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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. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-3429 or [FLETC-LegalTrainingDivision@dhs.gov](mailto:FLETC-LegalTrainingDivision@dhs.gov). You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting <https://www.fletc.gov/legal-resources>.

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## **FLETC Informer Webinar Schedule**

### **1. Understanding the Administrative / Inspection Search (1-hour)**

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, and Ken Anderson, Attorney / Advisor – Senior Instructor, Federal Law Enforcement Training Centers, Glynco, Georgia. ([John.Besselman@fletc.dhs.gov](mailto:John.Besselman@fletc.dhs.gov))

This unique government authority and its limitations is, at times, misunderstood. This webinar will explain how, why and when an agency has the ability to conduct an administrative inspection. All are welcome to attend. Recommended for those agencies that possess an inspection power.

**Thursday October 11, 2018 – 10:30 a.m. EDT**

To participate in this webinar: <https://share.dhs.gov/inspections/>



### **2. Federal Tort Claims Act (1-hour)**

Presented by Johnnie Story, Attorney-Advisor/ Senior Instructor and Patrick Walsh, Attorney-Advisor / Branch Chief, Federal Law Enforcement Training Centers, Glynco, Georgia. ([patrick.walsh@fletc.dhs.gov](mailto:patrick.walsh@fletc.dhs.gov))

It is not fun to think about how officers can be sued. Officers need to understand how actions can be brought against them in federal court, and how the law has protections built into it to shield them from improper lawsuits. This webinar will discuss how officers can be sued under the Federal Tort Claims Act, and how the FTCA gives officers defenses to those lawsuits. The webinar will walk you through how the FTCA works, how lawsuits are brought and what defenses officers have to these lawsuits. The webinar will also compare the Federal Tort Claims Act to a state Tort Claims Act, and demonstrate how local state and federal officers can be sued for violations of state tort law.

**Monday October 15, 2018 – 3:00 p.m. EDT**

and

**Monday October 22, 2018 – 10:30 a.m. EDT**

To participate in this webinar on either date: <https://share.dhs.gov/walsh/>



### **3. Briefing Skills - Meetings With a Purpose (1-hour)**

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, and Ken Anderson, Attorney / Advisor – Senior Instructor, Federal Law Enforcement Training Centers, Glynco, Georgia. ([John.Besselman@fletc.dhs.gov](mailto:John.Besselman@fletc.dhs.gov))

In this webinar, we will discuss the basics of briefing the client (or your boss or your associates or . . . ). The lost art of getting to the point is useful not just for the lawyers in the crowd. See what John, Ken, and the leaders of the field say about how to say less and mean more.

**Thursday October 18, 2018 – 10:30 a.m. EDT**

To participate in this webinar: <https://share.dhs.gov/briefingskills/>



### **4. Border Search Authority (1-hour)**

Presented by James Vogel, Senior Attorney, U.S. Customs and Border Protection, and Patrick Walsh, Attorney-Advisor / Branch Chief, Federal Law Enforcement Training Centers, Glynco, Georgia. ([patrick.walsh@fletc.dhs.gov](mailto:patrick.walsh@fletc.dhs.gov))

Have you ever wondered how it is constitutional for those that protect our nation’s borders to search people and items entering the United States? CBP Senior Attorney James Vogel will discuss Border Search Authority, a judicially recognized exception to the warrant requirement. This webinar is designed for the non-CBP officers, to inform them on what border search authority is, who can use it, and where it can be used. Border searches are a key legal concept that help keep our nation safe, but there are a lot of misconceptions about it. This webinar will provide a nuts and bolts overview for those who want to learn more.

**Wednesday October 24, 2018 – 3:00 p.m. EDT**

To participate in this webinar: <https://share.dhs.gov/walsh/>



### **To Participate in a FLETC Informer Webinar**

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3. If you do not have a HSIN account, click on the button next to “Enter as a Guest.”
4. Enter your name and click the “Enter” button.
5. You will now be in the meeting room and will be able to participate in the event.
6. Even though meeting rooms may be accessed before an event, there may be times when a meeting room is closed while an instructor is setting up the room.
7. **If you experience any technical issues / difficulties during the login process, please call our audio bridge line at (877) 446-3914 and enter participant passcode 232080 when prompted.**

## FLETC Talks

A brief review of United States Supreme Court cases involving a variety of Constitutional issues relevant to law enforcement officers.

1. **Graham v. Connor**: Use of Force / Objective Reasonableness Standard.  
<https://www.youtube.com/watch?v=zhtQovjR2C0>
2. **Carroll v. United States**: Warrantless searches of automobiles (Carroll Doctrine / Mobile Conveyance Exception / Automobile Exception).  
<https://www.youtube.com/watch?v=sF0BY7nBvck>
3. **Overflights**: Legal issues concerning Unmanned Aerial Vehicles (UAVs / Drones).  
[https://www.youtube.com/watch?v=rcppCxR\\_Lto](https://www.youtube.com/watch?v=rcppCxR_Lto)
4. **Katz v. United States**: Fourth Amendment searches and the reasonable expectation of privacy (REP) test.  
<https://www.youtube.com/watch?v=LS79Qz4TmV4>
5. **Arizona v. Gant**: Search Incident to Arrest (Vehicles)  
<https://www.youtube.com/watch?v=p-Ts09utgKQ>
6. **Government Employees and Free Speech**  
[https://www.youtube.com/watch?v=W6EBfL9\\_oPY](https://www.youtube.com/watch?v=W6EBfL9_oPY)
7. **Minnesota v. Dickerson**: Plain-Touch Doctrine  
<https://www.youtube.com/watch?v=3s4bDZ83krw>
8. **O'Connor v. Ortega**: Government Workplace Searches  
<https://www.youtube.com/watch?v=WeTm3GrzR4Q>
9. **Detective McFadden**: Terry Stops / Terry Frisks  
<https://www.youtube.com/watch?v=AVDy0EZFv3s>
10. **Michigan v. Long**: Frisking vehicles for weapons.  
<https://www.youtube.com/watch?v=wh8ZlhmWWgl>

# CASE SUMMARIES

## Circuit Courts of Appeal

### Second Circuit

#### **United States v. Santillan, 2018 U.S. App. LEXIS 23962 (2d Cir. N.Y. Aug. 24, 2018)**

Santillan was a passenger in a car that Rivera was driving from New York to Massachusetts. A police officer saw Rivera commit several traffic violations and conducted a traffic stop. During the stop, Rivera told the officer they were coming from Santillan's aunt's house, but he could not provide any specific information about the location of the aunt's house. Similarly, Santillan could not provide the officer any details about where his aunt lived. While talking to the men, the officer noticed that they appeared extremely nervous, avoided making eye contact, their voices were "shaky," and Rivera's hands shook when he gave the officer his license and registration. At this point, approximately eight minutes had elapsed and the officer had the information necessary to issue Rivera citations for the traffic violations.

The officer then ordered Santillan to exit the car, and when he did, the officer asked Santillan additional questions about the location of his aunt's house and his relationship to Rivera. Santillan could only tell the officer that his aunt lived somewhere in New Jersey and that he did not know Rivera that well. During the conversation, the officer saw energy drinks and multiple cell phones in the car's center console. The officer also noticed that the passenger seat was higher than the driver's seat. At this point, the officer frisked Santillan and removed \$1,000 from Santillan's back pants pocket. The officer asked Santillan to sit in the back of a second patrol car, which had arrived during the stop. Santillan was not handcuffed and the officer told him that he was not in trouble or under arrest.

The officer went to Rivera and obtained his consent to search the car. The officer then requested a drug-sniffing dog, which alerted to the presence of narcotics in the front passenger seat of the car. The officer pulled back the seat, found two packages containing cocaine, and arrested Santillan and Rivera.

The government charged Santillan and Rivera with drug-related offenses.

Santillan filed a motion to suppress the evidence seized from the car and from his person during the stop. Santillan argued that the officer violated the Fourth Amendment by prolonging the duration of the traffic stop past the eight-minute mark when the officer had all of the information he needed to issue the traffic citations.

The court disagreed. First, the court held that by the eight-minute mark, the officer had established reasonable suspicion that Santillan and Rivera were involved in criminal activity; therefore, he could reasonably extend the duration of the traffic stop. First, neither Santillan or Rivera could give the officer clear answer concerning the location of the aunt's house. Second, both men were extremely nervous and avoided eye contact with the officer. Finally, Rivera's hands were visibly shaking when he gave the officer his license and registration. Based on these facts, the court concluded the officer, who was trained in narcotics trafficking interdiction, had reasonable

suspicion to believe that Santillan and Rivera were involved in criminal activity and had the authority to investigate further.

Second, the court held that the officer had reasonable suspicion that Santillan was armed and dangerous; therefore, he was justified in frisking him. The court noted that by the time the officer decided to frisk Santillan, he had observed several indicators of possible narcotics activity, specifically the differences between the seat heights and the presence of multiple cell phones. The court also recognized that “narcotics activity and weapons often go hand in hand.” As a result, the court concluded that the officer was justified in frisking Santillan to ensure his own safety and the safety of others during the stop.

Third, the court held that the officer unlawfully removed the \$1,000 in cash from Santillan’s pants pocket during the frisk, as it was not immediately apparent that the cash was a weapon or contraband. Nevertheless, the court concluded that the \$1,000 was admissible against Santillan because it would have been inevitably discovered during a search incident to arrest after the officers discovered the cocaine in the car.

Santillan also argued that all of his statements to the officer during the stop should have been suppressed, because the officer did not provide him Miranda warnings.

Again, the court disagreed, holding that Santillan was never subject to custodial interrogation. To determine if a suspect is in custody for Miranda purposes, a court will ask whether: (1) a reasonable person in the suspect’s position would have understood that he or she was free to leave; and (2) there was a restraint of freedom of movement like that associated with a formal arrest.

In this case, even though the traffic stop was prolonged into an investigatory detention, the location and atmosphere of the questioning resembled that which is associated with a traffic stop. First, Santillan was questioned in public view on the side of the road about his relationship to the Rivera and details about their travels. Second, the officer never handcuffed Santillan or displayed a weapon. Third, although Santillan was frisked and asked to wait in the back of a police car while the officer continued his investigation, the officer told Santillan that he was not under arrest. The court held that under these circumstances, a reasonable person would not have felt that he was subject to a formal arrest; therefore, Miranda warnings were not required.

Finally, the court held that the officer’s decision to place Santillan in the back of a police car did not transform the stop into a de facto arrest, because the decision was a reasonable response to legitimate safety concerns.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca2/16-1112/16-1112-2018-08-24.pdf?ts=1535121009>

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## **Third Circuit**

### **United States v. Williams, 898 F.3d 323 (3d Cir. PA 2018)**

A drug task force suspected that Williams regularly transported drugs from Michigan to Pennsylvania. While following Williams, a Pennsylvania state trooper stopped Williams for speeding. After the trooper issued Williams a citation and told him that he was free to go, the trooper asked Williams for consent to search his car. Williams agreed and signed a consent-to-search form.

Several troopers participated in the search of Williams's car which lasted for approximately seventy-one minutes. After the troopers found two cell phones in the car, Williams told them that they could not search his phones without a warrant. Similarly, when the troopers began to disassemble the sound system speakers, Williams told them that they could not search them without a warrant. In both instances, the troopers did not search the cell phones or speakers, but continued to search the rest of Williams's car. While the troopers were searching Williams's car, he became irritated and complained to the troopers about the amount of time it was taking to complete the search. A short time later, the troopers found thirty-nine grams of heroin in a sleeve covering the car's parking brake lever and arrested Williams.

The government charged Williams with possession with intent to distribute heroin.

Williams filed a motion to suppress the evidence seized from his car, arguing that the troopers continued to search his car after he withdrew his consent to search. Specifically, Williams claimed that he withdrew his consent when he complained to the troopers about the amount of time it was taking to complete the search.

The court disagreed. Once a suspect voluntarily consents to a search, it is the suspect's burden to establish that he has withdrawn that consent. Although a suspect does not need to use a special set of words to withdraw consent, the suspect must do more than express unhappiness about the search to which he has consented. Here, the court held that Williams's statements to the troopers about the length of time it was taking to complete the search were expressions of frustration and not a valid withdrawal of his consent. The court noted when Williams complained to the troopers about the duration of the search, he had already expressly told the troopers they did not have consent to search his speakers or his cell phones and the troopers stopped searching those items. Consequently, the court found that Williams knew how to validly withdraw his consent if he wanted to do so.

Williams alternatively argued that even if he did not validly withdraw his consent to search, the evidence should be suppressed, because the "coercive" nature of the search prevented him from revoking his consent.

Again, the court disagreed. The court found that Williams's consent was obtained voluntarily, as the troopers did not threaten Williams, use force against him, or restrain him while they were searching his car.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/16-3547/16-3547-2018-08-01.pdf?ts=1533142808>

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**Bland v. City of Newark, 2018 U.S. App. LEXIS 22618 (3d Cir. N.J. Aug. 15, 2018)**

On December 26, 2011, the Newark Police Department received a report that a vehicle bearing Pennsylvania license plates had been carjacked at gunpoint. Approximately three hours later, two New Jersey State Troopers saw the carjacked vehicle in Newark. When the troopers activated their police lights in an attempt to conduct a traffic stop, the vehicle, driven by Corey Bland, failed to stop. Instead, Bland accelerated and reached speed exceeding 100 miles per hour, while running red lights, shutting off his headlights, and weaving in and out of traffic as he fled from the troopers.



Eventually, Bland drove the wrong way down Lincoln Park, a one-way street, and collided with troopers in a marked police car, as well as with an officer from another department in a marked police car. The collision caused the police car to strike an unoccupied parked car. As a result, Bland's vehicle, the police car, and the unoccupied car became entangled.

At this point, numerous officers surrounded Bland's vehicle and ordered him to surrender. Instead, Bland revved his vehicle's engine, spun its tires, and tried to get the vehicle to accelerate. Bland freed his vehicle by reversing and striking the now unoccupied police car a second time. Bland then drove over a curb and through a public park. During this encounter, six state troopers fired a total of 28 shots, none of which hit Bland.

Bland exited the park and continued to speed through Newark with his lights off, as officers continued to pursue him. At the intersection of 18th and Livingston Streets, a trooper rammed Bland's vehicle, sending it into scaffolding that surrounded a school. Six officers approached Bland's vehicle which remained entangled in the scaffolding. The officers discharged their firearms at Bland after he failed to comply with their orders to show his hands and to stop moving, and because he repeatedly threatened to kill them. Bland was shot between 16-18 times and suffered extensive injuries. The officers did not recover a gun from Bland's vehicle and no officer observed Bland with a weapon during the pursuit.

Bland sued the officers under 42 U.S.C. § 1983 alleging that the officers violated the Fourth Amendment by using excessive force against him.

The officers filed a motion for summary judgment based on qualified immunity, which the district court denied. The officers appealed.

The Third Circuit Court of Appeals reversed the district court, commenting that the Supreme Court has consistently held that officers either did not violate the Fourth Amendment or were entitled to qualified immunity when they used deadly force during car chases similar to the one in this case.

First, the court analyzed the deadly force used by the six troopers at Lincoln Park. The court found that before shots were fired at Lincoln Park, Bland drove at high speeds, disregarded traffic signals, drove the wrong way down a one-way street, collided with two occupied police vehicles, and failed to comply with orders to surrender. In addition, as the troopers shot at him, Bland attempted to drive away with officers standing in close proximity to his vehicle. Finally, Bland engaged in all of this behavior in a vehicle that had been reportedly taken at gunpoint a few hours earlier. Given the troopers' reasonable belief that Bland was armed, and the mortal threat that his conduct posed to those around him, the court concluded that the troopers shot at him at Lincoln Park did not violate Bland's clearly established constitutional rights.

Second, the court analyzed the deadly force used by the officers at the conclusion of the chase. After Bland fled from the officers at Lincoln Park, he continued to drive at excessive speed, disregard traffic lights, and put pedestrians and other motorists at great risk. When the officers finally stopped Bland by pinning his vehicle against the scaffolding, Bland made no attempt to surrender, but instead, threatened to kill the officers. Although the officers did not see a weapon, the court found that the report of an armed carjacking gave them reason to believe Bland was armed. Finally, while Bland's vehicle was pinned against the scaffolding, the officers had already seen Bland successfully free the car and continue to flee after the crash at Lincoln Park. Because Bland could not identify any case with similar facts that, in 2011, would have put the officers on

notice that using deadly force in such a situation violated his clearly established constitutional rights, the court concluded that the officers were entitled to qualified immunity.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/17-2228/17-2228-2018-08-15.pdf?ts=1534352508>

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**United States v. Clark, 2018 U.S. App. LEXIS 24694 (3d Cir. N.J. Aug. 30, 2018)**

A police officer stopped a vehicle driven by Donald Roberts for several minor traffic violations. The officer obtained Roberts's documents and ran a computer check, which revealed that Roberts had a valid driver's license, as well as a criminal record for drug offenses. The officer also discovered there were no outstanding warrants for Roberts's arrest and that the vehicle was registered to Kathy Roberts at the same address listed on Roberts's driver's license.

The officer returned to the driver-side window and immediately asked Roberts about his criminal record, specifically, whether he had been arrested, for what kinds of crimes, and the date of his last arrest. Roberts told the officer that he had been arrested most recently in 2006 for drug crimes.

The officer then questioned Roberts about his whereabouts earlier in the evening, before walking to the passenger side of the vehicle to question the passenger, Tyrone Clark. The officer questioned Clark about his relationship to Roberts and about where the men had been earlier that evening. After questioning Clark, the officer returned to Roberts and told him that Clark had given him a conflicting story, and asked Roberts why he had lied to him. After Roberts denied lying to the officer, the officer told Clark to exit the vehicle, because he smelled a strong odor of marijuana coming from the passenger-side of the vehicle. Clark exited the vehicle and as the officer prepared to frisk him, Clark told the officer that he had a handgun in his waistband. The officer seized the handgun and arrested Clark. The officer allowed Roberts to leave after he was issued a summons for the traffic violations.

The government charged Clark with being a felon in possession of a firearm.

Clark filed a motion to suppress the handgun. Clark argued that the officer unreasonably prolonged the duration of the stop without reasonable suspicion of criminal activity beyond the time necessary to issue traffic citations to Roberts.

Although a traffic stop may initially be lawful, as the parties agreed was the case here, it can become unreasonable at some later point. The Supreme Court has held that a traffic stop becomes unreasonable, and therefore unlawful, when it lasts longer than is necessary to address the traffic violation that warranted the stop and attend to related safety concerns. During a traffic stop, in addition to determining whether to issue a traffic ticket, it is reasonable for an officer to check the driver's license, registration, and insurance status, as well as determine if the driver has any outstanding warrants. The Court has held that these "incidental inquiries" are part of the traffic stop's mission, because they serve the objectives of ensuring roadway safety and protecting police officers.

However, the Supreme Court has held that not all inquiries during a traffic stop qualify as ordinarily incident to the stop's mission. For example, the Court has found that questions aimed at "detecting evidence of ordinary criminal wrongdoing," such as drug trafficking, are not related to the mission of the stop or safety on the roadway.

Against this backdrop, the Third Circuit Court of Appeals held the officer's questions to Roberts concerning his criminal history were not tied to the traffic stop's mission. The court concluded that by the time the officer questioned Roberts about his criminal history he had already confirmed through a computer check that Roberts was authorized to drive the vehicle and had not developed reasonable suspicion of criminal activity. At that point, the court held that traffic stop's mission was complete; therefore, the questions to Roberts and Clark unreasonably extended the duration of the stop. Consequently, the court held that handgun seized from Clark should be suppressed.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/17-2739/17-2739-2018-08-30.pdf?ts=1535648406>

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## **Fourth Circuit**

### **United States v. Bell, 2018 U.S. App. LEXIS 24335 (4th Cir. MD Aug. 28, 2018)**

Police officers obtained a warrant to search a house for narcotics and firearms. After entering the house, officers located Quinton Bell in the basement and placed him in handcuffs. The officers brought Bell upstairs to the living room and seated him in a chair near his wife, Stacy Bell, who had also been handcuffed and seated in a chair. Knowing that Stacy was the owner of the house, an officer told her why the officers were there and then asked her, in the interest of officer safety, if there were any weapons in the house. However, before Stacy could respond, Bell told the officer that there was a gun under the couch next to them. Bell claimed that a friend had given him the weapon after someone had tried to break into his house and rob him. Officers searched under the couch and recovered a Mini-14 Ruger semiautomatic rifle.

After a grand jury indicted Bell on drug and firearm related offenses, he filed a motion to suppress his statements to the officer. Bell argued that because he responded to interrogation while in custody without having been given Miranda warnings, his statements to the officer in which he admitted to possession of the rifle should have been suppressed. Bell claimed that the question directed to Stacy constituted interrogation of him, because the officer should have known that the question was reasonably likely to elicit an incriminating response from him.

The court disagreed. Under Miranda, the term "interrogation" includes express questioning or the functional equivalent of questioning. The functional equivalent of questioning are any words or actions by a police officer that the officer should know are reasonably likely to elicit an incriminating response from the suspect.

Here, the court held that Bell was not subjected to express questioning or the functional equivalent of questioning. First, the officer focused directly on Stacy as the owner of the house and looked directly at her when he asked about the presence of any weapons in the house. The question was not posed to Bell and it did not seek a response from him. Second, nothing in the formulation of the question suggested that it invited a response from anyone other than Stacy. Finally, although Bell was within earshot and it was within the realm of possibility that he would interject to answer the question, the court refused to find that the officer should have known that his question to Stacy was likely to prompt an incriminating response from Bell.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca4/16-4343/16-4343-2018-08-28.pdf?ts=1535481085>

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## **Fifth Circuit**

### **United States v. Reddick, 2018 U.S. App. LEXIS 23012 (5th Cir. TX Aug. 17, 2018)**

Reddick uploaded digital image files to Microsoft SkyDrive, a cloud hosting service. SkyDrive uses a program called PhotoDNA to automatically scan the hash values of user-uploaded files and compare them against the hash values of known images of child pornography. When PhotoDNA detects a match between the hash value of a user-uploaded file and a known child pornography hash value, it creates a “CyberTip” and sends the file, along with the uploader’s IP address information, to the National Center for Missing and Exploited Children (NCMEC).

In May 2015, Microsoft sent CyberTips to NCMEC based on the hash values of files that Reddick had uploaded to SkyDrive. Based on location data derived from the IPO address accompanying the files, NCMEC subsequently forwarded the CyberTips to the Corpus Christi Police Department. A detective then opened each of the suspect files and confirmed that each contained child pornography. Afterward, the detective obtained a warrant to search Reddick’s home and seize his computer. The search uncovered additional child pornography evidence.

The government charged Reddick with possession of child pornography.

Reddick filed a motion to suppress the child pornography evidence. Reddick argued that the detective’s warrantless opening of the files associated with the CyberTips was an unlawful search in violation of the Fourth Amendment. Reddick further argued that the evidence seized from his home should be suppressed, because the detective’s initial review of the suspect files was unlawful.

The court disagreed. Under the private search doctrine, the Fourth Amendment does not apply when the government does not conduct the search itself, but only receives and utilizes information discovered by a search conducted by a private party. The Supreme Court has reasoned that once a person’s expectation of privacy is defeated by a private party, the government may use “the now-nonprivate information.”

Here, Microsoft, a private company determined that the hash values of files uploaded by Reddick corresponded to the hash values of known child pornography. Microsoft then passed this information on to law enforcement. The court concluded that Microsoft conducted a “private search” for Fourth Amendment purposes. Consequently, the detective’s subsequent review of the images did not constitute an intrusion on Reddick’s privacy that he did not already experience as a result of the private search by Microsoft.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca5/17-41116/17-41116-2018-08-17.pdf?ts=1534548619>

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## **Seventh Circuit**

### **Thompson v. Cope, 2018 U.S. App. LEXIS 22480 (7th Cir. IN Aug. 14, 2018)**

Paramedic Lance Cope was dispatched to the south side of Indianapolis for an animal bite. When Cope arrived, he learned that the bite was not from an animal, but from a man, Dusty Heisman.

Before Cope could treat the bite patient, a police officer approached Cope and asked him to “take a look” at Heishman, who “was being combative.” Cope assessed Heishman and then injected him with a sedative, Versed, as a “chemical restraint for patient and crew safety.” While the sedative took effect, Cope visually monitored Heishman by watching his breathing and watching for any struggling. After Heishman was placed in the ambulance, Cope saw that Heishman was not breathing and found he had no pulse. Seven minutes of CPR restored Heishman’s heartbeat and breathing, but he remained unconscious. Heishman lost brain function and died eight days later.

Heishman’s estate sued Cope under 42 U.S.C. § 1983 alleging excessive use of force in violation of the Fourth Amendment.

After the district court denied qualified immunity, Cope appealed to the Seventh Circuit Court of Appeals.

The court declined to decide whether or not a paramedic could violate a patient’s Fourth Amendment rights to be free from unreasonable search and seizure when the paramedic renders medical treatment. Instead, the court held that case law did not and does not clearly establish that a paramedic can violate a patient-arrestee’s Fourth Amendment rights by exercising medical judgment to administer a sedative in a medical emergency. As a result, the court held that Cope was entitled to qualified immunity.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca7/17-3060/17-3060-2018-08-14.pdf?ts=1534262420>

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**United States v. Watson, 2018 U.S. App. LEXIS 22991 (7th Cir. IN Aug. 17, 2018)**

An unidentified 14-year-old called 911 and reported seeing “boys” “playing with guns” by a “gray and greenish Charger” in a nearby parking lot. The caller stated the he was calling from a McDonald’s across the street and that he had borrowed a stranger’s phone to make the call.

A short time later, an officer responded to the parking lot where he saw a Charger occupied by four men. Using his patrol car, the officer blocked the Charger before approaching on foot. Upon questioning, all of the occupants denied having any weapons. After several other officers arrived, they decided to take each occupant out of the car and frisk him for weapons. When one of the officers ordered Watson, the front seat passenger, out of the car, Watson threw a gun onto the backseat floor. The officer seized the gun and then saw a second gun inside the pouch in front of the backseat passenger.

The government charged Watson with being a felon in possession of a firearm.

Watson filed a motion to suppress the firearms seized from the car. Watson argued that the officer seized him in violation of the Fourth Amendment when he used his police car to block the Charger without reasonable suspicion of criminal activity.

Under the Fourth Amendment, a police officer cannot stop someone to investigate potential wrongdoing without reasonable suspicion that “criminal activity may be afoot.” Anonymous tips to police officers, by themselves, are usually not reliable enough to establish reasonable suspicion.

In this case, the court held the anonymous tip did not justify seizing the occupants of the Charger; therefore, the firearms should have been suppressed.

First, the court held that the caller's report was not sufficiently reliable because he used a borrowed phone, which would make it more difficult to identify or locate him. Second, the caller's report about the presence of a gun did not create a reasonable suspicion of criminal activity, because carrying a firearm in public is permitted with a license in Indiana. The court added "a mere possibility of unlawful use" of a gun is not sufficient to establish reasonable suspicion. Finally, the court found that the circumstances in this case did not necessitate an emergency response. The anonymous caller did not report a tense situation, like a verbal argument or physical confrontation, that suggested violence was about to occur. In addition, even if the caller's use of 911 and report of "boys" "playing with guns" made the officer concerned about an emergency, that concern should have been dissipated when the officer arrived at the scene. When the officer arrived in the parking lot, what he saw did not match the caller's report, as no one was playing with guns in the parking lot. Instead, men were seated inside the identified car with no guns in sight. If there had been a potential emergency at the time of the call, it no longer existed when the officers arrived.

The court concluded by noting it was appropriate for the officer to respond to the anonymous call by going to the parking lot to determine what was happening. However, the court added that determining what was happening and immediately seizing people on arrival are two different things. The court commented that upon arrival, the officer could have approached the occupants of the Charger and engaged them in a voluntary conversation or watched them from a short distance away. Either alternative would allow the officer to potentially obtain additional information, when combined with the anonymous tip, to establish reasonable suspicion of criminal activity.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/17-1651/17-1651-2018-08-17.pdf?ts=1534539619>

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## **Eighth Circuit**

### **United States v. Steinmetz, 2018 U.S. App. LEXIS 22603 (8th Cir. MO Aug. 15, 2018)**

Police began a child pornography investigation after a woman in her late twenties reported that Steinmetz, her stepfather, had sexually abused her when she was between thirteen and sixteen years old. The woman told the officers that some of the abuse occurred while Steinmetz showed her pornographic videos and that Steinmetz photographed some of the abuse.

Two officers approached Steinmetz at his workplace and he agreed to accompany the officers to the police station. During an interview, Steinmetz consented to a search of his residence and computer. Officers searched Steinmetz's house and seized child pornography.

The government charged Steinmetz with production of child pornography.

Steinmetz filed a motion to suppress the evidence seized from his house. Steinmetz argued that his consent was not voluntary because the officers coerced him to obtain it.

The court disagreed. First, the court found that the officers made "no show of force" when they approached Steinmetz at his workplace. Second, two officers interviewed Steinmetz individually in a room that measured ten feet by seven feet, which was "never crowded." Third, before the interview, an officer advised Steinmetz of his Miranda rights. Even assuming that Steinmetz was not free to leave, the court recognized that suspects in custody for Miranda purposes can still

provide voluntary consent. Fourth, the court found that Steinmetz appeared to be an articulate, intelligent, man in his sixties, that he appeared to be relatively at ease throughout the interview, and that with one or two brief exceptions, neither Steinmetz nor any of the officers raised their voices. Finally, although the interview lasted for approximately six hours, Steinmetz orally consented to the search and signed a “Consent to Search” form within the first ninety minutes of the interview.

Steinmetz also argued that his consent was not voluntary, because (1) the “Consent to Search” form did not specify the items that the officers intended to search, and (2) the officer who told Steinmetz that he would supervise the search ended up staying at the police station while other officers searched Steinmetz’ house.

The court concluded that a reasonable person would understand that the “Consent to Search” form included computers and other media, because Steinmetz had already given the officers oral consent to search those items. The court then held that identity of the officer supervising the search was not material to a finding of voluntary consent and that a reasonable person would have understood that officers could search the same areas and items regardless of the supervisor’s identity.

Finally, Steinmetz claimed that his consent to search was conditioned on his being present during the search; therefore, the officers exceeded the scope of his consent when they searched his house while he remained at the police station.

After Steinmetz gave consent to search his house, he told the officers that he would “prefer” to be present for the search. At that point, an officer told Steinmetz that officers were going to search his house while he remained at the police station. Despite this statement from the officer, Steinmetz did not insist on accompanying the officers, withdraw his consent, or otherwise make clear that his consent was conditioned on his presence during the search. Instead, even after being told that he would not be present for the search, Steinmetz told one of the officers which key she could use to open the residence. The court concluded that Steinmetz’s words and actions consistently communicated general consent to a search of his residence and that the officers did not exceed the scope of his consent.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/17-3061/17-3061-2018-08-15.pdf?ts=1534347031>

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**Johnson v. City of Minneapolis, 2018 U.S. App. LEXIS 24039 (8th Cir. MN Aug. 24, 2018)**

Catrina Johnson called 911 to report that her son, Jareese, was acting violently. Officers Buck and Heiple responded to Johnson’s apartment where they saw Johnson holding a hammer to protect herself from Jareese. After interviewing Johnson and Jareese, the officers decided to arrest Jareese. Jareese, who was standing in the hallway outside the apartment, resisted the officers’ efforts to arrest him. At this point, Johnson, who was dressed nightgown and soft slippers, retreated into her apartment to give the officers room to deal with Jareese in the hallway.

The officers engaged in a takedown of Jareese in which they brought him to the floor and handcuffed him. During the takedown, Officer Heiple was facing away from Johnson’s apartment while Officer Buck was facing towards it. After the takedown, Officer Heiple felt a sharp, “explosive” pain in his right calf. Officer Heiple turned around and asked Johnson if she had

kicked him. She said no. Although Officer Heiple did not see Johnson kick him, nor did he see if she was in a position to even reach him, given that she had gone back into the apartment, Officer Heiple assumed that she had kicked him. After Johnson denied kicking Officer Heiple a second time, he arrested her for assaulting a police officer. Officer Buck, who was facing Johnson at the time, later stated that he never saw Johnson kick Officer Heiple because he was focused on Jareese. A witness that was present during the takedown told Officer Heiple he was skeptical that Johnson had kicked him because of her positioning in the apartment.

Afterward, Officer Heiple was hospitalized diagnosed with a “rupture or sprain” of his calf muscle. Charges against Johnson were eventually dropped and Officer Heiple conceded that Johnson did not kick him.

Johnson sued the City of Minneapolis and Officer Heiple under 42 U.S.C. § 1983, alleging among other things, that Officer Heiple violated the Fourth Amendment because he arrested her without arguable probable cause. Specifically, Johnson claimed that Officer Heiple had reason to know that she could not have delivered a kick based on the type of pain he felt given her position, dress, and stature; he had no information that suggesting she was in a position to kick him; he did not observe her committing the criminal act; and he disregarded the statements of a witness in close proximity to him.

The district court held that the arrest violated Johnson’s clearly established constitutional rights and denied Officer Heiple qualified immunity. Officer Heiple appealed.

The Eighth Circuit Court of Appeals agreed and affirmed the district court. Based on the totality of the circumstances, the court held it was not objectively reasonable for Officer Heiple to mistakenly believe that Johnson kicked him. First, at the time of the incident, Johnson was 5’4” tall, disabled, weighted about 140 pounds, and was wearing slippers. Second, during the takedown, Officer Heiple’s back was to Johnson and she had retreated into her apartment to give the officers room to maneuver. Third, when Officer Heiple felt the pain in his calf, he only knew that Johnson was located some distance behind him. Officer Heiple had no direct knowledge that Johnson was within a range to reach him, much less within a range to deliver a blow that caused explosive pain given her stature. Finally, and most significantly, neither Officer Heiple, Officer Buck, nor the witness saw Johnson kick Officer Heiple.

The court further held that at the time of the incident prior case law clearly established that an officer in Officer Heiple’s position would have known that he did not have arguable probable cause to arrest Johnson.

For the court’s opinion: <https://cases.justia.com/federal/appellate-courts/ca8/17-2074/17-2074-2018-08-24.pdf?ts=1535124648>

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**Wilson v. Lamp, 2018 U.S. App. LEXIS 24386 (8th Cir. IA Aug. 28, 2018)**

Two police officers believed that David Wilson, a convicted child molester, was meeting a minor girl at a park. The officers knew David had eight outstanding warrants and that his brother, Levi Wilson might be hiding him. During surveillance in the park, the officers saw a pickup truck that belonged to Levi, which they suspected David was driving. The officers conducted a traffic stop, approached the truck with their guns drawn, and told the driver to put his hands up. The officers recognized the driver as Levi. The officers then ordered Levi and the passenger, Levi’s minor



son, to exit the truck. Levi and his son exited the truck, which had a covered bed. The officers frisked Levi for weapons and searched the truck. After the officers did not locate David, they allowed Levi and his son to leave. Throughout the stop, Levi and his son had at least one weapon pointed at them.

Levi and his son subsequently sued the officers under 42 U.S.C. § 1983 for unreasonable search and seizure and excessive use of force. The district court denied the officers qualified immunity and they appealed.

The Eighth Circuit Court of Appeals reversed the district court and held that the officers were entitled to qualified immunity for the plaintiffs' search and seizure claims. The court found that the officers had reasonable suspicion to believe that David would be hiding in the truck. The court further held that once the officers stopped the truck it was reasonable to approach with guns drawn, frisk Levi, and search the truck for David.

However, the court held that it was not reasonable for the officers to keep their weapons drawn and pointed at Levi and his son after they realized the driver was Levi, not David, that the passenger was Levi's son, and after the officers had frisked Levi for weapons. While it was reasonable to approach the truck with guns drawn, the court held that the continuous drawing and pointing of weapons at Levi and his son constituted excessive force. The court further held that at the time of the incident it was clearly established that it was unreasonable to use force against a non-resisting suspect who does not pose a threat to officer safety. Consequently, the court affirmed the district court's denial of qualified immunity as to plaintiffs' excessive use of force claim.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/16-4337/16-4337-2018-08-28.pdf?ts=1535470224>

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**United States v. Parks, 2018 U.S. App. LEXIS 24677 (8th Cir. MO Aug. 30, 2018)**

During a human trafficking investigation, police officers arrested five young women who told the officers they had committed acts of prostitution while at the Red Roof Inn. The women also told the officers they had given the money they earned to Parks. The officers knew that Parks was driving a gray van bearing temporary Ohio license tags and that S.L., a missing seventeen-year-old girl, was with him.

The next day, Parks went to the police department and approached the officer who was working in the lobby. Parks gave the officer his name, said that he was from Ohio, and that he was there to bail out a female friend. The desk-officer recognized Parks and notified Officer Yadlosky and Detective Kaiser.

Knowing that there was a missing girl who had last been seen with Parks, and that the gray van was registered to Parks, the officers decided to go out to the van to look for the girl. Detective Kaiser looked into the window and saw an older girl lying in the middle row of seats, wrapped in a blanket. The girl did not respond when the officers rapped on the van's window. Officer Yadlosky then opened the van door, at which time the girl responded in a "sluggish and slow" manner. At that point, Officer Yadlosky smelled the odor of marijuana and saw a bag of marijuana on the floor when the girl, identified as S.L., sat up. Officers subsequently seized marijuana and other evidence related to human trafficking from Parks's van.

The government charged Parks with a variety of criminal offenses. Parks filed a motion to suppress the evidence seized as a result of the warrantless search of his van.

The court held that it was reasonable for Officer Yadlosky open the van door to search for the missing girl. Under the community caretaking exception, an officer may enter property without a warrant when the officer has a reasonable belief that an emergency exists that requires his attention. Here, the court held that a reasonable officer in Officer Yadlosky's position could have reasonably believed that there was an emergency that required his attention. First, Officer Yadlosky knew of Parks's suspected prostitution activities at the Red Roof Inn. Second, he knew that law enforcement was looking for a gray van with temporary Ohio license tags, and that there was a missing girl who was likely with Parks. Finally, Parks had told Officer Yadlosky his name and that he was from Ohio.

The court further held that Officer developed probable cause to search the van under the automobile exception when he opened the door and smelled marijuana, saw suspected marijuana on the van floor, and observed an apparently comatose young woman inside the van.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/17-1914/17-1914-2018-08-30.pdf?ts=1535641297>

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## **Ninth Circuit**

### **Rodriguez v. Swartz, 2018 U.S. App. LEXIS 21930 (9th Cir. AZ Aug. 7, 2018)**

Araceli Rodriguez filed a lawsuit against Border Patrol Agent Lonnie Swartz for money damages. In her complaint, Rodriguez alleged that Swartz was an on-duty U.S. Border Patrol Agent stationed on the American side of the border fence and that her sixteen-year-old son, J.A., was a Mexican citizen walking down Calle Internacional, a street in Nogales, Mexico that runs parallel to the border. Rodriguez claimed, that without warning or provocation, Swartz fired his pistol between fourteen to thirty times through the border fence into Mexico, intentionally killing J.A. without any justification.

Swartz filed a motion to dismiss the lawsuit based on qualified immunity. The district court held that Swartz was not entitled to qualified immunity and Swartz appealed. On appeal, Swartz argued for the first time that Rodriguez was not entitled to bring a lawsuit against him under Bivens for an alleged Fourth Amendment violation for a cross-border shooting.

The Ninth Circuit Court of Appeals held that assuming, as it was required to do, that the facts as alleged by Rodriguez in her complaint were true, Swartz was not entitled to qualified immunity. First, the court held that J.A. had a Fourth Amendment right to be free from the unreasonable use of deadly force by an American law enforcement officer acting on American soil, even though Swartz's bullets hit him in Mexico. Second, the court held that given the circumstances that J.A. was not suspected of any crime, was not fleeing or resisting arrest and did not pose a threat to anyone, Swartz's use of force was unreasonable under the Fourth Amendment. Third, the court held that at the time of the incident it was clearly established that a reasonable office would have known that it was unlawful to kill someone for no reason. Finally, the court held that while it was reluctant to extend Bivens cause of action in this case, it did so because: (1) Rodriguez has no other adequate remedy available, (2) there is no reason to infer that Congress deliberately chose to withhold a remedy, and (3) there are no special factors present, such as high-level executive

branch policies, national security concerns, or foreign policy implications that would weigh in favor of not allowing a cause of action under Bivens in this case. The court concluded by noting that the facts as alleged by Rodriguez may turn out to be unsupported and that the shooting may turn out to have been excusable or justified.

In a dissenting opinion, Judge M. Smith stated that the court lacked the authority to extend Bivens. Instead, Judge Smith commented that it was up to Congress to pass legislation to provide a damages remedy for plaintiffs such as Rodriguez. In so holding, Judge Smith found that the majority created a circuit-split on the issue, overstepped the separation of powers principles, and disregarded Supreme Court decisions.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca9/15-16410/15-16410-2018-08-07.pdf?ts=1533661400>

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**United States v. Schram, 2018 U.S. App. LEXIS 23314 (9th Cir. OR Aug. 21, 2018)**

Police officers established probable cause to believe that Schram robbed a bank. The officers began their search for Schram at his girlfriend, Zona Satterfield's, residence. The officers also discovered that there was a no-contact order, which prohibited Schram from contacting Satterfield. The officers entered Satterfield's residence without a warrant, found Schram inside, and arrested him. Officers then obtained a search warrant for Satterfield's home and seized evidence that was late admitted against him at trial.

Schram filed a motion to suppress the evidence seized from Satterfield's house.

The district court denied Schram's motion, concluding that Schram could not object to the officers' entry into Satterfield's house because he had no legitimate expectation of privacy in a residence that he was legally barred from entering. Schram appealed.

The Ninth Circuit Court of Appeals affirmed the district court. The court held that a person who is prohibited from entering a residence by a court's no-contact order does not have a legitimate expectation of privacy in that residence and may not challenge its search on Fourth Amendment grounds. In so ruling, the court followed the Second, Third, and Seventh Circuits, which have held that trespassers and other individuals who occupy a piece of property unlawfully have no authority to challenge its search under the Fourth Amendment.

The court further held that Satterfield's consent for Schram to be inside her home did not override the terms of the no-contact order, which made it unlawful for Schram to be there.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca9/17-30055/17-30055-2018-08-21.pdf?ts=1534872797>

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**United States v. Raygoza-Garcia, 2018 U.S. App. LEXIS 24853 (9th Cir. CA Aug. 31, 2018)**

Two U.S. Border Patrol agents saw a red Dodge Neon travelling northbound on Interstate-15 about 70 miles from the United States – Mexico border. As the car passed their marked Border Patrol vehicle, the agents noticed that it slowed down from approximately 70 miles per hour to 50-55 miles per hour and that the driver did not look at the agents. The agents followed the car

and saw that it had a Mexican license plate. The agents conducted a records check which showed the car had crossed the border into the United States that morning and that it had crossed the border multiple times in the prior month. In four crossings in the prior weeks, the vehicle had been referred to secondary inspection at the border, but no contraband was ever discovered. As the agents followed the car, they saw it drift in and out of its lane of travel several times. The agents conducted a vehicle stop and the driver, Raygoza-Garcia, gave the agents consent to conduct a canine sniff and search his car. The agents found packages of methamphetamine and heroin in the car.

Raygoza-Garcia argued that the agents' stop of his vehicle violated the Fourth Amendment, because they did not have reasonable suspicion that he was engaged in criminal activity.

The court disagreed. First, the court noted that the agents had thirteen and six years of experience, respectively as Border Patrol Agents, and they had experience investigating drug smuggling operations. Second, based on this experience, the court credited the agents' testimony in which they stated that they found it suspicious that: (1) Raygoza-Garcia reduced his speed below the posted speed limit upon seeing the agents and drifted between lanes, (2) Raygoza-Garcia's car was 70 miles from the border, had a Mexican license plate, and had a prior border crossing history in which it was referred to secondary inspection, but no contraband was found. One of the agents testified that the recent secondary referrals aroused his suspicion because, in his experience, drug organizations often have a vehicle cross the border several times without contraband to develop a "clean" crossing history, (3) after the stop, the agents discovered that Raygoza-Garcia was not the same driver that had driven the car across the border earlier that day, a practice the agents found related to smuggling operations. The court concluded the agents' experience and observations established reasonable suspicion that criminal activity was afoot, and their stop of Raygoza-Garcia was lawful.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca9/16-50490/16-50490-2018-08-31.pdf?ts=1535735031>

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