

See below for another 9th Circuit case on handcuffing decided on 4th Amendment and ADA claims. Also attached is our policy on handcuffing that specifies, “When a restrained person complains of pain, injury, and/or impaired breathing, the officer shall determine whether there is a need to remove or adjust restraints and/or seek immediate medical attention.” As a matter of law (and policy), handcuffing is not required for all arrestees and you must make an individualized determination that is actually necessary under the totality of circumstances you are faced with in any particular encounter. Even after concluding they may be initially necessary, you are still required to make adjustments should the need arise.

Let me know if you have any questions.

Borawick v. City of Los Angeles, 2020 U.S. App. LEXIS 4875
United States Court of Appeals for the Ninth Circuit
February 13, 2020

The Ninth U.S. Circuit Court of Appeals reversed a summary judgment in favor of the City of Los Angeles and two of its police officers in an action by Borawick, an entertainment lawyer, who was handcuffed behind her back when arrested on a traffic warrant despite her protest that she had a severely injured shoulder that was “frozen” and that such positioning of her arms would result in extreme pain.

Borawick had been pulled over on Venice Boulevard on April 21, 2016, based on a defective brake light, while she was on her way to a medical appointment in connection with the condition of her shoulder. The officers determined there was a warrant for her arrest based on a misdemeanor hit-and-run stemming from a car collision.

Among the allegations by plaintiff Borawick are that, because the officers viewed her as belligerent, she was vindictively kept in handcuffs for about an hour, notwithstanding that she was in agony. Borawick charged that they acted despite a fear she expressed, after she was placed in a police car, that the experience—in light of her vascular disorder which had resulted in three bypass surgeries—could prove life-threatening to her.

A video recording of the encounter shows her exclaiming: “I’m afraid I’m going to have a heart attack.” Borawick referred the officers to medical information in her wallet which they examined but, she complained, did not cause them to alter their conduct. (The recording also reflects that they were not impressed by her screamed proclamation: “I’m an attorney in good standing!”)

“Brutal Treatment”

In Borawick’s opening brief in the Ninth Circuit, her attorneys argued, with respect to the excessive force claim:

“This case concerns the brutal treatment of a fifty-nine-year-old disabled woman who posed no threat to arresting officers and yet was unnecessarily and forcibly handcuffed in

a manner that caused her agonizing pain and, due to her medical conditions, nearly killed her.”

“As soon as the officers forced Ms. Borawick’s arms behind her back, she began to writhe and scream in agony....Ms. Borawick screamed, ‘My arm! My arm won’t go back! Oh my God I’m going to pass out.’...Ms. Borawick repeatedly informed the officers she could not sit with her arms like this, prayed to God, and asked the officers to please take her somewhere she could get help....

“The officers responded by telling her to relax,...by telling her they were not in any hurry to get out of there,...and by making her wait in the car still handcuffed rather than immediately taking her to the station where she could be released....They made no move to accommodate her even though the officers acknowledged there was a possibility that Ms. Borawick was experiencing real pain.”

The brief contends:

“At the time, Ms. Borawick did have a misdemeanor warrant for a past traffic collision issued by the Santa Monica Police Department....It was unnecessary to handcuff Ms. Borawick for a misdemeanor warrant....Ms. Borawick did not evade or flee from the officers and was cooperative at all times.

They also argued that under California Peace Officer Standards and Training standards “and case law, it was not appropriate to handcuff Ms. Borawick” based on an alleged misdemeanor.

Double Handcuffs

The City of Los Angeles stressed that at some point, the officers did accommodate Borawick by lessening the gap between her wrists by attaching each wrist to a different pair of handcuffs, which were joined.

The officers estimated the total amount of time she was handcuffed was less than the time—“over an hour”—Borawick stated. According to her, the trip to the LAPD’s Pacific Division station took “roughly thirty minutes” and it was only when she was transported to the Santa Monica station that double-handcuffs were used.

The 9th Circuit Held -

4th Amendment Claim

Borawick's Fourth Amendment claim against officers Reyes and Correa cannot be resolved as a matter of qualified immunity on summary judgment.

Public officials are immune from civil suit only insofar as their conduct does not violate a right that was "clearly established" at the time the conduct occurred. If genuine issues of material fact exist that prevent a determination of qualified immunity at summary judgment, the case must proceed to trial.

By the time of Borawick's arrest in 2016, we had long since established that "when no immediate threat is posed and the police can use other means of patting down a suspect, they may not insist on doing so in a manner that will cause the suspect pain." Winterrowd v. Nelson (9th Cir. 2007) (denying qualified immunity to officer who restrained a motorist during a pat-down search). See also Alexander v. Cty. of Los Angeles (9th Cir. 1995) (denying qualified immunity to officers who restrained suspected bank-robber in overly-tight handcuffs for "thirty-five to forty" minutes despite being informed that the suspect was a dialysis patient); Palmer v. Sanderson, (9th Cir. 1993) (denying qualified immunity to officer who "presented no evidence that would justify handcuffing a motorist suspected of driving while intoxicated so tightly that he suffered pain and bruises, or to justify the officer's refusal to loosen the handcuffs No reasonable officer could believe that the abusive application of handcuffs was constitutional.").

In this case, Borawick and Appellees have raised genuine disputes of material fact over whether there was an objective basis to believe that Borawick was a danger to the officers or to the public; whether a reasonable officer, having been alerted to Borawick's disability and medical history, would have employed alternative means of restraining her; and whether a reasonable officer would have known the handcuffs were causing Borawick unnecessary or unusually severe pain. As these disputes bear on whether Reyes and Correa engaged in conduct proscribed by clearly established law, the officers are not entitled to qualified immunity as a matter of law.

ADA Claim

Borawick's [Americans with Disabilities Act](#) and [Rehabilitation Act](#) claims against the City survive summary judgment. Borawick presented evidence that, if true, could lead a fact-finder to conclude that Reyes and Correa were deliberately indifferent to her disability as they knew of a reasonable accommodation (i.e., adding a second ring to her handcuffs) which they did not employ despite having the "time and opportunity" to do so. Under the ADA and Rehabilitation Act, municipalities are vicariously liable for the conduct of their employees. Borawick has viable claims under federal law.

The case was remanded to the district court for trial.

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