

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Emma Ochoa Toledo, as a wrongful death beneficiary on her own behalf and on behalf of all statutory beneficiaries, et al. v. Andrew Palafox, et al.

No. CV-24-00195-TUC-CKJ · No. No. CV-24-00195-TUC-CKJ · Decided March 26, 2026

OPINION

1 WO KAB 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Emma Ochoa Toledo, as a wrongful death beneficiary on her own behalf and 10 on behalf of all statutory beneficiaries, et No. CV-24-00195-TUC-CKJ al., 11 Plaintiffs, 12 ORDER v. 13 14 Andrew Palafox, et al., 15 Defendants. 16 17 Plaintiff Emma Ochoa Toledo, as a wrongful death beneficiary on her own behalf 18 and on behalf of all statutory beneficiaries, and Edgar Casahonda, on behalf of the Estate 19 of Edrei Ochoa, who are represented by counsel, brought this action pursuant to 42 U.S.C. 20 § 1983 and Arizona state law.

Defendants move for summary judgment. (Doc. 35.) 21 Although the Court granted Plaintiffs four extensions of time to file a response (Docs. 41, 22 43, 45, 47), Plaintiffs did not file a response or seek additional time to file a response. 23 24 I. Background 25 In the Complaint, Plaintiffs allege five counts against Defendants.

In Count One, 26 Plaintiffs allege assault and battery resulting in wrongful death of Edrei Ochoa (“Ochoa”), 27 against Defendants City of Nogales Police Officer Palafox (“Palafox”), City of Nogales 28 Police Officer Serrano (“Serrano”), and the City of Nogales (based on vicarious liability). 1 In Count Two, Plaintiffs allege negligent supervision against the City of Nogales.

In Count 2 Three, Plaintiffs allege Fourth Amendment excessive force against Defendants Palafox and 3 Serrano. In Count Four, Plaintiffs allege Monell claims against the City of Nogales based 4 on failure to train. In Count Five, Plaintiffs allege a Fourteenth Amendment loss of family 5 relationship claim against Defendants Palafox, Serrano and the City of Nogales.

6 Defendants assert that they are entitled to summary judgment because Palafox and 7 Serrano did not use excessive force, Palafox and Serrano are entitled to qualified immunity 8 as to the excessive force claim because there was no excessive force, there is no support 9 for a Monell claim, there was no conduct shocking the conscience to support that loss of 10 family relationship claim, and the state law claims are unsupported because the use of force 11 was justified.

12 13 II. Summary Judgment Standard 14 A court must grant summary judgment “if the movant shows that there is no genuine 15 dispute as to any material fact and the movant is entitled to

judgment as a matter of law.” 16 Fed. R. Civ. P. 56(a); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

The 17 movant bears the initial responsibility of presenting the basis for its motion and identifying 18 those portions of the record, together with affidavits, if any, that it believes demonstrate 19 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. 20 If the movant fails to carry its initial burden of production, the nonmovant need not 21 produce anything.

Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Co., Inc., 210 F.3d 1099, 22 1102-03 (9th Cir. 2000). But if the movant meets its initial responsibility, the burden shifts 23 to the nonmovant to demonstrate the existence of a factual dispute and that the fact in 24 contention is material, i.e., a fact that might affect the outcome of the suit under the 25 governing law, and that the dispute is genuine, i.e., the evidence is such that a reasonable 26 jury could return a verdict for the nonmovant.

Anderson v. Liberty Lobby, Inc., 477 U.S. 27 242, 248, 250 (1986); see *Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). The nonmovant need not establish a material issue of fact conclusively in its 1 favor, *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968); however, 2 it must “come forward with specific facts showing that there is a genuine issue for trial.” 3 *Matsushita Elec.*

Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal 4 citation omitted); see Fed. R. Civ. P. 56(c)(1). 5 At summary judgment, the judge’s function is not to weigh the evidence and 6 determine the truth but to determine whether there is a genuine issue for trial. *Anderson*, 7 477 U.S. at 249.

In its analysis, the court must believe the nonmovant’s evidence and draw 8 all inferences in the nonmovant’s favor. *Id.* at 255. The court need consider only the cited 9 materials, but it may consider any other materials in the record. Fed. R. Civ. P. 56(c)(3). 10 Additionally, where a response to a motion for summary judgment is not filed, it 11 should nonetheless be denied “where the movant's papers are insufficient to support that 12 motion or on their face reveal a genuine issue of material fact.” See *Henry v. Gill Industries, Inc.*, 983 F.2d 943 (9th Cir.

1993); see also L.R.Civ. 7.2(i). 14 Because they did not respond, Plaintiffs have failed to go beyond the pleadings and 15 set forth specific facts that show there is a material issue of fact for trial. The Court will 16 review the record to determine if Defendants’ evidence is sufficient to support a grant of 17 summary judgment. 18 19 III. Facts1 20 On April 8, 2023, Defendant Nogales Police Sergeant Palafox was one of the police 21 recipients of an email from Nogales Police Sergeant Amador Vasquez advising that Ochoa 22 was back in Nogales and to be on the alert.

(Doc. 36 ¶ 3.) 23 On the night of April 10, 2023, Defendant Sergeant Palafox, who was wearing his 24 Nogales Police uniform, purchased a burrito from a food truck in the vicinity of the Circle 25 K in a congested, heavy traffic, commercial area in Nogales. (Id. ¶¶ 4, 49.) Ochoa drove 26 up to Palafox's marked police car and advised Palafox that "you're safe.

I've got this place 27 28 1 Because Plaintiffs did not controvert any of Defendants' facts, the Court considers Defendants' supported facts undisputed. See Fed. R. Civ. P. 56(e)(2)-(3). 1 under surveillance. I'm under cover right now." (Id. ¶¶ 5, 49.) Palafox watched Ochoa 2 drive to the Circle K parking lot, retrieve body armor from his trunk, and put the body 3 armor on.

(Id. ¶ 6.) Palafox drove and parked his car directly behind Ochoa's car. (Id. ¶ 4 7.) Based on his criminal conviction history, Ochoa was a prohibited possessor of body 5 armor and a gun in violation of A.R.S. § 13-3116 and A.R.S. § 13-3102(A)(4), both Class 6 4 felonies. (Id. ¶ 8.) 7 Palafox asked Ochoa what he was doing with body armor and directed Ochoa to 8 step out of the car.

(Id. ¶ 9.) When Ochoa got out, he spun around and Palafox noticed the 9 handle of Ochoa's gun in a holster on the side of his right hip. (Id.) Palafox attempted to 10 put handcuffs on Ochoa, but Ochoa resisted. (Id. ¶ 10.) Palafox saw the handle of Ochoa's 11 gun, asked Ochoa if he had any weapons and Ochoa falsely stated he did not. (Id. ¶ 11.) 12 Ochoa grabbed the handle of his gun, but his oversized jacket prevented him from actually 13 grasping it.

(Id. ¶ 12.) Ochoa spun around immediately preventing Palafox from putting 14 a handcuff on his right arm. (Id. ¶ 13.) Palafox was unable to keep hold of Ochoa's right 15 wrist because Ochoa was stronger than him. (Id. ¶ 14.) Ochoa put his arm in front of him 16 and then reached for his gun. (Id.) Palafox used both his hands to push down on Ochoa's 17 hand to prevent him from getting the weapon out.

(Id.) 18 Ochoa reached for his weapon and grasped his weapon. (Id. ¶ 15.) Palafox was 19 focused on not letting Ochoa pull out his weapon. (Id. ¶ 16.) Palafox repeatedly 20 commanded "Don't take it out," "Don't do it. Don't do it." (Id.) Ochoa broke loose and 21 got in front of Palafox and put his arms up. (Id. ¶ 17.) Palafox felt that he was "going to 22 die." (Id. ¶ 17.)

Palafox commanded Ochoa, "Get on the ground"; "Get down on your 23 belly. Put your arms to the side." (Id. ¶ 18.) Ochoa just stood there looking at Palafox. 24 (Id.) Palafox got on the radio and City of Nogales Police Officer Kavathas arrived on 25 scene. (Id.) 26 Palafox was pointing his gun at Ochoa and Officer Kavathas had a taser pointed at 27 Ochoa. (Id. ¶ 19.)

Ochoa was complying with commands with both eyes fixed on Palafox, 28 alternating between a smile and seriousness. (Id.) Ochoa moved his arms above his head 1 and then would bring them down and, at one point, he gestured like he was going to grab 2 his gun. (Id. ¶ 20.) Palafox

commanded, “don’t grab it. Don’t grab it, lower yourself to the ground, get on your belly, get on your belly.” (Id. ¶ 20.)

Ochoa would lower to one knee in response to commands and then just “pop right back up.” (Id. ¶ 22.) Defendant Nogales Police Officer Serrano arrived with the K9 unit. (Id. ¶ 25.) Officer Serrano was able to see a gun on Ochoa’s hip. (Id. ¶ 56.) Officer Serrano knew that Ochoa was a prohibited possessor. (Id.) Ochoa was moving his arms up and down and putting his hands close to the gun on his waist and Officer Serrano told everyone to calm down and he would get his dog.

(Id. ¶ 58.) Officer Serrano first commanded the K9 to lie on its stomach flat on the ground and commanded Ochoa to get on the ground. (Id. ¶ 59.) Officer Serrano said “I don’t want my dog to bite you.” (Id.) Palafox told Ochoa to get on the ground and “we don’t want to harm you.” (Id.) Officer Serrano stated “we have a gun.

We don’t know what can happen what could trigger this.” (Id.) Ochoa had a knife in his right hand and Officer Serrano released the K9. (Id.) Ochoa did a turning-rolling type move that caused the K9 to not bite him. (Id.) Palafox saw Ochoa reach into his pocket and grab a knife and snap the blade open. (Id. ¶ 26.)

The blade had a hooked end. (Id.) Ochoa reached into his other pocket, grabbed a second knife, and snapped the blade open. (Id. ¶ 27.) Ochoa held the knives with the blades extending from the bottom of his hands as he got into fighting position. (Id.) At this point, Ochoa was moving around, not backing up, going side to side and was 10 to 15 feet from Palafox.

(Id. ¶ 28.) When Ochoa pulled knives out, Palafox commanded Ochoa “drop the knives, drop the knives.” (Id. ¶ 35.) Officer Serrano grabbed his taser and shot the taser at Ochoa’s center mass, but Ochoa did not receive the energy as the prongs did not stick into his body due to the body armor. (Id. ¶ 60.) Ochoa grabbed the wires, wrapped them, and just pulled them out.

(Id. ¶ 29.) Ochoa used one of the knives to cut the taser lead wires. (Id.) Ochoa started walking toward a restaurant in the parking lot and the police officers followed him. (Id. ¶ 61.) Serrano fired a second shot with the taser backwards that did not have any effect on Ochoa. (Id.) 1 Ochoa then began moving forward toward the police. (Id. ¶ 31.) Ochoa went toward 2 Officer Kavathas in a pace “less than a run, more than a walk.” (Id. ¶ 32.)

Palafox was 3 concerned about Officer Kavathas’ safety. (Id. ¶ 33.) The police began to back up as 4 Ochoa started moving towards them. (Id. ¶ 34.) Palafox feared for Officer Kavathas’ life 5 at that moment, and he discharged eight rounds of his service weapon at Ochoa’s right side 6 because he was wearing body armor that covered his center mass, and struck Ochoa.

