

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Sanchez de Tagle v. Julian

Case No. 23-cv-05095-VKD · No. 23-cv-05095-VKD · Decided June 30, 2025

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6
SAN JOSE DIVISION 7 8 ORLANDO SANCHEZ DE TAGLE, Case No. 23-cv-05095-VKD 9
Plaintiff, ORDER GRANTING MOTION FOR 10 v. SUMMARY JUDGMENT 11 SAN JOSE
POLICE OFFICER JULIAN Re: Dkt. No. 46 #4610, 12 Defendant. 13 14 In this action, plaintiff
Orlando Sanchez de Tagle¹ asserts one claim against defendant 15 Officer Zackery Julian of the
San Jose Police Department for unlawful arrest in violation of the 16 Fourth Amendment pursuant
to 42 U.S.C. § 1983.

Dkt. No. 6. Mr. de Tagle seeks \$30 million 17 dollars in compensatory damages and a permanent
restraining order against Officer Julian. Id. All 18 parties have consented to magistrate judge
jurisdiction. Dkt. Nos. 31, 33. 19 Officer Julian now moves for summary judgment on the ground
that there is no genuine 20 dispute of material fact and that the undisputed facts entitle him to
judgment as a matter of law.

21 Dkt. No. 46. He also asserts a defense of qualified immunity. Id. Mr. de Tagle filed a one- 22
paragraph opposition to the motion, without any supporting evidence. Dkt. No. 54. The Court 23
held a hearing on the motion on April 22, 2025. Only Officer Julian’s counsel appeared at the 24
hearing; Mr. de Tagle did not appear. 25 Upon consideration of the moving and responding papers,
and the oral argument presented, 26 the Court grants Officer Julian’s motion for summary
judgment.

27 1 I. BACKGROUND 2 In support of his motion for summary judgment, Officer Julian relies
on the following 3 evidence: his own declaration and attached excerpts from police reports
regarding the incident 4 (Dkt. No. 46-1); testimony and exhibits from certain fact depositions
(Dkt. No. 58); and video 5 from Officer Julian’s body worn camera (Dkt. No. 46-4).

As noted above, Mr. de Tagle did not 6 submit any evidence in opposition to the motion. 7 On
April 6, 2023, at approximately 2:00 p.m., Officer Julian responded to a call at Willow 8 Glen
Elementary School regarding a “male suspect... who was there to pick up his son.” Dkt. 9 No. 46-
1 ¶ 3 (Julian declaration).

The dispatcher informed Officer Julian that the suspect, later 10 identified as Mr. de Tagle, had
recently lost custody of his children and that the children’s mother 11 was at the school to take

custody of them. Id. ¶ 4. 12 Upon arriving at the school, Officer Julian obtained and reviewed a copy of the custody 13 order issued by the Santa Clara County Superior Court on April 5, 2023 (see Dkt.

No. 58 at ECF 14 46-47), and was told by the school resource officer that the resource officer had contacted the 15 court clerk to confirm the order's validity. Dkt. No. 46-1 ¶ 5. The custody order stated in relevant 16 part that Mr. de Tagle was to "turn over the children... to Mother today, April 5, 2023, at 5:00 17 p.m. at San Jose Fire Department, Station #6....

Father is to have no contact with the children 18 pending further order of the Court." Dkt. No. 58 at ECF 46-47. Officer Julian determined that the 19 children's mother had been able to pick up her son from the school but that she had not picked up 20 her daughter, and the daughter's whereabouts were unknown. Dkt. No. 46-1 at ECF 7. 21 Next, Officer Julian approached Mr. de Tagle in the school parking lot where he was 22 speaking with another officer, Officer Philip Wagnon.

Id. ¶ 6; see also id. at ECF 11. Mr. de 23 Tagle informed Officer Julian that he was involved in an ongoing custody dispute with his 24 children's mother but that he had received permission from Deputy District Attorney Giselle 25 Espinoza to take his children. Id. ¶ 6; Dkt. No. 46-4 at 24:48-25:15 (Officer Julian's body worn 26 camera video). Mr. de Tagle showed Officer Julian a "Good Cause report" dated March 10, 2023 27 (see Dkt.

No. 58 at ECF 31). Dkt. No. 46-1 ¶ 6. The report stated in relevant part: Abduction Unit acknowledges the parent/guardian named on the 1 reverse side of this card made a report to the office of the district 2 attorney disclosing....

The reasons the child(ren) was/were taken, enticed away, kept, withheld, or concealed. A Good Cause report 3 can only serve as a defense to an allegation of Penal Code Section 278.5... The parent/guardian was informed that a Good Cause 4 report does not guarantee a defense to child abduction/detention without further investigation. 5 6 Dkt. No. 58 at ECF 31.

When Officer Julian explained that the April 5, 2023 court order had since 7 transferred custody to the children's mother, Mr. de Tagle responded that the Good Cause report 8 superseded the court's custody order and that he had been instructed by the District Attorney's 9 office to show this report to law enforcement if a question arose regarding his custody rights.

Dkt. 10 No. 46-1 ¶ 7; Dkt. No. 46-4 at 28:57-29:14, 30:44-54, 31:28-39. He further asserted that he had 11 just received a renewal of the Good Cause report that day.2 Id. Officer Julian waited while Mr. de 12 Tagle attempted (unsuccessfully) to call Deputy District Attorney Espinoza. Dkt. No. 46-4 at 13 33:40-34:04. 14 According to the body worn camera video, during the course of their discussion, Officer 15 Julian asked Mr. de Tagle multiple times to disclose the location of his

daughter, but Mr. de Tagle 16 refused and periodically asserted that he was done answering questions or would not answer any 17 more questions.

Id. at 25:20-32; 25:45-26:12; 29:27-28; 30:34-44; 34:12-15; 36:10-15; 37:53- 18 38:00. 19 Subsequently, the school resource officer joined Officer Julian, Officer Wagnon, and Mr. 20 de Tagle in the parking lot. The school resource officer confronted Mr. de Tagle about the April 21 5, 2023 custody order, at which point Mr. de Tagle began to raise his voice and adopt a more 22 aggressive tone.

Dkt. No. 46-1 ¶ 8; Dkt. No. 46-4 at 35:11-36:07. The school resource officer and 23 Mr. de Tagle continued to argue until the officers intervened, suggesting the argument was not 24 productive. Dkt. No. 46-4 at 38:12-48. 25 As the body worn camera video shows, at around this time, Mr. de Tagle asked if he was 26 27 2 Later during the encounter, Mr. de Tagle shared with the officers a recent email he had received 1 being detained and arrested.

Id. at 36:34-40. Officer Julian and Officer Wagnon acknowledged 2 that Mr. de Tagle was being detained. Id. Mr. de Tagle then sat down on the ground, stating he 3 had nothing further to say. Id. at 39:10-47. Officer Julian asked if there was a family attorney he 4 could speak to, but Mr. de Tagle stated that he did not have an attorney. Id. at 39:47-40:00. 5 Officer Julian then stepped away from the conversation with Mr. de Tagle to speak by 6 telephone with a woman identified only as “Teresa,” a friend of the children’s mother, who had 7 accompanied the mother to the school.

Dkt. No. 46-1 ¶ 9. Teresa told Officer Julian that Mr. de 8 Tagle had emailed the mother’s attorney a picture of himself in a military uniform holding a gun, 9 accompanied by statements that the attorney and/or the mother would be “six feet under” and that 10 Mr. de Tagle intended to take the children out of town. Id.; Dkt. No. 46-4 at 51:01-55. Teresa 11 told Officer Julian that Mr. de Tagle owned guns and was capable of carrying out the threat.

Id. 12 Officer Julian states in his declaration that he “became concerned” after this call that Mr. de Tagle 13 “may have violated California Penal Code § 422 by making criminal threats and, more 14 importantly, that his daughter could be in imminent danger.” Dkt. No. 46-1 ¶ 10. 15 After speaking with Teresa, Officer Julian returned to the parking lot where Mr. de Tagle 16 remained with Officer Wagnon.

At that point, Officer Julian and Officer Wagnon handcuffed Mr. 17 de Tagle and escorted him to their police vehicle. Id. at 53:22-53:40. They searched Mr. de Tagle 18 and removed his personal belongings before placing him in the back of the police vehicle. Id. at 19 54:27-55:33.

The body worn camera video reflects that Mr. de Tagle had been speaking with the 20 officers for about 30 minutes before he was handcuffed. Id. at 53:22-53:40. Mr. de Tagle again 21 asked if he

was being arrested; Officer Julian replied that he was still just being detained. Id.; Dkt. 22 No. 46-1 ¶ 11. 23 Officer Julian asked again where Mr. de Tagle's daughter was.

