

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 26 2025

FOR THE NINTH CIRCUIT

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

ROBERTO ANTOINE DARDEN,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,
BARBARA VON BLANCKENSEE, named
as Warden V. Von Blacnkensee - USP
Tucson, M SEGAL, Assistant/Acting
Warden - USP Tucson, SHANNON BASS,
HSA - USP Tucson, HEIDI HAIGHT-
BIEHLER, Dr. - USP Tucson, A ASH, Dr. -
USP Tucson, DARRIN MCWHORTER,
Captain - USP Tucson, K GARCIA, Trust
Fund Supervisor - USP
Tucson, UNKNOWN DIXON, Infectious
Disease Expert - USP Tucson, UNKNOWN
COLBERT, Warden - USP
Tucson, UNKNOWN TUBB, Assistant
Warden - USP Tucson, UNKNOWN REY,
Captain - USP Tucson, J ALEXANDER,
Assistant HSA- USP Tucson, UNKNOWN
DYER, Assistant Warden - USP Tucson,

Defendants-Appellees.

No. 23-1775

D.C. No. 4:22-cv-00271-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

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

Jennifer G. Zipps, District Judge, Presiding

Submitted September 17, 2025**

Before: SILVERMAN, OWENS, and BRESS, Circuit Judges.

Roberto Antoine Darden, a federal prisoner, appeals pro se from the district court's judgment dismissing his Federal Tort Claims Act ("FTCA") action alleging negligence in response to the COVID-19 pandemic. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for lack of subject matter jurisdiction under the FTCA. *Terbush v. United States*, 516 F.3d 1125, 1128 (9th Cir. 2008). We affirm.

The district court properly dismissed Darden's action for lack of subject matter jurisdiction because the United States is immune from liability on Darden's claims under the "discretionary function" exception to the FTCA. *See* 28 U.S.C. § 2680(a); *United States v. Gaubert*, 499 U.S. 315, 322-23 (1991) (the discretionary function exception covers acts that are "discretionary in nature" and "based on considerations of public policy").

The district court did not abuse its discretion in denying Darden's motion to alter or amend the judgment because Darden failed to demonstrate any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or.*, 5 F.3d 1255, 1262-63 (9th

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

Cir. 1993) (setting forth standard of review and grounds for relief under Federal Rules of Civil Procedure 59).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Darden's motion (Docket Entry No. 36) for leave to amend his opening and reply briefs is granted to the extent that it seeks to correct typographical errors. The motion is otherwise denied. All other motions are denied.

AFFIRMED.