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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 JAVONTAE VALENTINE,

8 Plaintiff,

9 v.

10 TORRES-QUEZADA, et al.,

11 Defendants.

Case No. [22-cv-01520-JSW](#)

**ORDER DENYING AS MOOT
PLAINTIFF'S MOTION *IN LIMINE*
NO. 1 AND GRANTING, IN PART,
DEFENDANTS' MOTION *IN LIMINE*
NO. 2**

Re: Dkt. Nos. 89, 93

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13 At trial, Plaintiff seeks to introduce testimony about gang culture and prison politics for a
14 limited purpose but moves *in limine* to exclude any evidence gang affiliation as character
15 evidence. Defendants do not intend to use evidence of gang membership as character evidence.
16 Accordingly, the Court DENIES Plaintiff's motion as moot.

17 Defendants move *in limine* to exclude all testimony on gang culture or prison politics. The
18 Court granted Defendants' motion to exclude Plaintiff's use-of-force expert from providing an
19 opinion on those topics on the basis that it would not assist the trier of fact. (*See* Dkt. No. 85.)

20 The Court has considered the parties' papers, relevant legal authority, the record in this
21 case, as well as the parties' arguments at the pre-trial conference. For the reasons that follow, the
22 Court GRANTS Defendants' motion, in part.

23 Plaintiff argues that evidence about gang culture and prison politics is relevant to explain
24 why he did not immediately comply with Defendants' directives to get down. In order to
25 determine if any Defendant used excessive force on Plaintiff, a jury may consider: "(1) the extent
26 of injury suffered by an inmate; (2) the need for application of force; (3) the relationship between
27 that need and the amount of force used; (4) the threat reasonably perceived by the responsible
28 officials; and (5) any efforts made to temper the severity of a forceful response." *Furnace v.*

1 *Sullivan*, 705 F.3d 1021, 1028-29 (9th Cir. 2013). Plaintiff argues evidence of gang culture and
2 racial politics would be relevant to the second and fourth factors. (*See* Opp. to Def. MIL No. 2 at
3 2:1-2.)

4 It is undisputed that Defendants did not know who Plaintiff was on the date of the incident
5 and, thus, did not know whether or not Plaintiff was affiliated with a gang. The Court will exclude
6 evidence of “gang culture” on the basis that any probative value it may have would be
7 substantially outweighed by the potential to confuse the jurors and cause undue delay.

8 The fact that Plaintiff failed to comply with Defendants’ instructions is relevant, but
9 Plaintiff’s motivation for not complying with those orders is not. *Cf. White v. Roper*, 901 F.2d
10 1507, 1507 (9th Cir. 1990) (affirming grant of summary judgment and noting that notwithstanding
11 plaintiff’s motivations, his refusal to comply with orders “created a need for [the defendants] to
12 apply reasonable force to control him”).

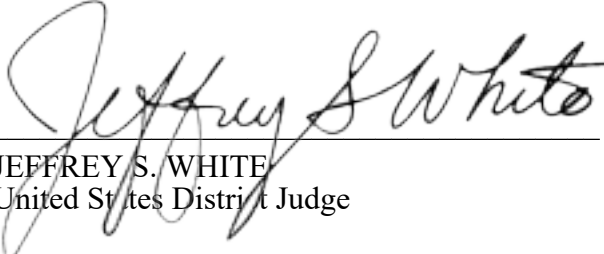
13 Although Defendants did not know who Plaintiff was, they have not argued they were
14 unaware of his race. There is testimony in the record from Defendant Reyes that “[d]uring an
15 altercation,” there are dangers associated with an inmate being near a group of inmates of a
16 different racial background. (Dkt. Nos. 105, 105-1, Declaration of Rodolfo Rivera Aquino, ¶ 2,
17 Ex. 1 (Deposition of Manuel Reyes-Diaz at 119:21-25).) Therefore, the Court concludes that
18 Plaintiff’s explanation for why he moved would be relevant to whether a Defendants’ perception
19 of those actions would be reasonable. Plaintiff may testify about why he did not immediately
20 comply with the Defendants’ orders on that day but may not testify about gang culture or prison
21 politics in general. In addition, the Court will not preclude Plaintiff from examining the
22 Defendants about whether Plaintiff’s actions on that date would have posed more or less of a
23 security risk in light of the circumstances. *See, e.g., Taylor v. Keurtson*, No. 19-cv-0450 TLN
24 KJN P, 2020 WL 384052, at *10-13 (E.D. Cal. July 8, 2020), *report and recommendation adopted*
25 2020 WL 5017602 (E.D. Cal. Aug. 25, 2020) (granting motion for summary judgment and
26 concluding defendants did not use excessive force, in part, because plaintiff failed to contradict
27 defendant’s evidence that his “behavior posed a security risk because it could incite other inmates
28 to become disruptive or be a decoy for other disruptive behavior”).

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Accordingly, the Court GRANTS, IN PART, AND DENIES, IN PART, Defendants' motion *in limine* no. 2. In light of the Court's ruling excluding evidence of gang membership, the Court will not question jurors about their views on gang membership during voir dire and will not include Plaintiff's proposed question on that topic in the juror questionnaire. Plaintiff may submit one additional question to be included in the juror survey by no later than 10:00 a.m. on August 30, 2024.

IT IS SO ORDERED.

Dated: August 28, 2024



JEFFREY S. WHITE
United States District Judge