CPOA CASE SUMMARIES – MARCH 2025

CONSTITUTIONAL LAW

A. Thirty-minute traffic stop was not unreasonably prolonged where officer questioned defendant while writing the citation and waiting for the criminal history check.

United States v. Steinman, 130 F.4th 693 (9th Cir. 2025)

Facts: In August 2022, Trooper William Boyer of the Nevada State Police pulled over a BMW that was speeding on a highway in Wells, Nevada. The car was driven by Triston Harris Steinman. Approaching the BMW, Trooper Boyer observed Steinman moving around within the car's cab. Trooper Boyer observed an ammunition box on the front right floor of the vehicle and items covered by a blanket in the back seat. While inspecting Steinman's license and registration, Trooper Boyer questioned him. Steinman admitted having ammunition but denied having any firearms in the car. Trooper Boyer ran a driver's license check. He ordered Steinman out of the BMW and into Trooper Boyer's patrol vehicle. In the patrol vehicle, Trooper Boyer accessed his ticket-writer application to fill out the traffic citation while he talked with Steinman. Approximately ten minutes into the stop, Trooper Boyer requested a criminal history check on Steinman from dispatch. The two continued conversing while Trooper Boyer worked on the citation. About three minutes after his request, Trooper Boyer received Steinman's criminal history record. Trooper Boyer reviewed the criminal history record for about three-and-a half to four minutes, observing that there was at least one entry listed as "felony with a guilty disposition." During this time, he also conversed with Steinman about the ticket that he was going to issue. After the record review, Trooper Boyer continued writing the citation while questioning Steinman.

Almost thirty minutes into the stop, Trooper Boyer informed Steinman that Steinman had some felonies on his background and ammunition in his BMW, which provided "a little" probable cause to search the vehicle. Steinman refused consent to the search and recanted his admission that there was ammunition in the car. Trooper Boyer tried to reach a K-9 unit, tried to confirm that Steinman had felony convictions (not just felony charges), and requested a tow. Trooper Boyer explained the citation, and then explained that the BMW was being seized. Trooper Boyer obtained a search warrant for the BMW. The police found thirty-eight firearms, silencers, ammunition, marijuana, and drug paraphernalia. One loaded firearm was found directly beneath the driver's seat, within Steinman's easy reach.

Steinman was charged with being a felon in possession of ammunition and possession of unregistered firearms. His moved to suppress the evidence collected as a result of the traffic stop, contending that his Fourth Amendment rights were violated. The District Court issued an order granting the motion, concluding in part that the stop was unconstitutionally prolonged without the required reasonable suspicion. The Government appealed the suppression order.

Held: The Ninth Circuit Court of Appeals reversed. The Court explained that "[a] seizure for a traffic violation justifies a police investigation of that violation." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). "[A] traffic stop 'exceeding the time needed to handle the matter for which

the stop was made violates the Constitution's shield against unreasonable seizures.'" *United States v. Ramirez*, 98 F.4th 1141, 1144 (9th Cir. 2024) (quoting *Rodriguez*, 575 U.S. at 350)). However, "the Fourth Amendment tolerate[s] certain unrelated investigations that [do] not lengthen the roadside detention." *Rodriguez*, 575 U.S. at 354. Although an officer may not make unrelated investigation inquiries "in a way that prolongs the stop." *United States v. Landeros*, 913 F.3d 862, 866 (9th Cir. 2019) (quoting *Rodriguez*, 575 U.S. at 355), "a stop 'may be extended to conduct an investigation into matters other than the original traffic violation' so long as 'the officers have reasonable suspicion of an independent offense.'" *United States v. Taylor*, 60 F.4th 1233, 1239 (9th Cir. 2023) (quoting *Landeros*, 913 F.3d at 867).

Here, the Ninth Circuit concluded that conclude that Steinman's Fourth Amendment rights were not violated by an unconstitutional prolongation of the traffic stop. The Court first explained that nothing up until the point when Trooper Boyer finished reviewing Steinman's criminal history and learned that he had a felony conviction (approximately seventeen minutes according to the body-camera footage) constituted an unconstitutional prolongation of the traffic stop. The Court found all the actions taken by Trooper Boyer up until that point either (1) were within the legitimate mission of the traffic stop, including protecting officer safety or (2) did not prolong the traffic stop. The Court next explained that after Trooper Boyer reviewed the criminal history and learned that Steinman had a felony conviction, he had reasonable suspicion to believe that Steinman was engaged in criminal activity—namely, that Steinman possessed firearms in violation of Nevada law. Thus, even assuming that Trooper Boyer did prolong the stop at some point after he learned that Steinman had a felony conviction, he was entitled to do so based on his reasonable suspicion of an independent offense. The Court also concluded that Trooper Boyer was entitled to seize (and search) the BMW because he had probable cause that the vehicle contained evidence of unlawful possession of ammunition and unlawful possession of firearms.

B. Agents' failure to inform arrestee of his charges did not cause him to make incriminating statements, and therefore that failure did not require suppression of those statements.

United States v. Rodriguez-Arvizu, 130 F.4th 1125 (9th Cir. 2025)

Facts: In November 2019, by United States Border Patrol agents arrested Abelardo Rodriguez-Arvizu on a suspected immigration violation. During his processing at a Border Patrol station, a criminal records check revealed an outstanding arrest warrant entered into the system by FBI Special Agent Michelle Terwilliger. That arrest warrant was issued following a September 2016 indictment charging him with certain offenses related to his alleged participation in an October 2014 incident. Once contacted, Agent Terwilliger requested that Rodriguez-Arvizu be transported the next day to a Tucson facility for pickup. A Border Patrol agent prepared I-213, I-214, and I-215 Forms for Rodriguez-Arvizu. Both the I-214 Form (Advisement of Rights Form) and I-215 Form (Record of Sworn Statement in Affidavit Form) provided a notice of *Miranda* rights. Rodriguez-Arvizu signed the I-214 Form but left the specific "waiver" portion of the form unsigned. The Border Patrol agent also marked "no" on the I-215 Form as Rodriguez-Arvizu's response when asked if he was willing to answer questions. That agent did not question Rodriguez-Arvizu about the charges in the warrant or inform him of the FBI's outstanding warrant for his arrest. The next day, Rodriguez-Arvizu was transported to the Tucson facility.

Agent Terwilliger, who did not speak Spanish, and FBI Agent Oscar Ramirez, who was fluent in Spanish, arrested and took custody of Rodriguez-Arvizu. Neither Agent Terwilliger nor Agent Ramirez told Rodriguez-Arvizu the specific charges he faced, although the FBI agents testified that Rodriguez-Arvizu was told that he was being arrested on a federal warrant, that they were FBI agents, and that we were going to take him for processing and an interview at the FBI office. During the approximately eight- to ten-minute ride to the FBI office, Rodriguez-Arvizu asked about the charges. He also made spontaneous statements to Agent Ramirez in Spanish connected with the October 2014 incident for which he was indicted. Agent Ramirez testified that he did not initiate any of these conversations. He also testified that whenever Rodriguez-Arvizu would make a statement, he generally advised Rodriguez-Arvizu that he "could not talk to him there inside the vehicle" and that the agents "would have an opportunity to talk to him at the FBI office." Once at the FBI office, Agent Ramirez read Rodriguez-Arvizu his *Miranda* rights and confirmed that Rodriguez-Arvizu understood those rights. Rodriguez-Arvizu then made several additional statements without an attorney present, despite repeatedly being informed he had that he could end the interview and retain counsel if he wished to do so. During the interview, Rodriguez-Arvizu detailed his presence at and knowledge of the October 24, 2014, incident.

Rodriguez-Arvizu subsequently moved to suppress his post-arrest statements, in part based on violation of Rule 4(c)(3)(A) of the Federal Rules of Criminal Procedure. The District Court denied the motion to suppress, finding that Fed. R. Crim. P. 4(c)(3)(A) was violated but suppression was not warranted. At the subsequent bench trial, the District Court found Rodriguez-Arvizu guilty of several counts listed in the superseding indictment. Rodriguez-Arvizu appealed the denial of his motion.

Held: The Ninth Circuit Court of Appeals explained that pursuant to Fed. R. Crim. P. 4(c)(3)(A), an arresting officer who does not possess a copy of the arrest warrant "must inform the defendant of the warrant's existence and of the offense charged." The Government did not contest the District Court's finding that the FBI agents did not tell Rodriguez-Arvizu the specific charges against him, but instead argued that any failure that occurred did not warrant application of the exclusionary rule. The Ninth Circuit noted that no court had yet held that suppression is warranted for a violation of this rule, though Rodriguez-Arvizu argued otherwise.

Under Supreme Court precedent, suppression is a "last resort." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system." *Herring v. United States*, 555 U.S. 135, 144 (2009). "The exclusionary rule does not apply 'when law enforcement officers have acted in objective good faith or their transgressions have been minor.'" *United States v. Henderson*, 906 F.3d 1109, 1118 (9th Cir. 2018) (quoting *United States v. Leon*, 468 U.S. 897, 908 (1984)).

The Ninth Circuit held that suppression was not warranted for the FBI agents' violation of Rule 4(c)(3)(A). The Court explained that Rodriguez-Arvizu knew he was under arrest on federal charges, even if he did not know the specific charges, and his comments in the car did not stem from any questioning by the agents. The failure to tell Rodriguez-Arvizu the precise charges did not compel him to make inculpatory statements in the car. Moreover, his Fifth Amendment right

against self-incrimination was not implicated as he was not yet in custody; and there was no evidence that the agents engaged in the kind of deliberate, reckless, or grossly negligent conduct that the exclusionary rule is meant to deter. *Herring*, 555 U.S. at 144. Moreover, the District Court found that there was no evidence that the failure to abide by Rule 4 was a systemic problem either in the FBI or in federal law enforcement more broadly. Finding in favor of the Government also on other issues, the Ninth Circuit Court of Appeals accordingly affirmed.

C. Officers had probable cause for warrantless arrest where defendant fled after officers attempted to stop him and the officers had evidence linking him to a prior shooting.

United States v. Hamilton, 131 F.4th 1087 (9th Cir. 2025)

Facts: San Francisco Police Department officers had specific information from witnesses, surveillance footage, GPS data connecting Robert Hamilton to an unlawful shooting in February 2021. A record check revealed that Hamilton had prior firearm-related convictions. Two weeks after the shooting, an officer involved in the shooting investigation, Sgt. Payne, spotted Hamilton several blocks from the shooting location. He advised other officers in the area that Hamilton was wanted for the shooting, and that it was highly likely that Hamilton had the gun used in the shooting on his person. Officers knew this to be a high-crime area where drug sales, shootings, and other crimes routinely occur. Sgt. Payne told the officers that Hamilton was a 25-year-old Black man wearing a black jacket, black pants, and a red shirt. The officers also had two photos of Hamilton.

One officer in the area saw a Black man approximately 25 years old wearing the clothes that Sgt. Payne described. The officer also noted that the man matched the photos of Hamilton. Shortly thereafter, two officers pulled up to Hamilton in their patrol car. One officer told Hamilton that the officers needed to speak with him. The other officer called Hamilton's name, told him (incorrectly) that there was a warrant for his arrest, and ordered him to stop. Hamilton looked at the officers and immediately ran. The officers chased Hamilton on foot for several blocks, and they observed him reaching for his waistband. An officer ordered Hamilton to show his hands and get on the ground, but Hamilton continued running. A second police car stopped in front of Hamilton, and officers tackled him to the ground. Hamilton was handcuffed and arrested. After the arrest, officers searched Hamilton and found a gun, marijuana, scales, and $6,692 in cash.

Hamilton was indicted and moved to suppress the evidence obtained from his arrest. The District Court denied the motion. A jury convicted Hamilton of being a felon in possession of a firearm and ammunition, and he was sentenced to prison. Hamilton appealed the denial of his motion to suppress, arguing that the officers lacked probable cause for arrest and his arrest was executed in an unreasonable manner.

Held: The Ninth Circuit Court of Appeals explained that the Fourth Amendment protects against unreasonable searches and seizures, and that courts consider the totality of the circumstances in assessing whether law enforcement acted reasonably. *See Samson v. California*, 547 U.S. 843, 848 (2006). Hamilton did not dispute the officers had a lawful basis to stop him because they reasonably suspected that he was involved in the shooting two weeks prior to his arrest. Hamilton

asserted, however, that the officers' attempt to stop him was unlawful because they intended to conduct an arrest, not merely an investigatory stop, from the outset. The Court stated that the officers' intent when they initially approached Hamilton was immaterial because he ran before the officers could do anything other than order him to stop. Thus, in their initial approach, the officers only attempted a seizure. They did not actually seize Hamilton. See *United States v. Smith*, 633 F.3d 889, 893 (9th Cir. 2011) ("[T]here is no seizure without actual submission; otherwise, there is at most an attempted seizure " (quoting *Brendlin v. California*, 551 U.S. 249, 254 (2007))).

Hamilton also argued that his arrest was unlawful because the officers did not have probable cause to believe he had committed a crime. The Court explained that probable cause justifying a warrantless arrest exists where, "under the totality of the facts and circumstances known to the arresting officer, a prudent person would have concluded that there was a *fair probability* that the suspect had committed a crime." *United States v. Struckman*, 603 F.3d 731, 739 (9th Cir. 2010) (emphasis added) (internal quotation marks and citation omitted). The Supreme Court has instructed that "[h]eadlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). However, flight is not *per se* suspicious.

Here, Hamilton argued that his flight was ambiguous and could not establish probable cause for arrest. The Ninth Circuit disagreed, noting that the officers had specific evidence that connected Hamilton to an unlawful shooting less than two weeks before they tried to stop him. There was no ambiguity about the officers' identities, and they called Hamilton by name and ordered him to stop. The Court stated that it was reasonable to infer, given the totality of circumstances, that Hamilton ran to evade law enforcement. The Court determined the instant case was analogous to *Smith*, where the Court had held that the defendant's flight reasonably suggested wrongdoing where he was in a high-crime area, the officer activated his siren and clearly identified himself before ordering the defendant to stop, the defendant understood that the officer was talking to him, and then the defendant fled. 633 F.3d at 891. The Ninth Circuit noted that the officers also observed Hamilton reaching for his waistband while fleeing. The Court stated that where the officers had specific evidence connecting Hamilton to a recent unlawful shooting, knew that the gun from the shooting had not been recovered, and knew that Hamilton had a prior firearm offense and might be armed, the officers could reasonably infer that Hamilton reaching for and clutching his waistband indicated that he was armed. Accordingly, the Ninth Circuit Court of Appeals affirmed.

D. Deaf motorist who requested a sign language interpreter at the start of traffic stop failed to plead sufficient facts that police discriminated against her by failing to provide a reasonable accommodation during her arrest and blood testing.

Mayfield v. City of Mesa, 131 F.4th 1100 (9th Cir. 2025)

Facts: On January 1, 2022, City of Mesa's Police Department ("MPD") Officer M. Hall pulled Alison Mayfield over after observing her weaving in traffic at about 9:45 PM. Mayfield is deaf and communicates primarily through American Sign Language ("ASL"). She has a limited ability to read lips and can read and write English. When Officer Hall first came up to Mayfield's driver's

side window,[1] Mayfield immediately began communicating in ASL, including requesting an ASL interpreter. Officer Hall did not know ASL. During the stop, Mayfield and Hall used different methods to communicate, including typed cell phone messages that they showed each other, writing and reading messages on a notepad, Officer Hall speaking while facing Mayfield so Mayfield could read her lips, and physical gestures. Hall repeatedly used her flashlight to help Mayfield read her typed and handwritten questions and instructions, and Mayfield also once turned on the lights in her car so that Officer Hall could read Mayfield's typed response on her phone.

Officer Hall communicated the purpose of the stop. Mayfield responded by informing Officer Hall that she had consumed marijuana at about 8:00 AM that day. Mayfield produced her license upon request, and she read and followed Officer Hall's handwritten instructions asking her to exit her vehicle and stand on the sidewalk. MPD Officer Van Hilsen arrived as backup. Mayfield consented to a pat down search, which Officer Hall performed.

Mayfield then read handwritten notes advising her that she would be subjected to sobriety tests. With a combination of written instructions, lip-reading, and/or visual demonstration by Officer Hall, Mayfield conveyed that she understood the instructions for each of the four sobriety tests that followed and Mayfield attempted to perform the specific tasks required in each of those four tests. Although Mayfield was able to complete the tests, she apparently did not pass them and was handcuffed. She was arrested for driving under the influence.

Mayfield was transported to a MPD facility where she was administered a written *Miranda* warning. She again requested an ASL interpreter but was informed that none was available. A call to MPD Officer Voeltz's mother – who he said was a certified ASL translator – proved unsuccessful. Mayfield received a consent form for blood drawing, which she read and signed. Mayfield then cooperated with the person who drew her blood sample. Mayfield was given a second form to review, and after reading it, she signed the form. The subsequent charges against Mayfield were ultimately dropped when Mayfield instead pleaded guilty to a single count of reckless driving.

Mayfield sued the City of Mesa under Title II of the Americans with Disabilities Act ("ADA")[2] and Section 504 of the Rehabilitation Act ("RA"),[3] alleging that the City's MPD officers had discriminated against her by failing to provide a reasonable accommodation for her disability—namely, either an in-person ASL interpreter or a Video Remote Interpreting service—after she was pulled over. The District Court dismissed Mayfield's complaint with prejudice, holding in part that Mayfield had not plausibly alleged claims under the ADA or RA. Mayfield appealed.

Held: Considering the merits of the claim, the Ninth Circuit Court of Appeals began by explaining that under Title II of the ADA, "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. section

[1] Because Mayfield's complaint referred to, and quoted from, MPD officer body camera footage, the body camera footage was incorporated by reference into the complaint.
[2] 42 U.S.C. section 12131 *et seq.*
[3] 29 U.S.C. section 794.

12132.[4] Under Ninth Circuit precedent, a Title II claim may arise where police "fail to reasonably accommodate the [plaintiff's] disability in the course of investigation or arrest, causing the [plaintiff] to suffer greater injury or indignity in that process than other arrestees." *Sheehan v. City & County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), *rev'd in part on other grounds*, 575 U.S. 600 (2015). Mayfield's theory was that MPD officers discriminated against her by failing to communicate with her in a manner that reasonably accommodated her deafness, thereby depriving her of the ability to fully participate in the officers' questioning and testing. The Court explained that the question here was whether, in light of the exigent circumstances applicable in the context of the stop and arrest of a deaf motorist,[5] the means of communication used were sufficient to allow the detained motorist to effectively exchange information with the officer so as to accomplish the various tasks entailed in the stop and arrest.

Applying that standard, the Court held that Mayfield failed to plead sufficient facts to establish that MPD "discriminated against [her] by failing to provide a reasonable accommodation during" her arrest and blood testing. *Sheehan*, 743 F.3d at 1233. The Court found that with respect to the questioning and sobriety testing preceding Mayfield's arrest, the body camera footage established that, even if Mayfield's understanding of Officer Hall's instructions was only partial, it was nonetheless sufficient to enable her to provide the information being requested and then to complete the various field sobriety tests she was asked to perform. At the DUI processing facility, Mayfield was able to effectively communicate in all respects that were material to the accomplishment of the relevant tasks. Mayfield was presented with physical copies of the pertinent consent documents, and she attested, with her signature, that she had read and understood them.

Citing an Eleventh Circuit case approvingly, the Ninth Circuit explained here noted that traffic stops—particularly for suspected DUI offenses—present "exigent circumstances" that limit the range of what would constitute a "*reasonable* modification of police procedures." *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1086 (11th Cir. 2007) (emphasis added). The Court agreed that "waiting for an oral interpreter before taking field sobriety tests is not a reasonable modification of police procedures given the exigent circumstances of a DUI stop on the side of a highway, the on-the-spot judgment required of police, and the serious public safety concerns in DUI criminal activity." *Id*. Moreover, Officer Hall explicitly did request a "'sign language' officer" very early in the encounter with Mayfield, but no such officer was available at the time of the DUI stop, nor later when Hall was booked.

The Ninth Circuit thus determined that Mayfield's complaint was properly dismissed for failure to state a claim. Because Mayfield would be unable to amend her complaint to overcome the indisputable evidence in the incorporated body camera footage, the Court of Appeals concluded that the District Court properly dismissed her complaint without leave to amend. Accordingly, the Ninth Circuit Court of Appeals affirmed.

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[4] The Ninth Circuit noted that Title II of the ADA and Section 504 of the RA are "interpreted coextensively because there is no significant difference in the analysis of rights and obligations created by" each provision. *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 737 (9th Cir. 2021) (simplified). The Court limited its discussion to the ADA claim, but with the understanding that its analysis equally applied to the RA claim.

[5] The Court of Appeals observed that "exigent circumstances inform the reasonableness analysis under the ADA, just as they inform the distinct reasonableness analysis under the Fourth Amendment." *Sheehan*, 743 F.3d at 1232.

QUALIFIED IMMUNITY

A. Officer who shot suspect six times without warning, two times of which were while the suspect's back may have been turned, was not entitled to qualified immunity.

Est. of Aguirre v. Cnty. of Riverside, 131 F.4th 702 (9th Cir. 2025)

Facts: In April 2016, Sergeant Dan Ponder of the Riverside County Sheriff's Department responded to a call in Lake Elsinore, California, about someone destroying property with a bat or club-like object. When he arrived on scene, Ponder observed that Clemente Najera-Aguirre ("Najera"), who was standing in the driveway of a house near the sidewalk, matched the suspect description. Ponder also noticed shattered glass around the house and people standing approximately 15-20 feet from Najera. Despite Ponder's repeated orders to drop the bat,[6] Najera did not comply. Instead, Najera exited the gate of the house and moved toward the street where Ponder stood. When Najera was approximately 10-15 feet away, Ponder pepper sprayed Najera twice, but the pepper spray blew away and was ineffective.

Najera then turned toward Ponder, still holding the bat. Ponder and Najera stood facing each other, where they remained roughly 10-15 feet apart, with Ponder now pointing his gun at Najera. Within seconds of facing each other, Ponder began shooting Najera without warning. Ponder fired six shots. Ponder fired the shots in two volleys; there was a pause between five and thirty seconds between Ponder's initial shots and the next round of shots that took Najera down. Najera was killed. An autopsy showed that four bullets struck Najera: one in the right upper chest, one in the left elbow, and two in the back, which were the fatal shots. The bullet paths of the shot to his left elbow and the two fatal shots to the back suggested Najera was turned away, with his back to Ponder, when he was struck.

Najera's children ("the Najeras") sued Ponder and his employer, Riverside County, under 42 U.S.C. section 1983, alleging in part that Ponder violated Najera's Fourth Amendment rights. The District Court granted the defendants' motion for summary judgment on all claims except for the Fourth Amendment claim against Ponder, thus denying him qualified immunity. Ponder sought reversal but the Ninth Circuit Court of Appeals affirmed on interlocutory appeal, holding that it was clearly established law that killing a suspect who poses no immediate threat to an officer or others violates the suspect's Fourth Amendment rights. Because factual disputes remained as to the level of threat Najera posed immediately before his death, that dispute needed to go to the jury, thus precluding summary judgment.

After a five-day trial in which multiple eyewitnesses and expert witnesses testified, the District Court denied Ponder's motion for judgment as a matter of law ("JMOL") regarding sufficiency of the evidence. The jury unanimously found Ponder liable under Section 1983 for excessive force in violation of the Fourth Amendment. After the entry of judgment following trial, Ponder filed a renewed motion for JMOL in which he also argued that he was entitled to qualified immunity. The District Court denied Ponder's renewed motion on the merits. Ponder appealed that decision.

[6] An eyewitness testified that the bat was resting on Najera's shoulders.

Held: The Ninth Circuit Court of Appeals observed that a police officer "will receive qualified immunity from suit under 42 U.S.C. [section] 1983 . . . if the plaintiff has not 'alleged' or 'shown' facts that would make out a constitutional violation," or a violation is shown but "the constitutional right allegedly violated was not 'clearly established' at the time of defendant's alleged misconduct." *A.D. v. Cal. Highway Patrol*, 712 F.3d 446, 453-54 (9th Cir. 2013) (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)). The Court continued: "When, as here, 'a jury has found (with reasonable support in the evidence)' a constitutional violation by a police officer, we view the jury's verdict as 'sufficient to deny him qualified immunity' on the first prong of the [qualified immunity] analysis. *Id.* at 450, 456…. The jury's finding in favor of the Najeras establishes that Ponder violated Najera's Fourth Amendment right to be free from excessive force." "Assessing qualified immunity after a jury verdict turns on the second, 'clearly established' prong, which requires deference to the jury's view of the facts. *See A.D.*, 712 F.3d at 456." 'Conduct violates a clearly established right if the unlawfulness of the action in question [is] apparent in light of some pre-existing law.' *Ballou v. McElvain*, 29 F.4th 413, 421 (9th Cir. 2022) (alteration in original) (internal quotations omitted)."

The Ninth Circuit noted that it was well settled that deadly force is not justified "[w]here the suspect poses no immediate threat to the officer and no threat to others." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). In *Hayes v. Cnty. of San Diego*, 736 F.3d 1223 (9th Cir. 2013), the Ninth Circuit held that police used excessive force when officers, "without warning," "shot and killed" an individual who was holding a knife but not threatening the deputies and standing "roughly six to eight feet away" from them. *Id.*, at pp. 1227-28, 1235. That use of deadly force was unreasonable because the evidence did not "clearly establish that Hayes was threatening the deputies with the knife" because he was "walking towards the deputies . . . not 'charging' at them" and "was not . . . attempting to evade" arrest. *Id.* at 1233 & n.4, 1234. Here, the Court stated that viewing the facts at trial in the light most favorable to the Najeras and deferring to the jury's verdict, *Hayes* was highly analogous and put Ponder on notice that his actions would violate Najera's rights. Moreover, Ponder and his own police practices expert acknowledged that Najera turned away, as did forensic evidence as to how the bullets struck Najera. Ponder also acknowledged that he never saw Najera swing, throw, or even wind up to throw a bat at him or anyone else. Najera was further away from Ponder when he was shot than Hayes was from the deputies who were denied qualified immunity in that case. The Ninth Circuit thus found that the trial evidence demonstrated that Najera was not an immediate threat to Ponder justifying the use of deadly force, especially considering Circuit case precedent. The Ninth Circuit also concluded that Najera did not pose an immediate threat to bystanders, as he was even further away from them than from Ponder.

The Ninth Circuit, deferring to the jury's factual findings, thus determined that, viewing the evidence in the light most favorable to the plaintiffs, Ponder violated Najera's clearly established Fourth Amendment right. The Ninth Circuit Court of Appeals accordingly affirmed the denial of qualified immunity to Ponder based on the jury verdict finding him liable for excessive force in violation of the Fourth Amendment.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 6, available at www.jones-mayer.com.

B. Officers not entitled to qualified immunity for using deadly force without warning less than six seconds after kicking in door where suspect raised his hand in compliance with officers' commands.

Johnson v. Myers, 129 F.4th 1189 (9th Cir. 2025)

Facts: In May 2019, Katy Nolan called 911, reporting that her boyfriend Ryan Smith was threatening to kill himself and her with a knife. Nolan had locked herself inside the bathroom, but Smith was outside of the bathroom. Nolan said that Smith had said that blood was everywhere, but Nolan did not know if Smith was hurt. Seattle police officers Christopher Myers, Brian Muoio, Joshua Knight, and Ryan Beecroft responded, arriving at Smith's apartment. All four wore activated body cameras. Officers Myers, Muoio and Knight carried tasers. After demanding entry into the apartment, Muoio announced "Seattle Police." Officer Beecroft kicked in the door, revealing Smith standing in the hallway with an open pocketknife in his right hand, hands down at his side. Over the span of approximately five seconds, the officers shouted overlapping commands: "Put your hands up"; "Let me see your hands"; "Get on the f***ing ground"; and "Drop the knife!" Smith took several steps forward. Officers Myers and Beecroft retreated, resulting in an estimated distance of 4.5 feet between themselves and Smith. Smith then raised his right arm across his chest and took a step forward. Officer Myers shot eight rounds. Officer Beecroft began shooting after Myers began shooting, shooting two rounds. No officers warned Smith that they were about to use force against him. Between the moment Beecroft kicked in the door and the moment Myers began firing his weapon, 5.87 seconds had elapsed. Smith died from the gunshot wounds.

Rose Johnson, Smith's mother, and others filed a complaint in District Court against Officers Myers and Beecroft, among others. In their first amended complaint, Plaintiffs alleged claims under 42 U.S.C. section 1983 and state law. Officers Myers and Beecroft moved for partial summary judgment on the Section 1983 claims on the ground of qualified immunity. The District Court denied the motion. Officers Myers and Beecroft brought an interlocutory appeal.

Held: The Ninth Circuit Court of Appeals began by explaining that an officer asserting a defense of qualified immunity should be denied summary judgment if "(1) the [evidence], taken in the light most favorable to the party asserting injury, show[s] that the officer's conduct violated a constitutional right, and (2) the right at issue was clearly established at the time of the incident such that a reasonable officer would have understood [his] conduct to be unlawful in that situation."[7] The Court explained that claims of constitutionally excessive force "under the Fourth Amendment's 'objective reasonableness standard.'" *Saucier v. Katz*, 533 U.S. 194, 204 (quoting *Graham v. Connor*, 490 U.S. 386, 388, 394 (1989)).)). The "use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.'" *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014) (cleaned up) (quoting *Scott v. Henrich*, 39 F.3d 912, 914 (9th Cir. 1994)). Because Nolan had barricaded herself in the bathroom, the Court explained that the only dispute was whether the officers were in such immediate danger that Officers Myers and Beecroft were

[7] *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011).

justified in shooting Smith without warning within seconds of breaking down the door.

The Ninth Circuit observed that, as soon as Beecroft kicked down the door, all the officers immediately shouted overlapping commands. Viewing the evidence in the light most favorable to Plaintiffs, Smith stopped after taking a few steps forward and began to comply with the command to put his hands up. None of the officers deployed their tasers, nor warned Smith that they were about to use deadly force. Myers began shooting a little less than six seconds after Beecroft kicked down the door. Viewing the evidence in the light most favorable to Plaintiffs, the Ninth Circuit concluded that a reasonable juror could conclude that Smith did not pose such "an immediate threat to the safety of the officers or others" that the use of deadly force was justified. *Lal v. California*, 746 F.3d 1112, 1117 (9th Cir. 2014).

Considering the second step of the qualified immunity analysis, the Ninth Circuit observed that in its earlier decision in *Glenn v. Wash. Cnty.*, 673 F.3d 864 (9th Cir. 2011), the Court denied qualified immunity to officers who fired six "beanbags," and then fired eleven shots from semiautomatic weapons, killing Lukus, an intoxicated man who was "several feet" away from them and was "holding [a] pocketknife to his own neck[.]" *Id.* at 874, 868. The *Glenn* Court concluded that the officers' use of force was not indisputably reasonable, in part, because (1) Lukus never brandished or threatened the officers with his pocketknife; (2) "Lukus may not have been actively resisting arrest, despite his failing to follow the officers' commands to put down the pocketknife," *Singh v. City of Phoenix*, 124 F.4th 746, 751 (9th Cir. 2024) (citing *Glenn*, 124 F.4th at 873-878); (3) "Lukus may not have comprehended the warnings and commands that the officers gave because he was intoxicated and there were other people yelling," *id.* (same); and (4) "less lethal alternatives, such as the use of a taser, may have been available," *id.* (same).

The Ninth Circuit found that the same factors were present here: (1) it was disputed whether Smith brandished or threatened the officers with his knife, so the Court had to assume at this stage on interlocutory appeal that he did not; (2) Smith may not have been actively resisting arrest; (3) Smith may not have comprehended the officers' commands because they were shouted at the same time and were inconsistent, and the officers gave no warnings; and (4) the use of a taser might have been available. Noting that "'clearly established law' should not be defined 'at a high level of generality[,]'"[8] the Court stated that while the facts in this case were not identical to the facts in *Glenn*, they provided a meaningful comparison that should have put a reasonable officer on notice that it was unreasonable to use deadly force solely because Smith was holding a knife in his right hand and raised that hand across his chest. The Court concluded that viewing the evidence in the light most favorable to Plaintiffs, it was clearly established law that a fatal shooting under these circumstances violated the Fourth Amendment. The Ninth Circuit Court of Appeals concluded that Officers Myers and Beecroft were not entitled to qualified immunity on a motion for summary judgment, and accordingly affirmed.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 6, available at www.jones-mayer.com.

[8] *White v. Pauly*, 580 U.S. 73, 79 (2017) (per curiam) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011))

FIREARMS/SECOND AMENDMENT

A. Ruling en banc, Ninth Circuit holds that California Penal Code section 32310(c), which bans the possession of large-capacity magazines, comports with the Second Amendment.

Duncan v. Bonta, 133 F.4th 852 (9th Cir. 2025)

Facts: In 2016, the California legislature enacted Senate Bill 1446, which banned the possession of large-capacity magazines (defined as magazines capable of holding more than 10 rounds of ammunition). California voters subsequently approved Proposition 63, which subsumed Senate Bill 1446 and added provisions that imposed a possible criminal penalty of imprisonment for up to a year for unlawful possession of large-capacity magazines after July 1, 2017. Penal Code section 32310(c). Plaintiffs owned or represented owners of large-capacity magazines, and brought an action in 2017 challenging the constitutionality of California's ban. The District Court granted summary judgment to Plaintiffs on their Second Amendment and other claims, and permanently enjoined enforcement of the law. A divided panel of the Ninth Circuit Court of Appeals affirmed as to the Second Amendment claim. Rehearing the case *en banc*, the Ninth Circuit upheld the law as consistent with the Second Amendment and other constitutional guarantees.

After the United States Supreme Court introduced a new framework for deciding Second Amendment challenges in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) ("*Bruen*"), the Supreme Court vacated the Ninth Circuit decision and remanded the case for further consideration. An *en banc* panel of the Ninth Circuit remanded the case to the District Court to consider the effect of *Bruen* on the Second Amendment claim. On remand, the District Court again granted summary judgment to Plaintiffs on the Second Amendment claim and permanently enjoined Defendant California Attorney General Rob Bonta from enforcing the law. Defendant appealed, and the Ninth Circuit *en banc* Court chose to address the new appeal. The *en banc* Court granted Defendant's motion to stay the permanent injunction pending the appeal's resolution.

Held: The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Amendment creates an individual right to keep and bear arms for self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 599, 602 (2008). The right applies against States via the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010) (plurality opinion).

In *Bruen*,[9] the Supreme Court announced the appropriate general methodology for deciding Second Amendment challenges to state laws: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24. The Supreme Court explained how the courts should approach "determining whether a historical regulation is a proper analogue for a distinctly modern firearm regulation." *Id.* at 28-29. That inquiry "requires a determination of whether the

[9] We discussed *Bruen* in Client Alert Vol. 37 No. 9. See also Client Alert Vol. 37 No. 11.

two regulations are 'relevantly similar,'" which entails considering "at least two metrics: how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29

Employing the *Bruen* methodology, the *en banc* Ninth Circuit again concluded that California's law comports with the Second Amendment, for two independent reasons. First, the *en banc* Court accordingly concluded that the Second Amendment's plain text does not encompass a right to possess large-capacity magazines because large-capacity magazines are neither "arms" nor protected accessories. The Court stated that at the time of ratification, a clear distinction was recognized between weapons themselves, referred to as "arms," and accessories of weaponry, referred to as "accoutrements." The Court stated that "the term 'Arms' thus encompasses most weapons used in armed self-defense, and the Second Amendment necessarily protects the components necessary to operate those weapons. But it does not protect the right to bear accoutrements." Because the Court deemed a large-capacity magazine to be an optional accessory not necessary to the ordinary operation of a firearm, the Court determined that large-capacity magazines are accessories, or accoutrements, rather than arms.

Second, the Court concluded that California's law "falls neatly within the Nation's traditions of protecting innocent persons by prohibiting especially dangerous uses of weapons and by regulating components necessary to the firing of a firearm." The Court explained that California's law is relevantly similar to such historical regulations in both "how" and "why" it burdens the right to armed self-defense. Like those historical laws, California's law restricts an especially dangerous feature of semi-automatic firearms—the ability to use a large-capacity magazine—while allowing all other uses of those firearms. The Court stated that the only effect of California's law on armed self-defense is the limitation that a person may fire no more than ten rounds without pausing to reload, something rarely done in self-defense. The Court found that the justification for California's law—to protect innocent persons from infrequent but devastating events—is also relevantly similar to the justifications for the historical laws. The *en banc* Court concluded that by prohibiting only an especially dangerous use of a modern weapon, the law comports with the principles underlying the Second Amendment. Accordingly, the *en banc* court reversed the District Court's contrary conclusion and remanded with instruction to enter judgment in favor of the California Attorney General.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 5, available at www.jones-mayer.com.

B. State law requiring in-person inspection of handguns within five days of acquiring them violated the Second Amendment because it had no relevantly similar historical example of firearm regulation.

Yukutake v. Lopez, 130 F.4th 1077 (9th Cir. 2025)

Facts: Plaintiffs Todd Yukutake and David Kikukawa are firearm owners who reside in Honolulu County and who wish to acquire additional firearms in the future. They filed an action seeking declaratory and injunctive relief to prevent the Hawaii Attorney General ("Hawaii" or "the State")

from enforcing two Hawaii's firearm laws on the ground that the provisions violate the Second Amendment.

First, Plaintiffs challenged the constitutionality of Hawaii Revised Statutes section 134-2(e), which provides a narrow time window (originally 10 days, and now 30 days) within which to acquire a handgun after obtaining the requisite permit. The permit application process includes a background check. Second, Plaintiffs challenged Section 134-3 to the extent that, as part of Hawaii's firearms registration process, it requires a gun owner, within five days of acquiring a firearm, to physically bring the gun to a police station for inspection.

In August 2021, the District Court granted summary judgment to Plaintiffs. The District Court concluded that the challenged aspects of both provisions were facially unconstitutional under the Second Amendment and permanently enjoined their enforcement. Hawaii appealed. Subsequently, the United States Supreme Court decided *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) ("*Bruen*"). A motions panel of the Ninth Circuit granted the State's request for supplemental briefing in light of *Bruen*.

Held: The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." *Bruen* held that the "standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" 597 U.S. at 24 (citation omitted).

Applying *Bruen*, the Ninth Circuit Court of Appeals first addressed Plaintiffs' challenge to Section 134-2(e)'s provision that a handgun purchasing permit is valid for only a brief period (originally 10 days and now 30 days). The Court observed that the conduct regulated by Section 134-2(e) is the acquisition, through purchase or otherwise, of a "pistol or revolver." The Court of Appeals reaffirmed its holding in its pre-*Bruen* decision, *Teixeira v. County of Alameda*, 873 F.3d 670 (9th Cir. 2017) (*en banc*) that the text of the Second Amendment must be understood as protecting the right of individuals to purchase and acquire firearms. The burden therefore fell on the State to justify its regulation by demonstrating that it was consistent with the Nation's historical tradition of firearms regulation.

The Ninth Circuit evaluated the State's justifications for Section 134-2(e) pursuant to the guidance provided in *Bruen*, 597 U.S. 1 (2022), footnote 9, which acknowledged that background checks can serve the historically based valid purpose of ensuring that firearms are possessed by law-abiding, responsible citizens. The Court explained that a firearms permitting scheme must not "delegate overly broad licensing discretion to a government official." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). The applicable time frames governing the system must, among other things, avoid unreasonable and undue delays. The Court stated that "[t]he practical logistical burdens on firearms possession that arise from the operation of the background-check-based permitting system—which are akin to logistical limitations on the 'time, place, and manner' of speech—'must be narrowly tailored to serve a significant governmental interest' and ultimately

'must leave open' the full exercise of Second Amendment rights." *Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992). The Court found that the State failed to provide evidence justifying such a short timeframe (10 or 30 days) as narrowly tailored to a significant government interest. The Ninth Circuit affirmed the District Court's judgment that Section 134-2(e)'s short timeframe for completing a firearms purchase after obtaining a permit was unconstitutional under the Second Amendment, and remanded for the District Court to revise its permanent injunction.

The Ninth Circuit next considered Plaintiffs' challenge to Section 134-3's requirement that, within five days of acquiring a firearm, the firearm must be physically inspected by the local chief of police as part of the process of registering the firearm. Because the Court understood the Second Amendment as protecting the right of ordinary individuals to acquire firearms, the Court considered whether the State carried its burden to justify the in-person inspection requirement imposed by Section 134-3. The Court analyzed whether the "how" and "why" of Section 134-3's physical inspection requirement were "relevantly similar" to a historical analogue and concluded that Hawaii failed to provide a relevantly similar historical example to Section 134-3. The Ninth Circuit explained that even assuming arguendo that Hawaii's basic system of registering firearms by owner, type, serial number, etc., was valid under *Bruen*—a point the Court did not decide—Hawaii's broad in-person inspection requirement could not be justified as merely a proper ancillary logistical measure in support of such a system. The government failed to point to evidence supporting its conclusion that the addition of a broadly applicable and burdensome physical inspection requirement would materially advance the objectives of the registration system. The Ninth Circuit thus affirmed the District Court's conclusion that Section 134-3's in-person inspection requirement violates the Second Amendment and remanded to the District Court to revise its permanent injunction.

Having thus considered each challenged Hawaii provision, the Ninth Circuit Court of Appeals generally affirmed the District Court's summary judgment and remanded with instruction to the lower court to revise its permanent injunction, as appropriate.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 5, available at www.jones-mayer.com.

MISCELLANEOUS

Penal Code section 148(a)(1) does not require that the defendant knew they resisted, delayed, or obstructed a peace officer. It is enough for a trier of fact to find that the defendant knew *or reasonably should have known* the person they resisted was a peace officer.

People v. Serna, 109 Cal. App. 5th 563 (4th Dist. 2025)

Facts: In August 2021, California Highway Patrol Officer Holguin was on duty providing security and protection for Caltrans as they performed weed abatement near the freeway at approximately 8:30 a.m. The officer was in a marked patrol vehicle and in uniform when he encountered Prospero Guadalupe Serna who was walking within the traffic lanes. Serna appeared agitated and had blood

on his hands. During this encounter, Serna refused to heed Officer Holguin's repeated instructions to keep out of the freeway lanes and pushed the officer several times. After Serna refused the officer's orders to stop running into the lanes, the officer deployed his Taser, but to little effect. Ultimately, a struggle ensued. Although other officers arrived, Serna continued to resist. After several minutes of struggling, Serna was finally placed in handcuffs. Officer Holguin later testified that Serna did not attempt to run into traffic when he first drew his Taser, indicating he understood the officer's commands.

A jury found Serna guilty of *inter alia* willfully resisting, delaying, or obstructing a peace officer (Penal Code section 148(a)(1)). On appeal to the Appellate Division of the Superior Court of San Bernardino County, Serna claimed his attorney rendered ineffective assistance of counsel by not seeking to admit Serna's mental health records to negate the knowledge requirements for the offense and by failing to request the trial court instruct the jury that evidence of a mental defect was relevant to its determination of whether Serna formed the requisite intent for the offense. Because evidence of mental disease, defect, or disorder is only admissible to show failure to form a specific intent,[10] and case law had established Section 148(a)(1) is a general intent crime, the appellate division held Serna's attorney did not provide deficient representation.

The appellate division recognized a split in authority on the question of whether Section 148(a)(1) includes an element of the perpetrator's actual knowledge that the person they resisted, delayed, or obstructed was a peace officer: *In re A.L.* (6th Dist. 2019) 38 Cal.App.5th 15, the court held that Section 148(a)(1) does include an actual knowledge requirement; however, *People v. Mackreth* (6th Dist. 2020) 58 Cal.App.5th 317, the court disagreed with *A.L.*, and held that Section 148(a)(1) does *not* require actual knowledge. The appellate division granted Serna's request to certify his appeal for transfer to the Fourth District Court of Appeal, and limited the issue to be decided as follows: "Does Penal Code section 148, subdivision (a)(1) require that a person have actual knowledge that the person being resisted is an executive officer?" The Fourth District granted the transfer, deeming it necessary to settle an important question of law.

Held: Penal Code section 148(a)(1) provides in part: "Every person who willfully resists, delays, or obstructs any …peace officer …in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment." The Fourth District observed that on its face, Section 148(a)(1) includes no knowledge element whatsoever. Relying heavily on *In re A.L.*, Serna argued that, as a matter of statutory interpretation, Section 148(a)(1) includes the element that a person knows they are resisting, delaying, or obstructing a peace officer. Because the jury was not instructed on the element of actual knowledge, Serna contended the judgment must be reversed. Following the contrary holding in *Mackreth*, the People argued that the jury was properly instructed a defendant violates Section 148(a)(1) if he knew *or should have known* the person being resisted was a police officer.

The Fourth District noted that consistent with the California Supreme Court's analysis in *People v. Atkins* (2001) 25 Cal.4th 76, courts have held Section 148(a)(1) is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a

[10] See Penal Code section 28(a).

further act or achieve a future consequence. In *People v. Lopez* (5th Dist. 1986) 188 Cal.App.3d 592, the Fifth District Court of Appeal held that Section 148 should be read to include a knowledge requirement as "that of actual knowledge *or what a reasonable person should have known*." (*Lopez*, at p. 599, italics added.)[11] Here, the Fourth District noted that until recently, California state courts, including the Supreme Court, have unanimously included the holding from *Lopez* when stating the elements of the Section 148(a)(1) offense. "The legal elements of that crime are as follows: '"(1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant *knew or reasonably should have known* that the other person was a peace officer engaged in the performance of his or her duties."'" (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 895, italics added, quoting *In re Muhammed C.*, 95 Cal.App.4th 1325, 1329 (6th Dist. 2002).)

Mackreth applied the rules of statutory construction and reviewed the statute's legislative history and held that Section 148(a)(1) "does not require actual knowledge." (*Mackreth*, supra, 58 Cal.App.5th at p. 334.) The Fourth District found the analysis in *Mackreth* to be persuasive, declined to follow *A.L.*, and concluded Section 148(a)(1) does not require the defendant knew they resisted, delayed, or obstructed a police officer. Moreover, the Court noted that the near-universal adoption of the knowledge requirement from *Lopez*, supra, 188 Cal.App.3d 592, including the (at least implied) imprimatur given the rule by the California Supreme Court in *Yount v. City of Sacramento*, supra, 43 Cal.4th at page 895, strongly counseled against adopting the contrary holding in *A.L.* The Court stated, "It is enough for a jury or trier of fact to find the defendant knew or reasonably should have known the person they resisted was a police officer." Therefore, the Fourth District Court of Appeal affirmed.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 4, available at www.jones-mayer.com.

[11] The Fourth District noted that "[t]he holding of *Lopez* has been incorporated into the pattern jury instruction for Section 148(a)." (*Atkins, supra*, 31 Cal.App.5th at p. 978.) CALCRIM No. 2656 requires the jury to find that, "[w]hen the defendant acted, (he/she) *knew, or reasonably should have known*, that <insert name, excluding title> was (a/an) (peace officer/public officer/emergency medical technician) performing or attempting to perform (his/her) duties." (Italics added.) The trial court in this case instructed the jury with CALCRIM No. 2656 on the elements for Section 148(a)(1), including the requirement that defendant "knew, or reasonably should have known" he resisted, delayed, or obstructed a police officer.