Commands and Opportunity to Comply

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What It Is

A police command creates a lawful expectation but does not automatically authorize force the moment compliance is not instantaneous. Federal courts examine whether the person had a realistic opportunity and actual ability to comply before force was used. That inquiry is contextual – there is no fixed constitutional waiting period – but where force is justified primarily as a response to noncompliance, the amount of time and practical capacity the person had to comply can become central to whether the force was objectively reasonable under *Graham v. Connor*.

Failure to Comply Instantly Is Not Active Resistance

The Ninth Circuit stated the core principle clearly in *Nelson v. City of Davis* (2012): failure to fully or immediately comply with an officer's orders does not, by itself, rise to the level of active resistance or justify non-trivial force.

Courts distinguish among several states that are not constitutionally equivalent:

- Active violent resistance – physically attacking, struggling, or threatening force
- Active nonviolent resistance – physically opposing control without threatening force
- Passive resistance – going limp, refusing to stand, declining to move
- Delayed compliance – beginning to perform the command slowly
- Attempted compliance – moving toward compliance when force is used
- Inability to comply – physically or cognitively unable to perform the command

Only the first two consistently support significant force. Passive resistance, delayed compliance, and attempted compliance carry less weight.

The Beginning-to-Comply Rule

In *Bagley v. Guillen* (5th Cir. 2024), the court addressed an officer who deployed a TASER while a subject was exiting a vehicle and turning toward it as directed. Video permitted the inference that the subject had begun complying when force was used. The Fifth Circuit stated a broadly applicable principle: force may sometimes be reasonable when a person refuses lawful commands, but not after that person has begun to comply. Compliance in progress changes the analysis.

Physical Inability Is Not Resistance

A command cannot support force merely because it was not completed if the person was physically unable to perform it.

In *Roosevelt-Hennix v. Prickett* (10th Cir. 2013), the plaintiff alleged a pre-existing back injury prevented her from moving her legs as ordered. The Tenth Circuit recognized that a person who is unable to comply with police commands is not resisting merely because the command is not completed.

This principle extends to officer-created inability. In *Krueger v. Phillips* (10th Cir. 2025), deputies held Krueger down with his hands pinned underneath his body, ordered him to show his hands, and used a TASER while he asked what they wanted him to do. The court held that a reasonable jury could find he was not actively resisting because the officers' own physical restraint made completing the command impossible. Ordering a movement while physically preventing it does not create actionable noncompliance.

Force Can Destroy the Ability to Comply

Prior force – including CEW deployment, chemical agents, physical takedowns, and prone restraint – can temporarily eliminate or impair a person's ability to follow subsequent commands.

In *Phelps v. City of Saginaw* (6th Cir. 2026), the court held that a jury could attribute the subject's movement to the effects of the TASER itself and that officers had not given him sufficient time to recover and comply before additional deployments. Phelps said he could not move and was promptly tased again. Movement caused by force already applied should not be classified as continued resistance, and an officer cannot demand immediate motor compliance from a person whose capacity has just been disrupted.

CEW Use and the "Drop the Knife" Problem

CEW deployment in probe mode is designed to produce neuromuscular incapacitation (NMI) – electrical interference with voluntary motor control. This creates a specific problem in edged-weapon encounters.

If an officer deploys a CEW against a person holding a knife and then immediately commands "Drop the knife," the subject may have little or no voluntary control over the affected muscles during the active electrical cycle. Failure to release the knife during that interval can reflect:

- Involuntary muscular contraction from the electrical current
- Inability to coordinate the hand or arm
- Partial-body NMI depending on probe placement and spread
- Transient motor impairment continuing into early recovery

A CEW exposure does not guarantee that the hand will open. Experimental research shows incapacitation is heavily dependent on probe location and spread; anterior exposures do not reliably produce complete upper-extremity incapacitation. Knife retention during NMI should therefore not be coded as active resistance or voluntary refusal without separate evidence that the subject had sufficient voluntary motor control at that moment.

Three facts must be kept analytically separate in CEW-plus-knife situations: 1. Weapon possession – is the knife still physically in the hand? 2. Voluntary motor capacity – can the subject actually release or reposition the hand? 3. Behavioral intent – is there evidence of deliberate refusal or renewed attack?

These are not the same variable. Possession can persist where voluntary control is substantially impaired.

Commands Must Be Interpretable

A person must have a reasonable ability to understand what is required. Compliance analysis is complicated where officers give:

- Simultaneous commands from multiple officers
- Rapidly changing or conflicting instructions ("Don't move" followed immediately by "Get on the ground")
- Commands incompatible with the person's current position or prior restraint
- Instructions the subject could not hear or cognitively process

There is no categorical rule that conflicting commands invalidate force, but they weaken the inference that incomplete performance was deliberate resistance.

Disability and the Ability to Hear and Understand

Noncompliance may reflect hearing impairment, cognitive or intellectual disability, acute psychosis, intoxication, extreme fear, or language difference. The Fourth Amendment remains objective – these conditions do not automatically eliminate the government's interest in gaining control – but where officers know or should recognize that a person cannot process the command, apparent noncompliance carries less weight as evidence of active resistance. This overlaps with ADA and Section 504 reasonable-accommodation doctrine.

Warning Before Force

A force warning and a command are distinct. "Drop the knife" is a command; "Drop the knife or I will shoot" is a warning. Whether officers warned the subject that noncompliance would result in force can be relevant to Fourth Amendment reasonableness where a warning was feasible (*Nehad v. Browder*, 9th Cir. 2019). There is

no categorical constitutional requirement to warn before every use of force – an active knife assault may leave no safe opportunity – but a warning can shift the analysis where the encounter allows time for one.

How Much Time Is Enough

No fixed number of seconds is required by the Constitution. Reasonable opportunity depends on threat level, distance, command complexity, whether the subject has begun to comply, whether prior force impairs movement, and what harm waiting would create.

At one extreme: if a person is actively stabbing someone, officers do not need to issue commands and then wait to see whether they will be obeyed. At the other: where the subject poses no immediate threat, is contained, and is beginning to follow instructions, a very brief interval before force can be substantially harder to justify.

Prolonged repeated noncompliance cuts the other way. The Eleventh Circuit's *Charles v. Johnson* involved twenty-one commands, nine TASER warnings, and approximately five minutes of active resistance before deployment – a record supporting force. The legal significance came from the combined facts, not the command count alone.

Knives and Threat Geometry

Commands in knife encounters must be read against the threat geometry.

Stationary knife holder: A person who holds a knife, remains stationary, is separated from officers, and threatens only themselves is not advancing – noncompliance with a drop command can be relevant but does not automatically establish an immediate assault. Time, containment, disability, and communication remain relevant.

Advancing knife holder: Where the person is closing distance, the window available to wait for compliance can narrow rapidly. A drop command does not require officers to delay until striking distance is reached.

Contradictory commands in knife cases: "Drop the knife" followed immediately by "Don't move" creates genuine ambiguity about what the subject is permitted to do with the hand holding the weapon. Incomplete performance is harder to characterize as defiance where officers created the ambiguity.

What This Body of Law Does Not Establish

- Every command must be followed by a fixed waiting period
- Officers must warn before every use of force
- Failure to obey commands can never support force
- Officers must wait during an active deadly assault

- Mental illness or disability prevents police from using necessary force
- A person must be fully compliant before officers may use any force
- Every hesitation is constitutionally protected
- Every contradictory command creates a Fourth Amendment violation

Policy Implications

1. Give clear, sequenced, non-conflicting commands where safety permits. Identify which officer is directing the subject. Avoid simultaneous contradictory instructions. The reasonableness of relying on noncompliance is weakened where the instructions themselves were unclear.
2. Allow sufficient processing and movement time where the threat permits it. A person receiving a complex command for the first time needs more time than an officer who has issued it a hundred times. The analysis should reflect the time actually needed, not the officer's internal expectation.
3. Recognize when prior force has destroyed the ability to comply. If a CEW deployment produced NMI, a command to "drop the knife" issued mid-cycle does not create voluntary noncompliance. If a takedown pinned someone's hands, a command to show hands does not create voluntary resistance. The analysis should ask whether the person could have complied, not just whether they did.
4. Separate command from warning in documentation. Use-of-force reports should record: the exact wording of commands, whether a force warning was given and what it said, elapsed time from command to force, and compliance status at the moment force was used (not attempting, beginning, attempted but unable, and so on).
5. Code compliance as a sequence, not a binary. "Noncompliant" collapses states that have different constitutional weight. Preferred coding separates command, opportunity and elapsed time, physical capacity, compliance status when force was used, and whether compliance had begun.

HOW TO CITE

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