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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DOYMA VANESSA MICHEL, an
12 individual,
13 Plaintiff,
14 v.
15 UNITED STATES OF AMERICA;
16 SAFARILAND, LLC, a Delaware limited
17 liability company, AND DOES 1
18 THROUGH 100, inclusive,
19 Defendants.

Case No.: 16CV277-GPC(AGS)

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

20 Before the Court is Plaintiff Doyma Vanessa Michel's ("Plaintiff" or "Michel")
21 motion for reconsideration of the Court's order granting Defendant United States of
22 America's ("Defendant" or "government") motion for summary judgment and denying
23 Plaintiff's motion for partial summary judgment. (Dkt. No. 93.) Defendant United States
24 of America filed an opposition. (Dkt. No. 99.) Plaintiff filed a reply. (Dkt. No. 100.)
25 Based on the reasoning below, the Court DENIES Plaintiff's motion for reconsideration.

26 **Background**

27 On October 31, 2017, the Court granted the United States of America's motion for
28 summary judgment on all four causes of action, including negligence, false

1 imprisonment, negligent infliction of emotional distress and intentional infliction of
2 emotional distress arising under the Federal Tort Claims Act (“FTCA”). (Dkt. No. 86.)
3 The parties are intimately familiar with the facts in this case, and the Court incorporates
4 by reference the detailed facts presented in the Court’s order on the parties’ cross-
5 motions for summary judgment. (Id. at 3-11)

6 **A. Legal Standard on Motion for Reconsideration**

7 Plaintiff moves for reconsideration pursuant to Federal Rule of Civil Procedure
8 (“Rule”) 59(e) and Local Civil. R. 7.1(i). (Dkt. No. 93; Dkt. No. 93-1 at 6.)

9 A district court may reconsider a grant of summary judgment under Rule
10 59(e). Sch. Dist. No. 1J, 1 Multnomah County, Or. v. ACandS, Inc., 5 F.3d
11 1255, 1262 (9th Cir. 1993). The Court has discretion in granting or denying a motion
12 for reconsideration. Fuller v. M.G. Jewelry, 950 F.2d 1437, 1441 (9th Cir. 1991). A
13 motion for reconsideration should not be granted absent highly unusual circumstances.
14 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

15 A motion for reconsideration, under Rule 59(e), is “appropriate if the district
16 court (1) is presented with newly discovered evidence; (2) clear error or the initial
17 decision was manifestly unjust, or (3) if there is an intervening change in controlling
18 law.” Sch. Dist. No. 1J, Multnomah County, Or., 5 F.3d at 1263; see also Ybarra v.
19 McDaniel, 656 F.3d 984, 998 (9th Cir. 2011). “[R]econsideration of a judgment after
20 its entry is an extraordinary remedy which should be used sparingly.” McDowell v.
21 Calderon, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999) (quoting 11 Charles Alan Wright,
22 Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed.
23 1995)). Rule 59(e) “may not be used to relitigate old matters, or to raise arguments or
24 present evidence that could have been raised prior to the entry of judgment.” Exxon
25 Shipping Co. v. Baker, 554 U.S. 471, 485 n. 5 (2008) (citation omitted); see also
26 Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) (“A Rule 59(e) motion may not
27 be used to raise arguments or present evidence for the first time when they could
28 reasonably have been raised earlier in the litigation.”) (citing Kona Enters. v. Estate of

1 Bishop, 229 F.3d 877, 890 (9th Cir. 2000)).

2 Local Civil Rule 7.1(i) states that in seeking reconsideration of an order, an
3 attorney must set forth an “affidavit of a party or witness or certified statement of an
4 attorney setting forth the material facts and circumstances surrounding each prior
5 application, including inter alia: (1) when and to what judge the application was made,
6 (2) what ruling or decision or order was made thereon, and (3) what new or different facts
7 and circumstances are claimed to exist which did not exist, or were not shown, upon such
8 prior application.” Local Civ. R. 7.1(i).

9 Discussion

10 Plaintiff seeks the Court’s reconsideration of its ruling in favor of the government
11 on all four causes of action.

12 A. False Imprisonment

13 In its order, the Court applied state law enforcement privilege to the false
14 imprisonment cause of action, and concluded that the government was not liable for false
15 imprisonment after criminal proceedings began on June 3, 2014 as it concerned Agent
16 Bulman’s actions. (Dkt. No. 86 at 23.) The Court also held that assuming that the
17 private actor standard applied to the actions of Agent Bulman, there was still no evidence
18 that his conduct or failure to act subjected the government to liability for false
19 imprisonment. (Id.)

20 Plaintiff argues that the U.S. Supreme Court has held that state law governmental
21 immunity does not apply to the United States in a Federal Tort Claims Act (“FTCA”)
22 action. Therefore, she contends that since state law immunity and federal statutory
23 privilege do not apply, the government is liable for her false imprisonment for her
24 continued detention after September 10, 2014, when Ambriz’ GC/MS testing revealed the
25 substance Michel was transporting was not a controlled substance.

26 Defendant counters that Plaintiff merely reiterates her arguments raised in the
27 summary judgment motions and has not alleged new facts, has not demonstrated an
28 intervening change of the law, and has not demonstrated clear error committed by the

1 Court. Therefore, she cannot demonstrate she is entitled to reconsideration of the Court's
2 order.

3 The FTCA provides that the government "is liable in the same manner and to the
4 same extent as a private individual under like circumstances." 28 U.S.C. § 2674. In the
5 parties' motions for summary judgment, the parties disagreed as to whether the state law
6 enforcement privilege/immunity applied to a claim of false imprisonment by a federal
7 law enforcement officer under the FTCA. Defendant argued that because law
8 enforcement officers engage in a unique governmental function that has no private sector
9 analogue, the law governing state law enforcement officers performing similar actions
10 applies. In response, Plaintiff contended that the Government is liable under a "private
11 person standard" or in this case, the standard for citizen's arrest as directed by the United
12 States Supreme Court in United States v. Olson, 546 U.S. 43 (2005) and the Ninth Circuit
13 case of Tekle v. United States, 511 F.3d 839 (9th Cir. 2007).

14 In her motion for reconsideration, Plaintiff repeats the same arguments raised on
15 summary judgment, albeit with more detail and vigor, but essentially she disagrees with
16 the Court's analysis. Moreover, the Court notes that it already addressed the private
17 person standard she seeks the Court to apply in her motion for reconsideration. (Dkt. No.
18 86 at 23.)

19 Plaintiff presumes that if the private person standard applies, the United States is
20 liable for Plaintiff's continued detention from September 10, 2014, when Ambriz
21 completed the GC/MS test which showed no presence of a controlled substance, until her
22 release on December 9, 2014.¹

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25 ¹ Plaintiff incorrectly asserts that there is no immunity or limitation of liability for private persons
26 accused of false imprisonment. In California, a private individual has lawful privilege to effectuate a
27 citizen's arrest if there is probable cause to detain. Fermino v. Fedco., Inc., 7 Cal. 4th 701, 715 (1994)
28 ("Merchants who detain individuals whom they have probable cause to believe are about to injure their
property are privileged against a false imprisonment action."). The Court concluded that there was
probable cause to arrest Michel by Officer Gibbons and the interrogation by Agent Bulman under the
collective knowledge doctrine. Under the private person standard, Michel's arrest was lawful. The

1 Even if the Court erred in applying the state law enforcement immunity, Plaintiff
2 has not demonstrated that applying a private person standard results in the government's
3 liability for false imprisonment. In support, Plaintiff cites to one case, Fermino v. Fedco.,
4 Inc., 7 Cal. 4th 701, 715 (1994), where the California Supreme Court addressed an
5 employee's claim that she was subject to false imprisonment by her employer. In
6 Fermino, the employee was summoned to a windowless room and interrogated about an
7 alleged theft. Id. at 706. Two managers and two security agents were in the room; they
8 accused her of stealing, demanded that she confess and threatened to have her arrested
9 unless she confessed and told her that witnesses to the incident were waiting in the next
10 room when they were not. Id. at 707. Despite the employee's repeated requests to leave
11 the room and to call her mother, they were denied. Id. She remained in the room for
12 more than one hour. Id. The court recognized a merchant's privilege against a false
13 imprisonment claim if the merchant has probable cause to believe an individual will
14 injure property under California Penal Code section 490.5. Id. at 715. However, an
15 employer's actions that go beyond a reasonable interrogation and detention constitute
16 false imprisonment. Id. at 716. The court reversed the trial court's demurrer in favor of
17 the employer. Id. at 724. The Court finds that Fermino is not applicable because it does
18 not address a prolonged detention such as Michel's where there was probable cause to
19 initially detain her and then she was transferred to the custody of jailers pursuant to
20 criminal court proceedings.

21 California recognizes a false imprisonment claim based on a prolonged detention if
22 a jailer knows or should have known of the "illegality of the imprisonment." Sullivan v.
23 Cnty. of Los Angeles, 12 Cal. 3d 710, 717-18 (1974). A public entity which employs the
24 jailer may be liable if jailers "have actual knowledge that the imprisonment of the
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28 question is whether there was a continuing duty on Agent Bulman to investigate the validity of
Plaintiff's detention.

1 plaintiff is unlawful or alternatively that he have some notice sufficient to put him, as a
2 reasonable man, under a duty to investigate the validity of the incarceration.” Id. at 719.

3 In Martinez, a plaintiff filed a complaint against the City of Los Angeles for false
4 imprisonment based on a prolonged detention of 59 days spent in jail in Mexico.
5 Martinez v. City of Los Angeles, 141 F.3d 1373, 1377 (9th Cir. 1998). The Ninth Circuit
6 reversed the district court’s summary judgment decision in favor of the City on the false
7 imprisonment claim based on prolonged detention. Id. at 1381. The Los Angeles Police
8 Department (“LAPD”) initiated an investigation that led to the plaintiff’s arrest in
9 Mexico. Id. at 1377. After Martinez was arrested, his attorney presented the LAPD with
10 evidence establishing the Mexican authorities arrested the wrong man. Id. at 1378. After
11 receiving this information, the LAPD delayed investigating further. Id. at 1381.
12 Martinez claimed that the LAPD officers allowed him to remain in jail in Mexico after
13 they knew or should have known he was not the person who committed the crime. Id. at
14 1379. The Ninth Circuit concluded there were genuine issues of material fact whether
15 the LAPD knew facts which would have caused a reasonable person to investigate the
16 legality of Martinez’s incarceration and seek his release. Id. at 1381. In a prolonged
17 detention case, the question of liability depends on whether the defendant knew facts that
18 the detained person is innocent or should have known facts that would have caused a
19 reasonable person to investigate the validity of the detained person’s detention.

20 In this case, Plaintiff has not demonstrated that Agent Bulman had facts that would
21 have put him on notice to trigger a duty to investigate the drug test results. Plaintiff
22 argues that when Agent Bulman interviewed Plaintiff on the day she was detained, on
23 June 2, 2014, she told him the substance was not methamphetamine but was cuajo and
24 both agreed that testing would reveal whether the substance was a drug or not. Based on
25 this conversation, Plaintiff argues that Agent Bulman was aware that the lab test could
26 exonerate Plaintiff and he had a continuing duty to investigate especially after September
27 10, 2014 when the results of the drug testing revealed she was innocent. First, a dispute
28 whether a substance is illicit or not is most likely common at a border stop. Second,

1 Agent Bulman did not have actual knowledge about the results of the drug testing until
2 December 3, 2014. He had no knowledge that Ambriz conducted GC/MS testing on
3 September 10, 2014 and did not know the results of that test. There was nothing to put
4 him on notice that triggered a duty to investigate the test results.

5 Next, Michel argues that Agent Bulman’s failure to follow-up with the DEA lab at
6 the request of two Assistant U.S. Attorneys was deliberate, willful and/or reckless.
7 However, the Court concluded that Agent Bulman’s failure to follow up with the
8 AUSA’s requests to check the lab results was allowable under the discretionary function
9 exception doctrine. There is no indication that his failure to act was deliberate, willful
10 and/or reckless. Plaintiff has not demonstrated that Agent Bulman had any actual
11 knowledge that Plaintiff’s prolonged detention was unlawful and there was nothing to put
12 him on notice to trigger a duty to investigate the validity of the detention.

13 Under either standard, the private actor standard or applying state law privilege,
14 Plaintiff has not demonstrated a genuine issue of fact that the government is liable for
15 false imprisonment due to Agent Bulman’s failure to act. Accordingly, the Court
16 DENIES Plaintiff’s motion for reconsideration on this issue.

17 **B. Discretionary Function Exception**

18 In the Court’s order on summary judgment, it held that the claims of negligence
19 and negligent infliction of emotional distress claim based on Ambriz’ conduct from
20 September 29, 2014 when she definitively learned that the substance in the bottles was
21 not a controlled substance, and December 9, 2014, when Michel was released from jail
22 was protected by the discretionary function exception. (Dkt. No. 86 at 25, 27.) The
23 Court explained that the “DEA lab’s decision on which track, rushed or not rushed, to test
24 the substance found in Plaintiff’s vehicle was driven by policy considerations.” (*Id.* at
25 27.)

26 In the motion, Plaintiff argues that Ambriz did not engage in a “permissible
27 exercise of policy discretion” after September 10, 2014, when she completed GC/MS
28 testing. She claims that while the DEA has discretion to determine how it prioritizes the

1 testing of drug samples, it does not have a policy about timely submission of drug test
2 reports and notifying the case agent of the lab results. Defendant argues that Plaintiff
3 merely “recycles” her arguments against Ambriz and has identified no new fact, no
4 intervening change in law or clear error to justify a reconsideration of the Court’s
5 decision.

6 Here, the Court concluded, and Plaintiff does not dispute, that the decision not to
7 rush the lab results was driven by policy considerations. That decision, that the substance
8 be tested in the regular course of testing, and not rushed, includes the entire lab testing
9 process, and not just the initial decision to not rush the test results. In 2014, a non-rushed
10 lab report took about six to ninth months to test. (Dkt. No. 59-3, Ex. G, Malone Depo. at
11 55:7-20.) In the regular course of testing, Plaintiff’s substance would have taken six to
12 nine months. In this case, the testing was completed within five months, earlier than the
13 normal testing time. The Court does not find Plaintiff’s argument concerning the delay
14 of the submission of the drug test reports to be persuasive.

15 Next, Plaintiff’s argument that once Ambriz knew that the substance was not a
16 controlled substance on September 10, 2014, Ambriz did not engage in a “permissible
17 exercise of policy discretion” and the discretionary exception did not apply to Ambriz’
18 decision to hold off submitting her final report until almost two months after testing was
19 completed, is not legally supportive. In its order, the Court concluded that Ambriz did
20 not have a duty to act because she “had no actual knowledge concerning the facts in
21 Michel’s underlying criminal case and no duty to promptly act to secure the release of
22 Michel. Ambriz was not an investigating officer, as such, she was not involved in the
23 detention and arrest of Michel, involved in the filing of the criminal complaint, aware of
24 Michel’s bail status or aware of the evidence in the possession of the Government
25 supporting Michel’s charges.” (Dkt. No. 86 at 29 citing Dkt. No. 52-9, P’s Index of Exs.,
26 Ex. 5, Ambriz Depo. at 124:3-15 (Ambriz testified she did not know whether Plaintiff
27 was in custody or not).) Therefore, Ambriz did not know that the test results of
28 September 2014 would have dissipated probable cause to detain Plaintiff.

1 As to Agent Bulman, Plaintiff also argues that his subjective and erroneous belief
2 about a non-existent policy is not subject to the discretionary function exception. The
3 Court concluded that Agent Bulman’s failure to follow up with the DEA lab was based
4 on a policy decision that rush requests were only made when there was a court date, a
5 plea date or an extenuating circumstances, such as when the AUSA makes the rush
6 request directly with the DEA lab, or a judge orders testing rushed. (Dkt. No. 86 at 11,
7 30.)

8 Plaintiff argues that Agent Bulman’s subjective belief is a disputed fact.
9 She asserts that Agent Bulman’s belief that he could not make a rush request unless there
10 was a trial date or plea agreement date is disputed by the DEA’s rush request form and
11 Ambriz’ testimony. (Dkt. No. 93-1 at 26 n. 4.) The Court disagrees. The rush analysis
12 request form includes a question that lists reasons that require a checkmark for the
13 “nature of rush request” and include, grand jury, preliminary hearing, plea deadline, trial
14 call, undercover buys and “other.” (Dkt. No. 94-2, P’s Suppl. Exs, Ex. A at 2.) These
15 choices indicate that rush requests are made for specific reasons such as court dates.
16 “Other” does not indicate that a rush request can be made without a time-sensitive reason.
17 Moreover, the fact that Ambriz testified she receives rush request forms from agents and
18 that she would have accommodated Bulman’s request for a rush analysis does not support
19 Plaintiff’s argument that Ambriz routinely received rush request forms for cases without
20 a trial date or plea agreement date or any extenuating circumstances. Plaintiff’s facts
21 only demonstrate that when a rush request is made, the lab policy expedites the testing.
22 Here, according to Agent Bulman, there was no justification for a rush request since there
23 was no court date. Plaintiff’s facts do not show that Agent Bulman’s understanding of
24 the DEA lab policy is contradicted.

25 Further, in support, Plaintiff submits an email exchange between Agent Bulman
26 and the AUSA concerning the lab testing of Michel’s substance. (Dkt. No. 94-2, P’s
27 Suppl. Exs., Ex. B.) While the email exchange was referenced in Plaintiff’s opposition to
28 the government’s separate statement of undisputed facts, (Dkt. No. 62-1, SSUF, No. 18),

1 the document was not submitted in the record. For the first time, Plaintiff submits the
2 email exchange in her motion for reconsideration. On August 1, 2014, the AUSA wrote,
3 “When you get a chance, would you send me your ROI in this case? And would you
4 check on the status of the DEA lab report (although I know we’re likely months away
5 from that being ready).” (Dkt. No. 94-2, P’s Suppl. Exs., Ex. B at 2.) In response, Agent
6 Bulman wrote, “I’ve attached a scanned copy of the approved initial ROI. The DEA Lab
7 received the liquid methamphetamine from the port seizure and from the storage unit
8 seizure on July 3. I know that the lab is still severely backlogged by at least six months,
9 but the samples are there waiting to be analyzed. If and when it becomes apparent that we
10 will need to submit a rush analysis, I will do so, but due to their backlog, they have also
11 been inundated with rush analysis requests.” (Id.) The AUSA responded, “Thanks! No
12 need for a rush request yet, I know how busy the lab is.” (Id.) The email exchange notes
13 the extreme backlog at the DEA lab and that a rush analysis request be made only when
14 necessary. At that time, it was not necessary to make the rush request. The email
15 exchange supports Agent Bulman’s testimony on when rush requests are made.

16 Therefore, Agent Bulman’s decision not to follow up with DEA lab based on the
17 AUSA’s request is subject to the discretionary function exception. The Court DENIES
18 Plaintiff’s request for reconsideration on this issue.

19 **C. Intentional Infliction of Emotional Distress**

20 Plaintiff merely reargues her claim that Ambriz’s conduct was based on her
21 reckless disregard of the probability of causing emotional distress to Plaintiff, that is, she
22 knew that the laboratory results would exonerate Plaintiff but failed to timely submit her
23 lab report. She also claims that Agent Bulman did not exercise policy judgment but had
24 an obligation to fulfill the AUSA’s requests and had no authority to refuse to obtain the
25 lab results. As discussed above, Agent Bulman was exercising his discretion in following
26 DEA’s prioritization policy concerning lab testing and Plaintiff did not demonstrate that
27 he acted with reckless disregard to cause her emotional distress. As to Ambriz, the Court
28 concluded that the claim was barred under 28 U.S.C. § 2680(h) since the claim for

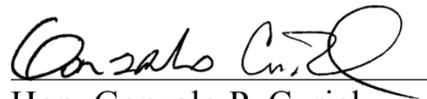
1 intentional infliction of emotional distress is based on facts to support the false
2 imprisonment cause of action and her injuries originate from this claim which is
3 explicitly exempt under the FTCA. Plaintiff has not demonstrated clear error to justify
4 reconsideration. The Court DENIES Plaintiff's motion for reconsideration on the
5 intentional infliction of emotional distress cause of action.

6 **Conclusion**

7 Based on the above, the Court DENIES Plaintiff's motion for reconsideration. The
8 hearing set for February 15, 2018 shall be **vacated**.

9 IT IS SO ORDERED.

10 Dated: February 13, 2018

11 
12 Hon. Gonzalo P. Curiel
13 United States District Judge
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