



1 v. *U.S. Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998) (“Because the United States is the only  
2 proper party defendant in an FTCA action, the district court correctly dismissed [the] complaint  
3 as improperly filed against the Postal Service and Runyon. The FTCA is the exclusive remedy  
4 for tort actions against a federal agency, and this is so despite the statutory authority of any  
5 agency to sue or be sued in its own name. See 28 U.S.C. § 2679(a) (1998). A claim against the  
6 United States Postal Service in its own name is not a claim against the United States.”). Thus,  
7 Tagle’s suit against DHS is not proper.

8           “The timely filing of an administrative claim is a jurisdictional prerequisite to the  
9 bringing of a suit under the FTCA, . . . and, as such, should be affirmatively alleged in the  
10 complaint.” *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980). Tagle has not alleged that  
11 he filed an administrative claim with DHS, so dismissal is appropriate. If this were the only  
12 defect in the Second Amended Complaint, I would allow him to amend again if he could  
13 truthfully allege (and ultimately prove) that he filed an administrative claim with DHS. But  
14 because the pleading is otherwise fatally flawed, amendment would be futile.

15           Tagle was recently transferred from the Nevada State Prison system to the custody of the  
16 federal government, apparently for deportation processing. ECF No. 153. If his Second  
17 Amended Complaint is interpreted not as an FTCA claim but a request that I intervene in and  
18 stop his deportation proceeding, I do not have jurisdiction to do so. The Illegal Immigration  
19 Reform and Immigrant Responsibility Act states:

20           Except as provided in this section and notwithstanding any other provision of law  
21 (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas  
22 corpus provision . . . no court shall have jurisdiction to hear any cause or claim by  
23 or on behalf of any [noncitizen] arising from the decision or action by the  
Attorney General to commence proceedings, adjudicate cases, or execute removal  
orders against any [noncitizen] under this chapter.

1 8 U.S.C. § 1252(g). Accordingly, I have no jurisdiction to review the government’s decision to  
2 commence Tagle’s deportation proceeding. *See, e.g., Ramallo v. Reno*, 114 F.3d 1210, 1213  
3 (D.C. Cir. 1997) (finding the district court lacked jurisdiction to consider plaintiff’s claims  
4 seeking to restore her status as lawful permanent resident because the case arose from “the  
5 decision or action of the Attorney General to execute a removal order against” her); *see also*  
6 *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018) (distinguishing between claims arising  
7 from the execution of the removal order, which courts lack jurisdiction over, and other  
8 immigration-related claims such as challenging a violation of a court’s order to stay removal, in  
9 which courts retain jurisdiction).

10 If Tagle’s Second Amended Complaint is interpreted to be a request for naturalization,  
11 again I have no authority to order that. “Through the Immigration Act of 1990 (‘IMMACT’),  
12 Congress transferred all statutory authority to naturalize persons as citizens from the judiciary to  
13 the Attorney General.” *Tesfay v. Holder*, 942 F.Supp. 2d 1063, 1066 (D. Nev. 2013) (citing 42  
14 U.S.C. § 1421(a)). “Accordingly, IMMACT eliminated the judiciary’s naturalization authority  
15 present under the preceding naturalization system.” *Id.* Under our current system, “Congress  
16 shifted the statutory authority to naturalize persons as citizens from the courts to the executive.”  
17 *Id.* at 1067. Accordingly, I have no jurisdiction to grant Tagle the relief he requests. That  
18 authority remains with the executive branch of the federal government.

19 Tagle has had several opportunities over the years to correct his pleadings, yet his Second  
20 Amended Complaint remains fatally defective. Magistrate Judge Ferenbach and I have each  
21 twice pointed out the jurisdictional and other problems with Tagle’s claims. ECF Nos. 2, 5, 12,  
22 15. Yet Tagle continues to assert those claims without addressing the defects. In addition, Tagle  
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1 has been deemed a vexatious litigant. ECF No. 119. Granting him another opportunity to amend  
2 would be futile.

3 I THEREFORE ORDER that the defendant's motion to dismiss (**ECF No. 148**) is  
4 **GRANTED.**

5 I FURTHER ORDER that all other pending motions (**ECF Nos. 140, 146, 149, 151**) are  
6 **DENIED AS MOOT.**

7 I FURTHER ORDER the clerk of the court to enter judgment accordingly and close this  
8 case.

9 DATED this 26th day of March, 2020.

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13 ANDREW P. GORDON  
14 UNITED STATES DISTRICT JUDGE  
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