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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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GUILLERMO BONILLA-CHIRINOS
and SANDRA HERNANDEZ,
individually and as guardians
ad litem of J.B., a minor,

 Plaintiffs,

 v.

CITY OF WEST SACRAMENTO and
police officers KENNETH
FELLOWS, MICHELLE TATE,
ANTHONY HERRERA, THOMAS
MAGGIANO, JENNIFER GRILLAT,
ERIC ANGLE, MATTHEW LUIZ, and
DAVID STALLIONS, in their
individual and official
capacities,

 Defendants.

Civ. No. 2:15-2564 WBS EFB

MEMORANDUM AND ORDER RE: MOTION
FOR SUMMARY JUDGMENT

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Plaintiffs Guillermo Bonilla-Chirinos and Sandra
Hernandez, individually and on behalf of their son J.B., brought
this action against defendants the City of West Sacramento ("the
City") and West Sacramento police officers Kenneth Fellows,

1 Michelle Tate, Anthony Herrera, Thomas Maggiano, Jennifer
2 Grillat, Eric Angle, Matthew Luiz, and David Stallions,¹
3 alleging, inter alia, that defendants used excessive force in
4 arresting them in violation of their Fourth Amendment rights.
5 (Compl. (Docket No. 1).) Before the court is defendants' Motion
6 for summary judgment. (Defs.' Mot. (Docket No. 31).)

7 I. Factual and Procedural History

8 On December 12, 2013, defendants approached plaintiffs'
9 residence with warrants for the arrest of Bonilla-Chirinos and
10 Hernandez. (See Decl. of Guillermo Bonilla-Chirinos ("Bonilla-
11 Chirinos Decl.") ¶¶ 11-12 (Docket No. 35).) The warrants were
12 issued based on an incident that occurred in May 2013 during
13 which Bonilla-Chirinos was involved in a physical altercation
14 with a representative from a repossession company who was
15 attempting to tow his car and Hernandez drove the car away before
16 the representative could tow it. (See id. ¶¶ 3, 8-11.)

17 Upon approaching the front door of plaintiffs'
18 residence, officer Fellows informed Bonilla-Chirinos and
19 Hernandez that defendants were police and had come with warrants
20 for their arrest. (Dep. of Kenneth Fellows at 35.) Hernandez
21 stated that she would not open the door and requested that
22 Fellows read the arrest warrants to her. (Id.) Fellows stated

24 ¹ The individual defendants are sued in their individual
25 and official capacities. (Am. Compl. ¶ 2 (Docket No. 14).) The
26 court will construe this action as brought against the individual
27 defendants only in their individual capacities, as the City is
28 named in this action. See Sherman v. Cty. of Maui, 191 F. App'x
535, 537 (9th Cir. 2006) (noting that claims against municipal
officials in their official capacity are "effectively claims
against the [municipality] itself").

1 that he would not read the arrest warrants to her, and requested
2 again that she open the door. (Id.) She refused. (Id.)
3 Fellows then kicked the door open. (Id.)

4 Bonilla-Chirinos testifies that immediately upon seeing
5 defendants enter his residence, he "got on [his] knees," "put
6 [his] hands up in the air," and "said 'I surrender.'" (Bonilla-
7 Chirinos Decl. ¶ 23.) He testifies that despite his surrender,
8 Fellows "rushed up to [him] and basically tackled [him] by
9 grabbing [his] neck and [his] arm . . . and pulling [his] arm
10 behind [his] back, and then slamming [him] face down to the
11 ground while driving [Fellows'] knee very violently and
12 forcefully into the small of [his] back." (Id.) He testifies
13 that Fellows "is a large and muscular man" and put his "entire
14 body weight into driving his knee into [Bonilla-Chirinos'] back."
15 (Id.) Bonilla-Chirinos testifies that he "did not resist the
16 arrest in any way." (Id.)

17 Hernandez testifies that officer Tate placed her under
18 arrest by "violently grabb[ing], pull[ing,] and twist[ing her]
19 right arm behind [her] back," then placing handcuffs on her.
20 (Decl. of Sandra Hernandez ("Hernandez Decl.") ¶ 10 (Docket No.
21 36).) She testifies that the handcuffs "were much too tight and
22 . . . were hurting [her] wrists," and Tate refused to loosen them
23 when she asked her to do so. (Id.) Hernandez testifies that she
24 also "did not resist arrest in any way." (Id.)

25 During the arrest, defendants had their guns drawn.
26 (Dep. of Michelle Tate at 23.) Hernandez testifies that at one
27 point during the arrest, officer Herrera pointed his gun at J.B.,
28 who was four years old at the time. (Hernandez Decl. ¶ 11.)

1 Hernandez also testifies that after she was placed
2 under arrest, she asked officers Tate and Maggiano if she could
3 call a relative to come pick J.B. up from their residence, and
4 Tate and Maggiano denied her request. (Id. ¶ 15.)

5 After the arrest, defendants transported plaintiffs to
6 a police station. (Dep. of Sandra Hernandez ("Hernandez Dep.")
7 at 116.) After arriving at the police station, defendants sent
8 J.B. to stay with relatives. (See id. at 129-30.) Hernandez was
9 released from the police station approximately nine hours later,
10 at which time she picked J.B. up from the relatives. (See id. at
11 130-32.) Bonilla-Chirinos was released from the police station
12 shortly thereafter. (See id. at 130-31.)

13 Plaintiffs filed this action in December 2015.
14 (Compl.) Citing the above facts and testimony, they bring the
15 following causes of action against defendants under 42 U.S.C. §
16 1983 ("section 1983")²: (1) use of excessive force in arrest in
17 violation of the Fourth Amendment, (2) unreasonable search in
18 violation of the Fourth Amendment, (3) unjustified invasion of
19 privacy in violation of the Fourth Amendment, (4) deprivation of
20 the right to remain silent in violation of the Fifth Amendment,
21 and (5) deprivation of familial association in violation of the
22 Fourteenth Amendment. (Am. Compl. at 5-10 (Docket No. 14).)

23
24 ² Section 1983 provides: "Every person who, under color
25 of any statute, ordinance, regulation, custom, or usage . . .
26 subjects, or causes to be subjected, any citizen of the United
27 States or other person within the jurisdiction thereof to the
28 deprivation of any rights, privileges, or immunities secured by
the Constitution and laws, shall be liable to the party injured
in an action at law, suit in equity, or other proper proceeding
for redress"

1 Defendants now move for judgment as to each of plaintiffs'
2 claims. (Defs.' Mot.)

3 II. Legal Standard

4 Summary judgment is proper "if the movant shows that
5 there is no genuine dispute as to any material fact and the
6 movant is entitled to judgment as a matter of law." Fed. R. Civ.
7 P. 56(a). A material fact is one that could affect the outcome
8 of the action, and a genuine issue is one for which a reasonable
9 jury could find in favor of the non-moving party. Anderson v.
10 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party
11 bears the initial burden of establishing the absence of a genuine
12 issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317,
13 322-23 (1986). It can satisfy that burden by presenting evidence
14 that negates an essential element of the non-moving party's case
15 or demonstrating that the non-moving party cannot produce
16 evidence to support an essential element for which it will bear
17 the burden of proof at trial. Id.

18 Once the moving party meets its burden, the burden
19 shifts to the non-moving party to "designate specific facts
20 showing that there is a genuine issue [of material fact] for
21 trial." Id. at 324. The non-moving party must "do more than
22 simply show that there is some metaphysical doubt as to the
23 material facts." Matsushita Elec. Indus. Co. v. Zenith Radio
24 Corp., 475 U.S. 574, 586 (1986). "The mere existence of a
25 scintilla of evidence . . . will be insufficient; there must be
26 evidence on which the jury could reasonably find for the [non-
27 moving party]." Anderson, 477 U.S. at 252.

28 In deciding a summary judgment motion, the court must

1 view the evidence in the light most favorable to the non-moving
2 party and draw all justifiable inferences in its favor. Id. at
3 255. "Credibility determinations, the weighing of the evidence,
4 and the drawing of legitimate inferences from the facts are jury
5 functions, not those of a judge . . . on a motion for summary
6 judgment" Id.

7 III. Discussion

8 A. Excessive Force Claim

9 i. Liability of Maggiano, Grillat, Angle, Luiz, and
10 Stallions

11 Defendants argue, as an initial matter, that the court
12 should grant them judgment as to the liability of officers
13 Maggiano, Grillat, Angle, Luiz, and Stallions for use of
14 excessive force during the December 2013 arrest because "there
15 are no specific facts alleged regarding [those defendants']
16 actions" during the arrest and plaintiff has merely "lump[ed]"
17 those defendants together with other defendants in discussing the
18 arrest. (Defs.' Mot., Mem. ("Defs.' Mem.") at 3.)

19 The Ninth Circuit has held that a plaintiff may not
20 "lump all the defendants together" under a "team effort" theory
21 of liability, but must, instead, "base each individual's
22 liability on his own conduct." Chuman v. Wright, 76 F.3d 292,
23 295 (9th Cir. 1996). In their Opposition to defendants' Motion,
24 plaintiffs neither point to any evidence indicating that
25 Maggiano, Grillat, Angle, Luiz, or Stallions used any force
26 against them during the December 2013 arrest, nor provide any
27 response to defendants' request for judgment as to the liability
28 of those defendants for use of excessive force. In light of

1 plaintiffs' failure to cite any evidence as to the liability of
2 Maggiano, Grillat, Angle, Luiz, or Stallions for use of excessive
3 force or respond to defendants' request for judgment as to those
4 defendants for use of such force, the court will grant judgment
5 to Maggiano, Grillat, Angle, Luiz, and Stallions as to
6 plaintiffs' excessive force claim. See Bias v. Moynihan, 508
7 F.3d 1212, 1219 (9th Cir. 2007) ("A district court does not have
8 a duty to search for evidence that would create a factual
9 dispute."); Bolbol v. City of Daly City, 754 F. Supp. 2d 1095,
10 1115 (N.D. Cal. 2010) ("Plaintiff does not challenge defendants'
11 assertion that she has no cause of action regarding California
12 Penal Code Section 4003 . . . in her opposition brief
13 Accordingly, the court grants summary judgment in favor of
14 defendants as to this claim.").

15 ii. Monell Liability

16 Defendants next argue that the court should grant them
17 judgment as to the liability of the City for excessive force
18 because plaintiffs have not offered "any facts or evidence"
19 suggesting that the conduct complained of in their excessive
20 force claim--Fellows' and Tate's use of force and Herrera's
21 pointing of a gun despite plaintiffs' non-resistance--was
22 pursuant to City policy or custom. (Defs.' Mem. at 7.)

23 Plaintiffs respond with the argument that such conduct occurred
24 because the City failed to train the individual defendants in
25 proper arrest procedures, and thus the City may be held liable
26 for the conduct under Monell v. Dep't of Soc. Servs. of City of
27 N.Y., 436 U.S. 658 (1978). (See Pls.' Opp'n at 17-20 (Docket No.
28 32).)

1 Under Monell, a city "may be held liable for [a police
2 officer's section 1983] violation only if the . . . officer['s]
3 conduct was a product of City policy or custom." Menotti v. City
4 of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005). A city's
5 failure "to train [officers] about their legal duty to avoid
6 violating citizens' rights may rise to the level of [city] policy
7 [or custom] for purposes of § 1983." Connick v. Thompson, 563
8 U.S. 51, 61 (2011). An individual asserting a Monell claim must
9 demonstrate "a conscious or deliberate choice" on the part of the
10 city to decline to train its police despite a need to do so, and
11 "the lack of training actually caused the constitutional harm or
12 deprivation of rights" that is at issue in the case. Flores v.
13 Cty. of Los Angeles, 758 F.3d 1154, 1159 (9th Cir. 2014).

