

Appendix 1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 19 2026

FOR THE NINTH CIRCUIT

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

LARRY CURLEE,

Plaintiff - Appellant,

v.

SOCIAL SECURITY
ADMINISTRATION,

Defendant - Appellee.

No. 24-4068

D.C. No. 1:22-cv-01593-JLT-BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Jennifer L. Thurston, District Judge, Presiding

Submitted February 18, 2026**

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

California state civil detainee Larry Curlee appeals pro se from the district court's judgment dismissing his action alleging claims related to the Social Security Administration's termination of his benefits. We have jurisdiction under

* 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).

28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C.

§ 1915(e)(2)(B)(ii). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Curlee's action because the Social Security Act bars benefits-related claims under the Federal Tort Claims Act, and a plaintiff may not bring a federal due process action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), for allegedly unconstitutional conduct resulting in the termination of benefits. *See Hooker v. U.S. Dep't of Health & Human Servs.*, 858 F.2d 525, 530 (9th Cir. 1988).

The district court did not abuse its discretion by dismissing without leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

AFFIRMED.

Appendix 2

UNITED STATES COURT OF APPEALS

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LARRY CURLEE,

Plaintiff - Appellant,

v.

SOCIAL SECURITY
ADMINISTRATION,

Defendant - Appellee.

No. 24-4068

D.C. No. 1:22-cv-01593-JLT-BAM
Eastern District of California,
Fresno

ORDER

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

The petition (Docket Entry No. 14) for panel rehearing is denied.

This court will not entertain any further filings in this closed case.

Appendix 3

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

LARRY CURLEE,

Plaintiff,

v.

SOCIAL SECURITY
ADMINISTRATION (SSA), et al.,

Defendants.

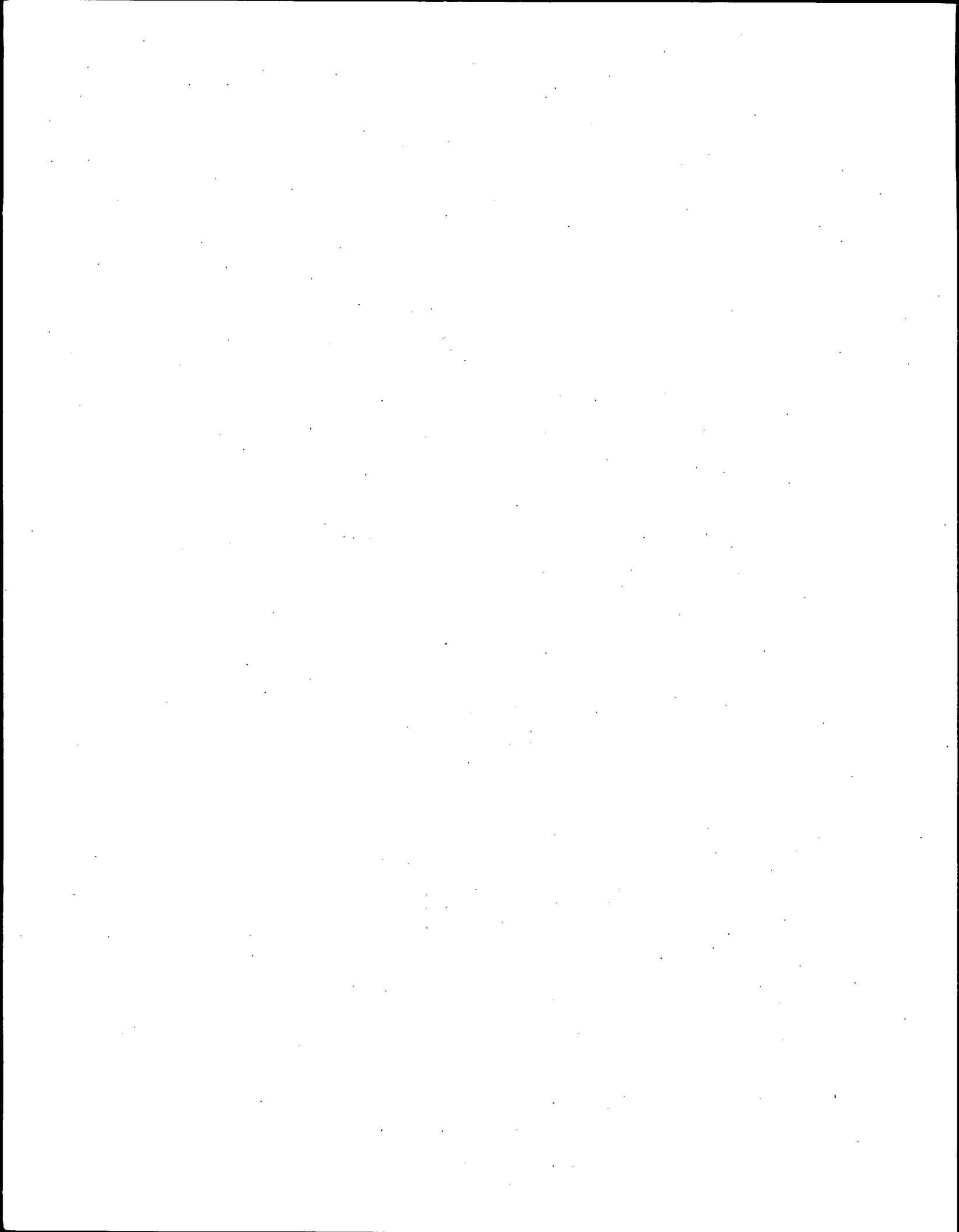
No. 1:22-cv-1593 JLT BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING THE
ACTION WITHOUT PREJUDICE, AND
DIRECTING THE CLERK OF COURT TO
CLOSE THIS CASE

(Doc. 8)

Larry Curlee is a pre-trial detainee proceeding *pro se* and *in forma pauperis* in this action, related to the termination of his Old-Age and Survivors Insurance Benefits by the Social Security Administration. Plaintiff asserts claims against the Social Security Administration—and several agents of the agency—pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and the Federal Tort Claims Act, seeking monetary damages for the termination of benefits and actions taken by the agency—in the course of their employment and reviewing Plaintiff's benefits—prior to termination. (*See* Doc. 1.)

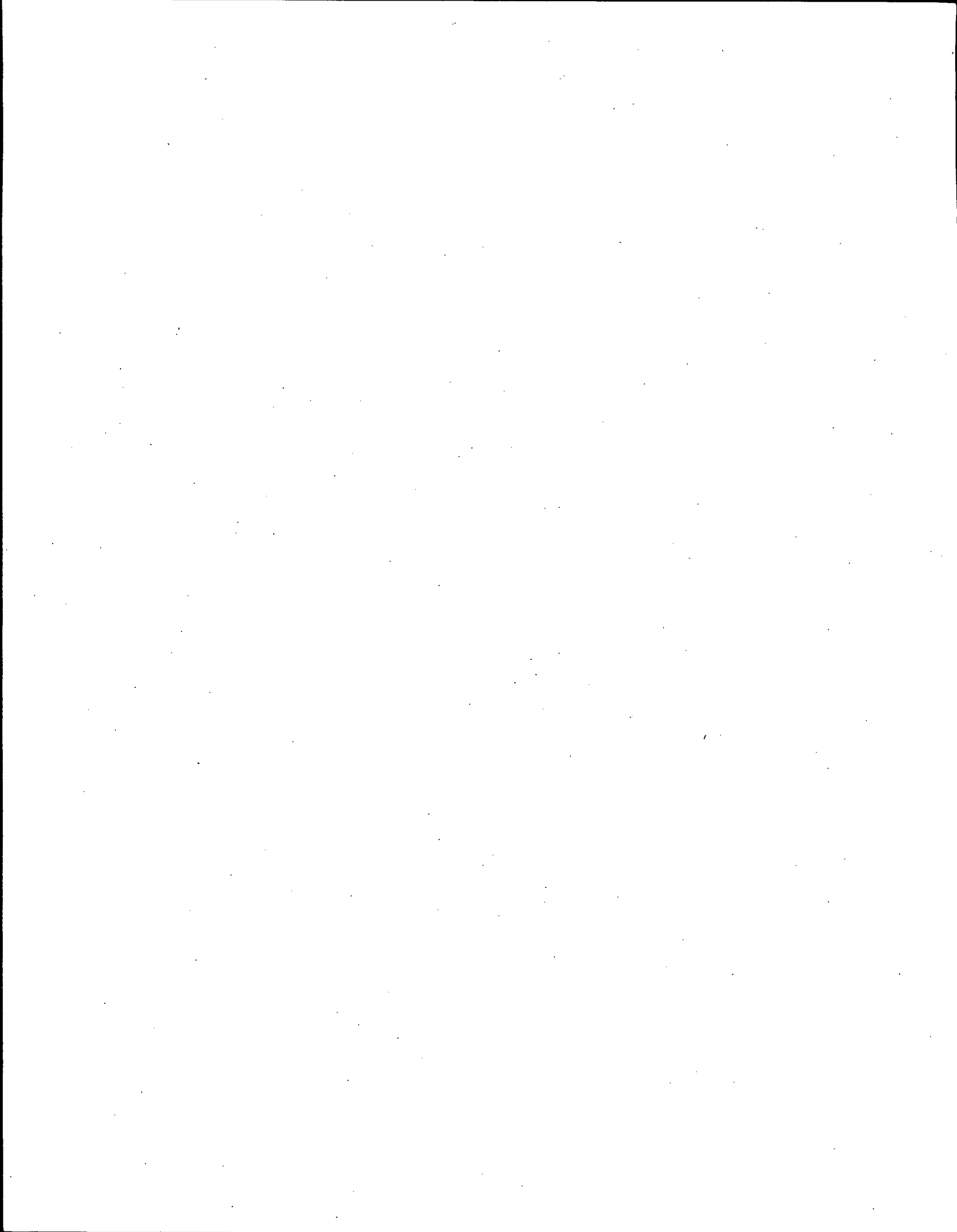
The magistrate judge screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2) and found Plaintiff could not pursue a *Bivens* action against the individual agents of the Social Security Administration for the alleged violations of his Fifth Amendment due process rights against the individual agents of the Social Security Administration. (Doc. 8 at 6-7.) In addition, to the extent Plaintiff sought to state a claim for negligence under the Federal Tort Claims Act



1 related to the termination of his benefits, the magistrate judge found the tort claim was barred by
2 42 U.S.C. § 405(h). (*Id.* at 7.) Finally, to the extent Plaintiff sought judicial review of the
3 termination of his benefits, the magistrate judge found this action was duplicative of Plaintiff's
4 prior action: *Curlee v. Comm'r of Soc. Sec.*, 1:20-cv-00145-SAB. (*Id.* at 7-8.) Therefore, the
5 magistrate judge recommended the complaint be dismissed without leave to amend. (*Id.* at 8.)

6 Plaintiff filed objections to the Findings and Recommendations, asserting the magistrate
7 judge lacked jurisdiction to issue Findings and Recommendations because he "never granted"
8 consent to the magistrate judge to preside over the action. (Doc. 9 at 1.) He asserts that "whether,
9 or not, the magistrate judge was correct in her analysis is irrelevant ... when the decisionmaker
10 lacked jurisdiction to make a decision." (*Id.* at 2.) However, Plaintiff also contends the
11 magistrate judge erred in the analysis. (*Id.* at 2-6.) According to Plaintiff, the magistrate judge
12 erred in applying requirements under the Prison Litigation Reform Act because he "is not a
13 'prisoner' and is thus not subject to the PLRA." (*Id.* at 2.) In addition, Plaintiff argues the
14 magistrate judge erred in finding this action is duplicative, asserting instead that he filed a
15 collateral action that invokes constitutional claims. (*Id.* at 2-6.)

16 As an initial matter, Plaintiff's consent was not required for the magistrate judge to act. A
17 magistrate judge is vested with the authority "to hear and determine any pretrial matter pending
18 before the court" except motions "for injunctive relief, for judgment on the pleadings, for
19 summary judgment, to dismiss or quash an indictment or information made by the defendant, to
20 suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to
21 dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss
22 an action." 28 U.S.C. 636(b)(1). With the excepted dispositive matters, a magistrate judge may
23 issue Findings and Recommendations to the district judge—such as a recommendation for
24 dismissal—without the consent of the parties. *Id.* Thus, the magistrate judge did not act
25 improperly in screening the allegations of the complaint issuing Findings and Recommendations.
26 *See id.*; *see also Gallegos v. Cal. Dep't of Corr. & Rehabilitation*, 2023 WL 3168360, at *1 (E.D.
27 Cal. Apr. 28, 2023) ("plaintiff's purported 'declination' to magistrate judge jurisdiction has no
28 impact on the assigned magistrate judge's authority to issue findings and recommendations with



1 respect to dispositive matters.’)

2 In addition, the magistrate judge did not invoke the PLRA in screening the complaint,
3 despite Plaintiff’s contentions to the contrary. As the magistrate judge indicated, the screening
4 was not because of Plaintiff’s status as a detainee, but rather because he sought to proceed *in*
5 *forma pauperis*. (See Doc. 8 at 1-2.) The provisions of 28 U.S.C. § 1915(e)(2) apply
6 to all seeking to proceed *in forma pauperis*, not only prisoners. See *Stephenson v. County of*
7 *Placer*, 2021 WL 22427, at *1 (E.D. Cal. Jan. 4, 2021) (“Although plaintiff is a civil detainee
8 rather than a prisoner, he is proceeding *in forma pauperis* and his complaint is therefore subject to
9 screening under 28 U.S.C. § 1915(e)(2)(B)”; *Koch v. Price*, 2019 WL 201525, at *1 (E.D. Cal.
10 Jan. 15, 2019) (stating the complaint of civil detainee is subject to screening under 28 U.S.C. §
11 1915(e)(2)(B)). Thus, Plaintiff is not exempt from screening due to his status as a detainee.

12 Finally, Plaintiff fails to show the magistrate judge erred in finding his claims were not
13 cognizable. The Supreme Court indicated monetary damages are “unavailable as a matter of law”
14 under *Bivens* where the plaintiff asserted due process violations by government agents resulted in
15 the termination of Social Security benefits. *Schweiker v. Chilicky*, 487 U.S. 412, 423-24, 429
16 (1988); see also *Ahlin v. Social Security Office*, 2007 WL 1302427, at *3 (E.D. Cal. May 3, 2007)
17 (citing *Schwiker* and explaining, “*Bivens* actions, i.e. suits against federal actors in their individual
18 capacities for violations of constitutional rights . . . cannot be pursued based on the denial of
19 social security benefits”). Similarly, Plaintiff is unable to proceed on a claim under the FTCA.
20 See 42 U.S.C. § 405(h); *Villarino v. Soc. Sec. Administration: Manager, 1521 N. Carpenter Rd.,*
21 *Suite 1, Modesto, CA 95354*, 2018 WL 5095125, at *3 (E.D. Cal. Oct. 17, 2018) (concluding a
22 plaintiff’s tort claim premised on the termination of benefits was barred under 42 U.S.C. §
23 405(h)). Given Plaintiff’s inability to proceed under *Bivens* and the FTCA, the Court find the
24 magistrate judge did not err in recommending leave to amend be denied.¹

25 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
26 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations

27 _____
28 ¹ Because Plaintiff is unable to proceed on the stated claims, the Court declines to address the remaining
objection related to whether the action was duplicative.

are supported by the record and proper analysis. Plaintiff's objections do not provide a basis to reject the Findings and Recommendations. Thus, the Court **ORDERS**:

1. The findings and recommendations issued on April 22, 2024 (Doc. 8) are **ADOPTED** in full.
2. This complaint is **DISMISSED** without prejudice and without leave to amend.
3. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: June 21, 2024


UNITED STATES DISTRICT JUDGE

Appendix 4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY CURLEE,

Plaintiff,

v.

SOCIAL SECURITY
ADMINISTRATION (SSA), et al.

Defendants.

Case No. 1:22-cv-01593-JLT-BAM

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION
WITHOUT LEAVE TO AMEND

(Doc. 1)

FOURTEEN-DAY DEADLINE

Plaintiff Larry Curlee ("Plaintiff"), a pre-trial civil detainee proceeding pro se and in forma pauperis, initiated this action on December 13, 2022. (Doc. 1.) On August 31, 2023, the matter was administratively redesignated and randomly reassigned to the undersigned magistrate judge. (Doc. 7.) Plaintiff's complaint is currently before the Court for screening.

I. Screening Requirement and Standard

The Court screens complaints brought by persons proceeding in pro se and in forma pauperis. 28 U.S.C. § 1915(e)(2). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not

1 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
2 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
3 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
4 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
5 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

6 To survive screening, Plaintiff’s claims must be facially plausible, which requires
7 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
8 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
9 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
10 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
11 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

12 II. Summary of Plaintiff’s Allegations

13 Plaintiff is currently detained at Coalinga State Hospital. He brings this action based on a
14 determination by the Social Security Administration that he was not entitled to Old-Age and
15 Survivors Insurance Benefits. Plaintiff claims that the erroneous determination was due to the
16 negligence of agents of the Social Security Administration. (*See generally* Doc. 1, Complaint.)
17 Plaintiff names the Social Security Administration and Unknown Named Social Security Agents
18 #1, #2, #3, #4, #5, #6, #7, and #8. (*Id.*, ¶¶ 11-18.)

19 Plaintiff alleges that he is a 73-year-old United States citizen who worked and paid a
20 portion of his wages into the Federal Old-Age and Survivors Insurance Trust Fund. He is a pre-
21 trial civil detainee awaiting court proceedings on the issue of whether or not he is subject to civil
22 commitment. (Compl. ¶¶ 41, 42.)

23 According to the complaint allegations, on November 3, 2017, the Social Security
24 Administration notified Plaintiff that he was entitled to monthly retirement benefits beginning
25 April 2017. (*Id.*, ¶ 44.)

26 On or about March 12, 2018, the Social Security Agency received information from an
27 agent of California’s Department of State Hospitals that Plaintiff was confined at Coalinga State
28 Hospital. The agent reportedly failed to inform the Social Security Administration that Plaintiff

1 was a pre-trial civil detainee and had not been found by a court to have mental disease, mental
2 defect, or to suffer from mental incompetence. Upon receipt of Plaintiff's confinement,
3 Defendant Unknown Named SSA Agent #1 concluded Plaintiff was no longer entitled to his Old-
4 Age and Survivors Insurance payments. Defendant allegedly failed to conduct an adequate
5 investigation of Plaintiff's actual status and neglected to discover that Plaintiff was no confined to
6 a prison or other penal institution and was not confined due to court's finding that Plaintiff had a
7 mental disease mental defect, mental incompetence, or other similar verdict or finding. (*Id.*, ¶
8 45.)

9 On March 30, 2018, Plaintiff submitted a request for reconsideration of the decision to
10 terminate his benefits. (Compl. ¶ 47.) On May 11, 2018, an agent of the Social Security
11 Administration sent an internal memorandum indicating Plaintiff had "filed a recon[sideration] on
12 his prisoner suspension." (*Id.*, ¶ 48.) Plaintiff alleges that the reference to "prisoner suspension"
13 indicates that the Social Security Administration was not aware of the fact Plaintiff was not a
14 prisoner. (*Id.*)

15 On May 14, 2018, Defendant Unknown Names SSA Agent #2 deemed that the suspension
16 of Plaintiff's payments was affirmed under Section 42x of the Act. Plaintiff alleges that
17 Defendant was referencing 28 U.S.C. § 402(x), which deems the Social Security Administration
18 can suspend payments if a citizen is a prisoner, has been civilly committed due to a mental
19 disorder, or is confined due to court finding that plaintiff has a mental disease, mental defect,
20 mental incompetence, or other similar verdict or finding. Plaintiff contends that Defendant failed
21 to conduct an adequate investigation of Plaintiff's actual status and neglected to discovery that
22 none of the reasons for suspension of payments noted in § 402(x) applied to Plaintiff. (Compl. ¶
23 49.)

24 On May 21, 2018, Defendant Unknown Named SSA Agent #3 sent a letter indicating the
25 law regarding prisoner suspension. Plaintiff alleges Defendant failed to conduct an investigation
26 of the facts pertinent to Plaintiff's detention status. (Compl. ¶ 50.)

27 Plaintiff claims that from May 2018 to January 2019, Plaintiff called several lawyers
28 seeking their assistance in this matter, who indicate that they only dealt with Social Security

1 Disability benefits. Plaintiff attempted to resolve the matter on his own. (Compl. ¶ 51.)

2 On July 18, 2018, Plaintiff requested a hearing regarding the Social Security
3 Administration's suspension of his Old-Age and Survivors Insurance payments. (Compl. ¶ 52.)

4 On November 19, 2018, the Social Security Administration informed Plaintiff of the
5 administrative law judge process and noted that the hearing could be held by video
6 teleconferencing rather than in person. As Plaintiff could not make a personal appearance due to
7 his civil detention, Plaintiff believed that the Social Security Administration would set up a video
8 teleconferencing appearance. (Compl. ¶ 53.)

9 On November 26, 2018, Cynthia Garibay, an agent of the Social Security Administration,
10 was "unable to get a hold of [Plaintiff] to give him the scheduled date and time of his hearing.
11 [Ms. Garibay] left info on his voicemail as well as our office number in case of any
12 questions/change of address." (Compl. ¶ 54.)

13 On December 7, 2018, Defendant Unknown Named SSA Agent #4 sent Plaintiff a "Notice
14 of Hearing," which indicated that Plaintiff had a hearing scheduled for March 1, 2019, in
15 Stockton, California. Include with the letter was an "Acknowledgment of Receipt (Notice of
16 Hearing)" form for Plaintiff to fill out and return to the Social Security Administration's Office of
17 Hearing Operations. Plaintiff alleges that despite Defendant knowing that Plaintiff was being
18 civilly detained and could not make a personal appearance at the hearing, Defendant failed to
19 make arrangements for Plaintiff to be present for said hearing by arranging for Plaintiff to appear
20 by either telephone or video at the hearing. (Compl. ¶ 55.)

21 On February 10, 2019, Plaintiff returned the "Acknowledgment of Receipt (Notice of
22 Hearing)" form. On the form, Plaintiff wrote the following:

23 [I] cannot be present at the time and place shown on the Notice of Hearing. I
24 request that you reschedule my hearing because: I have not been able to obtain
25 legal counsel. All social security lawyers only want to do disability cases.
26 Therefore I will have to act as my own attorney. Please grant me a 90 day
extension. I need to do all relevant legal research. I need copies of all documents
listed on the enclosed form. There are very complicated legal/constitutional
considerations in my case that I need to research thoroughly.

27 (Compl. ¶ 56.)

28 On February 25, 2019, Defendant Unknown Named SSA Agent #5 contacted Plaintiff by

1 telephone. Defendant took no steps to ensure that Plaintiff was present by either telephone or
2 video at the hearing. Defendant denied Plaintiff the opportunity to conduct relevant legal
3 research, get copies of all documents listed on the form, or obtain legal representation. Instead,
4 Defendant informed Plaintiff that the office was denying Plaintiff's postponement request without
5 explaining how Plaintiff could be personally present at the hearing considering he was being
6 civilly detained or how Plaintiff could have a fair hearing, in a meaningful manner, if he was
7 being denied the opportunity to adequately prepare to defend himself. (Compl. ¶57.)

8 In February 2019, Plaintiff telephoned Defendant Unknown Named SSA Agent #6.
9 Plaintiff explained why he could not be present at the March 1, 2019 hearing or be adequately
10 prepared to defend himself. Defendant took no steps to ensure that Plaintiff could be present by
11 telephone or by video at the hearing. Defendant also denied Plaintiff the opportunity to conduct
12 relevant legal research, get copies of all documents, or attempt to obtain legal representation.
13 Instead, Defendant informed Plaintiff that the office was denying Plaintiff's postponement
14 request without explaining how Plaintiff could be personally present at the hearing considering he
15 was being civilly detained or how Plaintiff could have a fair hearing, in a meaningful manner, if
16 he was being denied the opportunity to adequately prepare to defend himself. (Compl. ¶ 58.)

17 On March 1, 2019, the hearing went forward without Plaintiff being present. (Compl. ¶
18 59.)

19 In a letter dated March 4, 2019, which Plaintiff allegedly did not receive, the Social
20 Security Administration's Office of Hearing Operations "deemed that since Plaintiff did not
21 appear at the ... hearing, he needed to show cause if [he] still wanted to have a [hearing] with an
22 administrative law judge." (Compl. ¶ 59.) Plaintiff alleges that had he received the letter, he
23 would have diligently done his best to advocate for himself. However, as Plaintiff did not receive
24 the correspondence, he was unable to respond to it. (*Id.*)

25 In a letter dated May 22, 2019, Defendant Unknown Named SSA Agent #7 stated he was
26 dismissing Plaintiff's request for a hearing. Attached to the letter was the Social Security
27 Administration's Order of Dismissal. (Compl. ¶ 61.) Defendant dismissed the action despite
28 knowing that there was no possible means of Plaintiff appearing at the hearing as he was being

1 civilly detained. (*Id.*)

2 The decision was referred to the Social Security Administration's "Appeals Council." On
3 December 4, 2019, Defendant Unknown Named SSA Agent #6 affirmed the dismissal. However,
4 Defendant failed to discover that Plaintiff could not possibly have been present at the hearing as
5 he was civilly detained and the Social Security Administration had failed to ensure Plaintiff was
6 afforded the opportunity to be present by either telephone or by video. Defendant also neglected
7 to discover that the grounds for withholding the Old-Age and Survivors Insurance Benefits did
8 not apply to Plaintiff. (Compl. ¶62.)

9 Plaintiff forwards claims against defendants under the Federal Tort Claims Act and *Bivens*
10 for violations of his Fifth Amendment due process right not to be deprived of his Old-Age and
11 Survivors Insurance Benefits without being afforded a fair and meaningful hearing and for being
12 deprived of his Old-Age and Survivors Insurance Benefits without just reason. (Compl. ¶ 67.)
13 As relief, he seeks compensatory damages. (*Id.*, at 36.)

14 III. Discussion

15 A. *Bivens* Action

16 Plaintiff filed this action, in part, pursuant to *Bivens v. Six Unknown Named Agents of*
17 *Federal Bureau of Narcotics*, 403 U.S. 388 (1971), which provides a remedy for violation of
18 civil rights by federal actors. Plaintiff claims that the individually named defendants, agents of
19 the Social Security Administration, violated his Fifth Amendment due process rights.
20 However, Plaintiff cannot pursue a *Bivens* action for the denial of social security benefits
21 allegedly resulting from violations of due process. *See Butler v. Apfel*, 144 F.3d 622, 624 (9th
22 Cir. 1998) (determining plaintiff could not pursue a *Bivens* action for denial of social security
23 benefits); *see also Schweiker v. Chilicky*, 487 U.S. 412, 423-24 (1987) (concluding *Bivens*
24 remedy for damages unavailable in action challenging the improper denial of Social Security
25 disability benefits, allegedly resulting from violations of due process by government officials
26 who administered the federal Social Security program); *Ahlin v. Soc. Sec. Off.*, No. CIVF07-
27 287AWI SMS, 2007 WL 1302427, at *3 (E.D. Cal. May 3, 2007) ("*Bivens* actions, i.e. suits
28 against federal actors in their individual capacities for violations of constitutional rights . . .

1 cannot be pursued based on the denial of social security benefits.”).

2 B. Federal Tort Claims Act (“FTCA”)

3 Plaintiff also appears to be asserting a negligence claim based on the alleged wrongful
4 termination of his monthly retirement benefits. To the extent that Plaintiff’s tort claim is
5 premised on the denial of his social security benefits, his FTCA claim is barred under 42 U.S.C.
6 § 405(h), which provides, in relevant part: “No action against the United States, the
7 Commissioner of Social Security, or any officer or employee thereof shall be brought under
8 section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.” See
9 *Villarino v. Soc. Sec. Administration: Manager, 1521 N. Carpenter Rd., Suite 1, Modesto, CA*
10 *95354*, No. 1:18-cv-01112-DAD-EPG, 2018 WL 5095125, at *3 (E.D. Cal. Oct. 17, 2018)
11 (concluding tort claim is premised on the denial of supplemental security income benefits barred
12 under 42 U.S.C. § 405(h)). In *Hooker v. Department of Health and Human Services*, 858 F.2d
13 525, 530 (9th Cir. 1988), the Ninth Circuit held that “section 405(h) bars [a] state law claim
14 under the FTCA,” where such a claim arises out of the termination of benefits. “Indeed, in
15 *Hooker*, the Ninth Circuit rationalized that Congress intended to limit such claims under the
16 FTCA because it had created an administrative remedial scheme by which an aggrieved person
17 may contest the termination of benefits.” *Villarino*, 2018 WL 5095125, at *3.

18 C. Judicial Review

19 To the extent Plaintiff seeks judicial review of the Social Security Administration’s
20 decision to terminate his retirement benefits, this is duplicative of Plaintiff’s proceedings in the
21 matter of *Curlee v. Comm’r of Soc. Sec.*, 1:20-cv-00145-SAB.¹ In that action, Plaintiff sought
22 judicial review of the decision of the Social Security Administration terminating his Old-Age
23 benefits on March 12, 2018, due to his confinement at Coalinga State Hospital. Plaintiff also
24 noted his inability to attend a hearing. (*Curlee v. Comm’r of Soc. Sec.*, 1:20-cv-00145-SAB,

25 ¹ The Court may properly take judicial notice of court filings. See *Revn’s Pasta Bella, LLC v. Visa USA,*
26 *Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001).
27 Accordingly, the Court takes judicial notice of Plaintiff’s prior social security action.
28

1 Doc. 1.) The court denied Plaintiff's Social Security appeal on April 1, 2022, and judgment was
2 entered in favor of the Commissioner of Social Security. (*Id.*, Docs. 40, 41.) Following denial
3 of Plaintiff's subsequent motions for reconsideration, Plaintiff appealed the court's decision to
4 the Ninth Circuit, where it remains pending. (*Id.*, Docs. 43, 45, 46, 47.)

5 Duplicative lawsuits filed by a plaintiff proceeding *in forma pauperis* are subject to
6 dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). *See, e.g., Cato v. United*
7 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *McWilliams v. State of Colo.*, 121 F.3d 573, 574
8 (10th Cir. 1997); *Pittman v. Moore*, 980 F.2d 994, 994–95 (5th Cir. 1993); *Bailey v. Johnson*,
9 846 F.2d 1019, 1021 (5th Cir. 1988). A complaint that merely repeats pending or previously
10 litigated claims may be considered abusive and dismissed under § 1915. *Cato*, 70 F.3d at 1105
11 n.2; *Bailey*, 846 F.2d at 1021.

12 The Court will therefore recommend dismissal of this action as duplicative insofar as
13 Plaintiff is again attempting to seek judicial review of the termination of his monthly Social
14 Security retirement benefits.

15 D. Leave to Amend

16 “A pro se litigant must be given leave to amend his or her complaint, and some notice of
17 its deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be
18 cured by amendment.” *Cato*, 70 F.3d at 1106. Because it does not appear possible that the
19 deficiencies identified herein can be cured by amending the complaint, leave to amend is not
20 warranted. *See Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc).

21 **IV. Conclusion and Recommendation**

22 Based on the foregoing, the Court HEREBY RECOMMENDS that this action be
23 dismissed without leave to amend.

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
26 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
27 file written objections with the Court. The document should be captioned “Objections to
28 Magistrate Judge's Findings and Recommendations.” Plaintiff is advised that failure to file

1 objections within the specified time may result in the waiver of the “right to challenge the
2 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: April 22, 2024

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**