This time, Mr. de Tagle 24 replied that she was at her grandfather's jewelry store. Dkt. No. 46-4 at 54:05-09; Dkt. No. 46-1 25 ¶ 12. Mr. de Tagle asked again if he was being arrested and Officer Julian explained that he was 26 detaining him until he saw that Mr. de Tagle's daughter was safe. Id. at 55:22-25. Mr. de Tagle 27 provided a telephone number for his father (his daughter's grandfather).

Officer Julian called the 1 answered. Id. at 59:49-1:01:47. Mr. de Tagle gave instructions, presumably to his father, to bring 2 the daughter to the school. Id. Officer Julian then left the parking lot to speak with the children's 3 mother, advising Officer Wagnon that he wished to get the mother's statement in order to have 4 both sides of the story and to gather more information about the apparent threat Mr. de Tagle had 5 made in his email to the mother's attorney.

Id. at 1:02:36-1:03:04; 1:03:21-29. Officer Julian 6 asked Officer Wagnon to take Mr. de Tagle's statement. Id. The video recording and police 7 reports indicate that Officer Wagnon gave Mr. de Tagle a warning under *Miranda v. Arizona*, 384 U.S. 436 (1966) before taking his statement. Id. at 1:03:33-35; Dkt. No. 46-1 at 11. 9 Officer Julian took a statement from the children's mother.

Dkt. No. 46-1 ¶ 14. In his 10 declaration, he describes the email communications she showed him that Mr. de Tagle sent to her 11 attorney, including the "one where he threatened to take the children and disappear, as well as an 12 email titled 'Bang Bang' containing a picture of [Mr. de Tagle] holding a military rifle." Id. ¶ 15. 13 Officer Julian also spoke to the mother's attorney "who provided additional context regarding the 14 threats made by [Mr. de Tagle]." Id. ¶ 17.

15 At some point, Mr. de Tagle's father arrived at the school with Mr. de Tagle's daughter. 16 Id. ¶ 19. Once both children were reunited with their mother and left the school, Officer Julian 17 returned to the parking lot and released Mr. de Tagle. Id. ¶¶ 20-21. It appears from the body worn 18 camera video that the entire encounter between Officer Julian, Officer Wagnon, and Mr. de Tagle 19 lasted approximately one and a half hours, and that Mr. de Tagle was in handcuffs for 20 approximately one hour of that time.

Dkt. No. 46-1 ¶ 22; Dkt. No. 58 at ECF 14. 21 II. LEGAL STANDARD 22 A motion for summary judgment should be granted if there is no genuine dispute of 23 material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 24 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The moving party bears the 25 initial burden of informing the court of the basis for the motion, and identifying portions of the 26 pleadings, depositions, answers to interrogatories, admissions, or affidavits which demonstrate the 27 absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

In 1 element of the nonmoving party's claim or defense or show that the nonmoving party does not 2 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." 3 *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000). 4 If the moving party meets its initial burden, the burden shifts to the non-moving party to 5 produce evidence supporting its claims or defenses.

See *id.* at 1102. The non-moving party may 6 not rest upon mere allegations or denials of the adverse party's evidence, but instead must produce 7 admissible evidence that shows there is a genuine issue of material fact for trial. See *id.* A 8 genuine dispute of fact is one that could reasonably be resolved in favor of either party. A dispute 9 is "material" only if it could affect the outcome of the suit under the governing law.

Anderson, 10 477 U.S. at 248-49. 11 If the non-moving party fails to oppose, the Court must still consider whether the grant of 12 summary judgment is appropriate based on the record. A motion for summary judgment may not 13 be granted solely on the basis that the opponent did not contest the motion. *Heinemann v. 14 Satterberg*, 731 F.3d 914, 916 (9th Cir. 2013).

However, the Court may take the unchallenged 15 facts as "undisputed for the purposes of the motion." Fed R. Civ. P. 56(e)(2). 16 III. DISCUSSION 17 Officer Julian makes three arguments for summary judgment in his favor.

First, he argues 18 that the undisputed facts establish that Mr. de Tagle was never arrested, but merely detained, and 19 that Officer Julian had reasonable suspicion sufficient to justify this detention. Dkt. No. 46 at 11- 20 16.

Second, he argues that even if the detention could be considered an arrest, the undisputed facts 21 reflect that there was probable cause for the arrest. *Id.* at 16. Third, Officer Julian argues that, 22 even if the Court determines that there was no probable cause to arrest Mr. de Tagle, he is 23 nevertheless entitled to qualified immunity. *Id.* at 20.

In response, Mr. de Tagle asserts only that 24 "there is no probable cause by Defendant to have unlawfully arrest[ed] plaintiff. All such claims 25 and or allegations against Plaintiff were false and malicious in nature." Dkt. No. 54 at 1.

The 26 Court considers each asserted ground for summary judgment. 27 A. Whether Mr. de Tagle Was Lawfully Detained 1 "investigatory stop" under *Terry v. Ohio*, 392 U.S. 1 (1968). "There is no bright-line rule to 2 determine when an investigatory stop becomes an arrest." *Washington v. Lambert*, 98 F.3d 1181, 3 1185 (9th Cir. 1996).

The Court liberally construes Mr. de Tagle's opposition as contending that 4 he was arrested, and not merely detained by Officer Julian. 5 In determining whether the police action constitutes a Terry stop (or detention) or an arrest, 6 courts "evaluat[e] not only how intrusive the stop was, but

also whether the methods used were 7 reasonable given the specific circumstances.” Id. “Under ordinary circumstances, when the police 8 have only reasonable suspicion to make an investigatory stop, drawing weapons and using 9 handcuffs and other restraints will violate the Fourth Amendment.” Id. at 1187.

However, “[t]he 10 whole point of an investigatory stop, as the name suggests, is to allow police to investigate....” 11 *Gallegos v. City of Los Angeles*, 308 F.3d 987, 991 (9th Cir. 2002). Thus, in some circumstances, 12 more “intrusive measures” may be needed, such as: “1) where the suspect is uncooperative or 13 takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police 14 have information that the suspect is currently armed; 3) where the stop closely follows a violent 15 crime; and 4) where the police have information that a crime that may involve violence is about to 16 occur.” *Houston v. City of Fairfield*, No. 2:22-cv-01045-JAM-SCR, 2024 WL 4857649, at *5 17 (E.D.

Cal. Nov. 21, 2024); see also id. at *6 (circumstances involving “individuals whose 18 uncooperative actions themselves disrupted and prolonged officers’ investigations[] implicat[e] 19 the extraordinary circumstances that permit use of more intrusive measures under Washington”). 20 The Court finds that there is no genuine dispute of material fact regarding the 21 circumstances of Mr. de Tagle’s encounter with Officer Julian and Officer Wagnon, most of which 22 was captured by Officer Julian’s body worn camera.

The record reflects that Mr. de Tagle was not 23 permitted to leave the school parking lot for approximately one and a half hours, and was 24 handcuffed for approximately one hour. Initially, Officer Julian, with the assistance of Officer 25 Wagnon, conducted an extensive investigation into whether Mr. de Tagle may have been about to 26 commit, or had committed, a crime—specifically, a violation of California Penal Code § 278 27 1 prohibiting child abduction.³ During the course of that investigation, Officer Julian obtained new 2 information suggesting that Mr. de Tagle may have committed another crime—specifically, a 3 violation of Penal Code § 422, which prohibits threats of “death or great bodily harm” to 4 another—and he proceeded to investigate that offense as well.

During the investigation of these 5 two offenses, Mr. de Tagle was not entirely cooperative. He initially refused to reveal the location 6 of his daughter, despite Officer Julian’s repeated requests for that information. See Dkt. No. 46-4 7 at 25:20-32; 34:12-15, 36:14-15. And while Mr. de Tagle provided some information to Officer 8 Julian and Officer Wagnon regarding the circumstances he believed supported his right to take 9 custody of his children despite the existence of the April 5, 2023 custody order, at other times he 10 refused to answer the officers’ questions.

See id. at 25:45-26:12; 29:27-28; 30:34-44. Thus, 11 Officer Julian’s investigation of the offenses took longer than it might have had Mr. de Tagle been 12 more forthcoming and cooperative. 13 As

noted above, Officer Julian and Officer Wagnon did not merely prevent Mr. de Tagle 14 from leaving the parking lot while they investigated the possible offenses at issue.

After they had 15 been speaking with him for approximately 30 minutes, the officers handcuffed Mr. de Tagle and 16 placed him in the back of a police vehicle. Dkt. No. 46-4 at 53:27. In addition, before taking Mr. 17 de Tagle's statement, Officer Wagnon gave him a Miranda warning. Id. at 1:03:33-35. 18 Handcuffing a suspect and providing a Miranda warning are typical indicia of an arrest.

USA v. 19 Ehrman, No. 21-cr-00204-VC-1, 2022 WL 390716, at *1 (N.D. Cal. Feb. 9, 2022) ("Handcuffs 20 are... 'a hallmark of a formal arrest.'") (quoting United States v. Newton, 369 F.3d 659, 676 (2d 21 Cir. 2004)).

However, both handcuffing and Miranda warnings may be necessary or advisable in 22 some circumstances that fall short of an arrest. United States v. Bautista, 684 F.2d 1286, 1289 23 (9th Cir. 1982) ("A brief but complete restriction of liberty, if not excessive under the 24 circumstances, is permissible during a Terry stop and does not necessarily convert the stop into an 25 3 The California Penal Code also contains a provision prohibiting the malicious deprivation of 26 custody of a child from a lawful custodian.

Cal. Penal Code § 278.5. It is not clear from Officer Julian's motion whether he is also asserting he had reasonable suspicion to investigate this crime. 27 However, as discussed *infra*, the Court finds that the facts establish Officer Julian had reasonable 1 arrest"); id. at 1291 ("Miranda warnings are necessary even during a Terry stop if the suspect has 2 been taken into custody or if the questioning otherwise takes place in a police-dominated or 3 compelling atmosphere.").

In any event, while the Court considers these circumstances in 4 evaluating whether Mr. de Tagle was detained or arrested, neither is dispositive of that question. 5 See United States v. Kim, 292 F.3d 969, 976 (9th Cir. 2002) ("But whether an individual detained 6 during the execution of a search warrant has been unreasonably seized for Fourth Amendment 7 purposes and whether that individual is "in custody" for Miranda purposes are two different 8 issues."); see also Reynaga Hernandez v. Skinner, 969 F.3d 930, 941 (9th Cir.

2020) 9 ("Handcuffing as a means of detaining an individual does not automatically escalate a stop into an 10 arrest, but it 'substantially aggravates the intrusiveness of an otherwise routine investigatory 11 detention and is not part of a typical Terry stop.'") (quoting Bautista, 684 F.2d at 1289). 12 Here, the record reflects that the officers handcuffed Mr. de Tagle only after Officer Julian 13 learned that Mr. de Tagle had threatened the attorney representing the children's mother with harm 14 and had threatened to take the children away; meanwhile, Mr. de Tagle had refused to reveal the 15 location of his daughter.

The officers handcuffed Mr. de Tagle in an effort to reasonably ensure 16 Officer Julian could safely complete his investigation of the two offenses at issue. The record also 17 reflects that Mr. de Tagle was given a Miranda warning only because Officer Wagnon wished to 18 take his statement. This was a precaution meant to protect Mr. de Tagle’s own constitutional right 19 against compelled self-incrimination.

Shortly after being handcuffed, Mr. de Tagle revealed the 20 location of his daughter, contacted his father, and asked his father to bring his daughter to the 21 school. Dkt. No. 46-4 at 59:49-1:01:47. Once the daughter was safely reunited with her mother, 22 Officer Julian released Mr. de Tagle. Dkt. No. 46-1 ¶¶ 20-21. Mr. de Tagle does not contest this 23 sequence of events nor provide any support for his contention that Officer Julian arrested him.

24 Construing the undisputed facts in the light most favorable to Mr. de Tagle, the Court 25 concludes that the duration of Mr. de Tagle’s detention was longer than most Terry stops, and 26 some of the means used to restrict his movements were more intrusive than those typically used in 27 a Terry stop.

However, in view of the specific circumstances Officer Julian encountered in the 1 used to effectuate it exceeded what was reasonably necessary for completion of the investigation. 2 The Court concludes that Mr. de Tagle was detained and was not arrested, and no reasonable jury 3 could conclude otherwise. 4 Having determined that Mr. de Tagle was detained and not arrested, the Court must 5 nevertheless consider whether, as a matter of law, the detention was lawful under the Fourth 6 Amendment, i.e. whether Officer Julian had “reasonable suspicion” that Mr. de Tagle was 7 committing or had committed a criminal offense.

Thomas v. Dillard, 818 F.3d 864, 874-75 (9th 8 Cir. 2016), as amended (May 5, 2016). In making this determination, a court “must look at the 9 ‘totality of the circumstances’ of each case to see whether the detaining officer has a particularized 10 and objective basis for suspecting legal wrongdoing.” United States v. Arvizu, 534 U.S. 266, 273 11 (2002); see also United States v. Cortez, 449 U.S. 411, 417 (1981) (stating that “the totality of the 12 circumstances—the whole picture—must be taken into account” when determining if an officer 13 had reasonable suspicion to perform an investigatory stop).

14 Officer Julian argues that he had ample justification to detain Mr. de Tagle while 15 investigating him for “potential child abduction and criminal threats under California Penal Code 16 § 422.” Dkt. No. 46 at 15.

The elements of child abduction under Penal Code § 278 are: (1) the 17 defendant maliciously took, kept, withheld, or concealed a child from his or her lawful custodian; 18 (2) the child was under the age of 18; (3) when the defendant acted, he did not have a right to 19 custody of that

child; and (4) when the defendant acted, he intended to detain or conceal the child from the child's lawful custodian.

People v. Coulthard, 90 Cal. App. 5th 743, 754 (2023), reh'g 21 denied (Apr. 19, 2023), review denied (June 28, 2023) (citing CALCRIM No. 1250). The 22 elements of Penal Code § 422, as recognized by the California Supreme Court, are: 23 (1) that the defendant “willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another 24 person,” (2) that the defendant made the threat “with the specific 25 intent that the statement... is to be taken as a threat, even if there is no intent of actually carrying it out,” (3) that the threat— 26 which may be “made verbally, in writing, or by means of an electronic communication device”—was “on its face and under 27 the circumstances in which it [was] made,... so unequivocal, person threatened, a gravity of purpose and an immediate 1 prospect of execution of the threat,” (4) that the threat actually 2 caused the person threatened “to be in sustained fear for his or her own safety or for his or her immediate family's safety,” and 3 (5) that the threatened person's fear was “reasonabl[e]” under the circumstances.

4 5 *People v. Toledo*, 26 Cal. 4th 221, 227-28 (Cal. 2001) (citations omitted). 6 As to the crime of child abduction in violation of Penal Code § 278, the totality of the 7 circumstances supports a finding that Officer Julian possessed reasonable suspicion that this crime 8 was being committed. Officer Julian arrived at the school in response to a dispatch call that Mr. 9 de Tagle was at the school to pick up his son over whom he no longer had legal custody.

Dkt. No. 10 46-1 ¶¶ 3-4. Upon arrival, Officer Julian confirmed the validity of the custody order, which 11 explicitly removed all Mr. de Tagle's custody rights as of one day prior. *Id.*; see also Dkt. No. 58 12 at ECF 46-47. Officer Julian additionally discovered that Mr. de Tagle's son had been reunited 13 with his mother but that Mr. de Tagle's daughter was not at the school.

Dkt. No. 46-1 at ECF 7. 14 Officer Julian then spoke to Mr. de Tagle who admitted he was intentionally withholding his 15 daughter from her mother and asserted he was given permission to do so by Deputy District 16 Attorney Espinoza via a Good Cause report. Dkt. No. 46-1 ¶ 6; Dkt. No. 46-4 at 24:48-25:15. 17 Even after Officer Julian explained to Mr. de Tagle that the superior court had issued a 18 superseding custody order, Mr. de Tagle repeatedly refused to disclose the location of his 19 daughter.

See Dkt. No. 46-1 ¶ 7; Dkt. No. 46-4 at 25:20-32; 28:57-29:14; 30:44-50; 31:28-39; 20 34:12-15, 36:14-15. These circumstances more than establish a “particularized and objective 21 basis” for Officer Julian's suspicion that Mr. de Tagle was committing a violation of Penal Code 22 § 278. 23 The record similarly supports Officer Julian's reasonable suspicion that Mr. de Tagle had 24 committed a violation of Penal Code § 422.

During his investigation, Officer Julian received 25 information that Mr. de Tagle had sent threatening communications to the attorney representing 26 his children's mother. Dkt. No. 46-1 ¶ 9; Dkt. No. 46-4 at 51:01-55. He was informed that the 27 communications included an image of Mr. de Tagle wearing a military uniform and carrying a 1 would be "six feet under" while he took the children away.

Dkt. No. 46-4 at 51:01-55. Officer 2 Julian also received information that Mr. de Tagle owned a gun and was capable of carrying out 3 his threat. *Id.* Thus, based on the information known to Officer Julian at this time, he reasonably 4 suspected that Mr. de Tagle had intended to threaten the children's mother and/or her attorney 5 with death or bodily harm in violation of Penal Code § 422 and thus lawfully continued to detain 6 him while he further investigated the situation, including speaking to the children's mother and her 7 attorney, and personally viewing the threatening communications.

These facts establish that 8 Officer Julian possessed reasonable suspicion of a violation of Penal Code § 422. 9 Based on the undisputed facts, the Court concludes that Officer Julian had a reasonable 10 suspicion that Mr. de Tagle was committing or had committed violations of Penal Code § 278 and 11 Penal Code § 422, and grants Officer Julian's motion for summary judgment on this basis.

12 B. Whether Mr. de Tagle Was Lawfully Arrested 13 Officer Julian contends that, in any event, he had probable cause to arrest Mr. de Tagle for 14 a violation of Penal Code § 166(a)(4), for disobeying a court order,⁴ and Penal Code § 422, for 15 threatening to cause bodily injury. Dkt. No. 46 at 18.

The Court liberally construes Mr. de 16 Tagle's opposition as contending that Officer Julian did not have probable cause to arrest him for 17 any offense. 18 "Probable cause to arrest exists when officers have knowledge or reasonably trustworthy 19 information sufficient to lead a person of reasonable caution to believe that an offense has been or 20 is being committed by the person being arrested." *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th 21 Cir.

1984) (citing *Beck v. Ohio*, 379 U.S. 89, 91 (1964)); see also *Devenpeck*, 543 U.S. at 152 22 ("Whether probable cause exists depends upon the reasonable conclusion to be drawn from the 23 facts known to the arresting officer at the time of the arrest."). "Probable cause is an objective 24 25 4 The Court notes that the offenses for which Officer Julian claims he had probable cause overlap with, but are not the same as, those for which he claims he had reasonable suspicion.

However, 26 this discrepancy does not impact the Court's determination, as the question before the Court is not which specific crime Officer Julian believed was at issue but whether he had probable cause to 27 arrest Mr. de Tagle for a crime at the time of the arrest. *Devenpeck v. Alford*, 543 U.S. 146, 153 1 standard.

The arresting officers' subjective intention... is immaterial in judging whether their 2 actions were reasonable for Fourth Amendment purpose." *United States v. Lopez*, 482 F.3d 1067, 3 1072 (9th Cir. 2007). Probable cause "is not a high bar," *Kaley v. United States*, 571 U.S. 320, 4 338 (2014), and requires only "the kind of fair probability on which reasonable and prudent 5 people, not legal technicians, act," *Florida v. Harris*, 568 U.S. 237, 244 (2013) (cleaned up).

6 "[S]ummary judgment is appropriate when there is no genuine issue of fact and if no reasonable 7 jury could find an absence of probable cause under the facts." *Johnson v. Barr*, 79 F.4th 996, 8 1003 (9th Cir. 2023) (quotations and citation omitted). 9 Penal Code § 166(a)(4) prohibits "[w]illful disobedience of the terms, as written, of a 10 process or court order or out-of-state court order, lawfully issued by a court, including orders 11 pending trial." Here, it is undisputed that at the time Officer Julian first encountered Mr. de Tagle 12 he had information indicating that Mr. de Tagle was at his son's school with the intent to keep or 13 take custody of both children in violation of a court order giving sole custody to the children's 14 mother.

While some courts have declined to find probable cause to arrest a parent for disobeying 15 a custody order where the analysis would require interpretation of the order and thus California 16 family law, see *Dowling v. Starr*, No. 3:19-cv-05777-WHO, 2021 WL 2865211, at *5 (N.D. Cal. 17 July 8, 2021), there was nothing ambiguous about the April 5, 2023 custody order that Officer 18 Julian considered.

See Dkt. No. 58 at ECF 47 ("Father... is to turn over the children... to 19 Mother today, April 5, 2023 at 5:00 p.m..... Father is to have no contact with the children 20 pending further order of the Court."). Indeed, in the first few minutes of his conversation with 21 Officer Julian, Mr. de Tagle indicated that he was aware of the court order but intended not to 22 comply with it because he believed that the Good Cause report he had obtained "superseded" the 23 court's order.

Dkt No. 46-4 at 28:57-29:14. Officer Julian has established that he had probable 24 cause to believe Mr. de Tagle had committed or was committing a violation of Penal Code 25 § 166(a)(4). 26 With respect to the alleged violation of Penal Code § 422, the elements of which are set 27 out above, Officer Julian has also shown that he had probable cause to arrest Mr. de Tagle for this 1 observations, indicating that Mr. de Tagle had sent communications threatening harm to another 2 person (e.g., "six feet under").

In these circumstances, no reasonable jury could find that Officer 3 Julian lacked probable cause to arrest Mr. de Tagle for a violation of Penal Code § 422 at that 4 time. 5 Based on the undisputed facts, the Court concludes that Officer Julian had probable cause 6 to arrest Mr. de Tagle for violations of Penal Code § 166(a)(4) and Penal Code § 422, and grants 7 Officer Julian's motion for summary judgment on this basis.

8 C. Qualified Immunity 9 Officer Julian’s final argument for summary judgment in his favor is that even if the Court 10 concludes that his arrest or detention of Mr. de Tagle was not lawful, he is nevertheless entitled to 11 qualified immunity as a matter of law. Dkt. No. 46 at 22-23. Mr. de Tagle does not address this 12 argument in his opposition. 13 “‘Qualified immunity attaches when an official’s conduct does not violate clearly 14 established statutory or constitutional rights of which a reasonable person would have known.’” 15 *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (quoting *White v. Pauly*, 580 U.S. 73 (2017)). “The 16 two steps in the qualified immunity analysis are (1) ‘whether the facts that a plaintiff has alleged 17... or shown... make out a violation of a constitutional right’ and (2) ‘whether the right at issue 18 was “clearly established” at the time of defendant’s alleged misconduct.’” *Johnson*, 79 F.4th at 19 1004 (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)).

In the context of a claim for 20 unlawful arrest in violation of the Fourth Amendment, the Ninth Circuit has “summarized the two- 21 step qualified immunity inquiry as ‘(1) whether there was probable cause for the arrest; and (2) 22 whether it is reasonably arguable that there was probable cause for arrest—that is, whether 23 reasonable officers could disagree as to the legality of the arrest such that the arresting officer is 24 entitled to qualified immunity.’” *Id.* at 1005 (quoting *Rosenbaum v. Washoe Cnty.*, 663 F.3d 25 1071, 1076 (9th Cir.

2011)). The “clearly established” prong of the qualified immunity analysis is 26 a matter of law to be decided by the Court, once factual issues are resolved. *Reese v. Cnty. of 27 Sacramento*, 888 F.3d 1030, 1037 (9th Cir. 2017). “The linchpin of the qualified immunity 1 663 F.3d at 1078. 2 Here, Officer Julian was provided with, and personally reviewed, a copy of a custody order 3 clearly stating that Mr. de Tagle did not have custody of his children and should have turned over 4 both of his children to their mother the day before.

Dowling, 2021 WL 2865211, at *6 (“[W]hen 5 officers make an arrest based on an alleged violation of a court order, they have the obligation to 6 familiarize themselves with the precise terms of the order before doing so.”). While Mr. de Tagle 7 disputed the effectiveness of the court order, he did not provide Officer Julian any “countervailing 8 [court] order that would allow him to do what he had done” nor assert that such an order existed.

9 *Id.* at *7 (emphasis added). Mr. de Tagle’s Good Cause report states only that it “can only serve 10 as a defense to an allegation of Penal Code Section 278.5” and that such “a defense to child 11 abduction/detention” is not guaranteed “without further investigation.” Dkt. No. 58 at ECF 31. 12 Moreover, during the course of his investigation, Officer Julian was also provided information 13 indicating that Mr. de Tagle had threatened to take his children away and had had sent threatening 14 communications to the attorney representing his children’s mother in their custody dispute.

Dkt. 15 No. 46-1 ¶¶ 9-10, 14-15. 16 There is no clearly established law identified by either party indicating that an arrest, let 17 alone a detention, would be unlawful in these circumstances. And

even if Officer Julian had made 18 a mistake in enforcing the custody order, “the protection of qualified immunity applies regardless 19 of whether the government official's error is ‘a mistake of law, a mistake of fact, or a mistake 20 based on mixed questions of law and fact.’” Pearson, 555 U.S. at 231 (citation omitted).

21 Therefore, the Court finds that Officer Julian is entitled to qualified immunity and grants his 22 motion for summary judgment on this basis as well. 23 IV. CONCLUSION 24 For the reasons set out above, the Court grants Officer Julian’s motion for summary 25 judgment.

The Clerk shall enter judgment accordingly and close this file. 26 // 27 // 1 IT IS SO ORDERED.
2 Dated: June 30, 2025 3 4 Vrain. ®. ☐☐ ☐☐☐☐ Virginia K. DeMarchi 5 United States Magistrate
Judge 6 7 8 9 10 11 12 13 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28