

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 PEGGY KNOX,

12 Plaintiff,

13 v.

14 CHRISTINA ACOSTA,

15 Defendant.

Case No.: 18-cv-0030-AJB-AGS

**ORDER DISMISSING THE CASE  
WITH PREJUDICE**

**(Doc. No. 15)**

16  
17 Pro se plaintiff Peggy Knox has now had five opportunities to state her federal claim,  
18 which the Court reviews under 28 U.S.C. § 1915(e). This review is required when a  
19 plaintiff files a motion to proceed in forma pauperis. (Doc. No. 2.) Under this mandatory  
20 screening, the Court finds that Knox’s “Fourth” Amended Complaint, actually the fifth  
21 amendment filed) insufficient to state a claim for relief. Thus, the Court **DENIES as moot**  
22 Knox’s IFP motion, (Doc. No. 2), and **DISMISSES** her Fourth Amended Complaint,  
23 (Doc. No. 15), with prejudice.

24 **I. SCREENING UNDER 28 U.S.C. § 1915(e)**

25 Under 28 U.S.C. § 1915(e)(2), when reviewing an IFP motion, the Court must rule  
26 on its own motion to dismiss before the complaint is served. *Lopez v. Smith*, 203 F.3d 1122,  
27 1127 (9th Cir. 2000). The Court must dismiss the complaint if it is frivolous, malicious,  
28 failing to state a claim upon which relief may be granted, or seeking monetary relief from



1 to remain in the driver’s seat while they inspected her vehicle. (*Id.* ¶¶ 4–8.) At that point,  
2 Knox heard “two loud bangs” and saw one of the agents holding a “black stick in his hand.”  
3 (*Id.* ¶¶ 9, 12.) The agents then allowed her to leave and she went to the George Bailey  
4 Detention Center where she began to feel “sharp pain” in her “head [and] neck.” (*Id.* ¶ 16.)  
5 To relieve the pain, Knox took pain reliever and visited a chiropractor.” (*Id.* ¶¶ 17–20.)  
6 Knox also discusses two prior accidents she was involved in. In 2013, she was in a Vons  
7 parking lot when her cart was hit by a car. (*Id.* ¶ 21.) And in 2015, she was in her vehicle  
8 in a Fed Ex parking lot and hit by another car. (*Id.* ¶ 24.) She alleges the border incident  
9 resulted in damage to her car, as well as severe emotional distress. (*Id.* ¶¶ 29, 35.) Finally,  
10 Knox attaches various forms documenting her physical and emotional distress. (*Id.* at 6–  
11 38.) One of these forms, presumably written by a doctor, states “a border patrol agent was  
12 inspecting her car. She said he went under the back left side of her vehicle and started to  
13 hit the under carriage hard with a metal crow bar. The forceful impacts created a headache  
14 and pain in her neck and upper back.” (*Id.* at 7.)

### 15 III. DISCUSSION

16 An action against the government for damages resulting from the wrongful conduct  
17 or negligence of a government employee must be brought under the Federal Tort Claims  
18 Act. 28 U.S.C. §§ 2671–80. Under the FTCA, the United States is liable for tort claims “in  
19 the same manner and to the same extent as a private individual under like circumstances.”  
20 28 U.S.C. § 2674. Based on Knox’s current complaint, the Court could interpret her  
21 complaint as bringing a negligence claim for the agent’s alleged negligent handling of her  
22 vehicle resulting in apparent injury to her person.

23 However, the FTCA’s “detention of goods” exception strips this Court of  
24 sovereignty over her claims. The United States waives its sovereign immunity to allow  
25 recovery “for injury or loss of property, or personal injury or death caused by the negligent  
26 or wrongful act or omission of any employee of the Government while acting within the  
27 scope of his office or employment.” 28 U.S.C. § 1346(b); *see also* 28 U.S.C. § 2674.  
28 However, these provisions do not apply to “[a]ny claim arising in respect of the assessment

1 or collection of any tax or customs duty, or the detention of any goods, merchandise, or  
2 other property by any officer of customs or excise or any other law enforcement officer.”  
3 28 U.S.C. § 2860(c). The Supreme Court has broadly construed the language “arising in  
4 respect of” to mean any claim “arising out of” the detention of goods or property, including  
5 a claim resulting from negligent handling or storage of the detained property. *Kosak v.*  
6 *United States*, 465 U.S. 848, 854 (1984).

7 In a similar case arising out of Arizona, the Court dismissed plaintiff’s claim “based  
8 on personal injuries sustained while maneuvering her vehicle into a secondary inspection  
9 bay at a CBP port of entry.” *Boyd v. United States*, 2011 WL 31285, at \*2 (D. Ariz. Jan. 5,  
10 2011). The Court held that “[b]ecause Plaintiff’s injury ‘arises out of’ the detention of the  
11 vehicle in which she was riding, her negligence claim falls squarely within the exception  
12 in § 2680(c).” *Id.*; *See Goodman v. United States*, 987 F.2d 550, 551–52 (8th Cir. 1993)  
13 (finding routine customs inspection constitutes detention under § 2680(c)). The Ninth  
14 Circuit has held that the detention of goods exception bars personal injury claims arising  
15 from the detention of goods, regardless of whether they were intentional torts or grounded  
16 in negligence. *Gasho v. United States*, 39 F.3d 1420 (9th Cir. 1994); *see also Bramwell v.*  
17 *U.S. Bureau of Prisons*, 348 F.3d 804, 808 (9th Cir. 2003) (dismissing negligence claim  
18 where “alleged negligence resulting in damage occurred while [plaintiff’s] personal  
19 property was detained”).

20 Here, any alleged damage to Knox’s vehicle, and the subsequent injury to her head  
21 and neck were the result of the border agents’ detention of her vehicle as she was coming  
22 back into the United States after she accidentally entered into Mexico. Thus, similar to the  
23 plaintiff in *Boyd*, the injury arose during a detention by border agents and the United States  
24 retains its sovereign immunity against Knox’s claim.

#### 25 **IV. LEAVE TO AMEND**

26 Leave to amend should be granted if it appears possible that the plaintiff can correct  
27 the complaint’s deficiency. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 701 (9th Cir.  
28 1988). The “rule favoring liberality in amendments to pleadings is particularly important

1 for the pro se litigant. Presumably unskilled in the law, the pro se litigant is far more prone  
2 to make errors in pleading than the person who benefits from the representation of  
3 counsel.” *Noll*, 809 F.2d at 1448; *see Crowley v. Bannister*, 734 F.3d 967, 977–78 (9th Cir.  
4 2013); *see also Bazrowx v. Scott*, 136 F.3d 1053, 1054 (5th Cir. 1998) (“Generally a district  
5 court errs in dismissing a pro se complaint for failure to state a claim . . . without giving  
6 the plaintiff an opportunity to amend.”). However, a district court may in its discretion  
7 deny leave to amend due to repeated failures to cure deficiencies by amendments  
8 previously allowed. *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir.  
9 2009). “The district court’s discretion to deny leave to amend is particularly broad.” *Id.*

10 In the Court’s prior order, it allowed Knox one last opportunity to amend, as Knox  
11 had repeatedly omitted facts and alleged new facts in each of her complaints. Looking at  
12 the fourth amended complaint as the final complaint alleging all relevant facts, the Court  
13 finds it would be futile to allow Knox another opportunity to amend. While the Court is  
14 sympathetic Knox’s claim is now dismissed, the Court gave her every opportunity to allege  
15 the proper defendants, relevant facts, and theories of law.

## 16 V. CONCLUSION

17 For the reasons stated herein, the Court **DISMISSES** Knox’s fourth amended  
18 complaint with prejudice. Despite giving Knox several chances to amend, the Court simply  
19 does not see a way for Knox to allege any new facts not previously stated which would  
20 waive the United States’ sovereign immunity.

21 **IT IS SO ORDERED.**

22  
23 Dated: December 3, 2018

24   
25 Hon. Anthony J. Battaglia  
26 United States District Judge  
27  
28