



**Forging a New Legacy**

# **Homeland Security Investigations**

**Fourth Amendment: Border Search Exception 1**

**ICE HSI Special Agent Training**

**ICE Academy**

# Homeland Security Investigations (HSI)

## Border Search Exception

By understanding your authority, you can ensure your searches and seizures are legal and correctly performed, which will ultimately lead to a successful criminal prosecution.

(b)(6); (b)(7)(C)

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## Review of the Past

In the Fourth Amendment lesson, you learned: How to apply the Fourth Amendment's general rule requirements Agency policy to determine if a search or seizure is lawful Warrant and probable cause exceptions that can be used in searches and seizures

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## Advances Organizer

- What are the three components that must be met under the general rule requirements? What are the warrant exceptions that are available to you? What are the probable cause exceptions you may use?

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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

- Three elements of a lawful border search  
Application of the Functional Equivalent of the Border (FEB) and Extended Border Rules  
Practice activity

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## Terminal Performance Objective

Given past case information or scenarios at a border or its equivalent, determine the legality of a search/seizure and what can be searched/seized; in accordance with the Border Search Exception outlined by law, case law, and policy.



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## Enabling Performance Objectives

1. Identify the relationship between the Fourth Amendment and border search authority, and explain the border search general rule. Explain and apply the Functional Equivalent of the Border (in an inbound setting) authority. Explain and apply the Functional Equivalent of the Border (in an outbound setting) authority. Explain and apply the Extended Border Search authority. Determine when and how to border search people. Determine, for the border search of an object, the level of suspicion required and any follow-up actions.

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## Fourth Amendment Analysis

- The Fourth Amendment commands that searches and seizure be reasonable. What is reasonable depends on circumstances surrounding the search or seizure and the nature of the search or seizure itself. Permissibility of a particular law enforcement practice. Promotion of legitimate governmental interests. Reasonableness.

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## Border Search General Rule

- Conducted by an authorized agent Searching for people and objects for merchandise and evidence of merchandise At the border Land border Sea border Air border

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## Border Search Scope

Warrant Required?	Suspicion Required?	Exception Policy	Border Search Exception
(b)(5); (b)(7)(E)			

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## Demonstration

1.

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

**See Student Guide p. 9**

# Homeland Security Investigations (HSI)

## Demonstration, cont'd

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

**See Student Guide p. 9**



# Homeland Security Investigations (HSI)

## Demonstration (cont'd)

3.

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 9**

# Homeland Security Investigations (HSI)

## Demonstration (cont'd)

4.

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 9**





# Homeland Security Investigations (HSI)

## Demonstration (cont'd)

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

5

**See Student Guide p. 10**

# Homeland Security Investigations (HSI)

## Demonstration (cont'd)

6.

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 10**

# Homeland Security Investigations (HSI)

## Demonstration (cont'd)

7.

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 10**

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## Almeida-Sanchez v. US, 413 US 266 (1973)

Border searches may in certain circumstances take place not only at the border itself, but at its functional equivalents as well. Functional Equivalent of the Border (in an inbound setting) Functional Equivalent of the Border (in an outbound setting) Extended Border

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## FEB Inbound

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

**See Student Guide p. 11**

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## Preliminary Matters

- FEB is not a fixed location Reasonable Certainty Officer entitled to conduct routine questioning, Terry pat-downs, and frisks Person performing the search must be an authorized agent looking for merchandise

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## Example 1

1.

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

**See Student Guide p. 13**

# Homeland Security Investigations (HSI)

## Example 2

2.

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

See Student Guide p. 13



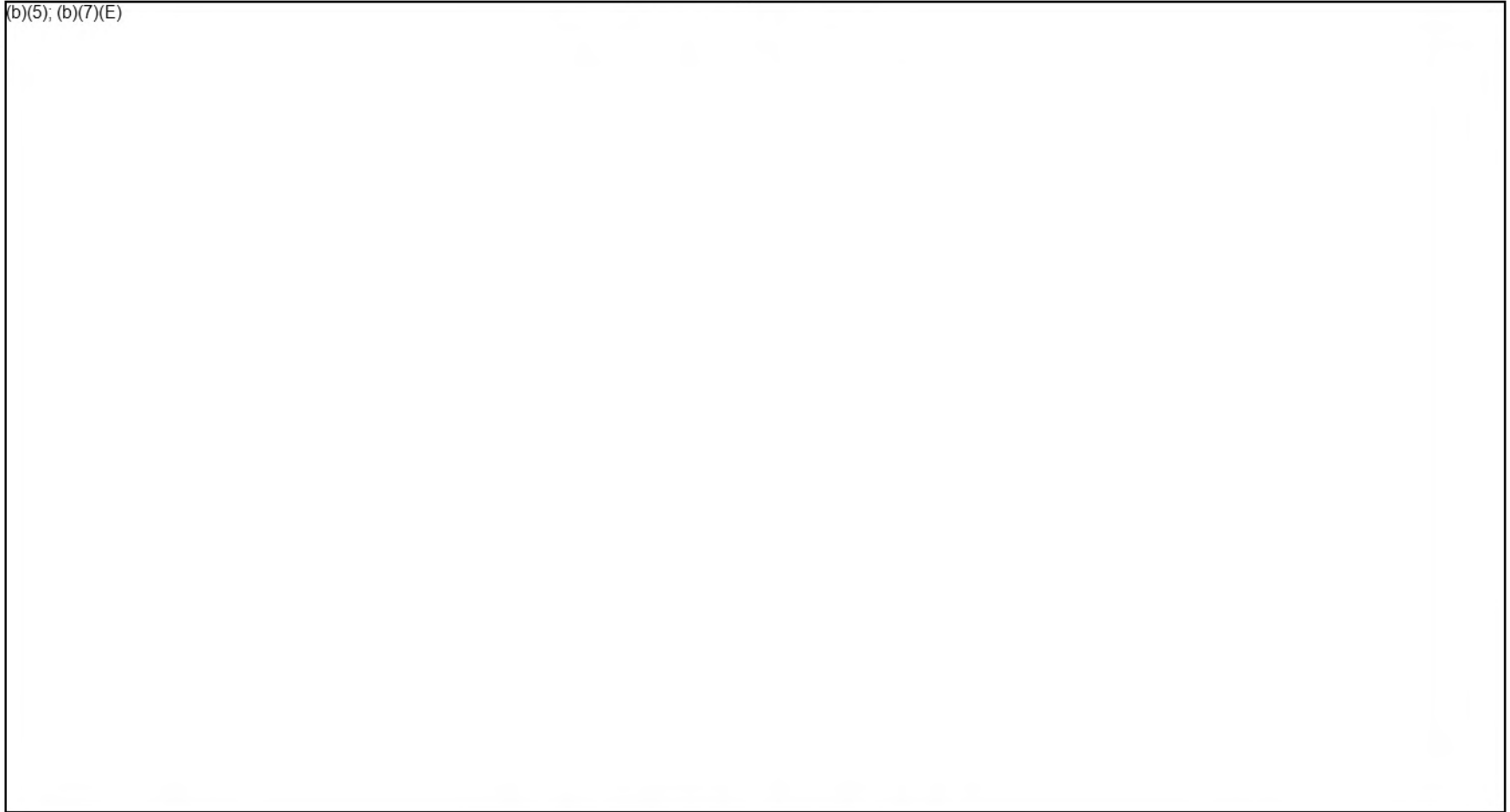


# Homeland Security Investigations (HSI)

## Example 3

3.

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



**See Student Guide p. 14**

# Homeland Security Investigations (HSI)

## Example 4

4.

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

**See Student Guide p. 16**

# Homeland Security Investigations (HSI)

## Example 5

5.

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

**See Student Guide p. 16**

# Homeland Security Investigations (HSI)

## Example 6

6.

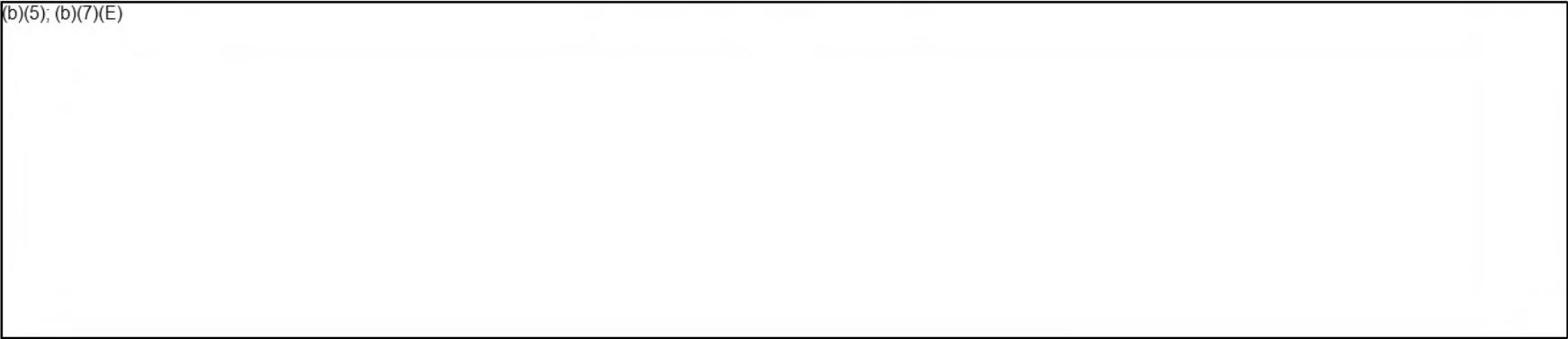
(b)(5); (b)(7)(E)

**See Student Guide p. 16**

# Homeland Security Investigations (HSI)

## Example 7

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



**See Student Guide p. 17**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Inbound Example

(b)(5), (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 17**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Inbound Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 18**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Inbound Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 19**



# Homeland Security Investigations (HSI)

## Demonstration – FEB Inbound Example

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

**See Student Guide p. 19**

# Homeland Security Investigations (HSI)

## FEB Outbound

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

**See Student Guide p. 21**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Outbound Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 22**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Outbound Example

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

**See Student Guide p. 23**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Outbound Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 23**

# Homeland Security Investigations (HSI)

## Demonstration – FEB Outbound Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 24**

# Homeland Security Investigations (HSI)

## Extended Border

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

**See Student Guide p. 25**



# Homeland Security Investigations (HSI)

## Example – Extended Border

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

**See Student Guide p. 26**



# Homeland Security Investigations (HSI)

## Example – Extended Border (cont'd)

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

**See Student Guide p. 27**

# Homeland Security Investigations (HSI)

## Example – Extended Border (cont'd)

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

**See Student Guide p. 27**

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## Extended Border, cont'd

- 19 U.S.C. § 1595(b) authorizes a “customs officer” (HSI SA) to enter the private lands and buildings of another, but not dwellings, to perform border searches and seizures Ninth-Circuit Caveat: (b)(5); (b)(7)(E)

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

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## Demonstration – Extended Border Search

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 28**

# Homeland Security Investigations (HSI)

## Demonstration – Extended Border Search

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 29**

# Homeland Security Investigations (HSI)

## 4<sup>th</sup> Amendment Analysis – Border Search People

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

# Homeland Security Investigations (HSI)

## 4<sup>th</sup> Amendment – Border Search People (cont'd)

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

# Homeland Security Investigations (HSI)

## Demonstration – Personal Search Example

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

**See Student Guide p. 34**



# Homeland Security Investigations (HSI)

## Demonstration – Personal Search Example

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

**See Student Guide p. 35**

# Homeland Security Investigations (HSI)

## Demonstration – Personal Search Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 36**

# Homeland Security Investigations (HSI)

## Demonstration – Personal Search Example

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

**See Student Guide p. 36**

# Homeland Security Investigations (HSI)

## 4<sup>th</sup> Amendment Analysis – Border Search Object

- Government agents may conduct a routine search at the international border or its functional equivalent without probable cause, a warrant, or any suspicion to justify the search. The degree of invasiveness or intrusiveness associated with any particular type of search determines whether or not that search qualifies as routine. – US v Braks, 842 F. 2d 509 (1st 1988).

# Homeland Security Investigations (HSI)

## Routine Searches of Items/Objects

Authorized with no warrants and zero suspicion  
Personal belongings and effects (See US v. Irving, 452 F.3d 110 (2nd Cir 2006)).  
Cargo and other commercial items  
Conveyances – cars, trucks, buses, planes, trains, vessels  
Use of technology – density busters, x-ray/VACIS, and radiation pagers

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## Non-routine Searches of Items/Objects

Authorized with no warrant but still require and reasonable suspicion  
Destructive searches – cutting, serious damage to or destroying an object  
Examples  
Use of drills/probes  
Cruise ship cabins/sleeper cabin  
trains/cargo ship cabin

# Homeland Security Investigations (HSI)

## Non-routine Searches of Items/Objects Example

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 38**

# Homeland Security Investigations (HSI)

## Border Search of Documents

• (b)(5); (b)(7)(E)



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## Demonstration – Border Searching Documents

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

**See Student Guide p. 43**

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## Border Search of Electronic Devices

- U.S. v. Cotterman, 709 F.3d 952 (9th Cir. 2013 en blanc) – Forensic examination of a computer requires reasonable suspicion  
U.S. v. Kolsuz, 890 F.3d 133 (4th Cir. 2018) HSI Legal Update – Border Search of Electronic – May 9, 2018  
U.S. Customs and Border Protection, CBP Directive No. 3340-09A, Border Search of Electronic Devices 5 (1-4-2018)  
Basic Search – without suspicion  
Advanced Search – with reasonable suspicion  
U.S. v. Carpenter. 138 S. Ct. 2206 (2018) – The Government’s acquisition of Carpenter’s cell site records was a Fourth Amendment search



# Homeland Security Investigations (HSI)

## Practice

1.

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

[Redacted content]

**See Student Guide p. 46**

# Homeland Security Investigations (HSI)

## Practice (cont'd)

2.

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

**See Student Guide p. 46**



# Homeland Security Investigations (HSI)

## Practice (cont'd)

3.

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

**See Student Guide p. 46**



# Homeland Security Investigations (HSI)

## Practice (cont'd)

4.

(b)(5); (b)(6); (b)(7)(C); (b)(7)(E)

**See Student Guide p. 46**

# Homeland Security Investigations (HSI)

## Practice (cont'd)

5.

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

**5. See Student Guide p. 47**

# Homeland Security Investigations (HSI)

## Practice (cont'd)

6.

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



**See Student Guide p. 47**



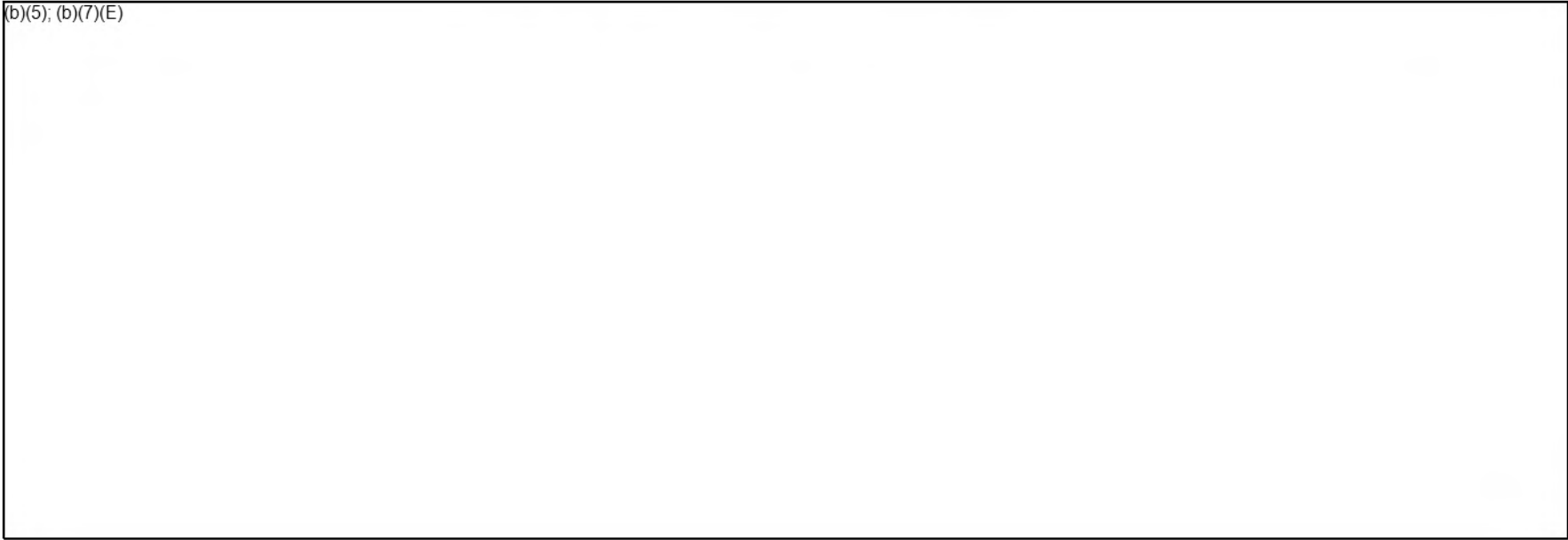


# Homeland Security Investigations (HSI)

## Practice (cont'd)

7.

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



**See Student Guide p. 47**



# Homeland Security Investigations (HSI)

## Practice (cont'd)

8.

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

[Redacted content]

**See Student Guide p. 48**

# Homeland Security Investigations (HSI)

## Practice (cont'd)

9.

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

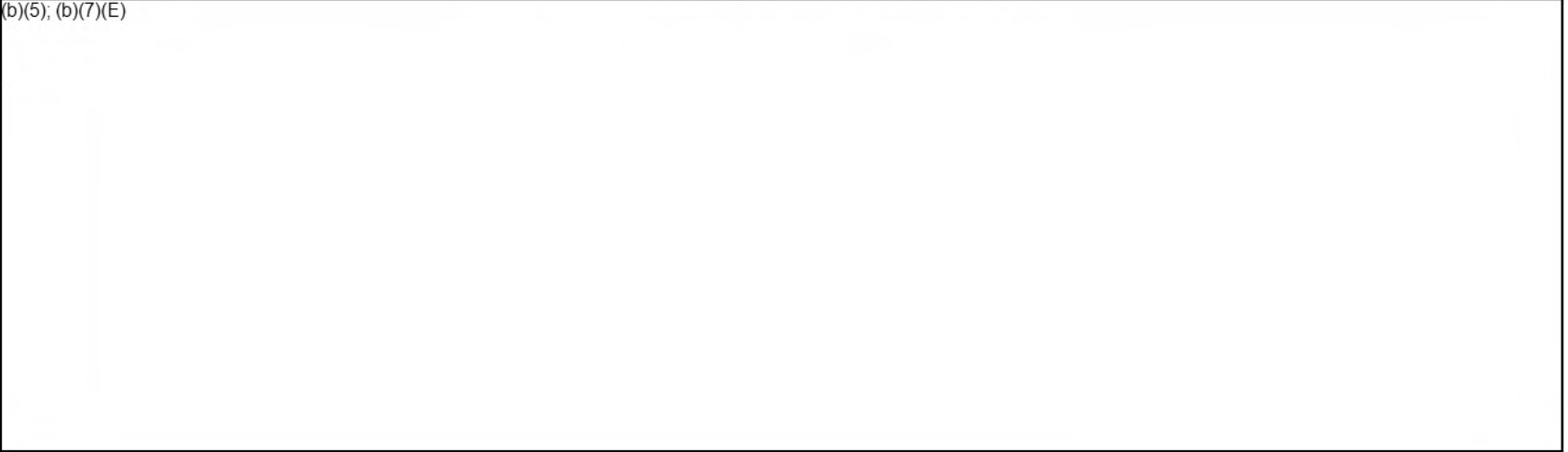
**See Student Guide p. 48**



# Homeland Security Investigations (HSI)

## Practice (cont'd)

10. (b)(5); (b)(7)(E)



**See Student Guide p. 48**

# Homeland Security Investigations (HSI)

## Summary

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



Protecting the Borders Against Illicit Trade, Travel, and Finance