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

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# CASE SUMMARIES

## Circuit Courts of Appeal

### First Circuit

#### McGrath v. Tavares, 757 F.3d 20 (1st Cir. Mass. Aug. 1, 2014)

At 3:15 a.m., Officer Almeida responded to an activated burglar alarm at a liquor store. As Officer Almeida got close to the liquor store, a Toyota Camry traveling in the opposite direction turned left in front of him at an intersection. Believing various traffic violations had been committed, Officer Almeida got behind the Camry, with blue lights and siren activated, and attempted to conduct a traffic stop. However, the driver of the Camry refused to stop. After the Camry drove through a bank's drive-through teller window in the wrong direction, Officer Tavares joined the pursuit. When the driver of the Camry crashed into a stone wall, Almeida and Tavares positioned their patrol cars behind the Camry. Almeida shouted commands to the driver to put his hands up and step out of the Camry. Instead of complying with Almeida's commands, the driver maneuvered the Camry in reverse between the two patrol cars. The reversing Camry hit Almeida's patrol car and continued backing up until it crashed into a telephone pole. The officers approached the Camry, which appeared to be stuck on the telephone pole, with their firearms drawn. Officer Tavares ordered the driver to turn off the engine and get out of the Camry. The driver revved the Camry's engine then accelerated toward Officer Tavares. Officer Tavares fired his firearm twice, striking the Camry's front windshield. One of the shots hit the driver in the upper right arm. As the Camry passed Officer Tavares and continued in Officer Almeida's direction, Officer Tavares fired two more shots, which entered the Camry through the front passenger window. One of the shots struck the driver in the back. Officer Almeida then fired seven shots; however, none struck the driver. After hitting a curb, the Camry went airborne and came to a complete stop. The driver, sixteen-year old, McGrath later died from the gunshot wound to the back.

McGrath's mother sued, claiming Officers Tavares and Almeida violated the *Fourth* and *Fourteenth Amendments* by using excessive force to unlawfully seize her son.

The court affirmed the district court, which held, as a matter of law, that Officer Tavares' use of deadly force was objectively reasonable under the circumstances. First, throughout the pursuit, the court noted, McGrath acted with complete disregard for the safety of the officers or anyone else that might have been on the street. Second, the undisputed facts established when Officer Tavares fired at the Camry, the chase had not ended, even though the Camry had crashed into a stone wall and then a telephone pole. When Officer Tavares fired his first two shots, the Camry was driving toward him. Officer Tavares' choices were to shoot or risk being run over. The court concluded an officer in this situation could have reasonably believed he was facing a threat of serious physical harm or death. Officer Tavares third and fourth shots were fired as the Camry drove toward Officer Almeida. The court found an officer in this situation could have reasonably believed the driver of the Camry posed a threat of serious physical harm to Officer Almeida, and then to the public if he were able to resume his flight. As a result, Officer Tavares was entitled to qualified immunity.

Concerning Officer Almeida, the court affirmed the district court, which held as a matter of law that Officer Almeida was entitled to qualified immunity. In this case, none of Officer Almeida's shots

struck McGrath or restrained McGrath's freedom of movement. Consequently, Officer Almeida never seized McGrath for *Fourth Amendment* purposes.

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

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**United States v. Martinez, 2014 U.S. App. LEXIS 15173 (1st Cir. Mass. Aug. 6, 2014)**

At roll call, police officers were advised of the heightened risk for gang violence in the area because a funeral service was being held at a local church for a murdered gang member. After the service, a police officer drove past a park near the church and saw a large gathering of people and cars. As police officers approached, a silver car left abruptly with its tires screeching and disregarded a red light. One of the officers stopped the car, which contained four men. The officer recognized the front-seat passenger, Martinez. The officer knew Martinez was a gang member who had previously been charged with assault and battery and with weapons offenses. The officer ordered the driver out of the car and told the other occupants to keep their hands where he could see them. Martinez initially placed his hands on the dashboard, but on two occasions reached toward his waistband. A back-up officer then ordered Martinez out of the car and frisked him. The officer discovered a loaded firearm in the waistband of Martinez's pants. The government indicted Martinez for being a felon in possession of a firearm.

Martinez argued the frisk was unlawful because the officer did not have reasonable suspicion that he was presently armed and dangerous.

The court disagreed. At the time of the stop, the officer knew Martinez belonged to a gang and that Martinez had been charged with assault and battery and weapons offenses in the past. In addition, the traffic stop occurred after the car in which Martinez was riding sped away and ran a red light as soon as police officers arrived in an area of suspected gang activity. Finally, Martinez repeatedly refused orders by police officers to keep his hands on the dashboard. Instead Martinez reached toward his waistband. The court concluded, under these circumstances, it was objectively reasonable for the officers to suspect Martinez was armed and dangerous.

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

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**United States v. Arthur, 2014 U.S. App. LEXIS 16240 (1st Cir. Mass. Aug. 22, 2014)**

On October 31, two armed men robbed a cell phone store and fled on foot. The store clerk described the robbers as black males wearing dark, heavy clothing. Another witness reported the robbers were fleeing on foot down Moultrie Street, which was a street near the store. Upon learning this information, a police officer drove to Moultrie Street and saw a resident raking leaves. The resident told the officer he had just seen two black males running down the street, heading away from the cell phone store. The officer drove to the end of Moultrie Street and when he turned to an adjacent street, the officer saw two black males walking in a direction that led away from the cell phone store. One of the men, later identified as Arthur, was wearing a black pea coat and blue jeans. The other man, later identified as Brown, was wearing a dark colored hooded sweatshirt and black pants. Approximately five minutes had elapsed since the robbery, the men were one eighth of a mile from the cell phone store, and the officer had seen no other people on foot in the area. The officer stopped the men and told them they matched the description of two robbery suspects. The officer brought the men back to

the store where the store clerk identified Arthur and Brown as the robbers. Arthur and Brown were arrested and charged with a variety of federal criminal offenses.

Arthur argued the officer violated the *Fourth Amendment* because the officer did not have reasonable suspicion to stop him.

The court disagreed. First, when the officer stopped Arthur, he had a reliable description of the robbers, to include their race, gender, clothing and their approximate location and direction of travel. Second, the officer corroborated this information with the person raking leaves. Third, only a few minutes had elapsed after the robbery when officer saw Arthur and the other man one eighth of a mile away from the crime scene, heading away from the store. Fourth, Arthur and the other man matched the description provided by the store clerk. Finally, the officer saw no other persons on foot in the area. As a result, the court held the officer had reasonable suspicion to stop Arthur and investigate Arthur's possible involvement in the robbery.

Arthur further argued the store clerk's identification should have been suppressed because it was not reliable.

Again, the court disagreed, holding the store clerk's identification of Arthur was reliable. After stopping Arthur and Brown, the officer brought the men back to the cell phone store. The clerk remained inside the store and viewed each man through the plate glass window as he stood on the sidewalk outside the store. When the clerk saw Arthur, she immediately shouted, "That's him, that's him." Although the show-up procedure was impermissibly suggestive, the court held it was still reliable. First, the clerk had a reasonably good chance to view Arthur during the robbery. Second, the clerk paid close attention to Arthur's appearance as demonstrated by her ability to provide an accurate description. Finally, after viewing Arthur on the sidewalk, the clerk did not hesitate in identifying him as one of the robbers.

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

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## **Third Circuit**

### **United States v. Donahue, 2014 U.S. App. LEXIS 16221 (3d Cir. Pa. Aug. 22, 2014)**

Donahue was convicted in federal court in Pennsylvania on several fraud related charges and received a ten-year prison sentence. The court directed Donahue to surrender at a certain time and place to begin serving this sentence, but Donahue failed to do so. As a result, the court issued a warrant for Donahue's arrest. Two weeks later, agents with the United States Marshals Service apprehended Donahue in New Mexico after they saw him enter his son's Mustang outside a hotel. The marshals seized the Mustang and searched it without a warrant. Inside the car, the marshals found various maps and several closed bags, which were not opened. The next day, an agent with the Federal Bureau of Investigation (FBI) drove the Mustang to an FBI facility. FBI agents searched the Mustang without a warrant and found a Glock .40 caliber magazine behind the driver's seat. The FBI agents then obtained the closed bags seized by the marshals from the trunk of the Mustang. Five days after Donahue's arrest, FBI agents searched the bags and found a Glock pistol. The government indicted Donahue for failure to surrender and weapons violations.

Donahue argued the evidence seized from the Mustang should have been suppressed because the warrantless searches were unreasonable under the *Fourth Amendment*.

The court disagreed, holding the federal agents established probable cause to search the Mustang without a warrant under the automobile exception to the *Fourth Amendment's* warrant requirement.

The automobile exception allows police officers to conduct vehicle searches without a warrant if there is probable cause to believe the vehicle contains evidence of a crime. Once probable cause is established, officers are allowed search every part of the vehicle and its contents that may conceal the object of the search. In addition, officers are allowed to search an impounded vehicle, without a warrant, after the officers have secured the vehicle and the loss of evidence is not a concern, even if the officers had time to obtain a search warrant.

In this case, the court held it was reasonable to believe the Mustang contained items showing that Donahue knowingly failed to surrender to federal authorities. The marshals knew Donahue had failed to surrender, as ordered by the court, and in his experience, a marshal testified that fugitives often keep false identification documents in places that are readily accessible, such as their cars. Once the marshals established probable cause to search the Mustang, the court concluded the marshals were entitled to seize the closed bags located in the trunk, and the five-day delay between the seizure of the Mustang and the search of the closed bags was immaterial.

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

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## **Fifth Circuit**

### **United States v. Massi, 2014 U.S. App. LEXIS 14815 (5th Cir. Tex. Aug. 1, 2014)**

Around 6:00 p.m., Massi and Sanchez landed a single-engine airplane at the Midland International Airport. The Air Marine Operations Center (AMOC) of the United States Customs and Border Protection requested that federal agents with the United States Immigration and Customs Enforcement (ICE) conduct a "ramp check" of Massi's airplane. A ramp check is a regulatory inspection that permits law enforcement officers to examine the licensing and certification of the pilot and aircraft to ensure they conform with federal regulations. The AMOC requested the ramp check for three reasons. First, the airplane had flown from Orlando to Las Vegas, making six refueling stops along the way, remained in Las Vegas for twelve hours, then was returning to Orlando with Midland as a refueling stop. Second, the registered owner of the airplane had been convicted of drug trafficking twelve years earlier. Third, Massi had crossed from Tijuana, Mexico into the United States sometime within the previous three days.

