No. 25-____

IN THE

Supreme Court of the United States

MATTHEW FARNEY, in his individual capacity, *et al.*,

Petitioners,

v.

MICHAEL ROSE, as personal representative for the estate of Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose,

Respondent.

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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QUESTIONS PRESENTED

1. This Court has never applied the obvious case exception to qualified immunity's second prong in the Fourth Amendment context. Although the Court has recognized its potential application, it has repeatedly cautioned against its use on an excessive force claim. Despite this, the Ninth Circuit applied the obvious case exception to reverse the grant of summary judgment in Deputy Matthew Farney's favor on Respondent's Fourth Amendment excessive force claim. Did the Ninth Circuit err in defining the qualified immunity right at issue too broadly by holding this was an "obvious" case?

2a. The Ninth Circuit holds that when there is only a single surviving officer witness to a deadly force encounter, it "must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably." *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994). Did the Ninth Circuit err in requiring a higher degree of scrutiny for a defendant officer's unopposed sworn testimony at summary judgment when he is the only surviving witness to a deadly force encounter despite the defendant officer not having the burden of proof at trial?

2b. Even assuming a higher degree of scrutiny is appropriate, did the Ninth Circuit err in holding that purported discrepancies in an officer's testimony created an issue of material fact sufficient to disregard the officer's sworn testimony on why force was necessary even though those discrepancies did not address the officer's decision to use deadly force?

PARTIES TO THE PROCEEDING

The parties in the Ninth Circuit were Petitioners Matthew Farney and Sheriff Doug Schuster, and Respondent Michael Rose as personal representative for the estate of Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose. Defendants Jose Cardenas, Devin Godfrey, and Nasia Shrader were parties to the Ninth Circuit appeal but are not parties to this Petition.

LIST OF RELATED CASES

Rose v. Farney, *et al.*, No. 23-2846 (9th Cir.)

Rose v. Farney, *et al.*, No. CV-22-08055-PCT-JAT (D. Ariz.)

Rose v. Farney, et al., No. CV-2023-01502 (Mohave Cnty. Super. Ct., AZ)

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INTRODUCTION

This case centers on Deputy Matthew Farney shooting Bradley Rose during a high-stakes, violent confrontation immediately following a dangerous pursuit. The Arizona District Court properly held Deputy Farney was entitled to qualified immunity for his use of deadly force. The Ninth Circuit erred in reversing this determination by applying the obvious case exception to qualified immunity, which broadly defined the constitutional right at issue and imposed a higher degree of scrutiny on Deputy Farney's testimony simply because he was the sole surviving officer witness.

The Ninth Circuit's application of the "obvious case" exception in this context has broad implications, potentially undermining the protections afforded to law enforcement officers who must make split-second decisions in perilous situations. The Ninth Circuit's decision also continues to apply a troubling precedent by imposing undue scrutiny on Deputy Farney's sworn testimony simply because he was the sole surviving officer witness. As a result, the Ninth Circuit's decision not only challenges established principles of qualified immunity but also threatens to hinder law enforcement's ability to perform their duties without fear of litigation.

Given the gravity of the case, the Petitioners urge the Court to grant the writ of certiorari to clarify the standards surrounding qualified immunity and the appropriate scrutiny applied to police testimony at summary judgment when they are the sole surviving witnesses in excessive force cases.

PETITION FOR WRIT OF CERTIORARI

Petitioners Matthew Farney and Sheriff Doug Schuster respectfully petition for a writ of certiorari to review the unpublished Memorandum Decision of the United States Court of Appeals for the Ninth Circuit in this case. The Ninth Circuit announced its original decision on March 12, 2025, and denied Petitioners' request for panel rehearing and petition for en banc review on April 18, 2025.

OPINIONS BELOW

The Ninth Circuit issued its unpublished Memorandum Decision on March 12, 2025. It is available at 2025 WL 785206. (Attached hereto as Appendix ("App.") A). The Ninth Circuit order denying the petition for panel rehearing and en banc review on April 18, 2025, was not published. (App. B). The United States District Court for the District of Arizona granted Defendants' motion for summary judgment in a written order on September 14, 2023, which was reported at 2023 WL 5983800. (App. C).

JURISDICTION

On March 12, 2025, the United States Court of Appeals for the Ninth Circuit issued its Memorandum Decision. (App. A). On April 18, 2025, the Ninth Circuit denied Petitioner's timely filed petition for rehearing and rehearing en banc. (App. B). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY QUESTIONS INVOLVED

Michael Rose alleges that the Deputy Farney and Sheriff Doug Shuster violated his son, Bradley Rose's,

civil rights under the Fourth Amendment to the United States Constitution, which 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.*

Rose brought the underlying action under 42 U.S.C. § 1983, which states:

> *Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or 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.*

STATEMENT OF THE CASE

On the evening of April 17, 2021, Deputies Matthew Farney, Jose Cardenas, Devin Godfrey, and Nasia Shrader were working a patrol shift. While Deputy Godfrey was patrolling, he observed a vehicle (driven by Bradley Rose) pass him in a no-passing area on the wrong side of the road. Godfrey began following Bradley. As Bradley and Godfrey approached the next intersection, Farney, Cardenas, and Shrader were parked in a commercial area writing reports. Farney observed Bradley fail to yield to the stop sign at the intersection. He then saw Godfrey follow with his lights illuminated. After observing this, Farney, Cardenas, and Shrader followed.

Around the same time, Godfrey activated his siren and called over the radio that he was in pursuit of a vehicle for failing to yield. Bradley did not yield to Godfrey and then ran a red light. As Godfrey followed Bradley, he eventually observed Bradley pull to the right side of the road and come to a stop. At this point Godfrey conducted a stop with the assistance of Farney and Cardenas. As Godfrey and Farney got out of their vehicles, Godfrey gave commands to Bradley to get out of his car. In response, Bradley put his car back in drive and made a U-turn, causing Godfrey to jump into his patrol vehicle to avoid getting hit. Farney moved to the driver's side of his vehicle and took cover as Bradley passed them. Bradley then drove between Godfrey and Farney's vehicles and struck Cardenas' patrol vehicle.

The deputies then followed Bradley from a distance and observed him as he continued to drive erratically, heading into oncoming traffic, then onto the shoulder of the road, almost striking civilians. Soon after, Bradley entered a nearby neighborhood where Deputy

Cardenas observed him. Cardenas turned on his overhead lights and attempted to commence another traffic stop. As Cardenas stepped out of his vehicle and drew his service weapon, Bradley made another U-turn and drove directly towards Cardenas before swerving at the very last minute. Cardenas made the split-second decision not to shoot Bradley. Cardenas reported over the radio that Bradley attempted to hit him. After Bradley U-turned, Bradley "slow rolled" his car within a foot of Deputy Schrader's vehicle, driver side to driver side. When Shrader saw this, she thought Bradley was going to shoot her and ducked down to get out of the way.

At some point during the pursuit, Deputy Farney observed Bradley in the neighborhood and followed him to a nearby residence. Farney estimated that it took roughly eight to twelve minutes after the deputies initially began to follow Bradley for him to come to a stop at the residence.

After Bradley stopped, Farney pulled right behind him. Before Farney could get out of his vehicle, Bradley was already standing in the doorjamb of his own car. At the time, Farney was alone.[1] Given Bradley's previously observed erratic behavior, Farney was concerned that Bradley would run into the nearby residence and create a hostage barricade situation. Farney also did not know whether Bradley was armed. In addition, Bradley was still within arm's length of his open driver's side door and Farney was concerned Bradley would reach back in for a gun or another weapon. Farney testified he did not feel he had time to

[1] Deputy Farney testified he did not know other deputies were on scene until *after* he fired his weapon.

attempt deescalation techniques given the flight and safety risk Bradley posed.

As a result, Farney got out of his vehicle, drew his service weapon, and quickly closed the distance to Bradley. At that same time Farney yelled multiple commands for Bradley to "get on the ground." Shrader, who arrived on scene after Farney, verified that she heard Farney giving commands. Shrader then also gave her own command to Bradley to "get down." Bradley did not obey these commands.

As Farney got within reach of Bradley, he began to move his service weapon back to reholster it so he could use both hands to handcuff Bradley. The record is undisputed that before Farney could holster his weapon, however, Bradley struck Farney in the head. Farney testified that he recalled Bradley punching him in the head once, after which he blacked out for a second. During this time, Shrader testified she saw Bradley strike Farney's upper body, face, and shoulders. Photographs of Deputy Farney's face post-shooting also confirm he received injuries on both sides of his face.

After being struck, Farney undisputedly testified he felt Bradley violently pull his right arm as Bradley grabbed his gun. Farney utilized an impact push to create an arm's length separation, but Bradley was still in his face. Farney commanded Bradley to "get to the ground." Farney testified Bradley ignored this command and again grabbed Farney's service weapon.

