No. 25-

IN THE

Supreme Court of the United States

NICHOLAS ROBLES, OFFICER NO. 451, *et al.*,

Petitioners,

v.

RONNIE PARHAM,

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. Does probable cause exist to stop, search, arrest, and prosecute a criminal suspect for evading arrest where unrefuted video evidence and the suspect's own admissions demonstrate that he refused to yield to the traffic stop, subsequently briefly stopped, and then accelerated away again?

2. Where an appellate panel is not in agreement about whether an underlying constitutional violation has occurred, how can the panel subsequently conclude that the law is "clearly established" such that a law enforcement officer is not entitled to qualified immunity for the claimed constitutional violation?

PARTIES

Petitioners Nicholas Robles, Carlos Gonzalez, Abel Hernandez, and Matthew Munoz either are currently or were at the time members of the West Covina Police Department. Each petitioner was a defendant in the district court and an appellant in the Ninth Circuit appeal from which this petition is taken.

Respondent Ronnie Parham was the plaintiff in the district court and the appellee in the Ninth Circuit.

RELATED PROCEEDINGS

Parham v. City of West Covina, et al., United States District Court, Central District of California, Case No. 2:21-cv-09114-FLA (GJSx), summary judgment denied on July 29, 2024.

Parham v. Nicholas Robles, Officer No. 451, et al., United States Court of Appeals for the Ninth Circuit, Case No. 24-5205, judgment entered on December 18, 2025.

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OPINIONS AND ORDERS BELOW

The Ninth Circuit's unpublished Memorandum Opinion affirming the denial in part of petitioner's motion for summary judgment (App. 1a-11a) is at 2025 U.S. App. LEXIS 33043.

The district court's unpublished order denying petitioner's motion for summary judgment (App. 12a-34a) is at 2024 U.S. Dist. LEXIS 133786.

JURISDICTION

The Ninth Circuit Court of Appeals issued its Memorandum affirming the district court's order on December 18, 2025.

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 Memorandum Opinion in the Ninth Circuit, pursuant to United States Supreme Court Rule 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent's 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, a 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

When West Covina Police Officers Nicholas Robles and Carlos Gonzalez observed Ronnie Parham driving a vehicle which did not contain front license plates and appeared to have illegally tinted windows just minutes before midnight, they decided to perform a traffic stop for the Vehicle Code violations. Unbeknownst to these officers, Parham – who had suffered four felony convictions, had been sentenced to state prison on two separate occasions, and never completed high school – was apparently not excited about the prospects of another contact with law enforcement.

When Officers Robles and Gonzalez activated their patrol light to initiate the traffic stop, Parham kept driving and refused to pull over. Then, after pulling over and stopping briefly, Parham accelerated away from the officers. This evasive conduct resulted in the transmission of a "failure to yield" call, the participation of additional officers in the pursuit, and a "high risk" vehicle stop.

Once Parham eventually stopped for a second time, he was initially compliant. For example, he rolled down his window, placed his hands outside of the vehicle where they could be seen, voluntarily exited the vehicle, approached the officers walking backwards, kneeled on the ground, and interlocked his fingers behind his head. However, once a handcuff was applied to Parham's right wrist, Parham suddenly stood up and attempted to flee and, as a result, Sergeant Hernandez and Officer Munoz used minimal hands-on force to obtain compliance. These events are all captured on the officers' MAV Dash Cam system. MAV Dash Cam video (Click here).[1]

The officers filed a motion for summary judgment asserting, *inter alia,* that Parham had failed to state a claim on any of his actions under 42 U.S.C. § 1983, and the officers were entitled to qualified immunity. The District Court denied summary judgment on the use of force issue, determining that a reasonable jury could conclude that the post-detention force used was unreasonable. Then, despite the uncontroverted evidence of Parham's refusal to yield that preceded the use of force, the District Court also denied summary judgment on the false arrest, inventory search, and malicious prosecution claims. App. 12a-34a. This finding was made despite Parham's own admission that he failed to yield, a violation of California *Vehicle Code* § 2800.1. See MAV Dash Cam video (Click here).

1. In connection with the motion for summary judgment, the officers submitted a video taken from the MAV Dash Camera. 3-E.R.-554. On appeal, the parties submitted a joint motion to transmit physical exhibits to the Ninth Circuit. App. Dkt. 15. For the convenience of the Court, hypertext links to this evidence have been included throughout this petition.

The District Court also denied summary judgment on Parham's deliberate indifference to a medical need claim.

On appeal, the Ninth Circuit affirmed the denial of summary judgment on all grounds; however, Circuit Judge Miller issued a pithy dissent on the wrongful arrest claim, stating:

> The officers arrested Parham for violating California Vehicle Code section 2800.1(a), which provides for the punishment of "[a]ny person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle." Parham does not dispute that after seeing the flashing lights on a marked police car, he pulled over and came to a brief stop, only to pull away again and drive off. ***At that moment, the officers had probable cause to believe that he violated the statute.*** App. 9a (emphasis added).

Moreover, Judge Miller expressly noted that no case authority existed which would put the officers on notice that their conduct was unconstitutional and, therefore, the officer should have been entitled to qualified immunity on the wrongful arrest claim. App. 11a. And, although Judge Miller limited his dissent to the issue of wrongful arrest, his analysis should apply equally to the search, seizure, and malicious prosecutions claims. This Court should so clarify.

Finally, this divided panel opinion outlines another problematic and unfortunate occurrence which continues

to rear its head in various circuit courts, in general, and the Ninth Circuit, in particular. Namely, where an appellate panel is not in agreement about whether an underlying constitutional violation has occurred, how can it subsequently conclude that the law is "clearly established" such that a law enforcement officer is *not* entitled to qualified immunity? Such a ruling holds officers to a standard upon which circuit judges cannot even agree. Surely, this is not the state of the law, nor should it be.

Simply stated, the uncontroverted facts demonstrate that Parham's arrest, the subsequent search of his vehicle, and his ultimate prosecution were based on probable cause. As such, Parham's claims fail as a matter of law. And, because a split of authority existed at the circuit level as to whether a constitutional violation occurred, the officers should have been entitled to qualified immunity.

STATEMENT OF THE CASE

On August 18, 2018, at approximately 11:30 p.m., West Covina Police Officer Nicholas Robles and his partner Officer Carlos Gonzalez were on routine patrol when they observed Parham driving a vehicle near the intersection of Francisquito and Lark Ellen in West Covina, California. Parham, who had suffered four felony convictions and who had been sentenced to state prison on two separate occasions, never completed high school and did most of his schooling while incarcerated.

As Officers Robles and Gonzalez approached Parham's vehicle from the opposite direction, they observed that Parham's vehicle did not have a front license plate and had what appeared to be illegal tinting. Officer Gonzalez

performed a U-turn and began to effectuate a traffic stop. Officer Gonzalez activated the MAV Dash Cam system while Officer Robles broadcast a traffic stop over the police radio. MAV Dash Cam video (Click here) at 0:00-7:27.

After Officer Gonzalez activated his lights, Parham did not stop and, instead, made a turn down Valinda Street and continued to drive southbound. Parham admits that as he turned onto Valinda he saw the officers' lights but did not pull over. As the officers continued to follow Parham with their lights activated, Parham then made a right turn on Doublegrove Street, stopped his vehicle momentarily, and then accelerated away. MAV Dash Cam video (Click here) at 0:50.

Once Parham accelerated away, Officer Gonzalez activated his sirens. Officer Robles made a second police broadcast that Parham had failed to yield to the traffic stop, an action which resulted in the interaction being treated as a "high risk" stop. After the "failure to yield" call was made, Sergeant Abel Hernandez and Officer Mathew Munoz joined the pursuit. Parham proceeded down Doublegrove Street for approximately one minute covering less than a mile at speeds of approximately 20 to 35 mph before pulling over a second time. MAV Dash Cam video (Click here) at 1:35.

Once Parham stopped his vehicle for the second time, Officer Gonzalez ordered him to roll down his window and place his hands outside where they could be seen, an order with which Parham complied. MAV Dash Cam video (Click here) at 1:47-4:47. After backup units arrived, Officer Gonzalez ordered Parham to step out of his vehicle, an order with which Parham complied. MAV

Dash Cam video (Click here) at 4:48-5:13. Officer Robles then ordered Parham to face away and walk toward the officers backwards, an order with which Parham complied. MAV Dash Cam video (Click here) at 5:14-5:32.

Sergeant Hernandez then took over and ordered Parham to kneel on the ground and interlock his fingers behind his head, an order with which Parham complied. MAV Dash Cam video (Click here) at 5:30-5:41. Sergeant Hernandez placed one handcuff on Parham's wrist, an action which Parham did not resist. Sergeant Hernandez then attempted to bring Parham's hands behind his back while Parham was still in the kneeling position so that he could apply the second handcuff.

As Sergeant Hernandez was attempting to apply the second handcuff, Parham suddenly stood up and attempted to pull away. MAV Dash Cam video (Click here) at 5:42. When Parham stood up with handcuffs only fastened to one wrist, Sergeant Hernandez grabbed him and pulled him to the ground. MAV Dash Cam video (Click here) at 5:44. After a brief struggle of approximately 30 to 45 seconds, Parham was handcuffed. MAV Dash Cam video (Click here) at 5:44-6:17. As Parham was taken to the ground, he continued to physically resist attempts to be handcuffed.

During the struggle, neither Officer Gonzalez nor Officer Robles used any force to attempt to subdue Parham; however, Officer Munoz delivered four closed-fist strikes on the shoulder in an attempt to obtain compliance and Sergeant Hernandez placed a knee on Parham's back in an attempt to prevent him from standing up. MAV Dash Cam video (Click here) at 5:44-6:17.

After Parham was handcuffed and arrested, officers performed an inventory search of Parham's vehicle and impounded it. Parham was then transported to a local hospital where he refused medical treatment.

As a result of these events, on October 11, 2018, Parham was charged with two misdemeanor counts of evading arrest and resisting arrest. However, on November 22, 2019, Parham was found not guilty of these charges.

On November 21, 2021, Parham filed a complaint alleging various federal claims arising out of his arrest for evading arrest. After discovery was complete, petitioners filed a motion for summary judgment and, on July 29, 2024, the District Court entered an order denying summary judgment in its entirety. App. 12a-34a.

On appeal, a majority of the panel issued an eight-page, unpublished, Memorandum Opinion (App. 1a-8a) which stated that viewing the evidence in the light most favorable to Parham, the officers used excessive force and did so in violation of clearly established law. Notably, however, the opinion also included a dissent authored by Judge Miller which concluded that the officers should have been entitled to summary judgment on the wrongful arrest claim based on the presence of probable cause and, since the law was not clearly established, under the doctrine of qualified immunity. App. 8a-11a.

ARGUMENT

A. Probable Cause Exists to Stop, Search, Arrest, and Prosecute a Criminal Suspect for Evading Arrest Where Unrefuted Video Evidence and the Suspect's Own Admissions Demonstrate That He Refused to Yield to a Traffic Stop, Subsequently Briefly Stopped, and Then Accelerated Away Again

Probable cause exists where the facts and circumstances within an officer's knowledge of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. *Carrol v. United States,* 267 U.S. 132, 162 (1925). Probable cause means less than evidence that would justify a conviction. *Brinegar v. United States,* 338 U.S. 160, 175 (1949). Even an acquittal would not be evidence of a lack of probable cause. *Id.* Thus, the mere fact that a prosecution was unsuccessful does not mean that it was not supported by probable cause. *Freeman v. City of Santa Ana,* 68 F.3d 1180, 1189 (9thCir. 1995). Probable cause is an absolute defense to malicious prosecution claims. *Lassiter v. City of Bremerton,* 556 F.3d 1049, 1054-1055 (9th Cir. 2009). Moreover, probable cause to justify an arrest may exist for a closely related offense other than the one charged. *Gasho v. United States,* 39 F.3d 1420, 1428, n. 6 (9th Cir. 1994).

In this case, the uncontroverted facts demonstrate that Parham failed to yield when the officers initially attempted to perform a traffic stop and then, after stopping briefly, that Parham accelerated away again, resulting in a "failure to yield" transmission and creating

a "high risk" stop. See MAV Dash Cam video (Click here) at 0:50. Indeed, Parham himself admitted these actions. As such, there was clearly probable cause to arrest and prosecute him for his own admitted actions.

Similarly, given that Parham's vehicle was properly impounded incident to his arrest, there was also good cause to perform an inventory search of the contents of his vehicle. *South Dakota v. Opperman,* 428 U.S. 364, 367 (1976); *United States v. Mancera-Londono,* 912 F.2d 373, 375 (9th Cir. 1990).

Despite this black letter law and undisputed facts, both the District Court and the Ninth Circuit denied summary judgment under the theory that a reasonable jury could believe that Parham did not attempt to evade arrest prior to being removed from the car. Both courts also concluded that because a jury could so conclude, summary judgment must also be denied regarding the constitutionality of Parham's subsequent arrest and prosecution. Not so.

There is no legal authority for the position that a suspect can refuse to yield to an officer and/or drive away from an initial stop if he is doing so to park in front of a relative's house. This argument strains credibility. Moreover, it must be remembered that probable cause examines the events leading up to an arrest from the standpoint of an objectively reasonable police officer. *Maryland v. Pringle,* 540 U.S. 366, 371 (2003). As the Court noted in *Wesby,* officers are entitled to make reasonable inferences based on the totality of the circumstances. *District of Columbia v. Wesby,* 583 U.S. ___, 57 (2018).

Moreover, this Court has repeatedly held that unprovoked flights are "certainly suggestive" of wrongdoing and can be treated as "suspicious behavior" that factors into the totality of the circumstances. *Illinois v. Wardlow,* 528 U.S. 119, 124-125 (2000).

Given Parham's erratic actions of repeated flight, his behavior certainly qualified as "suspicious," warranting not only his arrest, but the search and seizure of his automobile. A valid concern existed regarding the possible contents of Parham's vehicle which would cause him to attempt to evade arrest. However, in this case, the Courts bypassed the proper search and seizure of the car incident to Parham's arrest and, instead, relied on an impound statute based on the "community caretaker" function. This was clear error.

Where, as here, the uncontroverted facts demonstrate that probable cause existed and where the lower court erred on both the merits of the constitutional claim and the question of qualified immunity, the Court has the ability to correct errors at each step. *District of Columbia v. Wesby,* 583 U.S. at 62; *Ashcroft v. al-Kidd,* 563 U.S. 731, 735 (2011). This Court should do so.

Finally, one last issue warrants comment. The Courts' orders in this case seem to imply that some sort of issue of fact exists despite Parham's own admissions on the uncontroverted video evidence. These rulings fly in the face of *Scott v. Harris,* 550 U.S. 372, 380 (2007), in which Justice Scalia, writing for a majority of this Court, concluded that facts on summary judgment should be viewed in the light depicted in the videotape. However, both the District Court's order and the Ninth Circuit's

majority opinion are contrary to this doctrine. This Court can and should mark a brighter line on the use of undisputed video evidence and provide further instruction to courts of inferior jurisdiction on this critical issue.

B. Where an Appellate Panel is Not in Agreement About Whether an Underlying Constitutional Violation Has Occurred, the Panel Cannot Conclude that the Law is "Clearly Established" Such that a Law Enforcement Officer is *NOT* Entitled to Qualified Immunity

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 or 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. 223, 230 (2009) (emphasis added).

To evaluate qualified immunity, a court must first decide whether the facts show that the government 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 government 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 government 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. ___, 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). 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. 335, 341 (1986).

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, the Ninth Circuit could not agree as to whether an underlying constitutional violation had occurred. Specifically, Judge Miller determined that no

underlying constitutional violation had occurred with respect to the wrongful arrestee claim because the uncontroverted facts demonstrated that probable cause existed. App. 8a-11a. This analysis is also applicable to Parham's claims of an illegal stop, search, and malicious prosecution. Notwithstanding – and despite Judge Miller's clear statement that no prior case authority existed which would "clearly establish" that the officers were on notice that their conduct was unconstitutional – the panel held that the officers were *not* entitled to qualified immunity. This ruling cannot withstand serious scrutiny.

As stated above, "[t]he relevant dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier v. Katz*, 533 U.S. 194, 202 (2001). Although this Court "'do[es] not require a case directly on point' before concluding that the law is clearly established . . . 'existing precedent must have placed the statutory or constitutional question *beyond debate*.'" *Stanton v. Sims*, 571 U.S. 3, 6 (2013) (emphasis added).

Here, contrary to the majority's conclusion, the law is *not* "clearly established" and, indeed, the panel could not agree amongst itself as to whether a constitutional violation had occurred. "Although there might be instances where a reasonable jurist, but not a reasonable official, would consider particular conduct violative of clearly established law, **if a reasonable jurist would not have viewed the defendant's action as violative of clearly established law, then it necessarily follows that the reasonable officer likewise would not have viewed that conduct as violative of clearly established law**." *Hogan*

v. Carter, 85 F.3d 1113, 1116 n. 3 (11th Cir. 1996) (emphasis added). As this Court stated, **"If judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy."** *Wilson v. Layne*, 526 U.S. 603, 618 (1999) (emphasis added).

Given the lack of unanimity in the Memorandum Opinion, it is not reasonable to hold a law enforcement officer to a standard which circuit judges cannot even achieve. Moreover, even if one could argue that the law was clearly established (which it was not), to the extent that the officers were wrong about either the nature of the law or whether Parham 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.

In sum, because the Circuit Court did not agree on whether an underlying constitutional violation had occurred, the officers should have been entitled to qualified immunity. *Malley v. Briggs*, 475 U.S. at 341; *Pearson v. Callahan*, 555 U.S. at 320. Based on this fundamental error, a writ of certiorari is warranted.

CONCLUSION

This Court should issue the requested writ of certiorari in order to clarify to lower courts: (1) that probable cause exists to stop, search, arrest and prosecute a criminal suspect for evading arrest where he refused to yield to the traffic stop, subsequently briefly stopped, and then accelerated away again; and (2) that where an

appellate panel is not in agreement about whether an underlying constitutional violation has occurred, the panel may not conclude that the law is "clearly established" for the purpose of denying qualified immunity.

Respectfully submitted,

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APPENDIX A — MEMORANDUM OPINION IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (DECEMBER 18, 2025). 1a

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APPENDIX A — MEMORANDUM OPINION IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (DECEMBER 18, 2025)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-5205
D.C. No. 2:21-cv-09114-FLA-GJS

RONNIE PARHAM,

Plaintiff-Appellee,

v.

NICHOLAS ROBLES, OFFICER NO. 451;
CARLOS GONZALEZ, OFFICER NO. 444;
ABEL HERNANDEZ, OFFICER NO. 395;
MATTHEW MUNOZ, OFFICER NO. 445,

Defendants-Appellants.

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Argued and Submitted November 21, 2025
Pasadena, California

Filed December 18, 2025

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Appendix A

Partial Concurrence and Partial Dissent by Judge MILLER.

MEMORANDUM[1]

West Covina Police Department officers, Nicholas Robles, Carlos Gonzalez, Abel Hernandez, and Matthew Munoz (collectively, "WCPD Officers"), appeal from the district court's denial of summary judgment based on qualified immunity in this 42 U.S.C. § 1983 action. We review the district court's order de novo, "assuming all factual disputes are resolved, and all reasonable inferences are drawn, in plaintiff's favor." *Peck v. Montoya*, 51 F.4th 877, 884–85 (9th Cir. 2022) (citation omitted). We affirm.

1. On an 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 modified). In such a procedural stance, we generally "lack jurisdiction" over arguments that "the evidence is insufficient to raise a genuine issue of material fact." *Id.* The court may, however, "view[] the facts in the light depicted by" video evidence for purposes of qualified immunity if the plaintiff's version of the event is "blatantly contradicted" or "utterly discredited" by the video evidence. *Scott v.*

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

Harris, 550 U.S. 372, 380–81, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

Based on video evidence, the WCPD Officers ask this court to overturn the district court's determination that there are genuine issues of fact as to whether Parham evaded or resisted arrest and as to the level of force used by the WCPD Officers. But having reviewed the video evidence, we conclude that it is unclear as to the evasion and force issues, and so not within *Scott*'s "blatantly contradicted" exception. We therefore "view the facts in the light most favorable" to Parham on each of his § 1983 claims. *Rosenbaum v. City of San Jose*, 107 F.4th 919, 922 (9th Cir. 2024).

2. We affirm the district court's denial of qualified immunity to the WCPD Officers on Parham's excessive force claim. Parham maintains that he was not evading arrest by driving safely for less than a minute to his grandfather's house after having initially pulled over. The WCPD Officers do not dispute that, after Parham pulled over, he complied with all commands up until being handcuffed and did not threaten the arresting officers. Parham and his sister testified that while handcuffing him, the officers forcefully pulled Parham upwards and slammed him to the ground, where he was then kicked, punched, kneed, and struck with a baton violently for a minute and a half. The district court held that the evidence raised a genuine issue of material fact as to whether Parham had attempted to flee or resist arrest.

Resolving all factual disputes in favor of Parham, the constitutional question is whether the use of force on Parham when he was not resisting arrest was excessive. A reasonable jury could find that the use of force was excessive based on the factors we outlined in *Rice v. Morehouse*, 989 F.3d 1112, 1121 (9th Cir. 2021). We have previously stated that similar conduct, when applied to an individual who is "unarmed, posed no threat to anyone, and w[as] not engaged in any criminal activity," would constitute sufficient force to permit a jury to reasonably conclude it was excessive. *Nicholson v. City of Los Angeles*, 935 F.3d 685, 691 (9th Cir. 2019); *Blankenhorn v. City of Orange*, 485 F.3d 463, 479–80 (9th Cir. 2007). This constitutional violation was clearly established at the time. *See Nicholson*, 935 F.3d at 691; *Rice*, 989 F.3d at 1125–1126.[2] We therefore affirm the denial of qualified immunity on the excessive force claim.

3. We also affirm the district court's denial of qualified immunity to the WCPD Officers on Parham's claim for unlawful arrest. The WCPD Officers predicate their probable cause on a violation of Cal. Vehicle Code Section 2800.1(a), which requires that, to be held criminally liable, an individual must have an "intent to evade" a pursuing police officer in a motor vehicle. Where a party claims

2. The WCPD Officers fail to present any argument as to how the district court erred in denying summary judgment on the failure to intervene claim. Therefore, the claim is waived. *Tri-Valley Cares v. United States Dept. of Energy*, 671 F.3d 1113, 1130 (9th Cir. 2012).

that they were subject to an unlawful arrest or detention, the qualified immunity analysis asks "(1) whether there was probable cause for the arrest; and (2) whether it is *reasonably arguable* that there was probable cause for arrest." *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1076 (9th Cir. 2011) (emphasis in original).

Parham contends that he was not evading arrest by continuing to drive safely to his grandfather's house after having initially pulled over and then fully complying with all commands given to him. Whether there is probable cause for an arrest "depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer *at the time of the arrest*." *Devenpeck v. Alford*, 543 U.S. 146, 152, 125 S. Ct. 588, 160 L. Ed. 2d 537 (2004) (emphasis added). The district court held that a reasonable jury could conclude at the time of the arrest, "the Officer Defendants did not reasonably suspect Plaintiff [had been] evading or resisting arrest." Resolving all factual disputes in favor of Parham, we agree that the WCPD Officers lacked probable cause to arrest Parham, thereby committing a constitutional violation sufficient for the first step of the qualified immunity analysis.

As to second step, accepting Parham's version of events, it is not "reasonably arguable" that at the time of the arrest, the officers could have reasonably concluded that they had probable cause to believe that Parham had intentionally evaded arrest. He pulled over briefly and then drove in a controlled manner to his nearby grandfather's

house. Once there, over a period of four minutes, he fully complied will all officer commands. Accepting these facts as true, the WCPD Officers could not reasonably conclude that they had probable cause to believe Parham acted at any point with an "intent to evade" arrest, as required by Cal. Vehicle Code Section 2800.1(a). *Rosenbaum*, 663 F.3d at 1076.

4. We affirm the district court's denial of qualified immunity to the WCPD Officers on Parham's claim for malicious prosecution. "A police officer who maliciously or recklessly makes false reports to the prosecutor may be held liable for damages incurred as a proximate result of those reports." *Blankenhorn*, 485 F.3d at 482. Parham alleges that, after he was arrested without probable cause, Officers Hernandez and Munoz filed false reports indicating that Parham "attempted to flee when abruptly standing up during handcuffing and thereafter resisted arrest," and that these false reports resulted in his prosecution. Accepting Parham's version of events, these actions amount to a violation of Parham's constitutional rights. Further, the Ninth Circuit has clearly established that it is a constitutional violation for an officer to cite a suspect based on a knowingly false report while aware that a prosecutor would rely on the report to file charges. *See Blankenhorn*, 485 F.3d at 480–84 (reversing summary judgment finding on malicious prosecution claim and finding that qualified immunity did not apply).

5. We affirm the district court's denial of qualified immunity to the WCPD Officers on Parham's illegal search

claim. Parham asserts that the officers lacked authority to undertake a warrantless search of his vehicle for evidence because (1) there was no basis for believing there was evidence of a crime in the vehicle, *United States v. Rodgers*, 656 F.3d 1023, 1028 (9th Cir. 2011) (citing *United States v. Brooks*, 610 F.3d 1186, 1193 (9th Cir. 2010)); (2) there was no basis for a search incident to arrest because Parham was out of the car handcuffed at the time of the search and so had no access to anything in the car, *id.* at 1024 (citing *Arizona v. Gant*, 556 U.S. 332, 351, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)); and (3) the officers did not present evidence in the district court that they complied with the necessary protocols for conducting an inventory search, *United States v. Caseres*, 533 F.3d 1064, 1074–75 (9th Cir. 2008). Resolving these disputes in Parham's favor, the district court held that a jury could conclude the officers conducted an unconstitutional search of Parham's vehicle. For purposes of qualified immunity on appeal, the lack of compliance with any standard permitting a warrantless search is a constitutional violation clearly established by Ninth Circuit and Supreme Court precedent. *Rodgers*, 656 F.3d at 1024 (citing *Carroll*, 267 U.S. 132, 160–62, 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925); and *California v. Carney*, 471 U.S. 386, 390, 105 S. Ct. 2066, 85 L. Ed. 2d 406 (1985)).

6. We affirm the district court's denial of qualified immunity to the WCPD Officers on Parham's claim for deliberate indifference to Parham's medical needs. It is undisputed that Parham was injured during his arrest,

and that Officer Robles, Officer Gonzalez, and Sergeant Hernandez transported him to the hospital. Parham testified that he did not refuse medical treatment.

The parties do not dispute that the three officers who had taken him to the hospital transported him from the hospital to the police station with the knowledge that he had yet to receive medical treatment. The district court held that a "reasonable jury could determine Officers Hernandez, Robles, and Gonzalez prevented Plaintiff from being treated at the hospital in violation of his Fourteenth Amendment right." Resolving all factual disputes in favor of Parham, the WCPD Officers violated Parham's right to receive medical treatment by removing him from the hospital and taking him to the police station. And we have clearly established that a government official cannot deny, delay, or intentionally interfere with medical treatment. *See Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 679 (9th Cir. 2021); *see also Clement v. Gomez*, 298 F.3d 898, 906 (9th Cir. 2002).

AFFIRMED.

MILLER, Circuit Judge, concurring in part and dissenting in part:

I join the court's disposition except as to part 3. I agree that the defendant officers are not entitled to qualified immunity on the claims for excessive force, unlawful search, malicious prosecution, and deliberate

indifference. But I would reverse the district court's denial of qualified immunity on the claim for unlawful arrest.

"If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001). Probable cause "requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Illinois v. Gates*, 462 U.S. 213, 243 n.13, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). The standard "is not a high bar." *Kaley v. United States*, 571 U.S. 320, 338, 134 S. Ct. 1090, 188 L. Ed. 2d 46 (2014).

The officers arrested Parham for violating California Vehicle Code section 2800.1(a), which provides for the punishment of "[a]ny person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer's motor vehicle." Parham does not dispute that after seeing the flashing lights on a marked police car, he pulled over and came to a brief stop, only to pull away again and drive off. At that moment, the officers had probable cause to believe that he had violated the statute. Of course, they lacked direct evidence that he had "the intent to evade." But intent can be inferred from circumstantial evidence, and the officers could reasonably have inferred it from his driving away after stopping. *See People v. Johnson*, 32 Cal. App. 5th 26, 243 Cal. Rptr. 3d 586, 614 (Ct. App. 2019).

Parham emphasizes that his flight soon came to an end when he stopped near his grandfather's house and submitted to arrest. But that does not show that he lacked an intent to evade when he first drove away. If he had such an intent, the offense was completed at that moment, and a later change of heart would not undo it, or else no one could ever be guilty of violating section 2800.1(a) as long as he eventually surrendered. Nor does it matter that Parham drove in a controlled manner and under the speed limit—that, too, is consistent with an intent to violate section 2800.1(a). (Just ask O.J. Simpson.)

To be sure, the officers *could* have accepted Parham's explanation for his actions. But the Supreme Court has emphatically rejected the suggestion that a court assessing probable cause can "dismiss outright any circumstances that [are] susceptible of innocent explanation." *District of Columbia v. Wesby*, 583 U.S. 48, 61, 138 S. Ct. 577, 199 L. Ed. 2d 453 (2018) (internal quotation marks omitted). Instead, the question before us is "whether a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a 'substantial chance of criminal activity.'" *Id.* (quoting *Gates*, 462 U.S. at 244 n.13). A reasonable officer could have concluded exactly that.

Even if we were to determine that the officers lacked probable cause, that would not be sufficient to deny qualified immunity. Officers are entitled to qualified immunity unless they violated a constitutional right *and*

the right was "clearly established at the time." *Reichle v. Howards*, 566 U.S. 658, 664, 132 S. Ct. 2088, 182 L. Ed. 2d 985 (2012). "The 'clearly established' standard . . . requires that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him." *Wesby*, 583 U.S. at 63. That standard demands "a high 'degree of specificity,'" and the Supreme Court has "stressed that the 'specificity' of the rule is 'especially important in the Fourth Amendment context.'" *Id.* at 63–64 (quoting *Mullenix v. Luna*, 577 U.S. 7, 12–13, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (per curiam)).

Neither Parham nor the court identifies any case establishing that the officers lacked probable cause in these circumstances. They cite no cases involving section 2800.1(a) or any similar statute; instead, they cite only cases setting out the general standard of probable cause. Those cases do not come close to placing "the lawfulness of the *particular* arrest 'beyond debate.'" *Wesby*, 583 U.S. at 64 (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741, 131 S. Ct. 2074, 179 L. Ed. 2d 1149 (2011)) (emphasis added).

APPENDIX B — ORDER IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (JULY 29, 2024)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:21-cv-09114-FLA (GJSx)

RONNIE PARHAM,

Plaintiff,

v.

CITY OF WEST COVINA, *et al.*,

Defendants.

Filed July 29, 2024

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [DKT. 45]

RULING

Before the court is City of West Covina ("City") and Officers N. Robles ("Officer Robles"), Carlos Gonzalez ("Officer Gonzalez"), A. Hernandez ("Officer Hernandez"), and Matthew Muñoz's ("Officer Muñoz") (together, "Officer Defendants")[1] Motion for Summary Judgment

1. The court refers to the City and Officer Defendants collectively as "Defendants."

("Motion"). Dkt. 45 ("Mot."). Plaintiff Ronnie Parham ("Plaintiff" or "Parham") opposes the Motion. Dkt. 48 ("Opp'n"). On January 31, 2024, the court found the Motion appropriate for resolution without oral argument and vacated the respective hearing. *See* Dkt. 55; Fed. R. Civ. P. 78(b); Local Rule 7-15.

For the reasons stated below, the court DENIES the Motion.

BACKGROUND

I. Factual Background

The following facts are undisputed unless stated otherwise. On August 18, 2018, officers of the West Covina Police Department ("WCPD") initiated a traffic stop of Plaintiff for missing a front license plate and having tinted windows. Dkt. 54-1 ("PSF") ¶¶ 1, 7. Plaintiff pulled over briefly, but never fully stopped, and then drove a few more blocks over a period of approximately 60 seconds and parked in front of his grandparents' house. *Id.* ¶¶ 8–15; *see also* Dkt. 45-9, available at https://tinyurl.com/Parham-Dashcam-Vid ("Dashcam Vid.")[2] at 0:44–1:41.

Officers ordered Plaintiff to roll down his windows and stick his hands out of the car, which Plaintiff did. PSF ¶ 15; Dashcam Vid. at 1:42–4:48. Several minutes later, an officer ordered Plaintiff to exit the car and walk backwards toward the officers with his hands up, and

2. The video has no audio.

Plaintiff complied. PSF ¶¶ 16–18; Dashcam Vid. at 4:48–5:25. Officer Hernandez then ordered Plaintiff to get on his knees and interlace his fingers behind his head. PSF ¶ 19; Dashcam Vid. at 5:25–5:33. Plaintiff was compliant and did not resist Officer Hernandez. PSF ¶¶ 20–22; Dashcam Vid. at 5:33–5:40.

The parties dispute what happened next, and it is unclear from the dashcam video. *See* Dashcam Vid. at 5:40–5:45. Plaintiff contends Officer Hernandez grabbed Plaintiff's left arm, pulled his body upward by his wrists, and slammed him to the ground. PSF ¶¶ 23–24. Defendants contend that, while Officer Hernandez was attempting to apply the second handcuff, Plaintiff stood up and attempted to escape, causing Officer Hernandez to grab and pull him to the ground. Dkt. 50 ("DSF") ¶¶ 18–20.

Thereafter, a struggle ensued that lasted approximately 30 seconds and cannot be seen clearly on the dashcam video. *See* Dashcam Vid. at 5:45–6:15. It is undisputed Officer Muñoz punched Plaintiff multiple times, but Plaintiff also contends other officers, including Officer Hernandez, hit him with batons, kicked him, kneed him, and caused his face to hit the concrete multiple times. DSF ¶ 23; PSF ¶¶ 27–33. It is further undisputed Plaintiff did not threaten or assault any officers, or reach toward any officers' weapons or waistbands, PSF ¶¶ 42, 46–47; the officers had no information indicating Plaintiff was armed, *id.* ¶¶ 48–49; none of the officers intervened during the use of force against Plaintiff, *id.* ¶ 35; Plaintiff's sister observed the incident after she exited Plaintiff's

grandparents' house, *id.* ¶ 36; and Plaintiff was injured and in need of medical treatment, *id.* ¶ 51.

Plaintiff was arrested for resisting arrest in violation of Cal. Penal Code § 148(a)(1) and evading a pursuing officer's vehicle in violation of Cal. Veh. Code § 2800.1(a). PSF ¶ 39. The officers conducted an inventory search of Plaintiff's car and impounded it. *Id.* ¶¶ 40–41. Officers Robles, Gonzalez, and Hernandez transported Plaintiff to a hospital. *Id.* ¶ 52. It is disputed whether Plaintiff refused treatment, but undisputed that the officers transported Plaintiff to the police station before Plaintiff received treatment. *Id.* ¶¶ 54§ 55.

On October 11, 2018, the Los Angeles County District Attorney ("DA") charged Plaintiff with two counts of resisting arrest and one count of evading a pursuing officer's vehicle. *Id.* ¶ 61. The evasion charge was dismissed by the DA, and a jury found Plaintiff not guilty on both counts of resisting arrest on November 21, 2019. *Id.* ¶ 62.

II. Procedural Background

On November 21, 2021, Plaintiff filed a Complaint, alleging six causes of action under 42 U.S.C. § 1983 ("§ 1983") for: (1) excessive force against the Officer Defendants; (2) false arrest against the Officer Defendants; (3) unlawful search against the Officer Defendants; (4) municipal liability for unlawful custom and practice against the City; (5) malicious prosecution against Officers Hernandez and Muñoz; and (6) deliberate indifference to a serious medical need against Officers Robles, Gonzalez, and Hernandez. *See* Dkt. 1 ("Compl").

Appendix B

On November 10, 2022, the court denied Defendants' Motion to Dismiss the Complaint ("MTD") based on Defendants' statute of limitations argument, but granted the MTD as to Plaintiff's fourth cause of action (municipal liability) with leave to amend. Dkt. 26 ("Order re MTD"). Plaintiff did not file an amended complaint.

In the instant Motion, Defendants again raise their statute of limitations argument, and argue Plaintiff has failed to demonstrate he is entitled to relief on his five remaining claims because his constitutional rights were not violated, and even if they were, Defendants are shielded from liability under the doctrine of qualified immunity. *See* Mot.

LEGAL STANDARD

I. Rule 56

Summary judgment is appropriate where "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). "The substantive law determines which facts are material; only disputes over facts that might affect the outcome of the suit under the governing law properly preclude the entry of summary judgment." *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, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). A dispute about a 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.

"A moving party without the ultimate burden of persuasion at trial ... has both the initial burden of production and the ultimate burden of persuasion on a motion for summary judgment." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). "[T]o carry its burden of production, the moving party must either produce evidence negating an essential element of the nonmoving party's claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Id.* "[T]o carry its ultimate burden of persuasion on the motion, the moving party must persuade the court that there is no genuine issue of material fact." *Id.*

"If ... a moving party carries its burden of production, the nonmoving party must produce evidence to support its claim or defense." *Id.* at 1103. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). Summary judgment must be granted "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, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

"If the nonmoving party produces direct evidence of a material fact, the court may not assess the credibility of this evidence nor weigh against it any conflicting evidence

presented by the moving party." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 631 (9th Cir. 1987). Inferences may be drawn from underlying facts that are either not in dispute or that may be resolved at trial in favor of the nonmoving party, but only if they are "rational" or "reasonable" and otherwise permissible under the governing substantive law. *Id.* The court must view all evidence and justifiable inferences "in the light most favorable to the nonmoving party." *Id.* at 630–31. However, a party cannot defeat summary judgment based solely on the allegations or denials of the pleadings, conclusory statements, or unsupported conjecture. *Hernandez v. Spacelabs Med., Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003); *see also FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.").

DISCUSSION

I. Evidentiary Objections

The court's Initial Standing Order (Dkt. 9) sets forth the requirements for objections to evidence regarding Rule 56 motions:

> If a party disputes a fact based in whole or in part on an evidentiary objection, the ground for the objection should be stated succinctly in a separate statement of evidentiary objections in a two-column format. The left column should identify the items objected to (including page and line number if applicable) and the right

> column should set forth a concise objection (*e.g.*, hearsay, lack of foundation, etc.) with a citation to the Federal Rules of Evidence or, where applicable, a case citation. A proposed order shall be filed and attached to the evidentiary objections as a separate document consistent with Local Rule 52-4.1 and either uploaded through the CM/ECF System or emailed directly to the court's chambers email address at fla_chambers@cacd.uscourts.gov.

Dkt. 9 at 12.

Neither party submitted a "separate statement of evidentiary objections." *Id.*; *see* PSF; DSF. Additionally, the parties, for the most part, made *evidentiary* objections to purported *facts. See* PSF; DSF. Purported facts, however, are not evidence, and neither party made evidentiary objections to the actual evidence. *See id.* For these reasons, the parties' objections are OVERRULED. *See j2 Glob. Communs., Inc. v. Blue Jay, Inc.*, Case No. 08-cv-04254-PJH, 2009 U.S. Dist. LEXIS 1616, 2009 WL 29905, at *3 (N.D. Cal. Jan. 5, 2009) (overruling evidentiary objections aimed at "characterizations and purported misstatements of evidence, not at the actual evidence supporting those statements"); *Hanger Prosthetics & Orthotics, Inc. v. Capstone Orthopedic, Inc.*, 556 F. Supp. 2d 1122, 1126 n. 1 (E.D. Cal. 2008) (same).

II. Statute of Limitations

Defendants acknowledge the court previously rejected their argument regarding the statute of limitations when

the court found the two-year limitations period was tolled under Cal. Gov't Code § 945.3 and California Rules of Court, Emergency Rule 9 ("Emergency Rule 9").[3] Mot. at 13; Order re MTD at 4–8. Defendants' only new argument is that Plaintiff has failed to demonstrate facts which support equitable tolling under Emergency Rule 9. Mot. at 14–17 (arguing equitable tolling requires a plaintiff to establish diligence and extraordinary circumstances).

Tolling under Emergency Rule 9, however, is not equitable tolling. Rather, Emergency Rule 9 is a California Rule of Court promulgated by the Judicial Council of California. *Sholes v. Cates*, Case No. 1:21-cv-01006-DAD (HBK), 2021 U.S. Dist. LEXIS 229107, 2021 WL 5567381, at *5 (E.D. Cal. Nov. 29, 2021). Additionally, the rule plainly states that statutes of limitation are tolled "notwithstanding any other law." Emergency Rule 9.

The court, therefore, DENIES Defendants' Motion on this ground.

III. Excessive Force

Plaintiff alleges the Officer Defendants used excessive force to restrain him in violation of his Fourth Amendment rights. Compl. ¶ 31. Defendants seek summary judgment on the bases that the Officer Defendants' force was objectively reasonable and, thus, did not violate Plaintiff's

3. *See* Cal. Rules of Court, App. I: Emergency Rules Related to COVID-19, Emergency Rule 9(a) (adopted April 6, 2020, amended effective May 29, 2020), available at https://www.courts.ca.gov/documents/appendix-i.pdf.

Fourth Amendment rights, and, in any case, the Officer Defendants are subject to qualified immunity. Mot. at 17–21.

Qualified immunity protects government officials from civil liability where "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, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009) (cleaned up). "A public official is entitled to qualified immunity if (1) the disputed facts taken in the light most favorable to the party asserting the injury do not show that the official's conduct violated a constitutional right, or (2) the constitutional right was not clearly established at the time the official acted." *Atencio v. Arpaio*, 674 F. App'x 623, 625 (9th Cir. 2016); *see also Torres v. City of Madera*, 648 F.3d 1119, 1127 (9th Cir. 2011). "While the constitutional violation prong concerns the reasonableness of [an] officer's *mistake of fact*, the clearly established prong concerns the officer's *mistake of law* ...." *Torres*, 648 F.3d at 1127 (emphases in original). Either prong may be used as the starting point pursuant to the court's "sound discretion." *Pearson*, 555 U.S. at 236.

A constitutional violation is "clearly established only if existing law placed the constitutionality of the officer's conduct beyond debate, such that every 'reasonable official would understand that what he is doing is unlawful." *Hopson v. Alexander*, 71 F.4th 692, 697 (9th Cir. 2023) (cleaned up). "Although a case directly on point is not necessarily required, a rule is only clearly established if it has been settled by controlling authority or a

robust consensus of cases of persuasive authority that clearly prohibits the officer's conduct in the particular circumstances, with a high degree of specificity." *Id.* (cleaned up). "The plaintiff bears the burden of showing that the right at issue was clearly established under this second prong." *Sorrels v. McKee*, 290 F.3d 965, 969 (9th Cir. 2002).

A. Objectively Reasonable Force / Violation of Fourth Amendment

"An excessive force claim is a claim that a law enforcement officer carried out an unreasonable seizure through a use of force that was not justified under the relevant circumstances." *Cnty. of Los Angeles, Calif. v. Mendez*, 581 U.S. 420, 428, 137 S. Ct. 1539, 198 L. Ed. 2d 52 (2017). "In evaluating a Fourth Amendment claim of excessive force, [courts] ask whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Rice v. Morehouse*, 989 F.3d 1112, 1121 (9th Cir. 2021) (quoting *Graham v. Connor*, 490 U.S. 386, 397, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)) (cleaned up).

"Within the Ninth Circuit, courts apply a three-step analysis to evaluate excessive force claims." *Hermosillo v. Cnty. of Orange*, 562 F. Supp. 3d 802, 811 (C.D. Cal. 2021); *see also Rice*, 989 F.3d at 1121 (describing analysis). "First, the court considers the severity of the intrusion on the plaintiff's Fourth Amendment rights based on the type and amount of force inflicted." *Hermosillo*, 562 F. Supp. 3d at 811. "Next, the court evaluates the government interest

in light of the three *Graham* factors, which include '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.'" *Id.* (quoting *Graham*, 490 U.S. at 396). "Finally, the court balances the intrusion on the plaintiff against the government's need for the use of force." *Hermosillo*, 562 F. Supp. 3d at 811.

"The most important factor is whether the suspect posed an immediate threat to the safety of the officers or others." *Id.* (quoting *S.B. v. County of San Diego*, 864 F.3d 1010, 1013 (9th Cir. 2017) (cleaned up)). "Where the objective reasonableness of an officer's conduct turns on disputed issues of material fact, it is 'a question of fact best resolved by a jury.'" *Torres*, 648 F.3d at 1123; *see also Santos v. Gates*, 287 F.3d 846, 853 (9th Cir. 2002) (finding summary judgment in excessive force cases should be granted sparingly because balancing the factors "nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom").

1. Officers Who Used Force

Defendants argue the force used by Officers Hernandez and Muñoz was reasonable as a matter of law based on the *Graham* factors. Mot. at 19–20 (citing *Graham*, 490 U.S. at 394–95). Under the *Graham* factors, Defendants argue Plaintiff's crime was severe, he posed a real and immediate danger, and he resisted and attempt to evade arrest (or officers at least reasonably thought he resisted and attempted to evade). Mot. at 19–20, 24.

Under the Ninth Circuit's test, however, the *Graham* factors are used to determine the government's interest, which is then balanced against the individual's Fourth Amendment interest to determine whether the seizure was reasonable. *Hermosillo*, 562 F. Supp. at 811; *Rice*, 989 F.3d at 1121. Defendants do not establish the severity of the Fourth-Amendment intrusion (first step of excessive force analysis), or balance the gravity of that intrusion with the government's need for the intrusion (third step of analysis). *Rice*, 989 F.3d at 1121[4]; Mot. at 19–20. Defendants, therefore, have not met their burden to show Officers Hernandez and Muñoz did not use excessive force in violation of the Fourth Amendment as a matter of law.[5] *See Nissan Fire*, 210 F.3d at 1102 (moving party has burden of persuasion).

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4. *See also Graham*, 480 U.S. at 396 ("Determining whether force used to effect a particular seizure is 'reasonable' ... 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."); *Hopson v. Alexander*, 71 F.4th 692, 698 (9th Cir. 2023) ("To determine whether an officer used excessive force in violation of the Fourth Amendment, we balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. This requires us to [consider] the totality of the circumstances, including the type and amount of force inflicted, the severity of injuries, 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.") (cleaned up).

5. Defendants did not engage with the balancing test even after Plaintiff raised it in his opposition. Opp'n at 9–13; Reply at 6–9.

2. Officers Who Did Not Intervene

Defendants argue Officers Gonzalez and Robles cannot be liable because they did not use force on Plaintiff and the "incredibly brief encounter d[id] not provide any opportunity for either [officer] to have intervened even if such action would have been deemed necessary (which it wasn't)." Mot. at 19.

"Pursuant to a long line of civil cases, police officers have a duty to intercede when their fellow officers violate the constitutional rights of a suspect or other citizen." *United States v. Koon*, 34 F.3d 1416, 1447 n. 25 (9th Cir. 1994), *aff'd in part, rev'd in part*, 518 U.S. 81, 116 S. Ct. 2035, 135 L. Ed. 2d 392 (1996) (collecting cases). "In these cases, the constitutional right violated by the passive defendant is analytically the same as the right violated by the person who strikes the blows." *Id.* "Thus[,] an officer who failed to intercede when his colleagues were depriving a victim of his Fourth Amendment right to be free from unreasonable force in the course of an arrest would, like his colleagues, be responsible for subjecting the victim to a deprivation of his Fourth Amendment rights." *Id.* "Whether an officer had sufficient time to intervene or was capable of preventing the harm caused by the other officer is generally an issue for the trier of fact unless, considering all the evidence, a reasonable jury *could not possibly conclude otherwise*." *Abdullahi v. City of Madison*, 423 F.3d 763, 774 (7th Cir. 2005) (citation omitted) (emphasis in original).

Here, Defendants concede the struggle lasted "30 to 45 seconds." Mot. at 19. A reasonable jury could conclude

Officers Gonzalez and Robles could have intervened in that window of time. *See Abdullahi*, 423 F.3d at 774. Defendants, therefore, have not established that Officers Gonzalez and Robles cannot be liable for excessive force as a matter of law.

B. Clearly Established Right

It has long been established that, when an individual "d[oes] not make any threats or resist the officer ... the use of non-trivial force *of any kind* [is] unreasonable." *Rice*, 989 F.3d at 1126 (quoting *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1094 (9th Cir. 2013) (emphasis in original). The parties agree Plaintiff did not make any threats, PSF ¶ 42, and Plaintiff creates a genuine dispute of fact as to whether he attempted to flee or resist arrest, Dashcam Vid. at 5:40–6:15; Dkt. 51-1 ("R. Parham Dep. Tr.") at 73:24–80:25; Dkt. 51-2 ("K. Parham Dep. Tr.") at 33:1–10, 35:2–10.

"[F]or purposes of determining whether [an officer] is entitled to qualified immunity under [the] second prong, we assume [the officer] correctly perceived all of the relevant facts and ask whether an officer could have reasonably believed at the time that the force actually used was lawful under the circumstances." *Torres*, 648 F.3d at 1127. The court draws reasonable inferences in favor of Plaintiff and assumes he did not resist arrest, and as such, every reasonable officer would understand the Officer Defendants' use of non-trivial force was unlawful, because non-trivial force cannot be used on a person who is not resisting. *See Hopson*, 71 F.4th at 697; *Rice*, 989 F.3d at

1126. The Officer Defendants, therefore, are not entitled to qualified immunity under the second prong.

C. Conclusion Regarding Excessive Force

In sum, the court DENIES the Motion as to Plaintiff's excessive force claim.

IV. False Arrest

Plaintiff alleges the Officer Defendants arrested him without probable cause in violation of his Fourth Amendment rights. Compl. ¶¶ 42–43. Defendants seek summary judgment on the basis that the Officer Defendants had probable cause because Plaintiff refused to pull over and resisted arrest. Mot. at 20–24.

"A police officer may make a warrantless arrest when the officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed." *Blankenhorn v. City of Orange*, 485 F.3d 463, 471 (9th Cir. 2007) (cleaned up). "The test for whether probable cause exists is whether at the moment of arrest the facts and circumstances within the knowledge of the arresting officers and of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that the petitioner had committed or was committing an offense." *Id.* (cleaned up). "Probable cause exists when, under the totality of the circumstances known to the arresting officers (or within the knowledge of the other officers at the scene), a prudent person would believe the suspect had committed a crime."

Id. (cleaned up). "[I]n a § 1983 action[,] the factual matters underlying the judgment of reasonableness generally mean that probable cause is a question for the jury, and summary judgment is appropriate only if no reasonable jury could find that the officers did or did not have probable cause to arrest." *McKenzie v. Lamb*, 738 F.2d 1005, 1008 (9th Cir. 1984) (cleaned up).

Here, a reasonable jury could find the Officer Defendants did not reasonably suspect Plaintiff was evading or resisting arrest where he merely decelerated and then drove in a controlled manner a few blocks to his grandparents' house, calmly and fully complied with all instructions for several minutes before the disputed scuffle, and, if the jury so found, did not flee or resist arrest during the scuffle. *See also McKenzie*, 738 F.2d at 1008 ("Conclusive evidence of guilt is not necessary to establish probable cause. Mere suspicion, common rumor, or even strong reason to suspect are not enough, however. There must have been some objective evidence which would allow a reasonable officer to deduce that a particular individual has committed or is in the process of committing a criminal offense."). Alternatively, a reasonable jury could find the Officer Defendants reasonably believed Plaintiff was evading or resisting arrest when he did not immediately pull over, or that Plaintiff attempted to escape when Officer Hernandez handcuffed him.

The court, therefore, DENIES Defendants' Motion as to Plaintiff's claim for false arrest.

V. Unlawful Search

Plaintiff alleges the Officer Defendants unlawfully searched his car in violation of his Fourth Amendment rights because they did not have reasonable suspicion or probable cause to believe he was involved in any criminal activity or that evidence of a crime was contained in his car. Compl. ¶¶ 49–50. Defendants seek summary judgment on the basis that the Officer Defendants had "good cause" to perform an inventory search of the contents of Plaintiff's car. Mot. at 20–24.

"Under California Vehicle Code § 22651(h)(1), the police may impound a vehicle 'when an officer arrests any person driving or in control of a vehicle for an alleged offense' and takes that person into custody." *United States v. Caseres*, 533 F.3d 1064, 1074 (9th Cir. 2008). "A lawfully impounded vehicle may be searched for the purpose of determining its condition and contents at the time of impounding." *Id.* "Such warrantless inventory searches of vehicles are lawful only if conducted pursuant to standard police procedures that are aimed at protecting the owner's property and at protecting the police from the owner charging them with having stolen, lost, or damaged his property." *Id.* (citation omitted).

"Additionally, a vehicle can be impounded under § 22651(h)(1) only if impoundment serves some 'community caretaking function.'" *Id.* "Whether an impoundment is warranted under the community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other

drivers or from being a target for vandalism or theft." *Id.* at 1075 (citations omitted).

"[N]o lawful basis" exists to impound a person's car, and "therefore the subsequent inventory search [is] unconstitutional," where the car is legally parked at the curb of a residential street two houses away from the person's home; the possibility that the car would be stolen, broken into, or vandalized is no greater than if the police had not arrested the person; and the government does not present any evidence that the car was blocking a driveway or crosswalk, or that it poses a hazard or impediment to other traffic. *Id.*

Here, a reasonable jury could conclude no community caretaking function existed because Plaintiff's car was parked legally at the curb of a residential street near his grandparents' home, was not blocking a driveway or crosswalk, and did not pose a hazard or impediment to other traffic. *See* PSF ¶¶ 15, 37–38; Dashcam Vid. at 1:42–4:48. Defendants offer no evidence Plaintiff's car was at a greater risk of vandalism than if police had not arrested him. DSF ¶¶ 12, 25.

The court, therefore, DENIES Defendants' Motion as to Plaintiff's claim for unlawful search.

VI. Malicious Prosecution

Plaintiff alleges Officers Hernandez and Muñoz wrongfully caused his prosecution in violation of his Fourteenth Amendment rights because they lied about

Plaintiff's conduct in their police reports to cover up their use of excessive force. Compl. ¶¶ 68–69; Opp'n at 21. Defendants move for summary judgment on the basis the Officer Defendants had probable cause to arrest Plaintiff. Mot. at 20–24.

"A criminal defendant may maintain a malicious prosecution claim ... against ... police officers and investigators ... who wrongfully caused his prosecution." *Smith v. Almada*, 640 F.3d 931, 938 (9th Cir. 2011). "To maintain a § 1983 action for malicious prosecution, a plaintiff must show that the defendants prosecuted [him] with malice and without probable cause, and that they did so for the purpose of denying [him] a specific constitutional right." *Id.* (cleaned up). "Probable cause is an absolute defense to malicious prosecution." *Id.* (cleaned up).

Defendants' sole argument is that Officers Hernandez and Muñoz had probable cause to arrest Plaintiff, and thus did not maliciously cause his prosecution. Mot. at 21. Because the court has already determined a reasonable jury could conclude no probable cause existed to arrest Plaintiff, *see supra* § IV, the court DENIES Defendants' Motion as to Plaintiff's claim for malicious prosecution.

VII. Deliberate Indifference to a Medical Need

Plaintiff alleges Officers Hernandez, Robles, and Gonzalez violated his right to adequate medical care under the Fourteenth Amendment when they transported him from the hospital to the police station despite knowing he had yet to receive any medical attention. Compl. ¶¶ 74–75.

Defendants seek summary judgment on the bases that the officers' conduct was reasonable under the circumstances, and that they are entitled to qualified immunity. Mot. at 21–24. The legal standard for qualified immunity was set forth previously. *See supra* § III.

A. Violation of Constitutional Right

Defendants contend "[a]llegations of denial of medical care immediately following arrest are [] analyzed under the Fourth Amendment's reasonableness standard." Mot. at 21 (citing *Tatum v. City and Cnty. of S.F.*, 441 F.3d 1090, 1098 (9th Cir. 2006)). Plaintiff, however, brings his claim under the Fourteenth Amendment. Compl. ¶ 74. Additionally, "[a]lthough the Fourth Amendment provides the proper framework for [a plaintiff's] excessive force claim, it does not govern his medical needs claim." *Lolli v. Cnty. of Orange*, 351 F.3d 410, 418 (9th Cir. 2003) (cleaned up). "Claims of failure to provide care for serious medical needs, when brought by a detainee [] who has been neither charged nor convicted of a crime, are analyzed under the substantive due process clause of the Fourteenth Amendment." *Id.* (citation omitted). Indeed, the section of *Tatum* upon which Defendants rely addresses excessive force under the Fourth Amendment. *See Tatum*, 441 F.3d at 1095–1100.

"The Due Process Clause [of the Fourteenth Amendment] . . . require[s] the responsible government or governmental agency to provide medical care to persons ... who have been injured while being apprehended by the police." *City of Revere v. Massachusetts Gen. Hosp.*, 463

U.S. 239, 244, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983). "The Due Process Clause requires, at least, that persons in custody have the established right to not have officials remain deliberately indifferent to their serious medical needs." *Cabral v. Cnty. of Glenn*, 624 F. Supp. 2d 1184, 1190 (E.D. Cal. 2009) (citation and quotation marks omitted). Officials are "deliberately indifferent" to "serious medical needs" when they "deny, delay, or intentionally interfere with medical treatment." *Lolli*, 351 F.3d at 419.

Here, the parties agree Plaintiff was "obviously injured and in need of medical treatment" and "Officers could see that [Plaintiff's] face was wounded and bleeding." PSF ¶ 51. There is a dispute of fact, however, as to whether Officers Hernandez, Robles, and Gonzalez interfered with Plaintiff's medical treatment. Plaintiff testified he never refused treatment, R. Parham Dep. Tr. at 93:7–94:6, but hospital documents state otherwise, Dkt. 54-3. A reasonable jury could determine Officers Hernandez, Robles, and Gonzalez prevented Plaintiff from being treated at the hospital in violation of his Fourteenth Amendment right.

B. Clearly Established Right

It is clearly established that a government official cannot deny, delay, or intentionally interfere with medical treatment. *See Lolli*, 351 F.3d at 419; *Lopez v. Smith*, 203 F.3d 1122, 1132 (9th Cir. 2000). Here, drawing all inferences in favor of Plaintiff, and assuming he did not refuse treatment and, instead, Officers Hernandez, Robles, and Gonzalez interfered with his treatment by

removing him from the hospital, every reasonable officer would understand that Officers Hernandez, Robles, and Gonzalez's actions were unconstitutional. *See Hopson*, 71 F.4th at 697.

C. Conclusion Regarding Deliberate Indifference

Accordingly, the court DENIES Defendants' motion as to Plaintiff's claim for deliberate indifference.

CONCLUSION

For the foregoing reasons, the Motion is DENIED in its entirety. The court SETS a Pretrial Conference for October 4, 2024, at 1:30 p.m., and Trial for October 14, 2024, at 8:15 a.m.

IT IS SO ORDERED.

Dated: July 29, 2024 /s/ Fernando L. Aenlle-Rocha
FERNANDO L. AENLLE-ROCHA
United States District Judge