**Department of Homeland Security**
**Federal Law Enforcement Training Centers**
**Office of Chief Counsel**
**Legal Training Division**

**January 2021**

# The Federal Law Enforcement -Informer-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List and have *The Informer* delivered directly to you via e-mail by clicking on the link below.

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# The Informer – January 2021

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## FLETC Informer Webinar Schedule – February 2021

### 1. Lawyers as Leaders – Easier Said than Done (1 – 1.25 hours)

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, and Ken Anderson, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Glynco, GA.

In this webinar, we will examine the challenges confronting aspiring lawyers seeking to develop leadership skills. The first half of the webinar will cover core concepts of leadership; the second half will compare the "legal personality traits" to leadership expectations and models.

**Thursday, February 11, 2021: 1:30 p.m. Eastern/12:30 p.m. Central/11:30 a.m. Mountain/10:30 a.m. Pacific**

**To participate in this webinar: https://share.dhs.gov/lawversasleaders/**

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## 2. Understanding the Administrative Search (1-hour)

Presented by John Besselman, Senior Advisor for Training, Office of Chief Counsel, and Ken Anderson, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Glynco, GA.

The unique government authority to conduct administrative searches/inspections and its limitations is, at times, misunderstood. This webinar will explain how, why, and when an agency has the ability to conduct an administrative search. All are welcome to attend; it is highly recommended for those agencies that possess an inspection authority.

**Thursday, February 18, 2021: 1:30 p.m. Eastern/12:30 p.m. Central/11:30 a.m. Mountain/10:30 a.m. Pacific**

**To participate in this webinar: https://share.dhs.gov/inspections/**

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## 3. Facial Recognition Technology and Legal Considerations (1-hour)

Presented by Arie Schaap, Attorney-Advisor/Senior Instructor, Federal Law Enforcement Training Centers, Artesia, NM.

This webinar will explore facial recognition technology used by law enforcement to enhance surveillance capabilities and the associated constitutional legal issues it raises.

**Thursday, February 25, 2021: 3 p.m. Eastern/2 p.m. Central/1 p.m. Mountain/ 12 p.m. Pacific**

**To participate in this webinar: http://share.dhs.gov/informer**

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2. If you have a HSIN account, enter with your login and password information.
3. If you do not have a HSIN account, click on the button next to "Enter as a Guest."
4. Enter your name and click the "Enter" button.

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## FLETC Office of Chief Counsel Podcast Series

1. **Fundamentals of the Fourth Amendment – A 15-part podcast series that covers the following Fourth Amendment topics:**

- A Flash History of the Fourth Amendment
- What is a Fourth Amendment Search?
- What is a Fourth Amendment Seizure?
- Fourth Amendment Levels of Suspicion
- Stops and Arrests
- Plain View Seizures
- Mobile Conveyance (Part 1 and Part 2)
- Exigent Circumstances
- Frisks
- Searches Incident to Arrest (SIA)
- Consent (Part 1 and Part 2)
- Inventories
- Inspection Authorities

2. **Fifth and Sixth Amendment Series – A 10-Part podcast series that covers the following Fifth and Sixth Amendment topics:**

- What's In the Fifth Amendment?
- Right Against Self-Incrimination
- Kalkines/Garrity
- Miranda – The case
- Miranda – Custody
- Miranda – Interrogation
- Miranda – Waiver
- Miranda – Invocation of Rights
- Miranda – Grab Bag of Issues
- Sixth Amendment – Right to Counsel

**Click Here: https://leolaw.podbean.com/**

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# CASE SUMMARIES

## United States Supreme Court

**Tanzin v. Tanvir, 2020 U.S. LEXIS 5987; 2020 WL 7250100 (Dec. 10, 2020)**

Three practicing Muslim men (plaintiffs) sued various federal agents (defendants) in their official capacities claiming that Federal Bureau of Investigation (FBI) agents placed them on the "No Fly List" in retaliation for their refusal to act as informants against their religious communities. The plaintiffs also sued the agents in their individual capacities seeking monetary damages under the First Amendment and The Religious Freedom Restoration Act of 1993 (RFRA). According to the plaintiffs, being placed on the "No Fly List" cost them substantial sums of money in the form of airline tickets wasted and job opportunities lost.

More than a year after the plaintiffs sued, they received letters from the Department of Homeland Security informing them that "the government knows of no reason why they would be unable to fly," thereby rendering their cause of action against the agents in their official capacities moot. Afterward, the district court dismissed the plaintiffs' claims against the agents in their individual capacities for money damages. The district court dismissed the plaintiffs' First Amendment retaliation claims, stating that the Supreme Court and the Second Circuit Court of Appeals have "declined to extend [lawsuits against federal agents under] Bivens to a claim[s] arising [under] the First Amendment." The district court then dismissed the plaintiffs' claims under RFRA, ruling that RFRA did not permit the recovery of money damages from federal officers in their individual capacities.

On appeal, the plaintiffs' sole challenge was the district court's ruling that RFRA did not permit the recovery of damages from federal officers sued in their individual capacities. The Second Circuit Court of Appeals agreed with the plaintiffs and reversed the district court. The court determined that RFRA's express remedies provision, combined with the statutory definition of "Government," authorized claims against federal officials in their individual capacities.

For the Second Circuit's opinion: https://cases.justia.com/federal/appellate-courts/ca2/16-1176/16-1176-2019-02-14.pdf?ts=1550160007

After the ruling by the Second Circuit Court of Appeals, the defendants filed a writ of certiorari, which was granted by the Supreme Court. The issue before the court was whether RFRA permits lawsuits seeking money damages against individual federal employees.

In an 8-0 opinion authored by Justice Thomas, the Supreme Court affirmed the ruling by the Second Circuit Court of Appeals. Under RFRA, specifically 42 U.S.C. §2000bb-1(c), a person whose exercise of religion has been unlawfully burdened may "obtain appropriate relief against a government." The Court found that in 42 U.S.C. §2000bb-2(1) "government" is broadly defined to include "a branch, department, agency, instrumentality, and *official* (*or other person acting under color of law*) of the United States. The Court recognized that Congress replaced the ordinary meaning of "government" to include officials acting under the color of law. The Court added that the phrase "persons acting under the color of law" has historically permitted lawsuits against government officials in their individual capacities. As a result, the Court held that a lawsuit against an official in his personal capacity is a suit against a person acting under color of law.

Therefore, the Court reasoned that a lawsuit against a person acting under color of law is a suit against a "government" as defined under RFRA. §2000bb-1(c).

Next, the Court held that money damages are an "appropriate relief" when a plaintiff sues a government official in his individual capacity under RFRA. The Court found that in lawsuits against government officials, monetary damages "have long been awarded as appropriate relief." The Court added that had Congress wished to limit the remedy available to plaintiffs under RFRA it could have done so.

Justice Barrett took no part in the consideration or the decision of the case, which was argued before she was confirmed to the Court.

For the Court's opinion: https://www.supremecourt.gov/opinions/20pdf/19-71_qol1.pdf

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# Circuit Courts of Appeals

## First Circuit

**Project Veritas Action Fund v. Rollins, 982 F.3d 813 (1st Cir. 2020)**

This case consolidated two lawsuits, one filed by two Boston civil rights activists, K. Eric Martin and René Pérez (the plaintiffs), and the other filed by Project Veritas Action Fund, a national media organization dedicated to "undercover investigative journalism." This case summary is limited to the court's holding concerning the Martin plaintiffs' lawsuit, as it directly relates to and affects law enforcement officers.

Massachusetts General Law, Chapter 272, Section 99, enacted in 1968, makes it a crime for a person to, among other things, intercept any wire or oral communication made by another person. The term "interception" is defined in relevant part as follows:

> "to secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication."

In Commonwealth v. Jackson, decided in 1976, the Supreme Judicial Court of Massachusetts (SJC) held that a non-consensual audio recording is made "secretly," and therefore in violation of Section 99, if the person recorded does not have "actual knowledge of the recording." In 2001, in Commonwealth v. Hyde, the defendant was charged with violating Section 99 for having recorded the audio of his encounter with police, without the officer's knowledge, during a traffic stop. The defendant filed a motion to dismiss the criminal complaint against him on the ground that Section 99 did not apply to the recordings of "police officers . . . performing their official police duties." The SJC affirmed the denial of the defendant's motion by explaining that Section 99 "is carefully worded and unambiguous and lists no exception for a private individual who secretly records the oral communications of public officials."

In 2016, the plaintiffs filed a lawsuit against the Commissioner of the Boston Police Department and the District Attorney for Suffolk County (the defendants) in their official capacities. In their

lawsuit, the plaintiffs claimed to be civil rights activists who have regularly and openly recorded the audio of police officers without their consent as the officers discharge their official duties in public. The plaintiffs added that they would like to undertake the same type of recordings secretly but feared that doing would expose them to criminal prosecution under Section 99. Based on these allegations, the plaintiffs claimed that Section 99, "as applied to secretly recording police officers engaged in their official duties in public places, violates the First Amendment by causing Plaintiffs to refrain from constitutionally protected information gathering" and from "encouraging, or aiding other individuals to secretly record police conduct in public." The district court held that Section 99 violated the First Amendment insofar as it barred the secret recording "of government officials, including law enforcement officers, performing their duties in public spaces."

On appeal, the First Circuit Court of Appeals affirmed the district court's holding in favor of the plaintiffs. The court concluded that Section 99's outright ban on secretly recording police officers discharging their official duties in public spaces violated the First Amendment because "it is not narrowly tailored to further the government's important interest in preventing interference with police doing their jobs and thereby protecting the public." The court found that that the defendants presented little evidence to show how secret, nonconsensual audio recording of police officers doing their jobs in public interfered with their mission. Instead, the court stated that "Section 99 broadly prohibits such recording, notwithstanding the myriad circumstances in which it may play a critical role in informing the public about how the police are conducting themselves, whether by documenting their heroism, dispelling claims of their misconduct, or facilitating the public's ability to hold them to account for their wrongdoing."

For the court's opinion: https://law.justia.com/cases/federal/appellate-courts/ca1/19-1586/19-1586-2020-12-15.html

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# Fourth Circuit

**United States v. Ka, 982 F.3d 219 (4th Cir. 2020)**

In 2011, Daniel Ka was convicted of possessing a firearm during, and in relation to, a drug trafficking crime. The district court sentenced Ka to five years of imprisonment followed by five years of supervised release which he began serving in June of 2016. The conditions of Ka's supervised release required him, among other things, to refrain from committing any new crime or using controlled substances and to "answer truthfully all inquiries by [his] probation officer and [to] follow the instructions of [his] probation officer."

In May 2017, after Ka tested positive for drug use on two occasions, his probation officer, Chelsey Padilla, and her partner went to Ka's house to discuss his drug use. During their conversation, Ka told the officers that he was short on cash and that he had been helping friends sell drugs to make money. Officer Padilla reviewed text messages on Ka's phone, finding photos of marijuana and text messages related to drug sales. Afterward, Ka signed a statement prepared by Officer Padilla, in which Ka admitted to selling marijuana and cocaine.

Officer Padilla subsequently petitioned the district court to revoke's Ka's term of supervised release pursuant to 18 U.S.C. § 3583(e) claiming that Ka had violated the condition of his supervision prohibiting him from breaking the law. In response, Ka filed a motion to suppress all statements he had made to Officer Padilla concerning his possession and sale of drugs on the

grounds that the use of these statements violated his Fifth Amendment privilege against self-incrimination.

The district court denied Ka's motion. Relying in part on Ka's statements to Officer Padilla, the district court sentenced Ka to thirty months of imprisonment and an additional term of twenty-four months of supervised release for violating the conditions of his supervision. On appeal, Ka argued that the district court violated his Fifth Amendment right against self-incrimination by considering his statements to Officer Padilla.

The Fourth Circuit Court of Appeals disagreed. The Self-Incrimination Clause of the Fifth Amendment provides that "no person shall be compelled in a criminal case to be a witness against himself." In United States v. Riley, decided in April 2019, the Fourth Circuit explained that the Self-Incrimination Clause is violated "only if [the self-incriminating] statements are used in a criminal trial." In Riley, the court concluded that supervised release revocation proceedings pursuant to 18 U.S.C. § 3583(e) "are not part of the underlying criminal prosecution." As a result, the court held that the introduction of compelled self-incriminating statements in supervised release proceedings pursuant to § 3583(e) does not violate a defendant's rights under the Self-Incrimination Clause. Because of its previous holding in Riley, which remains valid law, the court affirmed the district court's denial of Ka's motion to suppress.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/18-4913/18-4913-2020-12-02.pdf?ts=1606937426

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**United States v. Brinkley, 980 F.3d 377 (4th Cir. 2020)**

In February 2017, a federal-state task force in Charlotte, North Carolina sought to execute outstanding arrest warrants. Among the targets was Kendrick Brinkley, who had an outstanding arrest warrant for unlawfully possessing a firearm as a convicted felon. Bureau of Alcohol, Tobacco, and Firearms (ATF) Special Agent Jason Murphy oversaw the operation. An ATF analyst provided Agent Murphy with at least two possible addresses. Because a water bill for one of these addresses was in Brinkley's name, Agent Murphy initially believed that address was Brinkley's most likely residence. One of the other addresses that the analyst provided was an apartment on Stoney Trace Drive.

In the meantime, Charlotte-Mecklenburg Police Department Detective Robert Stark, a member of Agent Murphy's task force, also tried to locate Brinkley. Detective Stark searched for Brinkley on CJLEADS, a North Carolina statewide law enforcement database. Detective Stark found multiple addresses in the database linked to Brinkley. Two CJLEADS entries entered in January 2017 were associated with the Stoney Trace apartment. However, other CJLEADS entries placed Brinkley at numerous other addresses.

Afterward, Detective Stark found Brinkley's public Facebook page. Posts and photos there led him to believe that Brinkley was dating Brittany Chisholm. Detective Stark searched for Chisholm on CJLEADS and found that she was also associated with the Stoney Trace apartment. Based on this information, Detective Stark concluded that Brinkley lived there with Chisholm.

Detective Stark reported his conclusion to Agent Murphy, who came to agree that Brinkley probably resided in the Stoney Trace apartment. However, neither officer was certain that they

had located Brinkley's address. Instead, in Agent Murphy's experience, it was "common for someone like Mr. Brinkley . . . to have more than one place where they will stay the night."

The next day, Agent Murphy, Detective Stark, and three other police officers went to the Stoney Trace apartment at 8:30 a.m. to conduct what both Agent Murphy and Detective Stark characterized as a "knock-and-talk" to "start [their] search for Mr. Brinkley." Agent Murphy acknowledged that he "had no idea if [Brinkley] was going to be there that morning," but thought the Stoney Trace apartment was the "most likely address" to "find Mr. Brinkley or evidence of his whereabouts."

Detective Stark knocked on the front door, and Brittany Chisholm opened it. Detective Stark told Chisholm the officers were looking for Brinkley and asked to enter the apartment. Chisholm denied that Brinkley was there. According to Detective Stark, Chisholm grew "very nervous"; her "body tensed" and her "breathing quickened," and she looked back over her shoulder into the apartment. The officers saw another woman, later identified as Jermica Prigon, in the living room. The officers heard movement coming from a room in the back of the apartment, and both Chisholm and Prigon repeatedly looked back toward that area. Detective Stark again asked if Brinkley was present and if the officers could enter to look for him. He explained that the officers "had information that [Brinkley] was staying at this residence" and "asked for [Chisholm's] permission . . . to come through and just do a walk through to make sure that he was indeed not at the residence." Chisholm, still seeming nervous, answered that she did not want the police officers to enter her apartment and asked if they had a search warrant authorizing them to do so.

