

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ALEX ROMERO MEDRANO,

Plaintiff - Appellee,

v.

Officer ACOSTA; Officer
ROBERTS,

Defendants - Appellants,

CITY OF BELL GARDENS, BELL
GARDENS POLICE, MONTEREY
PARK POLICE, CITY OF
MONTEREY PARK, MP JAILER,
BG JAILER, BG COMMANDER,
JENNIFER CHOU, CLAIRE
KELLY, Marshal K. DOMINGO,
CHAPMAN, 037, BG Jailer, BG
Transp, SCOTT B. FAIRFIELD,
ROBERT BARNES, BG Chief of
Police, Officer NUNO, Monterey
Park Jailer, KELLY GORDON, MP
Watchcommander, JIM SMITH, MP
Chief Police,

Defendants.

No. 24-6346

D.C. No.
2:18-cv-10108-
MEMF-SP

OPINION

Appeal from the United States District Court
for the Central District of California
Maame Ewusi-Mensah Frimpong, District Judge, Presiding

Argued and Submitted April 16, 2026
Pasadena, California

Filed September 25, 2026

Before: Richard A. Paez, Consuelo M. Callahan, and
Patrick J. Bumatay, Circuit Judges.

Opinion by Judge Callahan;
Partial Concurrence and Partial Dissent by Judge Paez

SUMMARY*

Qualified Immunity

The panel reversed the district court’s denial, on summary judgment, of qualified immunity to Bell Gardens Police Department Officers Acosta and Roberts (the “Officers”), and remanded, in an action brought by Alex R. Medrano pursuant to 42 U.S.C. § 1983, alleging that the Officers violated his Fourth Amendment rights by using excessive force to effectuate his arrest.

To execute a felony arrest warrant against Medrano, the Officers approached him from ten to twenty feet away with

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

their guns drawn. The Officers kept their guns drawn until they had safely placed him under arrest. Medrano sued, claiming that by aiming their firearms at his head, the officers used excessive force.

The panel held that the officers did not violate the Fourth Amendment by approaching Medrano with their weapons drawn and ready to use. While the Officers used a high level of force, they reasonably believed that Medrano may have committed multiple serious offenses, posed a threat to their safety, and was actively on the run from a felony arrest warrant and may again attempt to flee. Accordingly, the Officers' use of force under these circumstances was reasonable and did not violate Medrano's Fourth Amendment rights.

The panel further held that Medrano's claimed Fourth Amendment right was not clearly established under existing law because it was not sufficiently clear to the Officers here that what they were doing violated Medrano's Fourth Amendment right.

Judge Paez concurred in part and dissented in part. He joined Section II.C of the majority opinion, which held that the Officers' conduct did not violate clearly established law. However, he dissented from the majority's conclusion that the Officers did not violate Medrano's Fourth Amendment rights. When all disputes of fact are resolved in Medrano's favor, a rational jury could conclude that it was no longer objectively reasonable to keep two guns trained on Medrano's head, rather than at the ground away from him, once he was closer and compliant. In his view, the panel could have, and should have, resolved this case on the clearly established prong of the qualified immunity analysis.

COUNSEL

Carlos Fairbanks (argued) and Victor Bao (argued), Certified Law Students; Peter R. Afrasiabi, Supervising Attorney; One LLP, Newport Beach, California; for Plaintiff-Appellee.

Daniel P. Barer (argued) and Karen M. Stepanyan, Pollak Vida & Barer, Los Angeles, California; Scott J. Carpenter, Carpenter Rothans & Dumont LLP, Los Angeles, California; for Defendants-Appellants.

OPINION

CALLAHAN, Circuit Judge:

To execute a felony arrest warrant against Plaintiff Alex R. Medrano, two police officers approached Medrano from ten to twenty feet away with their guns drawn. The officers kept their guns drawn until they had safely placed him under arrest. Medrano sued, claiming that by aiming their firearms at his head, the officers used excessive force in violation of the Fourth Amendment. The district court denied the officers' motion for summary judgment, ruling that a juror could find that they used excessive force and that "under the circumstances, such action was a clear violation of an established constitutional right."

In arresting Medrano, the officers reasonably believed that he had committed serious crimes, presented a threat to their safety, and may resist arrest or attempt to flee. We hold that they did not violate the Fourth Amendment by

approaching him with their weapons drawn and ready to use. We thus reverse and remand. ¹

I

A

On June 8, 2018, Bell Gardens Police Department (BGPD) Officers Acosta and Roberts were both working patrol duty. ² Around 7:30 p.m., each Officer received a report that Medrano had been seen leaving his girlfriend's residence in Bell Gardens and was headed to his father's residence. Both Officers were familiar with Medrano, who they believed was affiliated with a local street gang.

On or around May 25, roughly two weeks prior to receiving the June 8 report, Officer Acosta learned that "Medrano had [recently] fled from a lawful traffic stop conducted by a BGPD officer," and was currently "on the run" from a "felony 'no bail' federal warrant for [his] arrest related to drug charges." The next day, Medrano's mother contacted BGPD regarding Medrano and asked that officers respond to his residence. ³ When BGPD officers (including Officer Acosta) arrived at the residence, Medrano's mother

¹ Medrano was ably represented on appeal by counsel appointed through the Ninth Circuit's pro bono program. We thank counsel for their service.

² "Because this case comes here on [the Officers'] motion for summary judgment, we view the facts in the light most favorable to the nonmoving party, [Medrano]." *Zorn v. Linton*, 607 U.S. 568, 570 n.1 (2026). We also "consider facts offered by the defendants that are 'uncontradicted by any evidence in the record.'" *Hopson v. Alexander*, 71 F.4th 692, 697 (9th Cir. 2023) (quoting *Wilkinson v. Torres*, 610 F.3d 546, 551 (9th Cir. 2010)).

³ The record is unclear as to whether this was Medrano's residence, his mother's residence, or a shared residence.

stated that he was inside alone, “acting paranoid and spray painting ‘the federal police [a]re out to get me’ inside the interior.” BGPD officers obtained a search warrant and entered the residence but did not find Medrano.

On June 5, a federal magistrate judge recalled Medrano’s outstanding arrest warrant after Medrano voluntarily appeared in court. But the California Law Enforcement Telecommunications System (CLETS) had not been updated to reflect that new development, and on June 8 CLETS still indicated that Medrano had an active warrant out for his arrest. Accordingly, the Officers did not know that the federal arrest warrant had been recalled.

On June 8, after receiving their respective reports that Medrano was en route to his father’s residence, Officers Acosta and Roberts went to the residence “and established a perimeter.” They approached the house from a neighboring driveway, which was separated from the house by a chain-linked fence approximately six feet tall. The fence had white aluminum strips that “obstructed visibility from atop to six feet below.” The Officers saw Medrano in the backyard alone with an unidentified dog, likely “some type of pit bull.” From approximately ten to twenty feet away, the Officers drew their weapons, aimed them at Medrano’s head, and “commanded [Medrano] to approach [their] position.” ⁴

⁴ There is no dispute that the Officers drew their weapons. However, where the Officers aimed their weapons is subject to dispute. Medrano alleges that the Officers both had their weapons aimed at his head. Officer Roberts denies that he had his firearm pointed at Medrano’s head. He claims that he had his weapon drawn, without specifying in which direction it was pointed. Officer Acosta also denies that he had his gun aimed at Medrano’s head. He asserts that he had his weapon

It was still light outside, and Medrano first became aware of the Officers when he looked to the right and saw Officer Roberts's firearm pointed at him. Medrano claims that he was not fully aware of what Officer Acosta was doing because he was "under extreme fear and extreme shock by Officer Roberts'[s] firearm[.]" and feared for his life. He complied with the Officers' command and climbed the fence without incident. The Officers immediately handcuffed him as soon as he was over the fence. Medrano does not recall at what point they put away their firearms during the arrest.

After handcuffing Medrano, the Officers walked him to a patrol vehicle. They then transported him to Bell Gardens jail, where he was booked based on the arrest warrant and for violating California Penal Code § 148 due to his having fled from law enforcement during the May 25 traffic stop.

On June 11, the U.S. Marshals Service took custody of Medrano. That same day, a federal magistrate judge ordered Medrano to be released because the earlier arrest warrant had been recalled.

B

On December 4, 2018, Medrano initiated this pro se civil rights action. On July 8, 2022, following some preliminary litigation, Medrano filed his operative complaint. Relevant to this appeal, the operative complaint brings claims against Officers Acosta and Roberts pursuant to 42 U.S.C. § 1983, alleging that they violated his rights under the Fourth Amendment by using excessive force to effectuate his arrest.

aimed in the direction of Medrano's torso. For present purposes, we accept the facts as alleged by Medrano.

Eventually, the Officers moved for summary judgment, arguing that “their use of force was reasonable, and, in the alternative, they are shielded from liability by the doctrine of qualified immunity.” The district judge referred the motion to a magistrate judge, who issued a report and recommendation that the district judge grant summary judgment to the Officers. The report reasoned that: (1) Officer Acosta did not violate Medrano’s Fourth Amendment rights, because Medrano could not specifically recall whether Officer Acosta had a firearm drawn at all and the record established only that Officer Acosta had his firearm drawn and pointed at Medrano’s torso; (2) Officer Roberts may have violated Medrano’s Fourth Amendment rights, because a reasonable juror could conclude Officer Roberts aimed his firearm at Medrano’s head; and (3) both Officers were entitled to qualified immunity because Medrano’s claimed Fourth Amendment right was not clearly established under existing law.

The district judge rejected the magistrate judge’s recommendations and denied the Officers’ motion for summary judgment. The district judge held that Officer Acosta was not entitled to summary judgment because “Medrano has shown a genuine dispute of material fact” as to “whether Officer Acosta pointed his gun at Medrano’s head,” which the district judge found to be “material to the excessive force analysis.” In the district judge’s view, neither Officer was entitled to qualified immunity because “a juror could find that both of the Officer Defendants pointed their guns at Medrano’s head, and under the circumstances, such action was a clear violation of an established constitutional right.”

The Officers timely appealed.

II

We have jurisdiction under 28 U.S.C. § 1291 to review a district court’s summary judgment order denying qualified immunity. *Hopson v. Alexander*, 71 F.4th 692, 696–97 (9th Cir. 2023); *see Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985) (holding that “a district court’s denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable ‘final decision’ within the meaning of 28 U.S.C. § 1291”). Reviewing de novo, we must decide “whether the facts, ‘considered in the light most favorable to the plaintiff,’ show that qualified immunity is warranted.” *Hopson*, 71 F. 4th at 697 (citing *Ames v. King County*, 846 F.3d 340, 347 (9th Cir. 2017)).

“Under the doctrine of qualified immunity, police officers are not liable under § 1983 ‘unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was clearly established at the time.’” *Id.* (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018)). We may “approach the qualified immunity question using either prong as [the] starting point.” *Id.* (quoting *Pearson v. Callahan*, 555 U.S. 223, 236 (2009)).

A

The Fourth Amendment of the Constitution, made applicable to the States by the Fourteenth Amendment, protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures[.]” *See Bailey v. United States*, 568 U.S. 186, 192 (2013). The Amendment’s central purpose is “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Chatrpie v. United States*, 146 S. Ct.

2193, 2204 (2026) (quoting *Carpenter v. United States*, 585 U. S. 296, 303 (2018)).

The Fourth Amendment prohibits police officers from using excessive force in conducting a seizure, including a lawful arrest. *Graham v. Connor*, 490 U.S. 386, 394 (1989). Excessive force, however, must be distinguished from appropriate force; an officer’s “right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Id.* at 396 (citing *Terry v. Ohio*, 392 U.S. 1, 22–27 (1968)); see *Saucier v. Katz*, 533 U.S. 194, 206 (2001) (noting the “sometimes ‘hazy border between excessive and acceptable force’” (quoting *Priester v. Riveria Beach*, 208 F.3d 919, 926–27 (11th Cir. 2000))). “[W]hen an officer reasonably believes force is necessary to protect his own safety or the safety of the public, measures used to restrain individuals, *such as stopping them at gunpoint and handcuffing them*, are reasonable.” *Hopson*, 71 F.4th at 701 (emphasis in original) (quoting *Alexander v. County of Los Angeles*, 64 F.3d 1315, 1320 (9th Cir. 1995)).

“Determining whether the force used to effect a particular [arrest] is ‘reasonable’ under the Fourth Amendment requires careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing government interests at stake.” *Graham*, 490 U.S. at 396 (citation modified); see also *Lowry v. City of San Diego*, 858 F.3d 1248, 1256 (9th Cir. 2017) (en banc). “The operative question . . . is ‘whether the totality of the circumstances, justifie[s] a particular sort of search or seizure.’” *County of Los Angeles v. Mendez*, 581 U.S. 420, 427–28 (2017) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8–9 (1985)). In answering this question, we must view the circumstances

“from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight[,]” bearing in mind that “[a]n officer’s use of force cannot be deemed excessive based on facts that he reasonably would not have known or anticipated.” *Graham*, 490 U.S. at 396; *Lowry*, 858 F.3d at 1256.

B

1

To consider whether the Officers used unconstitutionally excessive force in arresting Medrano, we first “assess the severity of the intrusion on [Medrano’s] Fourth Amendment rights by evaluating ‘the type and amount of force inflicted.’” *Espinosa v. City & County of San Francisco*, 598 F.3d 528, 537 (9th Cir. 2010) (quoting *Miller v. Clark County*, 340 F.3d 959, 964 (9th Cir. 2003)); *see also Lowry*, 858 F.3d at 1256–57. The Officers concede, as they must, that under our precedent, “pointing guns at a suspect is deemed a high level of force.” *See Thompson v. Rahr*, 885 F.3d 582, 586 (9th Cir. 2018) (“In the context of a residential confrontation, ‘pointing a loaded gun at a suspect, employing the threat of deadly force, is use of a high level of force.’” (quoting *Espinosa*, 598 F.3d at 537)). We thus agree that the Officers used a high level of force here.

2

“The second step of the excessive force analysis” requires us “to ‘evaluate the government’s interest in the use of force.’” *Lowry*, 858 F.3d at 1257 (quoting *Glenn v. Washington County*, 673 F.3d 864, 871 (9th Cir. 2011)). In doing so, we look to “three primary factors: ‘(1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others, and (3) whether the suspect was actively resisting arrest or

attempting to evade arrest by flight.” *Id.* (quoting *Miller*, 340 F.3d at 964); *see also Graham*, 490 U.S. at 396 (establishing factors). These factors “are not exclusive,” and we may also evaluate other relevant factors such as “‘whether proper warnings were given’ and ‘the availability of less intrusive alternatives to the force employed.’” *Lowry*, 858 F.3d at 1257, 1259 (quoting *Glenn*, 673 F.3d at 872). The key factor is “whether the suspect pose[d] a threat.” *Hopson*, 71 F.4th at 698.

Severity of the crimes at issue

The Officers sought to arrest Medrano for being on the run from “a felony ‘no bail’ federal warrant . . . related to felony drug charges,” and for fleeing from other BGPD officers during a recent local traffic stop. Three separate potential crimes are at issue here: distribution of dangerous drugs (methamphetamine), failure to appear (in the drug distribution case), and resisting arrest. *See* 21 U.S.C. § 841 (a)(1), (b)(1)(B)(viii); 18 U.S.C. § 3146(b); Cal Pen. Code § 148(a)(1). The first two of these three are felony offenses that carry significant criminal penalties. 21 U.S.C. §§ 841(b), 18 U.S.C. § 3146.

Medrano argues that the crimes at issue were not severe because (1) his methamphetamine distribution crime did not necessarily include violent conduct, (2) his failure to appear offense was already resolved, (3) his resisting arrest crime was only a misdemeanor, and (4) he was not actively engaging in any felonious conduct at the time of the arrest. The Officers, however, had no reason to know that his drug distribution offense did not include violent conduct or that the arrest warrant was no longer active.

We cannot judge the Officers’ conduct through the lens of “facts that [they] reasonably would not have known[.]”

Lowry, 858 F.3d at 1256. Considering that the Officers had an objective basis to think that Medrano was actively on the run from a felony arrest warrant related to distributing dangerous drugs (and had recently fled from another encounter with law enforcement), we conclude that they reasonably believed that the crimes at issue were serious. Accordingly, this factor weighs in the Officers' favor.

Whether Medrano posed an immediate threat to safety

We next consider whether it was reasonable for the Officers to believe that Medrano presented a threat to their safety. We do so, bearing in mind that the “calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the use of force that is necessary in a particular situation[.]” *Robinson v. Solano County*, 278 F.3d 1007, 1009 (9th Cir. 2002) (en banc) (quoting *Graham*, 490 U.S. at 395).

Upon making contact with Medrano, the Officers did not have an opportunity to check him for weapons and saw him with a pit bull. The Officers knew that Medrano had previously been on the run from law enforcement related to felony drug distribution charges; believed that he still was an active fugitive; and were aware that he had recently fled during another attempt by law enforcement to detain him. They also believed that he had long been affiliated with a local street gang. And they knew that Medrano's mother had recently called the police to have Medrano arrested, due to his erratic behavior and her knowledge of his outstanding arrest warrant. The totality of these circumstances would lead reasonable officers to believe that Medrano posed an objective threat, at least until they had an opportunity to

“secure the premises and to ensure their own safety.” *Los Angeles County v. Rettele*, 550 U.S. 609, 614 (2007).

Medrano contends that he “presented little to no objective threat” to the Officers’ safety and that he fully complied with their commands. He disputes that he actually had gang affiliations. He argues that the evidence does not show that the Officers suspected Medrano of having a firearm or that the dog presented a threat. He also contends that he was compliant and did not pose a flight risk.

Medrano’s arguments are not persuasive because they each require us to view the circumstances “based on facts that [a reasonable officer] would not have known or anticipated,” and “with the 20/20 vision of hindsight.” *Lowry*, 858 F.3d at 1256; *Graham*, 490 U.S. at 396. But, even accepting the facts as alleged by Medrano, we find that reasonable officers confronting the circumstances here would justifiably determine that Medrano presented a threat to their safety. Therefore, this factor, “the most important single element” of our inquiry, weighs in favor of the Officers. *See Chew v. Gates*, 27 F.3d 1432, 1441 (9th Cir. 1994).

Whether Medrano was actively resisting arrest or
attempting to flee

We turn next to the third factor and conclude that the Officers had a reasonable basis to believe that Medrano was both actively evading arrest and might further resist arrest or flee. Indeed, the entire interaction at issue was premised upon the Officers’ reasonable belief that they were arresting an active fugitive subject to a felony arrest warrant, who had recently fled from law enforcement. Although Medrano was not physically resisting arrest at the exact moment the Officers attempted to arrest him, he was nonetheless

generally seeking to evade arrest. *See id.* at 1442 (finding “a slight edge goes to the government on this [factor]” under analogous circumstances where defendant officers sought to arrest a suspect who had recently fled from a traffic stop and had outstanding arrest warrants); *contra* Dissent 28–29.

Medrano’s sole counterargument is that he was compliant with the Officers’ commands. The Officers, however, had no reason to believe that he would be compliant at the time that they drew their weapons and approached him, given what they already believed about Medrano. We must “evaluate the nature of any resistance in light of the actual facts of the case.” *Bryan v. MacPherson*, 630 F.3d 805, 830 (9th Cir. 2010). In doing so, we find that this factor provides further support for the Officers.

Other relevant factors

Medrano urges us to consider several other factors. He asserts that: (1) “less intrusive methods of arresting [him] were available,” (2) the “Officers did not adequately warn [him] prior to pointing a gun at his head,” and (3) the “Officers failed to identify themselves as law enforcement.”

We find these points unpersuasive. As an initial matter, it is not clear what less intrusive method would have been effective here. Medrano claims that the Officers could have “knocked on the front door or called to Medrano without pointing their guns at his head.” But the Officers had an objective basis to believe that Medrano was actively evading a felony arrest warrant, had recently fled from law enforcement, and was potentially dangerous. With a six-foot fence separating the Officers from Medrano, the Officers could have reasonably believed that their use of force was the best method of ensuring compliance while preventing the situation from escalating. As we have said before, “officers

‘are not required to use the least intrusive degree of force possible.’” *Lowry*, 858 F.3d at 1259 (quoting *Nelson v. City of Davis*, 685 F.3d 867, 882 (9th Cir. 2012)).

Similarly, the fact that the Officers did not provide a warning has little relevance because in this context the Officers’ use of force served as a warning to Medrano so as to mitigate the need to use additional, potentially deadly force. *Cf. Robinson*, 278 F.3d at 1018 (Fernandez, J., concurring) (“The threat [of force] may . . . escalate and finally lead to an excessive application of force to the person of another. Still, the threat alone is not that application. One can bare a fang without biting.”); *Thompson*, 885 F.3d at 586 (noting that “pointing a loaded gun at a suspect” is a “threat of deadly force” (quoting *Espinosa*, 598 F.3d at 537)). Nor is there any reason to believe that the Officers identifying themselves would have made a difference, because Medrano has never asserted that he did not know that the Officers were law enforcement.

In sum, Officers Acosta and Roberts reasonably believed that Medrano may have committed multiple serious offenses, posed a threat to their safety, and was actively on the run from a felony arrest warrant and may again attempt to flee. Therefore, the Officers had strong countervailing interests in employing the force at issue here.

3

Finally, we balance the parties’ respective interests, remaining mindful that “[t]he operative question . . . is ‘whether the totality of the circumstances justified’” the Officers’ actions here. *Mendez*, 581 U.S. at 428 (quoting *Garner*, 471 U.S. at 8–9). On the one hand, the Officers used a high level of force that did not physically injure Medrano but nonetheless allegedly placed him “in shock” and “in fear

for [his] life.” On the other hand, the Officers had an objective basis to reasonably believe that Medrano: (1) had committed multiple serious felony offenses; (2) presented an objective threat to their safety; and (3) was actively evading arrest on a felony warrant and may continue to do so.

An officer’s “right to make an arrest . . . necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.” *Graham*, 490 U.S. at 394. And “[w]hen officers execute a valid warrant and act in a reasonable manner to protect themselves from harm . . . the Fourth Amendment is not violated.” *Rettele*, 550 U.S. at 616. Here, the Officers’ conduct fits that description. We thus hold that the Officers’ use of force under these circumstances was reasonable and did not violate Medrano’s Fourth Amendment rights.

C

Even assuming that the Officers used excessive force, Medrano’s claim still fails because the Officers “enjoy qualified immunity from suit under § 1983 unless their conduct violates clearly established law.” *Zorn*, 607 U.S. at 571. “A right is clearly established when it is ‘sufficiently clear that every reasonable official would have understood that what he is doing violates that right.’” *Id.* (quoting *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021)). “A right is not clearly established if existing precedent does not place the constitutional question ‘beyond debate.’” *Id.* (quoting *Rivas-Villegas*, 595 U.S. at 5). “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.* (quoting *Wesby*, 583 U.S. at 63). “The rule’s contours must be so well defined that it is ‘clear to a reasonable officer that his

conduct was unlawful in the situation he confronted.” *Wesby*, 583 U.S. at 63 (quoting *Saucier*, 533 U.S. at 202).

Medrano argues that our Court’s holding in *Robinson v. Solano County*, 278 F.3d at 1014, clearly established the unlawfulness of the Officers’ conduct. We disagree.

“In *Robinson*, we held that police used excessive force in pointing their guns at a 64-year old unarmed retired police officer who had his hand up.” *Thomspson*, 885 F.3d at 588 (9th Cir. 2018) (citing *Robinson*, 278 F.3d at 1010, 1015). There, police officers responded to “a radio dispatch regarding a man carrying a shotgun who had just shot two dogs and [was] ‘in the middle of the street yelling[.]’” *Robinson*, 278 F.3d at 1010. When the officers arrived at Robinson’s home, Robinson went out to greet the officers and two of them pulled out their guns from roughly six feet away. *Id.* Robinson put his hands over his head at one of the officer’s command. *Id.* That officer then “thrust his gun three or four feet from Robinson’s head.” *Id.* We ruled that “[a] police officer who terrorizes a civilian by brandishing a cocked gun in front of that civilian’s face may not cause *physical* injury, but he has certainly laid the building blocks for a *section 1983* claim against him.” *Id.* at 1015 (quoting *Petta v. Rivera*, 143 F.3d 895, 905 (5th Cir. 1998)) (emphasis in original).

Robinson is not analogous to this case and certainly did not put the constitutional question at issue here “beyond debate.” *See Rivas-Villegas*, 595 U.S. at 5. The police officers in *Robinson* did not believe that they were making a felony arrest but were “investigating a mere misdemeanor.” *Hopson*, 71 F.4th at 704 (citing *Robinson*, 278 F.3d at 1010, 1014). In seizing Robinson, the officers needlessly “terrorize[d]” him by pointing their firearms at him from

point blank range, despite him having his hands on his head. *See Robinson*, 278 F.3d at 1015. Moreover, the officers had no cause to believe that Robinson was resisting arrest or would try to flee. These facts are materially different than those present here, such that our holding in *Robinson* would not have made “clear to [the Officers] that [their] conduct was unlawful in the situation [they] confronted.” *Wesby*, 583 U.S. at 63 (quoting *Saucier*, 533 U.S. at 202) (internal quotation marks omitted).

In denying the Officers qualified immunity, the district judge looked to Ninth Circuit precedent based on *Robinson* that established the specific rule “that officers use unconstitutionally excessive force when they aim their weapons at people who are not suspected of violent crimes, who do not pose a threat, who have complied with the officer’s instructions, who are not resisting and who are not attempting to flee.” *See, e.g., Thompson*, 885 F.3d at 586–87; *Espinosa*, 598 F.3d at 538; *Hopkins v. Bonvicino*, 573 F.3d 752, 776–77 (9th Cir. 2009); *Tekle v. United States*, 511 F.3d 839, 845–846 (9th Cir. 2007); *Robinson*, 278 F.3d at 1015. But for the reasons we have explained, that rule does not square with the circumstances of this case, when viewed “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *See Graham*, 490 U.S. at 396. Accordingly, it did not make “sufficiently clear” to the Officers here “that what [they were] doing violate[d]” Medrano’s Fourth Amendment right. *See Rivas-Villegas*, 595 U.S. at 5.

III

In this case, the Officers reasonably believed that Medrano had committed serious offenses, presented a threat to their safety, and may resist arrest or attempt to flee. By

approaching him with firearms drawn and ready to use, we hold that the Officers did not violate the Fourth Amendment. We thus reverse and remand with instructions to enter judgment in favor of the Officers.

REVERSED and REMANDED.

PAEZ, Circuit Judge, concurring in part and dissenting in part:

I concur in Section II.C of the majority opinion on the question of clearly established law. I respectfully dissent, however, from the majority's conclusion that Officers Acosta and Roberts did not violate Alex Medrano's Fourth Amendment rights.

The majority concludes that it was objectively reasonable for the Officers to aim their guns at Medrano's head from near point-blank range, as a matter of constitutional law, such that no rational jury could conclude otherwise. That decision is both unnecessary and flawed.

The decision is unnecessary because we could have, and should have, resolved this case on the second prong of the qualified immunity analysis. We are not required to address both prongs, and doing so may run "counter to the older, wiser judicial counsel not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Pearson v. Callahan*, 555 U.S. 223, 241 (2009) (internal quotation marks omitted) (quoting *Scott v. Harris*, 550 U.S. 372, 388 (2007) (Breyer, J., concurring)). That is particularly true when certain circumstances "create a risk of bad decisionmaking." *Id.* at 239.

Two such circumstances are present here. First, because the majority's decision turns on many unique facts, *see infra* Section II.A, the constitutional question is "so factbound that the decision provides little guidance for future cases." *Id.* at 237. Second, and because of that unique confluence of facts, the clearly established question in this case is far easier than the constitutional question.¹ *Id.* at 239.

That risk of bad decisionmaking is borne out here. The majority holds that it is objectively reasonable, as a matter of law, for officers to rely on non-violent acts long predating an arrest to treat a suspect as immediately dangerous and actively evading arrest at the scene. The majority also intimates, in direct conflict with *Robinson v. Solano County*, 278 F.3d 1007 (9th Cir. 2002) (en banc), that aiming a gun at a suspect is a warning, rather than a use of force. And the majority ignores a squarely presented argument on a less intrusive alternative that we have repeatedly held precludes summary judgment: holding a gun in the low-ready position, ready to employ but away from the suspect.

I address the majority's errors at each step of the Fourth Amendment excessive force analysis. We are to balance "the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 396 (1989) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)).

¹ Most notable among those facts is Medrano's gang affiliation. Medrano now argues that the district court erred in finding no dispute on this material fact, but we lack jurisdiction to entertain that argument, as this case comes to us on the denial of qualified immunity. *See Singh v. City of Phoenix*, 124 F.4th 746, 755 (9th Cir. 2024). So, we must take the fact of Medrano's gang affiliation as a given.

I. Nature and Quality of the Intrusion

In all of three sentences, the majority concludes that “the Officers used a high level of force.” Majority 11. While I agree with the bottom-line conclusion, the majority’s analysis omits important detail.

“Rather than relying on broad characterizations, we must evaluate the nature of the specific force employed in a specific factual situation.” *Bryan v. MacPherson*, 630 F.3d 805, 825 (9th Cir. 2010). And, to be specific, aiming a gun at a suspect’s head from near point-blank range is a far greater use of force than aiming anywhere else or from a greater distance. *See Robinson*, 278 F.3d at 1010, 1014–15. It is the threat of instant death.

Here, the majority omits from its analysis that the Officers aimed their guns at Medrano’s head from as close as three to five feet away. Medrano testified that the Officers were ten to twenty feet away “when [he] first noticed [them],” but also that they kept their guns aimed at his head at least until he reached the fence, roughly three feet away from the Officers. On the Officers’ account, their guns were as close as five feet away from Medrano.

Without these details, we cannot properly weigh the intrusion against the government’s interest, identify fact-specific alternatives (e.g., aiming elsewhere), or ask how the balance of interests changed as the arrest progressed. *See infra* Sections II.D, III.

II. Government Interests

A. Immediate Threat to Safety

“The central issue is whether it was objectively reasonable under the circumstances for the deputies to

believe that [Medrano] posed an immediate threat to their safety.” *Hayes v. County of San Diego*, 736 F.3d 1223, 1233 (9th Cir. 2013). If a reasonable jury could find that Medrano “posed no *immediate* safety threat,” then this factor weighs against the Officers. *Chew v. Gates*, 27 F.3d 1432, 1442 (9th Cir. 1994) (original emphasis). Because there are many ways to view the objective danger posed by a fact-intensive scenario, we routinely leave this question to the jury. *See, e.g., Smith v. City of Hemet*, 394 F.3d 689, 702 (9th Cir. 2005) (en banc); *Espinosa v. City & County of San Francisco*, 598 F.3d 528, 537–38 (9th Cir. 2010); *Glenn v. Washington County*, 673 F.3d 864, 874 (9th Cir. 2011); *Rice v. Morehouse*, 989 F.3d 1112, 1123 (9th Cir. 2021).

Under these standards, a rational jury could easily conclude that Medrano posed no immediate danger to the Officers or anyone else. The Officers did not suspect Medrano of any violent crimes. Medrano neither appeared to be armed nor gave the Officers any reason to believe he would be. Medrano was also “compliant” and “outnumbered,” and five other officers surrounded the home, all of which “counts against a finding that [h]e posed a threat.” *Green v. City & County of San Francisco*, 751 F.3d 1039, 1050 (9th Cir. 2014). I would thus conclude that this most important factor weighs in favor of Medrano.

The majority and the Officers contend that six facts compel the conclusion that Medrano posed an immediate danger: 1) one month before the arrest, Medrano skipped a detention hearing in his drug distribution case; 2) two weeks before the arrest, Medrano fled a traffic stop; 3) also two weeks prior, Medrano was acting erratically at his mother’s house, spray-painting her walls; 4) at the scene, Medrano was with a pitbull; 5) the Officers believed Medrano was affiliated with a gang; and 6) the Officers had not checked

Medrano for weapons. Properly applying our case law, a rational jury could discount each of these facts.

The first three facts are irrelevant to the danger inquiry twice over: they are stale *and* nonviolent. The majority offers no authority for the proposition that events long predating an arrest make a suspect objectively and immediately dangerous at the scene as a matter of law. For good reason. The *Graham* standard requires facts showing that the “the suspect poses an *immediate* threat to the safety of the officers or others.” 490 U.S. at 396 (emphasis added). Accordingly, it is the law of this circuit to reject inferences from prior conduct against the nonmovant at summary judgment. For instance, in *Robinson*, we rejected the officers’ argument that Robinson necessarily posed an immediate danger because he shot two dogs shortly before officers arrived on the scene. 278 F.3d at 1014. We emphasized that “[t]here were no dangerous or exigent circumstances apparent *at the time of the detention*.” *Id.* (emphasis added).

Not only were Medrano’s prior flights and spray-painting incident stale, they were also *nonviolent*. Skipping a hearing and fleeing a traffic stop does not necessarily make one more likely to violently resist arrest, as “neither entail[s] violence or gun possession.” *See A. K. H ex rel. Landeros v. City of Tustin*, 837 F.3d 1005, 1012 (9th Cir. 2016). Nor does “act[ing] paranoid and spray-paint[ing]” make one more likely, as a matter of law, to shoot at arresting officers. To conclude otherwise, the majority improperly resolves an inferential dispute against Medrano. *See Green*, 751 F.3d at 1050.

The fourth fact—the pitbull—is categorically irrelevant. It is undisputed that the Officers were separated from the dog

by a metal fence. The Officers would have had to jump the fence into the backyard to encounter any danger posed by the dog.

That leaves two facts. Fifth, the district court found that Medrano “who went by the moniker ‘Dreamer,’ . . . was affiliated with the street gang Bell Gardens Locos,” and that the Officers knew of this affiliation (but apparently no other details regarding the nature of the affiliation). Sixth, the Officers had not yet checked Medrano for weapons before attempting to arrest him.

Neither fact is dispositive. We have previously held that an individual with a “known gang association” did not necessarily pose a serious threat to officer safety. *Blankenhorn v. City of Orange*, 485 F.3d 463, 478 (9th Cir. 2007); *see also Cruz v. City of Anaheim*, 765 F.3d 1076 (9th Cir. 2014) (holding, in a deadly force case, that a gang member known to carry a gun would not have been an “immediate threat” if he was compliant and not making a threatening gesture); *Landeros*, 837 F.3d at 1012 (known gang member did not necessarily pose an immediate threat based on other mitigating circumstances).² That makes sense. To hold otherwise would, again, improperly draw an inference against the nonmovant, this time based on his associations.

² Moreover, Medrano disputes that he has an affiliation at all and argues that the Officers racially profiled him. For present purposes, we must assume the fact of his gang affiliation. *See supra* n.1. But if he can disprove this alleged affiliation at trial, and prove that the Officers’ “mistake of fact” was based on racial profiling rather than a reasonable basis, that may further undercut the reasonableness of the Officers’ estimation of danger. *See S.R. Nehad v. Browder*, 929 F.3d 1125, 1133 (9th Cir. 2019).

As for the lack of a prior search, we routinely leave it for the jury to decide whether this circumstance justifies an officer's decision to aim a loaded weapon. In *Espinosa* and *Robinson*, for example, the officers had not yet searched the suspect in either case before aiming their guns. *Espinosa*, 598 F.3d at 533, 537–38; *Robinson*, 278 F.3d at 1011. Nonetheless, we denied summary judgment in both cases.

These two circumstances, then, are just that—“circumstances,” which “can be viewed in various ways.” *Glenn*, 673 F.3d at 878. So, “a jury should have the opportunity to assess the reasonableness of the force used after hearing all the evidence.” *Id.*

The majority claims that it must reach this conclusion based on *Graham*'s hindsight directive—that we can only consider facts known to the officers. Majority 14. But this confuses two distinct issues: *what* evidence we may consider, and *how* we should look at that evidence. *Graham*'s hindsight directive does not bear on the latter.³ *Hayes*, 736 F.3d at 1234 n.6. As we have already explained: “The question on summary judgment . . . is not whether some version of the facts supports [the officers'] position, but rather whether a trier of fact, viewing the evidence in the light most favorable to [the plaintiff], could find in [the plaintiff's] favor.” *S.R. Nehad*, 929 F.3d at 1133.

B. Severity of Crime at Issue

“[W]e have established ‘two slightly different ways’ of assessing the seriousness of the offense in question.” *Singh*,

³ As Medrano's last contact with the police was ten days prior to the arrest, this was not—contrary to the majority's suggestion—“an occasion on which the police were forced to make ‘split-second judgments.’” *Chew*, 27 F.3d at 1443 (quoting *Graham*, 490 U.S. at 397).

124 F.4th at 752 (quoting *S.R. Nehad*, 929 F.3d at 1136). The first is to split crimes into felonies (generally serious) and misdemeanors (not serious). *Id.* The second is to use the severity of the crime at issue as a proxy for the danger posed by the suspect. *Id.*

Under the proxy-for-danger approach, none of the crimes at issue were violent. *See supra* Section II.A. The majority acknowledges the argument that the drug distribution charge did not necessarily entail violent conduct. But it responds that the Officers had no reason to know the conduct was *not* violent, so, as a matter of law, the Officers reasonably inferred that it *was* violent. Majority 12. That inference defies logic and our precedent. *See Mattos v. Agarano*, 661 F.3d 433, 449 (9th Cir. 2011) (en banc) (“Considering . . . the severity of the crime at issue, we are mindful that we must construe the facts in the light most favorable to [the nonmovant] at this stage.”).

On the felony/misdemeanor dichotomy, the results are mixed. Medrano was suspected of two felonies and one misdemeanor. The majority acknowledges, but does not respond to, Medrano’s argument that the misdemeanor is necessarily low-severity. I agree with Medrano on this point. *Singh*, 124 F.4th at 752 (“[C]ases involving a misdemeanor [] ‘provide little, if any, basis for a use of deadly force.’” (quoting *S.R. Nehad*, 929 F.3d at 1136)).

All else equal, however, the felonies tend to support a government interest in arresting Medrano. *S.R. Nehad*, 929 F.3d at 1136. Accordingly, I would hold that this factor tips slightly in favor of the government.

C. Resisting Arrest

As for this factor, the relevant question is whether the suspect was “*actively* resisting arrest or attempting to evade arrest by flight.” *Graham*, 490 U.S. at 396 (emphasis added). That a suspect has *previously* fled does not mean, as a matter of law, that he *actively* resists or evades arrest in every future encounter—particularly one that is distant from his prior flight. In *Chew*, the suspect ran from officers during a traffic stop and hid in a scrapyard for two hours before police found him. 27 F.3d at 1436. “With respect to whether he was attempting to evade arrest by flight,” we held that “the answer is yes and no. In a general sense he was, but in more precise terms his flight had terminated, at least temporarily, in the scrapyard.” *Id.* at 1442. In these mixed circumstances, we held that this factor weighed in favor of the government, “but only slightly.” *Id.*

The majority’s brief analysis—finding it dispositive that Medrano had evaded officers in the weeks and months prior to the arrest—is thus irreconcilable with *Chew*, where the events spanned mere hours and the suspect fled directly to his place of eventual arrest. And it ignores a circumstance that cuts strongly against the government—five officers, not counting Officers Acosta and Roberts, surrounded the house. Resolving ambiguities in favor of Medrano, this made it virtually certain that he “could not escape.” *Espinosa*, 598 F.3d at 537.

The majority concludes that Medrano was “actively evading arrest” when he was standing with a dog in his father’s backyard. Majority 14. But Medrano was not “actively” doing anything, so this is not a recitation of the facts in the record, but an *inference* from those facts against Medrano—i.e., that Medrano was likely to evade the

Officers based on his prior flights. This is, again, contrary to how we must view a summary judgment record on appeal.

Given that Medrano's prior flights were more removed in time than the scrapyard escape in *Chew*, that Medrano was completely surrounded, and that he did not resist arrest at the scene, I would conclude that this factor tips for Medrano.

D. Other Factors

1. Failure to Warn

We have repeatedly held that the failure of an officer to warn a suspect before applying force cuts against the reasonableness of the officer's conduct. *Mattos*, 661 F.3d at 451; *Glenn*, 673 F.3d at 876; *Hayes*, 736 F.3d at 1234–35; *S.R. Nehad*, 929 F.3d at 1137; *Singh*, 124 F.4th at 754. That makes sense—where feasible, a suspect should be given the opportunity to voluntarily comply before officers force compliance.

Rather than apply this settled rule, the majority apparently seeks to revive the rejected reasoning of an en banc dissent that is at odds with twenty-five years of law in this circuit. The majority reasons that the Officers did not need to provide a warning because aiming their guns at Medrano itself “served as a warning” to “mitigate the need to use additional, potentially deadly force.” Majority 16. For that proposition, the majority cites *Thompson v. Rahr*, 885 F.3d 582 (9th Cir. 2018), and the separate writing of Judge Fernandez in *Robinson*.

To the extent that the majority endorses Judge Fernandez's reasoning in *Robinson*, it is seriously wrong. In this circuit, aiming a loaded gun at a suspect is not the threat of force, it *is* force. *Robinson*, 278 F.3d at 1015; *Thompson*, 885 F.3d at 586 (“With regard to the force used, pointing a

loaded gun at a suspect, employing the threat of deadly force, is use of a high level of force” (quoting *Espinosa*, 598 F.3d at 537)). That was the majority holding from which Judge Fernandez dissented—he concurred “in the result only[,]” and only on the grounds that the officers were entitled to qualified immunity. *Id.* at 1017. It was Judge Fernandez’s view that aiming a gun does not constitute force under the Fourth Amendment when “there has not been a touching.” *Id.* We did not adopt Judge Fernandez’s dissenting view, *id.* at 1013–15, and the majority is wrong to the extent it adopts it here.

2. Failure to Use Less Intrusive Alternative

Finally, an officer’s failure to use available, less intrusive alternatives also supports the conclusion that the officer’s chosen method of effecting an arrest was unreasonable. *Green*, 751 F.3d at 1050–51. Whether an alternative was reasonably available to the officer, and whether the officer should have used the alternative, is generally a question for the jury. *Seidner v. de Vries*, 39 F.4th 591, 601 (9th Cir. 2022); *Glenn*, 673 F.3d at 878. Alternatives in the officer’s training or policy manual are particularly probative of reasonableness. *See Glenn*, 673 F.3d at 876.

Medrano argues that the Officers had a safer and less intrusive alternative available: holding their firearms in the low-ready position—toward the ground and away from Medrano—rather than at his head. The Officers’ training manual endorses this alternative: “If the officer does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be

kept in the low-ready position.”⁴ A jury could conclude that this encounter matched the policy manual, given that Medrano was not actively threatening the Officers. Indeed, we have repeatedly recognized this specific alternative as a significant factor in declining to grant officers summary judgment. *Green*, 751 F.3d at 1050–51; *see also Thompson*, 885 F.3d at 586, 590.

The majority, for its part, does not mention this squarely presented argument at all.

III. Balance of Interests

In sum, a rational jury could conclude that the Officers used a particularly high level of force by aiming two guns at Medrano’s head from near point-blank range; that Medrano was neither an immediate threat nor actively resisting arrest; that the Officers unreasonably failed to warn Medrano prior to aiming their guns at his head; and that the Officers unreasonably failed to instead hold their guns in the low-ready position. On the other side of the ledger, a rational jury could conclude that at least some of the felonies at issue were severe. That is insufficient to award the Officers judgment as a matter of law. *See, e.g., Thompson*, 885 F.3d at 586–87 (felony arrest); *Green*, 751 F.3d at 1050 (same).

Moreover, the balance tipped only further in Medrano’s favor “[a]s the situation evolved.” *Jones v. L.V. Metro. Police Dep’t*, 873 F.3d 1123, 1130 (9th Cir. 2017). Medrano’s immediate compliance undercut any possible inference that he was actively dangerous or resisting arrest.

⁴ Bell Gardens Police Department, *Bell Gardens PD Policy Manual* § 300.4.2(a), <https://www.bellgardens.org/home/showpublisheddocument/7168/639161757152130000> [<https://perma.cc/K7XB-MXSF>].

And as he moved closer to the Officers, the severity of the force grew greater. A jury could conclude that it was no longer objectively reasonable to keep two guns trained on Medrano's head, rather than at the ground away from him, once he was closer and compliant.

* * *

“When all disputes of fact are resolved in [Medrano's] favor, as they must be for purposes of summary judgment, it is apparent that application of the *Graham* factors would *not* have *required* a rational jury to decide that [aiming two guns at his head] to apprehend him was reasonable.” *Chew*, 27 F.3d at 1441. Because the majority instead draws every inference against Medrano and creates conflicts in our case law, I respectfully dissent from the majority's constitutional holding.