



**Responding to the Government’s Common Arguments in FTCA Litigation<sup>1</sup>**

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**Introduction**

The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 (“FTCA”), expressly waives the federal government’s sovereign immunity and authorizes suits for money damages for the tortious acts or omissions of federal employees. However, the FTCA’s waiver of sovereign immunity has several exceptions. *Id.* § 2680. If an exception applies, a court does not have jurisdiction over the claim. *Id.* §§ 1346(b), 2680.

This document details the common FTCA exceptions and the arguments the United States may raise in a motion to transfer and/or dismiss an FTCA action for lack of jurisdiction, Fed. R. Civ. P. 12(b)(1), and provides suggestions for how to respond to these arguments.

**1. Improper Venue**

In FTCA matters, venue is proper only in the judicial district (1) where the plaintiff resides **or** (2) where the act or omission complained of occurred. 28 U.S.C. § 1402. If the action is brought where the plaintiff resides, and she or he lives in a jurisdiction that is less favorable to the government, the government may seek to transfer venue. *See* 28 U.S.C. § 1404(a).

Courts permit transfer to another judicial district where the case might have been brought “[f]or the convenience of the parties and witnesses, in the interest of justice.” *Id.* The moving party has the “burden of making out a strong case for transfer,” *N.Y. Marine & Gen. Ins. Co. v. Lafarge N.*

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<sup>1</sup> This practice advisory should not be used as a substitute for legal advice and decision-making by a lawyer familiar with the mater. Please check for new developments.

*Am., Inc.*, 599 F.3d 102, 114 (2d Cir. 2010) (internal quotations omitted), and there is a strong presumption in favor of the plaintiff’s choice of forum, *see Coady v. Ashcraft & Gerel*, 223 F.3d 1, 11 (1st Cir. 2000). Importantly, the FTCA venue statute “reflects a policy choice Congress made to not force individuals to travel outside their home district to bring FTCA suits.” *K.O. v. United States*, No. 20-12015, 2023 WL 131411, at \*3 (D. Mass. Jan. 9, 2023).

If faced with a motion to transfer, argue that the plaintiff’s choice of forum should not be disturbed and that the factors weigh in favor of denying the motion. Additionally, look to cases involving family separation FTCA lawsuits, as most of the courts denied the government’s attempt to transfer venue.<sup>2</sup>

## 2. Discretionary Function Exception (28 U.S.C. § 2680(a))

The discretionary function exception (“DFE”) bars FTCA claims arising from a federal official’s exercise or failure to exercise a discretionary function or duty, even if the discretion was abused. 28 U.S.C. § 2680(a). For the government to successfully invoke the DFE, the alleged conduct must (1) involve an element of judgment or choice **and** (2) be based on public policy considerations. *See United States v. Gaubert*, 499 U.S. 315, 322–23 (1991); *Berkovitz v. United States*, 486 U.S. 531, 536–37 (1988). The government must satisfy both conditions.

Under the first prong, the DFE **does not** apply if the action violates a mandatory law, regulation, or policy, as an employee has no discretion to disobey a mandatory directive. *See Kohl v. United States*, 699 F.3d 935, 940 (6th Cir. 2012) (citing *Berkovitz*, 486 U.S. at 536). Also, in all but two federal circuits—the Seventh and Eleventh Circuits—the DFE does not apply if the challenged conduct violates the U.S. Constitution. *See M.Q. v. United States*, 22-cv-10680, 2025 WL 965810, at \*6–7 (S.D.N.Y. Mar. 31, 2025) (collecting cases and discussing the circuit split). Accordingly, try to identify as many mandatory legal duties that the challenged action violates. *See, e.g., Leticia v. United States*, 22-cv-7527, 2023 WL 7110953, at \*11–16 (E.D.N.Y. Oct. 27, 2023) (holding the DFE inapplicable to (1) separation of a mother and child because the conduct violated procedural and substantive due process under the Fifth Amendment and the *Flores* Agreement and (2) labeling

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<sup>2</sup> *See Leticia v. United States*, 22-cv-7527, 2023 WL 7110953, at \*6–8 (E.D.N.Y. Oct. 27, 2023); *F.C.C. v. United States*, No. 22-cv-05057 (E.D.N.Y.), Jun. 15, 2023 Docket Entry; *J.R.G. v. United States*, 22-cv-05183 (N.D. Cal. Apr. 11, 2023), ECF No. 37; *C.D.A. v. United States*, No. CV 21-469, 2023 WL 2666064, at \*10 (E.D. Pa. Mar. 28, 2023); *I.T. v. United States*, No. 22-cv-05333 (N.D. Cal. Feb. 24, 2023), ECF No. 30; *K.O. v. United States*, No. 20-12015, 2023 WL 131411, at \*3–4 (D. Mass. Jan. 9, 2023); *Rodriguez v. United States*, No. 22-CV-02845, 2022 WL 19237182, at \*3–4 (C.D. Cal. Dec. 22, 2022); *A.E.S.E. v. United States*, No. 21-CV-0569, 2022 WL 4289930, at \*6–7 (D.N.M. Sept. 16, 2022); *A.F.P. v. United States*, No. 21-CV-00780, 2022 WL 2704570, at \*4–9 (E.D. Cal. July 12, 2022); *E.L.A. v. United States*, No. 20-cv-01524, 2022 WL 2046135, at \*2–5 (W.D. Wash. June 3, 2022); *Wilbur P.G. v. United States*, No. 21-CV-04457, 2022 WL 3024319, at \*3–4 (N.D. Cal. May 10, 2022); *Nunez Euceda v. United States*, No. 20-cv-10793, 2021 WL 4895748, at \*4 (C.D. Cal. Apr. 27, 2021). *But see A.I.I.L. v. Unknown Parties*, No. 19-cv-00481 (D. Ariz. Apr. 11, 2023), ECF No. 112; *W.P.V. v. United States*, No. 21 CIV 4436, 2023 WL 1991426, at \*8 (S.D.N.Y. Feb. 14, 2023); *D.A. v. United States*, No. 20-cv-03082 (N.D. Ill. Aug. 11, 2022), ECF No. 85.

child as an unaccompanied minor because it violated the Trafficking Victims Protection Reauthorization Act of 2008); *Ruiz ex rel E.R. v. United States*, No. 13-CV-1241, 2014 WL 4662241, at \*12 (E.D.N.Y. Sept. 18, 2014) (holding DFE inapplicable to detention of a four-year-old U.S. citizen because officers violated the *Flores* Agreement and U.S. Customs & Border Protection policies).

Under the second prong, the DFE **does not** apply if the conduct was not “grounded in social, economic, [or] political policy.” *Gaubert*, 499 U.S. at 335 (internal quotation marks omitted). Even if the decision was “nominally discretionary, [it] may pass a threshold of objective unreasonableness such that no reasonable observer would see [it] as susceptible to policy analysis.” *Hajdusek v. United States*, 895 F.3d 146, 152 (1st Cir. 2018). If possible, try to frame the challenged action as objectively unreasonable and not one that is based in legitimate policy priorities. See, e.g., *Ruiz*, 2014 WL 4662241, at \*8 (employee’s mistreatment of a minor was not “susceptible to policy analysis” because the court could not “discern how deciding to wait fourteen hours before contacting [the child’s] parents and to only provide the child with a cookie and a soda over twenty hours could constitute a considered judgment grounded in social, economic, or political policies.”); *Scott v. Quay*, No. 19-CV-1075, 2020 WL 8611292, at \*14 (E.D.N.Y. Nov. 16, 2020) (“An official’s lazy or careless failure to perform his or her discretionary duties are negligent acts that . . . are [not] grounded in considerations of governmental policy.”).

Also, review FTCA cases involving the separation of immigrant families, as many courts rejected the United States’ invocation of the DFE,<sup>3</sup> and this analysis may be useful in other contexts as well.

