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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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JANICE ROBINSON, as natural mother of her
minor child JUWAUN ROBINSON, and
JUWAUN ROBINSON, a minor,

No. 2:14-cv-0298-LDG-GWF

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ORDER

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Plaintiffs,

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v.

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EVERETT GRAVES, et al.,

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Defendants.

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Plaintiff Juwaun Robinson was a pretrial detainee at the Juvenile Justice Services

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Detention when the constitutional violations allegedly occurred. The Clark County defendants

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have filed a motion for summary judgment (#24, opposition #47, reply #53); defendant Graves has

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filed a motion for summary judgment (#25, opposition #46, reply #54; and plaintiffs have filed a

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cross-motion for summary judgment against defendant Graves (#48, response #55, reply #56). In

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his briefing, defendant Graves seizes on the fact that plaintiffs pled an Eighth Amendment claim

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(which applies to convicted individuals), rather than a Fourteenth Amendment claim (which

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applies to pretrial detainees) in their complaint. In their motion for summary judgment (#24,

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opposition #47, reply #53), the Clark County defendants refer to the same deficiency in their

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qualified immunity analysis. While the standards of an Eighth Amendment and a Fourteenth

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Amendment claim in a case such as this are normally interchangeable, that does not relieve a

1 plaintiff of pleading the correct constitutional violation. In their oppositions to summary
2 judgment, plaintiffs complain that defendants did not raise the issue before the motions.
3 Defendants, of course, had no such duty. Plaintiffs also request that they should be allowed to
4 amend the complaint.

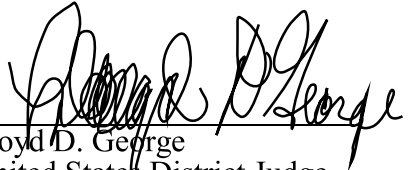
5 Rule 15(a) permits a party to amend its pleading once as a matter of right within 21 days
6 after serving the pleading or, if the pleading is one to which a responsive pleading is required, 21
7 days after the service of a responsive pleading or 21 days after service of a motion under 12(b),
8 (e), or (f), whichever is earlier. In all other cases, a party may amend its pleading only with the
9 opposing party's written consent or the court's leave.

10 The court will order that plaintiffs file a separate motion for leave to amend their complaint
11 to include a Fourteenth Amendment claim. Any responsive or reply briefs shall be filed as
12 provided by the rules. The court will deny without prejudice the three pending motions for
13 summary judgment subject to their reinstatement or supplementation by leave of court after the
14 Rule 15 motion is decided.

15 THE COURT HEREBY ORDERS that plaintiffs shall have 30 days from the date of this
16 order in which to file its motion to amend the complaint as directed above.

17 THE COURT FURTHER ORDERS that the Clark County defendants' motion for
18 summary judgment (#24), defendant Graves' motion for summary judgment (#25), and plaintiffs'
19 counter-motion for summary judgment against defendant Graves (#48) are DENIED without
20 prejudice subject to their reinstatement or supplementation by leave of court after the Rule 15
21 motion is decided.

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23 DATED this 21 day of September, 2015.

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25 Lloyd D. George
26 United States District Judge