14 Plaintiffs have not offered any evidence indicating
15 that the conduct complained of in their excessive force claim was
16 due to failure to provide adequate training on the City's part.
17 The only evidence they cite in support of Monell liability for
18 their excessive force claim is Bonilla-Chirinos' testimony that
19 Fellows "attack[ed] and seriously injure[d Bonilla-Chirinos] when
20 [he] had already surrendered and was on his knees with his hands
21 up."³ (See Pls.' Opp'n at 19.) That Fellows may have used
22 unlawful force against Bonilla-Chirinos during his arrest does
23 not speak to whether Fellows used such force because the City
24 failed to provide him proper training. It is entirely possible

25 ³ Plaintiffs cite other testimony arguing that the
26 warrants for their arrest and their criminal convictions were
27 unlawful in the section of their Opposition discussing Monell
28 liability. (See Pls.' Opp'n at 17-19.) It is unclear how such
testimony supports Monell liability as to their excessive force
claim.

1 that in "attack[ing] and seriously injur[ing]" Bonilla-Chirinos
2 despite his having surrendered, Fellows acted contrary to his
3 training. Because plaintiffs have not provided any evidence
4 indicating that the conduct complained of in their excessive
5 force claim was due to failure to provide adequate training on
6 the City's part, the court will grant judgment to the City as to
7 that claim.

8 iii. Merits of Excessive Force Claim Against Fellows,
9 Tate, and Herrera

10 In light of the above discussion, the only defendants
11 remaining for purposes of plaintiffs' excessive force claim are
12 Fellows, Tate, and Herrera. Defendants' arguments for judgment
13 as to those defendants are based on the merits of plaintiffs'
14 excessive force claim.

15 "Claims against law enforcement officers for the use of
16 excessive force during an arrest are analyzed under the Fourth
17 Amendment[]" Arias v. Amador, 61 F. Supp. 3d 960, 974
18 (E.D. Cal. 2014) (O'Neill, J.) (citing Graham v. Connor, 490 U.S.
19 386, 388 (1989)). "Under the Fourth Amendment, police may use
20 only such force during an arrest as is objectively reasonable
21 under the circumstances." Su v. Cty. of Sacramento, Civ. No.
22 2:09-1826 WBS GGH, 2010 WL 3238931, at *4 (E.D. Cal. Aug. 12,
23 2010) (citing Graham, 490 U.S. at 397). Determining whether
24 force used during an arrest was "objectively reasonable" requires
25 "balancing of the amount of force applied against the need for
26 that force under the circumstances." Atkinson v. Cty. of Tulare,
27 790 F. Supp. 2d 1188, 1202 (E.D. Cal. 2011) (Wanger, J.) (citing
28 Meredith v. Erath, 342 F.3d 1057, 1061 (9th Cir. 2003)). The

1 'objective reasonableness' inquiry "requires careful attention to
2 the facts and circumstances of each particular case, including
3 the severity of the crime at issue, whether the suspect poses an
4 immediate threat to the safety of the officers or others, and
5 whether he is actively resisting arrest or attempting to evade
6 arrest by flight." Graham, 490 U.S. at 396.

7 "[T]he reasonableness of force used is ordinarily a
8 question of fact for the jury." Smith v. City of Hemet, 394 F.3d
9 689, 701 (9th Cir. 2005) (quoting Liston v. County of Riverside,
10 120 F.3d 965, 976 n.10 (9th Cir. 1997)). Because excessive force
11 claims turn on the reasonableness of force used, motions for
12 summary judgment as to such claims are "sparingly" granted.
13 Santos v. Gates, 287 F.3d 846, 853 (9th Cir. 2002); see also
14 Smith, 394 F.3d at 701 (noting that excessive force claims
15 "almost always turn on a jury's credibility determinations").

16 In this case, plaintiffs have offered evidence
17 indicating that during the December 2013 arrest: (1) Fellows
18 "tackled" Bonilla-Chirinos and "dr[ove] his knee very violently
19 and forcefully into [Bonilla-Chirinos'] back," (Bonilla-Chirinos
20 Decl. ¶ 23); (2) Tate "violently grabbed, pulled[,] and twisted
21 [Hernandez's] arm behind [her] back" and "too tight[ly]" fixed
22 handcuffs on her wrists, (Hernandez Decl. ¶ 10); and (3) Herrera
23 pointed a gun at J.B., (id.). They have also offered evidence
24 indicating that other than Hernandez declining to open the door
25 when asked, plaintiffs did not resist arrest. (See Bonilla-
26 Chirinos Decl. ¶ 23; Hernandez Decl. ¶ 10.)

27 Viewing such evidence in the light most favorable to
28 plaintiffs--including assuming that Fellows applied his knee and

1 Tate her arm and handcuffs with injurious force--the court finds
2 that such evidence is sufficient to create triable issues of fact
3 as to whether Fellows, Tate, and Herrera used excessive force
4 against Bonilla-Chirinos, Hernandez, and J.B., respectively,
5 during the arrest. The court's finding is supported by ample
6 Ninth Circuit precedent. See Moore v. Richmond Police Dep't, 497
7 F. App'x 702, 708 (9th Cir. 2012) ("Where there is no need for
8 force, any force used is constitutionally unreasonable.");
9 Gravelet-Blondin v. Shelton, 728 F.3d 1086, 1093 (9th Cir. 2013)
10 (where individuals "engag[e] in mere passive resistance," use of
11 "non-trivial force" is unlawful); Barnard v. Las Vegas Metro.
12 Police Dep't, 310 F. App'x 990, 992-93 (9th Cir. 2009) (applying
13 "excessive knee pressure on [arrestee's] . . . back despite the
14 fact that he had surrendered and was not resisting arrest"
15 constitutes excessive force); Curriel v. Cty. of Contra Costa, 362
16 F. App'x 824, 830 (9th Cir. 2010) ("[O]verly tight handcuffs may
17 constitute excessive force."); Miller v. Placer Cty., 84 F. App'x
18 973, 974 (9th Cir. 2004) ("[P]ointing a gun at a child when [he]
19 pose[s] no threat to officers constitute[s] excessive force.").

20 iv. Qualified Immunity as to Fellows, Tate, and
21 Herrera

22 As an alternative to judgment on the merits of
23 plaintiffs' excessive force claim, defendants seek judgment as to
24 that claim for Fellows, Tate, and Herrera based on qualified
25 immunity. (See Defs.' Mem. at 12-13.)

26 Qualified immunity shields government officials "from
27 liability for civil damages insofar as their conduct does not
28 violate clearly established statutory or constitutional rights of

1 which a reasonable person would have known.” Pearson v.
2 Callahan, 555 U.S. 223, 231 (2009) (internal citation omitted).
3 The Ninth Circuit has described the qualified immunity inquiry as
4 consisting of the following three-part test:

5 First, the court must ask whether[,] taken in the
6 light most favorable to the party asserting the
7 injury, the facts alleged show the officer’s conduct
8 violated a constitutional right? If the answer is no,
9 the officer is entitled to qualified immunity. If the
10 answer is yes, the court must proceed to the next
11 question: whether the right was clearly established at
12 the time the officer acted. That is, whether it would
13 be clear to a reasonable officer that his conduct was
14 unlawful in the situation he confronted. If the
15 answer is no, the officer is entitled to qualified
16 immunity. If the answer is yes, the court must answer
17 the final question: whether the officer could have
18 believed, reasonably but mistakenly . . . that his or
19 her conduct did not violate a clearly established
20 constitutional right. If the answer is yes, the
21 officer is entitled to qualified immunity. If the
22 answer is no, he is not.

23 Skoog v. Cty. of Clackamas, 469 F.3d 1221, 1229 (9th Cir. 2006)
24 (citing Saucier v. Katz, 533 U.S. 194, 201-02 (2001)).

25 Viewed in the light most favorable to plaintiffs, the
26 evidence before the court indicates that Fellows used excessive
27 force against Bonilla-Chirinos by injuriously kneeling him in his
28 back despite his having surrendered. The right to be free from
use of police force when one has surrendered was clearly
established prior to 2013. See Moore, 497 F. App’x at 708
(citing, in 2012, Ninth Circuit and Supreme Court cases dating
from 1989 to 2010 for the proposition that “any force” is
excessive where no force is needed); see also Barnard, 310 F.
App’x at 992-93 (citing, in 2009, Ninth Circuit and Supreme Court
cases dating from 1989 to 2000 for the proposition that applying

1 "excessive knee pressure" on a non-resisting arrestee's back is
2 unconstitutional). Assuming the amount of force claimed by
3 plaintiffs was used, no reasonable officer could have believed
4 that applying such force to the back of Bonilla-Chirinos after he
5 surrendered was lawful. Accordingly, the court will not grant
6 qualified immunity to Fellows for use of excessive force.

7 Viewed in the light most favorable to plaintiffs, the
8 evidence before the court also indicates that Tate used excessive
9 force against Hernandez by injuriously twisting her arm behind
10 her back and too tightly fixing handcuffs on her wrists despite
11 her having engaged in mere passive resistance by declining to
12 open the door to her house when asked. The right to be free from
13 use of non-trivial police force when one engages in mere passive
14 resistance was clearly established prior to 2013. See Gravelet-
15 Blondin, 728 F.3d at 1093 (holding, in 2013, that "[t]he right to
16 be free from the application of non-trivial force for engaging in
17 mere passive resistance was clearly established prior to 2008");
18 see also Curiel, 362 F. App'x at 830 (citing, in 2010, a 2003
19 Ninth Circuit case for the proposition that "overly tight
20 handcuffs may constitute excessive force"). Again, assuming the
21 amount of force claimed by plaintiffs was used, no reasonable
22 officer could have believed that applying such force to twist the
23 arm and tighten the handcuffs of Hernandez, where she was not
24 actively resisting arrest, was lawful. Accordingly, the court
25 will not grant qualified immunity to Tate for use of excessive
26 force.

27 Lastly, the evidence before the court indicates Herrera
28 used excessive force against J.B. by pointing a gun at him during

1 the arrest. A non-threatening minor's right to not have a gun
2 pointed at him during an arrest was established prior to 2013.
3 See Miller, 84 F. App'x at 974 (holding, in 2004, that "the only
4 law in existence . . . [is] clear: pointing a gun at a child when
5 they posed no threat to officers constitute[s] excessive force").
6 No reasonable officer could have believed that pointing a gun at
7 J.B. in the manner that plaintiffs claim, where he posed no
8 threat to the officer, was lawful. Accordingly, the court will
9 not grant qualified immunity to Herrera for use of excessive
10 force.

11 B. Unreasonable Search, Invasion of Privacy, and Right to
12 Silence Claims

13 Defendants argue that the court should grant them
14 judgment as to plaintiffs' unreasonable search, invasion of
15 privacy, and right to silence claims because plaintiffs neither
16 cite any evidence supporting those claims nor provide any
17 response to their request for judgment as to those claims in
18 their Opposition. (See Defs.' Reply at 2 (Docket No. 38).)
19 Defendants are correct that plaintiffs neither cite any evidence
20 that appear to support those claims nor respond to defendants'
21 request for judgment as to those claims in their Opposition.
22 Accordingly, the court will grant defendants judgment as to
23 plaintiffs' unreasonable search, invasion of privacy, and right
24 to silence claims. See Bias, 508 F.3d at 1219; Bolbol, 754 F.
25 Supp. 2d at 1115.

26 C. Familial Association Claim

27 Plaintiffs' final cause of action asserts that Tate and
28 Maggiano unlawfully deprived Bonilla-Chirinos and Hernandez of

1 their Fourteenth Amendment right to care, custody, and control of
2 J.B. after they were arrested. (Pls.' Opp'n at 20-21.)

3 "[T]he Fourteenth Amendment protects the fundamental
4 right of parents to make decisions concerning the care, custody,
5 and control of their children." Troxel v. Granville, 530 U.S.
6 57, 66 (2000). Parents "cannot be summarily deprived of that
7 [right] without notice and a hearing, except where the [child is]
8 in imminent danger." Mueller v. Auker, 700 F.3d 1180, 1187 (9th
9 Cir. 2012) (citing Ram v. Rubin, 118 F.3d 1306, 1310 (9th Cir.
10 1997)). Where an officer's interference with parents' right to
11 care, custody, and control of their child was not justified by
12 emergency or due process of law, the parents may seek remedy
13 under section 1983. Kelson v. City of Springfield, 767 F.2d 651,
14 654 (9th Cir. 1985).

15 Plaintiffs have offered evidence that after Bonilla-
16 Chirinos and Hernandez were arrested, Hernandez asked Tate and
17 Maggiano if she could call a relative to come pick J.B. up from
18 their residence, and Tate and Maggiano denied her request. (See
19 Hernandez Decl. ¶ 15.) Defendants have pointed to no evidence of
20 imminent danger or due process that would appear to justify
21 denial of that request. Accordingly, there is a triable issue as
22 to whether Tate and Maggiano unlawfully deprived Bonilla-Chirinos
23 and Hernandez of their Fourteenth Amendment right to care,
24 custody, and control of J.B. after their arrest.

25 The right to care, custody, and control of one's child
26 in the absence of imminent danger or a deprivation of parental
27 rights comporting with due process was clearly established before
28 2013. See Ram, 118 F.3d at 1310 ("In 1993, it was clear that a

1 parent had a constitutionally protected right to the care and
2 custody of his children and that he could not be summarily
3 deprived of that custody without notice and a hearing, except
4 when the children were in imminent danger."). No reasonable
5 officer could have believed that depriving Bonilla-Chirinos and
6 Hernandez custody and control of J.B. after their arrest, where
7 there was no emergency or due process for such deprivation, was
8 lawful. See Bhatti v. Cty. of Sacramento, 281 F. App'x 764, 766
9 (9th Cir. 2008) (holding that "no objective social worker could
10 have believed" that depriving a parent custody and control of his
11 son without emergency or due process was lawful). Accordingly,
12 the court will not grant qualified immunity to Tate or Maggiano
13 as to plaintiffs' Fourteenth Amendment deprivation claim.

14 The court will grant judgment to Fellows, Herrera,
15 Grillat, Angle, Luiz, Stallions, and the City as to plaintiffs'
16 Fourteenth Amendment deprivation claim, however, as plaintiffs
17 conceded at oral argument that there is no evidence currently
18 before the court supporting the liability of those defendants for
19 deprivation of parental rights.

20 IT IS THEREFORE ORDERED that defendants' Motion for
21 summary judgment be, and the same hereby is, GRANTED IN PART as
22 follows:

- 23 (1) Judgment shall be entered in favor of defendants
24 Maggiano, Grillat, Angle, Luiz, Stallions, and the City
25 on plaintiffs' first cause of action;
- 26 (2) Judgment shall be entered in favor of all defendants on
27 plaintiffs' second, third, and fourth causes of action;
28 and

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(3) Judgment shall be entered in favor of defendants
Fellows, Herrera, Grillat, Angle, Luiz, Stallions, and
the City on plaintiffs' fifth cause of action.

AND IT IS FURTHER ORDERED that in all other respects,
defendants' Motion for Summary Judgment be, and the same hereby
is, DENIED.

Dated: July 25, 2017



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE