

No. 25-

IN THE
Supreme Court of the United States

BETTY JO SHELBY,

Petitioner,

v.

MICHAEL MANNING, *et al.*,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has repeatedly reversed lower courts for denying qualified immunity based on generalized excessive force principles rather than precedent addressing the officer’s specific conduct under the particular circumstances confronted. See, e.g., *Brosseau*, *Mullenix*, *White*, *Kisela*, *Bond*, and *Rivas-Villegas*. Most recently, in *Zorn v. Linton*, this Court summarily reversed the Second Circuit for denying qualified immunity based on generalized excessive force principles rather than precedent addressing the officer’s specific conduct with a “high degree of specificity.” 146 S. Ct. 926, 930 (2026).

The decision below reflects the same error this Court corrected in *Zorn*. Officer Betty Shelby encountered an individual she reasonably believed was impaired or experiencing a mental-health crisis who had abandoned a running vehicle in the middle of a roadway and then moved back toward that vehicle, creating uncertainty regarding his intentions and the circumstances confronting the officer. App. B at 27a-29a. The district court nevertheless concluded Respondent failed to identify precedent squarely governing Officer Shelby’s conduct under those circumstances. App. B at 37a-40a. The Tenth Circuit reversed, relying on generalized principles derived from *Garner* because the decedent was allegedly “unarmed” and “nondangerous.” App. A at 14a-15a.

The question presented is:

Whether the Tenth Circuit’s qualified immunity analysis conflicts with this Court’s repeated instruction that clearly established law must

be defined with a high degree of specificity and grounded in precedent squarely governing the officer's conduct under the particular circumstances confronted.

PARTIES TO THE PROCEEDING

Petitioner is Betty Jo Shelby, a police officer with the City of Tulsa, Oklahoma at the time of this incident, sued in her individual capacity. Petitioner was a defendant in the district court and an appellee in the United States Court of Appeals for the Tenth Circuit.

Respondent is Michael Manning, as Administrator of the Estate of Terence Crutcher, Sr. Respondent was the plaintiff in the district court and appellant in the United States Court of Appeals for the Tenth Circuit.

Respondent is The City of Tulsa. Respondent was a defendant in the district court and an appellee in the United States Court of Appeals for the Tenth Circuit.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Manning v. City of Tulsa, et al*, United States Court of Appeals for the Tenth Circuit, Case No. 24-5058 (10th Cir. March 30, 2026) (published); and
- *Manning v. City of Tulsa, et al*, United States District Court for the Northern District of Oklahoma, Case No. 17-CV-336-EFM-SH, 2023 WL 1164393 (N.D. Okla. Feb. 09, 2023) (unpublished).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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OPINIONS BELOW

The Tenth Circuit Court of Appeal's March 30, 2026, opinion reversing the district court's granting of qualified immunity to Officer Shelby, is published and reported at 170 F.4th 1287 (10th Cir. 2026) and reproduced at App. A at 1a-25a. The United States District Court for the Northern District of Oklahoma's February 9, 2023, Order granting qualified immunity to Officer Shelby is not published but reported at *Manning v. City of Tulsa*, No. 17-cv-336-EFM-SH, 2023 WL 1164393 (N.D. Okla. Feb. 09, 2023) and reproduced App. B at 26a-43a.

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on March 30, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition for a writ of certiorari is timely under Supreme Court Rule 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by

the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Respondent alleges the Petitioner violated the decedent's rights secured by the Fourth Amendment to the United States Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

INTRODUCTION

For more than two decades, this Court has instructed lower courts that clearly established law must be defined with a "high degree of specificity." See, e.g., *Brosseau*, 543 U.S. at 198-201; *Mullenix*, 577 U.S. at 12; *White*, 580

U.S. at 79; *Kisela*, 584 U.S. at 104; *Bond*, 595 U.S. at 12; *Rivas-Villegas*, 595 U.S. at 5-6; *Zorn*, 146 S. Ct. at 930. Yet despite a long series of summary reversals and GVRs, lower courts continue denying qualified immunity by relying on generalized constitutional principles untethered from precedent addressing the officer's specific conduct.

Most recently, in *Zorn v. Linton*, this Court summarily reversed the Second Circuit for employing precisely that methodology. 146 S.Ct. at 930. The Court explained even when disputed facts are viewed in the plaintiff's favor, qualified immunity may not be denied unless existing precedent places the unlawfulness of the officer's specific conduct beyond debate. *Id.*

The decision below cannot be reconciled with *Zorn*.

The district court assumed plaintiff-favorable facts and nevertheless concluded Respondent failed to identify precedent squarely governing Officer Shelby's conduct during the rapidly evolving encounter at issue here. App. B at 32a, 37a-40a. The Tenth Circuit reversed because it believed the district court defined clearly established law "too narrowly" and "at too granular a level." App. A at 13a-14a. The panel then relied on generalized "baseline principles," "commonsense parallels," and broad characterizations of Mr. Crutcher as "unarmed" and "nondangerous" to deny qualified immunity. App. A at 12a-15a.

That is the same analytical methodology this Court rejected in *Zorn*. 146 S. Ct. at 930.

Review is warranted.

STATEMENT OF THE CASE

A. Factual Background

Because this case arises from summary judgment and the question presented concerns clearly established law, the following factual background substantially tracks the district court's recitation of the facts, construed in Respondent's favor where disputed.

On September 16, 2016, Officer Betty Shelby was responding to a domestic-disturbance call when she observed a man whom she reasonably believed was impaired or experiencing a mental-health crisis. App. B at 27a. Several hundred feet later, she encountered an unattended vehicle parked in the middle of the roadway with its engine running. App. B at 27a-28a.

While investigating the vehicle, Officer Shelby again encountered Mr. Crutcher. When she attempted to speak with him, he did not respond. App. B at 28a. Officer Shelby ordered him to remove his hands from his pockets and show his hands. *Id.* Mr. Crutcher eventually raised his hands, but the parties dispute the extent to which he complied with subsequent commands. *Id.*

Officer Shelby radioed for assistance and reported that she had an individual who would not show his hands. App. B at 28a. She then ordered Mr. Crutcher to stop, get on his knees, and show his hands. *Id.* The district court expressly recognized that the parties disputed whether Mr. Crutcher complied with those commands. *Id.*

Mr. Crutcher then moved toward the unattended vehicle while Officer Shelby followed with her firearm drawn. App. B at 29a. It took approximately eighteen seconds and twenty-seven steps for Mr. Crutcher to reach the driver's-side door. *Id.* During that time, Officer Shelby was required to assess a rapidly evolving situation involving an individual she believed was impaired or experiencing a mental-health crisis who was approaching an unattended running vehicle in the middle of a roadway. App. B at 27a-29a.

The parties dispute several material facts concerning the final moments of the encounter, including the position of the driver's-side window, whether Mr. Crutcher reached toward the vehicle, and the position of his hands. App. A at 7a-8a; App. B at 29a. Construing those disputes in Respondent's favor, the district court nevertheless concluded Respondent failed to identify precedent that squarely governed Officer Shelby's conduct under the circumstances confronted and therefore granted qualified immunity. App. B at 32a, 37a-39a.

B. The District Court's Decision

Respondent filed this action under 42 U.S.C. § 1983 alleging Officer Shelby used excessive force in violation of the Fourth Amendment during a roadside encounter with Mr. Crutcher. App. A at 26a. Respondent also asserted *Monell* claims against the City of Tulsa. *Id.*

Following discovery, Officer Shelby moved for summary judgment on qualified immunity grounds. She argued that, even accepting Respondent's version of disputed facts, no decision of this Court or the Tenth

Circuit clearly established that her conduct violated the Fourth Amendment during the rapidly evolving roadside encounter at issue here.

As relevant here, the district court granted summary judgment to Officer Shelby on qualified immunity grounds. Consistent with *Pearson v. Callahan*, 555 U.S. 223 (2009), the district court acknowledged disputed facts, construed the evidence in Respondent's favor where appropriate, and resolved the motion on the clearly established law prong. App. B at 32a-33a, 37a-40a.

Applying this Court's qualified immunity framework, the district court concluded Respondent failed to identify precedent that squarely governed Officer Shelby's conduct under the particular circumstances confronted and placed the constitutional question beyond debate. App. B at 32a, 37a-39a.

The district court examined the authorities relied upon by Respondent and concluded none involved circumstances sufficiently analogous to place the constitutionality of Officer Shelby's conduct beyond debate. App. B at 37a-39a. The court further rejected Respondent's argument that generalized excessive force principles derived from *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989) and *Hope v. Pelzer*, 536 U.S. 730 (2002) could substitute for precedent addressing the specific conduct at issue. App. B at 38a-39a.

Recognizing this Court's qualified immunity jurisprudence requires a high degree of specificity and does not permit clearly established law to be defined at a high level of generality, the district court concluded

Respondent failed to satisfy the clearly established law requirement. App. B at 32a-33a, 39a-40a. Accordingly, the district court held Officer Shelby was entitled to qualified immunity and entered judgment in her favor. App. B at 40a.

C. The Tenth Circuit's Decision

The Tenth Circuit reversed the district court's grant of qualified immunity. App. A at 1a, 16a. The panel held that the district court "failed to view the facts in a light most favorable to the Estate" and "erred in analyzing clearly established law by defining the right at issue too narrowly." App. A at 8a, 13a-14a. According to the panel, the district court improperly focused on the absence of sufficiently similar precedent and defined clearly established law "at too granular a level." App. A at 12a-14a.

The panel then substantially reframed the encounter. Viewing the facts in Respondent's favor, the court characterized Mr. Crutcher as:

- "unarmed,"
- "nondangerous,"
- "compliant,"
- and not posing "an immediate threat" to officers at the moment deadly force was used.

App. A at 8a, 14a-15a. The panel further emphasized what it described as Mr. Crutcher's "partial compliance with police commands." App. A at 8a.

The panel further emphasized facts it believed demonstrated Mr. Crutcher was not posing an immediate threat at the moment force was used, including that his hands were visible, he was not charging officers, he was not verbally threatening officers, and no weapon was within his reach. App. A at 7a-8a, 14a-15a.

Based on that plaintiff-favorable characterization of the encounter, the panel concluded *Garner*, 471 U.S. 1 (1985) supplied a generalized “baseline principle” prohibiting Officer Shelby’s conduct. App. A at 14a-15a. The panel further rejected what it characterized as a “scavenger hunt” for prior cases involving sufficiently similar facts and reasoned that officers may be placed on notice through training, generalized constitutional principles, and “commonsense parallels” drawn from prior decisions. App. A at 12a-13a.

Relying on *Hope*, 536 U.S. 730 (2002) the panel reasoned officials need not identify “fundamentally similar” precedent and may receive fair warning even in “novel factual circumstances.” App. A at 12a-13a. The panel therefore relied on *Garner*, 471 U.S. 1 (1985), *Zuchel v. Spinharney*, 890 F.2d 273 (10th Cir. 1989), *Walker v. City of Orem*, 451 F.3d 1139 (10th Cir. 2006), and *Zia Trust Co. ex rel. Causey v. Montoya*, 597 F.3d 1150 (10th Cir. 2010) concluding those decisions collectively provided fair warning that Officer Shelby’s conduct violated clearly established law. App. A at 14a-15a.

The panel accordingly reversed the district court’s grant of qualified immunity and remanded for further proceedings. App. A at 16a.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Employs The Same Methodology This Court Rejected In *Zorn v. Linton*.

This case presents the same qualified immunity error this Court corrected in *Zorn v. Linton*. There, the Court summarily reversed a denial of qualified immunity because the court of appeals relied on generalized excessive force principles rather than precedent addressing the officer's specific conduct with a "high degree of specificity." 146 S. Ct. at 930. The Court explained that accepting plaintiff-favorable factual assumptions does not eliminate the requirement that clearly established law be grounded in precedent addressing the officer's specific conduct under the particular circumstances confronted. *Id.* at 929-30.

Zorn is particularly instructive because the Court did not question the premise that disputed facts must be viewed in the plaintiff's favor at summary judgment. Instead, the Court held that even accepting those plaintiff-favorable factual assumptions, qualified immunity could not be denied absent precedent addressing the officer's conduct with the requisite degree of specificity. 146 S. Ct. at 929-31.

In both cases, the district court granted qualified immunity. In both cases, the court of appeals concluded the district court improperly viewed disputed facts in the officer's favor. In both cases, the court of appeals accepted plaintiff-favorable factual assumptions and then relied on generalized constitutional principles rather than

precedent squarely governing the officer's conduct under the particular circumstances confronted. And in both cases, the court of appeals denied qualified immunity on that basis. *Id.*; App. A at 8a, 12a-15a.

The district court employed the framework this Court reaffirmed in *Zorn*. The court acknowledged disputed facts, construed the evidence in Respondent's favor where appropriate, and nevertheless concluded Respondent failed to identify precedent squarely governing Officer Shelby's conduct under the particular circumstances she confronted. App. B at 32a-33a, 37a-40a.

The cert-worthy error lies in the analytical sequence the court of appeals employed. In *Zorn*, the district court assumed the plaintiff's version of disputed facts and granted qualified immunity because no precedent squarely governed the officer's conduct under the circumstances confronted. The court of appeals reversed, reasoning the district court had defined clearly established law too narrowly and relying instead on broader constitutional principles. This Court summarily reversed. *Zorn*, 146 S. Ct. at 929-30.

The same sequence occurred below. The district court assumed Respondent's version of disputed facts and, consistent with *Pearson*, proceeded directly to the clearly established law inquiry. It concluded Respondent failed to identify precedent placing the constitutional question beyond debate. The Tenth Circuit reversed because it believed the district court defined the right at issue too specifically and then relied on generalized principles to deny qualified immunity. App. B at 32a-33a, 37a-40a; App. A at 12a-15a.

Zorn makes clear that approach is incompatible with the specificity requirement governing qualified immunity. The clearly established inquiry does not become less particularized once disputed facts are viewed in the plaintiff's favor. It becomes more important that precedent squarely govern the officer's conduct under the circumstances assumed. *Zorn*, 146 S. Ct. at 929-30.

The Tenth Circuit reversed. According to the panel, the district court failed to view the facts in the light most favorable to the Estate and defined clearly established law "at too granular a level." App. A at 8a, 12a-14a. The panel then reframed the encounter by characterizing Mr. Crutcher as "unarmed," "nondangerous," and "nonthreatening," and by concluding he was not posing an immediate threat to officers at the moment deadly force was used. App. A at 8a, 14a-15a.

The panel's analysis mirrors the approach rejected in *Zorn*. The Tenth Circuit expressly stated:

We therefore proceed from this starting point: despite Crutcher's partial compliance with police commands, Shelby shot Crutcher while he was standing with his hands up, unarmed, next to the mostly rolled-up driver's side window, no weapon within reach.

App. A at 8a. The panel then proceeded to evaluate clearly established law using that plaintiff-favorable characterization of the encounter. App. A at 12a-15a.

The panel invoked *Scott v. Harris*, 550 U.S. 372 (2007), to determine which factual assumptions governed

summary judgment and concluded the video evidence did not “blatantly contradict[]” Respondent’s version of disputed facts. App. A at 7a-8a. But accepting plaintiff-favorable factual assumptions does not eliminate the requirement that clearly established law be grounded in precedent addressing the officer’s specific conduct under the particular circumstances confronted. *Zorn*, 146 S. Ct. at 929-30.

The panel’s treatment of the video evidence illustrates the error. Invoking *Scott v. Harris*, the panel concluded the helicopter footage did not “blatantly contradict[]” Respondent’s version of disputed facts and therefore assumed that Mr. Crutcher was standing with his hands raised, next to a mostly rolled up driver’s side window, with no weapon within reach. App. A at 7a-8a. For purposes of summary judgment, those plaintiff-favorable assumptions governed the analysis. But the existence of those assumptions did not eliminate the need to evaluate clearly established law in light of the circumstances confronting Officer Shelby. The issue is not whether plaintiff-favorable factual assumptions govern summary judgment. They do. The issue is whether those assumptions permit a court to strip away the uncertainty confronting the officer and redefine the encounter as a generic shooting of an “unarmed” and “nondangerous” individual. By proceeding in that manner, the panel transformed disputed factual assumptions into a generalized constitutional abstraction and then relied on that abstraction to deny qualified immunity.

Instead, the panel relied on generalized constitutional principles to deny qualified immunity. Having characterized Mr. Crutcher as “unarmed,” “nondangerous,” and

“nonthreatening,” the panel relied on *Garner*’s “baseline principle,” “commonsense parallels” drawn from prior decisions, and generalized notions of fair warning to conclude Officer Shelby violated clearly established law. App. A at 12a-15a.

The panel’s own language underscores the conflict with this Court’s recent qualified immunity decisions. The panel rejected what it characterized as a “scavenger hunt” for sufficiently analogous precedent, emphasized that officers may draw “commonsense parallels” from prior cases, and treated *Garner*’s “baseline principle” as sufficient notice that Officer Shelby’s conduct was unconstitutional. App. A at 12a-15a. But this Court has repeatedly cautioned against precisely that methodology. See *Bond*, 595 U.S. at 12; *Kisela*, 584 U.S. at 104; *White*, 580 U.S. at 79; *Mullenix*, 577 U.S. at 12. Most recently, *Zorn* reiterated that clearly established law must be grounded in precedent addressing the officer’s conduct with a “high degree of specificity.” 146 S. Ct. at 930. The panel’s reliance on generalized principles, commonsense analogies, and broad characterizations of the encounter cannot be reconciled with those decisions.

That reasoning cannot be reconciled with *Zorn*. There, as here, the court of appeals accepted plaintiff-favorable factual assumptions and then treated generalized excessive force principles as sufficient to deny qualified immunity. This Court reversed. *Zorn*, 146 S. Ct. at 929-30; App. A at 12a-15a.

The similarity between this case and *Zorn* is striking. In both cases, the court of appeals accepted plaintiff-favorable factual assumptions and then denied qualified

immunity by reducing a fact specific encounter to a generalized excessive force principle. In *Zorn*, the court of appeals relied on generalized excessive force principles untethered from the officer's specific conduct. Here, the panel employed the same methodology, characterizing Mr. Crutcher as "unarmed," "nondangerous," and "nonthreatening," and treating those labels as sufficient to clearly establish the unlawfulness of Officer Shelby's conduct. The panel thus employed the same analytical approach this Court rejected in *Zorn*. *Zorn*, 146 S. Ct. at 929-30; App. A at 12a-15a.

The same result is warranted here. Rather than identifying precedent squarely governing Officer Shelby's conduct under the particular circumstances confronted, the panel relied on plaintiff-favorable factual assumptions, generalized constitutional principles, and broad characterizations of the encounter to conclude the law was clearly established. *Zorn*, 146 S. Ct. at 929-30; App. A at 12a-15a. *Zorn* makes clear that is not enough.

II. The Tenth Circuit Denied Qualified Immunity Without Identifying Precedent Squarely Governing Officer Shelby's Conduct.

The district court faithfully applied this Court's qualified immunity precedents. It recognized that Respondent bore the "heavy burden" of identifying precedent that squarely governed Officer Shelby's conduct under the particular circumstances she confronted and placed the constitutional question beyond debate. App. B at 32a-33a. Applying that framework, the district court carefully examined each authority relied upon by Respondent and concluded none squarely governed Officer

Shelby's conduct under the particular circumstances she confronted. App. B at 37a-39a. The court therefore held Respondent failed to satisfy the clearly established law requirement. App. B at 39a-40a.

The district court rejected Respondent's reliance on generalized excessive force principles derived from *Garner*, *Graham*, and *Hope*. Instead, it focused on whether Respondent had identified precedent that squarely governed Officer Shelby's conduct under the particular circumstances she confronted and placed the constitutional question beyond debate. App. B at 38a-39a.

The Tenth Circuit rejected that approach. According to the panel, the district court defined the right at issue "too narrowly" and "at too granular a level." App. A at 13a-14a. The panel further rejected what it characterized as a "scavenger hunt" for sufficiently analogous precedent and reasoned that officers may be placed on notice through generalized constitutional principles, training, and "commonsense parallels" drawn from prior decisions. App. A at 12a-13a.

Relying heavily on *Hope*, the panel reasoned that officials may receive fair warning even in the absence of "fundamentally similar" precedent. App. A at 12a-13a. The panel therefore concluded that *Garner* supplied a governing "baseline principle" and that *Zuchel*, *Walker*, and *Zia Trust* collectively provided sufficient notice that Officer Shelby's conduct was unconstitutional. App. A at 14a-15a.

But none of those decisions squarely governed Officer Shelby's conduct under the circumstances confronted here. *Zuchel* involved officers responding to a report that

an individual had damaged property and was reported to possess a knife. Officers used deadly force almost immediately upon confronting the individual. See *Zuchel*, 890 F.2d at 274-76. *Walker* involved a suicidal individual holding a knife to his own wrist and threatening self-harm. See *Walker*, 451 F.3d at 1154-56. *Zia Trust* involved an officer responding to a domestic disturbance call who, shortly after arriving on scene and before having any meaningful interaction with the van's occupant, used deadly force against the driver of an immobilized van perched on a pile of rocks when the van lurched forward. See *Zia Trust*, 597 F.3d at 1152-53.

None involved an individual whom Officer Shelby reasonably believed was impaired or experiencing a mental health crisis, who had abandoned a running vehicle in the middle of a roadway and then moved toward that vehicle, creating uncertainty regarding his intentions and actions as he approached the unattended vehicle.

Yet the panel distilled those materially different decisions into the generalized rule that officers may not use deadly force against an unarmed and nonthreatening individual. App. A at 14a-15a. That is precisely the analytical move this Court has repeatedly rejected. Clearly established law cannot be derived by synthesizing materially different decisions into an increasingly abstract proposition untethered from the officer's particular conduct and the circumstances confronted.

The panel's treatment of the encounter illustrates the problem. Viewing the facts in Respondent's favor, the panel characterized Mr. Crutcher as "unarmed," "nondangerous," and "nonthreatening." App. A at 14a-15a.

But, by framing the clearly established law inquiry around those labels, the panel effectively treated the uncertainty confronting Officer Shelby as legally irrelevant. This Court’s qualified immunity decisions require the opposite approach. See *Brosseau*, 543 U.S. at 201; *Mullenix*, 577 U.S. at 7; *Kisela*, 584 U.S. at 104; *Bond*, 595 U.S. at 12; *Rivas-Villegas*, 595 U.S. at 6; *Zorn*, 146 S.Ct. at 930. Those decisions recognize that excessive force encounters frequently arise amid uncertainty regarding a suspect’s intentions, movements, and rapidly evolving circumstances. The clearly established law inquiry therefore focuses on the circumstances confronting the officer at the moment force was used, not generalized labels applied after the fact.

The panel’s reliance on *Hope* is particularly revealing. App. A at 12a-13a. Nothing in *Hope* displaced this Court’s repeated instruction that clearly established law in excessive force cases must be defined with a high degree of specificity. To the contrary, this Court’s excessive force decisions have consistently emphasized the need for precedent addressing the officer’s specific conduct under the particular circumstances confronted. See *Brosseau*, 543 U.S. at 201; *Mullenix*, 577 U.S. at 12; *Kisela*, 584 U.S. at 104; *Bond*, 595 U.S. at 12; *Rivas-Villegas*, 595 U.S. at 6; *Zorn*, 146 S. Ct. at 930.

As this Court recognized in *Brosseau*, excessive force cases frequently arise within the “hazy border between excessive and acceptable force.” 543 U.S. at 201. For that reason, this Court has repeatedly insisted officers receive the benefit of qualified immunity unless existing precedent squarely governs the specific conduct at issue and places the constitutional question beyond debate.

This case illustrates precisely why that specificity requirement matters. It falls squarely within the “hazy border between excessive and acceptable force” this Court has repeatedly recognized characterizes many excessive force encounters. Officer Shelby was required to make split-second judgments during a rapidly evolving roadside encounter involving uncertainty regarding Mr. Crutcher’s intentions, movements, and actions as he approached the unattended vehicle. In precisely that setting, this Court’s precedents require precedent addressing the officer’s conduct with a high degree of specificity.

The same error occurred here. As this Court explained in *Zorn*:

Because the Second Circuit failed to identify a case where an officer taking similar actions in similar circumstances was held to have violated the Constitution . . . [the officer] was entitled to qualified immunity.

Zorn, 146 S. Ct. at 931. The same is true here. The panel identified no case in which an officer acting under similar circumstances was held to have violated the Constitution. Instead, it assembled a clearly established law rule from *Garner*, *Hope*, and materially distinguishable decisions. App. A at 12a-15a.

The significance of the panel’s approach is that it relieved Respondent of the burden the district court correctly imposed. The district court recognized Respondent bore the heavy burden of identifying precedent that squarely governed Officer Shelby’s conduct and placed the constitutional question beyond debate. App. B at 32a-33a. Respondent failed to do so. Rather

than identifying a case involving similar actions in similar circumstances that was held unconstitutional, the panel assembled a clearly established law rule from *Garner*, *Hope*, and materially distinguishable decisions. App. A at 12a-15a. That approach is incompatible with this Court's repeated instruction that the plaintiff bears the burden of identifying clearly established law and that qualified immunity protects officers unless existing precedent places the constitutional question beyond debate.

The decision below therefore reflects the same error this Court corrected in *Zorn*: defining clearly established law through generalized principles and synthesized analogies rather than through precedent addressing similar actions in similar circumstances. *Zorn*, 146 S. Ct. at 929-30; App. A at 12a-15a.

Because the panel denied qualified immunity without identifying a case in which an officer acting under similar circumstances was held to have violated the Constitution, review is warranted. *Zorn*, 146 S. Ct. at 931.

III. The Decision Below Reflects A Recurring Failure To Apply This Court's Specificity Requirement.

The decision below is not an isolated departure from this Court's qualified immunity jurisprudence. Rather, it reflects a recurring pattern in which lower courts continue denying qualified immunity through generalized constitutional reasoning despite this Court's repeated insistence that clearly established law must be defined with a high degree of specificity. See *Zorn*, 146 S. Ct. at 930; *Bond*, 595 U.S. at 12; *Rivas-Villegas*, 595 U.S. at 6; *Kisela*, 584 U.S. at 104; *White*, 580 U.S. at 79.

For more than two decades, this Court has repeatedly emphasized clearly established law must be grounded in precedent addressing the officer’s specific conduct under the particular circumstances confronted. See *Brosseau*, 543 U.S. 194 (2004); *Mullenix*, 577 U.S. 12 (2015); *White*, 580 U.S. 73 (2017); *Kisela*, 584 U.S. 100 (2018); *Bond*, 595 U.S. 9 (2021); *Rivas-Villegas*, 595 U.S. 1 (2021); *Zorn*, 146 S. Ct. 926 (2026). Yet despite those repeated instructions, lower courts continue denying qualified immunity by defining clearly established law at a high level of generality, reframing encounters through generalized factual characterizations, and then concluding officers had fair notice their conduct was unlawful.

This Court has repeatedly been required to intervene. In *White v. Pauly*, the Court reversed the Tenth Circuit for failing to identify precedent particularized to the facts confronting the officer. 580 U.S. 73, 79-80 (2017). In *City of Tahlequah v. Bond*, the Court again summarily reversed because the Tenth Circuit relied on excessive force precedent “cast at a high level of generality.” 595 U.S. 9, 12 (2021). In *Rivas-Villegas v. Cortesluna*, the Court once more emphasized that officers are entitled to qualified immunity unless precedent squarely governs the conduct at issue. 595 U.S. 1, 6 (2021). Most recently, in *Zorn v. Linton*, the Court summarily reversed the Second Circuit for relying on generalized excessive force principles rather than precedent addressing the officer’s specific conduct with the required degree of factual specificity. 146 S. Ct. at 929-30.

The Court’s subsequent actions underscore that the problem persists. Shortly after deciding *Zorn*, the Court granted certiorari, vacated the judgment in *Smith v. Scott*,

and remanded for further consideration in light of *Zorn*. *Smith v. Scott*, __ S.Ct. __, 2026 WL 1052063 (Mem). By immediately applying *Zorn* in *Smith*, the Court signaled that the specificity principles reaffirmed in *Zorn* extend beyond the particular facts presented there and continue to govern excessive force qualified immunity cases.

This case illustrates the problem. The panel criticized the district court for defining clearly established law “at too granular a level,” rejected what it characterized as a “scavenger hunt” for sufficiently analogous precedent, and instead relied upon generalized constitutional “baseline principles,” “commonsense parallels,” and broad characterizations of the suspect as “unarmed” and “nondangerous.” App. A at 12a-15a. That reasoning cannot be reconciled with this Court’s repeated insistence that clearly established law must be defined with a high degree of specificity.

A. The Tenth Circuit Has Repeatedly Applied the Same Reasoning This Court Has Rejected.

The recurring nature of this problem is particularly evident in the Tenth Circuit. In *Casey v. City of Federal Heights*, the court rejected what it characterized as a “scavenger hunt” for prior cases involving similar facts and adopted a sliding-scale approach under which “the more obviously egregious the conduct,” the less factual specificity is required from prior case law. 509 F.3d 1278, 1284 (10th Cir. 2007).

Although this Court has repeatedly emphasized that clearly established law must be grounded in precedent addressing the officer’s specific conduct

under the particular circumstances confronted, the reasoning reflected in *Casey* continues to surface in Tenth Circuit qualified immunity decisions. The panel below employed the same analytical framework. It rejected what it characterized as a “scavenger hunt” for analogous precedent, emphasized that officers may draw “commonsense parallels” from prior decisions, relied on generalized notions of fair warning, and concluded *Tennessee v. Garner*’s “baseline principle” provided sufficient notice that Officer Shelby’s conduct was unconstitutional. App. A at 12a-15a.

That reasoning cannot be reconciled with this Court’s repeated instruction that clearly established law must be defined with a high degree of specificity. See *White*, 580 U.S. at 79; *Kisela*, 584 U.S. at 104; *Bond*, 595 U.S. at 12; *Rivas-Villegas*, 595 U.S. at 6; *Zorn*, 146 S. Ct. at 930.

That tension has repeatedly required this Court’s intervention.

In *Mullenix v. Luna*, this Court reiterated that clearly established law must not be defined at a high level of generality and must instead focus on the officer’s specific conduct under the circumstances confronted. 577 U.S. 7, 12-13 (2015). Shortly thereafter, this Court granted certiorari, vacated the Tenth Circuit’s judgment in *Aldaba v. Pickens*, and remanded for reconsideration in light of *Mullenix*. See *Aldaba v. Pickens*, 577 U.S. 801 (2015).

The pattern continued. In *White v. Pauly*, this Court reversed the Tenth Circuit for failing to identify precedent particularized to the facts confronting the officer. 580 U.S. at 79-80. In *City of Tahlequah v. Bond*, the Court

again summarily reversed because the Tenth Circuit relied on excessive force precedent “cast at a high level of generality.” 595 U.S. at 12. And in *Rivas-Villegas v. Cortesluna*, the Court once more emphasized that officers are entitled to qualified immunity unless precedent squarely governs the conduct at issue. 595 U.S. at 6.

The decision below reflects the same recurring tendency. Rather than asking whether existing precedent squarely governed Officer Shelby’s conduct under the particular circumstances she confronted, the panel criticized the district court for defining clearly established law “at too granular a level,” rejected what it characterized as a “scavenger hunt” for sufficiently analogous precedent, and relied upon generalized constitutional “baseline principles,” “commonsense parallels,” and notions of fair warning to deny qualified immunity. App. A at 12a-15a.

The panel thus employed the same analytical framework that prompted this Court’s interventions in *Aldaba*, *White*, *Bond*, *Rivas-Villegas*, and most recently *Zorn*. Despite repeated reversals, GVRs, and admonitions from this Court, the Tenth Circuit again denied qualified immunity through generalized constitutional reasoning rather than precedent squarely governing the officer’s specific conduct under the particular circumstances confronted.

Review is warranted.

IV. This Case is an Excellent Vehicle to Reaffirm This Court’s Specificity Jurisprudence.

This case presents an unusually clean vehicle for resolving the question presented. The district court granted

qualified immunity solely on the clearly established law prong, and the Tenth Circuit reversed based exclusively on its disagreement with that analysis. The question presented is therefore outcome determinative.

This case reaches the Court in substantially the same posture as *Zorn v. Linton*. The district court assumed plaintiff-favorable facts, proceeded directly to the clearly established law inquiry, and granted qualified immunity. The court of appeals reversed after concluding the district court defined clearly established law too narrowly and at too granular a level. See 146 S. Ct. 926 (2026); App. A at 12a-14a.

As in *Zorn*, this Court need not determine whether Officer Shelby ultimately violated the Fourth Amendment. Nor must it resolve disputed factual questions. The only issue is whether existing precedent clearly established that Officer Shelby's conduct violated the Constitution under the particular circumstances she confronted.

The record is fully developed. The relevant facts were extensively addressed by both courts below. The district court expressly assumed plaintiff-favorable factual disputes for purposes of the qualified immunity analysis, and the court of appeals likewise proceeded from its own plaintiff-favorable factual assumptions. The question presented is therefore purely legal.

Accordingly, this case cleanly presents the recurring issue that has repeatedly required this Court's intervention: whether qualified immunity may be denied through generalized constitutional principles and broad factual

abstractions rather than precedent squarely governing the officer's conduct under the particular circumstances confronted.

Certiorari should be granted.

CONCLUSION

The decision below reflects the same analytical methodology this Court rejected in *Zorn v. Linton*. Rather than identifying a case in which an officer acting under similar circumstances was held to have violated the Constitution, the Tenth Circuit denied qualified immunity through generalized constitutional principles, “baseline principles,” “commonsense parallels,” training, and broad characterizations of the suspect as “unarmed” and “nondangerous.”

This Court has repeatedly instructed that clearly established law must be grounded in precedent addressing the officer's specific conduct under the particular circumstances confronted. Yet despite repeated reversals, GVRs, and admonitions, lower courts continue denying qualified immunity through generalized constitutional reasoning rather than precedent placing the constitutional question beyond debate.

Zorn makes clear that is not enough.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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**APPENDIX A — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT,
FILED MARCH 30, 2026**

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NO. 24-5058

MICHAEL MANNING, AS THE ADMINISTRATOR
OF THE ESTATE OF TERENCE CRUTCHER, SR.,

Plaintiff-Appellant,

v.

CITY OF TULSA; BETTY JO SHELBY,

Defendants-Appellees.

**Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:17-CV-00336-EFM-SH)**

Before **HARTZ, McHUGH**, and **MORITZ**, Circuit Judges.

MORITZ, Circuit Judge.

In 2016, Officer Betty Shelby of the Tulsa Police Department (TPD) shot and killed an unarmed Black man, Terence Crutcher, in Tulsa, Oklahoma. The administrator of Crutcher’s estate, Michael Manning (the Estate), sued Shelby for excessive force under 42 U.S.C. § 1983. The Estate also brought claims against the City of Tulsa

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under both state law and *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). The district court dismissed the *Monell* claims, finding the Estate failed to plausibly allege municipal liability. It then granted summary judgment to Shelby based on qualified immunity. Considering no federal claims remained at that point, the district court dismissed the state-law claim against the City.

We reverse in part and affirm in part. Because the district court failed to view the facts in a light most favorable to the Estate and erred in analyzing clearly established law by defining the right at issue too narrowly, we reverse its grant of summary judgment to Shelby. But we affirm the district court's dismissal of the *Monell* claims. On remand, the district court should consider whether exercising supplemental jurisdiction over the state-law claim is appropriate.

Background

As dusk settled over the streets of Tulsa one evening in September 2016, Shelby was on her way to a domestic-disturbance call.¹ She drove past a Black man on foot who she believed was either on PCP or experiencing a mental-health crisis because “[h]e had a distant look on his face and appeared zombie[-]like.” App. vol. 2, 260. The man had moved off the road and was not impeding traffic, however, so Shelby drove on.

1. We take these facts from the parties' summary-judgment pleadings, noting where they are disputed.

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Several hundred feet later, she came across an SUV parked in the middle of the road with its engine idling. Shelby stopped, got out of her patrol car, and walked to the SUV. Looking through the driver's side windows, she examined the rear compartment, the back seat, and the front seat. She saw no individuals and no weapons inside. As she walked around to the passenger side and looked back, she saw the Black man from earlier—Terence Crutcher—walking up the street toward her parked patrol car and the SUV. Shelby yelled to him, asking if the SUV was his, but he didn't respond. Instead, Crutcher began walking towards her, and she yelled at him to take his hands out of his pockets. He mumbled something in response and then slowly put both hands in the air. According to Shelby, Crutcher's "head was positioned downward[,] and he was sweating profusely." *Id.* at 229.

Crutcher either followed Shelby's orders by keeping his hands up, or he periodically put them back in his pockets.² As Crutcher neared Shelby's patrol car, she radioed, "[H]old traffic. I have a suspect that won't show me his hands!" *Id.* at 230. Shelby then ordered Crutcher to get on his knees and show his hands.

The culmination of the encounter was captured on camera—both from a helicopter above and from the dashcam of a second officer who arrived on scene. Crutcher continued walking slowly towards the parked SUV with his hands in the air. With her gun pointed at Crutcher's back,

2. This fact is disputed in part because Shelby did not activate her dashcam or any body-worn recording device.

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Shelby followed him and again ordered him to stop. Officer Tyler Turnbough heard her commands as he arrived on scene, and he pulled his taser as Crutcher reached the driver's side of the SUV. Turnbough announced, "Taser, I have my [t]aser," and thought he heard Shelby respond, "[O]kay." *Id.* at 285.

Simultaneously, Shelby fired her gun and Turnbough discharged his taser. Turnbough's taser temporarily paralyzed Crutcher while Shelby's bullet entered just below Crutcher's right armpit. He fell to the pavement and was pronounced dead less than an hour later.

In June 2017, the Estate sued Shelby and the City of Tulsa.³ As relevant to this appeal, the Estate brought a Fourth Amendment excessive-force claim against Shelby, a wrongful-death claim under Oklahoma law against the City, and *Monell* claims against the City for unconstitutional policies and practices resulting in Crutcher's death. The *Monell* claims focus on an overall culture and custom of excessive force, encouraged by deficient training in the use of force, flawed hiring practices, and inadequate officer-misconduct investigations and discipline. The Estate also alleged an equal-protection violation premised on a policy, practice, custom, or culture of intentional racially disparate enforcement.

The district court granted the City's motion to dismiss the *Monell* claims as inadequately pleaded. Later, the

3. The Estate also sued Turnbough and the TPD Chief of Police, but those defendants are not party to this appeal.

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district court granted Shelby's motion for summary judgment based on qualified immunity. Because no federal claims remained, it declined to exercise supplemental jurisdiction over the state-law wrongful-death claim against the City, dismissing that claim without prejudice.

The Estate appeals.

Analysis

The Estate asks us to reverse the district court's grant of summary judgment to Shelby on its excessive-force claim based on errors in the district court's qualified-immunity analysis. The Estate also argues that we should reverse the dismissal of its *Monell* claims against the City. We consider each issue in turn.

I. Excessive-Force Claim Against Shelby

The Estate sued Shelby under § 1983, which imposes civil liability for constitutional violations committed by state officials. It alleged that Shelby violated Crutcher's Fourth Amendment right to be free from unreasonable seizures by using excessive force. But Shelby invoked qualified immunity, which "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." *Tenorio v. Pitzer*, 802 F.3d 1160, 1163 (10th Cir. 2015) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009)). When a defendant invokes qualified immunity, "[t]he

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plaintiff bears the burden of establishing both (1) that the defendant violated a constitutional right and (2) that the right had been clearly established by the time of the violation.”⁴ *Id.* at 1164. Courts are free to address these prongs in either order and may grant qualified immunity if the plaintiff fails to meet either one. *See Pearson*, 555 U.S. at 236. Here, the district court chose to address only the second prong, ruling at summary judgment that any constitutional violation was not clearly established.

We review that decision de novo. *Shepherd v. Robbins*, 55 F.4th 810, 815 (10th Cir. 2022). In doing so, we view “the evidence in the light most favorable to [the Estate] and resolve all factual disputes and draw all reasonable inferences in [its] favor.” *Torres v. Madrid*, 60 F.4th 596, 600 (10th Cir. 2023). And we will affirm summary judgment here only if “there is no genuine dispute as to any material fact and [Shelby] is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We first discuss the relevant disputed facts and then consider each prong of the qualified-immunity test.

A. Factual Disputes

Before analyzing the qualified-immunity prongs, we address the key disputed facts. Because the Estate is the

4. Noting a circuit split on the issue, the Estate additionally argues—for preservation purposes alone—that the defendant should bear the burden of proving a constitutional right is clearly established. But as it recognizes, we are bound by our precedent, which places the burden on the plaintiff. *See, e.g., Tenorio*, 802 F.3d at 1164.

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nonmoving party, we must adopt its view of the disputed facts for purposes of this appeal. *See Torres*, 60 F.4th at 600.

To begin, we consider whether Crutcher complied with police commands to show his hands: Shelby says he made “continuous hand movements to his pockets,” Shelby Aplee. Br. 16, but the helicopter video—which captured the critical seconds leading up to the shooting as Crutcher approached the SUV—suggests otherwise.⁵

Next, the parties dispute the position of the driver’s window of the SUV. Shelby and Turnbough say they fired because they thought Crutcher was reaching through the window to retrieve a weapon. Based on the amount of blood on the outside of the driver’s window and the absence of blood inside the SUV, however, the Estate maintains that the window was at least “mostly rolled up, which would have prevented [Crutcher] from being able to reach” inside the SUV. App. vol. 3, 410.

Relatedly, the parties disputed the precise position of Crutcher’s arms at the moment Shelby shot him. The district court sided with Shelby on that point, finding that

5. The Estate also suggests that the district court improperly resolved the issue of Crutcher’s compliance with Shelby’s commands to “stop moving, [to] get on his knees, and to show his hands.” App. vol. 3, 637. But the district court’s observation that Crutcher “ignored orders to stop and get on his knees as he slowly walked away . . . with his hands up” merely describes what can be seen in the helicopter video. *Id.* at 643. Crutcher did not stop and get on his knees; he kept walking with his hands raised.

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“Crutcher did at least lower his arm” before she fired. *Id.* at 637. But the helicopter video doesn’t clearly show Crutcher making such a movement. Shelby directs us to a blurry screenshot that supposedly shows Crutcher’s left arm reaching through the window at the moment she fired. According to Shelby’s own expert, however, her gun discharged in frame 1003 of that video, and the screenshot Shelby cites is of frame 1118. So whatever the image shows, it can’t help us determine the position of his hands *before* he was shot.

Moreover, even if frame 1118 had captured the moment of the shooting, it is far too blurry to find that Crutcher *undisputedly* lowered his arms before Shelby fired. At summary judgment, we must accept the nonmoving party’s version of a material fact unless it is so “blatantly contradicted by the record . . . that no reasonable jury could believe it.” *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007). Frame 1118 doesn’t come close to providing the necessary degree of clarity. The pixelated, birds-eye-view image fails to contradict the Estate’s assertion that Crutcher’s hands were raised—let alone refute it so compellingly that no reasonable jury could believe it. Absent such a contradiction, we must follow the Estate’s version of events and assume Crutcher did not lower his hands.

We therefore proceed from this starting point: despite Crutcher’s partial compliance with police commands, Shelby shot Crutcher while he was standing with his hands up, unarmed, next to the mostly rolled-up driver’s side window, no weapon within reach.

*Appendix A***B. Constitutional Violation**

The Estate argues Shelby violated Crutcher’s Fourth Amendment right to be free from excessive force. “An officer’s use of force is unconstitutional if it is ‘objectively unreasonable’ as ‘judged from the perspective of a reasonable officer on the scene.’” *Clerkley v. Holcomb*, 121 F.4th 1359, 1364 (10th Cir. 2024) (quoting *Graham v. Connor*, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989)). Courts assess reasonableness based on the totality of the circumstances, paying “particular attention to three factors identified in *Graham*: ‘(1) the severity of the crime at issue, (2) whether the person poses an immediate threat to the safety of the officers or others, and (3) whether the person is actively resisting arrest or attempting to evade arrest by flight.’” *Id.* (cleaned up) (quoting *Graham*, 490 U.S. at 396).

When a case involves deadly force, courts consider four additional factors (known as the *Larsen* factors) that guide their assessment of the threat a person posed: “(1) ‘whether the officers ordered the [person] to drop his weapon[] and the [person’s] compliance with police commands’; (2) ‘whether any hostile motions were made with the weapon towards the officers’; (3) ‘the distance separating the officers and the [person]; and (4) ‘the manifest intentions of the [person].’” *Baca v. Cospers*, 128 F.4th 1319, 1325 (10th Cir.) (quoting *Est. of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008)), *cert. denied*, 146 S. Ct. 354, 223 L. Ed. 2d 190 (2025); *see also Clerkley*, 121 F.4th at 1364 (noting that Tenth Circuit uses *Larsen* factors to assess threat posed by person for purposes of second *Graham* factor).

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Here, all three *Graham* factors point in the same direction: that Shelby’s use of force was unreasonable. The first factor—the severity of the crime—favors the Estate, considering that Shelby suspected Crutcher of public intoxication and obstruction. These offenses are at most “non[.]violent misdemeanors,” as the district court noted. App. vol. 3, 643; *see also* Okla. Stat. tit. 21, § 540 (defining misdemeanor obstruction); Tulsa, Okla., Ordinances, tit. 27, § 700 (punishing public intoxication with fine). That “weigh[s] against the use of significant force.” *Est. of Taylor v. Salt Lake City*, 16 F.4th 744, 763-64 (10th Cir. 2021).

The same is true of the second *Graham* factor—the immediacy of the threat—as illuminated by the four *Larsen* factors. *See Graham*, 490 U.S. at 396; *Larsen*, 511 F.3d at 1260. There was no reason for Shelby to think Crutcher had a weapon, so the first and second *Larsen* factors necessarily favor the Estate. Shelby didn’t need to order Crutcher “to drop his weapon,” and Crutcher didn’t need to “compl[.]y” with that directive, because he wasn’t holding anything dangerous (indeed, he raised his hands at Shelby’s request). *Larsen*, 511 F.3d at 1260. Likewise, Crutcher couldn’t make “any hostile motions” with a weapon he wasn’t holding. *Id.* As for the third *Larsen* factor, the ten-foot “distance separating” Shelby and Crutcher strongly weighs against the use of force, given Crutcher’s lack of a weapon. *Id.*; *see also Est. of Harmon v. Salt Lake City*, 134 F.4th 1119, 1127 (10th Cir. 2025) (finding five-to-seven- foot distance to suspect armed with knife “didn’t necessarily create an imminent threat”). And on the fourth *Larsen* factor, the undisputed

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facts do not suggest that Crutcher, who had walked slowly toward the SUV with his hands in the air, “manifest[ed any] intent[.]” to harm Shelby or anyone else. *Larsen*, 511 F.3d at 1260. Together, these factors demonstrate that Crutcher posed even less of a threat than in a case like *Walker v. City of Orem*, where we concluded that using deadly force against a man holding a knife to his own wrist was unconstitutional. 451 F.3d 1139, 1160 (10th Cir. 2006).

Last, we reach the third *Graham* factor—whether the person was actively resisting arrest or attempting to evade arrest by flight. *See* 490 U.S. at 396. This, too, favors the Estate because Shelby’s own expert said that Crutcher “was not aggressively or actively resisting” or “fleeing.” App. vol. 3, 574. At most, Shelby’s expert said Crutcher was being “passively noncompliant.” *Id.* But such a “low level of resistance . . . ‘does not justify a severe use of force in response’ under this factor.” *Krueger v. Phillips*, 154 F.4th 1164, 1198-99 (10th Cir. 2025) (quoting *Surat v. Klamser*, 52 F.4th 1261, 1275 (10th Cir. 2022)).

Shelby offers little to counter this analysis. She neither directly addresses prong one of the qualified-immunity analysis nor uses the *Graham* and *Larsen* factors to assess her use of force. Moreover, her briefing regularly fails to view the facts in the light most favorable to the Estate. For instance, she repeatedly recites that the window was rolled down and that Crutcher was reaching through it to grab a gun. But as we have explained, those are disputed facts, so we must assume that the window was mostly rolled up and that Crutcher was not reaching into the SUV or lowering his hands. Doing so,

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we conclude that the evidence supports the Estate’s claim that Shelby violated Crutcher’s constitutional rights by using unreasonable force.

B. Clearly Established

At prong two, we consider whether the right Shelby violated was “clearly established”—meaning “confirmed by Supreme Court or Tenth Circuit precedent or the overwhelming weight of authority from other courts.” *Finch v. Rapp*, 38 F.4th 1234, 1240 (10th Cir. 2022). In defining “clearly established” rights, we tread a fairly narrow path. On the one hand, the Supreme Court has “repeatedly told courts not to define clearly established law at too high a level of generality.” *City of Tahlequah v. Bond*, 595 U.S. 9, 12, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021). On the other, “because excessive[-]force jurisprudence requires an all-things-considered inquiry with ‘careful attention to the facts and circumstances of each particular case,’ there will almost never be a previously published opinion involving exactly the same circumstances.” *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1284 (10th Cir. 2007) (cleaned up) (quoting *Graham*, 490 U.S. at 396).

Ultimately, we need not engage in “a scavenger hunt for prior cases with precisely the same facts” to conclude that officials were “on notice of clearly established law.” *Packard v. Budaj*, 86 F.4th 859, 869 (10th Cir. 2023) (quoting *Reavis v. Frost*, 967 F.3d 978, 992 (10th Cir. 2020)). Instead, officers are put on notice of our decisions through their training and education and must draw commonsense parallels between the facts of prior cases

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and those they encounter in the field. *See Hope v. Pelzer*, 536 U.S. 730, 741, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002) (rejecting requirement that cases be “fundamentally similar” and explaining “officials can still be on notice that their conduct violates established law even in novel factual circumstances”).

The Estate contends that the district court fell victim to the scavenger-hunt mentality by defining the right at issue too narrowly and improperly disregarding cases it cited below. We agree. In determining whether the right violated was clearly established, the district court framed the question with rigid specificity:

[Whether] an officer can[] use deadly force on a suspect who[] has diminished capacity; was in an open, unconfined area; reportedly committed only non[]violent misdemeanors; ignored orders to stop and get on his knees as he slowly walked away from an officer towards a parked vehicle with his hands up; and when he reached the door of the vehicle lowered his arm.

App. vol. 3, 643. Of course, this account fails to assume that Crutcher kept his hands raised when he reached the door of the vehicle. But leaving that aside, the district court’s articulation of the issue systematically recites the facts of this case and this case alone, straying into the forbidden territory of requiring “fundamental[] similar[ity].” *Hope*, 536 U.S. at 741.

As the Estate argues, the proper iteration of the right is broader and hinges on the use of deadly force against

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an unarmed individual who poses no threat. Unlike formulations we have rejected as too broad—for instance, the overarching principle that officers can’t use excessive force—“[t]his formulation of the right meets the clearly established test by avoiding generalities in favor of a right tailored to the essential facts of this case.” *King v. Hill*, 615 F. App’x 470, 477 (10th Cir. 2015).⁶ Indeed, that is exactly how subsequent cases have framed the right. In *Finch*, we explained it was clearly established “that an officer, even when responding to a dangerous reported situation, may not shoot an unarmed and unthreatening suspect.” 38 F.4th at 1243. And in *Clerkley*, we noted it was “clear . . . that an officer responding to a potentially dangerous situation could not use deadly force against an unarmed, nonthreatening person.”⁷ 121 F.4th at 1367.

This right was clearly established years before Shelby shot Crutcher in 2016. In *Tennessee v. Garner*, the Supreme Court established the baseline principle that “[a] police officer may not seize an unarmed, nondangerous suspect by shooting him dead.” 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985). In *Zuchel v. Spinharney*, we upheld the denial of qualified immunity where an officer shot a man holding nail clippers who was neither charging

6. We rely on *King* for its persuasive value. See Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A).

7. We are free to cite precedent that postdates the underlying incident in determining the appropriate level of generality for purposes of the clearly established inquiry. See, e.g., *Wise v. Caffey*, 72 F.4th 1199, 1209 (10th Cir. 2023) (relying on 2021 Supreme Court decision concerning level of generality in clearly established analysis of 2018 incident); *Frasier v. Evans*, 992 F.3d 1003, 1021 (10th Cir. 2021) (same for 2018 Supreme Court decision and 2014 incident).

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the officer nor stabbing at him. 890 F.2d 273, 274-76 (10th Cir. 1989). We reached the same result in *Zia Trust Co. ex rel. Causey v. Montoya*, where an officer shot the driver of a van stuck on a pile of rocks when the driver revved the engine and the vehicle jumped forward. 597 F.3d 1150, 1152-53 (10th Cir. 2010). So too in *Walker*, a 2006 case, where police shot a reportedly suicidal man who was holding a knife to his own wrist and did not threaten officers.⁸ 451 F.3d at 1160.

Although there are factual variations between those cases and the one at hand, in all, “a reasonable officer would have recognized that the plaintiff was unarmed and nonthreatening.” *Clerkley*, 121 F.4th at 1366-67 (synthesizing *Zuchel*, *Zia Trust*, *Walker*, and others). And we need not find “a court decision with identical facts to establish clearly that it is unreasonable to use deadly force when the force is totally unnecessary to restrain a suspect or to protect officers, the public, or the suspect himself.” *Finch*, 38 F.4th at 1243 (quoting *Zia Tr. Co.*, 597 F.3d at 1155).

8. The district court faulted the Estate for failing to cite this published authority. But courts analyzing clearly established law—both district and appellate—are not limited to authority cited by the parties. See *Elder v. Holloway*, 510 U.S. 510, 511-12, 114 S. Ct. 1019, 127 L. Ed. 2d 344 (1994) (explaining “appellate review of qualified immunity dispositions is to be conducted in light of all relevant precedents”); *Hardy v. Rabie*, 147 F.4th 1156, 1168 (10th Cir. 2025) (applying same principle to district courts). Of course, courts remain free to apply traditional waiver and forfeiture principles if the clearly established issue is inadequately briefed. See, e.g., *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020).

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Viewing the disputed facts in the Estate’s favor, Shelby violated Crutcher’s clearly established constitutional rights, so we reverse the district court’s grant of summary judgment based on qualified immunity and remand for further proceedings. We also direct the district court to reconsider its dismissal of the Estate’s state-law wrongful-death claim, since the district court only declined supplemental jurisdiction because no federal claims remained. *See Baca v. Sklar*, 398 F.3d 1210, 1222 n.4 (10th Cir. 2005) (directing district court to reconsider remand of state-law claims to state court after reversing summary judgment on federal claim).

II. *Monell* Claims Against the City

The Estate next argues that the district court erred in dismissing its *Monell* claims against the City for failure to state a claim under Federal Rule of Civil Procedure 12 (b)(6). Our review is de novo. *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019). In assessing whether a plaintiff states a claim for relief, “we ‘must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.’” *Id.* (quoting *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007)). But “mere labels and conclusions and a formulaic recitation of the elements of a cause of action will not suffice.” *Id.* (cleaned up) (quoting *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012)).

“[U]nder § 1983, local governments are responsible only for ‘their *own* illegal acts,’” meaning “[t]hey are not vicariously liable . . . for their employees’ actions.” *Connick v. Thompson*, 563 U.S. 51, 60, 131 S. Ct. 1350,

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179 L. Ed. 2d 417 (2011) (quoting *Pembaur v. Cincinnati*, 475 U.S. 469, 479, 106 S. Ct. 1292, 89 L. Ed. 2d 452 (1986)). So, “[t]o establish a claim for damages under § 1983 against municipal entities or local government bodies, the plaintiff must prove (1) the entity executed a policy or custom (2) that caused the plaintiff to suffer deprivation of constitutional or other federal rights.” *Thao v. Grady Cnty. Crim. Just. Auth.*, 159 F.4th 1214, 1227 (10th Cir. 2025) (quoting *Moss v. Kopp*, 559 F.3d 1155, 1168 (10th Cir. 2009)). There are five types of qualifying municipal policies or customs:

(1) a formal regulation or policy statement; (2) an informal custom amounting to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well[-]settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions—and the basis for them—of subordinates to whom authority was delegated subject to these policymakers’ review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from deliberate indifference to the injuries that may be caused.

Id. (quoting *Waller*, 932 F.3d at 1283).

The Estate’s three *Monell* claims all fall into the fifth category: the City failed to properly train Shelby, failed to properly screen Shelby before hiring her, and

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failed to investigate or discipline officers for misconduct, thereby creating a “code of silence.”⁹ To state a claim for § 1983 municipal liability on any of these theories, the Estate must show (1) a policy or custom—that is, the City provided “deliberately indifferent training or supervision”; and (2) causation—in other words, a close relationship between the practice and the constitutional violation, such “that ‘the municipality was the moving force behind the injury alleged.’” *Schneider v. City of Grand Junction Police Dep’t*, 717 F.3d 760, 770 (10th Cir. 2013) (cleaned up) (quoting *Bd. of Cnty. Comm’rs v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997)).

As a threshold matter, the Estate argues the district court improperly applied a heightened pleading standard to its *Monell* claims. As the Estate notes, federal courts cannot apply “more stringent . . . pleading requirements . . . in civil[-]rights cases alleging municipal liability.”

9. The Estate’s *Monell* claims suffer from a frustrating lack of clarity. Its operative complaint asserted seven federal claims against the City: two premised on the officers’ use of excessive force; one premised on equal protection; one premised on due process; two clearly labeled as *Monell* claims, asserting deliberately indifferent policies and practices; and one alleging deliberately indifferent hiring. But on appeal, the Estate’s opening brief argues only *Monell* claims related to the use of excessive force, focusing on the City’s training, hiring, and disciplinary practices and policies (often without any clear delineation between theories). And although the Estate’s reply brief includes a footnote purporting to also appeal the equal-protection *Monell* claim, it has waived any such argument by failing to argue its merits in either brief. See *Toeys v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012). We therefore narrow our focus to the three theories of *Monell* liability that the Estate adequately presents on appeal.

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Leatherman v. Tarrant Cnty. Narcotics Intel. & Coordination Unit, 507 U.S. 163, 164, 113 S. Ct. 1160, 122 L. Ed. 2d 517 (1993);¹⁰ *see also* Fed. R. Civ. P. 8(a) (requiring “short and plain statement of the claim showing that the pleader is entitled to relief”).

Even so, in the *Monell* context, simply alleging the existence of a policy is not enough to state a claim. *See Pyle v. Woods*, 874 F.3d 1257, 1266 (10th Cir. 2017) (describing such a pleading as “the type of ‘formulaic recitation of the elements of a cause of action’ that is insufficient to meet the *Twombly* pleading standard” (quoting *Twombly*, 550 U.S. at 555)). A plaintiff must include “factual allegations sufficient to support a plausible inference” that a policy caused his injuries. *Id.*

That is exactly the standard that the district court applied. It explained that a plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” App. vol. 1, 199 (quoting *Iqbal*, 556 U.S. at 678). And it described what would fall short: “labels and conclusions,” “a formulaic recitation of the elements of a cause of action,” or “naked assertions devoid of further factual enhancement.” *Id.* (cleaned up) (quoting *Iqbal*, 556 U.S. at 678). Contrary to the Estate’s assertion, the

10. *Leatherman* predated the Supreme Court’s decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). As such, it relied on the now-outdated notion of “notice pleading.” *Leatherman*, 507 U.S. at 168. We apply the pleading standard as clarified by *Twombly* and *Iqbal*.

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district court did not hold it to a heightened pleading standard.

Nor did the district court err in dismissing the *Monell* claims, which we now examine in detail.

A. Failure to Train

Beginning with its failure-to-train claim, the Estate suggests that the district court erred in concluding that it didn't "articulate what the training policies and procedures were[] or explain how they were deficient." App. vol. 1, 202. According to the Estate's operative complaint, despite Tulsa's "history of high rates of excessive[-]force complaints" and "racially disparate outcomes in . . . the use of force against [Black people]," the City failed to train officers in deescalating situations and interacting with individuals with diminished capacity—even after the Tulsa Mayor's Policy & Community Coalition advised TPD of the need for body cameras and implicit-bias training. *Id.* at 121. As a result, the Estate alleged, TPD developed a "culture of 'you hesitate and you die'" and fostered the perception that "there is a war against cops." *Id.* at 120. In further support, the Estate cited comments Shelby made in a television interview crediting her training for the decision to shoot Crutcher.

Recall that to state a failure-to-train claim, a plaintiff must demonstrate deliberate indifference. *Waller*, 932 F.3d at 1283-84. Doing so depends on showing the municipality "ha[d] actual or constructive notice that its action or failure to act [wa]s substantially certain to result in a

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constitutional violation, and it consciously or deliberately cho[se] to disregard the risk of harm.” *Schneider*, 717 F.3d at 771 (quoting *Barney v. Pulsipher*, 143 F.3d 1299, 1307 (10th Cir. 1998)). “Without notice that a course of training is deficient in a particular respect, decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights.” *Connick*, 563 U.S. at 62. To establish constructive notice, “[a] pattern of similar constitutional violations by untrained employees is ‘ordinarily necessary.’” *Id.* (quoting *Brown*, 520 U.S. at 409).

Here, the Estate fails to plausibly allege “[a] pattern of similar constitutional violations by untrained employees.” *Id.* The only support for such a pattern is the Estate’s allegation that TPD has a “history of high rates of excessive[-]force complaints.” App. vol. 1, 121. But without more information about prior incidents—including whether constitutional violations occurred—we can’t determine their similarities to the case at hand or say that the City was on notice that its training was deficient. *Cf. Connick*, 563 U.S. at 62-63 (concluding that plaintiff could not show deliberate indifference where prior incidents were not similar to the violation at issue).

True, in a “narrow range of circumstances,” constructive notice can be found without a pattern if “a violation of federal rights is a ‘highly predictable’ or ‘plainly obvious’ consequence of a municipality’s action or inaction.” *Barney*, 143 F.3d at 1307-08 (quoting *Brown*, 520 U.S. at 409). For example, “city policymakers know to a moral certainty that their police officers will be required

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to arrest fleeing felons,” so failing to train them on “the constitutional limitations on the use of deadly force” could constitute deliberate indifference. *City of Canton v. Harris*, 489 U.S. 378, 390 n.10, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). But the Estate’s allegation that the City failed to train officers on de-escalation and related matters “does not fall within the narrow range of *Canton*’s hypothesized single-incident liability.” *Connick*, 563 U.S. at 64. Instead, the Estate takes issue with “the nuance of the allegedly necessary training” rather than the complete absence of training that *Canton* imagined. *Id.* at 67. Thus, because the Estate did not plausibly allege deliberate indifference, it failed to state a claim against the City for failure to train.

B. Failure to Screen

Turning to the failure-to-screen claim, the Estate suggests it pleaded *Monell* liability by alleging the City neglected to adequately investigate Shelby’s past. The complaint alleges that even a cursory background check would have revealed that Shelby had brandished a knife during a domestic dispute, used a shovel to damage a car, and threatened someone with violence—incidents that respectively served as the basis of a police report and two protective orders against her.

In the screening context, the Supreme Court has noted a “particular danger that a municipality will be held liable for an injury not directly caused by a deliberate action attributable to the municipality itself,” as “[e]very injury suffered at the hands of a municipal employee can be

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traced to a hiring decision in a ‘but-for’ sense.” *Brown*, 520 U.S. at 410. To that end, “[t]he Supreme Court has made clear that the failure to conduct a sufficient background check on a job applicant is insufficient in itself to satisfy the deliberate[-]indifference element.” *Waller*, 932 F.3d at 1285. Instead, deliberate indifference occurs “[o]nly where adequate scrutiny of an applicant’s background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be the deprivation of a third party’s federally protected right.” *Brown*, 520 U.S. at 411.

Here, the allegations of violence in Shelby’s past may suggest her use of force against Crutcher was more likely. But the applicable legal standard is stricter than that. It is not plausible to infer from three incidents that resulted in allegations of violent or aggressive behavior—none of which resulted in physical injury or conviction—that a “*plainly obvious consequence* of the decision to hire” Shelby would be “the deprivation of a third party’s federally protected right.” *Id.* (emphasis added). We therefore conclude that the Estate failed to plead a plausible failure-to-screen claim.

C. Failure to Investigate or Discipline

The Estate’s final premise for excessive-force liability relates to the City’s allegedly deficient use-of-force investigations and officer discipline, which it says created a “code of silence” around misconduct. In support of this claim, the Estate points to its allegations that TPD inadequately investigates (or refuses to investigate)

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officer-misconduct complaints; discourages the district attorney from pursuing criminal investigations into officer-involved shootings; found a policy violation in just one of 61 deadly force incidents in an eight-year period; never disciplined Shelby or any other officers present at the scene of Crutcher's shooting; and failed to implement mandatory body cameras.

These allegations fall short of showing causation. Although the Estate plausibly alleges that neither Shelby nor any officer at the scene faced discipline, “[r]arely if ever is ‘the failure of a police department to discipline in a specific instance an adequate basis for municipal liability under *Monell*.’” *Schneider*, 717 F.3d at 777 (cleaned up) (quoting *Butler v. City of Norman*, 992 F.2d 1053, 1056 (10th Cir. 1993)). Indeed, “[b]asic principles of linear time prevent us from seeing how conduct that occurs after the alleged violation could have somehow caused that violation.” *Waller*, 932 F.3d at 1289 (cleaned up) (quoting *Cordova v. Aragon*, 569 F.3d 1183, 1194 (10th Cir. 2009)). As for the allegations of prior investigative and disciplinary failures, the Estate fails to allege that any of the misconduct complaints or officer-involved shootings involved excessive force, rendering their relevance purely speculative. Thus, the Estate’s disciplinary “allegations in this case are too general, encompassing too ‘wide a swath of conduct,’ to ‘nudge [its] claims across the line from conceivable to plausible.” *Id.* (cleaned up) (quoting *Khalik*, 671 F.3d at 1191).

In sum, the district court correctly dismissed the Estate’s *Monell* claims for excessive force based on failure to train, screen, and investigate or discipline officers.

*Appendix A***Conclusion**

Because the district court failed to view the facts in a light most favorable to the Estate and defined clearly established law at too granular a level, we reverse the grant of summary judgment to Shelby. But we affirm the district court's dismissal of the Estate's various *Monell* claims because they fail to plausibly state municipal liability.

**APPENDIX B — MEMORANDUM AND ORDER
OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA,
FILED APRIL 8, 2024**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 17-CV-336-EFM-SH

MICHAEL MANNING, AS THE ADMINISTRATOR
OF THE ESTATE OF TERENCE CRUTCHER, SR.,

Plaintiff,

vs.

CITY OF TULSA, *et al.*,

Defendants.

MEMORANDUM AND ORDER

Before the Court are Defendants Betty Jo Shelby's ("Officer Shelby") and City of Tulsa's (the "City") Motions for Summary Judgment. (Docs. 193 and 196). Plaintiff Michael Manning, as the Administrator of the Estate of Terrence Crutcher, Sr., asserts an excessive force claim under the Fourth Amendment and a deprivation of life claim under the Fourteenth Amendment against Officer Shelby. Plaintiff also brings a wrongful death claim against the City under a theory of vicarious liability. Officer Shelby asks the Court to grant her summary judgment, arguing that the Fourth Amendment claim

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is barred by qualified immunity and the Fourteenth Amendment claim is meritless. The City asks the Court to grant it summary judgment, arguing that Officer Shelby acted reasonably and met the Oklahoma law standard of conduct. For the reasons stated below, the Court grants both motions for summary judgment.

I. Factual and Procedural Background

This case arises from the fatal shooting of Terence Crutcher by Officer Shelby. On September 16, 2016, Officer Shelby, an officer of the Tulsa Police Department, responded to a domestic disturbance call. At the intersection of 36th Street North and Lewis Avenue, Officer Shelby observed a black male who she believed was under the influence of PCP or having a mental episode. Officer Shelby decided to continue west on 36th Street North to respond to the priority domestic disturbance call.

After traveling west on 36th Street North for several hundred feet, Officer Shelby stopped to investigate an unattended, running vehicle parked in the middle of the road. Officer Shelby radioed dispatch to request that someone else respond to the domestic disturbance call, explain that she would be investigating the vehicle, and call in the tag number. She turned on only her rear flashing lights, which did not activate her dash cam, and exited her patrol car. Officer Shelby walked to the unattended vehicle and looked through the windows on the driver's side. She first looked through at the rear compartment, then at the back seat, and finally at the front seat. Officer Shelby did not see anyone in the vehicle and started

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walking toward the back of the vehicle to go around and check the passenger's side.

As she approached the back of the vehicle, Officer Shelby saw the same man she had seen walking at the intersection earlier walking west on the north edge of 36th Street North. This man was Crutcher. Officer Shelby yelled to him, asking if the parked vehicle was his, but Crutcher did not respond to her. Instead, Crutcher started walking toward Officer Shelby who ordered him to take his hands out of his pockets. Officer Shelby could not understand what Crutcher mumbled in response. Then Crutcher slowly pulled his hands out of his pockets and put both hands up in the air. He was profusely sweating, and his head was positioned downward. The parties dispute whether Crutcher followed Officer Shelby's orders by keeping his hands in the air or if he periodically lowered them to his pockets.

Crutcher had walked to the rear end of Officer Shelby's patrol car. Officer Shelby radioed "Adam 303. Hold traffic. I have a suspect that won't show me his hands!" Officer Tyler Turnbough heard Officer Shelby's radio traffic and immediately headed toward her location. After radioing, Officer Shelby ordered Crutcher to stop moving, get on his knees, and to show his hands. It is disputed whether Crutcher complied with any commands. Crutcher walked to the front of the passenger side of the patrol car, stopped, mumbled something, and then looked over at the vehicle parked in the middle of the road. Officer Shelby could hear police sirens in the distance.

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Then Crutcher started walking toward the driver's side of the parked vehicle with his hands in the air. Officer Shelby followed him with her handgun drawn and ordered Crutcher to stop and get on his knees. It took Crutcher approximately 27 steps over the course of about 18 seconds to reach the driver's side door of the vehicle parked in the middle of the road. Shortly before Crutcher reached the driver's side door of the vehicle, Officer Turnbough arrived at the scene.

Crutcher had his hands up and was stopped facing toward the driver's side door of the vehicle. Officer Shelby was near the rear of the vehicle with her handgun drawn. Officer Turnbough was slightly behind Officer Shelby's left shoulder with his Taser drawn. The parties dispute whether the driver's side window was fully rolled down, partially rolled down, or not rolled down at all. Additionally, the parties dispute whether Crutcher reached into the driver's side window to possibly retrieve a weapon. However, Crutcher did at least lower his arm. When Officer Shelby and Officer Turnbough saw Crutcher lower his arm, they simultaneously fired the handgun and Taser at him. Crutcher fell to the pavement. Less than an hour later, Crutcher was pronounced dead.

Austin Bond, the administrator of Crutcher's Estate at the time, commenced this action in June 2017, asserting various claims against several Defendants. After years of litigation and a few partially successful motions to dismiss, only two Defendants remain—Officer Shelby and the City. Plaintiff brings a Fourth Amendment and Fourteenth

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Amendment claim against Officer Shelby, and a vicarious liability wrongful death claim under Oklahoma law remains against the City. Both Defendants filed Motions for Summary Judgment on September 1, 2023. Plaintiff filed his Responses on September 29, 2023. The City filed its Reply on October 13, 2023, and Officer Shelby filed her Reply on October 20, 2023.

II. Legal Standard

Summary judgment is appropriate if the moving party demonstrates that there is no genuine issue as to any material fact, and the movant is entitled to judgment as a matter of law.¹ A fact is “material” when it is essential to the claim, and issues of fact are “genuine” if the proffered evidence permits a reasonable jury to decide the issue in either party’s favor.² The movant bears the initial burden of proof and must show the lack of evidence on an essential element of the claim.³ The nonmovant must then bring forth specific facts showing a genuine issue for trial.⁴ These facts must be clearly identified through affidavits, deposition transcripts, or incorporated exhibits—

1. Fed. R. Civ. P. 56(a).

2. *Haynes v. Level 3 Commc’ns, LLC*, 456 F.3d 1215, 1219 (10th Cir. 2006) (citing *Bennett v. Quark, Inc.*, 258 F.3d 1220, 1224 (10th Cir. 2001)).

3. *Thom v. Bristol-Myers Squibb Co.*, 353 F.3d 848, 851 (10th Cir. 2003) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

4. *Garrison v. Gambro, Inc.*, 428 F.3d 933, 935, 150 Fed. Appx. 819 (10th Cir. 2005) (citation omitted).

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conclusory allegations alone cannot survive a motion for summary judgment.⁵ The court views all evidence and reasonable inferences in the light most favorable to the non-moving party.⁶

III. Analysis**A. Officer Shelby’s Motion for Summary Judgment****1. Fourth Amendment Right to be Free from Excessive Force**

Officer Shelby argues that she is entitled to summary judgment because Plaintiff cannot overcome her assertion of qualified immunity. It is well established that “individual defendants named in a § 1983 action may raise a defense of qualified immunity.”⁷ “The doctrine of qualified immunity shields public officials . . . from damages actions unless their conduct was unreasonable in light of clearly established law.”⁸ When the defense of qualified immunity is asserted, the burden shifts to the plaintiff to show: “(1) that the defendant’s actions violated

5. *Mitchell v. City of Moore*, 218 F.3d 1190, 1197 (10th Cir. 2000) (citing *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670-71 (10th Cir. 1998)).

6. *LifeWise Master Funding v. Telebank*, 374 F.3d 917, 927 (10th Cir. 2004) (citation omitted).

7. *Cillo v. City of Greenwood Vill.*, 739 F.3d 451, 460 (10th Cir. 2013).

8. *Id.* (quotations and citation omitted).

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a federal constitutional or statutory right, and if so, (2) that the right was clearly established at the time of the defendant's unlawful conduct.”⁹ The Court has discretion to determine “which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand.”¹⁰ “If the plaintiff fails to satisfy either part of the two-part inquiry, the court must grant the defendant qualified immunity.”¹¹ “In determining whether the plaintiff has shouldered this *heavy burden*, [the Court] construe[s] the facts in the light most favorable to the plaintiff as the nonmovant.”¹²

a. Clearly established

A right is “clearly established” if Supreme Court or Tenth Circuit precedent (or the weight of authority from other circuits) would put reasonable officers in the defendants’ position on notice they were violating the constitution or statute.¹³ “The plaintiff bears the burden

9. *Id.* (citation omitted).

10. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).

11. *Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001) (citation omitted).

12. *Corona v. Aguilar*, 959 F.3d 1278, 1282 (10th Cir. 2020) (quoting *Quinn v. Young*, 780 F.3d 998, 1004 (10th Cir. 2015)) (emphasis added).

13. *Carabajal v. City of Cheyenne*, 847 F.3d 1203, 1210 (10th Cir. 2017); *see also Ullery v. Bradley*, 949 F.3d 1282, 1294-97 (10th Cir. 2020) (finding a right was clearly established based on the consensus of persuasive authority from six other circuits).

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of citing to [the Court] what he thinks constitutes clearly established law.”¹⁴ The law must be “sufficiently clear that every reasonable official would have understood that what [she] is doing violates that right.”¹⁵ This does not require the existence of a case exactly on point,¹⁶ but does require that the existing caselaw be sufficiently clear to place the constitutional issue “beyond debate.”¹⁷ “Because the focus is on whether the officer had fair notice that [her] conduct was unlawful, reasonableness is judged against

14. *Thomas v. Durastanti*, 607 F.3d 655, 669 (10th Cir. 2010); *Easter v. Cramer*, 785 F. App’x 602, 607 (10th Cir. 2019) (“The plaintiff bears the burden of directing the Court to authority that clearly establishes the right that was arguably violated.”); see *Gutierrez v. Cobos*, 841 F.3d 895, 902 (10th Cir. 2016) (finding plaintiffs failed to carry their heavy burden when they did not cite or discuss any pertinent caselaw).

15. *Mullenix v. Luna*, 577 U.S. 7, 11, 136 S. Ct. 305, 193 L. Ed. 2d 255 (2015) (further citation and quotations omitted).

16. See *Hope v. Pelzer*, 536 U.S. 730, 740-41, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002); *Paugh v. Uintah Cnty.*, 47 F.4th 1139, 1167 (10th Cir. 2022) *cert denied sub nom. Anderson v. Calder*, 143 S. Ct. 2658, 216 L. Ed. 2d 1236 (2023) (“[T]his inquiry does not require a scavenger hunt for prior cases with precisely the same facts.”) (quotations and citation omitted); *Est. of Smart v. City of Wichita*, 951 F.3d 1161, 1168 (10th Cir. 2020) (“[A] prior case need not be exactly parallel to the conduct here for the officials to have been on notice of clearly established law.”) (quoting *Halley v. Huckaby*, 902 F.3d 1136, 1149 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 1347, 203 L. Ed. 2d 570 (2019)).

17. *White v. Pauly*, 580 U.S. 73, 79, 137 S. Ct. 548, 196 L. Ed. 2d 463 (2017).

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the backdrop of the law at the time of the conduct.”¹⁸ Thus, the law then-existing at the time of the officer’s actions must clearly establish that such conduct would violate the Constitution.¹⁹

“[E]xcessive force jurisprudence requires an all-things-considered inquiry with careful attention to the facts and circumstances of each particular case, and there will almost never be a previously published opinion involving exactly the same circumstances.”²⁰ To accommodate the multitude of factual circumstances involving claims of excessive force, the Tenth Circuit has established “a sliding scale in which [t]he more obviously egregious the conduct in light of prevailing constitutional principles, the less specificity is required from prior case law to clearly establish the violation.”²¹ However, the precedent at the time of the officer’s conduct must do more than merely suggest a rule.²² The precedent must sufficiently define the rule’s contours so “that it is clear to a reasonable officer that [her] conduct was unlawful in the

18. *McInerney v. King*, 791 F.3d 1224, 1237 (10th Cir. 2015) (quoting *Mascorro v. Billings*, 656 F.3d 1198, 1207-08 (10th Cir. 2011)).

19. *Id.*

20. *Easter*, 785 F. App’x at, 607 (quotation omitted).

21. *Id.* (quoting *Casey v. City of Fed. Heights*, 509 F.3d 1278, 1284 (10th Cir. 2007) (further quotations omitted)).

22. *City of Tahlequah, Okla. v. Bond*, 595 U.S. 9, 11, 142 S. Ct. 9, 211 L. Ed. 2d 170 (2021).

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situation [she] confronted.”²³ This required specificity is “‘especially important in the Fourth Amendment context,’ where it is ‘sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts.’”²⁴

Plaintiff cites to *King v. Hill*,²⁵ *Estate of Ceballos v. Husk*,²⁶ and *Allen v. Muskogee*.²⁷ The Tenth Circuit in *Hill* determined that an officer shooting an unarmed suspect who was not posing a threat to the officer or others is a clearly established violation of the Fourth Amendment.²⁸ In *Hill*, an officer shot and wounded the plaintiff who was mentally ill, holding a jacket, and raising his hands.²⁹

In *Ceballos*, the Tenth Circuit determined that a reasonable officer would have known that the reckless action of running screaming to a suspect caused the need to use deadly force, and thus is a clearly established violation of the Fourth Amendment.³⁰ There, an officer shot and killed a distraught suspect after approaching the

23. *Id.* (quotation omitted).

24. *Id.* at 12-13 (quoting *Mullenix*, 577 U.S. at 12).

25. 615 F. App’x 470 (10th Cir. 2015).

26. 919 F.3d 1204 (10th Cir. 2019).

27. 119 F.3d 837 (10th Cir. 1997).

28. *Hill*, 615 F. App’x at 477, 479.

29. *Id.* at 471-72.

30. *Ceballos*, 919 F.3d at 1216-17.

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suspect quickly, shouting at the suspect to drop the bat, and refusing to “give ground” when the suspect approached officers.³¹ The Tenth Circuit noted that a case decided on jurisdiction grounds³² and a unpublished decision³³ by themselves are not enough to meet the standard of clearly established.³⁴ However, the Tenth Circuit found that the clearly established standard is met when those cases are considered in conjunction with *Allen*, a closely analogous published case, that analyzes an officer’s actions in the context of excessive force.³⁵

Moving to *Allen*, the Tenth Circuit there held that a jury could find that the Fourth Amendment was violated when an officer’s reckless conduct “precipitated the need to use deadly force.”³⁶ In *Allen*, officers, within ninety seconds, shot and killed a potentially suicidal suspect after running to the parked vehicle where the suspect was located, yelling at the suspect, and attempting to physically take the suspect’s gun.³⁷ All of these events took place within ninety seconds.³⁸

31. *Id.* at 1216.

32. *Id.* at 1217 (discussing *Sevier v. City of Lawrence*, 60 F.3d 695 (10th Cir. 1995)).

33. *Id.* (discussing *Hasting v. Barnes*, 252 F. App’x 197 (10th Cir. 2007)).

34. *Id.*

35. *Id.* at 1215-17 (discussing *Allen*).

36. *Allen*, 119 F.3d at 841.

37. *Id.* at 839.

38. *Id.*

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Here, it is Plaintiff's burden to demonstrate that it was clearly established that an officer cannot use deadly force on a suspect who: has diminished capacity; was in an open, unconfined area; reportedly committed only non-violent misdemeanors; ignored orders to stop and get on his knees as he slowly walked away from an officer towards a parked vehicle with his hands up; and when he reached the door of the vehicle lowered his arm.³⁹ Officer Shelby argues that Plaintiff fails to meet his burden because the cases that he cites too are either unpublished, published after the incident at issue in this case, or factually distinguishable.

Plaintiff cites to *Hill*, *Ceballos*, and *Allen* to meet his burden. However, none of these cases sufficiently aid Plaintiff in meeting his burden.

For instance, Plaintiff draws no comparisons between the facts of *Hill* and the facts of this case. Instead, he merely cites the general rule from *Hill* that shooting an unarmed suspect who poses no threat to officers violates the Fourth Amendment. However, this rule is far too broad to be sufficiently defined to facts at issue in this case. A broad rule may serve as a founding principle for other cases to build upon to show that a right is clearly established; however, the broad rule by itself is not enough for the clearly established burden to be met.⁴⁰

39. Whether Crutcher reached into the vehicle window is disputed in this case. Construing facts in a light most favorable to Plaintiff, Crutcher lowered his arm.

40. *Hill*, 615 F. App'x at 477 (finding a published case that was factually distinguishable could not meet the clearly established standard by itself, but it could supply "a foundational principle

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Additionally, *Hill* is an unpublished case. An unpublished case, by itself, is wholly inadequate to meet the clearly established burden.⁴¹ Even though Plaintiff vaguely alludes to published authority in a parenthetical citation following his citation to *Hill*, this too is insufficient. Importantly, the parenthetical citation fails to specify whether the clearly established right applied only to the plaintiff in *Hill*, or whether the clearly established right applies to Plaintiff in this case.⁴² Regardless, a vague parenthetical citation falls short of the heavy burden that Plaintiff bears to show that the right is clearly established. Plaintiff has the burden to provide the Court with citations to authority and/or legal argument to show that the right at issue is clearly established. While Plaintiff did provide the Court with a citation to *Hill*, Plaintiff did not provide the Court with citations to or legal arguments regarding the published authority within *Hill*. Therefore, by only citing to an unpublished case, Plaintiff cannot meet his high burden.

concerning the limits on the use of deadly force against unarmed suspects”).

41. *Ceballos*, 919 F.3d at 1216-17 (discussing *Hasting*, 252 F. App’x 197); see *Morris v. Noe*, 672 F.3d 1185, 1197 n.5 (10th Cir. 2012) (“[A]n unpublished opinion provides little support for the notion that the law is clearly established on a given point. But we have never held that a district court must ignore unpublished opinions in deciding whether the law is clearly established.”); *Harris v. Mahr*, 838 F. App’x 339, 343 (10th Cir. 2020) (citing *Mecham v. Frazier*, 500 F.3d 1200, 1206 (10th Cir. 2007)).

42. This uncertainty stems from Plaintiff utilizing “Plaintiff” to refer to both himself, and to plaintiffs in general when articulating legal standards.

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Ceballos is the case that Plaintiff most heavily relies upon to meet his burden. However, this reliance is misplaced. To determine whether a right is clearly established, the Court looks to the legal precedent at the time that the conduct occurred.⁴³ *Ceballos* was published in 2019, two and a half years after the incident at issue occurred. A case “decided after the shooting at issue, is of no use in the clearly established inquiry.”⁴⁴ As such, *Ceballos* could not give fair notice to Officer Shelby that her conduct was unconstitutional.

Nonetheless, Plaintiff asserts that the untimeliness of *Ceballos* is inconsequential because the Tenth Circuit ruled that *Allen* clearly established the rights at issue in *Ceballos*, and therefore, *Allen* clearly establishes the right at issue in the present case. But Plaintiff provides no analysis of how the facts in *Allen* resemble the situation at issue before this Court. A review of the case reveals that the facts of *Allen* differ from the facts of the situation at issue here.

In *Allen*, the officers carelessly escalated the situation by screaming at the suspect in the vehicle and attempting to physically take the suspect’s gun.⁴⁵ By contrast, Officer Shelby interacted with Crutcher while investigating a parked vehicle in the middle of the road; did not see a weapon in Crutcher’s hands; and followed Crutcher

43. *McInerney*, 791 F.3d at 1237.

44. *Bond*, 595 U.S. at 13 (citation omitted).

45. *Allen*, 119 F.3d at 841.

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to the stopped vehicle while ordering him to show his hands, stop walking toward the vehicle, and to get on his knees. Thus, *Allen* does not clearly establish that Officer Shelby's conduct in the case at issue was reckless or that her ultimate use of force was unlawful.

The issue here is whether Plaintiff met his burden to show that the law is clearly established. Of the three cases Plaintiff provides, the Court cannot consider *Ceballos* because it was published after the incident occurred, cannot rely on *Allen* because it is too factually different, and cannot rely on *Hill* by itself because it is unpublished. As a result, Plaintiff fails to meet his heavy burden to show the right at issue is clearly established. "This isn't to say Plaintiff lacked (or possessed) a meritorious case, but clients are usually bound by their lawyers' actions."⁴⁶ And "Plaintiff, through his counsel, has simply failed to carry the burden assigned to him by law."⁴⁷ Therefore, the Court grants Officer Shelby's motion for summary judgment, finding that qualified immunity bars Plaintiff's Fourth Amendment claim against her.

2. Fourteenth Amendment Right to be Free from Deprivation of Life Without Due Process

Officer Shelby argues she is entitled to summary judgment because Plaintiff's Fourteenth Amendment

46. *Gutierrez*, 841 F.3d at 903 (quoting *Smith v. McCord*, 707 F.3d 1161, 1162 (10th Cir. 2013)) (internal quotation marks and brackets omitted).

47. *Rojas v. Anderson*, 727 F.3d 1000, 1005-6 (10th Cir. 2013) (quoting *Smith*, 707 F.3d at 1162) (internal quotation marks and brackets omitted) (alterations in original).

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claim is meritless. In his Response, Plaintiff fails to address Officer Shelby's summary judgment arguments against the Fourteenth Amendment claim. Instead, Plaintiff responded only to Officer Shelby's assertion of qualified immunity against the Fourth Amendment excessive force claim.

On summary judgment the burden of persuasion is shifted to the nonmovant when the movant makes an argument as to "why summary judgment is appropriate as to a particular claim."⁴⁸ The nonmovant's "failure to respond" to summary judgment arguments against a particular claim, is "fatal."⁴⁹

Here, in Plaintiff's response, he only addresses Officer Shelby's summary judgment arguments against the Fourth Amendment claim. He provides no argument or support for his remaining Fourteenth Amendment claim against Officer Shelby. Therefore, the Court finds that Plaintiff abandoned his remaining Fourteenth Amendment claim by failing to substantively respond to Officer Shelby's arguments against that claim. Consequently, the Court grants Officer Shelby's motion for summary judgment on Plaintiff's Fourteenth Amendment claim against her.

B. The City's Motion for Summary Judgment

The City argues that it is entitled to summary judgment on the vicarious liability wrongful death claim

48. *Hinsdale v. City of Liberal, Kan.*, 19 F. App'x 749, 769 (10th Cir. 2001).

49. *Id.*; see *Bejar v. Dep't of Veterans Affs.*, 683 F. App'x 656, 657 n. 2 (10th Cir. 2017) ("[Plaintiff] waived his retaliation claim by . . . omitting it from his summary judgment briefing.").

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because Officer Shelby acted reasonably and met the Oklahoma law standard of conduct. However, the wrongful death claim is a state law claim and no federal law claims remain in this case.

“[F]ederal courts are courts of limited subject-matter jurisdiction,” and they “may only hear cases when empowered to do so by the Constitution and by act of Congress.”⁵⁰ “[S]upplemental jurisdiction over state claims is exercised on a discretionary basis and . . . if federal claims are dismissed before trial, leaving only issues of state law, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.”⁵¹ The Tenth Circuit advises the district courts to “generally decline to exercise supplemental jurisdiction when no federal claims remain because ‘[n]otions of comity and federalism demand that a state court try its own lawsuits, absent compelling reasons to the contrary.’”⁵²

Here, no federal law claims remain. Because Plaintiff’s only remaining claim arises under state law, the Court declines to exercise supplemental jurisdiction over Plaintiff’s wrongful death claim. Consequently, the Court dismisses the vicarious liability wrongful death

50. *Gad v. Kan. State Univ.*, 787 F.3d 1032, 1035 (10th Cir. 2015) (further citations and quotations omitted).

51. *Hubbard v. Okla. Ex. Rel. Dep’t Hum. Servs.*, 759 F. App’x 693, 713 (10th Cir. 2018) (quoting *Bauchman v. West High Sch.*, 132 F.3d 542, 549 (10th Cir. 1997)) (internal quotation marks omitted).

52. *Id.* (quoting *Ball v. Renner*, 54 F.3d 664, 669 (10th Cir. 1995)).

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claim without prejudice. Therefore, the City's Motion is denied as moot.

IT IS THEREFORE ORDERED that Defendant Betty Jo Shelby's Motion for Summary Judgment (Doc. 193) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's vicarious liability wrongful death claim against Defendant City of Tulsa is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that Defendant City of Tulsa's Motion for Summary Judgment (Doc. 196) is **DENIED** as moot.

IT IS SO ORDERED.

Dated this 8th day of April, 2024.

This case is closed.

/s/ Eric F. Melgren
ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE