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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LUIS FELIPE CASAS CASTRILLON,  
Plaintiff,  
vs.  
EL CENTRO DETENTION CENTER, et al.,  
Defendants.

LEAD CASE NO. 07cv2078 JM(CAB)  
consolidated with 07cv2258 JM(CAB)

ORDER GRANTING MOTION TO  
DISMISS; GRANTING LEAVE TO  
AMEND

Defendant C. Howard moves to dismiss the First Amended Complaint (“FAC”) for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff has not filed an opposition nor a statement of opposition as required by Local Rule 7.1(e)(2). Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument. For the reasons set forth below, the motion to dismiss is granted.

Plaintiff is an immigration detainee at Corrections Corporation of America’s (“CCA”) facility located in San Diego County. Defendant C. Howard, Assistant Warden, was named in the original complaint but is not named as a defendant in the operative FAC. There are simply no allegations that Defendant Howard violated Plaintiff’s constitutional or other federal rights. Furthermore, there is no respondeat superior liability in a Bivens action. Terrell v. Brewer, 935 F.2d 1015, 1018 (9<sup>th</sup> Cir. 1991). As Plaintiff fails to state a claim against Defendant C. Howard, the court grants the motion to dismiss.


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2 In sum, the motion to dismiss is granted without prejudice. The court also grants Plaintiff 30  
3 days leave to amend from the date of entry this order.

4 **IT IS SO ORDERED.**

5 DATED: February 10, 2009

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7 Hon. Jeffrey T. Miller  
United States District Judge

8 cc: All parties

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