No. 24-6211

IN THE

United States Court of Appeals for the Ninth Circuit

MARCUS LEE LUSTER,
Plaintiff-Appellee,
v.
ANDREW REIDY, SERGEANT, ALBERT PIÑA, SERGEANT,
Defendants-Appellants,
COUNTY OF PIMA, ET AL.,
Defendants.

On Appeal from the U.S. District Court for the
District of Arizona, No. 4:22-cv-00519
Judge Rosemary Márquez

PLAINTIFF-APPELLEE MARCUS LEE LUSTER'S RESPONSE BRIEF

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INTRODUCTION

Within a two-month period, Defendants Andrew Reidy and Albert Piña subjected Marcus Lee Luster to two clear violations of his constitutional rights while he was detained before trial at the Pima County Adult Detention Center. Taking the facts in the light most favorable to Mr. Luster, the district court properly held that both Defendants violated clearly established law.

First, in July 2022, Defendant Piña strapped Mr. Luster onto a four-point restraint board—an extreme measure in which a person is fully immobilized by having his limbs tied to a board—for nearly two hours. Defendant Piña did so without any legitimate justification. As the district court recognized, Mr. Luster had "complied with all directives," "did not make any threats, and thus did not pose a threat to others or to himself." ER22. Instead, Defendant Piña used the restraint board as an unlawful form of punishment. Mr. Luster had previously objected to an order that he give up the property in his cell, but after speaking with a staff member, he agreed to do so. Defendant Piña declared, however, "It's too late now." ER18. In order to punish Mr. Luster, Defendant Piña ordered the jail's tactical team to place Mr. Luster onto the restraint board, causing Mr. Luster pain throughout his body and mental trauma that exacerbated his schizophrenia.

Second, in August 2022, Defendant Reidy failed to obtain medical care when Mr. Luster fell, hit his head, and was knocked unconscious. Mr. Luster had just

returned from the hospital the day before, where he was diagnosed with partial paralysis and numbness on the right side of his body. His doctors specifically instructed that, if he were to fall or lose consciousness, he should be brought back to the hospital immediately. But Defendant Reidy did not bring Mr. Luster back to the hospital. Instead, he listened as a nurse spewed vulgarities and racist epithets at Mr. Luster, told him that she was not going to do anything to help him, and declared that she did not care if he died. Defendant Reidy then left Mr. Luster, lying paralyzed on the floor of his cell, for eight hours. Mr. Luster was in excruciating pain, and because he could not move, he was forced to urinate on himself. He thought he was going to die. Yet throughout the eight-hour period, Defendant Reidy never helped Mr. Luster or even returned to check if he was alive.

As the district court properly held, Defendants Reidy and Piña are not entitled to summary judgment or qualified immunity. They did not act "within the bounds of the law," as they claim in their opening brief. Opening Br. 8. Defendant Piña used an extreme form of total-body restraint not for any legitimate reason, but as an unlawful form of punishment. Defendant Reidy ignored Mr. Luster's obvious medical crisis and abandoned him without obtaining the medical care he needed. No reasonable official would think that these actions were lawful. Accordingly, the decision below should be affirmed.

JURISDICTIONAL STATEMENT

In this interlocutory appeal, this Court's jurisdiction is limited to the question of "whether the defendant[s] would be entitled to qualified immunity as a matter of law, assuming all factual disputes are resolved, and all reasonable inferences are drawn, in plaintiff's favor." *Russell v. Lumitap*, 31 F.4th 729, 736 (9th Cir. 2022). This Court lacks jurisdiction to consider any "*fact*-related dispute about the pretrial record, namely, whether or not the evidence in the pretrial record was sufficient to show a genuine issue of fact for trial." *Estate of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021). Such factual disputes include challenges to the admissibility of evidence relied on by the district court. *See Munoz v. Curtis*, 47 F. App'x 501, 502 (9th Cir. 2002) (declining to reach the defendants' "argument, raised for the first time on appeal, that [the plaintiff] failed to produce authenticated, admissible evidence to support his assertions"); *Voskanyan v. Upchurch*, No. 21-55333, 2022 WL 4181664, at *2 (9th Cir. Sept. 13, 2022).

STATEMENT OF THE ISSUES

1. Whether Defendant Piña violated Mr. Luster's clearly established Fourteenth Amendment rights by strapping Mr. Luster onto a four-point restraint board, even though Mr. Luster was fully compliant and not threatening anyone, as a form of punishment.

2. Whether Defendant Reidy violated Mr. Luster's clearly established Fourteenth Amendment rights by refusing to obtain medical care and leaving Mr. Luster paralyzed on the floor of his cell for eight hours.

STATEMENT OF THE CASE

I. Factual Background

In 2022, Mr. Luster was confined at the Pima County Adult Detention Center while awaiting trial. ER141. There, he suffered two constitutional violations in the span of two months.

A. Defendant Piña Punishes Mr. Luster By Placing Him On A Restraint Board For Almost Two Hours.

In July 2022, Mr. Luster was assigned to the administrative segregation unit at the jail. ER17. On July 11, an officer ordered Mr. Luster to give up the property he had in his cell, including several books and a radio, due to his disciplinary status. ER17-18; SER-16. Mr. Luster refused, explaining that prisoners in the administrative segregation unit were not ordinarily required to give up their property. ER18; SER-4.[1] He argued that depriving only him of his property violated his constitutional rights. SER-11.

Defendant Piña arrived and told Mr. Luster to give up his property, and Mr. Luster again pointed out that other prisoners in the unit were allowed to keep their

[1] The administrative segregation unit in which Mr. Luster was housed was not a disciplinary housing unit. *See* ER17.

property. ER18. Because Mr. Luster suffers from schizophrenia, Defendant Piña called a member of the psychiatric staff to help resolve the situation. ER18-19; SER-4.

Consistent with the jail's de-escalation policy, the staff member asked Mr. Luster if he would agree to give up his property and "cuff up" before the jail's Tactical Assistance Group (TAG) arrived. ER18; ER147. The TAG team is an armed response group that, according to the jail's policy, may be used only as "a last resort" "where jail staff have been unable to obtain compliance from a detainee." ER79; *see* ER92.

Mr. Luster agreed to "cuff up" and comply with the officers' orders. ER18; SER-4. As a result, the staff member told Defendant Piña that Mr. Luster would give up his property and be placed in handcuffs. ER18. The TAG team was still about 30 minutes away from arriving. ER19.

Even though the situation had been resolved, however, Defendant Piña said, "It's too late now." ER18. He waited about 30 minutes for the TAG team to arrive. ER19. Nine officers came to Mr. Luster's cell, wearing protective gear and helmets, and armed with a shield, a taser, a shotgun firing less-lethal "pepperball" ammunition, and chemical agents. SER-11; SER-14. When they arrived, Defendant Piña ordered the TAG team to forcibly place Mr. Luster on a four-point restraint

board, in order to punish Mr. Luster for his earlier objection. ER19; SER-4 (noting Defendant Piña used the restraint board "for punishment").

A restraint board is an extreme method of total-body immobilization. *See* ER21 (noting four-point restraints are used "as a last resort"). When it is used, a person is placed on the board on his back, and each of his limbs is affixed to the board by chains or straps. *See* ER20; ER103. This kind of restraint can create risks to the person's health and safety. *See* ER21. For that reason, the jail's policy required that anyone subjected to a restraint device must be evaluated "within 15 minutes" for "conditions of distress (e.g., impaired breathing, notable skin coloration changes, loss of consciousness, etc.)." ER102. The person must continue to be evaluated "every twenty (20) minutes" thereafter. *Id*.

At the time, the jail's policy also expressly provided that the use of restraints, including a restraint board, "must be non-punitive (i.e., not used to punish)." ER80. Rather, restraints were only authorized for legitimate purposes like preventing "persons from harming others." ER81. Even for such justifications, restraints had to be removed as soon as the person was "secured and . . . no longer a threat." ER100.

When Defendant Piña ordered the use of the restraint board, Mr. Luster presented no threat to safety or security. ER22. The only justification Defendant Piña gave for using the restraint board was that Mr. Luster had previously "refus[ed] to

give up his property/DLD."[2] ER106. But well before the TAG team arrived, Mr. Luster had "complied with all directives" and "agreed to cuff up and give up his property." ER22; *see* ER25 ("Plaintiff was compliant and following all directives."). Moreover, before being placed on the restraint board, he "did not make any threats" or resist the TAG team in any way. ER22; ER147; SER-4; SER-14 (TAG team member recounting that Mr. Luster "agreed to comply with directives"). The TAG team even placed Mr. Luster in handcuffs and shackles "without incident." SER-12; SER-18. As a result, it was clear that he "did not pose a threat to others or to himself." ER22.

But as members of the TAG team later revealed, Defendant Piña had instructed them to place Mr. Luster "on the restraint board" "[p]rior to entering the housing unit." SER-12; *see* SER-14 ("[B]efore entering the housing unit during briefing it was determined he would be placed on the restraint board, and the board had already been prepped."). As a result, even though Mr. Luster was fully compliant, was not threatening anyone, and was already in handcuffs and shackles, the team still placed him on the restraint board. SER-12. As a TAG team member noted, Mr. Luster "was compliant and successfully placed on the board without further incident." *Id.*

[2] "DLD" refers to a disciplinary status requiring there to be a ratio of six prisoners "per Secure Dayroom to 2 Corrections officers." ER96. This status was the reason Mr. Luster was ordered to give up his property. *See* ER17.

Defendant Piña left Mr. Luster on the restraint board for about one hour and 50 minutes. ER19. During that time, officials did not conduct medical evaluations every 20 minutes, as required by the jail's policy, even though the checks that were performed showed that Mr. Luster's blood pressure was significantly elevated, ranging from 188/98 to 178/52. *See* ER106. Mr. Luster was also in "pain throughout [his] entire body" and suffered mental anguish, which exacerbated his schizophrenia. ER106; SER-4. Even after he was released, he continued to suffer pain in his right shoulder and mental trauma from the incident. ER19; *see also id.* at 20 (noting "that the incident exacerbated his schizophrenia condition, causing torment and fear"); ER147.

B. Defendant Reidy Refuses To Obtain Medical Care For Mr. Luster When He Falls, Leaving Mr. Luster Paralyzed On The Floor For Eight Hours.

About one month later, in August 2022, Mr. Luster was taken to Banner Hospital after he fell. ER8. At the hospital, he was diagnosed with hemiparesis (a form of partial paralysis) and hypoesthesia (numbness) on the right side of his body. *Id.* The doctors specifically directed that if he were to fall again or lose consciousness, he should immediately return to the emergency room or call 9-1-1. *Id.*; ER142. The doctors put these instructions in Mr. Luster's medical records. ER8.

On August 17, Mr. Luster returned to the Pima County Adult Detention Center, where Defendant Reidy was on duty as a sergeant. ER58. According to the

jail's policies, officers on duty, at least in certain units of the jail, were required to "familiarize" themselves with the "Medical Alerts" of prisoners in their units. ER96-97. Officers were also required to regularly conduct rounds to check on the welfare of the prisoners, and were trained in "emergency response measures." ER96; ER63.

That night, sometime between 2:00 a.m. and 4:00 a.m. on August 18, Mr. Luster fell again. ER8. When he fell, he hit his head on the wall and was knocked unconscious. ER8; ER141. The right side of his body was paralyzed. ER8. He lay on the floor of his cell, unable to move, and it was clear that he needed medical attention. *See* ER12 ("Plaintiff's serious condition was obvious.").

But Mr. Luster was not taken to the emergency room, as his doctors had instructed. Instead, a prison guard called a nurse named Amanda Thomas, who said that Mr. Luster was "faking," falsely stating that Mr. Luster's conditions had been diagnosed on the left side of his body, not the right side. ER8. Thomas left without providing any care, claiming that she would call the hospital to see if Mr. Luster should be brought back. *Id*. As Mr. Luster's medical records later revealed, she never called. *See* ER9.

After an hour, Mr. Luster remained on the floor, and Thomas still had not returned. ER8. The prison guard called her again, and Thomas returned with Defendant Reidy and another officer named Sergeant Perko. *Id.* Perko and Thomas began spewing vulgarities and "racial epithets" at Mr. Luster. *Id.*; ER142. They told

Mr. Luster they were not going to do anything to help him, and they "didn't care" if he died. ER8; ER141-42.

Defendant Reidy listened as Thomas and Perko said this to Mr. Luster. ER8; ER11 ("Defendant Reidy heard Nurse Thomas say to Plaintiff that she did not care if he died, and she was not going to do anything. Defendant Reidy also heard Nurse Thomas make racist comments to Plaintiff."); ER45. Defendant Reidy then watched as Thomas did two things: take Mr. Luster's blood pressure and raise his arm. ER8. This was the entirety of her medical evaluation. *Id.*; *see also* ER11 ("[Defendant Reidy] watched her conduct a very cursory evaluation."). Thomas never properly evaluated or treated Mr. Luster. *See* ER12 ("Defendant Reidy was aware of Nurse Thomas's insufficient evaluation."); ER13 ("[Defendant Reidy] was personally aware that Nurse Thomas refused to treat Plaintiff.").

Defendant Reidy, Thomas, and Perko then left Mr. Luster lying on the floor of the cell, unable to move. ER9. Thomas claimed she would call the hospital, but again, she never called. *Id.*; *see* ER142 (describing how a staff member later revealed that "Thomas never made a notation in [Mr. Luster's] chart about . . . calling the provider"). Neither she nor any other medical staff came back to provide care to Mr. Luster. *See* ER142 (noting that no one with medical training was told to "check on [Mr. Luster] or treat [him]").

Instead, Mr. Luster remained on the floor, unable to move, for about eight hours. ER9. He was left there for so long that he was forced to urinate on himself. *Id.* Throughout this time, he was in "physical pain" and suffered "mental anguish." *Id.*; ER8. He also had no access to food or water. ER9. He thought he "was going to die." *Id.*; ER142.

For the entire eight hours, Defendant Reidy did nothing to help Mr. Luster or see that he received adequate medical care. ER9. Defendant Reidy never even returned to check if Mr. Luster was alive. *Id.* It was not until the next day that a psychiatric staff member finally helped Mr. Luster. *Id.* As a result of Defendant Reidy's failure to obtain treatment, Mr. Luster has suffered "permanent numbness in [his] left leg," as well as psychological trauma. *Id.*; ER141-43.

II. Procedural History

On October 23, 2022, Mr. Luster filed this civil rights suit *pro se*. ER150. Among other things, he alleged that Defendant Piña violated his rights under the Fourteenth Amendment's Due Process Clause by forcing him onto the restraint board, and Defendant Reidy violated his rights by failing to provide adequate medical care. The district court screened Mr. Luster's complaint under 28 U.S.C. § 1915A(a), and found that he had adequately alleged Fourteenth Amendment claims against Defendants Piña and Reidy. ECF 9 at 7.

On September 26, 2024, the district court denied Defendants' motion for summary judgment. As to Defendant Piña, the district court determined that, before Mr. Luster was placed on the restraint board, he "complied with all directives, agreed to cuff up and give up his property, did not make any threats, and thus did not pose a threat to others or to himself." ER22. The district court rejected Defendant Piña's claim that Mr. Luster had not complied with a command to submit to a strip search, noting that Mr. Luster's evidence contradicted that claim, and even the jail's own records did not indicate that Mr. Luster ever refused to submit to a strip search. ER21. The district court denied qualified immunity because every reasonable official would know it is unlawful to use a restraint board against someone who is "compliant and following all directives," in order to punish him for previously objecting to an order. ER25.

As to Defendant Reidy, the district court recognized that, construing the evidence in Mr. Luster's favor, "Plaintiff's serious condition was obvious to Defendant Reidy," and yet he "chose to take no action" to obtain appropriate medical care. ER9-12. The district court rejected Defendant Reidy's defense that he was simply relying on Thomas's assessment, finding that a reasonable jury could "determine Defendant Reidy knew Nurse Thomas was mistreating Plaintiff and that her conclusion that no further medical care was necessary was unreasonable." ER11. The district court denied qualified immunity, concluding that every reasonable

official would know it was unlawful to leave Mr. Luster "lying on his cell floor unable to move" without medical care. ER16.

STANDARD OF REVIEW

This Court reviews the district court's decision denying summary judgment *de novo*, viewing the evidence "in the light most favorable to the non-moving party." *Sandoval v. County of San Diego*, 985 F.3d 657, 665 (9th Cir. 2021).

SUMMARY OF ARGUMENT

The district court properly denied summary judgment and qualified immunity. Construing the facts in the light most favorable to Mr. Luster, as they must be, each Defendant violated clearly established law.

I. Defendant Piña violated clearly established law by forcing Mr. Luster onto a four-point restraint board, even though Mr. Luster was complying with all directives and posed no threat to anyone, in order to punish Mr. Luster for objecting to the order to give up his property. The use of such an extreme form of total-body restraint for no legitimate purpose constituted excessive force.

I.A. A reasonable jury could find that Defendant Piña used excessive force against Mr. Luster. As the district court recognized, four-point restraints like a restraint board are dangerous and may be used only as a "measure of 'last resort.'" ER20. They cannot be used without a legitimate security justification, and certainly not for the purpose of punishment. *See, e.g.*, *Kingsley v. Hendrickson*, 576 U.S. 389,

400 (2015) ("[P]retrial detainees . . . cannot be punished at all."). Thus, it is well-established that using a four-point restraint device is objectively unreasonable "when a suspect is restrained, has stopped resisting, and does not pose a threat." *Hyde v. City of Wilcox*, 23 F.4th 863, 873 (9th Cir. 2022).

Here, there was no legitimate justification for the restraint board. At least 30 minutes before Defendant Piña forced Mr. Luster onto the board, Mr. Luster had already agreed to give up his property and follow "all directives." ER25. In addition, when the TAG team finally arrived, they handcuffed Mr. Luster, who "complied with all directives," "did not make any threats, and thus did not pose a threat to others or to himself." ER22. As a result, there was no need for the restraint board. Its only purpose was to punish Mr. Luster for previously objecting to the order to give up his property. *See* ER18.

In response, Defendant Piña tries to manufacture a security justification after the fact. Notably, none of the reasons he now gives were included in the form he filled out following the use-of-force incident. *See* ER106 (justifying the restraint board based only on "refusing to give up his property/DLD"). And none of these arguments justifies the extreme measure of forcing Mr. Luster onto the restraint board for almost two hours.

I.B. Qualified immunity was properly denied. This Court's precedents put every reasonable officer on notice that it is unlawful to use a restraint board against

someone who is fully compliant and not threatening anyone. *See Hyde*, 23 F.4th at 873; *Beavers v. Edgerton*, 773 F. App'x 897, 898 (9th Cir. 2019) ("An objectively reasonable officer would have known that forcibly restraining and injuring Beavers after he had complied with the deputies' orders to face the wall and produce the requested court order violates his Fourteenth Amendment rights."). Other Circuits have clearly established the same. *See, e.g.*, *United States v. Hill*, 99 F.4th 1289, 1304 (11th Cir. 2024) (finding violation of clearly established law because officers "had no legitimate purpose for ordering compliant, nonresistant detainees who were in the secure jail environment into restraint chairs"). Officials were plainly on notice, moreover, that force cannot be used as punishment. *Vazquez v. County of Kern*, 949 F.3d 1153, 1163-64 (9th Cir. 2020) ("[T]he Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*."). Defendant Piña thus had fair warning that using the restraint board against Mr. Luster was unlawful.

II. Defendant Reidy violated clearly established law by refusing to obtain medical care for Mr. Luster and leaving him paralyzed on the floor of his cell for eight hours. In doing so, Defendant Reidy exposed Mr. Luster to an objectively serious risk of harm.

II.A. A reasonable jury could find that Defendant Reidy failed to obtain medical care for Mr. Luster's serious medical condition. It is well-established that "[p]rison officials are deliberately indifferent to a prisoner's serious medical needs

when they deny, delay, or intentionally interfere with medical treatment." *Lolli v. Cnty. of Orange*, 351 F.3d 410, 419 (9th Cir. 2003). For example, in *Sandoval*, this Court held that "a prison official who is aware that an inmate is suffering from a serious acute medical condition violates the Constitution when he stands idly by rather than responding with reasonable diligence to treat the condition." 985 F.3d at 680.

That is exactly what happened here. As the district court recognized, Mr. Luster's need for medical attention was "obvious." ER12. In fact, Mr. Luster's doctors had specifically instructed that he should be brought to the hospital for immediate medical attention if he fell or lost consciousness. ER8; ER142. Both of those things happened, and yet Defendant Reidy did nothing. He listened as Thomas declared that she was not going to do anything to help Mr. Luster, even if he died, and then left Mr. Luster lying on the floor of his cell for eight hours. ER8; ER141-42. In doing so, Defendant Reidy violated the Fourteenth Amendment.

Defendant Reidy's primary response is to blame Thomas. He claims that she provided adequate medical care, and in any event, he lacked the medical training to do anything more. But it does not take a medical degree to recognize that a person lying on the floor, paralyzed, after falling and being knocked unconscious, needs medical attention. Nor does it take a medical degree to know that Thomas, who hurled racist epithets at Mr. Luster and said she did not care if he died, was not

providing the treatment Mr. Luster needed. Having witnessed all of this, Defendant Reidy had an obligation to respond to Mr. Luster's need for immediate medical care, and he failed to do so. *See, e.g.*, *Jett v. Penner*, 439 F.3d 1091, 1099 (9th Cir. 2006) (holding prison warden was deliberately indifferent because he knew of the "need for immediate medical care," but "did not summon such care").

II.B. Qualified immunity was properly denied. This Court's precedents put every reasonable officer on notice that he cannot stand "idly by" knowing that a person in his custody needs medical care. *Sandoval*, 985 F.3d at 680; *see, e.g.*, *Lemire v. Cal. Dep't of Corr. & Rehab.*, 726 F.3d 1062, 1083 (9th Cir. 2013) (finding deliberate indifference where shift officers "took no life saving action" despite "an obvious need"). This Court's precedents, moreover, were reinforced by a robust consensus from other Circuits. *See, e.g.*, *Lewis v. McLean*, 864 F.3d 556, 564 (7th Cir. 2017) (finding non-medical jail officer liable for failing to help plaintiff who was unable to move due to extreme back pain, after a nurse refused to treat plaintiff). Defendant Reidy thus had fair warning that abandoning Mr. Luster without care was unlawful.

Accordingly, the decision below should be affirmed.

ARGUMENT

I. Defendant Piña Violated Clearly Established Law By Forcing Mr. Luster Onto A Four-Point Restraint Board For Almost Two Hours In Order To Punish Him.

As the district court recognized, Mr. Luster's evidence shows that, after initially objecting to an order to give up his property, Mr. Luster "complied with all directives, agreed to cuff up and give up his property, did not make any threats, and thus did not pose a threat to others or to himself." ER22. Nevertheless, Defendant Piña declared that it was "too late" and forced Mr. Luster onto a restraint board in order to punish him. ER25. In doing so, Defendant Piña violated clearly established law.

A. Forcing Mr. Luster Onto The Restraint Board Constituted Excessive Force.

1. *Every Factor This Court Considers Supports The District Court's Conclusion That Using The Restraint Board Was Objectively Unreasonable.*

Forcing Mr. Luster onto the restraint board constituted excessive force because it was "objectively unreasonable" to use such extreme force when Mr. Luster was fully compliant and "did not pose a threat" to anyone.[3] ER22. In

[3] In the opening brief, Defendant Piña solely disputes whether the force he used was reasonable; he does not contest any other element of Mr. Luster's excessive force claim, such as intentional action and causation. *See* Opening Br. 32-38. As a result, challenges to those elements are waived. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[O]n appeal, arguments not raised by a party in its opening brief are deemed waived."). And in any event, as the district court

evaluating the reasonableness of force, this Court considers "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether plaintiff was actively resisting." *Hyde*, 23 F.4th at 870. "The most important factor is whether the suspect posed an immediate threat." *Id.*

For example, in *Hyde*, this Court held that officers used excessive force when they Tasered the plaintiff, placed him in a restraint hold, and then forced him into a restraint chair. *Id.* at 871. Prior to doing so, the officers had subdued the plaintiff, who had "violently injured himself in his cell." *Id.* at 870. Thus, by the time the officers used the restraint chair, the plaintiff had already been handcuffed and shackled, and he was "exhausted" and "on his knees." *Id.* Because he was "restrained and apparently no longer resisting," this Court held that it was excessive to subject him to further force, including the restraint chair. *Id.* at 872. This Court explained that it is "clearly established" that officers cannot use such force "when a suspect is restrained, has stopped resisting, and does not pose a threat." *Id.* at 873.

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properly determined, Mr. Luster's evidence establishes each element. *See* ER20-24.

Hyde squarely applies here. Construing the evidence in Mr. Luster's favor, as it must be, every factor this Court considers supports the district court's conclusion that the use of the restraint board was objectively unreasonable.

First, as the district court found, the "most important factor" weighs in Mr. Luster's favor because he "did not pose a threat" to anyone. ER22; *Hyde*, 23 F.4th at 873. The absence of any threat is even clearer here than in *Hyde* because, unlike the plaintiff in that case, Mr. Luster never used violence against himself or others. Rather, after verbally objecting to the jail's property policies, Mr. Luster agreed to give up his property and follow "all directives." ER25. He even agreed to "cuff up." ER21. He then waited for 30 minutes, peacefully and without incident, until the TAG team arrived. ER19. At that point, Mr. Luster continued to follow "all directives, and he made no threats." *Id.* The TAG team placed Mr. Luster in handcuffs and shackles "without incident." SER-12; SER-14. With Mr. Luster handcuffed, shackled, and fully compliant, there was no "immediate threat" that could justify the restraint board. *Hyde*, 23 F.4th at 870; *see Beavers*, 773 F. App'x at 897 (finding "little or no need" for force because the plaintiff was already complying with orders and "remained seated with his feet chained"); *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1058 (9th Cir. 2003) (finding "little or no need to use any physical force" because the plaintiff was "not resisting the officers" and was "handcuffed and lying on the ground").

Second, the "amount of force" used was extreme. *Hyde*, 23 F.4th at 870. As the district court recognized, four-point restraints like the restraint board are a "measure of 'last resort.'" ER20; *see Williams v. Benjamin*, 77 F.3d 756, 763 (4th Cir. 1996) ("In our civilized society, we would like to believe that chaining a human being to a metal bed frame in a spread-eagled position would never be necessary."); *see also* 28 C.F.R. § 552.24 (federal regulations authorizing four-point restraints when they are "the only means available to obtain and maintain control over an inmate"). Four-point restraints "involve the virtual immobilization of a prisoner." *LeMaire v. Maass*, 12 F.3d 1444, 1459-1460 (9th Cir. 1993). They are much more restrictive than alternatives like handcuffs and waist chains. *Id.* at 1459. They are also much more dangerous. Because of the risks that four-point restraints pose to a person's health and safety, Pima County's own regulations required that anyone placed on a restraint board be "evaluated by medical personnel within 15 minutes" for "conditions of distress (e.g., impaired breathing, notable skin coloration changes, loss of consciousness, etc.)." ER102; *see also* 28 C.F.R. § 552.24(f) (federal regulations requiring medical evaluation within 15 minutes to "ensure appropriate breathing" and confirm "that the restraints have not restricted or impaired the inmate's circulation").

Third, the extent of Mr. Luster's injuries was significant. *Hyde*, 23 F.4th at 870. Throughout the nearly two hours that Defendant Piña left Mr. Luster on the

restraint board, Mr. Luster was in "pain throughout [his] entire body." ER19; SER-4. He also suffered mental anguish, which exacerbated his schizophrenia. ER19; SER-4. Even after he was released from the board, he continued to suffer pain in his right shoulder and mental trauma from the incident. ER19; *see also* ER23 (noting "that the incident exacerbated his schizophrenia condition, causing torment and fear"); ER147. These harms underscore the excessiveness of the force used. *See Stephens v. DeGiovanni*, 852 F.3d 1298, 1326 (11th Cir. 2017) (finding force excessive where it "resulted in severe and permanent physical injuries as well as psychological trauma"); *see also Lewis v. Downey*, 581 F.3d 467, 475 (7th Cir. 2009) ("[P]ain, not injury, is the barometer by which we measure claims of excessive force.").

Finally, on top of all of this, the use of the restraint board was especially egregious because a reasonable jury could find that Defendant Piña used the restraint board to punish Mr. Luster. "[T]he Fourteenth Amendment prohibits *all* punishment" of people, like Mr. Luster, who are detained pre-trial. *Vazquez*, 949 F.3d at 1163. Thus, using force as a form of punishment is plainly unlawful. *See Kingsley*, 576 U.S. at 400 ("[P]retrial detainees . . . cannot be punished at all, much less 'maliciously and sadistically.'"); *Blackmon v. Sutton*, 734 F.3d 1237, 1242 (10th Cir. 2013) ("[T]he defendants were on notice that they could not use restraints with the express purpose of punishing or without *some* legitimate penological purpose in

mind."). Indeed, the jail's own policies made that clear. *See* ER80 (Pima County regulations requiring that restraints "must be non-punitive (i.e., not used to punish)").

Here, a reasonable jury could find that Defendant Piña used the restraint board to punish Mr. Luster. Mr. Luster had already agreed to give up his property, but Defendant Piña declared, "It's too late now." ER18. When the TAG team finally arrived—30 minutes after Mr. Luster had agreed to comply—there was no need for any force, much less the restraint board. *See* ER18; SER-11 (Defendants conceding that before Mr. Luster was placed on the restraint board, he "stated that he would comply" with the officers' directives, he was secured by being "placed into handcuffs," and his cell was searched to confirm there was no contraband). But Defendant Piña was not using the restraint board to respond to any ongoing security need; in fact, he had ordered the TAG team to place Mr. Luster on the restraint board before they had even arrived on the scene. *See* SER-12; SER-14 ("[B]efore entering the housing unit during briefing it was determined he would be placed on the restraint board, and the board had already been prepped."). Rather, Defendant Piña was using the restraint board simply as a means to punish Mr. Luster for his prior objection. *See White v. Roper*, 901 F.2d 1501, 1504 (9th Cir. 1990) ("[A] court may infer an intent to punish when there is no such reasonable relation [to a legitimate

government objective]."); SER-4 (noting Defendant Piña used the restraint board "for punishment").

Accordingly, the district court properly determined that Defendant Piña used excessive force.

2. *Defendant Piña's Attempt To Create A Security Justification After The Fact Fails.*

In response, Defendant Piña attempts to create a security justification for the restraint board after the fact. He points to Mr. Luster's disciplinary classification and prior infractions. Opening Br. 36-37. He claims that he used the restraint board in response to a "tense *and* escalating" situation. *Id.* at 38. He even explicitly contradicts the district court's construction of the facts by arguing that Mr. Luster made threats "while being placed on the board." Opening Br. 37; *but see* ER19 (district court finding Mr. Luster "made no threats"). These arguments fail for several reasons.

To start, a reasonable jury could easily discredit these *ex post* rationalizations. The day Mr. Luster was placed on the restraint board, Defendant Piña filled out an "Inmate Restraints Check Form," which required him to state the "[r]eason inmate was placed into restraints." ER106. The only reason Defendant Piña gave was "refusing to give up his property/DLD." *Id.* But that issue was resolved well before Defendant Piña forced Mr. Luster onto the restraint board. Defendant Piña did not

mention any of the justifications he now cites on appeal, and a reasonable jury could conclude that they are baseless.

In addition, none of the new justifications succeeds on its own terms. For example, Mr. Luster's prior disciplinary history did not justify the restraint board because—as Defendant Piña himself admits—the jail had already responded to any security concerns arising from that history through other restrictions on Mr. Luster: "1) he be allowed out of his cell only by himself; 2) two officers were required to be present at all times; 3) he was required to be handcuffed behind his back with shackles on his ankles and a hobble chain; and 4) generally was not allowed to have any sharp materials." Opening Br. 34; *see* ER88; ER96 (requiring prisoners on DLD status to be accompanied by two corrections officers in the "Secure Dayroom"). Defendant Piña never explains why those precautions were inadequate, especially given that Mr. Luster was fully compliant and not threatening anyone. *See Bell v. Williams*, 108 F.4th 809, 820 (9th Cir. 2024) (noting that the "threat posed by Bell's history was diminished" by his compliance with orders); *Jacobs v. Cumberland County*, 8 F.4th 187, 195 (3d Cir. 2021) (finding no threat from a prior disturbance because "the disturbance subsided well before the officers returned," where they found "the inmates orderly and compliant"). Thus, a reasonable jury could find that Mr. Luster's disciplinary history did not justify the extreme measure of a restraint board.

Defendant Piña's other claims are flatly contradicted by Mr. Luster's evidence, as the district court recognized. *See, e.g.*, ER22 ("Defendant Piña's decision to place Plaintiff on the restraint board was *not* a split-second decision made during a tense or escalating incident." (emphasis added)). Far from facing a "tense and escalating" situation, Defendant Piña already knew that a psychiatric staff member had successfully deescalated the situation, and Mr. Luster had agreed to give up his property and "cuff up" before the TAG team arrived. ER18; ER147. Before he was placed on the restraint board, Mr. Luster "made no threats," and did not pose a threat to anyone. ER19. Things should have ended there. *See Hyde*, 23 F.4th at 871 (finding threat from a "fast-evolving situation" dissipated after the person had been handcuffed for two minutes); *Piazza v. Jefferson Cnty.*, 923 F.3d 947, 953 (11th Cir. 2019) ("[W]hen jailers continue to use substantial force against a prisoner who has clearly *stopped resisting*—whether because he has decided to become compliant, he has been subdued, or he is otherwise incapacitated—that use of force is excessive."). Instead, Defendant Piña waited 30 minutes for the TAG team to arrive, just so that he could use the restraint board to punish Mr. Luster. In doing so, he violated the Fourteenth Amendment.

B. Qualified Immunity Was Properly Denied Because Defendant Piña Violated Clearly Established Law.

The district court properly denied qualified immunity because Defendant Piña violated clearly established law. By 2022, this Court had made clear to every

reasonable official that it is unlawful to use a restraint board against someone who is fully compliant and not threatening anyone. *See Hyde*, 23 F.4th at 873 (denying qualified immunity because it "is clearly established that officers cannot use intermediate force when a suspect is restrained, has stopped resisting, and does not pose a threat"); *Beavers*, 773 F. App'x at 898 ("An objectively reasonable officer would have known that forcibly restraining and injuring Beavers after he had complied with the deputies' orders to face the wall and produce the requested court order violates his Fourteenth Amendment rights."); *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013) (denying qualified immunity because "a significant amount of force was employed without significant provocation"). It was especially clear, moreover, that officers cannot use a restraint board as punishment. *See Kingsley*, 576 U.S. at 397 ("We have said that 'the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment."); *Vazquez*, 949 F.3d at 1163-64 ("[T]he Fourteenth Amendment prohibits *all* punishment of *pretrial detainees*.").

This Court's decisions were reinforced by a robust consensus from other Circuits. *See Hill*, 99 F.4th at 1304 (finding violation of clearly established law because officers "had no legitimate purpose for ordering compliant, nonresistant detainees who were in the secure jail environment into restraint chairs"); *Valencia v. Wiggins*, 981 F.2d 1440, 1447 (5th Cir. 1993) (holding officer's "use of the choke

hold and other force used to subdue a non-resisting Valencia and render him temporarily unconscious was unreasonable"); *Young v. Martin*, 801 F.3d 172, 181 (3d Cir. 2015) (holding restraint chair constituted excessive force because the prisoner was "safely secured and shackled after voluntarily complying with the COs' instructions"). In *Hill*, for example, the Court upheld a civil rights conviction under 18 U.S.C. § 242 based on the jury's determination that an officer used excessive force when he placed several prisoners in a restraint chair without a "legitimate nonpunitive purpose." 99 F.4th at 1292-93. Like the doctrine of qualified immunity, Section 242 requires that "case law provides the defendant 'fair warning' that his actions violated constitutional rights." *Id.* at 1300. The Court held that the defendant had fair warning because it was clearly established that officers "could not use force against a compliant, nonresistant detainee." *Id.* at 1303. The defendant's own policy, moreover, prohibited using the restraint chair "as a form of punishment." *Id.* at 1294. Accordingly, no reasonable officer would believe that the defendant's conduct was lawful. *Id.* at 1303.

By the same token, Defendant Piña had fair warning that his conduct was unlawful. As in *Hyde*, Mr. Luster was "restrained," had "stopped resisting," and did "not pose a threat." *Hyde*, 23 F.4th at 873. As in *Hill*, moreover, the jail's own regulations expressly warned officers that the use of restraints, including a restraint board, "must be non-punitive (i.e., not used to punish)." ER80. Rather, restraints

were only authorized for legitimate purposes like preventing "persons from harming others." ER81. The regulations also mandated that restraints must be removed as soon as "the inmate is secured and is no longer a threat." ER100. As a result, no reasonable official would think that it was lawful to use a restraint board against a fully compliant person like Mr. Luster in order to punish him. *See also Blackmon*, 734 F.3d at 1242 ("By 1997, the defendants were on notice that they could not use restraints with the express purpose of punishing or without *some* legitimate penological purpose in mind. Yet the record here suggests they may have used restraints in both forbidden ways.").

Defendant Piña's only response is to attempt to distinguish *Beavers* because it concerned a different type of force: pain compliance techniques, as opposed to a restraint board. Opening Br. 33. But as the Eleventh Circuit explained in *Hill*, "fair warning here did not require an 'extreme level of factual specificity.'" 99 F.4th at 1304. Every reasonable official would know that extreme force, like the pain compliance techniques in *Beavers*, the restraint chair in *Hyde* and *Hill*, or the restraint board here, cannot be used against a person who "complied with all directives" and who "did not pose a threat to others or to himself." ER22. Indeed, as *Hill* recognized, the unlawfulness of this type of conduct would be clear even without the factually analogous precedents discussed above from this Court and its sister Circuits. *See Hill*, 99 F.4th at 1302; *Hope v. Pelzer*, 536 U.S. 730, 738 (2002)

(finding obvious violation where prisoner was handcuffed to a hitching post even though he had "already been subdued, handcuffed, [and] placed in leg irons," there was a "clear lack of an emergency situation," and "[a]ny safety concerns had long since abated"). Accordingly, the district court properly denied qualified immunity.

II. Defendant Reidy Violated Clearly Established Law By Refusing To Obtain Medical Care For Mr. Luster And Leaving Him Paralyzed On The Floor For Eight Hours.

As the district court recognized, Mr. Luster's evidence shows that, when he fell, hit his head, and was knocked unconscious, he required immediate medical attention. ER11-12. Even though Mr. Luster's "serious condition was obvious to Defendant Reidy," Defendant Reidy refused to obtain medical care for Mr. Luster and left him lying on the floor of his cell, paralyzed and in pain, for eight hours. ER11. In doing so, Defendant Reidy violated clearly established law.

A. A Reasonable Jury Could Find That Defendant Reidy Violated Mr. Luster's Right To Receive Appropriate Medical Care For His Serious Medical Needs.

As the district court properly determined, a reasonable jury could find that Defendant Reidy violated Mr. Luster's right to receive appropriate medical care for his serious medical needs. Under the objective standard for Fourteenth Amendment claims, Mr. Luster must show that (1) "the defendant made an intentional decision," (2) that "put the plaintiff at substantial risk of suffering serious harm," (3) failed to "take reasonable available measures to abate that risk," and (4) "caused the

plaintiff's injuries." *Gordon v. Cnty. Of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). This standard is more lenient than the Eighth Amendment deliberate-indifference standard because it does not require proof of "subjective intent." *Id.*

A reasonable jury could find each element satisfied. Indeed, Defendant Reidy affirmatively concedes the first element. *See* Opening Br. 26; ER9. And as the district court recognized, Mr. Luster's evidence demonstrates that the remaining elements are met, as well.

1. *By Leaving Mr. Luster Paralyzed On The Floor For Eight Hours, Defendant Reidy Exposed Mr. Luster To A Substantial Risk of Serious Harm.*

By leaving Mr. Luster paralyzed on the floor for eight hours, Defendant Reidy put Mr. Luster at a substantial risk of serious harm. ER9-10. Even under the stricter Eighth Amendment standard, it is well-established that "[p]rison officials are deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment." *Lolli*, 351 F.3d at 419. Thus, when a prisoner is suffering a medical emergency, prison officials cannot simply abandon them without care. *See, e.g.*, *id.* at 420 (finding violation where officials failed to respond to diabetic prisoner who was "feeling weak and was experiencing blurred vision"); *Lemire*, 726 F.3d at 1082 (holding officials failed to respond to a prisoner found "unconscious, unresponsive, and purplish in color on the floor"); *Howell v. NaphCare, Inc.*, 67 F.4th 302, 312 (6th Cir. 2023) (emphasizing obvious risk of harm

where prisoner was "unable to walk under his own power" and "complaining about numbness and pain").

For example, in *Sandoval*, this Court held that a prisoner displayed an "obvious need" for medical care because he "was sweating, tired, and disoriented," and the defendants were told "there was still something going on." 985 F.3d at 679. Rather than attempting to "determine why Sandoval was suffering the symptoms," the defendants "abandoned" him for six hours without care. *Id.* This Court concluded that the defendants were deliberately indifferent because "a prison official who is aware that an inmate is suffering from a serious acute medical condition violates the Constitution when he stands idly by rather than responding with reasonable diligence to treat the condition." *Id.* at 680.

Here, as the district court recognized, Mr. Luster's serious medical condition was "obvious," ER12—even more obvious than the condition in *Sandoval*. Mr. Luster was not just "sweating, tired, and disoriented" like the plaintiff in *Sandoval*: Mr. Luster had fallen and hit his head on the wall, knocking him unconscious. ER8; ER141. He lay on the ground, unable to move—the right side of his body paralyzed. ER8. No reasonable person would miss the seriousness of this medical crisis. *See, e.g.*, *Burke v. Regalado*, 935 F.3d 960, 995 (10th Cir. 2019) (finding "obvious need" for medical treatment based on prisoner's paralysis).

On top of that, Defendant Reidy had specific, prior notice that this exact condition required emergency medical attention. Mr. Luster had just returned from the hospital the day before, where he was diagnosed with hemiparesis (a form of partial paralysis) and hypoesthesia (numbness) on the right side of his body. ER8. In his medical records, his doctors specifically instructed that he would need emergency treatment if he were to fall again or lose consciousness. *See* ER8; ER142. A reasonable jury could infer that jail officials—including Defendant Reidy, the officer on duty—reviewed Mr. Luster's medical records upon his return to the jail, in order to understand what had happened to him and what precautions needed to be taken at the jail. Indeed, officers in at least certain units of the jail were expressly required to "familiarize" themselves with prisoners' "Medical Alerts." ER96-97.

Like the defendants in *Sandoval*, however, Defendant Reidy sat "idly by," rather than seeking emergency treatment for Mr. Luster. 985 F.3d at 680. Defendant Reidy heard Thomas tell Mr. Luster that she "did not care if he died" from his condition. ER11. But instead of seeking appropriate medical care, Defendant Reidy "abandoned" Mr. Luster. *Sandoval*, 985 F.3d at 680. Defendant Reidy never returned to help Mr. Luster or even to check whether he was alive. ER9.[4] In doing so, he exposed Mr. Luster to a substantial risk of serious harm.

[4] Defendant Reidy argues that the district court was wrong to consider the entire eight-hour period in determining whether Defendant Reidy exposed Mr. Luster to a substantial risk of harm. *See* Opening Br. 26-27. Defendant Reidy is incorrect. The

In response, Defendant Reidy attempts to dispute whether a reasonable official would have believed that medical attention was necessary. *See* Opening Br. 19. He claims that Thomas "determined [Mr. Luster] needed no further medical attention, and informed him that she would check with the provider." *Id.* He claims that he relied on Thomas' medical opinion to conclude that no care was required. *Id.*

Defendant Reidy's argument fails on several levels. First, it improperly construes the evidence in Defendant Reidy's favor by claiming that Thomas rendered a medical opinion that Mr. Luster needed no further medical attention. In fact, a reasonable jury could conclude Thomas never determined, as a matter of medical expertise, that Mr. Luster did not require medical attention. To the contrary, Thomas recognized that Mr. Luster *did* need medical attention, but explicitly announced that she was not going to do anything to help him, and she "didn't care" if he died from the lack of treatment. ER8; ER141-42.[5] That was not a medical

district court properly considered the risk not only from Defendant Reidy "walking away" without seeking medical care, but also from Defendant Reidy "leaving [Mr. Luster] unattended for [eight] hours." *Sandoval*, 985 F.3d at 679.

[5] Thomas' declaration that she was not going to "do anything" also refutes any suggestion that Defendant Reidy thought Thomas was going to seek medical attention for Mr. Luster by, for example, calling the hospital. *See, e.g.*, Opening Br. 29-30 (suggesting Reidy believed that Thomas "would call the medical provider" and "seek additional medical care"). A reasonable jury could find that Reidy knew that Thomas did not intend to seek any medical care because she stated explicitly that she would not, and she did not care if Mr. Luster died from the lack of care. ER8; ER141-42; *see also* ER142 (describing how "Thomas never made a notation in [Mr. Luster's] chart about . . . calling the provider").

opinion because Thomas' refusal to provide care was "for reasons unrelated to the medical needs of the prisoner." *Jett*, 439 F.3d at 1097. Accordingly, the very premise of Defendant Reidy's argument is wrong.

Second, even assuming Thomas rendered a "medical opinion" that Mr. Luster did not require care, it was not reasonable for Defendant Reidy to rely on it. *See* ER11 (citing evidence that "Defendant Reidy knew Nurse Thomas was mistreating Plaintiff and that her conclusion that no further medical care was necessary was unreasonable"). In *Hamilton v. Endell*, 981 F.2d 1062 (9th Cir. 1992), this Court held that prison officials were deliberately indifferent when they transported a prisoner to another facility via airplane, despite an ear problem that resulted in extreme pain during the flight. *See id.* at 1064. The prison officials argued that they were not deliberately indifferent because a physician contracted by the prison had advised them that the prisoner was able to fly. *Id.* This Court rejected that defense, noting that the prisoner had recently had surgery on his ear, and his treating physician had specifically instructed that he "was not to fly." *Id.* at 1067. "By choosing to rely upon a medical opinion which a reasonable person would likely determine to be inferior," the officials acted with deliberate indifference. *Id.*

So too here. Choosing not to do anything after Mr. Luster fell and was knocked unconscious was directly contrary to the instructions of his treating doctors at the hospital. To the extent Thomas ever determined that Mr. Luster did not require

medical care, that opinion was plainly unreasonable—especially given that Thomas also hurled vulgarities and racist epithets at Mr. Luster and told him she did not care if he died.[6] Based on all of this, a reasonable jury could conclude that Thomas' "medical opinion" should have been disregarded, to the extent it was a medical opinion at all.

Finally, for the first time on appeal, Defendant Reidy attempts to object to the admissibility of Mr. Luster's evidence of Thomas' statements. *See* Opening Br. 22. Defendant Reidy claims that proper foundation has not been laid for what Defendant Reidy heard. *Id.* He concedes, however, that he "did not object to the consideration of these statements for their lack of foundation" before the district court." *Id.* at 23.

Defendant Reidy's new evidentiary argument should be rejected. To start, it is waived, as he concedes. *See Skillsky v. Lucky Stores*, *Inc*., 893 F.2d 1088, 1094 (9th Cir. 1990) (holding that the "failure to object to allegedly defective evidence waives the objection for purposes of summary judgment"). On top of that, it is beyond the scope of this Court's limited jurisdiction in this interlocutory appeal. *See*

[6] Defendant Reidy tries to downplay Thomas' statements as "non-specific racist comments" that, while "extremely unprofessional," somehow would not "put a non-medical jail official on notice in this situation that an inmate was not receiving proper medical care." Opening Br. 30-31. Based on that view, Defendant Reidy also claims that the comments are "not relevant" under Federal Rule of Evidence 401. *See* Opening Br. 22-23. That remarkable spin on Thomas' shocking statements must be rejected at this stage. As the district court properly determined, a reasonable jury could find that these statements alerted Defendant Reidy that Mr. Luster was not receiving appropriate medical care.

Munoz, 47 F. App'x at 502 (declining to address "questions about evidentiary sufficient at summary judgment" like whether the plaintiff "failed to produce authenticated admissible evidence"); *Est. of Anderson*, 985 F.3d at 730–31 ("[A]ny 'portion of a district court's summary judgment order that, though entered in a 'qualified immunity' case, determines only a question of 'evidence sufficiency,' i.e., which facts a party may, or may not, be able to prove at trial . . . is not appealable.'").

And to cap it off, the objection is meritless. Witnesses may testify to matters of which they have "personal knowledge," including matters they directly observe. Fed. R. Evid. 602. For example, witnesses can testify that they observed someone make a statement and that another person was present to hear it. *See Turner v. Long*, No. 23-5685, 2024 WL 3029249, at *6 (6th Cir. June 17, 2024) ("[A] reasonable factfinder could plainly infer that, if Bare made these statements in Turner's 'presence,' then Turner himself heard them."). That is exactly what Mr. Luster did, stating that Defendant Reidy was present with Thomas at Mr. Luster's cell when Thomas and Perko "used vulgarities and made racist comments" and told Mr. Luster they "didn't care" if he died, "and they were not going to do anything." ER8. That is sufficient foundation to establish that Defendant Reidy heard Thomas' statements and knew of Mr. Luster's continuing need for medical care. *See Lolli*, 351 F.3d at 420 (finding knowledge of the plaintiff's serious condition because the plaintiff "testified that 'other deputies' were standing near Walker when he spoke").

2. *Defendant Reidy Failed To Take Reasonable Measures Like Seeking Medical Care.*

Rather than respond to Mr. Luster's need for care, Defendant Reidy stood "idly by" and left Mr. Luster paralyzed on the floor for eight hours. *Sandoval*, 985 F.3d at 680. Defendant Reidy did not take any "emergency response measures," in which he was trained. ER96; ER63. He did not call 9-1-1 or bring Mr. Luster back to the hospital, as Mr. Luster's doctors had specifically instructed. ER8; ER142. He did not even help Mr. Luster off the floor or return to check if Mr. Luster was alive. ER9. He simply "abandoned" Mr. Luster. *Sandoval*, 985 F.3d at 679.

Defendant Reidy's primary response is to flatly assert that he "is not a medical professional." Opening Br. 31. Based on this, he argues that he was not responsible for seeking medical care because, under "the typical Jail chain-of-command for detainee medical calls," medical care was the responsibility of Thomas. *Id.*

Defendant Reidy's argument fails because, as he himself concedes, "officials other than medical personnel have a duty to protect the health and safety of prisoners." Opening Br. 18. Thus, when a prisoner is suffering from a medical crisis, officials like Defendant Reidy must seek medical attention, even if they themselves lack the training to provide it. *See, e.g.*, *Jett*, 439 F.3d at 1099 (holding prison warden was deliberately indifferent because he knew of the "need for immediate medical care" but "did not summon such care"); *Clement v. Gomez*, 298 F.3d 898, 905 (9th Cir. 2002) (holding correctional officers were deliberately indifferent because they

failed to obtain "medical attention for the inmates for the 4 hour period" even though the prisoners were "complaining of breathing problems, pain, and asthma attacks"); *Lolli*, 351 F.3d at 421 (finding county deputies were deliberately indifferent when they failed to respond to the plaintiff's "extreme behavior, his obviously sickly appearance and his explicit statements that he needed food because he was a diabetic"); *Beavers*, 773 F. App'x at 898 (finding deputy "refused to get Beavers medical care and instead left him chained to a bench for twelve hours").

Here, Defendant Reidy may not have been a "medical professional," but he—like any layperson—was able to call 9-1-1 or otherwise seek emergency treatment. *See Brawner v. Scott Cnty.*, 14 F.4th 585, 598 (6th Cir. 2021) ("[A] jury could reasonably find that [the plaintiff] had a serious need for medical care that was so obvious that even a layperson would easily recognize the necessity for a doctor's attention."). He even had training in "emergency response measures." ER96; ER63. Failing to take any action to help Mr. Luster violated the Fourteenth Amendment.

Defendant Reidy also tries to argue that Thomas' "evaluation" of Mr. Luster was sufficient medical care. Opening Br. 26. He insists that his "actions were entirely reasonable" because he "accompanied Thomas, a registered nurse, to Luster's cell, observed her conduct her evaluation, and she told him Luster did not require any further attention." *Id.* at 29. He argues that, as a non-medical professional, he was

not required to "question" Thomas' statement or know whether her "evaluation" was inadequate. *Id.* at 30-31.

As the district court recognized, however, it does not take a medical degree to recognize that Thomas was not providing Mr. Luster appropriate care. ER13 ("Defendant Reidy had personal knowledge of Plaintiff's serious medical need, was personally aware that Nurse Thomas refused to treat Plaintiff, and was aware that Plaintiff was left lying on his cell floor, unable to move."). Defendant Reidy knew that Mr. Luster had not received appropriate medical care because he watched Thomas provide only a "very cursory evaluation," consisting of taking Mr. Luster's blood pressure and lifting his arm. ER11. Neither of those things addressed the fact that Mr. Luster was lying on the floor, paralyzed. Thomas herself acknowledged that Mr. Luster still needed care, announcing that she was not going to do anything to help Mr. Luster, even "if he died." ER11. Faced with a substantial risk of serious harm, Defendant Reidy could not just sit idly by and do nothing.

3. *Defendant Reidy Caused Mr. Luster's Injuries.*

A reasonable jury could find that, by leaving Mr. Luster paralyzed on the floor for eight hours, Defendant Reidy caused his injuries. ER13-14. As the district court recognized, causation is an "intensely factual question" typically reserved for the jury. *Pac. Shores Prop., LLC v. City of Newport Beach*, 730 F.3d 1142, 1168 (9th Cir. 2013); *see* ER13. At summary judgment, "[o]nce a plaintiff presents evidence

that he suffered the sort of injury that would be the expected consequence of the defendant's wrongful conduct, he has done enough to withstand summary judgment." *Pac. Shores Prop.*, 730 F.3d at 1168; *see Lemire*, 726 F.3d at 1081 ("Just as the jury could conclude that Sisto and Neuhring were deliberately indifferent to the risks that an inmate would be seriously harmed during a three-hour-plus period without supervision, so too could the jury conclude that such harm could have been prevented with adequate supervision.").

Mr. Luster's evidence establishes that he suffered the kind of injuries that would be expected from being abandoned on the floor without medical care for eight hours. Throughout that time, Mr. Luster was in "physical pain" and suffered "mental anguish." ER9; ER141; *see Runnels v. Rosendale*, 499 F.2d 733, 735 (9th Cir. 1974) (relying on allegations "that plaintiff-appellant was left in severe pain for an extended period of time"). He also had no access to food or water. ER9. He thought he "was going to die." ER9; ER142. And as a result of that horrific experience, Mr. Luster has suffered "permanent numbness in [his] left leg," as well as psychological trauma. ER9; ER141-43. From this evidence, a reasonable jury could conclude that Defendant Reidy caused Mr. Luster's injuries.

