

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

SANDRA RINCON, as Administrator of)	
the Estate of Rosalio Rincon,)	
Deceased,)	
)	
Plaintiff,)	
)	
v.)	No. 2:10-CV-268 PS
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER

District courts have long had the inherent power to enter summary judgment *sua sponte*. See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (“[D]istrict courts are widely acknowledged to possess the power to enter summary judgments *sua sponte*, so long as the losing party was on notice that she had to come forward with all of her evidence.”). Indeed, this power has recently been codified in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 56(f) (“After giving notice and a reasonable time to respond, the court may . . . consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.”).

Upon review of the trial briefs filed in this case, the Court believes it may be appropriate to grant summary judgment in Defendant’s favor on Plaintiff’s negligence claims based on the discretionary function exemption to the Federal Tort Claims Act. As Plaintiff herself candidly admits in her trial brief: “[P]lanning how to effect an arrest ‘falls within the discretionary function exception to the FTCA.’ *Maravilla v. United States*, 867 F. Supp. 1363, 1382 (N.D. Ind. 1994).” [DE 60 at 6.]

The Court believes the parties’ trial briefs have sufficiently outlined the undisputed facts

and law on these claims. Nevertheless, if either party believes any other materials are necessary to evaluate Plaintiff's negligence claims, additional briefs may be filed within 14 days, up to and including September 25, 2012.

Finally, to be entirely clear, Plaintiff's intentional tort claim for battery is not amenable to summary judgment, for all the reasons already articulated in my June 1, 2012 Opinion. Thus, plaintiff's battery claim – brought pursuant to FTCA provisions 28 U.S.C. § 2674 and § 2679(b)(1) and governed by Indiana state law – will proceed to trial.

SO ORDERED.

ENTERED: September 11, 2012

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT