

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 TION ALONZO HILL,

5 Plaintiff,

6 v.

7 JOSHUA ARNOLD, et al.,

8 Defendants.

Case No. 09-cv-05434-TEH

**ORDER EXPLAINING REASONING  
FOR OMITTING QUALIFIED  
IMMUNITY INSTRUCTION**

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10 Both parties proposed separate jury instructions on qualified immunity. However,  
11 the Court concludes that no qualified immunity instruction is appropriate in this case,  
12 because a finding for Plaintiff on the first two elements of his excessive force claim would  
13 preclude a finding for Defendants on their qualified immunity defense.


14 It is clearly established law that “the Due Process Clause [of the Fourteenth  
15 Amendment] protects a pretrial detainee from the use of excessive force that amounts to  
16 punishment.” *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989). It is also clearly  
17 established law that “the due process rights of a [pretrial detainee] are at least as great as  
18 the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v.*  
19 *Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983); see also *Hydrick v. Hunter*, 500 F.3d 978,  
20 998 (9th Cir. 2007), vacated on other grounds, 556 U.S. 1256 (2009). And, it is clearly  
21 established law that applying force in the prison context “maliciously and sadistically for  
22 the very purpose of causing harm” constitutes an Eighth Amendment violation. *Whitley v.*  
23 *Albers*, 475 U.S. 312, 320-21 (1986). Applying these principles, the Court concludes that  
24 every reasonable Sheriff’s deputy would know that it was a violation of Plaintiff’s rights to  
25 use excessive force against him with the “purpose . . . to cause harm unrelated to a  
26 legitimate law enforcement objective.” Joint Proposed Particular Rights Instruction, Ex. A  
27 to Oldfather Decl. (Docket No. 192-1).

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Defendants' cited cases do not persuade the Court otherwise. In both Marquez v. Gutierrez and Jeffers v. Gomez, there were mere allegations of officer malice, not jury findings, such as would be the case here if the jury finds for Plaintiff on the second element of the Particular Rights Instruction. See Marquez, 322 F.3d 689, 693 (9th Cir. 2003); Jeffers, 267 F.3d 895, 911-12 (9th Cir. 2001). Moreover, Defendants' out-of-circuit cases regarding tight handcuffing in the Fourth Amendment context do not convince the Court that Defendants could be entitled to qualified immunity here, if the jury finds that such handcuffing was done with the intent to cause harm unrelated to a legitimate law enforcement objective.

**IT IS SO ORDERED.**

Dated: 06/15/15

  
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THELTON E. HENDERSON  
United States District Judge