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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

John Andreaccio,

Plaintiff

v.

Joshua Weaver and Allen Lynn,

Defendants

Case No.: 2:22-cv-00672-JAD-NJK

**Order Granting Defendants' Motion for
Summary Judgment and Closing Case**

[ECF No. 23]

Pro se plaintiff John Andreaccio sues Nye County police officer Joshua Weaver and police lieutenant Allen Lynn for violating his federal constitutional rights when Weaver pulled over Andreaccio for driving an unregistered vehicle on a highway and impounded his car. Andreaccio mainly theorizes that traffic, driver-licensing, and vehicle-registration laws don't apply to him because they regulate commercial activity only, and he was travelling for pleasure in a private capacity. The defendants move for summary judgment, arguing that Weaver had reasonable suspicion to stop Andreaccio because his vehicle had no visible license plates, that Weaver had probable cause to arrest Andreaccio for refusing to identify himself, and that Andreaccio has no evidence to support his other causes of action. Because Lynn's purely supervisory role does not subject him to § 1983 liability, Andreaccio cannot support his official-capacity claims against either Lynn or Weaver, and Weaver has shown his entitlement to summary judgment on Andreaccio's remaining claims against him based either on a lack of support in the record or qualified immunity, I grant the defendants' motion and close this case.

Background¹

On April 25, 2021, John Andreaccio took a day trip from Pahrump to Beatty, Nevada, with his wife and daughter.² While returning to Pahrump that afternoon, Andreaccio noticed that Nye County police deputy Joshua Weaver began following his car for about three miles before pulling him over.³ Andreaccio's vehicle had no license plates nor notices of registration displayed.⁴ Weaver requested Andreaccio's driver's license and registration, and Andreaccio began a lengthy back-and-forth with the officer, arguing that he was not subject to such requirements because he was "traveling for pleasure in a private capacity" and was thus not "in commerce"—and traffic laws only apply to those "in commerce."⁵

At multiple times throughout the stop, Weaver made requests for Andreaccio to fully identify himself, but Andreaccio refused to do so.⁶ So Weaver arrested Andreaccio for obstruction and handcuffed him.⁷ After about 20 minutes, Weaver obtained an Arizona driver's

¹ Andreaccio objects to the defendants' "Statement of Undisputed Facts," ECF No. 23 at 3–9, arguing that "the fact that the [d]efendants claim to know anything about the [p]laintiff is absurd. The commentary . . . is certainly disputable but irrelevant to the matter at hand." ECF No. 26 at 14. But a fact is disputed for purposes of Rule 56 only if "sufficient evidence supporting the claimed factual dispute" is identified "to require a jury or judge to resolve the parties' differing versions of the truth at trial." *Brit. Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) (quoting *First Nat'l. Bank v. Cities Serv. Co.*, 391 U.S. 253, 288–90 (1968)). Merely saying "objection" and observing that the facts are disputable does not create a genuine issue of disputed fact. Thus, the facts identified in this section are those supported by the record, which consists mainly of Andreaccio's deposition testimony and the objectively verifiable events depicted on the recording from Weaver's body-worn camera during the stop, at ECF No. 23-1 and ECF No. 23-5, respectively.

² ECF No. 1 at 6; ECF No. 23-1 at 6, 11, 35–36.

³ ECF No. 23-1 at 39.

⁴ *Id.* at 7.

⁵ ECF No. 1 at 3; ECF No. 23-1 at 32–34.

⁶ ECF No. 23-1 at 28–29.

⁷ ECF No. 23-5 (Weaver's body-camera footage) at 14:02:20. Andreaccio notes that "the audio/video file evidence entered into the record . . . starts with an edit" because it is missing the

1 license from Andreaccio’s pocket and released him from the handcuffs.⁸ Weaver then shifted his
2 inquiry to whether Andreaccio had proof of insurance for his vehicle, and Andreaccio claimed
3 that his proof of insurance could only be accessed on his cellphone but that there was no cell
4 service in the area.⁹

5 Because Andreaccio’s car was unregistered and he could not provide proof of insurance,
6 Weaver issued citations and requested a tow for Andreaccio’s car.¹⁰ Throughout the traffic stop,
7 Weaver placed multiple radio calls, providing updates on the situation.¹¹ The record does not
8 reflect who the recipient of those calls was. On the call following the tow request, Weaver
9 explained why he was impounding the car, stating “I don’t feel comfortable letting [Andreaccio]
10 get back in his car unregistered, uninsured, driving down the highway.”¹² Afterwards, Weaver
11 offered Andreaccio and his family a lift back to Beatty, but Andreaccio refused it because he did
12 not want “to validate [Weaver] in any way.”¹³

13 So Andreaccio and his family walked along the highway back to Beatty, where he placed
14 two calls: one to a friend to give him a ride back to Pahrump and the other to the Nye County
15 Sheriff’s Office. The latter call was answered by lieutenant Allen Lynn, the alleged supervisor
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19 first part of the traffic stop. ECF No. 26 at 3. But he also states that “it is not [his] intent to
20 challenge the validity of the entire file,” so I take the footage as authentic as confirmed by both
21 parties.

22 ⁸ ECF No. 23-5 at 14:17:00–21:34.

23 ⁹ ECF No. 23-1 at 20; ECF No. 23-5 at 14:29:30.

¹⁰ ECF No. 23-5 at 14:24:32; 14:33:13.

¹¹ *See, e.g., id.* at 13:57:00, 14:23:20.

¹² *Id.* at 14:58:35.

¹³ ECF No. 23-1 at 47–49.

1 on duty, who informed Andreaccio that he would need to contact the private tow company to
2 retrieve his vehicle.¹⁴ Andreaccio paid \$1,014.18 in impound and towing fees the next day.¹⁵

3 Andreaccio filed this suit against Weaver and Lynn in their individual and official
4 capacities for violating his Fourth, Fifth, Eighth, and Fourteenth Amendment rights.¹⁶ The
5 defendants now move for summary judgment on all claims, contending that the record does not
6 support a violation of any constitutional right and that, even if there were violations, the
7 defendants are shielded from this suit by qualified immunity.¹⁷ Andreaccio opposes that motion,
8 leaning heavily on what he perceives as his unfettered, constitutional right to travel.

9 Analysis

10 **I. The defendants must show that the record presents no genuine dispute of material** 11 **fact and that they are entitled to judgment as a matter of law to prevail on summary** 12 **judgment.**

13 The principal purpose of the summary-judgment procedure is to isolate and dispose of
14 factually unsupported claims or defenses.¹⁸ The moving party bears the initial responsibility of
15 presenting the basis for its motion and identifying the portions of the record or affidavits that
16 demonstrate the absence of a genuine issue of material fact.¹⁹ If the moving party satisfies his
17 burden with a properly supported motion, the burden then shifts to the opposing party to present
18 specific facts that show a genuine issue for trial.²⁰ A defendant moving for summary judgment

19 ¹⁴ ECF No. 1 at 3–4; ECF No. 23-1 at 43–45.

20 ¹⁵ ECF No. 23-1 at 51–52.

21 ¹⁶ ECF No. 1.

22 ¹⁷ ECF No. 23.

23 ¹⁸ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

¹⁹ *Celotex*, 477 U.S. at 323; *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (en banc).

²⁰ Fed. R. Civ. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Auvil v. CBS 60 Minutes*, 67 F.3d 816, 819 (9th Cir. 1995).

1 doesn't have to produce evidence to negate the plaintiff's claim; he merely has to point out the
2 evidence that shows an absence of a genuine material factual issue.²¹ The defendant need only
3 defeat one element of a claim to garner summary judgment on it because "a complete failure of
4 proof concerning an essential element of [a plaintiff's claim] necessarily renders all other facts
5 immaterial."²²

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7 **II. Andreaccio's claims against Lynn fail as a matter of law because a supervisory
8 position alone does not support § 1983 liability.**

8 Andreaccio contends that Lynn is liable in his supervisory capacity under § 1983 for
9 Weaver's violations of his constitutional rights. He theorizes that, because Lynn "denied any
10 assistance" and "refused to right the wrongs of his subordinate,"²³ Lynn was acting "in concert
11 and complacent with" Weaver's actions and refused to properly exercise the authority he
12 possessed as "the Sherriff's Supervisor-on-Duty" to stop the towing of his car.²⁴ Both parties
13 appear to agree that Lynn's personal participation in the traffic stop was limited to this post-stop,
14 post-impound phone call.

15 A defendant is liable under § 1983 "only upon a showing of [his] personal
16 participation."²⁵ So, for a supervisor to be held liable for the constitutional violations of his
17 subordinates, the supervisor must have "participated in or directed the violations, or knew of the
18 violations and failed to act to prevent them."²⁶ Thus, for Lynn to be accountable to Andreaccio

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20 ²¹ See, e.g., *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 885 (1990); *Celotex*, 477 U.S. at 323–
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21 ²² *Celotex*, 477 U.S. at 322.

22 ²³ ECF No. 1 at 4.

23 ²⁴ *Id.* at 6–7.

²⁵ *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

²⁶ *Id.*

1 under § 1983 here, Andreaccio must show that Lynn directed the conduct at issue or knew about
2 Weaver’s violations and failed to act to prevent them.²⁷ He “must go beyond the pleadings and
3 by [his] own evidence set forth specific facts showing that there is a genuine issue for trial”²⁸ by
4 “identify[ing] with reasonable particularity the evidence that precludes summary judgment.”²⁹

5 Andreaccio argues that Lynn is responsible for “that which occurs on his shift” and points
6 to the “audio/video in record” as evidence that Weaver was “not acting alone.”³⁰ But there is no
7 evidence in the record that Lynn was directing Weaver’s actions. The record is devoid of
8 evidence that Lynn was the recipient of Weaver’s radio transmissions during the traffic stop.
9 Plus, the body-camera footage of those calls shows that Weaver used phrases such as “just gonna
10 let you know”³¹ and “just giving you a heads up,”³² which is informative language, and nothing
11 in those exchanges suggests that Weaver’s actions were being directed by a supervisor.³³

12 Andreaccio thus cannot show that Lynn was directing Weaver’s actions during the traffic stop or
13 that Lynn had knowledge of Weaver’s actions before Andreaccio called him and could have—
14 but failed to—prevent them. Because Andreaccio identifies no evidence that Lynn personally
15 participated in, directed, or knew of and failed to prevent the constitutional violations that

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19 ²⁷ *Id.*

20 ²⁸ *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 997 (9th Cir. 2001) (quotations omitted) (quoting
21 Fed. R. Civ. P. 56(e)).

22 ²⁹ *Keenan v. Allan*, 91 F.3d 1275 (9th Cir. 1996).

23 ³⁰ ECF No. 26 at 25.

³¹ *Id.* at 13:57:02.

³² *Id.* at 13:58:16.

³³ *See, e.g.*, ECF No. 23-5 at 13:57:00, 14:23:20.

1 Andreaccio alleges, Lynn is entitled to summary judgment in his favor on all claims against him
2 in his individual capacity.³⁴

3
4 **III. The record does not support any official-capacity liability for Andreaccio’s
constitutional claims.**

5 Although Andreaccio asserts several of his claims against Weaver and Lynn in their
6 official capacities,³⁵ the law recognizes that such claims are actually “against the governmental
7 entity itself.”³⁶ So I construe Andreaccio’s official-capacity claims against Lynn and Weaver as
8 municipal-liability ones. The United States Supreme Court held in *Monell v. Department of*
9 *Social Services of the City of New York* that a municipal entity like Nye County can be held
10 liable for the constitutional violations of its officers (and officers can be held liable in their
11 official capacities) only if the plaintiff can show that the violations occurred because the officer
12 was carrying out a municipal policy or custom that caused the constitutional injury.³⁷ “A policy
13 can be one of action or inaction.”³⁸ For instance, “a local government’s decision not to train
14 certain employees about their legal duty to avoid violating citizens’ rights may rise to the level of
15 an official government policy for purposes of § 1983.”³⁹

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17 ³⁴ Even if the record could support such findings, no § 1983 liability could for Lynn because the
18 acts of Weaver are either not constitutional violations, *see infra* at pp. 8–22, or shielded by
qualified immunity. *See infra* at pp. 22–27.

19 ³⁵ ECF No. 1 at 5.

20 ³⁶ *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690 n.55 (1978); *see also*
21 *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“As long as the government entity receives
notice and an opportunity to respond, an official-capacity suit is, in all respects other than name,
to be treated as a suit against the entity.”).

22 ³⁷ *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006) (citing *Monell*, 436 U.S. at
690).

23 ³⁸ *Id.* (citing *Canton v. Harris*, 489 U.S. 378, 388 (1989)).

³⁹ *Connick v. Thompson*, 563 U.S. 51, 61 (2011).

1 Andreaccio contends that the county failed to act to correct Weaver’s constitutional
2 violations when “multiple requests for a supervisor were made, only to be told there was no
3 supervisor on duty at the time.”⁴⁰ But Andreaccio points to no policy or custom underlying this
4 claim against the county. And even if this single-day incident were a constitutional violation, the
5 Supreme Court held in *City of Oklahoma City v. Tuttle* that “proof of a single incident of
6 unconstitutional activity is not sufficient to impose liability under *Monell*[;] . . . the existence of
7 the unconstitutional policy, and its origin, must be separately proved.”⁴¹ Andreaccio thus cannot
8 prevail on his official-capacity claims against Lynn or Weaver, so I grant summary judgment on
9 these claims in favor of the defendants.

10 **IV. The record does not support any claim against Weaver in his individual capacity.**

11 Having resolved Andreaccio’s claims against Lynn and his official-capacity claims
12 against Weaver, I turn to the remaining claims against Weaver in his individual capacity.
13 Andreaccio theorizes that Weaver violated his Fifth and Fourteenth Amendment due-process
14 rights when Weaver conducted “an investigation” into him without “a complainant” and then
15 impounded his car.⁴² He claims that Weaver violated his Fourth Amendment rights by
16 “accost[ing] and inquir[ing] the identity of” Andreaccio in his “private status” during the traffic
17 stop.⁴³ He also alleges that his Eighth Amendment rights were violated when he had to pay
18 “unjust fines” to retrieve his car from the impound lot and had his medical conditions

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21 ⁴⁰ ECF No. 26 at 29.

22 ⁴¹ *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985); but see *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) (holding that “a municipality may be liable under § 1983 for a single decision by its properly constituted legislative body” (emphasis added)).

23 ⁴² ECF No. 1 at 7.

⁴³ *Id.* at 8.

1 exacerbated as a result of the experience.⁴⁴ Weaver responds that none of these facts rises to a
2 constitutional violation and, regardless, he is shielded from liability by the doctrine of qualified
3 immunity.⁴⁵

4 **A. Andreaccio’s right-to-travel theory is frivolous.**

5 Undergirding all of Andreaccio’s traffic-stop-related claims against Weaver is his belief
6 that the state’s licensing and registration requirements for vehicles and drivers don’t apply to
7 him. Based on that view, Andreaccio takes issue with the very idea that this case involved a
8 “traffic stop.”⁴⁶ He contends that he was not “in traffic” because of his “overt avoidance of
9 creating a vehicle, avoiding the use of license and other marking that may give the inference of a
10 vehicle in commerce, supported by the People[’]s repeated, expressed proclamation of a private
11 capacity; ‘not-in-commerce,’ and most importantly, remaining in the grace of God.”⁴⁷ He insists
12 that “this Plaintiff has clearly taken the necessary precautions not to appear as an actor in
13 traffic.”⁴⁸ And he wasn’t “a driver” under the law because he essentially opted out of highway
14 laws by “not designat[ing] by registration with the state and adorning license plates for a
15 designated use.”⁴⁹ This, he suggests, is his constitutional right to free travel.⁵⁰

19 ⁴⁴ *Id.* at 8–9.

20 ⁴⁵ ECF No. 23 at 3.

21 ⁴⁶ ECF No. 26 at 6.

22 ⁴⁷ *Id.*

22 ⁴⁸ *Id.*

23 ⁴⁹ *Id.*

⁵⁰ *Id.* at 29.

1 This misguided theory is just one iteration of the “sovereign citizen” ideology⁵¹—an
2 ideology that the Ninth Circuit has deemed frivolous and “entirely without merit.”⁵² Those
3 attempting to exempt themselves from governmental rules, regulations, and licensing or
4 permitting requirements by subscribing to this philosophy “believe they are not required to have
5 driver’s licenses, license plates, [or] vehicle registration”⁵³ They “place special emphasis
6 on the words being used. They differentiate between a driver and a traveler; an automobile and a
7 motor vehicle; commercial and non-commercial; and public versus private conveyances.”⁵⁴
8 They rely on isolated definitions from Black’s Law Dictionary.⁵⁵ And though Andreaccio insists
9 that he is not a sovereign citizen,⁵⁶ he does all of this in his complaint and his summary-
10 judgment brief.⁵⁷

11 Andreaccio’s right-to-travel theory lacks a true basis in the law and is patently
12 frivolous—as every court to confront it has held.⁵⁸ Although there is a constitutional right to
13 travel, that right is not unfettered, and it does not include the right to drive a motor vehicle on
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15 ⁵¹ See *Bey v. Elmwood Place Police Dep’t*, 2018 WL 4354541 at *1 (6th Cir. May 18, 2018)
16 (describing similar right-to-travel argument as one “rooted in the theories of the sovereign citizen
movement”).

17 ⁵² *United States v. Marks*, 530 F.3d 799, 811 (9th Cir. 2008).

18 ⁵³ Caesar Kalinowski IV, *A Legal Response to the Sovereign Citizen Movement*, 80 Mont. L.
Rev. 153, 167 (2019).

19 ⁵⁴ *Id.* at 167–68.

20 ⁵⁵ *Id.* at 169.

21 ⁵⁶ ECF No. 23-1 at 46.

22 ⁵⁷ See generally ECF Nos. 1, 26.

23 ⁵⁸ See, e.g., *Berry v. City of St. Louis*, 2021 WL 4191612 at *5 (E.D. Mo., Sept. 15, 2021)
(collecting cases); see also *Augmon v. Pennsylvania*, 2022 WL 16966723 at *3 (W.D. Pa. Oct.
25, 2022) (rejecting right-to-travel theory and concluding that “merely because [p]laintiff’s
vehicle was stopped and towed (because he did not have proper registration) does not mean that
his constitutional right to travel was impeded”).

1 public roads free from state-government requirements for licensing and registration.⁵⁹ To
2 borrow from the Ninth Circuit’s opinion in *Miller v. Reed*, “burdens on a single mode of
3 transportation do not implicate the right to interstate travel. . . . What is at issue here is not
4 [Andreaccio’s] right to travel interstate, but his right to operate a motor vehicle on the highways,
5 and we have no hesitation in holding that this is not a fundamental right” because there is no
6 “fundamental right to drive a motor vehicle.”⁶⁰ And the United States Supreme Court has made
7 it clear that states can condition the privilege to drive on public roads on compliance with
8 licensing and registration requirements.⁶¹ So, to the extent that Andreaccio’s claims are
9 grounded in a violation of the constitutional right to travel or his belief that he doesn’t need a
10 license or registration to drive on public roads, they fail as a matter of law.

15 ⁵⁹ *Winsley v. Cook Cnty.*, 563 F.3d 598, 604 (7th Cir. 2009) (noting that “no one has a right to
16 drive; driving on public highways is a privilege subject to revocation for a number of reasons”).

17 ⁶⁰ *Miller v. Reed*, 176 F.3d 1202, 1206 (9th Cir. 1999) (quoting *Berberian v. Petit*, 374 A.2d 791
(R. I. Sup. Ct. 1977)).

18 ⁶¹ *See Reitz v. Mealey*, 314 U.S. 33, 36 (1941), overruled in part on other grounds by *Perez v.*
19 *Campbell*, 402 U.S. 637 (1971) (“The use of the public highways by motor vehicles, with its
20 consequent dangers, renders the reasonableness and necessity of regulation apparent. The
21 universal practice is to register ownership of automobiles and to license their drivers. Any
22 appropriate means adopted by the states to insure competence and care on the part of its licensees
23 and to protect others using the highway is consonant with due process.”); *Hendrick v. State of*
Maryland, 235 U.S. 610, 622 (1915) (noting that “a state may rightfully prescribe uniform
regulations necessary for public safety and order in respect to the operation upon its highways of
all motor vehicles,-those moving in interstate commerce as well as others. And to this end it
may require the registration of such vehicles and the licensing of their drivers This is but an
exercise of the police power uniformly recognized as belonging to the states and essential to the
preservation of the health, safety, and comfort of their citizens; and it does not constitute a direct
and material burden on interstate commerce.).

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2 **B. Andreaccio has not shown that he was subjected to cruel and unusual punishment based on the exacerbation of his medical conditions.**

3 Andreaccio also theorizes that he was subjected to cruel and unusual punishment in
4 violation of the Eighth Amendment because the traffic stop exacerbated unspecified medical
5 conditions he was already suffering from.⁶² The Eighth Amendment’s protection against cruel
6 and unusual punishment “was designed to protect those convicted of crimes” and thus applies
7 “only after the [s]tate has complied with the constitutional guarantees traditionally associated
8 with criminal prosecutions.”⁶³ Because Andreaccio was not a convicted person with respect to
9 the facts of this case, if any constitutional provision governs his cruel-and-unusual punishment
10 claims, it’s the Fourteenth Amendment, which protects this right for pretrial detainees.⁶⁴

11 To prevail on such a claim, Andreaccio must show that (1) Weaver “made an intentional
12 decision with respect to the conditions” of Andreaccio’s detainment; (2) “[t]hose conditions put
13 [Andreaccio] at substantial risk of suffering serious harm”; (3) Weaver “did not take reasonable
14 available measures to abate that risk”; and (4) “[b]y not taking such measures,” Weaver caused
15 Andreaccio’s injuries.⁶⁵ But Andreaccio’s entire cruel-and-unusual-punishment theory consists

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17 ⁶² ECF No. 1 at 9.

18 ⁶³ *Whitley v. Albers*, 475 U.S. 312, 318 (1986) (quoting *Ingraham v. Wright*, 430 U.S. 651, 671, n.40 (1977)).

19 ⁶⁴ The Supreme Court defines pretrial detainees as “persons who have been charged with a crime
20 but who have not yet been tried on the charge.” *Bell v. Wolfish*, 441 U.S. 520, 523 (1979). It is
21 unclear from the record whether Andreaccio was a pretrial detainee during the traffic stop.
22 While Andreaccio was given citations for driving an unregistered vehicle and failing to present
23 proof of insurance, ECF No. 23-5 at 14:24:32, there is nothing to suggest that these citations
were criminal charges. Even if I liberally construe his claim as one under the Fourteenth
Amendment, *see, e.g., Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citation omitted) (holding
that pro se pleadings like Andreaccio’s are “to be liberally construed”), Andreaccio cannot
prevail on a cruel-and-unusual punishment theory, so I assume without deciding that he would
qualify for this Fourteenth Amendment protection.

⁶⁵ *Castro v. City of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016).

1 of just one reference in the complaint to unspecified medical conditions, and he does not address
2 this claim at all in his response to the defendants’ motion.⁶⁶ I find that Andreaccio cannot
3 establish on this record that Weaver subjected him to cruel and unusual punishment in violation
4 of any constitutional provision. So Weaver is entitled to summary judgment on Andreaccio’s
5 cruel-and-unusual-punishment claim.

6 **C. A private towing-company charge is not a constitutionally actionable fine.**

7 Andreaccio next claims that he was subjected to an unjust fine in violation of the Eighth
8 Amendment when Weaver confiscated his car and had it towed “an extreme distance of seventy-
9 five miles when a closer storage facility exist[ed]” in order to impose “unjust fines . . . paid for
10 threat of permanent loss of property.”⁶⁷ The excessive-fines clause of the Eighth Amendment is
11 not restricted to criminal convictions and applies to the states through the Fourteenth
12 Amendment.⁶⁸ That clause “limits the government’s power to extract payments, whether in cash
13 or kind, as punishment.”⁶⁹ For purposes of this clause, a fine is defined as a “payment to a
14 sovereign as punishment for some offense.”⁷⁰

15 In his responses to the defendants’ discovery requests, Andreaccio acknowledged that
16 “Nye County, its affiliates, departments, and agents have not received funds” and that he had “no
17 evidence that . . . Weaver received funds or financial benefit from [the private towing company],
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20 ⁶⁶ ECF No. 1 at 9; ECF No. 26 at 24.

21 ⁶⁷ ECF No. 1 at 9.

22 ⁶⁸ *Timbs v. Indiana*, 139 S. Ct. 682, 686–87 (2019); *see also Pimentel v. City of Los Angeles*, 974
F.3d 917, 922 (9th Cir. 2020).

23 ⁶⁹ *United States v. Bajakajian*, 524 U.S. 321, 328 (1998) (quoting *Austin v. United States*, 509
U.S. 602, 609–10 (1993)).

⁷⁰ *Austin*, 509 U.S. at 622.

1 related to the towing and/or impound” of his car.⁷¹ And in support of summary judgment,
2 Weaver argues that, because “there [was] no payment to the sovereign as punishment for some
3 offense via any costs [Andreaccio] incurred in retrieving his vehicle,” he can’t establish a
4 constitutional violation based on the facts here.⁷² So Andreaccio instead argues that the
5 defendants, “by their contracted partner, acted by proxy” in imposing the fine on him.⁷³ But the
6 Supreme Court’s definition of a fine for Eighth Amendment purposes contemplates “payment to
7 a sovereign” only,⁷⁴ and there was none here. Because Andreaccio cannot establish that the tow
8 and impound fees violated the excessive-fines clause, Weaver is entitled to summary judgment
9 on that claim, too.

10 **D. Andreaccio has not shown that his due-process rights were violated.**

11 Andreaccio claims that he was deprived of constitutional due process when he was
12 “interrogat[ed]” and arrested, and his car was impounded.⁷⁵ The Fifth Amendment “prohibits
13 the federal government from depriving persons of due process, while the Fourteenth Amendment
14 explicitly prohibits deprivations without due process by the several states.”⁷⁶ Due-process
15 claims can be sorted into two types: (1) those brought under the substantive component of the
16 due-process clause, which “bars certain arbitrary, wrongful government actions, ‘regardless of
17 the fairness of the procedures used to implement them[,]’” and (2) those brought under the
18 procedural component of the due-process clause, which prohibits deprivations of life, liberty, or
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20 ⁷¹ ECF No. 23-3 at 14 (answers 24 and 25).

21 ⁷² ECF No. 23 at 20–21.

22 ⁷³ ECF No. 26 at 24.

23 ⁷⁴ *Austin*, 509 U.S. at 622.

⁷⁵ ECF No. 1 at 7; ECF No. 26 at 10.

⁷⁶ *Castillo v. McFadden*, 399 F.3d 993, 1002 n.5 (9th Cir. 2005).

1 property without fair procedure.⁷⁷ To succeed on a substantive-due-process claim, a plaintiff
2 must show that the official’s conduct “shocks the conscience” and that the official acted “with a
3 purpose to harm for reasons unrelated to legitimate law-enforcement objectives.”⁷⁸ And to
4 prevail on a procedural-due-process claim, he must prove that he was denied a specified liberty
5 or property interest protected under the due-process clause and that he was deprived of that
6 interest without the constitutionally required procedures.⁷⁹

7 Andreaccio does not specify whether his due-process claim is procedural or substantive,
8 so I liberally construe his complaint to raise both types. He broadly theorizes that the defendants
9 deprived him of due process under the Fifth and Fourteenth Amendments by taking his “private
10 property for public use without just compensation” when Weaver impounded his car.⁸⁰ He
11 alleges that the towing was a confiscation “constitut[ing] public use” because the Nye County
12 sheriff received “financial gains as a result,” employing the language of the Fifth Amendment to
13 make a takings argument.⁸¹ Andreaccio also theorizes that his rights were violated when Weaver
14 “initiated an investigation” into him and imposed fines on him “without due process.”⁸² He cites
15 the United States Supreme Court case *Miranda v. Arizona* to support his claim that “an
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19 ⁷⁷ *Zinerman v. Burch*, 494 U.S. 113, 125 (quoting *Daniels v. Williams*, 474 U.S. 327, 331
(1986)).

20 ⁷⁸ *Porter v. Osborn*, 546 F.3d 1131, 1142 (9th Cir. 2008); *Cnty. of Sacramento v. Lewis*, 523
U.S. 833, 846–47 (1998).

21 ⁷⁹ *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011).

22 ⁸⁰ ECF No. 1 at 7.

23 ⁸¹ *Id.*; U.S. Const. amend. V (“nor shall private property be taken for public use, without just
compensation”).

⁸² ECF No. 1 at 6, 9.

1 interrogation was taking place without reason, with a false arrest[,]” in violation of the Fifth
2 Amendment.⁸³

3
4 ***1. Andreaccio cannot establish that Weaver violated his substantive-due-process rights.***

5 As a matter of law, Andreaccio cannot rely on the Fifth Amendment to the United States
6 Constitution for his property-deprivation theory because he is suing state—not federal—officials,
7 and the Fifth Amendment only applies to conduct by the federal government.⁸⁴ So I liberally
8 construe Andreaccio’s Fifth Amendment claim as one raised under the Fourteenth Amendment,
9 which applies to state actors. But Andreaccio also can’t invoke Fourteenth Amendment
10 protections to allege a substantive-due-process claim based on an allegedly unreasonable search
11 or seizure. In *Graham v. Connor*, the United States Supreme Court held that, “[b]ecause the
12 Fourth Amendment provides an explicit textual source of constitutional protection against this
13 sort of physically intrusive governmental conduct, that Amendment, not the more generalized
14 notion of ‘substantive due process,’ must be the guide for analyzing these claims.”⁸⁵ Because
15 Andreaccio cannot state a Fifth or Fourteenth Amendment substantive-due-process claim on
16 these facts, Weaver is entitled to summary judgment on any such claim.

17 ***2. Weaver did not violate Andreaccio’s procedural-due-process rights.***

18 Andreaccio bases his procedural-due-process claim on abstract rights of “[a]cquiring,
19 [p]ossessing, & [p]rotecting property and pursuing and obtaining safety . . . includ[ing]
20 protecting that property from forced, harmful contracts with anyone else.”⁸⁶ He also claims that

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22 ⁸³ ECF No. 26 at 10.

23 ⁸⁴ *Castillo*, 399 F.3d at 1002 n.5.

⁸⁵ *Graham v. Connor*, 490 U.S. 386, 395 (1989).

⁸⁶ ECF No. 26 at 5.

1 Weaver “initiated an investigation without due process”⁸⁷ and had “fines imposed [on him]
2 without due process.”⁸⁸ But Andreaccio does not allege that any particular *process*—let alone
3 one that was constitutionally required—was denied him. Rather, he theorizes that the
4 investigatory stop, request to identify, arrest, and vehicle impoundment should not have
5 happened at all, which cannot support a procedural-due-process claim.

6 Andreaccio also doesn’t identify any evidence to back up his claim. When asked in his
7 deposition what process was due to him at the traffic stop, Andreaccio stated only that Weaver
8 should have taken his word that Andreaccio was not operating “as a commercial entity or a
9 driver” and then “should have walked away.”⁸⁹ Because it is apparent that Andreaccio’s
10 procedural-due-process claim is rooted in his frivolous right-to-travel theory, and he has not
11 established that Weaver violated any procedural-due-process right, Weaver is entitled to
12 summary judgment on Andreaccio’s procedural-due-process claim, too.

13 **E. The record does not show that Weaver violated Andreaccio’s Fourth**
14 **Amendment rights during the traffic stop, demand for identification, or**
15 **arrest.**

16 Traffic stops are considered seizures under the Fourth Amendment.⁹⁰ The Supreme
17 Court has held that a traffic stop is constitutional under the Fourth Amendment if “there is at
18 least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is
19 not registered”⁹¹ Reasonable suspicion “is formed by specific, articulable facts which,

20 ⁸⁷ ECF No. 1 at 6.

21 ⁸⁸ *Id.* at 9.

22 ⁸⁹ ECF No. 23-1 at 31.

23 ⁹⁰ *U.S. v. Rojas-Millan*, 234 F.3d 464, 468 (9th Cir. 2000) (citing *Delaware v. Prouse*, 440 U.S.
648, 653 (1979)).

⁹¹ *Prouse*, 440 U.S. at 663.

1 together with objective and reasonable inferences, form the basis for suspecting that a particular
2 person detained is engaged in criminal activity.”⁹² “The reasonableness of a seizure under the
3 Fourth Amendment is determined by balancing its intrusion on the individual’s Fourth
4 Amendment interests against its promotion of legitimate government interests.”⁹³

5 Andreaccio alleges that he was unlawfully “accost[ed]” and required to identify himself
6 despite being “in a private status.”⁹⁴ He claims that Weaver violated his privacy and committed
7 a “warrantless search[] and warrantless confiscation of private property” during the traffic stop,
8 arrest, and the subsequent towing of his car.⁹⁵ Weaver responds that his actions were
9 constitutional because he had probable cause to believe Andreaccio was breaking traffic laws
10 and that Nevada law permits an officer to detain a person suspected of committing a crime for
11 purposes of determining his identity⁹⁶ and also authorizes an officer to seize and impound a
12 vehicle operating without registration under a community-caretaking purpose.⁹⁷

13 ***1. The traffic stop did not violate Andreaccio’s Fourth Amendment rights.***

14 The facts do not support Andreaccio’s claim that Weaver violated his Fourth Amendment
15 rights when he pulled him over and initiated a traffic stop. The Supreme Court specified in
16 *Delaware v. Prouse* that an officer’s mere reasonable suspicion that a car is unregistered is
17 enough to make that stop constitutional under the Fourth Amendment.⁹⁸ In *Prouse*, the Court

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⁹² *Rojas-Millan*, 234 F.3d at 468–69.

20 ⁹³ *Prouse*, 440 U.S. at 654.

21 ⁹⁴ ECF No. 1 at 8.

22 ⁹⁵ ECF No. 26 at 5; ECF No. 1 at 8.

23 ⁹⁶ ECF No. 23 at 17 (citing Nev. Rev. Stat. § 171.123(1)).

⁹⁷ *Id.* at 11–13 (citing Nev. Rev. Stat. § 482.540(1)(a)).

⁹⁸ *Prouse*, 440 U.S. at 663.

1 explained that states' registration requirements "are designed to keep dangerous automobiles off
2 the road" and are thus "essential elements in a highway safety program."⁹⁹ Thus, though
3 Andreaccio believes that "traffic laws[,]" such as license and registration requirements, "have
4 nothing to do with public safety[,]" the Supreme Court categorically disagrees.

5 As Andreaccio admitted in his deposition, he also had no license plates or public notices
6 of registration displayed on his vehicle when Weaver stopped him.¹⁰⁰ Nevada law requires that
7 "every owner of a motor vehicle . . . intended to be operated upon any highway in this [s]tate"
8 must "apply to the Department [of Motor Vehicles]. . . and obtain the registration thereof."¹⁰¹
9 Drivers are also required to display license plates on their vehicles.¹⁰² It is thus reasonable that
10 Weaver would suspect that Andreaccio was driving an unregistered vehicle because his car had
11 no license plates or other visible indications of registration. So the record does not support that
12 Weaver violated Andreaccio's Fourth Amendment rights when he pulled him over.

13
14 **2. *Weaver did not violate Andreaccio's constitutional rights when he asked
him to identify himself.***

15 Andreaccio next claims that Weaver's demand for identification violated his rights
16 against unreasonable search and seizure. The Supreme Court has observed that "an officer's
17 mission includes ordinary inquiries incident to the traffic stop" such as "checking the driver's
18 license, determining whether there are outstanding warrants against the driver, and inspecting the
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22 ⁹⁹ *Id.* at 658.

23 ¹⁰⁰ ECF No. 23-1 at 7–8.

¹⁰¹ Nev. Rev. Stat. § 482.205.

¹⁰² Nev. Rev. Stat. § 482.275(1).

1 automobile’s registration and proof of insurance.”¹⁰³ To facilitate those inquiries, Nevada
2 Revised Statute 171.123(3) allows police officers to detain someone suspected of criminal
3 activity “to ascertain the person’s identity” and requires that person to identify himself.¹⁰⁴ And
4 the United States Supreme Court specifically found NRS 171.123(3) consistent with the Fourth
5 Amendment in *Hiibel v. Sixth Judicial District Court of Nevada*.¹⁰⁵ A police officer arrested
6 Hiibel for obstruction after he refused to identify himself, as required by Nevada law, during an
7 investigative stop in which he was suspected of committing an assault.¹⁰⁶ The High Court held
8 that the defendant’s arrest was constitutional under the Fourth Amendment balancing test
9 because a “request for identity has an immediate relation to the purpose, rationale, and practical
10 demands of”¹⁰⁷ an investigative stop and “obtaining a suspect’s name . . . serves important
11 government interests” such as informing “an officer that a suspect is wanted for another offense,
12 or has a record of violence or mental disorder.”¹⁰⁸

13 Like the defendant in *Hiibel*, Andreaccio was suspected of unlawful activity—violating
14 state law requiring vehicle registration and display of license plates—so he was required under
15 Nevada law to identify himself when asked by Weaver. And the Supreme Court deemed
16 requirements for basic identification to law enforcement officers to be consistent with the Fourth
17 Amendment so long as there is reasonable suspicion of criminal activity justifying the stop, as

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20 ¹⁰³ *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (internal citations and quotations omitted).

21 ¹⁰⁴ Nev. Rev. Stat. § 171.123(3).

22 ¹⁰⁵ *Hiibel v. Sixth Jud. Dist. Ct. of Nevada, Humboldt Cnty.*, 542 U.S. 177, 188 (2004).

23 ¹⁰⁶ *Id.* at 180–181.

¹⁰⁷ *Id.* at 188.

¹⁰⁸ *Id.* at 186.

1 there was here. Andreaccio thus fails to establish that Weaver violated his constitutional rights
 2 by asking for his identification.

