No. 19-35513
No. 19-35514

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIGUEL ANGEL REYNAGA HERNANDEZ,

Plaintiff-Appellee,

v.

DERREK SKINNER, in his individual capacity,
PEDRO HERNANDEZ, in his individual capacity,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Montana
No. 1:18-cv-0040-SPW
Honorable Susan P. Watters

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INTRODUCTION

This case centers on a Montana justice of the peace's interruption of state court proceedings to call the county sheriff's office and report "illegals" he suspected were waiting outside his courtroom to serve as witnesses in proceedings before him. Plaintiff-Appellee Miguel Reynaga Hernandez's (Mr. Reynaga) ensuing detention and arrest, based solely on Defendants-Appellants Pedro Hernandez and Derrek Skinner's (Defendants) suspicion of his unlawful presence in the United States, led to this § 1983 lawsuit for a violation of Mr. Reynaga's right to be free from unlawful seizures.

In the proceedings below, the district court denied Defendants' request for qualified immunity and granted Mr. Reynaga's cross-motion for partial summary judgment, concluding that Defendants had violated the Fourth Amendment. Defendants now appeal, contesting the denial of qualified immunity. But Defendants' seizure of Mr. Reynaga at a state courthouse in Billings, Montana, which was based solely on suspicion of Mr. Reynaga's unauthorized presence, was a clear violation of Mr. Reynaga's Fourth Amendment rights. Mr. Reynaga was present at the courthouse to serve as a witness in support of his wife, who was seeking a protection order against a third party. During his wife's hearing, the opposing party alleged that Mr. Reynaga was "not a legal citizen," prompting Defendant Hernandez—a justice of the peace—to call the Yellowstone County

Sheriff's office and request that Mr. Reynaga be "picked up." Defendant Skinner arrived and seized Mr. Reynaga based solely on the information Defendant Hernandez provided. Neither party disputes these critical facts.

Fourth Amendment case law in this circuit unequivocally prohibits such seizures—and did so long before Defendants acted to seize Mr. Reynaga on October 2, 2017. As this Court has long explained, to be reasonable, a seizure by a local law enforcement officer must be supported by reasonable suspicion or probable cause that a crime has been committed. In *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011), this Court made clear that suspicion of unlawful presence in the United States does not, without more, provide a lawful basis to arrest someone. One year later, this Court reaffirmed that holding, observing that mere unauthorized presence is not a criminal matter and "does not give rise to an inference that criminal activity is afoot." *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012) (internal quotation marks omitted). Similarly, this Court has repeatedly explained that a state official may face liability for their "integral participation" in an act that violates an individual's clearly established rights, as Defendant Hernandez did here.

Defendants would have this Court overrule this binding precedent, contending that "[n]o precedent supports *Melendres*." Op. Br. 3. Similarly, they attack this Court's precedents holding "integral participants" accountable, asking

the Court to "overrule the doctrine" and asserting that Defendant Hernandez lacked notice that his conduct violated the Constitution. *Id.* at 18-19. But those precedents dictate that Defendants' actions violated Mr. Reynaga's clearly established rights, and Defendants' arguments requesting to "overrule the doctrine" essentially admit this point. Moreover, there is no basis to reconsider them. Finally, as for Defendant Hernandez's integral participation, this Court's case law demonstrates that the qualified immunity inquiry does not even apply to whether he was an integral participant. In any event, this Court's case law put him on notice. This Court should therefore affirm the district court's order.

JURISDICTIONAL STATEMENT

This case arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. The district court had jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction under 28 U.S.C. § 1291.

The district court entered its order on the parties' motions for summary judgment on May 29, 2019. Defendants timely filed a notice of appeal on June 17, 2019, in accordance with Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure. Though the district court's order did not dispose of all the claims in this case, it resolved Defendants' claims of qualified immunity as a matter of law and established Defendants' liability, such that it "is an appealable 'final decision'

within the meaning of 28 U.S.C. § 1291." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

STATEMENT OF THE ISSUES

1. Did the district court correctly deny Defendants' request for qualified immunity and determine that Defendants violated Mr. Reynaga's clearly established constitutional rights based on this Circuit's controlling precedent, which establishes that Defendants' suspicion of Mr. Reynaga's unauthorized presence did not provide a basis to seize him?

2. Did the district court correctly determine that Defendant Hernandez was an integral participant in Mr. Reynaga's unlawful seizure?

STATEMENT OF THE CASE

I. Factual Background

On the morning of October 2, 2017, Mr. Reynaga accompanied his wife, Jana Reynaga (Ms. Reynaga) to the Yellowstone County Justice Court in Billings, Montana. Suppl. Excerpts of Record (SER) 124 ¶ 3. Mr. Reynaga planned to testify in support of Ms. Reynaga's request for a civil order of protection against a third party, Rachel Elizondo (Ms. Elizondo). SER 124-25 ¶¶ 4-5. Defendant Pedro Hernandez, a justice of the peace, presided over the hearing and instructed Mr. Reynaga and another witness present at the hearing to wait outside the courtroom. SER 125 ¶¶ 6-7. After the hearing began, Ms. Reynaga provided testimony to the

Justice Court describing the reasons she sought a protection order against Ms. Elizondo. *Id.* ¶ 8. Ms. Elizondo then presented her testimony, during which she stated that Mr. Reynaga "is not a legal citizen." SER 125-26 ¶ 9.

At the conclusion of Ms. Elizondo's testimony, Defendant Hernandez remarked, "What I'm hearing here are allegations about illegal immigrant [sic]." SER 127 ¶ 11. Defendant Hernandez then directed his courtroom staff to call the Yellowstone County Sheriff's Office, noting, "I have two illegals sitting outside. I want them picked up." SER 129-30 ¶ 15. Once connected to the Sheriff's Office on the phone, Defendant Hernandez instructed, "Send me a couple of deputies. I have two illegal immigrants out in the hallway." SER 130 ¶ 17. He emphasized that the deputies should arrive "as quickly as possible." *Id.* ¶ 18. After speaking on the phone with the Yellowstone County Sheriff's Office, Defendant Hernandez ordered Ms. Reynaga and Ms. Elizondo to remain in the courtroom until a deputy from the Sheriff's Office arrived, and stated that he would "hold [them] in contempt and arrest [them] both" if they tried to leave. SER 131-32 ¶ 21. In doing so, Defendant Hernandez prevented Ms. Reynaga from telling Mr. Reynaga that a deputy sheriff was on the way to investigate his immigration status. SER 132 ¶ 22.

Meanwhile, a Yellowstone County dispatcher contacted Defendant Skinner and informed him that Defendant Hernandez had called regarding "two illegal immigrants outside his courtroom that he wants picked up" by a deputy sheriff.

SER 132-33 ¶ 23. A few minutes later, Defendant Skinner arrived at the courthouse and entered Defendant Hernandez's courtroom. SER 133-34 ¶¶ 24-25. Defendant Hernandez then stated to Defendant Skinner that the "testimony from the witness stand is that they are illegal." *Id*. ¶ 25. Defendant Skinner understood that Defendant Hernandez was instructing him to investigate Mr. Reynaga and responded that he would "take care of it." SER 134-35 ¶¶ 26-27. Defendant Hernandez asked Defendant Skinner to notify him of the investigation's outcome. SER 135 ¶ 28.

Defendant Skinner then exited the courtroom and immediately detained Mr. Reynaga in the hallway based on the information he received from Defendant Hernandez. SER 136-37 ¶¶ 31-32. Defendant Skinner requested to see Mr. Reynaga's identification, and Mr. Reynaga presented an expired Mexican consular ID card, which did not indicate his immigration status in the United States. SER 138-39 ¶¶ 33-34. Defendant Skinner also asked Mr. Reynaga questions regarding his immigration status, but Mr. Reynaga did not respond because he did not speak English fluently. SER 139 ¶ 35. Mr. Reynaga attempted to enter Defendant Hernandez's courtroom, but Defendant Skinner blocked and handcuffed him. SER 140 ¶ 36. Defendant Skinner then searched Mr. Reynaga, found no weapons or other suspicious items on his person, and removed him from the courthouse. *Id.* ¶¶ 37-38.

Upon exiting the courthouse, Defendant Skinner placed Mr. Reynaga in his patrol car to prevent him from leaving. *Id.* ¶ 38. While Mr. Reynaga sat handcuffed inside the car, Defendant Skinner radioed Yellowstone County Dispatch to run a warrants check on Mr. Reynaga. SER 141 ¶ 39. The warrants check returned no hits on Mr. Reynaga, but Defendant Skinner continued to detain Mr. Reynaga in order to investigate his immigration status. SER 141-42 ¶¶ 40-41. Defendant Skinner then asked the dispatcher to call U.S. Immigration and Customs Enforcement (ICE) to inquire if ICE had any interest in Mr. Reynaga. SER 142 ¶ 42. After the dispatcher made the call, ICE Agent Frischmann contacted Defendant Skinner. *Id.* ¶ 43. In that first phone call, Agent Frischmann did not indicate whether ICE wanted Defendant Skinner to arrest Mr. Reynaga. SER 143 ¶ 44. A few minutes later, Agent Frischmann called Defendant Skinner again and requested that he transport Mr. Reynaga to the Yellowstone County Detention Facility (YCDF). *Id.* ¶ 45; Excerpts of Record (ER) 44. Agent Frischmann did not verbally communicate to Defendant Skinner the reason that ICE wanted Mr. Reynaga detained. *See* SER 143-44 ¶ 46; ER 44.

Following Agent Frischmann's request, Defendant Skinner transported Mr. Reynaga and booked him into YCDF. SER 144-45 ¶¶ 47, 49. In the course of booking Mr. Reynaga into YCDF, Defendant Skinner filled out paperwork indicating that Mr. Reynaga's sole basis for detention was an "Immigration Hold,"

but he also marked the "felony" check box to prevent YCDF from releasing him. SER 144-45 ¶¶ 49, 53. Nearly half an hour after Defendant Skinner booked Mr. Reynaga into the jail, YCDF received an I-203 from ICE, an administrative form that asked the jail to detain Mr. Reynaga on ICE's behalf. SER 145 ¶ 51. Mr. Reynaga was thereafter detained at YCDF for nearly 18 hours, until ICE picked him up the following morning. *See* SER 146 ¶ 55.[1]

II. Procedural History

Mr. Reynaga filed a complaint against Defendants Hernandez and Skinner on February 22, 2018. Dist. Ct. Dkt. 1. The complaint alleges that both Defendants unlawfully seized Mr. Reynaga in violation of the Fourth Amendment and that each is liable under 42 U.S.C. § 1983. *Id.* at 12-15. On April 27, 2018, the district court granted Defendants' unopposed motion to dismiss the official capacity claims presented by Mr. Reynaga. Dist. Ct. Dkt. 25. Defendants Hernandez and Skinner moved for summary judgment on February 27, 2019. Dist. Ct. Dkts. 37-38, 39-40. Mr. Reynaga filed a cross-motion for summary judgment on March 20, 2019. Dist. Ct. Dkts. 55-56.

On May 29, 2019, the district court issued an Opinion and Order granting summary judgment in Mr. Reynaga's favor as to his § 1983 claims. ER 9. The

[1] Although the Department of Homeland Security initiated removal proceedings against Mr. Reynaga, the immigration judge issued an order terminating those proceedings. ER 11-12.

district court first identified a set of undisputed facts. *See* ER 9-12. To identify these facts, the court relied on Defendants' responses to Mr. Reynaga's statement of undisputed facts, in which Defendants did not dispute the critical facts leading up to and following Mr. Reynaga's seizure. *Id.*; *see also* SER 123-48. The court first acknowledged that Defendant Hernandez had heard testimony during the order of protection hearing that Mr. Reynaga "was 'not a legal citizen.'" ER 10. It then found that Defendant Hernandez stated, "What I'm hearing here are allegations about illegal immigrant [sic]." *Id.* As the court recounts, Defendant Hernandez then "halted the hearing" and "told his staff to 'call me a deputy'" because he had "two illegals outside" and he "want[ed] them picked up." *Id.*

The court then found that Defendant Hernandez "told the Sheriff's Office to 'send me a couple of deputies,'" who he wanted to arrive "as quickly as possible" because of the "illegal immigrants out in the hallway." *Id.* Defendant Hernandez then "ordered [Mr. Reynaga's] wife to remain in the courtroom to prevent her from telling [Mr. Reynaga] a deputy was coming to investigate his immigration status." *Id.*

The district court then turned to what happened when Defendant Skinner arrived. *Id.* According to the court, Defendant Skinner entered the courtroom and Defendant Hernandez told him that he had received "information . . . under oath" that there were "illegal aliens" in the hallway. *Id.* Defendant Skinner responded

that he would "take care of it," and he "stepped into the hallway, detained [Mr. Reynaga], and asked him for identification and about his immigration status." ER 10-11. As the court later noted, Defendant Skinner "does not dispute that he detained . . . [Mr. Reynaga] the moment he began questioning him." ER 16. The court then found that Mr. Reynaga produced a Mexican identification card and that the parties had trouble communicating because Mr. Reynaga was not fluent in English. ER 11. After Mr. Reynaga attempted to enter the courtroom, Defendant Skinner arrested him, ran his name for warrants checks (which turned up no results), and called ICE, who "asked [Defendant] Skinner to transport [Mr. Reynaga] to the Yellowstone County Detention Facility." *Id.* Defendant Skinner did so, and Mr. Reynaga was eventually transferred to ICE custody. *Id.*

The court then turned to the parties' claims, and first found that both Defendants violated Mr. Reynaga's Fourth Amendment rights. ER 17, 20. The district court determined that Defendant Skinner detained Mr. Reynaga immediately upon exiting the courtroom, and that he violated Mr. Reynaga's Fourth Amendment rights by detaining him solely based on information that he was "not a legal citizen." ER 16-17 (citation omitted). In reaching that conclusion, the district court relied on Ninth Circuit precedent establishing that suspicion of unlawful presence in the United States does not give rise to an inference of criminality. ER 17 (quoting *Melendres*, 695 F.3d at 1000).

The district court then found that Mr. Reynaga's detention "graduated to a full blown arrest" when Defendant Skinner blocked him from reentering the courtroom, handcuffed him, and removed him to the patrol car outside the building. ER 17. The court held that this arrest also violated Mr. Reynaga's constitutional rights because Defendant Skinner had no probable cause that Mr. Reynaga had committed the crime of illegal entry. ER 18. In doing so, the district court rejected Defendant Skinner's assertion that he had probable cause to arrest Mr. Reynaga based on his inability to speak English and presentation of a foreign ID card that said nothing about his immigration status, noting that such an argument "comes dangerously close to 'sweep[ing] many ordinary people into a generality of suspicious appearance.'" ER 18 (alteration in original) (quoting *United States v. Rodriguez*, 976 F.2d 592, 595-96 (9th Cir. 1992)). Additionally, the district court rejected Defendant Skinner's reliance on the collective knowledge doctrine, finding that the doctrine was inapplicable because he "was not working in concert with or at the direction of other officers" when he initially detained and subsequently arrested Mr. Reynaga. ER 19.

With respect to Defendant Hernandez, the district court found that he was subject to liability under § 1983 as "an integral participant in the violation of [Mr. Reynaga's] Fourth Amendment rights." ER 20. The district court explained that under *Boyd v. Benton County*, 374 F.3d 773, 780 (9th Cir. 2004), a public official

may be held liable as an integral participant in unconstitutional conduct. ER 20. In holding that Defendant Hernandez was such a participant, the district court pointed to undisputed facts showing that Defendant Hernandez called the Sheriff's Office to have Mr. Reynaga "picked up"; ordered Ms. Reynaga to remain in the courtroom to prevent her from notifying Mr. Reynaga that a deputy sheriff would be investigating him; and provided the information that Deputy Skinner relied on to unlawfully detain and arrest Mr. Reynaga. ER 21.

After finding that both Defendants had violated Mr. Reynaga's Fourth Amendment rights, the district court concluded that neither official was entitled to qualified immunity. ER 23-24. Regarding Defendant Skinner, the district court found that Ninth Circuit case law "clearly established the constitutional right violated in this context." ER 22-23. Citing the holdings of *Martinez-Medina* and *Melendres*, the district court determined that a reasonable officer would understand that seizing an individual based on suspicion of unlawful presence in the United States is unconstitutional. ER 23. The district court rejected Defendant Skinner's argument that *Martinez-Medina* and *Melendres* are "not founded on precedent or logic," ER 22 (quoting Dist. Ct. Dkt. 65 at 20), explaining that the relevant inquiry is "not whether the cases were correctly decided but rather whether they clearly established the law in this circuit" before Defendant Skinner unlawfully seized Mr. Reynaga, *id.* Similarly, the district court found that Defendant Hernandez was not

entitled to qualified immunity because his conduct violated Ninth Circuit precedent establishing (1) the integral participant rule, and (2) the rule against seizures based on suspicion of unlawful presence. ER 24. Based on these conclusions, the district court found that Mr. Reynaga was entitled to summary judgment as a matter of law with respect to his claims under § 1983. *Id.*

The district court left open the question of whether Defendants should face punitive damages, noting that a jury could reasonably infer either that Defendants "were oppressive or acted with callous indifference," or that "their actions did not rise to the level of recklessness required." ER 25. Finally, the district court denied Mr. Reynaga's request for declaratory relief as redundant given the Court's clear conclusions regarding Defendants' violations of Mr. Reynaga's rights. *Id.*

Defendants timely appealed the district court's decision on June 17, 2019. ER 1, 5. On July 8, 2019, this Court granted Mr. Reynaga's motion to consolidate Defendants' appeals and issued a consolidated briefing schedule. ECF 10.

STANDARD OF REVIEW

This Court reviews de novo a district court's grant of summary judgment as well as its denial of qualified immunity. *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011); *see also, e.g.*, *Scott v. Cty. of San Bernardino*, 903 F.3d 943, 948 (9th Cir. 2018) ("We review de novo both the district court's grant of summary judgment and its decision on qualified immunity."). Public officials are

not entitled to qualified immunity if "(1) the facts taken in the light most favorable to the party asserting the injury . . . show that the defendants' conduct violated a constitutional right and (2) the right was clearly established at the time of the alleged violation." *Bonivert v. City of Clarkston*, 883 F.3d 865, 871-72 (9th Cir. 2018) (internal quotation marks, alterations, and citation omitted). These prongs "entail questions of law that [this Court] may answer in either order." *Id.* This Court may determine whether any dispute of fact is material as a matter of law. *See Bingue v. Prunchak*, 512 F.3d 1169, 1172-73 (9th Cir. 2008)). The Court may not, however, engage in review of the district court's fact-finding at this stage, as "an appellate court lacks jurisdiction over an interlocutory appeal challenging the sufficiency of the evidence supporting the trial court's conclusion that an issue of fact exists" or does not exist. *Wilkins v. City of Oakland*, 350 F.3d 949, 951 (9th Cir. 2003) (citation omitted); *see also Johnson v. Jones*, 515 U.S. 304, 313 (1995).

SUMMARY OF ARGUMENT

The district court correctly decided that (1) Defendants violated Mr. Reynaga's clearly established constitutional rights by seizing him based on his suspected unlawful presence in this country, and (2) that Defendant Hernandez may be held liable as an integral participant to the seizure. Each of these points is well-grounded in this Circuit's case law, and flows directly from the undisputed facts before the district court.

First, this Court has repeatedly held that unlawful presence in the United States does not provide a basis for local law enforcement officers to detain an individual. *See, e.g.*, *Melendres*, 695 F.3d at 1001. That is because unlawful presence in the United States is only a civil violation, and therefore does not provide reasonable suspicion or probable cause that an individual has committed a crime.

In their opening brief, Defendants essentially concede this point, asserting that this Court "should overrule the holding in *Melendres*." Op. Br. 25. But a panel of this Court has no authority to take that step, and in any event, *Melendres* correctly applied decades of circuit precedent. That precedent made clear that the Fourth Amendment prohibits seizures based on suspected unlawful presence since any number of non-criminal reasons might explain the *civil* violation of unlawful presence in the United States. Defendants' request defies this well-established principle, and this Court should reject it.

Nor can Defendants' justify their arrest of Mr. Reynaga based on the collective knowledge doctrine. Defendant Skinner claims that this doctrine applies because he was "working in concert" with ICE officers when arresting Mr. Reynaga. Op. Br. 39. This is incorrect, as Defendants' seizure was unlawful from the moment they seized Mr. Reynaga, almost an hour before they established any contact with ICE. Any subsequent communication cannot rectify the initial

detention and arrest. This principle is well-grounded in this Court's case law, which makes clear the collective knowledge doctrine does not apply given that Defendant Skinner did not contact ICE until well after the arrest occurred. Finally, the collective knowledge doctrine does not apply in the context of this case because Defendants are local officials without the authority to enforce federal immigration law.

Second, Defendant Hernandez was an integral participant in Mr. Reynaga's seizure. Because Defendant Hernandez heard testimony from a respondent in a civil matter in state court making an allegation about Mr. Reynaga's legal status, he contacted the Sheriff's Office and instructed that the Office send deputies to investigate Mr. Reynaga. He then informed Defendant Skinner that the "testimony from the witness stand is that [Mr. Reynaga is] illegal," which prompted Defendant Skinner to detain Mr. Reynaga. SER 133-34 ¶ 25. He also ordered Mr. Reynaga's wife to remain in the courtroom in order to ensure that the Sheriff's department would have the opportunity to investigate Mr. Reynaga, among other acts. This Circuit's case law makes clear that such thorough involvement in Mr. Reynaga's seizure makes him an integral participant to the constitutional violation.

Moreover, Defendants incorrectly assert that the question of whether Defendant Hernandez's conduct amounted to integral participation must have been "clearly established." The "clearly established" question applies only to the

constitutional right in question—here, the right to be free from unlawful seizures based only on suspicion of unlawful presence. This Court's analysis of the integral participant question in several previous cases confirms this approach to the issue of integral participation. Accordingly, the district court also correctly determined that Defendant Hernandez is liable for Mr. Reynaga's unlawful seizure, and this Court should affirm the district court's order.

ARGUMENT

I. The Fourth Amendment Prohibits Local Officers from Seizing an Individual Based on Suspected Unlawful Presence.

A. An Allegation of Unlawful Presence Does Not Constitute Reasonable Suspicion of Criminality.

The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. To guarantee this right, the Fourth Amendment generally requires government officials to obtain a finding of probable cause "by a neutral and detached magistrate" before seizing an individual. *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975). In some cases, law enforcement officers may seize an individual absent a judicial warrant, but the Fourth Amendment prohibits them from stopping an individual absent reasonable suspicion of criminal activity, *see Terry v. Ohio*, 392 U.S. 1, 30 (1968), or from arresting an individual absent probable cause of a crime, *see, e.g.*, *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007).

An individual's unlawful presence in the United States does not, on its own, give rise to the "usual predicate for arrest," since, "[a]s a general rule, it is not a crime for a removable [noncitizen] to remain present in the United States." *Arizona v. United States*, 567 U.S. 387, 407 (2012). Consistent with that observation, this Court has carefully and repeatedly examined the distinction between civil and criminal violations of the immigration laws, explaining that unlawful presence amounts to "only a civil violation" and that "admission of illegal presence . . . does not, without more, provide probable cause of the criminal violation of illegal entry." *Gonzales v. City of Peoria*, 722 F.2d 468, 476-77 (9th Cir. 1983), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999). These holdings "always were, and remain, the law of the circuit, binding on law enforcement officers." *Martinez-Medina*, 673 F.3d at 1036. In 2012, this Court again affirmed those rulings, stating that "because mere unauthorized presence is not a criminal matter, suspicion of unauthorized presence alone does not give rise to an inference that criminal activity is 'afoot.'" *Melendres*, 695 F.3d at 1001 (quoting *Terry*, 392 U.S. at 30). Therefore, "if [local law enforcement officers] are to enforce immigration-related laws, they must enforce only immigration-related laws that are criminal in nature." *Id*. Local law enforcement officers thus violate the Fourth Amendment when they seize an individual solely on suspicion that the

individual is unlawfully present in the United States or has violated other civil immigration laws.

B. No Other Source of Authority Provides Local Officers in Montana a Basis to Seize an Individual Based on an Allegation of Unlawful Presence.

In addition, in the context of this case, no federal or state law or regulation provides authority for state and local officers in Montana to investigate, let alone detain, persons based on allegations of civil immigration violations.

Recognizing the complexity of federal immigration law, Congress crafted a statutory scheme that does not permit state and local law enforcement officers to enforce civil immigration violations absent limited exceptions that do not apply to this case.[2] The Supreme Court has explicitly recognized this fact, explaining that "[t]he federal statutory structure instructs when it is appropriate to arrest [a noncitizen] during the removal process." *Arizona*, 567 U.S. at 407. Under that "federal statutory structure," *id.*, only federal immigration officers may "interrogate, without warrant, any [noncitizen] or person believed to be [a

[2] The principal exception is for state or local law enforcement entities that enter into a formal agreement with U.S. Immigration and Customs Enforcement under 8 U.S.C. § 1357(g). Under § 1357(g), the state or local officers must undergo a training and certification program in federal immigration laws. *Id.* § 1357(g)(2). That exception does not apply here. *See* U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act (Sept. 5, 2019), https://www.ice.gov/287g (showing no § 1357(g) agreements in the State of Montana).

noncitizen] concerning his or her right to be, or to remain, in the United States," 8 C.F.R. § 287.5(a)(1). Similarly, only a specific subset of "immigration officers who have successfully completed basic immigration law enforcement training" may exercise arrest authority for suspected immigration violations. *Id.* § 287.5(c)(1).

Controlling case law further confirms that state and local officers are prohibited from enforcing civil immigration law. For example, in *Arizona*, the Supreme Court invalidated a state law allowing "state officers to decide whether [a noncitizen] should be detained for being removable." 567 U.S. at 409. And in *Melendres*, as noted above, this Court held that unlawful presence alone is not "sufficient to justify a stop by [local] officers who are not empowered to enforce civil immigration violations." 695 F.3d at 1001. Other courts have reached a similar conclusion. *See, e.g.*, *Santos v. Frederick Cty. Bd. of Comm'rs*, 725 F.3d 451, 465 (4th Cir. 2013) ("[A]bsent express direction or authorization by federal statute or federal officials, state and local law enforcement officers may not detain or arrest an individual solely based on known or suspected civil violations of federal immigration law.").

Montana state law also does not provide any authority for local officers to enforce civil immigration law. *See* Mont. Const. art. II, § 11 (prohibiting "unreasonable searches and seizures"). Insofar as Montana courts have addressed

the issue, the opposite is true. Montana state case law clearly recognizes that immigration is a matter of *federal* law and that state officials have no authority to investigate an individual's immigration status. In *Montana Immigrant Justice Alliance v. Bullock*, the Montana Supreme Court examined the legality of a legislative referendum denying state services to "illegal aliens." 371 P.3d 430, 434 (Mont. 2016). The *Bullock* court unanimously found that federal law preempted the referendum because "it utilizes the term 'illegal alien,' which is not a defined term in federal immigration law," and thus "leaves the decision about who qualifies as an 'illegal alien' up to multiple state officials." *Id.* at 441. As the court emphasized, none of the Montana state officials deposed during discovery in *Bullock* could identify how to "determine if someone 'unlawfully remains' in the United States." *Id.* at 442. The court explained that "the risk of inconsistent and inaccurate judgments . . . is one of the many reasons determinations about lawful presence are to be made solely by qualified federal agents." *Id.* (citation and internal quotation marks omitted).

In addition, Defendant Hernandez, as a judge of Yellowstone County Justice Court, presided over a court of limited jurisdiction that was not authorized to adjudicate immigration matters. *See* Mont. Code Ann. § 3-10-111 ("[J]ustices' courts are courts of peculiar and limited jurisdiction . . . ."); Mont. Code Ann. §§ 3-10-301, 3-10-302, 3-10-303 (specifying matters within Justice Court

jurisdiction). Indeed, Defendant never asserted judicial immunity in this case, implicitly acknowledging that he was acting outside the scope of any authority bestowed upon him as a judge of Yellowstone County Justice Court. Similarly, no state law authorized Defendant Skinner to enforce federal immigration law or investigate any type of immigration violation. *See* Mont. Code Ann. § 7-32-2121 (specifying duties of sheriff). To the contrary, policies at the state level confirm that local officers have no authority to seize an individual based on a suspected immigration violation. On April 3, 2015, the Montana State Highway Patrol agreed to adopt a policy that provides that

> [t]roopers may not stop or detain or unnecessarily prolong a stop or detention solely for the purpose of verifying a person's immigration status, even if the detention for verification purposes is requested by U.S. Customs and Border Protection ("CBP") or Immigration and Customs Enforcement ("ICE").

SER 26. While the policy is binding only on state troopers, it further demonstrates that Montana state law does not authorize its officers to stop or detain an individual solely to investigate immigration status.

In short, neither federal nor state law authorizes local officers in Montana to seize an individual for the sole purpose of investigating their immigration status.

II. Defendants Violated Mr. Reynaga's Clearly Established Rights by Seizing Him Based on Suspected Unlawful Presence.

As a threshold matter, Defendants do not argue that any material dispute of fact prohibits the resolution of this appeal. Nor could they. As noted above, the

district court observed that "Deputy Skinner does not dispute he detained, or *Terry* stopped, [Mr. Reynaga] the moment he began questioning him." ER 16; *see also* SER 136-37 ¶¶ 31-32. Defendants acknowledge this point on appeal, again agreeing that "[i]initially, Skinner detained [Mr. Reynaga] because of the testimony at the hearing." Op. Br. 13. Similarly, they acknowledge Defendant Hernandez's extensive participation in the events leading up to Mr. Reynaga's seizure and his request that Defendant Skinner investigate Mr. Reynaga. *See id.* at 8-9. In any event, the district court's fact-finding is not an issue before this Court on this qualified immunity appeal. *Johnson*, 515 U.S. at 319-20. Accordingly, the only question for this Court is whether Defendants Hernandez and Skinner may receive qualified immunity despite seizing Mr. Reynaga based only on a respondent's allegation in a civil proceeding that a witness for the opposing party was not a "legal citizen."

The answer to that question is straightforward. Defendants admit that the law governing the constitutionality of Defendant Skinner's actions was clear at the time of Mr. Reynaga's arrest. *See, e.g.*, Op. Br. 32-36. Indeed, Defendants seized Mr. Reynaga in violation of the Fourth Amendment over five years after the Supreme Court observed in *Arizona* that unlawful presence does not give rise to the "usual predicate for arrest," since, "[a]s a general rule, it is not a crime for a removable [noncitizen] to remain present in the United States." 567 U.S. at 407.

Defendants also acted in spite of Ninth Circuit precedent spanning decades that directly prohibited stops or arrests for the reason Defendants seized Mr. Reynaga. As noted above, binding precedent made clear that "because mere unauthorized presence is not a criminal matter, suspicion of unauthorized presence alone does not give rise to an inference that criminal activity is 'afoot.'" *Melendres*, 695 F.3d at 1001 (quoting *Terry*, 392 U.S. at 30). Defendants do not contest that unlawful presence in the United States is not a crime. Op. Br. 28.

Instead, Defendants' response is to ask this Court to overrule *Melendres*, *see, e.g.*, Op. Br. 25, 31, reiterating their argument to the district court that this Court's holdings in *Melendres* is "not founded on precedent or logic," ER 22 (quoting Dist. Ct. Dkt. 65 at 20). According to Defendants, *Melendres* incorrectly relied on *Martinez-Medina* for the proposition that "illegal presence does not provide *reasonable suspicion for investigation*," when *Martinez-Medina*'s actual holding is that "illegal presence by itself does not provide *probable cause for arrest*." Op. Br. 33 (emphasis added). But the reasoning behind *Martinez-Medina*'s holding applies equally in the context of investigatory stops as it does in the context of arrests. Reasonable suspicion, like probable cause, requires that a local law enforcement officer assess the likelihood that a *crime* has been committed. *See United States v. Manzo-Jurado*, 457 F.3d 928, 934 (9th Cir. 2006). And as this Court made clear in *Martinez-Medina*, admission of unlawful presence does not

provide suspicion to support a seizure precisely because unlawful presence is "only a *civil* violation." 673 F.3d at 1035 (emphasis added).

Defendants' argument also ignores this Court's careful and repeated examination of other reasons why unlawful presence provides no basis for a seizure. As the Court has explained in *Gonzales*,

> [t]here are numerous reasons why a person could be illegally present in the United States without having entered in violation of [8 U.S.C. §] 1325. Examples include expiration of a visitor's visa, change of student status, or acquisition of prohibited employment. . . .
>
> Furthermore, an arresting officer cannot assume that [a noncitizen] who admits he lacks proper documentation has violated section 1325. Although the lack of documentation or other admission of illegal presence may be some indication of illegal entry, it does not, without more, provide probable cause of the criminal violation of illegal entry.

722 F.2d at 476-77; *see also Martinez-Medina*, 673 F.3d at 1036 & n.4. *Melendres* reaffirmed this same principle, making clear that detentions based on suspicion of unlawful presence are also unconstitutional. The district court thus correctly concluded that this Court's precedent controls the result in this case and that the undisputed facts show Defendant Skinner violated Mr. Reynaga's clearly established right at the moment of seizure. Indeed, had the district court ruled otherwise, it would have been clear error. *See, e.g.*, *In re Zermeno-Gomez*, 868 F.3d 1048, 1053 (9th Cir. 2017) ("[I]t constitute[s] clear error for a district court to disregard a published opinion of this court.").

Defendants also err by suggesting that Defendant Skinner's conduct should be excused because he "rarely dealt with immigration issues" and does "not know the strange exception to the general principals [sic] of investigatory stops." Op. Br. 26-27. This Court's repeated need to remind law enforcement officers that unlawful presence is not a basis to detain someone should make clear that this is no "strange exception." *See Melendres*, 695 F.3d at 1001; *Martinez-Medina*, 673 F.3d at 1036; *Gonzales*, 722 F.2d at 476-77. But more importantly, the qualified immunity analysis is an objective inquiry that asks whether the *reasonable* officer should have known that certain conduct violates the Constitution. *Anderson v. Creighton*, 483 U.S. 635, 639 (1987). Whether an officer acts reasonably is "assessed in light of the legal rules that were 'clearly established' at the time" the officer acted. *Id.* To be clearly established, the law must give a "fair warning that [an officer's] conduct violated the Constitution." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). As is the case here, binding circuit case law satisfies that standard. *See id.* at 741-43. Defendants do not address or attempt to distinguish this case law, nor can they. Thus, *Melendres* and *Martinez-Medina* left no doubt that Defendants' actions violated the Constitution, and the district court correctly denied Defendants' request for qualified immunity.[3]

[3] For the same reason, Defendant Skinner's claim that he "was not knowledgeable about immigration law," Op. Br. 10, does not excuse his decision to violate Mr.

Defendants also cannot justify their seizure of Mr. Reynaga based on Defendant Skinner's interactions with Mr. Reynaga after Defendant Skinner encountered him. This is true for two reasons. First, Defendants cannot rely on facts that occurred *after* the detention started to justify the seizure. As the Supreme Court has explained, "[w]hether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer *at the time of the arrest*." *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004) (emphasis added); *see also, e.g., Ornelas v. United States*, 517 U.S. 690, 696 (1996) ("[T]he principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts . . . amount to reasonable suspicion or to probable cause.").

Second, none of the factors that Defendant Skinner discovered after the seizure began provided him with a reason to continue detaining and to later arrest Mr. Reynaga. *See* Op. Br. 30-31 (asserting that Mr. Reynaga's identification and inability to communicate his immigration status in English justified Mr. Reynaga's continued detention). As the district court observed, "[i]n a country as diverse as

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Reynaga's rights. Qualified immunity looks to whether the *reasonable* officer would have understood their conduct to violate the law. *See supra*. A lack of knowledge about clearly established law is no excuse, as "[s]tate officials are certainly not entitled . . . to ignore . . . federal law." *Schwenk v. Hartford*, 204 F.3d 1187, 1204 (9th Cir. 2000).

the United States, it is common to encounter someone who struggles with English. The Fourth Amendment would be of little value if the police were able to arrest anyone with a foreign ID and difficulty with English." ER 18. These factors did not provide Defendant Skinner with a "fair probability [Mr. Reynaga] . . . had illegally entered country[,] because a person who overstayed his visa, had a change of student status, or acquired prohibited employment could [also] very likely fit precisely into that profile." *Id.* (citing *Martinez-Medina*, 673 F.3d at 1036 n.4).

The district court's conclusion is well-grounded in this Circuit's case law. This Court has held that "[b]y itself . . . an individual's inability to understand English will not justify an investigatory stop because the same characteristic applies to a sizable portion of individuals lawfully present in this country." *Manzo-Jurado*, 457 F.3d at 937. Indeed, even when an inability to speak English is combined with other relevant factors, such as proximity to an international border, this Court has found that a *federal immigration agent* had no reason to suspect any immigration violation. *Id.* at 939. That conclusion is especially informative here, as Defendant Skinner was a local law enforcement officer without (1) the power to enforce civil immigration law and (2) the training necessary to evaluate potential immigration violations.

Similarly, Mr. Reynaga's identification provided no reason to suspect a civil immigration violation. That document did not indicate Mr. Reynaga's immigration

status, SER 92, and as the district court noted, possession of such a Mexican identification does not provide a reason to suspect a crime has occurred, ER 18. Indeed, "an arresting officer cannot assume that [a noncitizen] who admits he lacks proper documentation has violated section § 1325"; instead, the officer must have "additional evidence that the arrestee *entered* without inspection." *Gonzales*, 722 F.2d at 476-77 (emphasis added). Similarly, "a person's Mexican ancestry, even when that person is in proximity to the border, does not provide sufficient reasonable suspicion, on its own, to justify even a brief investigative detention." *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 896 (D. Ariz. 2013) (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975)). For all these reasons, Defendants' seizure of Mr. Reynaga violated clearly established law under the Fourth Amendment.

III. The Collective Knowledge Doctrine Has No Application to Defendants' Seizure of Mr. Reynaga.

Defendant Skinner also attempts to justify his arrest of Mr. Reynaga by pointing to the Immigration and Customs Enforcement officer that he contacted. According to Defendant Skinner, he was "working in concert with ICE," and thus the "collective knowledge" doctrine applies. Op Br. 39. As a result, "[Defendant] Skinner could rely on ICE . . . to arrest [Mr. Reynaga]." *Id.*

As an initial matter, whether the eventual *arrest* by ICE was lawful is immaterial, because Defendants' seizure of Mr. Reynaga was unlawful from its

inception. *See supra* pp. 22-29; *see also Chavez v. United States*, 683 F.3d 1102, 1111 (9th Cir. 2012) (noting, in context of a search, that "a search unlawful at its inception may [not] be validated by what it turns up" (alternation in original) (quoting *Wong Sun v. United States*, 371 U.S. 471, 484 (1963))); *cf. Ornelas*, 517 U.S. at 696 (lawfulness of a seizure is judged by the facts known by the officer prior to the seizure).

But Defendant's argument also has no basis in the case law that defines the collective knowledge doctrine. Under that doctrine, courts may impute the collective knowledge of police officers to another officer whom they are assisting in making a stop or arrest. *United States v. Villasenor*, 608 F.3d 467, 475 (9th Cir. 2010). As the district court explained, the doctrine is inapplicable to Mr. Reynaga's seizure because "other than perhaps [Defendant] Hernandez," Defendant Skinner "was not working in concert with or at the direction of other officers who had knowledge about [Mr. Reynaga's] citizenship or immigration status" either at the time of Mr. Reynaga's initial detention or of his subsequent arrest. ER 19.

The district court's conclusion flows directly from the case law of this Court, which has held that the collective knowledge doctrine applies in two situations—neither of which applies here. *See United States v. Ramirez*, 473 F.3d 1026, 1032-33 (9th Cir. 2007). First, the doctrine applies "where law enforcement agents are working together in an investigation but have not explicitly communicated the

facts each has independently learned." *Id.* at 1032. Second, it also applies "where an officer (or team of officers), with direct personal knowledge of all the facts necessary to give rise to reasonable suspicion or probable cause, directs or requests that another officer, not previously involved in the investigation, conduct a stop, search, or arrest." *Id.* at 1033 (emphasis omitted).

Neither situation applies in the instant case. As the district court explained, "Deputy Skinner does not dispute he detained . . . [Mr. Reynaga] the moment he began questioning him." ER 16. Mr. Reynaga's detention became an arrest "moments later," when Defendant Skinner blocked Mr. Reynaga from re-entering the courtroom, handcuffed him, and removed him to the patrol car outside the building. ER 17. At no point prior to Mr. Reynaga's initial detention or subsequent arrest did Defendants communicate with ICE. Nor at any point prior to Mr. Reynaga's seizure were Defendants working together on an investigation or otherwise acting in coordination with ICE. Thus, because Defendant Skinner seized Mr. Reynaga well before any communication from or coordination with ICE took place, the district court was correct to conclude that Mr. Reynaga's seizure falls well outside the two situations in which the collective knowledge doctrine applies.

Moreover, the collective knowledge doctrine does not apply to communications between federal immigration authorities and local law

enforcement officers where the latter have no authority to enforce civil immigration law. Courts have generally applied the collective knowledge doctrine only in cases where the cooperating agency that relied upon another agency's knowledge also had independent, inherent authority to perform the kind of seizure in question. *See, e.g.*, *Ramirez*, 473 F.3d at 1029 (police making arrest for suspected *criminal* violation); *United States v. Hensley*, 469 U.S. 221, 234-35 (1985) (same).

The Supreme Court has explained why this is so. "The federal statutory structure instructs when it is appropriate to arrest [a noncitizen] during the removal process." *Arizona*, 567 U.S. at 407. That "statutory structure" excludes local law enforcement officers from making immigration-related arrests absent an agreement under 8 U.S.C. § 1357(g). This arrangement avoids the complex problem of involving local officers who have, in the Defendants' own words, "little experience with the enforcement of immigration law." Op. Br. 37. Instead, Congress created a uniform system in which only an enumerated list of officers is permitted to exercise civil arrest powers in this context. *See* 8 C.F.R. §§ 241.2(b), 287.5(c)(1), (e)(3). Here, Defendants did not have authority to enforce civil immigration matters, a fact that they do not contest. As such, the collective knowledge doctrine would not apply even if Defendant Skinner had communicated with ICE prior to seizing Mr. Reynaga. For each of these reasons, the district court correctly declined

to apply the collective knowledge doctrine to justify Defendants' seizure of Mr. Reynaga.[4]

IV. Defendant Hernandez Violated Mr. Reynaga's Clearly Established Rights as an Integral Participant to His Seizure.

The district court also correctly determined that Defendant Hernandez was liable as an "integral participant" to Mr. Reynaga's seizure because "[Defendant] Skinner detained and arrested [Mr. Reynaga] based almost entirely on [Defendant] Hernandez's words and direction." ER 20. Defendant Hernandez's response is again to ask this Court to overturn its existing precedent and to assert that he did not have notice that this Circuit's case law would make him liable. But this Court's existing case law compelled the district court's conclusion, and this panel lacks authority to overturn the "integral participant" decisions that demonstrate Defendant Hernandez is liable.

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[4] In briefing before the district court, Defendants invoked *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018) to claim that the collective knowledge doctrine justified Mr. Reynaga's seizure. But that case is of no help to Defendants. In that case, the state of Texas had enacted legislation that affirmatively required local law enforcement to hold individuals pursuant to an ICE detainer—"a written request to state or local officials"—and a signed ICE administrative warrant. *See* 890 F.3d at 174 (describing the "ICE-detainer mandate"); *id.* at 188. Thus, the local officers in *City of El Cenizo* had an independent source of authority to allow them to engage in enforcing civil immigration laws. By contrast, Defendants based their detention of Mr. Reynaga only on their suspicion of Mr. Reynaga's unlawful presence, in the absence of any federal or state authority. Moreover, as noted above, Defendant Skinner acted *before* ever contacting ICE, whereas in *City of El Cenizo*, Texas police officers acted in response to detainers from ICE.

A. This Court's Precedent Made Clear Defendant Hernandez's Conduct Constituted Integral Participation.

The district court's conclusion that Defendant Hernandez was an "integral participant" is well-grounded in the case law of this Court. *Boyd*, 374 F.3d at 780. As this Court has explained, the "integral participant" inquiry is not especially demanding, as it "does not require that each officer's actions themselves rise to the level of a constitutional violation." *Id.*; *see also Bonivert*, 883 F.3d at 879 (same). Instead, the Court has explained that an individual may be liable for an unconstitutional act where the individual was (1) "aware of the decision" to act unconstitutionally, (2) "did not object to it," and (3) "participated in the . . . operation." *Boyd*, 384 F.3d at 780. Similarly, this Court has held that plaintiffs stated a claim against defendants for their "integral participation" in an unconstitutional act where those defendants "participated in a meaningful way in a collective decision" to violate plaintiffs' due process rights. *Keates v. Koile*, 883 F.3d 1228, 1242 (9th Cir. 2018); *cf. Hopkins v. Bonvicino*, 573 F.3d 752, 770 (9th Cir. 2009) (no integral participation where officer "participated in neither the planning nor the execution of the unlawful search").

Defendant Hernandez responds to the district court's conclusion by suggesting that he should receive qualified immunity because "[t]he courts have not clearly defined what constitutes integral participation." Op. Br. 20. He also appears to argue that he was without notice that he was violating Mr. Reynaga's

rights because he was not present at the scene. *Id.* Both arguments are unavailing. Defendant Hernandez meets this Court's well-defined criteria for integral participation, a conclusion that the district court laid out in detail and supported with several key acts that Defendant Hernandez committed.

As the undisputed facts below demonstrated, Defendant Hernandez stopped regular proceedings in a civil order of protection hearing to note the "allegations about [an] illegal immigrant." SER 127 ¶ 11; ER 10. Then, after hearing this "unsubstantiated assertion" that Mr. Reynaga was "not a legal citizen," Defendant Hernandez "ordered his staff to 'call me a deputy' because he had 'two illegals sitting outside' and he 'want[ed] them picked up.'" ER 21 (alteration in original) (quoting Defendant Hernandez's statements); *see also* SER 128-29 ¶¶ 14-15. Once on the phone with the Sheriff's Office, Defendant Hernandez requested that the office "'send [him] a couple of deputies . . . [and told the office to] get them here as quickly as possible' because he had 'two illegal immigrants out in the hallway.'" ER. 21 (second alteration in original). "The Sheriff's Office understood [Defendant] Hernandez's words to mean he had 'two illegal immigrants outside his courtroom that he wants picked up.'" *Id.*

Defendant Hernandez then further ensured that Mr. Reynaga would "be caught by surprise" by ordering Mr. Reynaga's wife "to remain in the courtroom so she couldn't tell [Mr. Reynaga] a deputy was coming for him." ER 21. Once

Defendant Skinner arrived, Defendant Hernandez again communicated that there were "illegal aliens" outside the courtroom, *id.*, and requested that Defendant Skinner investigate them, SER 134 ¶ 26. Defendant Hernandez also instructed Defendant Skinner to keep him apprised of the investigation. SER 135 ¶ 28.

Those facts satisfy this Court's test for determining integral participation. Defendant Hernandez was unquestionably "aware of the decision" to act unconstitutionally, *Boyd*, 384 F.3d at 780, as he was the one to receive the testimony, communicate it to the Sheriff's Office, and request that the Sheriff's Office act on that information. Similarly, Defendant Hernandez "did not object to" the unconstitutional seizure—to the contrary he instructed that it occur and facilitated it. *Id.* Finally, Defendant Hernandez was a key "participa[nt] in the . . . operation," *id.*, by (1) communicating critical allegations, (2) instructing the Sheriff's office to send deputies to the court because of the unsubstantiated allegations of a witness in a civil proceeding, (3) instructing Defendant Skinner to investigate Mr. Reynaga, and (4) preventing Mr. Reynaga's wife from advising Mr. Reynaga of the impending action. He was also present at the scene of the incident, which was his own courtroom and the hallway outside it. He therefore "participated in a meaningful way" in the decision to violate Mr. Reynaga's rights, *Keates*, 883 F.3d at 1242, as he was no "mere bystander," *Hopkins*, 573 F.3d at 770 (quoting *Chuman v. Wright*, 76 F.3d 292, 294 (9th Cir. 1996)). For these same

reasons, the law made clear that Defendant Hernandez's conduct could result in liability.

Defendant Hernandez's argument that he should receive qualified immunity because he was not present at the scene of the seizure also lacks merit. Op. Br. 20. The district court's fact finding unequivocally demonstrates that Defendant Hernandez was present at the scene. He was the one who heard the testimony, called the Sheriff's Office, requested an investigation, prohibited Mr. Reynaga's wife from going outside the courtroom to talk to her husband, and then instructed Defendant Skinner to investigate Mr. Reynaga, who was right outside the courtroom door. ER 9-11. The record therefore contradicts Defendant Hernandez's claim that he was not present. Indeed, contrary to Defendant Hernandez's argument, his "personal involvement [in the] deprivation of . . . constitutional rights" provides the "required link . . . to hold [a state official] liable." *Jones v. Williams*, 297 F.3d 930, 936 (9th Cir. 2002). Thus, notwithstanding Defendants' assertions to the contrary, the district court appropriately held Defendant Hernandez liable as a "full, active participant" in violating Mr. Reynaga's rights. *Bonivert*, 883 F.3d at 879 (citation omitted).

B. The Qualified Immunity Analysis Does Not Apply to the Question of Defendant Hernandez's Integral Participation.

Defendant Hernandez also errs to the extent he argues that what constitutes integral participation must be "clearly established" for qualified immunity

purposes. That suggestion misconceives the qualified immunity inquiry, which focuses on the nature of the *right* at issue. Defendant Hernandez's argument also ignores this Court's clear precedents establishing the test to determine if a defendant was an integral participant. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *White v. Pauly*, 137 S. Ct. 548 (2017) (internal quotation marks omitted). As noted above, to determine whether qualified immunity attaches, this Court conducts a two-part inquiry: (1) do "the facts . . . show that the defendants' conduct violated a constitutional right"?; and if so, (2) was the "right . . . clearly established at the time of the alleged violation"? *Bonivert*, 883 F.3d at 871-72 (brackets and citation omitted).

Here, the right in question was the right to be free from seizures by local law enforcement based only on an officer's suspicion that an individual is unlawfully present in the country. *Melendres*, 695 F.3d at 1001. Accordingly, a local law enforcement officer cannot seize an individual for that reason, no matter what role they played in the unlawful seizure. For example, a deputy sheriff cannot arrive at the scene of a domestic disturbance, hear that the neighbor is an "illegal alien," and instruct their partner back in the patrol vehicle to detain the neighbor and investigate them. In such a situation, the deputy sheriff's instruction to their partner to investigate the neighbor would violate the neighbor's clearly established rights.

Similarly, Defendant Hernandez's participation in this incident and instructions to the Sheriff's Office and Deputy Skinner violated Mr. Reynaga's clearly established right to be free from a seizure based on his suspected unlawful presence in the United States.

This approach is consistent with this Court's precedent. On several occasions, this Court has considered whether state officials should receive qualified immunity when they were an integral participant to a constitutional violation. In each instance, the Court has not asked whether the question of integral participation was "clearly established," but rather, whether the *right* to be free from some form of state conduct was clearly established. For example, in *Boyd*, this Court confronted a similar question. 674 F.3d at 778-84. That case involved whether police officers' use of a flash bang grenade violated the Fourth Amendment. At step one of the qualified immunity analysis, the Court considered whether the officers' actions violated the Fourth Amendment, and as part of that inquiry, asked whether certain officers were integral participants. *Id.* at 778-80. The Court answered that question in the affirmative. *Id.* Then, at step two, the Court asked whether the law clearly prohibited the use of a flash-bang grenade under the circumstances in that case. *Id.* at 780-84. But critically, the Court conducted the integral participant inquiry at step one, and then at step two simply asked whether the right the officers violated was clearly established.

The approach in *Boyd* is similar to the analysis the Court has conducted in other cases. In *Bonivert*, this Court examined the question of the defendant officers' integral participation in an unlawful entry separate from the qualified immunity analysis. 883 F.3d at 879; *see also Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th Cir. 2007) (officers not entitled to qualified immunity because the law clearly prohibited the use of hobble restraints and gang tackles, and thus officers whose "participation was integral" to those uses of force could be held liable); *Atencio v. Arpaio*, 674 F. App'x 623, 626 (9th Cir. 2016) (affirming in part and reversing in part district court decision to "den[y] qualified immunity to several other Defendants because there were genuine issues of material fact as to whether they were 'integral participants' in these acts of excessive force"). The district court correctly adhered to that approach when assessing whether Defendant Hernandez was an integral participant separate from the qualified immunity inquiry. *See* ER 20-21.

C. Defendant Hernandez's Other Arguments as to His Integral Participation Are Unavailing.

Conceding the weakness of his argument, Defendant Hernandez resorts to asking this Court to overturn the integral participant doctrine. *See, e.g.*, Op. Br. 21-23. But it is well-established that "in the absence of intervening Supreme Court precedent, one panel cannot overturn another panel." *Koerner v. Grigas*, 328 F.3d 1039, 1050 (9th Cir. 2003) (alteration and citation omitted). That principle is

particularly true here, as Defendant Hernandez has not pointed to any case law that "undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *United States v. Orona*, 923 F.3d 1197, 1200 (9th Cir. 2019) (citation omitted). This Court should therefore reject his invitation to overturn the integral participant doctrine.

Instead of pointing to intervening case law, Defendant contends that this Court should abandon the integral participant doctrine because it "does not conform to the general liability principals [sic] for [§] 1983 actions." Op. Br. 21. But this Court has repeatedly explained that the integral participation doctrine does precisely that. In *Boyd*, the Court observed that the integral participant doctrine is premised on an officer's *individual* actions, rather than vicarious or supervisory liability. 374 F.3d at 780. In making this point, the Court noted that the integral participant doctrine emerged after this Court "rejected a 'team effort' theory of section 1983 liability." *Id.* (quoting *Chuman*, 76 F.3d at 294). Prior decisions have refused to permit liability under such a "team" theory "because it [would] allow[] liability to attach to 'a mere bystander' who had 'no role in the unlawful conduct.'" *Id.* (citation omitted) By contrast, the "integral participant" doctrine ensures "'personal involvement' in the unlawful conduct." *Bonivert*, 883 F.3d at 879 (quoting *Jones*, 297 F.3d at 935-36).

The integral participant test thus requires personal involvement demonstrating why that individual should be held responsible. As Mr. Reynaga has explained, this Court has instructed district courts to consider several key factors to assess whether a state official is an "integral participant." *Supra* p. 34. Those instructions guarantee that a state official faces liability only where they were personally involved with the decision to violate someone's rights. *See Bonivert*, 883 F.3d at 879.

Finally, Defendant Hernandez appears to challenge the district court's characterization of events, suggesting that he only requested that Defendant Skinner investigate Mr. Reynaga. Op. Br. 19 ("The District Court erred when it determined Pedro Hernandez did anything more than request an investigation."). However, it is unclear how Defendants' challenge to the district court's facts benefits Defendant Hernandez, as it admits he was (1) at the hearing and scene of the incident; (2) he interrupted a civil protection order proceeding to request an investigation of a witness, and (3) he did nothing to stop the unlawful seizure, but instead instigated the enforcement action. In other words, even if it were appropriate for Defendants to challenge the district court's fact-finding in an appeal challenging qualified immunity—which it is not, *see Johnson*, 515 U.S. at 313-20—Defendant Hernandez's version of the facts also shows that he is liable. Moreover, a transcript, recording, and Defendant's own statement of disputed facts

confirm the district court's recitation of Defendant Hernandez's participation. *See, e.g.*, SER 37-50, 115-22, 123-48. For all of these reasons, this Court should affirm the district court's conclusion that Defendant Hernandez is liable for his integral participation in Mr. Reynaga's unlawful seizure.

CONCLUSION

For the foregoing reasons, this Court should affirm the order of the district court denying Defendants qualified immunity.

Dated: September 16, 2019

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Matt Adams

s/ Leila Kang
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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Plaintiff-Appellee state that he knows of no related cases pending in this Court.

Dated: September 16, 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Circuit Rule 32-1(a) because this brief contains 10,072 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word's Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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