THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Gustavo VARGAS RAMIREZ, Plaintiff, v. UNITED STATES OF AMERICA, Defendant.	Case No. 13-cv-02325-JLR **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

Plaintiff Gustavo Vargas Ramirez ("Mr. Vargas") was unlawfully arrested by United States Border Patrol ("USBP") on June 23, 2011. The seizure, which was based on ignorance of the law, misinformed assumptions, stereotypes, and generalizations, was not justified by reasonable suspicion, much less probable cause. Aware of this, USBP sought to provide a valid reason for the arrest by falsifying information on the Form I-213, Record of Deportable / Inadmissible Alien. Far from demonstrating Defendant's entitlement to summary judgment, the information obtained during discovery confirms Defendant's agents acted contrary to their well-established obligations under the Fourth Amendment and the relevant statutes and regulations.

II. ARGUMENT[1]

A. Defendant is not entitled to summary judgment on Mr. Vargas's false arrest and false imprisonment claims.

USBP agents have legal authority to seize an individual. *See* 8 C.F.R. § 287.5(c)(1) (arrest authority pursuant to 8 U.S.C. § 1357(a)(2)); 8 C.F.R. § 287.8 (b)(2) (detention authority). As the Court has previously recognized, this authority "depends on familiar Fourth Amendment concepts": an arrest must be justified by probable cause and a detention by reasonable suspicion that an individual is in the United States unlawfully. Dkt. 26 at 13. Defendant is incorrect in arguing that Mr. Vargas's seizure was lawful and so his claims for false arrest and false imprisonment must fail. *See* Dkt. 37 at 3-13. USBP's request that Anacortes Police Department ("APD") Officer Leetz detain Mr. Vargas was not supported by probable cause or even reasonable suspicion.

i. Border Patrol did not have probable cause to request that Officer Leetz seize Mr. Vargas for further questioning.

[1] While many material facts are undisputed, where that is not so, Mr. Vargas clarifies the dispute in the argument.

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USBP's initial seizure of Mr. Vargas was an arrest. Mr. Vargas was handcuffed, placed in Officer Leetz's police car, and transported to the APD station, where he was held in a cell for about 40 minutes until USBP Agent Orr arrived and further questioned him. *See* Dkt. 35 at II.E-F. These factors are characteristic of arrests, not temporary investigatory detentions. *See id.* at IV.A.i (summarizing case law). Mr. Vargas, who was in physical custody, was not free to go.

Defendant does not challenge that these factors turned the seizure into an arrest. In essence, it concedes that Mr. Vargas was unlawfully arrested at the scene of the traffic stop, but argues it should not be held liable because Agent Hafstad did not physically arrest Mr. Vargas but instead requested that the APD officer do so. *See* Dkt. 37 at 13-16. Yet Defendant ignores controlling Washington law outlining the conduct that can give rise to liability for false arrest and false imprisonment. A party need not have been the one to actually physically restrain or imprison: "procur[ing] or instigat[ing] the making of [the seizure] without proper authority" is enough. *Bender v. City of Seattle*, 99 Wash. 2d 582, 592 n.3 (1983) (en banc) (citation omitted).[2]

Here, the undisputed facts show that Officer Leetz only seized Mr. Vargas because Agent Hafstad requested it, and Officer Leetz believed Agent Hafstad had the authority to make that request. Ex. 1 at 13:13-14:1, 15:1-4, USAO284.[3] It was Agent Hafstad who told Officer Leetz to meet another USBP agent at the APD station, not at the scene of the traffic stop or elsewhere. *Id.* at 17:17-18; 56:16-22. USBP thus definitely took "some active part in bringing about the unlawful arrest itself, by some affirmative direction, persuasion, [or] request," subjecting

[2] *Means v. United States*, 176 F.3d 1376, 1377-78 (11th Cir. 1999) is inapposite, as the Court found that the County was liable for the alleged tortious behavior—breaking down the door and assaulting the plaintiffs—and that the federal authorities had no direction or control over those acts. Here, the tortious behavior is the unlawful imprisonment, and it is undisputed that Agent Hafstad directed Officer Leetz to detain Mr. Vargas.

[3] Unless otherwise indicated, all references to exhibits are to those accompanying the Declaration of Glenda M. Aldana Madrid In Support of Plaintiff's Motion for Partial Summary Judgment, Dkt. 36.

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Defendant to liability for false arrest and false imprisonment. *Bender*, 99 Wash. 2d at 592 n.3 (internal quotation marks and citation omitted).

What is more, while no facts suggest that Agent Hafstad explicitly instructed Officer Leetz as to *how* to seize Mr. Vargas, all of the officer's actions in taking and holding Mr. Vargas were standard procedures when transferring an individual in custody. *See* Dkt. 35 at 11-12. A reasonable officer would have known that when he told Officer Leetz to detain Mr. Vargas for USBP and transport him to APD, that Officer Leetz would handcuff Mr. Vargas, transport him in his police car, and place him in a holding cell while he waited for USBP's arrival—all further indicators that this was not a temporary investigative detention, but rather an arrest. Defendant is thus liable for false arrest and false imprisonment.[4]

Defendant has conceded that USBP did not have probable cause for its initial seizure of Mr. Vargas. *See* Dkt. 37 at 3 ("USBP's request that Officer Leetz detain Plaintiff … was lawful because it was supported by reasonable suspicion and USBP's *subsequent* detention … was supported by reasonable suspicion *and probable cause*.") (emphasis added); *see also id.* at 13 ("[O]nce it was confirmed that Plaintiff was from Mexico, the fact that Plaintiff was not in any of USBP's databases established probable cause."). USBP's initial seizure of Mr. Vargas, then, constitutes false arrest and false imprisonment, for it was an arrest unsupported by probable cause. Defendant's motion for summary judgment on these claims must fail.

ii. Border Patrol did not even have reasonable articulable suspicion to request that Officer Leetz seize Mr. Vargas for further questioning.

[4] Defendant's assertion that holding it responsible for Mr. Vargas's arrest would result in "double-recovery" in light of Mr. Vargas's settlement with APD is incorrect for at least two reasons. *See* Dkt. 37 at 14. First, Defendant wrongly assumes that Mr. Vargas seeks to hold it liable "based on Officer Leetz's actions." *Id.* Defendant's liability is premised on *USBP*'s actions, which directed the unlawful arrest. Second, Defendant wrongly assumes that APD's liability could have only stemmed from the actions Officer Leetz took pursuant to USBP's instructions.

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The unlawful nature of the initial arrest is further highlighted by the fact that USBP did not even possess the requisite reasonable suspicion for a detention.

Defendant acknowledges that Agent Hafstad had no "specific recollection" of the conversation in which he requested that Officer Leetz detain Mr. Vargas. *Id.* at 4. Moreover, the Form I-213 only identified Mr. Vargas's alleged admission of alienage at the scene of the traffic stop as the basis for his arrest. Ex. 7 at USAO33. Nonetheless, Defendant now identifies four factors and invites the Court to assume that Agent Hafstad relied on them to conclude that he had reasonable suspicion to seize Mr. Vargas: "(1) USBP's background checks revealed that the name and information Plaintiff provided were not in any of USBP's databases; (2) Officer Leetz's suspicion that Plaintiff was possibly an illegal alien; (3) the location and area Plaintiff was stopped in; and (4) the fact that there was no Social Security Number associated with the name Plaintiff provided." Dkt. 37 at 4 (citation omitted). Defendant claims that Mr. Vargas's English-language abilities were likely also a factor in Agent Hafstad's analysis. *Id.* at 8.

Even assuming, arguendo, that Agent Hafstad relied on these factors, they do not provide reasonable suspicion and certainly do not provide probable cause. The Ninth Circuit has held that "factors that have such a low probative value that no reasonable officer would have relied on them to make an investigative stop must be disregarded as a matter of law." *United States v. Montero-Camargo*, 208 F.3d 1122, 1132 (9th Cir. 2000) (citation omitted). The discussion below addresses why Defendant's claim that USBP had legal justification to seize Mr. Vargas is incorrect, in light of the factors and evidence asserted. Moreover, given that Mr. Vargas disputes that some of these factors were actually considered by Agent Hafstad, this Court should readily reject Defendant's Motion for Summary Judgment, as there is a clear dispute as to material facts.

i. USBP databases

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That Mr. Vargas's name and date of birth did not turn up any records in the checks conducted by USBP is of no probative value in the reasonable suspicion analysis.

Mr. Vargas agrees with most of Defendant's summation of what the records checks revealed. *See* Dkt. 37 at 5-6. Prior to returning Officer Leetz's call, Agent Hafstad had run a series of background checks on Mr. Vargas. Ex. 3 at 15:13-16, 31:4-8. The only positive record that turned up was one indicating that Mr. Vargas had a driver's license. *Id.* at 18:25-19:3, Ex. 7 at USAO428.[5] The checks did not yield any records in the other databases searched. *Id.* The "Wants/Warrants" check discovered no outstanding warrants for Mr. Vargas. *See* Ex. 3 at 15:19-24. The "Criminal History" check revealed he had no record of state or federal criminal history. *See id.* at 16:8-17. The "Class of Admission" check showed that Mr. Vargas was not registered as inspected or admitted to the United States, while the "A Number" check yielded no assigned immigrant number for Mr. Vargas. *See id.* at 16:18-17:1.

His absence from the EARM database showed there was no record that Mr. Vargas had ever been deported. *See id.* at 17:3-5. EADS showed no record of Mr. Vargas having ever had an employment authorization card. *See id.* at 17:6-8. The EOIR check showed that Mr. Vargas was not listed as facing charges in removal proceedings. *See id.* at 17:9-10; *see also* Dkt. 37 at 5 n.4. And no records in ENFORCE meant that Mr. Vargas was not registered as having previously been arrested by the immigration authorities. *See* Ex. 3 at 18:18-24. No results in CLAIMS indicated that there was no record that Mr. Vargas had ever filed an immigration application or petition. *See id.* at 17:11-15. No records in the TECS/IBIS databases meant that Mr. Vargas was not registered as having entered the country at a port of entry. *See id.* at 17:20-24.

[5] The records results Agent Hafstad received consisted of three faxed pages that contained a summary sheet—the Records Request Check Sheet—as well specific state records checks. Dkt. 34, Ex. A at 50-52; Ex. 3 at 14:6-12.

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That no record was found for all but the driver's license database is not indicative of foreign birth or unlawful status absent a concession of foreign birth. *See* Ex. 8 at #18 (admitting "Mr. Vargas's lack of an immigration record or history was indicative of an unlawful presence in the United States *if* he was not born in the United States") (emphasis added). Agent Hafstad simply gleaned that Mr. Vargas had not been previously subject to immigration enforcement and was not registered in immigration databases, which record many but not all persons who have applied for or are included in applications for immigration benefits. Mr. Vargas thus disputes Defendant's contention that failure to appear in an EARM or CLAIMS database check showed that a person "had *never* applied for any immigration benefits and had *never* been lawfully admitted to the United States." Dkt. 37 at 7 (emphasis added). To the contrary, Agent Hafstad recognized the "derivative citizen[s] who didn't make any application for—indication of citizenship," for example, would not have necessarily turned up in any of the checks. Ex. 3 at 26:5-9.[6] Moreover, Defendant itself has acknowledged that these databases did not include information on all foreign-born individuals in the United States, on all individuals who are U.S. citizens by virtue of deriving or acquiring their citizenship through a parent or grandparent born in this country, or even on all individuals born here. Ex. 5, Interrog. 2(c)-(e).

Defendant attempts to diminish the importance of the fact that these checks were not comprehensive by relying on the experience of agents Hafstad and Wynn, *see* Dkt. 37 at 6-7,[7] but the Ninth Circuit has previously found that "the incomplete nature of [immigration records]

[6] Although Defendant correctly notes that Agent Hafstad at first remarked that the possibility of this was "remote," he immediately qualified that statement, saying, "well, it's possible." Ex. 3 at 26:5-9.

[7] Defendant notes, for instance, that Agent Hafstad testified that the fact that Mr. Vargas's name "did not appear in each database individually, did not, in and of itself, establish that Plaintiff was here illegally, but taken together they were indicators of illegal presence." Dkt. 37 at 6 (citation omitted). But as Agent Wynn acknowledged, not every noncitizen with lawful status is found in the CIS database, Ex. 7 at 47:16-24, or the CLAIMS database, *id.* at 49:12-15; and that they would only appear in EARM if they have had some interaction with immigration enforcement, *id.* at 48:8-12, but that appearing "doesn't necessarily mean that they are here illegally." *Id.* at 49:1-2.

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alone is sufficient to render" similar "experience-based inference[s] valueless." *Orhorhaghe v. INS*, 38 F.3d 488, 499 (9th Cir. 1994). In *Orhorhaghe*, the court declined to assign any probative value to the fact that a records check had yielded no returns despite the immigration investigator's allegation that his "experience has shown that" no records meant, "nine times out of ten, the individual is, in fact, illegally present." *Id.* (internal quotation marks omitted). It did so because it found that the agent's "conclusion is contradicted by the objective facts": the first, that immigration agents "would be unable to locate any entry records for literally millions of people who are legitimately present"; the second, that "there would be no occasion to record the entry of native-born American citizens, even those with 'foreign-sounding' names" in the database consulted; and the third, that the records consulted only went back a few years. *Id.* at 498-99. Defendant's agents have readily conceded that the databases do not contain information on all individuals—foreign-born or not—lawfully present in this country. In such a circumstance, the Ninth Circuit has been careful to emphasize that "no matter how perfect the data base," if it excludes information as to individuals lawfully here and there is no evidence establishing the foreign birth of the person in question, "[t]he absence of any record … d[oes] not provide *any additional basis* for suspecting that [the individual is] an [undocumented immigrant] rather than a legal alien or American citizen." *Id.* at 498 & 499 n.17 (emphasis added).

The records check results in this case are thus lacking in probative value. They ought to be afforded no weight in assessing the legality of USBP's seizure of Mr. Vargas.

ii. Plaintiff's ability to speak English

Mr. Vargas disputes that Agent Hafstad knew "that Plaintiff spoke Spanish and broken English" and that "Officer Leetz could not even communicate with him to explain the details of

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the traffic infraction." Dkt. 37 at 8. At most, Agent Hafstad was aware that Mr. Vargas spoke English with an accent and/or that his spoken English was hard to understand.

It is not likely that Officer Leetz actually requested interpretation assistance from Agent Hafstad. Officer Leetz asserted that during his first call with USBP, he communicated a desire to obtain assistance "to explain my [traffic] ticket to him." Ex. 1 at 8:12-14. Yet his subsequent conduct does not make sense if his allegation as to needing interpretation assistance is true—for he hung up after giving Agent Hafstad the information he had on Mr. Vargas *without* waiting to obtain the alleged assistance he needed. *Id.* at 9:1-15. Indeed, his testimony makes clear that he only expected the USBP agent to call him back "*if* he had any reason why he needed [Officer Leetz] to detain [Mr. Vargas]." *Id.* at 9:9-15 ("I told him my intent was to complete the ticket and release Mr. Vargas-Ramirez, *but if anything had come up in the meantime*, I wanted to hear back from him.") (emphasis added). There was thus no expectation the agent would call him back apart from calling to advise regarding immigration enforcement. Had Officer Leetz genuinely needed language assistance, he would have asked the agent to convey to Mr. Vargas the officer's message regardless of any immigration enforcement determination the agent subsequently made. This fact severely undercuts any assertion that a request for interpretation assistance was actually made. This conclusion is all the more reasonable given that Officer Leetz, who wrote a thorough initial account of his interaction with Mr. Vargas and USBP, did not include any information about such a request in that report. *Id.* at USAO284-85. Notably, he also made no mention of any language assistance request in his follow-up report, despite being confronted with the characterization of the request as a call for translation assistance, which conflicted with his earlier account of the facts. *Id.* at USAO288**.** It seems unlikely that such a

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detail would escape him two months after the incident, especially since he was allegedly able to recall it more than three years later at his deposition.

Mr. Vargas also disputes the characterization of his English-speaking abilities, for it is apparent from the record that, at the time of the arrest, he spoke and understood English well enough to communicate effectively, even if with a heavy accent. *See* Dkt. 35 at IV.A.ii.2 (noting, *inter alia*, that Officer Leetz understood Mr. Vargas's repeated English-language requests for an attorney, his cell phone, and the opportunity to make a phone call, and that Mr. Vargas provided the officer with all the documentation and information he requested from him *in English*). Moreover, Mr. Vargas disputes that he spoke to Officer Leetz or Agent Hafstad in Spanish. Ex. 2 at 47:7-8; 49:20. The only undisputed fact reflects that Agent Hafstad heard Mr. Vargas say, *in English*, that he wanted an attorney. *Id.* at 49:16-25; 50:1-15; Ex. 1 at 13:4-12, 49:6-18, USAO284. Mr. Vargas has repeatedly maintained that he refused to answer any of the agent's questions over the phone. Ex. 2 at 49:16-25; 50:1-15. Defendant now admits that there "is no evidence that Plaintiff provided Agent Hafstad any substantive information before refusing to cooperate." Dkt. 37 at 10. Thus, all Agent Hafstad was able to garner from that exchange—other than that Mr. Vargas spoke accented English, or English that might be hard to understand—was that Mr. Vargas refused to cooperate. *Id.* At that point, he did not know whether Mr. Vargas was a noncitizen without authorization to be here or whether he was a U.S.-born citizen.[8]

Finally, even if Defendant's allegations were true, Agent Hafstad would have also known that immigration case law has made clear that while inability to speak English may qualify as an

[8] That Mr. Vargas refused to answer Agent Hafstad's questions was not a legitimate factor the agent could consider in his reasonable suspicion analysis, for Mr. Vargas was merely exercising his rights. *See INS v. Delgado*, 466 U.S. 210, 216-17 (1984) (in a consensual encounter where the person being questioned "refuses to answer and the police take additional steps … to obtain an answer, then the Fourth Amendment imposes some minimal level of objective justification to validate the detention or seizure") (citations omitted); *see also Hall v. Dodge*, 6:12- CV-1808-MC, 2013 WL 4782208, at *4-5 (D. Or. Sept. 5, 2013) (An "'individual has a right to ignore the [officer] and go about his business.'") (citations omitted). *See generally* Dkt. 19 at III.c.ii (providing further authority).

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articulable factor for reasonable suspicion, it is not only *not* dispositive, but also of limited value, requiring the existence of "other factors." *United States v. Manzo-Jurado*, 457 F.3d 928, 937, 40 (9th Cir. 2006) (citations omitted) (defendant's inability to understand any English, even combined with other factors such as his appearance as part of a work crew and location in a border town, was insufficient for reasonable suspicion); *see also* Dkt. 35 at 15-16 (highlighting that lack of English fluency "does not demonstrate foreign birth or unlawful status").

