

THE FEDERAL LAW ENFORCEMENT - INFORMER -

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

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer)*. The Legal Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court 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 Center. *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) 267-2179 or 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 the Legal Division web page at: <http://www.fletc.gov/legal>.

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4th AMENDMENT ROADMAP

A step by step guide to searches

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- Protective Sweeps
- Search Incident to Arrest
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Internal Affairs Investigations **Training Program**

Needs Survey

The Legal Division is proposing a new training program focused specifically on internal affairs investigations. We want to build and offer a program that addresses the unique practical, procedural, and legal issues of these investigations. We need your help. Please go to the link below and complete the needs survey. Also, please let others in your agency know so that they can have an opportunity to provide input into this program.

NEEDS SURVEY

Closes April 27

CIRCUIT COURTS OF APPEALS **CASE SUMMARIES**

1st CIRCUIT

US v. Nieves-Castano, 2007 U.S. App. LEXIS 7070, March 27, 2007

A machine gun is defined as “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.”

Mere possession of the weapon is insufficient to support conviction under 18 USC § 922(o). The government must also prove beyond a reasonable doubt that the defendant knew the weapon “had the characteristics that brought it within the statutory definition of a machinegun.”

Click [HERE](#) for the court’s opinion.

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3rd CIRCUIT

U.S. v. Laville, 2007 U.S. App. LEXIS 6086, March 16, 2007

State or local law does not dictate the reasonableness of an arrest for purposes of a Fourth Amendment probable cause analysis. A violation of state or local law is not a *per se* violation of the Fourth Amendment. Rather, notwithstanding the validity of the arrest under state or local law, probable cause exists when the totality of the circumstances within an officer's knowledge is sufficient to warrant a person of reasonable caution to conclude that the person being arrested has committed or is committing an offense.

The validity of an arrest under state law must never be confused or conflated with the Fourth Amendment concept of reasonableness. The validity of an arrest under state law is at most a factor that a court may consider in assessing the broader question of probable cause.

Click [HERE](#) for the court's opinion.

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7th CIRCUIT

USA v. Ghilarducci, 2007 U.S. App. LEXIS 5900, March 14, 2007

Materiality (i.e., a tendency to influence) is an essential element of a wire fraud prosecution. Reliance is not an element of federal criminal statutes dealing with fraud. A representation may be material even though the hearer strongly suspects that it is false. Whether or not a victim in fact relied upon a defendant's false representations is irrelevant in criminal fraud cases.

Click [HERE](#) for the court's opinion.

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9th CIRCUIT

*****The Court has vacated and withdrawn the October 30, 2006, decision in the *U.S. v. Mendez* case originally summarized in 11 Informer 06.*****

In that decision, the Court had ruled essentially that during a traffic stop, police needed particularized, reasonable suspicion to expand questioning beyond the scope of the traffic stop. A police officer may only "ask questions that are reasonably related in scope to the justification for his initiation of contact" and may expand the scope of questioning beyond the initial purpose of the stop only if he "articulate[s] suspicious factors that are

particularized and objective.

U.S. v. Mendez, 2007 U.S. App. LEXIS 3922, February 23, 2007

The Court now holds that based on the U.S. Supreme Court's holding in *Muehler v. Mena*, 544 U.S. 93 (2005), because the officers' questioning did not prolong the stop, the expanded questioning did not have to be supported by separate reasonable suspicion for purposes of the Fourth Amendment.

Click [HERE](#) for the court's opinion.

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U.S. v. Boyd, 2007 U.S. App. LEXIS 6797, March 23, 2007

A conviction under the Hobbs Act - 18 USC § 1951(a) / robbery - requires sufficient evidence that: 1) the business was engaged in interstate commerce; and 2) the robbery obstructed, delayed, or affected interstate commerce. Only a de minimis effect on interstate commerce is needed to support the conviction.

Click [HERE](#) for the court's opinion.

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U.S. v. Ihnatenko, 2007 U.S. App. LEXIS 7404, March 30, 2007

The gratuities statute, 18 USC § 201(c)(2), does not prohibit the government from providing immigration benefits, immunity from prosecution, leniency, cash benefits, or government-paid housing to a cooperating witness so long as the payment does not recompense any corruption of the truth of testimony.

Paid informants play a vital role in the government's infiltration and prosecution of major organized crime and drug syndicates. Such compensation is necessary to assure the safety of those who turn against their former compatriots in the underworld.

Click [HERE](#) for the court's opinion.

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11th CIRCUIT

Bircoll v. Miami-Dade County, 2007 U.S. App. LEXIS 5269, March 7, 2007

Title II of the Americans with Disabilities Act and the Department of Justice implementing regulations do not require police to wait for an oral interpreter before taking field sobriety

tests on a profoundly deaf subject. Such is not a reasonable modification of police procedures given the exigent circumstances of a DUI stop on the side of a highway, the on-the-spot judgment required of police, and the serious public safety concerns in DUI criminal activity.

Click [HERE](#) for the court's opinion.

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DC CIRCUIT

Parker v. District of Columbia, 478 F.3d 370, March 9, 2007

The Second Amendment protects an individual right to keep and bear arms – “a right that existed prior to the formation of the new government under the Constitution and was premised on the private use of arms for activities such as hunting and self-defense, the latter being understood as resistance to either private lawlessness or the depredations of a tyrannical government (or a threat from abroad).” The D.C. code provisions are unconstitutional to the extent that they act to ban the possession and carrying of pistols in the home. “[T]he District may not flatly ban the keeping of a handgun in the home, [and] it may not prevent it from being moved throughout one’s house. Such a restriction would negate the lawful use upon which the right was premised--i.e, self-defense.” The court specifically left open the question of whether the District could lawfully ban the possession and carrying in public or in automobiles.

(Editor’s Note - See also 18 U.S.C.A. 926A which provides:

Notwithstanding any other provision of law...of a state...any person...shall be entitled to transport a firearm for any lawful purpose from any place where he may lawfully possess and carry such firearm to any other place where he may lawfully possess and carry such firearm if, during such transportation, the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle...)

Click [HERE](#) for the court's opinion.