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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF DEVON RIDEOUT,
by and through LESLIE WOODS as
successor-in-interest; and LESLIE
WOODS as an individual,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No.: 22cv278-JO-WVG

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS**

Eduardo Arriola, a mentally incompetent individual and former Marine, purchased a gun and shot and killed his neighbor, Devon Rideout. Ms. Rideout’s mother, Leslie Woods¹, filed a Federal Tort Claims Act, [28 U.S.C. § 2674](#) (“FTCA”) lawsuit against the United States of America alleging that it failed to report Mr. Arriola’s mental incompetency to the federal background check system for gun purchasers. [Dkt. 15](#) (FAC). Plaintiff

¹ While Ms. Woods files this lawsuit on behalf of both her daughter’s estate and her own behalf, the Court will refer to her as “Plaintiff” throughout this order.

1 alleges that, properly reported, such information would have prevented Mr. Arriola from
2 purchasing the gun he used to shoot and kill her daughter.

3 On September 28, 2022, the United States filed a motion to dismiss the complaint
4 for lack of subject matter jurisdiction and failure to state a claim. Dkt. 16. For the reasons
5 stated below, the Court denies the United States' motion.

6 I. BACKGROUND

7 A. The Shooting of Devon Rideout

8 On July 20, 2018, Eduardo Arriola, a former United States Marine, shot and killed
9 Devon Rideout with a gun he purchased from Iron Sights Shooting Range, a federally
10 licensed gun retailer in Oceanside, California. FAC ¶¶ 14, 20. Ms. Rideout, a 24-year-old
11 Navy hospital corpsperson, was walking her dog outside her apartment when she was
12 killed. FAC ¶ 14. She did not have any relationship or connection to Mr. Arriola aside
13 from living in the apartment one floor below him. FAC ¶ 14. Mr. Arriola told police he
14 shot Ms. Rideout because “she was trespassing.” FAC ¶ 18.

15 From Mr. Arriola's time in military service, the United States Marine Corps
16 possessed a substantial record of his mental illness. *See* FAC ¶¶ 21, 24–26. Mr. Arriola
17 served in the Marine Corps from August 16, 2011, through September 29, 2017. FAC ¶
18 21. In December 2014, Mr. Arriola was hospitalized for “bizarre behavior and hyper
19 religiosity.” FAC ¶ 21. After his release from the hospital, he went absent from the military
20 without authorization. FAC ¶ 22. In April 2016, the military located Mr. Arriola and
21 arrested and charged him with desertion. FAC ¶¶ 22, 78. However, after a psychiatric
22 review of Mr. Arriola's mental state, the military court determined that he was incompetent
23 to stand trial. FAC ¶¶ 23–24. On July 20, 2016, the military court committed Mr. Arriola
24 to a Federal Bureau of Prisons (“FBOP”) psychiatric facility for mental health treatment to
25 regain his competency. *See* FAC ¶ 24. After three months of treatment, the FBOP
26 psychiatric facility confirmed his mental incompetency and diagnosed Mr. Arriola as
27 schizophrenic with disorganized thoughts and behavior, auditory hallucinations, and
28

1 delusions. FAC ¶¶ 25–26. Ultimately, the military discharged him due to this mental
2 incompetency. FAC ¶ 26.

3 **B. Federal Reporting and Background Check System Surrounding Gun Purchases**

4 Mr. Arriola’s mental incompetency rendered him ineligible to purchase a gun under
5 federal law. Federal law disqualifies people with certain characteristics from buying or
6 owning firearms. 18 U.S.C. § 922(g), amended by Brady Handgun Violence Prevention
7 Act, Pub. L. No. 103-159, 107 Stat. 1536. Disqualifying characteristics include having a
8 criminal record, being convicted of domestic violence, or, as relevant here, being
9 adjudicated as “mental[ly] defective” (e.g., being found incompetent to stand trial). *See* 27
10 C.F.R. § 478.11; 18 U.S.C. § 922(d)(4), (g)(4). Gun dealers therefore cannot sell firearms
11 to people with these disqualifications. 18 U.S.C. § 922(g).

12 In 1993, Congress passed the Brady Handgun Violence Prevention Act (“Brady
13 Act”), which tasked the United States Attorney General with establishing the National
14 Instant Criminal Background Check System (“NICS”), a federal background check system
15 designed to prevent disqualified people from purchasing firearms. FAC ¶ 27; 34 U.S.C. §
16 40901. This statutory framework requires every federal department or agency to provide
17 NICS with records containing disqualifying information—such as criminal history or
18 mental incompetency—and to correct and update these records as necessary. 34 U.S.C. §
19 40901(e)(1)(D).² Pursuant to both the Brady Act and the United States military’s own
20 internal regulations, these reporting requirements extend to the Department of Defense
21 (“DOD”) and its component agencies. FAC ¶¶ 35–40. Collecting these records from
22 reporting agencies, NICS maintains a database of people disqualified from purchasing
23 guns. FAC ¶ 45. In turn, federally licensed gun dealers are required to consult NICS prior
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27 ² The United States Department of Defense’s (“DOD”) internal policies and operating procedures
28 similarly mandate the DOD’s compliance with the Brady Act’s reporting requirements to compile,
maintain, and manage these records of mentally incompetent or other disqualified individuals. *See* FAC
¶¶ 37–40.

1 to completing a sale and cannot sell firearms to people who have disqualifying records in
2 the NICS database. FAC ¶ 46; 18 U.S.C. § 922(t).

3 Although the Federal Bureau of Investigation (“FBI”) administers NICS, some state
4 agencies act as a Point of Contact (“POC”) to manage background check inquiries between
5 in-state arms dealers and NICS. As relevant here, the California Department of Justice
6 (“California DOJ”) serves as the POC for NICS inquiries related to prospective firearms
7 sales in California. Pursuant to Brady Act implementing regulations, “[w]hen the NICS
8 receives an inquiry from a POC, it will search the relevant databases (*i.e.*, NICS Index,
9 NCIC, III) for any matching record(s) and will provide an electronic response to the POC.”
10 FAC ¶ 48; 28 C.F.R. § 25.6(f). In response to a background check request, NICS will
11 provide one of three responses: (1) “Proceed,” if no disqualifying information is found; (2)
12 “Delayed,” if more research is required before a decision can be rendered; and (3)
13 “Denied,” if disqualifying information is found. FAC ¶ 46; 28 C.F.R. § 25.6(c)(1)(iv).
14 State POCs serve as liaisons rather than independent investigators; while they may conduct
15 their own research and examine state records, they rely on NICS to provide them with
16 matching records and disqualifying information. 28 C.F.R. §§ 25.6(f)–(e); FAC ¶¶ 51–52.

17 **C. Reporting Failures by the Department of Defense**

18 Despite the DOD’s legal obligations to do so, Plaintiff alleges that it failed to report
19 information about Mr. Arriola’s mental incompetency to the FBI. FAC ¶ 71. As a result,
20 “NICS did not possess those records and did not communicate such disqualifying
21 information to the California DOJ after NICS searched its database.” FAC ¶ 76. Because
22 this disqualifying information was not present in the NICS database, NICS did not identify
23 Mr. Arriola to California DOJ as a person prohibited from purchasing a firearm. FAC ¶¶
24 73–75. Thus, when Iron Sights Shooting Range reported Mr. Arriola’s prospective gun
25 purchase to California DOJ, the NICS system failed to deny the sale of the gun. FAC ¶ 75.
26 Plaintiff alleges that the instant failure by DOD to submit Mr. Arriola’s mental
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1 incompetency finding is just one example of DOD’s pervasive and longstanding failures
2 to report disqualifying information to NICS.³ See FAC ¶¶ 53–66.

3 After NICS wrongfully approved the gun sale to Mr. Arriola, California DOJ, as the
4 POC for this sale, attempted to gather further information about Mr. Arriola. Plaintiff
5 alleges that a California DOJ employee independently discovered Mr. Arriola’s April 26,
6 2016 arrest warrant and, finding no disqualifying information in the NICS database,
7 contacted a DOD representative for additional information. FAC ¶ 78.⁴ In response, the
8 DOD representative provided the California DOJ employee with a package of documents
9 “noting that Arriola was transferred to the [FBOP] due to being found incompetent to stand
10 trial by court martial.” FAC ¶¶ 79–80.⁵ However, despite receiving this information
11 regarding Mr. Arriola’s incompetence finding, the California DOJ employee did not take
12 follow-up actions to stop the sale. See FAC ¶ 80.

13 **D. Procedural History**

14 Plaintiff filed two concurrent actions, one against the United States and the other
15 against the State of California, for the death of her daughter. Plaintiff filed her original
16 complaint against the United States in federal court on March 1, 2022. [Dkt. 1](#). On March
17 2, 2022, Plaintiff filed a complaint in state court against California DOJ and its employee
18 largely based on the same set of facts. RJN, Ex. 1. As explained above, Plaintiff’s state
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21 ³ The DOD Office of the Inspector General (“OIG”), the military’s official watchdog agency,
22 conducted numerous investigations into the military’s reporting failures. For instance, in 2014, the OIG
23 found that the military failed to report criminal records to the FBI despite federal crime reporting laws and
24 DOD’s reporting procedures. FAC ¶ 60. An investigation in 2015 revealed that only 72% of fingerprint
25 records and 70% of arrest records made it to the FBI. FAC ¶ 61. In 2017, the OIG found that the Marine
26 Corps failed to submit 29% of the required fingerprint cards and 36% of the final disposition reports. FAC
27 ¶ 62.

28 ⁴ Plaintiff filed a parallel lawsuit in San Diego Superior Court against California DOJ and its
employee alleging negligence and wrongful death based on their involvement in these events. See San
Diego Superior Court Case No. 37-2022-00008092-CU-PO-CTL (filed March 2, 2022).