3
 4 **3. *Andreaccio cannot establish a Fourth Amendment violation based on his arrest because there was probable cause.***

5 Andreaccio lists false arrest as one of several “[c]ivil [r]ights violations” in the opening
 6 of his complaint, alleging that Weaver “displayed a propensity for physical intrusion, going
 7 hands-on unprovoked” in apparent reference to Andreaccio’s arrest.¹⁰⁹ Weaver argues that the
 8 arrest was constitutional because he had probable cause to detain Andreaccio for failing to
 9 identify himself, as required by Nevada law.¹¹⁰ Andreaccio responds that he was exempt from
 10 the traffic laws that formed the basis for the investigatory stop because he was not operating “in
 11 commerce.”¹¹¹ He further argues that the Nevada statute that Weaver relies on for the
 12 identification requirement does not apply to him because the statute includes the words
 13 “presence abroad,” and Andreaccio is “of the land” and “not of foreign origin and not in
 14 commerce.”¹¹²

15 But Andreaccio’s arrest for failure to identify himself was supported by probable cause,
 16 and “when an officer has probable cause to believe a person committed even a minor crime in his
 17 presence, . . . [t]he arrest is constitutionally reasonable.”¹¹³ “Probable cause exists when, under
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¹⁰⁹ ECF No. 1 at 2, 6.

20 ¹¹⁰ ECF No. 23 at 16–18.

21 ¹¹¹ *See generally*, ECF No. 26 at 4–13.

22 ¹¹² *Id.* at 11 (citing Nev. Rev. Stat. § 171.123(3)). Andreaccio’s argument that NRS 171.123(3)
 23 is inapplicable to him because it contains the words “presence abroad” is meritless. The statute
 falls under Chapter 171, which governs public offenses, and the plain reading of NRS 171.123(3)
 does not suggest that it is meant to apply to foreign or international suspects.

¹¹³ *Virginia v. Moore*, 553 U.S. 164, 171 (2008) (collecting cases).

1 the totality of the circumstances known to the arresting officers . . . a prudent person would
2 believe the suspect had committed a crime.”¹¹⁴ Instructive here is *Virginia v. Moore*, in which
3 police officers heard over the police radio that the plaintiff was suspected of driving with a
4 suspended license, pulled him over, and arrested him for the misdemeanor of driving on a
5 suspended license.¹¹⁵ The United States Supreme Court determined that, despite the fact that
6 Virginia law required officers to issue the plaintiff a summons rather than arrest him, Moore’s
7 arrest was constitutional under the Fourth Amendment because the officers had probable
8 cause.¹¹⁶

9 Andreaccio’s arrest is based on an even clearer case for probable cause. Whereas the
10 officers in *Moore* had only secondhand knowledge of the suspected crime, Weaver witnessed
11 firsthand that Andreaccio was violating NRS 171.123(3) by refusing to identify himself fully
12 after being lawfully pulled over under suspicion of driving an unregistered vehicle. And, unlike
13 in *Moore*, this Nevada statute expressly permits officers to detain a suspect.¹¹⁷ So the record
14 does not support Andreaccio’s claim that the arrest violated his Fourth Amendment rights.

15
16 **E. Weaver enjoys qualified immunity from Andreaccio’s claims arising from
the impounding of the vehicle.**

17 Finally, I consider Andreaccio’s claim that Weaver violated his constitutional rights by
18 impounding his vehicle. “The impoundment of an automobile is a seizure within the meaning of
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20

21 ¹¹⁴ *Dubner v. City & Cnty. of San Francisco*, 266 F.3d 959, 966 (9th Cir. 2001) (citing *United*
22 *States v. Garza*, 980 F.2d 546, 550 (9th Cir. 1992)).

23 ¹¹⁵ *Moore*, 553 U.S. at 166–67.

¹¹⁶ *Id.* at 167, 176.

¹¹⁷ Nev. Rev. Stat. § 171.123(3).

1 the Fourth Amendment.”¹¹⁸ But “[u]nder the ‘community-caretaking’ doctrine, police may,
2 without a warrant, impound and search a motor vehicle so long as they do so in conformance
3 with the standardized procedures of the local police department and in furtherance of a
4 community-caretaking purpose.”¹¹⁹ Such impoundment is proper if a vehicle “jeopardize[s]
5 public safety and the efficient movement of vehicular traffic”¹²⁰ and “must consider the location
6 of the vehicle, and whether the vehicle was actually impeding traffic or threatening public safety
7 and commerce on the streets.”¹²¹

8 Weaver invokes this community-caretaking exception and contends that he was justified
9 in impounding Andreaccio’s car because “it’s simply not safe to leave the vehicle in the middle
10 of the desert” and that he “was promoting public safety and/or the efficient movement or flow of
11 vehicular traffic, and was also likely preventing the car from being vandalized or stolen.”¹²²
12 Weaver notes that the impoundment was authorized under both Nevada law, which authorizes
13 the seizure of any vehicle operating without proper registration,¹²³ and Nye County policy and
14 procedures, which permit the towing of any car being operated in violation of the law without
15 valid registration.¹²⁴

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18 _____
19 ¹¹⁸ *United States v. Torres*, 828 F.3d 1113, 1118 (9th Cir. 2016) (quoting *Miranda v. City of
Cornelius*, 429 F.3d 858, 862 (9th Cir. 2005)).

20 ¹¹⁹ *Id.* (citing *U.S. v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2016)) (cleaned up).

21 ¹²⁰ *South Dakota v. Opperman*, 428 U.S. 364, 368–69 (1976).

22 ¹²¹ *Miranda*, 429 F.3d at 865.

23 ¹²² ECF No. 23 at 13.

¹²³ *Id.* at 11 (quoting Nev. Rev. Stat. § 482.540(1)(a)).

¹²⁴ *Id.* (quoting Nye County Sheriff’s Office, Policy and Procedures Manual, Policy 0033,
“Vehicles: Towing, Impoundment, Seizing, Salvaging, Seizures”).

1 But “the fact that an impoundment complies with a state statute or police policy, by itself,
2 is insufficient to justify an impoundment under the community[-]caretaking exception.”¹²⁵ As
3 the Ninth Circuit held in *U.S. v. Cervantes*, the officer must also show that the vehicle’s
4 placement or other circumstances supported his need to invoke the community-caretaking
5 exception,¹²⁶ and this Weaver fails to do. Though he argues that Andreaccio’s car was a public
6 safety threat, impeded the flow of traffic, and was vulnerable to theft and vandalism, Weaver
7 points to nothing in the record to support these conclusory statements or to show that his decision
8 to impound the vehicle was based on such circumstances.

9 Indeed, the record tells a different story. The body-camera video shows Andreaccio’s car
10 parked on the side of the highway during the traffic stop for more than two hours without any
11 safety issues or interrupting the flow of traffic occurring throughout.¹²⁷ And the body-camera
12 audio contains Weaver’s true reason for ordering the tow: “I don’t feel comfortable letting him
13 get back in his car unregistered, uninsured, driving down the highway.”¹²⁸ While Andreaccio’s
14 continued operation of an unregistered vehicle could pose a public safety threat, that potential
15 hazard is based on the hypothetical that Andreaccio would continue driving his car after the
16 traffic stop, and the defendants do not provide evidence suggesting that was likely to occur. And
17 at no point in the video does Weaver indicate that he believes the car’s location on the highway
18 shoulder poses a safety threat, nuisance to the flow of traffic, or risk of theft or vandalism. So
19 Weaver has not shown that his impoundment of Andreaccio’s car did not violate the Fourth
20 Amendment.

21 _____
22 ¹²⁵ *Cervantes*, 703 F.3d at 1141.

23 ¹²⁶ *Miranda*, 429 F.3d at 865.

¹²⁷ ECF No. 23-5 at 13:55:34–15:56:26.

¹²⁸ *Id.* at 14:58:30–38.

1 But Weaver’s inability to claim the protection of the community-caretaking exception is
2 not the end of the analysis. As Weaver argues,¹²⁹ he enjoys qualified immunity from
3 Andreaccio’s Fourth Amendment improper-impoundment claim unless the unconstitutionality of
4 his action was clearly established at the time of the stop.¹³⁰ Qualified immunity protects
5 government officials “from money damages unless a plaintiff pleads facts showing that (1) the
6 official violated a statutory or constitutional right, and (2) the right was ‘clearly established’ at
7 the time of the challenged conduct.”¹³¹ The United States Supreme Court has warned lower
8 courts to avoid addressing qualified immunity at a high level of generality,¹³² and a defendant
9 will be entitled to qualified immunity even if he was mistaken in his belief that his conduct was
10 lawful, so long as that belief was reasonable.¹³³ And it’s the plaintiff who bears the burden of
11 showing that the rights at issue were clearly established.¹³⁴ Though the plaintiff need not
12 identify a case “directly on point, existing precedent must have placed the statutory or
13 constitutional question beyond debate.”¹³⁵

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16 ¹²⁹ ECF No. 23 at 22–23.

17 ¹³⁰ *Isayeva v. Sacramento Sheriff’s Dep’t*, 872 F.3d 938, 946 (9th Cir. 2017) (citing *Pearson v.*
18 *Callahan*, 555 U.S. 223 (2009)).

19 ¹³¹ *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800,
20 818 (1982)).

21 ¹³² *Saucier*, 533 U.S. at 201; *see also Sheehan v. Cty. of San Francisco*, 135 S. Ct. 1765, 1775–
22 76 (2015); *Kisella v. Hughes*, 138 S. Ct. 1148, 1152–53 (2018).

23 ¹³³ *Torres v. City of Madera*, 648 F.3d 1119, 1127 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 1032
24 (2012) (“the clearly established prong concerns the reasonableness of the officer’s mistake of
25 law.”); *Wilkins v. City of Oakland*, 350 F.3d 949, 955 (9th Cir. 2003); *Davis v. Scherer*, 468 U.S.
183, 191 (1984) (“Whether an official may prevail in his qualified immunity defense depends
upon the objective reasonableness of his conduct as measured by reference to clearly established
law.” (cleaned up)).

¹³⁴ *Robinson v. York*, 566 F.3d 817, 826 (9th Cir. 2009).

¹³⁵ *Id.*

1 Andreaccio has not met this burden. He responds to Weaver’s qualified-immunity
2 argument by contending that Nye County officers like Weaver had “prior knowledge” of the
3 “limitations of their duties and responsibilities” because Nye County policies and procedures use
4 words that Andreaccio believes exempt him from traffic laws.¹³⁶ For this proposition, he cites
5 two Supreme Court cases—one discussing plain-language statutory interpretation and the other
6 § 1983 attorney’s fees remedies¹³⁷—and the federal statute governing seditious conspiracy.¹³⁸
7 No part of his brief addresses whether the specific rights he asserts were clearly established at the
8 time of the traffic stop, and none of the authority he cites supports that notion.

9 Even if Andreaccio had shown that he had a constitutional right to not have his vehicle
10 impounded under these circumstances, Weaver would still be entitled to qualified immunity from
11 this claim because the record establishes without genuine dispute that Weaver was reasonable in
12 his belief that it was lawful to impound Andreaccio’s vehicle. The Supreme Court has held that
13 an officer is entitled to qualified immunity if he “reasonably believes that his . . . conduct
14 complies with the law”¹³⁹ because immunity is meant to protect “all but the plainly incompetent
15 or those who knowingly violate the law.”¹⁴⁰

16 Weaver argues that he was relying on Nevada law and Nye County police policies and
17 procedures when he ordered Andreaccio’s car to be towed,¹⁴¹ and these laws and policies
18 objectively support his claim. NRS 482.540(1)(a) allows “[a]ny police officer, without a

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20 ¹³⁶ ECF No. 26 at 27.

21 ¹³⁷ *Id.* (citing *Owen v. City of Indep., Mo.*, 445 U.S. 622 (1980); *Maine v. Thiboutot*, 448 U.S. 1
(1980)).

22 ¹³⁸ *Id.* (citing 18 U.S. § 2384).

23 ¹³⁹ *Pearson*, 555 U.S. at 244.


¹⁴⁰ *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

¹⁴¹ ECF No. 23 at 11–13.

1 warrant, [to] seize and take possession of any vehicle . . . being operated with improper
2 registration[,]” and the Nye County Sheriff’s manual authorizes officers to tow any vehicle
3 “being operated in violation of law with no valid insurance[] or valid registration.”¹⁴² In light of
4 the fact that Weaver (accurately) determined that Andreaccio was driving an unregistered
5 vehicle, and Andreaccio was unable to produce proof of insurance,¹⁴³ a reasonable officer could
6 have concluded that impounding the vehicle was lawful based on NRS 482.540(1)(a) and
7 department policies and procedures. So, Weaver is entitled to qualified immunity from
8 Andreaccio’s impoundment claim, and I grant summary judgment in Weaver’s favor on this final
9 claim on that basis.

10 **Conclusion**

11 IT IS THEREFORE ORDERED that the motion for summary judgment [**ECF No. 23**] is
12 **GRANTED**. The **Clerk of Court** is directed to **ENTER FINAL JUDGMENT** in favor of
13 defendants Joshua Weaver and Allen Lynn and against plaintiff John Andreaccio on all claims
14 **and CLOSE THIS CASE**.

15 
16 U.S. District Judge Jennifer A. Dorsey
17 May 29, 2023

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22 _____
23 ¹⁴² Nev. Rev. Stat. § 482.540(1)(a); Nye County Sheriff’s Office, Policy and Procedures Manual, Policy 0033, “Vehicles: Towing, Impoundment, Seizing, Salvaging, Seizures.”

¹⁴³ ECF No. 23 at 5–6.