

UPCOMING TRAININGS & CONFERENCES

NDA A is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDA A's virtual learning sessions at ndaa.org/training-courses/.

NDA A's Mastering Masking Digital Course/ On Demand Training (CLE Available)
ndaa.org/training/mastering-masking-2/

NDA A's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training
ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/

NDA A's Prosecuting DUI Cases Online Course/ On Demand Training (CLE Available)
ndaa.org/training/prosecuting-dui-cases/

The Anti-Racist Prosecutor III: Having the Hard Conversations (Live Webinar)
September 8, 2021 @ 11:30 a.m.-1:30 p.m. ET

Public Information Officer and Elected Prosecutor Media/PIO Training (Live Webinar)
September 9-10, 2021 @ 11:30 a.m.-2:30 p.m.

NDA A Career Course: The Evolution of Prosecution
October 4-7, 2021, Louisville, KY

RESOURCES

Impaired Driving Resources
ndaa.org/programs/ntlc/

CDL-Related Resources
ndaa.org/programs/ntlc/commercial-drivers-license/

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Traffic Enforcement Issues Decided by the U.S. Supreme Court

By Erin T. Inman, NTLC Staff Attorney

The United States Supreme Court decided two cases of import to traffic enforcement this session, *Lange v California* and *Torres v Madrid*. *Lange* considered whether an officer's pursuit of a misdemeanor suspect from the road into the attached garage of the suspect's home is a violation of the Fourth Amendment. *Torres* addressed whether an officer firing a gun at and wounding a person constitutes a seizure under the Fourth Amendment, even if that person drove away from the officer. This article discusses the implications and issues of *Lange* and *Torres*.

Lange v California, 141 S.Ct. 2011 (2021)

Issue: Does the exigent circumstance exception to the warrant requirement always allow an officer to enter a person's home without a warrant when an officer is pursuing a fleeing misdemeanor suspect into that person's home?

Answer: No

Holding: “The flight of a suspected misdemeanor does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency.”¹

Facts: A California Highway Patrol officer observed Mr. Lange drive past him while “listening to loud music with his windows down and repeatedly honking his horn.”² The officer turned on his lights indicating Mr. Lange should stop his car.³ When this happened, Mr. Lange was already very near his home and did not stop for the officer.⁴ Instead, he pulled into his home’s attached garage.⁵ The officer entered Mr. Lange’s garage and ultimately investigated and arrested Mr. Lange for DUI.^{6,7} Mr. Lange moved to suppress the investigation beginning when the officer entered the garage, claiming it was a violation of the Fourth Amendment’s prohibition of unreasonable searches. That motion was at issue, and the U.S. Supreme Court agreed with Mr. Lange.

Analysis: The Court declined to adopt a bright line rule allowing officers to enter people’s homes when they are a misdemeanor suspect and either are or appear to be fleeing from the officer.⁸ The Court, instead, emphasized the importance of considering the totality of the circumstances of each case.⁹ In coming to this conclusion, the Court discussed the wide range of behaviors that amount to a misdemeanor across the country—from littering on a beach to disorderly conduct.¹⁰ The Court also discussed the ability of an officer to obtain a warrant as a factor, again explaining that emergencies may not allow an officer time to do so.¹¹ In sum, the Court stated, “[w]hen the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting.”¹² Without an emergency, an officer should obtain a warrant to enter a misdemeanor suspect’s home.

***Torres v Madrid*, 141 S.Ct. 989 (2021)**

Issue: When a person is fired upon by officers, stricken by bullets, and flees in a vehicle for 75 miles, is that person seized as defined by the Fourth Amendment?

Answer: Yes

Holding: “The application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.”¹³

Facts:¹⁴ New Mexico State Police arrived at an apartment complex prepared to execute a warrant. Ms. Torres was standing by a car in the apartment complex’s parking lot.¹⁵ She was not a subject of the warrant, nor was she suspected to be at the time by the officers.¹⁶ The officers approached her, and she got into the car.¹⁷ The officers attempted to talk to her, and she “did not notice their presence until one of them tried to open the door of her car.”¹⁸ Ms. Torres stated she was coming off a methamphetamine high and did not recognize the officers as such although she did see their guns and believed they were car-jackers.¹⁹ She fled in the car, and the officers shot a total of thirteen bullets, striking Ms. Torres twice.²⁰ Ms. Torres drove 75 miles to a hospital and was apprehended the following day.²¹ She filed a lawsuit against the two officers claiming they used excessive force in seizing her person when they shot her. The lower court granted summary judgment in favor of the officers. The Court found Ms. Torres was not seized within the meaning of the Fourth Amendment, because she eluded the officers for some time. That ruling was at issue, and the U.S. Supreme Court sided with Ms. Torres.

Analysis: The Court held when use of force is applied by an officer with the intent to stop that person it is a seizure, even if the person does not halt.²² The Court explained this concept is firmly rooted and well established in common law.²³ It first clarified regarding the Fourth Amendment, “the seizure of a person . . . refers to an arrest.”²⁴ The Court next discussed centuries-old history of “seizure” in common law when it stated, “[a]ll the authorities, from the earliest time to the present, establish that a corporal touch is sufficient to constitute an arrest, even though the defendant [did] not submit.”²⁵ Thus, the Court reasoned striking a person with a bullet is akin to corporal touch or laying hands on a person.²⁶ The Court also expounded that the officer must also have the “intent to restrain” that person and if not, the Fourth Amendment is not implicated.²⁷ Therefore, Ms. Torres was seized as defined by the Fourth Amendment, when the officers shot at her with the intent to restrain her, and she was stricken by their bullets.²⁸

Conclusion

In both *Torres* and *Lange*, the Court emphasized and spelled out the expectation that law enforcement officers must be prudent in the way they conduct investigations and be able to articulate the actions taken. This is not a new concept, though it is now highlighted regularly as a public concern. As always, law enforcement officers should continue to discharge their duties professionally and in compliance with department policies. Law enforcement may also discuss with their prosecutors how these two cases may impact their daily action. For additional state-specific assistance, officers and prosecutors may reach out to their state Traffic Safety Resource Prosecutors (TSRP). A list of current TSRPs is available on the NTLC website [here](#).

Notes:

¹ *Lange v California*, 141 S.Ct. 2011, 2024 (2021).

² *Id.* at 2016.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ The lower courts included additional facts in their opinions, but the U.S. Supreme Court did not include all those facts in its opinion. See *People v Lange*, No. A157169, 2019 WL 5654385 (Cal. Ct. App. Oct. 30, 2019), *reh'g denied* (Nov. 21, 2019), *review denied* (Feb. 11, 2020), *cert. granted sub nom. Lange v California*, 141 S. Ct. 617, 208 L. Ed. 2d 227 (2020), and *vacated and remanded sub nom. Lange*, 141 S. Ct. 2011. Because the U.S. Supreme Court did not rely on those additional facts in its analysis, they are not included in this article.

⁸ *Lange*, 141 S.Ct. 2011 at 2021–22.

⁹ See *id.* at 2024.

¹⁰ *Id.* at 2020.

¹¹ *Id.* at 2021.

¹² *Id.* at 2021.

¹³ *Torres v Madrid*, 141 S.Ct. 989, 994 (2021).

¹⁴ This case came to the Court in the context of a 42 U.S. Code § 1983 use of force action. In the lower court, summary judgment was granted to the officers, so the facts of the case, though disputed, were viewed in a light most favorable to Ms. Torres. *Id.* at 994.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 995.

²³ *Id.* at 995–6.

²⁴ *Id.* at 996.

²⁵ *Id.* at 996 (citing *Nicholl v. Darley*, 2 Y. & J. 399, 400, 148 Eng. Rep. 974 (Exch. 1828)) (citation omitted).

²⁶ *Id.* at 998.

²⁷ *Id.*

²⁸ *Id.*

Virtual 2021 Commercial Driver's License Violations Conference: Enforcement, Prosecution & Reporting Recordings

NDAA's National Traffic Law Center conducted the *Virtual 2021 Commercial Driver's License Violations Conference: Enforcement, Prosecution & Reporting*¹ training on June 22–24, 2021. This Course was designed to assist prosecutors, law enforcement personnel, judges, court clerks, motor vehicle administrators, and other allied professionals with vested interests in CDL enforcement and public safety by identifying where potential breakdowns in communication exist and identifying common misconceptions about CDL prosecution. The videos and accompanying materials will assist stakeholders in their efforts to improve public safety, educate our enforcers, and save lives on our roads.

The recordings from each session of the conference (see list below) are available for FREE on the NTLC website. To access the videos, please click [here](#). Please note, however, viewers of the recorded videos are not eligible to receive the CLE credit that was given during the conference.

Additional Questions?

If you have additional questions about the conference videos, or any other commercial driver's license issues, please contact National Traffic Law Center Senior Attorney Jim Camp at jcamp@ndaajustice.org or Staff Attorney Aaron Ann Cole-Funfsinn at aacole@ndaajustice.org with the National Traffic Law Center.

VIRTUAL CDL CONFERENCE RECORDINGS

- **Keynote Address:** FMCSA Deputy Administrator Meera Joshi
- **Session 1: Case Analysis**—Wisconsin TSRP Tara Jenswold and Wisconsin State Patrol Sgt. Mike Marquardt, Supervisor, WSP's Technical Reconstruction Unit
- **Session 2: CDL: What Is It and How Do You Obtain One**—Cheri Daniels, CDL Coordinator, California Department of Motor Vehicles
- **Session 3: NTLC—Who We Are and What We Do**—Joanne Thomka, Director, NTLC
- **Session 4: Masking**—Jim Camp, Senior Attorney, NTLC and Romana Lavalas, FMCSA Attorney-Advisor, Office of Chief Counsel, Enforcement and Litigation Division
- **Session 5: Understanding the Role of the Court and the SDLA in Convictions, Recording and Disqualifications**—Hon. Gary Graber, Town Justice, Town of Darien, NY and Carla Weaver, Law and Justice Liaison, Program and Services Assistant Director's Office, Washington State Department of Licensing
- **Session 6: CVSA—Who They Are and What They Do**—Chris Turner, Director of Enforcement Data and Judicial Outreach, Commercial Vehicle Safety Alliance
- **Session 7: KY TSRPs and their CDL Task Force**—Kentucky TSRP Thomas Lockridge and Aaron Ann Cole-Funfsinn, NTLC Staff Attorney
- **Session 8: Panel Discussion**—Hon. Gary Graber, Indiana TSRP Chris Daniels and Chris Turner

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From Roadside to Record Video Series

NTLC is thrilled to present “**From Roadside to Record**,” a video series about enforcing, prosecuting, and adjudicating CDL traffic stops in accordance with federal and state regulations. They are perfect to use in CDL-related trainings.

The first video involves a law enforcement stop of a commercial motor vehicle and a stop of a non-commercial vehicle driven by a CDL holder. The second video includes courtroom scenes of a prosecutor engaged in realistic pretrial negotiations of cases involving CDL holders and presentations of those cases to court.

The link to these videos can be found [here](#).

