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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 GERRY WILLIAMS,

No. C 04-2409 SI

9 Plaintiff,

**ORDER DENYING DEFENDANTS'  
REQUEST FOR QUALIFIED  
IMMUNITY**

10 v.

11 LIEUTENANT ROSS, *et al.*,

12 Defendants.  
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14 On March 13, 2009, defendants submitted a letter brief requesting that the Court grant qualified  
15 immunity to defendant correctional officers Tuntakit and Roach. Defendants rely on an unpublished  
16 Ninth Circuit opinion, *Wayne v. Barowsky*, 175 Fed. Appx. 822 (9th Cir. 2006), which held that under  
17 the facts of that case, a one hour delay in getting an inmate nitroglycerin for his heart condition was not  
18 sufficient to demonstrate deliberate indifference to medical needs. Defendants contend that this case  
19 and *Wayne* have “nearly identical facts” and thus that defendants could have reasonably believed that  
20 their conduct did not violate plaintiff’s rights.

21 A court considering a claim of qualified immunity must determine whether the plaintiff has  
22 alleged the deprivation of an actual constitutional right and whether that right was clearly established  
23 such that it would be clear to a reasonable officer that his conduct was unlawful in the situation he  
24 confronted. *See Pearson v. Callahan*, 129 S.Ct. 808, 815-18 (2009). The inquiry of whether a  
25 constitutional right was clearly established must be undertaken in light of the specific context of the  
26 case, not as a broad general proposition. *Saucier v. Katz*, 533 U.S. 194, 202 (2001). The relevant,  
27 dispositive inquiry in determining whether a right is clearly established is whether it would be clear to  
28 a reasonable officer that his conduct was unlawful in the situation he confronted. *Id.* If the law did not

1 put the officer on notice that his conduct would be clearly unlawful, summary judgment based on  
2 qualified immunity is appropriate. *Id.* The Supreme Court has established that deliberate indifference  
3 by prison guards in intentionally denying or delaying access to medical care violates the Eighth  
4 Amendment. *See Estelle v. Gamble*, 429 U.S. 97, 104-105 (1976).

5 Defendants' reliance on *Wayne v. Barowsky* is misplaced. In *Wayne*, the plaintiff's main  
6 contention was that the guards inappropriately kept his heart medication at the deputies' station and  
7 caused him to regularly wait 5 to 15 minutes to receive his nitroglycerin. *See Wayne v. Kempthorne*,  
8 2005 WL 1631063, at \*3 (D. Idaho July 12, 2005). The plaintiff also alleged that on one occasion, there  
9 was a one hour delay in receiving his medication. *Id.* The district court found this isolated occurrence,  
10 among dozens of incidences of promptly providing the prisoner with medication, was not sufficient to  
11 demonstrate deliberate indifference to a serious medical need. *Id.* The court also noted that guards had  
12 called emergency medical personnel on 16 different occasions regarding administration of his medicine.  
13 *Id.* On these facts, the Ninth Circuit affirmed. *See Wayne*, 175 Fed. Appx. at 824.

14 Here, in contrast, plaintiff alleges that he was in severe cardiac distress and requested medical  
15 attention. Plaintiff also alleges that the guards knew plaintiff was experiencing actual serious harm and  
16 that the substantial risk of heart attack was obvious. Unlike *Wayne*, plaintiff alleges that defendants  
17 delayed in getting him medical attention after he clutched his chest and complained of substantial chest  
18 pain.

19 Plaintiff has cited cases in which courts have held similar delays in responding to prisoners  
20 exhibiting signs of cardiac distress constitute deliberate indifference. *See Plemmons v. Roberts*, 439  
21 F.3d 818, 825 (8th Cir. 2006) (holding that a 20 minute delay in providing treatment was deliberate  
22 indifference because jailers did not acknowledge prisoners' severe symptoms and ignored a history of  
23 heart attacks); *Estate of Carter v. Detroit*, 408 F.3d 305, 312 (6th Cir. 2005) (finding that a prisoner  
24 demonstrating classic signs of a heart attack was sufficient to notify officials that the person needed  
25 immediate treatment); *Tlamaka v. Serrell*, 244 F.3d 628, 635 (8th Cir. 2001) (finding that a delay of 10  
26 minutes in providing treatment to plaintiff when in severe cardiac distress amounted to deliberate  
27 indifference). These cases clearly establish a prisoner's recognized right to prompt medical care when  
28 displaying symptoms of cardiac arrest. Under the facts alleged by the plaintiff, a reasonable officer

1 would have known that his conduct was unlawful, and thus the Court DENIES defendants' request for  
2 qualified immunity.

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4 **IT IS SO ORDERED.**

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6 Dated: April 1, 2009

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SUSAN ILLSTON  
United States District Judge