Homeland Security Investigations

Forging a New Legacy

Homeland Security Investigations

Fourth Amendment

ICE HSI Special Agent Training

ICE Academy
• 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.
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.
Enabling Performance Objectives

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
Homeland Security Investigations (HSI)

Investigative Phases, cont’d

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

• Seizures and searches
  Fourth Amendment’s
  general rule requirements
  Fourth Amendment’s
  warrant and probable cause exceptions
  Agency policies and directives
  Practice activity
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.
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
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:

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.
Homeland Security Investigations (HSI)

Types of Seizures & Requirements

(b)(5) (b)(7)(E)
Search

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

  SA “trespasses upon” a protected area for a specific purpose
Three Types of Intrusion

- Physical intrusion

Example:

- Auditory intrusion

Example:
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)
SA Trespasses Upon a Protected Area for a Specific Purpose

- Trespasses Upon SA physically intrudes, or SA uses a tool to physically intrude into the 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.
Two Tests to Determine Search

(b)(5), (b)(7)(E)
Homeland Security Investigations (HSI)

Privacy

See Student Guide p. 8
Demonstration

See Student Guide p. 9
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
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.
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
Obtaining a Federal Warrant
Executing a Federal Warrant
Reasonableness of Execution

- Execution of warrant regulated by Fourth Amendment’s reasonableness standard. SA’s actions must be appropriate for the 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.
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
Demonstration

See Student Guide p. 13
Warrant Exceptions

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

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

See Student Guide p. 14
Demonstration

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

See Student Guide p. 15
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
- Act in Reasonable Fashion
Warrant and Probable Cause Exceptions, cont’d

(b)(5), (b)(7)(E)
Rules for Warrant Exceptions

See Student Guide p. 16
Demonstration

See Student Guide p. 18
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.
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
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.

HOMEWORK: Read the DOJ guidance at TDR 4thA-14
Homeland Security Investigations (HSI)

DHS Use of Force Policy

- 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
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
<table>
<thead>
<tr>
<th>Demonstration</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)(5), (b)(7)(E)</td>
</tr>
</tbody>
</table>

See Student Guide p. 25
Homeland Security Investigations (HSI)

Practice

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

See Student Guide p. 26
Practice – Q 1, cont’d

See Student Guide p. 26
Practice, cont’d

See Student Guide p. 26
Practice, cont’d

See Student Guide p. 26
Practice, cont’d

See Student Guide p. 27
Practice – Q4 cont’d

See Student Guide p. 27
Practice, cont’d

See Student Guide p. 27
Practice – Q5 cont’d

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

See Student Guide p. 27
Practice, cont’d

See Student Guide p. 27
Practice – Q6 cont’d

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

See Student Guide p. 28
Summary

• Seizure and search Fourth Amendment’s general rule
  Warrant exceptions
  Warrant and probable cause exceptions
  Policies, directives, and constitutional limitations
Looking Ahead

• Previous lessons addressed the development of the Investigative Plan. Next lesson will provide more information on evidence collection.
Protecting the Borders Against Illicit Trade, Travel, and Finance