

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 HOLLY RIGGS, E.R., and J.R.,

Case No.: 2:17-cv-02627-APG-VCF

4 Plaintiffs

**Order Granting Defendants’ Motion for  
Summary Judgment and Denying  
Plaintiffs’ Motion for Summary Judgment**

5 v.

6 NYE COUNTY, et al.,

[ECF Nos. 36, 38]

7 Defendants

8 Plaintiff Holly Riggs was arrested for child neglect after leaving her two minor children,  
9 plaintiffs E.R. and J.R., in a splash pool for a few minutes while she went inside her house. She  
10 sues Nye County and several Nye County Sheriff’s Office employees for various claims under  
11 federal and state law. She generally asserts that the defendants lacked probable cause to arrest  
12 her, disrupted familial relationships by arresting her while her daughter was in a perilous medical  
13 condition, and caused extreme emotional distress. Defendants Nye County, Sheriff Sharon  
14 Wehrly, Under Sheriff Brent Moody, Lieutenant Michael Eisenloffel, Sergeant Corey Fowles,  
15 and Deputy Richard Deutch move for summary judgment on all claims. The plaintiffs also move  
16 for summary judgment on all claims. I grant the defendants’ motion and deny the plaintiffs’  
17 motion.

18 **I. BACKGROUND**

19 This lawsuit arises out of an incident in September 2015 at Riggs’ home in Pahrump.  
20 ECF No. 37-4 at 5-6. Riggs and her two children, E.R. and J.R., went in their backyard to play  
21 in a splash pool. *Id.* at 7. At the time, E.R. was 18 months old and J.R. was just about to turn  
22 four years old. *Id.* at 8. Riggs went back inside the house for a few minutes to check on a cake  
23 she was baking. *Id.* at 7, 8. The children remained by the pool. *Id.* at 7. Riggs went into the

1 master bedroom and looked out the window to check on the children. *Id.* at 8. According to  
2 Riggs, she went to this particular window because it gave the best view to where the children  
3 were. *Id.*

4 When Riggs looked out the window, she saw her son holding her daughter in the splash  
5 pool. *Id.* E.R.'s arms were limp and her head was rolled back. *Id.* Riggs knocked on the window  
6 and J.R. dropped E.R. into the water. *Id.* E.R. was not moving. *Id.* Riggs ran outside and asked  
7 her son what happened, and he said he did not know. *Id.* Riggs carried E.R. into the house and  
8 called 911. *Id.* at 8-9. While waiting for paramedics to arrive, Riggs pushed on E.R.'s stomach  
9 and swept food and vomit out of E.R.'s mouth. *Id.* at 9. E.R. regained consciousness and started  
10 breathing just before paramedics arrived. *Id.*

11 In addition to the paramedics, Nye County Sheriff's Office personnel responded to the  
12 emergency call. ECF No. 37-2 at 5. First on the scene were Deputy James Brainard and Sergeant  
13 David Boruchowitz. *Id.* As they entered the home, they saw Riggs on the living room floor with  
14 her daughter. *Id.* at 6. While paramedics were attending to E.R., Boruchowitz spoke to J.R., who  
15 told him that Riggs was sleeping while the children were in the pool. *Id.* at 6. Boruchowitz  
16 notified Child Protective Services and Brainard notified the detective unit to follow up in case  
17 E.R.'s condition worsened. *Id.*

18 Paramedics transferred E.R. to Desert View Hospital. *Id.* at 6. At the hospital, Riggs  
19 filled out a voluntary statement. *Id.* at 10. Defendants Corey Fowles and Michael Eisenloffel,  
20 both Detectives, arrived at the hospital to conduct a child neglect investigation. ECF No. 37-3 at  
21 4-5. Fowles interviewed Riggs and she told him that she was baking a cake and heard the timer  
22 go off, so she left the children by the pool and went inside. *Id.* at 5. Riggs told Fowles that she  
23 was in the house up to three minutes. *Id.* at 22. Boruchowitz later told Fowles that J.R. had told

1 him that Riggs was sleeping. *Id.* at 6, 22. Boruchowitz also told Fowles that Riggs told the fire  
2 department personnel that she was doing dishes at the time of the incident. *Id.* at 7, 22. Fowles  
3 also spoke to the emergency room physician, who told him that E.R. had an inflamed trachea and  
4 lungs due to water inhalation. *Id.* at 8, 22.

5 Riggs' husband came to the hospital. ECF No. 37-4 at 13. He and Riggs arranged for  
6 some family friends to watch J.R. while they attended to E.R.'s situation. *Id.*

7 E.R.'s oxygen level was low and her heart rate was high, so medical personnel told Riggs  
8 they wanted to take E.R. by ambulance to a hospital in Las Vegas. *Id.* When E.R.'s condition  
9 worsened, medical personnel intubated her and decided to fly her to Las Vegas by helicopter. *Id.*

10 As Riggs and her husband were heading to the helicopter, Fowles and Eisenloffel  
11 questioned Riggs again. *Id.* at 14-15. After speaking with Riggs further, Eisenloffel decided to  
12 arrest her for child neglect. ECF Nos. 37-3 at 10; 37-8 at 8-9, 11. Fowles placed her into  
13 custody. ECF Nos. 37-3 at 11; ECF No. 37-4 at 15. Riggs' husband got on the helicopter and  
14 accompanied E.R. to the hospital in Las Vegas. ECF No. 37-4 at 16.

15 Riggs spent approximately nine hours in jail. *Id.* During that time, her father-in-law  
16 retrieved J.R. from the family friends and bailed Riggs out of jail. *Id.* The three of them then  
17 went to Las Vegas. *Id.* E.R. fully recovered from the incident. *Id.* at 20. The district attorney's  
18 office later declined to prosecute Riggs. ECF No. 37-8 at 11.

19 Based on these facts, the plaintiffs sue Nye County, Nye County Sheriff Sharon Wehrly,  
20 Under Sheriff Brent Moody, Eisenloffel, Fowles, and Deputy Richard Deutch.<sup>1</sup> The plaintiffs  
21 assert a federal claim under 42 U.S.C. § 1983, alleging that all of the defendants violated  
22 (1) Riggs' Fourth Amendment right to be free from an unreasonable seizure and (2) her and her  
23

---

<sup>1</sup> Brainard and Boruchowitz were defendants in this case but were dismissed. ECF Nos. 30; 31.

1 children’s Fourteenth Amendment rights to familial relationships.<sup>2</sup> They also assert against all  
2 defendants state law claims for malicious prosecution, false imprisonment and false arrest,  
3 intentional infliction of emotional distress, and civil conspiracy. Finally, they assert a negligent  
4 supervision and training claim against Wehrly and allege Nye County is vicariously liable for  
5 Wehrly’s negligence.

6 The defendants move for summary judgment on a variety of grounds, but mainly on the  
7 basis that the detectives had probable cause to arrest Riggs. They also assert they are entitled to  
8 qualified immunity for the federal claims and discretionary function immunity for the state law  
9 claims. The plaintiffs move for summary judgment as well, arguing the defendants lacked  
10 probable cause for the arrest, and the decision to arrest Riggs as her child was being airlifted to  
11 Las Vegas for medical treatment shocks the conscience.

## 12 **II. ANALYSIS**

13 Summary judgment is appropriate if the movant shows “there is no genuine dispute as to  
14 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.  
15 56(a), (c). A fact is material if it “might affect the outcome of the suit under the governing law.”  
16 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if “the evidence  
17 is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.*

18 The party seeking summary judgment bears the initial burden of informing the court of  
19 the basis for its motion and identifying those portions of the record that demonstrate the absence  
20 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The

---

21  
22 <sup>2</sup> The complaint also mentions the Fifth and Eighth Amendments, but those do not apply to the  
23 facts alleged here. *See Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008) (stating “the  
Fifth Amendment’s due process clause only applies to the federal government”); *Lee v. City of  
Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001) (“The Eighth Amendment’s prohibition of ‘cruel  
and unusual punishments applies only after conviction and sentence.” (quotation omitted)).

1 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a  
2 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531  
3 (9th Cir. 2000); *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018) (“To defeat  
4 summary judgment, the nonmoving party must produce evidence of a genuine dispute of material  
5 fact that could satisfy its burden at trial.”). I view the evidence and reasonable inferences in the  
6 light most favorable to the non-moving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523  
7 F.3d 915, 920 (9th Cir. 2008).

#### 8 **A. Defendants Moody and Deutch**

9 Defendants Moody and Deutch move for judgment on the ground that there is no  
10 evidence they participated in the events at issue. The plaintiffs do not respond to this argument  
11 nor is there any evidence before me that even mentions these two defendants. I therefore grant  
12 their motion as to all claims.

#### 13 **B. 42 U.S.C. § 1983**

14 To establish liability under § 1983, a plaintiff must show the violation of a right secured  
15 by the Constitution and laws of the United States and must show that the deprivation was  
16 committed by a person acting under color of state law. *Broam v. Bogan*, 320 F.3d 1023, 1028  
17 (9th Cir. 2003). The defendants do not contest that they acted under color of law. Thus, the  
18 dispute centers on whether the defendants violated the plaintiffs’ constitutional rights. The  
19 parties also dispute whether the defendants are entitled to qualified immunity.

##### 20 1. Fourth Amendment

21 Riggs alleges that the defendants lacked probable cause to arrest her and so her arrest and  
22 subsequent detention amount to an unreasonable seizure under the Fourth Amendment. “The  
23 Fourth Amendment requires police officers to have probable cause before making a warrantless

1 arrest.” *Ramirez v. City of Buena Park*, 560 F.3d 1012, 1023 (9th Cir. 2009). “Probable cause  
2 exists when, under the totality of the circumstances known to the arresting officers (or within the  
3 knowledge of the other officers at the scene), a prudent person would believe the suspect had  
4 committed a crime.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 471 (9th Cir. 2007).  
5 “[P]robable cause means ‘fair probability,’ not certainty or even a preponderance of the  
6 evidence.” *United States v. Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006) (en banc). It “requires  
7 only a probability or substantial chance of criminal activity, not an actual showing of such  
8 activity.” *United States v. Tan Duc Nguyen*, 673 F.3d 1259, 1264 (9th Cir. 2012) (quoting *New*  
9 *York v. P.J. Video, Inc.*, 475 U.S. 868, 877-78 (1986)). The inquiry is based on the “facts known  
10 to the arresting officer at the time of the arrest.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004).  
11 This may include objectively reasonable information provided by other law enforcement  
12 personnel. *Green v. City & Cty. of S.F.*, 751 F.3d 1039, 1045 (9th Cir. 2014). The inquiry is  
13 objective. *Devenpeck*, 543 U.S. at 153 (“Our cases make clear that an arresting officer’s state of  
14 mind (except for the facts that he knows) is irrelevant to the existence of probable cause.”).  
15 Thus, the officer’s subjective belief about whether or not probable cause existed is irrelevant.  
16 *Ewing v. City of Stockton*, 588 F.3d 1218, 1231 n.20 (9th Cir. 2009) (stating that the officer  
17 “expressed doubt as to the existence of probable cause, but his subjective beliefs are irrelevant;  
18 the standard is objective”).

19         In civil cases, the existence of probable cause generally is a fact question for the jury.  
20 *Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994). However, if there is no genuine  
21 issue of fact even when viewing the evidence in the light most favorable to the nonmoving party,  
22 then “summary judgment is appropriate if no reasonable jury could find an absence of probable  
23 cause under the facts.” *Id.*

1 Even viewing the facts in the light most favorable to the plaintiffs, no reasonable jury  
2 could find the detectives lacked probable cause for the arrest. Riggs told the officers she left her  
3 18-month-old and four-year-old children unsupervised at a splash pool while she went inside the  
4 house, and during that time E.R. suffered serious injury from water inhalation. Nevada Revised  
5 Statutes § 200.508(2) makes it a crime for a “person who is responsible for the safety or welfare  
6 of a child” to “permit[] or allow[] that child to suffer unjustifiable physical pain or mental  
7 suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer  
8 physical pain or mental suffering as the result of abuse or neglect.”<sup>3</sup> A reasonable officer could  
9 have concluded he had probable cause to arrest Riggs for child neglect. The defendants were at  
10 worst reasonably mistaken about whether probable cause supported the arrest, and thus would be  
11 entitled to qualified immunity. *See Rodis v. City, Cty. of San Francisco*, 558 F.3d 964, 971 (9th  
12 Cir. 2009). Consequently, I grant the defendants’ motion and deny the plaintiffs’ motion on the  
13 Fourth Amendment claim.

## 14 2. Fourteenth Amendment

15 The plaintiffs allege the arresting officers engaged in conscience-shocking behavior in  
16 violation of the plaintiffs’ Fourteenth Amendment rights to familial relationships because the  
17 detectives arrested Riggs as she was about to accompany E.R. on the helicopter while E.R. was  
18 in medical distress. The defendants are entitled to qualified immunity on this claim because the  
19

---

20 <sup>3</sup> *See also* Nev. Rev. Stat. § 200.508(4)(a) (defining abuse or neglect as, among other things,  
21 “negligent treatment . . . of a child under the age of 18 years, as set forth in paragraph (d) and  
22 NRS . . . 432B.140 . . . under circumstances which indicate that the child’s health or welfare is  
23 harmed or threatened with harm”); Nev. Rev. Stat. § 432B.140 (“Negligent treatment . . . of a  
child occurs if a child . . . is without proper care, control or supervision . . . because of the faults  
or habits of the person responsible for the welfare of the child or the neglect or refusal of the  
person to provide them when able to do so”).

1 plaintiffs do not identify any clearly established law that would have put the defendants on notice  
2 that their conduct was unlawful.

3       Qualified immunity protects “all but the plainly incompetent or those who knowingly  
4 violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986). In ruling on a qualified immunity  
5 defense, I make a two-pronged inquiry into whether (1) the defendant violated the plaintiff’s  
6 constitutional right and (2) whether that right was clearly established. *Sorrels v. McKee*, 290 F.3d  
7 965, 969 (9th Cir. 2002). I may consider these two prongs in any order. *Pearson v. Callahan*,  
8 555 U.S. 223, 236 (2009).

9       I view the facts in the light most favorable to the party asserting the injury and consider  
10 whether the facts show the defendant’s conduct violated a constitutional right. *Sorrels*, 290 F.3d  
11 at 969. If the plaintiff makes this showing, I also determine whether that right was clearly  
12 established. *Id.* A right is clearly established if “it would be clear to a reasonable officer that his  
13 conduct was unlawful in the situation he confronted.” *Wilkins v. City of Oakland*, 350 F.3d 949,  
14 954 (9th Cir. 2003) (emphasis omitted) (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)). I  
15 make this inquiry “in light of the specific context of the case, not as a broad general proposition.”  
16 *Saucier*, 533 U.S. at 200. An officer will be entitled to qualified immunity even if he was  
17 mistaken in his belief that his conduct was lawful, so long as that belief was reasonable. *Wilkins*,  
18 350 F.3d at 955.

19       The plaintiff bears the burden of showing that the right at issue was clearly established.  
20 *Sorrels*, 290 F.3d at 969. But a plaintiff need not establish that a court previously declared the  
21 defendant’s behavior unconstitutional if it would be clear from prior precedent that the conduct  
22 was unlawful. *Blueford v. Prunty*, 108 F.3d 251, 254 (9th Cir. 1997). Additionally, a plaintiff  
23 may meet his burden on the clearly established prong by showing the defendant’s conduct was



1 “such a far cry from what any reasonable . . . official could have believed was legal that the  
2 defendants knew or should have known they were breaking the law.” *Sorreles*, 290 F.3d at 971.

3 Even assuming a parent has a right not to be arrested while her child is in medical peril  
4 where a later arrest would have sufficed to protect the public, the plaintiffs fail to meet their  
5 burden of showing such a right was clearly established. The plaintiffs cite *White v. Rochford*,  
6 592 F.2d 381 (7th Cir. 1979), but that case is not on point. There, three minor children were  
7 riding in a car with their uncle when the police stopped and arrested the uncle. *White*, 592 F.2d at  
8 382. “Although the uncle pleaded with the officers to take the children to the police station or  
9 phone booth so that they could contact their parents, the defendant officers refused to provide  
10 any such aid.” *Id.* “Instead, they left all three children in an abandoned automobile on the side of  
11 the road,” where the children were exposed to cold and forced to “cross eight lanes of traffic and  
12 wander on the freeway at night in search of a telephone.” *Id.* The Seventh Circuit held this  
13 conduct shocked the conscience. *Id.* at 385-86.

14 Here, E.R.’s medical condition was serious, but she was not left to fend for herself. She  
15 was in the care of medical personnel and her father accompanied her on the helicopter flight to  
16 the Las Vegas hospital. J.R. was with family friends and then with his grandfather.

17 The plaintiffs do not cite any other cases that would have put these officers on notice that  
18 their conduct was unlawful under the circumstances. They therefore have not met their burden  
19 of showing the alleged right at issue was clearly established. Because the officers are entitled to  
20 qualified immunity, I grant the defendants’ motion and deny the plaintiffs’ motion as to this  
21 claim.

22 ////

23 ////

1           **B. State Law Claims**

2                   1. Malicious Prosecution, False Imprisonment, and False Arrest

3           The plaintiffs’ claims for malicious prosecution, false imprisonment, and false arrest each  
4 require as an element a lack of probable cause. *See LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev.  
5 2002) (malicious prosecution); *Marschall v. City of Carson*, 464 P.2d 494, 497 (Nev. 1970)  
6 (stating that where false imprisonment is based on a false arrest, there must be a lack of legal  
7 cause or justification); Nev. Rev. Stat. § 171.123(1) (“Any peace officer may detain any person  
8 whom the officer encounters under circumstances which reasonably indicate that the person has  
9 committed, is committing or is about to commit a crime.”). As discussed above, the defendants  
10 had probable cause to arrest Riggs, so these claims fail as a matter of law.

11           Moreover, the defendants would be entitled to discretionary immunity under Nevada law  
12 for the arrest and subsequent detention because the decisions to arrest and detain Riggs were  
13 discretionary and based on policy considerations of enforcing the criminal laws. *See Gonzalez v.*  
14 *Las Vegas Metro. Police Dep’t*, No. 61120, 2013 WL 7158415, at \*2-3 (Nev. Nov. 21, 2013)  
15 (holding that an officer’s decision to arrest based on a matched description in a facially valid  
16 warrant was entitled to discretionary immunity); *Martinez v. Maruszczak*, 168 P.3d 720, 729  
17 (Nev. 2007) (en banc) (holding that discretionary immunity applies if the officer’s decision “(1)  
18 involve[d] an element of individual judgment or choice and (2) [was] based on considerations of  
19 social, economic, or political policy”). I therefore grant the defendants’ motion and deny the  
20 plaintiffs’ motion as to the malicious prosecution, false imprisonment, and false arrest claims.

21                   2. Civil Conspiracy

22           “The elements of civil conspiracy are: (a) a combination of two or more persons; (b) who,  
23 by some concerted action; (c) intend to accomplish some unlawful objective; (d) for the purpose

1 of harming others; (e) which results in damage.” *Collins v. Union Fed. Savings & Loan Ass’n*,  
2 662 P.2d 610, 622 (Nev. 1983). The plaintiffs have not pointed to evidence in the record that the  
3 defendants intended to accomplish some unlawful objective for the purpose of harming Riggs or  
4 her children. I therefore grant the defendants’ motion and deny the plaintiffs’ motion as to the  
5 civil conspiracy claim.

### 6 3. Intentional Infliction of Emotional Distress

7 Under Nevada law, an intentional infliction of emotional distress (IIED) claim requires  
8 three elements: “(1) extreme and outrageous conduct with either the intention of, or reckless  
9 disregard for, causing emotional distress, (2) the plaintiff’s having suffered severe or extreme  
10 emotional distress and (3) actual or proximate causation.” *Dillard Dep’t Stores, Inc. v. Beckwith*,  
11 989 P.2d 882, 886 (Nev. 1999) (en banc). “[E]xtreme and outrageous conduct is that which is  
12 outside all possible bounds of decency and is regarded as utterly intolerable in a civilized  
13 community.” *Maduikie v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998) (quotation omitted).  
14 However, “persons must necessarily be expected and required to be hardened to occasional acts  
15 that are definitely inconsiderate and unkind.” *Id.* (omission and quotation omitted); *see also*  
16 Restatement (Second) of Torts § 46 cmt. d (“The liability clearly does not extend to mere insults,  
17 indignities, threats, annoyances, petty oppressions, or other trivialities.”).

18 The Supreme Court of Nevada has referred to the Restatement (Second) of Torts § 46 as  
19 relevant authority for IIED claims under Nevada law. *See, e.g., Olivero v. Lowe*, 995 P.2d 1023,  
20 1027 (Nev. 2000); *Selsnick v. Horton*, 620 P.2d 1256, 1257 (Nev. 1980). A police officer’s  
21 conduct may rise to the level of extreme and outrageous when he engages in an “extreme abuse”  
22 of his position. Restatement (Second) of Torts § 46, cmts. The comments to the Restatement  
23 offer examples of when a police officer’s conduct may be so outrageous as to support an IIED

1 claim, such as where the officer attempts to extort money by a threat of arrest or attempts to  
2 extort a confession by falsely telling the accused her child has been injured in an accident and  
3 she cannot go to the hospital until she confesses. “The Court determines whether the defendant’s  
4 conduct may be regarded as extreme and outrageous so as to permit recovery, but, where  
5 reasonable people may differ, the jury determines whether the conduct was extreme and  
6 outrageous enough to result in liability.” *Cehade Refai v. Lazaro*, 614 F. Supp. 2d 1103, 1121  
7 (D. Nev. 2009).

8         The defendants’ conduct here was not extreme and outrageous as a matter of law. The  
9 detectives had probable cause to arrest Riggs for child neglect. Even considering the decision to  
10 arrest her as she was heading to the helicopter, the defendants’ behavior does not rise to the level  
11 of an extreme abuse of power sufficient to support an IIED claim. I therefore grant the  
12 defendants’ motion and deny the plaintiffs’ motion as to this claim.

#### 13                 4. Negligent Supervision and Training

14         The plaintiffs allege Sheriff Wehrly failed to properly train and supervise the other  
15 defendants. They also contend Nye County is vicariously liable for Wehrly’s negligence.

16         Nevada Revised Statutes § 41.032 sets forth exceptions to Nevada’s general waiver of  
17 sovereign immunity. Pursuant to § 41.032(2), no action may be brought against a state officer or  
18 employee or any state agency or political subdivision that is “[b]ased upon the exercise or  
19 performance or the failure to exercise or perform a discretionary function or duty on the part of  
20 the State or any of its agencies or political subdivisions or of any officer, employee or immune  
21 contractor of any of these, whether or not the discretion involved is abused.”

22         Nevada looks to federal decisional law on the Federal Tort Claims Act for guidance on  
23 what type of conduct discretionary immunity protects. *Martinez*, 168 P.3d at 729. The United

1 States Court of Appeals for the Ninth Circuit and other circuits have held that “decisions relating  
2 to the hiring, training, and supervision of employees usually involve policy judgments of the type  
3 Congress intended the discretionary function exception to shield.” *Vickers v. United States*, 228  
4 F.3d 944, 950 (9th Cir. 2000) (citing cases). Because Nevada looks to federal case law to  
5 determine the scope of discretionary immunity, and because federal case law consistently holds  
6 training and supervision are acts entitled to such immunity, Wehrly is entitled to discretionary  
7 immunity on this claim. Moreover, the plaintiffs do not point to any evidence about what  
8 training Wehrly provided and they do not explain why that training was deficient or how that  
9 deficiency caused a constitutional violation in this case. Because the plaintiffs have not raised a  
10 genuine dispute about Wehrly’s alleged negligence, Nye County is also entitled to judgment as a  
11 matter of law on the plaintiffs’ vicarious liability theory. I therefore grant the defendants’  
12 motion and deny the plaintiffs’ motion on this claim.

13 **III. CONCLUSION**

14 IT IS THEREFORE ORDERED that the plaintiffs’ motion for summary judgment (**ECF**  
15 **No. 38**) is **DENIED**.

16 IT IS FURTHER ORDERED that the defendants’ motion for summary judgment (**ECF**  
17 **No. 36**) is **GRANTED**. The clerk of court is instructed to enter judgment in favor of defendants  
18 Nye County, Sheriff Sharon Wehrly, Under Sheriff Brent Moody, Lieutenant Michael  
19 Eisenloffel, Sergeant Corey Fowles, and Deputy Richard Deutch and against plaintiffs Holly  
20 Riggs, E.R., and J.R.

21 DATED this 21st day of March, 2019.

22  
23

  
\_\_\_\_\_  
ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE