MUNICIPAL TORT AND CIVIL RIGHTS LITIGATION UPDATE

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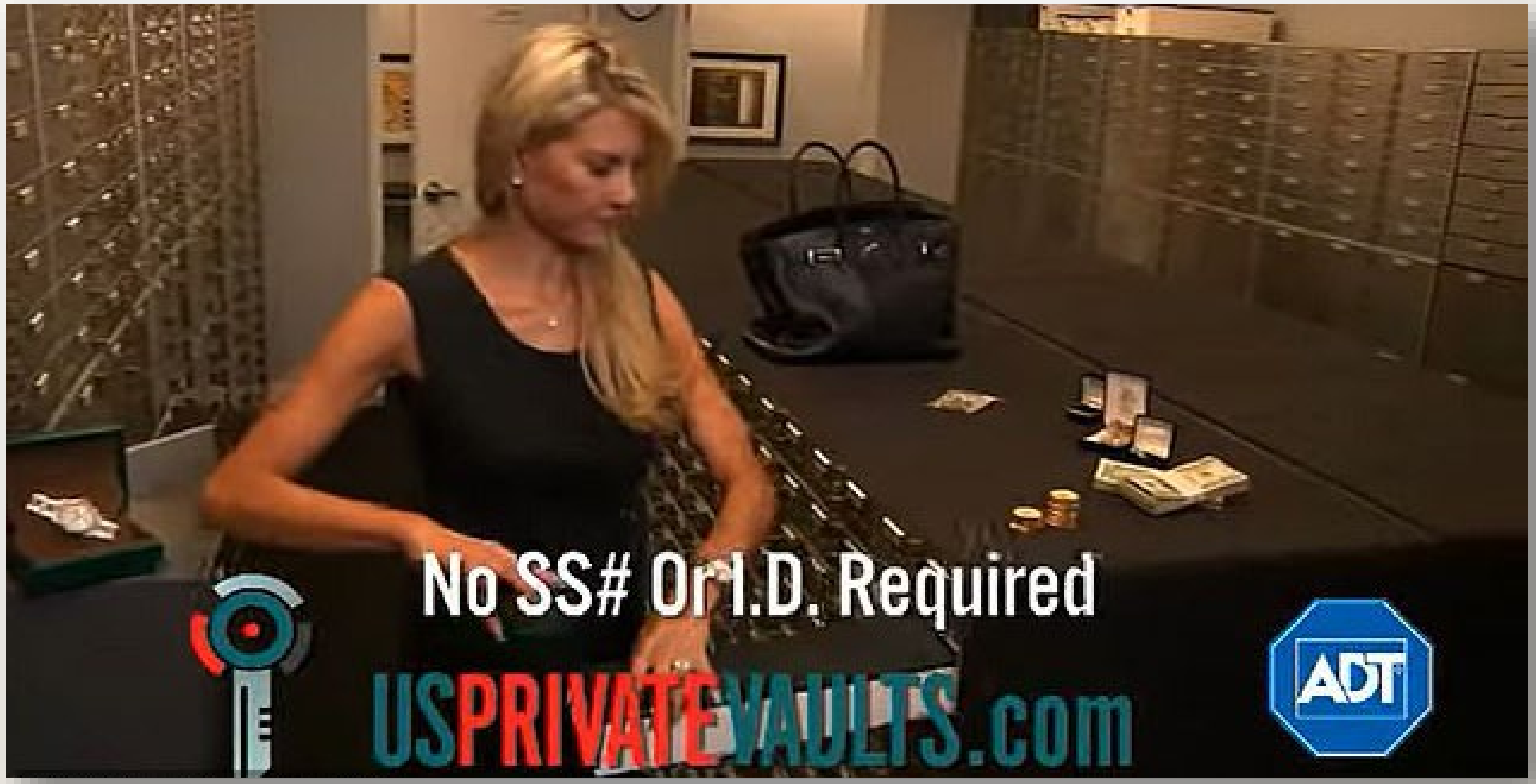
CIVIL RIGHTS

Law Enforcement Liability

Snitko v. United States, 90 F.4th 1250 (9th Cir. 2024)



Snitko v. United States – Facts

- Law enforcement agents were investigating US Private Vaults (UPSV) for various alleged criminal activities.
- Agents obtained a warrant to search USPV's facilities. The warrant did not authorize a criminal search or seizure of deposit box contents.
- Per customized "supplemental instructions," agents conducted an "inventory" search of 700 safe deposit boxes and seized property inside the boxes.
- Agents searched safe deposit boxes, used drug-sniffing dogs on cash, and made copies of documents.

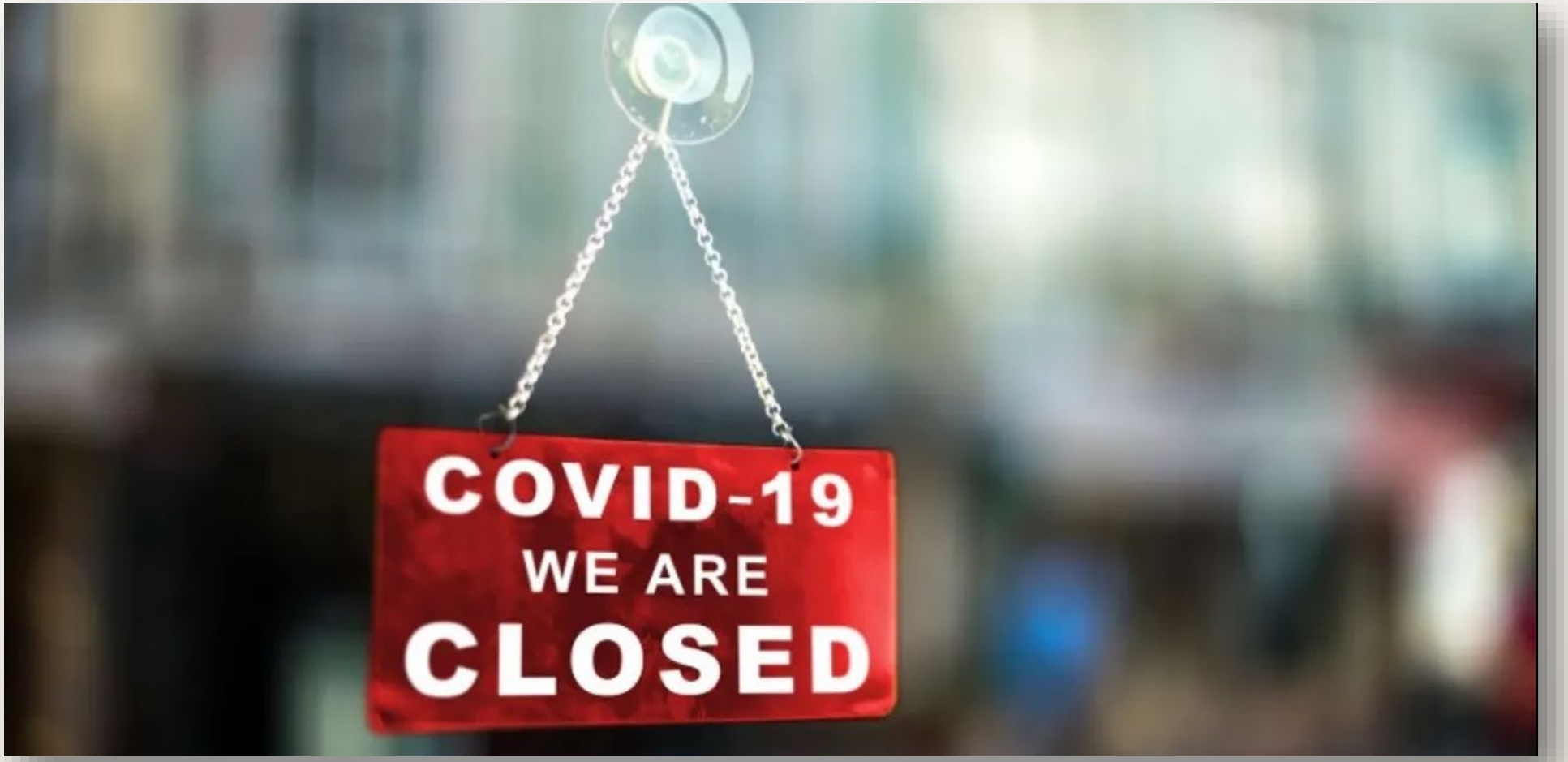
Snitko v. United States – Ninth Circuit

- Plaintiffs filed action to recover property and then further sought to destroy government records.
- Ninth Circuit held that the government violated the Fourth Amendment.
- The customized "special instructions" removed this case from the "inventory search" exception.
- The government also exceeded the scope of the search that had been authorized by the warrant.
- Property was returned; the government was ordered to destroy records pertaining to plaintiffs.

Snitko v. United States – Impact

- Specialized or customized inventory search instructions prepared for a specific case or investigation (as opposed to all cases) do not satisfy the inventory search exception.
- Adding a set of "customized" instructions on top of a "standardized" inventory policy does not keep the case within the inventory search exception.
- A search conducted per a warrant must match the scope of what the warrant in fact authorized.

