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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PAUL BALDONADO, Plaintiff - Appellant, v. UNITED STATES OF AMERICA, Defendant - Appellee.	No. 07-56677 D.C. No. CV-06-07266-FMC MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, District Judge, Presiding

Submitted February 4, 2009**
Pasadena, California

Before: PREGERSON, GRABER and WARDLAW, Circuit Judges.

Paul Baldonado ("Baldonado") appeals the district court's order dismissing in its entirety his action under the Federal Tort Claims Act. The parties are

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

familiar with the facts of this case, which we repeat here only to the extent necessary to explain our decision. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the applicability of the *Feres* doctrine, *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1997), and affirm in part and reverse in part.

As the district court properly held, the injuries Baldonado alleged in his complaint arose in the course of activity incident to military service. Therefore, Baldonado's claims as alleged in the operative complaint are barred. *Feres v. United States,* 340 U.S. 135, 146 (1950); *see also Jackson v. United States*, 110 F.3d 1484, 1489 (9th Cir. 1997) ("*Feres* bars suits for medical malpractice even when the treatment was not for military-related injuries.").

However, "[d]ismissal of a *pro se* complaint without leave to amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (quoting *Schucker v. Rockwood*, 846 F.2d 1202, 1203-04 (9th Cir.1988) (per curiam)). Baldonado's pro se complaint is poorly worded and difficult to decipher. Nevertheless, in reviewing a motion to dismiss based on the *Feres* doctrine, we must accept the plaintiff's allegations as true. *Dreier*, 106 F.3d at 847. Baldonado's complaint, though deficient in its current form, does allege that Department of Veterans Affairs doctors prescribed harmful medications to

Baldonado in 1996, nine years after Baldonado left the Navy. Though we do not express an opinion as to the applicability of the *Feres* bar to Baldonado's post-discharge injuries, it appears that the bar might not apply to the 1996 claims when analyzed under the "Johnson factors." *Johnson v. United States*, 704 F.2d 1431, 1436-39 (9th Cir. 1983). Accordingly, we reverse in part and remand to the district court to grant Baldonado leave to amend his complaint.

AFFIRMED in part, REVERSED in part, and REMANDED to the district court for further proceedings consistent with this disposition. With respect to this appeal, each side to bear its own costs.