Fourth Amendment

FOURTH AMENDMENT: AN OVERVIEW

I. INTERESTS PROTECTED

The Fourth Amendment of the U.S. Constitution provides that "[t]he 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."

The ultimate goal of this provision is to protect people's right to privacy and freedom from unreasonable intrusions by the government. However, the Fourth Amendment does not guarantee protection from all searches and seizures, but only those done by the government and deemed unreasonable under the law.

To claim violation of Fourth Amendment as the basis for suppressing a relevant evidence, the court had long required that the claimant must prove that he himself was the victim of an invasion of privacy to have a valid standing to claim protection under the Fourth Amendment. However, the Supreme Court has departed from such requirement, issue of exclusion is to be determined solely upon a resolution of the substantive question whether the claimant's Fourth Amendment rights have been violated, which in turn requires that the claimant demonstrates a justifiable expectation of privacy, which was arbitrarily violated by the government.

In general, most warrantless searches of private premises are prohibited under the Fourth Amendment, unless specific exception applies. For instance, a warrantless search may be lawful, if an officer has asked and is given consent to search; if the search is incident to a lawful arrest; if there is probable cause to search and there is exigent circumstance calling for the warrantless search. Exigent circumstances exist in situations where a situation where people are in imminent danger, where evidence faces imminent destruction, or prior to a suspect's imminent escape.

On the other hand, warrantless search and seizure of properties are not illegal, if the objects being searched are in plain view. Further, warrantless seizure of abandoned property, or of properties on an open field do not violate Fourth Amendment, because it is considered that having expectation of privacy right to an abandoned property or to properties on an open field is not reasonable.
However, in some states, there are some exception to this limitation, where some state authorities have granted protection to open fields. States can always establish higher standards for searches and seizures protection than what is required by the Fourth Amendment, but states cannot allow conducts that violate the Fourth Amendment.

Where there was a violation of one's fourth amendment rights by federal officials,
A bivens action can be filed against federal law enforcement officials for damages, resulting from an unlawful search and seizure. Under the Bivens action, the claimant needs to prove that there has been a constitutional violation of the fourth amendment rights by federal officials acting under the color of law.

However, the protection under the Fourth Amendment can be waived if one voluntarily consents to or does not object to evidence collected during a warrantless search or seizure.

II. SEARCHES AND SEIZURES UNDER FOURTH AMENDMENT

The courts must determine what constitutes a search or seizure under the Fourth Amendment. If the conduct challenged does not fall within the Fourth Amendment, the individual will not enjoy protection under Fourth Amendment.

A. Search

A search under Fourth Amendment occurs when a governmental employee or agent of the government violates an individual's reasonable expectation of privacy.

Strip searches and visual body cavity searches, including anal or genital inspections, constitute reasonable searches under the Fourth Amendment when supported by probable cause and conducted in a reasonable manner.

A dog-sniff inspection is invalid under the Fourth Amendment if the the inspection violates a reasonable expectation of privacy. Electronic surveillance is also considered a search under the Fourth Amendment.

B. Seizure of a Person

A seizure of a person, within the meaning of the Fourth Amendment, occurs when the police's conduct would communicate to a reasonable person, taking into account the circumstances surrounding the encounter, that the person is not free to ignore the police presence and leave at his will.

Two elements must be present to constitute a seizure of a person. First, there must be a show of authority by the police officer. Presence of handcuffs or weapons, the use of forceful language, and physical contact are each strong indicators of authority. Second, the person being seized must submit to the authority. An individual who ignores the officer's request and walks away has not been seized for Fourth Amendment purposes.

An arrest warrant is preferred but not required to make a lawful arrest under the Fourth Amendment. A warrantless arrest may be justified where probable cause and urgent need are present prior to the arrest. Probable cause is present when the police officer has a reasonable belief in the guilt of the suspect based on the facts and information prior to the arrest. For instance, a warrantless arrest may be legitimate in situations where a police officer has a probable belief that a suspect has either committed a crime or is a threat to the public security. Also, a police officer might arrest a suspect to prevent the suspect's escape or to preserve evidence.
A warrantless arrest may be invalidated if the police officer fails to demonstrate exigent circumstances.

The ability to make warrantless arrests are commonly limited by statutes subject to the due process guaranty of the U.S. Constitution. A suspect arrested without a warrant is entitled to prompt judicial determination, usually within 48 hours.

There are investigatory stops that fall short of arrests, but nonetheless, they fall within Fourth Amendment protection. For instance, police officers can perform a terry stop or a traffic stop. Usually, these stops provide officers with less dominion and controlling power and impose less of an infringement of personal liberty for individual stopped. Investigatory stops must be temporary questioning for limited purposes and conducted in a manner necessary to fulfill the purpose.

An officer's reasonable suspicion is sufficient to justify brief stops and detentions. To determine if the officer has met the standard to justify the seizure, the court takes into account the totality of the circumstances and examines whether the officer has a particularized and reasonable belief for suspecting the wrongdoing. Probable cause gained during stops or detentions might effectuate a subsequent warrantless arrest.

C. Seizure of Property

A seizure of property, within the meaning of the Fourth Amendment, occurs when there is some meaningful interference with an individual's possessory interests in the property.

In some circumstances, warrantless seizures of objects in plain view do not constitute seizures within the meaning of Fourth Amendment. When executing a search warrant, an officer might be able to seize an item observed in plain view even if it is not specified in the warrant.

III. WARRANT REQUIREMENT

A search or seizure is generally unreasonable and illegal without a warrant, subject to only a few exceptions.

To obtain a search warrant or arrest warrant, the law enforcement officer must demonstrate probable cause that a search or seizure is justified. A court-authority, usually a magistrate, will consider the totality of circumstances to determine whether to issue the warrant.

The warrant requirement may be excused in exigent circumstances if an officer has probable cause and obtaining a warrant is impractical in the particular situation. For instance, in State v. Helmbright, 990 N.E.2d 154, Ohio court held that a warrantless search of probationer's person or

his place of residence is not violation of the Fourth Amendment, if the officer who conducts the search possesses "reasonable grounds" to believe that the probationer has failed to comply with the terms of his probation.

Other well-established exceptions to the warrant requirement include consensual searches, certain brief investigatory stops, searches incident to a valid arrest, and seizures of items in plain view.

There is no general exception to the Fourth Amendment warrant requirement in national security cases. Warrantless searches are generally not permitted in exclusively domestic security cases. In foreign security cases, court opinions might differ on whether to accept the foreign security exception to the warrant requirement generally and, if accepted, whether the exception should extend to both physical searches and to electronic surveillances.

IV. REASONABLENESS REQUIREMENT

All searches and seizures under Fourth Amendment must be reasonable. No excessive force shall be used. Reasonableness is the ultimate measure of the constitutionality of a search or seizure. Searches and seizures with the warrant must also satisfy the reasonableness requirement.

On the other hand, warrantless searches and seizures are presumed to be unreasonable, unless they fall within the few exceptions.

In cases of warrantless searches and seizures, the court will try to balance the degree of intrusion on the individual's right to privacy and the need to promote government interests and special needs in exigent circumstances. The court will examine the totality of the circumstances to determine if the search or seizure was justified. When analyzing the reasonableness standard, the court uses an objective assessment and considers factors including the degree of intrusion by the search or seizure and the manner in which the search or seizure is conducted.

V. EXCLUSIONARY RULE

Under the exclusionary rule, any evidence obtained in violation of the Fourth Amendment will be excluded from criminal proceedings. There are a few exceptions to this rule.

VI. ELECTRONIC SURVEILLANCE

In recent years, the Fourth Amendment's applicability in electronic searches and seizures has received much attention from the courts. With the advent of the internet and increased popularity of computers, there has been an increasing amount of crime occurring electronically. Consequently, evidence of such crime can often be found on computers, hard drives, or other electronic devices. The Fourth Amendment applies to the search and seizure of electronic devices.

Many electronic search cases involve whether law enforcement can search a company-owned computer that an employee uses to conduct business. Although the case law is split, the majority holds that employees do not have a legitimate expectation of privacy with regard to information stored on a company-owned computer. In the 2010 case of City of Ontario v. Quon (08-1332), the Supreme Court extended this lack of an expectation of privacy to text messages sent and received on an employer-owned pager.

Lately, electronic surveillance and wiretapping has also caused a significant amount of Fourth Amendment litigation.

VII. THE USA PATRIOT ACT

Following the September 11, 2001 attacks on the World Trade Center and the Pentagon, Congress and the President enacted legislation to strengthen the intelligence gathering community's ability to combat domestic terrorism. Entitled the USA Patriot Act, the legislation's provisions aimed to increase the ability of law enforcement to search email and telephonic communications in addition to medical, financial, and library records.

One provision permits law enforcement to obtain access to stored voicemails by obtaining a basic search warrant rather than a surveillance warrant. Obtaining a basic search warrant requires a much lower evidentiary showing. A highly controversial provision of the Act includes permission for law enforcement to use sneak-and-peak warrants. A sneak-and-peak warrant is a warrant in which law enforcement can delay notifying the property owner about the warrant's issuance. In an Oregon federal district court case that drew national attention, Judge Ann Aiken struck down the use of sneak-and-peak warrants as unconstitutional and in violation of the Fourth Amendment. See 504 F.Supp.2d 1023 (D. Or. 2007).

The Patriot Act also expanded the practice of using National Security Letters (NSL). An NSL is an administrative subpoena that requires certain persons, groups, organizations, or companies to provide documents about certain persons. These documents typically involve telephone, email, and financial records. NSLs also carry a gag order, meaning the person or persons responsible for complying cannot mention the existence of the NSL. Under the Patriot Act provisions, law enforcement can use NSLs when investigating U.S. citizens, even when law enforcement does not think the individual under investigation has committed a crime. The Department of Homeland Security has used NSLs frequently since its inception. By using an NSL, an agency has no responsibility to first obtain a warrant or court order before conducting its search of records.

Another aspect of the Patriot Act, which has been highly confidential was the Telephone Metadata program, which under § 215 of the Patriot Act, had allowed the NSA to collect data about Americans' telephone calls in bulk, was reviewed by the Second Circuit in ACLU v. Clapper, in which the court held the Telephone Metadata program illegal under the Congress' original intent under the §215.

The Patriot Act has expired in mid-2015, and since June 2nd, 2015 has been repackaged under the USA Freedom Act. Although it remains to be seen how the Freedom Act will be interpreted, with respect to the Fourth Amendment protections, the new Act selectively re-authorized the Patriot Act, while banning the bulk collection of data of American's telephone records and internet metadata and limited the government's data collection to the "greatest extent reasonably practical" meaning the government now cannot collect all data pertaining to a particular service provider or broad geographic region.

VIII. FORTH AMENDMENT AND SUPERVISED RELEASE/PAROLE

Probationers—convicted criminal offender who is released into the community under supervision of a probation officer in lieu of incarceration; or parolees—convicts who have served a portion of his judicially imposed sentence in penal institutions, and is released for the remainder of the sentence under supervision of a parole officer for good behavior—can also assert fourth amendment rights, creating a potential confrontation between fundamental constitutional guarantee and the society's legitimate interest in correctional programs to prevent the convicts from lapsing back into a crime.

Traditionally, courts have struggled with various theories of parole and probation to justify the complete denial of fourth amendment rights to the convicts on supervised release or probation. The most prevalent of the theories was the "Custody Theory," under which an offender was said to be entitled to no more liberty than he would have enjoyed had he been incarcerated. Recently, however, this rationale was rejected by Morrissey v. Brewer, which emphasized that the parolee's status more closely resembles that of an ordinary citizen than a prisoner. While the Court noted that since parole revocation only changed the type of penalty imposed on an already-convicted criminal, the Court need not afford the parolees "the full panoply of rights" available under the fourteenth amendment to a free man facing criminal prosecution, the Court held that certain procedural protections must be guaranteed to the parolees facing revocation of the parole. In general, the released offenders now have been afforded full Fourth Amendment protection with respect to searches performed by the law enforcement officials, and warrantless searches conducted by correctional officers at the request of the police have also been declared unlawful.

However, in reviewing the searches undertaken by the correctional officers on their own initiative, some courts have modified the traditional Fourth Amendment protections to accommodate the correctional officers' informational needs, developing a modified "Reasonable Belief" standard, under which the correctional officer is permitted to make a showing of less than probable cause in order to justify the intrusion of privacy into the released offender.

Last Edited by Jonathan Kim, June 2017

menu of sources

Federal Material

U.S. Constitution and Federal Statutes

- U.S. Constitution
- U.S. Code: 18 U.S.C. - Crimes and Criminal Procedure
- CRS Annotated Constitution

Federal Court Rules

- Federal Rules of Criminal Procedure
- Federal Rules of Evidence

Federal Judicial Decisions

- U.S. Supreme Court:
    - Recent Criminal Procedure Decisions
        - *Brendlin v. California,* 551 U.S. ___ (2007)
        - Brigham City v. Stuart, 547 U.S. 398

        - *Georgia v. Randolph*, 547 U.S. 103 (2006)
        - *Hudson v. Michigan*, 547 U.S. 586 (2006)
        - United States v. Grubbs, 547 U.S. 90 (2006)
        - Important Criminal Procedure Decisions
    - liibulletin Oral Argument Previews

State Statutes

- State criminal procedure statutes

International Material

Conventions and Treaties

- Dealing with Human Rights (Including in the Criminal Justice Context)

Other References

Key Internet Source

- Rights of Suspects and Defendants (Nolo)
- ABA Criminal Justice Section, Committee on Criminal Procedure, Evidence and Police Practices Committee
- Litigator's Internet Resource Guide: rules of court
- Federal Judicial Center Publications
- Senate Judiciary Committee
- House Judiciary Committee
- Vera Institute of Justice

Useful Offnet (or Subscription - $) Sources

- Good Starting Point in Print: Wayne R. LaFave & Jerold H. Israel, *Hornbook on Criminal Procedure*, West Group (2003)

other topics

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- Category: Criminal Justice
- Criminal Procedure
- Sentencing

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