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LDF Submits Response Brief in Qualified Immunity Excessive Force Case Involving Taser and Pepper-Spray Deployment

Today, the NAACP Legal Defense and Educational Fund, Inc. (LDF) and Rights Behind Bars submitted an appellate response brief on behalf of David Getzen, who was twice electrocuted with a taser and pepper-sprayed by Deputy Joseph Long of the Yavapai County Sheriff's Office.

Mr. Getzen was sitting down on the bathroom floor of the apartment where he was staying, with his hands behind his neck. Mr. Getzen was unarmed and was not suspected of any serious crime. Deputy Long and his partner entered the bathroom with weapons drawn. After Mr. Getzen did not respond to conflicting commands, Deputy Long tased Mr. Getzen in dart mode and then in drive-stun mode and pepper sprayed him twice, causing Mr. Getzen to slump to the floor and rendering him immobile. Deputy Long then dragged Mr. Getzen out of the bathroom by his feet, injuring Mr. Getzen's head by knocking it on a doorframe along the way. Deputy Long's use of pepper spray blinded Mr. Getzen for 16 hours. The multiple taser deployments left Mr. Getzen with residual breathing problems as well as a heart injury.

Mr. Getzen filed a pro se lawsuit against Deputy Long, alleging violation of his right to be free from excessive force. Deputy Long sought summary judgement and argued he was entitled to qualified immunity because he used minimal force by pepper-spraying and tasing Mr. Getzen and because no clearly established law indicated that this level of force was a constitutional violation. The district court denied Deputy Long qualified immunity, holding that there was extensive case law prohibiting the use of such force on a passive individual. Deputy Long then filed an interlocutory appeal, challenging the district court's decision.

LDF's brief argues that the district court was correct to deny Deputy Long's motion for summary judgment on qualified immunity grounds. Mr. Getzen was unarmed, was not suspected of a serious crime, did not physically resist, and did not pose a threat to officer safety. Officers gave Mr. Getzen conflicting commands and then immediately deployed

significant force. Any reasonable officer would have known that the use of significant force in these circumstances was unlawful.

“Qualified immunity cannot and should not shield Deputy Long, or any officer, who twice tases and pepper-sprays a person for simply not responding to conflicting commands. It should be clear to anyone that this is unreasonable and unjustifiable force—which Ninth Circuit case law has expressly recognized,” said LDF Assistant Counsel Ashok Chandran. “Any officer who shows such alarming disregard for the law that they believe it is appropriate to assault a person for simply sitting down with their hands behind their neck and not speaking must be held accountable.”

“Qualified immunity is not an absolute shield,” said Oren Nimni, Litigation Director of Rights Behind Bars. “Here, where Deputy Long’s actions were plainly excessive and unnecessary, there must be accountability.”

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

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