



Constitutional Policing Update

Can a Responding Officer Be Liable for a Use of Force They Did Not Commit?

Yes, law enforcement officers who did not directly violate someone's constitutional rights can still be held liable for a constitutional violation committed by other officers under the Integral Participant Doctrine.

Key Points: Integral Participant Liability

- An officer must either:
 - a) Know about or acquiesce to the unconstitutional conduct as part of a common plan, or
 - b) Set in motion a series of acts that they knew or should have known would lead to the constitutional violation
- Being a bystander or having mere casual involvement is not enough to make an officer an integral participant. An officer's actions must be closely related to or fundamentally involved in the unconstitutional act, not just factually connected.
- For Fourth Amendment violations specifically, there must be evidence the officer intended to seize the individual, not just incidental involvement. Otherwise, without knowledge or intent, the liability risk would extend to all different ranks and job classifications.
- It is a factual analysis, considering the officer's knowledge, intent, actions, and role in the overall incident.

Overall, the integral participant doctrine provides a framework for determining when officers who did not directly violate constitutional rights can still be held liable, while attempting to limit liability to those substantially involved in or enabling the violation.

Integral Participant Case Examples

Boyd v. Benton County, 374 F.3d 773 (9th Cir. 2004)

In this case, a group of officers executed a search warrant at a home. Two officers provided armed backup while another officer reached into the doorway and deployed the flashbang device inside a home of a suspected armed robber at night, knowing that up to eight people unconnected with the robbery were inside the home. Another factor for the Court was that the use of the flashbang was part of the search operation in which every officer participated in some meaningful way. Lastly, every officer on scene was aware of the decision to use the flash-bang, did not object to it, and participated in the search operation knowing the flashbang was to be deployed prior to entry. Therefore, under the integral participation analysis, each defendant could be held liable for the Fourth Amendment violation of excessive force.

Hernandez v. Skinner, 969 F.3d 930 (9th Cir. 2020)

In 2017, a witness in a courtroom testified that plaintiff, another one of the witnesses, was "not a legal citizen." Based on that statement, the justice of the peace presiding over the hearing contacted the sheriff's office and asked that the plaintiff be "picked up." The responding deputy questioned the plaintiff about his immigration status,





placed plaintiff in handcuffs, searched plaintiff's person, and escorted him to a patrol car outside the courthouse. While plaintiff was waiting in the back of the patrol car, the deputy ran a warrant check on plaintiff that came back clean. The deputy then contacted ICE officials and plaintiff was taken to an ICE facility, where he remained in custody for three months before the deportation proceeding commenced against him was ultimately dismissed. Plaintiff filed suit against the deputy and the justice of the peace under 42 U.S.C. 1983 for violating his Fourth Amendment rights, alleging the arrest was unlawfully conducted without reasonable suspicion or probable cause that plaintiff was involved in criminal activity. The Court held that the justice of the peace who had ordered that the plaintiff be "picked up" was an integral participant in the unlawful arrest. The Court found the plaintiff's detention was not only "a reasonably foreseeable consequence" but "perhaps the only reasonable interpretation" of the justice of the peace's order. In other words, the order to "pick up" the plaintiff caused the arrest, and the justice of the peace knew that the order would result in arrest. The deputy had no basis for believing that there was probable cause resulting in an unlawful arrest and liability for both.

Nicholson v. City of Los Angeles, 935 F.3d 685 (9th Cir. 2019)

After an officer shot a youth holding a toy gun, the youth and his friends who were present at the scene were handcuffed and detained for five hours while the incident was investigated. The youths filed a civil rights lawsuit against the officer, including a Fourth Amendment claim for unreasonable seizure. The Court determined that although the officer was separated and monitored after the shooting, he did not have qualified immunity for any subsequent violation of the youths' Fourth Amendment rights. The Court concluded a jury could find that the officer was an integral participant in an unlawfully prolonged detention because he was the initial officer who set the events into motion and either instructed the other responding officers to arrest plaintiffs or consulted with them in that decision.

Not Integral Participant Case Examples

Peck v. Montoya, 51 F.4th 877 (9th Cir. 2022)

Five deputies responded to a disturbance where the reporting party indicated the suspect was acting erratically and threatening another person with a firearm. Two of those deputies shot and killed the suspect. A Fourth Amendment excessive force civil rights lawsuit filed by the suspect's wife resulted in the Ninth Circuit denying the two shooting officers qualified immunity. The Court went on to consider whether the other three deputies could also be liable for the suspect's death, and therefore not entitled to qualified immunity because they were "integral participants" in the two other deputies' use of excessive force.

The Court concluded that the three deputies who did not shoot the suspect were entitled to qualified immunity. Those deputies were not integral participants in the constitutional violation because they did not form a plan to shoot the suspect, nor did they set in motion the use of excessive force by the other two deputies. While it may have been foreseeable that a shooting could result from an armed response to the call, they did not know, nor did they have reason to know that an unconstitutional shooting would take place when they arrived on the scene.

Hopkins v. Bonvicino, 573 F.3d 752 (9th Cir. 2009)

After the suspect and a third party were involved in a minor traffic accident, the third party followed the suspect to his home, believed him to be intoxicated, and called police. The suspect failed to answer the door when the three responding officers attempted to contact him. One of the officers stood in the front yard of the house interviewing witnesses while the other two officers again attempted to contact the suspect and ultimately entered the house and carried out an unlawful search. The Court determined the officer who interviewed the witnesses was not an integral participant in that search because he had neither participated in the planning nor the execution of the unlawful search.

