

1 I. Factual Background

2 Defendant Darlene Smiley is, and was at all relevant
3 times, a transport officer with the Siskiyou County Jail. Her
4 responsibilities included transporting inmates to and from places
5 such as hospitals and courts. (Smiley Deposition (Docket No. 39-
6 4) at 5.)

7 On February 5, 2021, Chad Loynachan was stopped for
8 speeding and then arrested for possession of a stolen firearm and
9 drugs for distribution. (Internal Investigation I¹ (Docket No.
10 39-6) at 6-8.) Loynachan was taken to the Siskiyou County Jail
11 as a pretrial detainee the same day. (Id. at 10.)

12 Shortly before noon on February 19, Loynachan
13 approached a custodial officer and said that he swallowed a
14 razor. (Id. at 11.) Arrangements were promptly made to have
15 Loynachan medically evaluated at the Fairchild Medical Center.
16 (Id.) Prior to transport and according to protocol, Loynachan
17 was placed in belly chains, leg shackles, and handcuffs tethered
18 to the belly chains. (Smiley Deposition at 12-13.) The leg
19 shackles were around 14 inches in length; Loynachan's handcuffed
20 hands could reach out approximately a foot from the belly chains.
21 (Id. at 13-14.) Loynachan was searched for weapons, also
22 according to protocol. None were found. (Id. at 15.)

23 Defendant, as the on-duty transport officer,
24 transported Loynachan in a Ford Expedition SUV to the Fairchild
25 Medical Center. (Internal Investigation II (Docket No. 40-1) at
26

27 ¹ The parties submitted different excerpted portions from
28 the same Siskiyou County Sheriff Department's Internal
Investigation of Loynachan's death.

1 3.) Defendant was equipped with a duty belt, which contained her
2 duty gun secured to her right hip in a holster with a safety
3 release. (Smiley Deposition at 30, 43.) Defendant also had a
4 taser holstered to her left thigh. (Id. at 50.) No other
5 transport officers accompanied Loynachan. (Id.) Defendant drove
6 Loynachan to the hospital and parked the car outside the hospital
7 entrance. (Smiley Deposition at 10.) Hospital security camera
8 footage shows Loynachan and defendant walking into the hospital
9 around five minutes before noon. (Docket No. 39-7 at 2.)

10 Loynachan and defendant left the hospital about an hour
11 later. (Id. at 3.) They walked around the Expedition to the
12 driver's side, with Loynachan in front. (Smiley Deposition at
13 19.) Loynachan stopped and stood by the rear tire on the
14 driver's side while defendant entered a code on the driver's door
15 to unlock it. (Id.) Defendant then opened the driver's door,
16 unlocked the rest of the car, shut the driver's door, and opened
17 the passenger door on the driver's side. (Id.)

18 A struggle ensued. (Id. at 23-51.) Defendant alleges
19 that Loynachan, after initially entering the vehicle, lunged at
20 her and grabbed her duty belt, repeatedly headbutted and bit her
21 fingers and ear, and attempted to reach for her holstered taser.
22 (Id.) The struggle ended with defendant firing a single shot
23 into Loynachan's right mid abdomen. (Autopsy Report (Docket No.
24 40-9) at 2.) Based on autopsy reports, the shot was fired less
25 than an inch away from Loynachan's abdomen. (Olson Deposition
26 (Docket No. 39-5) at 11.) The bullet traveled right to left,
27 downwards, and front to back, eventually lodging in the left side
28 of Loynachan's lower back bone. (Id. at 12-15.) Loynachan fell

1 and lay supine and unresponsive with his head near the
2 Expedition's rear left tire and his feet near the front left
3 tire. (Docket No. 39-12 at 5.) Loynachan was taken to an
4 emergency operating room; however, he suffered "devastating"
5 damage from the bullet wound and was pronounced dead after over
6 two hours of surgery. (Nelson Decl. (Docket No. 39-8) ¶¶ 2-4.)

7 Loynachan's body showed fresh abrasions on his scalp,
8 nose, and lips, and a laceration of his eyelid. (Olson
9 Deposition at 15-17.) There are no records indicating that
10 Loynachan entered the hospital for his earlier evaluation with
11 any of these injuries. (See generally Docket No. 39-11.)

12 An officer who arrived on the scene shortly after the
13 gunshot reported that defendant was "very obviously upset and was
14 crying," and had blood on her hands and forehead. (Docket No.
15 40-8 at 5.) Defendant received a medical evaluation within an
16 hour of the shooting, which documented fresh human bite marks and
17 broken skin on her left hand fingers and her right ear, and a
18 "goose egg" lump on the back of her head. (See generally Docket
19 No. 39-9.)

20 II. Legal Standard

21 Summary judgment is proper "if the movant shows that
22 there is no genuine dispute as to any material fact and the
23 movant is entitled to judgment as a matter of law." Fed. R. Civ.
24 P. 56(a). A material fact is one that could affect the outcome
25 of the suit, and a genuine issue is one that could permit a
26 reasonable trier of fact to enter a verdict in the non-moving
27 party's favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242,
28 248 (1986).

1 The movant bears the initial burden of demonstrating
2 the absence of a genuine issue of material fact as to the basis
3 for the motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323
4 (1986). The moving party can satisfy its burden by presenting
5 evidence that negates an essential element of the nonmoving
6 party's case. Celotex Corp., 477 U.S. at 322-23. Alternatively,
7 the movant can demonstrate that the non-moving party cannot
8 provide evidence to support an essential element upon which it
9 will bear the burden of proof at trial. Id. The burden then
10 shifts to the non-moving party to set forth specific facts to
11 show that there is a genuine issue for trial. See id. at 324.
12 Any inferences drawn from the underlying facts must, however, be
13 viewed in the light most favorable to the non-moving party. See
14 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
15 587 (1986).

16 III. Discussion

17 Plaintiffs bring three Section 1983 claims against
18 defendant: Fourth Amendment excessive force (Claim 1); Fourth
19 Amendment failure to provide reasonable post-arrest care (Claim
20 2); and Fourteenth Amendment familial loss (Claim 3). (See
21 generally First Am. Compl. ("FAC") (Docket No. 33).)

22 A. Excessive Force (Claim 1)

23 Defendant asserts qualified immunity against
24 plaintiffs' excessive force claim. Qualified immunity is a
25 question of law to be decided by the court. See Hunter v.
26 Bryant, 502 U.S. 224, 228 (2009) ("Immunity ordinarily should be
27 decided by the court long before trial."). A defendant is
28 entitled to qualified immunity if a plaintiff (1) has not

1 "alleged" or "shown" facts that would make out a constitutional
2 violation, or (2) fails to show that an alleged constitutional
3 violation was not "'clearly established' at the time of
4 defendant's alleged misconduct." A.D. v. Cal. Highway Patrol,
5 712 F.3d 446, 453-54 (9th Cir. 2013) (citing Pearson v. Callahan,
6 555 U.S. 223, 232, 236 (2009)). On a motion for summary
7 judgment, the court first determines "whether the evidence viewed
8 in the light most favorable to the plaintiff is sufficient to
9 show a violation of a constitutional right." Sandoval v. County
10 of San Diego, 985 F.3d 657, 671 (9th Cir. 2021) (cleaned up).

11 1. Constitutional Violation

12 "[A]pprehension by the use of deadly force is a seizure
13 subject to the reasonableness requirement of the Fourth
14 Amendment." Tennessee v. Garner, 471 U.S. 1, 7 (1985). The
15 Supreme Court in Graham v. Connor set forth a non-exhaustive list
16 of factors for evaluating an officer's reasonability: (1) the
17 severity of the crime at issue, (2) whether the suspect posed an
18 immediate threat to the safety of the officers or others, and (3)
19 whether the suspect actively resisted arrest or attempted to
20 escape. See George v. Morris, 736 F.3d 829, 837 (9th Cir. 2013)
21 (citing Graham, 490 U.S. 386 (1989)). And in Tennessee v.
22 Garner, the Supreme Court analyzed the application of deadly
23 force by weighing (1) the immediacy of the threat, (2) whether
24 force was necessary to safeguard officers or the public, and (3)
25 whether officers administered a warning, assuming it was
26 practicable. See George, 736 F.3d 829, 837 (citing Garner, 471
27 U.S. at 11-12).

28 "In cases where the best (and usually only) witness who

1 could offer direct testimony for the plaintiff about what
2 happened before a shooting has died, our precedent permits the
3 decedent's version of events to be constructed circumstantially
4 from competent expert and physical evidence, as well as from
5 inconsistencies in the testimony of law enforcement." George,
6 736 F.3d at 834 (9th Cir. 2013).

7 It is undisputed that some kind of violent altercation
8 ensued between Loynachan and defendant -- their respective wounds
9 beyond Loynachan's gunshot wound attest to that. However, the
10 present record leaves some room, however slight, for a genuine
11 dispute as to whether Loynachan, in the moments before the fatal
12 shot, ceased his attack on defendant and was turning to flee.
13 Roger Clark, plaintiffs' expert witness, opines that "it is
14 likely that Loynachan was turning away or turned away in some
15 manner of escape when Deputy Smiley shot him" based on the
16 trajectory of the bullet. (Clark Report² (Docket No. 40-10) at
17 7-8.) Clark also states that the position of Loynachan's body
18 right after the shot was "in a position more consistent with
19 Loynachan trying to escape" (Id. at 8.)

20 Clark's report also leaves room for genuine dispute on
21

22 ² Defendant objects to the expert reports of Roger Clark
23 (Docket No. 40-10) and Leonard J. Romero (Docket No. 40-6):
24 Clark's, on hearsay grounds because Clark "is not a medical
25 doctor and [] cannot and has not, analyzed the path of the bullet
26 he uses to claim the decedent was 'trying to flee' at the moment
27 he was wounded;" and Romero's, because it was not made under
28 penalty of perjury. (Reply at 3.) These are no grounds to
ignore the reports. "At the summary judgment stage, we do not
focus on the admissibility of the evidence's form. We instead
focus on the admissibility of its contents." Fraser v. Goodale,
342 F.3d 1032, 1036 (9th Cir. 2003); see Fed. R. Civ. P.
56(c) (2).

1 whether lethal force was truly necessary to safeguard defendant's
2 safety. Defendant testified that she, at some point, was able to
3 create some space between herself and Loynachan during the
4 altercation. (Smiley Deposition at 31 ("I am trying to push away
5 from him, and at one point I do know -- remember either pushing
6 or hitting the side of his head. I get away enough and am now to
7 my right side, and he is biting my ear.").) From this Clark
8 concludes that defendant could have, and should have, "simply
9 stepped away, created distance and used a less lethal force
10 option." (Clark Report (Docket No. 40-10) at 7.) There are also
11 genuine disputes of material fact on whether lethal force was
12 proportionate to the danger that Loynachan posed, or to the
13 severity of defendant's injuries, at least because no testimony
14 from Loynachan is available to counter defendant's testimony on
15 the precise nature and severity of Loynachan's assault or whether
16 he was in fact attempting to reach defendant's taser to disarm
17 her immediately before the shot.

18 "Credibility determinations, the weighing of the
19 evidence, and the drawing of legitimate inferences from the facts
20 are jury functions, not those of a judge, whether he is ruling on
21 a motion for summary judgment or for a directed verdict. The
22 evidence of the non-movant is to be believed, and all justifiable
23 inferences are to be drawn in his favor." Anderson v. Liberty
24 Lobby, Inc., 477 U.S. 242, 255 (1986) (citing Adickes v. S. H.
25 Kress & Co., 398 U.S. 144, 158-59 (1970)). Accordingly, in light
26 of the issues raised by Clark's report and the absence of
27 countervailing testimony from Loynachan, for purposes of ruling
28 on this motion the court is compelled to accept the inferences

1 opined in Clark's report and conclude therefrom that defendant
2 violated Loynachan's constitutional right to be free from
3 unreasonable seizure by fatally shooting him.

4 2. Clearly Established Right

5 Still, qualified immunity applies if the violated
6 constitutional right was not clearly established. "A right is
7 clearly established when it is 'sufficiently clear that every
8 reasonable official would have understood that what he is doing
9 violates that right.'" Rivas-Villegas v. Cortesluna, 595 U.S. 1,
10 5-6 (2021) (quoting Mullenix v. Luna, 577 U.S. 7, 11 (2015)).
11 When determining whether a right is clearly established, the
12 court may not "define clearly established law at a high level of
13 generality." Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018)
14 (quoting Ashcroft v. Al-Kidd, 563 U.S. 731, 742 (2011)). Rather,
15 "[t]his inquiry 'must be undertaken in light of the specific
16 context of the case, not as a broad general proposition.'" Rivas-Villegas,
17 595 U.S. at 5-6 (citation omitted); see White v.
18 Pauly, 580 U.S. 73, 79 (2017) ("[T]he clearly established law at
19 issue must be particularized to the facts of the case.").

20 Tailoring the court's inquiry closely to the specific
21 contours of the present record, the court defines the relevant
22 question thusly: Would a reasonable officer understand that it
23 was unlawful to use lethal force against a detainee when the
24 detainee is no longer resisting, but is instead in the process of
25 fleeing from the officer?

26 The balance of precedent suggests that the answer is
27 yes. See, e.g., Graham v. Connor, 490 U.S. 386, 394 (1989)
28 ("[T]he use of deadly force to apprehend a fleeing suspect who

1 did not appear to be armed or otherwise dangerous violated the
2 suspect's constitutional rights, notwithstanding the existence of
3 probable cause to arrest.") (citing Tennessee v. Garner, 471 U.S.
4 1, 5 (1985)); Foster v. City of Indio, 908 F.3d 1204, 1211 (9th
5 Cir. 2018) ("It is clearly established law that shooting a
6 fleeing suspect in the back violates the suspect's Fourth
7 Amendment rights."); Harris v. Roderick, 126 F.3d 1189, 1203 (9th
8 Cir. 1997) ("Graham's totality of the circumstances test does not
9 permit the use of deadly force to kill a suspect who is running
10 back to a cabin where he is temporarily staying"); Tan
11 Lam v. City of Los Banos, 976 F.3d 986, 1002-03 (9th Cir. 2020)
12 ("The law was also clearly established at the time of the
13 incident that firing a second shot at a person who had previously
14 been aggressive, but posed no threat to the officer at the time
15 of the second shot, would violate the victim's rights."); Curnow
16 By and Through Curnow v. Ridgecrest Police, 952 F.2d 321, 324-25
17 (9th Cir. 1991) (shooting suspect in the back who was armed with
18 a rifle but not facing the officer or pointing the rifle at the
19 officer at the time of the shot, was unreasonable and a violation
20 of a clearly established right).

21 Defendant cites no countervailing cases, either in
22 their motion or in reply, that suggest a different definition of
23 the clearly defined right, or a different conclusion under the
24 court's definition.

25 Permitting the inference, without so finding, that
26 Loynachan ceased his assault and was turning to flee in the
27 moments before defendant shot him, the case law establishes that
28 defendant had "fair warning" that using deadly force would

1 violate Loynachan's Fourth Amendment right. See Hope v. Pelzer,
2 536 U.S. 730, 741 (2002)

3 Accordingly, because defendant's entitlement to
4 qualified immunity ultimately turns on disputed issues of fact,
5 summary judgment is not presently appropriate for this claim.
6 See Liston v. Cty. of Riverside, 120 F.3d 965, 975 (9th Cir.
7 1997) ("While we have held that qualified immunity is to be
8 determined at the earliest possible point in the litigation, we
9 have also held that summary judgment in favor of moving
10 defendants is inappropriate where a genuine issue of material
11 fact prevents a determination of qualified immunity until after
12 trial on the merits.").

13
14 B. Failure to Provide Reasonable Post-Arrest Care and
Familial Loss Claims (Claims 2-3)

15 In their opposition, plaintiffs state that they "do not
16 oppose dismissal of their failure to provide medical care claim
17 or 14th Amendment familial loss claim." (Opp'n at 17 n.2.)
18 Plaintiffs also did not assert any arguments opposing summary
19 judgment on those claims. Accordingly, the court will grant
20 defendant's summary judgment motion as to Claims 2 and 3.

21 IT IS THEREFORE ORDERED that defendant's motion for
22 summary judgment (Docket No. 39) be, and the same hereby is,
23 DENIED as to Claim 1, and GRANTED as to Claims 2 and 3.

24 Dated: February 6, 2024



25 **WILLIAM B. SHUBB**
26 **UNITED STATES DISTRICT JUDGE**
27
28