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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Javier Torres, et al.,

)

No. CV-06-2482-PHX-SMM

10

Plaintiffs,

)

11

v.

)

**MEMORANDUM OF DECISION
AND ORDER**

12

Terry Goddard, in his individual capacity,
Colin Homes, personal representative of
the estate of Cameron Homes,

)

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the estate of Cameron Homes,

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Defendants.

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This case is on remand from the Ninth Circuit Court of Appeals. See Torres v. Goddard, 793 F.3d 1046 (9th Cir. 2015). The Ninth Circuit remanded the issue of whether Defendants, although not entitled to absolute immunity, are entitled to qualified immunity for the service and execution of seizure for forfeiture warrants authorized by the Maricopa County Superior Court. Id. at 1056-59. The parties have briefed the issue and it is now ready for the Court’s review. (Docs. 276, 282-83.)

22

After due consideration of the parties’ submissions, the Court will grant Defendants’ Supplemental Motion for Summary Judgment Re: Qualified Immunity. (Doc. 276.)

24

BACKGROUND

25

This Court and the Ninth Circuit have previously detailed the extensive factual background of this case. See Torres, 793 F.3d at 1048-50; (Doc. 261 at 2-8.) In order to determine the narrow qualified immunity issue remanded to this Court, the Court will set out the following relevant facts.

28

1 Between 2001 and 2006, in its effort to combat the proliferation of coyotes bringing
2 in undocumented immigrants, Arizona officials executed over twenty warrants to seize
3 thousands of wire transfers that they claimed were highly likely to be connected to criminal
4 conduct. Torres, 793 F.3d at 1048.

5 Plaintiffs Javier Torres and Lia Rivadeneyra (“Plaintiffs”) were customers of Western
6 Union Financial Services, Inc. (“Western Union”) whose money transfers were subject to
7 seizure for forfeiture warrants issued by the Maricopa County Superior Court. At the time
8 the seizure for forfeiture warrants were carried out and at the time this lawsuit was initiated,
9 Defendant Terry Goddard (“Goddard”) was Attorney General of Arizona. (Doc. 261.) During
10 the time period from 2000 to 2007, Defendant Cameron Holmes (“Holmes”) was an Assistant
11 Attorney General in the Arizona Attorney General’s Office.¹ Holmes supervised the
12 Financial Remedies Section within the Criminal Division of the Attorney General’s Office.
13 (Doc. 261.) Holmes’s caseload consisted, in part, of civil forfeiture lawsuits. (Id.) In
14 connection with the seizure warrants at issue and the subsequent forfeiture proceedings
15 involving the electronic money transfers, Holmes acted as the “attorney for the state.” Under
16 Arizona’s forfeiture statutes, A.R.S. §§ 13–4301 through 13–4315, “[a]ttorney for the state”
17 means an attorney designated by the attorney general . . . to investigate, commence and
18 prosecute an action under this chapter.” A.R.S. § 4301(1) (2006).

19 The warrant program was carried out by the Arizona Financial Crimes Task
20 Force. The Task Force consisted of personnel from several public agencies
21 including the Arizona Attorney General’s Office. Cameron Holmes . . . worked
22 with the Task Force. Holmes sought court approval for and obtained seizure
warrants pursuant to Arizona’s civil forfeiture statutes. See [A.R.S.]§
13–4305(A)(1).

23 While some of the earlier warrants sought seizure of wire transfers involving
24 specific names listed in the warrants, later warrants, or “sweeps,” authorized
25 seizure of all wire transfers that met certain specified criteria. The six
26 “criteria-based” warrants identified in plaintiffs’ complaint authorized the
seizure of every person-to-person Western Union wire transfer that (1) was
sent from certain states to Arizona or, under one warrant, from certain states
to Sonora, Mexico; (2) met or exceeded a threshold amount ranging from \$500

27 ¹Holmes died while this matter was on appeal at the Ninth Circuit and was replaced
28 by the personal representative of his estate, Colin Holmes. Torres, 793 F.3d at 1050.