In response, Farney punched one of Bradley's arms to get Bradley to release his gun. Farney then pulled his firearm back and shot Bradley. This occurred roughly seven to ten seconds after Farney arrived on scene. Just as Farney shot Bradley, other deputies

arrived on scene and administered emergency aid to Bradley until emergency medical service arrived. Bradley was then transported to a local hospital but later passed from his injuries.

STATEMENT OF THE PROCEEDINGS

Plaintiff-Appellant Michael Rose filed a Complaint on behalf of Bradley Rose as the personal representative of his estate and on behalf of Bradley's statutory beneficiaries. The Complaint brought 42 U.S.C. § 1983 claims that alleged, among other things, a Fourth Amendment violation for Farney's use of deadly force and a Fourth Amendment violation against Sheriff Schuster based on supervisory liability.

On March 24, 2023, the Defendants filed a motion for partial summary judgment, seeking summary judgment on all of Plaintiff's federal claims. On September 14, 2023, the district court granted Defendants' motion on all federal claims. As relevant here, the district court held that Deputy Farney's use of deadly force was entitled to qualified immunity because at the time of the alleged misconduct there was not a clearly established constitutional right and this was not an "obvious case" of a constitutional violation. (App. C at 21a–23a). As a result, Plaintiff's supervisory liability claim against the Sheriff also failed. (*Id.* at 27a–28a).[2]

Plaintiff-Respondent timely appealed the district court's summary judgment ruling on his federal claims

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[2] The district court also declined to exercise supplemental jurisdiction over the remaining state law claims and dismissed them without prejudice. (*Id.* at 28a). The state law claims were refiled in Mohave County Superior Court. That action is currently stayed pending the outcome of this appeal.

to the Ninth Circuit Court of Appeals. After full briefing and oral argument, the Ninth Circuit reversed the district court's grant of summary judgment on the excessive force claim against Farney and the supervisory liability claim against Sheriff Schuster. (App. A at 2a–4a). It held that because a reasonable jury could question "some" of Farney's statements it could entirely discount Farney's version of events, including his otherwise undisputed account that Bradley grabbed Farney's weapon. (*Id.*). Further, the court stated, "a reasonable jury could instead find that . . . Farney . . . without giving any commands, simply stepped back and shot Bradley dead." (*Id.* at 4a). Thus, the panel held Farney was not entitled to qualified immunity because this was an "obvious" case of excessive force. (*Id.*). It also reinstated the supervisory liability claim against Sheriff Schuster. (*Id.* n.1).

Defendants filed a petition for panel rehearing and en banc review. On April 18, 2025, the Ninth Circuit Order denied rehearing and en banc review. (App. B). The Ninth Circuit then stayed the issuance of the mandate pending the filing of this Petition. (App. D).

REASONS FOR GRANTING THE WRIT

I. THE COURT NEEDS TO PROVIDE ADDITIONAL GUIDANCE ON THE OBVIOUS CASE EXCEPTION TO QUALIFIED IMMUNITY.

The proper application of qualified immunity is critical to ensure that public officials are not subjected to the burdens of litigation or held liable for conduct without notice that such conduct is unlawful. *See Kisela v. Hughes*, 584 U.S. 100, 104 (2018). To determine whether an officer is entitled to qualified

immunity, this Court considers: (1) whether the officer violated a constitutional right, and (2) whether the constitutional right was clearly established. *Pearson v. Callahan*, 555 U.S. 223, 232, 236 (2009). As to the second prong, a plaintiff "must identify a case that put [the officer] on notice that his specific conduct was unlawful." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021).

This Court has repeatedly taken jurisdiction to correct lower circuit courts that define clearly established law at too high a level of generality. *See, e.g.*, *Rivas-Villegas*, 595 U.S. at 6; *City of Tahlequah v. Bond*, 595 U.S. 9, 12 (2021); *White v. Pauly*, 580 U.S. 73, 79 (2017); *Kisela*, 584 U.S. at 104. That is because "[s]pecificity is especially important in the Fourth Amendment context, where it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Rivas-Villegas*, 595 U.S. at 6 (cleaned up).

Recognizing the tension in the law that not every circumstance can be previously set forth in established case law, and that some uses of force can be so egregious they are self-evidently unconstitutional, this Court recognized an exception to the clearly established prong of qualified immunity when the constitutional violation is "obvious." *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004).[3] But what is an "obvious" constitutional violation? This Court has never clearly defined that the concept. And this Court has always

[3] The genesis for this exception comes from truly egregious Eighth Amendment claims in the prison context. *See, e.g.*, *Hope v. Pelzer*, 536 U.S. 730, 738 (2002); *see also Taylor v. Riojas,* 592 U.S. 7, 7–10 (2020).

been quick to caution *against* applying the obvious case exception in the Fourth Amendment context. *See, e.g.*, *Kisela*, 584 U.S. at 105; *see also Brosseau*, 543 U.S. at 199.

As even the Ninth Circuit has recognized, the "obviousness principle, an exception to the specific-case requirement, is especially problematic in the Fourth-Amendment context." *Sharp v. County of Orange*, 871 F.3d 901, 912 (9th Cir. 2017). "[T]o say that it is almost *always* wrong for an officer in those circumstances to act as he did" is a "categorical statement" that is "particularly hard to make when officers encounter suspects every day in never-before-seen ways." *Id.* And because of this difficulty, this Court has made clear that "[w]here constitutional guidelines seem inapplicable or too remote, it does not suffice for a court simply to state that an officer may not use unreasonable and excessive force, deny qualified immunity, and then remit the case for a trial on the question of reasonableness." *Kisela*, 584 U.S. at 105; *Brosseau*, 543 U.S. at 199 ("The Court of Appeals acknowledged this statement of law, but then proceeded to find fair warning in the general tests set out in *Graham* and *Garner*. In so doing, it was mistaken. *Graham* and *Garner*, following the lead of the Fourth Amendment's text, are cast at a high level of generality." (citation omitted)).

To date, this Court has <u>*never*</u> applied the obvious case exception to a Fourth Amendment excessive force claim and has expressly rejected repeated requests to do so. *See, e.g.*, *Rivas-Villegas,* 595 U.S. at 6; *City of Escondido v. Emmons,* 586 U.S. 38, 43–44 (2019); *Kisela*, 584 U.S. at 105; *D.C. v. Wesby*, 583 U.S. 48, 64–65 (2018); *White,* 580 U.S. at 80; *Brosseau*, 543 U.S. at 199. And despite issuing broad pronounce-

ments cautioning against applying the obvious case exception in a Fourth Amendment excessive force context, the Court has not provided meaningful guidance on when the exception is appropriate. This has led to conflicting and inconsistent applications of the "obvious" principle to Fourth Amendment excessive force claims in the lower courts. *Compare, e.g.*, *Jennings v. Jones*, 499 F.3d 2, 17 (1st Cir. 2007); *O'Bert ex rel. Estate of O'Bert v. Vargo*, 331 F.3d 29, 40 (2d Cir. 2003); *Cole v. Carson,* 935 F.3d 444, 453 (5th Cir. 2019), *as revised* (Aug. 21, 2019); *Williams v. Maurer*, 9 F.4th 416, 440 (6th Cir. 2021); *Gray ex rel. Alexander v. Bostic,* 458 F.3d 1295, 1306–07 (11th Cir. 2006) (all applying obvious case exception) *with Knight v. Bobanic,* 807 Fed. App'x. 161, 163–64 (3d Cir. 2020); *E.W. by & through T.W. v. Dolgos*, 884 F.3d 172, 186 (4th Cir. 2018); *Farris v. Oakland County*, 96 F.4th 956, 966 (6th Cir. 2024); *Lopez v. Sheriff of Cook Cnty.*, 993 F.3d 981, 988 (7th Cir. 2021) (all refusing to apply obvious case exception).

This lack of guidance led the Ninth Circuit astray in this case. Here, the Ninth Circuit held Deputy Farney was not entitled to qualified immunity because this was an "obvious" case, citing *Rivas-Villegas,* 595 U.S. at 6 (granting qualified immunity for use of force while arresting an armed suspect, who appeared to be reaching for a knife); *Mullenix v. Luna,* 577 U.S. 7, 11 (2015) (granting qualified immunity for officer firing at a moving vehicle); *Graham v. Connor,* 490 U.S. 386, 396 (1989) (use of force while arresting a suspect, where qualified immunity was not at issue); and *Mattos v. Agarano,* 661 F.3d 433, 442 (9th Cir. 2011) (granting qualified immunity for the use of taser involving a pregnant suspect who refused to sign a traffic citation for speeding). (Appx. A at 4a). Yet, *none* of those cases applied the obvious case exception to

qualified immunity. Moreover, the facts of this case are also *far* from an obvious case and distinct from the facts of the cases that the Ninth Circuit relied upon.