Despite claiming that he disputes "[t]he other three" elements of the *Gordon* standard, *see* Opening Br. 26, Defendant Reidy makes no argument about causation. *See id.* at 18-32. Any such arguments are therefore waived. *See Velasquez-Gaspar*

v. Barr, 976 F.3d 1062, 1065 (9th Cir. 2020) (finding waiver where the opening brief failed to "specifically and distinctly discuss the matter").

Defendant Reidy rightly abandons the causation argument he made below, which challenged only the "causal relationship" between his misconduct and the permanent numbness Mr. Luster still suffers. As the district court recognized, that argument does not address the other injuries Mr. Luster suffered, including the pain and suffering he endured. ER13. And as to the permanent numbness, Mr. Luster's evidence allows a reasonable jury to infer that Defendant Reidy's "wrongful conduct was a 'substantial factor' in bringing about the harm in question." *Pac. Shores Prop.*, 730 F.3d at 1168; *see Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1073 (9th Cir. 2016) (finding sufficient evidence to support "the jury's finding that the officers caused Castro's injuries by failing to take reasonable measures to address the risk"). At this stage, Mr. Luster did not need to "prove a series of negatives" to "positively exclude[] every other possible cause." *Pac. Shores Prop.*, 730 F.3d at 1168. Accordingly, the district court properly denied Defendant Reidy's motion for summary judgment.

B. Qualified Immunity Was Properly Denied Because Defendant Reidy Violated Clearly Established Law.

The district court properly denied qualified immunity because Defendant Reidy violated clearly established law. "It has long been held that 'a prison official who is aware that an inmate is suffering from a serious acute medical condition

violates the Constitution when he stands idly by rather than responding with reasonable diligence to treat the condition.'" *Gordon*, 6 F.4th at 972. Thus, by 2022, this Court had made clear to every reasonable official that abandoning Mr. Luster without medical care for eight hours was unlawful. *See Sandoval*, 985 F.3d at 679 (denying qualified immunity because "not calling paramedics amounted to an unconstitutional failure to provide 'life-saving measures to an inmate in obvious need'"). This Court had done so, moreover, specifically in the context of correctional officers who were not medical professionals. *See Lemire*, 726 F.3d at 1083 (finding deliberate indifference where shift officers "took no life saving action" despite "an obvious need"); *Jett*, 439 F.3d at 1099 (finding deliberate indifference where warden "knew of [the person's] need to have medical care summoned" and "took no steps to summon" that care); *Clement*, 298 F.3d at 905 (denying qualified immunity where officers "denied showers and medical attention for the inmates for the 4 hour period").

This Court's precedents, moreover, were reinforced by a robust consensus from other Circuits. *See, e.g.*, *Lewis*, 864 F.3d at 564 (finding non-medical jail officer liable for failing to help plaintiff who was unable to move due to extreme back pain, after a nurse refused to treat plaintiff); *Howell*, 67 F.4th at 315-16 (determining a non-medical staff member could be liable for failing to obtain medical care where plaintiff was "sprawled out on the floor" and he "could not feel

his legs"); *Iko v. Shreve,* 535 F.3d 225, 242 (4th Cir. 2008) (finding prison officials were deliberately indifferent when they failed to obtain medical treatment for a prisoner who had been pepper sprayed). In *Lewis*, for example, the plaintiff became "immobilized by pain" in his back. *Id.* at 558-59. The defendants—a security supervisor and a nurse—went to the plaintiff's cell, but neither provided medical care. *Id.* at 559. Instead, the security supervisor told the plaintiff to crawl to the cell door so that he could be handcuffed, and when the plaintiff explained that he could not move, both defendants walked away, leaving the plaintiff for over an hour and a half without care. *Id.* at 559-60.

The Court held that both defendants—including the non-medical security supervisor—were deliberately indifferent. *Id.* at 563. The Court explained that the plaintiff's back condition was serious, and both defendants "exhibited deliberate indifference by delaying Lewis's treatment for approximately one and a half hours." *Id.* The security supervisor, for example, "did nothing to help Lewis," including failing to obtain emergency assistance *Id.* at 564. Accordingly, a reasonable jury could find that they violated the Constitution. *Id.* at 565; *see also Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (recognizing that deliberate indifference can be "manifested by prison doctors in their response to the prisoner's needs *or by prison guards* in intentionally denying or delaying access to medical care" (emphasis added)).

So too here. Defendant Reidy "did, literally, nothing" to help Mr. Luster obtain the medical treatment he needed. *Lewis*, 864 F.3d at 565. Instead, Defendant Reidy stood "idly by" for eight hours while Mr. Luster lay on the floor of his cell, paralyzed and in pain. *Sandoval*, 985 F.3d at 680. No reasonable official would believe that was lawful.

In response, Defendant Reidy argues that he was not on notice that he needed to act because Mr. Luster "never requested help after Thomas's evaluation." Opening Br. 18-19, 28-29. Defendant Reidy suggests that, without such a request for "*additional* medical care," it was reasonable for him to believe that Thomas' interaction was sufficient. *Id.*

As discussed above, a reasonable jury could find that it was obvious that Thomas' interaction—consisting of racist comments, a "cursory evaluation" in which she "took Plaintiff's blood pressure and lifted Plaintiff's right arm," and an explicit declaration that she would not do anything to help Mr. Luster and did not care if he died—was plainly inadequate, and that Mr. Luster's need for emergency medical treatment remained urgent. ER8, ER11. No reasonable official would do nothing in those circumstances, simply because Mr. Luster—who was lying paralyzed on the floor after falling and hitting his head—did not make an additional plea for help.

In addition, Defendant Reidy argues that this Court's decision in *Hamilton* "is not factually similar to this case" because "Hamilton's treating physician *specifically* told them he should not fly." Opening Br. 19. But the same is true here: Mr. Luster's doctors specifically instructed that he should be brought back to the hospital if he fell or lost consciousness. ER8; ER142. Both of those things happened, and yet Defendant Reidy did nothing. *Hamilton* made clear that corrections officers cannot insulate themselves from liability by pointing to a medical opinion—to the extent Thomas even rendered a medical opinion—that "a reasonable person would likely determine to be inferior." *Hamilton*, 981 F.2d at 1067; *see also Von Tobel v. Johns*, No. 20-16853, 2022 WL 1568359, at *2 (9th Cir. May 18, 2022) (rejecting a "medical opinion" that an injury "was not important enough" because it was not supported by a "medical reason"); *Short v. Hartman*, 87 F.4th 593, 614 (4th Cir. 2023) (rejecting prison official's defense that "nurses who examined Ms. Short did not take or order" additional care because "non-medical defendants" are not shielded "from liability whenever a medical provider was at some point consulted").

Finally, Defendant Reidy faults the district court for citing several district court decisions alongside controlling precedent from this Court and the Supreme Court. *See* Opening Br. 20-22. Those decisions, however, simply reinforced the principle in *Hamilton* that prison officials cannot rely on "the medical opinions of healthcare professionals" if they have "knowledge that prison doctors or staff are *not*

treating a prisoner" properly. *Lopez v. Bollweg*, No. 13-cv-691, 2017 WL 4677850, at *6 (D. Ariz. June 26, 2017). Defendant Reidy had such knowledge because Thomas explicitly said she was not going to do anything to help Mr. Luster, and she did not care if he died. Accordingly, the district court properly denied qualified immunity.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision below.

Dated: February 20, 2025

Respectfully submitted,

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Dated: February 20, 2025

/s/ *Gregory Cui*
Gregory Cui

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I hereby certify that on February 20, 2025, I electronically filed the foregoing *Plaintiff-Appellee Marcus Lee Luster's Response Brief* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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FOR THE NINTH CIRCUIT

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