



Forging a New Legacy

Homeland Security Investigations

Fourth Amendment

ICE HSI Special Agent Training

ICE Academy

Homeland Security Investigations (HSI)

Working within the Constitution

- The Constitution clearly limits the manner in which law enforcement may go about collecting evidence for use in criminal prosecutions Failure to comply with the Constitutional limitations will result in a variety of sanctions

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Terminal Performance Objective

Given a set of scenarios, demonstrate how to analyze Fourth Amendment search and seizure issues in the field per the United States Constitution and Fourth Amendment law.

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Enabling Performance Objectives

1. Define seizure and search. Examine the Fourth Amendment's General Rule. Explain the Fourth Amendment's Warrant Exceptions. Describe the Fourth Amendment's Probable Cause Exceptions. Apply Agency Policies and Directives to Fourth Amendment seizures and searches (including Use of Race Guidelines).

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Review of the Past

Sanctions that may result from failure to properly
comply with the Fourth Amendment: Exclusionary
Rule Fruit of the Poisonous Tree Employment
Consequences Personal Lawsuit Criminal
Prosecution

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Investigative Phases

(b)(5), (b)(7)(E)

Investigative Phases, cont'd

(b)(5); (b)(7)(E)

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Agenda

- Seizures and searches
Fourth Amendment's general rule requirements
Fourth Amendment's warrant and probable cause exceptions
Agency policies and directives
Practice activity

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Fourth Amendment

Generally regulates the government's collection of physical evidence The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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Seizure of an Object

- Government interference with a possessory right/interest
Government: All government personnel and anyone who is acting under the direction of, or with the help of, government
Interference: Must be meaningful
Possessory right/interest: When interference serves to affect the individual's ability to control, use or benefit from the object



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Seizure of a Person

- Government interference with a person's freedom of movement under circumstances where a reasonable person would not feel free to leave or to end the encounter with the government agent. Ultimate Question: (b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

?Consensual encounters: Government interferences with people, during which a reasonable person in such a position would feel free to leave or end the encounter at a time and in a manner of their choosing.

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Types of Seizures & Requirements

(b)(5); (b)(7)(E)

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Search

- Defined by two “search” tests: Katz REP Test Jones Trespass Test
Courts conclude Fourth Amendment Search when:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

SA “trespasses upon” a protected area for a specific purpose



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Three Types of Intrusion



- Physical intrusion Example:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Auditory intrusion

Example:

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

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Reasonable Expectation of Privacy (REP)

- Any situation in which a person has...A subjective expectation of privacy (i.e., does the person think that the situation is private) That is objectively reasonable (i.e., would society agree that the person has legitimate reasons to expect privacy under the existing circumstances)

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SA Trespasses Upon a Protected Area for a Specific Purpose

- Trespasses Upon SA physically intrudes, or SA uses a tool to physically intrude Protected Area:
“persons, houses, papers, and effects”
House includes the home’s curtilage
Effects include objects such as cars, sheds, etc.
Specific Purpose To gain information, or An attempt to find something

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Two Tests to Determine Search

(b)(5); (b)(7)(E)

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Privacy

(b)(5); (b)(7)(E)



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Demonstration

(b)(5); (b)(7)(E)

See Student Guide p. 9

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Fourth Amendment's General Rule

A search or seizure is reasonable if:

- Conducted with a warrant issued by a neutral/detached magistrate, Supported by Probable Cause, and Executed in a reasonable manner

Option 1: Comply with General Rule Requirements
Warrant
Probable Cause
Act in Reasonable Fashion

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Federal Warrants

**May be issued for: Evidence of a crime
Contraband, fruits of crime, or other items illegally possessed
Property designed for use, intended for use, or used in committing a crime
A person to be arrested or a person who is unlawfully restrained**

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Federal Warrants, cont'd

- Types of warrants identified in Rule 41: Seizure/Arrest Search Warrant Warrant Seeking Electronically Stored Information Warrant for a Tracking Device Parts of a warrant: Actual warrant Affidavit of probable cause Inventory/receipt

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Obtaining a Federal Warrant

(b)(5); (b)(7)(E)

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Executing a Federal Warrant

(b)(5); (b)(7)(E)

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Reasonableness of Execution

- Execution of warrant regulated by Fourth Amendment's reasonableness standard SA's actions must be appropriate for situation Offending the reasonableness standard will result in suppression of evidence obtained and arrests made Policies and directives can impact reasonableness of search or seizure Warrant to search for contraband founded on probable cause implicitly carries limited authority to detain occupants of premises while proper search conducted



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Inventory/Receipt

- Record of what was seized during the execution of the Search Warrant Must be completed and original must be returned to the magistrate judge

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Demonstration

(b)(5); (b)(7)(E)

See Student Guide p. 13



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Warrant Exceptions

- Four court-created Warrant Exceptions: Arrest in public Plain view seizure Mobile conveyance doctrine Exigent circumstances

(b)(5); (b)(7)(E)

Option 2: Warrant Exceptions
Warrant Probable Cause Act in Reasonable Fashion

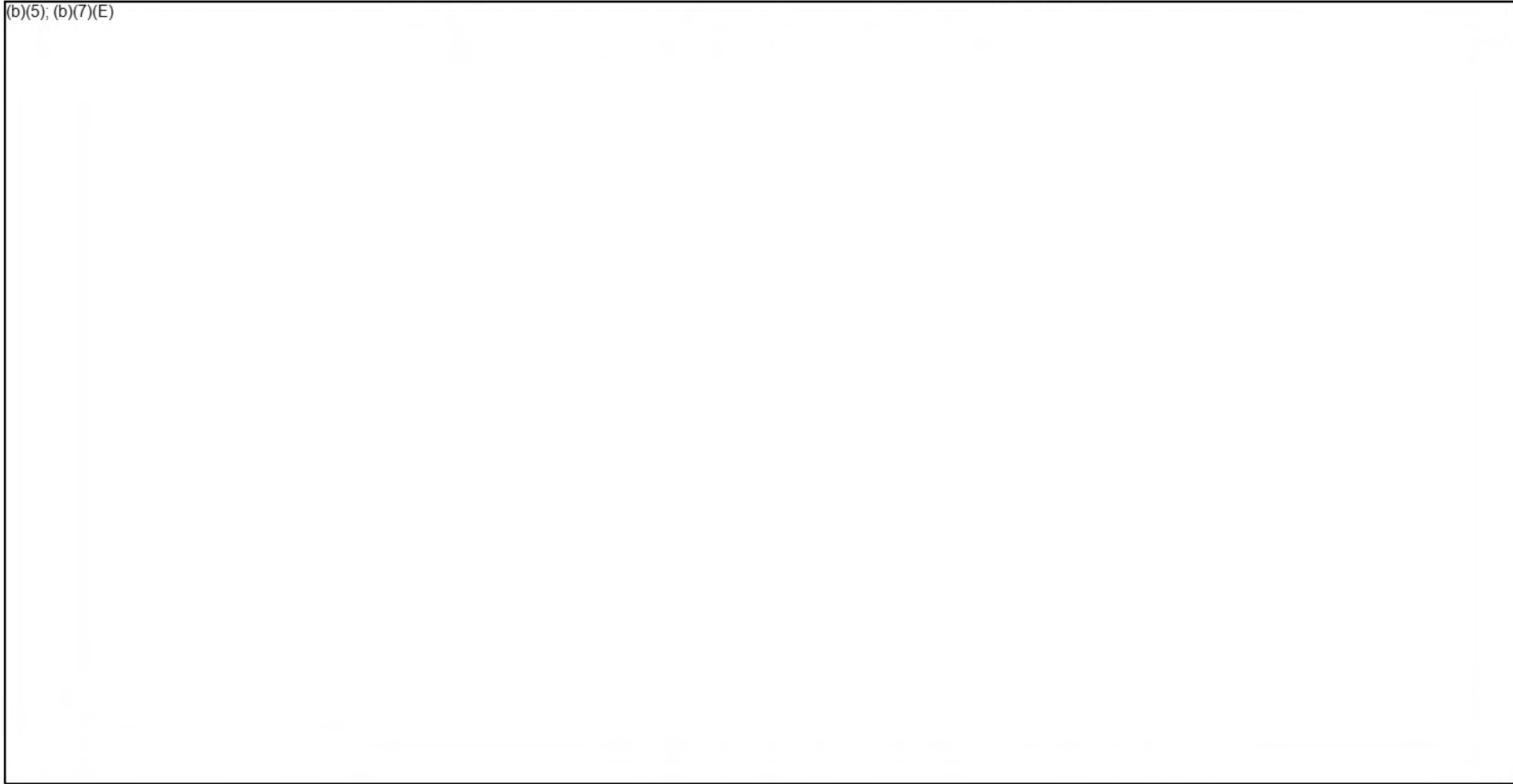
(b)(5); (b)(7)(E)



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Rules for Warrant Exceptions

(b)(5); (b)(7)(E)



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Demonstration

(b)(5); (b)(7)(E)

See Student Guide p. 15

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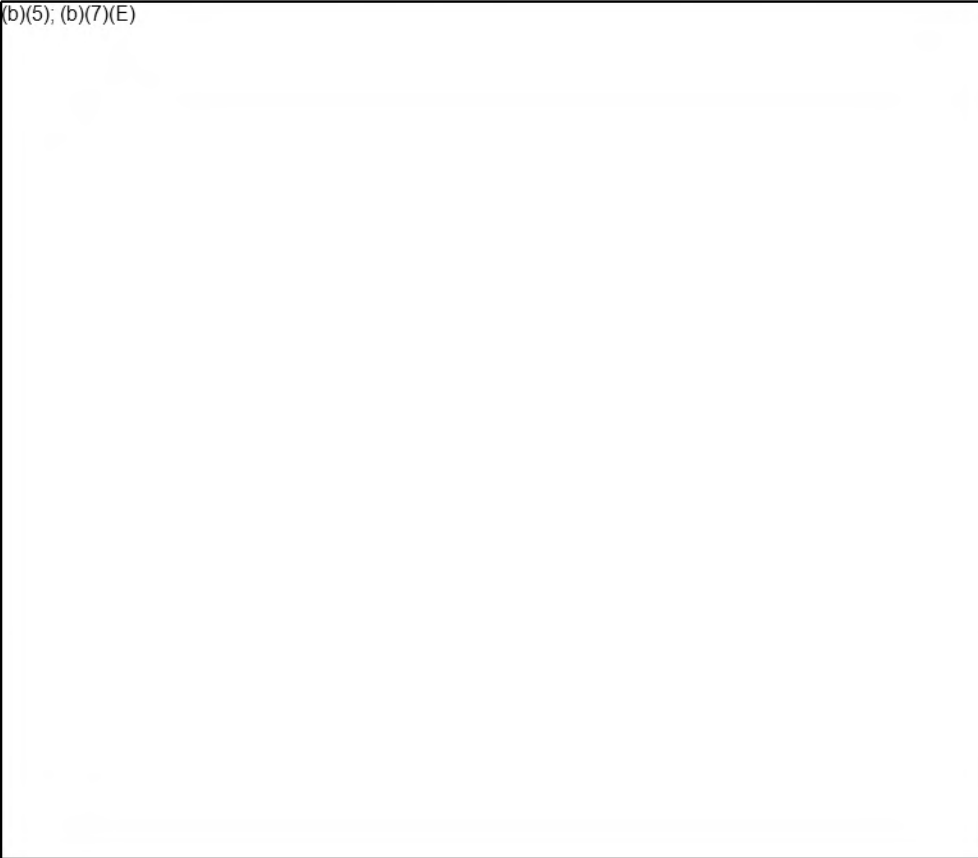
Warrant and Probable Cause Exceptions

- Eight court-created Warrant and Probable Cause Exceptions
Search Incident to Arrest
Consent
Investigative Detention/Terry Stop
Terry Frisk
Inventory Search
Protective Sweep
Administrative/Regulatory Search
Border Search Authority

Option 3: Warrant and PC Exceptions
~~Probable Cause Act in Reasonable Fashion~~

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Warrant and Probable Cause Exceptions, cont'd

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(b)(5); (b)(7)(E)

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Rules for Warrant Exceptions

(b)(5); (b)(7)(E)

See Student Guide p. 16

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Demonstration

(b)(5); (b)(7)(E)

See Student Guide p. 18

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First Amendment

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

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First Amendment, cont'd

- Free Speech – Law enforcement activity must not diminish a person's ability to communicate a message in words or deeds
- Religious Practice – Law enforcement activity that impacts religious practice must be engaged in for an authorized purpose and take into consideration the proper time, place, and manner of execution
- Peaceful Assembly – Law enforcement activity must recognize the breadth of this protection
- Laird v. Tatum Rule
- Certain investigative activities allowed
- Certain investigative activities disallowed
- Must use least intrusive method

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Guidance Regarding Use of Race by Federal Law Enforcement Agencies

- Based on Department of Justice (DOJ) Guidance DHS policy prohibits consideration of race or ethnicity in daily law enforcement activities in all but the most exceptional instances Guided by two standards

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

HOMEWORK: Read the DOJ guidance at TDR 4thA-14

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DHS Use of Force Policy

- See DHS Use of Force Policy at SDRs 4th A-19, 4th A-20, 4th A-21-1, 4th A-21-8 See DHS Use of Deadly Force Policy at SDR 4th A-22 Subject must pose imminent threat of death or serious physical injury Firearms cannot be used solely to disable moving vehicle Warning shots not permitted unless specific maritime or aviation law enforcement operation

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HSI Encounters with Diplomats

- Diplomatic Immunity United States legally bound to ensure that privileges and immunities embodied in the VCDR are respected and followed Properly designated diplomatic agents and family members may not be handcuffed, arrested, or detained U.S. extends immunity to particular individuals Consular Posts International Organizations personnel typically enjoy only official acts immunities as provided by 22 U.S.C. § 2881

See Student Guide p. 23

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Demonstration

(b)(5); (b)(7)(E)

See Student Guide p. 25

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Practice

(b)(5); (b)(7)(E)

See Student Guide p. 26

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Practice – Q 1, cont'd

(b)(5); (b)(7)(E)

See Student Guide p. 26

Homeland Security Investigations (HSI)

Practice, cont'd

(b)(5); (b)(7)(E)

See Student Guide p. 26



Homeland Security Investigations (HSI)

Practice, cont'd

(b)(5); (b)(7)(E)

See Student Guide p. 26

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Practice – Q3 cont'd

(b)(5); (b)(7)(E)

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Practice, cont'd

(b)(5), (b)(7)(E)

See Student Guide p. 27

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Practice – Q4 cont'd

(b)(5); (b)(7)(E)

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Practice, cont'd

(b)(5); (b)(7)(E)

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Practice – Q5 cont'd

(b)(5); (b)(7)(E)

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Practice, cont'd

(b)(5); (b)(7)(E)

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Practice – Q6 cont'd

(b)(5); (b)(7)(E)

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Summary

- Seizure and search Fourth Amendment's general rule
Warrant exceptions
Warrant and probable cause exceptions
Policies, directives, and constitutional limitations

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Looking Ahead

- Previous lessons addressed the development of the Investigative PlanNext lesson will provide more information on evidence collection



Protecting the Borders Against Illicit Trade, Travel, and Finance