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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELESTE HOLLAND,

Plaintiff,

v.

JOHN AZEVEDO, et al.,

Defendants.

Case No. 14-cv-01349-JST

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

Re: ECF No. 65

Plaintiff Celeste Holland, proceeding *pro se*, alleges unconstitutional conduct stemming from a traffic stop and her arrest. ECF No. 21. Presently before the Court is Defendants John Azevedo, Robert Estes, and Shawna Pacheco's Motion for Summary Judgment. ECF No. 65. Because there is no evidence before the Court from which the Court can find a dispute of material fact, the Court will grant Defendants' motion.

I. BACKGROUND

A. Undisputed Facts¹

On March 23, 2012, California Highway Patrol ("CHP") Officer Azevedo conducted a traffic stop on Plaintiff's car at Interstate 680 southbound under the Interstate 580 flyover. ECF No. 65-1, Azevedo Decl. ¶ 3. Azevedo initiated the stop because Plaintiff's car traveled partially on the center divider and merged quickly two lanes to her right. *Id.* When Azevedo positioned his patrol vehicle behind Plaintiff's car, he noticed that Plaintiff's car had an expired registration sticker. *Id.* Azevedo approached Plaintiff's car on the passenger side and requested Plaintiff's

¹ In support of the motion for summary judgment, Defendants filed declarations from Defendants Azevedo, Estes, and Pacheco. *See* ECF No. 65-1, Azevedo Decl.; 65-2, Estes Decl.; 65-3, Pacheco Decl. Defendants also submitted two DVDs containing CHP dashboard camera video footage of Plaintiff's traffic stop and arrest. *See* ECF No. 65-3, Pacheco Decl., Ex. A. Plaintiff also submitted this footage with her First Amended Complaint ("FAC"). ECF No. 21. Plaintiff did not oppose Defendant's motion or submit other evidence.

1 driver's license, vehicle registration, and proof of automobile insurance. Id. Plaintiff asked
2 Azevedo if he was a public servant. Id. Officer Azevedo answered that he worked for the State of
3 California, and he repeated his request for Plaintiff's license, vehicle registration, and proof of
4 automobile insurance. Id. Plaintiff told Azevedo he had no right to stop her, she was not required
5 to have a license because she was not conducting business, and she did not need registration or
6 auto insurance to drive. Id. Plaintiff provided her passport as identification. Id.

7 Officer Azevedo then contacted CHP dispatch, who informed Azevedo that Plaintiff's
8 vehicle registration and driver's license were expired. Id. ¶ 4. Azevedo requested a backup patrol
9 unit, and CHP Officer Estes arrived on the scene to assist. Id. Azevedo administered a DUI
10 evaluation and determined that Plaintiff was not under the influence of drugs or alcohol. Id.
11 Plaintiff then returned to her vehicle. ECF No 65-3, Pacheco Decl., Ex. A. Thereafter, Azevedo
12 issued Plaintiff a CHP 215, Notice to Appear, for violations of California Vehicle Code
13 § 4000(a) – expired registration; Vehicle Code § 12500(a) – unlicensed driver; and Vehicle Code
14 § 16028(a) – no proof of insurance. ECF No. 65-1, Azevedo Decl. ¶ 4. Plaintiff signed the
15 citation, see id., but in her First Amended Complaint, Plaintiff asserts she should have been free to
16 go and continue traveling, ECF No. 21 ¶ 5.

17 Because of Plaintiff's expired license, Officer Azevedo decided to impound her car
18 pursuant to Vehicle Code § 14607.6. ECF No. 65-1, Azevedo Decl. ¶ 5. Azevedo offered Plaintiff
19 the option of calling someone to pick up her car, but Plaintiff refused and repeated that she did not
20 need to have a driver's license. Id. Azevedo ordered Plaintiff to gather her belongings and exit
21 the car, but Plaintiff refused to comply. Id. Plaintiff responded by locking the car doors and
22 rolling up the windows. Id. Azevedo ordered Plaintiff to gather her belongings and exit the car
23 several times, but when it became clear that she would not comply with his orders, Azevedo
24 notified dispatch and requested the on-duty supervisor to respond to the scene. Id.

25 Both a tow truck and CHP Officer-in-Charge ("OIC") Shawna Pacheco arrived on the
26 scene shortly thereafter. ECF No. 65-3, Pacheco Decl. ¶ 6. After Azevedo briefed Pacheco on the
27 circumstances, Pacheco approached Plaintiff's car on the passenger side and asked her to roll
28 down the window. Id. Plaintiff rolled the window down approximately three inches, and Pacheco

1 told Plaintiff why she had been asked to get out of her car. Id. Plaintiff asked if Pacheco was a
2 public servant and told Pacheco she did not recognize Pacheco’s authority. Id. Plaintiff informed
3 Pacheco that she was not required to carry any documents because she was not transporting goods
4 or people and because the stop was unjustified. Id. ¶ 7. Plaintiff refused to get out of her car and
5 told Pacheco she was not going to allow Defendants to impound it. Id. Pacheco explained to
6 Plaintiff that she would give Plaintiff 30 seconds to exit her car, and if Plaintiff failed to comply,
7 the officers would be forced to break her car window in order to enter her car and that Plaintiff
8 would be arrested. Id. Plaintiff responded that the officers weren’t going to break her window.
9 Id.

10 Pacheco then observed Plaintiff grab the ignition key, place the key in the ignition, and roll
11 up the window. Id. ¶ 8. Pacheco believed that Plaintiff was attempting to leave the scene, and so
12 she hit the passenger side window twice with a steel baton. Id. Officer Azevedo then broke the
13 passenger side window by striking it twice with his baton and unlocked the passenger side door.²
14 Id.; ECF No. 65-1, Azevedo Decl. ¶ 8. Defendants Azevedo and Pacheco told Plaintiff to get out
15 of the car and thereafter tried to remove Plaintiff through the passenger door. Id. Azevedo and
16 Pacheco could not do so, however, because Plaintiff had wedged herself between the driver’s seat
17 and the dashboard while clinging to the steering wheel. Id. Plaintiff can be heard yelling on the
18 dash board camera video, “Do not touch me” and “I’m not getting out of the car” during this
19 encounter. ECF No. 65-3, Pacheco Decl., Ex. A. An officer informed Plaintiff that she was
20 resisting arrest, to which Plaintiff responded, “You are falsely arresting me.” Id. Plaintiff can
21 then be heard saying “Let go of me. You’re going to hurt me.” Id. An officer thereafter ordered
22 Plaintiff to get out, and she responded, “I’m not getting out.” Id.

23 Officer Estes saw the brake lights on Plaintiff’s car illuminate, which indicated to him that
24 Plaintiff was stepping on the brake. ECF No. 65-2, Estes Decl. ¶ 7. Estes “interpreted the brake
25 lights to mean that [Plaintiff] was preparing to start the bar and attempt to leave the scene.” Id.
26 Estes positioned his vehicle to left of Plaintiff’s vehicle. Id. ¶ 8. Eventually, Azevedo moved

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28 ² Over 50 minutes elapsed from when Officer Azevedo pulled Plaintiff over to when he struck her
passenger side window. ECF No. 65-3, Pacheco Decl., Ex. A.

1 Estes' patrol vehicle, and Estes opened the driver's side door and took Plaintiff's arm while
2 Pacheco pushed her out. Id. Azevedo and Estes escorted Plaintiff to Azevedo's patrol vehicle,
3 where Plaintiff was placed under arrest for violating Penal Code § 148(a) – obstructing a police
4 officer. Id. ¶ 9; ECF No. 65-1, Azevedo Decl. ¶ 9. OIC Pacheco conducted a search incident to
5 arrest of Plaintiff, and then placed Plaintiff in the right rear passenger seat of her patrol vehicle.³
6 ECF No. 65-3, Pacheco Decl. ¶ 10.

7 Pacheco transported Plaintiff to Santa Rita County Jail for booking. Id. At the jail facility,
8 Pacheco checked Plaintiff for visible injuries and noted a small scratch on Plaintiff's right wrist
9 that she had received from the broken glass, as well as two spots of blood on her right forearm. Id.
10 ¶ 11. Pacheco informed Plaintiff she would be treated for her injuries and took photos of her
11 them. Id. Plaintiff did not claim additional injuries or request to be taken to the hospital. Id.
12 Other than searching Plaintiff incident to arrest, escorting Plaintiff in and out of the patrol vehicle,
13 and escorting Plaintiff through the booking process, Pacheco avers she did not touch Plaintiff. Id.

14 Based on Defendants' observations and Plaintiff's statements and actions, Defendants state
15 Plaintiff violated Vehicle Code § 4000(a) – expired registration; Vehicle Code § 12500(a) –
16 unlicensed driver; and Vehicle Code § 16028(a) – no proof of insurance. ECF No. 65-1, Azevedo
17 Decl. ¶ 10; ECF No. 65-2, Estes Decl. ¶ 10; ECF No. 65-3, Pacheco Decl. ¶ 12. Defendants assert
18 that under Vehicle Code § 14607.6(c)(1), they had the authority to impound and tow Plaintiff's
19 vehicle. Id. Defendants also state they had probable cause to arrest Plaintiff for violating Penal
20 Code § 148(a) – obstructing a police officer. Id.

21 All three Defendants state that they did not target or retaliate against Plaintiff because of
22 her speech. ECF No. 65-1, Azevedo Decl. ¶ 11; ECF No. 65-2, Estes Decl. ¶ 11; ECF No. 65-3,
23 Pacheco Decl. ¶ 13. Defendants assert they had probable cause to arrest Plaintiff and impound her
24 vehicle. Id. Defendants also aver that they did not deny or attempt to deny Plaintiff her right to
25 counsel during her criminal proceedings. Id.

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28 ³ Pacheco's search incident to arrest was out of the dash board camera's view. See ECF No. 64-3,
Pacheco Decl., Ex. A.

1 **B. Procedural History**

2 On March 25, 2014, Defendants removed this case from Contra Costa Superior Court
3 pursuant to 28 U.S.C. § 1441. Plaintiff filed a First Amended Complaint (“FAC”) on August 20,
4 2014 against a number of Defendants, alleging violations of her First, Fifth, Sixth, Eighth, Ninth,
5 Tenth, Thirteenth, and Fourteenth Amendment rights. See generally ECF No. 21.

6 The Court then granted the motions to dismiss of Defendants Department of Motor
7 Vehicles, Nancy O’Malley, and Catherine Kobal. ECF Nos. 31 and 35. When Plaintiff failed to
8 file an amended complaint against these defendants, the Court dismissed Plaintiff’s claims against
9 them with prejudice. ECF No. 45.

10 On May 21, 2015, the Court dismissed the claims against Defendants Edmund G. Brown,
11 Jr., Anne Gust Brown, Anna M. Caballero, John Chang, Michael A. Ramos, Julie Nauman, Ted
12 DeJung, Carson Johnson, Dennis Hayashi, Cecilia Castellanos, and Frank Roesch with prejudice.
13 ECF No. 49. Plaintiff had failed to serve these defendants, and despite an opportunity to file an
14 amended complaint and serve the previously unserved defendants, ECF No. 48, Plaintiff did not
15 file or serve an amended complaint.

16 On March 11, 2016, remaining Defendants Azevedo, Estes, and Pacheco filed the present
17 motion for summary judgment. ECF No. 65. Plaintiff did not file an opposition, and Defendants
18 did not file a reply.

19 **C. Jurisdiction**

20 This Court has jurisdiction under 28 U.S.C. § 1331.

21 **II. LEGAL STANDARD**

22 Summary judgment is appropriate where the pleadings, depositions, answers to
23 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
24 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
25 Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show the
26 absence of a genuine issue of material fact with respect to an essential element of the non-moving
27 party’s claim. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant has made this
28 showing, the burden then shifts to the party opposing summary judgment to designate “specific

1 facts showing there is a genuine issue for trial.” Id. The court draws all reasonable factual
2 inferences in favor of the non-movant. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 255 (1986).
3 The non-moving party “cannot defeat summary judgment with allegations in the complaint, or
4 with unsupported conjecture or conclusory statements.” Hernandez v. Spacelabs Med. Inc., 343
5 F.3d 1107, 1112 (9th Cir. 2003).

6 **III. DISCUSSION**

7 Plaintiff alleges that Defendants conspired to and committed acts that resulted in multiple
8 violations of her constitutional rights. See ECF No. 21. Plaintiff alleges the following: (1)
9 Defendants deprived Plaintiff of her “right to counsel of choice” in violation of multiple
10 Constitutional Amendments; (2) Defendants subjected Plaintiff to “peonage and involuntary
11 servitude” in violation of the Thirteenth Amendment; (3) Defendants violated Plaintiff’s
12 Fourteenth Amendment rights under 18 U.S.C §§ 241 and 242; (4) and Defendants violated
13 Plaintiff’s Fourth Amendment rights by falsely arresting her and using excessive force in
14 effectuating the arrest. Id.

15 The Court discusses each of Plaintiff’s claims in turn.

16 **A. Right to Counsel of Choice**

17 Plaintiff alleges Defendants violated several of her constitutional rights by infringing on
18 her “right to counsel of choice.” ECF No. 21 at 6–9.

19 **1. Sixth and Fourteenth Amendment Right to Counsel**

20 The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall . . .
21 have the assistance of counsel for his defense.” See U.S. Const. amend. VI. Section 1 of the
22 Fourteenth Amendment mandates that “[n]o State shall . . . deprive any person of life, liberty, or
23 property, without due process of law . . .” See U.S. Const. amend. XIV. “The Sixth and
24 Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or
25 federal court must be afforded the right to the assistance of counsel before he can be validly
26 convicted and punished by imprisonment.” Martinez v. Court of Appeal of California, Fourth
27 Appellate Dist., 528 U.S. 152, 154 (2000).

28 Plaintiff alleges that Defendants violated her Sixth Amendment right to counsel.

1 Specifically, Plaintiff alleges she “has a right to counsel of her own choice . . . as set forth in the
2 [Sixth] Amendment of [the] U.S. Constitution,” and “Defendants are in concert with the California
3 State Legislature to deny Plaintiff[] counsel of her own choice.” *Id.* ¶¶ 31–32. Defendants
4 respond that Plaintiff’s Sixth and Fourteenth Amendment right to counsel claims fail for the
5 following reasons: (1) Plaintiff does not allege that Defendants Azevedo, Estes, or Pacheco
6 denied her the right to counsel; (2) Plaintiff fails to allege how her right to counsel was denied; (3)
7 Plaintiff does not state why the denial of her right to counsel in her state court criminal
8 proceedings gives rise to a civil claim in federal court; and (4) sworn declarations from each
9 officer show that at no time did the officers deny or attempt to deny Plaintiff her right to counsel
10 for her criminal proceeding. ECF No. 65 at 13–14.⁴

11 Defendants aver they did not deny or attempt to deny Plaintiff her right to counsel during
12 her criminal proceedings. ECF No. 65-1, Azevedo Decl. ¶ 11; ECF No. 65-2, Estes Decl. ¶ 11;
13 ECF No. 65-3, Pacheco Decl. ¶ 13. Aside from Plaintiff’s allegations in her Complaint that
14 Defendant conspired to violate this right, Plaintiff has not submitted any evidence from which a
15 reasonable jury could find in her favor on this claim. Accordingly, Defendants are entitled to
16 summary judgment on this claim.

17 **2. First Amendment Freedom of Speech and Freedom of Association**

18 The First Amendment protects freedom of speech and freedom of association. The latter
19 provides “the right to associate for expressive purposes.” *Roberts v. U.S. Jaycees*, 468 U.S. 609,
20 623 (1984).

21 Plaintiff alleges the First Amendment guarantees her freedom of speech and freedom of
22 association, and, therefore, “Plaintiff is free to associate with counsel of her choice and to have a
23 spokesman (counsel of her choice speak to her).” *Id.* ¶¶ 34–35. Defendants respond that
24 Plaintiff’s First Amendment claim fails because she does not allege if and how any of the
25 individual CHP officers prevented her from associating with any group, including counsel. ECF
26 65 at 14. Defendants further stress that they have provided evidence that they did not deny or

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28 ⁴ Citations are to the pages assigned by the Court’s electronic case filing system and not to the
internal pagination of the document.

1 attempt to deny plaintiff her right to counsel. Id.

2 The Court agrees. Plaintiff does not allege any conduct or put forth any evidence that
3 allows a reasonable jury to find that Defendants' actions restrained Plaintiff's First Amendment
4 rights. The Court grants Defendants' motion for summary judgment as to Plaintiff's First
5 Amendment claim.

6 **3. Fifth Amendment Due Process**

7 The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or
8 property, without due process of law . . ." "The Fifth Amendment prohibits the federal
9 government from depriving persons of due process, while the Fourteenth Amendment explicitly
10 prohibits deprivations without due process by the several States: '*nor shall any State deprive any*
11 *person of life, liberty, or property, without due process of law.*'" Castillo v. McFadden, 399 F.3d
12 993, 1002 (9th Cir. 2005) (quoting U.S. Const. amend. XIV) (emphasis in original).

13 Plaintiff alleges that by denying her counsel of choice, Defendants also violated her Fifth
14 Amendment rights because "Due Process is guaranteed by both the 5th and the 14th amendments
15 to the [C]onstitution." ECF No. 21 ¶ 37. Defendants respond that Plaintiff fails to allege what
16 actions by the CHP officers violated her due process rights, and that even if Plaintiff had alleged
17 specific conduct, Defendants "are employees of the State of California and the Fifth Amendment's
18 due process clause only applies to the federal government." ECF No. 65 at 15 (citing Bingue v.
19 Pranchak, 512 F.3d 1169, 1174 (9th Cir. 2008)).

20 Defendants are CHP officers employed by the State of California. As such, the Court
21 grants Defendants' motion for summary judgment as to Plaintiff's Fifth Amendment claim. See
22 Bingue, 512 F.3d at 1174 ("[Defendant] is a local law enforcement official, and the Fifth
23 Amendment's due process clause only applies to the federal government.").⁵

24 _____
25 ⁵ With regard to Holland's passing reference to the Fourteenth Amendment, it is true that the
26 Fourteenth Amendment gives Holland the "right to be free . . . from conduct by law enforcement
27 officers that shocks the conscience or offends human dignity," and that this right is enforceable by
28 an action pursuant to 42 U.S.C. § 1983. Fontana v. Haskin, 262 F.3d 871, 878 (9th Cir. 2001).
But Holland pleads no facts, and has submitted no evidence, from which a reasonable jury could
find that any of the remaining defendants did anything actionable. "Under our precedents, a party
cannot establish a disputed question of material fact, and thereby avoid summary judgment, by
making a 'bare assertion' that is devoid of 'any legal or factual support.'" Kitchens v. Pierce, 565

1 **4. Eighth Amendment Cruel and Unusual Punishment**

2 The Eighth Amendment provides: “Excessive bail shall not be required, nor excessive
3 fines imposed, nor cruel and unusual punishments inflicted.” The Eighth Amendment applies
4 “only after the State has complied with the constitutional guarantees traditionally associated with
5 criminal prosecutions.” Ingraham v. Wright, 430 U.S. 651, 671 n.40 (1977).

6 Plaintiff alleges that Defendants violated her Eighth Amendment rights and subjected her
7 to cruel and unusual punishment—in the form of mental stress—by denying her counsel of choice.
8 ECF No. 21 ¶ 41. There is no evidence that Defendants took any action regarding Holland’s
9 choice of counsel. Plaintiff does not allege that any of the CHP officers had any contact with her
10 after she was arrested and booked into Santa Rita County Jail. ECF No. 65 at 15.

11 Plaintiff does not rebut Defendants’ evidence that they did not interfere with her right to
12 counsel of choice. The Court grants Defendants’ motion for summary judgment as to Plaintiff’s
13 Eighth Amendment claim.

14 **5. Ninth and Tenth Amendments Denial of Counsel**

15 The Ninth Amendment states “[t]he enumeration in the Constitution, of certain rights, shall
16 not be construed to deny or disparage others retained by the people.” The Tenth Amendment
17 provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited
18 by it to the States, are reserved to the States respectively, or to the people.”

19 Plaintiff alleges that the Ninth and Tenth Amendments protect her right to counsel of
20 choice from encroachment by any individual or governmental body. ECF No. 21 ¶¶ 42–43.
21 Defendants argue Plaintiff improperly relies on the Ninth and Tenth Amendments to vindicate her
22 “right to counsel of her choice,” Plaintiff’s allegations are not specific to the CHP officers, and the
23 evidence shows the officers did not encroach Plaintiff’s right to counsel. ECF No. 65 at 16.
24 Defendants also note that Plaintiff provides no case law holding that the Tenth Amendment, either
25 alone or in conjunction with the Ninth Amendment, provides grounds upon which to bring a civil
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27 F. App’x 590, 591 (9th Cir. 2014) (quoting DeNieva v. Reyes, 966 F.2d 480, 486 (9th Cir. 1992)).
28 Thus, even generously construing Holland’s Complaint to include a claim under the Fourteenth
Amendment would not save it from summary judgment.

1 rights claim.

2 The Ninth Amendment has never been recognized as independently securing any
3 constitutional right for purposes of pursuing a civil rights claim. See Strandberg v. City of Helena,
4 791 F.2d 744, 748 (9th Cir. 1986). The Tenth Amendment “creates no constitutional rights
5 cognizable in civil rights cause of action.” Id. at 749. Plaintiff does not provide argument to
6 support her contention that the Ninth and Tenth Amendments provide grounds to bring her right to
7 counsel of choice claim. The Court grants summary judgment as to Plaintiff’s Ninth and Tenth
8 Amendment claims.

9 **B. Infliction of Peonage and Involuntary Servitude**

10 Section 1 of the Thirteenth Amendment provides “[n]either slavery nor involuntary
11 servitude, except as punishment for crime whereof the party shall have been duly convicted, shall
12 exist within the United States, or any place subject to their jurisdiction.”

13 Plaintiff alleges that the Thirteenth Amendment grants her protection against “peonage and
14 involuntary servitude where the actions of the Defendants appear to destine Plaintiff.” ECF No.
15 21 ¶ 44. Defendants argue that the Thirteenth Amendment is not relevant to a lawsuit regarding a
16 traffic enforcement stop, arrest, and use of force. ECF No. 65 at 16. Defendants urge the Court
17 grant summary judgment on this claim because Plaintiff “fails to allege the manner in which any
18 one of the CHP subjected [P]laintiff to involuntary servitude.” Id.

19 Plaintiff fails to put forth evidence that would allow a reasonable jury to find that
20 Defendants’ conduct forced Plaintiff into slavery or involuntary servitude. The Court accordingly
21 grants summary judgment on this claim.

22 **C. Fourteenth Amendment Claim Based on 18 U.S.C. §§ 241 and 242**

23 Section 241 protects against the interference with “any right or privilege secured by the
24 Constitution or laws of the United States.” 18 U.S.C. § 241. Section 242 prohibits the
25 “deprivation of any rights, privileges, or immunities secured or protected by the Constitution or
26 laws of the United States” under color of law. 18 U.S.C. § 242.

27 Plaintiff alleges that the Fourteenth Amendment and 18 U.S.C. §§ 241 and 242 grant her
28 protection from “the acts of Defendants,” and that Defendants actions constitute a violation of

1 their “Oaths of Office as covered by [18 U.S.C. §§ 241 and 242].” ECF No. 21 ¶ 29. Defendants
2 argue that Plaintiff “fails to identify any of the CHP officers with respect to this claim,” and that
3 “federal criminal statutes do not provide a basis for civil liability.” ECF No. 65 at 16.

4 Sections 241 and 242 are “criminal provisions” and “provide no basis for civil liability.”
5 Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980). The Court grants Defendants’ motion for
6 summary judgment as to Plaintiff’s 18 U.S.C. § 241 and § 242 claims.

7 **D. Plaintiff’s False Arrest and Excessive Force Claims and Defendants’ Qualified**
8 **Immunity**

9 Defendants seek summary judgment for Plaintiff’s false arrest and excessive force claims.
10 See ECF No. 65 at 17. Defendants contend that Plaintiff failed to create a genuine issue as to
11 whether her Fourth Amendment rights were violated. Defendants argue that even if Plaintiff’s
12 FAC states a cognizable claim under the Fourth Amendment, Defendants are entitled to qualified
13 immunity as Defendants’ conduct did not “violate clearly established statutory or constitutional
14 rights of which a reasonable person would have known.” ECF No. 65 at 17 (citing Harlow v.
15 Fitzgerald, 457 U.S. 800, 818 (1982)).

16 Qualified immunity balances two important but competing interests – “the need to hold
17 public officials accountable when they exercise power irresponsibly and the need to shield
18 officials from harassment, distraction, and liability when they perform their duties reasonably.”
19 Pearson v. Callahan, 555 U.S. 223, 231 (2009). Qualified immunity protects government officials
20 from liability for civil damages “unless a plaintiff pleads facts showing (1) that the official
21 violated a statutory or constitutional right, and (2) that the right was ‘clearly established’ at the
22 time of the challenged conduct.” Wood v. Moss, 134 S. Ct. 2056, 2066–67 (2014) (quoting
23 Ashcroft v. al-Kidd, 131 S. Ct. 2074, 2080 (2011)); Harlow, 457 U.S. at 818. Courts are
24 “permitted to exercise their sound discretion in deciding which of the two prongs of the qualified
25 immunity analysis should be addressed first in light of the circumstances in the particular case at
26 hand.” Pearson, 555 U.S. at 236. “If an official could reasonably have believed her action were
27 legal in light of clearly established law and the information she possessed at the time, she is
28 protected by qualified immunity.” Franklin v. Fox, 312 F.3d 423, 437 (9th Cir. 2002).

1 **1. False Arrest**

2 Under California Penal Code § 148(a)(1), “[t]he legal elements of a violation . . . are as
3 follows: (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the
4 officer was engaged in the performance of his or her duties, and (3) the defendant knew or
5 reasonably should have known that the other person was a peace officer engaged in the
6 performance of his or her duties.” In re Muhammed C., 95 Cal. App. 4th 1325, 1329 (2002)
7 (citations omitted). “For a § 148(a)(1) conviction to be valid, a criminal defendant must have
8 resisted, delayed, or obstructed a police officer in the lawful exercise of his duties. In California,
9 the lawfulness of the officer’s conduct is an essential element of the offense of resisting, delaying,
10 or obstructing a peace officer.” Smith v. City of Hemet, 394 F.3d 689, 695 (9th Cir. 2005).

11 Plaintiff alleges she was falsely arrested. ECF No. 21 ¶¶ 5, 38, 86. Defendants respond
12 that they had probable cause to arrest Plaintiff because, based on the totality of circumstances, “a
13 prudent person would believe that Ms. Holland was violating Penal Code section 148.” ECF No.
14 65 at 19.

15 California Vehicle Code section 14607.6(c)(1) mandates that “[i]f a driver is unable to
16 produce a valid driver’s license on demand of a peace officer . . . the vehicle shall be impounded
17 regardless of ownership” Plaintiff’s own allegations state that she resisted Officer Azevedo’s
18 attempt to impound her vehicle. ECF No. 21 ¶ 5 (“Officer John Az[e]vedo, #19517, announced
19 that he was going to have my car towed, I refused his offer”). Moreover, Defendants’
20 declarations and the dash camera videos strongly support a finding of probable cause. Officers
21 repeatedly asked Plaintiff to get out of her car so that they could tow it, but Plaintiff repeatedly
22 refused. Defendants also warned Plaintiff that they would have to break her window and remove
23 her from the car if she did not comply with their requests. Plaintiff persisted in her refusal to exit
24 the vehicle. Plaintiff repeatedly delayed and obstructed Defendants’ performance of their duties.

25 On this evidence, there is no genuine dispute of material fact that Defendants had probable
26 cause to arrest Plaintiff for a violating Penal Code § 148(a)(1). Plaintiff had no constitutional
27 right, much less a clearly established one, to disregard Defendants’ lawful orders or to do so
28 without the consequence of arrest under these circumstances. Defendants are therefore entitled to

1 qualified immunity, and the Court grants Defendants’ motion for summary judgment as to
2 Plaintiff’s false arrest claim.

3 **2. Excessive Force**

4 Having determined that Defendants had probable cause to place Plaintiff under arrest, the
5 Court next turns to the actions Defendants took in effectuating that arrest to determine the
6 propriety of summary judgment on Plaintiff’s excessive force claim.

7 The reasonableness of an officer defendant’s conduct is analyzed under the substantive law
8 of Graham v. Connor, 490 U.S. 386 (1989). See Coles v. Eagle, 704 F.3d 624, 628 (9th Cir.
9 2012). The court first considers “the nature and quality of the alleged intrusion” and “then
10 consider[s] the governmental interests at stake by looking at (1) how severe the crime at issue is,
11 (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3)
12 whether the suspect was actively resisting arrest or attempting to evade arrest by flight.” Id.; see
13 also Graham, 490 U.S. at 396. “The ‘reasonableness’ of a particular use of force must be judged
14 from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of
15 hindsight.” Graham, 490 U.S. at 396. These factors are not exclusive, and a court must examine
16 the totality of circumstances. Coles, 704 F.3d at 628. “Because such balancing nearly always
17 requires a jury to sift through disputed factual contentions, and to draw inferences therefrom . . .
18 summary judgment or judgment as a matter of law in excessive force cases should be granted
19 sparingly.” Id.

20 Plaintiff alleges Defendants used excessive force in the process of removing her from her
21 vehicle during the arrest. ECF No. 21 ¶¶ 5, 38–39, 86. Defendants argue they used only the force
22 necessary to get Plaintiff out of her car. ECF No. 65 at 20. Defendants contend there is no case
23 law that supports a finding that officers’ use of force—as shown in the video and described in the
24 declarations—to remove a person from a vehicle before towing violates the Fourth Amendment.
25 Id. Defendants further assert it would not have been clear to a reasonable officer that this conduct
26 was unlawful in the situation they confronted, the right was not clearly established, and they are
27 entitled to qualified immunity. Id.

28 An assessment of the facts in the light most favorable to Plaintiff shows that her Fourth

1 Amendment rights were not violated.

2 **a. Nature and Quality of the Intrusion**

3 The Court first considers “the nature and quality” of the intrusion on Plaintiff’s rights.
4 Coles, 704 F.3d at 628. “The gravity of the particular intrusion that a given use of force imposes
5 upon an individual’s liberty interest is measured with reference to ‘the type and amount of force
6 inflicted.’” Young v. Cty. of Los Angeles, 655 F.3d 1156, 1161 (9th Cir. 2011) (quoting Deorle v.
7 Rutherford, 272 F.3d 1272, 1279 (9th Cir. 2001).