Miller v. City of Scottsdale, 88 F.4th 800 (9th Cir. 2023)



Miller v. City of Scottsdale – Facts

- 2020 Executive Orders:
  - March 19, 2020: prohibited on-site dining
  - March 23, 2020: restaurants "essential function" that could provide take-out.
  - March 30, 2020: physical distancing policy with a notice requirement.
- Police gave verbal warnings on March 27 and 28.
- Citation issued to Owner on April 11.
- Owner filed Section 1983 lawsuit.

Miller v. City of Scottsdale – Ninth Circuit

- Miller argued that some in the restaurant were employees. This argument did not account for the prior calls reporting violations or the officers' observations of people leaving without to-go bags. Probable cause inquiry turns not on whether a reasonable officer would conclude that there was a fair probability of a violation.
- Miller also argued that he did not receive notice and an opportunity to comply before the arrest. The panel, however, determined that the newer EO did not invalidate prior warnings.
- Doesn't matter that Miller owned the restaurant through an LLC if he was serving in-person diners.

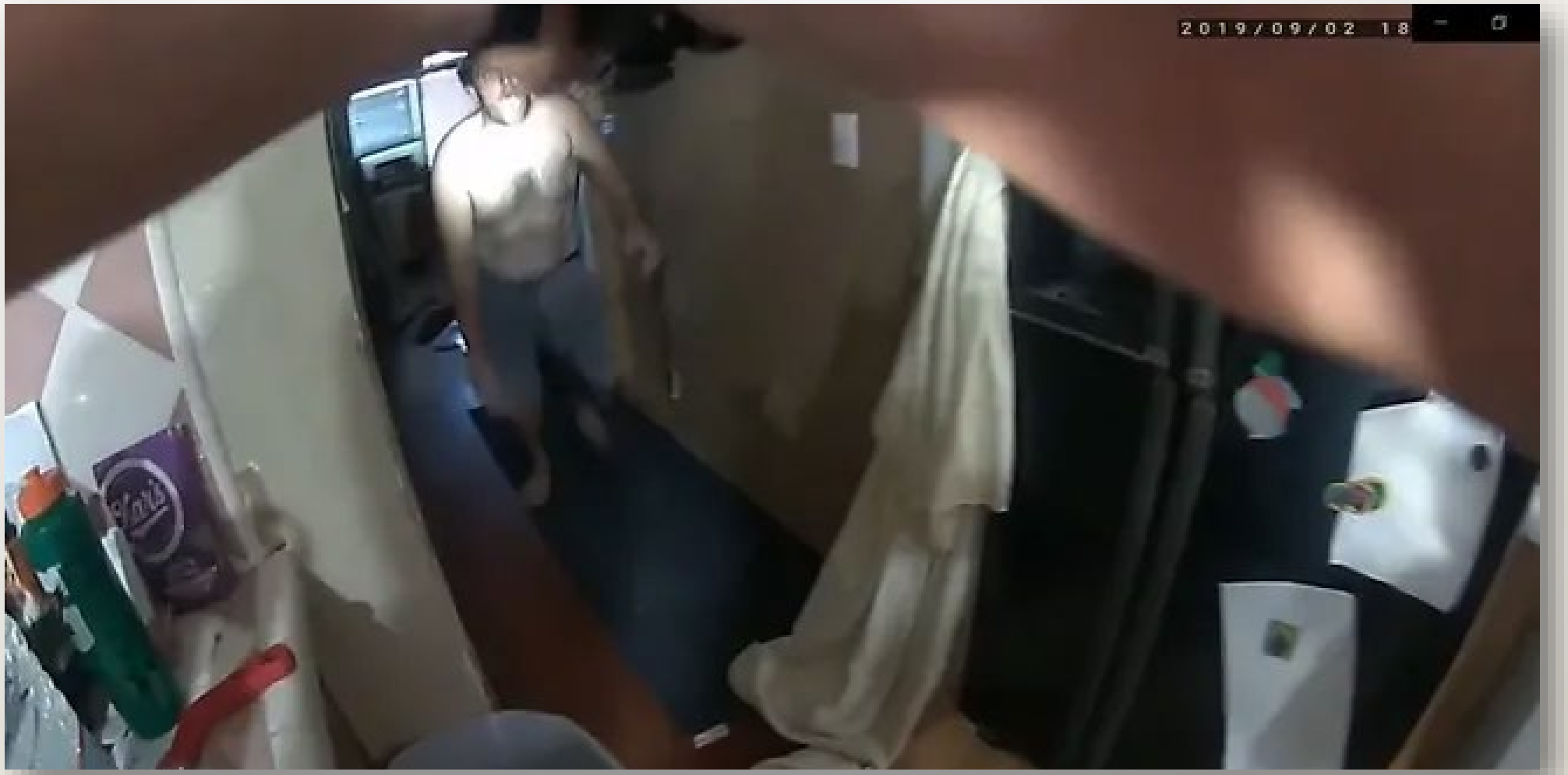
Miller v. City of Scottsdale – Impact

This legal debate in the Ninth Circuit could have been avoided had the executive order's language been more precise regarding:

1. whether individuals fall within the statute prohibiting restaurants from having on-site dining, and

2. whether warnings before the issuance of the order were valid.

Waid v. County of Lyon, 87 F.4th 383 (9th Cir. 2023)



Waid v. County of Lyon – Facts

- Police received a 911 domestic violence call.
- At the residence, two minor children, both distressed, told a police officer that their parents were fighting and that their mother needed an ambulance. One stated that there were no weapons other than a BB gun. Medics were called.
- Dad shouted an obscenity, ignored commands, and ran down a hallway towards the officers. Officers fired several rounds.
- A civil rights lawsuit was filed.

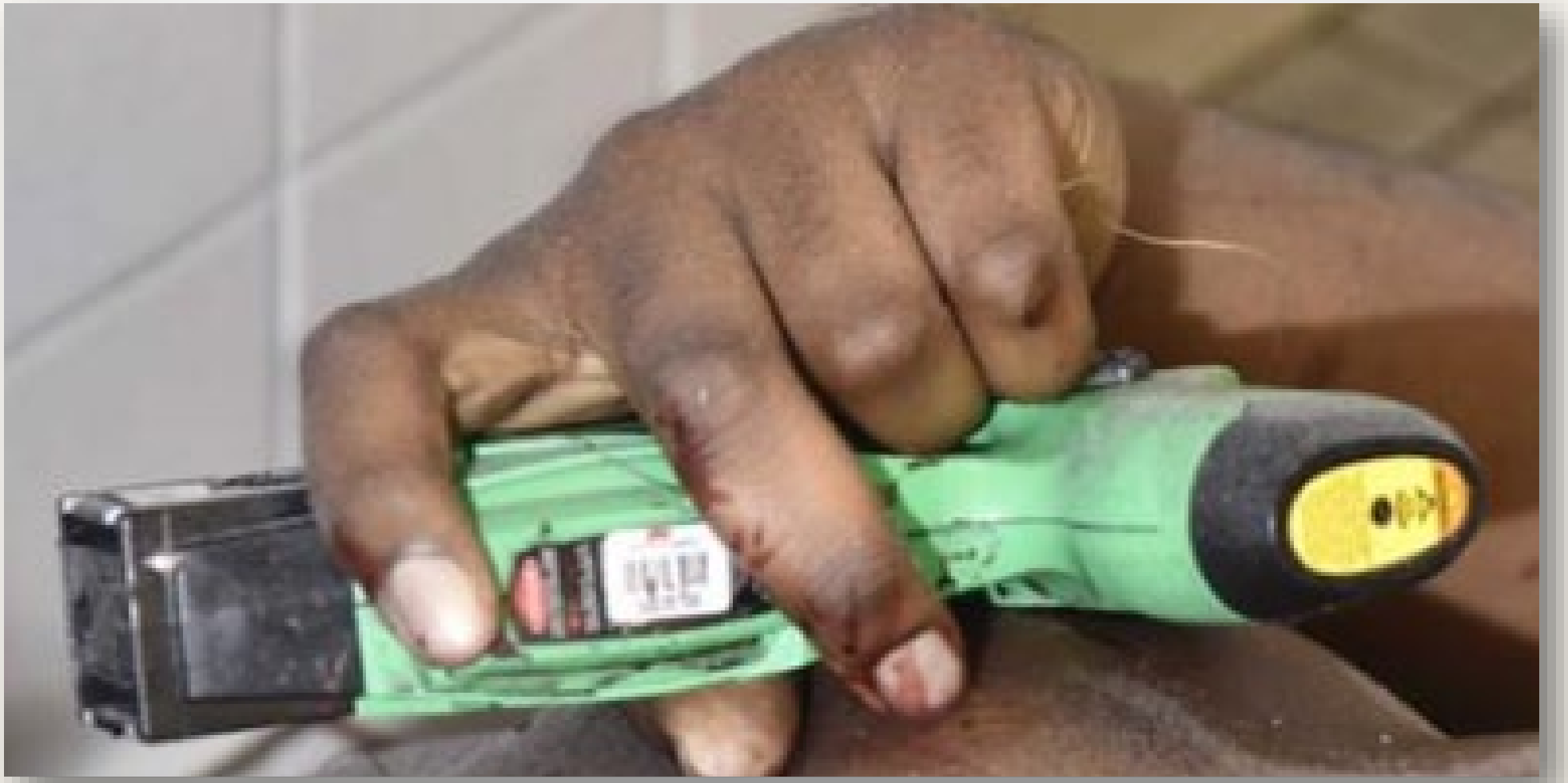
Waid v. County of Lyon – Ninth Circuit

- The facts did not show that officers clearly violated Dad's constitutional rights, even when viewed in the plaintiffs' favor. Dad used aggressive language with the officers, ignored their orders, and rushed towards them in a small, confined space.
- Partial Dissent: An officer may not shoot an unarmed suspect several times—in rapid succession and without warning—when the suspect is not reaching for a gun.

Waid v. County of Lyon – Impact

- To show that an allegedly violated right was clearly established for purposes of qualified immunity analysis, plaintiffs must either explain why their case is obvious under existing general principles or show specific cases that control or reflect a consensus of non-binding authorities in similar situations.
- This case also reinforces the importance of an officer's ability to make split-second decisions.

Smith v. Agdeppa, 81 F.4th 994 (9th Cir. 2023)



Smith v. Agdeppa – Facts

- Two police officers were dispatched to a gym, where a man reportedly threatened gym patrons and assaulted a security guard.
- The man violently attacked the officers and refused to stop even after the officers used their tasers. (Both officers were treated in the ER afterward.)
- Eventually, one of the officers used lethal force to end the aggression.
- Decedent's mother brought a § 1983 action against the officer that used lethal force.

Smith v. Agdeppa – Ninth Circuit

- The Ninth Circuit initially affirmed (2-1) the denial of qualified immunity.
- However, United States District Judge Gary Feinerman, sitting by designation, resigned from judicial service and Judge Consuelo Callahan was named the replacement judge. Judge Callahan and Judge Bress (original dissenting judge) voted in favor of rehearing.

Smith v. Agdeppa – Ninth Circuit

- Ninth Circuit held (2-1) that plaintiff's claim failed on the "clearly established" law qualified immunity prong.
- Plaintiff failed to identify precedent finding a Fourth Amendment violation under circumstances like the ones at issue here.
- Because none of the court's prior cases involved similar circumstances, there was "no basis" to conclude that Agdeppa's use of force here was "obviously constitutionally excessive."

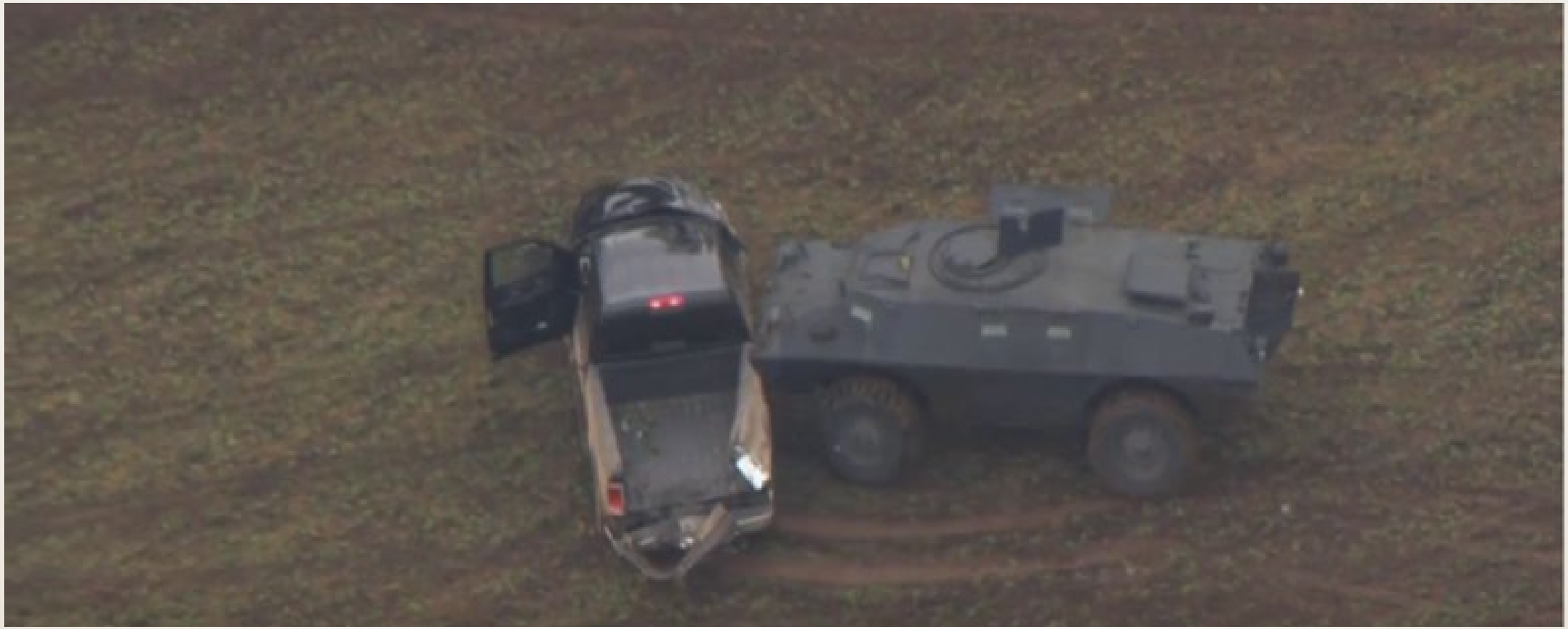
Smith v. Agdeppa – Ninth Circuit

- Agdeppa was constitutionally required to warn Dorsey before using deadly force. Although no warning was given, the law only requires warnings "whenever practical."
- This warning principle "is not a one-size-fits-all proposition that applies in every case or context."

Smith v. Agdeppa – Impact

- Plaintiff bears the burden to identify precedent that would place the constitutional question of excessive force beyond debate.
- General statements in prior cases about the need for officers to provide a "warning," whenever practicable, before resorting to deadly force are insufficient to satisfy a plaintiff's burden on the clearly established law prong.

Sabbe v. Washington County Board of Commissioners, 84 F.4th 807 (9th Cir. 2023)



Sabbe – Facts

- Police encountered a belligerent, potentially armed man in a pickup truck on his rural property.
- Using an armored personnel carrier, officers executed two "pursuit intervention technique" maneuvers (i.e., deliberate collisions) with the pickup truck.
- Officers heard a gunshot and opened fire, killing the man.
- District court grants summary judgment on § 1983 claims.

Sabbe – Ninth Circuit majority

- Illegal entry claim failed because entry did not proximately cause Sabbe's death
- PIT maneuver may have been excessive force but did not violate Sabbe's clearly established rights
- Shooting was not excessive because officers reasonably perceived that Sabbe presented an immediate threat
- No *Monell* liability because using County had never contemplated using an armored personnel carrier for PIT maneuvers

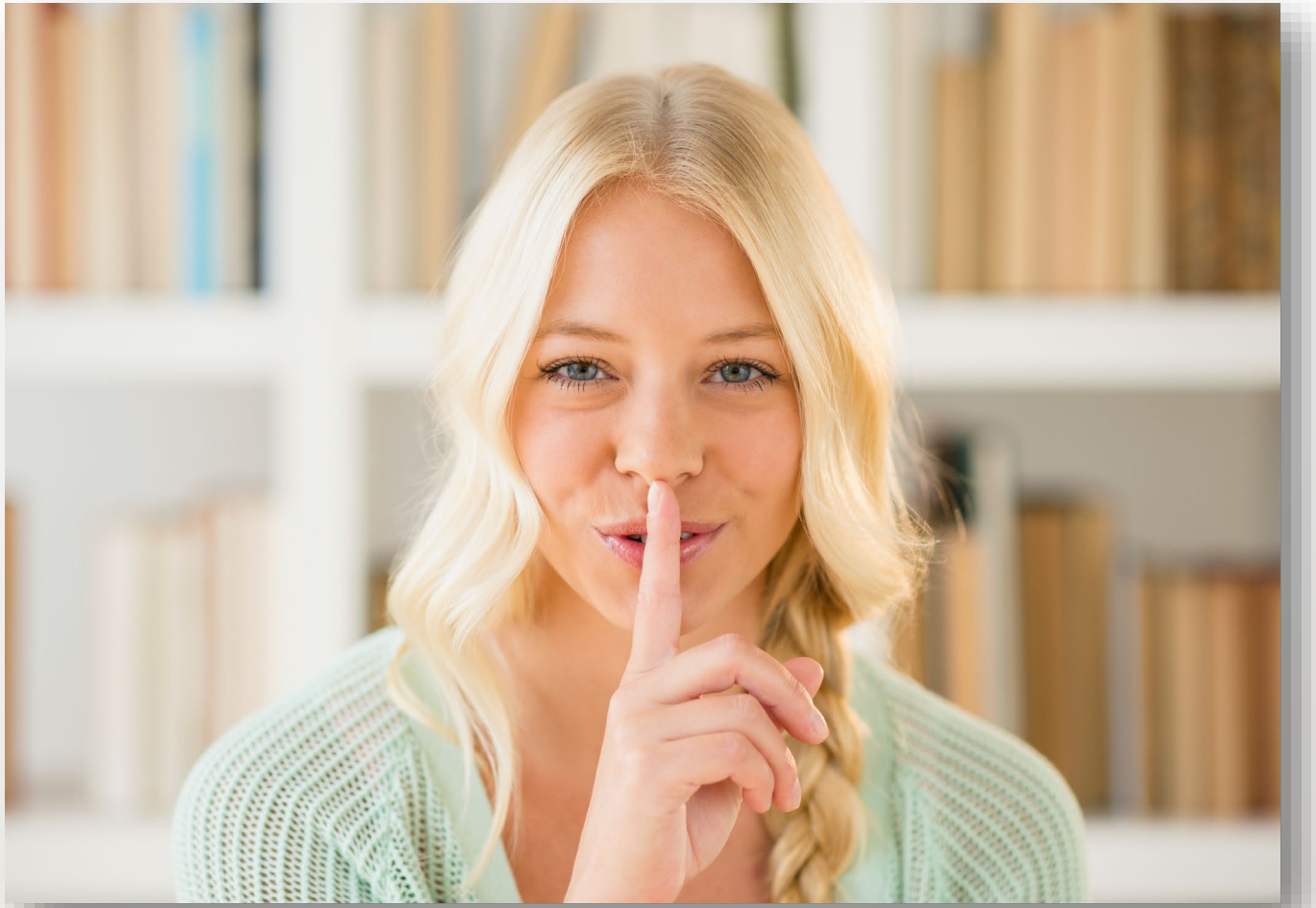
Sabbe – Ninth Circuit concurrence/dissent

- Defendants' entry onto Sabbe's property was clearly unconstitutional and a cause of his death
- PIT maneuvers were obviously, clearly excessive force
- Jury could find that shooting was excessive force
- Agrees that there is no *Monell* liability

Sabbe v. Washington County Board Of Commissioners – Impact

There may be an increased expectation for law enforcement agencies to have policies on the use of armored vehicles to conduct PIT maneuvers.

Martinez v. High, 91 F.4th 1022 (9th Cir. 2024)



Martinez v. High – Facts

- Police told domestic abuse victim's boyfriend (a police officer) that she had reported abuse.
- Leak of report led to further abuse, until abuser was eventually arrested.
- Abuse victim sued officers for disclosing her report and failing to arrest abuser earlier.
- District court granted summary judgment for defendants.

Martinez v. High – Ninth Circuit majority

- Leaking abuse report violated victim's rights under the "state-created danger" doctrine
- But officer entitled to qualified immunity because law was not clearly established at time of incident (it was decided in an earlier appeal in this case)

Martinez v. High – Ninth Circuit concurrence

- Judge Butamay would have decided the case based on lack of clearly-established law without reaching whether there was a constitutional violation
- He believes that the entire state-created danger doctrine is misguided and should be pruned back

MARTINEZ v. HIGH – IMPACT

Law must have been clearly established *at the time of the underlying events.*

Moore v. Garnand, 83 F.4th 743 (9th Cir. 2023)

Moore v. Garnand – Facts

- Plaintiff invokes his right to remain silent when police sought to interview him as part of an investigation
- Police search plaintiffs' house and open a criminal financial investigation of them; the investigation is later closed
- Plaintiffs sue for Fourth Amendment violations based on search; police reopen criminal investigation
- Plaintiffs sue again, alleging First Amendment retaliation
- District court denies summary judgment based on need for more discovery

Moore v. Garnand – Ninth Circuit

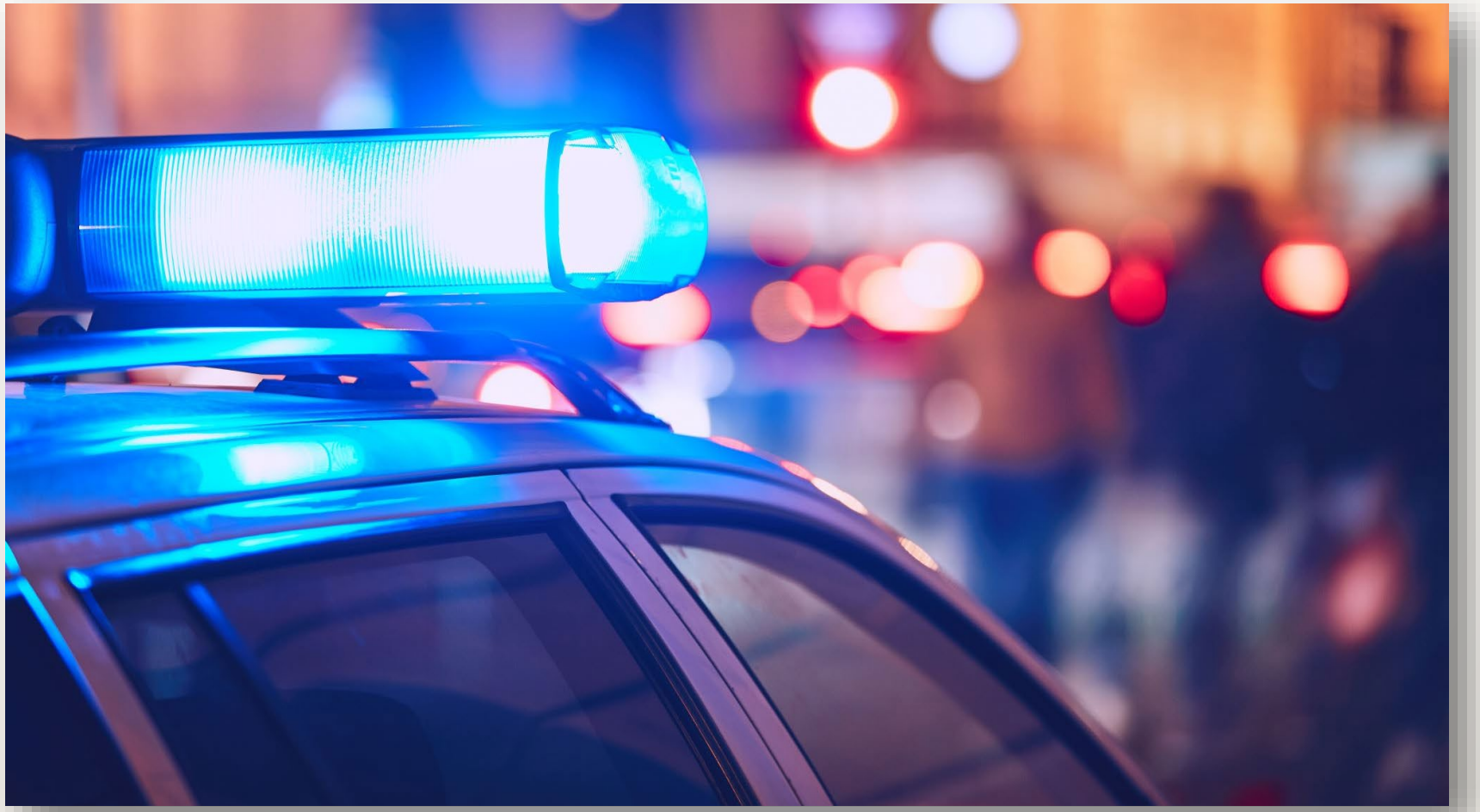
- Interlocutory appeal is available to determine the legal issue of whether plaintiff's version of events demonstrates a violation of clearly established law -- even if summary judgment was denied simply to allow additional discovery
- Based on plaintiffs' version of events, no violation of clearly established rights

Moore v. Garnand– Impact

No "clearly established law" that a person has a *First Amendment* right to remain silent when questioned by the police

No clearly established law finding a First Amendment violation based on a retaliatory investigation

Hernandez v. City of Los Angeles, 96 F.4th 1209 (9th Cir. 2024)



Hernandez v. City of Los Angeles – Facts

- At the scene of a car accident, police saw a man emerge from a truck holding a weapon. An officer ordered him to stay where he was and drop the knife. The man advanced toward the officer. The officer fired 6 shots in 8 seconds, ultimately killing the man.
- Decedent's family sued the officer, the police department, and the City. The district court granted summary judgment for the defendants.

Hernandez v. City of Los Angeles – Ninth Circuit

- Officer's first four shots were reasonable as a matter of law
- Fifth and sixth shots were "a much closer question," but officer entitled to qualified immunity because excessiveness was not clearly established
- No evidence that the officer acted with a purpose to harm without regard to legitimate law enforcement objectives
- No abuse of discretion in denying continuance for additional discovery on *Monell* liability

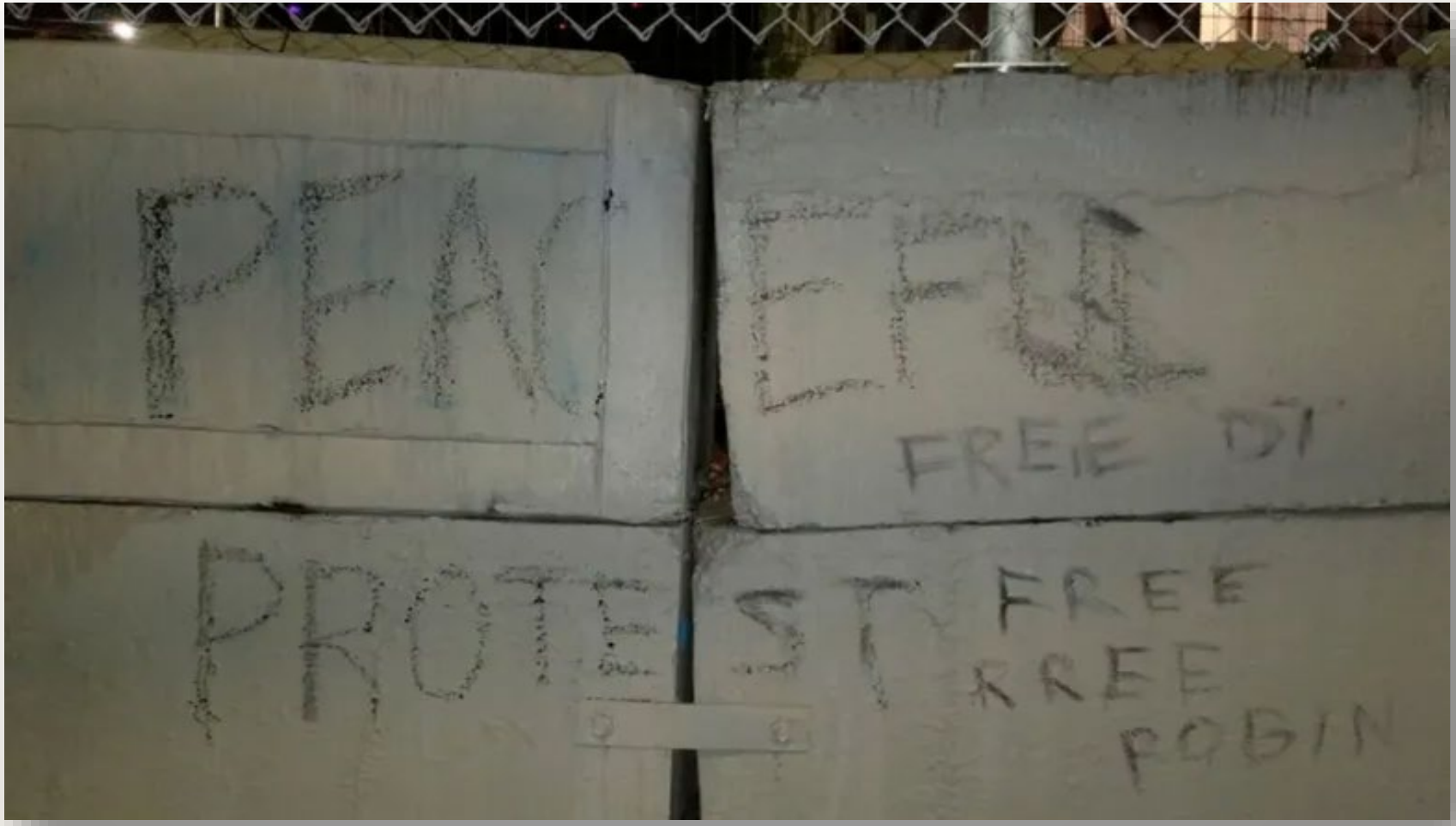
Hernandez v. City of Los Angeles – Impact

Defendant-friendly "clearly established" analysis; broad deference on abuse-of-discretion review.

CIVIL RIGHTS

Non-Law Enforcement Liability

Tucson v. City of Seattle, 91 F.4th 1318 (9th Cir. 2024)



Tucson v. City of Seattle – Facts

- Plaintiffs were arrested for writing political messages on a wall outside a police department.
- Documented offense was violation of a municipal code provision criminalizing writing on buildings or other property without permission
- Plaintiffs sued, arguing that code provision violates the First and Fourteenth Amendments
- District court preliminarily enjoined enforcement of provision

Tucson v. City of Seattle – Ninth Circuit

- Reversed preliminary injunction
- District court failed to recognize that overbreadth analysis requires considering whether the number of unconstitutional applications is substantially disproportionate to lawful sweep
- District court failed to recognize that vagueness analysis requires examining whether provision is vague in most of its intended applications—cannot be based on speculative hypotheticals and fanciful situations not actually presented

TUCSON v. CITY OF SEATTLE - Impact

Provides framework for analyzing facial statutory challenges

Camenzind v. California Exposition & State Fair, 84 F.4th 1102 *(9th Cir. 2023)*

Camenzind v. California Expo – Facts

- The plaintiff visited a privately organized event at the state-owned Cal Expo fairgrounds, hoping to distribute religious tokens to attendees.
- Cal Expo's Free Speech Activities Guidelines prohibit attendees from leafletting, picketing, or gathering signatures within the enclosed portion of the fairgrounds.
- Police officers told the plaintiff he could distribute his tokens in designated Free Speech Zones outside the entry gates.
- The plaintiff instead purchased a ticket, entered the festival, and began handing out the tokens.

Camenzind v. California Expo – 9th Circuit

- The enclosed portion of the fairgrounds was not a traditional public forum.
  - The space does not serve as a public thoroughfare, and Cal Expo does not permit free public access to it.
  - The surrounding fencing marked the space's boundaries.
  - No evidence suggested that all who sought to distribute material were granted access. In fact, the policy designated free speech expression zones for demonstrations for free speech activity.
- Designating a Free Speech Zone was a valid regulation of speech.

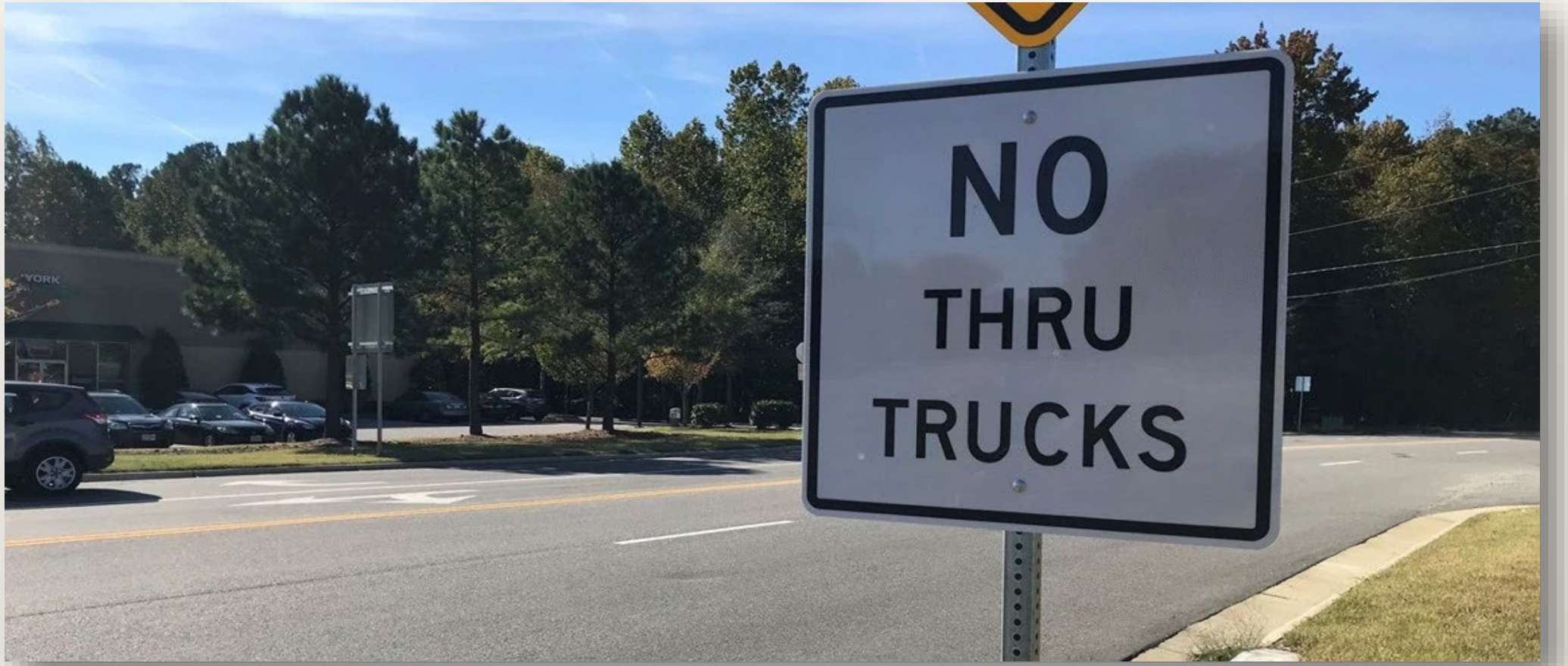
Camenzind v. California Expo – Impact

The state prevailed because Cal Expo:

- had a clear, non-discriminatory policy;
- enclosed the event space;
- leased the space (it was not free) for the privilege of using it;
- ensured that the space is not continually open to the public and remains locked and inaccessible until leased by a private party; and
- designated a free speech zone outside of the event space.

MUNICIPAL TORT LIABILITY

City of Norwalk v. City of Cerritos, 99 Cal.App.5th 977 (2024)



City of Norwalk v. City of Cerritos – Facts

- City of Cerritos restricts "any commercial vehicle or any vehicle exceeding six thousand pounds" to specific arteries.
- The neighboring City of Norwalk sued, asserting that the ordinance caused "adverse effects" accompanying heavier traffic flow.
- City of Cerritos asserted it is immune from public nuisance liability under Civil Code Section 3482 for any acts "done or maintained under the express authority of a statute"

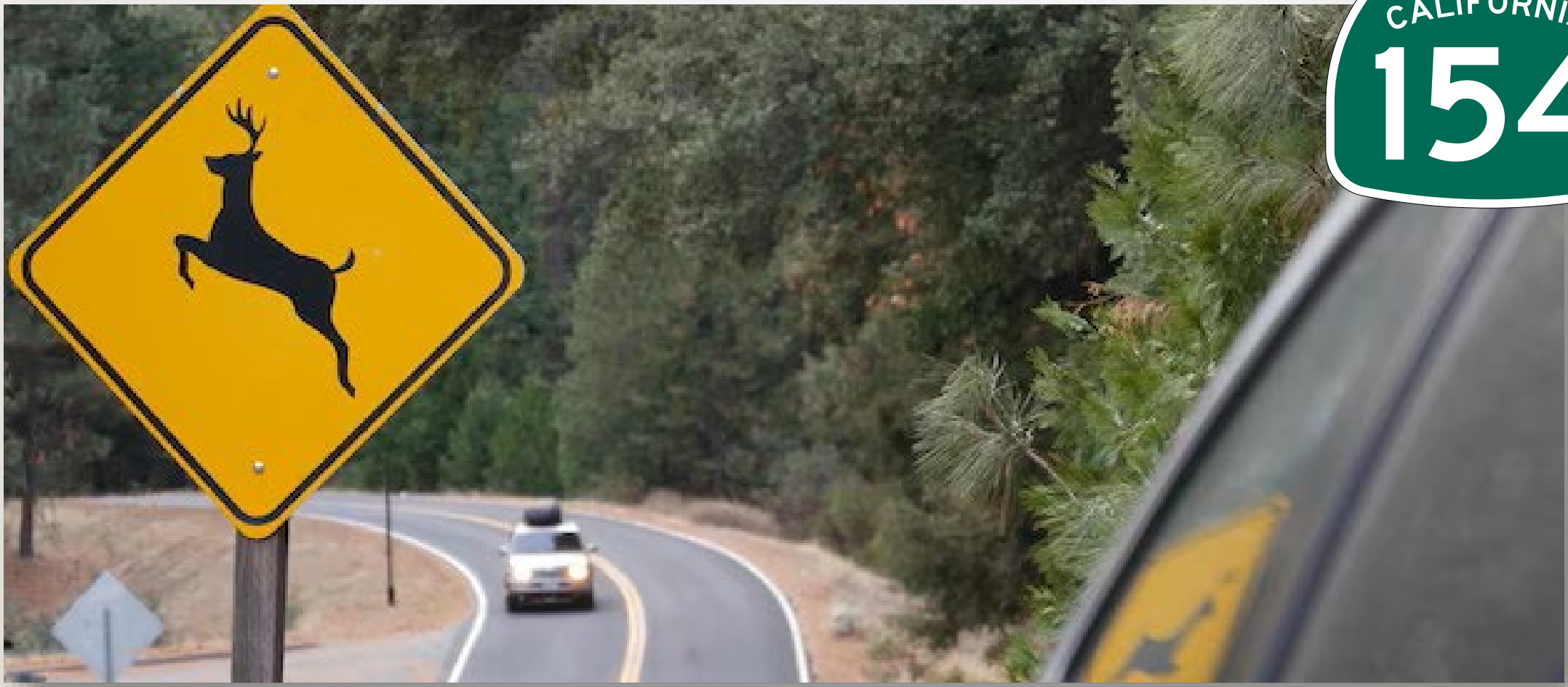
City of Norwalk v. City of Cerritos – Court of Appeal

- "Is the alleged nuisance an inexorable and inescapable consequence that necessarily flows from the statutorily authorized act, such that the statutorily authorized act and the alleged nuisance are flip sides of the same coin?"
  - "Yes, because the immunity conferred by Civil Code section 3482 applies not only to the specific act expressly authorized by statute . . . but also to the inexorable and inescapable consequences that necessarily flow from that act. . . ."

Section 3482 immunity applies where an alleged nuisance inexorably and inescapably flows from the statutorily authorized act

City of Norwalk v. City of Cerritos – Impact

Stufkosky v. Cal. Dep't of Transportation, 97 Cal.App.5th 492 (2023)



Stufkosky v. Cal. Dep't of Transportation – Facts

- A vehicle struck a deer on a state highway, sending it into the opposing lane, where it struck an oncoming SUV. The SUV lost control and collided with a vehicle driven by plaintiffs' decedent.
- Six deer warning signs appear along the 15-mile roadway segment where the accident occurred. The plaintiffs sued the state for maintaining a dangerous condition of public property, alleging the roadway's design, lack of deer crossing signs, and high speed limit. The state asserted design immunity.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- Three elements of design immunity:
- (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- Three elements of design immunity:
- (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.

  - The state met the causal relation prong by showing that the complaint alleged the required causal connection.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- Three elements of design immunity:
- (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.

  - The state fulfilled the discretionary approval requirement by presenting comprehensive plans for the section of the roadway where the accident occurred.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- Three elements of design immunity:
- (1) a causal relationship between the plan or design and the accident; (2) discretionary approval of the plan or design prior to construction; and (3) substantial evidence supporting the reasonableness of the plan or design.

  - Deer warning signs were east and west of the accident site. These facts alone showed that the approved design plans were reasonable. Also, over 40 million vehicles had traveled through the accident site in 8 years and no accidents involved a deer crossing or head-on collision.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- The court of appeal then addressed whether design immunity protected Caltrans from liability for failure to warn motorists of that condition in light of the state supreme court's 2023 decision in *Tansavatdi v. City of Rancho Palos Verdes*. *Tansavatdi* stands for the principle that design immunity does not permit it to remain silent when it has notice that an element of the road design presents a concealed danger. However, the supreme court declined to decide whether design immunity affected a failure to warn claim when a public entity produces evidence that it considered whether to provide a warning.

Stufkosky v. Cal. Dep't of Transportation – Court of Appeal

- Because Caltrans produced evidence that its design plans specified the quantity and placement of deer crossing signs, the court of appeal upheld the lower court ruling in favor of the state.

Stufkosky v. Cal. Dep't of Transportation – Impact

- For design immunity, it is not necessary to expressly consider each possible alternative design that a plaintiff claims would have been more protective of the driving public.
- Where a public entity warns motorists of a danger according to design plans, a cause of action will not survive for merely asserting that the motorist warning was inadequate.

Summerfield v. City of Inglewood, 96 Cal.App.5th 983 (2023)

Summerfield v. City of Inglewood – Facts

- Man drove to a city park to play basketball. While in his vehicle in the parking lot, he was shot and killed.
- A wrongful death action against the City alleged that there were no cameras in the parking lot and a lack of adequate precautions such as "control measures and/or security."
- The lawsuit also alleged a dangerous condition existed because two other parking lot shootings in the past 23 years showed that the lack of security attracted criminal activity.

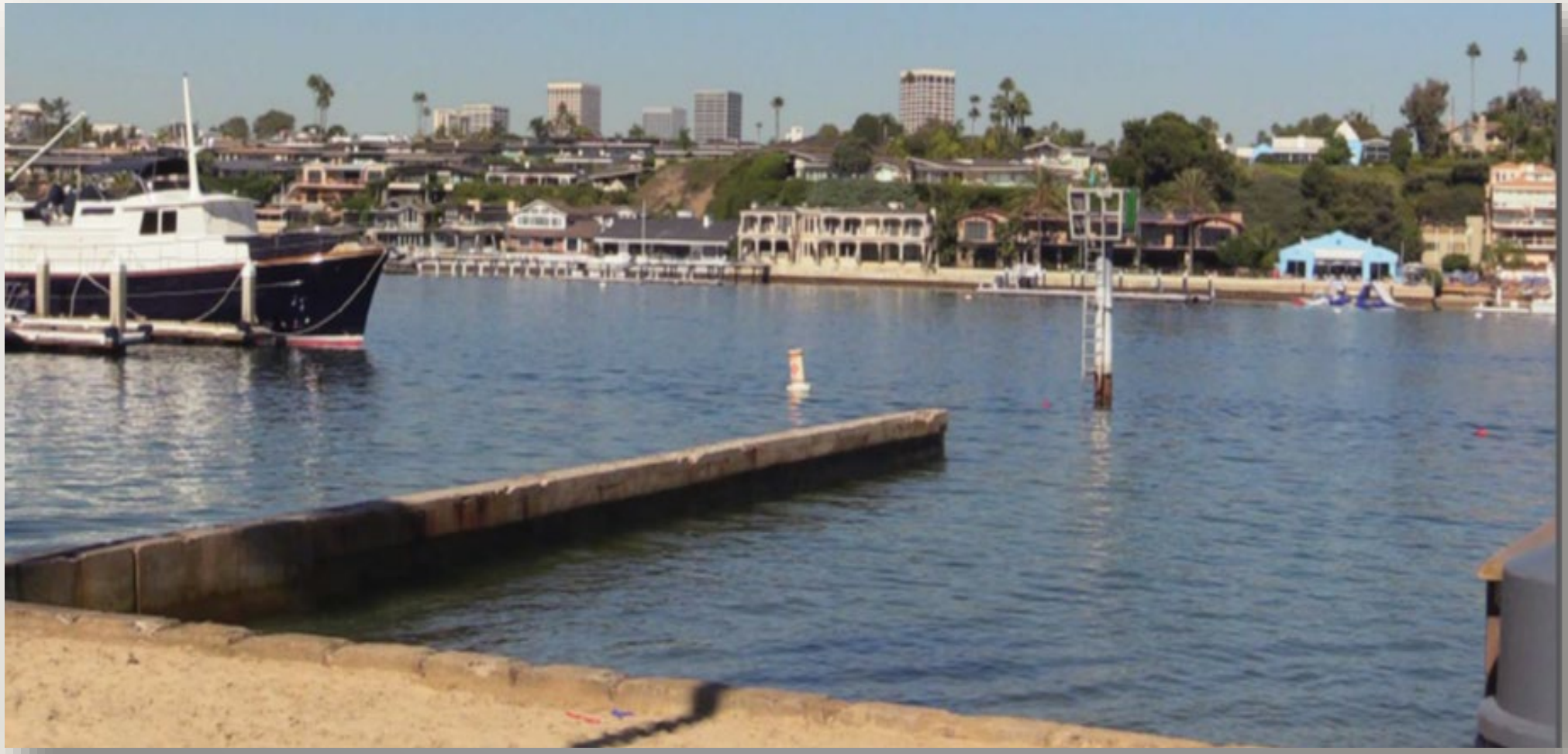
Summerfield v. City of Inglewood – Court of Appeal

- The presence or absence of security guards is not a physical characteristic of public property – so not a dangerous condition.
- Two crimes throughout a 23-year span do not constitute ongoing criminal activity.
- The complaint did not sufficiently allege with the requisite particularity that the absence of surveillance cameras in the parking lot facilitated decedent's shooting, such that it was a defective or dangerous condition. The absence of security cameras did not create a substantial risk of being shot.
- A public entity has no duty to warn against criminal conduct.

Summerfield v. City of Inglewood – Impact

This case provides helpful guidance for municipal park operators with regard to security measures. A contrary ruling would have created a duty for every California public entity to install and maintain security cameras at municipal parks.

Carr v. City of Newport Beach, 94 Cal.App.5th 1199 (2023)



Carr v. City of Newport Beach – Facts

- Plaintiff dove into Newport Bay headfirst and hit the sea floor, rendering him a quadriplegic
- Plaintiff sued City for dangerous condition of public property
- Trial court granted summary judgment for City based on Government Code section 831.7 immunity for "[a]ny form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given."

Carr v. City of Newport Beach – Court of Appeal majority

- Section 831.7 diving immunity applies if plaintiff *either* (1) dove from any location other than a diving board or platform, or (2) dove from any place where diving is prohibited and a reasonable warning is given.
- Under (1), immunity is not conditioned on a warning.
- No gross negligence in failure to protect against or warn about an inherent risk of a hazardous recreational activity.

Carr v. City of Newport Beach – Court of Appeal dissent

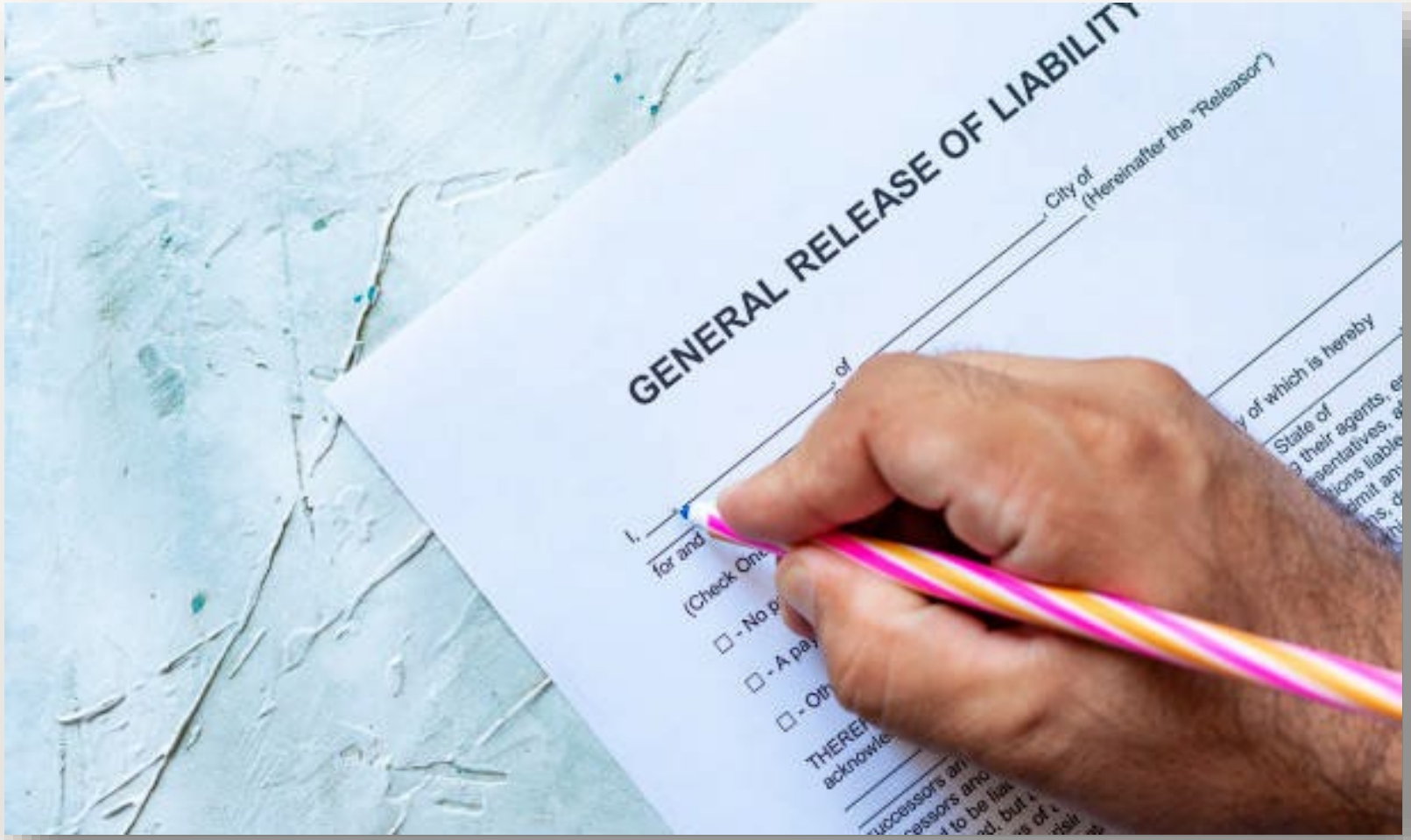
- Section 831.7's diving immunity is not available unless the entity prohibits diving and reasonably warns of the provision.
- Warning could easily have been given but wasn't.
- Triable issue as to whether seawall presented a dangerous condition.

Carr v. City of Newport Beach – Impact

Majority's expansive interpretation of diving immunity benefits public entities

But, dissent shows that judges can disagree on this – so prudent to clearly display diving-prohibited warning

Whitehead v. City of Oakland, 99 Cal.App.5th 775 (2024)



Whitehead v. City of Oakland – Facts

- Before participating in a practice ride for an AIDSLifeCycle fundraiser, plaintiff signed a broad release
- During the ride, plaintiff was injured when his bike hit a pothole
- Plaintiff sued the City for dangerous condition
- Trial court granted summary judgment for the City based on the release

Whitehead v. City of Oakland – Court of Appeal

- *Tunkl* establishes factors for analyzing enforceability of a release from liability for future negligence
- Release was valid because under the *Tunkl* factors, the ride did not implicate public interest. Focus is on the transaction for which the release is given, not the location
- Plaintiff failed to present evidence that City was grossly negligent in maintaining the road

Whitehead v. City of Oakland – Impact

Releases of liability pertaining to nonessential sports activities are generally enforceable and public entities (like private ones) can rely on them to avoid ordinary negligence liability.

Miller v. Pacific Gas and Electric Co., 97 Cal.App.5th 1161 (2023)

Miller v. Pacific Gas and Electric – Facts

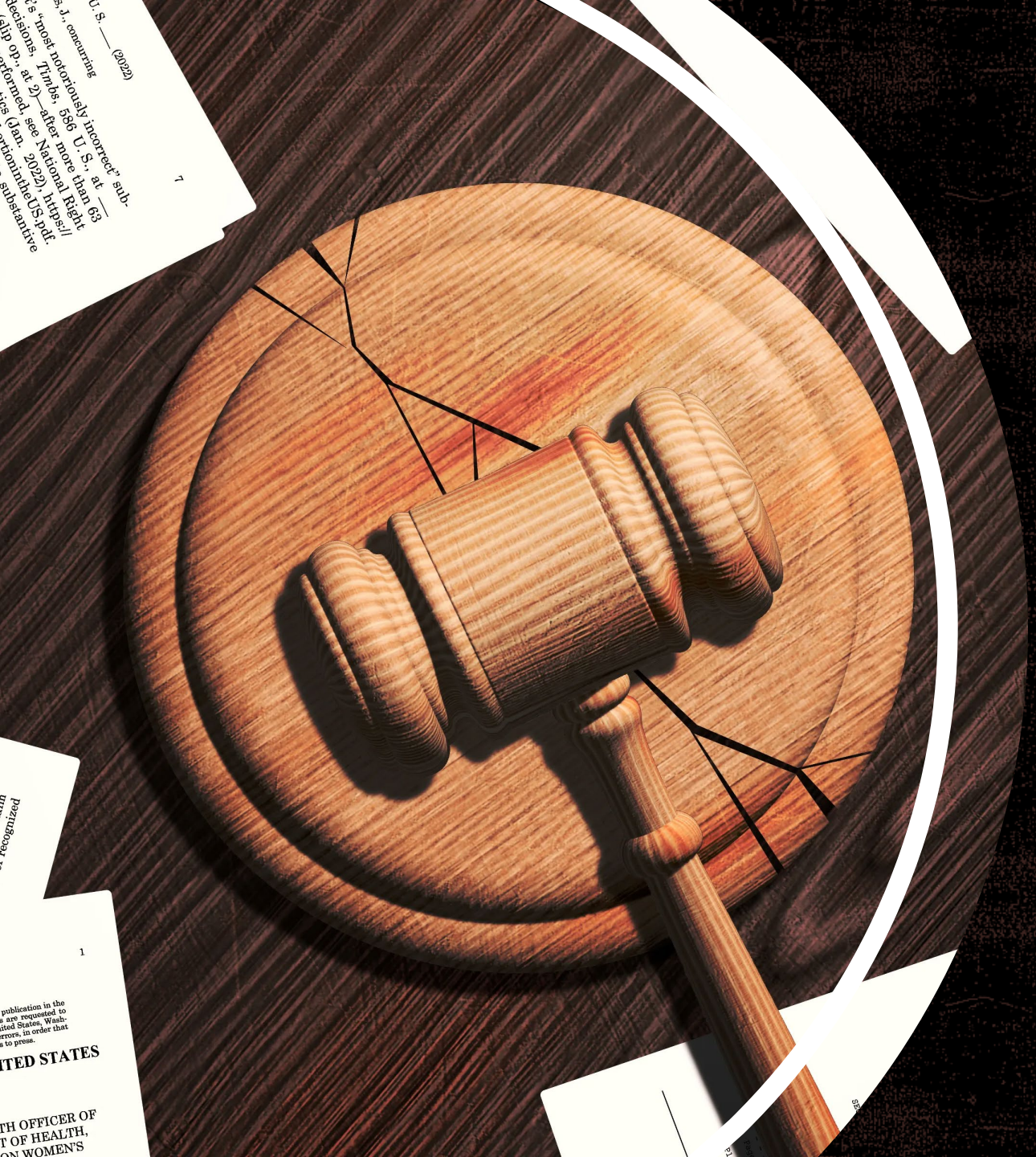
- Plaintiff tripped and fell on a misaligned utility vault cover on a San Francisco sidewalk. A City inspector had ordered that the misalignment be repaired, but the repair was not done
- Plaintiff sued PG&E (owner of the utility vault) and the owner of the property adjacent to the sidewalk, on a dangerous condition theory
- Trial court granted summary judgment for defendants based on the trivial defect doctrine

Miller v. Pacific Gas and Electric Co. – Court of Appeal

- Affirms summary judgment
- Defendants presented evidence that the misalignment was trivial (<1 inch, sufficient illumination, no history of prior incidents)
- No evidence that City's repair order was based on a finding of dangerous condition
- No evidence drawing into question defendants' visibility showing
- Plaintiff forfeited negligence per se theory by not raising it until her reply brief

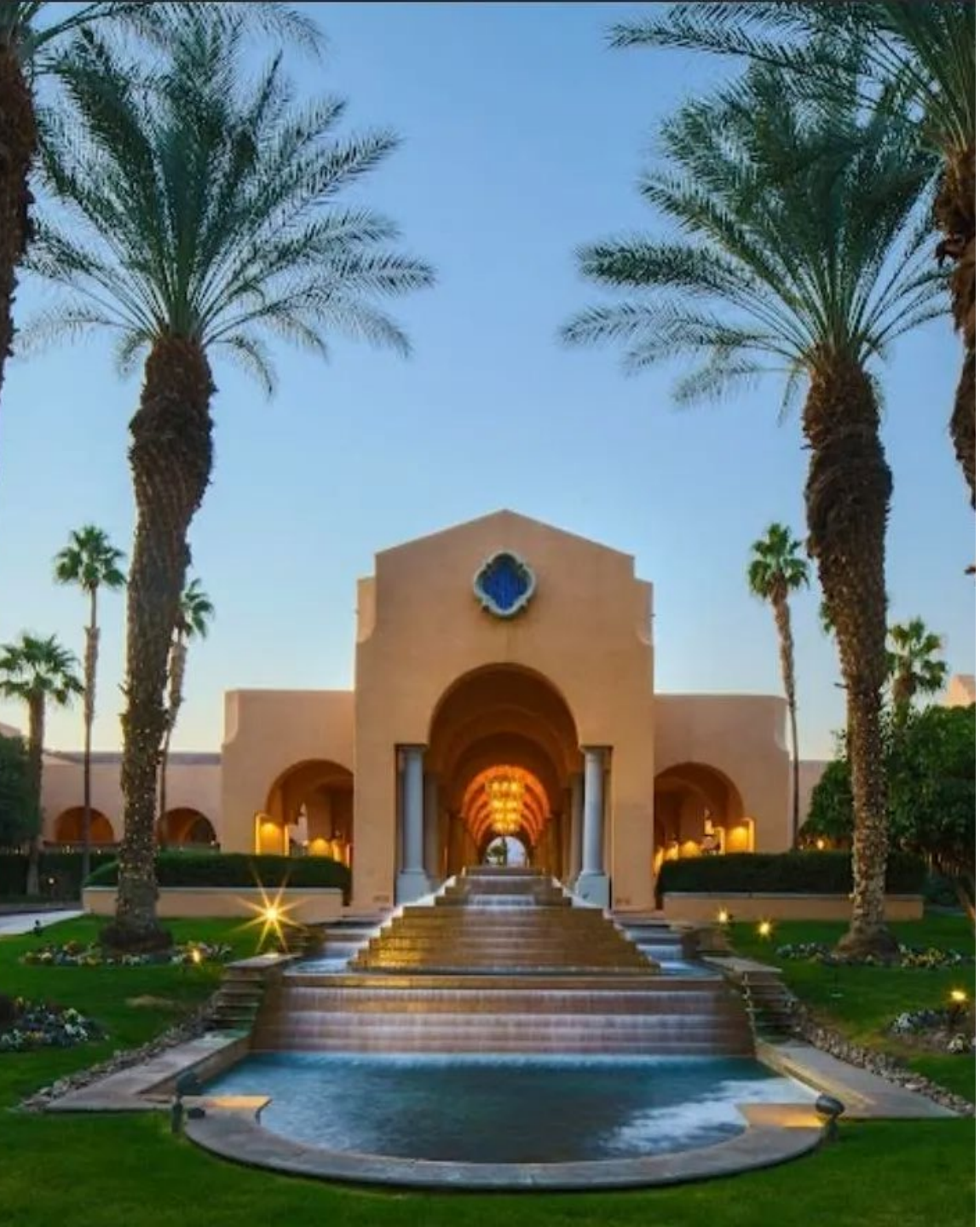
Miller v. Pacific Gas and Electric Co. – Impact

Some sidewalk defect cases remain amenable to summary judgment. Photographic evidence seems to help.



Late Breaking Case Decisions

BREAKING NEWS



THANK YOU !

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