Again, in the instant case, the facts demonstrate that Mr. Vargas was able to understand English, and complied with all instructions. At most they demonstrate that his English was hard to understand. But even if he had been completely unable to understand or speak English, that inability, combined with the other factors which at best are "marginally relevant," are clearly insufficient to provide reasonable suspicion. *Manzo-Jurado*, 457 F.3d at 937-38.

iii. Plaintiff's demeanor and appearance

It is unclear on the record whether Agent Hafstad considered Mr. Vargas's appearance or apparent race or ethnicity in his analysis. Defendant did not allege in its Motion to Dismiss or for Summary Judgment that this factor had been a considered at the time of the seizure. *See* Dkt. 15 at 8 (omitting factor). To the extent Defendant now seeks to rely on this assertion, it should be held to either *weigh against* a finding of probable cause, or simply be irrelevant.

Officer Leetz initially testified quite categorically that he did not communicate any information about Mr. Vargas's race, ethnicity, demeanor, or appearance to Agent Hafstad over the phone. Ex. 1 at 9:16-21 (responding a firm "No" to questions about whether he had communicated anything to Agent Hafstad about any of those factors). In contrast, in his responses during cross-examination, when Defendant's counsel suggested additional information he may have communicated to the USBP agent, Officer Leetz spoke in vague, more qualified

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terms. *Id.* at 39:24-40:12 (responding that he "[m]ost likely yes" mentioned something about Mr. Vargas "appear[ing] to be Mexican or that he looked Hispanic" and that he "would imagine" he mentioned something about Mr. Vargas's appearance). On redirect, he did not state he "imagined he did tell" Agent Hafstad such information, as Defendant argues, *see* Dkt. 37 at 9; rather, he repeated that phrase in distinguishing his responses on cross-examination and direct examination. *See* Ex. 1 at 83:14-84:2. He stated that he had no recollection of having mentioned such factors, i.e., race or ethnicity, to Agent Hafstad, *id.* at 83:23-24, and on that basis subsequently confirmed that he did not communicate such factors to him. *Id.* at 84:3-11.[9]

Thus, it seems improbable that Agent Hafstad—beyond making assumptions as to Mr. Vargas's race, ethnicity, or demeanor based on his name—considered Mr. Vargas's demeanor or appearance. Indeed, Officer Leetz testified that he did not give the agent any additional information. And when asked whether Mr. Vargas had seemed nervous, the officer responded that "nothing extreme stood out. Otherwise, I would have documented that," and verified there was nothing "strange" in Mr. Vargas's demeanor that caused him suspicion. *Id.* at 54:3-4, 21.

To the extent Agent Hafstad did consider Mr. Vargas's apparent race and ethnicity, the Ninth Circuit has repeatedly repudiated reliance on such factors in reasonable suspicion analysis. *See, e.g.*, *Montero-Camargo*, 208 F.3d at 1132 ("Hispanic appearance is not, in general, an appropriate factor [in evaluating whether to make an investigative stop]."); *id.* at 1135 ("Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone. … that those who are not white enjoy a

[9] Officer Leetz confirmed the information he gave Agent Hafstad consisted of Mr. Vargas's biographical data (name, date of birth); that he showed up as having no Social Security number—all zeros—in the Department of Licensing database; that his English was difficult to understand (Mr. Vargas disputes that Officer Leetz told Agent Hafstad that he was speaking Spanish, *see supra*); and that based on these reasons, he suspected Mr. Vargas might be in the country unlawfully. Ex. 1 at 8:24-9:7, 38:20-39:18.

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lesser degree of constitutional protection."); *see also Melendres v. Arpaio*, 989 F. Supp. 2d 822, 896 (D. Ariz. 2013) ("the race of an individual cannot be considered when determining whether an officer has or had reasonable suspicion in connection with a *Terry* stop, including for immigration investigation") (citation omitted). In areas "sparsely populated with Hispanics," the Court has allowed that "apparent Hispanic ethnicity" can be "a relevant factor in the reasonable suspicion inquiry, [but] cannot by itself justify an investigatory stop in a border area." *Manzo-Jurado*, 457 F.3d at 935 & n.6 (citation omitted). Census numbers show that 5.0% of Anacortes was "Hispanic or Latino" in 2010, as was 11.2% of the State of Washington.[10] But nothing reflects what percentage of the Latino population was comprised of citizens and what percentage was comprised of immigrants in lawful status. Indeed, Defendant admitted to not having any numbers or official estimates regarding Anacortes. Ex. 5 at #7; *see also* Ex. 7 at 56:17-59:7. Mr. Vargas's ethnicity is thus not a legitimate factor to consider in the reasonable suspicion analysis.

iv. Location factors

Mr. Vargas disputes that location of his traffic stop had any bearing in Agent Hafstad's analysis, as the agent did not suspect him of having recently crossed the border. Moreover, even if location did factor into Agent Hafstad's suspicion, that factor is devoid of any probative value in the reasonable suspicion analysis, for all of Defendant's allegations as to its significance are based on generalizations and speculation that apply to all Anacortes residents (and indeed, most residents of Western Washington).

Defendant alleges that the fact that Mr. Vargas was stopped "in an area near an international [maritime] border with a non-functioning Border Patrol checkpoint and a large illegal immigrant population" factored into Agent Hafstad's assessment as to whether he had

[10] U.S. CENSUS BUREAU: "State & County QuickFacts: Anacortes, WA," *available at* http://quickfacts.census.gov/qfd/states/53/5301990.html (last accessed Jan. 31, 2015).

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legal authorization to arrest Mr. Vargas. Dkt. 37 at 10-11. But Agent Hafstad clarified that he did not suspect that Mr. Vargas had just come from the ferry terminal. Ex. 3 at 27:12-14. Indeed, Mr. Vargas had a valid Washington driver's license and a registered car, indicating that he was a resident of the state. Ex. 1 at USAO284. There was thus no suspicion that Mr. Vargas was a recent border crosser. Without this suspicion, proximity to border loses much of its value in the reasonable suspicion analysis, and the remaining factors proffered must be examined "charily." *United States v. Pallares–Pallares,* 784 F.2d 1231, 1233-34 (5th Cir. 1986) ("'reason to believe that the vehicle had come from the border' is a vital element") (citation omitted). What is more, any connection to the *Canadian* border is especially attenuated given that USBP suspected Mr. Vargas of coming from Latin America. *Cf. United States v. Martinez-Fuerte*, 428 U.S. 543, 564 n. 17 (1976) ("Different considerations would arise if, for example, reliance were put on apparent Mexican ancestry at a checkpoint operated near the Canadian border.").

Additionally, the Ninth Circuit has held that location near the Canadian border is "relevant" but its "significance …is not overriding [where] the record does not establish that [the location is] notorious for containing illegal immigrants" or "used predominantly for illegal purposes—including illegal immigration." *Manzo-Jurado*, 457 F.3d at 936 (noting that in the absence of such evidence, border proximity "only minimally supports reasonable suspicion"). While Defendant offers allegations to support the inference that there is a significant risk of unlawful activity and a large undocumented population in Anacortes, they are completely unsubstantiated and thus (at best) "only minimally support" a finding of reasonable suspicion. Neither Agent Hafstad nor Agent Wynn was able to provide any data to substantiate the assertion that Anacortes is a hotbed of illicit border crossing activity. Rather, they spoke in generalizations and conclusory statements.

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See, e.g., Ex. 3 at 53:13 ("illegal aliens *have* used the ferry") (emphasis added); Ex. 7 at 38:1-40:8. Agent Hafstad even noted that most of the people his agents have arrested in Anacortes had entered through the southern border. Ex. 3 at 60:21-23. Further, Defendant conceded that USBP does not maintain records as to what percentage of the total number of undocumented people it apprehended in Anacortes in the last five years has been comprised of border crossers unlawfully coming from Canada, for example. Ex. 5 at #5.[11]

Lastly, Defendant's allegations as to the large undocumented population in Anacortes are similarly unsubstantiated. *See, e.g.*, *id.* at #7 (Defendant does not maintain any records on this). Despite writing a declaration holding out this allegation as a fact, Dkt. 16 ¶3, Agent Wynn could provide no concrete information or even estimates as to this purportedly large population, eventually admitting that it was his "opinion" based on the presence of "seasonal farmers" in the area and national "historical averages." Ex. 7 at 56:17-59:7. While a degree of deference is often paid to a trained agent's assessment as to the significance of certain factors, "[s]uch 'permissible deductions,' or 'rational inferences,' must, however, flow from objective facts and be capable of rational explanation." *Orhorhaghe*, 38 F.3d at 499 (citation omitted). Defendant's allegations as to the significance of the location, then, are grossly overstated and not based on objective facts. Crediting the agents' baseless assertions as to these factors is the equivalent of "giv[ing] the officers unbridled discretion in making a stop." *Id.* (citation omitted).[12]

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[11] Moreover, those arriving on international ferries at Anacortes actually go through a checkpoint managed by Customs and Border Protection—it is the *domestic* ferries that no longer have a USBP checkpoint. Ex. 3 at 54:5-55:5. Additionally, while Defendant alleges that the checkpoint was closed due to limited resources, the Bellingham USBP station has actually grown "substantially" since 2007. *Id.* at 53:20-54:2. The checkpoint closed in 2009—if it was addressing a serious need, it would presumably not have closed given the increased resources. *Id.* at 49:22-24.

[12] It is alarming that Agent Wynn was unable to substantiate the significance of the various factors he had previously asserted so authoritatively. *Compare* Dkt. 16 with Ex. 7 at 37:20-63:13 (responding, for example, that the agents he

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What is more, Agent Hafstad admitted that these location factors "can apply…to anybody in the area that's in that location." Ex. 3 at 29:7-8. Considering them, then, creates a "broad profile" that could apply to lawful as well as unlawful immigrants and residents of Anacortes. *Manzo-Jurado*, 457 F.3d at 940. USBP agents may not "rely solely on generalizations that, if accepted, would cast suspicion on large segments of the lawabiding [sic] population." *Id.* at 935 (citations omitted). These location factors are thus not probative in Mr. Vargas's case.

When Agent Hafstad made his request that Officer Leetz detain Mr. Vargas, Mr. Vargas had not said anything regarding where he had been born or whether he was an immigrant. And the other factors Agent Hafstad *did* know failed to support a finding of reasonable suspicion. Indeed, Agent Hafstad relied on layer upon layer of generalizations and misconceptions.[13] As noted, in another case bearing remarkable similarities to this one, the Ninth Circuit found that USBP lacked reasonable suspicion to stop a group of men in Montana based on the "individuals' appearance as a Hispanic work crew," which the agents claimed was correlated with unlawful status, because USBP had "encountered 'numerous' work crews with illegal aliens"; "inability to speak English," and act of speaking Spanish; "proximity to the border," although there was no allegation of a large unlawful immigrant population or illicit activity there; and "unsuspicious behavior" of walking past a USBP car twice and not leaving immediately thereafter. *Manzo-Jurado*, 457 F.3d at 932-33, 36, 38. These factors "form[ed] a broad profile that would cover

supervises *have* arrested, in Anacortes, recent illicit border crossers who have come via the San Juan Islands, but unable to provide even an estimate and noting he's not "privy" to records USBP may have with that information).

[13] Defendant asserts that Agent Hafstad also relied on Officer Leetz's suspicion as to Mr. Vargas's immigration status. Dkt. 37 at 4. Officer Leetz's suspicion is completely devoid of any value given that he had *no* immigration law training, was misinformed as to Washington law, and was guided by stereotypes as to the English-speaking ability of citizens and noncitizens. *See* Dkt. 35 at IV.A.ii.3; Dkt. 19 at III.c.i. Indeed, Defendant's assertion as to "Mexican" appearance, *see* Dkt. 37 at 8-10, is confounding as it is unclear how Officer Leetz or Agent Hafstad was equipped to distinguish someone who looks "Mexican" from someone from another country. Moreover, Agent Hafstad's consideration that Mr. Vargas might be undocumented because his license had no Social Security number associated with it is also flawed, for Washington does not require that such a number be provided when issuing licenses. *See* Dkt. 19 at III.c.v; Dkt. 35 at IV.A.ii.1.

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many lawful, newly-arrived immigrants" and lacked the requisite particularity for a detention. *Id.* at 939-40. Agent Hafstad relied on similarly flawed factors. USBP thus did not have reasonable suspicion to even detain, much less instruct Officer Leetz to arrest, Mr. Vargas.

iii. USBP lacked legal justification to continue Mr. Vargas's arrest.

Moreover, while Mr. Vargas [redacted], this [redacted] did not cure USBP's false arrest and imprisonment nor justify its continued seizure of Mr. Vargas. It is now undisputed that this [redacted] occurred *after* Mr. Vargas had already been seized at USBP's request. As it was the direct product of the unlawful seizure, it may not be used to support a finding of legal justification. *See, e.g., United States v. Crawford*, 372 F.3d 1048, 1055 (9th Cir. 2004) (describing cases in which individuals were "arrested without probable cause in the hope that something [incriminating] would turn up… [and] the [Supreme] Court excluded the defendants' confessions as fruits of the illegal seizures") (internal quotation marks, alterations, and citations omitted). Indeed, in *Manzo-Jurado,* the defendant's concession, prior to his arrest, that he did not have proper immigration documents did not save from suppression the evidence subsequently obtained, since the Court found that the initial detention that preceded it was unlawful. 457 F.3d at 933-34, 939-40. The Court of Appeals even rejected the government's attempt to apply the inevitable discovery doctrine. *Id*. at 939-40.[14]

B. Defendant is not entitled to summary judgment on Mr. Vargas's abuse of process claim.

[14] Defendant has previously relied on *Smith v. Kelly*, No. C11-623RAJ, 2013 WL 5770337 (W.D. Wash. Oct. 24, 2013) to argue that Mr. Vargas may not recover for *damages* beyond the initial unlawful arrest. In that case, the Court found that Mr. Smith was entitled to compensation only for his unlawful arrest, but that the defendant could not be held liable for his detention pursuant to an additional charge for felon in possession of a firearm, which the defendant had discovered in a search incident to the initial arrest. *Id.* at *8. Here, however, there was no separate basis to charge Mr. Vargas. He was held exclusively on USBP's initial charge that he had alleged admitted he was from Mexico and was unable to present documentation of authorized presence. This was precisely the type of information USBP *sought* to obtain by unlawfully arresting Mr. Vargas in the first place. As the court in *Kelly* acknowledged, "unlike a suspicionless search, in which an officer will most often recover nothing of value, an officer eliciting a confession expects to obtain a confession to the crime about which he is inquiring." *Id.* at *15 n. 6.

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Defendant's assertion that Mr. Vargas's abuse of process claim must fail because it denounces actions taken prior to the institution of a judicial proceeding, Dkt. 37 at 16-18, is incorrect. "Process" need not be part of a formal court process, for courts have recognized that an arrest or the commencement of certain proceedings may be challenged as abuse of process. The drafting and issuance of the falsified I-213 certainly constitute a legal process.[15]

Defendant's definition of "process" is too narrow. Washington courts have defined abuse of process as referring to "a *legal* process, whether criminal or civil." *Fite v. Lee*, 11 Wash. App. 21, 27 (1974) (citing the Restatement of Torts § 682 (1938)) (emphasis added). While "process" generally refers to some form of judicial process, it can extend to include actions predating the commencement of a judicial action. In *Gibson v. City of Kirkland*, C08-0937-JCC, 2009 WL 973360 (W.D. Wash. Apr. 9, 2009), for instance, the court declined to dismiss the plaintiffs' abuse of process claim against the police officer defendants, finding that "a reasonable jury could conclude that the officers initiated the *arrest* for [the] ulterior purpose" of covering up their earlier use of excessive force. 2009 WL 973360 at *5 (emphasis added). Quite similarly, USBP, in the course of processing Mr. Vargas for immigration removal proceedings, prepared the Form I-213—undoubtedly a routine part of the "legal process" that immigration authorities undertake

[15] Mr. Vargas initially alleged that other USBP actions also constituted an abuse of process. In light of information obtained through discovery, he now limits his abuse of process claim to the issuance of the I-213. At the time the I-213 was issued, USBP had already initiated the immigration legal process against Mr. Vargas—removal proceedings had not yet been initiated, *see* Dkt. 37 at 18, but he had already been interrogated and arrested and was being prepared for transfer to the Northwest Detention Center for removal proceedings. *See* Ex. 6 at 16:9-14. The charging document that initiated the removal proceedings was Form I-862, Notice to Appear. Dkt. 37 at 18. Hence, as Mr. Vargas is not challenging the "institution of a legal proceeding," Defendant's contention that his abuse of process claim must fail for this reason is unavailing. *Id.* at 17. What is more, while courts have pronounced that "the initiation of vexatious civil proceeding, although baseless, is not an abuse of process," *Saldivar v. Momah*, 145 Wash. App. 365, 389 (2008), others have recognized the possibility of abuse of process in the decision to prosecute an individual. In *Anderson v. City of Bellevue*, 862 F. Supp. 2d 1095, 1109-10 (W.D. Wash. 2012), the court dismissed a claim alleging abuse of process in the city's decision to pursue a civil enforcement action after finding no ulterior purpose. Notably, the court did not dismiss the claim because it was based on the *initiation* of a legal process, examining instead the merits. Mr. Vargas's case is similar, as it denounces governmental actions in a civil proceeding—actions clearly motivated by the ulterior purpose of concealing violations of Mr. Vargas's rights.

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in order to support charges in removal proceedings. *See generally* Dkt. 35 at 21-22 (explaining role of an I-213 form). Indeed, USBP Agent Reyes identified the I-213 as being the form that records "our statements as to what happened" "to tell the court" what transpired in an individual's case. Ex. 6 at 22:2-13.

Notably, completing an I-213 form would count as "process" even under the Defendant's overly restrictive definition. Immigration courts are adversarial proceedings, governed by strict rules and "quasi-judicial functions." *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119-20 (9th Cir. 2001) (noting that, for example, hearings are transcribed, witness testimony is taken under oath, and judges have the authority to issue subpoenas). The I-213 generally plays a key role in removal proceedings in immigration court: it is typically used to establish the facts needed to sustain the charges of removability. *See, e.g.*, *In Re Gomez-Gomez*, 23 I. & N. Dec. 522, 524 (BIA 2002) ("[W]ithin the jurisdiction of the United States Court of Appeals for the Fifth Circuit, … and generally throughout the country[], a Form I-213 is admissible and ordinarily sufficient 'for a prima facie case of deportability,' whereupon the 'burden shifts to the alien to prove that he is here legally.'") (citations omitted); *Espinoza v. INS*, 45 F.3d 308, 310-11 (9th Cir. 1995), *as amended on denial of reh'g* (Jan. 12, 1995) (finding that I-213 was sufficient to demonstrate inadmissibility absent showing by respondent to counter statements); *Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988) ("Absent any indication that a Form I–213 contains information that is incorrect or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability."). Thus, even under Defendant's overly limiting definition of "process," the issuance of an I-213 form would nonetheless constitute a type of "*judicial* proceeding." Dkt. 37 at 18.

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Defendant relies on *Sea-Pac Co. v. United Food & Commercial Workers Local Union 44*, 103 Wash. 2d 800, 802-03, 807 (1985), where the court rejected administrative (National Labor Relations Board) proceedings as qualifying as a predicate "process," and *Oreskovich v. Eymann*, 129 Wash. App. 1032, at *3 (2005), in which the court rejected Washington State Bar Association proceedings as "process," for the proposition that "process" requires a formal judicial process. *See* Dkt. 37 at 17. However, unlike the administrative and bar disciplinary proceedings at issue in those cases, Mr. Vargas challenges a quasi-criminal proceeding, where the government has filed charges against him in civil proceedings placing his liberty at stake.

Here, the undisputed facts establish that USBP provided false information on the I-213. *See* Dkt. 35 at 22-23. It is clear that USBP misused the immigration legal process for the ulterior purpose of covering up its transgression in arresting Mr. Vargas without legal justification—an act that constitutes an abuse of process. *See id.* at IV.B. As Defendant's arguments are unavailing, Defendant is not entitled to summary judgment on this claim.[16]

C. Defendant is not entitled to summary judgment on Mr. Vargas's negligent infliction of emotional distress ("NIED") claim.

Defendant first errs in asserting that Mr. Vargas's claim for NIED fails because USBP did not owe Mr. Vargas a duty under Washington law. Dkt. 37 at 19. Mr. Vargas *can* show that USBP agents owed him a duty of care, as the FTCA imposes liability "*if a private person*, would be liable" under state law. 28 U.S.C. § 1346(b)(1) (emphasis added). It is true that, under

[16] Defendant correctly notes that abuse of process claims are disfavored in Washington, Dkt. 37 at 16**,** but this reluctance is motivated by "a policy which favors allowing the plaintiff his day in court." *Batten v. Abrams*, 28 Wash. App. 737, 750 (1981). The primary concern is that such claims might chill litigation and litigants' access to the courts as avenues for redress. *Id.* ("There is the risk that if abuse of process is not limited to an act subsequent to filing suit, …that it may be based on subjective intent only and that as a result be included as a counterclaim in nearly every answer."). These interests are much more compelling in the case of private litigants than in a case such as this one, where an individual is pitted against the government and brings suit for transgressions by the government. The government is not being denied its "day in court" and is unlikely to be chilled in its activities by suits of this kind, which, as a practical matter, would be difficult to bring in "nearly every" case.

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Washington law, the public duty doctrine shields law enforcement officers from liability for negligent conduct absent specified circumstances. *See, e.g.*, *Lawson v. City of Seattle*, No. C12-1994-MAT, 2014 WL 1593350, at *12 (W.D. Wash. Apr. 21, 2014). Courts have held that "[p]olice officers owe no duty of reasonable care to avoid the inadvertent infliction of emotional distress on the subjects of criminal investigation." Dkt. 37 at 19. However, the United States Supreme Court has clarified that in FTCA actions, the behavior of federal officers is judged by the standards of liability that would apply under state law to a private person engaged in analogous behavior—not the standards for liability or immunity that would apply to state or municipal actors in the same situation. *United States v. Olson*, 546 U.S. 43, 44-46 (2005) (concluding that federal agents could be sued under the FTCA only where state law made private individuals liable in tort—*not* where state law made public entities liable—even in the context of claims involving purely governmental functions); *see also Firebaugh Canal Water Dist. v. United States*, 712 F.3d 1296, 1303 (9th Cir. 2013) *cert. denied*, 134 S. Ct. 130 (2014) ("[T]he proper analogy [for FTCA liability] is to 'state-law liability of private entities, not to that of public entities.'") (citing *Olson*); *Coffey v. United States*, 870 F. Supp. 2d 1202, 1220-21 (D.N.M. 2012) ("The United States' liability is coextensive with that of private individuals under the respective States' law, even if comparable government actors would have additional defenses or additional obligations under that State's law.") (citations omitted). Thus, Defendant, through USBP, is liable for NIED under Washington tort law to the same extent as private individuals. *See, e.g.*, *Hunsley v. Giard*, 87 Wash. 2d 424, 435 (1976) (en banc).[17]

Relying on some federal district court decisions applying Washington law, Defendant also alleges that a negligence claim cannot be premised on intentional acts. Dkt. 37 at 19 (citing

[17] The Ninth Circuit has also recognized that law enforcement officers have a duty to not arrest individuals without probable cause. *Orin v. Barclay*, 272 F.3d 1207, 1219 (9th Cir. 2001) (applying Washington law in an NIED claim).

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Lawson, 2014 WL 1593350 at *13, which in turn relied on *Willard v. City of Everett*, No. C12-14 TSZ, 2013 WL 4759064, at *2 (W.D. Wash. Sept. 4, 2013)). However, the authorities Defendant cites to arise from specific contexts, and the Washington State court cases they rely on do not support a general rule barring an NIED claim that involves intentional actions. *Boyles v. City of Kennewick*, 62 Wash. App. 174 (1991), one of the two cases upon which *Willard* was ultimately based, held only that "the factual allegations of the complaint in this case" did not support a claim for negligence. 62 Wash. App. 174 at 178. It neither stated nor provided the reasoning to support a broad and categorical rule.[18]

Tegman v. Accident & Med. Investigations, Inc., 150 Wash. 2d 102 (2003), the other case upon which *Willard* relied, is also unpersuasive here, for its holding was made within a very specific context. In *Tegman*, the Washington Supreme Court explored "whether negligent defendants are jointly and severally liable for damages resulting from both negligent and intentional acts." 150 Wash. 2d at 105 (emphasis removed). The determination was governed by RCW 4.22.070, which applies to situations involving multiple tortfeasors. *Id.* at 109. And while the court noted that within that scheme, "fault," which included negligence, did not include intentional acts, it grounded that exclusion on the definition for "fault" provided within the statute itself. *Id.* at 109-110. The court did not make a broad declaration as to the interaction between intentional acts and negligence at common law or in general, referring only to their interaction within the specific statutory scheme in question. *See generally id.* at 108-110; *see also Oshatz v. Ginsing, LLC*, 168 Wash. App. 1008, at *3 (2012) (unpub.) ("*Tegman* prevents a negligent defendant from being held jointly and severally liable with a co-defendant whose

[18] *Willard* cited to another district court decision, *Nix v. Bauer,* 2007 WL 686506 at *4 (W.D. Wash. Mar.1, 2007), and *Tegman v. Accident & Med. Investigations, Inc.,* 150 Wash.2d 102 (2003) to support its broad proclamation that plaintiffs could not base negligence claims on intentional acts. *Willard*, 2013 WL 4759064 at *2. The *Nix* court, for its part, cited *Boyles* as the only authority for that principle. *See Nix*, 2007 WL 686506 at *4.

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intentional actions were a proximate cause of the same injury. … [T]he *Tegman* rule comes into play only *after* a defendant's liability for negligence has been established.") (citation omitted). *Tegman*'s holding thus does not support the broad principle that intentional acts may not form the basis of a negligence claim.[19] Moreover, even its limited holding does not apply here, since instead of dealing with multiple tortfeasor defendants, this case deals with only one—the United States government. Defendant is thus not entitled to summary judgment on this claim.

D. Defendant is not entitled to summary judgment on Mr. Vargas's intentional infliction of emotional distress ("IIED") claim.

Contrary to Defendant's allegations, *see* Dkt. 37 at 20, Mr. Vargas *has* demonstrated that USBP's actions constituted "extreme and outrageous conduct," as required to prove an IIED (or outrage) claim. *Kloepfel v. Bokor*, 149 Wash. 2d 192, 195-96 (2003) (en banc). USBP seized Mr. Vargas without the requisite legal justification. *See* II.A, *supra*. USBP then *falsified* the narrative of the seizure on the government form that would be reviewed by the immigration court to cover up the unlawful seizure and ensure Mr. Vargas's immigration proceedings continued uninterrupted by the violations of his rights. *See* Dkt. 35 at 22-23. In so doing, USBP acted in a "sufficiently extreme, outrageous, and atrocious manner" as required to prove IIED. *Brumfield v. Dyment*, C10-1247-JCC, 2011 WL 2710055, at *3 (W.D. Wash. July 12, 2011).

[19] Similarly, the logic underpinning *St. Michelle v. Robinson*, 52 Wash. App. 309, 314-16 (1988), which held that an NIED cause of action could not be based on intentional acts of sexual abuse, strongly suggests that the case is also limited to its context: claims based on sexual abuse. *See, e.g.*, *Am. Econ. Ins. Co. v. Estate of Wilker*, 96 Wash. App. 87, 91-92 (1999) ("We infer an intent to cause emotional distress injury … from acts of sexual abuse.") (citing *St. Michelle*). *But see Dominguez v. City of Seattle*, No. C05-1400JLR, 2006 WL 2527626, at *7 (W.D. Wash. Aug. 30, 2006) (applying *St. Michelle* more broadly). Indeed, the case relied on another sexual abuse case, *Rodriguez v. Williams*, 107 Wash. 2d 381 (1986), which supported its conclusion as to intent by reasoning that the labeling of incest as a Class B felony was a reflection of a legislative belief that "incest would harm the victim of such an act." *Id.* at 387. Given the heinous nature of the conduct, the Court determined that the intent to harm could be inferred by the nature of the crime, the sexual assault. That same intent to harm cannot be inferred with false arrest, as indeed, the tort covers only those arrests that are subsequently determined to be unlawful. There may have been no intent to cause the harm, but the negligent actions of the person liable for the false arrest nonetheless resulted in harm.

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Defendant argues that (1) the arrest was lawful (notwithstanding the false report filed to justify the arrest), and so USBP's conduct cannot be considered outrageous and, alternatively, (2) even if the arrest was unlawful, given that Mr. Vargas can prevail on the false arrest and imprisonment claims, he may not in addition prevail on the tort for IIED if it is based upon the same set of facts. Dkt. 37 at 20-21. But as previously argued, Mr. Vargas is able to demonstrate that his arrest and imprisonment were unlawful. *See* II.A, *supra*.

Moreover, Defendant's allegation that Mr. Vargas's outrage claim must fail because it is premised entirely on other torts is incorrect. Mr. Vargas does not dispute that he cannot "bring a separate independent claim for IIED/outrage based on the same conduct as the alleged false arrest and false imprisonment because it may result in double recovery." Dkt. 37 at 20 (citations omitted). But while there is certainly overlap in the actions giving rise to Mr. Vargas's outrage and unlawful seizure claims, the latter do not subsume the former. *See Smith v. K-Mart Corp.*, No. CS-95-0248-RHW, 1995 WL 819119, at *3 (E.D. Wash. Nov. 22, 1995) ("If the operative facts of an outrage claim create a separate cause of action, then dismissal of the outrage claim would be improper.") (citing *Weathers v. American Family Mut. Ins. Co.,* 793 F. Supp. 1002 (D. Kan. 1992)). Indeed, the *Weathers* court did not dismiss the plaintiff's outrage claim for, "[a]lthough there may have been an overlap of certain operative facts …, plaintiff's outrage and malicious prosecution claims were based on substantially different sets of facts." 793 F. Supp. at 1009; *id.* at 1010 (noting also the "substantial hardship" the plaintiff would suffer otherwise).[20]

Mr. Vargas's outrage claim is premised not just on the actions comprising his false arrest and imprisonment, Dkt. 37 at 20-21; it is also based on the manner in which the USBP agents sought to cover up their unlawful arrest by falsifying the information in the form I-213. Dkt. 1

[20] The court did clarify, however, that care had to be given to "properly instruct the jury so that they do not award duplicative damages in the event that the plaintiff prevails on more than one claim." *Weathers*, 793 F. Supp. at 1010.

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¶109. Claims involving similar facts have been recognized as IIED before. In *Brumfield*, the court denied the defendants' motion for summary judgment on the plaintiff's IIED claim where the police officer defendant was alleged to have "negligently str[uck] [the plaintiff] with a patrol car and attempt[ed] to cover up the act by arresting [him] and seeking charges of property destruction." 2011 WL 2710055 at *3; *see also White v. City of Tacoma*, No. C12-5987 RBL, 2014 WL 172037, at *14 (W.D. Wash. Jan. 15, 2014) (denying motion for summary judgment on outrage claim against officers who—viewed in the light most favorable to the plaintiff—"responded to [the plaintiff's] call to 911 for assistance and, instead of helping her, they tased her. Then, in an attempt to cover up their own mistake, they charged her with assault and booked her into jail where she was held for over two days"). USBP's behavior, both in unlawfully arresting Mr. Vargas and then seeking to cloak the unlawful arrest with a false report, was thus "extreme and outrageous." While the false report provides evidence of Mr. Vargas's claims of false arrest and false imprisonment, it is an independent and additional harm that is not required or even encompassed in the torts of false arrest and false imprisonment. Mr. Vargas's claim for outrage should not be dismissed.

III. CONCLUSION

For the foregoing reasons, Plaintiff requests that the Court deny Defendant's motion for summary judgment.

DATED this 2nd of February, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Glenda M. Aldana Madrid, hereby certify that on February 2, 2015, I electronically filed Plaintiff's Opposition to Defendant's Motion for Summary Judgment, for case 13-cv-02325-JLR, with the Clerk of the Court using the CM/ECF system, which automatically sends notification of such filing to the following CM/ECF participant:

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