

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 9 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CHAUNA CARLSON; ANDREW
CARLSON, husband and wife; and the
marital community comprised thereof,

Plaintiffs - Appellees,

v.

Adams County Deputy SAUL CHAVEZ, in
his professional and individual capacity;
Sergeant JUAN GARCIA, in his
professional and individual capacity,

Defendants - Appellants,

and

COUNTY OF ADAMS, ADAMS
COUNTY SHERIFF'S OFFICE, Adams
County Sheriff DALE WAGNER, in his
professional and individual capacity,

Defendants.

No. 25-3038

D.C. No.
2:24-cv-00114-RLP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rebecca L. Pennell, District Judge, Presiding

Argued and Submitted July 9, 2026

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Portland, Oregon

Before: GRABER, CLIFTON, and SUNG, Circuit Judges;
Dissent by Judge CLIFTON.

Defendants Deputy Saul Chavez and Sergeant Juan Garcia appeal the district court’s denial of summary judgment on the ground that they were not entitled to qualified immunity with respect to Plaintiffs Chauna Carlson and Andrew Carlson’s claims. Plaintiffs’ claims, filed pursuant to 42 U.S.C. § 1983, arise from (1) Defendants’ warrantless entries into Plaintiffs’ residence, and (2) Garcia’s warrantless seizure of Chauna Carlson’s cell phone. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo the denial of summary judgment on the ground that a defendant is not entitled to qualified immunity. *Hopkins v. Bonvicino*, 573 F.3d 752, 762 (9th Cir. 2009). We likewise review de novo the existence of probable cause and exigent circumstances. *See United States v. Arrellano-Rios*, 799 F.2d 520, 522 (9th Cir. 1986) (probable cause); *United States v. Iwai*, 930 F.3d 1141, 1144 (9th Cir. 2019) (exigent circumstances). Our “qualified-immunity analysis involves two prongs: (1) whether the officer’s conduct violated a constitutional right, and (2) whether that right ‘was clearly established at the time of the events at issue.’” *Williamson v. City of National City*, 23 F.4th 1146, 1151 (9th Cir. 2022) (quoting *Monzon v. City of Murrieta*, 978 F.3d 1150, 1156 (9th Cir. 2020)).

1. The district court correctly concluded that, viewing the facts in the light

most favorable to Plaintiffs, both intrusions violated the Fourth Amendment. A warrantless search or seizure is “presumptively unreasonable,” *Payton v. New York*, 445 U.S. 573, 586 (1980), but the presumption may be overcome if the intrusion is supported by probable cause and exigent circumstances, *United States v. Brooks*, 367 F.3d 1128, 1133 (9th Cir. 2004).¹ “Whether exigent circumstances exist in a given case is a fact-specific inquiry that depends on the totality of the circumstances.” *United States v. Arellano-Ochoa*, 461 F.3d 1142, 1145 (9th Cir. 2006).

The sole exigency asserted by Defendants is the need to preserve evidence. But there was no imminent danger that Chauna Carlson or anyone else would destroy evidence. The destruction-of-evidence exception does not apply when “[t]here was no evidence of *imminent* danger of destruction of evidence” and where officers had “no information that [a suspect] was in the process of destroying evidence.” *United States v. Whitten*, 706 F.2d 1000, 1016 (9th Cir. 1983) (emphasis added), *overruled in part on other grounds by United States*

¹ The dissent argues that this principle is inapplicable because “Defendants were not trying to conduct a search.” Dissent at 5. But “the reason why an officer might enter a house or effectuate a seizure is wholly irrelevant to the threshold question whether the [Fourth] Amendment applies. What matters is the intrusion on the people’s security from governmental interference.” *Soldal v. Cook County*, 506 U.S. 56, 69 (1992); *see also Payton*, 445 U.S. at 590 (“[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.”).

v. Gomez, 165 F.4th 1199, 1206–07 (9th Cir. 2026) (en banc); *see Vale v. Louisiana*, 399 U.S. 30, 35 (1970) (ruling that the exigency exception did not apply, even though the suspect’s mother and brother were present at the house searched, because “[t]he goods ultimately seized were not in the process of destruction”);² *United States v. Suarez*, 902 F.2d 1466, 1468 (9th Cir. 1990) (“Because the agents merely speculated . . . that there was an imminent danger that [evidence] would be destroyed, they have failed to show exigent circumstances to justify the search . . .”). When Defendants arrived, Chauna Carlson (1) acknowledged that an argument had occurred; (2) correctly identified her husband and adult daughter as the persons involved; (3) consented to Chavez’s initial entry into the residence; and (4) left her phone unattended on the porch, making no effort to conceal it. And, as the dissent acknowledges, Defendants did not identify any particular evidence they believed was in the house and was thus in imminent danger of destruction. Dissent at 8; *see United States v. Impink*, 728 F.2d 1228, 1231 (9th Cir. 1984) (“For destruction of evidence to constitute

² In *Vale*, very soon after officers arrested the defendant outside his house, the defendant’s mother and brother, who also lived at the house, “returned home carrying groceries.” 399 U.S. at 33. The officers later searched the house. *Id.* The Louisiana Supreme Court had “thought the search independently supportable because it involved narcotics, which are easily removed, hidden, or destroyed,” but the United States Supreme Court disagreed. *Id.* at 34–35. Despite the presence of close family members who had access to the house, the Court rejected the state court’s conclusion, holding that no exigency exception applied because “the goods ultimately seized were not in the process of destruction.” *Id.* at 35.

exigency, evidence must be present that could be destroyed. The mere suspicion that evidence may be present does not justify entry by the police.” (internal citation omitted)). Additionally, a substantial amount of time elapsed *between* the initial consent search and the subsequent warrantless entries, and the record contains no indication that law enforcement made any effort to obtain a warrant. The exigent-circumstances “standard is not satisfied unless the government demonstrates that a warrant could not have been obtained in time even by telephone.” *United States v. Manfredi*, 722 F.2d 519, 522 (9th Cir. 1983). Viewing these facts in the light most favorable to Plaintiffs—as we must at summary judgment—it was, at most, speculative that Chauna Carlson intended to destroy evidence. Accordingly, no exigent need to prevent the imminent destruction of evidence relieved Defendants of the need for a warrant.

Separately, we have long recognized that “a seizure reasonable at its inception . . . may become unreasonable as a result of its duration or for other reasons.” *United States v. Song Ja Cha*, 597 F.3d 995, 999–1000 (9th Cir. 2010) (quoting *Segura v. United States*, 468 U.S. 796, 812 (1984) (plurality)). Even assuming that the intrusions and the seizure of the cell phone were reasonable at their inception—which they were not—the duration of the seizure of the cell phone became unreasonable. Garcia, by his own account, “elected to retain the cell phone as evidence” for hours even after the investigating detective informed him

that he did not need the cell phone. And the record contains no indication that law enforcement made any effort to obtain a warrant during that period.

2. The district court correctly held that the law was clearly established in October 2022, the time of the incident. At that time, it was clearly established that (1) the exigency exception does not apply unless evidence is in danger of imminent destruction, *see Vale*, 399 U.S. at 35; *Suarez*, 902 F.2d at 1468; *Whitten*, 706 F.2d at 1016; and (2) where, as here, officers have sufficient opportunity to obtain a warrant, their failure to do so renders the intrusion unreasonable, *see Manfredi*, 722 F.2d at 522.

AFFIRMED.

FILED

Carlson v. Chavez, 25-3038

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CLIFTON, Circuit Judge, dissenting:

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U.S. COURT OF APPEALS

Defendants-Appellants Deputy Saul Chavez and Sergeant Juan Garcia (“Defendants”) should be entitled to qualified immunity and to dismissal of the § 1983 claims against them. Plaintiffs-Appellants Chauna Carlson and Andrew Carlson (“Plaintiffs”) have not demonstrated that it was clearly established under the law that Defendants’ actions violated Plaintiffs’ rights. We should reverse the district court’s denial of summary judgment to Defendants.

Qualified immunity protects “government officials . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). It is meant to be broad, providing “ample protection to all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

Denial of qualified immunity requires the court to determine (1) that the officer’s conduct violated a constitutional right, and (2) that it was “clearly established at the time of the events at issue” that the officer’s conduct was a constitutional violation. *Williamson v. City of National City*, 23 F.4th 1146, 1151 (9th Cir. 2022) (quoting *Monzon v. City of Murrieta*, 978 F.3d 1150, 1156 (9th Cir. 2020)). I focus on the second prong.

A right is clearly established only if existing precedent “place[s] the constitutional question beyond debate.” *Zorn v. Linton*, 607 U.S. 568, 572 (2026) (per curiam) (citation modified). Generally, this requires identifying a case “where an officer acting under similar circumstances was held to have violated the Constitution. . . . The relevant precedent must define the right with a high degree of specificity, so that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.” *Id.* (citation modified). “Principles stated generally . . . do not suffice” to show that a right was clearly established. *Id.* “[E]xisting law must have placed the [un]constitutionality of the officer’s conduct ‘beyond debate.’” *Polanco v. Diaz*, 76 F.4th 918, 930 (9th Cir. 2023) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011)).

The Supreme Court has repeatedly admonished courts generally, and our court more than once, not to conduct the qualified immunity analysis at too high a level of generality. *See, e.g., Kisela v. Hughes*, 584 U.S. 100, 104 (2018); *Ashcroft*, 563 U.S. at 742. None of the cases cited by Plaintiffs or relied upon by the majority speak to the factual circumstances of this case. Tellingly, at oral argument, when asked by the panel to point to decisional law that would have put Defendants on notice that their actions were unlawful, counsel for Plaintiffs could not identify a single case.

The factual circumstances of this case were particularly unique in one key respect. Defendants in this case responded to a call that there had been an assault by a father against an adult daughter, an episode of domestic violence. But they were not responding officers in the usual sense. Explaining that requires some understanding of the relevant facts.

The alleged assault took place at Plaintiffs' house in Ritzville, Washington, a small town in eastern Washington with a population reported in the 2020 census of 1,767 people. Ritzville is the county seat of Adams County, population 20,613, again according to the 2020 census.

While off duty, Ritzville Chief of Police Dave McCormick received a personal phone call from Justin McKenzie, the brother of Plaintiff Chauna Carlson.¹ McKenzie reported that Plaintiff Andrew Carlson had choked Kelcee Carlson (the adult daughter of Andrew and Chauna), and that he was traveling to the Carlson home to assault Andrew. The record does not explain how McKenzie learned that information, but it is not hard to infer that it likely came from his sister Chauna or possibly his niece, Kelcee, the alleged victim. That McKenzie told Chief McCormick, that he, McKenzie, planned to assault his brother-in-law, Andrew, suggested a level of serious concern. It certainly meant that McKenzie

¹ Because of the multiple participants in this story who share the surname Carlson, they will often be referred to by their first names.

believed that the alleged assault by Andrew on Kelcee had actually happened and needed to be taken seriously. Chief McCormick called the Adams County Sheriff's Office, who sent deputies to the Carlson home. Defendants were those officers.

The brother of the alleged assailant, Andrew, was Matt Carlson, who was himself an officer of the Ritzville Police Department. Chief McCormick then called Officer Matt and asked what was going on. Matt initially denied knowledge but ultimately admitted to Chief McCormick – who was his boss – to having received a text message from Chauna approximately 40 minutes earlier, asking him to come and remove Andrew from the home. Officer Matt stated he provided Andrew with a key to Matt's own home and directed him there. According to Officer Matt, when his brother attempted to speak with him, he replied, "I [do] not want to hear it." That Officer Matt admitted as much to his boss, the chief of police, after at first denying any knowledge, further suggested that the allegation against Andrew was to be taken seriously. It also illustrated the conflict faced by the Ritzville Police Department.

Chief McCormick then called Adams County Sheriff Dale Wagner. Sheriff Wagner informed Chief McCormick he would refer the investigation to the sheriff's office in a neighboring county, Grant County, because his office had its own conflict. In addition to difficulties presented by personal relationships among

several of the participants, Officer Matt ran against Sheriff Wagner for the position of Adams County Sheriff in the 2022 elections.

No party has questioned the propriety of the matter being referred to the Grant County Sheriff's Office. That is the reason, in my view, why Defendants were not responding officers in the usual sense. By the time Defendants arrived at the Plaintiffs' house, their office had already recognized that it had a conflict. Accordingly, responsibility for any investigation had been assigned to a neighboring sheriff, approximately 50 miles away. Once Defendants confirmed that there was no ongoing violence (consistent with Officer Matt's statement to Chief McCormick that he had already provided Andrew with a key to Matt's home and directed him there), their goal was to preserve the scene for the Grant County Sheriff's Office to take charge. They were not expected to take the lead themselves.

The suggestions in the majority disposition, at 3–5, that Defendants had time to get a search warrant and that there was no exigency to justify a warrantless search miss the point. Defendants were not trying to conduct a search. They were trying to preserve the alleged crime scene for the neighboring department to take charge of the investigation.² After the officers' initial entry into the house to

² The majority, at 3 n.1, faults my dissent for erroneously observing that the Fourth Amendment does not apply when officers are not conducting a search. That is a mischaracterization. The fact that Defendants were not conducting a search

confirm that there was no ongoing violence and that Andrew and Kelcee had in fact left the scene, all of the subsequent entries by Defendants were to follow Chauna when she entered the house to ensure that she did not tamper with any evidence. If she had not entered the house, they did not need to, but she did.

Defendants made no effort to enter the house on their own or to conduct a search of the property. Similarly, when Chauna's phone was picked up, all that was done with it was to place it in "airplane mode." No effort was made to search it. That was not what the Defendants were trying to do. No case identified by Plaintiffs or the majority addressed that situation. The law was not clearly established for the officers confronted with that circumstance.

The main proposition relied upon by the majority disposition, at 3, is that "there was no imminent danger that Chauna Carlson or anyone else would destroy evidence." That is wrong as both a matter of law and of fact.

As a matter of law, the majority asserts, at 3–4, that "The destruction-of-evidence exception does not apply when '[t]here was no evidence of *imminent*

does not render the Fourth Amendment's general requirement that an intrusion be supported by a warrant inapplicable. But the facts that officers from a neighboring county were responsible for investigating the matter and that Defendants were dispatched to the Carlson residence merely to preserve it for that office should be considered within our qualified immunity analysis. Because Defendants were not responding officers in the ordinary sense, they had reason to believe that a warrant, if necessary, would be obtained by the neighboring county officers. Defendants' failure to obtain a warrant must be understood in that context in assessing whether qualified immunity applies.

danger of destruction of evidence’ and where officers had ‘no information that [a suspect] was in the process of destroying evidence.’ *United States v. Whitten*, 706 F.2d 1000, 1016 (9th Cir. 1983) (emphasis added), *overruled in part on other grounds by United States v. Gomez*, 165 F.4th 1199, 1206–07 (9th Cir. 2026) (en banc).” The facts of the *Whitten* case were markedly different from the circumstances confronted by Defendants and did not clearly establish the law for their purposes.

Whitten was a case involving multiple defendants. The defendant relevant to the issue involved in our case was named Gaiefsky. He was convicted of various narcotics offenses. He challenged his conviction with an argument that the drugs upon which the conviction was based had been wrongfully seized. The drugs were found in a hotel room where he was staying. When officers knocked on the door of that hotel room, Gaiefsky answered and was immediately arrested and handcuffed. The district court held there were exigent circumstances to support the search, including concern for destruction of evidence. We reversed.

The facts of *Whitten* were far from the facts presented to Defendants in our case. Gaiefsky had already been arrested by multiple officers. He was handcuffed and placed in a chair in the hotel room. After they entered the room, the officers knew that there was nobody else there in a position to destroy evidence. In quoting from the *Whitten* opinion, the majority in our case added emphasis to the word

“imminent,” but it was not highlighted in the opinion and does even not appear pertinent to that decision, given that the only person capable there of destroying evidence had already been arrested, taken into custody, and handcuffed.

As outlined above, there were obvious reasons for Defendants to be concerned about the commission of the alleged assault and of the possibility of a cover-up. Chauna’s brother, McKenzie, told Chief McCormick that Andrew had assaulted Kelcee. McKenzie was sufficiently upset to also tell Chief McCormick that he was about to assault Andrew. Further, Officer Matt initially lied to his boss, Chief McCormick, by denying any knowledge of the alleged assault before admitting that Chauna had called him to get Andrew out of the house. When Defendants arrived at the Carlson house, Chauna denied that anything was amiss. She sought to convey the impression that there was nothing to see there. It is not a surprise that family members sometimes close ranks and deny domestic violence has occurred within the family even when it has.

Unlike in *Whitten*, where the suspect was under arrest and handcuffed, there could be no such confidence on the part of Defendants here. They did not know what evidence might be inside the house (perhaps a towel with blood that might be in a bathroom) or on Chauna’s phone (likely the text message from Chauna that Officer Matt initially denied but eventually admitted to receiving), but they had to be concerned that whatever might be there could be removed or destroyed while

they waited for the investigator from the next county to take charge.³ Far from being under their control, Chauna repeatedly re-entered the house. It was only when she did that one of the Defendants re-entered the house. Chauna's apparent complaint is that she was not permitted to go unobserved. In light of her effort to minimize what had happened between her husband and daughter, Defendants' concerns that she might disturb the scene are not hard to understand.

The majority bolsters the citation to *Whitten* by citing the Supreme Court's opinion in *Vale v. Louisiana*, 399 U.S. 30 (1970), with a "see" signal, in support of the proposition that the exigency exception does not apply when the "goods ultimately seized were not in the process of destruction," *id.* at 35. The majority's citation to *Vale* is similarly inapposite and unpersuasive. In *Vale*, the Supreme Court set aside a Louisiana conviction for possessing heroin. Vale was observed outside of a house speaking to someone in a parked car. The police officers who observed him concluded that a narcotics transaction had taken place. As they

³ The majority observes, at 4, that my dissent "acknowledges" that "Defendants did not identify any particular evidence they believed was in the house and was thus in imminent danger of destruction." Not entirely so. The fact that Defendants did not know the *extent* of evidence that could be discovered does not logically suggest that Defendants had not identified any evidence of the suspected crime or that they were proceeding on the basis of mere suspicion. Defendants knew that Chauna had reached out to Officer Matt by phone about the alleged assault because Matt told the chief of police. They thus had good reason to believe that Chauna's cell phone contained relevant evidence. As for other intrusions, Defendants' later entries into the house were not in search of evidence but to follow Chauna to preserve the scene for the investigating officers.

approached Vale, he saw them and started walking to the house. The officers cut him off and placed him under arrest as he reached the front steps. They then conducted a search of the house and found a quantity of narcotics in a rear bedroom. The main issue discussed in the opinion was whether the search could be justified, as it had been by the Louisiana Supreme Court, as being in the “immediate vicinity of the arrest” and “substantially contemporaneous therewith,” perhaps what is more commonly described today as a search incident to arrest. *Id.* at 33. The Court rejected that argument, noting that exception was already established as “confined to the immediate vicinity of the arrest,” and this search was not. *Id.* at 33–34. The only observation that appears pertinent to our case was the simple statement that “[t]he goods ultimately seized were not in the process of destruction.” *Id.* at 35. As they were in a different room inside the house and Vale was already under arrest outside, that was not surprising.

The majority’s invocation of *Whitten* and *Vale* is followed, at 4, by a citation to *United States v. Suarez*, 902 F.2d 1466, 1468 (9th Cir. 1990). The short opinion in that case is sparse on facts. It involved a challenge to a conviction for possession with intent to distribute cocaine. Suarez entered a conditional guilty plea preserving his ability to challenge a warrantless search of his apartment that presumably led to the discovery of the drugs. A dissent in that case noted that Suarez was handcuffed. *Id.* at 1469 (Chambers, J., dissenting). He was apparently

arrested following a search of a garage for which the majority in that case agreed the agents had probable cause. *Id.* at 1467. That garage was used for several cars for several people, according to the dissent. *Id.* at 1469. The opinion did not mention any challenge to the arrest itself. The problem appeared to be the expansion of the search into Suarez’s neighboring apartment. The majority in our case quotes, at 4, from the *Suarez* opinion: “Because the agents merely speculated . . . that there was an imminent danger that [evidence] would be destroyed, they have failed to show exigent circumstances to justify the search” But if, as it seems, Suarez had already been arrested – an arrest that did not appear to have been challenged in that case – then his situation is no different from that of the suspect in *Whitten*. He was under arrest and handcuffed, was not inside the apartment, and was in no position to destroy evidence. In addition, our opinion in *Suarez* relied upon the fact that the agents could have obtained a warrant to search the apartment. *Id.* at 1468. Those agents were conducting the investigation, unlike Defendants in our case, who were waiting for the neighboring county’s sheriff to do that. That opinion did not clearly establish the law for Defendants.

Recall the standard quoted above from the Supreme Court earlier this year: “The relevant precedent must define the right with a ‘high degree of specificity,’ so that ‘every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply.’” *Zorn*, 607 U.S. at 572 (quoting *District of Columbia v.*

Wesby, 583 U. S. 48, 63 (2018)). For the most part, I do not think that I would have myself recognized them as violations of Plaintiffs’ constitutional rights had I been in their position. In only one respect do I question the propriety of Defendants’ actions. As noted in the majority disposition, at 4, Defendant Garcia retained Chauna’s cell phone as evidence even after the investigating detective from the neighboring county informed him that he did not need the cell phone. But even Garcia’s hesitation to return the phone does not seem that surprising to me under the circumstances. The detective from Grant County did not appear at the Carlson house while Defendants were waiting there but had informed Garcia that his investigation remained ongoing. Garcia did not give the phone back right away, but it was returned to Chauna later that evening. I cannot conclude that action or the other actions by Defendants were “plainly incompetent or [a knowing violation of] the law.” *Malley*, 475 U.S. at 341.

Plaintiffs have not pointed to any authority that clearly established on the facts of this case that Defendants violated their constitutional rights. The majority disposition does not, either, even reaching back to cases from 1970, 1983 and 1990 – 56, 43 and 36 years ago, respectively. Qualified immunity should apply.

I respectfully dissent.