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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TROAS V. BARNETT,

CASE NO. 1:05-cv-01022-BAM PC

Plaintiff,

ORDER REGARDING DEFENDANTS' *EX PARTE* APPLICATION REGARDING COURT'S DECISION ON SHACKLING

v.

MARTIN GAMBOA, ANGEL DURAN,
and MANUEL TORRES,

(ECF No. 267)

Defendants.

Plaintiff Troas V. Barnett is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Martin Gamboa, Angel Duran and Manuel Torres for the use of excessive force, and Defendant Torres for failure to intervene in violation of the Eighth Amendment. The matter is currently set for trial on January 22, 2012.

On December 14, 2012, Defendants filed a motion in limine to permit Defendant Duran to appear at trial without restraints. (ECF No. 214.) At the hearing held on January 15, 2013, and by written order, the Court deferred ruling on the motion and informed the parties that it would address the issue of Defendant Duran appearing without restraints on the first day of trial. (ECF No. 262.)

On January 16, 2013, Defendants filed the instant *ex parte* application regarding the Court's decision on shackling. (ECF No. 267.) Defendants acknowledge that the Court did not issue a ruling, however, Defendants strongly urge the Court to determine in advance of trial that Defendant Duran will not be shackled in the courtroom. Defendants suggest that ordering shackling of

1 Defendant Duran in the courtroom would be reversible error, would negate the Court's ruling
2 precluding Plaintiff from referring to Defendant Duran's pending criminal case and would be highly
3 prejudicial.

4 As stated at the hearing, the Court will address Defendants' motion in limine and now
5 Defendants' *ex parte* application to permit Defendant Duran to appear at trial without restraints on
6 the first day of trial before the jury is called.

7 IT IS SO ORDERED.

8 **Dated: January 17, 2013**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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