



# LEGAL UPDATE

December 2021 - April 2024

A brief summary of each case is provided below. Be advised that case law is complex and fact dependent and may be narrowly tailored in some circumstances. For that reason, each case title has the link to the case decision which will provide all of the pertinent facts for each case. Additionally, at the end of each case there is a link for any associated video if available.

## DATE

## CASE SUMMARY (LINK IN THE TITLE)

December 15, 2021



### [TIMPA V. DILLARD](#)

Dallas Police Department

*This case is about excessive force and bystander liability. Bystander liability is defined as: An officer is liable for failure to intervene when that officer: (1) knew a fellow officer was violating an individual's constitutional right, (2) was present at the scene of the constitutional violation, (3) had a reasonable opportunity to prevent the harm but nevertheless, (4) chose not to act. For reference, please follow link to [POST UOF Standards and Guidelines \(#9\)](#) and [AB26 Language](#)*

In August 2016, Anthony Timpa called 911 and asked to be picked up. Timpa has a history of mental illness, schizophrenia, and was off his medications. Sergeant Mansell was the first to arrive; Timpa had already been handcuffed by private security guards. Moments later, officers Dillard, Vasquez and Rivera arrived on scene. Timpa confessed to being under the influence of cocaine. As officers Dillard and Vasquez failed to calm Timpa, they forced him on his stomach and each pressed one knee on Timpa's back while his legs were being restrained. Timpa was cuffed at the hands and ankles while Officer Dillard pressed his left knee into Timpa's back for a total of 14 minutes and 7 seconds. At the 12-minute mark, Timpa became nonresponsive. Paramedics on scene declared him deceased.

Officers Vasquez and Dominguez stood feet away from Timpa throughout the entire 14 minutes and 7 seconds. Both officers were trained to place subjects in an upright position or on their side after subjects are under control. Both officers could be seen on body worn camera standing and laughing while Officer Dillard kept his knee on Timpa's back. Sergeant Mansell left to his car 34 seconds after Timpa became subdued and observed Timpa for the critical half minute when Timpa suddenly lost consciousness. Officer Rivera left the scene 2 ½ minutes before Timpa stopped moving his legs, lacking a reasonable opportunity to intervene.

The Fifth Circuit reversed the district court's grant of summary judgment on the claim of excessive force against Officer Dillard and claims of bystander liability against Sergeant Mansel, Officer Vasquez and Officer Dominguez. The court however, affirmed the district court's grant of summary judgement on the claim of bystander liability against officer Rivera.

[Associated Video](#)

April 15, 2024



### [PEREZ V. CITY OF FRESNO](#)

Fresno Police Department

*This case is about compression asphyxia and force application at the direction of a paramedic.*

In 2017, at the direction of a paramedic, a police officer used their body weight to hold down and restrain Perez while he was in a prone position in order to strap him to a backboard so he could be transported to a hospital for mental-health treatment. Perez told officers that he could not breathe and eventually stopped responding; paramedics discovered that he did not have a pulse. Perez was pronounced dead at the hospital and the coroner report indicated Perez's death was due to compression asphyxia during restraint with methamphetamine toxicity.

The Ninth Circuit granted summary judgement on both the officers and the paramedic. The officers grant of summary judgement was not because their conduct was found to be within constitutional boundaries but because it was determined that existing law did not give them fair notice that their conduct was unconstitutional.

#### [Associated Video](#)

*Note: Officers should be very careful and hesitant when receiving direction from a paramedic to apply force and pressure to a prone person's upper torso. **This case now serves as notice to officers in the Ninth Circuit that this conduct will result in the denial of qualified immunity if the subject is injured or dies as a result.** Officers should remember that they are responsible for any use of force in accordance with General Order 580.02 (Use of Force).*

April 17, 2024

#### [UNITED STATES V. PAYNE](#)

California Highway Patrol – Coachella Valley Violent Crime Gang Taskforce

*This case is about parolee phone search using the parolee's thumb print.*

Payne was a parolee who was released on parole shortly after his conviction. Payne signed a special condition of parole that includes general search conditions. On November 3, 2021, Payne was pulled over by officers Coddington and Garcia. Payne appeared extremely nervous, sweating profusely, and stammering when he spoke. Payne informed the officers that he was on California parole. Officer Coddington asked Payne to step out of the car so the vehicle could be searched. Payne informed the officers where his phone was and issued a description of what the phone looked like. After the officer found the phone and asked for the passcode, Payne said the phone did not belong to him and he did not know the password. However, Officer Coddington grabbed Payne's thumb and used it to unlock the phone. Once the phone setting confirmed ownership, he began looking through the device which led to an investigation of the discovery of drugs.

The Ninth Circuit held that a parolee search of [his] cellphone following [a] traffic stop was reasonable. The court held that the search was authorized under a general search condition, mandated by California law, allowing the suspicion less search of any property under Payne's control. The officer's use of the defendant's thumb to unlock his cell phone was not testimonial and thus did not violate Fifth Amendment privilege against self-incrimination and the search warrant for a house associated with defendant was supported by probable cause.

*Note: Officers should remember that California state parolees have search clauses that allow for warrantless searches however, officers should always verify the subject is currently on parole prior to a parole search being conducted.*

Of note, in cases for summary judgement, the defendant(s) (generally the officers or government entity) must prove that they did not violate any clearly established case law. If the court declines to find for summary judgement the court believes there are sufficient facts for the case to go to trial for a jury to decide; and that the law was clearly established at the time of the incident. For that reason, officers should carefully evaluate their conduct in similar circumstances. Please feel free to reach out to the Compliance Team with any questions or any cases of interest for future editions.