

4th Amendment

‘U.S. Raid on an Immigrant Household Deepens
Anger and Mistrust’

(New York Times - Published: April 10, 2007)

Then her bedroom door burst open, she said, and armed men in blue bulletproof vests pushed in, demanding to know if she was hiding someone. They pressed on to the room where 4-year-old Carson was asleep with their mother. “They started screaming at my mom real bad,” Erica said. “I wasn’t crying, but I was, like, terrified.”

Road Map

- Limitations
- What Is Allowed
- Scenarios

Limitations

- Cannot enter residence without consent
- Cannot search residence without consent
- Must exit residence when consent withdrawn

General Advice to Aliens

- Carry a card stating:
 - I wish to remain silent
 - I want to speak to a lawyer
- Remember, consensual encounter
- Use verbal deflectors
 - I understand that, but...
 - I hear that, but...

Advice to Aliens at Home

- Do not answer immigration status questions
- Do not open the door, have agent slide warrant under the door
- Do not allow the agent inside
- Agent must have a warrant
- Have a family care plan

Advice to Aliens at Work

- Must have a warrant unless public place
- Make pact with co-workers to remain silent
- Make plan with the Union

What You Should Remember

- It Is A Consensual Encounter
- Use your verbal deflectors
 - I understand that, but...
 - I hear that, but...

What is the Fourth Amendment

- Fourth Amendment protects against unreasonable search and seizure
- Focuses on the action of the officer, not the suspects state of mind

Reasonable Expectation of Privacy

Residence v. Work Place v. Public Place

Protect Yourself

- Document what you do
- Articulate

Importance of Articulation

- Hunch not enough
- Need to articulate
 - Dumpster scenario
 - Loitering in hallway at scene of crime scenario
 - Anonymous tip regarding suicide
- After an incident, document each step

Surveillance

What is reasonable expectation of privacy

- May peer into house from location where general public allowed
- May use binoculars – caveat
- Flashlights
- May talk to neighbors
- May talk to employer

Surveillance

- Cars outside the residence
- Mail – outside of envelope, mail cover
- May call the residence - caveat
- Abandoned Property
 - Trash
 - Bags
- May trail through school zones

Surveillance

- Court records
- Internet face book
- GPS
 - When
 - Where
 - Why
- Subpoenas

What is Curtilage

- Higher expectation of privacy
 - intimate activity as extension of sanctity of the home
- Proximity to house
- Is it in the same enclosure as house
- What steps are take to protect the area

Entry into Curtilage

- Reasonable expectation of privacy, but does not mean you cannot enter
- Walkway leading to front door implies entry allowed
- Same route as any guest caller - pollster, salesman, mailman, neighbor
- Front yard less protected than back yard

Curtilage

- Open field not protected
- No Trespassing sign cannot change character of open field
- Some state laws differ, only apply to state law prosecutions
- Even if private property, must take steps to keep the public out

Scenarios

You have a warrant for John. You believe John is staying in a shed converted into a small living space in the back yard of his sister's house. The small yard is surrounded by an eight foot high fence. What is allowed?

- Officer climbs over the fence, into the yard?
- Climbs a stepladder he placed on the public sidewalk and peers over the fence?
- Obtains consent of the neighbor and looks in from the second story window?

Scenarios

- The shed is located 75 feet from the house in a wooded area of unfenced property:
 - Can you go look in through the windows?
 - Can you open the door and look in?

KNOCK AND TALK

Hours of Operation

- Daytime hours
- Daytime means 6:00 a.m to 10 p.m.
- Consider presence of small children
- May operate outside daytime hours IF
 - In writing
 - Prior approval
 - Must articulate why necessary

What would be an exception to the
6 a.m to 10 p.m. knock and talk requirement?

Threshold

- What is it?
- When may you cross it?

Consent to Enter Home

- Must be given by an adult resident with apparent authority
- Need to have a good faith belief that they are an adult resident with apparent authority
- No duty to investigate unless reason to question authority

Consent to Enter

- What's an adult?

Assume you know that the person is one of the following, do they have authority?

- Renter?
- Landlord?
- Employer in company housing?

Must Not Be Coercive

Refusal would not result in danger

- Gas leak
- Intruder through back window
- Police are evacuating the neighborhood

Scenarios

- Officers visit when Larry is gone and speak to Mary, who Larry hired to come in and clean every other week. Officers explain they want to come in and look around and Mary lets them in?
- What if Mary comes to clean every day?
- What if Mary comes to clean every day and has freedom to use the apartment whenever she likes?

Scenarios

- Janis, Larry's ex-girlfriend, calls and says, "I know Larry has an order of removal", and suggests that you come over and look around. She meets you at the apt, opens the door with her key (she didn't give it back when broke-up), and leads you into the living room. This ok?
- What if she moved out 2 days ago v. 2 months ago?

Scenarios

- Larry is gone, but the landlord, who lives on the first floor is there. Officer asks, “can we search the car”, which is parked in the driveway and Larry gave the landlord a key to move if its blocking other cars. Landlord opens the doors.
- Ask landlord for access to Larry’s apartment and Larry has given landlord permission to enter his apartment to turnoff appliance and lights

Scenarios

- Larry is home and officer asks Larry if he may look in the back of Larry's cargo van parked in the driveway. Larry says, "Sure, go ahead".
Where may you look
 - Through window?
 - Open doors? Back doors?
 - Boxes inside the cargo area?

Scenarios

Larry rents an apt on the 3rd floor of a house. He is the only occupant. Is the consent valid?

- 3 officers visit Larry and ask permission to search the apt. Larry is outwardly nervous and indecisive. One officer says, “sure won’t look good to your landlord if you refuse to let us look around”. Larry lets the officers in

What is Consent

- Facial Expression
- Body language
- Open door after prolonged knocking?
- Open door after discussion through window, “Here to arrest Jose”?
- Drunk?
- Ask, may we come in and steps back?

Ruses

- Knowing and intelligent does not apply to 4th amendment
- But, **MUST** be voluntary

Ruses

- Fake photo
- Van equipped with ladder, etc.
- Carrying box and clipboard
- Fake business emblem
- Fake business card
- UPS? DMV? OSHA?

What is Not Allowed

- No fictitious identification or license plates not properly issued by a governmental entity.
- No third-party “actors” because they effectively become an agent of the government
- No bank accounts or spending money as part of ruse

Other Considerations

- Prior approval before trying a new ruse
- Must identify self before making arrest
- What if co-tenant, may they assist with the ruse?

Scenario

- Knock on the door and tell David that he has won a television but it's downstairs and needs to come and sign for it?
- Tell a kid walking by to deliver a note?
- What else?

Dealing With Difficult People

- What's in it for them
 - Let us close it out
 - Don't want to make trouble for yourself
 - Do not make promises you cannot keep

Consent to Search

- Protective sweep?
 - Articulate – reasonable suspicion third party
- What may be searched?
- What is objectively reasonable
 - Other rooms?
 - Locked bedroom?
 - Dressers?

Identifying People Inside

- Fingerprinting?
- What if refuse?

- Lawful investigative detention.

An officer may detain any person encountered under circumstances that reasonably indicate the person has committed, is committing or is about to commit a crime, which requires that “any person so detained shall identify himself”

Search Incident to Arrest

- Immediate area for officer safety and to preserve evidence
- Underlying arrest must be lawful and precede the search

Plain view

- Original intrusion must be lawful
- Observed while the officer is confining activities to permissible scope
- Must be immediately apparent that item is contraband or evidence of crime

Scenarios

- Officers arrive at Bill's house with a warrant for his arrest. You know Bill's wife is also here illegally but does not have an order of removal. You enter the house when a co-tenant answers the door and lets you in. When you enter, Bill was on his way upstairs from the basement. You arrest Bill, then go downstairs to look for his wife. Allowed?
- What if have warrant for her too?

Scenarios

- Officer is placing Bill under arrest. While putting the handcuffs on in the living room, the officer looks into the kitchen and sees Bill's wife attempting to sneak out the door. May you stop her?

Scenarios

- You arrest Bill, put him in handcuffs and place him in the transport van. While placing Bill in the van, you see Bill's wife looking through the upstairs window. You have a warrant for her arrest. Can you go back in and arrest her?

Consent Withdrawn

- When can it be withdrawn?
- Who can withdraw?

Questioning Those Inside

- May ask for identification
- May place in handcuffs when necessary

Hot Pursuit

- May chase down street on foot
- May not enter residence
 - Not allowed on misdemeanor / administrative authority
 - Not allowed on felony unless evidence / weapon
- What can you do?

Vehicle Stop

- Vehicle stops are discouraged
- Must have FLETC training
- Must have sirens, lights and other local requirements

Assisting Other Law Enforcement

- Know your authority
- If it's your operation, do not have someone from another agency take lead
- When
 - Marshalls?
 - State police assisting you?

Scenarios

- The local sheriff's department is anxious to get rid of illegal aliens. The sheriff calls ICE and suggests that ICE set up what appeared to be a sobriety checkpoint. Marco was stopped at the checkpoint and was found to be a fugitive alien. The checkpoint was staffed by ICE agents, not traffic officers, and there was no sobriety equipment, but did have the outward requirements of a sobriety checkpoint. Allowed?

Scenarios

- Charleston police set up a drug interdiction operation where they would stop cars that were in any way in violation of the motor vehicle code (i.e. unlit license plate, chip in windshield). After a vehicle was stopped, ICE agents would approach and identify themselves as ICE agents and question the people in the vehicle. Allowed?

All Else Fails, What Can You Do?

- Criminal Search Warrant
- Detroit
- Requirements:
 - Issued by neutral and detached magistrate
 - Showing of probable cause, i.e. how know he's there
 - Describe with particularity the place to be searched and the person to be seized

Affidavit in Support of Search Warrant

(b)(6),(b)(7)(C)

states under oath as follows:

1. I am a Deportation Officer with the United States Immigration and Customs Enforcement Agency (ICE). I have been employed in that capacity for over six years and am assigned to the Fugitive Operations Unit. This affidavit is submitted in support of probable cause and is therefore a summary of the pertinent facts known to me.

2. On May 02, 2008 at approximately 9:45 p.m., Deportation Officers from the Detroit ICE Fugitive Operations Unit went to [REDACTED] Troy, MI, to execute a Deportation/ Removal Warrant for [REDACTED] is a native and citizen of Korea who was ordered Deported/Removed from the United States on April 30, 1985 by a United States Immigration Judge. [REDACTED] appealed this initial ruling of the Immigration Judge to the Board of Immigration Appeals on April 27, 1986, wherein the Board of Immigration Appeals dismissed the case on April 03, 1992. No further appeals have been filed in this case.

3. When Deportation Officers attempted contact at the above address on the evening of May 01, 2008, agents observed lights on inside the dwelling. An Asian male matching the description of (b)(6),(b)(7)(C) was observed by officers in the front window. Multiple attempts were made to contact the inhabitants of the dwelling by knocking and announcing “Police-Federal Agent” to no avail

4. During the investigation to locate (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) computer queries were made in “Accurint”, which is a data base of commercially available and Public Records. Those queries indicated that (b)(6),(b)(7)(C) Troy, MI is occupied by the subject since 1991. Those queries further indicated that (b)(6),(b)(7)(C) has a Michigan Drivers License and two vehicles registered in his name in the State of Michigan to that same address

5. Also, on May 1, 2008, officers contacted the leasing agent for (b)(6),(b)(7)(C) the complex where the dwelling is located, and she visually verified the subject (b)(6),(b)(7)(C) resides at the said dwelling. The leasing agent also checked the lease folder located in the leasing office and verified that (b)(6),(b)(7)(C) is the primary leas holder for the apartment located at (b)(6),(b)(7)(C) Troy, MI and is currently signed into a lease dated December 1, 2007 and expiring December 1, 2008. The maintenance worker, who lives two doors down, also visually verified (b)(6),(b)(7)(C) lives in the apartment.

6. The dwelling located at [REDACTED] Troy, MI has been under surveillance by ICE officers since the initial attempted contact with the subject at approximately 9:45 p.m., May 1, 2008. No persons have entered or departed the residence.

7. Based upon the foregoing facts, there is probable cause to conclude [REDACTED] a fugitive from Immigration and Customs Enforcement, is concealed within the dwelling located at [REDACTED], Troy, MI and is refusing to come out of the residence or allow officers to enter the residence. I further believe there is probable cause to conclude that [REDACTED] [REDACTED] is present in the United States in violation of Title 8 USC 1253, Willful Failure to Depart the United States under Lawful Order of Deportation/Removal.

Signature Page

Prep Your AUSA For a Warrant

- Show them samples ahead of time.
- Use samples approved by other AUSAs.
- Save requests for priority fugitives

Why the 4th Amendment Matters

- TRO's against Fugitive Operations
- Civil liability against officer
- DRO investigation
- Other

CONCLUSION

(b)(6),(b)(7)(C)

202-732-(b)(6),(b)(7)(C)