8 Plaintiff has not established a prima facie case of a significant Fourth Amendment
9 intrusion. Rather, the evidence on this record conclusively establishes that Defendants employed a
10 level of force that is “low on the continuum of tactics available to police officers.” Donovan v.
11 Phillips, No. 3:14-CV-00680-CRB, 2015 WL 993324, at *5 (N.D. Cal. Mar. 4, 2015). Defendants
12 broke Plaintiff’s passenger side window, opened the passenger door, and attempted to pull her
13 from the car through the passenger door. There is no evidence that Defendants used force, such as
14 kicks, punches, pepper spray, or baton blows, to effectuate her arrest. This case is unlike Coles v.
15 Eagle, where the Ninth Circuit determined that the plaintiff had established a significant Fourth
16 Amendment intrusion where the officers broke the driver’s side glass window, pulled the plaintiff
17 through the broken window, kicked plaintiff in the upper torso during the extraction, and
18 continued to beat plaintiff until the officers handcuffed him. 704 F.3d at 628. The Court
19 concludes that the force used to extract Plaintiff through the door was not “capable of inflicting
20 significant pain and causing serious injury.” Young, 655 F.3d at 1162. There is no evidence that
21 officers used any force greater than necessary to effectuate a lawful arrest.

22 In light of the fact, previously discussed, that Plaintiff had no legal right under § 148(a)(1)
23 to disregard Defendants’ orders that Plaintiff exit her vehicle, and that a low level of force was
24 used to effect compliance, the Court concludes that the intrusion on Plaintiff’s Fourth Amendment
25 interests was minimal.

26 **b. Governmental Interests at Stake**

27 The Court next turns to the severity of the crime, the immediacy of the threat, and whether
28 Plaintiff evaded arrest to determine whether the use of force was reasonable.

1 The Court first examines the severity of the crime. Defendants state that Plaintiff was
2 pulled over because she drove over the center divide and because of her expired registration
3 sticker. Plaintiff’s vehicle registration and driver’s license were also expired. Plaintiff thereafter
4 refused to exit her vehicle so that it could be towed. Plaintiff’s traffic violations and her
5 obstruction of a police officer are not serious offenses. See Mattos v. Agarano, 661 F.3d 433, 444
6 (9th Cir. 2011) (holding that plaintiff’s failure to sign a traffic citation and speeding in a school
7 zone were not serious offenses); Davis v. City of Las Vegas, 478 F.3d 1048, 1055 (9th Cir. 2007)
8 (noting that trespassing and obstructing a police officer were not severe crimes).

9 The Court next turns to whether Plaintiff posed an immediate threat to the safety of
10 Defendants. Plaintiff was unarmed and never attempted to harm Defendants in any way.
11 Plaintiff’s car was boxed in with a tow truck in front of her and Officer Azevedo’s patrol car
12 behind her. At one point, Plaintiff’s vehicle was further boxed in on the driver’s side by Officer
13 Estes’ patrol car. Based on these facts, a reasonable jury could conclude that the officers did not
14 face an immediate threat to their safety.

15 Finally, the Court looks at whether Plaintiff was “actively resisting arrest or attempting to
16 evade arrest by flight and whether any other exigent circumstances . . . existed at the time of the
17 arrest.” Coles, 704 F.3d at 629. Here, Defendants have put forward evidence showing that
18 Defendants repeatedly asked Plaintiff to exit her vehicle voluntarily, and she refused. Defendants
19 further aver that Plaintiff held on to her steering wheel and wedged her body to thwart Defendants’
20 efforts to remove her from her car. Plaintiff does not dispute this evidence. The Court concludes
21 that Plaintiff resisted arrest. See Mattos, 661 F.3d at 445 (suspect who “refused to get out of her
22 car when requested do so and later stiffened her body and clutched her steering wheel to frustrate
23 the officers’ efforts to remove her from her car” had “engaged in some resistance to arrest”).

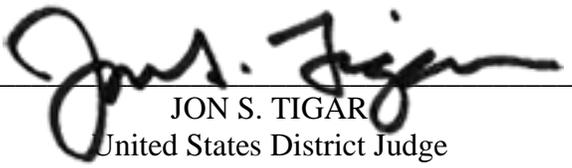
24 Ultimately, the severity of “the force which is applied must be balanced against the need
25 for that force.” Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052, 1057 (9th Cir.
26 2003); Young, 655 F.3d at 1166 (“We conclude our analysis of whether the force used by [the
27 defendant] was reasonable by balancing “the gravity of the intrusion on the individual against the
28 government's need for that intrusion.”) (citation omitted).

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All pending deadlines and hearings in this action are vacated. Defendants shall submit a proposed form of judgment within seven days of the date of this Order. Plaintiff will then have seven days from the receipt of the proposed judgment to either approve it as to form or file her objections. Defendants may file a response to Plaintiff's objections, if any, within seven days after Plaintiff's objections are due.

IT IS SO ORDERED.

Dated: May 3, 2016



JON S. TIGAR
United States District Judge