



1 3); Incident Recall (#35-9)). The home was occupied by the Rodriguez family, which included  
2 Jesus Rodriguez Sandoval ("Sandoval"), his wife Adriana Rodriguez, and their two children,  
3 Henry Brian Rodriguez ("Henry") (who was age eighteen at the time of the incident), and  
4 Kenya Rodriguez (who was age nine at the time of the incident). (Sandoval Dep. (#31-1) at  
5 25, 28). Before the police arrived, one of the two suspected prowlers jumped back over the  
6 fence and was picked up by a maroon SUV. (Schouten Stat. (#31-3)). Sergeant Jay Roberts  
7 then arrived on the scene and interviewed Schouten, who pointed out the house the subjects  
8 had apparently attempted to enter. (*Id.*; Roberts Dep. (#31-4) at 118). Sergeant Roberts was  
9 concerned over the possible burglary because there had been a rash of daytime burglaries in  
10 the area where youth would skip school and ransack homes. (Roberts Dep. (#31-4) at 119).

11       Officer Michael Dunn then arrived on the scene and Sergeant Roberts instructed him  
12 to cover the front of the home. (*Id.* at 120). Officer Christopher Kohntopp then arrived and  
13 Sergeant Roberts instructed him to cover the back of the home while Sergeant Roberts and  
14 Officer Dunn investigated. (*Id.*). Upon approaching the home, Sergeant Roberts and Officer  
15 Dunn observed that the side gate had been opened along with the security door to the garage  
16 and the door to the shed in the backyard. (*Id.* at 122-23; Dunn Dep. (#31-5) at 61). These  
17 factors combined with the fact that daytime burglaries by youth were common in the area  
18 caused Sergeant Roberts to become concerned that a burglary may be occurring. (Roberts  
19 Dep. (#31-4) at 122-23; Dunn Dep. (#31-5) at 61).

20       Sergeant Roberts and Officer Dunn then proceeded into the backyard, where Officer  
21 Dunn checked the shed to see if anyone was there. (Roberts Dep. (#31-4) at 129). The  
22 officers then approached the rear sliding door that Schouten had indicated the suspects had  
23 attempted to open and noticed it to be ajar a few inches. (*Id.* at 129-30). Sergeant Roberts  
24 instructed Officer Dunn to cover the sliding door while Sergeant Roberts set out to finish  
25 clearing the backyard. (*Id.* at 132). As Sergeant Roberts approached the window to the home  
26 with his gun drawn in the low-ready position, he observed three young males moving around  
27 in the room. (*Id.* at 135-36, 157). Unknown to the officers, the three males were Henry and  
28 his friends Jordhy Leal and David Madueno, whom Henry had invited over to play video

1 games, watch television, and listen to music. (Henry Dep. (#31-7) at 24, 28).

2 Sergeant Roberts stated that his first inclination upon sighting the three males in the  
3 room was that these were the suspects and that they were ransacking the room. (Roberts  
4 Dep. (#31-4) at 136). With his gun pointed inside the bedroom window, Sergeant Roberts  
5 yelled "Metro Police, put your hands up." (*Id.* at 154; Henry Dep. (#31-7) at 34). Henry claims  
6 Sergeant Roberts began yelling conflicting commands, such as "Don't move!" and "Turn down  
7 the music." (Henry Dep. (#31-7) at 34). Upon hearing Sergeant Roberts make multiple  
8 commands to the suspects to show him their hands and to "stop reaching for stuff", Officer  
9 Dunn entered the home through the sliding door to help control the situation, because  
10 Sergeant Roberts could not from his position. (Dunn Dep. (#31-5) at 76).

11 Officer Dunn then posted up the hallway and took over as lead officer due to his  
12 position and started to give verbal commands to the three young men. (*Id.* at 81). Officer  
13 Dunn ordered the young men to exit the room and to show him their hands. (*Id.* at 84-85).  
14 Before complying with the command, Henry told Sergeant Roberts that he had to take care  
15 of his dog (a pit bull) who was in the room with them, but was instructed to open the front door.  
16 (Henry Dep. (#31-7) at 34-35). As the suspects exited the room, the dog ran past the young  
17 men and lunged at Officer Dunn. (Dunn Dep. (#31-5) at 86). When the dog was less than two  
18 feet away from Officer Dunn and about one foot from David, Officer Dunn shot the dog in the  
19 face. (*Id.* at 87; David Dep. (#31-8) at 33). Officer Dunn reported the shooting over the radio  
20 and requested animal control. (Dunn Dep. (#31-5) at 113). Henry grabbed the dog and  
21 Officer Dunn ordered Jordhy and David to get on the ground. (*Id.* at 88; Jordhy Dep. (#31-2)  
22 at 54). Jordhy and David were handcuffed and led outside along with Henry, who was holding  
23 the pit bull. (Jordhy Dep. (#31-2) at 56, 65). While leading the young men outside, the  
24 officers inquired as to who they were and why they were on the property. (*Id.* at 66). Jordhy  
25 and David were sat down on the front lawn for forty minutes while Henry remained with the  
26 dog. (*Id.* at 66, 89). Henry was understandably upset that his dog had been shot and  
27 repeatedly screamed at the officers, "why the f\*\*\* they shoot my dog." (Henry Dep. (#31-6)  
28 at 58).

1 Henry was then allowed to call his father. (*Id.* at 60). Once Sandoval heard of the  
2 incident from Henry, he rushed home with his daughter, Kenya. (Kenya Dep. (#31-8) at 14).  
3 Sandoval quickly drove up to the house, exited the vehicle with his cane (which was needed  
4 because he was recovering from recent back surgery) and began walking toward the scene.  
5 (Sandoval Dep. (#31-1) at 45). Sandoval had only taken a few steps when he was told to  
6 “stop there” by the officers. (*Id.*). He did not get any closer but began yelling and cursing at  
7 the officers. (*Id.* at 46-47). Sandoval saw Henry covered in blood and believed his son had  
8 also been shot. (*Id.* at 43). An officer instructed him to “calm down” and began explaining to  
9 him what had transpired. (*Id.* at 47-48). He was still very upset and attempted to approach  
10 the scene but was denied by the officers. (*Id.* at 50-51). At this point, Sergeant Roberts  
11 instructed that Sandoval be handcuffed, and an officer grabbed him by his arm and pulled up,  
12 making it difficult for him to walk. (*Id.* at 51, 53). Sandoval told the officer he had just had  
13 surgery and that the action was hurting him. (*Id.*). He was then pushed against the police car  
14 and handcuffed. (*Id.* at 53-54). Sandoval told the officer “please don’t do this, I just had  
15 surgery, I had a back surgery about 15 days ago.” (*Id.* at 55). The officer then placed him  
16 face down in the car. (*Id.* at 56-57).

17 Due to his recent surgery, Sandoval was in pain and began screaming for his medicine.  
18 (*Id.* at 62). Between 25-30 minutes later, an officer came up to Sandoval and asked him what  
19 he wanted. (*Id.* at 62-63). Sandoval requested his medicine and the officer obtained it for him,  
20 helped him out of the car, and ordered him to stand behind the yellow police tape. (*Id.* at 63-  
21 67).

22 Animal control eventually arrived on the scene and Henry ran towards the truck and put  
23 the dog inside. (Henry Dep. (#31-6) at 72). Henry was very agitated and started yelling at the  
24 officers. (Givens. Decl. (#31-9); Henry Dep. (#31-2) at 83). Officer Troy Givens then  
25 handcuffed Henry and placed him in the back of his patrol car until Harry calmed down.  
26 (Givens. Decl. (#31-9)). Henry was later released and told to stand behind the yellow tape with  
27 his family. (Henry Dep. (#31-6) at 77). David and Jordhy were also released. (Sandoval Dep.  
28 (#31-1) at 90; David Dep. (#31-7) at 57). It was later learned the dog died of its injuries. (Mot.

1 for Summ. J. (#31) at 9; Opp'n to Mot. for Summ. J. (#35) at 6). None of the members of the  
2 Rodriguez family or Jordhy or David were ever charged or cited with a crime. (Roberts Dep.  
3 (#31-4) at 52-53).

## 4 **II. The Complaint**

5 Jesus Rodriguez Sandoval, Adriana Rodriguez (individually and as guardian ad litem  
6 for Kenya Rodriguez), Henry Rodriguez, Martha Leal (as guardian ad litem for Jordhy Leal),  
7 and Monica Moreno (as guardian ad litem for David Madueno) (collectively "Plaintiffs"), filed  
8 a complaint on July 19, 2010 against the Las Vegas Metropolitan Police Department, County  
9 of Clark, and Doe Officers I-X. (Compl. (#1)). Plaintiffs later amended their complaint on May  
10 25, 2011 to add as defendants Sergeant Jay Roberts, Officer Michael Dunn, Officer  
11 Christopher Kohntopp, Officer Justin Byers, and Officer Troy Givens. (Am. Compl. (#15)).  
12 The amended complaint contains six causes of action, including: (1) violation of the civil right  
13 to life and security of persons under 42 U.S.C. § 1983; (2) municipal liability under 42 U.S.C.  
14 § 1983; (3) violation of the civil right to familial relationships under 42 U.S.C. § 1983; (4)  
15 intentional infliction of emotional distress; (5) assault and battery; and (6) false imprisonment.  
16 (*Id.* at 7-10).

17 Defendants filed a motion for summary judgment on October 24, 2011. (Mot. for  
18 Summ. J. (#31). Plaintiff's filed an opposition to the motion for summary judgment on  
19 December 7, 2011, and a reply was filed on January 6, 2012. (Opp'n to Mot. for Summ. J.  
20 (#35); Reply (#42)).

### 21 **LEGAL STANDARD**

22 The purpose of summary judgment is to dispose of factually unsupported claims and  
23 defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). A court must grant  
24 summary judgment when "the movant shows that there is no genuine dispute as to any  
25 material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).  
26 A fact is material if it may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477  
27 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence  
28 for a reasonable jury to return a verdict for the nonmoving party. *Id.*

1           When presented with a motion for summary judgment, the court employs a burden-  
2 shifting analysis. When the moving party would bear the burden of proof at trial, it must  
3 present evidence “which would entitle it to a directed verdict if the evidence went  
4 uncontroverted at trial.” *C.A.R. Transp. Brokerage Co., Inc. v. Darden Rests., Inc.*, 213 F.3d  
5 474, 480 (9th Cir. 2000) (quoting *Houghton v. South*, 965 F.2d 1532, 1536 (9th Cir. 1992). In  
6 such circumstances, “the moving party has the initial burden of establishing the absence of  
7 a genuine issue of fact on each issue material to its case.” *Id.* In contrast, when the  
8 nonmoving party would bear the burden of proving the claim or defense, the moving party may  
9 satisfy its burden in two ways: (1) by presenting evidence which negates an essential element  
10 of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party has failed to  
11 make a showing sufficient to establish an essential element to that party’s case on which that  
12 party would bear the burden of proof at trial. See *Celotex Corp.*, 477 U.S. at 323-24. If the  
13 moving party fails to satisfy its initial burden, the court must deny the motion for summary  
14 judgment and need not consider the nonmoving party’s evidence. See *Adickes v. S.H. Kress*  
15 *& Co.*, 398 U.S. 144, 159-60 (1970).

16           If the moving party meets its initial burden, the burden will then shift to the opposing  
17 party to establish that a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co.*  
18 *v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To show a genuine issue of material fact,  
19 the opposing party is not required to establish a material issue of fact conclusively in its favor.  
20 Rather, it is sufficient that “the claimed factual dispute be shown to require a jury or judge to  
21 resolve the parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
22 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987) (quoting *First Nat’l Bank of Ariz. v. Cities*  
23 *Serv. Co.*, 391 U.S. 253, 288-89 (1968)). In essence, the nonmoving party cannot avoid  
24 summary judgment by solely relying on conclusory allegations that are unsupported by factual  
25 data. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). The opposition must go beyond  
26 the allegations and assertions of the pleadings and set forth specific fact by providing the court  
27 with competent evidence that establishes a genuine issue for trial. FED. R. CIV. P. 56(e);  
28 *Celotex Corp.*, 477 U.S. at 324.

1 At the summary judgment stage, the court is not to weigh the evidence and determine  
2 the truth, but rather to determine whether there is a genuine issue for trial. See *Anderson*, 477  
3 U.S. at 249. The evidence of the nonmovant must be believed, and all justifiable inferences  
4 drawn in his favor. *Id.* at 255. If the evidence of the nonmoving party is simply colorable or  
5 it is not significantly probative, summary judgment may be granted. See *id.* at 249-50.

## 6 DISCUSSION

### 7 I. Plaintiffs' Claims for Violations of Their Constitutional Rights

8 Plaintiffs have brought several claims under 42 U.S.C. § 1983 for violations of their  
9 rights under the United States Constitution. “[Title] 42 U.S.C. § 1983 provides a remedy to  
10 individuals whose constitutional rights have been violated by persons acting under color of  
11 state law.” *Burke v. Cnty. of Alameda*, 586 F.3d 725, 731 (9th Cir. 2009) (quoting *Caballero*  
12 *v. City of Concord*, 956 F.2d 204, 206 (9th Cir.1992)). To sustain an action under § 1983, a  
13 plaintiff must prove: (1) that a defendant acted under color of state law; and (2) the conduct  
14 deprived the plaintiff of a right secured by the Constitution or laws of the United States. See  
15 *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th Cir. 1997). There is no dispute that  
16 Defendants acted under color of state law. Consequently, the Court need only determine  
17 whether Plaintiffs were deprived of rights secured by the Constitution.

18 Plaintiffs advance three claims under the United States Constitution. First, Plaintiffs  
19 allege they were deprived of the civil right to life and security. (Am. Compl. (#15) at 7).  
20 Second, Plaintiffs allege municipal liability. (*Id.* at 8). Third, Plaintiffs allege Defendants  
21 violated their civil right to familial relationships. (*Id.*).

#### 22 A. Violations of Civil Rights to Life and Security of Persons

23 Defendants contend that the officers are entitled to qualified immunity on Plaintiffs first  
24 cause of action for violations of civil rights to life and security of persons. (Mot. for Summ. J.  
25 (#31) at 28). Government officials performing discretionary functions may be shielded from  
26 personal liability for their actions under the doctrine of qualified immunity. *Harlow v. Fitzgerald*,  
27 457 U.S. 800, 818 (1982). Qualified immunity is “an *immunity from suit* rather than a mere  
28 defense to liability” and is an appropriate basis for granting summary judgment. *Mitchell v.*

1 *Forsyth*, 472 U.S. 511, 526 (1985). The doctrine of qualified immunity protects government  
2 officials “from liability for civil damages insofar as their conduct does not violate clearly  
3 established statutory or constitutional rights of which a reasonable person would have known.”  
4 *Harlow*, 457 U.S. at 818. Qualified immunity protects “all but the plainly incompetent or those  
5 who knowingly violate the law.” *Malley v Briggs*, 475 U.S. 335, 341 (1986). Officers can have  
6 a reasonable, but mistaken, belief about the facts or about what the law requires in a certain  
7 situation and still be entitled to qualified immunity. *Saucier v. Katz*, 533 U.S. 194, 205 (2001),  
8 *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223 (2009); *Estate of Ford v.*  
9 *Ramirez-Palmer*, 301 F.3d 1043, 1049 (9th Cir. 2002).

10 Analyzing whether a government official is entitled to qualified immunity involves two  
11 questions: (1) whether the facts alleged, in the light most favorable to the plaintiff, show the  
12 official violated a constitutional right; and (2) whether the right was clearly established such  
13 that a reasonable government official would know the conduct was unlawful. *Saucier*, 533  
14 U.S. at 201. The court has discretion as to which prong will be addressed first under the  
15 particular circumstances presented, and if the answer to either is “no,” then the official may  
16 not be held liable for damages. *Pearson*, 555 U.S. at 236.

17 Plaintiffs’ first cause of action alleges that Defendants deprived Plaintiffs of their right  
18 to due process, the right to be free from excessive force, and the right to be free from pre-  
19 conviction punishment under the Fourth and Fourteenth Amendments, and the right to equal  
20 protection as secured by the Fourteenth Amendment. (Am. Compl. (#15) at 7). Although the  
21 claim seemingly purports to allege a substantive due process violation, the United States  
22 Supreme Court has held that all constitutional claims, including those for excessive force,  
23 which result from an arrest, investigatory stop, or other seizure of a free citizen are to be  
24 analyzed under the Fourth Amendment rather than under a substantive due process  
25 approach. *Graham v. Connor*, 490 U.S. 386, 395 (1989). Plaintiffs seem to concede this in  
26 their opposition to the motion for summary judgment by only discussing the violation under the  
27 framework of the Fourth Amendment. (See Opp’n to Mot. for Summ. J. (#35) at 6). Therefore,  
28 under the first cause of action the Court need only address whether the officers violated either



1 the Fourth Amendment or the Equal Protection Clause of the Fourteenth Amendment as they  
2 investigated and detained Plaintiffs.

### 3 **1. Fourth Amendment Claims**

4 The Fourth Amendment protects “[t]he right of the people to be secure in their persons,  
5 houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST.  
6 amend. IV. “[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness.’ ”  
7 *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). The Supreme Court has long  
8 recognized that “the right to make an arrest or investigatory stop necessarily carries with it the  
9 right to use some degree of physical coercion or threat thereof to effect it.” *Graham*, 490 U.S.  
10 at 396. But where the use of force is excessive under objective standards of reasonableness,  
11 it violates the protections guaranteed under the Fourth Amendment. *Id.* at 397.

12 Whether the force used to effect a seizure is “reasonable” under the Fourth Amendment  
13 requires the court to balance the nature and quality of the intrusion on the individual’s Fourth  
14 Amendment interests against the countervailing government interests at stake. *Blanford v.*  
15 *Sacramento Cnty.*, 406 F.3d 1110, 1115 (9th Cir. 2005) (citing *Graham*, 490 U.S. at 396). The  
16 reasonableness of an arrest or seizure must be assessed by “carefully considering the  
17 objective facts and circumstances that confronted the arresting officer or officers.” *Chew v.*  
18 *Gates*, 27 F.3d 1432, 1440 (9th Cir. 1994). “The calculus of reasonableness must embody  
19 allowance for the fact that police officers are often forced to make split-second judgments—in  
20 circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that  
21 is necessary in a particular situation.” *Graham*, 490 U.S. at 396-97. The court must judge the  
22 reasonableness from the perspective of a reasonable officer on the scene rather than with the  
23 20/20 vision of hindsight. *Id.* at 396.

24 In balancing the nature and quality of the intrusion on the individual's Fourth  
25 Amendment interests against the countervailing government interests at stake, the court must  
26 conduct a three-part analysis. *Espinosa v. City & Cnty. Of San Francisco*, 598 F.3d 528, 537  
27 (9th Cir. 2010). The court first must assess “the severity of the intrusion on the individual’s  
28 Fourth Amendment rights by evaluating ‘the type and amount of force inflicted.’ ” *Id.* (citing

1 *Miller v. Clark Cnty.*, 340 F.3d 959, 964 (9th Cir. 2003). Second, the court must assess the  
2 importance of the government interests at stake by assessing: (1) the severity of the crime at  
3 issue, (2) whether the suspect posed an immediate threat to the safety of the officers or  
4 others, and (3) whether the suspect was actively resisting arrest or attempting to escape. *Id.*  
5 The factor regarding the safety of officers or others is the most important, *Smith v. City of*  
6 *Hemet*, 394 F.3d 689, 702 (9th Cir. 2005), and there must be objective factors that suggest  
7 that there is a threat to a person's safety, *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (9th Cir.  
8 2001). Finally, the court must balance the gravity of the intrusion against the government's  
9 need for that intrusion. *Espinosa*, 598 F.3d at 537.

10 **i. Force Used Against Henry, Jordhy, and David**

11 The force used against Henry, Jordhy, and David included being handcuffed and having  
12 the officers' weapons pointed at them. Being detained for nearly forty minutes is only mildly  
13 intrusive, but having a gun pointed at Plaintiffs is more intrusive and may serve as the basis  
14 for a § 1983 claim for violation of Plaintiffs' Fourth Amendment rights. *Robinson v. Solano*  
15 *Cnty.*, 278 F.3d 1007, 1014-15 (9th Cir. 2002).

16 An important government interest however was at stake because the officers  
17 reasonably believed that the three young men were committing a burglary. As the record  
18 shows, a witness called 911 and reported that at least two young men were prowling around  
19 the home and possibly attempting to gain access. (Schouten Stat. (#31-3); Incident Recall  
20 (#35-9)). The home was located in an area where youth had previously committed burglaries  
21 during daytime hours. (Roberts Dep. (#31-4) at 119). When the officers arrived on the scene,  
22 they found that the gate, shed door, security door to the garage, and the door though which  
23 the witness claimed the suspects attempted to enter were all open. (Roberts Dep. (#31-4) at  
24 122-23; Dunn Dep. (#31-5) at 61). The officers then found three young men within the home  
25 and reasonably concluded that these may very well be the suspects they were seeking and  
26 they were committing a burglary. In Nevada, burglary is considered to be a very serious crime.  
27 See *Matter of Seven Minors*, 664 P.2d 947, 954 (Nev. 1983), *disapproved of on other grounds*  
28 *by In re William S.*, 132 P.3d 1015 (Nev. 2006). This is because “[i]t is an offense which

1 conduces towards violence and may cause serious and permanent psychological harm to the  
2 victim.” *Id.*

3 Furthermore, the officers had reason to believe there was a threat to their own safety  
4 and the safety of others. The Ninth Circuit has emphasized that “when officers suspect a  
5 burglary in progress, they have no idea who might be inside and may reasonably assume that  
6 the suspects will, if confronted, flee or offer armed resistance. In such exigent circumstances,  
7 the police are entitled to enter immediately, using all appropriate force.” *Frunz v. City of*  
8 *Tacoma*, 468 F.3d 1141, 1145 (9th Cir. 2006). Furthermore, “[i]n burglary cases, the  
9 possibility that a lawful resident has been injured or is being held hostage gives rise to exigent  
10 circumstances.” *United States v. Mancinas-Flores*, 588 F.3d 677, 687 (9th Cir. 2009) (citing  
11 *United States v. Washington*, 573 F.3d 279, 288 (6th Cir. 2009)). Because the officers  
12 reasonably suspected that a burglary was in progress, they had cause to believe there was  
13 a threat to themselves and possibly others.

14 Objective factors also suggested Officer Dunn was in danger when he entered the  
15 home. He heard Sergeant Roberts repeatedly yell at the suspects, which could lead him to  
16 believe Sergeant Roberts could not control the situation from his position and the suspects  
17 were potentially noncompliant. Upon entering the home, the family pit bull charged at Officer  
18 Dunn. Although Plaintiffs claim the dog had never bitten anyone in the past, Officer Dunn had  
19 no reason to know that. All that was known was that he stood before three potentially  
20 dangerous suspected burglars and a lunging pit bull.

21 In balancing the gravity of the intrusion against the government’s need for the intrusion,  
22 it becomes clear that because the officers reasonably believed a burglary was in progress and  
23 used no more force than was necessary in controlling the situation until the facts were known,  
24 these actions did not violate Plaintiffs’ Fourth Amendment rights.

## 25 **ii. Force Used Against Sandoval and Henry**

26 The force used against Sandoval and Henry included handcuffing them and detaining  
27 them in the back of a police vehicle. The severity of the act of handcuffing Sandoval and  
28 Henry and detaining them for less than forty minutes is relatively mild. The government also

1 had an interest in detaining them because they had become agitated and the officers needed  
2 to retain control over the situation. The government has a substantial interest in exercising  
3 unquestioned command of the situation in order to protect the officers and others present.  
4 See *Graham v. Connor*, 490 U.S. 386, 396 (1989) (noting that officers have the right to use  
5 some degree of physical force in making an arrest or investigatory stop); *Jackson v. City of*  
6 *Bremerton*, 268 F.3d 646, 653 (9th Cir. 2001) (holding that the Fourth Amendment was not  
7 violated when officers used force against a plaintiff who refused to comply with officers'  
8 commands and interfered with their ability to maintain order).

9 In the matter before the Court, Sandoval arrived quickly on the scene, appeared  
10 agitated, swore at the officers, and failed to obey their commands. Although Sandoval claimed  
11 that he had back surgery just fifteen days prior to the incident, officers are not required to  
12 refrain from the use of force, such as handcuffing, due to mere allegations of a pre-existing  
13 injury. *Winterrowd v. Nelson*, 480 F.3d 1181, 1184 (9th Cir. 2007) (stating "a police officer  
14 need not endanger himself by unduly crediting a suspect's mere claim of injury" because  
15 individuals may feign injuries for improper motives). In balancing the mild force used against  
16 the substantial interest the government has in allowing officers to control the situation while  
17 investigating a possible crime scene, it is apparent that the government's interest outweighs  
18 the harm to Sandoval. The officers had no way of knowing the extent of Sandoval's surgery  
19 and are not required to accommodate all parties who claim injuries. Sandoval was also  
20 agitated and refused to comply with the officers commands. The officers accordingly acted  
21 reasonably with regard to the force used against Sandoval.

22 Henry was similarly handcuffed after he placed his dog in the animal control vehicle.  
23 Henry was understandably upset and was cursing at the officers and acting irrationally.  
24 (Givens. Decl. (#31-9); Henry Dep. (#31-2) at 83). As previously stated, the government has  
25 a significant interest in allowing its law enforcement officers to control the situation while  
26 investigating a potential crime scene and in protecting the officers and others present. See  
27 *Graham*, 490 U.S. at 396; *Jackson*, 268 F.3d at 653. Henry here was agitated and acting  
28 irrationally, and to maintain control over the situation Officer Givens handcuffed him and

1 placed him in the back of his vehicle to calm him down. (Givens. Decl. (#31-9)). Henry  
2 acknowledged that Officer Givens was nice to him, made him feel comfortable, and calmed  
3 him at least somewhat after his dog was given to animal control. (Henry Dep. (#31-6) at 73).  
4 In balancing the government interest in this matter against the mild intrusion of handcuffing  
5 Henry to calm him down, it is apparent that the amount of force used in this matter was  
6 reasonable.

### 7 **iii. Shooting the Family Dog**

8 Plaintiffs also contend that Officer Dunn used excessive force in shooting the family  
9 dog. (Opp'n to Mot. for Summ. J. (#35) at 12-15). A dog is not a person and therefore is not  
10 entitled to protection under the Fourth Amendment. See U.S. CONST. amend IV (protecting  
11 “[t]he right of the *people* to be secure in their persons, houses, papers, and effects”) (emphasis  
12 added); *Altman v. City of High Point, N.C.*, 330 F.3d 194, 200 (4th Cir. 2003) (holding that a  
13 dog is not a “person” under the Fourth Amendment). However, an owner may bring a claim  
14 against the government actor for violating the Fourth Amendment for an unconstitutional  
15 seizure of the owner’s property if the manner in which the dog was taken or killed was  
16 unreasonable. See *San Jose Charter of the Hells Angels Motorcycle Club v. City of San Jose*,  
17 402 F.3d 962, 975 (9th Cir. 2005); *Fuller v. Vines*, 36 F.3d 65, 67-68 (9th Cir. 1994), *overruled*  
18 *on other grounds by Robinson v. Solano Cnty.*, 278 F.3d 1007, 1013 (9th Cir. 2002).

19 The complaint here fails to allege that Defendants engaged in an unconstitutional  
20 seizure of Plaintiffs’ property. Although the complaint alleges Plaintiffs were deprived of “life”  
21 and “liberty” in violation of the Fourth and Fourteenth Amendments, Plaintiffs never assert that  
22 they were unconstitutionally deprived of their “property.” (See Compl. (#15) at 7). Even if  
23 Plaintiffs had alleged the seizure of their property in violation of the Fourth Amendment in their  
24 complaint, the seizure here was not unreasonable. Although the loss of the animal is a  
25 significant intrusion, the pit bull was charging at Officer Dunn at the time it was shot. (Dunn  
26 Dep. (#31-5) at 87). Officer Dunn’s safety clearly outweighed the loss of the property interest  
27 Plaintiffs had in the animal. While Officer Dunn did not attempt nonlethal methods of  
28 restraining the dog before shooting, this was a rapidly evolving situation in which Officer Dunn

1 was required to make a split second decision in how to protect himself. Such actions must be  
2 judged from the perspective of the officer at the scene rather than with the 20/20 vision of  
3 hindsight. See *Graham*, 490 U.S. at 396. From Officer Dunn’s perspective, a pit bull was  
4 racing toward him while he was standing before three suspected burglars who may have been  
5 noncompliant and reaching for items when Sergeant Roberts first discovered them. Based  
6 on the information available to Officer Dunn at the time, it cannot be said his actions were  
7 unreasonable.

#### 8 **iv. Entering Plaintiffs’ Home**

9 Plaintiffs additionally argue that Officer Dunn’s entry into the home constituted an  
10 unreasonable search in violation of the Fourth Amendment. “It is a basic principle of Fourth  
11 Amendment law that searches and seizures inside a home without a warrant are  
12 presumptively unreasonable.” *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (quoting  
13 *Payton v. New York*, 445 U.S. 573, 586 (1980)). However, because the ultimate touchstone  
14 of the Fourth Amendment is “reasonableness”, certain exceptions to the warrant requirement  
15 exist. *Id.* For instance, the Supreme Court has recently held that “the Fourth Amendment  
16 permits an officer to enter a residence if the officer has a reasonable basis for concluding that  
17 there is an imminent threat of violence.” *Ryburn v. Huff*, --- S.Ct. ----, 2012 WL 171121, at \*3  
18 (2012); see also *Frunz v. City of Tacoma*, 468 F.3d 1141, 1145 (9th Cir. 2006) (“[W]hen  
19 officers suspect a burglary in progress, they have no idea who might be inside and may  
20 reasonably assume that the suspects will, if confronted, flee or offer armed resistance. In such  
21 exigent circumstances, the police are entitled to enter immediately.”).

22 Officer Dunn here had a reasonable belief that an imminent threat of violence existed.  
23 There were numerous indications that a burglary may have been in progress, including the fact  
24 burglaries by youth were common in the area, an eyewitness reported seeing two young men  
25 prowling around the home, and open doors. (Roberts Dep. (#31-4) at 119; Dunn Dep. (#31-5)  
26 at 61). While investigating the potential burglary, Officer Dunn was instructed by Sergeant  
27 Roberts to watch the open sliding glass door so that the officers would not be surprised if  
28 somebody exited the residence while Sergeant Roberts finished clearing the north part of the

1 backyard. (Roberts Dep. (#31-4) at 132). He then observed Sergeant Roberts raise his  
2 weapon to the bedroom window and repeatedly yell at the suspects “let me see your hands”  
3 and “stop reaching for stuff”. (Dunn Dep. (#31-5) at 70-72). This could reasonably lead  
4 Officer Dunn to conclude that the suspects in the room presented a threat, that they were not  
5 complying with Sergeant Roberts’ commands, and that they were potentially reaching for  
6 weapons. In addition, Officer Dunn stated that he heard the tone of Sergeant Roberts voice  
7 suddenly change while addressing the suspects, which could lead him to believe the situation  
8 had become dangerous. (*Id.* at 72). Because Officer Dunn had a reasonable basis for  
9 concluding that there was an imminent threat of violence based on the evidence available to  
10 him at the time, his decision to enter the home was not objectively unreasonable and Plaintiffs’  
11 Fourth Amendment rights were not violated by the action.

## 12 **2. Equal Protection Claim**

13 Plaintiffs’ second claim within their first cause of action is for deprivation of the right to  
14 equal protection under the laws. “The Equal Protection Clause of the Fourteenth Amendment  
15 commands that no State shall ‘deny to any person within its jurisdiction the equal protection  
16 of the laws,’ which is essentially a direction that all persons similarly situated should be treated  
17 alike.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler*  
18 *v. Doe*, 457 U.S. 202, 216 (1982)). “To establish a § 1983 equal protection violation, the  
19 plaintiffs must show that the defendants, acting under color of state law, discriminated against  
20 them as members of an identifiable class and that the discrimination was intentional.” *Flores*  
21 *v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003). “Discriminatory intent  
22 may be proved by direct or indirect evidence.” *FDIC v. Henderson*, 940 F.2d 465, 471 (9th Cir.  
23 1991). To survive a motion for summary judgment, a plaintiff must “produce evidence  
24 sufficient to permit a reasonable trier of fact to find by a preponderance of the evidence that  
25 [the action] was racially motivated.” *Keyser v. Sacramento City Unified Sch. Dist.*, 265 F.3d  
26 741, 754 (9th Cir. 2001) (quoting *Henderson*, 940 F.2d at 473). “[M]ere allegation and  
27 speculation do not create a factual dispute for purposes of summary judgment.” *Nelson v.*  
28 *Pima Cmty. Coll.*, 83 F.3d 1075, 1081-82 (9th Cir. 1996).

1 Plaintiffs here claim that the officers intentionally discriminated against them due to their  
2 race. (Opp'n to Mot. for Summ. J. (#35) at 18-19). As evidence of discriminatory intent,  
3 Plaintiffs note that the officers had been told the suspects were two white males, and therefore  
4 they had no reason to believe that the three Hispanic youths were engaged in criminal activity.  
5 (*Id.* at 18). Plaintiffs seem to submit that this alone is enough to establish a genuine issue of  
6 material fact. (*Id.* at 19). The fact the youth were Hispanic rather than white is insufficient to  
7 establish that the officers' conduct was motivated by discriminatory intentions because  
8 witnesses' perceptions can often be inaccurate. Schouten—the witness who reported the  
9 prowler—from a distance easily could have confused the skin color of a Hispanic as white.  
10 Due to his vantage point, he also may not have seen a suspect enter the home from the front,  
11 and therefore the fact there were three people in the home rather than only two does not show  
12 the officers had any discriminatory intentions. Additionally, Sergeant Roberts noted that based  
13 on Schouten's description, he would have stopped any young male he found in the area  
14 because his training and experience has taught him that the perception of witnesses is not  
15 always accurate. (Roberts Dep. (#31-4) at 127). No evidence has been presented to show  
16 the officers made any derogatory statements regarding Hispanics or that the officers have any  
17 history of discriminating against Hispanics. Ultimately Plaintiffs allegations that they were  
18 discriminated against based on their race amount to nothing more than speculation that the  
19 officers acted the way they did because Plaintiffs are Hispanic. Because mere speculation is  
20 not enough to establish a genuine issue of material fact, *Nelson*, 83 F.3d at 1081-82,  
21 Defendants' motion for summary judgment is granted as to this claim.

### 22 3. The Officers Are Entitled to Qualified Immunity

23 Because the officers acted reasonably, Defendants are entitled to qualified immunity  
24 on the ground that Plaintiffs' Fourth Amendment rights were not violated. See *Saucier v. Katz*,  
25 533 U.S. 194, 201 (2001), *overruled on other grounds by Pearson v. Callahan*, 555 U.S. 223  
26 (2009). Defendants are also entitled to qualified immunity because it cannot be said that the  
27 rights of Plaintiffs were so clearly established that a reasonable official would have known the  
28 conduct was unlawful. *Id.* The officers reasonably believed Henry, Jordhy, and David were



1 burglars. Although that belief was ultimately mistaken, the belief was still reasonable and  
2 therefore the mistake of fact does not bar Defendants from asserting qualified immunity. See  
3 *Saucier*, 533 U.S. at 205; *Estate of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049 (9th Cir.  
4 2002). As stated above, the officers also had the authority to detain Sandoval and Henry while  
5 they investigated the matter as they were agitated, acting irrationally, and not complying with  
6 the officers' commands. As there was no constitutional violation and a reasonable  
7 government official would not have known the conduct was unlawful, the officers are entitled  
8 to qualified immunity.

### 9 **B. Municipal Liability**

10 Plaintiffs also claim municipal liability because they allege the LVMPD had a policy,  
11 practice, and custom of negligently hiring, training, and supervising its officers. (Am. Compl.  
12 (#15) at 8). A municipality may not be found liable under 42 U.S.C. § 1983 under a theory of  
13 respondeat superior. *Monell v. Dep't of Soc. Serv.*, 436 U.S. 658, 691 (1978). A plaintiff who  
14 seeks to impose liability on a local government under § 1983 must prove that an " 'action  
15 pursuant to official municipal policy' caused their injury." *Connick v. Thompson*, 131 S.Ct.  
16 1350, 1359 (2011) (citing *Monell*, 436 U.S. at 691). "Official municipal policy includes the  
17 decisions of a government's lawmakers, the acts of its policymaking officials, and practices so  
18 persistent and widespread as to practically have the force of law." *Id.*

19 Plaintiffs' claim of municipal liability first fails because there was no constitutional  
20 violation. Yet even if there had been a constitutional violation, municipal liability would not  
21 apply because Plaintiffs have provided no evidence that LVMPD had any policy or practice of  
22 violating the civil rights of citizens in the manner alleged by Plaintiffs. Furthermore, Plaintiffs  
23 have presented no evidence that would establish that Sergeant Roberts or any other officer  
24 was a policymaking official. Because the record is void of any evidence demonstrating an  
25 action pursuant to the official municipal policy of the LVMPD caused Plaintiffs' injuries,  
26 Defendants' motion for summary judgment is granted on this claim.

### 27 **C. Deprivation of Familial Relations**

28

1 Plaintiffs also claim that they were deprived of the constitutional right to a family  
2 relationship. (Am. Compl. (#15) at 8). The substantive due process right to familial  
3 association is well established. *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1079 (9th Cir.  
4 2011). A parent has a “fundamental liberty interest” in companionship with his or her child.  
5 *Kelson v. City of Springfield*, 767 F.2d 651, 654–55 (9th Cir. 1985). State action which  
6 interferes with this interest amounts to a violation of substantive due process if the harmful  
7 conduct “shocks the conscience” or “offend[s] the community’s sense of fair play and  
8 decency.” *Rosenbaum*, 663 F.3d at 1079 (citing *Rochin v. California*, 342 U.S. 165, 172-73  
9 (1952)). For example, the Ninth Circuit held that a mother stated a claim under § 1983 for a  
10 violation of the right to familial association where her mentally-disabled son was mistaken for  
11 another person, falsely arrested, and extradited to another state where he was imprisoned for  
12 two years, during which time the police department repeatedly misinformed her of his  
13 whereabouts. *Lee v. City of Los Angeles*, 250 F.3d 668, 685-86 (9th Cir. 2001). The Ninth  
14 Circuit has also held that parents had stated a cause of action for a violation of the right to  
15 familial association when their son committed suicide at school. *Kelson*, 767 F.2d at 653-55.

16 Plaintiffs here argue that they were deprived of the right to familial association when the  
17 officers shot the family dog and used excessive force on the youths and Sandoval. (Opp’n to  
18 Mot. for Summ. J. (#35) at 15). Keeping Sandoval and Henry separated for forty minutes is  
19 hardly conduct that shocks the conscious or would offend society’s sense of decency. See  
20 *Rosenbaum*, 663 F.3d at 1079-80 (finding that the right to familial association was not violated  
21 when the plaintiff’s children were taken from him because they were not separated for an  
22 extended period of time). Often such short detentions are necessary to allow police to sort  
23 through the facts and determine what has transpired.

24 Although shooting the family dog was obviously a traumatic event for the family, it does  
25 not result in the deprivation of a familial relationship. The right to familial association generally  
26 only applies in parent-child relationships. See, e.g., *Lee*, 250 F.3d at 685-86; *Kelson*, 767  
27 F.2d at 653-55; *Morrison v. Jones*, 607 F.2d 1269, 1275 (9th Cir. 1979), *cert. denied*, 445 U.S.  
28 962, 100 S.Ct. 1648, 64 L.Ed.2d 237 (1980). Although many people have close relationships

1 with their pets, the owner-pet relationship is not a parent-child relationship. Furthermore,  
2 Plaintiffs have failed to cite any legal authority which would justify the extension of the right of  
3 familial association to relationships owners have with their animals. For these reasons, the  
4 loss of the family dog consequently does not deprive Plaintiffs' of their right to familial  
5 association.

## 6 **II. Plaintiffs' State-Law Claims**

7 Plaintiffs have also asserted state-law claims for intentional infliction of emotional  
8 distress, assault and battery, and false imprisonment. These claims fail for two reasons. First,  
9 the officers are entitled to discretionary-function immunity under NRS § 41.032 because they  
10 were effectuating an arrest. Second, no genuine issue of material fact exists and Defendants  
11 are entitled to judgment as a matter of law on these claims.

### 12 **A. Discretionary-Function Immunity**

13 Although Nevada has generally waived its state immunity under NRS § 41.031, the  
14 State has retained immunity under NRS § 41.032 for officials exercising discretion. NRS §  
15 41.032(2) states no actions may be brought against an officer of the State or its political  
16 subdivision that is “[b]ased upon the exercise or performance or the failure to exercise or  
17 perform a discretionary function or duty” of the officer. On its face, this statute does not  
18 immunize municipal governments or their employees, because municipalities are considered  
19 independent corporations or “persons” with their own identities, not mere political subdivisions  
20 of a state. See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). The Nevada  
21 Supreme Court, however, has implicitly assumed that municipalities are political subdivisions  
22 of the State for the purposes of applying the discretionary act immunity statute. See, e.g.,  
23 *Travelers Hotel, Ltd. v. City of Reno*, 741 P.2d 1353, 1354-55 (Nev. 1987).

24 In determining whether immunity applies under NRS § 41.032, the Nevada Supreme  
25 Court has adopted the general principles of federal jurisprudence as to discretionary-function  
26 immunity, holding that the actions of state officers are entitled to discretionary-function  
27 immunity if their decision (1) involves an element of individual judgment or choice and (2) is  
28 based on considerations of social, economic, or political policy. *Martinez v. Maruszczak*, 168

1 P.3d 720, 727, 729 (Nev. 2007). Decisions at all levels of government, including routine  
2 decisions, may be protected by discretionary-function immunity so long as both criteria are  
3 satisfied. *Id.* at 729. Additionally, “the discretionary function exception protects agency  
4 decisions concerning the scope and manner in which it conducts an investigation so long as  
5 the agency does not violate a mandatory directive.” *Vickers v. United States*, 228 F.3d 944,  
6 951 (9th Cir. 2000). In analyzing discretionary-function immunity, a court does not ask  
7 whether the official abused his or her discretion, but only whether the acts concerned a matter  
8 in which the official had discretion. See NEV. REV. STAT. § 41.032(2)

9 Based on the facts of this case, the officers are entitled to discretionary-function  
10 immunity. A law enforcement officer is generally afforded discretionary-function immunity in  
11 conducting an investigation and effectuating an arrest so long as the officer does not violate  
12 a mandatory directive in doing so. *Hart v. United States*, 630 F.3d 1085, 1090 (8th Cir. 2011)  
13 (“We readily conclude a federal law enforcement officer’s on-the-spot decisions concerning  
14 how to effectuate an arrest—including how best to restrain, supervise, control or trust an  
15 arrestee—fall within the discretionary function exception to the FTCA absent a specific  
16 mandatory directive to the contrary.”); *Sabow v. United States*, 93 F.3d 1445, 1453 (9th Cir.  
17 1996) (“Investigations by federal law enforcement officials . . . clearly require investigative  
18 officers to consider relevant political and social circumstances in making decisions about the  
19 nature and scope of a criminal investigation.”); *Mesa v. United States*, 837 F.Supp. 1210, 1213  
20 (S.D. Fla. 1993) (“We hold as a matter of law that the function of determining when and how  
21 to execute an arrest warrant is quintessentially a discretionary function, involving choices and  
22 judgments that are grounded in policy considerations.”), *aff’d*, 123 F.3d 1435 (11th Cir. 1997);  
23 *Trujillo v. Powell*, 2011 WL 3419504, at \*9 (D. Nev. 2011) (holding that a sheriff who decided  
24 to handcuff the plaintiff during a traffic stop was entitled to discretionary-function immunity);  
25 *Spear v. City of N. Las Vegas*, 2010 WL 3895761, at \*9 (D. Nev. 2010) (“The [officers] are also  
26 protected under Nev. Rev. Stat. § 41.032 from the state law torts, because their handling of  
27 the situation with [the plaintiff] led to discretionary decisions that ‘were concerning the scope  
28 and manner in which North Las Vegas Police Department conducts an investigation,’ or

1 responds to an emergency call based on the policies of North Las Vegas Police, and did not  
2 'violate a mandatory directive.' " (citing *Vickers*, 228 F.3d at 951)). In determining how to best  
3 enforce the law, law enforcement officers are required to consider their training, the need to  
4 arrest certain parties, the concern for their own safety, the concern for the arrestee's safety,  
5 the public's safety, the resources available to the officer, LVMPD policies, and the information  
6 the officer has on hand. See *Hart*, 630 F.3d at 1091 (citing *Williams v. United States*, 314  
7 Fed.Appx. 253, 257-58 (11th Cir. 2009) (unpub. per curiam)). These factors indicate that the  
8 officers' decision to arrest Plaintiffs is "fundamentally rooted in policy considerations, and that  
9 judicial second-guessing of this decision thus is not appropriate." *Mesa v. United States*, 123  
10 F.3d 1435, 1438 (11th Cir. 1997). As the officers' decision to arrest Plaintiffs and investigate  
11 involved judgment based on social and policy considerations, and because there is no  
12 evidence that the officers violated a mandatory directive during the investigation and arrest,  
13 the officers are entitled to discretionary-function immunity under NRS § 41.032(2).

#### 14 **B. Defendants Are Entitled to Judgment as a Matter of Law**

15 Defendants are also entitled to summary judgment because no genuine issue of  
16 material fact exists and they are entitled to judgment as a matter of law on Plaintiffs state-law  
17 claims.

##### 18 **1. Intentional Infliction of Emotional Distress**

19 Plaintiffs have alleged intentional infliction of emotional distress, claiming they have  
20 suffered severe emotional distress resulting from the conduct of the officers. (Am. Compl.  
21 (#15) at 9). To succeed on a claim for intentional infliction of emotional distress, the plaintiff  
22 must show "(1) extreme and outrageous conduct with either the intention of, or reckless  
23 disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme  
24 emotional distress and (3) actual or proximate causation." *Dillard Dept. Stores, Inc. v.*  
25 *Beckwith*, 989 P.2d 882, 886 (Nev. 1999) (quoting *Star v. Rabello*, 625 P.2d 90, 92 (Nev.  
26 1981)). "[E]xtreme and outrageous conduct is that which is 'outside all possible bounds of  
27 decency' and is regarded as 'utterly intolerable in a civilized community.'" *Maduikie v. Agency*  
28 *Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998) (citations omitted).

1 Plaintiffs have failed to defend their claim of intentional infliction of emotional distress  
2 in their opposition to the motion for summary judgment. Regardless, handcuffing the youth  
3 and detaining them for less than forty minutes was not outrageous conduct because the  
4 officers reasonably suspected the youth had committed a burglary. Detaining Sandoval was  
5 also not outrageous conduct because he was agitated and failed to obey police orders and the  
6 officers had a right to use force on those who present an immediate threat to the officers or  
7 others. See *Cortes v. State*, 260 P.3d 184, 189 (Nev. 2011); *Redeker v. State*, 238 P.3d 848,  
8 2008 WL 6102007, at \*3 (Nev. 2008 ) (unpublished opinion). Shooting the dog as it was  
9 lunging at Officer Dunn was not outrageous conduct as Officer Dunn had a right to protect  
10 himself from the charging pit bull. *Cortes*, 260 P.3d at 189. Even if any of these actions could  
11 be deemed to be outrageous conduct, Plaintiffs have provided no evidence that the actions  
12 were done with the intention of causing emotional distress or that Plaintiffs suffered severe or  
13 extreme emotional distress as a result of the conduct. Accordingly, summary judgment is  
14 granted in favor of Defendants on this claim.

## 15 2. Assault and Battery

16 Plaintiffs have also alleged that the officers committed assault and battery against  
17 Plaintiffs. (Compl. (#15) at 9). To establish a claim of assault, the plaintiff must demonstrate  
18 that the defendant (1) intended to cause harmful or offensive physical contact or an imminent  
19 apprehension of such a contact, and (2) the victim was put in apprehension of such contact.  
20 RESTATEMENT (SECOND) OF TORTS § 21 (1965). As for the tort of battery, a plaintiff must show  
21 that the defendant (1) intended to cause harmful or offensive contact or an imminent  
22 apprehension of such a contact, and (2) offensive contact occurred. *Id.* §§ 13, 18. In the  
23 context of an arrest, contact may only constitute an assault or battery if the officer used  
24 unreasonable force in effectuating the arrest. *Yada v. Simpson*, 913 P.2d 1261, 1262-63  
25 (Nev. 1996), *superseded by statute on other grounds as recognized by RTTC Commc'ns, LLC*  
26 *v. Saratoga Flier, Inc.*, 110 P.3d 24, 29 (Nev. 2005); see also *Castaneda v. Douglas Cnty.*  
27 *Sheriff's Investigator Rory Planeta*, 2007 WL 160816, at \*9 (D. Nev. 2007).

1 Plaintiffs have again failed to support their claims for assault and battery in their  
2 opposition to the motion for summary judgment. The conduct here occurred while the officers  
3 were effectuating an arrest and the officers did not use an unreasonable amount of force in  
4 doing so. Sergeant Roberts pointed his weapon at the youth and the officers arrested them  
5 because they reasonably believed they were committing a burglary. Officer Dunn shot the dog  
6 because it was charging at him. Sandoval was arrested because he was agitated and failed  
7 to comply with the orders from the officers. Although placing him in the back of the police  
8 vehicle may have caused him pain due to his recent back surgery, as stated earlier, police  
9 officers are not required to credit every claim of injury. See *Winterrowd v. Nelson*, 480 F.3d  
10 1181, 1184 (9th Cir. 2007). The force used was therefore not unreasonable and Plaintiffs'  
11 claims for assault and battery consequently fail.

### 12 3. False Imprisonment

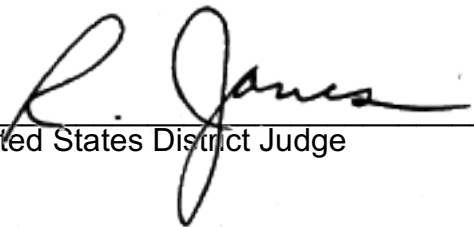
13 Finally, Plaintiffs have alleged they were falsely imprisoned by the officers. (Am.  
14 Compl. (#15) at 10). "To establish false imprisonment of which false arrest is an integral part,  
15 it is necessary to prove that the person be restrained of his liberty under the probable  
16 imminence of force without any legal cause or justification." *Hernandez v. City of Reno*, 634  
17 P.2d 668, 671 (Nev. 1981) (quoting *Marschall v. City of Carson*, 464 P.2d 494, 497 (Nev.  
18 1970)). A defendant may be liable for false imprisonment where: (1) he intentionally confines  
19 the plaintiff within boundaries fixed by the defendant; (2) his act directly or indirectly results in  
20 a confinement of the plaintiff; and (3) the plaintiff is conscious of the confinement or is harmed  
21 by it. *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 35 (1965)). NRS § 171.123(1) however  
22 states "[a] peace officer may detain any person whom the officer encounters under  
23 circumstances which reasonably indicate that the person has committed, is committing or is  
24 about to commit a crime." Officers are also allowed to protect themselves and detain those  
25 who fail to comply with police orders. *Cortes v. State*, 260 P.3d 184, 189 (Nev. 2011); see  
26 also *Redeker v. State*, 238 P.3d 848, 2008 WL 6102007, at \*3 (Nev. 2008 ) (unpublished  
27 opinion).

1 The officers here detained Henry, Jordhy, and David under the reasonable belief that  
2 a burglary was in progress. The officers also detained Sandoval because he was agitated and  
3 refused to obey the orders of the officers. Defendants are therefore entitled to summary  
4 judgment on Plaintiffs' claim for false imprisonment.

5 **CONCLUSION**

6 For the foregoing reasons, IT IS ORDERED that Defendants' motion for summary  
7 judgment (#31) is granted.

8  
9 DATED: This 24th day of February, 2012.

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12 \_\_\_\_\_  
13 United States District Judge  
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