

# 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 – July 2025

### United States Supreme Court

**Martin v. United States:** Whether homeowners can sue the government for damages when agents raid the wrong residence, what kinds of claims can be brought if a suit is allowed, and whether the government can defeat such claims under the Supremacy Clause .....4

### Circuit Courts of Appeals

#### Third Circuit

**United States v. Moses:** Whether an officer intruded on a defendant’s curtilage when searching a car in the defendant’s driveway.....5

**United States v. Outlaw:** Whether a defendant’s rights were violated when an officer searched him after smelling marijuana coming from his vehicle, but did not smell marijuana on him or his breath, nor did the defendant exhibit any signs of ingesting marijuana.....7

#### Fifth Circuit

**Estate of Parker v. Mississippi Department of Public Safety:** Whether officers should be granted qualified immunity after shooting and killing an active shooter and the infant that was being used as a human shield.....8

## **FLETC Informer Webinar Schedule: August 2025**

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

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

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

**Thursday, August 7, 2025: 2:30 p.m. Eastern / 1:30 p.m. Central / 12:30 p.m. Mountain / 11:30 a.m. Pacific**

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



### **2. SFSTs, Driving and the Law – How to Effectively Tie them Together (1-hour)**

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico, and Ashley Schluck, Wyoming Traffic Safety Resource Prosecutor, Laramie, Wyoming.

DUI cases are challenged by painting the SFSTs as confusing and by diminishing or excusing what the officer is observing as not related to driving. To counter this, it is essential to effectively explain to the jury the purpose of these tests and most importantly how they relate to driving skills. The presenters will break down the various components of the SFSTs into simple terms and real-world analogies that are applicable to driving, and most importantly how to testify in a way that will allow the jury to make the most out of the officer's observations. The speakers will also share how to effectively incorporate the law during testimony on SFSTs in an easy to understand manner to help the jury understand the association between SFSTs and an individual's ability to drive safely.

**Wednesday, August 13, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific**

**To join: [SFSTs, Driving and the Law – How to Effectively Tie them Together](#)**



### **3. Fifth Amendment Considerations in a DWI Case (1-hour)**

Presented by Rachel Smith, Attorney Advisor / Senior Instructor, Federal Law Enforcement Training Centers, Artesia, New Mexico.

Learn the constitutional parameters for Fifth Amendment rights, when a suspect needs to be Mirandized, and how these principles apply in common impaired-driving scenarios.

**Wednesday, August 20, 2025: 12:00 p.m. Eastern / 11:00 a.m. Central / 10:00 a.m. Mountain / 9:00 a.m. Pacific**

**To join: [Fifth Amendment Considerations in a DWI Case](#)**



# CASE SUMMARIES

## United States Supreme Court

**Martin v. United States**, No. 24-362, (605 U.S. \_\_\_\_ (2025))

On October 18, 2017, the FBI went to a suburban Atlanta home to execute search and arrest warrants but they raided the wrong house. Officers meant to raid a suspected gang hideout at 3741 Landau Lane but, instead, stormed into 3756 Denville Trace, where Curtrina Martin, her 7-year-old son, and her partner Hilliard Toi Cliatt lived. The six-member SWAT team breached the front door, detonated a flash-bang grenade, and assaulted the occupants in the home, resulting in property damage and personal injuries. The error occurred when an agent's personal GPS device unexplainably led agents to the erroneous address and other agents failed to notice that the home they were raiding had a different street address than the one specified in the warrants. The occupants filed a claim against the United States under the Federal Tort Claims Act (FTCA) alleging the agents committed various negligent and intentional torts before and during the raid. The Supreme Court considered two FTCA issues: 1) what types of claims can be brought against the United States; and 2) whether the United States can raise the Supremacy Clause as a defense to claims brought under the FTCA.

The Court began its analysis by recognizing that the FTCA allows those injured by federal employees to sue the United States for damages. The statute achieves this end by waiving sovereign immunity for certain (but not all) torts committed by federal employees acting within the scope of their employment. A plaintiff may sue the United States for negligent acts of federal employees so long as the employee was acting within the scope of their employment. The ability to file a negligence claim against the United States applies to the actions of all federal employees – law enforcement and non-law enforcement employees alike. In addition to negligence-type claims, certain intentional tort claims can also be brought against the United States for actions taken by investigative law enforcement officers acting within the scope of their employment. The FTCA specifically lists six intentional tort claims that can be brought against the United States for actions of investigative law enforcement officers. They are assault, battery, false imprisonment, false arrest, abuse of process and malicious prosecution. After reviewing the language of the FTCA, the Supreme Court easily concluded that the plaintiffs in this case could potentially pursue both negligence and intentional tort claims against the United States for the actions of the FBI agents during the ill-fated raid.

Next, the Court turned to a much more difficult question, which dealt with the so-called “discretionary function” exception under the FTCA. This exception bars “[a]ny claim” based on the exercise of an official’s “discretionary function” and forbids suits challenging decisions that “involve an element of judgment or choice.” There is very little case law interpreting the discretionary function exception under the FTCA. Some courts believe that the discretionary function exception prohibits *all claims* against the United States if the employee was required to exercise judgment and choose between several options before acting. Other courts have interpreted the discretionary function exception more narrowly, concluding that it only precludes certain types of claims from being brought against the United States under the FTCA. The Supreme Court acknowledged that there is a great deal of ambiguity surrounding the scope of the

discretionary function exception under the FTCA. Rather than defining the scope of the discretionary function exception, the Court remanded the case to the district court with instructions to evaluate each of plaintiff's claims individually and consider whether any of the claims are barred by the discretionary function exception to the FTCA.

The final question addressed by the Court dealt with whether the United States could invoke the Supremacy Clause of the Constitution to defeat a claim brought against it under the FTCA. The Supreme Court concluded it could not because the Supremacy Clause only applies when there is a conflict between state and federal law. Finding no conflict between state and federal law when it comes to claims against the United States, the Court concluded that the Supremacy Clause was inapplicable to claims brought against the United States under the FTCA.

For the court's opinion: <https://supreme.justia.com/cases/federal/us/605/24-362/>

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## Circuit Courts of Appeals

### **Third Circuit**

**United States v. Moses**, No. 23-3078 (3<sup>rd</sup> Cir. 2025)

Ronell Moses was driving through his neighborhood when a police officer in a marked SUV with his windows rolled down drove past him in the opposite direction. As they passed each other, the officer smelled the odor of burnt marijuana, suggesting that Moses was smoking while driving, which was illegal. The officer made a U-turn and followed Moses, who eventually reached his home and pulled into the driveway. The officer parked at the driveway's entrance and walked up the driveway to Moses's car. The officer searched the car and found a loaded, stolen handgun in the center armrest.

The government charged Moses with possession of a firearm and ammunition by a convicted felon under 18 U.S.C. § 922(g)(1). Moses filed a motion to suppress the gun, arguing that when the officer walked up the driveway to his car, the officer stepped onto his home's curtilage without a warrant or an exception to the Fourth Amendment's warrant requirement. After the district court denied the motion, Moses pleaded guilty, reserving the right to appeal the district court's ruling.

The Fourth Amendment expressly protects houses from unreasonable searches. However, the Supreme Court has recognized that the area falling outside the boundaries of a house, called the curtilage, is protected to the same extent under the Fourth Amendment as the house itself. The curtilage is afforded the same protection as the home so as to protect homeowners from officers intruding upon the property to learn more about the interior of the home than they could by observing it from a public place. Consequently, police officers generally cannot enter the curtilage of a house without probable cause and either a warrant or an exception to the warrant requirement.

In [U.S. v. Dunn](#), the Court found that the test to determine if an area is within the curtilage of a home is "whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." The Court outlined four factors that could be considered when making this determination: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding

the home, the nature of the uses to which the area is put, and steps taken by the resident to protect the area from observation by people passing by.”

In this case, the Third Circuit Court of Appeals relied on the following screenshots from the officer’s bodycam footage. The first shows where Moses parked, filmed as the officer stood on the edge of the driveway. The officer walked up to the car and questioned Moses while standing by the doors on the driver’s side.



The photo below shows, from the officer’s perspective, how far onto Moses’s property he advanced. The part of the driveway where the officer was standing did not butt up against Moses’s house, as a front porch or side garden does. On the contrary, Moses’s car was parked about twenty to thirty feet into a seventy-foot driveway, so the officer was still several dozen feet from the garage. The driveway was not secluded, but plainly visible from the public street and on the path that any stranger might take to the front door. Based on these facts, the court concluded that Moses did not have a reasonable expectation of privacy in that part of his driveway; therefore, it could not be considered part of the home’s curtilage.



Next, while the court commented that the [Dunn](#) factors were not overly helpful in this case, they reinforced the court’s conclusion that the officer did not intrude upon the curtilage of Moses’s home. First, the driveway was approximately seventy feet long but the officer only walked approximately twenty-five feet into the driveway to get to the car. From this location, the officer was thirty to forty feet away from the house and likely closer to the street than to Moses’s house. Second, there was no fence, wall, or other enclosure separating the part of the driveway where the officer stood from the property’s open fields. Third, all evidence indicated that Moses used this part of the driveway to park cars. There was no sign of domestic activity in the driveway and there is nothing domestic or private about parking cars. Finally, while the property was slightly shielded by a row of low bushes in front of the yard and some patchy hedges on the property’s right side, anyone walking by on the street could see clearly into the driveway.

Finally, the court concluded that the officer did not intrude upon the curtilage because, from his vantage point, an officer would not expect to see more through the front windows of Moses's house when standing approximately forty feet from it than he could when standing on the street.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/23-3078/23-3078-2025-07-03.pdf>

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**United States v. Outlaw**, No. 24-2114, (3<sup>rd</sup> Cir. 2025)

A police officer in an unmarked car was on patrol in a high-crime area in Newark, New Jersey, one evening when he saw a parked, running car that had its sunroof open and "heavy aftermarket tints." As the officer's vehicle approached the parked car, the officer smelled burning marijuana and conducted a traffic stop.

When the officer shined his flashlight into the parked car, he did not see the driver, later identified as Abdul Outlaw, or the passenger smoking marijuana, exhibiting signs of being under the influence of marijuana, discarding anything, or making furtive movements. As the officer approached the driver's side of the car, Outlaw lowered the window, and the officer saw smoke emanating from the window and noticed that the smell of burning marijuana became more pungent.

The officer then asked Outlaw to step out of the car, believing that criminal activity was afoot due to the smell of burning marijuana along with physically seeing the smoke emanating from the car. The officer did not ask Outlaw if he been smoking marijuana, smell marijuana on his breath or clothing, or observe that he appeared to be under the influence of marijuana. The officer frisked Outlaw due to "the burning marijuana inside the vehicle" and his "belief there may be more contraband or weapons, and due to officers' safety." The officer arrested Outlaw after he found a firearm with an obliterated serial number and a prescription bottle containing raw marijuana on Outlaw's person. The raw marijuana was not the burning marijuana the officer had smelled.

At trial, the district court granted Outlaw's motion to suppress the firearm and pill bottle. The court found that, while the vehicle stop was lawful given the tinted windows and the burning marijuana smell, the officer did not have reasonable suspicion or probable cause to search Outlaw's person. The government appealed.

The sole issue before the Third Circuit Court of Appeals was whether the officer had probable cause to arrest Outlaw when he decided to search Outlaw's person. If there was probable cause to arrest Outlaw, then the officer was permitted to search his person incident to that arrest.

The government argued that the odor of marijuana and smoke emanating from the driver's side window established probable cause to arrest Outlaw. The court disagreed, recognizing that while they are often discussed in tandem, probable cause to search is not the same as probable cause to arrest.

The court explained that "while the smell of marijuana alone can create probable cause to search a vehicle, there must be facts that connects the smell to an individual passenger for there to be probable cause to arrest that passenger." The court commented that when the odor of marijuana is particularized to a vehicle, and the individual is alone in that vehicle, this distinction is immaterial. However, as in this case, where there are multiple individuals within the vicinity of



the odor, there must be additional facts particularized to an individual to establish probable cause of marijuana possession by that individual. While admitting that it was a close call, the court held that the officer's testimony did not establish probable cause that Outlaw possessed marijuana.

First, the officer did not observe Outlaw or the passenger smoking marijuana or detect any evidence of marijuana ingestion, nor did he see Outlaw or the passenger move furtively or attempt to discard any evidence when he approached the car. Second, after Outlaw got out of the car, the officer did not smell marijuana on his person, clothing, or breath, and did not see evidence indicating that Outlaw was under the influence of marijuana. Third, although the officer saw smoke come from the driver's side window and noticed the odor became more pungent, there was no evidence connecting it to Outlaw rather than the passenger. Finally, if the smoke from the driver's side window heightened the officer's suspicion that Outlaw was smoking marijuana, the lack of smell on Outlaw's person or other signs of recent ingestion should have dispelled those suspicions. Consequently, while the court held that while the facts in this case could have plausibly supported a search of Outlaw's vehicle, they did not support his arrest, and therefore did not support a search incident to his arrest that led to the discovery of the firearm and the pill bottle.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca3/24-2114/24-2114-2025-05-28.pdf>

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## **Fifth Circuit**

**Estate of Parker v. Mississippi Department of Public Safety**, No. 24-60208 (5<sup>th</sup> Cir. 2025)

On May 3, 2021, law enforcement was called to a shooting in Baker, Louisiana. Responding officers discovered two individuals who had been fatally shot, and learned that an infant, La'Mello Parker, was missing. Officers were able to identify La'Mello's father, Eric Smith, as a suspect in the double homicide and his likely abductor, with law enforcement securing arrest warrants for those charges.

Smith was spotted with La'Mello on Interstate 10 near the Mississippi State line, which led to a pursuit that resulted in spike strips being deployed and rendered Smith's car at least partially disabled. Smith then stopped and exited his vehicle, with La'Mello pressed against him as a human-shield, and fired his gun towards a trooper with the Mississippi Highway Patrol. None of the officers returned fire, and Smith got back into the car and resumed his flight down the highway with the infant in tow. Local Mississippi law enforcement agents deployed additional spike strips approximately 20 miles down the highway and roadblocks, to include snipers and hostage negotiators, approximately 30 miles down the highway.

As the pursuit continued towards those obstacles, a local deputy sheriff was able to ram Smith's vehicle into the median, disabling it. Deputies and troopers surrounded the vehicle where Smith remained and was still clinging to his infant hostage. When one of the deputies left his position of cover to retrieve a police canine, which had gotten loose in the confusion, Smith lowered his window and fired his gun. In response to this hostile act, no less than ten law enforcement officers returned fire. While this response was able to neutralize the threat presented by Smith, an errant round fired by one of the troopers also struck and killed La'Mello.



On La'Mello's behalf, family members sued the officers under 42 USC § 1983 for violations of his Fourth and Fourteenth Amendment rights. The district court dismissed the claims against the officers who fired their weapons but did not strike La'Mello, based upon standing. The district court dismissed the claims against the remaining parties finding that the deputy's ramming of Smith's vehicle and the returning of fire were not unreasonable given the circumstances and that, even if the latter was a violation, it was not clearly established by law. The district court dismissed the Fourteenth Amendment claims, finding that the conduct was best evaluated under the Fourth Amendment and, even if it was evaluated under the Fourteenth Amendment's standard, that conduct did not meet the standard of the amendment which would require law enforcement's conduct "shock the conscience."

On appeal, the Fifth Circuit Court of Appeals found the plaintiffs had standing to seek relief under the Fourth and Fourteenth Amendments. The court explained that this standing flowed from the traceability of the officers' alleged bystander participation in the trooper's use of deadly force, and their affirmative conduct leading up to the confrontation and conditions that led to the fatal shot. The court found that, for the purposes of standing, the officers' actions – or inactions as alleged by the plaintiffs – were sufficient at the pleading stage. Next, the court turned to the issue of whether the case might be dismissed based on qualified immunity. Qualified immunity is granted when there is either no violation of a constitutional right, or where it was not clearly established that the officer's actions would violate a constitutional right.

The first issue, treated as a non-issue by the court, was whether the accidental shooting of a third party constituted a seizure for the purposes of a § 1983 action. None of the officers or agencies being sued contested that this would constitute a seizure so the court proceeded with its analysis without deciding that particular issue.

To determine whether there was a constitutional violation which might support a § 1983 claim, the court evaluated the officers' actions under the factor test from the landmark U.S. Supreme Court case [Graham v. Connor](#). The first factor from [Graham](#), which weighs the severity of the crime, favored the officers as Smith was sought in connection to a double homicide. The second factor, the immediacy of the threat, also favored the officers as Smith not only threatened the officers on scene but also the bystanders, with the court noting that vehicles were stopped on the interstate and Smith could have turned his weapon on them or re-entered his vehicle. Finally, the court found the last [Graham](#) factor of flight/resistance favored the officers as Smith was actively fleeing and resisting arrest by firing at officers.

The Fifth Circuit, acknowledging the U.S. Supreme Court's recent decision in [Barnes v. Felix](#) recognized that, while the deputy's action of ramming Smith's car may have contributed to the outcome, the deputy acted reasonably in seizing a safe opportunity to end a dangerous police pursuit under the totality of the circumstances.

While the court had reservations regarding an act that resulted in the death of a child being used as a shield, it opined that it might discourage officers in the future to stop an active shooter for fear of striking a hostage. The court recognized that, while the outcome was tragic, the officers actions in returning fire on Smith were reasonable. In addition, the court noted that, even if these actions weren't reasonable, there was no clearly established law which would put the officers on notice that their conduct would have violated a constitutional right.

Turning to the issue of the Fourteenth Amendment claims, the court held that it had not historically permitted Fourteenth Amendment claims in excessive force cases when a more specific constitutional provision such as the Fourth Amendment might apply. Since there was no question that a seizure occurred, there could be no liability under the Fourteenth Amendment as the claims must be analyzed under the Fourth Amendment.

Even for argument's sake in considering the Fourteenth Amendment claims against the officers the court found that these would fail for additional reasons. The court specifically noted that conduct which might support such liability would have to go beyond recklessness and would rather require law enforcement to act with the purpose to harm. It was not alleged that the deputy who rammed Smith's car from the road, acted with the intent to harm La'Mello. It is also true that officers firing at an active shooter who is using a child as a shield, did not intend to harm the hostage but to stop the threat. The court found that while the result was tragic, the officers response to an active shooter did not shock the conscience and would not be subject to Fourteenth Amendment liability. Having evaluated all of the constitutional claims, the court granted qualified immunity for the officers.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca5/24-60208/24-60208-2025-06-06.pdf>

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