⁵ Even though the DOD representative provided this package of documents upon request, Plaintiff
alleges the package did not satisfy DOD’s obligations to properly report information to the NICS
background check system. FAC ¶ 81.

1 court complaint alleges that a California DOJ employee reached out to the DOD directly
2 after finding no disqualifying information in NICS regarding Mr. Arriola. Ex. 1, ¶¶ 51–
3 53. The DOD provided the California DOJ employee with a package of documents noting
4 Mr. Arriola’s mental incompetence finding. Ex. 1 ¶¶ 53–54. Plaintiff alleges that despite
5 receiving these materials indicating Mr. Arriola’s disqualified status, the California DOJ
6 employee failed to take steps to notify the gun seller to block the sale of the gun. Ex. 1 ¶¶
7 53–54.

8 On September 28, 2022, the United States moved to dismiss the instant federal action
9 for lack of subject matter jurisdiction and failure to state a claim. Dkt. 16.

10 II. LEGAL STANDARD

11 A party may challenge a complaint under Rule 12(b)(1) for lack of subject matter
12 jurisdiction. “Federal courts are courts of limited jurisdiction [and] possess only that power
13 authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
14 U.S. 375, 377 (1994). Pursuant to Rule 12(b)(1), a party may seek dismissal of an action
15 for lack of subject matter jurisdiction by asserting a facial challenge or a factual challenge.
16 Fed. R. Civ. P. 12(b)(1); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th
17 Cir. 2003). Where the moving party asserts a facial challenge, as it does here, the court
18 limits its inquiry to the allegations set forth in the complaint. *Safe Air for Everyone v.*
19 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In such a challenge, the court considers the
20 complaint’s allegations to be true and draws all reasonable inferences in the plaintiff’s
21 favor. *See Doe v. Holy*, 557 F.3d 1066, 1073 (9th Cir. 2009). Where the moving party
22 asserts a factual challenge, based on the legal sufficiency of the jurisdictional facts, the
23 court may review any evidence necessary, such as affidavits and testimony, in order to
24 determine whether subject matter jurisdiction exists. *McCarthy v. United States*, 850 F.2d
25 558, 560 (9th Cir. 1988). The plaintiff has the burden of showing that the court has subject
26 matter jurisdiction over the action. *Ass’n of Am. Med. Colleges v. United States*, 217 F.3d
27 770, 778–79 (9th Cir. 2000).

1 Relatedly, a party may also challenge the legal sufficiency of the claims asserted in
2 a complaint under Federal Rule 12(b)(6). Fed. R. Civ. P. 12(b)(6); *Navarro v. Block*, 250
3 F.3d 729, 731 (9th Cir. 2001). To avoid a Rule 12(b)(6) dismissal, a complaint must plead
4 “enough facts to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556
5 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007)). A
6 claim is facially plausible when the factual allegations permit “the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
8 U.S. at 678. A court must accept all factual allegations pleaded in the complaint as true
9 and draw all reasonable inferences from them in favor of the nonmoving party. *Cahill v.*
10 *Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996).

11 III. REQUEST FOR JUDICIAL NOTICE

12 The United States requests that the Court take judicial notice of Plaintiff’s filings in
13 her parallel state court lawsuit against California DOJ and its employee for the death of her
14 daughter. Specifically, the United States requests judicial notice of (1) Plaintiff’s
15 complaint, Case No. 37-2022-00008092-CU-PO-CTL, filed in San Diego Superior Court
16 on March 2, 2022; and (2) Plaintiff’s opposition brief to the State’s demurrer. Dkt. 21-1,
17 Exs. 1–2 (Def.’s RJN). Federal Rule of Evidence 201 permits a court to take judicial notice
18 of a fact that is “not subject to reasonable dispute.” Fed. R. Evid. 201(b). A federal court
19 may take judicial notice of related state court orders and proceedings if they directly relate
20 to matters before the court. *See United States ex rel. Robinson Rancheria Citizens Council*
21 *v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (taking judicial notice of state court
22 proceedings because they “are directly related” to the federal action and may be
23 dispositive). Plaintiff’s state court complaint and filings arise from the same set of facts in
24 this action. These documents directly relate to the matters before this Court and, as matters
25 of judicial record, their authenticity is not in question. Accordingly, the Court grants the
26 United States’ request and takes judicial notice of the existence of the state court action
27 and the claims and positions asserted by the Plaintiff in that action. *In re Bare Escentuals,*
28 *Inc. Sec. Litig.*, 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010) (taking judicial notice of the

1 existence of court documents, but not for the truth of the matters asserted in those
2 documents).

3 IV. DISCUSSION

4 The United States moves to dismiss Plaintiff’s claims for lack of subject matter
5 jurisdiction arguing that they fall outside the claims permitted by the FTCA for the
6 following two reasons. First, the United States argues that Plaintiff’s claims are barred
7 because they fall within the “misrepresentation exception” of the FTCA. Second, the
8 United States argues that California law would not hold a private citizen liable under
9 similar circumstances—*i.e.*, for failing to prevent the dangerous actions of a third party—
10 and therefore no FTCA liability exists. The Court will examine each of these arguments
11 below.

