



1 (Am. Compl., Docket no. 13, ¶ 20.) In another, it says he suffered physical injuries, but fails  
2 to explain what kind, or what the cause was (e.g., whether he was shot, injured by flying  
3 debris, or something else).<sup>1</sup> (*Id.*, ¶ 20.) And in another place it says he incurred costs hiring  
4 doctors to “examine and treat his emotional injuries,” and also costs for other unspecified  
5 “emergency treatment” and “other incidental medical expenses.” (*Id.*, ¶ 29.) What type of  
6 medical care this is referring to is left unexplained.

7 The amended complaint also fails to make clear whether Lerma-Mayoral was actually  
8 targeted, and whether he was shot. It says law enforcement officials shot at him, “nearly  
9 missing” him. (Am. Compl., Docket no. 15, ¶ 43.) It is unclear whether this means they  
10 narrowly missed him or whether it means they almost failed to hit him (*i.e.*, that they were  
11 trying to kill him but only superficially injured him.) In various places it alleges they targeted  
12 him or shot at him, and in others it alleges they merely shot in his direction or into his vehicle.  
13 (*Compare id.* ¶¶ 2, 15, 91 (alleging Defendants “shot at” him) and ¶ 16 (alleging that just  
14 before the shooting began Defendants pointed their firearms’ laser sights at him); with ¶¶ 17,  
15 43, 49, 96, 98 (alleging they shot at or into his vehicle).) The Amended Complaint also  
16 refers to “excessive force and brutality,” “excessive and deadly force,” and “force used upon  
17 him.” (*Id.*, ¶¶ 2, 49), implying that the officers actually shot him.<sup>2</sup> Elsewhere it says no bullets  
18 hit him. (*Id.* ¶ 17.)T

19 The Amended Complaint also says, in on place, that officers fired multiple rounds  
20 through the driver’s side window (where he was sitting). (Am. Compl. ¶ 17.) But in another,  
21 it says a single bullet passed through the driver’s side window. (*Id.*, ¶ 98.)

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23 <sup>1</sup> The Amended Complaint alleges that Defendants failed to properly train officers to  
24 take steps to prevent detainees from attempting suicide or injuring themselves. (*Id.*, ¶ 50.)  
25 Because no suicide attempt or self-injury is mentioned elsewhere, it is unclear why this  
allegation is included, and whether Lerma-Mayoral is suing over self-inflicted injuries that he  
believes Defendants had a duty to prevent.

26 <sup>2</sup> As the Court’s order noted, merely pointing a firearm at someone for no reason can,  
27 depending on the circumstances, amount to excessive force. *See Tekle v. United States*,  
28 511 F.3d 839, 845 (9<sup>th</sup> Cir. 2007); *Robinson v. Solano County*, 278 F.3d 1007, 1014 (9<sup>th</sup> Cir.  
2002) (en banc). But by mentioning “brutality” and force being “used on” Lerma-Mayoral, and  
that the force used was “deadly,” the Amended Complaint suggests the force was more than  
merely pointing of firearms.

1 All this affects both the nature and plausibility of the Amended Complaint's claims,  
2 which are important considerations at the pleading stage. See *Bell Atlantic Corp. v.*  
3 *Twombly*, 550 US. 544, 555 (2007) (explaining that a plaintiff must plead enough fact to give  
4 fair notice of what his claim is and on what grounds it rests.) See also *id.* at 558 (“[S]ome  
5 threshold of plausibility must be crossed at the outset” before a case is permitted to  
6 proceed). Specifically, is Lerma-Mayoral alleging that the officers targeted him and fired a  
7 hail of bullets at him? If so, is he alleging that he was physically injured either by a bullet or  
8 in some other way, such as by flying debris? Or is he alleging that the officers were shooting  
9 into the vehicle, at his passenger, and not trying to hit him? Even if the officers were not  
10 shooting at him, Lerma-Mayoral may still have a claim, but it is a different kind of claim.

11 Defendants are entitled to know the nature of the claims against them, and the  
12 alleged grounds of those claims. See *Twombly*, 550 US. at 555. See also *Toguchi v.*  
13 *Matayoshi*, 2015 WL 1778366, at \*5 (D. Haw., Apr. 17, 2015) (holding that defendants in  
14 intentional infliction of emotional distress case, before they could be expected to respond,  
15 were entitled to know what specific conduct is alleged to support the claim, when it occurred,  
16 and why that conduct rises to the level of the outrageous).

17 Moreover, the Court is under a continuing obligation to confirm its own jurisdiction,  
18 particularly in removed cases such as this one. See *Sparta Surgical Corp. v. Nat'l Ass'n.*  
19 *Sec. Dealers, Inc.*, 159 F.3d 1209, 1211 (9th Cir. 1998). If it becomes clear Lerma-Mayoral  
20 cannot maintain any federal claim, the case would likely need to be remanded. Without  
21 knowing what Lerma-Mayoral's claim really is, the Court cannot carry out its obligations.

22 The Court therefore proposes to treat the following allegations as abandoned:

- 23 a. that officers intended to or tried to shoot Lerma-Mayoral
- 24 b. that Lerma-Mayoral was hit by any bullets, flying debris, or anything else
- 25 c. that Lerma-Mayoral was physically injured by the acts or omissions alleged.

26 The Court proposes to construe the Amended Complaint as alleging that Lerma-Mayoral  
27 suffered purely emotional injuries, that officers were trying to (and did) shoot his passenger

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1 and not him when they fired into the vehicle, and that officers only briefly pointed their  
2 weapons at him before the shooting began.

3 If Lerma-Mayoral disagrees with the Court's proposed construction of his Amended  
4 Complaint in any way, he may file a second amended complaint, which must plainly allege  
5 facts to clear up the ambiguities noted in this order and in the March 29 order. His second  
6 amended complaint, if any, must be filed by **May 12, 2016**.

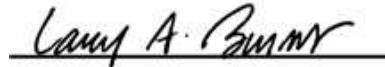
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8 **IT IS SO ORDERED.**

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10 DATED: April 29, 2016

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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