Based on Chisholm's demeanor, Prigon's presence, the movement they heard in the back of the apartment, and the morning hour (8:30 a.m.), the officers believed that Brinkley was inside. At this point, the officers decided not to follow the original plan to secure the area and wait to see if Brinkley left the home. Instead, Agent Murphy told Chisholm that he believed she was hiding Brinkley and that the officers were going to enter the apartment to serve an arrest warrant on him. The five officers entered the apartment, found Brinkley in a bedroom, and arrested him.

Afterward, while conducting a protective sweep, the officers found digital scales, a plastic baggie containing cocaine base, and a bullet. The officers subsequently obtained a warrant to search the apartment and seized three firearms and magazines. The government charged Brinkley with several drug and firearm offenses based on the discovery of this evidence.

Brinkley filed a motion to suppress the evidence the officers obtained after entering the Stoney Trace apartment, arguing that when the officers entered the apartment, they lacked reason to believe that he: (1) resided in the apartment or, (2) would be present there at that time. The district court disagreed and denied Brinkley's motion. Brinkley appealed.

Generally, police officers must have a search warrant, consent, or an exception to the warrant requirement to enter a home. However, in Payton v. New York, the Supreme Court held that, in some circumstances, an arrest warrant can also allow officers to enter a home in order to apprehend a suspect. Specifically, the Court held that "an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within." The circuit courts of appeals have unanimously interpreted Payton's standard, "reason to believe the suspect is within," to require a two prong test. First, officers must have reason to believe both: (1) that the location is the suspect's residence, and (2) that the suspect will home when the officers enter.

As an initial matter, the Fourth Circuit Court of Appeals recognized that the circuit courts of appeals were divided as to level of proof needed to satisfy the "reason to believe" standard set forth in Payton. The court found that some circuits construe "reason to believe" as less than probable cause while other circuits equate it to probable cause. In this case, the court agreed with the circuits that have found "reason to believe" equates to probable cause. Applying this requirement, the court concluded that before entering the Stoney Trace Apartment without a search warrant, the officers needed to have probable cause that Brinkley resided there and would be present when they entered.

As to Payton's first prong, the court found that the information known to the officers suggested that Brinkley may have stayed temporarily in several places. However, the court noted that the officers investigated only the Stoney Trace apartment. Under Payton, the officers needed to establish reason to believe not just that Brinkley was staying in the Stoney Trace apartment but that he resided there. Detective Stark's discovery that Brinkley was involved with Chisholm, and that Chisholm was associated with the Stoney Trace apartment provided evidence that Brinkley might well have stayed in Chisholm's home, but it did not speak to whether he did so as a resident or only as Chisholm's overnight guest.

After focusing on the Stoney Trace apartment, the officers did not investigate the address on the utility bill associated to Brinkley nor any of the numerous addresses found on CJLEADS, even those that were listed multiple times. The court stated that had the officers ruled out any of these alternatives, it could have bolstered their theory that Brinkley resided in the Stoney Trace apartment. Although the officers developed a well-founded suspicion that Brinkley might have stayed in the Stoney Trace apartment at times, the court held that that the officers failed to establish probable cause that Brinkley resided there. As a result, the court found that the officers' entry into the apartment was unlawful.

Next, the court added that even if the available information were enough to give the officers reason to believe that Brinkley resided in the Stoney Trace apartment, the officers did not satisfy Payton's second prong, as they failed to establish probable cause that Brinkley would be present in the home when they entered. First, the court noted that "a substantiated belief as to the suspect's residence is especially important," because if a person is known to live at a particular location, it is reasonable to expect him to be there. However, in this case, the officers had documented, multiple other possible primary residences for Brinkley and initially only went to the Stoney Trace apartment to gather more information.

Second, the court found that the noises the officers heard in the apartment, and Chisholm and Prigon's reactions to them, could have been made by anyone. The officers had no reason to believe that the noises came from Brinkley.

Finally, the court held that Chisholm's nervousness was understandable under the circumstances, as she was confronted by five armed police officers who consistently pressed her to allow them to enter the apartment. The court concluded by stating that "when police have limited reason to believe a suspect resides in a home, generic signs of life inside and understandably nervous reactions of residents, without more, do not amount to probable cause that the suspect is present within."

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/18-4455/18-4455-2020-11-13.pdf?ts=1605297623

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# Sixth Circuit

**United States v. Clancy, 979 F.3d 1135 (6th Cir. 2020)**

Lamar Clancy and another man entered a Boost Mobile store in Memphis, Tennessee, and attempted to rob the store at gunpoint. However, the store manager and another employee grabbed their own guns and fired at Clancy and the other robber. When police responded, the store employees told officers that one of the robbers was wearing a white sweatshirt, red jogging pants with a white stripe, a black mask, black gloves, and had a silver handgun.

Approximately fifteen minutes later, Clancy went to a nearby hospital suffering from a gunshot wound to the arm. After hospital workers rolled Clancy into a trauma room, they stripped off his clothes and piled them on the floor. In the meantime, officers at the Boost Mobile store learned that the hospital had just admitted a shooting victim. Two officers went to the hospital and walked into the emergency department where they found Clancy and saw his clothes on the floor, "out in the open" and visible from the hallway outside his room. The pile of clothes consisted of a white sweatshirt, red pants with a white stripe, red Nike sneakers, and a black ski mask.

After an initial assessment, hospital staff airlifted Clancy to another hospital for treatment. After Clancy was gone, crime scene investigators arrived at the emergency department, went to the trauma room, and found Clancy's bloodied clothing in a plastic bag. One of the investigators removed the clothes from the bag, then photographed each piece, and then put them in a paper bag.

The government charged Clancy with two criminal offenses related to the attempted robbery of the Boost Mobile store. The district court denied Clancy's motion to suppress the clothing evidence. Upon conviction, Clancy appealed the denial of his motion to suppress to the Sixth Circuit Court of Appeals.

Generally, under the Fourth Amendment, police officers must obtain a warrant before seizing a person's private property. However, the plain-view seizure exception allows officers to seize evidence that an officer sees from a lawful vantage point if: 1) the "incriminating character" of the evidence is "immediately apparent" to the officer; and 2) the officer has "a lawful right to access to the object itself."

In this case, the court held that seizure of Clancy's bloodied clothing fell within the plain-view seizure exception. First, Clancy's clothing was visible to those passing by his room and the officers who initially responded to the hospital saw the clothing from a common area outside his room. The court found that the officers who viewed Clancy's clothes from this vantage point did not violate Clancy's Fourth Amendment rights by walking the hospital's hallways as any other person might.

Next, the court held that the incriminating nature of Clancy's clothes was immediately apparent to the officers. One of the robbers was described by witnesses as wearing a white sweatshirt, red jogging pants with a white stripe, and a black ski mask. The officer saw clothing matching this description, to include a black ski mask, a giveaway that Clancy was not merely a gunshot victim in the wrong place at the wrong time.

Finally, the court held that the officers had lawful access to Clancy's clothes. The "lawful access" requirement ensures that police officers do not conduct warrantless entries and trespass onto

private property just because they see incriminating evidence located there. In this case, the court found that no trespass occurred in the hospital room, as Clancy had been airlifted to another hospital by the time the crime scene investigators seized his clothing from the trauma room. The court added that even if Clancy had a reasonable expectation of privacy in his hospital room while the being treated, this expectation of privacy would not continue after he left the hospital and hospital staff began preparing the room for new patients.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca6/19-6367/19-6367-2020-11-12.pdf?ts=1605216615

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## Ninth Circuit

**United States v. Ngumezi, 980 F.3d 1285 (9th Cir. 2020)**

A San Francisco police officer, Kolby Willmes, saw Malik Nkomazi's car parked at a gas station with Ngumezi in the driver's seat. The car had no license plates, in apparent violation of section 5200(a) of the California Vehicle Code. Officer Willmes approached the car to investigate. However, because a gas pump blocked access to the driver side, he went to the passenger side of the vehicle. Officer Willmes opened the passenger door, leaned into the car, and asked Ngumezi for his driver's license and vehicle registration. Ngumezi produced a California identification card but not a driver's license. When Officer Willmes asked Ngumezi if his license was suspended, Ngumezi admitted that it was. Another officer then ran a license check and confirmed that Ngumezi's license was suspended and that Ngumezi had three prior citations for driving with a suspended license.

San Francisco Police Department policy requires officers to inventory and tow a vehicle when a driver lacks a valid license and has at least one prior citation for driving without a license. Consistent with that policy, the officers conducted an inventory of Ngumezi's car and found a loaded .45 caliber handgun under the driver's seat. The officers then ran a background check and learned that Ngumezi was prohibited from possessing firearms because of a previous felony conviction.

The government charged Ngumezi with being a felon in possession of a firearm. Ngumezi filed a motion to suppress the firearm as fruit of an unlawful search. The district court denied the motion and upon conviction, Ngumezi appealed. Ngumezi argued that even if Officer Willmes had reasonable suspicion to investigate a suspected license plate violation, opening the door and leaning into Ngumezi's car was un unlawful search under the Fourth Amendment because it was not supported by an exception to the warrant requirement. Ngumezi claimed that the gun was the fruit of this unlawful search because if Officer Willmes had not leaned into his car, Ngumezi "might have been less intimidated" and could have directed Officer Willmes to the bill of sale affixed to the front, right-side windshield; thereby, dispelling any suspicion of a license plate violation and ending the encounter before Officer Willmes learned of his suspended license.

First, the Ninth Circuit Court of Appeals noted that in New York v. Class, the Supreme Court held that a physical intrusion into the interior of a car constitutes a search under the Fourth Amendment. Although the search conducted by the officers in Class was found to be reasonable because of the officers' need to find the car's vehicle identification number (VIN) and its minimal intrusiveness, neither of those considerations was present in this case. The court added that the government pointed to no justification as to why opening Ngumezi's car door and leaning inside the vehicle

was reasonable. The government did not argue that Officer Willmes had probable cause, nor did it suggest that Officer Willmes had any reason to fear that Ngumezi might be dangerous. The court found that cases in which courts have upheld an entry into a car have involved some particularized justification, such as the need to ensure officer safety or to ensure that a passenger who would ultimately be operating a vehicle was not impaired. Finally, the court stated there were no prior cases upholding an entry into a vehicle in circumstances similar to this case. As a result, the court held that opening the car door and leaning into Ngumezi's car constituted an unlawful search.

Next, the court held that exclusion of the evidence seized from Ngumezi's car was the appropriate remedy in this case. The court was skeptical of Ngumezi's argument as to why the evidence should be suppressed because it involved a great deal of speculation. However, the government, which had the burden to establish that exclusion of the evidence was not an appropriate remedy, failed to make any effort do so. For example, the government did not argue that the attenuation doctrine applied, which would allow the evidence to avoid suppression by the showing the connection between the unlawful search by Officer Willmes and discovery of the handgun under the driver's seat was remote. In addition, the court stated, "despite what would seem to be a plausible argument that the gun would have been discovered even without the constitutional violation, the government has not argued that the inevitable-discovery doctrine applies." Consequently, the court reversed the district court's denial of Ngumezi's motion to suppress and vacated Ngumezi's conviction.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca9/19-10243/19-10243-2020-11-20.pdf?ts=1605895427

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