

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 19 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

BASILEA MENA,

Plaintiff-Appellant,

v.

ROBERT MASSIE,

Defendant-Appellee.

No. 22-16938

D.C. No. 4:17-cv-00368-LCK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Lynnette C. Kimmins, Magistrate Judge, Presiding\*\*

Submitted July 19, 2024\*\*\*

Before: WALLACE, O'SCANNLAIN, and FERNANDEZ, Circuit Judges.

Basilea Mena appeals pro se the district court's judgment following a jury trial in her 42 U.S.C. § 1983 action against Robert Massie, a City of Tucson police officer. Mena alleged excessive force in violation of the Fourth Amendment. We

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The parties consented to the jurisdiction of the magistrate judge. *See* 28 U.S.C. § 636(c).

\*\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

affirm.

Mena is not entitled to challenge the district court's judgment based upon her claims of ineffective assistance of counsel. *See Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9th Cir. 1985) ("Generally, a plaintiff in a civil case has no right to effective assistance of counsel.").

The district court did not abuse its discretion in granting Massie's pretrial motions precluding testimony regarding the legality of Mena's initial detention and arrest, as well as testimony that any force used was "excessive." *See Fed. R. Evid. 701; see also Torres v. City of Los Angeles*, 548 F.3d 1197, 1214 n.11 (9th Cir. 2008).

We do not consider arguments and allegations that were not specifically raised and argued in the opening brief or raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *see also Syncom Capital Corp. v. Wade*, 924 F.2d 167, 169 (9th Cir. 1991) (pursuant to Fed. R. App. P. 10(b)(2), when an appellant fails to provide a transcript of the district court proceeding this court may decline to consider the appellant's argument).

**AFFIRMED.**