12 A. Sovereign Immunity and the FTCA

13 The FTCA enables private citizens to bring tort claims against the United States for
14 the negligent performance of governmental functions. In general, the United States enjoys
15 sovereign immunity, which means that it cannot be sued “unless it has expressly waived
16 such immunity and consented to be sued.” *Dunn & Black, P.S. v. United States*, 492 F.3d
17 1084, 1087–88 (9th Cir. 2007); *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (“Absent a
18 waiver, sovereign immunity shields the Federal Government and its agencies from suit.”).
19 Thus, a federal court has subject matter jurisdiction over claims against the United States
20 only to the extent an express waiver of sovereign immunity permits those claims. *United*
21 *States v. Mitchell*, 445 U.S. 535, 538 (1980). By passing the FTCA, Congress expressly
22 waived sovereign immunity to allow private suits based on the negligent conduct of federal
23 government employees and agencies, including those alleging “personal injury or death
24 caused by the negligent or wrongful act or omission of any employee of the
25 Government...[.]” 28 U.S.C. § 2674; 28 U.S.C. § 1346(b). However, the government can
26 only be liable if a private person would be liable under applicable state law under similar
27 or analogous circumstances. 28 U.S.C. § 2674; *see also* 28 U.S.C. § 1346(b)(1).

1 In addition to the requirement that a private citizen must be liable under like
2 circumstances for the United States to be liable, the FTCA also carved out exceptions to a
3 plaintiff's ability to bring suit against the government, including the so-called
4 "misrepresentation exception." See 28 U.S.C. § 2680(h). The misrepresentation exception
5 bars claims against the government that arise from the communication of misinformation.
6 *Block v. Neal*, 460 U.S. 289, 296 (1983). The Supreme Court has held that this exception
7 applies equally to misstatements and omissions, whether negligent or deliberate. *United*
8 *States v. Neustadt*, 366 U.S. 696, 697 n.4, 702, 704 (1961).

9 **B. FTCA's "Misrepresentation Exception"**

10 The United States argues that Plaintiff premises her claim on the military's failure
11 to adequately communicate information about Mr. Arriola's prohibited status for gun
12 ownership. Construing Plaintiff's claims as a "failure to communicate" Mr. Arriola's
13 dangerousness, the United States argues that the misrepresentation exception bars her
14 claims. See Def.'s Mot. at 14.

15 To determine whether a claim falls under the misrepresentation exception, courts
16 examine whether the injuries resulted from the communication of information or the
17 performance of operational tasks. *Mundy v. United States*, 983 F.2d 950, 952 (9th Cir.
18 1993). The misrepresentation exception bars claims that arise from "the government's
19 failure to use due care in communicating information." *Snyder & Assocs. Acquisitions*
20 *LLC v. United States*, 859 F.3d 1152, 1160 (9th Cir. 2017) (citing *Block*, 460 U.S. at 297).
21 On the other hand, it does not bar claims for "injuries resulting from negligence and
22 performance of operational tasks even though misrepresentations are collaterally
23 involved." *Mundy*, 983 F.2d at 952; see also *Life Partners Inc. v. United States*, 650 F.3d
24 1026, 1031 (5th Cir. 2011). Where "the government's misstatements are not essential to
25 plaintiff's negligence claim," the exception does not apply. *Block*, 460 U.S. at 297.

26 In other words, if the "focal point" of the claim is a negligent communication by the
27 defendant, then the misrepresentation exception applies. See *Lawrence v. United States*,
28 340 F.3d 952, 958 (9th Cir. 2003) (finding misrepresentation exception barred FTCA claim

1 arising from federal agents’ failure to provide certain known information regarding the
2 criminal history of a sex offender; such failure to warn of the offender’s dangerousness fell
3 within the misrepresentation exception). By contrast, if the focal point of the claim is an
4 “operational error” with a communication only “collaterally involved,” then the
5 misrepresentation exception does not apply. *See Mundy*, 983 F.2d at 952 (finding
6 misrepresentation exception did not bar FTCA claim arising from federal agency’s failure
7 to properly process security clearance request). Notably, in a case similar to the present
8 one, the Western District of Texas declined to extend the misrepresentation exception to
9 claims alleging the government’s failure to provide disqualifying information to NICS.
10 *Holcombe v. United States*, 388 F. Supp. 3d 777, 795 (W.D. Tex. 2019). There, the court
11 reasoned that, in failing to report disqualifying information under the Brady Act, the U.S.
12 Air Force’s conduct “skew[ed] closer to operational negligence—rooted in failure to
13 collect and process information that should have been in its possession—than to
14 communicational failure.” *Id.*

15 Despite the United States’ efforts to characterize Plaintiff’s claims as arising from
16 misrepresentation, an examination of the operative pleading reveals otherwise. In this case,
17 the complaint makes clear that the essence or “focal point” of Plaintiff’s claims is the
18 alleged failure of the DOD to submit Mr. Arriola’s disqualifying information to the NICS
19 database—a failure which consequently prevented NICS from reporting Mr. Arriola’s
20 disqualified status to California DOJ and the gun dealer. FAC ¶¶ 69–77. Plaintiff alleges
21 that her injury—the death of her daughter—resulted from the DOD’s failure to compile
22 and maintain disqualifying information about Mr. Arriola and to submit that information
23 to NICS. These are operational failures distinct from a duty to use due care in
24 communicating information. *See Holcombe*, 388 F. Supp. 3d at 794; *Block*, 460 U.S. at
25 297. As in *Holcombe*, “the gravamen of [Plaintiff’s] allegations” here is the DOD’s
26 “negligence in handling, processing, and entering . . . background information into
27 [NICS],” not the purported misrepresentation of Mr. Arriola’s eligible status. 388 F. Supp.
28 3d at 795. The NICS background check report approving Mr. Arriola for a gun sale was

1 incidental to the central failure to submit and maintain disqualifying information about
2 him: any misrepresentation was itself a consequence of the original operational failure
3 rather than the wrongdoing that caused the injury. Indeed, the NICS report communicated
4 by DOD was not a “misrepresentation” at all, since it accurately conveyed that NICS did
5 not have any record indicating that Mr. Arriola should not be allowed to purchase a gun.
6 *See id.* Since Plaintiff’s injuries stem from an operational failure rather than a
7 communication failure, the “misrepresentation exception” to the FTCA does not bar her
8 claims.

9 Relying on *Lawrence v. United States*, [340 F.3d 952](#) (9th Cir. 2003), the United
10 States argues that the government’s failure to adequately warn of Mr. Arriola’s
11 dangerousness falls squarely within the misrepresentation exception of the FTCA. In
12 *Lawrence*, the plaintiff brought an FTCA suit after a convicted felon sexually abused her.
13 [340 F.3d at 954–55](#). The plaintiff argued that federal officers provided inadequate criminal
14 history information about the felon to a state agency. *Id.* at 955, 958. The Ninth Circuit
15 held that the plaintiff’s claim, which alleged that complete and accurate disclosure of this
16 information would have prevented the abuse, fell under the misrepresentation exception.
17 *Id.* Here, the United States points to the package of information that the DOD
18 representative provided in response to California DOJ’s inquiry as the source of the
19 purported misrepresentation. Based on this package, it argues that any inadequacies in that
20 information to fully warn about Mr. Arriola’s dangerousness are errors in communication
21 covered by the misrepresentation exception. The United States’ argument, however,
22 contradicts the actual claims in Plaintiff’s complaint. Plaintiff does not premise her
23 claims—in either this action or her parallel state lawsuit—on the DOD’s failure to
24 adequately communicate Mr. Arriola’s dangerousness in the package they provided to
25 California DOJ. As explained above, Plaintiff’s complaint in this action focuses on the
26 United States’ alleged failure to collect, submit, and process Mr. Arriola’s disqualifying
27 information into the NICS database—operational tasks that, performed correctly, would
28 have systematically alerted California DOJ that Mr. Arriola was barred from owning or

1 purchasing a firearm. FAC ¶¶ 35–36, 72, 75. In her parallel state action, Plaintiff focuses
2 her claims on California DOJ’s negligent failure to deny the gun sale after receiving
3 information from the DOD representative, not on the inadequacy of the contents of the
4 packet received. Ex. 1 ¶ 54. Given that Plaintiff does not even plead that the DOD’s
5 package of documents to California DOJ misrepresented Mr. Arriola’s dangerousness, any
6 negligence or inadequacies surrounding such communication are certainly not the “focal
7 point” of Plaintiff’s claims.⁶ *Mundy*, 983 F.2d at 952.

8 **C. Analogous State Law Duty**

9 The United States also argues that the Court lacks subject matter jurisdiction over
10 these claims because California law would not hold a private person liable under similar or
11 analogous circumstances. The Court will examine Plaintiff’s contention that California’s
12 Good Samaritan doctrine, also known as the “negligent undertaking” theory of liability,
13 provides the requisite analogous framework to hold the United States liable for
14 volunteering to provide a system of gun background checks but negligently performing
15 that undertaking.

16 Under the FTCA, the United States is liable for negligence only “if a private person[]
17 would be liable to the claimant in accordance with the law of the place where the act or
18 omission occurred.” 28 U.S.C. § 1346(b)(1). In other words, a plaintiff can bring an FTCA
19 claim against the United States only if state law would hold a private person liable for
20 similar conduct. *See United States v. Olson*, 546 U.S. 43, 46 (2005). For FTCA liability
21 to exist, a breach of federal statutes or regulations on its own cannot form the grounds of a
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24 ⁶ Moreover, “[n]either the language nor history of the [FTCA] suggest that when one aspect of the
25 Government’s conduct is not actionable under the ‘misrepresentation’ exception, a claimant is barred from
26 pursuing a distinct claim arising out of other aspects of the Government’s conduct.” *Block*, 460 U.S. at
27 298. Even if discovery reveals that the DOD’s supplementary communications to California DOJ *did*
28 constitute misrepresentations, the Court may still consider whether its operational errors relating to its
NICS reporting obligations are sufficient to sustain a negligence claim.