(Id. ¶¶ 36, 40, 43.) Palafox saw Ochoa go down to the ground and Ochoa was still making 8 stabbing motions with his knife, so he discharged his weapon again firing an additional 9 three rounds. (Id. ¶¶ 37, 43.) At that point, Ochoa dropped the knife, and Palafox stopped 10 shooting. (Id. ¶ 38.) While Palafox was shooting, Officer Serrano “also discharged 11 rounds.” (Id. ¶ 39.)

After the shooting, Officer Kavathas rendered aid to Ochoa. (Id. ¶ 12 81.) 13 14 IV. Discussion 15 A. Count Three: Fourth Amendment excessive force against Defendants Palafox and Serrano 16 Defendants assert that they are entitled to summary judgment on the Fourth 17 Amendment excessive force claim because the force used by the officers was objectively 18 reasonable because Ochoa posed an immediate threat to the safety of the Defendant 19 Officers, other officers at the scene, and multiple civilians in the area.

Defendants assert 20 that the threat was clear because Ochoa was holding knives with four inch blades in attack 21 positions in each hand, was armed with a handgun, was wearing body armor, and was 22 charging at the officers making stabbing/slicing motions with the knives, and was within 23 8-10 feet of the officers when the officers shot him. Defendants assert that the officers 24 were in police uniforms, in marked vehicles, gave multiple commands and warnings to 25 Ochoa, and attempted lesser uses of force.

Defendants assert that they knew Ochoa was 26 committing a felony by being a prohibited possessor and was resisting arrest, and was 27 committing aggravated assault at the time the officers shot him. Defendants assert that 28 *Napouk v. Las Vegas Metropolitan Police Department*, 123 F.4th 906 (9th. Cir. 2024) 1 supports that their conduct was reasonable under the circumstances.

Defendants further 2 assert that they are entitled to qualified immunity because the law was not clearly 3 established that their behavior violated the Fourth Amendment. 4 1. Legal Standards 5 a. Excessive Force 6 If the alleged use of excessive force was applied during the plaintiff’s arrest, the 7 Fourth Amendment objective-reasonableness standard applies.

Graham v. Connor, 490 8 U.S. 386, 388 (1989). Under this standard, a court considers certain objective factors and 9 does not consider the defendant officer’s intent or motivation. See *id.* at 397, 399 10 (“subjective concepts like ‘malice’ and ‘sadism’ have no proper place in [this] inquiry”). 11 Under the Fourth Amendment standard, the reasonableness of the use of force “must 12 be judged from the perspective of a reasonable officer at the scene, rather than with the 13 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396.

When determining whether the 14 totality of the circumstances justifies the degree of force, the court must consider “the facts 15 and circumstances of each particular case, including the severity of the crime at issue, 16 whether the suspect poses an immediate threat to the safety of the officers or others, and 17 whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.*

The 18 inquiry is “whether the officers’ actions are ‘objectively reasonable’ considering the facts 19 and circumstances confronting them, without regard to their underlying intent or 20 motivation.” *Id.* at 397 (citations omitted).

21 b. Qualified Immunity 22 A defendant in a § 1983 action is entitled to qualified immunity from damages for 23 civil liability if his conduct does not violate clearly established federal statutory or 24 constitutional rights of which a reasonable person would have known. *Harlow v. 25 Fitzgerald*, 457 U.S. 800, 818 (1982).

The qualified immunity analysis formerly required 26 the court to make two distinct inquiries, the “constitutional inquiry” and the “qualified 27 immunity inquiry.” See *Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049 (9th Cir. 28 2002).

The “constitutional inquiry” asks whether, when taken in the light most favorable 1 to the non-moving party, the facts alleged show that the official’s conduct violated a 2 constitutional right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

The “qualified immunity 3 inquiry” asks if the right was clearly established at the relevant time. *Id.* at 201-02. 4 “A right is clearly established when it is ‘sufficiently clear that every reasonable 5 official would have understood that what he is doing violates that right.’” *Zorn v. Linton*, 6 No. 25–297, 2026 WL 795469, at *2 (U.S. Mar. 23, 2026); see also *Waid v. Cnty. of Lyon*, 7 87 F.4th 383, 387 (9th Cir.

2023). While a case need not be directly on point, existing 8 precedent must “place the statutory or constitutional question beyond debate.” *Waid*, 87 9 F.4th at 387 (cleaned up). “Such specificity is especially important in the Fourth 10 Amendment context, where the Court has recognized that it is sometimes difficult for an 11 officer to determine how the relevant legal doctrine, here excessive force, will apply to the 12 factual situation the officer confronts.” *Id.* (internal citations omitted). “Cases cast at a 13 high level of generality are unlikely to establish rights with the requisite specificity.” *Id.* 14 at 388 (internal citation omitted). “While a case addressing general principles may clearly 15 establish a right in an obvious case, such obvious cases are rare.” *Id.* (cleaned up). “[T]his 16 obviousness principle, an exception to the specific-case requirement, is especially 17 problematic in the Fourth-Amendment context” “because a categorical statement that 18 conduct obviously violates the Fourth Amendment is particularly hard to make when 19 officers encounter suspects every day in never-before-seen ways, including countless 20 confrontations that yield endless permutations of outcomes and responses.” *Id.* (cleaned 21 up).

As such, Fourth Amendment violations must be beyond debate to be considered 22 obvious. *Id.* (citation omitted); see also *Zorn*, 2026 WL 795469, at *2 (citation omitted) 23 (“A right is not clearly established if existing precedent does not place the constitutional 24 question ‘beyond debate.’”); *Villanueva v. California*, 986 F.3d 1158, 1171 (9th Cir. 2021) 25 (“Because excessive

use of force is a highly fact-specific inquiry, even when we determine 26 excessive force was used, ‘police officers are entitled to qualified immunity unless existing 27 precedent ‘squarely governs’ the specific facts at issue.’”) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)).

1 “Instead, a clearly established right usually requires controlling authority or a 2 robust consensus of cases of persuasive authority.” *Id.* (citations omitted). “Plaintiffs must 3 either explain why their case is obvious under existing general principles or, more 4 commonly, show specific cases that control or reflect a consensus of non-binding 5 authorities in similar situations.” *Id.* With regard to the “reasonableness of lethal force as 6 a response to vehicular flight,... this is an area in which the result depends very much on 7 the facts of each case.” *Plumhoff*, 572 U.S. at 777.

The Court must “view the facts as an 8 officer would have encountered them on the night in question, not as an *ex post facto* critic 9 dissecting every potential variance under a magnifying glass.” *Monzon v. City of Murrieta*, 10 978 F.3d 1150, 1157 (9th Cir. 2020). 11 Courts “have discretion to address the ‘clearly established’ prong of the qualified 12 immunity test first; if [they] conclude that the relevant law was not clearly established, 13 [they] need not address the other prong concerning the underlying merits of the 14 constitutional claim.” *Shooter v. Arizona*, 4 F.4th 955, 961 (9th Cir.

2021) (internal 15 quotation marks omitted). The Court will exercise its discretion to begin with the clearly 16 established prong here because it is dispositive. 17 2. Analysis 18 Here, Plaintiffs did not a file a response to the Motion for Summary Judgment and 19 therefore did not meet their burden of establishing that the law was clearly established that 20 Defendants violated the Fourth Amendment under the circumstances of this case.

See, e.g., 21 *Hughes v. Rodriguez*, 31 F.4th 1211, 1223 (9th Cir. 2022) (“The plaintiff bears the burden 22 of pointing to prior case law that articulates a constitutional rule specific enough to alert 23 these officers in this case that their particular conduct was unlawful.”) (cleaned up); *Davis v. Scherer*, 468 U.S. 183, 197 (1984) (“A plaintiff who seeks damages for violation of 25 constitutional or statutory rights may overcome the defendant official’s qualified immunity 26 only by showing that those rights were clearly established at the time of the conduct at 27 issue.”).

28 Moreover, Defendants’ argument that *Napouk v. Las Vegas Metropolitan Police 1 Department* demonstrates that the law was not clearly established is persuasive. In *Napouk*, 2 the Ninth Circuit Court of Appeals found that the officers acted reasonably in using deadly 3 force when they “reasonably perceived” 2 that a man “was holding a long, bladed weapon, 4 walking toward one of them and failing to follow commands to stop or to drop the weapon” 5 and “[a]t the moment they fired, [the man] was within ten feet of them, had ignored their 6 commands for more than five minutes, and had moved at them several times, causing them 7 to retreat with increasing frequency as the encounter went on.” 123 F.4th 906, 916 (9th 8 Cir.

2024). The Ninth Circuit further stated, “In a case like this one... where the suspect 9 is brandishing what is reasonably understood to be a lethal weapon and advancing towards 10 the officers, that he was emotionally disturbed does not negate the serious threat he 11 exhibited. If anything, his mental state and erratic behavior made [the suspect] more of a 12 threat to the officers because he clearly was not behaving rationally or in a predictable 13 manner when he repeatedly approached them with a bladed weapon.

Id. at 921 (emphasis 14 in original). 15 In *Napouk*, the Ninth Circuit Court of Appeals found both that the Defendant 16 Officers conduct in shooting the suspect under these circumstances was reasonable and that 17 there was no clearly established law demonstrating that their conduct violated the Fourth 18 Amendment. See generally id. 19 The facts of the instant case are not meaningfully different than those in *Napouk* 20 where the officers conduct was found reasonable.

Because Plaintiffs have not identified 21 any factually similar cases to qualify as Fourth Amendment precedents that “developed in 22 such a concrete and factually defined context to make it obvious to all reasonable 23 government actors, in the defendant[s’] place, that what [they were] doing violates federal 24 law,” *Shafer v. Cnty. of Santa Barbara*, 868 F.3d 1110, 1117 (9th Cir.

2017), Defendants 25 are entitled to qualified immunity on the Fourth Amendment claim. 26 27 28 2 In *Napouk*, the man was actually carrying a plastic sword. 123 F.4th at 916. 1 2 B. Count Four: Monell claim against the City of Nogales 3 Defendants assert that there is no evidence that the City failed to train or supervise 4 the Defendant police officers. 5 To state a claim based on a policy, practice, or custom of Defendant City of Nogales, 6 Plaintiffs must allege facts showing (1) that his constitutional rights were violated by an 7 employee or employees of the Defendant; (2) that the Defendant has customs or policies 8 that amount to deliberate indifference; and (3) that the policies or customs were the moving 9 force behind the violation of Ochoa’s constitutional rights in the sense that the Defendant 10 could have prevented the violation with an appropriate policy.

See *Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1193-94 (9th Cir. 2002). “Policies of omission regarding the 12 supervision of employees... can be policies or customs that create... liability..., but 13 only if the omission reflects a deliberate or conscious choice to countenance the possibility 14 of a constitutional violation.” Id. at 1194 (quotations omitted).

15 A “decision not to train certain employees about their legal duty to avoid violating 16 citizens’ rights may rise to the level of an official government policy for purposes of 17 § 1983.” *Connick v. Thompson*, 563 U.S. 51, 60 (2011).

To support a Monell claim for 18 failure to train under § 1983, a plaintiff must allege facts demonstrating that the local 19 government’s failure to train amounts to “deliberate indifference to

the rights of persons 20 with whom the [untrained employees] come into contact.” Connick, 563 U.S. at 61 (citing 21 *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

22 Deliberate indifference may be shown if there are facts to support that “in light of 23 the duties assigned to specific officers or employees, the need for more or different training 24 is obvious, and the inadequacy so likely to result in violations of constitutional rights, that 25 the policy-makers... can reasonably be said to have been deliberately indifferent to the 26 need.” *Clement v. Gomez*, 298 F.3d 898, 905 (9th Cir.

2002) (citing *Canton*, 489 U.S. at 27 390). While, “[a] pattern of similar constitutional violations by untrained employees is 28 ‘ordinarily necessary’ to demonstrate deliberate indifference for purposes of failure to 1 train” Connick, 563 U.S. at 62, a plaintiff may still prove a failure-to-train claim without 2 showing a pattern of constitutional violations where a violation “may be a highly 3 predictable consequence of a failure to equip law enforcement officers with specific tools 4 to handle recurring situations.” *Long v. Cnty. of L.A.*, 442 F.3d 1178, 1186 (9th Cir.

2006) 5 (internal citation omitted). In such instances, “failing to train could be so patently obvious 6 that [an entity] could be liable under § 1983 without proof of a pre-existing pattern of 7 violations.” Connick, 563 F.3d at 64. 8 A plaintiff may prove the existence of a custom or informal policy with evidence of 9 repeated constitutional violations for which the errant municipal officials were not 10 discharged or reprimanded.

See *Gillette v. Delmore*, 979 F.2d 1342, 1348 (9th Cir. 1992); 11 *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001). 12 Here, Plaintiffs have not produced any evidence demonstrating that the City failed 13 to train or supervise its employees leading to a violation of Ochoa’s constitutional rights. 14 Accordingly, summary judgment will be granted in favor of the City as to this claim.

15 C. Count Five: Fourteenth Amendment loss of family relationship claim against Defendants Palafox, Serrano and City of Nogales 16 Defendants assert that they are entitled to summary judgment on Plaintiffs’ 17 Fourteenth Amendment loss of familial association claim because there is no evidence that 18 Sergeant Palafox and Officer Serrano acted with anything other than legitimate law 19 enforcement objectives of self-defense, defense of each other, and defense of the other 20 police and citizens in this congested area.

21 “The substantive due process right to family or to familial association is well 22 established,” and the state’s interference with this liberty interest without due process of 23 law is remediable under § 1983. *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1079 (9th 24 Cir. 2011) (citation omitted). “To amount to a violation of substantive due process, 25 however, the harmful conduct must shock [] the conscience’ or ‘offend the community’s 26 sense of fair play and decency.’” *Rochin v. California*, 342 U.S. 165, 172–73 (1952).

The 27 “shocks-the-conscience” standard is, depending on the circumstances, met either by 28 showing that a defendant (1) acted with “deliberate indifference” or (2) with a “purpose to 1 harm” for reasons unrelated to legitimate law enforcement objectives. *Porter v. Osborn*, 2 546 F.3d 1132, 1137 (9th Cir. 2008) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 3 846 (1998)).

Under the first situation, if a defendant is in a position “[w]here actual 4 deliberation is practical,” then his deliberate indifference to the harm he caused may be 5 sufficient to “shock the conscience.” *Gantt v. City of Los Angeles*, 717 F.3d 702, 707-08 6 (9th Cir. 2013) (quoting *Wilkinson v. Torres*, 610 F.3d 546, 554 (9th Cir. 2010)). “On the 7 other hand, when an officer makes a snap judgment because of an escalating situation,” 8 then the courts apply the “purpose-to-harm” standard.

Id. (quoting *Wilkinson*, 610 F.3d at 9 554). 10 Under Supreme Court precedent, conduct that “shocks the conscience” includes 11 conduct that violates the “decencies of civilized conduct,” that is “brutal” or “offensive” or 12 “arbitrary.” *Cnty. of Sacramento*, 523 U.S. at 846-47 (citations omitted). Negligence, 13 however, “is categorically beneath the threshold of constitutional due process.” *Id.* at 849.

14 Whether conduct such as recklessness or gross negligence shocks the conscience “is a 15 matter for closer calls.” *Id.* at 849 (noting that rules of due process are not “subject to 16 mechanical application” and depend on the particular facts in a case). 17 Here, the purpose-to-harm standard applies because the evidence supports that the 18 officers had to make snap judgments in an escalating situation.

I.A. v. City of Emeryville, 19 No. 15-cv-04973-DMR, 2017 WL 952894, at *10 (N.D. Cal. Mar. 13, 2017) (“A court may 20 determine at summary judgment whether the officer had time to deliberate... or instead 21 had to make a snap judgment because he found himself in a quickly escalating situation..

22. ‘so long as the undisputed facts point to one standard or the other.’”) (citations omitted). 23 Moreover, the evidence shows that Defendants acted with the purpose of legitimate 24 law enforcement objectives. “Legitimate objectives can include arrest, self-protection, and 25 protection of the public,” and “[i]llegitimate objectives include ‘whether the officer had 26 any ulterior motives for using force against the suspect, such as to bully a suspect or get 27 even, or when an officer uses force against a clearly harmless or subdued suspect. ” *Ochoa 28 v. City of Mesa*, 26 F.4th 1050, 1056 (9th Cir.

2022) (cleaned up). 1 Here, there is no indication in the record that Defendants had any improper or 2 ulterior motives when they shot Ochoa, and there is no evidence in the record that Ochoa 3 was clearly harmless or subdued when the officers shot him. 4 Because there are no disputed

issues of material fact, summary judgment will be granted in favor of Defendants as to Count Five.

6 D. Count One: Assault and battery resulting in wrongful death against Palafox, Serrano, and the City of Nogales (based on vicarious liability) 7 Defendants argue that they are entitled to summary judgment on Plaintiffs' battery 8 claims because Arizona's justification defenses protect their conduct.

Under Arizona law, 9 "[n]o person... shall be subject to civil liability for engaging in conduct otherwise justified 10 pursuant to the provisions of this chapter." Ariz. Rev. Stat. § 13-413. Law enforcement 11 officers are justified in using deadly force "when the peace officer reasonably believes that 12 it is necessary [t]o defend himself or a third person from what the peace officer reasonably 13 believes to be the use or imminent use of deadly physical force." Id. § 13-410(c)(1).

14 Defendants may also rely on presumptions in Arizona Revised Statutes § 12-716, which 15 sets forth presumptions concerning crime victims and law enforcement officers. *Ryan v. 16 Napier*, 425 P.3d 230, 241 (Ariz. 2018). If a presumption applies, the burden shifts to the 17 plaintiff to produce evidence to rebut the presumption, although the defendant retains the 18 burden of persuasion.

Id. The relevant presumption applies if an officer proves by a 19 preponderance of the evidence that the officer used deadly physical force to "[p]rotect 20 himself or another person against another person's use or attempted use of physical force 21 or deadly physical force." Ariz. Rev. Stat. Ann. § 12-716(A).

The presumption also 22 applies to the City if it hired or trained an officer who used force under these circumstances. 23 (Id.) 24 Here, Defendants have shown by a preponderance of evidence that Arizona's 25 justification statutes support the shooting as Ochoa was wielding knives at and walking 26 toward one of the police officers when the Defendant officers shot him.

Plaintiffs do not 27 rebut this presumption. Accordingly, Defendants are entitled to summary judgment on the 28 claims in Count One.] E. Count Two: Negligent Supervision against the City of Nogales 2 Defendants assert that they are entitled to summary judgment as to Count Two because there is no evidence that the Defendant officers were negligently trained or 4| supervised.

Plaintiffs did not respond and did not produce any evidence demonstrating that 5| the Defendant officers were negligently trained or supervised. Accordingly, summary 6) judgment will be granted as to Count Two. 7 8 IT IS ORDERED that Defendants' Motion for Summary Judgment (Doc. 35) is 9) granted, and the action is terminated with prejudice.

The Clerk of Court must enter 10 | judgment accordingly. 1] Dated this 25th day of March, 2026. 12 1 Ei LC Decyamaens 14 Honorable Cin. J6fgenson United States District Judge 15 16 17 18 19

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