1 to \$2000; and (3) was made during a certain time period—typically three or
2 four weeks in the spring or fall. Accompanying the warrant applications were
3 factual affidavits sworn to by Task Force detectives. The affidavits claimed
4 that any wire transfer that met the warrants’ criteria had a very high likelihood,
5 for some warrants as high as 97 percent, of being “directly involved in illegal
6 drug and/or human smuggling.”

7 The seizures followed the same basic pattern. Holmes supervised the
8 preparation of the seizure warrants and warrant applications. Holmes also
9 reviewed the factual affidavits sworn to by Task Force detectives “in order to
10 satisfy [himself] that the seizure warrant[s] being applied for [were] supported
11 by probable cause.” Holmes then sought approval of the warrants before a state
12 court judge. Once the warrants were approved, Holmes served them on
13 Western Union’s corporate headquarters. The warrants were “effective upon
14 receipt” by Western Union. They required Western Union to identify all wire
15 transfers that met the listed criteria and “cause the transaction[s] to be ‘force
16 paid’ to a detention account” maintained for the state by Western Union.
17 Western Union seized the funds on the state’s behalf by loading the criteria
18 into its computer system. When a wire transfer that met all the criteria listed
19 in a warrant was initiated, Western Union’s computer system automatically
20 diverted the transfer to Arizona’s detention account. While the seized funds
21 were held by Western Union, they were considered to be in the “constructive
22 custody of the law enforcement agency making the seizure for forfeiture.”

23 Torres, 793 F.3d at 1049. The Ninth Circuit summarized the Plaintiffs’ complaint, as follows:

24 [Plaintiffs’] section 1983 complaint alleges that defendants, “both personally
25 and through agents or representatives,” “served and executed” the
26 criteria-based warrants and “have illegally seized more than \$9 million in
27 interstate and international money transfers.” *Plaintiffs allege that the seizures
28 were unconstitutional because they were conducted without “particularized
probable cause” to believe that their wire transfers “were involved in,” or
“were the fruits or instrumentalities of, any of the stated criminal offenses” in
the warrants.*

29 Torres, 793 F.3d at 1050 (emphasis added).

30 In Torres, joining all of the other circuits that had addressed the issue, the Ninth
31 Circuit held that absolute immunity is available to prosecutors in the context of civil
32 forfeiture proceedings. Id. at 1052. In application to the facts of this case, the Ninth Circuit
33 found that as prosecutors, the Defendants’ actions were protected by absolute immunity. Id.
34 at 1051-54. However, the Ninth Circuit remanded the Defendants’ actions related to service
35 and execution of the seizure warrants. According to the Ninth Circuit’s remand instructions,
36 the Court is to determine whether Defendant Holmes’s actions in serving and executing the
37 warrants are protected by qualified immunity and whether Defendant Goddard’s actions in
38 supervising the service and execution of the warrants are protected by qualified immunity.

1 Id. at 1057, 1059. Further, if any of Holmes’s actions or Goddard’s actions are not protected
2 by qualified immunity, the Ninth Circuit specified that the Court go on to assess whether
3 those unprotected acts give rise to a cause of action for damages against Holmes and
4 Goddard under section 1983, citing Buckley v. Fitzsimmons, 509 U.S. 259, 274 n.5 (1993).
5 See Torres, 793 F.3d at 1057.²

6 STANDARD OF REVIEW

7 “The doctrine of qualified immunity protects government officials ‘from liability for
8 civil damages insofar as their conduct does not violate clearly established statutory or
9 constitutional rights of which a reasonable person would have known.’” Pearson v. Callahan,
10 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Before
11 a government official can be subject to liability for civil damages, both prongs of the
12 qualified immunity analysis must be satisfied: (1) whether the official violated the plaintiff’s
13 constitutional rights, and if so, (2) whether the right violated was clearly established at the
14 time of the official’s conduct. Pearson, 555 U.S. at 232.

15 Regarding the constitutional violation prong in search and seizure cases, “[w]here the
16 alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the
17 fact that a neutral magistrate has issued a warrant is the clearest indication that the officers
18 acted in an objectively reasonable manner or, as we have sometimes put it, in objective good
19 faith” . . . unless “it is obvious that no reasonably competent officer would have concluded
20 that a warrant should issue.” Messerschmidt v. Millender, 132 S. Ct. 1235, 1245 (2012)
21 (further citation and quotation omitted).

22
23 ²Previously, this Court granted summary judgment to Defendants and dismissed
24 Plaintiffs’ lawsuit, which included their Fourth Amendment claims, their procedural due
25 process claim, and their Commerce Clause claim. (Doc. 261). Plaintiffs appealed to the Ninth
26 Circuit. The Ninth Circuit only examined Plaintiffs’ claim for seizure of their funds without
27 probable cause and granted a limited remand to determine whether qualified immunity
28 shields the Defendants from a Fourth Amendment claim premised on service and execution
of the seizure warrants. Plaintiffs did not petition for rehearing for any claim allegedly
overlooked. The only claim remanded to this Court, and thus at issue, is Plaintiffs’ Fourth
Amendment seizure claim related to the government officials’ claim for qualified immunity.

1 to show evidence, circumstantial or otherwise, that is sufficient to support a reasonable belief
2 that the money has a general connection to crime. See, e.g., U.S. v. Approximately \$1.67
3 Million In Cash, 513 F.3d 991, 999-1000 (9th Cir. 2008); U.S. v. \$5,644,540.00 in U.S.
4 Currency, 799 F.2d 1357, 1363 (9th Cir. 1986); U.S. v. \$93,685.61 in U.S. Currency, 730
5 F.2d 571, 572 (9th Cir. 1984). As long as such evidence is shown in support of probable
6 cause, there is no need to tie the money in question to a particular identifiable illicit
7 transaction. See Approximately \$1.67 Million in Cash, 513 F.3d at 999; Marine Midland
8 Bank v. U.S., 11 F.3d 1119, 1126 (2d Cir. 1993).

9 Defendants argue that there is no case law holding that their service and execution of
10 the seizure for forfeiture warrants was a clearly established violation of the Fourth
11 Amendment. (Doc. 276.) According to Defendants, given the case law involving money
12 forfeiture, Plaintiffs can only defeat their defense of qualified immunity if they are able to
13 point to legal authorities that would have clearly established that at the time of seizure
14 Plaintiffs' type of transaction-specific probable cause was required to support seizure
15 warrants for electronic money transfers.

16 Plaintiffs maintain that the central question in this case is the Fourth Amendment's
17 main rule of reasonableness which requires "individualized suspicion of wrongdoing" citing
18 Chandler v. Miller, 520 U.S. 305, 313 (1997). (Doc. 282 at 2.) Plaintiffs argue that statistics
19 alone cannot satisfy the Fourth Amendment probable cause standard for issuing a seizure
20 warrant. (Id.) Based on the lack of individualized suspicion, Plaintiffs contend that the
21 seizure warrants were facially invalid, which invalidity was not cured by the supporting
22 affidavits. (Id. at 3.) Because clearly established Fourth Amendment law requires
23 particularized probable cause, and the warrants and affidavits at issue did not provide such
24 probable cause, Plaintiffs argue that Defendants are not entitled to qualified immunity, citing
25 Messerschmidt, 132 S. Ct. at 1244. (Id.)

26 Plaintiffs do acknowledge that when a seizure warrant has been reviewed and issued
27 by a judge, in order to reach the conclusion that qualified immunity does not attach to the
28 service and execution of the warrant, Messerschmidt requires that it be so "obvious that no

1 reasonably competent officer would have concluded that a warrant should issue . . . for
2 example, where the warrant was based on an affidavit so lacking in indicia of probable cause
3 as to render official belief in its existence entirely unreasonable.” 132 S. Ct. at 1245 (further
4 citation and quotation omitted). In support that Defendants acted unreasonably in the service
5 and execution of the warrants, Plaintiffs rely on United States v. Grant, 682 F.3d 827 (9th
6 Cir. 2012) and People v. Underwood, 725 F.3d 1076 (9th Cir. 2013). (Doc. 282 at 7-9.) For
7 instance, the Grant court found the officers’ reliance on the search warrant “entirely
8 unreasonable,” despite review and approval by a magistrate because the supporting affidavit
9 did “not set out any plausible connection between [the defendant, whose home was
10 authorized by the warrant to be searched] and the gun or ammunition used in the homicide.”
11 682 F.3d at 836. Probable cause had not been established due to the absence of evidence
12 connecting the defendant to the homicide being investigated. Id. at 828. Continuing,
13 Plaintiffs argue that here, as in Grant, there was no evidence connecting the wire transfers
14 sent by Plaintiffs to any particular crime. (Doc. 282 at 8.) Finally, Plaintiffs contend that the
15 warrants’ statistical inferences and general conclusions about drug and human smugglers
16 provided no particularized probable cause to Defendants about Plaintiffs nor any of
17 Plaintiffs’ transactions. (Id. at 9.)

18 The Court disagrees with Plaintiffs. The Court finds that Defendants are entitled to
19 qualified immunity. Defendants are shielded by qualified immunity unless both prongs of
20 constitutional analysis are satisfied: (1) whether the official violated the plaintiff’s
21 constitutional rights, and if so, (2) whether the right violated was clearly established at the
22 time of the official’s conduct. See Pearson, 555 U.S. at 232. The Court initially finds that
23 Defendants did not violate the Plaintiffs’ constitutional rights, and, next, even assuming a
24 constitutional violation, such a violation was not a violation of clearly established law at the
25 time of the service and execution of the seizure warrants.

26 *Constitutional Violation*

27 The Court finds that the seizure warrant for forfeiture at issue did not violate
28 Plaintiffs’ rights against unreasonable seizure under the Fourth Amendment. In

1 Messerschmidt, the Supreme Court held that “[w]here the alleged Fourth Amendment
2 violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate
3 has issued a warrant is the clearest indication that the officers acted in an objectively
4 reasonable manner or, as we have sometimes put it, in objective good faith.” 132 S. Ct. at
5 1245.

6 However, the issue here is not whether the non-party police investigators offered
7 enough evidence in their affidavits and materials to meet the requirements of probable cause.
8 The only issue is whether, even assuming that probable cause was insufficient, their
9 affidavits and materials were so lacking in indicia of probable cause “as to render official
10 belief in its existence entirely unreasonable.” Messerschmidt, 132 S. Ct. at 1245. Thus,
11 Plaintiffs would be required to show that when Defendant Holmes, under the supervision of
12 Defendant Goddard, served the warrants on Western Union, a finding could be made that
13 neither officer acted objectively reasonable in concluding that a warrant should issue. Id.

14 Under the Fourth Amendment, government officials who have a reasonable but
15 mistaken belief as to the facts in support of the question of probable cause are not in violation
16 of the Constitution. See Anderson v. Creighton, 483 U.S. 635, 641 (1987) (stating that “it is
17 inevitable that law enforcement officials will in some cases reasonably but mistakenly
18 conclude that probable cause is present, and we have indicated that in such cases those
19 officials—like other officials who act in ways they reasonably believe to be lawful—should
20 not be held personally liable.”); see also Armstrong v. Asselin, 734 F.3d 984, 991 (9th Cir.
21 2013) (stating that a state official is entitled to qualified immunity even for a seizure based
22 on an invalid warrant if he has a reasonable belief that the warrant is supported by reasonable
23 cause).

24 The record in this case requires a finding of no constitutional violation because
25 Defendants acted reasonably in service and execution of the warrants believing that the
26 warrants were supported by probable cause. In support, two Maricopa County Superior Court
27 Judges, Judge James Keppel and Judge Brian Ishikawa, after reviewing the supporting
28 affidavits and materials, both found probable cause and issued the challenged warrants. (Doc.

1 231-8 at 57-71.) It follows from Messerschmidt, the fact that two Maricopa County Superior
2 Court Judges issued seizure for forfeiture warrants is the clearest indication that Defendants,
3 in the service and execution of those warrants, acted in an objectively reasonable manner.
4 See 132 S. Ct. at 1245.

5 Next, although its opinion was subsequently vacated on other grounds by the Arizona
6 Supreme Court, this Court finds the reasoning of the Arizona Court of Appeals persuasive
7 on the issue of probable cause because it thoroughly reviewed and analyzed the facts at issue
8 and the merits of Judge Ishikawa’s finding.³ See State of Arizona v. Western Union Fin.
9 Serv., 219 Ariz. 337, 353-62, 199 P.3d 592, 608-17 (App. 2008), opinion vacated on other
10 grounds by, 220 Ariz. 567, 208 P.3d 218 (2009).⁴ In summary, the Arizona Court of Appeals
11 found “the Seizure Warrant at issue in this case was supported by probable cause that
12 proceeds of Arizona racketeering activities would be in [Western Union’s] possession in the
13 form of [electronic credits] during the ten-day time frame of the Warrant. Therefore, the
14 Warrant did not violate the Fourth Amendment merely because the [electronic credits] at
15 issue were not in [Western Union’s] possession at the time the court issued the Warrant. . .
16 . [U]nder the specific circumstances of this case, the Seizure Warrant did not violate the
17 Fourth Amendment as it was supported by probable cause and was sufficiently particularized
18 in describing the property to be seized and its location. Id. at 362, 199 P.3d at 617.

19 Specifically, the State had the burden of showing that the electronic credits of Western
20 Union were the proceeds of or used to facilitate Arizona racketeering offenses, namely
21 human smuggling and narcotics trafficking. See id. at 343, 199 P.3d at 598 (citing A.R.S. §
22 13–2314(C) (2001) (authorizing court to issue seizure warrant prior to determination of
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24 ³The Court finds that the two warrant applications signed by Judges Keppel and
25 Ishikawa are functionally similar for purposes of reviewing the determination of probable
26 cause.

27 ⁴The Arizona Supreme Court determined that Arizona’s courts lack jurisdiction to
28 issue a warrant seizing Western Union money transfers sent from other states to the Country
of Mexico. 220 Ariz. at 568, 208 P.3d at 219.

1 liability for racketeering); A.R.S. § 13–2314(G)(3) (providing that proceeds traceable to
2 racketeering subject to forfeiture); and A.R.S. § 13–4310(A) (2001) (authorizing court to
3 issue seizure warrant “prior or subsequent to the filing of a notice of pending forfeiture,
4 complaint, indictment or information”). In support of probable cause, the court of appeals
5 reviewed the submitted affidavits and declarations from members of a financial crimes task
6 force (the “Task Force”). Id. at 353-62, 199 P.3d at 608-17. Based on its review of the
7 totality of the Task Force findings, the court of appeals concluded that the electronic credits
8 targeted by the seizure warrants had a causal nexus to human smuggling and/or narcotics
9 trafficking. Id. at 359, 199 P.3d at 614 (stating that the state had produced credible evidence
10 demonstrating a probability that the targeted electronic credits were linked to racketeering
11 activity). This finding of probable cause by the Arizona Court of Appeals further supports
12 that Defendants, in the service and execution of those warrants, acted in an objectively
13 reasonable manner. See Messerschmidt, 132 S. Ct. at 1245. There is no evidence that the
14 Task Force affidavits and materials were so lacking in indicia of probable cause as to render
15 Defendants’ official belief in probable cause entirely unreasonable.⁵ See id.

16 Thus the Court easily concludes that even if Defendants reasonably but mistakenly
17 concluded that probable cause was present (which in fact probable cause was present), they
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20 ⁵The Court disagrees with Plaintiffs that United States v. Grant, 682 F.3d 827 (9th Cir.
21 2012), is applicable to the facts at issue. In Grant, the court found that the affidavit in support
22 of the search warrant did “not set out any plausible connection between [the defendant,
23 whose home was authorized by the warrant to be searched] and the gun or ammunition used
in the homicide.” 682 F.3d at 836. Probable cause had not been established due to the
absence of evidence connecting the defendant to the homicide being investigated.

24 Initially, the Court finds that Grant is distinguished as it overturned a denied
25 suppression motion but did not involve any qualified immunity analysis. Furthermore, there
26 is abundant evidence in support of probable cause in this case, as opposed to Grant. The Task
27 Force’s investigation into human smuggling and the use by smugglers of Western Union’s
28 electronic credits in violation of Arizona’s racketeering statutes lasted from 2000 to 2006,
when the warrants at issue were served by Defendants. The lengthy analysis by the Arizona
Court of Appeals demonstrated that the electronic credits targeted by the seizure warrants had
a causal nexus to human smuggling and/or narcotics trafficking.

1 will not be held personally liable. See Anderson, 483 U.S. at 641. Defendants are entitled to
2 qualified immunity. See Ashcroft v. al-Kidd, 563 U.S. 731, 743 (2011) (stating that the shield
3 of qualified immunity “protects all but the plainly incompetent or those who knowingly
4 violate the law.”) (further citation omitted).

5 *Clearly Established Law*

6 Even when it is assumed that a constitutional violation may have been committed,
7 Plaintiffs must also establish that the alleged constitutional violation was clearly established
8 and gave fair notice to the state officials at issue. In the particular factual context of this case,
9 Plaintiffs cannot so demonstrate.

10 Plaintiffs contend that Defendants are not entitled to qualified immunity for their roles
11 in serving and executing general seizure warrants that were devoid of particularized probable
12 cause. (Doc. 282 at 2-3.) According to Plaintiffs, the warrant violated the Fourth
13 Amendment’s requirement of “individualized suspicion of wrongdoing.” (Id.) Based on the
14 lack of individualized suspicion, Plaintiffs contend that the seizure warrants were facially
15 invalid, which invalidity was not cured by the supporting affidavits. (Id. at 3.) Plaintiffs
16 contend that by the time Defendants caused the seizure of their funds in 2006, it had been
17 clear for decades that statistical inferences and profile evidence alone cannot establish
18 probable cause. (Id. at 4.) Plaintiffs emphasize that there was no evidence connecting the
19 wire transfers sent by Plaintiffs to any particular crime. (Id. at 8.)

20 Defendants respond that state officials are not expected to second-guess issuing courts
21 that have found probable cause, having the responsibility to scour the materials for defects
22 in probable cause to ensure that a warrant may issue. As stated in both Messerschmidt and
23 Armstrong, when a court has issued a warrant, any alleged defects, assuming they exist,
24 would need to be obvious to the state official with just a simple glance. Messerschmidt, 132
25 S. Ct. at 1250; Armstrong, 734 F.3d at 992. Here, any defects, if there were any, would only
26 become apparent upon a careful and detailed legal analysis, looking at the warrant, affidavit,
27 and relevant statutes. Thus, Defendants contend that no clearly established law gave them
28 fair notice that service and execution of the warrants in this case was a constitutional

1 violation.

2 The Court agrees with Defendants that no clearly established law gave them fair
3 notice that service and execution of the seizure warrants for forfeiture in this case would be
4 a constitutional violation. The burden is on the Plaintiffs to show that the law was clearly
5 established at the time of the alleged violation. See Davis v. Scherer, 468 U.S. 183, 197-98
6 (1984). The Supreme Court has repeatedly stated that clearly established law is not defined
7 at a high level of generality. See Mullenix, 136 S. Ct. at 308. “For federal law to be clearly
8 established, there must be fairly close factual correspondence between the prior precedents
9 and the case at hand. Federal law is less likely to be clearly established when it depends on
10 an *ad hoc* balancing of competing interests between the state and the individual.” Martin A.
11 Schwartz, Fed. Judicial Ctr., Section 1983 Litigation, 147 (3rd ed. 2014). In Mullenix, the
12 Supreme Court reiterated that “[t]he dispositive question is whether the violative nature of
13 particular conduct is clearly established.” 136 S. Ct. at 308; see also City & Cnty. of San
14 Francisco v. Sheehan, 135 S. Ct. 1765, 1777 (2015) (requiring for clearly established law that
15 the state official be given fair notice of the particular conduct which is prohibited).

16 Plaintiffs reliance upon Grant to establish clearly defined law for Defendants is
17 misplaced. In Grant, at issue was the absence of facts in the search warrant demonstrating
18 probability that the weapon in the homicide investigation would be found at the search
19 location. Grant is far removed from the facts at issue here. In support of the seizure warrant
20 for forfeiture, the facts at issue in the warrant application showed that the *res* being seized
21 was probably the proceeds of racketeering allegations.

22 Grant has no bearing on the Court’s “clearly established” analysis because the
23 application for the search warrant in Grant took place in 2009, three years after Defendants’
24 service and execution of the seizure for forfeiture warrants in 2006. The ruling in Grant by
25 the Ninth Circuit did not occur until 2012. As a matter of law, clearly established law for
26 qualified immunity purposes is the law clearly established at the time of the conduct at issue.
27 See Anderson, 483 U.S. at 639 (stating that whether a state official may be held personally
28 liable for an allegedly unlawful official action “generally turns on the objective legal

1 reasonableness of the action, assessed in light of the legal rules that were clearly established
2 at the time it was taken.”).

3 Moreover, even if considered, for federal law to be clearly established, there must be
4 fairly close factual correspondence between the prior precedents and the case at hand.
5 Otherwise, the state official is not put on notice that existing precedent has placed the
6 statutory or constitutional question beyond debate. See al-Kidd, 131 S. Ct. at 2083; see also
7 Mullenix, 136 S. Ct. at 308 (stating that “[t]he dispositive question is whether the violative
8 nature of particular conduct is clearly established”). Because there is no fairly close factual
9 correspondence between Grant and the facts here, Grant would not have provided any notice
10 to Defendants here that any reasonable official would have understood that he was violating
11 the constitutional right at issue.

12 Plaintiffs also rely on People v. Underwood, 725 F.3d 1076 (9th Cir. 2013) (stating
13 that the warrant affidavit was so lacking in indicia of probable cause as to preclude any
14 officer’s objectively reasonable reliance on it). As in Grant, Underwood has no bearing on
15 the Court’s “clearly established” analysis because the application for the search warrant at
16 issue in Underwood took place in 2010, four years after Defendants’ service and execution
17 of the seizure for forfeiture warrants in 2006. The ruling in Underwood by the Ninth Circuit
18 did not occur until 2013.

19 Moreover, Underwood is not factually similar. It deals with the lack of probable cause
20 to search for drug trafficking evidence. The affidavit in support of the search warrant failed
21 to define “drug trafficker” and provided no facts in support of the conclusion that defendant
22 was a drug trafficker. The Ninth Circuit held that probable cause had not been established
23 because the affidavit did not provide proper support for the conclusion that defendant was
24 a drug courier and no support for the conclusion that drug trafficking evidence would be
25 found at his address. Because there is no fairly close factual correspondence between
26 Underwood and the facts here, even if Underwood were timely, which it is not, it would not
27 have provided notice to Defendants here that any reasonable official would have understood
28 that his actions violated the constitutional right at issue.

1 Thus, Plaintiffs have failed to carry their burden of showing clearly established law
2 at the time of the alleged violation that Defendants' service and execution of the seizure for
3 forfeiture warrants was objectively unreasonable in light of the legal rules that were clearly
4 established at the time it was taken.

5 **CONCLUSION**

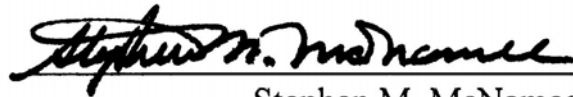
6 The Court finds that qualified immunity shields Defendants from personal liability
7 regarding their actions in serving and executing a pair of 2006 state court issued seizure for
8 forfeiture warrants to Western Union headquarters.

9 Accordingly, on the basis of the foregoing,

10 **IT IS HEREBY ORDERED** granting Defendants' Supplemental Motion for
11 Summary Judgment Re: Qualified Immunity. (Doc. 276.) The Clerk of Court shall issue
12 Judgment in favor of Defendants and terminate this case.

13 **IT IS FURTHER ORDERED** that the Clerk of Court forward this Order to the Ninth
14 Circuit Court of Appeals.

15 DATED this 29th day of June, 2016.

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19 Stephen M. McNamee
20 Senior United States District Judge
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