

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,

and 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-00040-SPW
Hon. Susan P. Watters

**DEFENDANTS-APPELLANTS' OPENING BRIEF
(UNDER SEAL)**

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Introduction

Miguel Hernandez is a citizen of Mexico. He entered the United States without permission. He committed a crime when he entered the United States without permission. His presence in the United States is evidence of his crime of illegal entry into the United States. During a hearing, Pedro Hernandez, a justice of the peace, heard testimony Miguel Hernandez, a potential witness at the hearing, was illegally in the United States. Pedro Hernandez contacted the sheriff's office to investigate the allegation. Derrek Skinner, a deputy sheriff, responded to the request. Skinner investigated Miguel Hernandez's immigration status. Based on a request from Immigration and Customs Enforcement, ICE, Skinner arrested Miguel Hernandez. The United States initiated and then dismissed removal proceedings against Miguel Hernandez. Miguel Hernandez filed a complaint that alleged Pedro Hernandez and Skinner violated his right against unreasonable searches and seizures for the request, detention and arrest. Pedro Hernandez and Skinner denied the allegation. Pedro Hernandez and Skinner filed motions for summary judgment that included a request the District Court grant them qualified immunity. Miguel Hernandez filed a cross motion for summary judgment. The District Court denied Pedro Hernandez and Skinner's motions and granted Miguel Hernandez's motion. The District Court denied Pedro Hernandez and Skinner qualified immunity. Pedro

Hernandez and Skinner appealed the District Court's decision to deny them qualified immunity.

The District Court erred when it denied Pedro Hernandez qualified immunity. Pedro Hernandez did not violate Miguel Hernandez's right with the request. Pedro Hernandez was not an integral participant with the detention and arrest of Miguel Hernandez. If Pedro Hernandez was an integral participant with the detention and arrest, the Court should overrule the doctrine. The doctrine is contrary to general principle a person is only responsible for his conduct and is not vicariously responsible for the conduct of another. Even if Pedro Hernandez violated Miguel Hernandez's right, it was reasonable for him to believe he could make the request and not violate Miguel Hernandez's right. There is no legal precedent what he did would violate Miguel Hernandez's rights. The general concept of integral participant or reasonable suspicion for an investigatory stop would not have placed Pedro Hernandez on notice his request would violate Miguel Hernandez's right.

The District Court erred when it denied Skinner qualified immunity. Skinner did not violate Miguel Hernandez's right with the detention and arrest. Skinner had a reasonable suspicion that Miguel Hernandez might have committed a crime that allowed him to detain Miguel Hernandez to determine whether Miguel Hernandez had committed a crime. Skinner could rely on ICE that it had probable cause to arrest Miguel Hernandez that allowed him to arrest Miguel Hernandez and transport him

to the Facility. Illegal presence in the United States is enough for a reasonable suspicion to detain a person to determine whether the person committed the crime of illegal entry into the United States. There is a distinct possibility a person illegally in the United States illegally entered the United States. The Court should overrule *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012). It contradicts the general principal of investigatory stops that the police only need a reasonable suspicion of criminal activity to investigate. No precedent supports *Melendres*. Skinner could rely on ICE that it had information that established probable cause to arrest Miguel Hernandez when it requested Skinner transport him to the Yellowstone County Facility. When an officer knows facts that establish probable cause to arrest a person and communicates a request to another officer to arrest the person, the other officer does not violate the right against unreasonable searches and seizures.

Even if Skinner violated Miguel Hernandez's right, it was reasonable for him to believe he could detain and arrest Miguel Hernandez and not violate his right. The premise that illegal presence in the United States does not allow for an investigation of illegal entry into the United States is so contrary to the general principal that if the police have a reasonable belief a person has committed a crime they can detain the person to investigate the suspicion, it was reasonable for Skinner who had little experience with illegal entry into the United States to apply the general principal

instead of the nuanced approach to illegal presence investigations adopted by the Court.

Jurisdictional Statement

District Court's Jurisdiction

The District Court had jurisdiction over the claims made in the complaint. In the complaint, Miguel Hernandez alleges Pedro Hernandez and Skinner violated his right to illegal searches and seizures under the 4th Amendment of the United States Constitution. CV 18-40-BLG-SPW, Docket No. 1. A federal district court has original jurisdiction over all civil actions arising under the Constitution of the United States. 28 U.S.C. § 1331. A federal district court has original jurisdiction over civil rights actions. 28 U.S.C. § 1343. The District Court had original jurisdiction over the claims Pedro Hernandez and Skinner violated Miguel Hernandez's right to illegal searches and seizures under the United States Constitution. They are constitutional and civil rights claims.

The Court's Jurisdiction

The Court has jurisdiction over the appeal. The District Court denied Pedro Hernandez and Skinner's motions for summary judgment as to qualified immunity on a legal, not a factual, basis. ER 9-26. The Court has jurisdiction from all final decisions of a district court. 28 U.S.C. § 1291. A decision on qualified immunity is

a final decision that the Court can review on appeal. *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

Timeliness of Appeal

On May 29, 2019, the District Court denied Pedro Hernandez and Skinner's motions for summary judgment as to qualified immunity. ER 9-26. On June 17, 2019, within 30 days of the District Court's decision, Pedro Hernandez and Skinner filed their notices of appeal from the decision. ER 1-4 & ER 5-8.

Authority for Interlocutory Appeal

The Court has jurisdiction over the appeal. The District Court's decision on Pedro Hernandez and Skinner's motions for summary judgment did not dispose of all the claims in the case. ER 9-26. The District Court's decision did resolve Pedro Hernandez and Skinner's claims of qualified immunity. *Id.* The District Court denied Pedro Hernandez and Skinner qualified immunity. *Id.* The Court can review a decision to deny qualified immunity through an interlocutory appeal. *Mitchell v. Forsyth*, 472 U.S. 511, 530, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

Statement of the Issues Presented for Review

Did the District Court err when it denied Pedro Hernandez and Skinner's motions for summary judgment as to qualified immunity?

Did the District Court err when it determined Pedro Hernandez violated Miguel Hernandez's right to unreasonable searches and seizures? Did the District

Court err when it determined Pedro Hernandez was an integral participant in the violation of Miguel Hernandez's right? Did the District Court err when it determined Pedro Hernandez should have known based on prior precedent that his conduct would have violated Miguel Hernandez's right? Should the Court continue to recognize the integral participation doctrine? Does the integral participation doctrine contradict the general liability principal that a person is only responsible for their conduct?

Did the District Court err when it determined Skinner violated Miguel Hernandez's right to unreasonable searches and seizures? Did the District Court err when it determined Skinner did not have a reasonable suspicion of criminal activity to detain Miguel Hernandez? Did the District Court err when it determined Skinner did not have probable cause to arrest Miguel Hernandez? Did the District Court err when it determined Pedro Hernandez should have known based on prior precedent that his conduct would violate Miguel Hernandez's right? Should the Court continue to recognize illegal presence in the United States does not establish reasonable suspicion that person may have illegally entered the United States? Does the premise that illegal presence in the United States does not establish reasonable suspicion that person may have illegally entered the United States contradict the general liability principal that the police only need a reasonable suspicion of criminal activity to investigate?

Statement of the Case

Facts

Miguel Hernandez was not born in the United States. ER 56-63. He was born in Mexico. *Id.* He is not a citizen of the United States. *Id.* He is a citizen of Mexico. *Id.* He entered the United States from Mexico without a visa from the United States. *Id.* He did not present himself to an official of the United States when he entered the United States. *Id.* at p. 2. He illegally entered the United States. *Id.* He committed a misdemeanor crime when he entered the United States. *Id.* He is illegally in the United States. *Id.* He has no legal right to be in the United States. *Id.*

Derrek Skinner is a retired Deputy Yellowstone County Sheriff. ER 40-46. From August 1, 1997 until January 9, 2018, he served as a Deputy Sheriff. *Id.* As a Deputy Sheriff, he was obligated to enforce the laws of the United States and the State of Montana. *Id.*

Pedro Hernandez is a retired Yellowstone County Justice of the Peace. ER 34-39. Yellowstone County Justice Court is a court of limited jurisdiction. *Id.* From February 1, 1973 until November 30, 2017, he served as a Justice of the Peace. *Id.* Pedro Hernandez presided over the marriage between Miguel Hernandez and Jana Girard. *Id.* Jana Girard is later referred to as Jana Hernandez. *Id.* As a Justice of the Peace, he was obligated to uphold the laws of the United States and the State of Montana. *Id.*

On October 2, 2017, at 9:30 a.m., in the Yellowstone County Courthouse in Billings, Montana, Miguel Hernandez attended an order of protection hearing before Yellowstone County Justice of the Peace Pedro Hernandez as a witness. ER 34-39. Pedro Hernandez excluded Miguel Hernandez and Louis Elizondo from the courtroom because they were potential witnesses. *Id.* During the hearing, Rachel Flagen, also known as Rachel Elizondo, testified Miguel Hernandez was illegally in the United States and Jana Hernandez stated Louis Elizondo was also illegally in the United States. *Id.* at 17:44-17:47, 45:40-47:07. Neither Miguel Hernandez nor Louis Elizondo testified at the hearing. As the hearing concluded, Pedro Hernandez telephoned the Yellowstone County Sheriff's Office and requested a deputy respond to his courtroom to investigate the immigration status of Miguel Hernandez and Louis Elizondo. *Id.* Pedro Hernandez did not order anyone to arrest Miguel Hernandez or Louis Elizondo. *Id.* Pedro Hernandez believed based on the testimony during the hearing, Miguel Hernandez and Louis Elizondo may have committed crimes as indicated by their presence in the United States. ER 34-39. Pedro Hernandez believed it was his obligation to report these possible crimes to the Sheriff's Office so it could investigate. *Id.* Pedro Hernandez did not contact the Sheriff's Office to investigate the allegation because of any malice towards Miguel Hernandez. *Id.* The Sheriff's Office telephoned Yellowstone County dispatch to have a deputy respond to the courtroom. Dispatch contacted Skinner, who was on

duty, and ordered him to respond to the courtroom. ER 38. At 10:36 a.m., Skinner responded to the courtroom. ER 34-39, ER 40-46 & ER 40, 06:40-08:10. Pedro Hernandez told Skinner that he had heard testimony that Miguel Hernandez and Louis Elizondo, who he believed were outside of the courtroom, were illegally in the United States and Skinner should investigate their immigration status. *Id.* Pedro Hernandez did not order Skinner to arrest Miguel Hernandez or Louis Elizondo. *Id.* Based on the information provided to him by Pedro Hernandez, the sworn testimony that Miguel Hernandez and Louis Elizondo were illegally in the United States, Skinner had a reasonable suspicion that they may have committed crimes as indicated by their presence in the United States. ER 40-46.

At 10:38 a.m., Skinner left the courtroom to locate Miguel Hernandez and Louis Elizondo to investigate their immigration status. ER 40-46. Skinner did not know Miguel Hernandez or Louis Elizondo's immigration status. *Id.* Skinner did not know whether Miguel Hernandez or Louis Elizondo had committed a crime with their immigration status. *Id.* Skinner located Miguel Hernandez outside of the courtroom. *Id.* Skinner could not locate Louis Elizondo. *Id.* Skinner assumed that Louis Elizondo had left. *Id.* Skinner introduced himself and advised Miguel Hernandez he was investigating his immigration status. *Id.* Skinner requested Miguel Hernandez to identify himself. *Id.* Miguel Hernandez identified himself. *Id.* Miguel Hernandez provided Skinner with an expired identification card from Mexico. *Id.*

Miguel Hernandez was unclear about his immigration status. *Id.* It was difficult for Skinner and Miguel Hernandez to communicate. *Id.* Skinner was not fluent in Spanish and Miguel Hernandez was not fluent in English. *Id.* Skinner began to do a weapons check on Miguel Hernandez. *Id.* Miguel Hernandez began to enter the courtroom. ER 40-46, 10:20-10:40. Skinner told Miguel Hernandez not to enter the courtroom. *Id.* Skinner forcibly prevented Miguel Hernandez from entering the courtroom. *Id.* Skinner handcuffed Miguel Hernandez and checked him for weapons. *Id.* Skinner found no weapons on Miguel Hernandez. *Id.* Skinner and Miguel Hernandez talked for a few minutes about his immigration status. *Id.* Skinner took Miguel Hernandez into the Justice Court Office to advise the Office that he was taking Miguel Hernandez outside to his vehicle to perform a check for arrest warrants for him and to contact ICE to determine his immigration status. *Id.* Skinner was not knowledgeable about immigration law. *Id.* Skinner assumed ICE would be knowledgeable about immigration law and would be able to determine whether Miguel Hernandez had committed a crime as indicated by his presence in the United States. *Id.* Skinner assumed ICE would be able to cross-reference Miguel Hernandez with the visas issued by the United States to determine whether he committed a crime as indicated by his presence in the United States. *Id.*

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At 10:45, a.m., Skinner escorted Miguel Hernandez out of the courthouse to his patrol vehicle parked outside of the courthouse and placed him in the back seat of the vehicle. ER 40-46. Jana Hernandez, Miguel Hernandez's wife, came out to Skinner's vehicle and talked to both Skinner and Miguel Hernandez. *Id.* Skinner left the door open so Miguel Hernandez could communicate with him and his wife. *Id.* At the request of Miguel Hernandez, Skinner gave Miguel Hernandez's jacket to his wife. *Id.* At 11:15 a.m., Skinner telephoned dispatch to run an arrest warrants check on Miguel Hernandez. *Id.* Skinner contacted Lisa Ouzts, a dispatcher with the 911 Center. ER 40-46, ER 30-33 & ER 40. Ouzts ran an arrest warrants check on Miguel Hernandez. ER 30-33. The check indicated Miguel Hernandez did not have any arrest warrants. *Id.* Ouzts advised Skinner that Miguel Hernandez did not have any arrest warrants. ER 40-46 & ER 30-33. Skinner requested Ouzts contact ICE to determine whether it wanted to detain Miguel Hernandez. *Id.* Ouzts advised Skinner she would contact ICE and have ICE directly contact him. *Id.* At 11:26 a.m., Ouzts telephoned ICE. ER 30-33. Ouzts contacted David Frischmann, a Special Agent with ICE, and requested he have someone from ICE contact Skinner. ER 30-33. Frischmann advised Ouzts that someone from ICE would contact Skinner. *Id.* Shortly thereafter, Frischmann telephoned Skinner. ER 40-46. Skinner asked Frischmann whether ICE wanted to detain Miguel Hernandez. *Id.* Frischmann told Skinner he had to contact his superior, Laurence J. Carrol, a Supervising Detective

and Deportation Officer with ICE, to provide Skinner with an answer. *Id.* As Pedro Hernandez was leaving the courthouse for lunch, he saw Skinner with Miguel Hernandez outside of the courthouse. ER 40-46 & ER 34-39. Pedro Hernandez asked Skinner what was happening with Miguel Hernandez. *Id.* Skinner told Pedro Hernandez he was waiting for a decision from ICE as to what to do with Miguel Hernandez. *Id.* Pedro Hernandez did not order Skinner to arrest Miguel Hernandez. *Id.* Frischmann telephoned Skinner. ER 40-46. Frischmann told Skinner ICE wanted to detain Miguel Hernandez and he should transport Miguel Hernandez to the Yellowstone County Detention Facility. *Id.* Based on ICE's request to detain Miguel Hernandez, Skinner assumed that ICE had information that established probable cause to arrest Miguel Hernandez for a crime. *Id.* Skinner assumed ICE had cross-referenced Miguel Hernandez with the visas issued by the United States and had determined that Miguel Hernandez did not have a visa and committed a crime with his entry into the United States. *Id.* At 11:37 a.m., Skinner transported Miguel Hernandez to the Facility. *Id.* If ICE had told Skinner it did not want to detain Miguel Hernandez, Skinner would have released him. *Id.* The only reason Skinner transported Miguel Hernandez to the Facility was because ICE requested it. *Id.* Skinner had no other reason to detain Miguel Hernandez. *Id.* Skinner detained Miguel Hernandez long enough to receive a decision from ICE whether to detain Miguel Hernandez. *Id.*

At 11:45 a.m., Skinner remanded Miguel Hernandez to the Facility. ER 40-46. Skinner had no contact with Miguel Hernandez after he remanded him to the Facility. *Id.* Skinner detained Miguel Hernandez to determine his immigration status and detained him only long enough to determine his status. *Id.*

Initially, Skinner detained Miguel Hernandez because of the testimony at the hearing. Skinner continued to detain Miguel Hernandez because of his inability to speak English, his use of a Mexican identification card to identify himself and his inability to articulate his immigration status. Skinner arrested Miguel Hernandez when ICE requested he transport Miguel Hernandez to the Facility. Skinner assumed ICE had information that established probable cause for the arrest of Miguel Hernandez.

At 12:30 p.m., Frischmann placed a detainer on Miguel Hernandez for removal from the United States. ER 27-29. On October 3, 2017, at 7:00 a.m., Michael Hardy, a Special Agent with ICE, removed Miguel Hernandez from the Facility. *Id.* No one from Yellowstone County had any contact with Miguel Hernandez after he left the Facility.

Procedural History

Miguel Hernandez filed a complaint that alleged Pedro Hernandez, a former Yellowstone County Justice of the Peace, and Derrek Skinner, a former Deputy Yellowstone County Sheriff, violated his right against unreasonable searches and

seizures under the 4th Amendment of the United States Constitution. CV 18-40-BLG-SPW, Docket No. 1. Skinner and Pedro Hernandez filed an answer that denied the allegations. CV 18-40-BLG-SPW, Docket No. 18. Pedro Hernandez and Skinner filed motions for summary judgment. CV 18-40-BLG-SPW, Docket Nos. 37 & 39. Pedro Hernandez argued in the motion: (1) he did not violate Miguel Hernandez's right against unreasonable searches and seizures, (2) if he did violate the right, he is entitled to qualified immunity, (3) he did not act with the required mental state to have punitive damages assessed against him and (4) injunctive and declaratory relief are not available against him. CV 18-40-BLG-SPW, Docket No. 38. Skinner argued in the motion: (1) he did not violate Miguel Hernandez's right against unreasonable searches and seizures, (2) if he did violate the right, he is entitled to qualified immunity, (3) he did not act with the required mental state to have punitive damages assessed against him and (4) injunctive and declaratory relief are not available against him. CV 18-40-BLG-SPW, Docket No. 40. Miguel Hernandez filed a cross-motion for summary judgment. CV 18-40-BLG-SPW, Docket No. 55. Miguel Hernandez argued in the motion: (1) Pedro Hernandez and Skinner violated his right against unreasonable searches and seizures, (2) Pedro Hernandez and Skinner are not entitled to qualified immunity, (3) there is a genuine issue of material fact as to compensatory and punitive damages and (4) he is entitled to injunctive and declaratory relief. CV 18-40-BLG-SPW, Docket No. 56. The parties fully briefed

the motions. The District Court did not hold oral arguments on the motions. The District Court denied Pedro Hernandez and Skinner's motions and granted Miguel Hernandez's motion. ER 9-26. The District Court found Pedro Hernandez and Skinner had violated Miguel Hernandez's right against unreasonable searches and seizures, Pedro Hernandez and Skinner were not entitled to qualified immunity, there was a genuine issue of material fact as to compensatory and punitive damages and no need for declaratory relief. *Id.* Pedro Hernandez and Skinner appealed the District Court's decision to deny their motions as to qualified immunity. ER 1-4 & ER 5-8.

Summary of the Argument

The District Court erred when it denied Pedro Hernandez and Skinner qualified immunity. They were entitled to qualified immunity.

Pedro Hernandez did not violate Miguel Hernandez's right against unreasonable searches and seizures when he contacted the Sheriff's Office and requested it to investigate Miguel Hernandez. Pedro Hernandez was not an integral participant in the detention or arrest of Miguel Hernandez. If Pedro Hernandez was an integral participant with the detention or arrest, the Court should overrule the doctrine. The doctrine is contrary to the general principal a person is only responsible for his conduct and is not vicariously responsible for the conduct of another. Even if Pedro Hernandez violated Miguel Hernandez's right, it was reasonable for him to

believe he could make the request and not violate Miguel Hernandez's right. There is no legal precedent what he did would violate Miguel Hernandez's right. The general concept of integral participant or reasonable suspicion for an investigatory stop would not have placed Pedro Hernandez on notice his request would violate Miguel Hernandez's right.

Skinner did not violate Miguel Hernandez's right against unreasonable searches and seizures when he detained and arrested Miguel Hernandez. Skinner had a reasonable suspicion that Miguel Hernandez might have committed a crime as indicated by his presence in the United States. It was reasonable for Skinner to believe a person illegally in the United States might have illegally entered the United States. The Court should overrule *Melendres*. It contradicts the general principal of investigatory stops that the police only need a reasonable suspicion of criminal activity to investigate. No precedent supports *Melendres*. It was reasonable for Skinner to believe he could arrest and transport Miguel Hernandez to the Facility based on the request of ICE. It was reasonable for Skinner to believe ICE had information that established probable cause to arrest Miguel Hernandez. When an officer knows facts that establish probable cause to arrest a person and communicates a request to another officer to arrest the person, the other officer does not violate the right against unreasonable searches and seizures.

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Even if Skinner violated Miguel Hernandez's right against unreasonable searches and seizure with his detention and arrest, it would not have been clear that the detention and arrest would violate Miguel Hernandez's right. The premise that illegal presence in the United States does not allow for an investigation of illegal entry into the United States is so contrary to the general principal that if the police have a reasonable belief a person has committed a crime they can detain the person to investigate the suspicion, it was reasonable for Skinner who had little experience with illegal entry into the United States to apply the general principal instead of the nuanced approach to illegal presence investigations adopted by the Court. Qualified immunity allows people to make reasonable mistakes about open legal questions and protects all but the plainly incompetent or those who knowingly violate the law. *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S. Ct. 2074, 2085, 179 L. Ed. 2d 1149 (2011); *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 1096, 89 L. Ed. 2d 271 (1986). At worst, Skinner made a reasonable mistake.

Argument

Summary Judgment Standard of Review

The Court reviews a district court's decision on a motion for summary judgment anew. *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 988–89 (9th Cir. 2016). The Court gives no deference to the decision. *Id.* The Court uses the same standard used by the district court. *Id.* The Court determines

whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Rule 56(a), Fed.R.Civ.P. Material facts are those that may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.* The Court applies substantive law to the facts. *Animal Legal Def. Fund, Supra.*

Pedro Hernandez

The District Court erred when it denied Pedro Hernandez qualified immunity. Pedro Hernandez did not violate Miguel Hernandez's right against unreasonable searches and seizures when he requested an investigation. Pedro Hernandez was not an integral participant in the alleged violation. If Pedro Hernandez was an integral participant, the Court should overrule the doctrine. The doctrine does not conform to the general liability principals for 1983 actions that a person is responsible for their own actions, not the actions of others. Even if Pedro Hernandez did violate Miguel Hernandez's right when he requested an investigation, it would not have been clear his request for an investigation would have violated Miguel Hernandez's right. No legal precedent gave Pedro Hernandez notice that his request for an investigation would violate Miguel Hernandez's right. The general concept of integral participant or reasonable suspicion for an investigatory stop would not have

placed Pedro Hernandez on notice his request would violate Miguel Hernandez's right.

The District Court erred when it determined Pedro Hernandez did anything more than request an investigation. Pedro Hernandez requested the Sheriff's Office investigate Miguel Hernandez. Pedro Hernandez did not order the Sheriff's Office to arrest Miguel Hernandez. Pedro Hernandez may have inarticulately phrased his request, but based on the actions of Pedro Hernandez and Skinner, both interpreted Pedro Hernandez request as one to investigate, not arrest, Miguel Hernandez. If Pedro Hernandez had wanted Miguel Hernandez arrested, he would have told Skinner in the courtroom to arrest Miguel Hernandez, not that Skinner might have to contact immigration to determine Miguel Hernandez's immigration status. If Skinner had believed Pedro Hernandez had ordered Miguel Hernandez arrested, he would have immediately arrested him and transported him to the Facility. Skinner would not have investigated whether Miguel Hernandez had committed the crime of illegal entry into the United States. A crime he committed. If Pedro Hernandez had ordered the Sheriff's Office to arrest Miguel Hernandez, Pedro Hernandez would not have asked Skinner the status of the investigation of Miguel Hernandez when he left for lunch. Pedro Hernandez would have asked Skinner why he had not transported Miguel Hernandez to the Facility. There is no genuine issue of material

fact that Pedro Hernandez requested the Sheriff's Office to investigate Miguel Hernandez, not arrest him.

The District Court erred when it determined Pedro Hernandez violated Miguel Hernandez's right against unreasonable searches and seizures. Pedro Hernandez's request for the Sheriff's Office to investigate Miguel Hernandez did not violate Miguel Hernandez's right. Pedro Hernandez's request for the Sheriff's Office to investigate Miguel Hernandez did not make Pedro Hernandez an integral participant in Skinner's alleged violation of Miguel Hernandez's right to unreasonable searches and seizures. Even if a person does not violate another's constitutional right with his action, if the person is an integral participant in the constitutional violation, the person is responsible for the violation. *Keates v. Koile*, 883 F.3d 1228, 1241–42 (9th Cir. 2018). The courts have not clearly defined what constitutes integral participation in a constitutional violation. The courts have decided on a case-by-case basis what constitutes integral participation. Most of the cases that have found a person was an integral participant in the constitutional violation the person was present at the location of the constitutional violation and participated in some way with the violation. *See Boyd v. Benton Cty.*, 374 F.3d 773, 780 (9th Cir. 2004); *Estate of Lopez ex rel. Lopez v. Torres*, 105 F. Supp. 3d 1148, 1156–57 (S.D. Cal. 2015)(list of cases that found person not an integral participant because not present at violation). Even when the person participated in the constitutional violation, most

cases have found the person not to be an integral participant in the violation when the person was not involved in the decision to commit the violation. *See Sjurset v. Button*, 810 F.3d 609, 618–19 (9th Cir. 2015). Pedro Hernandez did not order Skinner to detain or arrest Miguel Hernandez. Pedro Hernandez was not present when Skinner detained or arrested Miguel Hernandez. Pedro Hernandez did not authorize the detention or arrest of Miguel Hernandez. Pedro Hernandez did not ratify the detention or arrest of Miguel Hernandez. Pedro Hernandez was not an integral participant in the detention or arrest of Miguel Hernandez.

If Pedro Hernandez was an integral participant, the Court should overrule the doctrine. The doctrine of integral participant does not conform to the general liability principals for 1983 actions that a person is responsible for their own actions, not the actions of others. A person is responsible for their own actions, not the actions of others. *See Rizzo v Goode*, 423 U.S. 362 (1976); *Monell v. Dep't of Soc.Servs.*, 436 U.S. 658 (1978); *Ashcroft v. Iqbal*, 556 U.S.662 (2009).

The idea that vicarious liability is inapplicable in 1983 actions has been made explicit. *Ashcroft v. Iqbal*, at 676. Even in actions against supervisors, there must be misconduct on the part of the supervisor. *Id.* at 677. When analyzing a defense of qualified immunity, a Court must grant it if “a reasonable officer could have believed [his actions] lawful, in light of clearly established law and the information the . . . officer[] possessed.” *Anderson v. Creighton*, 483 U.S. 635, 641 (1987). This

requires a Court to analyze the specific actions of the person claiming qualified immunity, not the actions of others. The doctrine of integral participation runs entirely counter to that proposition. Courts are not only analyzing the specific person's actions, but also looking to the actions of others and may impart an unconstitutional action upon the first person. There has never been an obligation that, in order for a person to obtain qualified immunity, no one else involved in the situation committed a violation not subject to qualified immunity. This is vicarious liability by any other name, and is expressly prohibited in 1983 actions.

To be granted qualified immunity under the doctrine of integral participation, not only must a person reasonably believe their conduct is proper, they must now ensure that they are also not an "integral participant" when others are committing a violation. However, what constitutes integral participation is not clear. In qualified immunity, Courts have been admonished repeatedly that the constitutional right at issue must be clearly established to defeat qualified immunity. A right is clearly established when "[t]he contours of [a] right must be sufficiently clear that a reasonable [officer] would understand that what he is doing violates that right." *Id.* at 640. Also, "existing precedent must have placed the . . . constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). The doctrine of integral participation is opposite of the specificity and clarity required in all other aspects of qualified immunity. It can impose liability based upon vague

determinations of participation based upon after the fact analysis. It also adds an additional requirement for qualified immunity found nowhere else besides the 9th Circuit. Here, Pedro Hernandez did not know what actions Skinner would take. He did not know if Skinner would detain Miguel Hernandez at all, much less arrest him. Pedro Hernandez had no control or authority over Skinner's decisions. Pedro Hernandez is being held as an integral participant to violations that occurred after his involvement in the situation was completed.

The doctrine of integral participation is dangerous and runs completely counter to the policies underlying qualified immunity and 1983 actions. A person may refrain from acting at all when they cannot trust that another may or may not commit a violation during an event. The consequences for an officer not acting could be dire, and the doctrine of qualified immunity is what ensures an officer can act freely. Adding liability based upon integral participation unreasonably dilutes that freedom. The purpose of individual liability under Section 1983 is to hold those who violate a person's rights responsible, not someone who committed no misconduct, but was participating in a situation where someone else committed a violation, even if the first person's action was not a proximate cause of the violation. Qualified immunity is supposed to protect all but the plainly incompetent and those who knowingly violate the law, not all but the plainly incompetent, those who knowingly

violate the law, and those who were not committing an unconstitutional act, but someone else “participating” did.

The District Court erred when it denied Pedro Hernandez qualified immunity. Pedro Hernandez did not violate Miguel Hernandez’s right, and, even if he did, it was reasonable for him not to know his action would violate the right. No legal precedent placed him on notice his action would violate the right. A court should grant a person qualified immunity when the person violates a right, but it was reasonable, based on the circumstances, for the person not to know his action would violate the right. *See Pearson v. Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009). Qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). Pedro Hernandez did not violate Miguel Hernandez’s right against unreasonable searches and seizure with his request for an investigation. Pedro Hernandez’s request for an investigation did not make him an integral participant in the alleged violation. Pedro Hernandez only requested an investigation. He did not perform the investigation. He did not supervise the investigation. He had no control over the investigation. Even if Pedro Hernandez violated Miguel Hernandez’s constitutional right with the request, no legal precedent gave him notice that his action would violate the right. The general concept of integral participant and reasonable suspicion for an investigatory stop would not

have placed Pedro Hernandez on notice his request would violate Miguel Hernandez's right. A clearly established right must be particularized to the facts of the case. *Kisela v. Hughes*, 138 S. Ct. 1148, 1153, 200 L. Ed. 2d 449 (2018); *White v. Pauly*, 137 S. Ct. 548, 552, 196 L. Ed. 2d 463 (2017); *Foster v. City of Indio*, 908 F.3d 1204, 1210–11 (9th Cir. 2018). A clearly established right should not be defined at a high level of generality. *Id.* A case does not have to be directly on point for a right to be clearly established, but must be close enough to place the person on notice his action would violate a right. *Id.* The general concept of integral participant and reasonable suspicion for an investigatory stop cited by the District Court as the precedent that should have placed Pedro Hernandez on notice did not place Pedro Hernandez on notice his action would violate Miguel Hernandez's right.

Derrek Skinner

The District Court erred when it denied Skinner qualified immunity. Skinner did not violate Miguel Hernandez's right against unreasonable searches and seizures when he detained and arrested Miguel Hernandez. Skinner had a reasonable suspicion that Miguel Hernandez committed a crime that allowed him to detain Miguel Hernandez to determine whether he had committed a crime. The Court should overrule the holding in *Melendres* that illegal presence in the United States does not create a reasonable suspicion that the person illegally entered the United States. Illegal presence does lead to the reasonable possibility someone illegally

entered the United States, a crime. *Melendres* is contrary to the general principals of investigatory stops and not based on precedent. Skinner could rely on ICE that it had probable cause to arrest Miguel Hernandez for a crime that allowed him to arrest and transport Miguel Hernandez to the Facility. ICE's knowledge of Miguel Hernandez's crime should be imputed to Skinner.

Even if Skinner violated Miguel Hernandez's right when he detained and arrested him, it would have been reasonable for Skinner to believe he could detain Miguel Hernandez to determine whether he had committed a crime based on the information presented to him and not violated Miguel Hernandez's right. The holding in *Melendres* that illegal presence does not create a reasonable suspicion that the person illegally entered the United States does not comply with the general investigatory stop standard that the police can detain a person if they have a reasonable belief that the person has committed a crime. There is a reasonable possibility that a person illegally in the United States might have illegally entered the United States. One fact logically leads to the next fact. Just because illegal presence is not a crime and a person illegally in the United States might not have committed the crime of illegal entry, does not negate illegal presence may be indicative the person might have committed the crime of illegal entry. It was reasonable for Skinner, who rarely dealt with immigration issues, to not know the strange exception to the general principals of investigatory stops that does not allow

for investigatory stops on reasonable suspicion for the crime of illegal entry into the United States.

When the police have a reasonable suspicion that a person might have engaged in a crime, the police may detain the person to investigate the suspicion. *Navarette v. California*, 572 U.S. 393, 396–97, 134 S. Ct. 1683, 1687, 188 L. Ed. 2d 680 (2014). The police have a reasonable suspicion that a person might have engaged in a crime when they can articulate a reason based on facts for the belief the person might have engaged in a crime. *United States v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 1585, 104 L. Ed. 2d 1 (1989). The police do not have a reasonable suspicion a person might have engaged in a crime based on a hunch or instinct. *Navarette v. California*, 572 U.S. 393, 396–97, 134 S. Ct. 1683, 1687, 188 L. Ed. 2d 680 (2014). When the police detain a person based on a reasonable suspicion the person might have committed a crime, the police should use the least intrusive means to investigate the suspicion and only detain the person long enough to validate or invalidate the suspicion. *Rodriguez v. United States*, 135 S. Ct. 1609, 1614, 191 L. Ed. 2d 492 (2015). If the police validate the suspicion, the police have established probable cause to arrest the person. The police may arrest the person. The police have probable cause to arrest a person when there is a substantial chance that the person has committed a crime. *D.C. v. Wesby*, 138 S. Ct. 577, 586, 199 L. Ed. 2d 453 (2018). If the police invalidate the suspicion, the police have not established

probable cause to arrest the person. The police cannot arrest the person. The police must release the person. To develop either reasonable suspicion or probable cause the police may rely upon information provided to them by other police and may detain or arrest a person based on the request from other police even if the police who actually detain or arrest the person do not have the information to establish a reasonable suspicion or probable cause. *United States v. Ramirez*, 473 F.3d 1026 (9th Cir. 2007).

A person commits a crime when he enters the United States without permission from the United States. 8 U.S.C. § 1325(a). A person does not commit a crime when he enters the United States with permission from the United States and overstays the permission. See 8 U.S.C.A. § 1229. A person does not commit a crime with his illegal presence in the United States. *See Arizona v. United States*, 567 U.S. 387, 407, 132 S. Ct. 2492, 2505, 183 L. Ed. 2d 351 (2012). There is no crime of illegal presence in the United States. *Id.* A person who is illegally in the United States either entered the United States without permission from the United States, a crime, or legally entered the United States with permission from the United States, not a crime. It is reasonable to infer a person who is illegally in the United States might have entered the United States without permission from the United States, a crime. The police may detain a person to investigate a possible crime when they have a reasonable suspicion the person might have committed a crime. *Illinois v.*

Wardlow, 528 U.S. 119, 123–24, 120 S. Ct. 673, 675–76, 145 L. Ed. 2d 570 (2000). The police should be allowed to detain a person when they have information that person is illegally in the United States to investigate whether the person illegally entered the United States, a crime. *See Illinois Supra; contra Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012). The police may arrest a person when they have probable cause the person might have committed a crime. *D.C. v. Wesby*, 138 S. Ct. 577, 585–86, 199 L. Ed. 2d 453 (2018). The police should not arrest a person illegally in the United States for illegal entry into the United States based solely upon their illegal presence. *Martinez-Medina v. Holder*, 673 F.3d 1029, 1035–36 (9th Cir. 2011). The person might have legally entered the United States and not committed a crime. *Id.*

Skinner had a reasonable suspicion that Miguel Hernandez might have committed a crime that allowed him to detain Miguel Hernandez and probable cause to arrest Miguel Hernandez based on the request from ICE. Miguel Hernandez committed a crime when he entered the United States without permission. Pedro Hernandez heard sworn testimony Miguel Hernandez was illegally in the United States. The testimony Miguel Hernandez was illegally in the United States did not establish probable cause that Miguel Hernandez had committed a crime. Illegal presence in the United States is not a crime. It can be indicative of the crime of illegal entry into the United States. Pedro Hernandez did not know Miguel Hernandez had

committed a crime with his illegal entry into the United States. Pedro Hernandez knew enough that Miguel Hernandez's alleged illegal presence in the United States indicated Miguel Hernandez might have committed the crime of illegal entry into the United States. Pedro Hernandez contacted the Sheriff's Office to investigate Miguel Hernandez's alleged illegal presence in the United States. Skinner arrived. Pedro Hernandez told Skinner about the alleged illegal presence of Miguel Hernandez. Skinner did not know Miguel Hernandez had committed a crime with illegal entry into the United States. Skinner did not have probable cause to arrest Miguel Hernandez based on his alleged illegal presence in the United States. Skinner did have a reasonable suspicion Miguel Hernandez might have committed the crime of illegal entry into the United States as indicated by his presence in the United States. Skinner applied the general principal that reasonable suspicion a crime might have occurred would allow him to investigate Miguel Hernandez. Skinner did not apply the exception from the general principal articulated in *Melendres* that illegal presence in the United States does not lead to a reasonable suspicion the person might not have illegally entered the United States. Skinner asked Miguel Hernandez to identify himself. Miguel Hernandez identified himself with a Mexican identification card. Miguel Hernandez did not identify himself with a United States driver's license or identification card. He did not identify himself with a United States or Mexican passport. Skinner asked Miguel Hernandez his immigration status.

Miguel Hernandez could not articulate his immigration status. He did not state he was a United States citizen. He did not state he was a Mexican citizen in the United States on a visa. He did not state he was a Mexican citizen in the United States on a visa that had expired. It was difficult for Skinner and Miguel Hernandez to communicate with each other. Skinner was not fluent in Spanish. Miguel Hernandez did not seem fluent in English. These facts furthered Skinner's suspicion Miguel Hernandez might have entered the United States without permission, a crime. Skinner began to perform a weapons check on Miguel Hernandez. Miguel Hernandez attempted to flee. Skinner handcuffed and brought Miguel Hernandez to his vehicle. Skinner brought Miguel Hernandez to the vehicle to better control Miguel Hernandez while he investigated whether Miguel Hernandez had committed a crime. Skinner had dispatch determine whether Miguel Hernandez had an arrest warrant. Dispatch advised Skinner there was no arrest warrant for Miguel Hernandez. Skinner had dispatch contact ICE to determine whether it wanted to arrest Miguel Hernandez. ICE advised Skinner it wanted Miguel Hernandez transported to the Facility. Based on the request Skinner believed ICE had information that established probable cause to arrest Miguel Hernandez. ICE had determined Miguel Hernandez had illegally entered the United States. ICE had no record of a visa for Miguel Hernandez.

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Prior to *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), the Court had held the illegal presence of a person in the United States did not by itself establish probable cause for the police to arrest the person for the crime of illegal entry into the United States. *Martinez-Medina v. Holder*, 673 F.3d 1029, 1035–36 (9th Cir. 2011); *Gonzales v. City of Peoria*, 722 F.2d 468, 476 (9th Cir. 1983), overruled by *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999). The person might not have committed a crime with his illegal presence in the United States. *Id.* The person might have overstayed a visa. *Id.* It is not a crime to overstay a visa. *Id.* The Court did not hold illegal presence of a person in the United States did not establish a reasonable suspicion the person might have committed the crime of illegal entry into the United States that would prevent the limited detention of the person to investigate whether the person had committed the crime of illegal entry into the United States. The precedent complied with the general principals of investigatory stops and arrest.

In *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 975 (D. Ariz. 2011), *aff'd sub nom. Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), a district court held illegal presence of a person in the United States does not establish a reasonable suspicion the person might have committed the crime of illegal entry into the United States and the police could not detain a person to investigate whether the

person had committed the crime of illegal entry into the United States as indicated by the person's illegal presence in the United States. The district court states:

Local law enforcement officers may therefore not detain vehicle passengers based upon probable cause, or even actual knowledge, without more, that those passengers are not lawfully in the United States, since such knowledge does not provide officers with reasonable suspicion that the passengers are violating any law that local law enforcement officers can enforce. *Martinez–Medina*, 673 F.3d at 1035–36, 2011 WL 855791, at *6. This prohibition holds true even when the car has been reasonably stopped for other cause, such as a traffic violation, because such cause provides “no such reason to stop or detain the passengers.” *Maryland v. Wilson*, 519 U.S. 408, 413, 117 S. Ct. 882, 886, 137 L. Ed. 2d 41 (1997).

Id at 976. The district court incorrectly cites *Martinez–Medina* that illegal presence does not provide reasonable suspicion for investigation. *Martinez–Medina* holds illegal presence by itself does not provide probable cause for arrest. Reasonable suspicion for investigation is not equivalent to probable cause for arrest.

In *Martinez–Medina*, the Court states:

We have explained that “[a]lthough 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.” *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) (en banc). We have also explained that, unlike illegal entry, which is a criminal violation, an alien's illegal presence in the United States is only a civil violation. *Id.* at 476. But in a subsequent opinion, the Supreme Court stated that “entering or remaining unlawfully in this country is itself a crime.” *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038, 104 S. Ct. 3479, 3483, 82 L. Ed. 2d 778 (1984). Although the Court did not elaborate on what it meant to “remain[] unlawfully in this country,” a reasonable

officer could have interpreted that statement to mean an alien's unlawful presence in this country is itself a crime.³

In addition, we stated in *Martinez v. Nygaard*, 831 F.2d 822, 828 (9th Cir.1987), that “[a]n individual's admission that she is an alien, coupled with her failure to produce her green card, provides probable cause for an arrest.” This language could have created some uncertainty with respect *1036 to when officers have probable cause to arrest aliens for suspected violations of federal immigration laws. Based on these passages from *Martinez* and *I.N.S.*, a reasonable officer could have concluded that an alien's illegal presence in the United States is a crime.

Although a reasonable officer could have been confused by these statements in *I.N.S.* and *Martinez*—and for that reason, the error was not “egregious”—a close reading of those cases demonstrates that neither meant to suggest that an alien's mere unauthorized presence is itself a crime. Both cases, rather, were referencing specific criminal statutes, *see I.N.S.*, 468 U.S. at 1038, 104 S.Ct. 3479 (citing 8 U.S.C. §§ 1302, 1306, 1325); *Martinez*, 831 F.2d at 828 & n. 4 (citing 8 U.S.C. § 1304(e)), none of which criminalizes mere unlawful presence. Nor is there any other federal criminal statute making unlawful presence in the United States, alone, a federal crime, although an alien's willful failure to register his presence in the United States when required to do so is a crime, *see* 8 U.S.C. § 1306(a), and other criminal statutes may be applicable in a particular circumstance.⁴ Therefore, *Gonzales's* observation that “an alien who is illegally present in the United States ... [commits] only a civil violation,” and its holding that an alien's “admission of illegal presence ... does not, without more, provide probable cause of the criminal violation of illegal entry,” always were, and remain, the law of the circuit, binding on law enforcement officers. 722 F.2d at 476–77.

Martinez-Medina v. Holder, 673 F.3d 1029, 1035–36 (9th Cir. 2011). Nor does the decision comply with the general principals of investigatory stops that the police only need a reasonable basis to believe a person has committed a crime to detain the person to investigate. There is a strong possibility that a person illegally

in the United States committed the crime of illegal entry into the United States. There is a rational relationship between illegal presence and illegal entry.

On appeal, in *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012), the Court affirmed the decision of the district court in *Ortega-Melendres*. The Court states

Here, the district court enjoined the Defendants from detaining individuals based solely on reasonable suspicion or knowledge that a person was unlawfully present in the United States. The Defendants acknowledge that, although they previously had authority under section 287(g) of the Act to enforce federal civil immigration law, they no longer have authority to do so except in the jail context. Accordingly, if the Defendants are to enforce immigration-related laws, they must enforce only immigration-related laws that are criminal in nature, which they are permitted to do even without section 287(g) authority. *See Gonzales*, 722 F.2d at 475 (holding that “federal law does not preclude local enforcement of the criminal provisions” of federal immigration law). That enforcement must be consistent with the Fourth Amendment requirement that a *Terry* investigative stop be premised on criminality. Thus, 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.” *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884, 20 L. Ed. 2d 889 (1968). Although we have recognized that “illegal presence may be some indication of illegal entry,” *Martinez–Medina*, 673 F.3d at 1035 (internal quotation marks omitted), unlawful presence need not result from illegal entry. For example, an individual may have entered the country lawfully, but overstayed his or her visa. *See Gonzales*, 722 F.2d at 476. In any event, nothing in *Martinez–Medina* suggests that presence *alone* is sufficient to justify a stop by the Defendants' officers who are not empowered to enforce civil immigration violations.

Id. at 1000–01. Again, the decision does not comply with the general principals of investigatory stops that the police only need a reasonable basis to believe a person has committed a crime to detain the person to investigate. There is

a reasonable suspicion that a person illegally in the United States might have committed the crime of illegal entry into the United States. There is a rational relationship between illegal presence and illegal entry. Illegal presence in the United States is not a crime, but it leads to a reasonable inference the person might have committed the crime of illegal entry in the United States. There is no legal precedent for the decision. All the prior cases dealt with probable cause for arrest, not reasonable suspicion for a stop.

A person illegally in the United States leads to the reasonable inference, a reasonable suspicion, that the person might have illegally entered the United States that should allow the police to detain the person to investigate whether the person has illegally entered the United States, a crime. A person illegally in the United States does not create a substantial chance, probable cause, that the person might have illegally entered the United States that should allow the police to arrest the person for illegal entry in the United States. A person could be illegally in the United States because the person overstayed a visa. A person illegally in the United States leads to a reasonable suspicion for detention, not probable cause for arrest. The Court should overrule *Melendres*.

If Skinner did violate Miguel Hernandez's right against unreasonable searches and seizures with his detention and arrest of Miguel Hernandez, based on the circumstances, it was reasonable for Skinner to believe he could detain and arrest

Miguel Hernandez and not violate his right. Skinner had little experience with the enforcement of immigration law. It was reasonable for him to believe the general standard for investigatory stops would apply to Miguel Hernandez and not a special rule that only applied to the crime of illegal entry into the United States that a reasonable suspicion a person has committed the crime of illegal entry is not enough to detain the person for an investigatory stop, It was reasonable for him to assume based on ICE's request for him to transport Miguel Hernandez to the Facility that ICE had facts that established probable cause to arrest Miguel Hernandez.

The district court misinterpreted when Skinner arrested Miguel Hernandez. ER 9-26. According to the district court, Skinner arrested Miguel Hernandez when he placed him in handcuffs, removed him from the courthouse and placed him in his vehicle. *Id.* Skinner did not arrest Miguel Hernandez when he placed him in handcuffs, removed him from the courthouse and placed him in his vehicle. Skinner only detained Miguel Hernandez until he finished his investigation. Skinner did not have probable cause to arrest Miguel Hernandez. Skinner still only had a reasonable suspicion that Miguel Hernandez might have committed a crime. The testimony Miguel Hernandez was illegally in the United States, his identification of himself with a Mexican identification card, his inability to articulate his immigration status and his inability to speak English did not establish probable cause for Skinner to arrest Miguel Hernandez. If Skinner had believed these facts established probable

cause to arrest Miguel Hernandez, he would have transported Miguel Hernandez to the Facility. Skinner did not transport Miguel Hernandez to the Facility. Skinner did not transport Miguel Hernandez to the Facility because he did not believe he had probable cause to arrest him and had not arrested him. Skinner would not have contacted dispatch and inquired about arrest warrants for Miguel Hernandez or contacted ICE to determine whether it had any reason to detain or arrest Miguel Hernandez. Skinner's actions after he placed Miguel Hernandez in handcuffs, removed him from the courthouse and placed him in the vehicle with the numerous radio communications and telephone calls would lead a reasonable person in Miguel Hernandez's position to believe Skinner was involved in further investigation and had not arrested him. A reasonable person would understand if Skinner had probable cause to arrest him, Skinner would have just transported him to the Facility and not have been on the radio and telephone to still determine whether or not he should release Miguel Hernandez. Only after ICE requested Skinner to transport Miguel Hernandez to the Facility, did Skinner believe probable cause existed to arrest Miguel Hernandez. Skinner believed ICE had information that established probable cause for the arrest of Miguel Hernandez. Skinner viewed ICE as the expert on immigration and assumed it knew facts that established probable cause. Skinner reasonably relied upon the direction of ICE.

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The district court misapplied the collective knowledge doctrine. *See United States v. Ramirez*, 473 F.3d 1026 (9th Cir. 2007). According to the district court, the collective knowledge doctrine did not apply to Skinner. ER 9-26. The district court implies because Skinner was not working in concert with ICE, the information ICE had as to probable cause for the arrest of Miguel Hernandez could not be imputed to Skinner. *Id.* Skinner was working in concert with ICE. Skinner contacted ICE because he did not have sufficient knowledge of immigration law to make a determination of what to do with Miguel Hernandez. Skinner could rely on the request by ICE to transport Miguel Hernandez to the Facility that ICE had probable cause to arrest Miguel Hernandez. Skinner did not interrogate ICE as to whether it wanted him to transport Miguel Hernandez because of a civil or criminal immigration violation. Skinner assumed ICE had the authority to do what it requested him to do. Skinner acted upon a request from ICE.

Conclusion

The Court should reverse the District Court's decision to deny Pedro Hernandez and Skinner qualified immunity.

The District Court erred when it denied Pedro Hernandez and Skinner qualified immunity. Pedro Hernandez did not violate Miguel Hernandez's right with the request. Pedro Hernandez was not an integral participant with the detention and arrest of Miguel Hernandez. If Pedro Hernandez was an integral participant, the

Court should overrule the doctrine. The doctrine does not conform to the general liability principals for 1983 actions that a person is responsible for their own actions, not the actions of others. The doctrine adds additional and impermissible, requirements to qualified immunity. Even if Pedro Hernandez violated Miguel Hernandez's right, it was reasonable for him to believe he could make the request and not violate Miguel Hernandez's right because there is no legal precedent what he did with the request would violate Miguel Hernandez's right. The general concept of integral participant or reasonable suspicion for an investigatory stop would not have placed Pedro Hernandez on notice his request would violate Miguel Hernandez's right.

The District Court erred when it denied Skinner qualified immunity. Skinner did not violate Miguel Hernandez's right with the detention and arrest. Skinner had a reasonable suspicion that Miguel Hernandez might have committed a crime that allowed him to detain Miguel Hernandez to determine whether Miguel Hernandez had committed a crime. Skinner could rely on ICE that it had probable cause to arrest Miguel Hernandez that allowed him to arrest Miguel Hernandez and transport him to the Facility. Illegal presence in the United States is enough for a reasonable suspicion to detain a person to determine whether the person committed the crime of illegal entry into the United States. There is a distinct possibility a person illegally in the United States illegally entered the United States. Skinner could rely on ICE

that it had information that established probable cause to arrest Miguel Hernandez when it requested Skinner transport him to the Facility. When an officer knows facts that establish probable cause to arrest a person and communicates a request to another officer to arrest the person, the other officer does not violate the right against unreasonable searches and seizures.

Dated: August 19, 2019

/s/ Melissa A. Williams

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FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s)

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Description of Document(s) (*required for all documents*):

Defendants-Appellants' Opening Brief (UNDER SEAL)

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov