

JSH ATTORNEYS MICHELE MOLINARIO PREVAILS ON SUMMARY JUDGMENT IN SECTION 1983 ACTION AGAINST CITY & OFFICER

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Esquivel v. City of Yuma – JSH partner [Michele Molinario](#) prevailed by summary judgment in a 42 U.S.C. § 1983 civil

rights action against the City of Yuma and one of its law enforcement officers. This case involved the use of a TASER CEW in dart-mode to seize Plaintiff Gavino Esquivel, who was actively fleeing the scene of a reported physical disturbance at a local restaurant that reportedly turned physical. Mr. Esquivel also brought claims of false arrest, malicious prosecution and assault. The U.S. District Court for the District of Arizona found that there was no liability on the part of the City of Yuma or its officer.

The central issue to the Motion for Summary Judgment concerned whether the officer used excessive force in his apprehension of the Plaintiff, and whether the officer was entitled to qualified immunity for his use of force irrespective of whether said force was excessive. Judge Neil V. Wake declined to determine whether the use of force was reasonable under the circumstances but instead ruled in favor of the defense based on qualified immunity. Judge Wake agreed with the defense position that at the time of this incident in March of 2014, there was no clearly established law that would have put the officer on notice that the use of a TASER CEW and similar devices on a fleeing suspect would constitute excessive force. In the words of Judge Wake, “the law was not clearly established in 2012 – and it is not now – that a single tasing of a fleeing suspect, who reportedly was involved in a physical disturbance and may have displayed a gun, after ordering him to stop, violates the Fourth Amendment.”

[Michele Molinario](#) joined Jones, Skelton & Hochuli in 2008, and has been a Partner since 2013. As a trial attorney since 2000, she has tried state and federal jury and bench trials and administrative law hearings. Michele concentrates her civil litigation practice on governmental entity defense with an emphasis on civil rights matters.