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# THE FEDERAL LAW ENFORCEMENT - INFORMER -

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW  
ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. You can join *The Informer* Mailing List, and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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# The Informer – January 2025

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## FLETC Informer Webinar Schedule: January – February 2025

### **1. Relevant Reports: No Detail Too Small (1-hour)**

Presented by Amanda Barak and Liberty Moore, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

An officer’s report is more than just a summary of what happened during an encounter, it’s an official record of a law enforcement agency. It will be reviewed by prosecutors, defense attorneys, the court, and even civil attorneys. What the report includes – or doesn’t include – can affect the outcome of the case. Please join Attorney Advisors Amanda Barak and Liberty Moore as they outline the importance of good report writing and its legal implications in Relevant Reports: No Detail Too Small.

**Wednesday, January 29, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific**

**To join: [Relevant Reports: No Detail Too Small](#)**



## **2. Inspections (1-hour)**

Presented by James Stack, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Charleston, South Carolina.

The webinar will examine the distinction between Statutory Authority and Regulatory Authority and the basis to conduct inspections at Federal sites, regulated businesses, and the United States border. Please join Attorney Advisor James Stack as he explains the differences between the different authorities and how they are applied in different locations in Inspections.

**Tuesday, February 18, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific**

**To join: [Inspections](#)**



## **3. Officer Liability: Supervisor's Edition (Episode One, 1-hour)**

Presented by Mary Mara and Samuel A. Lochridge, Attorney Advisors / Senior Instructors, Federal Law Enforcement Training Centers, Glynco, Georgia.

The legal consequences for law enforcement in the course of their duties has become more than a sparsely reported news story but evolved into a commonplace reality. This is no less true for those who train and supervise the men and women working in the industry. This six-part web series will explore the liability of supervision. Please join Attorney Advisors Sam Lochridge and Mary Mara as they begin this journey with the basics of officer liability in Episode 1: Officer Liability (generally).

**Thursday, February 20, 2025: 1:00 p.m. Eastern / 12:00 p.m. Central / 11:00 a.m. Mountain / 10:00 a.m. Pacific**

**To join: [Officer Liability: Supervisor's Edition \(Episode 1\)](#)**



# CASE SUMMARIES

## Circuit Courts of Appeals

### Fourth Circuit

#### United States v. Turner, 122 F.4th 511 (4th Circuit 2024)

On June 1, 2020, a police officer obtained an arrest warrant for Turner for larceny of a firearm, a black and gray Ruger Model SR45. During this process, the officer learned that Turner was a convicted felon and confirmed gang member. The next night, the officer responded to a reported carjacking. The victim told the officer that Turner pointed a black and gray Ruger handgun at him and threatened to shoot him unless he gave Turner the keys to his car.

On June 4, 2020, at approximately 2:00 a.m., the officer responded to a call of shots fired at a convenience store. As the officer approached the store, he recognized Turner sitting in a car. The officer arrested Turner on the outstanding warrant for larceny of a firearm, searched him, but found no weapons. After placing Turner in the back of his patrol car, the officer joined a second officer who had begun to search Turner's car. The second officer found a firearm in the glove box that was later confirmed to be the stolen Ruger Model SR45.

The government charged Turner with two firearm-related charges. Afterward, Turner filed a motion to suppress the handgun, arguing that the officers' warrantless search of his car violated the Fourth Amendment. The district court denied Turner's motion, holding that the search of Turner's car was a lawful search incident to his arrest. Turner appealed.

In [Arizona v. Gant](#), the Supreme Court held that a warrantless search of a vehicle incident to the arrest of a recent occupant does not violate the Fourth Amendment as long as "it is reasonable to believe the vehicle contains evidence of the crime of arrest."

First, the Fourth Circuit Court of Appeals noted that neither the Supreme Court nor it had articulated the "precise quantum of proof" necessary to satisfy the [Gant](#) "reasonable to believe" standard. Following the Seventh, Ninth, and D.C. Circuits, the court held that [Gant's](#) "reasonable to believe" standard requires something less than probable cause. The court reasoned that if the Supreme Court had intended to "set the bar at probable cause, then it could have just said so," as "probable cause is an often used and well-understood Fourth Amendment term of art."

Next, the court held that when the officer saw Turner sitting in a car at the convenience store, just after a report of gunfire, it was reasonable to believe Turner was armed. In addition, it was reasonable for the officer to believe that Turner was armed with the same stolen handgun he had reportedly used the night before in an apparent carjacking. Finally, because the officers did not discover the handgun during their search of Turner incident to his arrest, the car in which Turner was sitting became the most likely place for Turner to have concealed it.

Consequently, the court agreed with the district court’s conclusion that the officer had “at least a reasonable belief that Turner’s vehicle contained evidence of the larceny of a firearm” for which he was arrested “such that the search of the vehicle incident to arrest was permissible” under Gant.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca4/22-4055/22-4055-2024-12-04.pdf?ts=1733340623>

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## **Fifth Circuit**

### **United States v. Smith, 110 F.4th 817 (5th Cir. 2024)**

The government investigated a violent robbery that resulted in the postal theft of \$60,706. After reviewing a video of the incident taken from a neighboring property, a Postal Inspector was able to decipher three persons that appeared to be involved in the attack, and at least one of them used a cell phone immediately before and after the crime. Many months later, with no further developments in identifying who committed this offense, the government sought a geofence warrant, which can be useful when the location, date and time of a specific crime is known, but the perpetrators are not. With the known location and time of an event, the government obtains information from certain technology companies to determine which cellphones were within these parameters. This is possible with a great number of technology users that have their location histories retained by the technology companies, with the users’ permission.

A U.S. Magistrate issued the warrant for the hour during the commission of the crime within a geofence covering approximately 98,192 square meters around the crime scene. The technology company identified three anonymous users over a much larger area than that proscribed by the issuing magistrate. After reviewing the data, the government believed all three users were relevant to its investigation and, without further judicial review, sought their identities. While one of these users was later deemed to be irrelevant to the investigation, the data helped further the investigation and the defendants were ultimately identified and arrested for the robbery.

The defendants moved to suppress the evidence obtained through the geofence warrant arguing that the warrant was in violation of their Fourth Amendment rights due to lack of probable cause and particularity, and that the government failed to follow proper legal procedures in obtaining additional information from Google. The district court denied the motion to suppress, finding that law enforcement acted in good faith and the defendants appealed.

The key issue under consideration by the reviewing court is whether persons have a reasonable expectation of privacy in the data being generated by the location service of their cellphones. In Carpenter v. United States, the Supreme Court found that the government’s collection of cellphone data from wireless carriers to the degree that it learned of the defendant’s whereabouts over a series of days amounted to a search within the meaning of the Fourth Amendment. The Court’s rationale was that persons “have a reasonable expectation of privacy in the whole of their physical movements” even when derived from data that had been voluntarily turned over to a third party. The Fifth Circuit concluded this reasoning was applicable here, despite the fact that the

government's interest was limited to a specific moment and location and not a series of days. Interestingly, this conclusion is in contrast with the Fourth Circuit, which found that geofencing does not result in a Fourth Amendment "search" as set forth in [United States v. Chatrue](#). In addition, the Eleventh Circuit found that a suspect lacked standing to challenge the government's use of a geofence warrant for his girlfriend's phone in [United States v. Davis](#).

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/23-60321/23-60321-2024-08-09.pdf?ts=1723246217>

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## **Ninth Circuit**

### **Smith v. Agdeppa, 2023 U.S. App. LEXIS 22954 (9th Cir. 2023)**

At 9:00 am on October 29, 2018, Officer Edward Agdeppa (5'1" and 145lbs) and Officer Perla Rodriguez (5'5" and 145lbs) responded to a gym in Hollywood, California, due to a report of a trespasser threatening gym patrons and assaulting a security guard. When they arrived, they were briefed by an employee and led to the men's locker room where they encountered Dorsey (6'1" and 280lbs), standing naked near the shower area playing music from his phone. After repeatedly ordering Dorsey to turn off music, get dressed and leave the gym, Dorsey remained naked, began taunting the officers by dancing to the music in front of the mirror and the officers, and raising his middle finger towards Officer Agdeppa. After four minutes, Agdeppa moved closer in an attempt to handcuff Dorsey from behind. As Dorsey resisted, Rodriguez stepped in to assist and, despite the resistance, the officers were able to get a handcuff on Dorsey's right wrist but the officers were not able to get Dorsey under control. Agdeppa was able to radio for additional units.

The officers continued to struggle with Dorsey for approximately one minute before Agdeppa's body camera was knocked to the ground, rendering it unable to capture all of the encounter visually, but the audio included crashes, shouts of pain and other indications of a violent confrontation. As Dorsey became increasingly aggressive, officers could be heard continuously ordering Dorsey to "Stop Resisting!" Agdeppa pulled out his taser and warned Dorsey that he will be tased if he continues to resist. Dorsey is tased twice by Agdeppa, which failed to stop the violent struggle. Rodriguez then tased Dorsey in dart mode, hitting Dorsey in the back, cycling three times with no apparent effect on Dorsey. The audio confirmed the struggle escalated after the tasings.

Dorsey then advanced on the officers punching at their heads and faces with the handcuff swinging from his wrist. One of Dorsey's blows knocked Agdeppa backwards into a wall, momentarily disorienting him and causing him to drop his taser on the floor. Dorsey struck Rodriguez knocking her to the floor, straddled her, struck her repeatedly and attempted to gain control of her taser. When Agdeppa came to, he observed Rodriguez in the fetal position trying to cover her face and head while Dorsey repeatedly punched her. Believing Rodriguez's life was at risk, Agdeppa shot Dorsey. Dorsey was still holding one of the officers' tasers after he was shot.

Agdeppa claimed he warned Dorsey before he shot him, but it is unclear from the recording captured on the body camera. Agdeppa then radioed that shots had been fired and that an officer and suspect were down. There were also witnesses that observed Dorsey's onslaught on the officers, describing the ordeal in greater detail. The Los Angeles Board of Police Commissioners (BOPC) faulted the officers for poor planning and for failing to use de-escalation tactics earlier in the encounter. BOPC also found – relying on independent witnesses – that Agdeppa reasonably perceived a risk of death or serious injury to the officers.

During the motion for summary judgment based on qualified immunity, the district court denied qualified immunity and ruled that there were disputes of fact concerning: 1) whether the severity of the officers' injuries were consistent with a threat of death or serious injury; 2) whether (based on a bullet's reported trajectory) Dorsey was crouching over Rodriguez when Agdeppa discharged his weapon; 3) whether witnesses intervened in the altercation; and 4) whether Agdeppa failed to warn Dorsey before firing the fatal shots. Agdeppa appealed.

An opinion of the Ninth Circuit Court of Appeals was published in December 2022 and affirmed the district court's ruling. That opinion was recalled in May 2023 and the case was reheard by a panel of three different judges, which found Agdeppa was entitled to qualified immunity, with one judge dissenting. The panel held that the Defendant's use of deadly force, including his failure to give a warning that he would be using such force, did not violate clearly established law given the specific circumstances he encountered. As such, the court found that there was no basis to conclude that the Defendant's use of force here was obviously constitutionally excessive.

Using several cases, the Ninth Circuit held that the standards from [Tennessee v. Garner](#) are cast at a high level of generality, so they ordinarily do not clearly establish rights. Further, the Supreme Court has repeatedly stressed that courts must not define clearly established law at a high level of generality. The Court reiterated that a court should not second-guess officers' real time decisions from the standpoint of 20/20 hindsight. The district court's question of the bullet's reported trajectory was based off the argument made by the plaintiff's counsel and not by expert opinion and, as such, was improper.

Using factors as laid out in [Graham v. Connor](#), the court then focused on the most important of the Graham factors, which was "whether the suspect posed an immediate threat to the safety of the officers or others." The court discussed how the discrepancy in the size of the officers versus the suspect affected this factor, as well as the ineffectiveness of the attempted tasings. The court addressed the lower court's review of the officers' injuries by stating that "[n]o clearly established law requires officers to have sustained more grievous injuries or worse before using lethal force in the particular situation they confronted."

The Ninth Circuit also addressed the district court's assessment of Agdeppa's warning – or lack thereof – by stating that they have specifically emphasized in prior cases that the absence of a warning does not necessarily mean that an officer's use of deadly force was unreasonable and therefore, it is difficult to establish a constitutional violation based solely on a lack of a warning. They further stated that existing precedent does not clearly establish in every context when such a warning is "practicable," what form the warning must take, or how specific it must be. The court also admits there is no existing law that clearly establishes how the absence of a warning is to be balanced against the other Graham factors. As to the current case, the court held that, by the officers' words and actions, Dorsey was warned throughout the encounter; in addition, Dorsey



was given numerous opportunities to stand down, and he instead continued to fight. Further, none of the cases put forth by the Plaintiff would have caused Agdeppa to believe he was required to issue a further warning – to call a “time-out” – in the middle of an increasingly violent altercation. The dissent, however, claimed that Agdeppa should have warned Dorsey that he would switch from using his taser to using his firearm if Dorsey did not submit to being handcuffed.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca9/20-56254/20-56254-2023-08-30.pdf?ts=1693411265>

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### **Puente v. City of Phoenix: No 22-15344 (9th Cir. 2024)**

On August 22, 2017, demonstrators gathered outside a rally held by then-President Trump at the Phoenix Convention Center. The Phoenix Police Department (PPD) had delineated two zones outside the venue: one a “free speech zone” where demonstrators could gather and one closed to the public that was to be kept clear as a “Public Safety Zone”. The zones were separated by a three-foot-high pedestrian fence. Around 6,000 people gathered to demonstrate and did so peacefully for several hours. About 30 minutes after the rally began, unknown individuals within the Free Speech Zone began throwing water bottles at police and those waiting in line. About an hour later, police became aware of Antifa members in the crowd that began “to start some trouble” by acting aggressively, shouting profanities, shoving another demonstrator who told them to stop throwing objects, and also possessing signs on “tall poles” which had been used in prior Antifa protests to breach barriers. About half an hour later, suspected Antifa members began passing out unidentified items from a bag and began pushing the fence. PPD responded by employing experienced grenadiers to fire “pepper balls” at the ground in front of the area that was being breached.

The potential breaches only intensified, and activity escalated as more and more objects began to be thrown by the protesters. PPD deployed inert smoke, but the barrage of objects thrown by the protesters continued, some of which included water bottles, rocks, and a “pyrotechnic munition” which burned for several minutes before it was extinguished by police. PPD then began dispersing the crowd with “tear gas, other chemical irritants, and ‘flash-bang grenades’”. Almost three hours after the first bottle was thrown, PPD declared the assembly was unlawful and cleared the Free Speech Zone; by the end of the night, PPD had arrested five individuals—none of whom were plaintiffs in this action.

Two organizations and four individuals, the Plaintiffs, brought suit against the Defendants alleging that PPD violated their rights under the First, Fourth, and Fourteenth Amendments to the U.S. Constitution. The district court granted summary judgment to defendants on all claims except for the individual Fourth Amendment excessive-force claims made by three individual plaintiffs against individual officers. Both parties appealed the partial judgment with the officers arguing that they are entitled to qualified immunity.

The Ninth Circuit first considered the class of Plaintiffs who were dispersed from the Free Speech Zone by PPD and affirmed the district court’s summary judgment on claims for excessive force under the Fourth and Fourteenth Amendment because the use of airborne and visual/auditory irritants was not employed with the objective intent to restrain the crowd and thus there was no



“seizure” within the meaning of the Fourth Amendment. Relying on [Torres v. Madrid](#), the court found that officers had not seized the individuals they had dispersed because there was no objective intent to *restrain, detain, or confine*—even temporarily—but instead the intent to *exclude* them. The court noted that if an officer had used measures objectively aimed to detain or confine—even if brief—in their expulsion of an individual then they would also have seized the individual. The court likened this to a librarian who at closing time grabs the shoulder of a patron overstaying their welcome or physically guides them to the exit—the patron is necessarily seized because the objective intent was to restrain in order to expel the individual. The court also outlined case examples of officers who applied specific force with the objective intent to restrain: officers applying pepper spray to the eyes of already detained individuals who have mechanically linked themselves together to force them to separate; officers striking a student with a targeted pepper ball and causing them to be physically immobilized; and officers striking individuals with batons as that physically obstructed the officers from removing illegally placed tents. Without the objective intent to restrain, the methods used to disperse the crowd did not constitute a seizure.

Next, the court then analyzed these claims under the Fourteenth Amendment test of “shocks-the-conscience” and found that due to the escalating, quick paced situation officers were acting with legitimate law enforcement objectives and not an improper purpose. “If . . . ‘the situation at issue escalated so quickly that the officer had to make a snap judgment,’ then the officer’s use of force ‘shocks the conscience’ only if the officer acted with ‘a purpose to harm [the plaintiff] for reasons unrelated to legitimate law enforcement objectives.’” (citing [Ochoa v. City of Mesa](#)). Plaintiffs argued Defendants’ purpose to harm was evidenced by a vulgar commemorative coin depicting “a protestor being hit by a munition” created by unknown individuals but possessed and distributed by several officers. “But such later-occurring events, even if distasteful have ‘minimal relevance’ because they ‘took place after the officers’ applied the force in question.”

The court then addressed the individual excessive force claims of the named plaintiffs that were actually struck by projectiles and thus seized. The court reversed the lower court’s denial of summary judgment and held that the officers were entitled to qualified immunity because they acted reasonably under the circumstances or did not violate clearly established laws. Plaintiff Yeldin was a protestor who was struck with pepper balls after he returned to the fence to again attempt to breach it after the police had just fired warning pepper balls at the same location when the fence was being breached. Yeldin was seized, but the court found the actions of the officers reasonable given the “significant interest in avoiding any breach of the security fence . . . because that would present an immediate and substantial threat to the safety of the officers, nearby members of the public, and potentially even the President’s motorcade.” Plaintiff Travis put herself between an approaching “skirmish line” of officers and the crowd that was throwing objects at the police and thus was seized by a “muzzle blast”. The court held that officers acted reasonably given the substantial interest in public safety and that even so the officers would be entitled to qualified immunity because the right asserted by Travis is not clearly established. Finally, Plaintiff Guillen was hit by an unknown projectile and seized and though it is unclear factually whether the particularized force was reasonable, the court sidesteps the issue by determining that the right was not clearly established.

Though Plaintiffs argue this case is similar to [Nelson v. City of Davis](#), the court disagreed. Here, unlike [Nelson](#), there is an exigent public safety concern to act quickly that was not present in [Nelson](#) where officers were merely clearing out an apartment after shutting down a raucous party. [Nelson](#) involved a small, discreet group of students separated from the other partygoers, whereas

Guillen who despite not having been immediately involved in threatening or dangerous behavior was practically indistinguishable from the rest of the crowd. Finally, though an order to disperse had not been verbalized there had been “numerous objective indicia that the police were trying to clear the area”—circumstances not present in Nelson. Thus, the officers were entitled to qualified immunity even for Guillen’s claims.

Regarding the First Amendment claims, the court affirmed the summary judgment for the Defendants and held they were entitled to qualified immunity because the use of unidentified gases and pyrotechnic devices by the protestors established a “clear and present danger” of immediate threat. “Whatever the outer boundaries of the ‘clear and present danger’ test may be, we think that circumstances involving the use of unidentified gas and pyrotechnic devices by agitators dispersed throughout a crowd, escalating violence toward the officers, an organized attempt to breach a police line, and the exigent concern of presential security, falls within it.” The Plaintiffs also argued that the Defendant’s failure to issue a verbal dispersal order before beginning to disperse the crowd was a violation of the First Amendment relying on Jones v. Parmley out of the Second Circuit. The court disagreed and held that verbal orders to disperse are not *always* required and noted that the demonstration in Jones was peaceful and officers there had charged into the crowd and began arresting individuals. The protest here was not akin to that of Jones.

Finally, the court upheld the summary judgment regarding claims of municipal liability against the city and claims of supervisory liability made against the Chief of Police because they do not involve a violation of a clearly established right and fail to raise a triable issue that either party caused, ratified, or was deliberately indifferent to the constitutional rights of the plaintiffs.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca9/22-15344/22-15344-2024-12-19.pdf?ts=1734625867>

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