1 viable claim. *Love v. United States*, 60 F.3d 642, 644 (9th Cir. 1995). A defendant must
2 breach a duty arising under state law—here, California law—analogueous to a duty created
3 by federal law. *Delta Savings Bank v. United States*, 265 F.3d 1017, 1024 (9th Cir. 2001).
4 “Although the federal government could never be exactly like a private actor, a court’s job
5 in applying the standard is to find the most reasonable analogy.” *Dugard v. United States*,
6 835 F.3d 915, 919 (9th Cir. 2016) (internal quotations omitted).

7 In *Indian Towing*, the Supreme Court instructed that the closest analogy between the
8 government’s breach of its functions and a private citizen’s liability is often provided by
9 the “Good Samaritan” doctrine. *Indian Towing Co.*, 350 U.S. 61, 64 (1955). There, a
10 plaintiff’s tugboat crashed into shore after a Coast Guard-operated lighthouse ran out of
11 power. *Id.* The plaintiff brought a negligence claim against the United States pursuant to
12 the FTCA based on the Coast Guard’s negligent maintenance of the lighthouse. *Id.* at 64–
13 65. The court concluded that the Coast Guard voluntarily undertaking to provide
14 lighthouse services was akin to a Good Samaritan citizen who voluntarily undertakes to
15 help a third party. *See id.* Like the Good Samaritan, the Coast Guard thus assumed a duty
16 to use reasonable care in providing that help—namely, the duty to maintain the lighthouse
17 in proper working condition. *Id.* at 69. Under these circumstances, the Supreme Court
18 held that if the Coast Guard breached this duty and caused injury to the plaintiff, then the
19 United States was liable under the FTCA. *Id.*

20 The Court therefore turns to whether the Good Samaritan or negligent undertaking
21 theory of liability provides an appropriate state law analog to the United States’ negligent
22 failure to carry out its statutory obligations to maintain a viable system of gun background
23 checks. In California, a person ordinarily has no duty to help another or prevent the
24 misconduct of third parties. *Paz v. State of California*, 22 Cal. 4th 550, 559 (2000).
25 However, such a duty arises when a person voluntarily undertakes to help another person.⁷
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28 ⁷ The Court notes that California law also imposes a legal duty to protect against the conduct of a
third party if there is a “special relationship” between the defendant and the person in danger. A “special

1 Known as the “negligent undertaking” theory, a person who volunteers to render services
2 to another has a duty to exercise reasonable care in their actions and may be liable to third
3 persons for harm resulting from a failure to do so. *Id.* at 553 (citing Restatement (Second)
4 of Torts § 324A). Under California law, a plaintiff must show five elements for a negligent
5 undertaking claim:

6 (1) [T]he actor undertook...to render services to another; (2) ...of a kind the
7 actor should have recognized as necessary for the protection of [the plaintiff];
8 (3) the actor failed to exercise reasonable care in the performance of the
9 undertaking; (4) the actor’s failure to exercise reasonable care resulted in
10 physical harm to the [plaintiff]; and (5) either (a) the actor’s carelessness
11 increased the risk of such harm, or (b) the actor undertook to perform a duty
12 that the other owed to the third persons, or (c) the harm was suffered because
either the other or the third persons relied on the actor’s undertaking.

13 *Paz*, 22 Cal. 4th at 559; *Dent v. National Football League*, 968 F.3d 1126 (9th Cir. 2020).
14 Under these elements, a plaintiff establishes a duty of care by satisfying the first, second,
15 and fifth elements. *Peredia v. HR Mobile Services, Inc.*, 25 Cal. App. 5th 680, 691 (2018).

16 Here, Plaintiff has adequately pled an analogous “negligent undertaking” duty of
17 care by alleging that (1) the United States undertook to provide background checks for gun
18 purchasers; (2) when it did so, it recognized that these services were necessary for the
19 protection of citizens like Ms. Rideout; and (3) its negligence in performing this
20 undertaking increased the risk of people like Ms. Rideout suffering harm. First, Plaintiff

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23 relationship” can rest on various grounds—some are inherently “special,” others are contract-based, and
24 others arise by statute or regulation. *Lopez v. Southern Calif. Rapid Transit Dist.*, 40 Cal. 3d 780, 788–
25 89 (1985); see Restatement (Second) of Torts §§ 314, 315. No matter the basis, California law is clear
26 that in certain situations, a person may have a duty to protect against harm by a third party and thus face
27 liability for the crime of another. See, e.g., *Delgado v. Trax Bar & Grill*, 36 Cal. 4th 224 (2005) (finding
28 restaurants, bars, and shopping centers have affirmative duty to reasonably secure premises against
reasonably foreseeable criminal acts of third parties); *Myers v. Quesenberry*, 144 Cal. App. 3d 888 (1983)
(finding doctor has duty to warn foreseeable third-party potential victims if patient’s condition may be
dangerous to others); *Regents of Univ. of Calif. v. Sup. Ct.*, 4 Cal. 5th 607 (2018) (finding university had
duty to student assaulted by another student where university staff knew of the assailant’s schizophrenia
and violent tendencies).

1 alleged that by establishing the NICS background check system, the United States
2 undertook to prevent firearms from ending up in the hands of dangerous individuals, such
3 as those with criminal records or who are mentally incompetent. *See* FAC ¶¶ 27–33. In
4 addition, Plaintiff pointed to several other federal statutes, DOD regulations, and policies
5 which demonstrate that the United States voluntarily assumed the specific duty to submit
6 disqualifying information, properly compile, correct, and manage data, and run a system
7 of background checks for gun safety. FAC ¶¶ 37–42; [34 U.S.C. § 40911\(b\)\(2\)](#).

8 Second, Plaintiff has adequately alleged that the United States should have known
9 the NICS system was necessary to protect California residents from gun violence. Plaintiff
10 points to federal statutes and Congressional findings which indicated that the purpose of
11 NICS was to protect the public from mentally incompetent individuals, as well as other
12 dangerous, disqualified persons, having access to firearms. *See* FAC ¶¶ 37–42; [34 U.S.C.](#)
13 [§ 40902](#). Plaintiff alleges that in passing such federal statutes and regulations, the United
14 States recognized the need to prevent dangerous individuals from accessing firearms and
15 thereby protect the public from gun violence resulting from this access. FAC ¶ 74.

16 Finally, Plaintiff has alleged that the United States’ failure in carrying out its
17 assumed duty to submit and maintain disqualifying information for gun background checks
18 increased the risk of harm to Ms. Rideout. A negligent undertaking claim requires “that
19 the actor’s carelessness increased the risk of harm to [the plaintiff].” *Dent*, [968 F.3d at](#)
20 [1134](#) (finding NFL undertook to implement a medication distribution program for injured
21 NFL players but its carelessness in distributing painkillers to the players increased the risk
22 of harm to them); *Scott v. C.R. Bard, Inc.*, [231 Cal. App. 4th 763, 776](#) (2014) (finding
23 medical device manufacturer volunteered to provide physician training but its “improper
24 training could increase the risk of harm to the physician’s patients”). To measure increased
25 risk, the Court compares the risk of harm to Ms. Rideout that existed on the day of the
26 shooting with the risk that would have existed had the United States provided no services.
27 *See Toomer v. United States*, [615 F.3d 1233, 1239](#) (9th Cir. 2010); *Paz*, [22 Cal. 4th at 560](#)
28 (finding that although the city undertook to install a traffic signal at a blind intersection,

1 the negligent delay in installing the signal “did not increase the risk of physical harm to
2 plaintiff beyond that which allegedly existed at the intersection”).

3 Here, Plaintiff’s complaint adequately alleges facts supporting the inference that the
4 United States’ negligent operation of the NICS system created greater risk to Ms. Rideout
5 than if no federal system of gun background checks existed. First, Plaintiff alleges that by
6 undertaking a federal background check system, the United States created public reliance
7 on its efficacy. FAC ¶ 77. Through a system of federal laws and regulations, including
8 the Brady Act, the federal government undertook to provide a system of background checks
9 designed to collect and maintain information about dangerous persons in order to bar gun
10 sales to these individuals. *See, e.g.*, FAC ¶¶ 27–33, 70. The federal government also
11 positioned itself as the centralized source of this information for all federally licensed gun
12 dealers, in effect acting as the primary enforcer of federal prohibitions on gun access for
13 disqualified people. *See* FAC ¶¶ 45–49. In doing so, the United States created public
14 reliance on a federally regulated regime that would keep guns out of the hand of dangerous
15 people and provided an implicit assurance that this system would function to protect the
16 public. *See* FAC ¶¶ 74, 77.

17 By alleging public reliance on this federal system of background checks for gun
18 purchases, Plaintiff also adequately creates an inference that Ms. Rideout was subject to
19 increased risk when the government failed in its undertaking to keep guns away from
20 mentally incompetent persons. Courts have recognized the commonsense principle that
21 public reliance on government protections and the proper functioning of government
22 systems necessarily impacts individual choices and courses of action. As articulated by
23 the court in *Cuffy v. City of New York*, reliance on the government’s undertaking of certain
24 protections can “lull[] the injured party into a false sense of security and...thereby induce[]
25 him to either relax his own vigilance or to forgo other available avenues of protection.” 69
26 N.Y. 2d 255, 261 (1987). In *Moch Co. v. Rensselaer Water Co.*, Judge Cardozo also
27 recognized the principle that a benefit provided poorly may cause more harm than if not
28 provided at all. 247 N.Y. 160, 167 (1928) (discussing duty of city water company where

1 a plaintiff’s warehouse burned down after the water company failed to provide adequate
2 water supply). He cautioned that an actor’s poor execution of a volunteered undertaking
3 does not merely “withhold a benefit” but would result “positively or actively in working
4 an injury” and “launch[] a force or instrument of harm.” *Id.* at 168.

5 Based on similar principles, the United States’ failed undertaking of its gun control
6 system did not merely withhold a benefit to Ms. Rideout, but actively increased the risk to
7 her. Not only did a mentally incompetent person obtain a gun that killed her, but Ms.
8 Rideout’s general expectation and reliance on federal gun control measures, FAC ¶ 77,
9 deprived her of the precautions and alternative measures that she and other entities may
10 have taken if they did not exist. Because the general public’s reliance that the federal
11 system would keep guns out of the hands of the mentally incompetent caused the public to
12 forgo other choices and protections, the negligent operation of these gun control measures
13 put Ms. Rideout in a worse situation than if no protective framework existed. Plaintiff has
14 therefore sufficiently alleged that the United States’ negligent undertaking to provide these
15 services increased Ms. Rideout’s risk of harm.

16 Based on the foregoing, the Court thus finds that Plaintiff has adequately alleged
17 that the United States undertook to maintain a background check service for gun purchases,
18 recognizing that this service was necessary for the protection of public citizens like Ms.
19 Rideout, and its negligence in providing the service increased the risk of harm to Ms.
20 Rideout. By doing so, she has established that the United States had an analogous duty
21 under California negligent undertaking law to use reasonable care in maintaining and
22 reporting disqualifying information to the NICS background check system. *S.A. Empresa*
23 *De Viacao Aerea Rio Grandense (Varig Airlines) v. United States*, [692 F.2d 1205, 1208](#)
24 (9th Cir. 1982) (finding FAA voluntarily undertook airplane inspection and certification
25 duties), *rev’d on other grounds*, [467 U.S. 797](#) (1984).

26 The United States relies on a series of distinguishable cases to argue that no
27 analogous state law duty exists. *See* Def.’s Mot. at 8–10. In each of these cases, the tort
28 defendant had neither undertaken a specific duty nor had a special relationship with the

1 injured party; thus, they did not owe a duty to the plaintiffs under their particular
2 circumstances. *See Wise v. Superior Court*, 222 Cal. App. 3d 1008 (1990) (finding wife
3 of a shooter did not undertake specific duty to prevent husband from shooting plaintiffs);
4 *Cardenas v. Eggleston Youth Ctr.*, 193 Cal. App. 3d 331 (1987) (finding operator of group
5 home did not undertake specific duty to prevent residents from committing assault); *Davis*
6 *v. Gomez*, 207 Cal. App. 3d 1401 (1989) (finding landlord did not undertake specific duty
7 to control behavior of tenant); *Smith v. Freund*, 192 Cal. App. 4th 466 (2011) (finding
8 killer's parents did not undertake specific duty to prevent their son from attacking others).
9 Here, unlike the above cases, Plaintiff has adequately alleged that the United States
10 undertook the specific duty to provide federal gun protection services to the public in order
11 to prevent the mentally incompetent from accessing firearms, as explained above.

12 Having determined that Plaintiff's allegations established a duty of care on the part
13 of the United States, the Court turns to whether Plaintiff has also sufficiently alleged a
14 breach of that duty, an actual injury, and a causal connection between the two. *Paz*, 22
15 Cal. 4th at 559. Plaintiff alleged that the DOD failed to exercise reasonable care in its
16 NICS undertaking by failing to submit Mr. Arriola's disqualifying information. FAC ¶ 71.
17 Plaintiff also sufficiently alleged that the missing data in NICS caused Mr. Arriola to be
18 able to purchase a gun, and Ms. Rideout was shot and killed by that gun. FAC ¶ 75. The
19 Court therefore concludes that Plaintiff has adequately pled that the United States' actions
20 satisfy all the elements of a California negligent undertaking cause of action.⁸ Because
21 Plaintiff has demonstrated that the United States would be liable under state law, the Court
22 finds that it can be liable under the FTCA. *See Olson*, 546 U.S. at 46 (finding plaintiff can
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26 ⁸ In doing so, Plaintiff has also adequately pled the elements of a wrongful death action, premised
27 on the negligent undertaking theory. *See Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 390 (1999) (citing Cal.
28 Code Civ. P. § 377.60) (finding elements of a wrongful death claim are (1) a wrongful act, including a
tort, that (2) causes (3) the death of another person). The parties do not dispute that if Plaintiff establishes
liability under the negligent undertaking theory, that she also does so under the wrongful death claim.

1 bring an FTCA claim against the United States only if state law would hold a private person
2 liable for similar conduct).

3 **V. CONCLUSION**

4 For the reasons discussed above, the Court DENIES the United States' motion to
5 dismiss Plaintiff's First Amended Complaint [[Dkt. 16](#)].

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7 **IT IS SO ORDERED.**

8 Dated: June 14, 2023

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12 Honorable Jinsook Ohta
13 United States District Judge
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