Department of Homeland Security
Federal Law Enforcement Training Centers
Office of Chief Counsel
Legal Training Division

March 2025

The Federal Law Enforcement -Informer-

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

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

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The Informer – March 2025

Circuit Courts of Appeals

First Circuit

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FLETC Informer Webinar Schedule: April - May 2025

1. Government Workplace Searches (1-hour)

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

This webinar will examine the balance of between a government worker's reasonable expectation of privacy with the legitimate need to ensure an efficient and effective workplace. Three categories of reasonable intrusions and their bases will be reviewed: Work-Related Purposes, Employee Discipline, and Criminal Evidence. Please join Attorney Advisor James Stack as he reviews the different types of searches in Government Workplace Searches.

Thursday, April 10, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific

To join: Government Workplace Searches

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2. Officer Liability: Supervisor's Edition (Episode 3, Supervisor Liability Generally) (1-hour)

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

The legal consequences for law enforcement in the course of their duties has become more than a sparsely reported news story but evolved into a commonplace reality. This is no less true for those who train and supervise the men and women working in the industry. This six-part web series will explore the liability of supervision. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 3: Supervisor Liability Generally.

Wednesday, April 16, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 3, Supervisor Liability Generally)

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3. Officer Liability: Supervisor's Edition (Episode 4, Common Law Torts) (1-hour)

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

In part four of this six-part series covering the liability of supervision, we will explore civil lawsuits, along with different forms of immunity that might be available when officers are faced with a lawsuit alleging either negligent or intentional torts. Please join Attorney Advisors Sam Lochridge and Mary Mara as they continue this journey in Episode 4: Common Law Torts.

Monday, May 19, 2025: 3:00 p.m. Eastern / 2:00 p.m. Central / 1:00 p.m. Mountain / 12:00 p.m. Pacific

To join: Officer Liability: Supervisor's Edition (Episode 4, Common Law Torts)

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CASE SUMMARIES

Circuit Courts of Appeals

First Circuit

Cohen v. City of Portland, 23-2026 (1st Cir. 2024)

On April 12, 2020, the Portland Maine Police Department received an emergency call that Eric Cohen, who was apparently experiencing a psychotic episode, had attacked his girlfriend, stripped off his clothing, and fled from the scene. When responding officers were able to locate Cohen, he then fled into the waist-deep waters of Back Cove, an estuary basin on the northern side of the Portland Peninsula, which had an approximate water temperature of forty-one degrees Fahrenheit.

To apprehend Cohen, officers requested a rescue boat from the Portland Fire Department, which set out with three officers onboard. One of the officers on the shore, who was a former Coast Guard rescue swimmer, proposed swimming out to retrieve Cohen, though this plan was ultimately scrapped as no life vest had been made available and the rescue boat was within 100 feet of him. The officers on shore had noted that Cohen had begun to struggle with swimming and had gone under the water. Sometime later the rescue boat pulled a lifeless Cohen aboard and, despite rescue efforts by a responding ambulance, he was declared dead due to a combination of hypothermia and drowning.

Cohen's estate sued the responding officers, a firefighter, the city, and state alleging violations of the Due Process Clause of the Fourteenth Amendment. The First Circuit Court of Appeals found that such a suit might be maintained where a plaintiff demonstrated a failure to protect them from danger created by the officers or where the officers enhanced that danger through some affirmative act. To satisfy this showing it must be established that: 1) a state actor affirmatively acted to create or enhance the danger; 2) the danger that put the plaintiff in peril was specific to them and not merely a danger to the public at large; 3) the affirmative acts by the officers actually caused the plaintiff's harm; and 4) the state actor's conduct, viewed as a whole, shocked the conscience.

Even when viewing the facts in a light most favorable for the plaintiff, the court found that the officers' actions or inactions were, at best, merely negligent which could never support a suit for a due process violation. Among the allegations levied by Cohen's estate were that the officers did not act fast enough, which may have violated agency policy, though the court dismissed the notion that a policy violation, by itself, might support such a claim.

Cohen's estate also alleged that the officers should have attempted a rescue from shore, contacted a crisis intervention specialist, or arranged for an ambulance sooner. The court found that the officers on shore had no affirmative duty to enter the water and interrupt the danger Cohen had put himself in. The court opined that, while the officers' actions or inaction may have fallen short of the motto "protect and serve", they did not cause the death of Cohen, nor could it be said that

their conduct shocked the conscience. The court affirmed the trial court's previous dismissal of the suit.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca1/23-2026/23-2026-2024-08-01.html

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Second Circuit

United States v. Harry, 23-7106 (2d Cir. 2025)

In April 2021, as part of an ongoing drug-trafficking investigation, Drug Enforcement Administration (DEA) agents attached a video surveillance camera to a utility pole on a lot across the street from the Action Audio Store (Action Audio), an automotive business that Harry owned and operated. The camera recorded 24 hours per day for approximately 50 days. The feed captured Action Audio's exterior, the outdoor parking lot, and occasionally a portion of the interior of the business's garage bay whenever the garage door was raised.

The government eventually charged Harry with drug-related offenses. At trial, the government introduced 28 minutes' worth of the video, which showed Harry and two individuals transferring bags of what the government believed to be controlled substances to their vehicles. A jury convicted Harry, and he appealed.

On appeal, Harry argued that the DEA's warrantless footage collection of activities at Harry's business constituted an unreasonable search in violation of the Fourth Amendment; therefore, the footage should have been suppressed at trial.

The Second Circuit Court of Appeals disagreed and explained that not all law enforcement-initiated surveillance qualifies as a "search." Instead, a Fourth Amendment search occurs only if a person has both a subjective and objective reasonable expectation of privacy in the area searched.

First, the court noted that "what a person knowingly exposes to the public ... does not receive Fourth Amendment protection." In this case, Harry made little to no effort to conceal the activity happening outside of Action Audio. Specifically, only a very low fence, with railings spaced far enough apart to see through it, bordered one side of the Action Audio parking lot and, as such, the parking lot and the exterior of Action Audio, including the activities therein, remained clearly visible. Additionally, when the business's garage door was open, some of the garage's interior could be viewed from the street. The court added that it would be absurd for a proprietor of a business to claim a subjective privacy interest in the publicly visible aspects of his business's premises during work hours. The court concluded that Harry manifested no subjective expectation of privacy in the exterior of Action Audio or its parking lot.

Next, the court considered whether Harry's expectation of privacy in the activities outside his business was objectively reasonable or, in other words, one that "society is prepared to recognize ... as reasonable." The court noted previous cases have held that individuals "generally do not have a legitimate expectation of privacy in open and accessible areas" that can be viewed by the public. Here, Action Audio's parking lot and storefront were open and visible to the public. The court added that the police are generally free to observe what may be seen from a place where

they are entitled to be. As the pole camera only monitored what was publicly visible, the court found that Harry had no objectively reasonable expectation of privacy in Action Audio's parking lot and storefront.

Finally, the court rejected Harry's contention that the pole camera's continuous recording for approximately 50 days was materially different from a DEA agent's physical surveillance and, therefore, made his expectation of privacy objectively reasonable. When modern technology enhances law enforcement's traditional surveillance techniques, the Supreme Court has recognized a Fourth Amendment search only when law enforcement uses particularly invasive forms of technological surveillance. The court held that the stationary pole camera trained only on Action Auto's exterior did not meaningfully resemble other forms of technological surveillance such as thermal imaging devices, GPS tracking devices, or the collection of a target's cell-site location information.

Consequently, the court held that the DEA's warrantless collection of footage of activities in public view at Harry's business, for a period of 50 days, using a stationary pole camera, did not violate the Fourth Amendment. Accordingly, the district court did not err in admitting video from the camera's feed at Harry's trial.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca2/23-7106/23-7106-2025-03-07.html

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Ninth Circuit

United States v. In, No. 23-2917 (9th Cir. 2024)

Three of Las Vegas Metropolitan Police Department's bicycle squad conducted a traffic stop near Las Vegas Boulevard ("the Strip") on the evening of March 4, 2020, when they noticed a car, bearing California tags with a taillight out, was parked in a no-parking zone about 50 feet away from the Strip. When officers approached the car, they found Larry Seng In seated in the driver's seat and requested his driver's license, registration, and insurance. While one officer spoke with In, another officer shone her flashlight into the interior of the car and discovered a Glock pistol on the backseat passenger-side floor of the car, which she announced to the other two officers. In was ordered out of the car but he had already started collecting his documents before he was told to stop and put his hands in the air. After In put his hands in the air, an officer opened the car door, put a hand on In's wrist, unbuckled his seatbelt, pulled him out of the car, and positioned In against the closed back door of the car while holding In's hands behind his back.

Officers then began asking In whether he had any weapons on him or in the car, both questions to which he responded, "No." When asked if he'd ever been arrested and for what, In answered, "Yeah, in California…for marijuana…that's it." In was then handcuffed and asked again about any weapons in the car and In, again, claimed there were none. This prompted one officer to ask, "Why is there a Glock back there? You don't know now?" and In responded that he had just left the shooting range. When In was asked whether he was a felon, he told the officers he was not and admitted that the gun belonged to him.

Although the Nevada records check came back clear for In, one of the officers decided to run an additional, and non-routine, check of interstate records, because of In's suspicious and inconsistent responses regarding the possession of the gun. The interstate history records check revealed that In had prior felony convictions in California. In was then arrested, the car was searched, the gun was seized, and he was charged with being a felon in possession of a firearm.

Defense counsel moved to suppress the gun, claiming that the officers' actions, especially handcuffing him during a valid Terry stop, became an unlawful "*de facto* arrest" because they handcuffed him before having probable cause to believe he was prohibited from possessing the gun. The district court referred the motion to a magistrate judge, who held an evidentiary hearing and recommended denying the motion, concluding that the handcuffing was justified. The district court, however, rejected the magistrate's recommendation and granted the motion to suppress, holding that the gun was obtained from an unlawful *de facto* arrest without probable cause. The Government's motion for reconsideration was denied, leading to this appeal.

The Ninth Circuit Court of Appeals reviewed the case and considered several issues: first, whether the traffic stop turned into a *de facto* arrest; second, whether the officers were justified in handcuffing the defendant during their investigation; and, finally whether they had a sufficient and reasonable basis to fear for their safety.

In United States v. Sharpe, the Supreme Court stated that there is no bright line rule for how long a stop should take and "at some point," an investigative stop "can no longer be justified as an investigative stop," and turns into an unconstitutional *de facto* arrest.

When determining whether a stop becomes a *de facto* arrest, the Ninth Circuit first turned to Reynaga Hernandez v. Skinner, and reiterated that the court must consider the totality of the circumstances, including "the severity of the intrusion, the aggressiveness of the officer's actions, and the reasonableness of the officer's methods under the circumstances." The use of "especially intrusive means" when conducting stops has been held permissible in situations including: 1) where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) where the police have information that the suspect is currently armed; 3) where the stop closely follows a violent crime; and 4) where the police have information that crime that may involve violence is about to occur.

In this case, the court held that the officers' decision to handcuff In made the traffic stop more intrusive than a typical stop, but it was reasonable under the circumstances and doing so did not convert the stop into an arrest. When the officers found the gun on the floor of the backseat, and then questioned, In was dishonest; although he was physically cooperative, he became uncooperative when he answered untruthfully to the officer's questions about the gun. His dishonest response reasonably raised the possibility that the stop could turn dangerous.

Next, the court turned to United States v. Edwards, where it had previously held that, when considering the reasonableness of the officer's methods, in this case handcuffing, the court must consider whether the officer had "sufficient basis to fear for his [or her] safety to warrant the intrusiveness of the action taken." Because the officers were patrolling on bicycles, they could not place the defendant inside a patrol car while conducting their investigation. If the officers had not handcuffed In, they would have had to rely on their ability to physically overpower him if he attempted to reach for the gun that was visible and loose on the floor of the backseat of the car.

Finally, the court found that, based on the totality of the circumstances, the presence of an unsecured gun in the car, the defendant's initial dishonesty about the gun, and the location of the stop, which was near a densely populated area, contributed to the reasonableness of the officers' actions. As a result, the court reversed the district court's order granting the suppression motion and remanded the case for trial.

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca9/23-2917/23-2917-2024-12-30.html

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Eleventh Circuit

United States v. Williamson, 22-12800 (11th Cir. 2025)

As part of a drug trafficking investigation, police officers installed two pole cameras to observe Williamson's house. One camera overlooked the front of Williamson's house, and the other camera overlooked the backyard. Both cameras were installed in October 2018 without a warrant and continuously recorded soundless footage through August 2019. The cameras could only view what was visible from the public street in front of the house and the public alley behind it.

Based, in part, on footage captured by the cameras, officers obtained a warrant to search Williamson's house, where they seized drugs, firearms, and other evidence. Afterward, Williamson and three other individuals were charged with a variety of criminal offenses.

Upon conviction, Williamson appealed the district court's denial of his motion to suppress the evidence seized from his house. Williamson argued, among other things, that the search warrant lacked probable cause because it was supported by pole camera footage that was taken in violation of the Fourth Amendment. Specifically, Williamson claimed that the pole cameras invaded his reasonable expectation of privacy because they were focused on his home and recorded non-stop.

The Eleventh Circuit Court of Appeals disagreed. In Katz v. United States, the Supreme Court held that "what a person knowingly exposes to the public, even in his own home or office is not a subject of Fourth Amendment protection." In this case, it was undisputed that the front area of Williamson's home was entirely visible to the public and the backyard was open to public view from an observer standing on the street. The court concluded that Williamson could not have a reasonable expectation of privacy in these areas as they were both exposed to public view.

Next, the court held that neither the pole camera's capacity to record non-stop nor the length of the surveillance transformed their use into a Fourth Amendment search. The court commented that it's reasoning was consistent with pole camera cases decided by the Sixth and Seventh Circuits. Specifically, in U.S. v. Houston, decided by the Sixth Circuit, the court held "the length of the surveillance did not render the use of the pole camera unconstitutional, because the Fourth Amendment does not punish law enforcement from using technology to more efficiently conduct their investigations." In addition, while the agency "could have stationed agents round-the-clock to observe the defendant's property in person, the fact that they instead used a camera to conduct the surveillance did not make the surveillance unconstitutional." The Seventh Circuit ruled similarly in U.S. v. Tuggle, opining that, while stationary cameras around a property may capture

an important sliver of a person's life, they did not paint the type of exhaustive picture of a person's every movement that the Supreme Court has frowned upon.

The court then rejected Williamson's contention that the use of the pole cameras was analogous to installing and monitoring of GPS tracking devices; therefore, their use constituted a Fourth Amendment search. The court found that, unlike GPS tracking devices, pole cameras are stationary and do not "follow" a person like a GPS device attached to a vehicle.

Finally, the court rejected Williamson's argument that the use of the pole cameras was analogous to accessing a person's cell phone records that provide a comprehensive record of the user's past movements. The court stated that pole cameras are distinct both in terms of the information that they mine and the degree of intrusion necessary to do so. The court added, "pole cameras are a conventional surveillance technique very similar to security cameras – and the government has used them for surveillance across the country for decades."

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca11/22-12800/22-12800-2025-02-13.html

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