Municipal Tort and Civil Rights Litigation Update

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I. CALIFORNIA MUNICIPAL TORT LIABILITY

A. *Harland v. City of West Hollywood,* 120 Cal. App. 5th 1166 (2026)

- **Claimant cannot sue public entity within the 45-day claim presentation hold under Government Code §912.4; Complaint cannot be dismissed and refiled to circumvent noncompliance**

Plaintiff tripped and fell walking on a sidewalk in West Hollywood. Two days before the six-month claim presentation deadline, Plaintiff's attorney mailed a government claim to the City, then, two days after the mailing, filed suit against the City, before the City had even received the claim.

The City demurred based on failure to comply with the Claims Act presentation requirements found in Government Code sections 945.4 and 912.4(a) and (c). In response to the demurrer, Plaintiff filed a first amended complaint arguing that the 45-day response time had passed since the claim was first submitted. The trial court overruled the City's demurrer, noting "Harland served the summons and complaint before the time period expired for the City to respond…which defeats the whole purpose of the 45-day requirement."

Plaintiff then dismissed her lawsuit without prejudice and filed a second, new lawsuit. The City demurred again, arguing the second action was an effort to "circumvent the deficiencies" of her first lawsuit and was still in violation of the Claims Act.

The trial court sustained the City's demurrer without leave to amend, finding that the "initial failure to comply with the Act is a complete bar to the action" and "voluntarily dismissing that case and refiling it does not cure the failure to comply."

The court of appeal affirmed. Satisfying the Act's claim presentation requirements is a condition precedent to a tort action. Failing to comply with the claim presentation requirements subjects a complaint to a general demurrer for failure to state a claim. The claims presentation requirements ensure public entities get sufficient information to investigate claims *without the expense of litigation*. (*City of Stockton v. Superior Court*, 42 Cal. 4th 740, 746 (2007). Suing a public entity before presenting it with a claim defeats this function.

A claimant cannot sue a public entity unless and until they have complied with the claim filing requirement, and the entity has either outright denied the claim or failed to act upon the claim within 45 days. (Gov. Code §§ 945.4, 912.4(a).) (The period is extended to 50-days if served by mail under Government Code 915.2.)

Where a lawsuit is not preceded by rejection of a claim, a plaintiff's noncompliance with the Government Claims Act cannot be cured by amending the complaint to allege compliance. (*Lowry*, *supra*, at p. 221.) It is immaterial the City later denied the claim.

Significance: *Malear v. State* is a narrow exception that only applies if the prematurely filed complaint has not been served on the public agency, because the agency had not been forced to incur costs of litigation. Here, the City was deprived of the opportunity to investigate the claim before being forced into litigation. *Note the 45-day hold is increased to 50 days if the claim is served by mail.

B. *Sargenti v. City of Long Beach*, 120 Cal. App. 5th 702 (2026)

- **Unauthenticated and otherwise inadmissible Google images cannot be used to create issue of fact in an opposition to a motion for summary judgment**

Plaintiff was riding a rented e-scooter on a driveway section of sidewalk in Long Beach when he hit an asphalt patch and fell. Plaintiff sued the City, alleging the City had notice that the asphalt patch was dangerous and that it had negligently created or maintained the condition.

The City moved for summary judgment on several grounds, and the trial court granted the City's motion based on the user's web-based electric scooter rental application and release agreement (the ruling was made prior to the California Supreme Court issuing *Whitehead v. City of Oakland*). The trial court denied the motion finding a triable issue of fact on notice, holding that Plaintiff created a triable issue of material fact on constructive notice as his attorney submitted a screen shot of a Google Maps image purportedly depicting the subject driveway in March of 2015, five years before the accident.

In overruling the City's objections on foundation, authentication, and personal knowledge to the Google image, the trial court cited the California Supreme Court's *Sweetwater* decision and stated "trial counsel can cure the foundational defects at trial."

The court of appeal affirmed the MSJ, but on grounds of notice, finding the unauthenticated and otherwise inadmissible Google images could not create an issue of fact. Plaintiff's counsel "never stated who took the screenshot, when that person took it, what that person did to find the Google Street View image, or how that person ensured his or her screenshot accurately represented the sidewalk in 2015."

The court of appeal also emphasized Plaintiff did not even try to authenticate or provide foundation for the Google screenshot after the City (correctly) objected to its admission, despite the passage of four months between service of the motion and the opposition filing.

The Court found that *Sweetwater Union High School Dist. v. Gilbane Building Co*. (2019) 6 Cal.5th 931, does not authorize the court to consider inadmissible evidence submitted in opposition to a motion for summary judgment where the proponent claims it can cure the evidentiary defect at trial. Code of Civil Procedure section 437c "has always required the evidence relied on in supporting or opposing papers to be *admissible*" and *Sweetwater* does not change that rule.

The case also has a useful discussion of amending discovery responses to correct an error. An amendment to a prior, incorrect discovery response does not automatically create an issue of fact and does not preclude that party from obtaining summary judgment.

Significance: Unauthenticated historical Google "street view" images of a defective sidewalk condition cannot create an issue of fact to defeat a motion for summary judgment brought by a public entity based on absence of notice.

C. *Pagan v. City of San Rafael*, 119 Cal. App. 5th 853 (2026)

- **Public entity had no duty to warn of visible and obvious roadway conditions caused by weather; the opposition to the motion for summary judgment is limited by the allegations in the operative pleading**

A provisionally licensed teenage driver lost control of a car and injured the Plaintiff, a passenger. The driver was speeding, it had been raining, and the roadway was wet. Plaintiff's complaint listed the reasons why the roadway was defective, including that there were no warnings of a sharp left curve, no warnings of a combination of a sharp curve and slippery roadway, and no guardrails or other barriers to prevent cars from going down a steep embankment. There was no reference in the pleading to surface roadway conditions or degradation.

The City moved for summary judgment or in the alternative, summary adjudication that the alleged defects were open and obvious. Plaintiff opposed the City's MSJ based on a declaration from an expert witness that the rollover was caused by a damaged and crumbled pavement surface which had lost its structural integrity and caused a depression with cracking, potholes, and depressions.

The trial court granted summary adjudication as to issue number four, that the conditions were open and obvious as a matter of law. The trial court found the City "carried its initial burden to establish that there is no material dispute as to the fact that the roadway at issue was obviously wet with rain and obviously carried the enhanced danger typically associated with a wet road, as compared with a dry one." Finally, the trial court noted that Plaintiff spent much of the opposition advocating for a fourth 'dangerous condition' - that the roadway at the site of the accident featured 'severe degradation, alligator cracking, potholes, settlement and depressions in the wheel path' and that this is what caused the vehicle to hydroplane. However, Plaintiff's complaint had not plead this defect in the roadway surface as one of the 'dangerous conditions' on which her claim is predicated.

The Court of Appeal affirmed summary adjudication based on the following:

- The issues for a motion for summary judgment are framed by the operative pleading – not by the opposition. The materiality of a disputed fact is measured by pleadings which "set the boundaries of the issues to be resolved at summary judgment." Plaintiff cannot defeat summary judgment by relying on a new legal theory.

- Public entities do not need to anticipate negligence or recklessness – the determination is whether the condition is dangerous when due care is used. A public entity is only required to provide roads that are safe for reasonably foreseeable careful use. If it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not "dangerous" within the meaning of Government Code section 830.

- Liability for dangerous condition cannot be premised on a claim that the property could have been made safer. (See *Belcher v. City and County of San Francisco* (1945) 69 Cal.App.2d 457, 463 ["liability is not to be fastened upon a municipality merely because it may appear that certain property, in nowise dangerous either in its construction or intended use, could possibly be made safer by other means"].)

- There can be no concealed trap where the dangers are reasonably apparent to those exercising due care. (*Sutton v. Golden Gate Bridge, Highway & Transportation Dist.* (1998) 68 Cal.App.4th 1149, 1165.)

- The Plaintiff must specify in the operative pleading what condition constituted a dangerous condition. *(Cerna*, *supra*, 161 Cal.App.4th at pp. 1347–1348; *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 131.)

- A declaration stating an expert's opinion may be admissible to defeat a summary judgment motion, but only if the requirements for admissibility are established in the same manner as if the declarant were testifying at trial. (*Towns v. Davidson* (2007) 147 Cal.App.4th 461, 472; *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 541.)

Significance: To allege a claim for dangerous condition, plaintiff must specify in what manner the condition constituted a dangerous condition. Here, that specification did not include a defective roadway surface. Public entities are not required to post warnings to motorists of visible roadway elements and weather conditions.

D. *City of Riverside v. RLI Insurance*, 119 Cal. App. 5th 405 (2026)

- **City can properly name both consultant and the consultant's liability insurer as cross-defendants where it is a first-party additional insured under the consultant's insurance policy**

Plaintiffs sued the City of Riverside for dangerous condition of public property and wrongful death arising out of a fatal car accident. As to the first cause of action for dangerous condition of public property, Plaintiffs alleged that the roadway where the accident occurred had been the site of numerous prior collisions, was unreasonably dangerous, lacked sufficient signs or signals, and that the dangerous conditions were concealed. The City cross-complained for indemnification, breach of contract, and insurance bad faith, against numerous contractors and consultants, including a landscape contractor and its insurance carrier.

Regarding the insurance carrier, the City alleged that in its agreement with the landscape contractor, the City required insurance policies to protect the City against claims arising out of the landscape contractor's work, including negligence, and that insurance carrier agreed to name the City as an additional insured on all insurance policies in its agreement with the landscape contractor. Certificates of insurance were in fact issued by the insurance carrier. The City tendered defense and indemnity to the insurance carrier and included at least some of the relevant policies, as well as an endorsement from the insurance carrier noting that the City was added as an additional insured. The insurance carrier thereafter refused to defend and indemnify the City for the lawsuit against the City for dangerous condition on public property arising from the work of the landscape contractor under the contract.

The trial court sustained the insurance carrier's demurrer under *Royal Globe v. Superior Court*, where the California Supreme Court held that a cross-complainant "may not sue both the insurer and the insured in the same lawsuit." The insurance carrier also argued allowing the City to sue both the landscape contractor and the insurance carrier for the contractor violated the *Royal Globe* holding as well as the spirit of Evidence Code section 1155. The trial court sustained the insurance carrier's demurrer without leave to amend.

The court of appeal reversed. *Royal Globe's* general prohibition on suits against insurance carriers directly is inapplicable under these circumstances. By naming the City as an additional insured, the court of appeal found the insurance carrier undertook an independent written contractual obligation to the City for certain insurance protections.

Where the City is a first-party additional insured with privity of contract and standing to sue the insurance carrier, the prohibition against suing an insured and insurer in the same action does not apply. Instead, *Royal Surplus Lines Inc. Co. v. Ranger Ins.*, 100 Cal. App. 4th 193, is controlling, where the court determined the general rule in *Royal Globe* did not apply to a first-party additional insured in an action against the named insured and the named insured's insurer.

As to the insurance carrier's argument that the City could attempt to seek discovery of materials from the carrier's claim file, thereby creating a conflict between the insurance carrier and its insured, the claims against the insurance carrier are contract claims and to the extent the City seeks discovery regarding the insurance policy itself, there is no conflict of interest to address. Any remaining issues can be handled by the trial court's inherent authority to determine the order of issues at trial.

"To the extent [the insurance carrier] asserts the City is not an additional named insured, that matter should be resolved in conjunction with the claims against [the landscape contractor], who the City alleges had a contractual obligation to ensure the City *was* named as an additional insured, just as it was in *Royal Surplus*." The trial court erred in concluding the insurance carrier could not be properly joined in the City's cross-complaint.

***Significance*:** An additional insured in direct contractual privity with the insurer may assert direct breach of contract and bad faith claims in the same lawsuit against the insurer.

E. ***Yan v. City of Diamond Bar***, 119 Cal. App. 5th 21 (2026)

- **Trial court may properly admit evidence of other tree failures of the same species in same vicinity solely to show notice of a dangerous condition**

Plaintiff was a pedestrian on a public sidewalk when a tree limb from a Bradford pear detached and fell, causing three limbs to fall on him, resulting in a spinal compression fracture. The tree was owned by the City of Diamond Bar, which contracted with a third-party arborist to conduct trimming of the City's trees every five years based on location. The arborist also handled specific requests by the City and maintained a database of those work orders. The City's oversight of trees was otherwise "reactionary" in that it responded to complaints by alerting the arborist to pick up fallen tree debris. The City's complaint intake system retained little information on the reason for debris pickup and it retained very few records of the complaints it received.

A City resident had reported several previous incidents of fallen limbs and branches of Bradford pear trees in the same neighborhood. Due to those complaints, the City's records documented that "the same tree that partially collapsed on plaintiff had experienced two prior branch failures—one five years prior to Plaintiff's accident and another ten months prior."

In the five years prior to Plaintiff's accident, other Bradford pear trees in the neighborhood experienced branch failures nine times, including limb the size of a truck bed falling from a tree canopy in 2016, a branch falling into an area where children load and unload from school buses in 2017, and branches falling from two different trees two weeks before Plaintiff's accident. On each of those occasions, the City directed the arborist to remove the fallen limbs but otherwise did not investigate the cause of the failure.

At trial, the court allowed evidence of the prior branch failures, instructing the jury that it could consider the prior branch failures as to the tree that harmed plaintiff as evidence bearing on (a) whether the City had actual or constructive notice of a dangerous condition and (b) whether that specific tree was in a dangerous condition, but (2) that the jury could consider the prior branch failures of other Bradford pear trees in the neighborhood solely as evidence bearing on whether the City had "actual or constructive notice of the dangerous condition." The jury returned a verdict for Plaintiff and awarded $250,000 for past noneconomic loss and $500,000 or future noneconomic loss.

Evidence of prior accidents on public property may be relevant to prove one of two elements of a dangerous condition claim—namely, (1) to prove that the public property was in a "dangerous condition," or (2) to prove that the public entity had actual or constructive notice of that condition.

When admitted to prove that the public property is in a dangerous condition, a prior accident is admissible only if it occurred under "the same or substantially similar conditions" as the accident at issue, although the prior and current accidents need not be "precisely" the same or "identical."

However, when a prior accident is admitted to prove that the public entity had actual or constructive notice of the dangerous condition, a prior accident is admissible as long as it is "similar enough" to "attract the public entity's attention to the dangerous situation at issue" and thereby "impart notice of some particular condition requiring correction." (*Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 168-169 (*Hilts*); *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 432.) This standard for similarity is admittedly "relaxed" compared to the standard when admitting prior accidents to prove a dangerous condition. Even prior accidents bearing a lesser degree of similarity to the accident at issue can still impart actual or constructive knowledge of a dangerous condition, including the need to investigate whether such a condition exists

The Court of Appeal found the trial court did not abuse its discretion in determining that the prior branch failures of Bradford pear trees in the same vicinity as the tree that injured plaintiff were admissible. The prior incidents were admitted *solely to establish notice*, so the prior incidents were admissible so long they were "similar enough" to the incident involving Plaintiff to "attract the City's attention to the dangerous situation at issue" and thereby "impart notice of some particular condition requiring correction."

Significance: Prior failures can be admitted solely to establish notice as long as they are "similar enough" to attract a City's attention and impart notice of a condition requiring correction.

F. ***Khedr v. Superior Court,*** 2026 WL 2018161 (June 24, 2026)

- **No substantial compliance where item "wholly omitted" from Government Claim**

Police officers sued their former department alleging they were subjected to retaliation and termination after reporting fiscal mismanagement and ethics violations against the police chief. Plaintiffs submitted timely government claim forms. As to the "Date of Loss" provision of the claim form, they stated "Numerous—Loss is ongoing."

The District sent Plaintiffs' counsel notices of insufficiency as to each claim, stating, in part, that their claim notices failed to comply with Government Code sections 910 and 910.2 and would not be considered on the merits because they did not specify a date of loss. The notices stated that pursuant to section 910.8, the District would take no action for a period of 15 days and that if Plaintiffs wished to correct the deficiencies, they should do so within that time period. Plaintiffs did not respond to the notices.

Government Code section 910 subdivision (c) requires the notice include "the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted." The trial court sustained demurrers on the basis the claim forms failed to comply with section 910, finding the forms were fatally defective as a matter of law due to an entire absence of one factor. The trial court rejected the argument that because the misconduct was continuous and ongoing, it was not possible to state a single date of loss. Furthermore, the claim forms alleged multiple discreet events such that Plaintiffs could have made an effort to provide dates.

The purpose of the Claims Act is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. It is well-settled that claims statutes must be satisfied even in the face of the public entity's actual knowledge of the circumstances surrounding the claim." The claims statutes also "enable the public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future." *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991. "The intent of the Government Claims Act is 'not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances."

The doctrine of substantial compliance has been applied to determine whether a plaintiff's claim form, which is defective in some respects, nonetheless substantially complies with all statutory requirements for a valid claim form. *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713.

On appeal, Plaintiffs argued they had substantially complied with Government Code section 910 because they asserted the wrongful conduct was ongoing and the forms were dated. However, the Court of Appeal found the claims neither complied nor substantially complied with section 910 because they failed to specify any dates or date ranges on which the alleged wrongful conduct occurred. The substantial compliance doctrine has been found not to apply when a plaintiff has *wholly omitted* from his or her claim form a particular statutory requirement. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456.

Unlike *Knight v. City of Los Angeles*, where the California Supreme Court found a date range a sufficient specification to notify the defendant to investigate the claim, this situation involves a required item "wholly omitted" from the claim. "Petitioners' failure to specify any dates, or even a date range, for the multiple instances of alleged misconduct identified in their claim forms, instead merely stating the date as 'Numerous—Loss is ongoing,' does not constitute substantial compliance with section 910. Such indefinite and vague information does not provide sufficient information to allow the receiving entity to investigate petitioners' claims."

Significance: The claim must provide a specific date or a date range of the wrongful conduct. A claim devoid of any dates impedes the public entity's ability to investigate and does not substantially comply with the Claims Act.

G. *Eagle Colton 55, LP v. City of Colton,* 2026 WL 2097217 (July 21, 2026)

- **Serving demand letter on City Council member at offsite meeting does not constitute presentation under Claims Act**

Eagle Colton, a commercial developer, filed a complaint against the City of Colton asserting causes of action for intentional interference with prospective economic advantage, negligent interference with prospective economic relations, breach of the implied covenant of good faith and fair dealing, and defamation.

The complaint alleged Yucaipa city officials suddenly decided not to go forward with a development because City of Colton staff members had made comments to them regarding Eagle's alleged default in a separate contract. Further, it alleged that given what Yucaipa heard about Eagle's exchanges with City of staff, City staff did not expect Eagle to live up to its obligation to repay the loan—and was therefore writing the loan off. It further alleged that "these derogatory statements were all false," that they resulted in the "disruption and ultimate termination of the Yucaipa Project" and "harmed Eagle's reputation in other respects."

The City of Colton filed an anti-SLAPP motion which was denied by the trial court. On appeal, the City argued that Eagle was unlikely to prevail on its claims because they were barred by the Government Claims Act claim presentation requirement. Eagle argued that it sent a settlement demand letter to Colton's city attorney (who was in another county) and then handed the demand letter to a Colton city council member during an offsite meeting. The City council member did not consider the demand letter to be a Government Claim and never delivered the documents to the City clerk's office. The trial court found that delivery of the demand letter was compliance because "a member of the city council qualifies as the board who can be presented with a claim."

On appeal, the court first noted that claim presentation requires actual receipt by the "board of the local public entity." (Gov. Code, § 915, subd. (e); see also id., § 900.2, subd. (a) [defining "board" as "the governing body of the local public entity".) Here, the council member did not receive the letter while sitting as a body with the other members of the city council. He received it while alone and off-site during a private meeting. Additionally, the letter was not addressed to him as a city council member, nor to the city council as a whole, but instead to the city attorney at his office outside of Colton (in a different county).

Furthermore, the court found that a single member of the city council is not the "board" or "governing body" and delivering a letter to one member at a private meeting away from city hall, and where he did not recognize the letter as a claim and did not forward it to the city clerk or the city council, is not the equivalent of actual receipt by the "board" or "governing body." The council member simply was not statutorily authorized to accept and process Eagle's claim against the City of Colton. As the Supreme Court has explained, "[t]he Legislature retains authority to determine which representatives are appropriate. The Court of Appeal cannot override that determination simply because it concludes receipt by others should be considered sufficient." (*DiCampli-Mintz,* 55 Cal.4th at p. 994.)

The trial court incorrectly broadened the list of statutorily authorized recipients under the Claims Act thus denying the City of Colton an opportunity "to investigate and appropriately resolve claims and to plan for potential liabilities." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 994.) Reversed.

Significance: The Act's claim presentation provision requires actual receipt by the board of the local public entity. A single council member off-site and in a private meeting is not presentation to the board.

II. POLICE LIABILITY

A. *Gonzalez v. City of Phoenix,* 163 F. 4th 1289 (9th Cir. 2026)

- **No qualified immunity where suspect no longer resisting and in visible medical distress is hogtied and placed face-down in back of patrol vehicle**

Phoenix police officers received a call of a man acting erratically who appeared to be high on methamphetamine. Following a foot chase, the man was handcuffed and then placed in a RIPP hobble restraint (consisting of a nylon loop and strap connecting the ankles to handcuffs behind the back).

After application of the RIPP restraint, officers continued to use knees to press down on the man's back for an additional 55 seconds, holding him face-down on asphalt in 100 degree weather, where the man became unresponsive. Some six minutes later, the man was transported to a nearby parking lot in a police vehicle, still in the RIPP restraint and now face down in the rear seat. Medics arrived, found no pulse, and the man was pronounced dead a short time later.

Decedent's heirs brought suit under 42 U.S.C. §1983 for false arrest, excessive force, and a *Monell* claim. The district court granted Defendants' motion for summary judgment on false arrest and *Monell*. The court granted Defendants' motion on <u>initial application</u> of the RIPP restraint, but denied the motion on qualified immunity for use of force <u>after</u> the application of the RIPP restraint.

On appeal, the Ninth Circuit held that, under *Graham v. Connor*, a reasonable jury could determine the officers violated Decedent's constitutional rights by placing and transporting him in a hogtied and prone position after he surrendered and no longer posed a danger to the officers.

Under the second prong of qualified immunity, *Drummond v. City of Anaheim* clearly established that "in a situation in which an arrestee surrenders and is rendered helpless, any reasonable officer would know that a continued use of force or a refusal without cause to alleviate its harmful effects constitutes excessive force." *Drummond*, 343 F. 3d 1052 (9th Cir. 2003).

Significance: The Ninth Circuit has continued to look closely at prone restraints without active resistance and hold that those cases present allegations sufficient to go to a jury.

B. *Fuhr v. City of Seattle,* 175 F. 4th 1081 (9th Cir. 2026)

- **Officers do not violate clearly established right when shooting suspect who discharged firearm in public then fled and ignored commands while advancing with baby in arms**

Seattle police received a call of an armed man who had discharged a firearm in a park and walked away holding an infant. Officers located the suspect, who fled. A short time later, the suspect approached a SWAT officer holding the infant in front of him. The SWAT officer fired, striking and killing the decedent. During deposition, the officer testified that he believed decedent was armed and using the child as either a hostage or human shield. At the time of the shooting, the decedent was unarmed but the gun was later located in the vicinity of the shooting.

Decedent's estate sued the officer and the Seattle Police Department and the district court granted the defendant's summary judgment motion based on qualified immunity.

A qualified immunity inquiry has two prongs, which can be addressed in either order. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Under the first prong, the court must consider whether the facts demonstrate violation of a constitutional right. *Id*. at 232. The second prong asks whether that right was "clearly established" at the time of the officer's conduct. *Id.*

In undertaking a qualified immunity analysis, the Supreme Court has emphasized that a clearly established right "should not be defined 'at a high level of generality'" and must be "'particularized' to the facts of the case." *White v. Pauly*, 580 U.S. 73, 79 (2017) Most recently the Supreme Court reiterated that, in defining a clearly established right, "principles stated generally, such as that 'an officer may not use unreasonable and excessive force' do not suffice." *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026). In order "to find that a right is clearly established," we must "identify a case where an officer acting under similar circumstances was held to have violated the Constitution."

Accordingly, the court "looked for precedent that encompasses a noncompliant, fleeing, potentially armed suspect holding a child or potential hostage," and found none. Decedent's continued possession of the baby after firing a gun, fleeing from law enforcement, and ignoring commands to stop are factors that, when combined, distinguish this case from clearly established law that sets out a constitutional violation. "We are aware of no case clearly establishing a suspect's right to be free of excessive force in the face of these facts and when his actions are 'objectively threatening' to others."

Because no case clearly established a Fourth Amendment right was violated, the officer was entitled to qualified immunity.

Significance: The Ninth Circuit has continued to emphasize that qualified immunity depends on whether existing, specific case law clearly prohibits an officer's conduct in a rapidly evolving hostage situation.