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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH PEREZ,  
Plaintiff,  
v.  
R. PADILLA,  
Defendant.

No. 1:14-cv-01730-DAD-EPG

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. Nos. 30 & 47)

Plaintiff Joseph Perez is a former state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds on plaintiff's first amended complaint, filed on April 15, 2015, against defendant R. Padilla, a correctional officer, for violation of the Eighth Amendment based on the alleged excessive use of force on plaintiff. (Doc. Nos. 12, 25, 28.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 15, 2016, defendant filed a Rule 12(b)(6) motion to dismiss on the grounds that plaintiff's claim is barred by the favorable termination rule established in *Heck v. Humphrey*, 512 U.S. 477 (1994), that plaintiff failed to state a claim for excessive use of force in violation of the Eighth Amendment, and that defendant is entitled to qualified immunity. (Doc. No. 30.) On December 21, 2016, plaintiff filed a response to that motion. (Doc. No. 35.) The assigned

1 magistrate judge heard oral argument with respect to the motion to dismiss on January 31, 2017.  
2 (Doc. No. 42.)

3 On March 8, 2017, the magistrate judge issued findings and recommendations,  
4 recommending that defendant's motion to dismiss be denied. (Doc. No. 47.) The parties were  
5 provided an opportunity to file objections to the findings and recommendations within twenty-one  
6 days. (*Id.*) Defendant has filed objections to the findings and recommendations. (Doc. No. 49.)  
7 Plaintiff did not object to the findings and recommendations or file a reply to defendant's  
8 objections.

9 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
10 court has conducted a de novo review of this case. Having carefully reviewed the entire file, the  
11 court finds the findings and recommendations to be supported by the record and proper analysis.<sup>1</sup>

12 Accordingly,

- 13 1. The March 8, 2017 findings and recommendations (Doc. No. 47) are adopted;
- 14 2. Defendant's motion to dismiss (Doc. No. 30) is denied; and
- 15 3. This case is referred back to the assigned magistrate judge for further proceedings.

16 IT IS SO ORDERED.

17 Dated: June 8, 2017

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20 UNITED STATES DISTRICT JUDGE

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24 <sup>1</sup> Whether plaintiff's "lunging forward, striking his head into the window of an office door"  
25 (Doc. No 47 at 3) was directed toward correctional officers and was part of the  
26 resisting/obstructing conduct for which he suffered a prison disciplinary conviction is difficult to  
27 determine at this stage of the proceedings. However, and in any event, plaintiff alleges that after  
28 his head hit the office window and he was bleeding, defendant Padilla slammed him to the  
ground. (Doc. No. 24 at 5.) It is clear that an Eighth Amendment excessive use of force claim  
based on that alleged conduct is not *Heck* barred for the reasons set forth in the magistrate judge's  
findings and recommendations.