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<sup>3</sup> See *C.M. v. United States*, 699 F. Supp. 3d 809, 825–32 (D. Ariz. 2023); *Flores Benitez v. Miller*, 687 F. Supp. 3d 304, 326–30 (D. Conn. 2023); *D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 592–93 (S.D.N.Y. 2022); *A.P.F. v. United States*, 492 F. Supp. 3d 989, 996–97 (D. Ariz. 2020); *S.M.F. v. United States*, No. 22-cv-01193, 2023 WL 6215319, at \*4 (W.D. Wash. Sept. 25, 2023); *B.Y.C.C. v. United States*, Nos. 22-6586, 22-6587, 22-6588, 2023 WL 5237147, at \*6 (D.N.J. Aug. 15, 2023); *J.P. v. United States*, No. CV-22-00683, 2023 WL 4237331, at \*8–9 (D. Ariz. June 28, 2023); *C.M. v. United States*, No. 21-CV-0234, 2023 WL 3261612, at \*43 (W.D. Tex. May 4, 2023); *C.D.A. v. United States*, No. CV 21-469, 2023 WL 2666064, at \*14–15 (E.D. Pa. Mar. 28, 2023); *D.A. v. United States*, No. EP-22-CV-00295, 2023 WL 2619167, at \*8–10 (W.D. Tex. Mar. 23, 2023); *I.T. v. United States*, No. 22-cv-05333, (N.D. Cal. Feb. 24, 2023) ECF No. 30 at 10–13; *K.O. v. United States*, No. 20-12015, 2023 WL 131411, at \*9 (D. Mass. Jan. 9, 2023); *Fuentes-Ortega v. United States*, No. CV-22-00449, 2022 WL 16924223, at \*3 (D. Ariz. Nov. 14, 2022); *E.C.B. v. United States*, No. CV-22-00915, ECF No. 24 at 11–12 (D. Ariz. Nov. 8, 2022); *E.S.M. v. United States*, No. CV-21-00029, 2022 WL 11729644, at \*4–5 (D. Ariz. Oct. 20, 2022); *A.E.S.E. v. United States*, No. 21-CV-0569, 2022 WL 4289930, at \*9–13 (D.N.M. Sept. 16, 2022); *F.R. v. United States*, No. CV-21-00339, 2022 WL 2905040, at \*5 (D. Ariz. July 22, 2022); *A.F.P. v. United States*, No. 21-CV-00780, 2022 WL 2704570, at \*12–14 (E.D. Cal. July 12, 2022); *Wilbur P.G. v. United States*, No. 21-CV-04457 2022 WL 3024319, at \*4–5 (N.D. Cal. May 10, 2022); *Nunez Euceda v. United States*, No. 20-cv-10793, 2021 WL 4895748, at \*3 (C.D. Cal. Apr. 27, 2021); *A.I.I.L. v. Sessions*, No. CV-19-00481, 2022 WL 992543, at \*3–4 (D. Ariz. Mar. 31, 2022); *C.M. v. United States*, No. 19-cv-05217, 2020 WL 1698191, at \*4 (D. Ariz. Mar. 30, 2020); *but*

### 3. Due Care Exception (28 U.S.C. § 2680(a))

The due care exception (“DCE”) to the FTCA bars claims “based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid.” 28 U.S.C. § 2680(a). The DCE applies only if (1) a statute or regulation requires a course of action and, if so, (2) the federal employee exercised due care in following such requirements. *Welch v. United States*, 409 F.2d 646, 652 (4th Cir. 2005).

Unless a statute or regulation “*specifically* [prescribes]” the conduct at issue, the DCE does not apply. *Id.* (emphasis added). Actions taken pursuant to executive policy, not a statute or regulation, are not shielded by the DCE. *See, e.g., C.M. v. United States*, 672 F. Supp. 3d 288, 326 (W.D. Tex. 2023); *D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 597–87 (S.D.N.Y. 2022); *A.P.F. v. United States*, 492 F. Supp. 3d 989, 996 (D. Ariz. 2020).<sup>4</sup>

Further, even if a specific action is mandated, the DCE applies only if the official also exercise due care, which “implies at least some minimal concern for the rights of others.” *Hatahley v. United States*, 351 U.S. 173, 181 (1956). Where plaintiffs allege they were mistreated by federal employees, courts have consistently held the DCE did not apply. *See, e.g., J.P. v. United States*, No. CV-22-00683, 2023 WL 4237331, at \*11 (D. Ariz. June 28, 2023) (finding DCE inapplicable even assuming a statute prescribed a course of action because plaintiffs plausibly alleged that the officers who detained and separated them did not act with due care).<sup>5</sup>

### 4. No Private Person Analog (28 U.S.C. § 1346(b)(1))

Under the FTCA, the United States is liable “to the same extent as a private individual in like circumstances” under the law where the act or omission occurred. 28 U.S.C. §§ 2674, 1346(b)(1). The government often argues there is no “private analog” for the conduct at issue. However, the “like circumstances” requirement does not mean “the *same circumstances*.” *United States v. Olson*, 546 U.S. 43, 46 (2005) (quoting *Indian Towing Co. v. United States*, 350 U.S. 61, 64 (1955)). Rather, the cause of action simply must be “comparable” to one against a private citizen in the jurisdiction where the tort occurred, and the allegations must satisfy the necessary elements

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*see S.E.B.M. v. United States*, No. 21-CV-00095, 2023 WL 2383784, at \*14 (D.N.M. Mar. 6, 2023); *Peña Arita v. United States*, 470 F. Supp. 3d 663, 692 (S.D. Tex. 2020).

<sup>4</sup> *See also Nunez Euceda v. United States*, No. 2:20-CV-10793-VAP-GJSx, 2021 WL 4895748, at \*4 (C.D. Cal. Apr. 27, 2021); *C.M. v. United States*, No. CV-19-05217-PHX-SRB, 2020 WL 1698191, at \*3 (D. Ariz. Mar. 30, 2020); *Garcia-Feliciano v. United States*, No. CIV. 12-1959, 2014 WL 1653143, at \*4 n.8 (D.P.R. Apr. 23, 2014).

<sup>5</sup> *See also Leticia*, 2023 WL 7110953 at \*17 (holding DCE inapplicable because the government “did not exercise due care” in its treatment of a separated minor and treated the plaintiff minor “without an apparent concern for his welfare”); *A.F.P. v. United States*, 2022 WL 2704570, at \*15 (E.D. Cal. July 12, 2022) (holding DCE inapplicable, even if a statute or regulation mandated the challenged conduct, because the government failed to show “due care” was taken).

of that comparable state cause of action. *D.J.C.V.*, 605 F. Supp. 3d at 598–88 (quoting *Chen v. United States*, 854 F.2d 622, 626 (2d Cir. 1988)).

Given the unique nature of government action, courts will “look further afield” to find analogous torts relating to the government conduct at issue. *Olson*, 546 43 at 46; *see also Dugard v. United States*, 835 F.3d 915, 919 (9th Cir. 2016) (“the federal government could never be exactly like a private actor,” so the court must “find the most reasonable analogy” (internal quotation marks omitted)). Indeed, several courts have found private analogs under various states’ laws for torts committed by immigration officials against people in detention.<sup>6</sup> These courts have focused not on the uniquely governmental functions of detention and arrest, but rather on the specific tortious conduct at issue. *See, e.g., D.J.C.V.*, 605 F. Supp. 3d at 601–02 (explaining that plaintiffs were not challenging their detention *qua* detention, but the focus of the tort claims was on the Government’s forced separation and mistreatment of them with the intent of inflicting harm, actions which have private state law analogs).

### 5. Misrepresentation Exception (28 U.S.C. § 2680(h))

The FTCA precludes any claims “arising out of . . . misrepresentation [or] deceit.” 28 U.S.C. § 2680(h). The exception applies to claims arising out of negligent and intention misrepresentation, *Flores Benitez v. Miller*, 687 F. Supp. 3d 304, 332 (D. Conn. 2023), as well as claims where the “gravamen” or “essence” is the government’s communication of false information, *Abbey v. United States*, 112 F.4th 1141, 1145–46 (9th Cir. 2024). Where the misrepresentations alleged are “not essential,” though, the exception will not bar that claim. *Block v. Neal*, 460 U.S. 289, 296–98 (1983).

Even where federal officials made false statements to plaintiffs, courts have declined to dismiss FTCA claims on the basis of this exception where the “heart of” the claims is not the coercion or misrepresentation. *See Flores Benitez*, 687 F. Supp. 3d at 332 (declining to dismiss intentional infliction of emotional distress (“IIED”), negligence, and abuse of process claims in family separation matter even though “misrepresentations contributed to the injuries alleged by the plaintiffs,” because “they were not the sole—or even the main—cause”); *D.J.C.V.*, 605 F. Supp. 3d at 598 (concluding that the misrepresentation exception is “not grounds to dismiss plaintiffs’ FTCA claims” because “[t]he heart of plaintiffs’ FTCA claims . . . is not the officials’ alleged coercion, but their separation”); *A.I.I.L. v. Sessions*, No. CV-19-00481, 2022 WL 992543, at \*5 (D. Ariz. Mar. 31, 2022) (misrepresentation exception did not apply because “the misstatements allegedly made by government officials are not essential to the claims asserted”); *but see D.A. v.*

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<sup>6</sup> *See, e.g., Liranzo*, 690 F.3d at 97 (although “immigration is a quintessentially federal function,” immigration detention has a private non-federal officer analogue); *Flores Benitez*, 687 F. Supp. 3d at 335–36 (finding private analog for intentional infliction of emotional distress (“IIED”) under Texas law); *A.E.S.E.*, 2022 WL 4289930, at \*14 (same); *A.F.P.*, 2022 WL 2704570, at \*9–10 (finding private analogs for IIED, abuse of process, and negligence in Texas); *D.J.C.V.*, 605 F. Supp. 3d at 601–02 (finding private analogs for IIED, negligent infliction of emotional distress (“NEID”), and negligence under New York law); *A.P.F.*, 492 F. Supp. 3d at 994–95 (finding private analogs for IIED, negligence, and loss of consortium under Arizona law); *C.M.*, 2020 WL 1698191, at \*2 (finding private analogs for IIED and negligence under Arizona law).

*United States*, 663 F. Supp. 3d 715, 738 (W.D. Tex. 2023) (barring claim that immigration officers mislead plaintiff into waiving her asylum claim under misrepresentation exception because plaintiffs did not challenge government’s invocation of the exception).

To avoid the misrepresentation exception, if your claims contain allegations that federal officers made false statements, coerced, or deceived your clients, be sure to frame them in such a way that the misrepresentations are not central or essential to the claims asserted.

## 6. Independent Contractor Exception

The independent contractor exception protects the United States from liability for the actions of its independent contractors when the United States does not exercise the requisite degree of control over the relevant contractor’s actions.<sup>7</sup> *See United States v. Orleans*, 425 U.S. 807, 814 (1976) (explaining the government can be held liable for a contractor’s acts if the contractor’s “day-to-day operations are supervised by the Federal Government”). However, the exception does not limit the United States’ liability for its *own* acts or omissions, even where it has delegated some responsibilities to an independent contractor. *See Edison v. United States*, 822 F.3d 510, 518 (9th Cir. 2016). Additionally, where the law imposes nondelegable duties on the government that the plaintiff alleges were breached, the United States may still be held liable under the FTCA. *See id.* at 518 n.4 (noting peculiar risk liability has been construed as creating liability for the government’s nondelegable duty to ensure its contract employs proper safety procedures).

Although the independent contractor exception bars holding the United States vicariously liable for its contractors’ conduct, federal courts have held the exception inapplicable to claims that immigrants were mistreated in contractor-operated facilities where the tortious conduct was committed by federal officials. *See Leticia*, 2023 WL 7110953, at \*19 (“The United States may be liable for tort violations committed by Government employees even when plaintiffs are detained at a private facility”). Further, the exception may not apply where the alleged harms were “proximately caused by the alleged wrongdoing of government employees” and not based on vicarious liability. *See A.P.F.*, 492 F. Supp. 3d at 997–98 (independent contractor exception inapplicable to claims that separated children were abused in contractor-operated foster care because the harms were traceable to the family separation policy); *A.F.P. v. United States*, No. 21-CV-00780, 2022 WL 2704570, at \*18 (E.D. Cal. July 12, 2022) (independent contractor exception inapplicable to claim that “the government’s conduct of forcibly separating plaintiffs was a direct and proximate cause of the harm suffered by plaintiff” at a contractor-operated shelter).

Thus, to resist the applicability of the independent contractor exception, where possible argue that: (1) the federal government controls the day-to-day operations of the independent contractor, thus the United States may be held liable for its acts, *see Orleans*, 425 U.S. at 815; (2) federal officials committed the tortious act or omission in the private facility, *see Leticia*, 2023 WL 7110953, at \*19; (3) the alleged harms were proximately caused by government employees, *see*

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<sup>7</sup> The independent contractor exception is not listed as an explicit exception in 28 U.S.C. § 2680. Instead, it is derived from the FTCA’s requirement that Government “employee[s]” engaged in the relevant conduct, 28 U.S.C. § 1346(b)(1), and the definition of “employee” specifically excludes “any contractor with the United States.” *Id.* § 2674.

*A.P.F.*, 492 F. Supp. 3d at 997–98; and (4) the United States breached nondelegable duties it owed plaintiff, *see Edison*, 822 F.3d at 518 n.4.

## **7. Constitutional Torts Are Not Cognizable Under the FTCA**

The FTCA waives sovereign immunity for common law torts, not for “constitutional tort claims.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 478 (1994). In other words, the “United States cannot be sued on the theory that there has been a violation of [Plaintiffs’] constitutional rights.” *J.P. v. United States*, 679 F. Supp. 3d 911, 927 (D. Ariz. 2023); *see also B.A.D.J. v. United States*, No. CV-21-00215-PHX-SMB, 2022 WL 11631016, at \*5 (D. Ariz. Sept. 30, 2022) (holding that “any claim based on the alleged unconstitutional separation in violation of due process rights is precluded” under the FTCA).

The government may raise this defense in response to the argument that a federal official’s tortious conduct violated the Constitution and thus the DFE is inapplicable. In so doing, the government improperly “conflates the difference between a cause of action and a basis of immunity from a cause of action.” *D.A. v. United States*, No. 22-295, 2023 WL 2619167, at \*9 (W.D. Tex. Mar. 23, 2023). In response, be clear that the plaintiff is asserting state tort law claims—allegations that federal officials’ tortious conduct violated the Constitution is relevant only with respect to defeating the government’s invocation of the DFE. *See id.* Courts have easily understood this distinction. *See, e.g., B.Y.C.C. v. United States*, Nos. 22-6586, 22-6587, 22-6588, 2023 WL 5237147, at \*8 (D.N.J. Aug. 15, 2023) (dismissing the government’s argument that plaintiff alleged constitutional claims, as plaintiffs “plead tort claims under Texas and Michigan law arising from the acts/of omissions of federal employees”); *E.S.M.*, 2022 WL 11729644, at \*2 (rejecting the United States’ attempt to recast plaintiffs’ claims based on actions of individual government employees as “systemic” constitutional torts “against the Government writ large”); *C.D.A.*, 2023 WL 2666064, at \*17 (same); *Nunez Euceda v. United States*, No. 20-cv-10793, 2021 WL 4895748, at \*3-4 (C.D. Cal. Apr. 27, 2021) (same); *see also Dalai v. Molinelli*, No. 20-1434, 2021 WL 1208901, at \*10 n.12 (D.N.J. Mar. 30, 2021) (“The fact that a constitutional tort is not a cognizable claim [under the FTCA] does not mean that a plaintiff cannot bring a state tort law claim against the federal government based on identified constitutional defects.”).

## **8. Institutional or Systemic Torts Are Not Cognizable Under the FTCA**

The FTCA limits lawsuits against the United States for tortious conduct by its employees or agents, it does not allow recovery for “institutional torts,” or “generalized theories of negligence asserted against the staff and employees of federal institutions as a whole.” *J.P.*, 679 F. Supp. 3d at 921 (internal quotation marks omitted). Courts will dismiss FTCA claims as “too vague and conclusory” under this exception if a plaintiff fails to specify any employee’s role in the alleged negligent act. *See, e.g., Lee v. United States*, No. CV 19-08051-PCT-DLR, 2020 WL 6573258 (D. Ariz. Sept. 18, 2020).

Where plaintiffs challenge “specific acts” committed by federal employees—even if unnamed—courts generally will not dismiss claims under this exception, even if the claim relates to a federal policy. *See B.Y.C.C.*, 2023 WL 5237147, at \*8 (holding FTCA claims related to family separation were not “systemic” because the complaint “makes numerous references to the actions of

individual Government employees” and collecting cases); *B.A.D.J.*, 2022 WL 11631016, at \*5 (refusing to dismiss FTCA action based on family separation under the “institutional torts” exception because “[i]ndividual officials craft the Government’s policies, which are later implemented by the Government’s individual employees”).<sup>8</sup>

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<sup>8</sup> See also *Wilbur P.G.*, 2022 WL 3024319, at \*6 (“The fact that [plaintiffs] are unable to name the individual [b]order [p]atrol officers who forcibly separated them and detention center employees without the benefit of discovery, should not be fatal to their action, particularly given that none of the [p]laintiffs spoke English at the time of detention . . .”); *A.F.P.*, 2022 WL 2704570, at \*18; *K.O.*, 2023 WL 131411, at \*12.