When Lethal Force Is Authorized

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What It Is

Lethal force is the intentional use of an intervention that is capable of causing death or serious bodily injury. In police encounters this most often means a firearm, but the constitutional analysis does not turn on the weapon label. An intervention constitutes deadly force where the manner of use creates a substantial risk of death or serious bodily injury – a vehicle maneuver, a baton strike to the head, or an impact projectile fired at close range may each qualify depending on circumstance.

The legal question is whether lethal force was objectively reasonable under the totality of circumstances, judged from the perspective of a reasonable officer on the scene at the time it was used.

The Constitutional Standard

Two Supreme Court decisions frame the lethal-force analysis.

Tennessee v. Garner (1985) rejected the old rule that police could use deadly force to prevent the escape of any fleeing felon. The Court held that deadly force may not be used against an apparently unarmed, non-dangerous fleeing person. Where deadly force is used to prevent escape or stop a threat, the officer must have probable cause to believe the person poses a significant threat of death or serious physical injury to the officer or others. Where feasible, a warning should precede deadly force.

Graham v. Connor (1989) establishes the general framework: objective reasonableness under the totality of circumstances. For lethal force specifically, the most consequential Graham factor is almost always whether the person poses an immediate threat to the safety of officers or others. The analysis is objective – the question is what a reasonable officer would perceive and do, not what this officer subjectively intended.

Together, these cases mean that lethal force is preventative: officers do not have to wait until a person has already caused death or serious injury before using it, but possession of a weapon or classification as a felony suspect is not sufficient. The threat must be real and sufficiently immediate.

Imminence in Practice

Imminence does not require that an attack be completed. A threat is sufficiently immediate where a reasonable officer could perceive that the person poses a threat of death or serious injury that cannot safely be allowed to develop further. Relevant facts in assessing imminence include:

- whether a weapon is drawn, raised, or in a threatening position

- whether the person is advancing, charging, or lunging
- the rate and direction of movement
- distance to the officer, distance to a civilian
- whether the person has already attacked or threatened
- whether barriers, cover, or obstacles separate the parties
- whether commands have been ignored
- whether warnings have been given and disregarded
- time available for response given distance and movement

For edged-weapon encounters, the relevant question about distance is not whether the subject is inside or outside a fixed threshold, but how much usable time and space exists before the officer or another person could be reached and seriously injured. Distance matters because it determines time, not because any specific number of feet is a constitutional trigger.

Being Shot Is Not the Same as Being Stopped

One of the most operationally important distinctions in the evidence base is that gunshot injury does not guarantee immediate incapacitation. Immediate physical incapacitation is most reliably associated with major disruption of the central nervous system – the brain or upper spinal cord. Outside those injuries, a person may retain purposeful movement for some period after being shot, even when the wound is ultimately fatal.

This has two practical implications.

First, where a person remains capable of threatening action after being shot – advancing, continuing an assault, retaining a weapon, moving toward a victim – continued use of force may be justified. The relevant test is whether the threat continues, not whether shots have been fired.

Second, and equally important: a person who has been shot may fall, flinch, stumble, or exhibit involuntary movement. These are not automatically indicators that the threat continues. Movement should be assessed in context rather than reflexively interpreted as renewed attack.

When Force Must Stop

Lethal force is justified only while the threat justifying it continues. The Supreme Court held in *Plumhoff v. Rickard* (2014) that officers justified in using deadly force to end a severe and ongoing threat need not stop firing until the threat has ended – but that authorization ends precisely when the threat ends.

Waterman v. Batton (4th Cir. 2005) provides one of the clearest analyses: force justified when a vehicle was approaching became unjustified seconds later once the vehicle had passed. The Fourth Circuit held that each

temporal phase of force must be separately assessed, and a jury could find the later shots unconstitutional even though the initial shots were reasonable.

Zion v. County of Orange (9th Cir. 2017) addresses edged weapons directly: terminating the threat is not the same as terminating the person. A wounded subject on the ground holding a knife may no longer present an immediate threat even while remaining alive and conscious. The threat geometry changes when someone is on the ground, movement capacity is impaired, and the weapon's reach is limited.

The stopping question involves perception lag. An officer does not stop firing at the exact millisecond circumstances change; the change must be perceived, its significance understood, and the response physically inhibited. *Spencer v. Glaser* (4th Cir. 2026) demonstrates the other direction: a subject who fell and dropped a knife then attempted to rise and move toward the officer twelve seconds later; the prior armed advance remained relevant to how a reasonable officer could interpret that renewed movement. Reassessment operates in both directions.

Weapon Possession Without Immediate Threat

Possessing an edged weapon does not automatically establish that lethal force is justified. A person standing still, contained, not advancing, not threatening others, and at sufficient distance may be holding a knife without presenting an immediate threat sufficient to justify shooting. Relevant behavior includes whether the person is attacking, advancing, threatening another person, raising or directing the weapon, attempting to gain access to a victim, or creating a threat that cannot be addressed through time, distance, or available alternatives.

The existence of a knife means the threat can develop rapidly. It does not mean the threat is already present at the level that authorizes lethal force.

Fleeing Persons

A person who is fleeing does not automatically lose the protection of *Garner*. Deadly force against a fleeing suspect requires probable cause that the person poses a significant threat of death or serious physical injury. A person fleeing with a knife – who is not actively attacking, has not recently attacked, and is not threatening others – may be difficult to justify shooting solely to prevent escape, absent evidence of a significant ongoing threat.

Policy Implications

1. Train threat assessment as distinct from weapon identification. Officers who associate "knife present" with "lethal force authorized" have collapsed a multi-factor analysis into a binary. The behavioral

question – what the person is doing with the weapon, relative to whom, at what distance and speed – is the constitutional question.

2. Document the threat specifically. Useful force reports describe what the person was doing, not just what they had. "Subject advanced with knife raised while closing distance at approximately [n] feet" is an articulable threat. "Subject was armed" is not.
3. Train the start and stop of force as connected skills. Officers who are trained on when to use lethal force but not on when to stop are missing half the analysis. Reassessment after the first shot, during a pause, or when a subject falls should be an explicit training element.
4. Policy can require more than the constitutional floor. Many modern use-of-force policies – including DOJ's department-wide policy – require that lethal force be necessary and that no reasonably effective, safe, and feasible alternative exists. These are policy standards, not categorical Fourth Amendment rules, but training should be built around the policy, not merely the constitutional minimum.

HOW TO CITE

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