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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UBELINO SALINAS-IBARRA,
Plaintiff,
v.
JAMIE ELLIS,
Defendant.

Case No. [17-cv-01137-BLF](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

[Re: ECF 26]

Plaintiff Ubelino Salinas-Ibarra (“Mr. Salinas-Ibarra”) brings this action under 42 U.S.C. § 1983 against Santa Clara Police Officer Jamie Ellis (“Officer Ellis”) arising from an incident at Mr. Salinas-Ibarra’s residence in the early morning hours of March 7, 2015. *See generally* Amended Compl., ECF 8. Mr. Salinas-Ibarra claims that his Fourth Amendment rights were violated when Officer Ellis wrongfully detained, arrested, and used excessive force against him when police responded to a 911 call regarding Mr. Salinas-Ibarra’s son, Johnathon.

Officer Ellis moves for summary judgment on all claims. *See generally* Motion for Summary Judgment, ECF 26 (“Mot.”). The Court has considered the briefing, admissible evidence, applicable law, as well as the oral argument presented at the hearing held on February 15, 2018. For the reasons that follow, Officer Ellis’ motion for summary judgment is GRANTED IN PART and DENIED IN PART.

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I. BACKGROUND¹

At all relevant times, Officer Jamie Ellis served as a police officer for the City of Santa Clara. *See* Declaration of Jamie Ellis (“Ellis Decl.”) ¶ 1, ECF 26-7. At approximately 12:40 A.M. on March 7, 2015, Officer Ellis responded to a call at Mr. Salinas-Ibarra’s residence in Santa Clara. *Id.* ¶ 2. Officer Ellis testified that she heard the communications dispatcher describe the incident as a “415...weapons,” which refers to the California Penal Code governing fights and disturbances. *Id.* The dispatcher informed Officer Ellis that a family member at the residence was high on acid, and was threatening another family member with a baseball bat. *Id.* The dispatcher identified the suspect with the bat as Johnathon Salinas, describing him as a man in his twenties, wearing a red sweater. *See* Declaration of Ralph Robles Jr. (“Robles Decl.”) Exh. B, ECF 27-3 (“Ellis Depo.”) 18:18-23. Johnathon Salinas is the son of Mr. Salinas-Ibarra. Ellis Decl. ¶ 2.

Mr. Salinas-Ibarra was forty-one (41) years old at the time of the March 7, 2015 incident. Robles Decl. Exh. A, ECF 27-2 (“Salinas-Ibarra Depo.”) at 7:14. Mr. Salinas-Ibarra testified that he was asleep during the “family argument,” and only woke up when he heard the police outside speaking loudly into a microphone. *Id.* at 14:6-25. At that point, Officer Ellis had arrived at the residence with several other Santa Clara Police Department Officers, including Sergeant Johanna Green. Ellis Decl. ¶ 3. Officer Ellis recalled a male, later identified as Mr. Salinas-Ibarra, coming to the front window of the residence and having a brief conversation with Sergeant Green, who is Spanish-speaking. *Id.* Officer Ellis understood that Sergeant Green had told Mr. Salinas-Ibarra to come out of the house but that he had refused, shut the window, and walked away. *Id.*

Officer Ellis testified that both she and Sergeant Green then made amplified announcements to the occupants of the residence, in both Spanish and English, telling the residents to come outside with their hands up. *Id.* ¶ 4. Mr. Salinas-Ibarra was the first to exit the residence, and he was detained in handcuffs by Officer Patricia Bowers. *Id.* Mr. Salinas-Ibarra testified that he did not understand why he was being handcuffed, and that up until the point of handcuffing the officers only spoke to him English and they “didn’t understand Spanish.” Salinas-

¹ The facts set forth in this section are undisputed unless otherwise noted.

1 Ibarra Depo. 34:2-15. Mr. Salinas-Ibarra is Spanish-speaking and does not speak English. *Id.*
2 37:23-25. Meanwhile, other occupants exited the residence. Ellis Decl. ¶ 4.

3 Once Officer Bowers detained him in handcuffs, Mr. Salinas-Ibarra verbally identified
4 himself to the police. *See* Robles Decl. Exh. C at 2 (“3/7/2015 Police Report”). Officer Jason
5 D’Amico then walked Mr. Salinas-Ibarra—still in handcuffs—to the opposite side of the street
6 from the residence, where Officer Ellis was positioned near the curb. *Id.*; *see also* Ellis Decl. ¶ 5.
7 Officer D’Amico asked Officer Ellis to stay with Mr. Salinas-Ibarra “until the situation was sorted
8 out.” *Id.* Officer Ellis testified that Mr. Salinas-Ibarra was wearing a dark-colored flannel robe
9 with no shoes, and he appeared to be in his late thirties or forties. *See* Ellis Depo. 25:2-9; 27:1-4.

10 The events that followed are in dispute. Officer Ellis testified that Mr. Salinas-Ibarra was
11 “boisterous” and “rowdy,” and she had to ask him to be quiet several times. Ellis Decl. ¶ 5.
12 Although Officer Ellis testified that she and Officer D’Amico assisted Mr. Salinas-Ibarra into a
13 seated position on the curb, Mr. Salinas-Ibarra kept standing up and had to be told to sit down at
14 least three times. *Id.* Officer Ellis testified that she specifically told Mr. Salinas-Ibarra to sit down
15 in Spanish. *Id.* In contrast, Mr. Salinas-Ibarra testified that all instructions were given to him in
16 English and he only understood that Officer Ellis wanted him to sit because “she was pushing me
17 down.” *See* Salinas-Ibarra Depo. 37:1-4, 11-25. Mr. Salinas-Ibarra also testified that he never
18 attempted to stand up after the officers put him into a seated position. *Id.* 49:15-50:2. He then
19 immediately clarified that he did try to get up when Johnathon exited the residence but he was
20 unable to. *Id.* 50:3-10. Accordingly, there are factual disputes as to whether Officer Ellis gave
21 instructions to Mr. Salinas-Ibarra in English or in Spanish, and whether Mr. Salinas-Ibarra
22 understood the instructions given to him and complied with them.

23 Mr. Salinas-Ibarra testified that before Johnathon Salinas ever exited the house, Officer
24 Ellis “started to apply pressure” to his shoulders to get Mr. Salinas-Ibarra to sit down while he was
25 standing on asphalt. *Id.* 37:17-20; 43:3-10. Mr. Salinas-Ibarra testified that he “never resisted”
26 and went into a seated position in response to the pressure. *Id.* 43:11-15. He explains that while
27 he was seated, his feet were in a position such that his toes were on the ground and his feet were
28 higher up on the sidewalk. *Id.* 44:3-7. Mr. Salinas-Ibarra testified that when Officer Ellis was

1 sitting him down on the curb, she smashed his foot with her own. *Id.* 46:11-17. He felt pain
2 immediately, stating that he felt the impact in his pinky toe. *Id.* 47:8-12.²

3 While Mr. Salinas-Ibarra was stationed at the curb in handcuffs next to Officer Ellis, and
4 after he alleges she had stomped on his foot, Johnathon Salinas exited the residence. *See* Salinas-
5 Ibarra Depo. 48:17-20; Ellis Decl. ¶ 6. Johnathon began yelling at the officers on the scene. Ellis
6 Decl. ¶ 6. Officer Ellis testified that Mr. Salinas-Ibarra then yelled in Spanish to his son,
7 Johnathon, including yelling at him to calm down. *Id.*; *see also* Ellis Depo. 28:6-8. According to
8 Officer Ellis, Johnathon Salinas did not calm down but actually became louder and louder with the
9 officers on the scene. *See* Ellis Decl. ¶ 7. Officer Ellis further testified that at that point, Mr.
10 Salinas-Ibarra stood up for “at least the fourth time,” and started walking forward toward his wife
11 and Sergeant Green. *Id.* Meanwhile, Johnathon continued to scream, and Mr. Salinas-Ibarra
12 seemed to be attempting to walk forward into a position where he could see his son. *Id.* Officer
13 Ellis was concerned that Mr. Salinas-Ibarra would attempt to communicate with Johnathon, which
14 could increase Johnathon’s agitation and resistance to the officers engaged with him. *Id.*

15 In contrast, Mr. Salinas-Ibarra testified that he never stood up when Johnathon exited the
16 residence because he “could not get up,” and he also never attempted to walk forward toward any
17 of his family members. *See* Salinas-Ibarra Depo. 50:6-7; 60:3-5. According to Mr. Salinas-Ibarra,
18 he could not communicate with Johnathon when he came outside, and he did not try to yell
19 anything at Johnathon. *Id.* 60:14-22. Mr. Salinas-Ibarra does admit that he *tried* to get up to see
20 what was happening because he believed the police were hitting his son. *Id.* 49:2-10; 50:8-10.
21 However, Mr. Salinas-Ibarra was not able to stand up to see what was going on with Johnathon
22 because his foot was hurting and broken from Officer Ellis’ stomp. *Id.*

23 Officer Ellis, who testified that Mr. Salinas-Ibarra stood up and was attempting to walk
24 forward, recalls that she placed her left hand on the back of Mr. Salinas-Ibarra’s left shoulder and
25 told him to sit down. *See* Ellis Decl. ¶ 7. When he refused to comply, Officer Ellis grabbed the
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28 ² The Court notes that although Mr. Salinas-Ibarra describes his injury as a “broken foot,” Officer
Ellis represents that Mr. Salinas-Ibarra sustained a fracture of one of the bones in his pinky toe.
Compare Salinas-Ibarra Depo. at 13:3 *with* Reply at 4, ECF 28.

1 large flannel robe he was wearing to pull him down, which he resisted. *Id.* Because Mr. Salinas-
 2 Ibarra refused to sit down again, Officer Ellis placed both of her hands on his shoulders and pulled
 3 him backward toward the curb, but he tensed up and refused to move. *Id.* ¶ 8. As she pulled him
 4 backwards by his robe, she stepped up onto the curb to gain leverage. *Id.* When Mr. Salinas-
 5 Ibarra continued to refuse her commands to sit down—which Officer Ellis testified she gave to
 6 him in Spanish—Officer Ellis pushed down on his shoulders and simultaneously kicked the back
 7 of his knee so that his leg would fold and force him back into a seated position. *Id.* ¶ 9. Officer
 8 Ellis did not give Mr. Salinas-Ibarra a warning before she made physical contact with him because
 9 she did not feel that it was feasible since she had to move quickly. *See* Ellis Depo. 34:10-21.

10 Officer Ellis arrested Mr. Salinas-Ibarra for a violation of California Penal Code
 11 § 148(a)(1), due to his behavior resisting and delaying a police officer and not complying with
 12 multiple orders to be seated on the curb. Ellis Decl. ¶ 10. Mr. Salinas-Ibarra does not believe that
 13 he resisted arrest. *See* Salinas-Ibarra Depo. 77:18-21. After he left the police station, Mr. Salinas-
 14 Ibarra went to Valley Medical Center where he found out that his foot was broken. *Id.* 13:3-5;
 15 63:2-5. The Santa Clara County District Attorney’s Office prosecuted Mr. Salinas-Ibarra for the
 16 § 148(a)(1) charge. *See* Request for Judicial Notice (“RJN”), Exh. A (“Misdemeanor
 17 Complaint”), ECF 26-2. Mr. Salinas-Ibarra subsequently performed twenty (20) hours of
 18 community service, and the District Attorney’s Office dismissed the criminal complaint against
 19 him on February 9, 2016. RJN Exh. B (“2/9/2016 Minute Order”).

20 On March 6, 2017, Mr. Salinas-Ibarra brought this action against Officer Ellis, seeking to
 21 hold her accountable for violations of Mr. Salinas-Ibarra’s constitutional rights. *See* ECF 1.³
 22 Specifically, Mr. Salinas-Ibarra alleges that Officer Ellis deprived him of the right to be free from
 23 unreasonable searches and seizures as guaranteed by the Fourth Amendment. The First Cause of
 24 Action (“COA”) encompasses a claim for wrongful detention and wrongful arrest. *See* Amended
 25 Compl. ¶¶ 36-40 (First COA). Mr. Salinas-Ibarra also alleges a Fourth Amendment violation for
 26 excessive force. *Id.* ¶¶ 41-44 (Second COA).

27
 28 ³ Salinas-Ibarra then filed an Amended Complaint as of right on April 13, 2017. *See* ECF 8.
 Officer Ellis answered the Amended Complaint on May 11, 2017. *See* ECF 9.

1 **II. LEGAL STANDARD**

2 **A. Summary Judgment**

3 “A party is entitled to summary judgment if the ‘movant shows that there is no genuine
4 dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *City of*
5 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P.
6 56(a)). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty*
7 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists if there is sufficient
8 evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* at 248–49.

9 The party moving for summary judgment bears the initial burden of informing the court of
10 the basis for the motion, and identifying portions of the pleadings, depositions, answers to
11 interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material
12 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To meet its burden, “the moving party
13 must either produce evidence negating an essential element of the nonmoving party’s claim or
14 defense or show that the nonmoving party does not have enough evidence of an essential element
15 to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz*
16 *Cos., Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000).

17 If the moving party meets its initial burden, the burden shifts to the nonmoving party to
18 produce evidence supporting its claims or defenses. *Id.* at 1103. If the nonmoving party does not
19 produce evidence to show a genuine issue of material fact, the moving party is entitled to
20 summary judgment. *Celotex*, 477 U.S. at 323. “The court must view the evidence in the light
21 most favorable to the nonmovant and draw all reasonable inferences in the nonmovant’s favor.”
22 *City of Pomona*, 750 F.3d at 1049. However, “the ‘mere existence of a scintilla of evidence in
23 support of the plaintiff’s position’” is insufficient to defeat a motion for summary judgment. *Id.*
24 (quoting *Anderson*, 477 U.S. 242, 252 (1986)). “‘Where the record taken as a whole could not
25 lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.’” *Id.*
26 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

27 **B. Qualified Immunity**

28 “The doctrine of qualified immunity protects government officials from liability for civil

1 damages ‘unless a plaintiff pleads facts showing (1) that the official violated a statutory or
 2 constitutional right, and (2) that the right was ‘clearly established’ at the time of the challenged
 3 conduct.’” *Wood v. Moss*, 134 S.Ct. 2056, 2066–67 (2014) (quoting *Ashcroft v. al-Kidd*, 131 S.Ct.
 4 2074, 2080 (2011)). “[T]he Supreme Court has ‘repeatedly ... stressed the importance of resolving
 5 immunity questions at the earliest possible stage in litigation.’” *Dunn v. Castro*, 621 F.3d 1196,
 6 1199 (9th Cir. 2010) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)). Under the applicable
 7 pleading standard, the plaintiff must allege facts sufficient to make out a plausible claim that it
 8 would have been clear to the defendant officer that his conduct was unlawful in the situation he
 9 confronted. *Id.* at 2067. “Because qualified immunity is an affirmative defense from suit, not
 10 merely from liability, ‘[u]nless the plaintiff’s allegations state a claim of violation of clearly
 11 established law, a defendant pleading qualified immunity is entitled to dismissal before the
 12 commencement of discovery.’” *Doe By and Through Doe v. Petaluma City School Dist.*, 54 F.3d
 13 1447, 1449–50 (9th Cir. 1995) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

14 In *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001), the Supreme
 15 Court set forth a two-part approach for analyzing qualified immunity. The analysis contains both
 16 a constitutional inquiry and an immunity inquiry. *Johnson v. County of Los Angeles*, 340 F.3d 787,
 17 791 (9th Cir. 2003). The constitutional inquiry requires the court to determine this threshold
 18 question: “Taken in the light most favorable to the party asserting the injury, do the facts alleged
 19 show the officer’s conduct violated a constitutional right?” *Saucier*, 533 U.S. at 201. If the Court
 20 determines that a constitutional violation could be made out based on the parties’ submissions, the
 21 second step is to determine whether the right was clearly established. *Id.* “The relevant,
 22 dispositive inquiry in determining whether a right is clearly established is whether it would be
 23 clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” *Id.* at
 24 202. The Supreme Court has clarified that the *sequence* of analysis set forth in *Saucier* is not
 25 mandatory and that a court may exercise its sound discretion in determining which of the two
 26 prongs of the qualified immunity analysis to address first. *Pearson v. Callahan*, 555 U.S. 223,
 27 241-42 (2009). Thus, in some cases, it may be unnecessary to reach the ultimate constitutional
 28 question when officers would be entitled to qualified immunity in any event, a result consistent

1 with longstanding principles of judicial restraint.

2 The Supreme Court recently reiterated the longstanding principle that a “clearly
3 established” constitutional right “should not be defined ‘at a high level of generality.’” *White v.*
4 *Pauly*, 137 S. Ct. 548, 552 (2017) (quoting *al-Kidd*, 563 U.S. at 742). Rather, it must be
5 “particularized” to the facts of the case.” *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640
6 (1987)). Defining the right at too high a level of generality “avoids the crucial question whether
7 the official acted reasonably in the particular circumstances that he or she faced.” *Plumhoff v.*
8 *Ricard*, 134 S.Ct. 2012, 2023 (2014). “[A] defendant cannot be said to have violated a clearly
9 established right unless the right’s contours were sufficiently definite that any reasonable official
10 in the defendant’s shoes would have understood that he was violating it.” *Id.* “In other words,
11 ‘existing precedent must have placed the statutory or constitutional question’ confronted by the
12 official ‘beyond debate.’” *Id.* (quoting *al-Kidd*, 563 U.S. at 741). “A right can be clearly
13 established despite a lack of factually analogous preexisting case law, and officers can be on
14 notice that their conduct is unlawful even in novel factual circumstances.” *Ford v. City of Yakima*,
15 706 F.3d 1188, 1195 (9th Cir. 2013). “The relevant inquiry is whether, at the time of the officers’
16 action, the state of the law gave the officers fair warning that their conduct was unconstitutional.”
17 *Id.*

18 **III. REQUEST FOR JUDICIAL NOTICE**

19 In support of her motion for summary judgment, Officer Ellis requests judicial notice of
20 two documents: (1) a misdemeanor complaint in the criminal case against Mr. Salinas-Ibarra,
21 *People v. Salinas, et al.*, Case No. C1508306, and (2) a Court Minute Order from February 9,
22 2016 dismissing the criminal complaint against Mr. Salinas-Ibarra. *See* RJN Exhs. A, B. Mr.
23 Salinas-Ibarra does not oppose the request, and also relies on these documents in his opposition.
24 *See* Opp’n at 7.

25 Documents that are part of the public record may be judicially noticed to show that a
26 judicial proceeding occurred or that a document was filed in another court case, but a court may
27 not take judicial notice of findings of facts from another case. *See Wyatt v. Terhune*, 315 F.3d
28 1108, 1114 & n. 5 (9th Cir. 2003); *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001).

1 Nor may the court take judicial notice of any matter that is in dispute. *Lee*, 250 F.3d at 689–90.
2 Because these documents are public records, the Court GRANTS Officer Ellis’ request for judicial
3 notice as to the existence of the misdemeanor complaint, and its dismissal, against Mr. Salinas-
4 Ibarra. *See* Fed. R. Evid. 201(b).

5 **IV. DISCUSSION**

6 **A. Wrongful Detention and Arrest**

7 Officer Ellis moves for summary judgment on Mr. Salinas-Ibarra’s First COA for wrongful
8 detention and arrest in violation of the Fourth Amendment. *See* Mot. at 6-9. Specifically, Officer
9 Ellis argues that she is entitled to qualified immunity because she did not initiate the detention or
10 apply the handcuffs to Mr. Salinas-Ibarra, and she had probable cause to arrest him for a violation
11 of California Penal Code § 148(a)(1). Even if her actions amounted to a constitutional violation,
12 Officer Ellis argues that the law was not clearly established such that her conduct was plainly
13 incompetent. Officer Ellis further argues that the unlawful arrest claim is barred by *Heck v.*
14 *Humphrey*, 512 U.S. 477 (1994), because Mr. Salinas-Ibarra’s “criminal conviction” arising out of
15 the same facts is fundamentally inconsistent with the unlawful behavior for which he seeks
16 damages under § 1983. Mot. at 8-9. The Court addresses each argument in turn.

17 **1. Wrongful Detention**

18 The Fourth Amendment “applies to all seizures of the person, including seizures that
19 involve only a brief detention short of traditional arrest.” *United States v. Brignoni–Ponce*, 422
20 U.S. 873, 878 (1975); *see also United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir.
21 2000). Accordingly, the Fourth Amendment requires that such seizures be, at a minimum,
22 “reasonable.” *Id.* Pursuant to the Supreme Court’s decision in *Terry v. Ohio*, 392 U.S. 1 (1968),
23 the police may conduct “a brief, investigatory search or seizure, so long as they have a reasonable,
24 articulable suspicion that justifies their actions.” *Gallegos v. City of Los Angeles*, 308 F.3d 987,
25 990 (9th Cir. 2002).

26 The reasonable suspicion standard applied to investigatory stops is “a less demanding
27 standard than probable cause,” and merely requires “a minimal level of objective justification.”
28 *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). However, like the probable cause determination,

1 the reasonable suspicion analysis is a “fluid concept” that is not “readily, or even usefully, reduced
2 to a neat set of legal rules.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Illinois v.*
3 *Gates*, 462 U.S. 213, 232 (1983)). In determining whether officers had reasonable suspicion to
4 justify a brief seizure, courts must “look at the ‘totality of the circumstances’ of each case to see
5 whether the detaining officer has a ‘particularized and objective basis’ for suspecting legal
6 wrongdoing.” *United States v. Arvizu*, 534 U.S. 266, 273 (2002). This approach allows officers to
7 “draw on their own experience and specialized training to make inferences from and deductions
8 about the cumulative information available” to them. *Id.* Nonetheless, an officer may not rely
9 upon a mere hunch to justify an investigatory stop. *Id.* at 274. Rather, “in justifying the particular
10 intrusion the police officer must be able to point to specific and articulable facts which, taken
11 together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v.*
12 *Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

13 Officer Ellis argues that she is shielded by qualified immunity on the wrongful detention
14 claim because she reasonably relied in good faith on the detaining officers’ determination of
15 reasonable suspicion. *See* Mot. at 6. She also argues that summary judgment is appropriate
16 because the undisputed facts show that the detaining officers had reasonable suspicion to support
17 the detention. *Id.* at 7. For the reasons that follow, the Court finds both arguments persuasive and
18 GRANTS Officer Ellis’ motion for summary judgment as to the claim for wrongful detention.

19 **i. Reasonable Reliance on Facially Valid Direction**

20 In this case, it is undisputed that Officer Ellis did not make the decision to detain Mr.
21 Salinas-Ibarra and she did not apply the handcuffs. *See* Ellis Decl. ¶ 4. The parties agree that
22 Officer Ellis had the right to rely on the detaining officer’s determination of reasonable suspicion.
23 *See* Mot. at 6; Opp’n at 16-17. (“Defendant is correct that a facially valid direction from one
24 officer to another to stop a person or a vehicle insulates the complying officer from assuming
25 personal responsibility or liability for his act done in obedience to the direction.”) Here, Officer
26 Ellis relied on a facially valid direction from the officers who detained and escorted Mr. Salinas-
27 Ibarra to her and asked her to keep an eye on him. To carry her burden on summary judgment,
28 Officer Ellis has presented evidence that after Mr. Salinas-Ibarra was handcuffed by Officer

1 Bowers, Officer Jason D’Amico walked Mr. Salinas-Ibarra to the curb where Officer Ellis was
2 standing and asked her to stay with Mr. Salinas-Ibarra “until the situation was sorted out.” Ellis
3 Decl. ¶ 5. Accordingly, Officer Ellis argues that she cannot be liable for her reasonable, good
4 faith belief that Mr. Salinas-Ibarra’s initial detention was valid. Mot. at 7.

5 Officer Ellis points to *United States v. Robinson*, 536 F.2d 1298, 1299 (9th Cir. 1976) for
6 the proposition that an officer relying on facially valid direction from another officer insulates the
7 complying officer from assuming personal responsibility or liability for his act done in obedience
8 to the direction. See Mot. at 6. In *Robinson*, a police officer made a traffic stop based solely on
9 the receipt of a radio dispatch to stop the described vehicle. 536 F.2d at 1299. In the context of a
10 criminal motion to suppress, the Ninth Circuit held that reasonable suspicion to detain did not
11 arise solely from the dispatcher relaying the information to a fellow officer, but required proof of
12 the factual foundation for the relayed message. *Id.* at 1299. However, the Ninth Circuit described
13 facts similar to those presented here, and held that the stopping officer would not face *personal*
14 liability even if there was no foundation for the detention: “A facially valid direction from one
15 officer to another to stop a person or a vehicle insulates the complying officer from assuming
16 personal responsibility or liability for his act done in obedience to the direction. But the direction
17 does not itself supply legal cause for the detention, any more than the fact of detention supplies its
18 own justification.” *Id.* The Ninth Circuit recognized “that effective law enforcement cannot be
19 conducted unless police officers can act on directions and information transmitted by one officer
20 to another and that officers, who must often act swiftly, cannot be expected to cross-examine their
21 fellow officers about the foundation for the transmitted information.” *Id.* at 1299-1300.

22 A similar line of authority holds that an officer may rely on the work of another law
23 enforcement officer to establish probable cause. See *United States v. Jensen*, 425 F.3d 698, 704
24 (9th Cir. 2005) (“The accepted practice of modern law enforcement is that an officer often makes
25 arrests at the direction of another law enforcement officer even though the arresting officer himself
26 lacks actual, personal knowledge of the facts supporting probable cause.”). In addition, police
27 officers have been granted qualified immunity for arrests based on recalled warrants, even where
28 the arrestee provided the arresting officers with notice of the recall, because the officers

1 reasonably relied upon information from official warrant tracking services that later turned out to
2 be inaccurate. *See, e.g., Duckett v. City of Cedar Park*, 950 F.2d 272, 280 (5th Cir. 1992)
3 (concluding that police officer acted reasonably where officer confirmed the validity of a since-
4 recalled warrant through official channels); *Mitchell v. Aluisi*, 872 F.2d 577, 578–79 (4th Cir.
5 1989) (concluding that arrest based on facially valid warrant did not violate due process, where
6 sheriff’s office had not received notice that the warrant had been cancelled).

7 So long as Officer Ellis had a reasonable, good faith belief that she was acting pursuant to
8 valid authority from the other officers on the scene, the Court agrees that she is immune from suit.
9 Mot. at 6 (citing *U.S. v. Hensley*, 469 U.S. 221, 232 (1985)) (“Assuming the police make
10 a *Terry* stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the
11 course of the stop is admissible if the police who *issued* the flyer or bulletin possessed a
12 reasonable suspicion justifying a stop.”) (citing *Robinson*, 536 F.2d 1298).

13 Mr. Salinas-Ibarra agrees with the authority discussed above, but argues that it is disputed
14 whether Officer Ellis had a reasonable, good faith belief that his detention was valid. Opp’n at 17.
15 Mr. Salinas-Ibarra’s only argument is that because he did not match the description of Johnathon
16 Salinas given to the officers by the dispatcher, it was not reasonable for Officer Ellis to suspect
17 him of criminal activity or rely on the other officers’ reasonable suspicion determination. *Id.* Mr.
18 Salinas-Ibarra also distinguishes the cases on which Officer Ellis relies, such as *Hensley*, because
19 Officer Ellis was present at the scene and could make her own determination of reasonable
20 suspicion to detain Mr. Salinas-Ibarra. *Id.* 17-18. Mr. Salinas-Ibarra’s argument against qualified
21 immunity is unpersuasive. There is undisputed evidence that Officer Ellis responded to a weapons
22 call at a residence and encountered an active situation where occupants were leaving the house and
23 the police were trying to get a handle on a potentially dangerous situation where a suspect was
24 high on acid and wielding a baseball bat. Officer Ellis believed Mr. Salinas-Ibarra’s detention was
25 valid given the violent behavior that had been reported and the possibility that Mr. Salinas-Ibarra
26 had been involved in the incident, in particular because he had refused Sergeant Green’s
27 instructions to come out of the house when the police first arrived. Ellis Decl. ¶¶ 3-4.

28 Officer Ellis has met her initial burden on summary judgment, and Mr. Salinas-Ibarra has

1 not carried his burden to produce evidence to show a genuine issue of material fact for trial.
2 *Celotex*, 477 U.S. at 323. The undisputed facts show that Officer Ellis’ reliance on the facially
3 valid direction of Officer D’Amico was reasonable, and even if her reliance was unreasonable, Mr.
4 Salinas-Ibarra has not even attempted to show that her actions violated clearly established law.
5 *Saucier*, 533 U.S. at 202, 121 S.Ct. 2151 (“The relevant, dispositive inquiry in determining
6 whether a right is clearly established is whether it would be clear to a reasonable officer that his
7 conduct was unlawful in the situation he confronted.”) On Mr. Salinas-Ibarra’s version of the
8 facts, it would not have been clear to a reasonable officer on the scene that the detention was
9 invalid solely because Mr. Salinas-Ibarra did not match the description of one of the suspects from
10 dispatch. In other words, controlling federal law does not “clearly establish” that officers cannot
11 handcuff a person who previously refused a police directive to leave a residence where a violent
12 incident has been reported and the officers are securing the scene, simply because the person does
13 not match the description provided by the 911 dispatcher. Mr. Salinas-Ibarra fails to “identify a
14 case” to alert Officer Ellis that her conduct was unlawful, and qualified immunity applies. *See*
15 *Sharp v. County of Orange*, No. 15-56146, 2017 WL 4126947, at *7 (9th Cir. Sept. 19, 2017)
16 (quoting *White v. Pauly*, 137 S.Ct. at 552).

17 **ii. Reasonable Suspicion**

18 Officer Ellis also cannot be liable because the Court finds that it is undisputed that Officers
19 Bowers and D’Amico had reasonable suspicion to conduct an investigatory detention to determine
20 Mr. Salinas-Ibarra’s involvement in the events. *See Gallegos*, 308 F.3d at 990. Mr. Salinas-Ibarra
21 does not dispute Officer Ellis’ observation that he came to the front window of the residence and
22 initially refused to exit after Sergeant Green asked him, in Spanish, to come out of the house. *See*
23 *generally* Opp’n; Ellis Decl. ¶ 3. Officer Ellis testified that as soon as Mr. Salinas-Ibarra left the
24 residence, he was detained in handcuffs by Officer Bowers due to his possible involvement in the
25 violent incident which had been reported and was still unfolding. *Id.* In his opposition, Mr.
26 Salinas-Ibarra argues that there is a factual dispute with respect to whether he was legally detained
27 because the dispatcher told the police that the suspect with the baseball bat, Johnathon Salinas,
28 was in his twenties and wearing a red sweater. *See* Ellis Depo. 18:12-23. Mr. Salinas-Ibarra did

1 not match this description, and he immediately identified himself to police as Ubelino Salinas.
2 *See* Ellis Depo. 27:1-4; Police Report at 2.

3 The problem with Mr. Salinas-Ibarra’s argument is that he was not detained as a suspect
4 from the 911 call. Rather, it is undisputed that he refused a police order to exit the house so that
5 the police could continue their investigation of the suspect without endangering others. *See* Ellis
6 Decl. ¶ 3. Mr. Salinas-Ibarra does not dispute the dangerousness of the situation that police
7 confronted at his residence on March 7, 2015. The dispatcher reported to the responding officers
8 that an incident involving weapons occurred in the middle of the night, involving a family member
9 who was high on acid and trying to fight with family members with a baseball bat. Ellis Decl. ¶ 2.
10 Mr. Salinas-Ibarra argues only that he was unlawfully detained because he did not meet the
11 description of Johnathon Salinas. But the authority of police to detain individuals based on
12 reasonable suspicion is not so narrow.

13 In light of the undisputed facts, it was constitutionally permissible for the officers to detain
14 Mr. Salinas-Ibarra for a reasonable period of time in order to determine his connection to the
15 events. *U.S. v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (holding that in order to
16 make a valid investigatory detention, he or she needs only “a reasonable suspicion supported by
17 articulable facts that criminal activity may be afoot.”). The Court finds, as a matter of law, that
18 Mr. Salinas-Ibarra’s detention does not amount to a Fourth Amendment violation, which requires
19 only “some minimal level of objective justification to validate the detention.” *INS v. Delgado*, 466
20 U.S. 210, 217 (1984). It is irrelevant whether Mr. Salinas-Ibarra matched the dispatcher’s
21 description of the bat-wielding individual.⁴ The responding officers arrived at the scene, and when
22 Mr. Salinas-Ibarra came to the window, he refused Sergeant Green’s request in Spanish to exit the
23 residence. *See* Ellis Decl. ¶ 3. Based on this refusal, and because the police were still securing the
24 premises to determine the exact nature of the incident, the police had reasonable suspicion to
25 detain Mr. Salinas-Ibarra to determine his connection to the reported events. Even viewing the
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28 ⁴ Although Mr. Salinas-Ibarra argues that he “was not the person the police were looking for,” and
“was not engaged in any criminal activity,” he does not cite to *any* case authority to defeat
summary judgment on this point. *See* Opp’n at 10.

1 evidence in the light most favorable to Mr. Salinas-Ibarra and drawing all inferences in his favor, a
2 rational trier of fact could not find that he was unlawfully detained, so there is no genuine issue of
3 fact for trial on the wrongful detention claim. *Id.*

4 For the foregoing reasons, Officer Ellis’ motion for summary judgment on the unlawful
5 detention claim is GRANTED on several grounds: (1) Officer Ellis is immune from personal
6 liability based on her reasonable, good faith reliance on a facially valid direction from her fellow
7 officer to keep watch over Mr. Salinas-Ibarra who was already detained in handcuffs; (2) to the
8 extent Officer Ellis’ reliance was unreasonable (and thus unconstitutional), the second prong of
9 qualified immunity applies because at the time of her conduct, the law did not clearly establish
10 that her conduct was unconstitutional; and (3) the undisputed facts show that the Mr. Salinas-
11 Ibarra’s detention was based on reasonable suspicion and no reasonable jury could find otherwise.

12 **2. Wrongful Arrest**

13 The Court next turns to Officer Ellis’ motion for summary judgment on the wrongful arrest
14 claim. A claim for unlawful arrest may arise under § 1983, “provided the arrest was without
15 probable cause or other justification.” *Dubner v. Cnty. of San Francisco*, 266 F.3d 959, 964 (9th
16 Cir. 2001). “Probable cause exists when the facts and circumstances within the officer’s
17 knowledge are sufficient to cause a reasonably prudent person to believe that a crime has been
18 committed.” *Lassiter v. City of Bremerton*, 556 F.3d 1049, 1053 (9th Cir. 2009). “The
19 determination whether there was probable cause is based upon the information the officer had at
20 the time of making the arrest. It is essential to avoid hindsight analysis, *i.e.*, to consider additional
21 facts that became known only after the arrest was made.” *John v. City of El Monte*, 515 F.3d 936,
22 940 (9th Cir. 2008) (citations omitted). Moreover, probable cause does not require evidence of
23 each element of the offense that would be needed to support a conviction. *Adams v. Williams*, 407
24 U.S. 143, 149 (1972).

25 Officer Ellis argues that it is undisputed that she had probable cause to arrest Mr. Salinas-
26 Ibarra for a violation of California Penal Code § 148 when he refused her repeated commands to
27 stay seated. Section 148(a)(1) criminalizes “willfully resisting, delaying, or obstructing a peace
28 officer” in the lawful performance of his or her duties. *See Smith v. City of Hemet*, 394 F.3d 689,

1 693 (9th Cir. 2005); Cal. Penal Code § 148 (West). According to Officer Ellis, she had probable
2 cause to arrest Mr. Salinas-Ibarra for refusing to comply with her repeated orders to be quiet and
3 stay seated. Mot. at 8. She also points to evidence that Mr. Salinas-Ibarra resisted arrest by
4 tensing his body and refusing to move backward to the curb and sit down. Ellis Decl. ¶ 8.
5 However, in determining whether qualified immunity applies on summary judgment, the Court
6 must consider the facts in the light most favorable to Mr. Salinas-Ibarra—who disputes Officer
7 Ellis’ account of events.

8 Mr. Salinas-Ibarra provided an account of events in his deposition testimony as follows:
9 He testified that he never stood up after being seated on the curb for the first time, in part because
10 his foot was injured when Officer Ellis crushed his foot when he was initially brought to a seated
11 position. Salinas-Ibarra Depo. 43:11-21. Mr. Salinas-Ibarra testified that Officer Ellis “smashed”
12 his foot on her own, but he did not see it happen because it happened behind his back. *Id.* 46:11-
13 17. Once his foot was crushed and he was seated on the curb, he testified that he never stood up or
14 moved forward—only that he tried to stand up at one point to see what was going on with
15 Johnathon, but he could not stand due to his foot injury. *Id.* 49:15-25; 50:1-2.⁵ As Mr. Salinas-
16 Ibarra testified, the incident with his foot being crushed had already happened by the time
17 Johnathon exited the residence. *Id.* 48:17-20. When Mr. Salinas-Ibarra tried but failed to stand
18 up, he testified that the officers put their hand on his neck and “applied a lot of pressure.” *Id.*
19 50:14-16. According to Mr. Salinas-Ibarra, he did not try to move toward his wife or family
20 members, and he did not try to communicate with Johnathon. *Id.* 60:3-22. Mr. Salinas-Ibarra
21 further testified that Officer Ellis did not give him any instructions to sit down in Spanish, and he
22 did not understand her instructions. *Id.* 37:1-4, 11-25. Accordingly, Mr. Salinas-Ibarra does not
23 believe that he resisted arrest. *Id.* 77:18-21.

24 The first step of the qualified immunity analysis requires the Court to ask whether, taking
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26 ⁵ Because Mr. Salinas-Ibarra’s version of events does not include Officer Ellis’ use of a “leg
27 sweep,” it appears that he disputes the leg sweep. Instead, he says Officer Ellis stomped on his
28 foot, although he could not see it because it was behind him. Salinas-Ibarra Depo. 46:11-17. It is
not clear whether the “stomp” occurred during the initial sit down or at some point after, but Mr.
Salinas-Ibarra is clear that it occurred before Johnathon exited the residence. *Id.* 48:17-20.

1 the facts “in the light most favorable to the party asserting the injury,” the facts alleged show that
2 “the officer’s conduct violated a constitutional right.” *See Millender v. County of Los Angeles*,
3 564 F.3d 1143, 1148 (9th Cir. 2009) (citing *Saucier*, 533 U.S. at 201). The Court finds that
4 several genuine disputes of material fact exist regarding the events that led up to Mr. Salinas-
5 Ibarra’s arrest for a violation of § 148. Based on Mr. Salinas-Ibarra’s version of events describing
6 himself as compliant at all times, the Court cannot conclude that a prudent person under the
7 totality of circumstances would believe that Mr. Salinas-Ibarra was willfully resisting, delaying, or
8 obstructing legitimate law enforcement activities. Thus, the totality of the circumstances viewed
9 in the light most favorable to Mr. Salinas-Ibarra do not support a finding on summary judgment
10 that Officer Ellis had probable cause to arrest him for a violation of section 148(a)(1).

11 Because the facts according to Mr. Salinas-Ibarra show that a constitutional violation
12 occurred when Mr. Salinas-Ibarra was arrested, the Court must turn to the second prong of
13 qualified immunity to determine if, at the time of the arrest, Officer Ellis’ conduct violated a
14 clearly established right. *Millender*, 564 F.3d at 1148 (“If the answer to the first inquiry is yes, the
15 second inquiry is whether the right was clearly established: in other words, ‘whether it would be
16 clear to a reasonable officer that his conduct was unlawful in the situation he confronted.’”) (quoting
17 *Saucier*, 533 U.S. at 201). Ultimately, the Court finds that the question of qualified
18 immunity is premature in light of the disputed material facts that can only be resolved by a jury.

19 As explained above, Officer Ellis has presented evidence that Mr. Salinas-Ibarra refused
20 multiple orders that she gave to him in Spanish to remain seated and quiet, and for tensing his
21 body and resisting arrest when she tried to move him back to the curb after he stood up and began
22 moving forward. Ellis Decl. ¶¶ 5, 7-8. Under the second prong of qualified immunity, Officer
23 Ellis argues that it was not plainly incompetent for her to believe she was justified to arrest Mr.
24 Salinas-Ibarra under Penal Code § 148 when he refused her commands and resisted her efforts to
25 keep him seated. Mot at 8. Yet Mr. Salinas-Ibarra disputes every aspect of Officer Ellis’
26 testimony in this regard, stating that he was fully compliant with the exception of one unsuccessful
27 attempt to get up when Johnathon exited the residence. Salinas-Ibarra Depo. 49:15-25; 50:1-2. In
28 her reply, Officer Ellis attempts to argue that even under Mr. Salinas-Ibarra’s version of the facts

1 he violated § 148(a)(1) by attempting to get up from a seated position when Johnathon Salinas
2 exited the residence, because he had been placed into a seated position and he knew that the
3 officers wanted him to remain seated. Salinas-Ibarra Depo. 49:15-21.

4 The Court cannot conclude, based on Mr. Salinas-Ibarra’s version of the facts, that a single
5 and unsuccessful attempt to stand up when he did not understand any of the officer’s
6 instructions—constitutes probable cause to arrest him for violating California Penal Code
7 § 148(a), which applies when a person “willfully resists, delays, or obstructs any...peace
8 officer...in the discharge or attempt to discharge any duty of his or her office or employment.”
9 Cal.Penal Code § 148(a)(1). According to Mr. Salinas-Ibarra, he did not do anything that would
10 have satisfied Officer Ellis’ articulated reasons for arresting him. Namely, Officer Ellis testified
11 that she was concerned that Mr. Salinas-Ibarra would attempt to communicate with Johnathon
12 (Mr. Salinas-Ibarra testified that he did not attempt to do so), concerned that he had not complied
13 with her multiple orders to remained seated and quiet (Mr. Salinas-Ibarra testified that he always
14 remained seated and compliant); and concerned that he may try to confront one of the other
15 officers (Mr. Salinas-Ibarra testified that he did not stand up or move forward because his foot was
16 injured). *See* Ellis Decl. ¶ 7.

17 The Court notes an important discrepancy between Mr. Salinas-Ibarra’s deposition
18 testimony and the operative complaint in this action, as well as arguments presented in the
19 opposition brief. The Amended Complaint alleges that “[w]hile the Officers were attempting to
20 detain Plaintiff’s son, Plaintiff was yelling at his son to comply,” and explains that Officer Ellis
21 used excessive force against Plaintiff as he “continued to advise his son to calm down.” Amended
22 Compl. ¶¶ 22, 24. In contrast, Mr. Salinas-Ibarra testified that he did *not* try to yell anything to
23 Johnathon when he came outside the residence. Salinas-Ibarra Depo. 60:10-16. Then, the
24 opposition brief appears to concede that Mr. Salinas-Ibarra *did* yell toward his son. *See* Opp’n at
25 18 (“The fact that Mr. Salinas-Ibarra yelled at his son to calm down during this incident does not
26 rise to probable cause to arrest.”); Opp’n at 13 “[Y]elling to his son to calm down could hardly be
27 perceived as a threat that would require the use of force by Officer Ellis.”). Similarly, at the
28 summary judgment hearing, counsel did not dispute that Mr. Salinas-Ibarra attempted to

1 communicate with Johnathon. Nevertheless, the Court cannot ignore the clear testimony from Mr.
2 Salinas-Ibarra’s deposition that raises a genuine dispute of material fact on the wrongful arrest
3 claim. *City of Pomona*, 750 F.3d at 1049. The Court cannot conclude that “no reasonable jury”
4 could credit Mr. Salinas-Ibarra’s testimony and find that he was arrested without probable cause.

5 Binding Ninth Circuit authority is clear that it would be inappropriate for the Court to draw
6 upon Officer Ellis’ version of events to resolve these factual disputes on a motion for summary
7 judgment based on qualified immunity. *Bonivert v. City of Clarkston*, 883 F.3d 865, 881 (9th Cir.
8 2018) (finding that “in weighing the evidence in favor of the officers, rather than [the plaintiff],
9 the district court unfairly tipped that inquiry in the officers’ favor,” and concluding that genuine
10 issues of fact “prevent a determination of qualified immunity at summary judgment [such] that the
11 case must proceed to trial.”) (citing *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir.
12 1993)); *see also Espinosa v. City & Cty. of San Francisco*, 598 F.3d 528, 532 (9th Cir. 2010) (“In
13 this case, the district court properly denied the summary judgment motion because there are
14 genuine issues of fact regarding whether the officers violated [plaintiff’s] Fourth Amendment
15 rights. Those unresolved issues of fact are also material to a proper determination of the
16 reasonableness of the officers’ belief in the legality of their actions.”) (citing *Santos v. Gates*, 287
17 F.3d 846, 855 n. 12 (9th Cir. 2002)). Officer Ellis does not testify that a single attempt to get up
18 off the curb and some yelling would have amounted to probable cause. Rather, she based her
19 probable cause determination on Mr. Salinas-Ibarra’s “multiple” attempts to stand up in violation
20 of her orders to sit down—which he disputes. *See Ellis Decl.* ¶¶ 5, 7.

21 As the Ninth Circuit explained in *Act Up!/Portland v. Bagley*, “[i]f a genuine issue of fact
22 exists preventing a determination of qualified immunity at summary judgment, the case must
23 proceed to trial.” 988 F.2d at 873. “Where a Fourth Amendment violation is claimed, the factual
24 issues that may preclude a determination of qualified immunity on summary judgment fall into
25 two categories.” *Id.* First, the Ninth Circuit explained, “a determination of reasonable suspicion or
26 probable cause requires an inquiry as to the facts and circumstances within an officer’s
27 knowledge...[t]hese are matters of fact to be determined, where genuine disputes of a material
28 nature exist, by the fact finder.” *Id.*

1 Second, and as relevant here, “the determination of what conduct underlies the alleged
2 violation—*what the officer and claimant did or failed to do*—is a determination of fact. *Id.*
3 (emphasis added). Although the Court could determine as a matter of law whether undisputed
4 facts support an objective belief that probable cause existed, it cannot resolve two competing and
5 entirely inconsistent sets of facts at this stage. *Id.* at 873-74 (“If the court finds that a genuine issue
6 of underlying fact does exist, it should postpone the qualified immunity determination until the
7 facts have been developed at trial.”) The facts underlying whether Officer Ellis is entitled to
8 qualified immunity for arresting Mr. Salinas-Ibarra must be resolved by the jury at trial.⁶

9 In addition to her qualified immunity arguments, Officer Ellis argues that Mr. Salinas-
10 Ibarra’s wrongful arrest claim is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the
11 Supreme Court held that a § 1983 claim which necessarily calls into question the lawfulness of a
12 plaintiff’s criminal conviction or sentence is not cognizable unless the plaintiff can show that the
13 conviction or sentence has been reversed or otherwise invalidated. *Id.* at 486-87. *Heck* explained
14 that “if a criminal conviction arising out of the same facts stands and is fundamentally inconsistent
15 with the unlawful behavior for which section 1983 damages are sought, the 1983 action must be
16 dismissed.” *Id.* (see also *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996). Accordingly, the
17 relevant question is whether success in a subsequent § 1983 suit would “necessarily imply” or
18 “demonstrate” the invalidity of the earlier conviction or sentence under § 148(a)(1). *Smith v. City*
19 *of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005) (*Heck*, 512 U.S. at 487). The rule announced in *Heck*
20 has become known as the “favorable termination” requirement. *Osborne v. Dist. Attorney’s Office*
21 *for Third Judicial Dist.*, 423 F.3d 1050, 1053 (9th Cir. 2005).

22 The parties agree that *Heck* would bar Mr. Salinas-Ibarra’s unlawful arrest claim had he
23 been convicted or sentenced. However, the undisputed facts show that the misdemeanor criminal
24 complaint filed against Mr. Salinas-Ibarra was *dismissed*, and the criminal proceedings never
25 resulted in a “conviction.” See RJN Exh. B. Officer Ellis argues that the “dismissal” rather than

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27 ⁶ At the hearing on Officer Ellis’ motion, the Court indicated that it was inclined to grant summary
28 judgment on the wrongful arrest claim. Upon further review of the briefing and factual record,
however, the Court finds that it would be improper to grant the motion as to the wrongful arrest
claim in light of the disputed facts underlying the qualified immunity analysis.

1 “conviction” issue is a technicality, and it is clear from the record that the dismissal of the charges
2 was predicated on Mr. Salinas-Ibarra completing twenty (20) hours of community service. Mot. at
3 9. Officer Ellis cites to a single district court decision from the Middle District of Pennsylvania to
4 support her position that this Court should extend *Heck* to a dismissal of criminal charges—rather
5 than a conviction. See *Taylor v. JFC Staffing Associates*, 690 F.Supp.2d 357 (M.D. Penn. 2009).

6 In *Taylor*, the court granted summary judgment in favor of the defendant on the plaintiff’s
7 retaliation claim under *Heck* because the plaintiff had agreed to perform community service in
8 exchange for having his arrest expunged. 690 F. Supp. 2d at 376. The court interpreted binding
9 Third Circuit precedent from *Gilles v. Davis*, 427 F.3d 197, 211 (3d Cir. 2005), in finding that the
10 plaintiff’s “agreement to perform community service in exchange for expungement placed burdens
11 upon him that were ‘not consistent with innocence,’ and is unlike the exceptions announced
12 in *Heck* that would permit a § 1983 claim to proceed.” *Taylor v. JFC Staffing Assocs.*, 690 F.
13 Supp. 2d at 376.⁷ Officer Ellis urges the Court to apply *Taylor* and *Gilles* to find that the dismissal
14 of Mr. Salinas-Ibarra’s Penal Code § 148 charges in exchange for performing 20 hours of
15 community service, means that *Heck* bars his unlawful arrest claim. Mot. at 9.

16 The Court does not find Officer Ellis’ out of circuit precedent persuasive, and declines to
17 extend *Heck* to the facts of this case. The District Attorney dismissed the misdemeanor charge
18 against Mr. Salinas-Ibarra. Without a conviction in any sense of the word, *Heck* does not apply
19 and Mr. Salinas-Ibarra’s § 1983 claim for wrongful arrest may proceed.

20 Because *Heck* does not apply and the material facts underlying Officer Ellis’ assertion of
21 qualified immunity—namely that Mr. Salinas-Ibarra refused her commands to stay seated by
22 getting up from the curb multiple times, moving forward, and yelling at Johnathon Salinas—are

23 _____
24 ⁷ The Court cannot find a single decision from the Ninth Circuit Court of Appeals or the Northern
25 District of California that cites to either *Gilles* or *Taylor*. Indeed, *Taylor* has never been applied
26 outside of Pennsylvania. The only case from the Southern District of California to discuss a
27 related issue actually adopted a strict reading of *Heck* and distinguished *Gilles* in order to
28 concluded that *Heck* did not bar the plaintiff’s § 1983 claims. *Magana v. Cty. of San Diego*, 835 F.
Supp. 2d 906, 913 (S.D. Cal. 2011) (holding that *Heck* does not apply because the plaintiff “was
never convicted of anything or sentenced by the juvenile court,” “never pleaded guilty to the
criminal charges leveled against him,” and “upon his successful completion of the informal
supervision, those charges were dismissed in their entirety.”)

1 disputed, summary judgment on the wrongful arrest claim must be DENIED WITHOUT
2 PREJUDICE at this stage.

3 **B. Excessive Force**

4 In his second claim for relief, Mr. Salinas-Ibarra alleges that Officer Ellis used excessive
5 force against him in violation of the Fourth Amendment when she kicked him in the legs and
6 knocked him to the ground. Amended Compl. ¶¶ 41-44.⁸ Officer Ellis asserts qualified immunity
7 based on what she describes as “minimal force” used to return Mr. Salinas-Ibarra to a seated
8 position on the curb. Mot. at 9. As with the unlawful arrest analysis, Officer Ellis again relies on
9 her own version of events and ignores the requirement that this Court view the evidence in the
10 light most favorable to Mr. Salinas-Ibarra even when determining whether qualified immunity
11 applies. *Saucier*, 533 U.S. at 201. The Court is required to accept Mr. Salinas-Ibarra at his word at
12 the summary judgment stage. *See Thompson v. Rahr*, No. 16-35301, 2018 WL 1277400, at *3
13 (9th Cir. Mar. 13, 2018).

14 Because the excessive force inquiry is legally distinct from the wrongful arrest analysis
15 conducted above, the Court separately considers whether Officer Ellis is entitled to qualified
16 immunity on the excessive force claim. *See Blankenhorn v. City of Orange*, 485 F.3d 463, 477
17 (9th Cir. 2007) (“Because the excessive force and false arrest factual inquiries are distinct,
18 establishing a lack of probable cause to make an arrest does not establish an excessive force claim,
19 and vice-versa.”). Resolving all factual disputes in favor of Mr. Salinas-Ibarra, the Court
20 concludes that every reasonable officer in Officer Ellis’ position would have known that she was
21 violating the constitution by stomping on Mr. Salinas-Ibarra’s foot when he was already
22 handcuffed and cooperating with instructions to sit down. The Court acknowledges that the
23 qualified immunity analysis would be much different if the Court were to credit Officer Ellis’
24 account, but the disputed facts in the record prevent a finding of qualified immunity. Accordingly,

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26 ⁸ As explained above, Mr. Salinas-Ibarra’s deposition testimony is not consistent with the
27 allegations in the Amended Complaint. He testified that his foot injury happened before
28 Johnathon left the residence, and not, as alleged, while he was advising Johnathon to calm down.
Compare Salinas-Ibarra Depo. 48:17-20 with Amended Compl. ¶ 24. Nevertheless, the Court
draws all reasonable inferences from Mr. Salinas-Ibarra’s testimony on summary judgment,
including his timeline regarding Officer Ellis’ use of force. *City of Pomona*, 750 F.3d at 1049.

1 Officer Ellis’ motion for summary judgment on the excessive force claim is DENIED.

2 As explained above, a government official sued under § 1983 is entitled to qualified
3 immunity unless the plaintiff shows that (1) the official violated a statutory or constitutional right,
4 and (2) the right was “clearly established” at the time of the challenged conduct. *Plumhoff v.*
5 *Rickard*, 134 S.Ct. 2012, 2023 (2014) (citing *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2080 (2011)).
6 Because Mr. Salinas-Ibarra must succeed on both prongs, the Court addresses each in turn. *See*
7 *Nelson v. City of Davis*, 685 F.3d 867, 875 (9th Cir. 2012). However, where factual disputes exist,
8 summary judgment on the issue of qualified immunity is appropriate only if Officer Ellis is
9 entitled to qualified immunity on the facts as alleged by the non-moving party. *Blankenhorn v.*
10 *City of Orange*, 485 F.3d 463, 477–78 (9th Cir. 2007); *see also Liston v. Cty. of Riverside*, 120
11 F.3d 965, 977 (9th Cir. 1997) (“For the purposes of summary judgment, even in a qualified
12 immunity case, we must assume the nonmoving party’s version of the facts to be correct.”) Thus,
13 the Court views the disputed facts in Mr. Salinas-Ibarra’s favor in determining whether Officer
14 Ellis is entitled to qualified immunity.

15 **1. Constitutional Violation**

16 Under the first prong of qualified immunity at summary judgment, Officer Ellis must show
17 that no rational trier of fact could find that her use of force violated Mr. Salinas-Ibarra’s Fourth
18 Amendment rights to be free from unreasonable searches and seizures. If the evidence viewed in
19 the light most favorable to Mr. Salinas-Ibarra could lead a reasonable jury to find that Officer Ellis
20 used excessive force, then she is not entitled to summary judgment on the excessive force claim.
21 *See Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc). The Fourth Amendment
22 “guarantees citizens the right to be secure in their persons . . . against unreasonable . . . seizures of
23 the person.” *Graham v. Connor*, 490 U.S. 386, 394 (1989) (internal quotation marks omitted)
24 (alteration in original). “[A]ll claims that law enforcement officers have used excessive force –
25 deadly or not – in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen
26 should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.” *Id.* at 395;
27 *see also City of Hemet*, 394 F.3d at 700–01.

28 The “reasonableness” of a particular seizure depends on how it was carried out. *Graham*,

1 490 U.S. at 395. The “objective reasonableness” of an officer’s use of force in a particular case is
 2 determined “in light of the facts and circumstances confronting [her], without regard to [her]
 3 underlying intent or motivation.” *Id.* at 396–97. In *Graham*, the Supreme Court set forth a non-
 4 exhaustive list of factors to be considered in evaluating whether the force used to effect a
 5 particular seizure is reasonable, including (1) the severity of the crime at issue; (2) whether the
 6 suspect poses an immediate threat to the safety of the officers or others; and (3) whether the
 7 suspect actively resists detention or attempts to evade arrest by flight. *Id.* at 396; *see also Liston v.*
 8 *Cty. of Riverside*, 120 F.3d 965, 976 (9th Cir. 1997), *as amended* (Oct. 9, 1997). “Because this
 9 inquiry is inherently fact specific, the determination whether the force used to effect an arrest was
 10 reasonable under the Fourth Amendment should only be taken from the jury in rare cases.” *Green*
 11 *v. City & Cty. of San Francisco*, 751 F.3d 1039, 1049 (9th Cir. 2014) (internal quotations
 12 omitted); *see also Avina v. United States*, 681 F.3d 1127, 1130 (9th Cir. 2012) (“summary
 13 judgment or judgment as a matter of law in excessive force cases should be granted sparingly”).

14 Moreover, the Supreme Court in *Graham* explained that evaluating an excessive force
 15 claim “requires a careful balancing of the nature and quality of the intrusion on the individual’s
 16 Fourth Amendment interests against the countervailing governmental interests at stake.” 490 U.S.
 17 at 396 (internal quotation marks and citation omitted). “The calculus of reasonableness must
 18 embody allowance for the fact that police officers are often forced to make split-second judgments
 19 – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that
 20 is necessary in a particular situation.” *Id.* at 396-97. “The ‘reasonableness’ of a particular use of
 21 force must be judged from the perspective of a reasonable officer on the scene, rather than with the
 22 20/20 vision of hindsight.” *Id.* at 396 (internal quotation marks and citation omitted).

23 The Ninth Circuit has articulated a three-step approach to *Graham* balancing. *See Glenn v.*
 24 *Washington Cnty.*, 673 F.3d 864, 871 (9th Cir. 2011). First, the court “must assess the severity of
 25 the intrusion on the individual’s Fourth Amendment rights by evaluating the type and amount of
 26 force inflicted.” *Id.* (internal quotation marks and citation omitted). Second, the court must
 27 “evaluate the government’s interest in the use of force.” *Id.* Finally, the court must “balance the
 28 gravity of the intrusion on the individual against the government’s need for that intrusion.” *Id.*

1 (internal quotation marks and citation omitted); *see also Meredith v. Erath*, 342 F.3d 1057, 1061
 2 (9th Cir. 2003) (“This standard requires us to balance the amount of force applied against the need
 3 for that force.”).

4 Despite the *Graham* factors and the approach laid out in *Glenn*, the Court must keep in
 5 mind that “there are no per se rules in the Fourth Amendment excessive force context; rather,
 6 courts must still sloop their way through the factbound morass of ‘reasonableness.’” *See Mattos v.*
 7 *Agarano*, 661 F.3d 433, 441 (9th Cir. 2011) (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)).
 8 The Court notes that in their briefing, neither party appropriately presents their argument under the
 9 *Glenn* framework. Nonetheless, the Court uses the Ninth Circuit’s approach to *Graham* balancing
 10 in order to “balance the amount of force applied against the need for that force.” *Bryan v.*
 11 *MacPherson*, 630 F.3d 805, 826 (9th Cir. 2010); *Meredith v. Erath*, 342 F.3d at 1061.

12 **i. Nature and Quality of the Intrusion**

13 First, as to the severity of the intrusion on Mr. Salinas-Ibarra’s Fourth Amendment rights,
 14 Mr. Salinas-Ibarra testified that Officer Ellis “smashed” his foot. Salinas-Ibarra Depo. 46:3-21.
 15 The Court considers this to be an intermediate use of force because it was capable of inflicting
 16 significant pain and causing serious injury—indeed it is undisputed that the maneuver resulted in a
 17 broken bone. The Ninth Circuit has recognized that “[t]he police arsenal includes many different
 18 types of force, which intrude upon the Fourth Amendment rights of the individual to varying
 19 degrees.” *Nelson v. City of Davis*, 685 F.3d 867, 878 (9th Cir. 2012). Moreover, “physical blows
 20 or cuts often constitute a more substantial application of force than categories of force that do not
 21 involve a physical impact to the body.” *Id.* (internal quotations and citation omitted).

22 Although Officer Ellis describes her physical maneuver to get Mr. Salinas-Ibarra into a
 23 seated position differently, the Court must accept Mr. Salinas-Ibarra’s testimony for the purposes
 24 of summary judgment on the excessive force claim. It is undisputed that Officer Ellis used
 25 physical force to get Mr. Salinas-Ibarra to sit down. However, “[n]either tackling nor punching a
 26 suspect to make an arrest necessarily constitutes excessive force.” *Blankenhorn v. City of Orange*,
 27 485 F.3d 463, 477 (9th Cir. 2007). “Not every push or shove, even if it may seem unnecessary in
 28 the peace of the judge’s chambers, ... violates the Fourth Amendment”. *Graham*, 490 U.S. at 396

1 (internal quotations and citation omitted).

2 Indeed, officers have been granted qualified immunity for “leg sweep” takedowns of an
 3 arrestee in certain circumstances, such as when the arrestee refused commands to get down. *Huber*
 4 *v. Coulter*, No. CV 12-3293-GHK (JEM), 2015 WL 13173223, at *12 (C.D. Cal. Feb. 10,
 5 2015), *aff’d*, 684 F. App’x 623 (9th Cir. 2017). However, the Court in *Huber* also noted that “the
 6 floor was carpeted and plaintiff suffered no injuries other than bruises,” demonstrating that the
 7 *Graham* inquiry is fact intensive. The *Huber* court ultimately granted the defendants’ summary
 8 judgment motion based on qualified immunity under the second “clearly established” prong, but
 9 with respect to the first prong it unequivocally held that “[t]he objective reasonableness of
 10 performing a leg sweep or similar takedown maneuver against an unresisting or minimally
 11 resisting individual is a fact-specific issue that often cannot be resolved on summary judgment.”
 12 2015 WL 13173223, at *13 (C.D. Cal. Feb. 10, 2015).

13 In determining whether Officer Ellis’ “kick” or “leg sweep” was reasonable in this case,
 14 the Court must next consider the amount of physical force used in light of the governmental
 15 interests at stake.

16 **ii. Governmental Interest in Use of Force**

17 Under *Graham v. Connor*, the Court evaluates the government’s interest in the use of force
 18 by examining three core factors: (1) the severity of the crime at issue; (2) whether the suspect
 19 poses an immediate threat to the safety of the officers or others; and (3) whether the suspect is
 20 actively resisting arrest or attempting to evade arrest by flight. 490 U.S. at 396; *see also Deorle v.*
 21 *Rutherford*, 272 F.3d 1272, 1280 (9th Cir. 2001); *Bryan v. MacPherson*, 630 F.3d 805, 826 (9th
 22 Cir. 2010). These factors are not exclusive and are “simply a means by which to determine
 23 objectively ‘the amount of force that is necessary in a particular situation.’” *Deorle*, 272 F.3d at
 24 1280 (quoting *Graham*, 490 U.S. at 396-97).

25 In other words, the Court examines the totality of the circumstances and considers
 26 “whatever specific factors may be appropriate in a particular case, whether or not listed
 27 in *Graham*.” *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir.1994). For example, in some cases
 28 the Court may find it necessary to consider the availability of alternative methods of capturing or

1 subduing a suspect. *See City of Hemet*, 394 F.3d at 701. Although officers need not employ the
2 least intrusive degree of force possible, they must consider less intrusive methods of effecting an
3 arrest, and the presence of feasible alternatives factors into the *Graham* analysis. *Bryan*, 630 F.3d
4 at 831 n.15.

5 Here, under the totality of the circumstances and viewing the evidence in the light most
6 favorable to Salinas-Ibarra, the evidence suggests that Officer Ellis’ use of force against him was
7 not justified under the circumstances. As to the first factor, Mr. Salinas-Ibarra testified that he
8 committed no crime and did not resist arrest, nor did he match the description of Johnathon
9 Salinas—the individual who was reported to be threatening family members with a baseball bat.
10 Officer Ellis testified that Mr. Salinas-Ibarra was arrested for resisting, delaying, and not
11 complying with multiple orders to be seated on the curb. Ellis Decl. ¶ 10. Thus, the severity of
12 the crime does not weigh heavily in the Court’s analysis.

13 The “most important” factor in considering the governmental interest in the use of force
14 under *Graham* is whether the suspect posed an “immediate threat to the safety of the officers or
15 others.” *City of Hemet*, 394 F.3d at 702 (quoting *Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir.
16 1994)). “A simple statement by an officer that he fears for his safety or the safety of others is not
17 enough; there must be objective factors to justify such a concern.” *Deorle*, 272 F.3d at 1281. The
18 Court cannot accept Officer Ellis’ version of events and her testimony that Mr. Salinas-Ibarra was
19 standing up repeatedly, moving forward and yelling at Johnathon, interfering with legitimate law
20 enforcement objectives. Rather, Mr. Salinas-Ibarra testified that the foot injury occurred *before*
21 Johnathon even came outside, and that Mr. Salinas-Ibarra remained on the ground after that. A
22 reasonable jury could credit Mr. Salinas-Ibarra’s version of the facts and find based on these facts
23 that Mr. Salinas-Ibarra did not pose an immediate threat to the safety of the officers or to anyone
24 else at the time of his arrest.

25 The third consideration under *Graham*’s governmental interest factor is whether the
26 suspect was actively resisting arrest or attempting to evade arrest by flight. 490 U.S. at 396. Mr.
27 Salinas-Ibarra did not attempt to flee, however it is disputed whether he resisted because he
28 disputes that he ever stood up again after he was initially seated. The conflicting factual scenarios

1 presented by Mr. Salinas-Ibarra and Officer Ellis make clear that whether Mr. Salinas-Ibarra was
2 resisting or refusing to comply with Officer Ellis' commands to sit down is a question for the jury.

3 **iii. Balancing Competing Interests**

4 Ultimately, under *Graham*'s "core factors," when the evidence is viewed in the light most
5 favorable to Mr. Salinas-Ibarra, a reasonable jury could find that Officer Ellis' use of force was
6 unreasonable. The Court has also considered whether less intrusive options were available to
7 Officer Ellis at the time of the incident. *See Young v. Cty. of Los Angeles*, 655 F.3d 1156, 1165-66
8 (9th Cir. 2011). In *Young*, the Ninth Circuit held that "it is rarely necessary, if ever, for a police
9 officer to employ substantial force without warning against an individual who is suspected only of
10 minor offenses, is not resisting arrest, and, most important, does not pose any apparent threat to
11 officer of public safety." *Id.* at 1167-68. The Ninth Circuit took into account that less intrusive
12 options were available to the officer: for example, the officer could have given the suspect a
13 warning that disobedience would lead to the use of force against him, or could have "simply begun
14 to effect [the plaintiff]'s arrest by attempting to handcuff him." *Id.* at 1165-66. Officer Ellis
15 concedes that she did not warn Mr. Salinas-Ibarra before using force against him. Ellis Depo.
16 34:10-11; *see Deorle*, 272 F.3d at 1284 ("[W]arnings should be given, when feasible, if the use of
17 force may result in serious injury, and...the giving of a warning or the failure to do so is a factor to
18 be considered in applying the *Graham* balancing test.")

19 The Court recognizes that dangerous circumstances such as those presented here require
20 police officers to make "split second" judgments. *See Graham*, 490 U.S. at 397 (finding that
21 police officers must act "in circumstances that are tense, uncertain, and rapidly evolving.")
22 However, it is disputed whether Mr. Salinas-Ibarra posed a threat to the officers, interfered with
23 the officers' interactions with Johnathon, complied with instructions to remain seated, or resisted
24 arrest. Consequently, when all of the facts are construed in favor of Mr. Salinas-Ibarra, Officer
25 Ellis has not demonstrated that her use of force was objectively reasonable as a matter of law.
26 Accordingly, she is not entitled to qualified immunity under the first prong.

2. Clearly Established

Because the Court finds that there is a triable question of fact regarding whether a constitutional violation occurred, the Court next determine whether Officer Ellis violated a clearly established right at the time of her conduct on March 7, 2015. The Court concludes that, resolving factual disputes in Mr. Salinas-Ibarra’s favor, it was clearly established that using a leg sweep, stomp, or kick to take down a non-resisting and compliant individual without warning, resulting in a broken foot, was unconstitutional. *See Blankenhorn*, 485 F.3d at 481 (“In assessing the state of the law at the time of Blankenhorn’s arrest, we need look no further than *Graham*’s holding that force is only justified when there is a need for force.”). A reasonable officer would have known that such conduct violated the Fourth Amendment. *See, e.g., McCaig v. Raber*, 515 F. App’x 551, 556 (6th Cir. 2013) (“Because it was clearly established that the use of force on a non-resistant or passively-resistant individual may constitute excessive force, and because a reasonable jury could find that [the plaintiff] posed little or no threat based on the facts alleged, the district court did not err in denying [defendant officer’s] motion for summary judgment based on qualified immunity.”)

The Supreme Court has repeatedly admonished courts to consider clearly established constitutional violations as it relates to the particular circumstances of the case, and must avoid defining it “at a high level of generality.” *See White v. Pauly*, 137 S.Ct. 548, 551-52 (2017). Further, the Ninth Circuit has recently emphasized that the plaintiff has the burden under the second prong of qualified immunity to point to case law indicating that the right allegedly violated was clearly established. “Except in the rare case of an ‘obvious’ instance of constitutional misconduct...Plaintiffs must *identify a case* where an officer acting under similar circumstances as [Officer Ellis] was held to have violated the Fourth Amendment.” *Sharp v. County of Orange*, No. 15-56146, 2017 WL 4126947, at *7 (9th Cir. Sept. 19, 2017) (emphasis in original) (quoting *White v. Pauly*, 137 S.Ct. at 552). The preexisting law identified must also be “controlling—from the Ninth Circuit or Supreme Court—or otherwise be embraced by a consensus of courts outside the relevant jurisdiction.” *Id.* (internal citation and quotation omitted).

Mr. Salinas-Ibarra points to *Young v. Cty. of Los Angeles* to demonstrate that it was clearly established on March 7, 2015, that an officer may not “use significant force against a suspect who

1 was suspected of a minor crime, posed no apparent threat to officer safety, and could be found not
2 to have resisted arrest.” 655 F.3d 1156, 1168 (9th Cir. 2011); *see* Opp’n at 16. In *Young*, a deputy
3 pulled Young over for driving with an unfastened seatbelt, and Young refused to stay in his truck
4 as instructed. 655 F.3d at 1159. Without warning, the deputy approached Young from behind
5 while he was sitting on a sidewalk curb and pepper sprayed him. *Id.* When Young got up to back
6 away from the spray, the deputy struck him numerous times with a baton, and struck him again
7 even after he was on the ground in handcuffs. *Id.* at 1160. The Ninth Circuit reversed the district
8 court’s grant of summary judgment on the issue of qualified immunity because well-established
9 law put reasonable officers on “explicit and unambiguous notice” that the use of intermediate
10 force would constitute an excessive response to a suspect’s misdemeanor and disobedience of a
11 police order. *Id.* at 1168 (citing *Blankenhorn v. City of Orange*, 485 F.3d 463, 468, 479 (9th Cir.
12 2007)).

13 Although the facts differ somewhat from those presented here, *Young* and *Blankenhorn*
14 clearly established as early as 2001 that it was unconstitutional for an officer to use significant
15 force against individuals suspected of minor crimes, who were not resisting arrest, and posed no
16 threat to officer safety. According to Mr. Salinas-Ibarra, he was a non-resisting misdemeanor
17 suspect already in handcuffs who was kicked or stomped on without warning, resulting in a
18 broken foot. The Court agrees that summary judgment under the second prong of qualified
19 immunity is not appropriate at this stage.

20 Officer Ellis does not argue that she is entitled to qualified immunity under Mr. Salinas-
21 Ibarra’s set of facts. Rather, she argues that her “slight” use of force was necessitated only by Mr.
22 Salinas-Ibarra’s “own persistent refusal to remain in place,” and there is no “clearly established
23 law” forbidding her use of force under such circumstances. Mot. at 4. When confronted with Mr.
24 Salinas-Ibarra’s testimony that contradicts her own, she argues that his factual assertions “lack
25 foundation” and call for medical opinion. Reply at 4. Again relying on *Huber*, Officer Ellis urges
26 the Court to find that qualified immunity applies to the use of a leg sweep or a more modest
27 degree of force to return an individual to a seated position on the curb. *Id.*

28

1 In *Huber*, the court found that the *Graham* standard is “cast at a high level of generality”
 2 and by itself clearly establishes a constitutional right only in an obvious case. *Huber v. Coulter*,
 3 No. CV 12-3293-GHK (JEM), 2015 WL 13173223, at *14 (C.D. Cal. Feb. 10, 2015), *aff’d*, 684 F.
 4 App’x 623 (9th Cir. 2017) (interpreting *Brosseau v. Haugen*, 543 U.S. 194, 199, 125 S. Ct. 596,
 5 599, 160 L. Ed. 2d 583 (2004)). Under the factual scenario set forth by the plaintiff in *Huber*, the
 6 Court held that “it would not have been clear to a reasonable officer that a takedown of an
 7 unresisting arrestee with the level of force and under the circumstances present here would violate
 8 the Fourth Amendment.” 2015 WL 13173223, at *14. The court noted that the plaintiff did not
 9 suffer any injuries beyond bruising, and further considered his prior physical resistance that
 10 distinguished *Huber* “from the usual case involving a non-resisting arrestee.” *Id.* Mr. Salinas-
 11 Ibarra, on the other hand, describes himself as the quintessential non-resisting arrestee who was
 12 already detained in handcuffs and presents evidence that he suffered a broken foot from the
 13 incident. *See* Salinas-Ibarra Depo. 13:3-8; 43:11-13; 77:18-21.

14 The *Huber* court distinguished cases involving takedowns in which courts denied qualified
 15 immunity, in part because they involved more serious injuries to the plaintiff. *See, e.g., McCaig*,
 16 515 F. App’x at 555 (finding that the plaintiff’s right to be free from excessive force involving a
 17 takedown maneuver that broke his wrist was clearly established because “cases in this circuit
 18 clearly establish the right of [persons] who pose no safety risk to the police to be free from
 19 gratuitous violence during arrest.”); *See also Montoya v. City of Flandreau*, 669 F.3d 867, 873
 20 (8th Cir. 2012) (“Assuming once again [plaintiff’s] story is true, the contours of the right at issue
 21 were sufficiently clear to inform a reasonable officer in [the officer defendant’s] position it was
 22 unlawful for him to perform a ‘leg sweep’ and throw to the ground a nonviolent, suspected
 23 misdemeanor who was not threatening anyone, was not actively resisting arrest, and was not
 24 attempting to flee.”) The Court finds that Mr. Salinas-Ibarra’s version of events paints a similar
 25 picture to those circumstances presented in *McCaig* and *Montoya*, and is distinguishable from
 26 *Huber*.

27 Crediting Mr. Salinas-Ibarra’s testimony, the constitutional question was “beyond debate”
 28 such that every reasonable officer on March 7, 2015, would have known that leg sweeping or

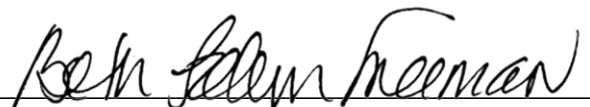
1 stomping on an already handcuffed and complying individual’s foot without warning in order to
2 get him to sit down violated his Fourth Amendment rights. *See al-Kidd*, 131 S. Ct. at 2083.
3 Accordingly, Officer Ellis is not entitled to qualified immunity. *See Young*, 655 F.3d at 1167-68
4 (holding that “it is rarely necessary, if ever, for a police officer to employ substantial force without
5 warning against an individual who is suspected only of minor offenses, is not resisting arrest, and,
6 most important, does not pose any apparent threat to officer of public safety.”). Officer Ellis’
7 motion for summary judgment on the excessive force claim is DENIED.

8 **V. ORDER**

9 For the foregoing reasons, IT IS HEREBY ORDERED that Officer Ellis’ Motion for
10 Summary Judgment is:

- 11 (1) GRANTED as to Mr. Salinas-Ibarra’s claim for wrongful detention;
- 12 (2) DENIED as to Mr. Salinas-Ibarra’s claim for wrongful arrest;
- 13 (3) DENIED as to Mr. Salinas-Ibarra’s claim for excessive force.

14
15 Dated: March 27, 2018

16 
17 BETH LABSON FREEMAN
18 United States District Judge
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