No. 24-

IN THE

Supreme Court of the United States

WILLIAM JONES, JR.,

Petitioner,

v.

YMELDA ELENA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

After the Los Angeles Police Department responded to multiple 911 calls of an "***active shooter,***" the officers heard screaming, observed blood on the floor, and saw a female victim bleeding profusely from the head, crawling on the floor, and attempting to escape her assailant, Daniel Elena-Lopez. As Officer William Jones (Petitioner) approached Elena-Lopez, he saw a dark object in Elena-Lopez's hand and saw it moving. Believing Elena-Lopez was armed with a gun as previously reported, Officer Jones fired three shots in rapid succession, one of which fatally wounded Elena-Lopez. Despite the presence of clear video evidence which established these facts, the Ninth Circuit denied summary judgment, thereby presenting the following issue:

In ruling on a claim for qualified immunity raised in a motion for summary judgment, does a court's obligation to view the evidence in the light most favorable to the plaintiff allow that court to ignore undisputed clear video evidence which, if considered, would require the court to draw the inference that the force used by the defendants was not excessive, and the further inference that the unlawfulness of the defendants' conduct was not clearly established?

PARTIES

Petitioner William Jones, Jr., is a member of the Los Angeles Police Department. Petitioner was a defendant in the District Court and an appellant in the Ninth Circuit appeal from which this petition is taken.

Respondents Ymelda Elena, Mario Elena, and I.J., a minor by and through her Guardian Ad Litem, Maria Cervantes, are the Successors in Interest to Decedent Daniel Elena-Lopez, and were the plaintiffs in the District Court and the appellees in the Ninth Circuit.

RELATED PROCEEDINGS

Ymelda Elena, et al. v. William Jones, Jr. and the City of Los Angeles, United States District Court, Central District of California, Case No. 2:22-CV-07651-KK-KS, summary judgment granted in part and denied in part on January 17, 2024.

Ymelda Elena, et al. v. William Jones, Jr. and the City of Los Angeles, United States Court of Appeals for the Ninth Circuit, Case No. 24-552, judgment entered on December 9, 2024.

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2. The District Court's unpublished order granting in part and denying in part petitioner's motion for summary judgment (App. 5a-33a) is at *Elena v. City of Los Angeles*, 2022 U.S. Dist. LEXIS 78458 (C.D. Cal. 2024).

JURISDICTION

The Ninth Circuit Court of Appeals issued its Memorandum affirming the District Court's order on December 9, 2024. This Court has jurisdiction to review the decision of the United States Court of Appeals for the Ninth Circuit by petition for writ of certiorari. 28 U.S.C. § 1254(1). This petition is being timely filed within 90 days after the Ninth Circuit's Memorandum pursuant to United States Supreme Court Rule 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents' claims are under the Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983.

The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not

> be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1 of the Fourteenth Amendment states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any persons of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42 U.S. Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was

violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

INTRODUCTION

On December 23, 2021, during the busy shopping period the day before Christmas Eve, the Los Angeles Police Department (LAPD) responded to multiple 911 calls of an "***active shooter***" at the Burlington Coat Factory in North Hollywood, California. Upon arriving at the scene, the LAPD officers encountered a horrific scene: individuals were screaming, there was blood on the floor, and a female victim was bleeding profusely from the head and crawling on the floor attempting to escape her attacker. As Officer Jones approached, he peered around the corner and observed Elena-Lopez with a dark object in his hand and saw it moving. Believing Elena-Lopez was armed with a gun—as had been reported in the multiple 911 calls which had been relayed to the officers—and fearing that Elena-Lopez was going to either shoot him or the victim, Officer Jones fired three shots in rapid succession, one of which struck Elena-Lopez, who was subsequently pronounced dead at the scene.

These disturbing events were caught both on Burlington surveillance video as well as Officer Jones' body worn camera thereby eliminating any issue of fact pursuant to *Scott v. Harris,* 550 U.S. 372, 380 (2007).[1]

1. In conjunction with the motion for summary judgment, both Petitioner and Respondents submitted multiple audio recordings and video recordings, which were transmitted to the

In *Scott*, this Court was presented with a situation in which a plaintiff in a civil rights case told a version of a story which was contradicted by the video evidence in the case. Under plaintiff 's view,

> "there was little, if any, actual threat to pedestrians or other motorists, as the roads were mostly empty." *Id.* at 378. However, the video evidence showed something entirely different. Scott was shown "racing down narrow, two-lane roads in the dead of night at speeds that are shockingly fast. We see it swerve around more than a dozen other cars, cross the double-yellow line, and force cars traveling in both directions to their respective shoulders to avoid being hit. We see multiple red lights and travel for considerable periods of time in the occasional left-turn-only lane, chased by numerous police cars forced to engage in some hazardous maneuvers just to keep up. Far from being the cautious and controlled driver the lower court depicts, what we see on the video more closely resembles a Hollywood-style car chase of the most frightening sort. . . ." *Id.* at 379-380.

Ninth Circuit. Ninth Cir. Dkt. 36; District Court Dkt. 42, 49. For the convenience of the court and the parties, hypertext links to two of these exhibits (each of which are under two minutes in length) are provided below:

- Video of Fitting Room Attack (Def. Ex. E) (https://streamable.com/27tmgb).
- Body Worn Camera Video (Pl. Ex. E [2-minute excerpt of original 17-minute video]) (https://streamable.com/jeehfs).

Based on the presence of the video evidence, Justice Scalia, writing for the majority of this Court, stated, "When opposing parties tell different stories, one of which is blatantly contradicted by the record so that no reasonable jury could believe it, a court should not adopt that version of facts for the purposes of ruling on a motion for summary judgment." *Id.* at 380. In so ruling, Justice Scalia reasoned, "[Plaintiff's] version of events is so utterly discredited by the record that no reasonable jury could have believed him. **The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape**." *Id.* at 380-381 (emphasis added).

Justice Scalia's insight was prescient. In the intervening seventeen years, cell phones with video-recording capability have become ubiquitous, and the vast majority of law enforcement agencies are moving toward the use of body worn cameras. These two changes have resulted in more transparency and an increased accountability for law enforcement and have fostered an enhanced sense of safeguarding the public trust between the law enforcement community and the citizenry as a whole.

However, in recent years, courts of inferior jurisdiction have started to drift farther and farther away from Justice Scalia's sage reasoning. In summarizing the facts of the case, some circuit courts will cherry pick certain facts while ignoring the vast amount of other undisputed evidence (shown on video) which puts the facts recited by the panel in context. Once these additional uncontroverted facts are considered, there is only one inference that can be drawn: that the use of force was not excessive, and the

unique circumstances of this incident make clear that the law was not clearly established.

This dilution of the uncontroverted facts is readily apparent in this case. Here, the Ninth Circuit does not even engage in a factual recitation in an unpublished memorandum opinion which takes up a scant four paragraphs, including a single sentence on the issue of qualified immunity.

The proper resolution of issues of qualified immunity, however, cannot be based on an artificial and selective recitation of the facts; rather, it requires a deep dive into the particularized facts of the case. *White v. Pauly*, 580 U.S. 73, 79 (2017) ("clearly established law" should not be defined "at a high level of generality" but must be "particularized" to the facts of the case). In limiting the appropriate factual analysis, panels are using unpublished memorandum decisions to evade binding Supreme Court authority which outlines not only the substantive law, but also the proper use of uncontroverted and dispositive video evidence.

Unfortunately, the Ninth Circuit's dilution of *Scott v. Harris* in this matter is no isolated incident. Recently, in *Wright v. City of San Bernardino,* 2023 U.S. Dist. LEXIS 192897 (C.D. Cal. 2023), a California District Court rejected an argument based on *Scott v. Harris,* sneering,

> Whatever else might be said about the majority opinion in *Scott,* with the rise of 'deep fake' videos and other manipulated media, the Court questions whether the decision's approach should have long-term affect [sic]. No party

> in this litigation has argued that any of the video evidence has been manipulated to show something that did not actually occur on the evening in question.

Id. at *34-35, n. 15.

A similar issue recently occurred in *City of Los Angeles v. M.A.R.,* 2023 U.S. App. LEXIS 18078 (9th Cir. 2024), in which similar issues were raised to this Court in United States Supreme Court Case No. 23-689, and in which this Court requested a response from respondents.[2]

And yet another similar issue recently occurred in *Penny v. Azmy, et al.,* 2024 U.S. App. LEXIS 6672 (9th Cir. 2024), in which identical issues were raised to this Court in United States Supreme Court Case No. 23-1333.

Finally, within the last two weeks, in *Pina v. Dominguez,* — U.S. —, 2025 U.S. LEXIS 853 (02-24-25), Justices Alito and Thomas dissented in the denial of certiorari in a case in which the Ninth Circuit once again "badly fumbled" a qualified immunity analysis. *Id.* at *1 (Alito, dissenting).

As these cases aptly demonstrate, the various District and Circuit Courts, in general, and those in the Ninth Circuit, in particular, are in desperate need of guidance. Is *Scott v. Harris* no longer binding precedent? How

2. During the pendency of the Petition for a Writ of Certiorari in *City of Los Angeles v. M.A.R.,* the parties entered into a settlement agreement. Consequently, the petition in this matter is being held in abeyance pending the finalization of the settlement agreement.

should *Scott* be applied when there are no allegations or evidence of video tampering, and no reason to question the validity of the undisputed video evidence? And what should happen when—as was the case here—the reviewing court evades a comprehensive review of all relevant facts and video evidence to offer a facially plausible reason to deny qualified immunity in an unpublished memorandum opinion?

Petitioner, therefore, asks that this Court grant the petition for a writ of certiorari to provide the much needed instruction and advice on this critical issue. Alternatively, Petitioner requests that this Court grant the petition and reverse the Ninth Circuit's judgment by way of summary disposition. See *Los Angeles County v. Rettele,* 550 U.S. 609 (2007).

STATEMENT OF THE CASE

The Initial Events

On December 23, 2021, Elena-Lopez committed a string of unprovoked, random, and violent crimes against women, including tackling one woman on the sidewalk and forcing himself into the apartment of another woman with her young children present.

Sometime thereafter, Elena-Lopez entered the nearby Burlington Coat Factory store in the North Hollywood area of Los Angeles with a bicycle and a heavy-duty bicycle lock. A loss prevention specialist for the store immediately noticed Elena-Lopez and her attention was drawn to him because he brought the bicycle up the escalator.

Employees repeatedly told Elena-Lopez to leave, but he refused and loitered near the escalator and elevator landing area on the second floor with his bicycle. On two occasions, Elena-Lopez picked up his bicycle, raised it over his head and held it over the railing of the landing as if he was going to throw it to the first floor. Elena-Lopez also struck a female employee across her buttocks.

As the store employees continued to instruct all employees to evacuate the store and warned Elena-Lopez that the police were being called, Elena-Lopez swung the bicycle lock repeatedly, striking a security monitor and hard drive affixed to a podium on the landing.

Multiple 911 Calls of an Active Shooter Are Received

An employee in the store believed that the loud banging sounds that the bike lock was making when it was striking the objects were gunshots. The employee called 911 and stated that there was a man in the store with a gun and to please send the police to Burlington. The employee was panicked and stated that shots had been fired. The dispatcher specifically asked if the suspect shot the gun, to which the employee responded, "yes."

Elena-Lopez began moving around the store and assaulted more civilian women who were innocently trying to leave the store. Elena-Lopez walked to the front doors and swung the bicycle lock against the theft prevention security sensors and shattered one of the glass doors.

These noises led numerous individuals to believe that an active shooter situation was unfolding inside the store. Numerous customers and employees fled the store, while others sheltered in place.

Several additional calls to 911 were made. LAPD dispatchers broadcast that there was a suspect in the Burlington store attempting to assault customers with a bike lock. Shortly after that, in response to additional 911 calls, the dispatcher stated, "North Hollywood units, Ambulance . . . correction, shooting just occurred Victory Blvd. and Laurel Canyon, Victory Blvd. and Laurel Canyon at the Burlington Coat Factory."

Of the total six 911 calls that were made from inside the store, one of them was answered by the Burbank Police Department (BPD). During this call, the Burlington employee used the term "***active shooter***" to describe shots she believed she had heard inside Burlington. Thereafter, the BPD operator informed the LAPD dispatcher that she was transferring a caller that was reporting an "active shooter."

Based on the various broadcasts which were made, some of the officers, including Officer William Jones, Jr., believed it was very possible that Elena-Lopez was armed with a gun and was an active shooter.

The LAPD Responds to the Active Shooter Calls

Multiple LAPD officers responded to Burlington, including Officer Jones. When Officer Jones arrived in the parking lot, he and his fellow officer encountered a number of people outside the store gathered in the parking lot, appearing to have just exited the store. Officer Jones believed that this was very possibly an active shooter scenario.

Responding officers were informed over the radio broadcast that at least two or three callers stated that

there was a shooting in progress or a possible subject with a gun inside the store. Officer Jones broadcast that his patrol vehicle was equipped with a rifle.

Prior to the incident, on December 8, 2021, Officer Jones attended Mass Violence Tactical Response training. The officers that had initially arrived at Burlington formed a contact team and entered the store. Officer Jones exited his patrol vehicle and obtained the rifle from the back of the vehicle. As Officer Jones was preparing his rifle, one customer who was standing in the parking lot was providing a description of the suspect and Officer Jones perceived in her tone an urgency to intervene with what was happening inside the store.

Elena-Lopez returned to the second floor of the store just prior to the time that the contact team began to ascend the escalators, indicating that he was aware of law enforcement presence.

The Violent Assault on a Customer

As the contact team ascended to the second level, a female customer was continuing to shop in the store. She was pushing a shopping cart and appeared to be unaware of the emergency that was unfolding inside the store due to Elena-Lopez's violent conduct.

Elena-Lopez approached her, and, in a completely unprovoked attack, he repeatedly struck the woman with the bicycle lock, striking her approximately 20 times in her body and head, and causing severe injuries. The woman raised both hands over her head to protect herself, however, Elena-Lopez continued to bludgeon her. As the

victim attempted to protect herself, Elena-Lopez grabbed her by the hair and dragged her to the floor and continued to violently strike her with the bike lock eight additional times and kicked her in the face. Video of Fitting Room Attack (https://streamable.com/27tmgb).

As Officer Jones approached the store, he noticed broken glass in the front door area and discarded clothing items on the floor at the base of the escalator. Officer Jones encountered a sergeant who saw him carrying the patrol rifle and the sergeant gestured Officer Jones past him to ascend the escalator. When Officer Jones reached the top of the escalator, he met the contact team officers configured in a manner that he anticipated to be consistent with Immediate Action/Rapid Deployment active shooter tactics. Officer Jones made statements as he reached the team, "Get distance" and "Back up."

At the time he joined the contact team, an officer had already identified a "***victim down***" and the team was beginning to push forward. Officer Jones told the team, "Hey, slow down" to allow him to take the point position with the rifle.

A female citizen moved quickly past the officers and away from their area of focus, which is conduct that Officer Jones recognized as consistent with people fleeing the scene of an active shooter. As the officers were moving forward, Officer Jones heard the instructions to slow the cadence of the team, and he responded to those instructions. Body Worn Camera Video (https://streamable.com/jeehfs).

Officer Jones Discovers the Severely Injured Victim

When Officer Jones observed the severely injured and bloodied victim, circumstances immediately changed. The victim was crawling and rolled to her right side. Her face was covered in blood, appeared swollen and disfigured, and she had what appeared to be masses of skin or other tissue in her hair.

Officer Jones then accelerated his cadence toward the victim. Officer Jones shouted to the team, "Hey, she's bleeding. She's bleeding." The victim was crawling from between display shelves toward the main aisle, from where Officer Jones and the rest of the officers were approaching. She looked momentarily toward Officer Jones and then back into the aisle.

As the victim made it to the end cap of the aisle, she briefly looked towards Officer Jones and then looked back into the aisle, again causing Officer Jones to believe that Elena-Lopez was still in the immediate area.

Officer Jones moved the selector switch on his rifle transitioning from the safe to fire position based on the risk of the suspect unexpectedly emerging from behind display racks at a dangerously close distance and because he believed the victim could have been looking back into the aisle because her attacker was in close proximity. Body Worn Camera Video (https://streamable.com/jeehfs).

Officer Jones Encounters Elena-Lopez

Officer Jones made the turn around the display rack nearest the victim and took a position over her, and at that time, he could see Elena-Lopez in the aisle. Elena-Lopez's demeanor indicated that he was in a rage and his appearance was consistent with controlled substance intoxication. Elena-Lopez had the bicycle lock in his right hand, which Officer Jones believed to be a firearm based on the totality of circumstances, including the injuries that had been inflicted on the victim, the information in the radio dispatches, and his other observations leading up to and including that moment. Officer Jones believed that Elena-Lopez was armed with a firearm and that Elena-Lopez intended to kill him.[3]

Elena-Lopez started to turn and move to his left and began bending his elbow upward, raising what Officer Jones believed was the gun. Officer Jones believed that the lives of the victim, himself, his fellow officers and the public at large were in imminent danger.

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3. The District Court found, "Plaintiffs do not dispute that defendant Jones has testified that he believed Elena-Lopez was holding a firearm." 1-E.R-005, n. 5.

 [4]

Officer Jones pointed his rifle at Elena-Lopez's center body, looked through the optic of his rifle (which limited

4. Still photo taken from Body Worn Camera Video (https://streamable.com/jeehfs) at 0:33.

his range of vision to Elena-Lopez's center body mass), and fired three shots in rapid succession as Elena-Lopez moved toward the cover provided by the display rack. Body Worn Camera Video (https://streamable.com/jeehfs); Video of Fitting Room Attack (https://streamable.com/27tmgb).

After the shooting, Officer Jones and other LAPD Officers rendered medical aid to Elena-Lopez. However, despite these efforts, Elena-Lopez succumbed to his injuries.

The Complaint for Damages

Based on these events, Respondents filed a complaint alleging multiple federal and state causes of actions against the involved officers arising out of this non-fatal officer-involved shooting. The officers filed a motion for summary judgment asserting that the undisputed facts demonstrated that the force used was not excessive under *Graham v. Connor*, 490 U.S. 386 (1989), and that they were entitled to qualified immunity as they did not knowingly violate any clearly established law. After reviewing all the documentary and video evidence, the District Court issued an order granting in part and denying in part summary judgment. App. 5a-33a.

On appeal, the panel issued a four-paragraph, unpublished, Memorandum Opinion (App. 1a-4a) which stated that despite the presence of multiple 911 calls of an active shooter, video evidence of the violent and vicious near-fatal assault on a store patron, and body worn camera video showing the shooting itself, genuine issues of fact exist as "a reasonable juror could find that Defendant's

body camera footage comports with Plaintiffs' account." App. 4a, n. 1.

The Ninth Circuit's opinion, however, did not address the uncontroverted nature of the video evidence, pursuant to *Scott v. Harris*' mandate. In addition, the Ninth Circuit's opinion did not address the fact that officers are entitled to qualified immunity, as the District Court correctly concluded, even where there is a reasonable mistake of fact. *Pearson v. Callahan*, 555 U.S. 223, 230 (2009).

The Ninth Circuit's opinion also did not address the fact that at the time the shots were fired, the officers were responding to an "***active shooter***" call, that immediately before Officer Jones encountered Elena-Lopez, he had been informed by another officer that there was a victim down, and that Officer Jones personally saw a bloody and badly injured victim attempting to escape Elena-Lopez's violent assault.

Finally, the Ninth Circuit's decision was inconsistent with multiple reported decisions, including *Woodward v. City of Tucson,* 870 F.3d 1154 (9th Cir. 2019), in which qualified immunity was granted where a suspect was armed with a hockey stick and was fatally shot as a result. Given this prior case authority, Officer Jones, at a minimum, was entitled to qualified immunity. See *Malley v. Briggs,* 475 U.S. 335, 341 (1986) (qualified immunity is sweeping in scope and designed to protect "all but the plainly incompetent or those who knowingly violate the law").

ARGUMENT

A. A Court's Obligation to View the Evidence in the Light Most Favorable to the Plaintiff Does Not Allow the Court to Ignore Undisputed Video Evidence Which, if Considered, Would Require the Court to Draw the Inference that the Force Used by the Defendants Was Not Excessive, and the Further Inference that the Unlawfulness of the Defendants' Conduct Was Not Clearly Established

1. Applicable Law

In *Graham v. Connor,* 490 U.S. at 388, this Court held that an excessive force claim is properly analyzed under the Fourth Amendment's objective reasonableness standard. *Graham v. Connor* set forth a non-exhaustive list of factors to be considered in evaluating whether the force used to affect a particular seizure is reasonable: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others; and (3) whether the suspect actively resists detention or attempts to escape. *Id.* at 394-395. The test is an objective one, viewed from the vantage of reasonable officers at the scene, and is highly deferential to the police officer's need to protect himself or others. *Id.* at 396-397.

The Ninth Circuit has also indicated that "judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *Ryburn v. Huff*, 565 U.S. 469, 477 (2012). Moreover, the most important single element of the three specified factors is whether the suspect poses an immediate threat to the safety of the officers or others. *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005).

2. Factual Analysis

To properly analyze this case, the Court must look to the nature of the factual record. In this case, however, the recitation of facts, as articulated by both the District Court and the Ninth Circuit, is fatally flawed and leads to an incorrect result which is not in compliance with this Court's mandates.

In analyzing the use of force question, the District Court noted, "As an initial matter, viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find it was not reasonable for defendant Jones to mistake the bike lock in Elena-Lopez's hand for a firearm." App. 15a. In so doing, the Court focused on the fact that during the chaotic 911 calls, discrepancies existed in the details of the assault committed by Elena-Lopez which were relayed by the reporting parties such that it would have been *unreasonable* for Officer Jones to *assume* that he was an active shooter (despite multiple reports to the contrary). Finally, the Court found that a reasonable jury could find that there was no threat to death or serious physical injury to defendant, Jones, the victim, other LAPD officers, or other civilians in the store. App. 16a. In so holding, the District Court noted that a jury *could* determine that Elena-Lopez was "indisputably no longer assaulting customers" at the time he was shot. App. 18a.

This analysis, however, is contrary to the undisputed video evidence and the uncontroverted testimony that LAPD officers were responding to an "active shooter" call. To say that Elena-Lopez did not impose a risk of imminent harm is completely farcical in light of the fact that *he had already inflicted great physical harm* and, moreover,

completely inconsistent with this Court's mandate in *Scott v. Harris.*

In reviewing this decision, the Ninth Circuit engaged in even less analysis, dismissing the notion in just four paragraphs. App. 1a-4a. There is no analysis about whether any mistake Officer Jones might have made was *reasonable* under the totality of the circumstances. There was no analysis regarding whether any prior case authority existed which clearly established with the requisite degree of specificity that Officer Jones' response to the "active shooter" scenario, and in light of hearing there was a victim down, and encountering such a severely injured victim would be unconstitutional. Neither the District Court nor the Ninth Circuit considered whether it was reasonable for Officer Jones to utilize deadly force under the "fleeing felon" rule. *Plumhoff v. Rickard*, 572 U.S. at 765.

Here, the uncontroverted video evidence shows that during what could very well be the busiest shopping day of the year, officers received multiple calls of an "active shooter." These reports were confirmed when officers arrived to a chaotic scene of individuals fleeing, people screaming, and bloodied victims attempting to escape their assailant.

Given the potential for loss of life under such a scenario, the officers' response was entirely *reasonable* and designed to save lives. Their conduct—as well as the conduct of Elena-Lopez—was captured on video, leaving no facts for a jury to resolve. *Scott v. Harris,* 550 U.S. at 380. When viewed through the lens of the video evidence, the uncontroverted facts demonstrate that the force used

under the totality of the circumstances was reasonable and the officers are entitled to qualified immunity as a matter of law. *Graham v. Connor,* 490 U.S. at 388.

In addition, neither the District Court nor the Ninth Circuit considered whether it was reasonable for Officer Jones to utilize deadly force under the "fleeing felon" rule. *Plumhoff v. Rickard*, 572 U.S. at 765. In *Plumhoff*, this Court addressed the situation in which an officer fired a total of 15 shots into a car which was attempting to escape. This use of force was determined to be reasonable in large part due to the threat that the fleeing felon posed to the public at large. Here, as in *Plumhoff,* Elena-Lopez constituted an extreme and ongoing risk based not only on the reports of an "active shooter," but also based on his repeated and vicious attacks on multiple individuals.

In sum, if this Court's mandate to view the evidence in the light depicted in the undisputed video evidence is not followed, it is a direct violation of binding precedent and leads to a faulty result. And the fact is that the officers were responding to an ***active shooter*** call. Their responses must be viewed through this lens.

Finally, the suggestion that *Scott v. Harris* is no longer good law, or that it should be casually disregarded even in the absence of a claim of fabrication, is worrisome and would eradicate a long line of caselaw, as is the notion that a reviewing court can use an incomplete version of the uncontroverted facts to overturn grants of qualified immunity. This Court can and should mark a brighter line rule on the use of undisputed video evidence and provide further instruction to courts of inferior jurisdiction on this critical issue.

B. Since the Doctrine of Qualified Immunity Contemplates the Possibility of an Officer's Reasonable Mistake of Fact, Issues of Fact Do Not Preclude Summary Judgment Where Any Alleged Mistakes Were Reasonable

The law is clear that qualified immunity protects government officials from suit under federal law claims if "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "**The protection of qualified immunity applies regardless of whether the government official's error is 'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact**.'" *Pearson v. Callahan*, 555 U.S. at 230 (emphasis added).

To evaluate qualified immunity, a court must first decide whether the facts show that the governmental official's conduct violated a constitutional right. *Jackson v. County of Bremerton*, 268 F.3d 646 (9th Cir. 2001). Second, a court decides whether the governmental official could nevertheless have reasonably but mistakenly believed that his or her conduct did not violate a clearly established right. *Id*. However, the court may skip the first step and proceed to the second. *Pearson v. Callahan*, 555 U.S. at 227.

This Court has recently clarified that a governmental official is entitled to qualified immunity from suit/liability where, at the time of the conduct, there was no prior precedent or case law with facts specifically and substantially identical to the facts of the incident at issue which would have put the defendant on notice that his or

her conduct was unconstitutional. *White v. Pauly*, 580 U.S. at 79 ("clearly established law" should not be defined "at a high level of generality" but must be "particularized" to the facts of the case). This Court has emphasized this point again and again, because qualified immunity is important to society as a whole and because the immunity from suit is effectively lost if a case is erroneously permitted to go to trial. *Id*. at 551-555.

Under the doctrine of qualified immunity, if a government official's mistake as to what the law requires is reasonable, the government official is entitled to qualified immunity. *Davis v. Scherer*, 468 U.S. 183, 205 (1984). Moreover, this doctrine is sweeping in scope and designed to protect "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. at 341.

Applying the two-pronged qualified immunity analysis, this Court must first look to whether the officers' conduct violated a constitutional right. *Jackson*, 268 F.3d at 646. However, there is no relevant case authority which holds that the officers' conduct in this matter was constitutionally deficient.

In this case, neither the District Court, the Ninth Circuit, nor respondents have identified a case holding with specificity that it is unconstitutional to respond to the unique situation involving an "active shooter" call in the manner as done by Officer Jones. *White v. Pauly*, 580 U.S. at 79 ("clearly established law" should not be defined "at a high level of generality" but must be "particularized" to the facts of the case). And, indeed, such a rule would exponentially increase the risk of danger to police officers

and have a chilling impact on police officers who are attempting to protect the public in the lawful performance of their duties.

Rather, this case is analogous to *Woodward v. City of Tucson,* 870 F.3d 1154 (9th Cir. 2017). In *Woodward,* the Ninth Circuit reversed a denial of qualified immunity where a suspect charged an officer with a two-foot-long raised stick and approached to a distance of within approximately five to six feet. *Id.* at 1157, 1162. In reversing the denial of qualified immunity, the Ninth Circuit stated:

> We conclude that reasonable officers in Defendants' positions would not have known that shooting [the suspect] violated a clearly established right. Indeed, the case makes clear that the use of deadly force can be acceptable in such a situation. *See Tennessee v. Garner,* 471 U.S. 1, 11-12 (1985) ("[I]f the suspect threatens the officer with a weapon . . . deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given."); *Blanford v. Sacramento Cty.,* 406 F.3d 1110, 1111-13, 1117-19 (9th Cir. 2005) (holding that deputies were entitled to qualified immunity for shooting a suspect wandering around a neighborhood with a raised sword, making growling noises, and ignoring commands to drop the weapon). Thus, even assuming that a constitutional violation occurred, the District Court erred by denying Defendants qualified immunity from this claim.

Id. at 1162-1163, parallel citations omitted.

Indeed, the basic factual underpinning which has been ignored by both the District Court and the Ninth Circuit is that, like *Woodward,* when Elena-Lopez, who was believed to be armed with a weapon and who most certainly was armed with a deadly weapon, was positioned within striking distance of both Officer Jones and his ongoing victim, he absolutely constituted an immediate threat justifying the use of deadly force under *Tennessee v. Garner,* 471 U.S. at 11-12.

Thus, the Ninth Circuit's conclusion that the law clearly established that deadly force could not be used is not tethered to a meaningful and substantive summary of the facts as established by the irrefutable video evidence. Given that the facts surrounding this active shooter response are so fundamentally different from those contained in prior reported cases, one simply cannot conclude that the law is clearly established that Officer Jones's actions were unconstitutional.

Finally, to the extent that the officers were wrong about either the nature of the law or whether Elena-Lopez constituted a threat, they are nonetheless entitled to qualified immunity. The doctrine is sweeping in scope and designed to protect "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. at 341.

Respondents have maintained that the video evidence in this case supports the reasonable interpretation that Elena-Lopez did not constitute a danger. Although the presence of multiple reasonable interpretations might ordinarily preclude a grant of summary judgment, this is not the case when analyzing a qualified immunity case

which specifically allows for a defense when there is a reasonable mistake regarding the nature of the facts or, as here, when all relevant uncontroverted facts are considered. See *Pearson v. Callahan*, 555 U.S. at 320.

Indeed, when one puts oneself in the position of Officer Jones in the seconds before shots were fired, it is easy to see how he could have felt that Elena-Lopez—who had committed unspeakable acts of violence—presented an ongoing and imminent threat to both the victim and himself. Given these facts, the finding that Officer Jones' conduct could only be described as "plainly incompetent" or to have "knowingly violated the law" (see *Malley v. Briggs*, 475 U.S. at 341) is not sustainable when faced with the uncontroverted video evidence.

Stated another way, issues of fact do not preclude a grant of summary judgment based on qualified immunity where any alleged mistake of fact was **reasonable**. Because this was neither considered nor addressed in the Ninth Circuit's opinion, a writ of certiorari is warranted.

C. This Case is an Ideal Vehicle to Both Enforce and Clarify *Scott v. Harris* and *White v. Pauly*

Finally, this case is a particularly good vehicle for the Court to address lower courts' various questions related to the scope of *Scott* and *White.* As stated above, there are no factual disputes, there is hypertext-linked video evidence which is uncontested, a clear evidentiary record, and experienced counsel on both sides.

As evidenced in the very cases upon which the District Court and the Ninth Circuit relied, the danger

of misapplication of law in these areas is real, and sure to continue unabated unless this Court grants review in a case like this one. There are no questions of fact here to be decided; indeed, one advantage of reviewing this case is precisely that both sides concede the authenticity of the video evidence in this case. Instead, this case is resolved by a simple but important and recurring question of law: does a court's obligation to view evidence in the light most favorable to the plaintiff allow the court to ignore undisputed clear video evidence which, if considered, would require the court to draw the inference that the force used by defendants was not excessive, and the further inference that the unlawfulness of the defendants' conduct was not clearly established at the appropriate level of specificity?

Simply stated, the Ninth Circuit rested its holding on a notion at odds with the central premises of *Scott, White,* and opinions of other courts of appeals. Given that the Ninth Circuit did not cite to either of these cases, it is difficult to credibly assert that the Ninth Circuit's opinion was consistent with them.

CONCLUSION

This Court should issue the requested writ of certiorari to clarify for the lower courts the proper use of undisputed video evidence, which will only be increasingly part of civil and criminal litigation, in general, and civil rights litigation, in particular.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 9, 2024

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-552
D.C. No.
2:22-cv-07651-KK-KS

YMELDA ELENA, AN INDIVIDUAL; MARIO ELENA, AN INDIVIDUAL; I. J., A MINOR BY AND THROUGH HER GUARDIAN AD LITEM, MARIA CERVANTES, INDIVIDUALLY AND AS SUCCESSOR-IN-INTEREST TO DECEDENT DANIEL ELENA-LOPEZ,

Plaintiffs – Appellees,

v.

WILLIAM JONES, JR., INDIVIDUALLY AND IN OFFICIAL CAPACITY AS A POLICE OFFICER FOR THE LOS ANGELES POLICE DEPARTMENT,

Defendant – Appellant,

and

CITY OF LOS ANGELES, a municipal entity,

Defendant.

Appendix A

Appeal from the United States District Court
for the Central District of California
Kenly Kiya Kato, District Judge, Presiding

Filed December 9, 2024
Argued and Submitted December 3, 2024
Pasadena, California

MEMORANDUM*

Before: BEA, OWENS, and KOH, Circuit Judges.

Los Angeles Police Department Officer William Jones, Jr. ("Defendant") appeals from the district court's denial of summary judgment based on qualified immunity in this 42 U.S.C. § 1983 action in which Ymelda Elena, Mario Elena, and minor I.J. by and through her guardian ad litem Maria Cervantes ("Plaintiffs") allege Defendant used excessive force in violation of the Fourth Amendment. "We review *de novo* a denial of summary judgment predicated upon qualified immunity." *Cox v. Roskelley*, 359 F.3d 1105, 1109 (9th Cir. 2004). On interlocutory appeal from the denial of qualified immunity, we have jurisdiction "to resolv[e] a defendant's purely legal . . . contention that [his or her] conduct did not violate the [Constitution] and, in any event, did not violate clearly established law." *Est. of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021) (citation and internal quotation marks omitted). As the

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

parties are familiar with the facts, we do not recount them here. We affirm.

The district court properly denied summary judgment because genuine issues of material fact exist as to whether Defendant is entitled to qualified immunity. "We must affirm the district court's denial of qualified immunity if, resolving all factual disputes and drawing all inferences in [Plaintiffs'] favor, Defendant['s] conduct (1) violated a constitutional right (2) that 'was clearly established at the time of the officer['s] alleged misconduct.'" *Rosenbaum v. City of San Jose*, 107 F.4th 919, 924 (9th Cir. 2024) (citation omitted). Because the excessive force analysis "nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment . . . in excessive force cases should be granted sparingly." *Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005) (en banc) (citation omitted).

Here, it is undisputed that the decedent, Daniel Elena-Lopez, was holding only a bike lock when Defendant shot him, and that Defendant's bullet entered through Elena-Lopez's back and exited through his chest. Even if Defendant reasonably mistook the bike lock for a gun, taking the facts in the light most favorable to Plaintiffs, Elena-Lopez was turning away from Defendant with the bike lock pointed toward the ground and made no "furtive movement, harrowing gesture, or serious verbal threat" that "might create an immediate threat." *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013). Under these circumstances, a genuine issue of material fact exists as to

whether Defendant used excessive force in violation of the Fourth Amendment.[1] *See Graham v. Connor*, 490 U.S. 386, 396 (1989) (laying out the test for whether an officer's use of force was reasonable under the Fourth Amendment). And given our decisions in *Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991), *George*, 736 F.3d at 838, and *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1021 (9th Cir. 2017), a genuine issue of material fact also exists as to whether Defendant's conduct violated clearly established law.

"Because [Defendant's] entitlement to qualified immunity ultimately depends on disputed factual issues, summary judgment is not presently appropriate." *Est. of Lopez*, 871 F.3d at 1021.

AFFIRMED.

1. Defendant incorrectly asserts that the presence of video footage eliminates any factual dispute. To the contrary, a reasonable juror could find that Defendant's body camera footage comports with Plaintiffs' account. *See Rosenbaum*, 107 F.4th at 921 ("[W]e view the facts in the light most favorable to [the non-movant] unless they are 'blatantly contradicted' by video evidence." (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007))).

APPENDIX B — MINUTE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DATED JANUARY 17, 2024

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES – GENERAL

Case No. CV 22-7651-KK-KSx Date January 17, 2024
Title: ***Ymelda Elena, et al. v. City of Los Angeles, et al.***

Present: The Honorable KENLY KIYA KATO, UNITED STATES DISTRICT JUDGE

Proceedings: (In Chambers) Order (1) GRANTING IN PART and DENYING IN PART Defendants' Motion for Summary Judgment [Dkt. 40], and (2) DENYING AS MOOT Plaintiffs' Motion to Strike [Dkt. 54]

I.
INTRODUCTION

Plaintiffs Ymelda Elena and Mario Elena, individually, and minor plaintiff I.J. through her guardian ad litem Maria Cervantes, individually and as successor in interest to decedent Daniel Elena-Lopez (collectively, "Plaintiffs"), filed a Complaint against defendants City of Los Angeles and William Jones, Jr. ("Defendants") alleging violations of the Fourth and Fourteenth Amendments and related state claims arising from the December 23, 2021 shooting of decedent Daniel Elena-Lopez. ECF Docket No. ("Dkt.") 1. On September 22, 2023, Defendants filed the instant Motion for Summary Judgment ("Motion"). Dkt. 40. The Court finds this matter appropriate for resolution without

oral argument. *See* FED. R. CIV. P. 78(b); L.R. 7-15. For the reasons set forth below, the Motion is **GRANTED IN PART** and **DENIED IN PART**.

II.
BACKGROUND

A. PROCEDURAL HISTORY

On October 19, 2022, Plaintiffs filed the operative Complaint, asserting the following claims:

(1) First Cause of Action against defendant Jones pursuant to 42 U.S.C. § 1983 for excessive force in violation of the Fourth Amendment;

(2) Second Cause of Action against defendant Jones pursuant to 42 U.S.C. § 1983 for unwarranted interference with the right to familial association in violation of the Fourteenth Amendment;

(3) Third Cause of Action against defendant City of Los Angeles pursuant to *Monell v. Department of Social Services*, 436 U.S. 658 (1978);

(4) Fourth Cause of Action against defendant Jones for negligence pursuant to California's wrongful death statute, Sections 377.60 and 377.61 of the California Code of Civil Procedure;

(5) Fifth Cause of Action against Defendants for violation of California's Bane Act, Section 52.1 of the California Civil Code ("Bane Act")

(6) Sixth Cause of Action against Defendants for battery;

(7) Seventh Cause of Action against Defendants for intentional infliction of emotional distress; and

(8) Eighth Cause of Action against Defendants for negligence.

Dkt. 1.

On November 14, 2022, defendant City of Los Angeles filed an Answer to the Complaint. Dkt. 17. On November 29, 2022, defendant Jones filed an Answer to the Complaint. Dkt. 20.

On January 17, 2023, the Court issued a Scheduling Order in this matter setting a Final Pretrial Conference for May 10, 2024. Dkt. 24.

On September 22, 2023, Defendants filed the instant Motion. Dkt. 40.

On October 27, 2023, Plaintiffs filed an Opposition to the Motion. Dkt. 48. On the same date, Plaintiffs filed a Motion for an Order striking certain exhibits[1] attached to the Motion and all portions of the Motion relying on such

1. Specifically, Plaintiffs seek an Order striking Exhibits A through F (security camera footage), Exhibit I (still frame from security camera footage), Exhibits J and K (Los Angeles Police Department Records Request and Authorization), Exhibits L through O (911 call audio), and Exhibit P (Los Angeles Board of Police Commissioners Report).

exhibits on the ground that this evidence was not produced to Plaintiffs during discovery ("Motion to Strike"). Dkt. 54.

On November 3, 2023, Defendants filed a Reply in support of the Motion. Dkt. 55. On November 27, 2023, Defendants filed an Opposition to the Motion to Strike. Dkt. 66.

On December 1, 2023, Plaintiffs filed a Reply in support of the Motion to Strike. Dkt. 67.

The matters thus stand submitted.

B. MATERIAL FACTS

Unless otherwise indicated, the following facts are uncontroverted. To the extent certain facts are not referenced in this Order, the Court has not relied on such facts in reaching its decision. In addition, the Court considers the parties' evidentiary objections only where necessary.[2] All other objections are **OVERRULED AS MOOT**.[3]

On December 23, 2021, Los Angeles Police Department ("LAPD") dispatch aired that a suspect at the Burlington store in North Hollywood was attempting to assault

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2. "[O]bjections to evidence on the ground that it is irrelevant, speculative, and/or argumentative, or that it constitutes an improper legal conclusion are all duplicative of the summary judgment standard itself[.]" *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006). The Court declines to address such objections.

3. Furthermore, because the Court has not relied on the facts or evidence at issue in Plaintiffs' Motion to Strike, the Motion to Strike is **DENIED AS MOOT**.

customers with a bike lock. Dkt. 41, Defs.' Statement of Undisputed Facts ("DSUF") ¶ 19; dkt. 48-1, Pls.' Statement of Additional Material Facts ("PAMF") ¶ 1. Seconds later, dispatch aired, "correction, shooting just occurred . . . at the [North Hollywood] Burlington" store. DSUF ¶ 20; see also dkt. 48-3, Declaration of Lena P. Andrews ("Andrews Decl."), ¶ 5, Ex. A at 0:00-0:50 (radio traffic). One minute later, dispatch aired that the suspect at the North Hollywood Burlington store was using the bike lock to break the building's glass front door. PAMF ¶ 3.

Multiple LAPD officers, including defendant Jones, responded to the incident. *Id.* ¶¶ 5, 11. While driving to the scene, defendant Jones broadcast over the radio that he was equipped with a patrol rifle. *Id.* ¶ 13. Another LAPD officer broadcast, "Roger, we are moving up, stand by." Andrews Decl., ¶ 5, Ex. A at 4:25-4:35 (radio traffic). Plaintiffs contend this transmission constituted an instruction to defendant Jones to "stand by," *see* PAMF ¶ 14, a fact that Defendants dispute, *see* dkt. 56, Defs.' Response to PAMF ¶ 14.

As defendant Jones arrived on scene, another LAPD officer broadcast, "We have one suspect . . . with a bike lock. We are making contact." PAMF ¶ 16; *see also* Andrews Decl., ¶ 5, Ex. E at 3:50-4:00 (defendant Jones' body-worn camera footage). Defendant Jones obtained the rifle from the back of his patrol vehicle. DSUF ¶ 33. Defendant Jones proceeded to enter the store, and an LAPD sergeant gestured defendant Jones past him to ascend the escalator to the second floor, where the contact team had assembled. *Id.* ¶¶ 42-44; PAMF ¶ 22. During this time, no gunfire could be heard, and no LAPD officers aired over the radio

that they had heard gunshots or witnessed anyone with a firearm. PAMF ¶ 20.

At the time defendant Jones joined the contact team on the second floor, another LAPD officer had already identified a "victim down" and the contact team was beginning to push forward. DSUF ¶ 46. Defendant Jones told the team to "slow down" to allow him to take the point position with the rifle. *Id.* ¶ 47. As the team moved forward, with defendant Jones in the lead, defendant Jones observed a woman with severe injuries crawling into the main aisle from between display shelves. *Id.* ¶¶ 54-55, 57; PAMF ¶¶ 28-29. Defendant Jones accelerated towards the woman. DSUF ¶¶ 52, 60; PAMF ¶¶ 29-30. When he reached the woman and took position over her, defendant Jones saw decedent Daniel Elena-Lopez ("Elena-Lopez") in the display aisle, approximately ten to fifteen feet away. DSUF ¶ 60; PAMF ¶ 38. Elena-Lopez was holding a bike lock in his right hand. DSUF ¶ 62. No commands were given to him.[4] PAMF ¶ 47.

The parties dispute what the footage from defendant Jones' body-worn camera shows happened in the next few

4. Defendant Jones' body-worn camera footage establishes that, before the contact team began moving forward on the second floor, an LAPD officer announced, "All victims, LAPD! All victims come to us, all victims come to us!" Andrews Decl., ¶ 5, Ex. E at 4:47-4:57; *see also* Defs.' Response to PAMF ¶ 47. The parties dispute whether this constituted a warning to Elena-Lopez. *See* PAMF ¶ 47; Defs.' Response to PAMF ¶ 47. However, Defendants have not identified any evidence controverting the fact that no commands were given to Elena-Lopez. *See* Defs.' Response to PAMF ¶ 47.

seconds. According to Defendants, Elena-Lopez started to move to his left while raising the bike lock, which defendant Jones believed to be a firearm,[55] in his right hand. DSUF ¶¶ 62, 64. According to Plaintiffs, however, Elena-Lopez did not raise the bike lock or make any gestures towards defendant Jones, the victim, or anyone else. PAMF ¶ 44. Instead, Elena- Lopez was backing away, turned to his left, and slipped and began to fall. *Id.* ¶ 43.

It is undisputed that defendant Jones then fired three shots from his rifle in rapid succession, one of which struck Elena-Lopez in the back. DSUF ¶ 66; PAMF ¶¶ 45, 48. Less than forty seconds passed between when defendant Jones joined the contact team on the second floor of the Burlington store and when he fired his rifle. *See* Andrews Decl., ¶ 5, Ex. E at 5:00-5:35. At least one of the other bullets penetrated the wall behind Elena-Lopez, killing a minor in a dressing room on the other side. PAMF ¶ 50; Defs.' Response to PAMF ¶ 50. Elena-Lopez died as a result of the shooting. PAMF ¶¶ 48-49.

III.
LEGAL STANDARD

Summary judgment is appropriate when the moving party "shows that there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A fact is "material" if it "might affect the outcome of the suit[.]"

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5. Plaintiffs do not dispute that defendant Jones has testified he believed Elena-Lopez was holding a firearm. PAMF ¶ 36.

Nat'l Ass'n of Optometrists & Opticians v. Harris, 682 F.3d 1144, 1147 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute of material fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

The party moving for summary judgment bears the initial burden of identifying the portions of the pleadings and record that it believes demonstrate the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The burden then shifts to the non-moving party to "go beyond the pleadings" and "designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (quoting FED. R. CIV. P. 56(e)) (internal quotation marks omitted).

In deciding a motion for summary judgment, the court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Summary judgment is, therefore, not proper "where contradictory inferences may reasonably be drawn from undisputed evidentiary facts[.]" *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 (9th Cir. 1980). Furthermore, the court does not make credibility determinations with respect to the evidence offered. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987).

Appendix B

IV.
DISCUSSION

A. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FIRST CAUSE OF ACTION UNDER THE FOURTH AMENDMENT

1. Genuine Issues of Material Fact Exist as to Whether Defendant Jones Used Excessive Force in Violation of the Fourth Amendment

a. Applicable Law

The Fourth Amendment's "objective reasonableness" standard governs excessive force claims. *Graham v. Connor*, 490 U.S. 386, 388 (1989). The reasonableness standard "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Id.* at 396 (internal quotation marks omitted). In other words, a court must "balance the amount of force applied against the need for that force." *Bryan v. MacPherson*, 630 F.3d 805, 823-24 (9th Cir. 2010). Proper application of the reasonableness standard "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. "[W]hether the suspect poses an immediate threat to the safety of the

officers or others" is the "most important" of the *Graham* factors. *Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005).

The use of deadly force is reasonable "only if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Scott v. Henrich*, 39 F.3d 912, 914 (9th Cir. 1994) (quoting *Tennessee v. Garner*, 471 U.S. 1, 3 (1985)) (internal quotation marks omitted). When a suspect is armed or "reasonably suspected" to be armed, "a furtive movement, harrowing gesture, or serious verbal threat might create an immediate threat" rendering the use of deadly force reasonable. *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013). On the other hand, the use of deadly force is not reasonable when a suspect has taken no "objectively threatening" actions, even when the suspect is armed. *Id.*; *see also Zion v. Cnty. of Orange*, 874 F.3d 1072, 1076 (9th Cir. 2017) ("[T]he use of deadly force against a non-threatening suspect is unreasonable.").

When "an officer's particular use of force is based on a mistake of fact," the relevant inquiry is "whether a reasonable officer would have or *should* have accurately perceived that fact." *Nehad v. Browder*, 929 F.3d 1125, 1133 (9th Cir. 2019) (emphasis in original). "[W]hether the mistake was an *honest* one is not the concern, only whether it was a *reasonable* one." *Id.* (emphasis in original).

Finally, "[b]ecause [the excessive force] inquiry is inherently fact specific, the determination whether the force used . . . was reasonable under the Fourth Amendment

should only be taken from the jury in rare cases." *Green v. City & Cnty. of San Francisco*, 751 F.3d 1039, 1049 (9th Cir. 2014) (internal quotation marks omitted).

b. Analysis

Here, genuine issues of material fact exist as to whether defendant Jones used excessive force in violation of the Fourth Amendment. As an initial matter, viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find it was not reasonable for defendant Jones to mistake the bike lock in Elena-Lopez's hand for a firearm. While LAPD dispatch aired that a "shooting" had occurred at the North Hollywood Burlington store, dispatch also aired that the suspect at the North Hollywood Burlington store was using a bike lock to assault customers and damage store property. *See* DSUF ¶¶ 19-20; PAMF ¶¶ 1, 3. In addition, as defendant Jones arrived on scene, an LAPD officer who was already inside the Burlington store stated over the radio, "We have one suspect . . . with a bike lock." PAMF ¶ 16; *see also* Andrews Decl., ¶ 5, Ex. E at 3:50-4:00. Further, no gunfire could be heard while defendant Jones entered the store, and no LAPD officers on scene aired over the radio that they had heard gunshots or witnessed anyone with a firearm. PAMF ¶ 20. These undisputed facts are sufficient to give rise to a triable question of fact as to whether defendant Jones reasonably mistook the bike lock for a firearm. *See Nehad*, 929 F.3d at 1133-34 (holding issue of whether defendant officer "reasonably mistook" decedent's pen for a knife was a triable question of fact); *see also Diaz v. Cnty. of Ventura*, 512 F. Supp. 3d

1030, 1042 (C.D. Cal. 2021) (concluding issue of whether defendant officer reasonably perceived that decedent had a gun when he did not was a triable question of fact).

Moreover, genuine issues of material fact exist as to the reasonableness of defendant Jones' use of force. It is undisputed that defendant Jones used deadly force against Elena-Lopez. *See* DSUF ¶ 66; PAMF ¶¶ 45, 48-49. Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find defendant Jones' use of deadly force unreasonable under the circumstances.

First, a genuine issue of material fact exists as to whether Elena-Lopez posed an immediate and significant threat of death or serious physical injury to defendant Jones, the victim, other LAPD officers in the contact team, or other civilians in the store. *See Graham*, 490 U.S. at 396; *Scott*, 39 F.3d at 914. When defendant Jones fired his rifle, defendant Jones had already taken position over the victim, and Elena-Lopez was approximately ten to fifteen feet away from both defendant Jones and the victim, holding only a bike lock. *See* DSUF ¶¶ 60, 62; PAMF ¶ 38. It is undisputed that Elena-Lopez made no verbal threats in the moments before defendant Jones shot him. *See* DSUF ¶¶ 62, 64; PAMF ¶¶ 43-44; *cf. George*, 736 F.3d at 838 (holding "a serious verbal threat might create an immediate threat" rendering the use of deadly force reasonable). Moreover, crediting Plaintiffs' inferences from the body-worn camera footage,[66] Elena-Lopez was

6. Defendants contend Plaintiffs "attempt[] to skew the video footage from [defendant Jones'] body-worn camera to create a triable issue of fact" and the Court should "view[] the facts in

not raising the bike lock when defendant Jones shot him and, in fact, had slipped and begun to fall. *See* PAMF ¶¶ 43-44; *see also Diaz*, 512 F. Supp. 3d at 1043 (declining to find defendant officer's use of deadly force reasonable as a matter of law where reasonable jury could conclude decedent was making no physical or verbal threats at the time he was shot and "rather was stumbling and falling – a notably vulnerable and *unthreatening* posture" (emphasis in original)). The undisputed fact that defendant Jones' bullet struck Elena-Lopez in the back, *see* PAMF ¶ 48, further underscores that a triable question of fact exists as to whether defendant Jones' body-worn camera footage shows Elena-Lopez beginning to raise the bike lock, as Defendants contend, *see* DSUF ¶¶ 62, 64; *see also S.T. v. City of Ceres*, 327 F. Supp. 3d 1261, 1277 (E.D. Cal. 2018) (finding fact that decedent was shot in the back "present[ed] another reason to allow the trier of fact" to assess "officers' account that [suspect] was angling his body, while running and hunching over, to point hand torch at them"). Hence, viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find Elena-Lopez did not pose an "immediate threat" to others such that the use of deadly force against him was reasonable.

Second, a genuine issue of material fact exists as to whether "the severity of the crime[s] at issue" rendered the

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the light depicted by the" video footage. Dkt. 55 at 4, 6 (quoting *Scott v. Harris*, 550 U.S. 372, 380-81 (2007)). However, the body-worn camera footage does not "utterly discredit[]" Plaintiffs' version of the facts, *see Scott*, 550 U.S. at 380, and "contradictory inferences may reasonably be drawn from" it, *see Hollingsworth Solderless Terminal*, 622 F.2d at 1335. The Court, therefore, rejects Defendants' argument.

use of deadly force against Elena-Lopez reasonable. *See Graham*, 490 U.S. at 396. When defendant Jones reached the display aisle and saw Elena-Lopez, Elena-Lopez was indisputably no longer assaulting customers or damaging store property with the bike lock. *See Nehad*, 929 F.3d at 1136 (declining to find defendant officer's use of deadly force reasonable as a matter of law where, even if decedent had "committed a serious crime" prior to defendant officer's arrival, "he was indisputably not engaged in any such conduct when [defendant officer] arrived, let alone when [defendant officer] fired his weapon"); *see also Harris v. Roderick*, 126 F.3d 1189, 1203 (9th Cir. 1997) ("The fact that [a suspect has] committed a violent crime in the immediate past is an important factor but it is not, without more, a justification for killing him on sight."). Hence, viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find "the severity of the crime[s] at issue" did not render the use of deadly force against Elena-Lopez reasonable.

Finally, a genuine issue of material fact exists as to whether Elena-Lopez was "actively resisting arrest or attempting to evade arrest by flight" such that the use of deadly force against him was reasonable. *See Graham*, 490 U.S. at 396. It is undisputed that no commands were given to Elena-Lopez before defendant Jones shot him. PAMF ¶ 47. Moreover, crediting Plaintiffs' inferences from the body-worn camera footage, Elena-Lopez had slipped and begun to fall at the time defendant Jones shot him. *Id.* ¶ 43. Hence, viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find Elena-Lopez was not "actively resisting arrest or attempting to

evade arrest by flight" such that the use of deadly force against him was reasonable.

Thus, genuine issues of material fact exist as to whether defendant Jones used excessive force in violation of the Fourth Amendment.

2. Genuine Issues of Material Fact Exist as to Whether Defendant Jones Is Entitled to Qualified Immunity with Respect to the Excessive Force Claim

a. Applicable Law

The doctrine of qualified immunity protects government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "[Q]ualified immunity is to be determined at the earliest possible point in the litigation[.]" *Estate of Lopez v. Gelhaus*, 871 F.3d 998, 1021 (9th Cir. 2017). Nevertheless, summary judgment in favor of a government official on the basis of qualified immunity "is inappropriate where a genuine issue of material fact prevents a determination of qualified immunity until after trial on the merits." *Id.*

The qualified immunity analysis is two-pronged, and courts have discretion "in deciding which of the two prongs . . . should be addressed first in light of the circumstances

in the particular case at hand." *Pearson*, 555 U.S. at 236. Under the first prong, the issue is whether the facts, taken in the light most favorable to the party asserting the injury, show the defendant's conduct violated a constitutional right. *Id.* at 232. Under the second prong, the issue is whether the constitutional right in question was "clearly established" at the time the conduct at issue occurred. *Id.* at 232, 236.

A right is "clearly established" if, at the time of the challenged conduct, "'the contours of [the] right are sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right.'" *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (brackets omitted) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The "clearly established" inquiry "must be undertaken in light of the case's specific context, not as a broad general proposition," *Saucier v. Katz*, 533 U.S. 194, 201 (2001), and "turns on the 'objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken,'" *Pearson*, 555 U.S. at 244 (quoting *Wilson v. Layne*, 526 U.S. 603, 614 (1999)). "[A] case directly on point" is not required to show the right in question was clearly established, "but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft*, 563 U.S. at 741 (citing *Anderson*, 483 U.S. at 640; *Malley v. Briggs*, 475 U.S. 335, 341 (1986)).

b. Analysis

Genuine issues of material fact exist as to whether defendant Jones is entitled to qualified immunity. With

respect to the first prong of the analysis, a reasonable jury could find defendant Jones used excessive force in violation of the Fourth Amendment, as discussed above in Section IV.A.1.b. In addition, with respect to the second prong of the analysis, a reasonable jury could find defendant Jones' conduct violated a clearly established right.

It is clearly established "the use of deadly force against a non-threatening suspect is unreasonable." *Zion*, 874 F.3d at 1076. For example, in *George v. Morris*, 736 F.3d 829 (9th Cir. 2013), the Ninth Circuit held the use of deadly force against a domestic violence suspect armed with a gun would violate the Fourth Amendment where the suspect took no "objectively threatening" actions immediately prior to being shot by law enforcement officers. Similarly, in *Estate of Lopez v. Gelhaus*, 871 F.3d 998 (9th Cir. 2017), the Ninth Circuit held the use of deadly force against a teenager carrying a toy AK-47 would violate the Fourth Amendment, even though law enforcement officers believed he was carrying a firearm, where the teenager moved "naturally and non-aggressively" immediately prior to being shot and did not point the object believed to be a firearm at the officers. Here, genuine issues of material fact exist as to whether defendant Jones' conduct violated the clearly established law set forth in these cases. *See Estate of Lopez*, 871 F.3d at 1021. Specifically, crediting Plaintiffs' inferences from the body-worn camera footage, Elena-Lopez was not raising the bike lock and, in fact, had slipped and begun to fall immediately prior to being shot by defendant Jones. *See* PAMF ¶¶ 43-44. Furthermore, it is undisputed that no commands were given to Elena-Lopez, Elena-Lopez

made no verbal threats, and defendant Jones' bullet struck Elena-Lopez in the back. *See* DSUF ¶¶ 62, 64; PAMF ¶¶ 43-44, 47-48. Based on this evidence, a reasonable jury could find Elena-Lopez did not engage in any objectively threatening behavior immediately prior to being shot by defendant Jones, even though defendant Jones believed Elena- Lopez had a firearm. Moreover, as discussed above in Section IV.A.1.b, a reasonable jury could find it was not reasonable for defendant Jones to mistake the bike lock in Elena-Lopez's hand for a firearm. *See Demuth v. Cnty. of Los Angeles*, 798 F.3d 837, 839 (9th Cir. 2015) ("An unreasonable mistake of fact does not provide the basis for qualified immunity.").

The cases cited by Defendants for the proposition that defendant Jones is entitled to qualified immunity as a matter of law are inapposite. *See* dkt. 40 at 21-24. In *Kisela v. Hughes*, 584 U.S. _, 138 S. Ct. 1148 (2018), the Supreme Court held it was not clearly established that shooting a suspect armed with a knife to protect a bystander standing within "striking distance" of the suspect would violate the Fourth Amendment. The Supreme Court found it significant that the law enforcement officers on scene were separated from the suspect and the bystander by a chain-link fence and the suspect had failed to acknowledge "at least two" commands to drop the knife. *Kisela*, 138 S. Ct. at 1153-54. By contrast, here, it is undisputed that defendant Jones had already taken position over the victim when he saw Elena-Lopez, Elena-Lopez was ten to fifteen feet away from defendant Jones and the victim, and no commands were given to Elena-Lopez before defendant Jones shot him. *See* DSUF ¶ 60; PAMF ¶¶ 38, 47.

Defendants' remaining citations are even less instructive. In *City of Tahlequah v. Bond*, 595 U.S. 9 (2021), the Supreme Court held it was not clearly established that shooting a suspect armed with a hammer would violate the Fourth Amendment where, despite repeated commands to stop moving and drop the hammer, the suspect moved to where he had an "unobstructed path" to one of the officers and "raised the hammer . . . as if he was about to throw [it] or charge at the officers." *City of Tahlequah*, 595 U.S. at 11-12. Similarly, in *Woodward v. City of Tucson*, 870 F.3d 1154 (9th Cir. 2017), the Ninth Circuit held it was not clearly established that shooting a suspect would violate the Fourth Amendment where the suspect charged at law enforcement officers while brandishing a hockey stick and "yelling or growling[.]" *Woodward*, 870 F.3d at 1157, 1162. Finally, in *Smith v. Agdeppa*, 81 F.4th 994 (9th Cir. 2023), the Ninth Circuit held it was not clearly established that shooting an unarmed suspect would violate the Fourth Amendment where the suspect "violently resisted and assaulted [law enforcement] officers" despite their "repeated[]" commands "to stop resisting" and attempts to use non-lethal force to subdue him. *Smith*, 81 F.4th at 1004. None of these factual scenarios are remotely comparable to the shooting of Elena-Lopez.

Thus, genuine issues of material fact exist as to whether defendant Jones is entitled to qualified immunity with respect to the excessive force claim. Accordingly, Defendants' request for summary judgment on Plaintiffs' First Cause of Action is **DENIED**.

B. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' SECOND CAUSE OF ACTION UNDER THE FOURTEENTH AMENDMENT

1. Applicable Law

Parents and children have a Fourteenth Amendment liberty interest in each other's "companionship and society." *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010); *see also Hardwick v. Cnty. of Orange*, 980 F.3d 733, 740-41 (9th Cir. 2020) (holding the Fourteenth Amendment's guarantee against unwarranted state interference with the right to familial association applies equally to "parent-child" relationships and "child-parent" relationships). Hence, official conduct that "shocks the conscience" in depriving a parent or child of that interest "is cognizable as a violation of due process." *Wilkinson*, 610 F.3d at 554.

In determining whether a law enforcement's officer's use of force "shocks the conscience" and, therefore, violates the Fourteenth Amendment right to familial association, a court must first determine whether the circumstances were such that "actual deliberation" by the officer was practical. *Id.* "Where actual deliberation is practical, then an officer's 'deliberate indifference' may suffice to shock the conscience." *Id.* By contrast, "where a law enforcement officer makes a snap judgment because of an escalating situation, his conduct may only be found to shock the conscience if he acts with a purpose to harm unrelated to legitimate law enforcement objectives." *Id.*

2. Analysis

Here, no genuine issue of material fact exists as to whether defendant Jones' use of force violated the Fourteenth Amendment. As an initial matter, the heightened purpose-to-harm standard applies to Plaintiffs' Fourteenth Amendment claim because "actual deliberation" was not practical under the circumstances – less than forty seconds passed between defendant Jones joining the contact team on the second floor of the Burlington store and defendant Jones observing the injured victim, taking position over the victim, and seeing Elena-Lopez. *See* Andrews Decl., ¶ 5, Ex. E at 5:00-5:35; *Diaz*, 512 F. Supp. 3d at 1047 (applying purpose-to-harm standard despite "lengthy car chase" and "approximately hour-long standoff" because "the moments before [defendant officer] used lethal force upon [decedent] were fast-paced and occurred within a matter of seconds"). Thus, defendant Jones "faced an evolving set of circumstances that took place over a short time period" and required "split-second decisions." *See Porter v. Osborn*, 546 F.3d 1131, 1133, 1139 (9th Cir. 2008) (holding purpose-to-harm standard applied where, over the course of approximately five minutes, defendant officers responding to a call about an apparently abandoned vehicle "shouted at a startled and confused [suspect] to get out of his car," "pepper sprayed him through the open window" when he failed to comply, and fatally shot him when he "began to drive the car slowly forward"). Although Plaintiffs argue defendant Jones "had time prior to encountering Elena-Lopez to evaluate the situation" and "there was no reason for [defendant Jones] to rush and use deadly force[,]" dkt. 48 at 22, "the

purpose-to-harm standard can apply even where 'the officer may have helped to create an emergency situation" through the officer's own "flawed tactical choices" or "excessive actions[,]" *Peck v. Montoya*, 51 F.4th 877, 894 (9th Cir. 2022) (quoting *Porter*, 546 F.3d at 1132).

Applying the purpose-to-harm standard, the Court concludes no genuine issue of material fact exists as to whether defendant Jones' conduct violated the Fourteenth Amendment. *See Wilkinson*, 610 F.3d at 554. The only evidence from which a reasonable jury could potentially conclude defendant Jones' actions were not related to legitimate law enforcement objectives is the evidence that defendant Jones was instructed to "stand by" prior to his arrival on scene. *See* PAMF ¶ 14. Nevertheless, when defendant Jones entered the store, an LAPD sergeant gestured defendant Jones past him to the second floor, where the contact team was assembled. DSUF ¶ 43. Furthermore, Plaintiffs have produced no evidence that defendant Jones had any "ulterior motives" for using deadly force against Elena-Lopez. *See Gonzalez v. City of Anaheim*, 747 F.3d 789, 795, 797-98 (9th Cir. 2014) (holding no genuine issue of material fact existed as to whether defendant officer had purpose to harm where, although reasonable jury could conclude officer "did not reasonably perceive an immediate threat[,]" plaintiffs had produced no evidence that officer had "ulterior motives" for using deadly force). Plaintiffs' argument that questions of fact exist as to "[w]hether [defendant Jones] reasonably perceived the bike lock to be a gun and reasonably perceived Elena-Lopez to be raising it in a threatening manner[,]" dkt. 48 at 22, misconstrues the

purpose-to-harm standard, which "is a subjective standard of culpability[,]" *see A.D. v. Cal. Highway Patrol*, 712 F.3d 446, 453 (9th Cir. 2013). Hence, even viewing the evidence in the light most favorable to Plaintiffs, no reasonable jury could find defendant Jones acted with a purpose to harm unrelated to legitimate law enforcement objectives. *See Diaz*, 512 F. Supp. 3d at 1047 (finding no genuine issue of material fact existed as to whether defendant officer had purpose to harm where he "fired four shots in rapid succession and stopped when [decedent] hit the ground" because, "[a]t most, a jury could conclude that [defendant officer] irrationally panicked out of a false sense of fear").

Thus, no genuine issue of material fact exists as to whether defendant Jones' conduct violated Plaintiffs' Fourteenth Amendment right to unwarranted state interference with the right to familial association. Accordingly, Defendants' request for summary judgment on Plaintiffs' Second Cause of Action is **GRANTED**.

C. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' THIRD CAUSE OF ACTION PURSUANT TO *MONELL*

Defendants argue no genuine issue of material fact exists as to the *Monell* claim against defendant City of Los Angeles. Dkt. 40 at 25-26. In their Opposition, Plaintiffs state they "do not oppose Defendants' Motion on this issue and withdraw [the *Monell*] claim." Dkt. 48 at 25. Accordingly, Defendants' request for summary judgment on Plaintiffs' Third Cause of Action is **GRANTED**.

D. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FOURTH AND EIGHTH CAUSES OF ACTION FOR NEGLIGENCE

1. Applicable Law

To prevail on a claim for negligence, a plaintiff must show the defendant owed the plaintiff a duty, the defendant breached that duty, and such breach was a proximate or legal cause of the plaintiff's injuries. *Merrill v. Navegar, Inc.*, 28 P.3d 116, 123 (Cal. 2001). Under California law, law enforcement officers owe "a duty to act reasonably when using deadly force." *Hayes v. Cnty. of San Diego*, 305 P.3d 252, 256 (Cal. 2013). Whether an officer has breached this duty "is determined in light of the totality of circumstances." *Id.* Generally, an officer's use of deadly force "will be considered reasonable where the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." *Koussaya v. City of Stockton*, 54 Cal. App. 5th 909, 936-37 (Cal. Ct. App. 2020).

2. Analysis

Here, genuine issues of material fact exist as to the reasonableness of defendant Jones' use of force. As discussed above in Section IV.A.1.b, a reasonable jury could find Elena-Lopez did not pose a threat to others such that the use of deadly force against him was reasonable. Defendants' attempt to analogize the shooting of Elena-Lopez to the facts at issue in *Villalobos v. City*

of Santa Maria, 85 Cal. App. 5th 383 (Cal. Ct. App. 2022) is unavailing. In *Villalobos*, the decedent "repeatedly refused to comply with [officers'] demands to drop [his] knife . . . during the course of a 40-minute long plus interaction[.]" *Villalobos*, 85 Cal. App. 5th at 389. The officers then deployed less-than-lethal rounds against the suspect, at which point the decedent "charge[d] full speed toward the officers." *Id.* at 387, 389. The California Court of Appeal held the officers "were justified in using deadly force when decedent charged at them while holding a knife." *Id.* at 389. However, no such circumstances were present when defendant Jones shot Elena-Lopez. *See* DSUF ¶¶ 62, 64; PAMF ¶¶ 43-44.

Accordingly, for the same reasons that Defendants' request for summary judgment on Plaintiffs' First Cause of Action is denied, Defendants' request for summary judgment on Plaintiffs' Fourth and Eighth Causes of Action is **DENIED**.

E. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FIFTH CAUSE OF ACTION UNDER THE BANE ACT

1. Applicable Law

The Bane Act creates a cause of action against persons who interfere with constitutional rights "by threat, intimidation, or coercion[.]" Cal. Civ. Code § 52.1. In an excessive force case, the Bane Act requires establishing not only a Fourth Amendment violation but also "a specific

intent to violate the arrestee's right to freedom from unreasonable seizure." *Reese v. Cnty. of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018) (quoting *Cornell v. City & Cnty. of San Francisco*, 17 Cal. App. 5th 766, 801 (Cal. Ct. App. 2017)). Evidence of "[r]eckless disregard for a person's constitutional rights" is sufficient to establish "a specific intent to deprive that person of those rights." *Id.* at 1045 (quoting *United States v. Reese*, 2 F.3d 870, 885 (9th Cir. 1993)). Courts have concluded a reasonable jury could find an officer's use of deadly force on a suspect amounted to reckless disregard where the evidence raised a triable question of fact as to whether the suspect posed a threat to the officer or others. *See, e.g.*, *Banks v. Mortimer*, 620 F. Supp. 3d 902, 935 (N.D. Cal. 2022) (concluding reasonable jury could find use of deadly force amounted to reckless disregard where evidence suggested suspect was fleeing and posed no threat); *Chambers v. Cnty. of Los Angeles*, No. CV 21-8733-MCS-JEMx, 2022 WL 19076765, at *12 (C.D. Cal. Dec. 12, 2022) (concluding reasonable jury could find use of deadly force amounted to reckless disregard where, despite claim that suspect approached deputies in a "threatening manner[,]" video footage of incident did "not clearly show [suspect] posing a threat to the deputies").

2. Analysis

Here, genuine issues of material fact exist as to whether defendant Jones acted with reckless disregard for Elena-Lopez's constitutional rights. Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could conclude defendant Jones exhibited reckless disregard by firing his rifle within seconds

of encountering Elena-Lopez, without attempting to give him any commands. *See* DSUF ¶¶ 62, 64; PAMF ¶¶ 43-44; *see also Reese*, 888 F.3d at 1035, 1045 (holding reasonable jury could find defendant officer acted with reckless disregard where he advanced into apartment of suspect who had been armed with a knife and, upon seeing suspect was not incapacitated, "immediately" shot at him despite being unable to see whether he was still armed). In fact, crediting Plaintiffs' inferences from the body-worn camera footage, Elena-Lopez had slipped and begun to fall when defendant Jones shot him. *See* PAMF ¶¶ 43-44. Moreover, it is undisputed that defendant Jones' bullet struck Elena-Lopez in the back. *See id.* ¶ 48. This evidence raises a triable question of fact as to whether Elena-Lopez posed a threat to the officer or others. Hence, a reasonable jury could conclude defendant Jones' use of deadly force amounted to reckless disregard. *See Banks* 620 F. Supp. 3d at 935; *Chambers*, 2022 WL 19076765, at *12.

Accordingly, Defendants' request for summary judgment on Plaintiffs' Fifth Cause of Action is **DENIED**.

F. DEFENDANTS ARE NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' SIXTH CAUSE OF ACTION FOR BATTERY

1. Applicable Law

To prevail on a claim for battery under California law, a plaintiff must show the defendant intentionally did an act that resulted in harmful or offensive contact with the plaintiff's person, the plaintiff did not consent to such

contact, and such contact caused injury, damage, loss, or harm to the plaintiff. *Tekle v. United States*, 511 F.3d 839, 855 (9th Cir. 2007); *accord. Brown v. Ransweiler*, 171 Cal. App. 4th 516, 526-27 (Cal. Ct. App. 2009). In an excessive force case, a plaintiff asserting a claim for battery must establish the defendant officer's use of force was unreasonable. *Avina v. United States*, 681 F.3d 1127, 1131 (9th Cir. 2012). Such claims are governed by the Fourth Amendment's "objective reasonableness" standard. *Id.*; *see also Diaz*, 512 F. Supp. 3d at 1048 ("[C]laims for battery against police officers acting in their official capacities 'are analyzed under the reasonableness standard of the Fourth Amendment[.]'").

2. Analysis

Here, genuine issues of material fact exist as to the reasonableness of defendant Jones' use of force. As discussed above in Section IV.A.1.b, a reasonable jury could find Elena-Lopez did not pose a threat to others such that the use of deadly force against him was reasonable. Accordingly, for the same reasons that Defendants' request for summary judgment on Plaintiffs' First Cause of Action is denied, Defendants' request for summary judgment on Plaintiffs' Sixth Cause of Action is **DENIED**.

G. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' SEVENTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Defendants argue the claim for intentional infliction of emotional distress fails as a matter of law. Dkt. 40 at 32-33. In their Opposition, Plaintiffs state they "do not oppose Defendants' Motion on this issue and withdraw [the intentional infliction of emotional distress] claim." Dkt. 48 at 25. Accordingly, Defendants' request for summary judgment on Plaintiffs' Seventh Cause of Action is **GRANTED**.

V.
CONCLUSION

For the reasons set forth above, the Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The Motion is **GRANTED** as to Plaintiffs' Second, Third, and Seventh Causes of Action.

2. The Motion is **DENIED** as to Plaintiffs' First, Fourth, Fifth, Sixth, and Eighth Causes of Action.

IT IS SO ORDERED.