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**AMENDED OPINION AND DENIAL
OF PETITION FOR REHEARING,
U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(MARCH 6, 2026)**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GENOA JONES; CORNELL TINSLEY,

Plaintiffs-Appellants,

v.

CITY OF NORTH LAS VEGAS;
SCOTT SALKOFF; MICHAEL ROSE,

Defendants-Appellees.

No. 24-3374

Appeal from the United States District Court
for the District of Nevada Cristina D. Silva,
District Judge, Presiding
D.C. No. 2:21-cv-00241-CDS-DJA

Argued and Submitted May 22, 2025
San Francisco, California

Filed September 8, 2025
Amended March 6, 2026

Before: Michelle T. FRIEDLAND and
Salvador MENDOZA, JR., Circuit Judges, and
Robert S. LASNIK, District Judge.*

ORDER

The opinion filed September 8, 2025, is hereby amended. The amended opinion will be filed concurrently with this order.

Judges Friedland and Mendoza voted to deny the petition for rehearing en banc, and Judge Lasnik so recommended. The full court was advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40.

The petition for rehearing en banc (Dkt. No. 46) is DENIED, and no further petitions for rehearing will be entertained.

OPINION

MENDOZA, Circuit Judge:

When does a hot pursuit turn cold? Today we conclude that a pursuit was at best lukewarm, and certainly no longer hot pursuit, when officers lost a suspect's trail in a residential neighborhood for at least eighteen minutes.

A police officer saw a suspect flee from the back of a house into a neighboring backyard. Instead of

* The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

directly following the suspect, the officer hurried to his car, called for backup, and drove two blocks south to establish a perimeter around the area. At least eighteen minutes passed before a K-9 unit alerted in the direction of Plaintiffs' backyard, several houses away from where the suspect had disappeared. An officer with a K-9 searched the yard, rousing Plaintiffs' three dogs. Two of the dogs attacked the police K-9 and were shot and killed by an officer.

Plaintiffs Genoa Jones and Cornell Tinsley sued under 42 U.S.C. § 1983, claiming the officers and the City of North Las Vegas violated their Fourth Amendment right to be free from unwarranted searches and seizures. The district court granted summary judgment for the officers, reasoning that the officers' intrusion was permitted by the hot pursuit exception to the warrant requirement and that the use of force was reasonable under the circumstances. The district court also granted summary judgment for the city, finding no support for Plaintiffs' failure-to-train theory.

We reverse, in part, holding that there was no hot pursuit where officers lost track of a suspect for at least eighteen minutes. We affirm with respect to the K-9 handler's use of force and the claims against the city. We remand for further proceedings.

I.

On February 15, 2019, at 3:47 p.m., North Las Vegas Police Department ("NLVPD") Officers Joseph Minelli ("Officer Minelli") and Michael Rose ("Officer Rose") responded to a possible domestic battery at a house on a residential cul-de-sac. While Officer Minelli spoke with a woman at the door, Officer Rose moved to the side of the house, where he witnessed a person

flee over the back wall to the south into a neighboring yard. Officer Rose ran to his patrol car to request assistance. He drove two streets south hoping to cut off whomever had fled but did not catch sight of the person again. Several units quickly responded and helped Officer Rose establish a multiple-block perimeter around the area.

Meanwhile, Officer Minelli stayed at the home to investigate the domestic battery allegation. The woman who answered the door denied that there was any domestic violence, but Officer Minelli observed injuries on her face, including several injuries around her eyes and a long cut across her chin that had been stitched. The woman told Officer Minelli that police were not welcome at her house and that her boyfriend—whom officers suspected had battered the woman and whom they believed to be the person who fled—would be back that evening and police would need a warrant to apprehend him at the home. Officer Minelli remained at the address in case the suspect returned.

With a perimeter in place, officers believed nobody could leave the area without crossing their line of sight. A sergeant on scene decided to call for a K-9 unit to search for the suspect. NLVPD Lieutenant Scott Salkoff (“Lieutenant Salkoff”) and his police K-9 Storm (“Storm”) responded to the scene around 4:05 p.m., approximately eighteen minutes after Officer Rose saw the suspect flee.

Lieutenant Salkoff used Storm—who is trained to detect the odor of apocrine, a hormone some people release when they are afraid to search within the perimeter. Lieutenant Salkoff informed residents of the searches using his patrol car’s public address

system. He also sent NLVPD Officer Lee Young (“Officer Young”) ahead to seek consent from residents to search their yards.

Lieutenant Salkoff was searching a backyard four houses east and one house south of where the suspect vanished when Storm alerted to an odor coming from a distant, elevated position in the direction of Plaintiffs’ walled-in backyard.¹

Lieutenant Salkoff decided to search Plaintiffs’ backyard. He had Officer Young check the gate, which was locked and posted with a “Beware of Dog” sign. Officer Young knocked on Plaintiffs’ door to request their consent to search the yard but received no response because they were not home. To gain a vantage, Lieutenant Salkoff jumped onto the six-foot cinderblock wall that enclosed Plaintiffs’ yard. He observed trash cans, where he thought the suspect might be hiding, and a fenced-in kennel area with an open gate and three dog houses and bowls but did not see any dogs.

With neither a warrant nor Plaintiffs’ consent, Lieutenant Salkoff hopped down from the wall into their backyard. Officer Rose then passed Storm over the wall. Plaintiffs’ three dogs were stirred from their

¹ We know Storm’s alert came at least eighteen minutes after officers had last seen the person they were looking for—and, on the record before us, it may have been much later. Officer Rose saw someone flee at around 3:47 p.m. and Lieutenant Salkoff responded to the scene with Storm at approximately 4:05 p.m. Lieutenant Salkoff does not recall precisely when or where he started his search and says he may have searched one yard or more than a dozen yards before Storm smelled fear in the air. Officer Rose recalls that the search lasted for more than an hour and possibly for two or three hours.

doghouses, emerging to investigate the unwelcome strangers in their yard. Lieutenant Salkoff attempted to keep the dogs at bay, kicking them and placing trash cans between them and Storm. His efforts deterred one dog, but the other two Shadow and Whitewall—attacked Storm. Lieutenant Salkoff drew his service weapon and killed both Shadow and Whitewall.

Despite officers scouring the neighborhood, they never found the person they were looking for.

Plaintiffs sued Lieutenant Salkoff, Officer Rose, and the City of North Las Vegas (“the City”), asserting several claims under 42 U.S.C. § 1983: Lieutenant Salkoff violated the Fourth and Fourteenth Amendments when, without a warrant, he entered Plaintiffs’ backyard, and Officer Rose violated the same when he passed Storm into the yard; Lieutenant Salkoff violated the Fourth and Fourteenth Amendments when he unreasonably seized their dogs by shooting them dead; and the City was deliberately indifferent to the risk of these violations. Plaintiffs also brought a state law claim that Lieutenant Salkoff and the City violated Nevada Revised Statutes § 41.130.

The district court granted Defendants’ motion for summary judgment on the constitutional claims, declined to exercise supplemental jurisdiction over the remaining state law claim, and entered judgment for Defendants. Plaintiffs timely appeal.

II.

We review a district court’s grant of summary judgment de novo, *Spencer v. Pew*, 117 F.4th 1130, 1137 (9th Cir. 2024), including officers’ entitlement to qualified immunity, *Sanderlin v. Dwyer*, 116 F.4th

905, 910 (9th Cir. 2024). In conducting this review, we take “the facts in the light most favorable to the nonmoving party and draw all inferences in that party’s favor.” *Nehad v. Browder*, 929 F.3d 1125, 1132 (9th Cir. 2019); Fed. R. Civ. P. 56(e).

Qualified immunity protects government officials from liability under § 1983 “unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.” *Waid v. County of Lyon*, 87 F.4th 383, 387 (9th Cir. 2023) (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018)). “Either prong can be adjudicated on appeal by taking the facts as most favorable to the plaintiffs and applying the pertinent legal standards to those facts.” *Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 945 (9th Cir. 2017). Defendants are entitled to qualified immunity where we find “a negative answer at either step.” *Sabbe v. Wash. Cnty. Bd. of Comm’rs*, 84 F.4th 807, 819 (9th Cir. 2023).

III.

“When a law enforcement officer physically intrudes on the curtilage” of a home, like a walled-in backyard, “a search within the meaning of the Fourth Amendment has occurred.” *Collins v. Virginia*, 584 U.S. 586, 593 (2018). “[A] small, enclosed yard adjacent to a home in a residential neighborhood . . . is ‘curtilage’ subject to Fourth Amendment protection.” *United States v. Struckman*, 603 F.3d 731, 739 (9th Cir. 2010) (quoting *United States v. Romero-Bustamante*, 337 F.3d 1104, 1108 (9th Cir. 2003)). Such searches are “presumptively unreasonable absent a warrant.” *Collins*, 584 U.S. at 593.

But the Fourth Amendment’s warrant requirement “is subject to certain exceptions.” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). An “exigent circumstance” such as “the hot pursuit of a fleeing suspect,” “the need to prevent the imminent destruction of relevant evidence,” and “the need to prevent the escape of a suspect” may constitute such an exception. *Struckman*, 603 F.3d at 743. To rely on the exigent circumstances exception, the government “must satisfy two requirements: first, the government must prove that the officer had probable cause to search,” and “second, the government must prove that exigent circumstances justified the warrantless intrusion.” *United States v. Johnson*, 256 F.3d 895, 905 (9th Cir. 2001) (en banc) (per curiam). Probable cause exists where “the ‘facts and circumstances’ before the officer are sufficient to warrant a person of reasonable caution to believe” that a suspect would be found in a place. *Id.* (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)); see also *Newman v. Underhill*, 134 F.4th 1025, 1031 (9th Cir. 2025).

Lieutenant Salkoff and Officer Rose do not dispute that they physically intruded into Plaintiffs’ walled-in backyard—Lieutenant Salkoff by entering the yard and Officer Rose by passing Storm over the wall. Such a warrantless search is presumptively unreasonable. See *Collins*, 584 U.S. at 593. The district court assumed, without explanation, that Lieutenant Salkoff and Officer Rose conducted this warrantless search while in hot pursuit of a fleeing suspect. We disagree.

Hot pursuit fundamentally “means some sort of a chase.” *United States v. Santana*, 427 U.S. 38, 43 (1976). To qualify as hot pursuit, a chase “need not

be reminiscent of the opening scene of a James Bond film.” *Lange v. California*, 594 U.S. 295, 329 (2021) (Roberts, C.J., concurring). “The hot pursuit exception to the warrant requirement only applies when officers are in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime.” *Johnson*, 256 F.3d at 907 (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984)). As to immediacy, officers act with sufficient speed to qualify as hot pursuit when they act immediately, making a “split-second decision” to pursue a suspect. *Stanton v. Sims*, 571 U.S. 3, 10 (2013) (per curiam).

But there is no hot pursuit where “the continuity of the chase [has been] terminated” definitively. *Johnson*, 256 F.3d at 908. In *Johnson*, a suspect “ran into a wooded area where he was free to run for over a half hour” rather than “into a confined area where [the police] could monitor his movements.” *Id.* On that basis, we determined that “the continuity of the chase was clearly broken and a warrant was required.” *Id.* We further noted that, “[a]lthough this requirement may be inconvenient to law enforcement, any other outcome renders the concept of ‘hot pursuit’ meaningless and allows the police to conduct warrantless searches while investigating a suspect’s whereabouts.” *Id.*

We recently observed in *Newman* that whether a pursuit’s continuity has been definitively broken is a function of “two interrelated considerations.” 134 F.4th at 1033. First, “whether, and to what degree, the officer[] lost track of the suspect’s whereabouts.” *Id.* Second, whether, after losing sight of a suspect, the officer “continued to act with speed in attempting to apprehend the suspect.” *Id.* Timing is relevant to both considerations. As seconds and minutes tick by,

the officer's once-clear knowledge of a suspect's position fades till they are no longer chasing a suspect but instead searching for him. "The more time passes without the officer's physically chasing after the suspect . . . the more likely the continuity of the chase is to break." *Id.*

In *Newman*, officers followed a suspect's truck down a dead-end street where the suspect exited his vehicle and ran directly toward the back of the plaintiff's house. *Id.* at 1028-29. Officers lost sight of the suspect for nine minutes but had probable cause to believe he was in the plaintiff's house, given that the suspect had been headed in that direction, he was not in the backyard, the terrain and fences would have hindered his flight to an adjacent property, the plaintiff's backdoor was unlocked, and the officer perceived someone interacting with the backdoor at some point during the pursuit. *Id.* at 1031. We held that the pursuit's continuity was unbroken because the officers "had a reasonably good idea where [the suspect] was hiding" for the duration of the nine minutes after they lost sight of him. *Id.* at 1033.

Comparatively, here, Officer Rose last saw the suspect fleeing toward a different property three houses west of Plaintiffs' home—rather than directly to the property that was later searched. Officer Rose neither chased after the person nor peered over the wall to monitor the person's movements, and instead unsuccessfully attempted to cut the suspect off by patrol car. Officers had seen neither hide nor hair of the suspect for at least eighteen minutes preceding their search, in which time the suspect's movements through a suburban neighborhood were completely unknown. In light of those circumstances, the continuity

of the chase here was broken, so the hot pursuit exception no longer applied.²

Defendants suggest that they reasonably believed the suspect was somewhere within the neighborhood, and therefore, the continuity of their search was unbroken. If we were to accept this argument, it would threaten to swallow the warrant requirement whole. Officers may not riffle through private spaces in an entire neighborhood merely because police have lost track of someone who earlier fled from them in the general vicinity. Lieutenant Salkoff and Officer Rose had no “reasonably good” basis for knowing

² We note that exigent circumstances are less likely to exist when the alleged offense is a misdemeanor and there is no risk of “imminent harm to others.” *Lange v. California*, 594 U.S. 295, 308 (2021); *see also id.* at 313 (“The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency.”); *Johnson*, 256 F.3d at 908 (“[A]pplication of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed.” (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984))). In this case, the gravity of the alleged offense and the lack of risk of imminent harm to others weigh against applying the exigent circumstances exception. *Johnson*, 256 F.3d at 908 (explaining that the allegation that the suspect committed only a misdemeanor “does not definitely preclude a finding of exigent circumstances, it weighs heavily against it”). Defendants conceded that the suspect was alleged to have committed a misdemeanor, domestic battery. Although the Supreme Court has recognized that domestic violence is a serious misdemeanor, *Lange*, 594 U.S. at 308, the danger involved is generally to co-habitants. Here, one officer remained at the victim’s address in case the suspect returned, thereby ensuring that neither she nor any other member of the household was at risk of imminent harm.

where the suspect was—beyond that he was likely still in the neighborhood. *Id.* at 1033. Therefore, Defendants may not avail themselves of the hot pursuit exception to the Fourth Amendment’s warrant requirement.

Defendants urge that Storm’s alert salvaged the hot pursuit and gave them probable cause to search Plaintiffs’ yard. Not so. Even assuming the dog alert did give the officers probable cause to believe the suspect was in Plaintiffs’ yard, by that time, “the continuity of the chase was terminated” so there was no hot pursuit to salvage. *Johnson*, 256 F.3d at 908.

Our case law was clear when these unfortunate events unfolded in February 2019 that a pursuit’s continuity is broken when officers completely lose a suspect’s trail for more than a short time, as happened here. We note that *Newman*, decided this year, is not only distinguishable but also does not bear on what was clearly established law in 2019. *See Sanderlin*, 116 F.4th at 916 (noting that “neither favorable nor damning subsequent legal developments can be used to demonstrate what law was or was not clearly established at the time of an officer’s challenged conduct”). But *Johnson*, decided in 2001, made it clear to officers in 2019 that they may not sweep through an area and search the properties within it simply because they believe a suspect is somewhere therein. 256 F.3d at 907-08. Allowing such searches would turn back the clock to the age of English general warrants, which our founders firmly rejected with the inclusion of the Fourth Amendment. *See Payton v. New York*, 445 U.S. 573, 583 (1980).

Because Defendants lacked an exigent circumstance to search Plaintiffs’ yard under clearly estab-

ished law at the time of the incident, they are not entitled to qualified immunity and summary judgment was improper.

IV.

We turn now to the fate of Shadow and Whitewall. “Reasonableness is the touchstone of any seizure under the Fourth Amendment.” *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir. 2005). “To determine whether the shooting of the dogs was reasonable, we balance ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the counter-vailing governmental interests at stake.’” *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). We must judge the reasonableness of a particular use of force “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396.

When we evaluate an officer’s use of force following a warrantless intrusion into private space, we must not conflate the unreasonable seizure claim with the unreasonable search claim challenging the entry. *County of Los Angeles v. Mendez*, 581 U.S. 420, 428 (2017) (“[T]he objective reasonableness analysis must be conducted separately for each search or seizure that is alleged to be unconstitutional.”). Even where officers have violated clearly established law with a warrantless search, we cannot rely on that warrantless search to say that an officer’s otherwise reasonable subsequent use of force was excessive. *See id.* at 428-29.

Plaintiffs argue that Lieutenant Salkoff violated rights that were clearly established under *Hells Angels*

when he shot their dogs. In *Hells Angels*, recognizing “that dogs are more than just a personal effect,” we found that killing dogs is a “severe” intrusion on Fourth Amendment protections. 402 F.3d at 975. But, in that case, officers had a week to plan the execution of the warrants, were aware guard dogs resided at the premises to be searched, and devised only to use a shotgun to handle any encounters with the dogs rather than employing less-intrusive means. *Id.* at 976. We emphasized in our decision that it was not a case “where the officer was reacting to a sudden unexpected situation” or needed to make a split-second judgment. *Id.* at 978.

By contrast, in this case, officers had minutes—not days—to discover and plan for handling any dogs in Plaintiffs’ backyard. Lieutenant Salkoff attempted to stir any dogs that might have been home before he entered the yard but saw no indications that dogs were present. Officers were unaware that the resident dogs were pit bulls, as opposed to a breed that may have been less sensitive to the intrusion or more readily controllable by Lieutenant Salkoff.

For these reasons, the facts in this case are sufficiently distinguishable from those in *Hells Angels* that we cannot say Lieutenant Salkoff’s actions in this more spontaneous confrontation violated clearly established law.

Because Plaintiffs do not offer, and we cannot find, any cases clearly establishing that Lieutenant Salkoff’s actions were unreasonable, he is entitled to qualified immunity and summary judgment with respect to his use of force against Plaintiffs’ dogs.

We note, however, that Lieutenant Salkoff and Officer Rose may still be liable to Plaintiffs for the deaths of their dogs as a natural consequence of the warrantless search of their yard. *Tatum v. Moody*, 768 F.3d 806, 817 (9th Cir. 2014) (“Under § 1983, ‘a person is responsible for the natural consequences of his actions.’” (simplified)) (quoting *Monroe v. Pape*, 365 U.S. 167, 187 (1961), *overruled in part on other grounds by Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978)); *Mendez*, 581 U.S. at 431 (stating that, even where plaintiffs “cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry”).

V.

Cities may be held liable under § 1983 for constitutional violations committed by their officers. *See Monell*, 436 U.S. at 694. To establish such liability, Plaintiffs must prove “(1) [they were] deprived of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate indifference to [their] constitutional right; and (4) the policy was the moving force behind the constitutional violation.” *Lockett v. County of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020). A municipal policy can be, among other things, “a failure to train [or] supervise.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 603 (9th Cir. 2019).

Plaintiffs contend that the City failed to provide officers with adequate training and supervision regarding warrantless searches and the lawful use of a service weapon on pet dogs. To establish municipal liability under such a theory, the failure to train must “amount to ‘deliberate indifference to the rights

of persons with whom the [untrained employees] come into contact. “*Connick v. Thompson*, 563 U.S. 51, 61 (2011) (alteration in original) (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). Because the municipality must have had “actual or constructive notice [of] a particular omission in their training program” to demonstrate deliberate indifference, a plaintiff must typically provide evidence of “[a] pattern of similar constitutional violations by untrained employees.” *Id.* at 61-62.

Plaintiffs’ Monell claim on warrantless searches fails because Plaintiffs have not offered any evidence of a pattern of warrantless search violations or other evidence of constructive notice such that the City was deliberately indifferent to Plaintiffs’ Fourth Amendment rights. As for the use-of-force claim, Plaintiffs note that the City settled three prior suits involving dog-shootings, each with different facts than those presented here, during a five-year period. Even if those settlements suggest that the police may have acted wrongfully in those cases, evidence of “sporadic” or “isolated” wrongdoing is generally insufficient to establish “that the conduct has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996); *see also Connick*, 563 U.S. at 62-63. Therefore, the City is entitled to summary judgment on Plaintiffs’ Monell claims.³

³ Plaintiffs also do not argue that the consequences of a failure to train on warrantless searches are so “patently obvious” that the City could be liable “without proof of a pre-existing pattern of violations.” *Connick*, 563 U.S. at 64.

VI.

We reverse the district court's grant of qualified immunity and summary judgment to Lieutenant Salkoff and Officer Rose with respect to their search of Plaintiffs' backyard. Because the district court declined to exercise supplemental jurisdiction over Plaintiffs' state law claim solely based on its grant of summary judgment to Defendants on all of Plaintiffs' federal claims, its dismissal of that claim is also reversed. *See Brodheim v. Cry*, 584 F.3d 1262, 1273 (9th Cir. 2009). We affirm the district court's grant of summary judgment in all other respects. We remand for further proceedings.

The parties shall bear their own costs on appeal.

**AFFIRMED IN PART; REVERSED IN PART;
REMANDED.**

**DISSENTING OPINION OF
JUDGE COLLINS ET AL.**

COLLINS, Circuit Judge, with whom CALLAHAN, BENNETT, R. NELSON, LEE, BRESS, BUMATAY, and TUNG, Circuit Judges, join, dissenting from the denial of rehearing en banc:

This case is another in a long—and seemingly unending—string of cases in which our court continues to ignore controlling Supreme Court precedent concerning qualified immunity in actions brought under 42 U.S.C. § 1983. As the Court has reiterated, “officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.” *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018) (emphasis added) (simplified). “A right is clearly established when it is sufficiently clear that every reasonable official would have understood that what he is doing violates that right.” *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (simplified). Time and again, however, we have evaded this demanding standard for defeating qualified immunity by defining “clearly established” law in broad and general terms that disregard the legal and factual nuances of the particular situation that the officers faced. We have done so despite the Supreme Court’s having “repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality.” *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (simplified). The panel’s decision in this case is a particularly egregious example of our stubborn adherence to this oft-condemned practice.

The underlying Fourth Amendment claim in this case presents the important and interesting question whether the “hot pursuit” of a suspect will justify a warrantless entry into a property if the pursuing police officers temporarily lose the suspect’s trail but then believe that they have recovered it. Specifically, the panel held that where police officers are engaged in continuous efforts to pursue a fleeing dangerous suspect but then “lose [the] suspect’s trail,” the continuity of any “hot pursuit” is irretrievably broken for purposes of the warrant exception for the “exigent circumstance” of a pursuit, and that the continuity remains broken even if the trail is only temporarily lost and is promptly recovered (here, within about 18 minutes). *Jones v. City of North Las Vegas*, 150 F.4th 1030, 1037 (9th Cir. 2025); *see also* Jones, Amended Opin. at 14. Despite the fact that, at the time of the Defendant Officers’ entry into Plaintiffs’ property in this case, no Supreme Court or Ninth Circuit decision had ever squarely addressed this sort of recovery-of-a-hot-pursuit scenario, the panel summarily announced that its (dubious) answer to that novel question had actually been the clearly established law of this court for nearly a quarter of a century. The panel did so by improperly over-generalizing the principles established in a “materially distinguishable” 2001 Ninth Circuit decision that “does not govern the facts of this case” and that did not put the Defendant Officers “on notice that [their] specific conduct was unlawful.” *Rivas-Villegas*, 595 U.S. at 6. Indeed, that sole 2001 decision invoked by the panel here—*United States v. Johnson*, 256 F.3d 895 (9th Cir. 2001) (en banc)—did not even address, much less resolve, whether a trail that is temporarily lost can promptly be recovered. It should go without saying that a precedent cannot “clearly

establish” the answer to a question that was not even presented or considered in that case.

We should have granted rehearing en banc to address the panel’s troubling disregard of Supreme Court precedent concerning the application of qualified immunity. I respectfully dissent from our failure to do so.

I

A

Around 3:47 p.m. on February 15, 2019, two officers from the North Las Vegas Police Department (“NLVPD”), Officer Minelli and Officer Rose, responded to a welfare check request regarding a possible domestic battery incident at a specific address, which was a house on a residential cul-de-sac. The person making the report had received texts of photographs from her sister showing various injuries to her face. The person reporting told the dispatch that her sister’s boyfriend, Demario Shapiro, had battered her sister before and that “she was scared for her sister’s safety.” Upon arriving at the residence to conduct a welfare check, Officer Minelli recalled that he had personally responded to the very same house in the past for a domestic-related incident.

The officers rang the doorbell, and in response, the front door opened slightly and then was immediately closed. Officer Minelli attempted to open the door, but it was locked. He knocked on the door shouting “Police,” and a few moments later, a woman responded. Officer Minelli thought that she was stalling, but she finally stepped outside after he asked her several times to come out.

Meanwhile, Officer Rose positioned himself so that he could view the side of the house in case anyone fled the scene. Officer Rose then witnessed a man—who the officers suspected was Shapiro—fleeing from the back of the house, running southbound, and jumping over the wall into the neighboring yard. In response, Officer Rose quickly got in his patrol car and drove two streets to the south in an unsuccessful attempt to cut off the fleeing suspect. Believing that the suspect was hiding out in the immediate vicinity, Officer Rose promptly requested assistance, and several nearby units responded and “very quickly” established a multi-block perimeter to contain the suspect. The officers took up spots around the perimeter such that they believed the suspect would not be able to get out without crossing their line of sight. Believing that the suspect was a “dangerous offender” who not only put the alleged victim at risk but also “anybody else he comes in contact with in the neighborhood,” the officers made announcements over their public address systems that were audible throughout the neighborhood, and they began knocking on doors to make contact with the residents.

While the perimeter was being set up, Officer Minelli stayed behind to talk with the woman regarding the domestic battery allegations. He observed that she had several severe injuries on her face, including a long, stitched cut across her chin. Officer Minelli broadcasted this information over the radio to the other responding officers. The woman, however, was uncooperative and relayed inconsistent narratives regarding Shapiro’s location and her injuries. She denied any allegations of domestic violence and told Officer Minelli that Shapiro would be back home later that evening,

that the police were not welcome at her house, and that they would need to obtain a warrant to apprehend Shapiro.

Among those who responded and aided in the search for the suspect was a K-9 unit consisting of NLVPD Lieutenant Salkoff and his police dog, "Storm." They arrived at the scene around 4:05 PM, approximately 18 minutes after Officers Minelli and Rose had arrived at the victim's home. Prior to deploying the police dog, Lieutenant Salkoff conducted a records check of Shapiro, which revealed that Shapiro had an active domestic battery misdemeanor warrant and an active traffic warrant, as well as an extensive criminal history that included 11 prior arrests for domestic battery with strangulation, obstruction, robbery, assault with a deadly weapon, battery with substantial bodily harm, carrying a concealed weapon, possession of a stolen vehicle, and traffic charges.

After making announcements about the use of a police dog from his vehicle's public address system, Lieutenant Salkoff took Storm and began to search for the suspect within the perimeter. Lieutenant Salkoff searched a property that was located about one house south and four houses east of the victim's home, when Storm—who was trained to detect apocrine, an odor that humans release when they are scared—gave an indication of "high alert" from the direction of Plaintiffs' walled-in backyard. NLVPD Officer Young, who had been sent ahead by Lieutenant Salkoff to seek consent from residents to search their yards, attempted to make contact with someone in Plaintiffs' home, but no one responded. Officer Young went to check the gate, and it was locked. He also noticed a "Beware of Dog" sign, and he relayed that fact to

Lieutenant Salkoff. Lieutenant Salkoff also observed three doghouses enclosed by a chain-link fence with an open gate. The officers whistled, shook the locked gate, and slapped the wall to determine if any dogs were in the yard, but they did not observe any signs of movement or animals. Lieutenant Salkoff then decided to jump the wall into Plaintiffs' backyard, and Officer Rose lifted Storm and handed him to Lieutenant Salkoff over the wall. Lieutenant Salkoff and Storm began searching Plaintiffs' yard when Plaintiffs' three pit bulls emerged from their doghouses. Two of the dogs started to attack Storm, and after failing to keep the dogs at bay through non-lethal means, Lieutenant Salkoff drew his department-issued firearm and shot the two dogs, killing them. Despite the search, the officers never found the suspect.

Plaintiffs sued Lieutenant Salkoff, Officer Rose, and the City of North Las Vegas (collectively "Defendants"). Invoking 42 U.S.C. § 1983, Plaintiffs asserted two Fourth Amendment claims against Lieutenant Salkoff and Officer Rose ("Defendant Officers"), one for unreasonable search of their property and one for unreasonable seizure of their dogs. Plaintiffs also asserted a Monell claim against the City of North Las Vegas ("City") based on the theory that the City had failed to adequately train and supervise its officers. Plaintiffs also asserted a state law claim under Nevada law.

The district court granted the Defendant Officers qualified immunity, granted summary judgment in favor of Defendants on all federal claims, and declined to exercise supplemental jurisdiction over the remaining state law claim. Plaintiffs timely appealed.

B

As relevant here, the panel reversed the grant of summary to the Defendant Officers with respect to Plaintiffs' claim that they had violated the Fourth Amendment by entering and searching Plaintiffs' backyard. Jones, Amended Opin. at 6.¹ As the panel acknowledged, *see id.* at 9-10, the qualified immunity inquiry involves "a two-pronged inquiry": (1) the first prong asks whether "the officer's conduct violated a federal right," and (2) the "second prong . . . asks whether the right in question was clearly established at the time of the violation," *Tolan v. Cotton*, 572 U.S. 650, 655-56 (2014) (simplified). The panel held that Plaintiffs had established both prongs, thereby defeating qualified immunity. Jones, Amended Opin. at 14-15.

As to the first prong, the panel acknowledged that the warrantless entry into Plaintiffs' backyard would be reasonable if (1) it was supported by probable cause, and (2) "exigent circumstances justified the warrantless intrusion." Jones, Amended Opin. at 10-11 (citation omitted). The panel assumed, without deciding, that Storm's alert "did give the officers probable cause to believe the suspect was in Plaintiffs' yard." *Id.* at 14 (emphasis added). But the panel held that the search was nonetheless invalid because there were no "exigent circumstances" to justify the warrantless intrusion. *Id.* at 11-14. Specifically, the panel rejected

¹ The panel affirmed the district court's grant of qualified immunity to the Defendant Officers with respect to Plaintiffs' separate Fourth Amendment claim concerning the seizure of the two dogs, as well as the district court's grant of summary judgment to the City as to Plaintiffs' Monell claim. Jones, Amended Opin. at 15-19. I do not question either of those rulings.

the Defendant Officers' contention that exigent circumstances were present in that they were "in hot pursuit of a fleeing suspect." *Id.* at 11.

The panel held that, under the en banc decision in *United States v. Johnson*, 256 F.3d 895 (9th Cir. 2001), "[t]he hot pursuit exception to the warrant requirement only applies when officers are in 'immediate' and 'continuous' pursuit of a suspect from the scene of the crime." *Jones*, Amended Opin. at 11 (quoting *Johnson*, 256 F.3d at 907). The panel held that the Defendant Officers responded to the suspect's flight from the victim's home with sufficient alacrity to count as acting "immediately." *Id.* But the panel concluded that the "continuity" requirement was not met because, in its view, the Defendant "Officers had seen neither hide nor hair of the suspect for at least eighteen minutes preceding their search [of Plaintiffs' backyard], in which time the suspect's movements through a suburban neighborhood were completely unknown." *Id.* at 13. The panel held that the fact that the Defendant Officers knew that the suspect was "somewhere within the neighborhood" was not enough, because that information was too non-specific and would justify searching "through private spaces in an entire neighborhood." *Id.* at 14. In response to the Defendants Officers' argument that "Storm's alert salvaged the hot pursuit and gave them probable cause to search Plaintiffs' yard," the panel held that there was no exigent circumstance to justify the warrantless entry because "the continuity of the chase was terminated' so there was no hot pursuit to salvage." *Id.* (quoting *Johnson*, 256 F.3d at 908).

Turning to the second prong of the qualified immunity inquiry, the panel held that "[o]ur case law

was clear when these unfortunate events unfolded in February 2019 that a pursuit's continuity is broken when officers completely lose a suspect's trail for more than a short time, as happened here." *Jones*, Amended Opin. at 14. In support of this conclusion, the panel stated that "*Johnson*, decided in 2001, made it clear to officers in 2019 that they may not sweep through an area and search the properties within it simply because they believe a suspect is somewhere therein." *Id.* at 15.

II

Even assuming *arguendo* the panel's dubious premise that the Defendant Officers violated the Fourth Amendment when they entered Plaintiffs' yard without a warrant, the panel's further holding that the Defendant Officers violated clearly established law plainly contravenes controlling Supreme Court precedent concerning qualified immunity.

A

"Although 'th[e] [Supreme] Court's caselaw does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate. "*Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (citation omitted). "Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts." *Id.* (simplified) (noting that, in that case, the relevant Fourth Amendment doctrine at issue was "excessive force," which "is an area of the law 'in which

the result depends very much on the facts of each case” (citation omitted)). “An officer ‘cannot be said to have violated a clearly established right unless the right’s contours were sufficiently definite that any reasonable official in the defendant’s shoes would have understood that he was violating it.’” *Id.* at 105 (citation omitted). Consequently, in the absence of an “obvious case,” the party seeking to defeat qualified immunity—here, Plaintiffs—“must identify a case that put [the officers] on notice that [their] specific conduct was unlawful.” *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 6 (2021). But if a precedent is “materially distinguishable” from the instant case, then it cannot be said to “govern the facts of this case” for purposes of qualified immunity. *Id.* (emphasis added).

Under these standards, the Defendant Officers are clearly entitled to qualified immunity. Given the distinctive and difficult Fourth Amendment question presented here—namely, whether the prompt recovery of a temporarily lost hot pursuit of a dangerous suspect justifies a warrantless entry into a specific property—this is not an “obvious case” in which the general Fourth Amendment standards will supply a clear answer “even without a body of relevant case law.” *Rivas-Villegas*, 595 U.S. at 6 (citation omitted). Nor did the panel contend that it was. Consequently, “to show a violation of clearly established law,” Plaintiffs had to “identify a case that put [the Defendant Officers] on notice that [their] specific conduct was unlawful.” *Id.* In holding that Plaintiffs had carried that burden, the panel relied solely on this court’s 2001 decision in *United States v. Johnson*, 256 F.3d 895 (9th Cir. 2001) (en banc). See *Jones*, Amended Opin. at 14-15. But *Johnson* is “materially disting-

uishable and thus does not govern the facts of this case.” *Rivas-Villegas*, 595 U.S. at 6.²

In *Johnson*, an officer attempted to arrest a misdemeanor suspect (Smith) who was wanted on “five outstanding arrest warrants for misdemeanor offenses,” including DUI and resisting arrest. 256 F.3d at 899 & n. 1. Smith, however, broke free and ran away. *Id.* at 899. The officer got in his vehicle and attempted to follow Smith but lost sight of him when Smith went off the road into the “thick brush” of the woods. *Id.* at 899. The rural area was “sparsely populated,” and each property, including defendant *Johnson*’s adjacent property, spanned multiple acres. *Id.* at 906. The officer “radioed for backup and requested a canine unit.” *Id.* at 899. While waiting for backup to arrive, the officer followed a nearby driveway and arrived at *Johnson*’s gated property, which was locked. *Id.* The officer then left the trail completely and returned to the scene of his initial confrontation with the suspect to grab a pepper spray cannister that he had dropped earlier. *Id.* He returned to the locked gate and waited for an additional 15 minutes for backup to arrive. *Id.* at 899-900. Finally, over 30 minutes since the officer last saw the suspect disappear into the woods, the officers broke into

² The Supreme Court has yet to clarify whether even an on-point circuit precedent can qualify as controlling authority for purposes of qualified immunity, see *District of Columbia v. Wesby*, 583 U.S. 48, 66 n.8 (2018) (“We have not yet decided what precedents—other than our own—qualify as controlling authority for purposes of qualified immunity.”); *Reichle v. Howards*, 566 U.S. 658, 665-66 (2012) (reserving the question whether court of appeals decisions can be “a dispositive source of clearly established law”); see also *Rivas-Villegas*, 595 U.S. at 5 (same).

Johnson's yard based on a "gut feeling" that the suspect would be there. *Id.* at 898, 905. While searching *Johnson's* property, the officers detected the clear smell of marijuana coming from a shed. *Id.* at 900. However, they did not find Smith. *Id.* After obtaining a warrant to search the shed, the officers found 553 marijuana plants, and *Johnson* was later indicted. *Id.*

Johnson moved to suppress the evidence, but the district court denied the motion, stating that the warrantless search was justified under the hot pursuit exception. *Johnson*, 256 F.3d at 900. A panel of this court affirmed, but after en banc rehearing was granted, the en banc court reversed and remanded. The en banc court remanded as to whether the area of the shed was within the "curtilage" of *Johnson's* home that is protected by the Fourth Amendment against warrantless searches, but the court held that, if it was, then the warrantless search was not justified. *Id.* at 897-98. The court held that the officers did not have probable cause to believe that Smith was on *Johnson's* property, because once Smith entered the woods, "Smith's options were unlimited" and his choices for "hiding places [were] potentially endless," and the officers had nothing more than a "gut feeling" that he might be on *Johnson's* property. *Id.* at 906-07. The court also held that the warrantless nature of the entry was not justified by the "hot pursuit exception to the warrant requirement." *Id.* at 907. The officers had lost sight of Smith, and for the ensuing 30 minutes they "received no new information about where Smith had gone." *Id.* at 908. Meanwhile, Smith had "not run into a confined area," but had instead run "into a wooded area where he was free to run for over a half hour." *Id.* Under these circum-

stances, the court held, “the continuity of the chase was terminated permanently.” *Id.* (emphasis added). The court also held that Smith’s flight from the misdemeanor offense of resisting arrest “weighs heavily” against a “finding of exigent circumstances.” *Id.*

Johnson is materially distinguishable in multiple respects from this case. Most importantly, the pursuit here was not “terminated permanently,” *Johnson*, 256 F.3d at 908, because the Defendant Officers’ continued investigation led them to develop probable cause that the suspect was in Plaintiffs’ yard. This is thus not a case, like *Johnson*, in which the officers, during the period after losing sight of the suspect, “no longer had any idea where [the suspect] was.” *Id.* Unlike *Johnson*, the suspect here did not run into a vast woods that afforded “unlimited” options to escape, *id.* at 906; on the contrary, the officers reasonably believed that he had “run into a confined area,” namely, the limited perimeter the officers had established before developing probable cause as to which specific yard he might be in, *id.* at 908. (The fact that Shapiro ultimately turned out not to be in Plaintiff’s yard or within the perimeter makes no difference; the *ex ante* authority to conduct a search does not turn on the *ex post* result.) And, in contrast to the officer in *Johnson*, who made no efforts to pursue Smith for 30 minutes while he waited for backup, the officers here were continuously working to establish a perimeter and then to find the suspect. Most importantly, because the officers in *Johnson* never developed any subsequent information to establish probable cause that they had recovered a temporarily lost trail, *Johnson* simply cannot be viewed as having clearly established the answer to the question whether a temporarily lost

trail can be promptly recovered. Finally, in contrast to the minor misdemeanors at issue in *Johnson*, the suspect here was suspected of a violent domestic battery misdemeanor. See *Lange v. California*, 594 U.S. 295, 305 (2021) (noting that, because “many perpetrators of domestic violence are charged with misdemeanors, despite the harmfulness of their conduct,” “a felon is not always more dangerous than a misdemeanant” (simplified)). The panel was thus flatly wrong in concluding that *Johnson* clearly established that the officers’ conduct here was unlawful.

The panel’s amended opinion only makes things worse and underscores that qualified immunity was wrongly denied here. In its amended opinion, the panel attempts to make *Johnson* look like a better fit to the facts of this case by improperly altering its prior quotation from *Johnson*’s key holding. The panel’s original opinion accurately quoted *Johnson*’s holding that “there is no hot pursuit where ‘the continuity of the chase was terminated permanently.’” *Jones*, 150 F.4th at 1036 (quoting *Johnson*, 256 F.3d at 908). But this case does not fit that rule because, as I have explained, the continuity of the chase here was not “terminated permanently” given that the trail was promptly recovered. Rather than acknowledge that *Johnson* is thus materially distinguishable and does not govern this case, the panel instead now doctors its quotation from *Johnson* so as to reframe that decision’s holding in a broader way that will better fit this case. Specifically, the above-quoted phrase has been changed to now say that “there is no hot pursuit where ‘the continuity of the chase [has been] terminated’ definitively.” See *Jones*, Amended Opin. at 12 (alterations in original) (emphasis added); see

also id. at 14 (adding this same quote in a truncated form that deletes the word “permanently”). This alteration is significant, because it attempts to recast *Johnson*’s holding so that it would extend, not merely to a pursuit whose continuity was terminated “permanently” (and therefore never recovered), but also to one that was in some sense “terminated definitively” (such that it would not count that the trail was promptly recovered). But qualified immunity turns on what the relevant precedents actually say and not how they might be misquoted by future panels. See *Estate of Hernandez v. City of Los Angeles*, 139 F.4th 790, 827 (9th Cir. 2025) (en banc) (Collins, J., concurring in part and dissenting in part) (stating that, under a proper understanding of qualified immunity doctrine, officers must be able to “rely on what our opinions actually say” and should not have to “consider that future panels may take considerable liberties with selectively quoting the opinion’s language”).

For all of these reasons, *Johnson* does not “squarely govern[]” this case and does not place its outcome “beyond debate.” *Kisela*, 584 U.S. at 104 (citations omitted). By holding that *Johnson* did clearly establish the relevant law here, the panel once again relied on an overbroad reading of precedent and thereby disregarded the Supreme Court’s repeated admonition that we must not “define clearly established law at a high level of generality.” *Id.* (simplified). The Defendant Officers here were entitled to qualified immunity.

B

In addition to its erroneous reliance on *Johnson* as having clearly established the relevant law, there

are several additional respects in which the panel's decision here conflicts with relevant Supreme Court authority.

The panel's original opinion held that it is "clearly established" law that the loss of a suspect's trail for as few as 18 minutes means any hot pursuit has been definitively terminated and cannot be recovered, and it remarkably reached this conclusion without giving any consideration to the nature of the underlying crime at issue or the dangerousness of the suspect in this case. *See Jones*, 150 F.4th at 1036-38. In its amended opinion, the panel has now belatedly added a footnote minimizing the dangerousness of the suspect here, but the amendment only makes things worse because the new footnote squarely conflicts with Supreme Court precedent. *See Jones*, Amended Opin. at 13 n.2.

The panel's new footnote introduces a further error by explicitly reaffirming *Johnson's* overbroad comment that a fleeing suspect's commission of a "misdemeanor" "weighs heavily against" a finding of exigent circumstances. *See Jones*, Amended Opin. at 13 n.2 (quoting *Johnson*, 256 F.3d at 908). That sweeping comment did not survive the Supreme Court's decision in *Lange*, which emphasized the importance of dangerousness to the hot pursuit inquiry and expressly noted—citing "domestic violence" offenses in particular that "a felon is not always more dangerous than a misdemeanant." 594 U.S. at 305 (simplified). The panel's new footnote, and its reliance on *Johnson's* dismissal of misdemeanors, also cannot be squared with *Stanton v. Sims*, 571 U.S. 3 (2013), in which the Supreme Court summarily and unanimously reversed this court for denying qualified immunity based on a

similar overreading of *Johnson*'s discounting of the seriousness of misdemeanors. Citing the very same discussion in *Johnson*, this court denied qualified immunity in *Stanton*, holding that "[i]t should have been clear to Stanton, however, from Supreme Court and Ninth Circuit decisions that law enforcement actions involving a misdemeanor offense will rarely, if ever, justify a warrantless entry." *Sims v. Stanton*, 706 F.3d 954, 964 (9th Cir. 2013) (citing, *inter alia*, "*Johnson*, 256 F.3d at 908 (clearly established since 2001)"). The Supreme Court reversed, holding that this court had read such statements in *Johnson* "far too broadly." *Stanton*, 571 U.S. at 9 (noting the *Stanton* panel's reliance on a similar accompanying footnote in *Johnson*). The Court instead held that the law governing the hot pursuit of misdemeanants, including the role of dangerousness in that analysis, was not clearly established, given the *post-Johnson* conflicting precedent within the Ninth Circuit itself and given that "the federal and state courts of last resort around the Nation were sharply divided." *Id.* at 10. The panel's resuscitation of this discredited aspect of *Johnson* is plainly wrong, and it shows that we have learned nothing from the unanimous reversal we suffered in *Stanton*.³

³ The panel's downplaying of the suspect's dangerousness here is also factually inaccurate. The panel's suggestion that any danger here was mitigated by the fact that an officer stayed with the victim during the pursuit makes no sense: the whole point of the pursuit was to detain the dangerous suspect whose flight required the officer to temporarily guard the victim during the pursuit. To the extent that the panel's amended opinion now suggests that the pursuit could perhaps have been maintained if the officers had left the victim unguarded, that strikes me as perversely illogical. Moreover, a fleeing suspect

Stanton underscores the panel's error in this case in a further respect. Here, just as in *Stanton*, a variety of federal and state court decisions that have addressed the specific question presented here have reached results contrary to the panel's claim that that question has actually been long settled by general principles from a decades-old case. *See Stanton*, 571 U.S. at 9-10 (citing two state intermediate appellate decisions and two federal district court opinions). Here, several post-*Johnson* cases have upheld, as falling within the hot pursuit exception, pursuits in which the officers briefly lost track of the suspect but then, through quick and continuous efforts, promptly regained the trail. *See, e.g.,* Prado a Police Dept of East Palo Alto, 2018 WL 4103175, at *1, 4 (Cal. Ct. App. Aug. 29, 2018) (finding hot pursuit where an officer lost sight of the suspect disappearing into private property at a dead-end street and fleeing to the west, and other officers created a perimeter while

with a known history of domestic violence who leaps into a neighbor's backyard would reasonably be considered to be a danger to the community generally and not only, as the panel would have it, to "co-habitants." *See Jones*, Amended Opin. at 13 n.2. Indeed, it is surprising to see the panel make such a point in this case, given that the canine officer's report stated that he conducted a records check of the fleeing suspect before he deployed his police dog and that he thereby learned that the suspect "had an extensive criminal history, which included several violent offenses such as domestic [violence] with strangulation, assault with a deadly weapon, carrying a concealed weapon and robbery." Based on what they knew about Shapiro, the officers concluded that he was a danger to "anybody else he comes in contact with in the neighborhood." The panel is therefore quite wrong to suggest that this violent suspect did not present any danger to the neighbors whose yards he was suspected of jumping into.

the chasing officer, making use of information developed during the pursuit, made warrantless entries into two separate yards near the residence where the suspect disappeared and ultimately shot the plaintiff's pit bull in one of the yards); *United States v. Fuller*, 572 F. App'x 819, 819-21 (11th Cir. 2014) (holding that the passing of 12 minutes between the suspects' fleeing from the stolen car and a detective's entry into defendant's property after another detective driving nearby announced that there were suspicious people in defendant's backyard did not render the hot pursuit "cold" because the detectives were "engaged in a single pursuit that was continuous"); *United States a Red Bird*, 2020 WL 7209760, at * 1, 6-7 (D. S.D. Aug. 20, 2020) (finding hot pursuit where officer, seeing a suspect flee, drove one street down to unsuccessfully cut him off but recovered trail using footprints in snow); *United States v. White*, 185 F. Supp. 3d 1295, 1299-1301, 1304-10 (D. Utah 2016) (finding hot pursuit exception applied to a warrantless entry where, after losing track of a suspected felon when he entered into a multi-building complex, the officers recovered the trail by using the information developed during the pursuit to narrow down to one apartment unit on the top floor). This conflicting caselaw further "bolster[s]" the conclusion that qualified immunity should have been granted here. *Stanton*, 571 U.S.at10.

* * *

For the foregoing reasons, the panel's decision is flatly contrary to controlling Supreme Court authority, and we should have reheard this case en banc. I respectfully dissent from our denial of rehearing en banc.

**INITIAL OPINION, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
(SEPTEMBER 8, 2025)**

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GENOA JONES; CORNELL TINSLEY,

Plaintiffs-Appellants,

v.

CITY OF NORTH LAS VEGAS;
SCOTT SALKOFF; MICHAEL ROSE,

Defendants-Appellees.

No. 24-3374

Appeal from the United States District Court
for the District of Nevada Cristina D. Silva, District
Judge, Presiding

D.C. No. 2:21-cv-00241-CDS-DJA

Argued and Submitted May 22, 2025
San Francisco, California

September 8, 2025

Before: Michelle T. FRIEDLAND and
Salvador MENDOZA, JR., Circuit Judges, and
Robert S. LASNIK, District Judge.*

Opinion by Judge Mendoza

OPINION

MENDOZA, Circuit Judge:

When does a hot pursuit turn cold? Today we conclude that a pursuit is at best lukewarm, and certainly no longer hot pursuit, when officers lose a suspect's trail in a residential neighborhood for eighteen minutes.

A police officer saw a suspect flee from the back of a house into a neighboring backyard. Instead of directly following the suspect, the officer hurried to his car, called for backup, and drove two blocks south to establish a perimeter around the area. At least eighteen minutes passed before a K-9 unit alerted in the direction of Plaintiffs' backyard, several houses away from where the suspect had disappeared. An officer with a K-9 searched the yard, rousing Plaintiffs' three dogs. Two of the dogs attacked the police K-9 and were shot and killed by an officer.

Plaintiffs Genoa Jones and Cornell Tinsley sued under 42 U.S.C. § 1983, claiming the officers and the City of North Las Vegas violated their Fourth Amendment right to be free from unwarranted searches and seizures. The district court granted summary judgment for the officers, reasoning that the officers' intrusion

* The Honorable Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

was permitted by the hot pursuit exception to the warrant requirement and that the use of force was reasonable under the circumstances. The district court also granted summary judgment for the city, finding no support for Plaintiffs' failure-to-train theory.

We reverse, in part, holding that there is no hot pursuit where officers lose track of a suspect for eighteen minutes. We affirm with respect to the K-9 handler's use of force and the claims against the city. We remand for further proceedings.

I.

On February 15, 2019, at 3:47 p.m., North Las Vegas Police Department ("NLVPD") Officers Joseph Minelli ("Officer Minelli") and Michael Rose ("Officer Rose") responded to a possible domestic battery at a house on a residential cul-de-sac. While Officer Minelli spoke with a woman at the door, Officer Rose moved to the side of the house, where he witnessed a person flee over the back wall to the south into a neighboring yard. Officer Rose ran to his patrol car to request assistance. He drove two streets south hoping to cut off whomever had fled but did not catch sight of the person again. Several units quickly responded and helped Officer Rose establish a multiple-block perimeter around the area.

Meanwhile, Officer Minelli stayed at the home to investigate the domestic battery allegation. The woman who answered the door denied that there was any domestic violence, but Officer Minelli observed injuries on her face, including several injuries around her eyes and a long cut across her chin that had been stitched. The woman told Officer Minelli that police were not welcome at her house and that her boyfriend—

whom officers suspected had battered the woman and whom they believed to be the person who fled—would be back that evening and police would need a warrant to apprehend him at the home. Officer Minelli remained at the address in case the suspect returned.

With a perimeter in place, officers believed nobody could leave the area without crossing their line of sight. A sergeant on scene decided to call for a K-9 unit to search for the suspect. NLVPD Lieutenant Scott Salkoff (“Lieutenant Salkoff”) and his police K-9 Storm (“Storm”) responded to the scene around 4:05 p.m., approximately eighteen minutes after Officer Rose saw the suspect flee.

Lieutenant Salkoff used Storm—who is trained to detect the odor of apocrine, a hormone some people release when they are afraid—to search within the perimeter. Lieutenant Salkoff informed residents of the searches using his patrol car’s public address system. He also sent NLVPD Officer Lee Young (“Officer Young”) ahead to seek consent from residents to search their yards.

Lieutenant Salkoff was searching a backyard four houses east and one house south of where the suspect vanished when Storm alerted to an odor coming from a distant, elevated position in the direction of Plaintiffs’ walled-in backyard.¹

¹ We know Storm’s alert came at least eighteen minutes after officers had last seen the person they were looking for—and, on the record before us, it may have been much later. Officer Rose saw someone flee at around 3:47 p.m. and Lieutenant Salkoff responded to the scene with Storm at approximately 4:05 p.m. Lieutenant Salkoff does not recall precisely when or where he started his search and says he may have searched one yard or more than a dozen yards before Storm smelled fear in the air.

Lieutenant Salkoff decided to search Plaintiffs' backyard. He had Officer Young check the gate, which was locked and posted with a "Beware of Dog" sign. Officer Young knocked on Plaintiffs' door to request their consent to search the yard but received no response because they were not home. To gain a vantage, Lieutenant Salkoff jumped onto the six-foot cinderblock wall that enclosed Plaintiffs' yard. He observed trash cans, where he thought the suspect might be hiding, and a fenced-in kennel area with an open gate and three dog houses and bowls but did not see any dogs.

With neither a warrant nor Plaintiffs' consent, Lieutenant Salkoff hopped down from the wall into their backyard. Officer Rose then passed Storm over the wall. Plaintiffs' three dogs were stirred from their doghouses, emerging to investigate the unwelcome strangers in their yard. Lieutenant Salkoff attempted to keep the dogs at bay, kicking them and placing trash cans between them and Storm. His efforts deterred one dog, but the other two— Shadow and Whitewall—attacked Storm. Lieutenant Salkoff drew his service weapon and killed both Shadow and Whitewall.

Despite officers scouring the neighborhood, they never found the person they were looking for.

Plaintiffs sued Lieutenant Salkoff, Officer Rose, and the City of North Las Vegas ("the City"), asserting several claims under 42 U.S.C. § 1983: Lieutenant Salkoff violated the Fourth and Fourteenth Amendments when, without a warrant, he entered Plaintiffs'

Officer Rose recalls that the search lasted for more than an hour and possibly for two or three hours.

backyard, and Officer Rose violated the same when he passed Storm into the yard; Lieutenant Salkoff violated the Fourth and Fourteenth Amendments when he unreasonably seized their dogs by shooting them dead; and the City was deliberately indifferent to the risk of these violations. Plaintiffs also brought a state law claim that Lieutenant Salkoff and the City violated Nevada Revised Statutes § 41.130.

The district court granted Defendants' motion for summary judgment on the constitutional claims, declined to exercise supplemental jurisdiction over the remaining state law claim, and entered judgment for Defendants. Plaintiffs timely appeal.

II.

We review a district court's grant of summary judgment de novo, *Spencer v. Pew*, 117 F.4th 1130, 1137 (9th Cir. 2024), including officers' entitlement to qualified immunity, *Sanderlin v. Dwyer*, 116 F.4th 905, 910 (9th Cir. 2024). In conducting this review, we take "the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Nehad v. Browder*, 929 F.3d 1125, 1132 (9th Cir. 2019); Fed. R. Civ. P. 56(e).

Qualified immunity protects government officials from liability under § 1983 "unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time." *Waid v. County of Lyon*, 87 F.4th 383, 387 (9th Cir. 2023) (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 62-63 (2018)). "Either prong can be adjudicated on appeal by taking the facts as most favorable to the plaintiffs and applying the pertinent legal standards to those facts." *Isayeva v. Sacramento*

Sheriff's Dep't, 872 F.3d 938, 945 (9th Cir. 2017). Defendants are entitled to qualified immunity where we find “a negative answer at either step.” *Sabbe v. Wash. Cnty. Bd. of Comm'rs*, 84 F.4th 807, 819 (9th Cir. 2023).

III.

“When a law enforcement officer physically intrudes on the curtilage” of a home, like a walled-in backyard, “a search within the meaning of the Fourth Amendment has occurred.” *Collins v. Virginia*, 584 U.S. 586, 593 (2018). “[A] small, enclosed yard adjacent to a home in a residential neighborhood . . . is ‘curtilage’ subject to Fourth Amendment protection.” *United States v. Struckman*, 603 F.3d 731, 739 (9th Cir. 2010) (quoting *United States v. Romero-Bustamante*, 337 F.3d 1104, 1108 (9th Cir. 2003)). Such searches are “presumptively unreasonable absent a warrant.” *Collins*, 584 U.S. at 593.

But the Fourth Amendment’s warrant requirement “is subject to certain exceptions.” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). An “exigent circumstance” such as “the hot pursuit of a fleeing suspect,” “the need to prevent the imminent destruction of relevant evidence,” and “the need to prevent the escape of a suspect” may constitute such an exception. *Struckman*, 603 F.3d at 743. To rely on the exigent circumstances exception, the government “must satisfy two requirements: first, the government must prove that the officer had probable cause to search,” and “second, the government must prove that exigent circumstances justified the warrantless intrusion.” *United States v. Johnson*, 256 F.3d 895, 905 (9th Cir. 2001) (en banc) (per curiam). Probable cause exists

where “the ‘facts and circumstances’ before the officer are sufficient to warrant a person of reasonable caution to believe” that a suspect would be found in a place. *Id.* (quoting *Brinegar v. United States*, 338 U.S. 160, 175 (1949)); *see also Newman v. Underhill*, 134 F.4th 1025, 1031 (9th Cir. 2025).

Lieutenant Salkoff and Officer Rose do not dispute that they physically intruded into Plaintiffs’ walled-in backyard—Lieutenant Salkoff by entering the yard and Officer Rose by passing Storm over the wall. Such a warrantless search is presumptively unreasonable. *See Collins*, 584 U.S. at 593. The district court assumed, without explanation, that Lieutenant Salkoff and Officer Rose conducted this warrantless search while in hot pursuit of a fleeing suspect. We disagree.

Hot pursuit fundamentally “means some sort of a chase.” *United States v. Santana*, 427 U.S. 38, 43 (1976). “The hot pursuit exception to the warrant requirement only applies when officers are in ‘immediate’ and ‘continuous’ pursuit of a suspect from the scene of the crime.” *Johnson*, 256 F.3d at 907 (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984)). To qualify as hot pursuit, a chase “need not be reminiscent of the opening scene of a James Bond film,” *Lange v. California*, 594 U.S. 295, 329 (2021) (Roberts, C.J., concurring). Officers act with sufficient speed to qualify as hot pursuit when they act immediately, making a “split-second decision” to pursue a suspect. *Stanton v. Sims*, 571 U.S. 3, 10 (2013) (per curiam).

But there is no hot pursuit where “the continuity of the chase was terminated permanently.” *Johnson*, 256 F.3d at 908. In *Johnson*, a suspect “ran into a wooded area where he was free to run for over a half

hour” rather than “into a confined area where [the police] could monitor his movements.” *Id.* On that basis, we determined that “the continuity of the chase was clearly broken and a warrant was required.” *Id.* We further noted that, “[a]lthough this requirement may be inconvenient to law enforcement, any other outcome renders the concept of ‘hot pursuit’ meaningless and allows the police to conduct warrantless searches while investigating a suspect’s whereabouts.” *Id.*

We recently observed in *Newman* that whether a pursuit’s continuity has been broken is a function of “two interrelated considerations.” 134 F.4th at 1033. First, “whether, and to what degree, the officer[] lost track of the suspect’s whereabouts.” *Id.* Second, whether, after losing sight of a suspect, the officer “continued to act with speed in attempting to apprehend the suspect.” *Id.* Timing is relevant to both considerations. As seconds and minutes tick by, the officer’s once-clear knowledge of a suspect’s position fades till they are no longer chasing a suspect but instead searching for him. “The more time passes without the officer’s physically chasing after the suspect . . . the more likely the continuity of the chase is to break.” *Id.*

In *Newman*, officers followed a suspect’s truck down a dead-end street where the suspect exited his vehicle and ran directly toward the back of the plaintiff’s house. *Id.* at 1028-29. Officers lost sight of the suspect for nine minutes but had probable cause to believe he was in the plaintiff’s house, given that the suspect had been headed in that direction, he was not in the backyard, the terrain and fences would have hindered his flight to an adjacent property, the plaintiff’s backdoor was unlocked, and the officer

perceived someone interacting with the backdoor at some point during the pursuit. *Id.* at 1031. We held that the pursuit's continuity was unbroken because the officers "had a reasonably good idea where [the suspect] was hiding" for the duration of the nine minutes after they lost sight of him. *Id.* at 1033.

Comparatively, here, Officer Rose last saw the suspect fleeing toward a different property—three houses west of Plaintiffs' home—rather than directly to the property that was later searched. Officer Rose neither chased after the person nor peered over the wall to monitor the person's movements, and instead unsuccessfully attempted to cut the suspect off by patrol car. Officers had seen neither hide nor hair of the suspect for at least eighteen minutes preceding their search, in which time the suspect's movements through a suburban neighborhood were completely unknown.

Defendants suggest that they reasonably believed the suspect was somewhere within the neighborhood, and therefore, the continuity of their search was unbroken. If we were to accept this argument, it would threaten to swallow the warrant requirement whole. Officers may not riffle through private spaces in an entire neighborhood merely because police have lost track of someone who earlier fled from them in the general vicinity. Lieutenant Salkoff and Officer Rose had no "reasonably good" basis for knowing where the suspect was—beyond that he was likely still in the neighborhood. *Id.* at 1033. Therefore, Defendants may not avail themselves of the hot pursuit exception to the Fourth Amendment's warrant requirement.

Defendants urge that Storm's alert salvaged the hot pursuit and gave them probable cause to search Plaintiffs' yard. Not so. Even if the dog sniff did give officers probable cause to believe the suspect was in Plaintiffs' yard, probable cause alone is insufficient to obviate the Fourth Amendment's warrant requirement—there must be both probable cause and an exigent circumstance. *Johnson*, 256 F.3d at 905.

Our case law was clear when these unfortunate events unfolded in February 2019 that a pursuit's continuity is broken when officers lose a suspect's trail, as happened here. We note that *Newman*, decided this year, is not only distinguishable but also does not bear on what was clearly established law in 2019. See *Sanderlin*, 116 F.4th at 916 (noting that “neither favorable nor damning subsequent legal developments can be used to demonstrate what law was or was not clearly established at the time of an officer's challenged conduct”). But *Johnson*, decided in 2001, made it abundantly clear to officers in 2019 that they may not sweep through an area and search the properties within it simply because they believe a suspect is somewhere therein. 256 F.3d at 907-08. Allowing such searches would turn back the clock to the age of English general warrants, which our founders firmly rejected with the inclusion of the Fourth Amendment. See *Payton v. New York*, 445 U.S. 573, 583 (1980).

Because Defendants lacked an exigent circumstance to search Plaintiffs' yard under clearly established law at the time of the incident, they are not entitled to qualified immunity and summary judgment was improper.

IV.

We turn now to the fate of Shadow and Whitewall. “Reasonableness is the touchstone of any seizure under the Fourth Amendment.” *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir. 2005). “To determine whether the shooting of the dogs was reasonable, we balance ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests at stake.’” *Id.* (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). We must judge the reasonableness of a particular use of force “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396.

When we evaluate an officer’s use of force following a warrantless intrusion into private space, we must not conflate the unreasonable seizure claim with the unreasonable search claim challenging the entry. *County of Los Angeles v. Mendez*, 581 U.S. 420, 428 (2017) (“[T]he objective reasonableness analysis must be conducted separately for each search or seizure that is alleged to be unconstitutional.”). Even where officers have violated clearly established law with a warrantless search, we cannot rely on that warrantless search to say that an officer’s otherwise reasonable subsequent use of force was excessive. *See id.* at 428-29.

Plaintiffs argue that Lieutenant Salkoff violated rights that were clearly established under *Hells Angels* when he shot their dogs. In *Hells Angels*, recognizing “that dogs are more than just a personal effect,” we found that killing dogs is a “severe” intrusion on Fourth Amendment protections. 402 F.3d at

975. But, in that case, officers had a week to plan the execution of the warrants, were aware guard dogs resided at the premises to be searched, and devised only to use a shotgun to handle any encounters with the dogs rather than employing less-intrusive means. *Id.* at 976. We emphasized in our decision that it was not a case “where the officer was reacting to a sudden unexpected situation” or needed to make a split-second judgment. *Id.* at 978.

By contrast, in this case, officers had minutes—not days—to discover and plan for handling any dogs in Plaintiffs’ backyard. Lieutenant Salkoff attempted to stir any dogs that might have been home before he entered the yard but saw no indications that dogs were present. Officers were unaware that the resident dogs were pit bulls, as opposed to a breed that may have been less sensitive to the intrusion or more readily controllable by Lieutenant Salkoff. For these reasons, the facts in this case are sufficiently distinguishable from those in *Hells Angels* that we cannot say Lieutenant Salkoff’s actions in this more spontaneous confrontation violated clearly established law.

Because Plaintiffs do not offer, and we cannot find, any cases clearly establishing that Lieutenant Salkoff’s actions were unreasonable, he is entitled to qualified immunity and summary judgment with respect to his use of force against Plaintiffs’ dogs.

We note, however, that Lieutenant Salkoff and Officer Rose may still be liable to Plaintiffs for the deaths of their dogs as a natural consequence of the warrantless search of their yard. *Tatum v. Moody*, 768 F.3d 806, 817 (9th Cir. 2014) (“Under § 1983, ‘a person is responsible for the natural consequences of his actions.’” (simplified)) (quoting *Monroe v. Pape*,

365 U.S. 167, 187 (1961), *overruled in part on other grounds by Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)); *Mendez*, 581 U.S. at 431 (stating that, even where plaintiffs “cannot recover on their excessive force claim, that will not foreclose recovery for injuries proximately caused by the warrantless entry”).

V.

Cities may be held liable under § 1983 for constitutional violations committed by their officers. *See Monell*, 436 U.S. at 694. To establish such liability, Plaintiffs must prove “(1) [they were] deprived of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate indifference to [their] constitutional right; and (4) the policy was the moving force behind the constitutional violation.” *Lockett v. County of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020). A municipal policy can be, among other things, “a failure to train [or] supervise.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 603 (9th Cir. 2019).

Plaintiffs contend that the City failed to provide officers with adequate training and supervision regarding warrantless searches and the lawful use of a service weapon on pet dogs. To establish municipal liability under such a theory, the failure to train must “amount to ‘deliberate indifference to the rights of persons with whom the [untrained employees] come into contact.’” *Connick v. Thompson*, 563 U.S. 51, 61 (2011) (alteration in original) (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)). Because the municipality must have had “actual or constructive notice [of] a particular omission in their training program” to demonstrate deliberate indifference, a plaintiff

must typically provide evidence of “[a] pattern of similar constitutional violations by untrained employees.” *Id.* at 61-62.

Plaintiffs’ *Monell* claim on warrantless searches fails because Plaintiffs have not offered any evidence of a pattern of warrantless search violations or other evidence of constructive notice such that the City was deliberately indifferent to Plaintiffs’ Fourth Amendment rights. As for the use-of-force claim, Plaintiffs note that the City settled three prior suits involving dog-shootings, each with different facts than those presented here, during a five-year period. Even if those settlements suggest that the police may have acted wrongfully in those cases, evidence of “sporadic” or “isolated” wrongdoing is generally insufficient to establish “that the conduct has become a traditional method of carrying out policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996); *see also Connick*, 563 U.S. at 62-63. Therefore, the City is entitled to summary judgment on Plaintiffs’ *Monell* claims.²

VI.

We reverse the district court’s grant of qualified immunity and summary judgment to Lieutenant Salkoff and Officer Rose with respect to their search of Plaintiffs’ backyard. Because the district court declined to exercise supplemental jurisdiction over Plaintiffs’ state law claim solely based on its grant of summary judgment to Defendants on all of Plaintiffs’

² Plaintiffs also do not argue that the consequences of a failure to train on warrantless searches are so “patently obvious” that the City could be liable “without proof of a pre-existing pattern of violations.” *Connick*, 563 U.S. at 64.

federal claims, its dismissal of that claim is also reversed. *See Brodheim v. Cry*, 584 F.3d 1262, 1273 (9th Cir. 2009). We affirm the district court's grant of summary judgment in all other respects. We remand for further proceedings.

The parties shall bear their own costs on appeal.

**AFFIRMED IN PART; REVERSED IN PART;
REMANDED.**

**ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT, U.S. DISTRICT
COURT FOR THE DISTRICT OF NEVADA
(APRIL 29, 2024)**

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GENOA JONES AND CORNELL TINSLEY,

Plaintiffs,

v.

CITY OF NORTH LAS VEGAS, ET AL.,

Defendants.

Case No. 2:21-cv-00241-CDS-DJA

Before: Cristina D. SILVA,
United States District Judge.

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
AND CLOSING CASE [ECF NO. 35]**

Plaintiffs Genoa Jones and Cornell Tinsley bring this civil-rights action under 42 U.S.C. § 1983, and related claims, against the City of North Las Vegas and two of its police officers, Lieutenant (Lt.) Scott Salkoff¹ and Officer (Ofc.) Michael Rose, stemming

¹ At the time of the underlying events, Salkoff was a Sergeant, and he is identified as such in the complaint. *See* ECF No. 1.

from the fatal shooting of two of their dogs in February of 2019. *See* ECF No. 1. Defendants move for summary judgment on all claims. ECF No. 35. Plaintiffs oppose the motion. ECF No. 45. The motion is fully briefed. *See* ECF No. 49.

For the reasons asserted herein, I find that defendants are entitled to qualified immunity on the § 1983 claims against Lt. Scott Salkoff and Ofc. Michael Rose, so I grant defendants' summary judgment motion. Further, because I do not find that defendants have a long-standing unconstitutional policy, custom or practice, I grant defendants' summary judgment on plaintiffs' *Monell* claim. Last, because no federal claims remain, I decline to exercise supplemental jurisdiction over plaintiffs' remaining state claim for conversion, so I remand the claim to state court. I kindly ask the Clerk of Court to enter judgment accordingly, and to close this case.

I. Background

On February 15, 2019, Ofc. Rose and another non-party officer, Joseph Minelli, responded to a potential in-progress, domestic battery call on St. Peter Court in North Las Vegas, Nevada. Minelli Report,² Defs.' Ex. A, ECF No. 35-2 at 5. The caller identified both the potential suspect (Shapiro) and victim (Konold).³

But according to his deposition, he is now a Lieutenant. *See* Salkoff Dep., ECF No. 35-5 at 5:24-6:1.

² Police reports may be considered at summary judgment. *See Lawrence v. City and Cnty. of San Francisco*, 258 F. Supp. 3d 977, 986 (N.D. Cal. 2017) (finding police reports may be considered at summary judgment because the information can be presented at trial through the testimony of the author of the reports).

³ Shapiro and Konold are not parties to this action.

Id. According to Officer Minelli's report, Officers Rose and Minelli approached the home and rang the doorbell. *Id.* In response, the front door opened about six inches but then was immediately shut. *Id.* Officer Minelli reported that he immediately grabbed the door handle and attempted to open the door, but it was locked. *Id.* The officers then knocked on the door while loudly announcing "Police." *Id.* Shortly thereafter, Konold answered the door, appearing flustered. *Id.* Officer Minelli ordered Konold out of the house numerous times, however, Officer Minelli reported that instead of complying, it seemed like Konold was stalling by advising that she needed to put away her dogs. *Id.* At the same time, Ofc. Rose began running back to his patrol vehicle because he had just observed Shapiro exit the back of the house and jump a wall, fleeing the area. *Id.* Officer Minelli stayed at the residence engaging in an uncooperative conversation with Konold,⁴ while Ofc. Rose set up a perimeter and began searching for Shapiro.⁵ *Id.* at 6.

⁴ Konold had visible injuries on her face. Konold told Ofc. Rose that she sustained the injuries from falling in her garage. Minelli Police Report, Pl.'s Ex. A, ECF No. 35-2 at 5.

⁵ A records check of Shapiro showed he had active warrants for misdemeanor domestic violence and driving without a license, as well as 11 prior arrests for various offenses including obstruction, robbery, assault with a deadly weapon, battery with substantial bodily harm, carrying a concealed weapon, and more. Salkoff Report, Defs.' Ex. C, ECF No. 35-4 at 4. During his deposition, Lt. Salkoff testified he was aware of Shapiro's "violent past," and that "coupled with the violence of this particular crime . . . and a few other factors" met the needs for him to do his search. Salkoff's Dep., Defs.' Ex. D, ECF No. 35-5 at 82:14-25.

Lt. Salkoff and his K-9 officer, Storm, responded to the scene to assist in the search for Shapiro. *Id.*; Salkoff Police Report, Defs.' Ex. C, ECF No. 35-4. According to Lt. Salkoff's report, prior to him and Storm beginning their search for Shapiro, Salkoff made several "K9 announcements via [his] vehicle's Public Address system." *Id.* at 4. The investigation included searching a residence located at 3804 Vidalia in North Las Vegas.⁶ *Id.* Lt. Salkoff reported that because no one was home, he jumped the wall into the backyard of that residence with Storm and began their search. *Id.* As Lt. Salkoff and Storm approached the west wall (between 3808 and 3804 Vidalia), Storm lifted his head and changed his behavior (*i.e.*, alerted) which Salkoff recognized as a sign that Storm had picked up an odor of some kind. *Id.*; see also Salkoff Dep., Defs.' Ex. D, ECF No. 35-5 at 88:1-21. There was a locked gate between the houses, so Lt. Salkoff assisted Storm over the wall to the front of the house, then jumped up onto the wall to get out of the yard. Salkoff Dep., ECF No. 35-4 at 4. As he did, Lt. Salkoff observed three "dogloos"⁷ and bowls in the backyard of 3808 Vidalia but did not see any dogs or evidence of dogs being present. ECF No. 35-5 at 92:4-14. Lt. Salkoff then whistled and made other noises to see if dogs would respond but saw no move-

⁶ Lt. Salkoff's report states he began his search at the 3804 address, but during his deposition Salkoff testified he began his search at 3718 Vidalia. *Compare* ECF No. 35-4 at 4, *with* ECF No. 35-5 at 204:25-205:7. Either way, there is no dispute that at some point, Salkoff and Storm ended up at plaintiffs' residence, located at 3808 Vidalia. *See* ECF No. 35-4 at 4; ECF No. 35-5 at 204:25-205:7.

⁷ Lt. Salkoff explained that a "dogloo" is an igloo for dogs. ECF No. 35-5 at 92:15-25.

ment or any other signs that dogs were in the yard. *Id.* at 94:11-20.

Lt. Salkoff was met by Officer Young⁸ at the front of 3808 Vidalia, who advised that he rang the doorbell, but no one came to the door. Salkoff Report, Defs.' Ex. C, ECF No. 35-4 at 4. Ofc. Young told Lt. Salkoff that there was a "Beware of Dog" sign on the west side of the house, and that he had whistled and shook the gate but did not see or hear signs of any dogs. *Id.* Based on Storm's alert, and finding no signs of any dogs in the yard, Lt. Salkoff decided the backyard should be searched. *Id.* Ofc. Young remained at the front of the house while Lt. Salkoff jumped the wall into the backyard of the residence. *Id.* Ofc. Rose then lifted Storm over the wall, who was given a verbal command to lie down. *Id.*; Salkoff Dep., Defs.' Ex. D, ECF No. 35-5 at 95:4-96:3. Lt. Salkoff began searching the yard, starting with two large trash cans, which he opened and confirmed no one was hiding inside. Salkoff Dep., Defs.' Ex. D, ECF No. 35-5 at 96:4-16. It was then that Lt. Salkoff saw one pit bull exiting a dogloo, who was then joined by another dog, who immediately ran up to Lt. Salkoff and Storm. *Id.* at 97:7-15. Lt. Salkoff used his legs to push the dogs away and isolate the dogs from him and Storm by placing the trash cans as a barrier between them and the dogs. *Id.* at 97:17-98:4. One of the pit bulls, described as darker in color, turned aggressive, forced itself in between the trash cans and attacked Storm, biting his ear. Salkoff Report, Defs.' Ex. C, ECF No. 35-4 at 4. Storm yelped and pulled away from that darker colored pit bull when a second pit bull came

⁸ Ofc. Young is not a part to this action.

forward and bit Storm somewhere on his head. *Id.* Lt. Salkoff then saw the third pit bull approaching. *Id.* Lt. Salkoff attempted to kick all three dogs to get them to run away but only the last pit bull to approach Storm retreated. *Id.* The other two pit bulls—identified by plaintiffs as Shadow and White-wall⁹—would not release their grip on Storm. *Id.* Lt. Salkoff attempted to pull the black pit bull off Storm but while he was doing so, the black pit bull began to “thrash” his head side to side and bit Storm in his throat area. *Id.*; *see also* Salkoff Dep., Defs.’ Ex. D, ECF No. 35-5 at 98:5-7, 16-17. Lt. Salkoff reported that because he believed the dogs were going to or attack him or severely injure or kill Storm, he drew his department issued Glock 17, 9 mm handgun and once shot each of the two pit bulls who were attacking Storm, instantly killing both. Salkoff Report, Defs.’ Ex. C, ECF No. 35-4 at 4; *see also* Salkoff Dep., Defs.’ Ex. D, ECF No. 35-5 at 98:24-99:1 (explaining that “dispatching” means to shoot the dogs). During his deposition, Lt. Salkoff explained that he decided to shoot the dogs, instead of using a less lethal option, because there were two dogs attacking, and he determined that either using a baton or pepper spray would not have been effective. *See* Salkoff Dep., Defs.’ Ex. D, ECF No. 35-5 at 99:15-103:21. Lt. Salkoff also discussed that using his taser would not have been effective as it could have caused the dog being tased to clench down on Storm’s throat harder. *Id.* at 101:8-19. Storm had several puncture wounds and had to receive stitches from the incident. *Id.* at 104:12-17. Lt. Salkoff testified that he spoke to one plaintiff,

⁹ ECF No. 1 at 2.

identified in his report as Tinsley,¹⁰ before taking Storm to the veterinarian for treatment. *Id.* at 105:10-21.

Plaintiffs filed a complaint in this court against: Lt. Salkoff and Ofc. Rose for unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments; Lt. Salkoff for killing their dogs in violation of the Fourth and Fourteenth Amendments; the City for municipal liability for failing to provide adequate training and supervision regarding unreasonable searches and seizures and lawful use of a service weapon on pet dogs which amounts to deliberate indifference in violation of the Fourth and Fourteenth Amendments; and Lt. Salkoff and the City for conversion in violation of NRS § 41.130. *See generally* ECF No. 1.

II. Legal standard

A. Summary Judgment

Summary judgment is appropriate when the pleadings and admissible evidence “show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing Fed. R. Civ. P. 56(c)). At the summary judgment stage, the court views all facts and draws all inferences in the light most favorable to the non-moving party. *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986). If reasonable minds could differ on material facts, summary judgment is inappropriate because its purpose

¹⁰ ECF No. 35-4 at 5.

is to avoid unnecessary trials when the facts are undisputed; the case must then proceed to the trier of fact. *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); *see also Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Once the moving party satisfies Rule 56 by demonstrating the absence of any genuine issue of material fact, the burden shifts to the party resisting summary judgment to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323. “To defeat summary judgment, the nonmoving party must produce evidence of a genuine dispute of material fact that could satisfy its burden at trial.” *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

B. Qualified Immunity

“In § 1983 actions, qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Sampson v. Cnty. of Los Angeles*, 974 F.3d 1012, 1018 (9th Cir. 2020) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). “Clearly established” means that the statutory or constitutional question was “beyond debate,” such that every reasonable official would understand that what he is doing is unlawful. *See District of Columbia v. Wesby* 583 U.S. 48, 62 (2018); *Vos v. City of Newport Beach*, 892 F.3d 1024, 1035 (9th Cir. 2018). Relevant case law “does not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.”

White v. Pauly, 580 U.S. 73, 79 (2017) (cleaned up). The court may evaluate the qualified immunity prongs in any order. *Felarca v. Birgeneau*, 891 F.3d 809, 815-16 (9th Cir. 2018).

Further, the Supreme Court has “repeatedly told courts . . . not to define clearly established law at a high level of generality. *City and Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 613 (2015) (quotation marks omitted), because such immunity “is effectively lost if a case is erroneously permitted to go to trial.” *Pearson*, 555 U.S. at 231. In other words, “immunity protects ‘all but the plainly incompetent or those who knowingly violate the law.’” *Id.* (quoting *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)).

In the Ninth Circuit, if a defendant affirmatively raises qualified immunity as a defense, the plaintiff bears the burden of demonstrating that both prongs are met. *Isayeva v. Sacramento Sheriff’s Dept.*, 872 F.3d 938, 946 (9th Cir. 2017).

III. Discussion

Defendants contend that they are entitled to summary judgment because (1) plaintiffs fail to demonstrate a constitutional violation; (2) the officers are entitled to qualified immunity for the federal claims and discretionary immunity on the state law claims; and (3) plaintiffs’ *Monell* claim fails without a demonstrated constitutional violation, nor can plaintiffs establish that the City has a “policy, practice, custom, or scheme” that caused any alleged constitutional violation. *See generally* ECF No. 35. Plaintiffs aver that defendants are not entitled to immunity of any sort, and that there are many genuine disputes of material fact precluding summary judgment, namely their

asserted unreasonableness of the officers' entry onto their property and the reasonableness of shooting their dogs. *See generally*, ECF No. 45. Plaintiffs further argue there is sufficient evidence supporting their *Monell* claim. *Id.* at 39-40.

A. The Officers are Entitled to Qualified Immunity

The Supreme Court has recognized that the killing of a dog is a seizure under the Fourth Amendment and can give rise to a cognizable § 1983 claim. *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir. 2005). The Ninth Circuit instructs courts to look at the totality of the circumstances when determining whether the shooting of a plaintiff's dog, resulting in the dog's death, was "reasonably necessary to effectuate the [officer's duties]" balanced with "the nature of quality of the intrusion" on the plaintiff's Fourth Amendment interests "against the countervailing government interests at stake." *Id.* There are no per se rules when "[d]etermining the reasonableness of an officer's actions." *Torres v. City of Madera*, 648 F.3d 1119, 1124 (9th Cir. 2011) (citing *Scott v. Harris*, 550 U.S. 372, 383 (2007)). Rather that determination is highly fact intensive. *Id.* Traditionally, reasonableness is left for a jury to decide. *Liston v. Cnty. of Riverside*, 120 F.3d 965, 976 n.10 (9th Cir. 1997). But a defendant "can still win on summary judgment if the district court concludes, after resolving all factual disputes in favor of the plaintiff, that the officer's use of force was objectively reasonable under the circumstances." *Id.* (quoting *Scott v. Henrich*, 39 F.3d 912 (9th Cir. 1994)).

In order to resolve this motion, the court must evaluate first the actions of Lt. Salkoff and Ofc. Rose upon entering the plaintiffs' property. Then the court must consider their actions once on the property. Last, the court evaluates plaintiffs' *Monell* claim.

1. The Officers Did Not Violate a Clearly Established Right by Entering Plaintiffs' Property While in Pursuit of a Misdemeanor Domestic Violence Suspect

As discussed in more detail below, the facts of this case present similar issues to other cases in this circuit involving the use of lethal force against animals. Making this case distinguishable from those cases is the fact that defendants were in pursuit of a misdemeanor domestic violence suspect. Thus, before the court can resolve the officers' actions once on plaintiffs' property, I must first determine whether the officers violated a clearly established right by entering onto plaintiffs' property in the first place.

In *Stanton v. Sims*, the Supreme Court determined that an officer, while pursuing someone who was suspected of committing a misdemeanor offense, was entitled to qualified immunity for kicking open a gate and entering private property while in pursuit of the suspect. 571 U.S. 3 (2013). In concluding that the officer was entitled to qualified immunity, the court found that "the law regarding warrantless entry of a hot pursuit [] fleeing misdemeanant is not clearly established." *Id.* The court held the proper question to ask was not whether the officer violated the Constitution but whether the officer was "plainly incompetent" when he entered the private yard in

pursuit of the suspect; the Court answered the question in the negative, finding he was not. *Id.* at 6.

Eight years later, the court decided *Lange v. California*, in an attempt to resolve a split of authority on whether the Fourth Amendment permits warrantless home entries in pursuit of a fleeing misdemeanor. 141 S. Ct. 2011 (2021). In that case, an officer attempted a traffic stop of Lange for suspected driving under the influence, but he did not stop. Instead, Lange drove into the driveway of his home and entered his attached garage. *Id.* at 2016. The officer followed Lange into his garage where the officer then questioned and performed field sobriety tests on him. The *Lange* court found that “[t]he flight of a suspected misdemeanor does not always justify a warrantless entry into a home,” rather, “[a]n officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency.” *Id.* at 2024. The Court found that the circumstances in *Lange* did not justify the officer’s warrantless entry onto Lange’s personal property. *Id.* at 2024-2025. *Lange* also found that a suspect’s flight is part of the calculus that should be considered when officers are conducting investigations into fleeing misdemeanants, holding that “[w]hen the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting. And those circumstances, as described just above, include the flight itself.” *Id.* at 2021-2022.

Stanton and *Lange* demonstrate that neither Lt. Salkoff nor Ofc. Rose violated a clearly established right by entering onto plaintiffs’ property in pursuit of a misdemeanor domestic violence suspect. The

events that gave rise to this action took place in 2019, when *Stanton*'s 2013 holding that the warrantless entry in hot pursuit of fleeing misdemeanor was "not clearly established" controlled. And this case also occurred almost two years before the Supreme Court issued *Lange*, which clarified when chasing a fleeing suspect is unacceptable but did not provide a bright line rule on whether or not law enforcement can chase misdemeanor domestic violence suspects. Instead, the court determined that the totality of the circumstances controls and requires consideration of imminent harm to others, destruction of evidence, amongst other exceptions, to include flight itself. Accordingly, at the time the defendants entered plaintiffs' property in hot pursuit, they did not violate a clearly established right and are therefore entitled to qualified immunity.

2. Lt. Salkoff and Ofc. Rose Did Not Violate a Clearly Established Right by Using Lethal Force Against Plaintiffs' Dogs

Ninth Circuit cases addressing the use of lethal force against dogs demonstrate the defendants did not violate a clearly established right by utilizing lethal force against plaintiffs' dogs and are therefore entitled to qualified immunity.

In *Wickersham v. Washington*, the Ninth Circuit affirmed the trial court's grant of qualified immunity where an officer, who was investigating a possible fishing violation, shot a 70-80 pound Doberman that appeared and ran down some stairs at the officer who was approaching a home after announcing her presence several times. 2015 WL 224810, at *2 (W.D.

Wash. Jan. 15, 2015), *aff'd*, 694 F. App'x 559 (9th Cir. 2017). The Doberman was wearing a shock collar and bore its teeth at the officer, who yelled to the dog's owner to secure the dog. *Id.* Like in this case, the dog in *Wickersham* was found to have run at the officer within a matter of seconds. *Id.* Fearing the dog was going to kill her, the officer fired two rounds at the Doberman. *Id.* The Ninth Circuit concluded that the seizure was reasonable and that there was no clearly established law holding that the officer's conduct violated the Fourth Amendment. *See id.*

In comparison, in an unpublished case, the Ninth Circuit affirmed the trial court's finding that the shooting of a dog was reasonable and did not violate any clearly established rights where a 120-pound pit bull charged at an officer in the backyard of the home that the officer entered after hearing a gun shot and moaning noises coming from the yard. *See Patino v. Las Vegas Metro. Police Dep't*, 706 F. App'x 427 (9th Cir. 2017). The *Patino* trial court concluded that the search was reasonable and no clearly established law prohibited the officer's response to the emergency situation because (1) the officer had roughly five seconds to react to a 120-pound pit bull, (2) the dog was running at him aggressively, (3) the other officer on scene also drew a weapon and perceived the dog to be a threat, (4) the officer yelled at the dog to stop, and (5) the officer shot and killed the dog when it was within two feet of him. *See Patino v. Las Vegas Metro. Police Dep't*, 207 F. Supp. 3d 1158, 1164-66 (D. Nev. 2016). The trial court distinguished the facts of the emergency scenario in *Patino* from those in *Hells Angels*, where the officers failed to plan to address the dogs they knew were on the property.

See id. at 1165-66. On these facts, the Ninth Circuit affirmed and found that the seizure in *Patino* was reasonable and did not violate any clearly established rights. *See Patino*, 706 F. App'x at 427.

In a recent case, *Miller v. Nye County*, the Ninth Circuit affirmed the trial court's finding that a Nye County officer was entitled to qualified immunity where he responded to a silent alarm at a property where he was confronted by a 56-pound pit bull that charged at him. 2021 WL 4486345, at *2-3 (D. Nev. Sept. 30, 2021), *aff'd sub nom, Miller v. Cnty. of Nye*, 2022 WL 16570782 (9th Cir. Nov. 1, 2022). The officer verbally told the dog "oh don't do it doggie. Stop it. Stop it," but the dog did not stop his approach. *Id.* at *2. Consequently, the officer shot the dog named "Blu." *Id.* Blu was later euthanized due to the injuries he sustained. *Id.* at *3. The shooting occurred on property that was surrounded by an 8-foot-tall perimeter fence and had no "beware of dog" sign. *Id.* at *2. The officer entered the property without waiting for backup because the officer found the repeat activation of the silent alarm was "abnormal," and he was concerned that there could be a hostage or domestic violence situation afoot. *Id.* at *3. Discovery revealed that the officer falsified a certificate showing he completed state-mandated training for law enforcement regarding on-duty-dog-encounters. *Id.* The trial court found that, speaking generally, the lying about completing a training may be a violation of state criminal law but "a violation of state law does not lead to liability under § 1983." *Id.* (citing *Campbell v. Burt*, 141 F.3d 927, 930 (9th Cir. 1998) (citing *Davis v. Scherer*, 468 U.S. 183, 194 (1984) ("Officials sued for constitutional violations do not lose their qualified

immunity merely because their conduct violates some statutory or administrative provision.”)); *Doe v. Connecticut Dep’t of Child & Youth Servs.*, 911 F.2d 868, 869 (2nd Cir. 1990) (“A violation of state law neither gives plaintiffs a § 1983 claim nor deprives defendants of the defense of qualified immunity to a proper § 1983 claim.”)).

In comparison, in *Criscuolo v. Grant County*, the Ninth Circuit reversed a trial court’s summary judgment in favor of a law enforcement officer who shot a dog because it may have been attacking the officer’s police dog. 540 F. App’x 562, 563 (9th Cir. 2013). The Ninth Circuit found that the factual determinations of the trial court, taken in the light most favorable to the plaintiff, did not support summary judgment because the plaintiff’s dog and police dog had separated at the time of the shooting, and that plaintiff’s dog “was not springing toward [the police dog],” and that plaintiff’s dog “was either stationary or retreating at a distance of 10-20 feet from” the police officer and the police dog. *Id.* Considering the trial court’s factual findings, the Ninth Circuit concluded that plaintiff’s dog “posed no imminent threat” to the officer’s police dog, such that the officer “did not need to make any-split second decision” to protect his dog. *See id.* (citations omitted).

In another case, *Thurston v. City of North Las Vegas Police Department*, the court held that the officers’ seizure violated the clearly established law that “a reasonable officer ‘should have known that to create a plan to enter the perimeter of a person’s property, knowing all the while about the presence of dogs on the property, without considering a method of subduing the dogs besides killing them, would violate

the Fourth Amendment.” 552 F. App’x 640 (9th Cir. 2014) (quoting *Hells Angels*, 402 F.3d at 978). In reversing the grant of summary judgment, the Ninth Circuit found the shooting of two pet dogs during execution of a high-risk warrant was unreasonable and thus precluded summary judgment because police waited 20 minutes after entering the home before shooting the dogs and because there was a genuine dispute of fact over how the dogs were behaving just before the dogs attacked the officers. *Id.* at 642.

Considering the facts of this case together with the aforementioned cases, I find this case aligns more with *Patino* and *Miller* than with *Hells Angels*, *Criscuolo*, or *Thurston*. This case involved a dynamic situation where officers were in pursuit of a fleeing suspect, during which a K-9 officer was approached and ultimately attacked by plaintiffs’ dogs. Unlike *Lange*, where the investigation involved a non-violent offender, the officers here were investigating a domestic violence crime, which the Supreme Court has found to be a crime of violence. *See United States v. Castleman*, 572 U.S. 157, 173 (2014) (a conviction for having “intentionally or knowingly cause[d] bodily injury to” the mother of Castleman’s child qualifies as a “misdemeanor crime of domestic violence.”); *see also Voisine v. United States*, 579 U.S. 686, 686 (2016) (a reckless domestic assault qualifies as a “misdemeanor crime of domestic violence” under § 922(g)(9)). Thus, the question of whether the officers violated a statutory or constitutional right here was not clear at the time.

In fact, *Lange* addressed the split in authority on warrantless entries during pursuit of a misdemeanant two years *after* the events that gave rise to this case. Stated otherwise, it was not “beyond debate” that

officers were not permitted to conduct warrantless entry onto plaintiffs' property during their pursuit of Shapiro.

Further, in viewing the evidence in the light most favorable to the plaintiffs, and in evaluating the totality of the circumstances, I find the decision to shoot Shadow and Whitewall was objectively reasonable.¹¹ Plaintiffs argue that "when police know or should know of a pet dog's presence on a property—and therefore have time to take precautions and attempt to use non-lethal options to control dogs they

¹¹ "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *See Kisela v. Hughes*, 584 U.S. 100, 103 (2018) (citation omitted) (addressing reasonableness of the use of force under Fourth Amendment standards). Part of the reasonableness calculus "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* (citation omitted). The facts of this case fit squarely into the type of situation where officers must make a split-second judgment call, here, a judgment-call that ended in tragedy for the plaintiffs who lost their dogs. Thus, it was not clearly established that it was unreasonable for Lt. Salkoff to use lethal force when the plaintiffs' dogs began attacking Storm. *See Alexander v. Cnty. of Los Angeles*, 64 F.3d 1315, 1320 (9th Cir. 1995) (addressing the lawfulness of an arrest under the Fourth Amendment, holding "[i]t is well settled that when an officer reasonably believes force is necessary to protect his own safety or the safety of the public, measures used to restrain individuals, such as stopping them at gunpoint and handcuffing them, are reasonable."); *see also Hopson v. Alexander*, 71 F.4th 692, 706 (9th Cir. 2023) (also applying a Fourth Amendment analysis, holding there was no clearly established law preventing officers from acting quickly and with moderate force to ensure that an armed robbery suspect was detained without incident.).

may encounter—resorting to lethal force on a pet dog constitutes an unreasonable seizure in violation of the Fourth Amendment.” ECF No. 45 at 38. As a threshold matter, I agree with plaintiffs that between the “Beware of dog” sign and the “dogloos,” the officers here, at a minimum, should have known of the presence of pet dogs. However, it was clearly established that officers may not “plan[] to use only lethal force on aggressive dogs that they knew they might encounter while executing a search warrant, *with no plan for less lethal options whatsoever*.” *Aguaristi v. Cnty. of Merced*, 2022 U.S. Dist. LEXIS 116757, at *41 (E.D. Cal. June 30, 2022) (emphasis added) (citing *Hells Angels*, 402 F.3d at 978). The defendants were not in a planned search warrant, but were engaged in an active, on-going search of a fleeing suspect. Lt. Salkoff and Ofc. Rose took steps to determine if there were any dogs on the property before entering the backyard. Then, once Lt. Skaloff and Storm entered the plaintiffs’ backyard and the plaintiffs’ dogs emerged, Lt. Skaloff made clear non-lethal attempts to manage the situation prior to using deadly force: attempting to physically separate himself and Storm (which failed) and attempting to scare the pit bulls¹² into fleeing (which succeeded with one of the three). He used deadly force only once Storm’s life appeared

¹² The court also accounts for the quantity of dogs Officer Salkoff was facing at the time—three at once—and the breed. See *Brown v. Battle Creek Police Dep’t*, 844 F.3d 556, 572 (6th Cir. 2016) (emphasizing the dog’s breed and taking into account “the nature and size of the dogs”); *Niesen v. Garcia*, 2016 WL 4126382, at *9 (E.D. Cal. July 5, 2016) (noting that “[t]he deputies were also dealing with a breed of dog, [a pit bull], that is known for fighting, aggressive behavior, and causing serious injury”).

to be at imminent risk, and as discussed in his deposition, less deadly options were not reliably effective ways to ensure both his dog's and his own safety in that exigent moment. Salkoff Dep., Defs.' Ex. D, ECF No. 35-5 at 99:15-103:21. For those reasons, I find that Lt. Salkoff and Ofc. Rose did not violate a clearly established right by their actions which resulted in the deaths of Shadow and Whitewall. *See Aguaristi*, 2022 U.S. Dist. LEXIS 116757 at, *46-48 (finding no violation of clearly established right where officer shot dog after entering property to execute lawful arrest when, at the time of entry, the officers knew dogs were present, planned to use non-lethal methods to subdue (pepper spray and a baton), and officer resorted to lethal force only after use of pepper spray failed to subdue dog who had become aggressive and lunged at her). Because I find that Lt. Salkoff and Ofc. Rose did not violate a clearly established right of which a reasonable person would know, they are entitled to qualified immunity. Accordingly, I grant their motion for summary judgment on the § 1983 claims against them.

B. The Plaintiffs' *Monell* Claim Cannot be Supported Without an Underlying Constitutional Violation

A local government may be sued under § 1983 only under certain circumstances. *Monell v. NYC Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). To establish municipal liability, plaintiffs must plausibly allege that “(1) [they were] deprived of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate indifference to [their] constitutional right[s]; and (4) the policy was the moving force behind the constitutional violation[s].” *Lockett*

v. Cnty. of Los Angeles, 977 F.3d 737, 741 (9th Cir. 2020). The policy can be an official policy, a “pervasive practice or custom,” a failure to train or supervise, or an “act by a final policymaker.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602-03 (9th Cir. 2019). Liability under a theory of respondeat superior is insufficient to confer § 1983 municipal liability. *Id.* at 603. Thus, municipal liability only attaches when execution of a government policy or custom inflicts a plaintiff’s injury. *See Monell*, 436 U.S. at 694; *Bd. of Cnty. Comm’rs of Bryan Cnty., Okl. v. Brown*, 520 U.S. 397, 403 (1997).

A necessary condition to a *Monell* claim is that the plaintiff must demonstrate that he suffered a violation of their constitutional rights. *See Munger v. City of Glasgow Police Dep’t*, 227 F.3d 1082, 1087 (9th Cir. 2000) (“To hold a [] department liable for the actions of its officers, the [plaintiffs] must demonstrate a constitutional deprivation[.]”). Plaintiffs allege summary judgment on their *Monell* claim is improper because “there is a genuine dispute of material fact as to whether the City of North Las Vegas failed to adequately train its officers to avoid the constitutional violations which took place here.” ECF No. 45 at 40. But for the reasons stated above, the record does not support that defendants violated a clearly established right. And fatal to plaintiffs’ *Monell* claim is their failure to cite to admissible evidence showing a pattern of similar constitutional violations by allegedly untrained employees. “Absent a formal governmental policy, [a plaintiff] must show a ‘longstanding practice or custom which constitutes the standard operating procedure of the local government entity.’” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996)

(quoting *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992)). Here, plaintiffs cite two cases against North Las Vegas involving lethal force against dogs. See 2:14-cv-01475-JAD-NJK and 2:15-cv-01772-JCM-DJA. But even taking both of those cases into account, they involve activity that took place back in 2013—six years before the events that gave rise to this action. This is insufficient to demonstrate a genuine issue of material fact demonstrating the

City has a longstanding practice or custom that equates to the standard operating procedure for local government entity. See *Trevino*, 99 F.3d at 918 (“Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency and consistency that the conduct has become a traditional method of carrying out that policy.”); see also *Thompson v. City of L.A.*, 885 F.2d 1439, 1443-44 (9th Cir. 1989) (“Consistent with the commonly understood meaning of custom, proof of random acts or isolated events are insufficient to establish custom.”) *overruled on other grounds*, *Bull v. City & Cty. of San Francisco*, 595 F.3d 964 (9th Cir. 2010) (en banc). Consequently, plaintiffs’ *Monell* claim for relief fails as a matter of law. I thus grant the defendants summary judgment on the plaintiffs’ *Monell* claim.

C. I Decline to Exercise Supplemental Jurisdiction Over the Plaintiffs’ State Claim

A district court has discretion “to decline to exercise supplemental jurisdiction over” an action if it “has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). District courts

may decline to exercise jurisdiction over supplemental state law claims “[d]epending on a host of factors” including “the circumstances of the particular case, the nature of the state[-]law claims, the character of the governing state law, and the relationship between the state and federal claims.” *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 173 (1997). The supplemental jurisdiction statute “reflects the understanding that, when deciding whether to exercise supplemental jurisdiction, ‘a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity.’” *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)).

“[I]n the usual case in which federal[-]law claims are eliminated before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the remaining state[-]law claims.” *Reynolds v. Cnty. of San Diego*, 84 F.3d 1162, 1171 (9th Cir. 1996); see also *De LaTorre v. CashCall, Inc.*, 2019 WL 452028, at *4 (N.D. Cal. Feb. 5, 2019) (“The elimination of federal claims does not automatically deprive district courts of subject[-]matter jurisdiction over any supplemental state[-]law claims. However, comity and precedent in this circuit strongly disfavor[] exercising supplemental jurisdiction.”) (cleaned up).

Because I grant summary judgment in favor of the defendants on the federal claims for relief, I find that the issues of economy, convenience, fairness, and comity weigh in favor of remand the remaining conversion claim. These claims are based on state law, and the determination of state-law claims should generally be made in state court. See *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966).

IV. Conclusion

IT IS THEREFORE ORDERED that defendants' motion for summary judgment [ECF No. 35] is GRANTED. The defendants are entitled to qualified immunity and therefore summary judgment is granted on all federal claims. I also decline to exercise supplemental jurisdiction over the remaining state claims and remand them to state court.

The Clerk of Court is directed to enter judgment accordingly and to close this case.

/s/ Cristina D. Silva
United States District Judge

Dated: April 29, 2024

**JUDGMENT, U.S. DISTRICT COURT
FOR THE DISTRICT OF NEVADA
(APRIL 29, 2024)**

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GENOA JONES, ET AL.,

Plaintiffs,

v.

CITY OF NORTH LAS VEGAS, ET AL.,

Defendants.

Case No. 2:21-cv-00241-CDS-DJA

Before: Cristina D. SILVA,
United States District Judge.

JUDGMENT IN A CIVIL CASE

- ☒ Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

DEBRA K. KEMPI
Clerk

/s/ M. Moran
Deputy Clerk

Date: 4/29/2024