**NOT FOR PUBLICATION**

FILED

AUG 27 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JEREMY JOHN HALGAT,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>UNITED STATES OF AMERICA; LAS VEGAS METROPOLITAN POLICE DEPARTMENT,<br><br>Defendants - Appellees. | No. 24-2771<br><br>D.C. No.<br>2:22-cv-00592-ART-EJY<br><br>MEMORANDUM[*] |

Appeal from the United States District Court
for the District of Nevada
Anne R. Traum, District Judge, Presiding

Submitted August 14, 2025[**]
San Francisco, California

Before: RAWLINSON and KOH, Circuit Judges, and FITZWATER, District Judge.[***]

Jeremy John Halgat appeals from the district court's dismissal of his claims

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

against the United States brought under the Federal Tort Claims Act ("FTCA"). As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. We conclude that the district court properly dismissed Halgat's malicious prosecution, abuse of process, intentional infliction of emotional distress ("IIED") and negligence claims because the United States has not waived sovereign immunity. We review de novo "[w]hether the United States is immune from liability in an FTCA action. . . ." *Nieves Martinez v. United States*, 997 F.3d 867, 875 (9th Cir. 2021) (quoting *Alfrey v. United States*, 276 F.3d 557, 561 (9th Cir. 2002)). Taking the complaint's factual allegations as true and "drawing all reasonable inferences in the plaintiff's favor," we ask "whether the allegations are sufficient as a legal matter to invoke the court's jurisdiction." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

Under the FTCA's intentional tort exception, 28 U.S.C. § 2680(h), the United States generally does not waive sovereign immunity for "[a]ny claim arising out of . . . malicious prosecution, abuse of process," and certain other intentional torts. *See Abbey v. United States*, 112 F.4th 1141, 1145 (9th Cir. 2024). We conclude that all of Halgat's FTCA claims fall within this intentional tort exception. Halgat's malicious prosecution and abuse of process claims are explicitly enumerated in § 2680(h). Halgat's IIED and negligence claims also fall

within the intentional tort exception because the claims "aris[e] out of" the same conduct underlying the malicious prosecution and abuse of process claims. 28 U.S.C. § 2680(h); *see Sabow v. United States*, 93 F.3d 1445, 1456 (9th Cir. 1996) ("In determining whether a claim 'arises out of' one of the enumerated torts, we look beyond a plaintiff's classification of the cause of action to examine whether the conduct upon which the claim is based constitutes one of the torts listed in § 2680(h)."), *as amended* (Sept. 26, 1996).

Because Halgat's FTCA claims fall within the intentional tort exception, they are barred unless the alleged torts are committed by a federal "investigative or law enforcement officer." 28 U.S.C. § 2680(h). *See Martin v. United States*, 145 S. Ct. 1689, 1695 (2025) (explaining that the intentional tort exception "is itself subject to a 'law enforcement proviso'" that ensures claims against federal law enforcement officers "survive an encounter with the intentional-tort exception"). For purposes of this law enforcement proviso, the term "investigative or law enforcement officer" is defined as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. § 2680(h).

Here, Halgat's FTCA claims are premised on the alleged conduct of a federal prosecutor who "knowingly elicited testimony" from third-party witnesses who repeatedly lied under oath in bringing an indictment against Halgat. However,

federal prosecutors do not qualify as "investigative or law enforcement officer[s]" under 28 U.S.C. § 2680(h). *See* 28 U.S.C. § 547 (outlining the duties of federal prosecutors); *Wright v. United States*, 719 F.2d 1032, 1034 (9th Cir. 1983), *abrogated on other grounds as recognized in Gasho v. United States*, 39 F.3d 1420 (9th Cir. 1994).

Although Halgat briefly references additional named and unnamed federal agents involved in the investigations that led to his indictment, the complaint does not describe any specific action taken by any government employee which could serve as a basis for any of his claims. Conclusory allegations unsupported by facts in the complaint are insufficient to plausibly allege that the government has waived its sovereign immunity here. *See Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) ("[B]are assertions . . . amount[ing] to nothing more than a 'formulaic recitation of the elements' of a . . . claim . . . are conclusory and not entitled to be assumed true." (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007))).

In short, because we conclude that Halgat's claims fall within the FTCA's intentional tort exception and outside of the FTCA's law enforcement proviso, we affirm the district court's dismissal of these claims.[1]

[1] Because we conclude that Halgat's claims are barred by the intentional tort exception, we need not reach whether his claims are independently barred by the discretionary function exception, 28 U.S.C. § 2680(a). However, were we to reach this issue, we would conclude that Halgat's claims are also barred by the discretionary function exception because the challenged conduct involved elements

2. Second, we conclude that the district court did not err in denying Halgat's motion for leave to amend the complaint. "We review the denial of leave to amend for abuse of discretion, but we review the question of futility of amendment de novo. . . ." *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1172 (9th Cir. 2016) (citations omitted). Here, amendment would be legally futile in light of the government's sovereign immunity. In his briefing before this court, Halgat has failed to identify any facts that could cure this futility. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008) (concluding amendment would be futile where "[a]ppellants fail[ed] to state what additional facts they would plead if given leave to amend, or what additional discovery they would conduct to discover such facts"). Moreover, the district court already granted Halgat leave to amend once, and his amended complaint still failed to plausibly allege that the government has waived its sovereign immunity. *See United States v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

**AFFIRMED**.

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of judgment "of the kind that the discretionary function exception was designed to shield." *See Nieves Martinez*, 997 F.3d at 876 (quoting *Sabow*, 93 F.3d at 1451).