Two ICE agents reviewed Massi and Sanchez's documents and then requested consent to search the airplane. Both men denied consent, and simultaneously with denying consent, Massi attempted to shut the airplane's open door. While walking around the exterior of the airplane, one of the ICE agents saw a cardboard box through the window of the airplane. When the agent questioned Massi and Sanchez separately about the box, each man gave a different account as to who owned the box.

A third ICE agent arrived at 7:30 p.m., and for the next two hours, he confirmed with his colleagues what had transpired before his arrival. During this time, Massi and Sanchez were required to remain near the airplane. At 9:30 p.m., the ICE agent obtained approval to request a search warrant for the airplane. The ICE agent drafted the affidavit for the search warrant and presented it to a magistrate who issued the warrant at 11:30 p.m. The ICE agents executed the search warrant at midnight and



discovered over ten kilograms of marijuana in the cardboard box. The government indicted Massi for possession with intent to distribute marijuana.

Massi moved to suppress all evidence seized in the search of the airplane. While conceding the ICE agents conducted a lawful ramp check of the airplane, Massi argued his lengthy detention prior to the execution of the search warrant was unreasonable. Massi further argued the search warrant was not valid because it was the product of that unlawful detention.

The court held the ICE agents had reasonable suspicion to detain Massi under *Terry v. Ohio* after the conclusion of the ramp check. The AMOC's suspicions that arose from Massi's flight pattern, Massi's recent travel to Tijuana, Mexico, a known drug hub, and the fact that the airplane's registered owner had a drug trafficking conviction combined to establish reasonable suspicion that Massi may have been involved in a drug crime. However, the court further held the justification to detain Massi under *Terry* ended by 7:30 p.m., when the third ICE agent arrived. Consequently, Massi's four and one half hour detention until the search warrant was executed at midnight constituted an unreasonable seizure.

Although the court found Massi's detention violated the *Fourth Amendment*, the court held the good faith exception to the exclusionary rule applied. First, the court noted there was no clear connection between Massi's unlawful detention and the acquisition of the evidence used to support the search warrant. The court found the evidence used to support the affidavit for the search warrant was obtained, although not fully corroborated, before 7:30 p.m. Second, even though Massi's unlawful seizure allowed the airplane to be at the airport for the midnight search warrant to be executed, the court found it was objectively reasonable for the third ICE agent to believe Massi's detention past 7:30 p.m. was lawful because when the agent arrived, he believed that probable cause to search existed. As a result, the court found it was reasonable for the agent to believe that he was justified in taking the steps needed to confirm the known facts in the case with his colleagues, and then to prepare an affidavit to present to a magistrate and obtain a search warrant. In its opinion, the court recognized that case law does not clearly indicate whether or how the delays inherent in obtaining a warrant interact with unlawful seizures under the *Fourth Amendment*. Finally, the court held search warrant affidavit included sufficient facts discovered during Massi's *Terry* stop to establish probable cause to search the airplane.

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

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### **Thompson v. Mercer, 2014 U.S. App. LEXIS 15241 (5th Cir. Tex. Aug. 7, 2014)**

Thompson stole a vehicle, kidnapped its sleeping occupant, and then led police officers on a two-hour pursuit. The kidnapping victim dialed 911 allowing dispatchers to overhear Thompson state that he would "kill himself" when he "got to where he was going." In addition, the victim told the dispatchers there was a firearm in the vehicle. While fleeing from the police officers, Thompson reached speeds in excess of 100 miles per hour, ran numerous stop signs, drove on the wrong side of the road and passed other motorists on the left, on the right, on the shoulder and on the median. The pursuing officers made several attempts to disable Thompson's vehicle, all of which failed. Sheriff Mercer, who did not participate in the pursuit, was kept apprised of the developments and was aware of these facts. Sheriff Mercer positioned himself on the shoulder of the road ahead of Thompson. When Thompson came into view, Sheriff Mercer fired an AR-15 assault rifle at the vehicle, striking the radiator. When the vehicle failed to slow down, Mercer fired directly into the windshield, striking Thomson in the head and neck killing him. Thompsons parents sued Mercer claiming Mercer used excessive force to stop their son.

The court held Mercer's use of deadly force was objectively reasonable; therefore, Mercer was entitled to qualified immunity. While firing an assault rifle directly into the vehicle created a significant risk of serious injury to Thompson, the court found this risk was outweighed by Thompson's "shocking disregard for the welfare of passersby and of the pursuing law enforcement officers." In addition, the vehicle was not the only deadly weapon at Thompson's disposal. Thompson was in possession of a firearm and throughout the two-hour pursuit, he never showed any signs that he planned to surrender.

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

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**United States v. Iraheta, 2014 U.S. App. LEXIS 15960 (5th Cir. La. Aug. 19, 2014)**

A police officer conducted a traffic stop on a car driven by Iraheta. The officer directed Iraheta to exit the car but had the passengers, Gonzalez and Meraz-Garcia, remain inside. During the stop, the officer discovered the men were traveling from California to Miami. At some point, the officer asked Iraheta for permission to search the car for narcotics and Iraheta consented. Gonzalez and Meraz-Garcia did not hear the exchange between the officer and Iraheta. When the officer opened the trunk to search, he saw several duffel bags. None of the bags were marked in a way that identified the owner and none of the men objected to the search or claimed ownership of the bags. The officer opened one of the bags and discovered cocaine and methamphetamine. Iraheta, Gonzalez and Meraz-Garcia were charged with a variety of federal drug offenses.

Each defendant filed a motion to suppress the drugs found in the bag. The district court denied Iraheta's motion, but suppressed the evidence as to Gonzalez and Meraz-Garcia. The government appealed.

First, the court held Gonzalez and Meraz-Garcia had standing to object to the officer's search of the duffel bag. The court recognized the owner of a suitcase located in another person's car may have a legitimate expectation of privacy with regard to the contents of the suitcase. In addition, a person who abandons or disclaims ownership of property prior to the search does not have standing to challenge a search after his abandonment or disclaimer of that property. However, in this case, neither Gonzalez nor Meraz-Garcia denied ownership of the bag before the officer searched it. Consequently, neither man had abandoned the bag; therefore, Gonzalez and Meraz-Garcia had standing to object to the search of the duffel bag.

Next, the court held Iraheta did not have actual authority to consent to the search of the multiple bags located in the trunk of the car. The court found the government failed to establish that Iraheta had joint access or mutual use of the bags with Gonzalez or Meraz-Garcia. Without joint access or mutual use, the fact that the bags were found in the trunk of the car driven by Iraheta was not enough to establish he had actual authority to consent to their search.

Finally, the court held Iraheta did not have apparent authority to consent to the search of the bags. There were three people in the car and the number of bags in the trunk was consistent with three people traveling from California to Miami. Taken together, the court found these circumstances would put a reasonable officer on notice that Iraheta could not give consent to search all of the bags in the trunk. In addition, the officer testified he could not remember how many bags were in the trunk or who owned the bags, and the officer never inquired into their ownership.



Although Gonzalez and Meraz-Garcia did not object to the search nor claim ownership of the bags, the court commented neither man heard Iraheta grant consent to search, and the officer never told them Iraheta had done so. Under these circumstances, the court stated, “The onus was on the officers to act reasonably.”

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

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**Luna v. Mullenix, 2014 U.S. App. LEXIS 16785 (5th Cir. Tex. Aug. 28, 2014)**

At approximately 10:21 p.m., a police officer followed Leija to a fast food restaurant and attempted to arrest him on an outstanding misdemeanor arrest warrant. After some discussion with the officer, Leija fled in his vehicle with the officer in pursuit. A state trooper took the lead in the pursuit as Leija continued onto an interstate highway. Approximately eighteen minutes into the pursuit, Leija approached an overpass where a trooper had deployed a spike strip in the roadway, while Mullenix positioned himself on top of the overpass with an M-4 rifle. Mullenix fired six rounds at Leija’s car, which then engaged the spike strip, hit the median and rolled over. Leija was pronounced dead at the scene. Leija’s cause of death was later determined to be one of the shots fired by Mullenix.

Leija’s estate sued Mullenix, claiming Mullenix violated the *Fourth Amendment* by using excessive force to stop Leija. Mullenix argued his use of force was objectively reasonable because he acted to protect the officers involved in the pursuit, the officer below the overpass, and other motorists who might have been in the path of the pursuit.

The court held Mullenix was not entitled to qualified immunity. The court found the immediacy of the risk posed by Leija was a disputed fact that a reasonable jury could find in either Luna’s favor or in the officer’s favor. According to Luna’s version of the facts, although Leija was clearly speeding during the pursuit, traffic in the rural area was light, and there were no pedestrians, businesses or residences along the highway. In addition, Leija did not run any vehicles off the road and he did not collide with any police vehicles. As a result, the court concluded it could not find that Mullenix acted objectively reasonable as a matter of law.

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

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**Sixth Circuit**

**United States v. Noble, 2014 U.S. App. LEXIS 15279 (6th Cir. Ky. August 8, 2014)**

A police officer was following a vehicle connected to a suspect in a methamphetamine trafficking ring. The officer conducted a traffic stop after the vehicle drifted into the adjacent lane without using a turn signal and because the officer believed the window tint on the vehicle was unlawful. While standing at the passenger-side window, the officer noticed the passenger, Noble, was extremely nervous. The officer used his tint meter and determined the vehicle’s tint was in violation of state law. The officer then administered a field sobriety test to Adkins, the driver, because of the lane-change violation. During this time, another officer arrived and directed Noble to place his hand on the dashboard, which he did. After the driver passed the field sobriety test, the officer obtained consent to search the vehicle and ordered Noble to exit. When Noble stepped out of the car, the officer frisked Noble for weapons. The officer stated Noble’s nervousness and the fact that Noble was in a car

suspected of being involved in drug trafficking caused him to believe Noble might be armed. The officer frisked Noble and felt an object in a plastic bag that the officer believed to be crack cocaine. The officer removed the object and identified it as methamphetamine. The officer also discovered two other baggies of methamphetamine, a pill bottle, a smoking pipe and a loaded handgun on Noble's person. The government indicted Noble on drug and firearms offenses.

Noble argued the officer violated the *Fourth Amendment* by unreasonably prolonging the duration of the traffic stop and by frisking him without reasonable suspicion.

First, the court held the duration of the traffic stop was reasonable. The officer had probable cause to believe two traffic violations had occurred. The officer immediately questioned the driver about his identity and reasons for changing lanes without using his turn signal. The officer then checked the tint on the vehicle's windows and administered a field sobriety test to ensure Adkins' erratic driving was not caused by alcohol or drug impairment.

Second, the court held the officer did not have reasonable suspicion to believe Noble was armed and dangerous. The court noted, in the context of a traffic stop, a person's nervousness is not a reliable indicator of how dangerous he might be. In this case, the officer noticed Noble was nervous at the beginning of the stop, but tested the vehicle's window tint and performed a field sobriety test on Adkins before he decided to frisk Noble. In addition, Noble placed his hands on the dashboard when directed to do so, and left them there until he was ordered out of the vehicle.

The court further stated a person's mere presence in a car, which police officers believe is connected to drug trafficking, does not automatically justify a frisk of that person. Here, the officers did not recognize Noble or Adkins as having a criminal history, and both men complied with the officers' various commands during the traffic stop. Consequently, the court held the frisk of Noble violated the *Fourth Amendment* and the evidence discovered on his person should have been suppressed.

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

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## **Seventh Circuit**

### **Seiser v. City of Chicago, 2014 U.S. App. LEXIS 15473 (7th Cir. Ill. Aug. 12, 2014)**

Seiser, an on-duty Chicago police officer, drove his personal vehicle to a school where he worked security. While in his car, three witnesses saw Seiser drinking from a large bottle, which contained a clear liquid and called 911. The bottle was a 1.75-liter T.G.I. Friday's Mudslide bottle which, when sold, had contained an alcoholic beverage, which still bore a label that read, "The liquor is in it." The responding police officer saw Seiser's parked car and a bottle with clear liquid on the front seat. Although, the officer could not see the label, the officer believed the bottle contained alcohol based on the witness' statements. The officer located Seiser and asked Seiser to give him the bottle. After Seiser refused, the officer contacted a supervisor who told the officer to arrest Seiser for driving under the influence (DUI) and seize the bottle from Seiser's car. The officer arrested Seiser and administered field sobriety tests, which Seiser passed. The officer then ordered Seiser to submit to a breathalyzer, which indicated a blood-alcohol content of 0.00. The officer amended the charge against Seiser from DUI to an open container violation. A laboratory analysis of the liquid of the bottle seized from Seiser's car found that it did not contain alcohol. The state then dismissed the open container charge against Seiser.

Seiser sued, arguing that compelling him to submit to a breathalyzer test was an unreasonable search under the *Fourth Amendment*. Seiser also claimed there was no probable cause to believe he violated the open container law.

The court disagreed. When a police officer obtains information from a reasonably credible witness that a person has committed a crime, the officer may rely on that information to establish probable cause. Here, the supervisor had reports from three credible witnesses indicating Seiser had been drinking while driving a car. In addition, a police officer saw a bottle in Seiser's car that appeared to contain an alcoholic beverage and Seiser refused the officer's request to inspect the bottle. Finally, the label on the bottle seized from Seiser's car indicated it contained an alcoholic beverage. Under these circumstances, the court concluded it was reasonable to believe Seiser had committed DUI and that the breathalyzer test would yield evidence of that crime.

Finally, even though the results of the breathalyzer administered to Seiser were negative, the officers had probable cause to believe the contents of the bottle seized from Seiser's car contained an alcoholic beverage. Based on the witness statements, the officer's observations and the labeling on the bottle, the court found it was reasonable to believe Seiser violated the state's open container law.

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

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## **Eighth Circuit**

### **United States v. Givens, 2014 U.S. App. LEXIS 15691 (8th Cir. Iowa Aug. 15, 2014)**

At approximately 2:00 a.m., a police officer saw a car that did not have license plates. The officer saw a piece of paper in the rear window of the car, but the officer could not determine if the paper was a valid temporary registration card. The officer conducted a traffic stop, and upon reaching the back of the car, he saw the paper in the rear window was a valid temporary registration card. However, by that time, the officer smelled the odor of marijuana emanating from the car. The officer searched the car and discovered bags of marijuana and rounds of ammunition. The government indicted Givens for several criminal violations.

Givens argued the officer did not have reasonable suspicion to support the traffic stop. Specifically, Givens claimed because the officer could not initially read the temporary registration card that the officer could not have reasonably believed the card was invalid.

The court disagreed. The officer testified when he saw the paper in the rear window of Givens' car, he could not tell whether it was a valid temporary registration card or not. The officer further testified, in his experience, temporary registration cards are generally legible when observed from his patrol car. The officer also testified that on prior occasions he had been able to read temporary registration cards at nighttime. The court concluded the lack of license plates on Givens' car or a readily apparent paper registration card in the window gave the officer reasonable suspicion to believe Givens was in violation of state law.

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

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**United States v. Meidel, 2014 U.S. App. LEXIS 16096 (8th Cir. Mo. Aug. 21, 2014)**

While in Meidel's neighborhood looking for a suspicious vehicle, the officers approached Meidel to ask if he had seen the vehicle. Meidel, who was standing in his front yard, which was surrounded by a chain link fence, spoke to the officers, who remained on the other side of the fence near the roadway. When the conversation ended, Meidel turned around and began to walk toward his house. The officers then saw what appeared to be a semi-automatic handgun tucked partially into Meidel's pants in the small of his back. At the time, the officers knew several neighbors had previously reported that Meidel had fired a gun in the neighborhood, that Meidel was a convicted felon, and that Meidel had previously displayed the handle of a pistol to a clerk in a convenience store during a dispute. When the officers asked Meidel if he had a gun, Meidel told them it was a pellet gun. The officers noticed Meidel's demeanor had changed, and as Meidel continued toward his house, he was getting closer to a dumpster that was in the yard. The officers told Meidel that he was under arrest, but Meidel continued walking toward his house, while reaching back to the handgun in his waistband. Both police officers jumped the fence, tackled Meidel and recovered the handgun from Meidel's waistband. The government indicted Meidel for being a felon in possession of a firearm.

Meidel argued the officers violated the *Fourth Amendment* when they entered his front yard after they saw the handgun in his waistband.

The court disagreed. First, without deciding the issue, the court assumed that Meidel's fenced-in front yard constituted curtilage; therefore, it was protected by the *Fourth Amendment*. Next, the court held the officers' warrantless entry into Meidel's front yard was justified by exigent circumstances. Here, the officers saw what they believed to be a handgun in the waistband of Meidel's pants and the officers knew Meidel was a convicted felon. In addition, Meidel's demeanor changed when the officers asked him about the gun and Meidel was walking toward a dumpster in the yard, which would have shielded him from the officers' view. The court concluded under these circumstances a reasonable officer would have had legitimate concerns for his safety and the safety of others; therefore, the warrantless entry into Meidel's yard to arrest him and secure the gun was justified.

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

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**United States v. Hickman, 2014 U.S. App. LEXIS 16194 (8th Cir. Ark. Aug. 22, 2014)**

Robinson was in the bedroom of the house she shared with Tidwell when Hickman came to bedroom door. Hickman, who had been at the house visiting Tidwell, told Robinson Tidwell had left the house and that Tidwell was not answering his cell phone. Robinson and Hickman later found Tidwell's body lying at the side of the house. Instead of calling for assistance, Robinson and Hickman went into the house and packed two kilograms of cocaine into a cooler. After Hickman left with the drugs, Robinson called 911. Robinson told the responding officers she had never seen Hickman before that night, and that Hickman introduced himself to her as "Scotty."

One week later, Robinson told a detective about the drugs in the house, and about how the man whom she knew as "Scotty" had removed the drugs the night of Tidwell's death. The detective then showed Robinson a photograph of Hickman and asked her whom it depicted. Robinson quickly responded the man in the photograph was "Scotty."

The government charge Hickman with conspiracy to possess cocaine with intent to distribute. At trial, Hickman argued Robinson's identification of him during her interview with the detective should have been suppressed.

The court noted that even if Robinson's initial police interview involved an identification procedure that was unduly suggestive, suppression of Robinson's identification would not be automatic. Instead, a court would determine whether the unduly suggestive identification procedure created "a substantial likelihood of misidentification." In this case, the court concluded Robinson's identification of Hickman was reliable. First, Robinson described in detail their joint effort to remove the cocaine from the house. Second, Robinson identified Hickman by a specific alias that Hickman did not dispute. Third, Robinson was certain of Hickman's identity once she saw his photograph. Finally, Robinson identified Hickman from the photograph approximately one week after the incident.

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

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**Williams v. Holley, 2014 U.S. App. LEXIS 16288 (8th Cir. Ark. Aug. 25, 2014)**

Officer Holley entered Williams' home to arrest Williams on twenty-three outstanding misdemeanor arrest warrants. The warrants were for non-violent misdemeanors, traffic violations and contempt of court stemming from those misdemeanors. After an initial struggle, Holley pushed Williams away from him, and the two men ended up standing five to six feet apart from each other. Williams did not attempt to get away, make any threatening gestures or advance toward Holley. Holley drew his Taser and ordered Williams to lie on the floor. Although Williams ignored Holley's command and remained standing, Williams did not say anything to Holley or make any threatening gestures. Holley attempted to call for back-up; however, his call failed because the radio channel was already in use. Holley then deployed his Taser in dart mode, which hit, but did not appear to affect Williams. As Williams attempted to remove the darts, Holley approached with the intent of applying the exposed prongs of the Taser directly into Williams' body. When Holley approached, Williams took the Taser away from Holley and got on top of him. Williams pressed the activated Taser against Holley's left shoulder. Holley claimed the Taser disabled his left shoulder, but stated he was still able to use his left arm in an attempt to shift Williams off him. Holley then used his right hand to draw his pistol and point it at William's stomach. Williams refused to get off Holley and continued pressing the Taser into Holley's shoulder. Holley fired his pistol into Williams' stomach and then fired a second shot that struck Williams in the hand as Williams attempted to grab the pistol. After the second shot, Holley used his left hand to shift Williams so he could get out from under him. Holley fired four more shots, striking Williams in the chest. According to Holley, he fired at Williams from a distance of less than three feet because Williams was advancing toward him with raised arms. Williams died from his wounds,

An internal investigation and coroner's examination revealed inconsistencies with the account of the shooting provided by Holley. These inconsistencies called into question whether Williams deployed the Taser against Holley as Holley claimed, and whether Williams was in the position Holley claimed when Holley shot him.

Williams' daughter sued Holley, claiming Holley's decision to deploy his Taser against Williams was unreasonable and that Holley unreasonably used deadly force when he repeatedly shot Williams.

The court of appeals affirmed the district court, which held Holley was not entitled to qualified immunity.

Holley argued the court was bound to accept his version of events because he was the only surviving eyewitness to the incident. As a result, Holley claimed there was insufficient evidence for a reasonable juror to find his decision to use deadly force against Williams was unreasonable.

The court disagreed. To determine whether a police officer is entitled to qualified immunity, the court reviews the facts as claimed by the plaintiff, in this case Williams, to determine if a constitutional violation was alleged. In this case, the court noted the circumstantial evidence raised questions of fact regarding material aspects of Holley's account of the incident. Specifically, a reasonable juror could infer Williams had not deployed the Taser against Holley in the manner Holley claimed, and that Williams had been raising his arms to defend himself from Holley's gunshots rather than attacking as Holley described.

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

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## **Ninth Circuit**

### **United States v. Nora, 2014 U.S. App. LEXIS 16677 (9th Cir. Cal. Aug. 28, 2014)**

Police officers saw two men they did not recognize standing on the sidewalk in front of Nora's house. The officers lost sight of the men for a few seconds and by the time the officers pulled up in front of the house, the men were standing on the porch. As the officers stood on the sidewalk and attempted to talk to the men, Nora abruptly turned away from the officers and entered the house. The officers saw that Nora was holding a blue-steel semi-automatic handgun in his right hand. The officers ordered Nora to stop, but Nora disregarded the officers' commands and went into the house. The officers called for backup, and within minutes, 20 to 30 officers arrived and surrounded the house with weapons drawn. Police officers used a public address system to order Nora out of the house. When Nora came out, the officers arrested him and found a small amount of marijuana on his person. In addition, Nora made several incriminating statements in response to questioning by the officers. Based on the officers' initial observations, the marijuana seized from Nora, and Nora's incriminating statements, the officers obtained a warrant to search Nora's house for firearms and drugs. After the officers discovered firearms and drugs in Nora's house, the government indicted Nora on a variety of federal criminal offenses.

First, the court held the officers had probable cause to arrest Nora for carrying a loaded firearm in a public place, a misdemeanor. The officers saw Nora carrying the firearm while he was on the front porch of his house, which is not a "public" place under state law. However, when the officers first saw Nora, a few seconds earlier, he was standing on the public sidewalk. Given the short interval during which the officers lost sight of Nora, the court concluded the officers had reasonable grounds to believe Nora possessed the firearm just moments earlier on the public sidewalk.

Second, even if police officers have probable cause to arrest, when arresting a suspect inside his home, the officers must first obtain an arrest warrant or one of the exceptions to the warrant requirement must apply. Although the officers physically took Nora into custody outside his home, Nora only came out after the police ordered him to do so at gunpoint. The court recognized that forcing a suspect to exit his home under those circumstances constitutes an "in-home" arrest for *Fourth Amendment* purposes.

Third, in this case, the officers did not have an arrest warrant for Nora, nor were there exigent circumstances that justified Nora's "in-home" warrantless arrest. Even though Nora possessed a firearm, the court stated that Nora never aimed it at the officers or anyone else and there was no



evidence Nora had used or threatened to use the firearm. In addition, the officers had no reason to believe Nora might pose a danger to the public by attempting to flee because the officers had the house surrounded. Finally, the officers only had probable cause to believe Nora committed a misdemeanor violation of state law. The court stated that “an exigency related to a misdemeanor will seldom, if ever, justify a warrantless entry into the home.” Here, the court concluded the relatively minor nature of Nora’s offense did not justify a finding of exigent circumstances.

Fourth, the court held Nora’s unlawful “in-house” arrest required the suppression of the drugs seized from Nora’s person, and Nora’s incriminating statements. In addition, the court concluded this information should not have been considered when the officers obtained the warrant to search Nora’s house for drugs and firearms.

Finally, the court held the evidence seized from Nora’s house, pursuant to the search warrant should have been suppressed. Based on their personal observations, the officers had probable cause to believe Nora carried a blue-steel semi-automatic handgun into his house. However, the search warrant authorized the officers to seize “firearms, assault rifles, handguns of any caliber and shotguns of any caliber.” The court concluded that this provision of the search warrant was impermissibly broad because it failed to particularly describe the handgun the officers saw Nora carrying.

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

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**United States v. Fowlkes, 2014 U.S. App. LEXIS 16387 (9th Cir. Cal. Aug. 25, 2014)**

Police officers witnessed what appeared to be a drug transaction between Fowlkes and another man. After conducting a traffic stop, the officers arrested Fowlkes after they saw marijuana and cocaine in Fowlkes’ car. The officers transported Fowlkes to the jail where they conducted a strip search. During the search, the Fowlkes appeared to push something into his anus. The officers responded by deploying a Taser against Fowlkes and then forcibly removing a plastic bag from Fowlkes’ rectum that contained cocaine.

Fowlkes argued the forcible removal of drugs from his rectum by police officers without medical training or a search warrant violated the *Fourth Amendment*.

The court agreed. The *Fourth Amendment* generally requires police officers to obtain a warrant to search for and seize drugs within a person’s body. However, a warrantless search of the human body is reasonable if the search falls within one of the exceptions to the *Fourth Amendment*. In this case, the court found exigent circumstances did not justify the warrantless search of Fowlkes’ rectum. When the officers searched Fowlkes, he was handcuffed, tased and surrounded by five police officers. The government did not present any evidence to establish that Fowlkes could have destroyed the evidence or that a medical emergency existed that justified the immediate retrieval of the cocaine.

The court further held the special-needs exception did not apply. While the officers had a strong interest in preventing contraband from entering the jail, a visual observation would have confirmed their suspicions that Fowlkes was concealing contraband and allowed the officers to obtain a warrant.

Finally, even if the officers could have lawfully conducted a warrantless search, the manner in which the officers conducted the search was unreasonable. There was no evidence that any of the officers had medical or any other training on how to safely remove suspicious objects from an arrestee’s rectum or how to evaluate whether such removal could cause serious harm or death.

Consequently, the court held the lack of a warrant along with the unreasonable and dangerous methods used during the body cavity search violated Fowkles' *Fourth Amendment* rights; therefore, the cocaine should have been suppressed.

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

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**Cruz v. City of Anaheim, 2014 U.S. App. LEXIS 16705 (9th Cir. Cal. Aug. 28, 2014)**

A confidential informant (CI) told a police officer that Cruz was a gang member who sold methamphetamine and carried a gun. The officer determined Cruz had a prior conviction for a felony involving a firearm. Sometime later, the CI told the officer where Cruz was located, described Cruz's vehicle and told the officer Cruz was carrying a handgun in his waistband. The CI also told the officer Cruz made it clear that "he was not going back to prison." Several police officers located Cruz's Suburban and followed it. When the officers noticed Cruz's vehicle had a broken taillight, they executed a traffic stop. After Cruz pulled into a parking lot, the officers surrounded his vehicle with their police cars. Cruz attempted to escape by backing his vehicle into one of the police cars. Cruz eventually stopped, and five police officers got out of their patrol cars with their weapons drawn. When Cruz opened his door, the officers shouted at him to get on the ground as he emerged from his vehicle. According to four of the officers, Cruz ignored their commands, exited his vehicle and reached for the waistband of his pants. The fifth officer was standing behind Cruz's vehicle and could not see whether Cruz reached for his waistband. The four officers who claimed Cruz reached for his waistband fired at Cruz. The fifth officer fired at Cruz because he perceived that Cruz was exchanging gunfire with the other four officers. After they stopped firing, the officer approached Cruz's body, which was tangled in his seatbelt and hanging from it. The officers did not find a gun on Cruz's person, but found a loaded handgun on the passenger seat of Cruz' vehicle.

Cruz's relatives sued the city, the chief of police, a deputy chief of police and the five police officers for excessive use of force and wrongful death. The district court dismissed the lawsuit against the city, the chief and deputy chief. The court held the five police officers were entitled to qualified immunity because the plaintiffs had not presented any evidence to contest the officers' version of events.

The court of appeals reversed district court regarding the four officers who claimed they shot Cruz because he reached for his waistband. The court concluded a reasonable jury might find the officers' version of events implausible. For example, the court stated a jury might be skeptical that four pairs of eyes had a line of sight to Cruz's hand as Cruz stood between his vehicle and his vehicle's open door. The court also noted that Cruz was left handed, yet two officers claimed they saw Cruz reach for his waistband with his right hand. As a result, the court found a reasonable jury could doubt that Cruz would have reached for his waistband with his right hand. Finally, the officers claimed Cruz exited his vehicle, stood in the doorway and then reached for his waistband. However, after the officers shot Cruz, the officers had to cut Cruz free from his seatbelt because he was suspended by it. The court concluded a reasonable jury could find that the officers shot Cruz before he exited his vehicle or that Cruz had not reached for his waistband as the officers claimed.

In addition, the court of appeals reversed the district court's dismissal of the lawsuit as to the city, the chief of police and the deputy chief of police.

Finally, the court of appeals affirmed the district court, which held the fifth officer was entitled to qualified immunity. The court found the plaintiffs presented no evidence to doubt the officer's claim

that he reasonably perceived an immediate threat when he heard gunshots that could have been coming from the other four officers, Cruz or both.

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

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