This Court has also affirmed an officer's use of force under similar circumstances. The Court's decision in *Plumhoff v. Rickard* involved an excessive-force claim for the fatal shooting of a driver at the end of a "dangerous car chase" lasting more than five minutes. 572 U.S. 765, 768 (2014). In a suit brought against the officer, the driver's daughter contended that shots were fired when the chase was "already over." *Id.* at 777. But this Court rejected that claim based on everything that had happened during the incident—the driver's "outrageously reckless" behavior over the prior "five minutes," as well as his last-second efforts to again take flight. *Id.* at 776. Given all of those events, a reasonable officer would have concluded that the driver was "intent on resuming" his getaway and, if allowed to do so, would "again pose a deadly threat for others." *Id.* at 777; *see also Scott v. Harris*, 550 U.S. 372, 386 (2007) ("A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.").[4]

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[4] The Ninth Circuit improperly focused on immaterial fact disputes, and it also ignored Deputy Farney's reason why he needed to quickly control and arrest Bradley—the 8–12 minute police chase that Bradley had just engaged in during which he undisputedly posed a serious threat to the public at large. *See Barnes v. Felix,* 145 S. Ct. 1353, 1358 (2025). This concern equally weighed on Deputy Farney's belief as to why Bradley posed a threat of serious bodily harm after Bradley punched Deputy

Plumhoff and *Scott* are perfect examples of why the Ninth Circuit erred in applying the obvious principle here. This case involves a suspect who had: (1) fled from four deputies and refused to obey their lawful commands to stop; (2) hit a deputy's car in an attempt to evade the deputies; (3) nearly hit other pedestrians while driving erratically including into oncoming traffic; (4) refused multiple lawful commands at various points of the pursuit and subsequent on foot encounter; (5) attacked an arresting officer by punching him in the face; and (6) grabbed a deputy's gun.[5] A reasonable officer would believe that a suspect in those circumstances posed a serious threat that justified deadly force. Therefore, Farney's use of force was simply not "beyond debate" such that this is an obvious case in which an extraordinary exception to qualified immunity applies.

Thus, review is warranted to clarify and give guidance to the lower courts on how to apply the obvious case exception to qualified immunity, particularly in the context of a Fourth Amendment deadly force claim.

Farney in the face once he did get within Bradley's immediate vicinity, and ultimately why deadly force was warranted.

[5] The district court and the Ninth Circuit improperly held an issue of material fact existed on whether Bradley grabbed Deputy Farney's gun based on misapplying a heightened standard at summary judgment. *See infra* § II(A). But even if it properly found a material fact dispute issue existed on whether Bradley grabbed Deputy Farney's gun, it is undisputed that Bradley struck Farney in the face, and the Ninth Circuit refused to properly weigh that material fact before determining this was an obvious case. *See infra* § II(B).

II. THE COURT SHOULD CLARIFY THAT A HIGHER DEGREE OF SCRUTINY DOES NOT APPLY TO AN OFFICER'S TESTIMONY AT SUMMARY JUDGMENT SIMPLY BECAUSE HE IS THE SURVIVING WITNESS.

A. This Court Has Not Adopted A Heightened Scrutiny Standard For A Surviving Officer's Testimony At Summary Judgment And Should Decline To Do So Now.

Under Fed. R. Civ. P. 56(a) "[t]he court shall grant summary judgment if the movant shows that there is no *genuine* dispute as to any material fact and the movant is entitled to judgment as a matter of law." (emphasis added). Under this standard, only *genuine* disputes of *material* fact preclude summary judgment. *Scott*, 550 U.S. at 380 ("[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." (cleaned up)). Thus, to create an issue of material fact, a plaintiff must do more than attempt to poke holes in an officer's testimony on any immaterial fact issue. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986).

The Ninth Circuit, however, created a heightened standard when a police officer employs deadly force and is the only surviving witness. In such cases, "the court may not simply accept what may be a self-serving account by the police officer." *Henrich*, 39 F.3d at 915; *see also Gonzalez v. City of Anaheim,* 747 F.3d 789, 794–95 (9th Cir. 2014). Instead, a court "must

also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably." *Henrich,* 39 F.3d at 915.[6] The Ninth Circuit then repeated *Henrich*'s holding in subsequent cases, *see, e.g.*, *Gonzalez*, 747 F.3d at 794–95; *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014), solidifying it as the standard in the Ninth Circuit.

But the use of this erroneous standard does not end with the Ninth Circuit. *Every circuit* has considered this issue, and it appears that *every circuit* cites *Henrich* as the basis for adopting the same, heightened standard. *See, e.g.*, *Hegarty v. Somerset County*, 53 F.3d 1367, 1376 n.6 (1st Cir. 1995); *O'Bert*, 331 F.3d at 37; *Abraham v. Raso,* 183 F.3d 279, 294 (3d Cir. 1999); *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 195 (4th Cir. 2006); *Ontiveros v. City of Rosenberg*, 564 F.3d 379, 383 (5th Cir. 2009) (citing

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[6] *Henrich* came to this principle by citing two cases, *Hopkins v. Andaya*, 958 F.2d 881, 885–88 (9th Cir. 1992), *overruled on other grounds as stated in Federman v. County of Kern*, 61 F. App'x 438, 440 (9th Cir. 2003), and *Ting v. United States*, 927 F.2d 1504, 1510–11 (9th Cir. 1991). As an initial matter, *Ting* did not involve a decedent and simply explained that there was a genuine issue of material fact regarding the circumstances of the shooting given the differing explanations of the shooting and the ballistics evidence in the case. *Ting*, 927 F.2d at 1507, 1510–11. There is nothing novel in that analysis. *Hopkins*, on the other hand, did involve a decedent, and the Ninth Circuit there simply explained that "circumstantial evidence can speak clearly and often unequivocally." 958 F.2d at 888. It did not cite any cases for that proposition and sent the case back to the jury to determine whether the decedent posed a threat to the officer. *Id.* Notably, however, *neither* case suggested that courts should be skeptical in every case where the officer is the sole survivor.

O'bert, which in turn cites *Henrich*); *Jefferson v. Lewis*, 594 F.3d 454, 462 (6th Cir. 2010); *Maravilla v. United States*, 60 F.3d 1230, 1233–34 (7th Cir. 1995);[7] *Ludwig v. Anderson*, 54 F.3d 465, 470 n.3 (8th Cir. 1995); *Pauly v. White*, 874 F.3d 1197, 1217–18 (10th Cir. 2017); *Hinson v. Bias*, 927 F.3d 1103, 1118 (11th Cir. 2019); *Flythe v. D.C.*, 791 F.3d 13, 19 (D.C. Cir. 2015). The circuit courts appear to follow this standard without questioning its origins or whether it comports with this Court's jurisprudence. That should change now.

This Court has never adopted *Henrich*'s heightened summary judgment standard despite having many opportunities to do so. It should decline to do so now for several reasons.

First, the Ninth Circuit's current test improperly swaps the burden of persuasion and places the burden on the defendant officer to prove that his account is consistent with, and not contradicted by, the record. However, it is the plaintiff who has the burden to establish his case—not the defendant. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) ("the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial"); *see also Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56 (2005) ("Perhaps the broadest and most accepted idea is that

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[7] The Seventh Circuit created a similar standard on its own prior to adopting *Henrich*, *Plakas v. Drinski*, 19 F.3d 1143, 1146–47 (7th Cir. 1994) (announcing standard without citing any case law), but ultimately cited *Henrich* in later cases.

the person who seeks court action should justify the request, which means that the plaintiffs bear the burdens on the elements in their claims."); *Scott*, 550 U.S. at 380 ("When opposing parties tell two 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 the facts for purposes of ruling on a motion for summary judgment.").

Second, the Ninth Circuit's reasoning for imposing this standard is fundamentally flawed. It posits that "[d]eadly force cases pose a particularly difficult problem . . . because the officer defendant is often the only surviving eyewitness." *Henrich*, 39 F.3d at 915. But that is true for *any* case where the plaintiff has passed either as a result of the incident giving rise to the action or otherwise. Yet, in other civil contexts, such as a fatal car accident, there is no heightened burden on the driver who causes a fatal accident. The same is true where an individual uses deadly force in self-defense. Or when the plaintiff passes after the event at issue for any other unrelated reason. Yet, the Ninth Circuit's test places additional requirements on a defendant officer and no one else. *Henrich*, 39 F.3d at 915. The Ninth Circuit did not explain why this burden should be heightened only in the context of police cases, or why law enforcement should be treated differently and with higher scrutiny than any other defendant. Taken to its logical conclusion, *Henrich* undermines the summary judgment standard in *every* case involving a decedent. Or, read another way, *Henrich* could suggest that officers can never be granted summary judgment in a § 1983 case because they are simply untrustworthy and a jury must always determine whether to impeach their testimony, *even in the absence of any evidence to the contrary*.

Third, there is no limitation to what the Ninth Circuit has found to create an issue of material fact under its heightened scrutiny standard. It requires courts to examine *all* the evidence in the record determine whether the officer's story is internally consistent and consistent with *other known facts*. *Id.* But it does not stop there, as this case illustrates, any perceived inconsistency in an officer's account, no matter how immaterial, can purportedly serve as a basis to find a disputed material fact and reverse summary judgment. *See infra* § II(B).

Finally, this Court has previously admonished the Ninth Circuit for "provid[ing] a novel and unsupported path to liability in cases in which the use of force was reasonable" and "permit[ing] excessive force claims that cannot succeed on their own terms." *County of Los Angeles v. Mendez*, 581 U.S. 420, 428–30 (2017) (holding the Ninth Circuit's provocation rule was "an unwarranted and illogical expansion of *Graham*" in part because it included "a vague causal standard" and failed to incorporate "the familiar proximate cause standard"). Just as this Court recognized in *Mendez*, the circuit courts cannot impermissibly expand the requirements of Fourth Amendment claims by raising the bar via heightened summary judgment standards.

Given the uncertainty surrounding the proper application of Fed. R. Civ. P. 56 summary judgment standards where there is a surviving defendant officer that is the sole witness to a deadly force shooting, the Court should accept review to clarify and provide guidance on this important and recurring issue.[8]

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[8] This Court recently clarified that the "'totality of the circumstances' inquiry into a use of force has no time limit" for purposes of assessing Fourth Amendment excessive force claims. *Barnes*,

B. Even If A Heightened Standard Of Scrutiny Applied, This Court Should Clarify Only Material Inconsistencies Should Matter At Summary Judgment.

There was no evidence that Farney's account was *materially* inconsistent on the critical issue of whether Bradley posed a threat of serious bodily harm or death to Farney at the time he fired his weapon. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (discussing requirement that suspect pose immediate threat). Specifically, in the context of this case, no evidence in the record called Farney's testimony into question that Bradley grabbed his weapon after Bradley undisputedly struck Farney in the face and dazed him.

The Ninth Circuit nevertheless determined a jury could question Farney's account. Specifically, the panel did not find that Farney's testimony that Bradley *grabbed his weapon* was contradicted by the record or another officer's account. Rather, the panel focused on other immaterial (and therefore irrelevant) "inconsistencies" in Farney's account that occurred *before* or *after* Bradley grabbed Farney's gun. This

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145 S. Ct. at 1358. But *Barnes* did not address the issue raised in this Petition—whether tangential fact disputes of an officer's account outside of the reason for his use of force impacts the existence of clearly established law. *Id.* at 1360 (remanding to the trial court "to consider the reasonableness of the shooting, using the lengthier timeframe we have prescribed"). In other words, while this Court clarified that "[t]he history of the interaction, as well as other past circumstances known to the officer, [] may inform the reasonableness of the use of force" it did not give any guidance to whether disputes of circumstantial facts could sufficiently create an issue of material fact on an officer's justification for his use of force. *Id.* at 1358. Thus, clarification of the summary judgment standard in light of the Court's *Barnes* opinion is yet another reason why review is warranted.

included purported discrepancies regarding: (1) the speed that Farney initially approached Bradley while on foot; (2) whether Farney gave commands before Bradley assaulted Farney; and (3) the distance between Bradley and Farney after shots were fired (despite no expert testimony to establish it). (*See* App. A at 1a–4a). But even if there were factual inconsistencies on these issues (there were not), they were immaterial to Farney's justification for deadly force—Bradley undisputedly assaulting Farney and subsequently grabbing his gun. *See Barnes*, 145 S. Ct. at 1358 ("Of course, the situation at the precise time of the shooting will often be what matters most; it is, after all, the officer's choice in that moment that is under review.").

The *only* evidence (other than Deputy Farney's sworn testimony) that remotely addressed the issue of whether Bradley grabbed the gun was the fact that incomplete fingerprints were found on the underside of the flashlight attachment to Farney's gun. These fingerprints were insufficient to conduct a comparison to Bradley.[9] But simply because a comparison could not be made does not disprove Farney's sworn testimony that Bradley grabbed his gun. Rather, the existence of latent prints on the gun's flashlight *corroborated* Farney's account it was grabbed. Thus, the only actual circumstantial evidence in the record on the grab supported (rather than called into question) Farney's account that a grab occurred.

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[9] When the prints were compared to Bradley's, the results were "*inconclusive* due to *insufficient detail in the latent* and in the known prints of [Bradley]" and noted additional latent prints were not compared due to insufficient detail.

The Ninth Circuit's disregard for this evidence and holding that a reasonable jury could disbelieve Farney by focusing on purported fact discrepancies *that had no impact on the immediacy of the threat* eviscerates the summary judgment standard and, even worse, is an invitation for a court or jury to speculate as to matters not in the record purely because the Ninth Circuit believes that officers are a special class of defendants who are subject to a heightened summary judgment standard.

This harm is not speculative. In recent decisions, the Ninth Court has repeatedly reversed and remanded excessive force cases based on the alleged existence of a dispute of material fact regarding the "immediate threat" prong of *Graham*. *See, e.g.*, *Johnson v. Myers*, 129 F.4th 1189, 1194, 1196 (9th Cir. 2025) (remanding case for jury to determine whether suspect presented an immediate threat); *Singh v. City of Phoenix*, 124 F.4th 746, 752 (9th Cir. 2024) (remanding case because "a jury reasonably could conclude that the officers 'could have moved farther away at any time, had they wanted to'" from undisputed body-worn camera); *Daily v. City of Phoenix,* 765 Fed. App'x 325, 326 (9th Cir. 2019), *as amended on denial of reh'g and reh'g en banc* (May 21, 2019) (reversing summary judgment due to issue of fact on whether suspect swung a broken table leg at another officer's head before being shot despite other officers not contradicting shooting officer's account and testifying they were not in a position to see the threat seen by shooting officer).

These cases all arise—as this case does—in the context of whether the suspect posed an immediate threat. (App. A at 2a–3a). Following the logic of the Ninth Circuit's decision in this case, and in other

recent excessive force cases, an officer may *never* be entitled to summary judgment on an excessive force case, because the heightened standard applied by the Ninth Circuit (and elsewhere) permits a savvy plaintiff to focus solely on any immaterial dispute of fact in order to disregard an officer's sworn testimony. But that is not the summary judgment standard, nor is it the standard for qualified immunity.

In sum, guidance from this Court is needed to ensure all lower appellate and district courts conduct a proper qualified immunity analysis at summary judgment without turning the "immediate threat" prong of *Graham* into an automatic question of fact for the jury. Thus, Petitioners urge this Court to provide clarity on the summary judgment standard for a surviving officer's use of deadly force and hold the Ninth Circuit incorrectly found that Deputy Farney's testimony regarding Bradley grabbing his gun was materially disputed.

CONCLUSION

For the reasons stated above, Petitioners request that the Petition for Writ of Certiorari be granted, the memorandum decision of the Ninth Circuit Court of Appeals be partially vacated as it relates to Plaintiff's excessive force claim against Deputy Matthew Farney and supervisory liability claim against Sheriff Doug Schuster, and the district court's grant of summary judgment in the Petitioner-Defendants' favor on all 42 U.S.C. § 1983 claims be affirmed.

Respectfully submitted,

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July 17, 2025

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-2846
D.C. No. 3:22-cv-08055-JAT

MICHAEL ROSE, as personal representative for the estate of Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose,

Plaintiff-Appellant,

v.

MATTHEW FARNEY, JOSE CARDENAS, DEVIN GODFREY, NASIA SHRADER, DOUG SCHUSTER, Sheriff, in their individual capacities,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Arizona

James A. Teilborg, Senior District Judge, Presiding

Argued and Submitted September 10, 2024
Phoenix, Arizona

MEMORANDUM*

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

Before: RAWLINSON and COLLINS, Circuit Judges, and FITZWATER, District Judge.[**]

In this action brought under 42 U.S.C. § 1983, Michael Rose (Rose), as personal representative for the estate of his son, Bradley Rose (Bradley), appeals the district court's order granting partial summary judgment in favor of Deputies Matthew Farney, Jose Cardenas, Devin Godfrey, Nasia Shrader and Sheriff Doug Schuster of the Mohave County Sheriff's Department. We have jurisdiction over this interlocutory appeal involving qualified immunity, and, reviewing *de novo*, we affirm in part and reverse in part the district court's order. *See Scott v. Smith*, 109 F.4th 1215, 1222 (9th Cir. 2024).

1. The district court erred in granting summary judgment in favor of Deputy Farney on Rose's excessive force claim. Although we consider several factors when evaluating an officer's use of force, "[t]he most important factor is whether the suspect posed an *immediate* threat." *Id.* at 1224 (citation and internal quotation marks omitted) (emphasis added). Deputy Farney was not wearing his bodycam when he fatally shot Bradley, and "the witness most likely to contradict his story the person shot dead—is unable to testify." *Gonzalez v. City of Anaheim*, 747 F.3d 789, 795 (9th Cir. 2014) (en banc) (citation omitted). "Accordingly, we carefully examine all the evidence in the record, such as medical reports, contemporaneous statements by the officer and the available physical evidence, to determine whether the officer's story is internally consistent and consistent

[**] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

with other known facts. . . .” *Id.* (citation, alteration, and internal quotation marks omitted).

We conclude that a reasonable jury could question some of Deputy Farney’s statements based on the evidence and conflicting statements from Deputy Farney. It is undisputed that Bradley did not “jump out of his vehicle and start running away,” and that Bradley was unarmed. According to Deputy Farney, he did not “start running toward [Bradley] to take him into custody,” and he “yell[ed] at the top of [his] lungs multiple times” for Bradley “to get on the ground.” However, a jury could determine that a video reflects that Deputy Farney rushed towards Bradley, and that no commands from Deputy Farney are on the audio from the bodycam left in Deputy Farney’s police vehicle, although another deputy and the sound of gunshots can be heard. This evidence calls into question Deputy Farney’s statements.

In addition, Deputy Farney maintains that Bradley grabbed his firearm during the altercation. However, the district court determined that there was “a dispute as to whether [Bradley] grabbed [Deputy] Farney’s service weapon,” and a fingerprint analysis of Deputy Farney’s firearm was inconclusive. Deputy Farney related that, after he was hit by Bradley “one time,” he was “able to gain some distance,” but Bradley was “still in [Deputy Farney’s] face.” However, the autopsy report indicated that at least one of the gunshot wounds came from two feet away. “[V]iewing the facts in the light most favorable to” Rose, a reasonable jury could discount Deputy Farney’s version of events and determine that Bradley, who was unarmed and “some distance from” Deputy Farney, did not pose “an immediate threat.” *Scott*, 109 F.4th at 1224 (citation omitted).

Based on the evidence in the record, a reasonable jury could discount Deputy Farney's version of events and find him not credible. With Deputy Farney determined to be not credible, a reasonable jury could reject his crucial claim that Bradley reached for Deputy Farney's weapon. A reasonable jury could instead find that, after Bradley ended his dangerous driving evading officers, and exited his vehicle, he stood there, flailing his arms and hit the approaching Deputy Farney, who then, without giving any commands, simply stepped back and shot Bradley dead. Under the totality of the circumstances presented here, as construed in the light most favorable to Rose, "every reasonable official would have understood that" Deputy Farney's actions violated Bradley's Fourth Amendment right to be free of excessive force. *Mullenix v. Luna*, 577 U.S. 7, 11 (2015). Under this version of the facts, this is an "obvious case" in which the general excessive force standards of *Graham v. Connor*, 490 U.S. 386, 396 (1989), "can clearly establish the answer, even without a body of relevant case law." *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). Stated differently, these facts constitute an "obvious case" of excessive force, and Deputy Farney is not entitled to qualified immunity. *Mattos v. Agarano*, 661 F.3d 433, 442 (9th Cir. 2011) (en banc) (citation omitted).[1]

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[1] Because Deputy Farney is not entitled to qualified immunity, the district court also erred in granting summary judgment in favor of Sheriff Schuster. *See Hyde v. City of Willcox*, 23 F.4th 863, 874 (9th Cir. 2022) (explaining that supervisors can be held liable under § 1983). The district court properly granted summary judgment in favor of Deputy Farney on Rose's familial association claim because the facts of this case do not "shock[ ] the conscience." *Scott*, 109 F.4th at 1228 (citation omitted).

The district court correctly held that Rose did not distinctly allege in his complaint that Deputy Farney's pointing of his firearm at Bradley was a separate use of excessive force independent of the discharge of the weapon. *See Echlin v. PeaceHealth*, 887 F.3d 967, 978 (9th Cir. 2018) (focusing on claim actually pled).[2]

2. The district court properly determined that Deputy Godfrey was entitled to qualified immunity when he handcuffed Bradley because Rose failed to demonstrate that it was "beyond debate" that Deputy Godfrey's conduct violated a clearly established right. *Scott*, 109 F.4th at 1226 (citation omitted). Accordingly, the district court also properly granted summary judgment in favor of Deputies Farney, Cardenas, and Shrader on Rose's related integral participant claim. *See Peck v. Montoya*, 51 F.4th 877, 891 (9th Cir. 2022).

AFFIRMED in part and REVERSED in part.

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[2] The district court correctly held that Rose failed to demonstrate good cause in seeking leave to amend his complaint after the deadline imposed by the district court's scheduling order. *See Branch Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 764-65 (9th Cir. 2017).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-2846

D.C. No. 3:22-cv-08055-JAT
District of Arizona, Prescott

MICHAEL ROSE, as personal representative for the estate of Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose,

Plaintiff-Appellant,

v.

MATTHEW FARNEY, in his individual capacity; *et al*.,

Defendants-Appellees.

ORDER

Before: RAWLINSON and COLLINS, Circuit Judges, and FITZWATER, District Judge.[*]

The panel unanimously voted to deny the Petition for Panel Rehearing.

Judges Rawlinson and Collins voted to deny, and Judge Fitzwater recommended denying, the Petition for Rehearing En Banc.

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[*] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

The full court has been advised of the Petition for Rehearing En Banc, and no judge of the court has requested a vote.

The Petition for Panel Rehearing and Rehearing En Banc, filed March 26, 2025, is DENIED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-22-08055-PCT-JAT

MICHAEL ROSE, as personal representative for the of estate Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased,

Plaintiff,

v.

MATTHEW FARNEY, *et al.*,

Defendants.

ORDER

Pending before the Court is Plaintiff's Motion to Amend/Correct Complaint, (Doc. 54), and Defendant's Motion for Partial Summary Judgment re: Qualified Immunity, (Doc. 57). The Motion to Amend has been fully briefed, (Docs. 60, 63), as has the Motion for Summary Judgment, (Docs. 78, 90). The Court will now rule.

I. MOTION TO AMEND COMPLAINT

a. Procedural Background

Plaintiff filed a complaint on April 6, 2022, raising a number of federal and state law claims arising out of the deadly shooting of Bradley Rose ("Rose"). (Doc. 1). Plaintiff brought federal law claims under 42 U.S.C. § 1983 for excessive force on the part of the

officer who shot Rose and on the part of the officer who handcuffed him. (*Id.* at 9–10). Plaintiff also brought claims against the other officers who were on the scene for being "integral participants" and for failure to intervene. (*Id.* at 10–11). Additionally, Plaintiff brought a claim against Sheriff Schuster for failure to adequately train the deputies involved. (*Id.* at 11). Plaintiff also brought claims alleging an interference with the parent-child relationship under the First and Fourteenth Amendments against the officer involved in the shooting and the sheriff. (*Id.* at 12–13). Finally, Plaintiff brought a number of additional Arizona state law claims. (*Id.* at 14–16).

The Rule 16 scheduling order set the deadline to file an amended complaint for October 28, 2022.[1] (Doc. 23 at 1). No amended complaint was filed before the deadline. Almost five months after the deadline had passed, Plaintiff filed a "Motion for Leave to File First Amended Complaint and to Amend Scheduling Order to Allow the Same." (Doc. 54). The amended complaint sought to add Mohave County as a defendant and to bring additional federal and state law claims against it and Sheriff Schuster. (*Id.* at 12).

b. Discussion

Generally, Rule 15(a) governs a motion to amend pleadings to add claims or parties. But because Plaintiff filed his motion after the scheduling order's deadline for amended pleadings, an additional showing of "good cause" under Rule 16 is required. Fed. R.

[1] Plaintiff asserts that this Court entered a scheduling order on August 5, 2022, setting the deadline for amended complaints for November 11, 2022. This is incorrect. November 11, 2022 was the date set to file an amended answer to the complaint, not an amended complaint.

Civ. P. 16(b)(4); *Johnson v. Mammoth Recreation, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992).[2] With respect to the interplay between Rules 16 and 15(a), a party "must first show good cause" under Rule 16 and then "must demonstrate that amendment was proper under Rule 15." *Id.* at 608; *see also Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999); *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1419 (11th Cir. 1998) ("If [the court] considered only Rule 15(a) without regard to Rule 16(b), [it] would render scheduling orders meaningless and effectively would read Rule 16(b) and its good cause requirement out of the Federal Rules of Civil Procedure.").

Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking the amendment. *Johnson*, 975 F.2d at 609. In determining a party's diligence, a court may consider:

> (1) that [the movant] was diligent in assisting the Court in creating a workable Rule 16 order; (2) that [the movant's] noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding [the movant's] diligent efforts to comply, because of the dev-

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[2] Despite Plaintiff's assertion that *Johnson* is not applicable to this case, this Court finds that it is directly applicable. Plaintiff contends that the complications involved in adding a new party to a case are not present here because Plaintiff merely seeks to add Mohave County, "whose (sic) is already involved in this action as it is inextricably intertwined with Sheriff Schuster and the defendant deputies." (Doc. 54 at 14). Mohave County is not yet a party in this case, however. And although Sheriff Schuster and his deputies may be employed by the County, that does not mean that no additional burdens will be involved in adding the County as a party to this case. *Johnson* is squarely on point with this case and consequently Plaintiff's motion will be analyzed under it.

> elopment of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference; and (3) that [the movant] was diligent in seeking amendment of the Rule 16 order, once it became apparent that [the movant] could not comply with the order.

Jackson, 186 F.R.D. at 608 (citations omitted). Although the court "may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking the extension," "carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief." *Johnson*, 975 F.2d at 609 (internal quotations omitted). In seeking leave to modify the Rule 16 Order to allow amendment, movant has the burden of establishing good cause within the meaning of that Rule. *Morgal v. Maricopa Cnty. Bd. of Sup'rs*, 284 F.R.D. 452, 460 (D. Ariz. 2012).

There is no debate that Plaintiff was diligent in assisting the Court in creating the Rule 16 order. *See Jackson*, 186 F.R.D. at 608. Plaintiff's issues arise at the second step of the inquiry. Plaintiff advances two main reasons for why a post-deadline amendment to the complaint should be allowed. Neither of them meets the good cause standard of Rule 16. The first basis is that new evidence was discovered through depositions that was not available to Plaintiff until after he received transcripts of the depositions. (Doc. 54 at 3–4). Plaintiff asserts that depositions revealed "a serious deficiency and lack of training of deputy sheriffs." (*Id.* at 4). Plaintiff includes sections of the depositions in which the sheriff and other deputies present testimony of an alleged lack of training in the areas of behavioral health crisis response and high-

risk stops, among other things. (*See id.* at 7–12). He claims that because he did not have this testimony earlier, he was unable to bring a *Monell* claim against the County and certain state law claims against the sheriff. (*See id.* at 12). Yet this Court finds that there is no good cause to add the County as a party and to allow Plaintiff to bring in these new claims on this basis. Although the evidence of an alleged lack of training was perhaps made clearer through deposition testimony, Plaintiff had access to detailed training logs that outlined all of the training modules that each of the deputies involved in the encounter went through. (*See* Doc. 60-2 at 6–11). These records were made available to Plaintiff on September 2, 2022, almost two months before the deadline to amend. (*See* Doc. 60 at 3). As in *Johnson* it seems that Plaintiff's attorney here "filed pleadings and conducted discovery but failed to pay attention to the responses [he] . . . received." *Johnson*, 975 F.2d at 610. Plaintiff had this information and had the time to amend his complaint before the deadline. No new evidence unavailable to Plaintiff came to light through deposition testimony. Furthermore, this motion to amend was filed on March 24, 2023, a whole month after the last deposition was taken. (*See* Doc. 60 at 4). Thus, even if it could be said that Plaintiff discovered new evidence regarding the deputies' training through the depositions, this month-long delay shows a lack of diligence in making a motion before this Court. Consequently, the good cause standard is not met here.

The second reason given by Plaintiff is that his attorney had so many personal and professional obligations that he was unable to make it through the "voluminous" evidence. (*See* Doc. 63 at 2). Diligence, he argues, should be analyzed based on "the size of

an attorney's practice, his case load, his personal family life and a host of other things." (*Id.* at 2–3). Because he is a solo practitioner with a boutique firm, he asserts, he should be given more leeway with deadlines than larger defense firms. (*See id.* at 3). He further states that he has been diligent in litigating this case by engaging in extensive discovery and performing a significant amount of work. (*See id.*). Yet none of this amounts to the showing of good cause necessary under Rule 16. Ultimately what this amounts to is carelessness resulting from an attorney presumably taking on more work than he could responsibly handle. As the Ninth Circuit has stated multiple times, "carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief." *See Johnson*, 975 F.2d at 609. While Counsel for Plaintiff did put in work to litigate this case, the fact that he had other cases pending before other courts and that there were holidays during the months of November and December, (Doc. 63 at 4), do not provide adequate bases for a finding of good cause.

II. MOTION FOR PARTIAL SUMMARY JUDGMENT

a. Factual Background

These facts are presented in a light most favorable to the non-moving party or are undisputed. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir. 2004).

After spending the day with his family on April 17, 2021, Bradley Rose left his sister's house at around 9:00 p.m. (*See* Doc. 57 at 2). Later that evening, Officer Godfrey observed Rose as he passed his vehicle in a no passing zone and drove into oncoming traffic. (*See id.*). Officer Godfrey then began to follow

Rose. (*See id.*). After Rose committed a number of traffic violations, other deputies in the area began to follow his vehicle. (*See id.*). Officer Godfrey then turned on his lights and siren. (*See id.* at 3). Rose proceeded to run a red light. (*See id.*).

Although he stated that he was going to "disengage," after turning off his lights and siren, Officer Godfrey noticed that Rose was still driving erratically. (*See id.*). Rose then pulled over, and Godfrey radioed that he was going to conduct a high-risk stop. (*See id.*). After Officer Godfrey got out of his vehicle and began giving commands to Rose, the other officers joined and parked their vehicles nearby. (*See id.*). Instead of complying with the commands, Rose made a U-turn which led Officer Godfrey to get back in his car to avoid being hit. (*See id.*). As Rose drove between two of the parked patrol vehicles, he struck a third patrol vehicle before driving away. (*See id.*; Doc. 78 at 3). The deputies continued to follow Rose who drove in the wrong lane, almost hitting a tow truck, and onto the shoulder of the road, endangering civilians. (*See* Doc. 57 at 4).

Another officer, Cardenas, then turned on his lights to attempt another high-risk stop. (*See id.*). Officer Cardenas exited his vehicle and drew his weapon. (*See id.*). Rose began driving directly at Officer Cardenas, but then swerved to avoid hitting him. (*See id.*). Officer Cardenas radioed that Rose attempted to hit him. (*See id.*).

Eventually, Officer Farney found Rose's car and began to follow it to a residence where Rose stopped his vehicle. (*See id.* at 5). Officer Farney pulled in behind Rose. (*See id.*). Rose got out and stood in the doorjamb of his car. (*See id.* at 6). Rose was described as looking at Officer Farney with a "thousand-yard

stare." (*See* Doc. 78 at 4). Rose simply stood by his car and did not attempt to run or assume a fighting stance. (*See id.*). Officer Farney asserts that, at the time, he was concerned that Rose might run inside the house and potentially create a hostage situation. (*See* Doc. 57 at 5). He also could not tell whether Rose had a weapon in his vehicle that he might have reached for. (*See id.*). Officer Farney got out of his vehicle, drew his service weapon, and began to move toward Rose. (*See id.* at 6).

At this moment, Officer Farney testified that he yelled numerous commands at Rose to "get on the ground." (*See id.* at 6). Plaintiff disputes Officer Farney's testimony by arguing that there is no evidence that Farney gave these commands because his body worn camera was in his patrol vehicle, and it did not pick up any audio of him yelling commands. (*See* Doc. 78 at 4). What is uncontested is that Officer Shrader, who arrived shortly after Officer Farney, did give the command to "get down." (*See* Doc. 57 at 6). It is also uncontested that as Officer Farney approached Rose, Rose began to flail his arms at Officer Farney and Rose hit Farney. (*See* Doc. 78 at 5). Officer Farney also testified that at this time Rose attempted to grab his service weapon. (*See* Doc. 57 at 7). Whether Rose grabbed for the gun is disputed by Plaintiff who claims that there is no body worn camera footage showing this. (*See* Doc. 78 at 5). Officer Farney then pulled back and fired at Rose. (*See* Doc. 57 at 7).

Officer Godfrey, who arrived seconds before, saw Rose moving away from Officer Farney after the shots were fired. (*See id.* at 7). Officer Godfrey grabbed Rose by the shoulders. (*See id.*). Rose then fell to the ground. (*See id.*). Officer Godfrey then

handcuffed Rose behind his back. (*See id.*). He rolled Rose over and observed a large screwdriver underneath Rose. (*See id.* at 7–8). Officer Godfrey and another officer began performing lifesaving measures on Rose until emergency medical services arrived. (*See id.* at 8). The handcuffs were not removed until Rose was placed on a stretcher and taken to the hospital. (*See id.*). This occurred seven minutes after Officer Shrader radioed that shots had been fired. (*See id.*).

b. Legal Standard

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A party asserting that a fact cannot be or is genuinely disputed must support that assertion by . . . citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, or declarations, stipulations . . . admissions, interrogatory answers, or other materials," or by "showing that materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.* 56(c)(1)(A-B). Thus, summary judgment is mandated "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

Initially, the movant bears the burden of demonstrating to the Court the basis for the motion and the elements of the cause of action upon which the nonmovant will be unable to establish a genuine issue of

material fact. *Id.* at 323. The burden then shifts to the nonmovant to establish the existence of material fact. *Id.* A material fact is any factual issue that may affect the outcome of the case under the governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts" by "com[ing] forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (quoting Fed. R. Civ. P. 56(e)). A dispute about a fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 248. The non-movant's bare assertions, standing alone, are insufficient to create a material issue of fact and defeat a motion for summary judgment. *Id.* at 247–48. However, in the summary judgment context, the Court construes all disputed facts in the light most favorable to the non-moving party. *Ellison*, 357 F.3d at 1075.

At the summary judgment stage, the Court's role is to determine whether there is a genuine issue available for trial. There is no issue for trial unless there is sufficient evidence in favor of the non-moving party for a jury to return a verdict for the non-moving party. *Liberty Lobby, Inc.*, 477 U.S. at 249–50. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* (citations omitted).

This inquiry changes when the issue of qualified immunity has been raised. While ordinarily a Court would look to whether there are disputed issues of material fact, "when qualified immunity is at stake, a

court must first determine whether the law has been clearly established." *Romero v. Kitsap County*, 931 F.2d 624, 628 (9th Cir. 1991). An assessment of whether there are disputed material facts comes in when analyzing whether a reasonable officer could have believed that the conduct at issue was lawful. *See id.*

Generally, government officials enjoy qualified immunity from civil damages unless their conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In deciding if qualified immunity applies, the Court must determine: (1) whether the facts alleged show the defendant's conduct violated a constitutional right; and (2) whether that right was clearly established at the time of the violation. *Pearson v. Callahan*, 555 U.S. 223, 230-32, 235-36 (2009) (courts may address either prong first depending on the circumstances in the particular case). Whether a right is clearly established must be determined "in light of the specific context of the case, not as a broad general proposition." *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The plaintiff has the burden to show that the right was clearly established at the time of the alleged violation. *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002); *Romero v. Kitsap County*, 931 F.2d 624, 627 (9th Cir. 1991). Thus, "the contours of the right must be sufficiently clear that at the time the allegedly unlawful act is [under]taken, a reasonable official would understand that what he is doing violates that right;" and "in the light of pre-existing law the unlawfulness must be apparent." *Mendoza v. Block*, 27 F.3d 1357, 1361 (9th Cir. 1994) (internal quotations omitted). Therefore, regardless of whether the constitutional violation occurred, the officer

should prevail if the right asserted by the plaintiff was not "clearly established" or the officer could have reasonably believed that his particular conduct was lawful. *Romero*, 931 F.2d at 627.

The determination of whether a right is clearly established is one for the judge in each specific case to make. *Harlow*, 457 U.S. 800, 818 (1982). In doing this, the Court must consider "only the facts that were knowable to the defendant officers." *White v. Pauly*, 580 U.S. 73, 77 (2017). Thus, it is an inquiry defined by the specific facts and circumstances of the case. While a Plaintiff does not need to find a case that is directly on point, "existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* at 79 (internal quotations omitted). As the Supreme Court has reiterated, "the clearly established law must be 'particularized' to the facts of the case. *Id.* (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). Plaintiffs should not be able to avoid the effects of qualified immunity simply by pointing to a vague and general right. Otherwise, officers would not be given "fair and clear warning" of the law that governs their specific conduct in the various circumstances they may face. *See id.* at 79–80. Fundamentally, qualified immunity "protects all but the plainly incompetent or those who knowingly violate the law." *Id.* (internal quotations omitted).

The only other circumstance in which qualified immunity does not attach is when a government official's conduct obviously violates clearly established law under general cases such as *Tennessee v. Garner*[3] and *Graham v. Connor*.[4] *See id.* at 80.

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[3] *Tennessee v. Garner*, 471 U.S. 1 (1985).

[4] *Graham v. Connor*, 490 U.S. 386 (1989).

"Obvious" cases are those that involve "run-of-the-mill" Fourth Amendment violations. *See id.* When a court finds an obvious violation it is saying that "it is almost always wrong for an officer in those circumstances to act as he did." *Sharp v. County of Orange*, 871 F.3d 901, 912 (9th Cir. 2017) (emphasis omitted). But, as the Ninth Circuit has noted, the "obviousness principle, an exception to the specific-case requirement, is especially problematic in the Fourth-Amendment context." *Id.* This is so because officers encounter suspects in different and novel circumstances and have to deal with them as those differing circumstances dictate. *See id.* Thus, it is very difficult in the Fourth Amendment context to say that an obvious violation occurred.

c. Discussion

i. Pointing the service weapon

This Court first addresses the contention that because Defendants did not separately address the claim of excessive force stemming from "pointing a loaded firearm at" Rose that it is not before the Court as part of the motion for partial summary judgment. (*See* Doc. 78 at 2). Defendants assert that this claim is properly before the Court because the initial complaint never separately pled that pointing the service weapon constituted a Fourth Amendment violation. (*See* Doc. 90 at 13). They argue that the claims stemming from the pointing and the discharge of the service weapon constitute a single allegation of excessive force. (*See id.*). This too is how this Court interprets Plaintiff's complaint. The complaint states, under the first claim for relief, "[u]pon exiting his vehicle, Farney unholstered and pointed his firearm at Bradley. Seconds later, he discharged his firearm, shooting Bradley four times. These uses by Farney of

his firearm constituted seizures of Bradley's person under the Fourth Amendment." (Doc. 1 at 9). Despite the use of the language "these uses[,]" this Court reads this as a single allegation relating to a series of events. Consequently, this Court will consider this aspect of the excessive force claim in conjunction with the actual discharge of the service weapon.

ii. Use of deadly force

Both Plaintiff and Defendants spend a large portion of their arguments discussing whether a constitutional right was violated by Officer Farney. As noted above, in the context of a qualified immunity analysis, a judge need not decide whether a constitutional right exists before determining whether a right is clearly established under precedential caselaw. *See Pearson*, 555 U.S. at 236. Therefore, this Court will first assess whether, at the time of the Defendants alleged misconduct, there was a clearly established constitutional right. It finds that there was not.

Defendants point to a number of cases that they assert establish that Officer Farney acted reasonably under the circumstances. Specifically, Defendants cite to *Billington v. Smith*, 292 F.3d 1177 (9th Cir. 2002). That case involved both a car chase, a struggle between a police officer and an offender, and a deadly shooting. In *Billington*, a speeding driver who had swerved into oncoming traffic was being chased by a police officer. *See id.* at 1180. The driver then crashed his car, and the officer drew his service weapon and began walking towards the vehicle. *See id.* The driver, who was intoxicated and initially unresponsive, attempted to start his car and drive away. *See id.* at 1180–81. The driver then proceeded to hit the officer and grabbed him by the throat. *See id.* at

1181. The driver crawled out of his window and began charging at the officer and hitting him. *See id.* A scuffle ensued and the officer shot and killed the driver. *See id.* The Court found that because the driver was locked in hand-to-hand-combat with the officer, the officer did not violate any constitutional rights by shooting him. *See id.* at 1185.

Plaintiff asserts that *Billington* is not on point because in this case Officer Farney was the aggressor. (*See* Doc. 78 at 17). This contrasts with *Billington* where the driver was the aggressor. (*See id.*). Yet the Court does not need to decide whether that case, or any of the other cases cited by Defendants are on point with this case. The burden placed on the Plaintiff is not to show that Defendants cannot point to any controlling case, but that there is precedential caselaw that clearly establishes the right at issue. *See Sorrels*, 290 F.3d at 969. The only case that Plaintiff cites to show that there was a clearly established constitutional right is *Tennessee v. Garner*. The Supreme Court has noted multiple times, that *Garner* lays out "excessive-force principles at only a general level." *White*, 580 U.S. at 79. And, therefore, is not specific enough to serve as a precedential case that clearly establishes a right for purposes of a qualified immunity analysis. As the Supreme Court stated, "we have held that *Garner* and *Graham* do not by themselves create clearly established law outside 'an obvious case.'" *Id.* at 80 (citing *Brosseau v. Haugen*, 543 U.S. 194, 199 (2004)). Plaintiff cannot therefore establish that a right was clearly established by simply citing to *Garner*. Yet that is exactly what they did.

Plaintiff argues that he only needs to cite to *Garner* because this is an obvious case. (*See* Doc. 78 at 18).

The obvious case principle presents a very high bar, however. Plaintiff argues that Officer Farney was the only person to whom Rose could have posed a threat, that Rose was unarmed and unaware of his surroundings, that Rose only struck him one time, and that Officer Farney was able to back away before firing. Consequently, it would have been obvious to Officer Farney that using deadly force against Rose would be a Fourth Amendment violation. This retelling of the facts involves a good deal of speculation and simplification, however. When assessed in light of all the facts, this encounter does not involve an "run-of-the-mill" Fourth Amendment Violation. *White*, 580 U.S. at 80. This case involved a car chase where Rose broke numerous laws, hit a police vehicle, and endangered the lives of officers and civilians. Furthermore, when Officer Farney finally encountered Rose outside a house, he did not know whether Rose was armed, or whether he would attempt to enter the home and create a hostage situation. Additionally, although there is a dispute as to whether Rose grabbed Officer Farney's service weapon, it is not disputed that Rose hit Officer Farney in the face. These facts do not make for the obvious case. Further, as discussed above, Plaintiff makes no case specific argument that the law was clearly established. Thus, having concluded that this case was not obvious, this Court finds that Officer Farney is entitled to qualified immunity for all of his acts involving pointing and discharging his service weapon.

iii. Handcuffing

Plaintiff also argues that caselaw clearly establishes a right to be free from the excessive force involved in the act of handcuffing an unarmed

suspect after that suspect has been shot. (*See* Doc. 78 at 20). After distinguishing a number of cases cited by Defendants, Plaintiff cites to two cases to show that this right is clearly established. The first case, *Estate of Srabian ex rel. Srabian v. Cnty. Of Fresno*, involved an armed man who was shot by a police officer responding to a 911 call. *See* No. 1:08-CV-00336, 2012 WL 5932938, *1–*2 (E. D. Cal. Nov. 27, 2012). After the suspect was shot, the officer who shot him, and another officer, applied force to the suspect in order to handcuff him. *See Srabian* at *10. The suspect was then dragged to a patrol car. *See id.* The district court found that the officers were not entitled to qualified immunity for the post-shooting handcuffing. *See id.* at *11. The facts of that case, however, are too dissimilar from the facts involved here for that case to have clearly established a right. First, the officer in *Srabian* saw that the suspect was armed and also that the suspect had dropped the gun after he was shot. *See id.* at *2. Additionally, two officers applied force to Srabian because it was difficult to handcuff him. *See id.* at *10. Finally, the officers dragged the suspect to their patrol car. *See id.* Here, Rose was cuffed after he was shot and the officer immediately began performing lifesaving measures. Furthermore, the judge in *Srabian* found that there was excessive force not because the officers handcuffed the suspect after he was shot, but because of the "combined force by two deputies [used] to handcuff Srabian" after he had been shot. *See id.* at *11. It was the additional force used in the act of handcuffing that was the basis for the excessive force claim. Moreover, even if *Srabian* were directly on point, it still may not have been enough to clearly establish a right because it is an unpublished district court opinion. *See generally Rivas-Villegas v.*

Cortesluna, 142 S.Ct. 4, 7 (2021) (noting that "[e]ven assuming that controlling Circuit precedent clearly establishes law for purposes of § 1983, *LaLonde* did not give fair notice to Rivas-Villegas.").

The second case cited by Plaintiff is *Fisher v. City of Las Cruses*, a case from the Tenth Circuit. This case involved an individual who accidentally shot himself twice. *See Fisher v. City of Las Cruses*, 584 F.3d 888, 892 (10th Cir. 2009). After police officers arrived on the scene, they ordered the individual to lay on his stomach and put his arms over his head. *See id.* He did not comply, so the officers handcuffed him. *See id.* That case is clearly different from this case for a number of reasons. The main reason being that the individual in *Fisher* shot himself. Furthermore, there was not a car chase or any other incidents leading up to the shooting. And in *Fisher*, much as in *Srabian*, the court found excessive force in of the manner in which he was handcuffed, not in the fact that he was handcuffed. *See id.* at 893 ("As a threshold matter, we agree with the district court that the initial decision to handcuff Fisher was not unreasonable. Rather, the issue here is whether in these circumstances the manner in which the officers handcuffed Fisher, forcibly behind his back while he suffered from gun shot wounds, constituted excessive force."). None of these cases meets the high threshold of the "clearly established" prong of the qualified immunity standard.[5]

[5] Plaintiff also makes passing reference to the fact that this is an obvious constitutional violation. Given the complexity of the factual situation at the time of the handcuffing, this Court finds that this was not an "obvious" Fourth Amendment violation.

iv. Integral Participant Theory and Failure to Intervene

Plaintiff's claims that the other deputies on the scene were integral participants or failed to intervene also fail for much the same reasons. Because there was no violation of any clearly established rights stemming out of Officer Farney's pointing his service weapon at Rose or discharging it at him, or out of Officer Godfrey's handcuffing Rose after Rose had been shot, it too is the case that no clearly established rights were violated by any of the other officers on the scene. This applies both to their alleged role as integral participants and for failing to intervene.

v. Familial Association Claim

Defendants also challenge Plaintiff's familial association claim under the First and Fourteenth Amendments. They assert that "no similar case put [officer Farney] . . . on notice that his conduct violated Plaintiff's familial association rights." (*See* Doc. 57 at 21). Plaintiff counters that *Nicholson v. City of Los Angeles* clearly established the right that was violated. (*See* Doc. 78 at 24). In *Nicholson* a group of four boys were in an alleyway before school, and one was holding a toy gun. *See Nicholson v. City of Los Angeles*, 935 F.3d 685, 689 (9th Cir. 2019). Upon noticing the gun, a police officer jumped out of his car and began running towards the group. *See id.* The officer alleged that he yelled commands at the group, but this fact was disputed, as was whether the officer fired his weapon while running towards them or only after he was a few feet from the group. *See id.* The officer shot and hit one of the boys. *See id.* The court held that the officer's actions violated the plaintiff's Fourteenth Amendment rights. *See id.* at 695. Plaintiff claims that this case "would have put any reason-

able officer on notice that Farney's conduct violated the Roses' constitutional rights." (Doc. 78 at 25).

Much like with the other claims, that case is not factually similar enough to this case to have put officer Farney on notice that he was violating a clearly established right. *Nicholson* did not involve a chase or felonious activity as in this case. Furthermore, it was disputed whether commands were given, whereas here it is not disputed that at least one officer gave commands to Rose. Additionally, *Nicholson* involved four friends who did not pose any actual threat to each other or any officers or civilians. Before Officer Farney found Rose outside of the house, Rose had endangered numerous individuals, and officer Farney was unsure whether he was armed or would attempt to enter a house and create a hostage situation. The facts involved in this case are too unique to be covered by the holding in *Nicholson*. Consequently, this Court finds that Officer Farney is entitled to qualified immunity on any familial association claim.

vi. Supervisory Liability Claim

Finally, Defendants challenge Plaintiff's supervisory liability claim against the sheriff. (*See* Doc. 57 at 22). They assert that "[b]ecause the individual deputies did not violate any of Plaintiff's constitutional rights and are entitled to qualified immunity, Plaintiff's *Monell* and/or supervisory liability claim fails as a matter of law." (*See* Doc. 90 at 20). This Court finds that because there was no violation of any clearly established rights by any of the officers in this case, there was no violation of any clearly established rights by Sheriff Schuster in the training provided to his deputies. Additionally, the burden is on the Plaintiff to show that there was a clearly

established right at the time of the incident. *See McKee*, 290 F.3d at 969. Plaintiff pointed to no cases showing that there was a clearly established right.[6] Sheriff Schuster is thus also entitled to qualified immunity on the supervisory liability claim.

i. Remaining State Law Claims

Because this Court is granting Defendants' motion for summary judgment on all federal claims, it too will dismiss the remaining state law claims. A district court has the authority to "decline to exercise supplemental jurisdiction over" related state law claims if "the district court has dismissed all claims over which it has original jurisdiction." 28 U.S.C. § 1367. In such circumstances, "the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (internal quotations omitted); *see also Avelar v. Youth And Family Enrichment Servs.*, 364 Fed.Appx. 358, 359 (9th Cir. 2010) ("We have frequently recognized that when federal claims are dismissed before trial, supplemental state claims should ordinarily also be dismissed."). This Court finds that the balance of factors here tips in favor of declining to exercise supplemental jurisdiction over the remaining claims. Thus, all remaining state law claims will be dismissed without prejudice.

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[6] Despite Defendants claiming that Sheriff Schuster was entitled to qualified immunity, *See* Doc. 57 at 22, Plaintiffs failed to point to any caselaw showing a clearly established right and merely focused on the fact that a constitutional violation had occurred.

III. CONCLUSION

Accordingly,

IT IS ORDERED that Plaintiff's Notice of Motion and Motion for Leave to File First Amended Complaint and to Amend Scheduling Order to Allow the Same, (Doc. 54), is **DENIED.**

IT IS FURTHER ORDERED granting Defendants' motion for partial summary judgment, (Doc. 57), as to all federal claims.

IT IS FURTHER ORDERED dismissing all remaining state law claims without prejudice because the Court declines to exercise supplemental jurisdiction over those claims.

IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment, 5 days from the date of this Order, in favor of Defendants on the federal claims only and dismissing without prejudice the state law claims.

Dated this 14th day of September, 2023.

/s/ James A. Teilborg
James A. Teilborg
Senior United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23-2846

D.C. No. 3:22-cv-08055-JAT
District of Arizona, Prescott

MICHAEL ROSE, as personal representative for the estate of Bradley Rose and as personal representative on behalf of all statutory beneficiaries of Bradley Rose, deceased estate of Bradley Rose,

Plaintiff-Appellant,

v.

MATTHEW FARNEY, in his individual capacity; *et al*.,

Defendants-Appellees.

ORDER

Before: RAWLINSON and COLLINS, Circuit Judges, and FITZWATER, District Judge.[1]

Defendants-Appellees' unopposed Motion to Stay Issuance of Mandate Pending Filing of a Petition for Writ of Certiorari, filed April 23, 2025, is GRANTED. The Clerk of the Court shall stay the issuance of the mandate for 90 days to allow Defendants-Appellees to file a petition for certiorari. If, within that period, Defendants-Appellees advise the Clerk that a petition

[1] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

for certiorari has been filed, then mandate shall be further stayed until a final decision in the matter is issued by the United States Supreme Court.