

ICE

4th Amendment Training [Refresher for ERO FUG OPS]

Office of the Principal Legal Advisor
Revised up to August 2017

2018-ICLI-00007-R-0001



U.S. Immigration
and Customs
Enforcement

ICE/ERO Authorities and Limitations

- In this section we'll briefly discuss some of ERO's law enforcement authorities and limitations in order to put Fourth Amendment issues in context.
 - § Administrative Warrants
 - § Title 19 designation



ICE Administrative Arrest Authority

- Title 8 interrogation and arrest authority *does not extend* to warrantless searches of dwellings. An administrative arrest warrant *does not convey* the authority to enter and search premises.
- A warrant of deportation/removal (Form I-205) is an administrative instrument, not a judicially approved search or arrest warrant.
- ICE Enforcement Operations Teams may only enter a dwelling with an administrative arrest warrant, with the **CONSENT** of the occupant(s), or in **EXIGENT CIRCUMSTANCES**.



INA Administrative Arrest Warrants

- When conducting targeted fugitive operations arrests, ERO officers must be in possession of *either* the I-205 (Warrant for Removal) or the I-200 (Warrant of Arrest).
- However, this administrative warrant does not authorize entry into a dwelling to execute it. It merely allows for the target's arrest.
- Even with an administrative warrant, DHS officers need CONSENT to enter an area that has a REP to make an arrest
 - § Including a home, the curtilage of a home, or an individual's room in shared premises.



Delegation of Limited Customs Officer Authority to ERO Officers

Pursuant to [a recent delegation](#), Enforcement and Removal Operations (ERO) officers have been designated as “customs officers” as defined by 19 U.S.C. § 1401(i) for the following purposes, as set forth in 19 U.S.C. § 1589a:

- to execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States; and
- to make an arrest without a warrant for any offense against the United States committed in the officer’s presence or for a felony, cognizable under the laws of the United States, committed outside the officer’s presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

The delegation does not extend to other authorities afforded to customs officers by statute or regulation.



Scope of Delegation

The Title 19 delegation does:

- ensure that ERO officers have authority to act in today's complex immigration enforcement environment;
- ensure that ERO's at-large arrests and partnerships with federal, state, and local law enforcement to locate, arrest, and remove priority targets are fully supported by ICE's broad range of statutory authority;
- provide additional protection against litigation challenging warrantless arrests by ERO officers based on a claim that ERO failed to establish a likelihood of the subject escaping before a warrant could be obtained; and
- provide slightly increased flexibility with regard to the circumstances in which ERO officers may make warrantless arrests for federal misdemeanors and felonies committed in their presence and federal felonies committed outside their presence.



Scope of Delegation

The Title 19 delegation does not: **(Continued)**

- provide ERO officers with any other authorities afforded to customs officers by statute or regulation;
- provide ERO officers with border search authority;
- change ERO's primary mission – to identify, apprehend, and remove priority aliens from the United States – or its day-to-day responsibilities; and
- eliminate the legal requirement that the duties of ERO officers be reasonably related to their immigration enforcement mission.



General Arrest Authority under INA § 287; 8 U.S.C. § 1357

Section 287 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357, sets forth the powers of immigration officers. Under this authority, an ERO officer may arrest an individual for a non-immigration offense without a warrant where either:

- the individual committed any federal offense (misdemeanor or felony) in the immigration officer's presence; or
- there is probable cause to believe the individual committed or is committing a federal felony.

INA § 287(a)(5); 8 U.S.C. § 1357(a)(5).

Notably, Title 8's immigration officer authority is expressly limited to circumstances in which: (1) the individual is likely to escape before a warrant can be obtained; and (2) the officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest. *Id.*



General Arrest Authority under 19 U.S.C. § 1589a

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- Pursuant to 19 U.S.C. § 1589a, customs officers possess the same criminal arrest authorities addressed above (and set forth in INA § 287(a)(5); 8 U.S.C. § 1357(a)(5)), but the authority is not limited to circumstances in which the officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest; nor is there a requirement that the subject be likely to escape before a warrant can be obtained.



General Arrest Authority under 19 U.S.C. § 1589a – Best Practice

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- Unlike the authority provided under INA § 287(a)(5); 8 U.S.C. § 1357(a)(5), an ERO officer delegated limited Title 19 authority may make warrantless arrests for non-immigration federal offenses committed in the immigration officer's presence, or federal felonies, where there is probable cause to believe the individual committed or is committing the offense, even where there is no likelihood of the person escaping before a warrant can be obtained.
- As a general matter, however, ERO officers should nonetheless seek a warrant prior to making any criminal arrest whenever practicable.



19 U.S.C. § 1589a

An **ERO officer** delegated limited Title 19 authority may make a warrantless arrest of any person:

- 1) for any **federal misdemeanor**;
- 1) committed **in the officer's presence**;
- 1) if officer has **probable cause** to believe that the person is committing or has committed the offense; and
- 1) at the time of the arrest the officer is engaged in activity **reasonably related to their immigration enforcement mission**.



Compare ERO Officer Authority Under 8 U.S.C. § 1357 and 19 U.S.C. § 1589a

8 U.S.C. § 1357(a)(4)	8 U.S.C. § 1357(a)(5)(A)	8 U.S.C. § 1357(a)(5)(B)	19 U.S.C. § 1589a	
Immigration Officer	Immigration Officer	Immigration Officer	<i>Customs Officer</i>	
Without Warrant	Without Warrant	Without Warrant	Without Warrant	
Arrest Any Person	Arrest Any Person	Arrest Any Person	Arrest Any Person	
Immigration Felony	Federal Felony or Misdemeanor	Federal Felony	Federal Felony	Federal Misdemeanor
In or Out of Officer's Presence	In Officer's Presence	In or Out of Officer's Presence	In or Out of Officer's Presence	In Officer's Presence
With Probable Cause	With Probable Cause	With Probable Cause	With Probable Cause	
Likelihood of Escape	Likelihood of Escape	Likelihood of Escape	<i>No Escape Risk Required Under Statute</i>	
Performing Duties Related to Immigration Enforcement	Performing Duties Related to Immigration Enforcement	Performing Duties Related to Immigration Enforcement	<i>ERO Supervisors Note:</i> <i>"Purpose Statute," 31 U.S.C. § 1301(a), Creates Requirement that ERO Officers Assigned to Task Forces be Engaged in Duties Reasonably Related to Immigration Enforcement Mission</i>	

2018-ICLI-00007-R-0012



ICE

Title 19 Hypothetical #1

(b)(5)



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Hypothetical #1 - Discussion

(b)(5)



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Hypothetical #2

(b)(5)



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Hypothetical #2 - Discussion

(b)(5)



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The Fourth Amendment

- Applicable to situations that may be encountered while conducting ICE operations
- Imposes limits on law enforcement officers' (Government's) authority by prohibiting unreasonable searches and seizures

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.



Government

- Includes law enforcement officers and agents
- Includes civil government employees, e.g., building inspectors, school officials, OSHA
- Also includes private individuals acting under the Government's direction and/or request, e.g., confidential informants, cooperative neighbors, cooperative apartment managers



WHAT IS A SEIZURE?

- A person is seized when:
 - § Government
 - § Interferes with a person's freedom of movement
 - § Resulting in a reasonable person (objective) not feeling free to leave or terminate the encounter
- If an encounter is not a seizure, it is a consensual encounter
- Brief investigatory stops are allowed if supported by reasonable suspicion supported by articulable facts [*Terry* stop]
- Property is seized when there is some meaningful interference with an individual's possessory interests in the property



WHAT IS A SEARCH?

A “search” triggering Fourth Amendment protection occurs under *either* of the below:

Jones “search”:

- § Physical intrusion by the government into a “constitutionally protected area” (i.e., persons, houses, papers, and effects); coupled with
- § the purpose of gathering information (as evinced in monitoring a GPS installed); or

Katz “search”:

There is a governmental intrusion into area where an individual has a reasonable expectation of privacy.



4th Amendment Search if:

Katz REP Test

Government
+
Intrusion/Invasion
(Physical/Visual/Auditory)
+
REP
Subjective expectation that is
objectively reasonable

OR

Jones Trespass Test

Government
+
Physical Intrusion
(Trespass)
+
Protected Areas
(Persons, Houses, Papers,
Effects)
+
Purpose
To Gain Information Attempt to
find something



Search - *Katz*

Fourth Amendment protection can be triggered under the traditional Katz analysis: Is there a Governmental Intrusion into an area that has a ***reasonable expectation of privacy (REP)*** (two part test)?

- § Subjective expectation of privacy that
- § Society is prepared to recognize as objectively reasonable

There's no place like home!



Search - *Katz*

- **REP Present**

- § Person's body
- § Dwellings
- § Curtilage
- § Private buildings and spaces
- § Baggage
- § Conveyances
- § Private communications

- **No REP**

- § Open Field
- § Plain View Observations
- § Conversation Overheard in public
- § Abandoned Property
- § ID and travel documents
- § Gift card magnetic strips



Search – Use of Technology

- Whether the use of technology results in a search or not is a case by case analysis to determine if there is a government intrusion into a reasonable expectation of privacy
- Factors:
 - § Sophistication of the device; and
 - § Whether the activity that was viewed occurred in public or private
- Practical Application:
 - § If technology merely allows the officer to see more clearly something that was already open to his or her view, its use will likely not be considered a search.
 - § If the use of technology permits observation of something that could not otherwise be observed, the use of technology will likely be considered a search.



Search–Use of Technology

- Technology commonly used by ERO
 - § Flashlights
 - w Use alone will not result in a search assuming physical presence is not already a search
 - § Binoculars
 - w Same as flashlights. Courts will take into consideration the power of the binoculars, steps taken by the individual to shield objects/activity from view
 - § Night vision
 - w Use not a search generally, may be problematic into a home or curtilage
 - § Dog
 - w Search in curtilage and/or used to sniff into home problematic
 - § Mobile Tracking Devices (GPS)
 - w Use alone is a search



Search – related note on ATD data

- ATD can come into play in the detention context when ERO uses ankle bracelet technology for immigration violators. Some LEA's, including HSI, have sought to use this data for criminal purposes.
- ATD data is a search and is subject to the Fourth Amendment.
- Consent for desired purpose (criminal investigation) will likely be necessary and even then, may be problematic.
- Please contact your local ACC or HSI embed attorney if you get a request for ATD data.



“Knock and Talk” Rules

- Hours of operation – daytime hours
- Daytime means 6:00 a.m. to 10:00 p.m. for criminal search warrants.
- Operation outside daytime hours?
 - § In writing
 - § Prior approval
 - § Must articulate why necessary
- If target leaves for work before 6:00 a.m., does not constitute “necessary”
- What is an example of “necessary”?
- Obtain consent to enter and consent to search residence from an adult with authority to consent



Curtilage

- Curtilage is “the area to which extends the intimate activity associated with the sanctity of a man’s home and the privacies of life.”
- When determining curtilage, consider:
 - § Proximity to home
 - § Single enclosure with home
 - § Area’s use
 - § Steps taken to prevent observation by passersby
- Factors are analyzed using totality of the circumstances.



Curtilage - Implied License

May walk across curtilage of the house to speak to occupants if general public could do so as well.

However, a law enforcement officer may not exceed the scope of a license. License is granted for the purpose of making contact with occupant, not looking through windows or conducting other “searches”. Exceeding the scope of implied license results in an unlawful search unless supported by some other warrant exception.



Front door



Back door



Implied License - Curtilage

- Implied License can be taken away by the occupant of home.
- Locked gates and signs indicating you or the general public is prohibited from entering onto curtilage are common ways to revoke implied license.
- The existence of a closed, but unlocked gate alone does not generally indicate an absence of implied license. Rather, the existence of a gate should be viewed in totality of the circumstances in determining if the general public would approach the door for the purpose of making contact with an occupant of a residence.



Implied License - Curtilage

- If ICE does not have implied license to approach a door to conduct a knock and talk, they will not be able to do so and must rely upon either a search warrant or exigent circumstances to be able to approach the dwelling.
- Implied License to enter onto curtilage for the purpose of conducting a knock and talk does not permit entry onto other parts of the curtilage for other purposes.
 - § Example: setting up a perimeter in the back yard of a house to prevent the exit of occupants.

Surveillance

What a person knowingly exposes to the public, even if in their own home or office, is not subject to Fourth Amendment protection.

- § May peer into house from location where general public is allowed
- § May talk to neighbors
- § May talk to employer
- § Abandoned property
 - w Trash (Off curtilage)
 - w Bags



Knock and Talk – Consent to Search

No warrant needed if an individual consents to entry and/or search

- § Must have authority
- § Must be voluntary
- § Must be obtained *before* entry or search starts
- § Must stay within the scope
- § Any occupant with authority can withdraw, limit, or vitiate consent



Consent: Authority

- **Actual Authority:** The person with the expectation of privacy in the thing/place to be searched has authority to consent
- **Apparent Authority:** As long as officers reasonably believe that the person who gives consent to search has the authority to do so, they may rely on that consent.
- **Common Authority:** Mutual use of property demonstrates joint access or control



Authority to Consent Examples

Do the following people have authority to give consent to search:

- § Co-tenant?
 - w Both present?
- § Landlord?
- § Employer in company housing?
- § Driver of a vehicle?
- § Passenger in a vehicle?



Authority to Consent Answers to Examples

Do the following people have authority to give consent to search:

§ Co-tenant?

w Yes, those with joint possession may grant consent to search common areas and areas of their exclusive use.

w BUT if both present: it depends

§ Landlord?

w If the landlord does not live there, the landlord may not grant consent

§ Employer in company housing?

w Employer may not consent to search of employee housing



Authority to Consent Answers to Examples

Do the following people have authority to give consent to search:

§ Driver of a vehicle?

w Yes, the driver of a vehicle is either the owner of the vehicle who has actual authority to grant consent, or the driver was granted control over the vehicle by the owner which carries with it the actual authority to grant consent to search.

§ Passenger in a vehicle?

w No, unless the passenger is also the owner of the vehicle.



Consent: Voluntary?

- Consent must be voluntary and not the product of coercion. Government bears burden.
 - § Cannot be demonstrated by mere acquiescence
 - § Determined by **a totality of the circumstances**
 - § Factors:
 - w Knowledge of right to refuse
 - w Age, intelligence, education, language ability
 - w Degree to which the individual cooperates
 - w Person's attitude
 - w Length of detention and questioning
 - w Ruses or misrepresentations



Consent: Timing and Positioning Matters

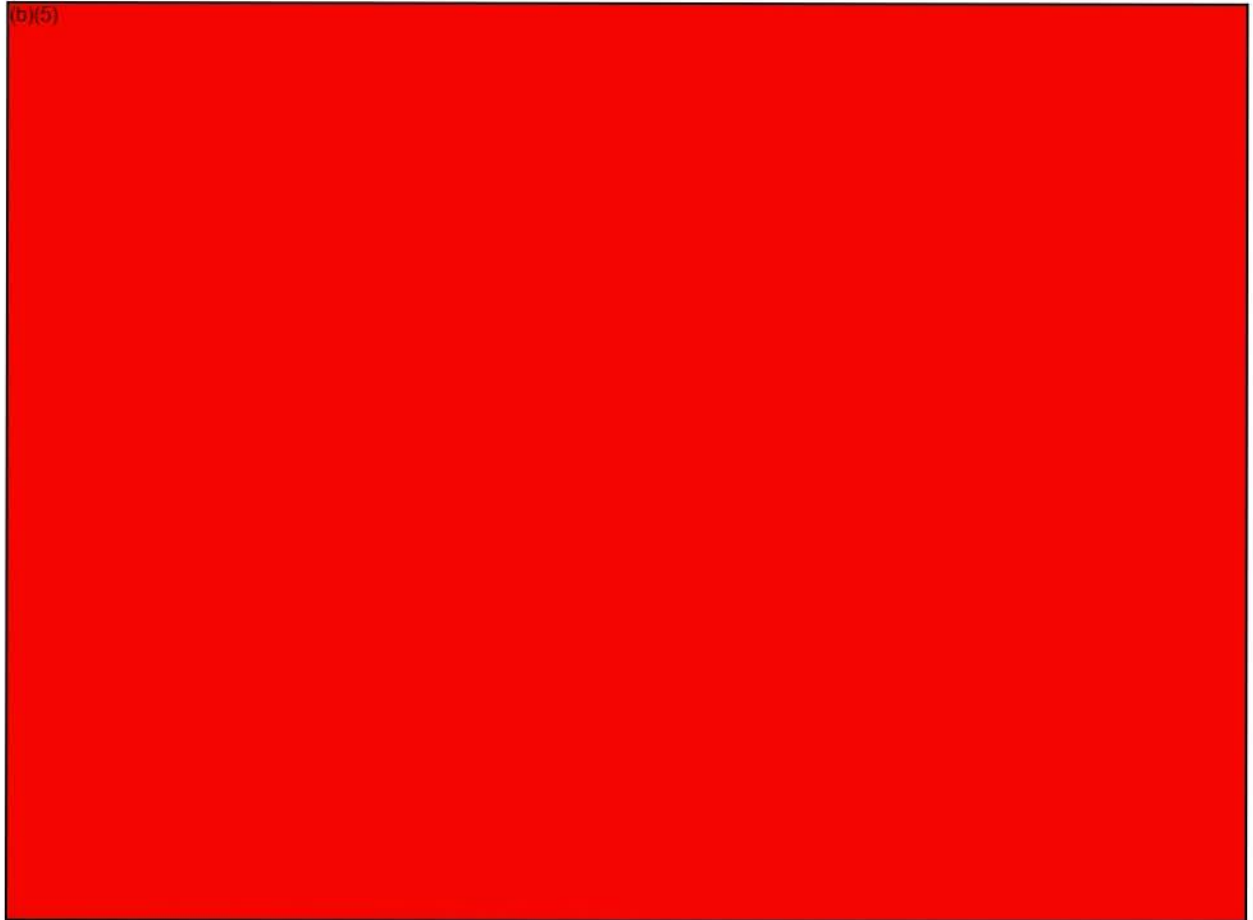
- Obtain consent *before* entering and beginning to search
- Obtain consent while still located at a place with less Fourth Amendment protection (e.g., a porch that can be accessed by the general public)
- Stepping across a threshold prior to obtaining consent will likely jeopardize the subsequent search
- Ensure all language barrier issues are adequately addressed



Consent: Case law says consent to search may be express or implied

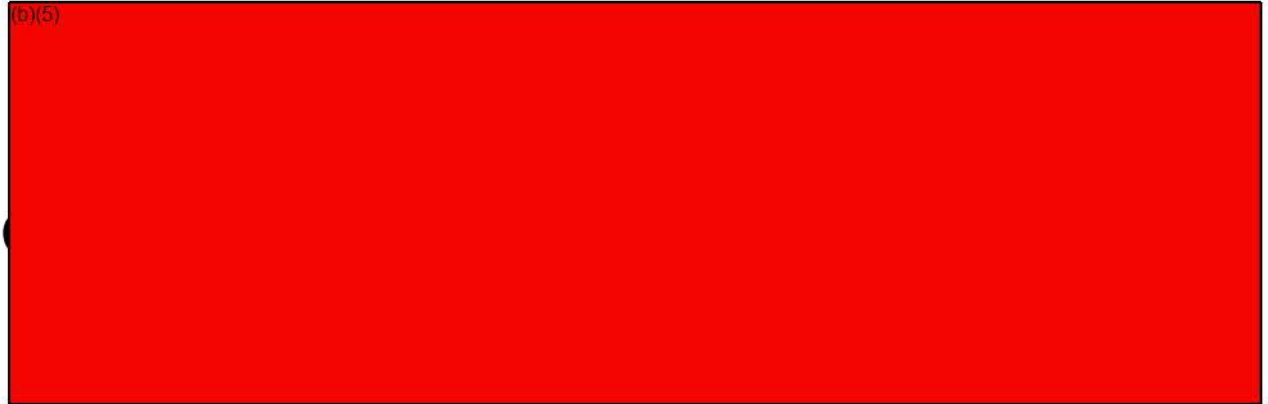
BEST PRACTICE

§
§



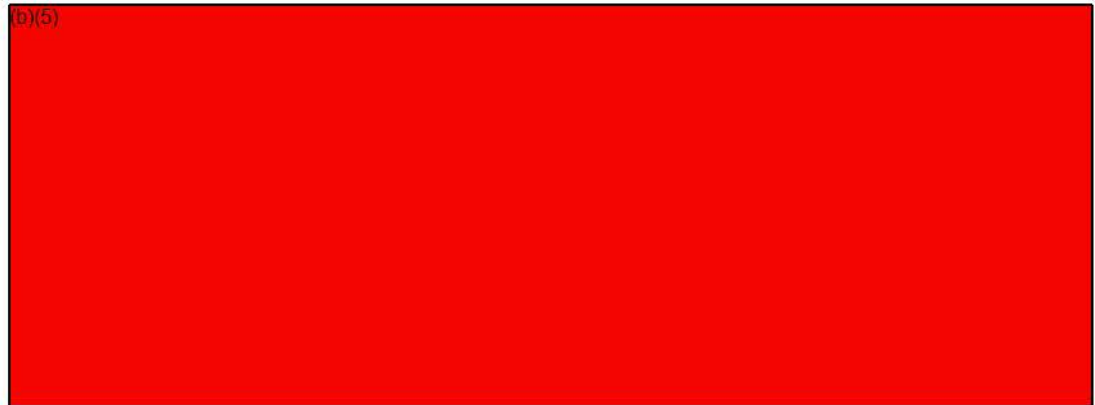
Implied Consent

(b)(5)



§
§
§
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(b)(5)

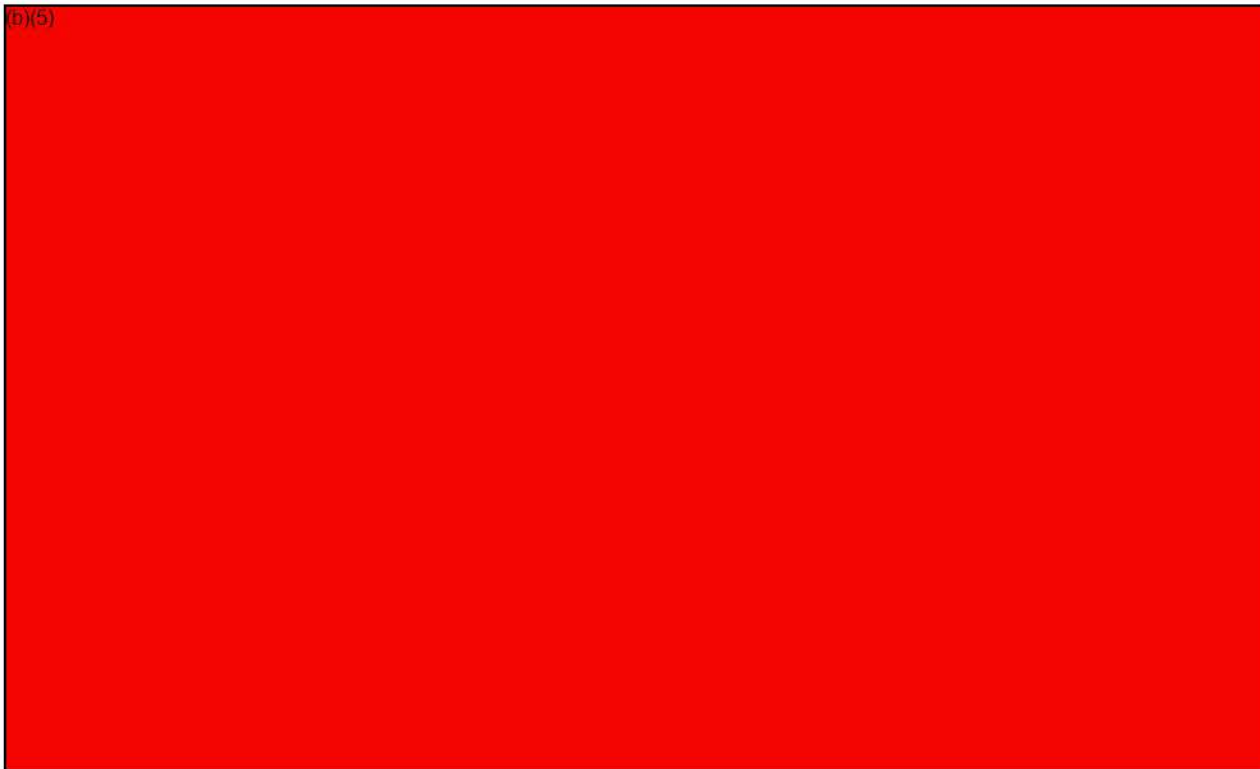


Consent

Best Practice Tips

-

(b)(5)



-



Consent cont.

- (b)(5) 
- When in doubt consult with your local OPLA Office of Chief Counsel



Consent: Scope and Withdrawal

Search must not exceed the scope of consent

- Consent to *enter* a home is not consent to *search* the entire home
- Withdrawal or narrowing of consent must be honored
 - § Must be clearly expressed by actions or words
 - § Plain view seizure of evidence is permitted even following withdrawal of consent but only if an officer has probable cause to seize it and lawful access to it.



Consent: Scope and Withdrawal (continued)

Search must not exceed the scope of consent

- Withdrawal or narrowing of consent must be honored
 - If present, anyone with authority over the particular area (e.g., common area) may withdraw consent at any time
 - However, on Feb. 25, 2014, in *Fernandez v. California*, the U.S. Supreme Court held that when a person is present and objects to the search, but is then *lawfully* removed from the scene, a person with common authority can give the officers valid consent to search. A person's objection does not remain in place after his lawful arrest.



Ruses

- Ruses are permitted but must not be coercive
 - § May not convince resident they have no choice but to let officer inside
 - § The totality of circumstances will determine if a particular ruse is coercive
- Fourth Amendment prohibition against warrantless arrests in a home means that courts scrutinize ruses to gain access to home more closely than ruses to convince a person to exit a residence, but even ruses to lure people out of a home have been held to be coercive.



Ruses

- Allowed for surveillance:
 - § Van altered so not obviously Government transport van, i.e. equipped with ladders, tubing, etc.
 - § Carrying box and clipboard
 - § Fake business emblem and card



Ruses

- Not allowed:
 - § Must not represent self as employee of a real business, i.e. FedEx, UPS
 - § Must not represent self as employee of Government agency such as OSHA, child welfare
 - § Must not use license plates or government identification that is not properly issued
 - § Must not fabricate life threatening emergency, (e.g., gas leak or fire), or fake exigency (e.g. missing child)
 - § When doing a “knock and talk” with another LEA, need to get consent to enter for ICE purposes (e.g., if accompanying a police officer into a home, ICE should obtain consent to enter for immigration purposes).



Exceptions to the Warrant Requirement

- Consent – *already discussed*
- Terry Stop (Investigative detention)
- Terry Frisk
- Search incident to arrest
- Protective sweep
- Vehicle inventory – ERO not permitted at this time
- Plain view seizure
- Hot pursuit
- Emergency aid
- Imminent destruction of evidence



Terry Stop

- Requires:
 - § RS of criminal activity; or
 - § RS unlawfully present in the United States
- Scope:
 - § To investigate and confirm suspicion in order to make an arrest or dispel suspicion in order to terminate the seizure
- Officer must use “due diligence” and “least intrusive means” in order for the seizure to maintain its lawfulness unless PC is developed
- Not allowed in subject’s home in the absence of exigent circumstances



Terry Stop

- Vehicle Stops (Terry Stops in vehicles) are permitted with RS of any occupant in a vehicle.
- Vehicle Pursuits of persons not complying with your direction to stop are not authorized and are therefore prohibited by regulation.
- The amount of force required to effect the exit of a driver or passenger from a vehicle should be minimal, i.e. the first step in arresting an occupant of a vehicle is NOT to reach in and grab him, unless there are specific circumstances requiring that action.



Terry Frisk

- Requires:
 - § Lawful seizure; and
 - § RS a person is armed and dangerous
- Scope:
 - § Pat down for weapons only
- Do not Terry-frisk persons you do not have authority to seize (i.e. persons you have consensual encounters with)



Search Incident to Arrest

- Requires:
 - § Lawful Arrest
- Purpose:
 - § discover weapons;
 - § prevent destruction or concealment of evidence; or
 - § discover tools that may be used to escape.
- Search must be contemporaneous with arrest.
- *Note: Remember when making an arrest, you must identify yourself as an Immigration officer; state that the arrestee is under arrest and the reason for the arrest – 8 CFR 287.8(c)(2).*
- *Note: Taking fingerprints is probably not considered a search BUT seizure of the person to complete this procedure must be justified.*



Search Incident to Arrest

- Scope:
 - § Arrestee
 - § Arrestee's area of "immediate control"
 - § Spaces immediately adjoining the place of arrest from which an attack could be immediately launched
 - w This is different from a protective sweep, which is discussed next
 - w Does not extend to other areas of the home
 - w Example of adjoining area of potential danger: Opening a bedroom closet door when an arrest is made in that bedroom, even though the closet is outside
arrestee's area of immediate control



Search Incident to Arrest: Cell Phones

- On June 25, 2014, the U.S. Supreme Court ruled in *Riley v. California*, and *United States v. Wurie*, that law enforcement officers must generally secure a warrant before conducting a search of a cell phone incident to arrest.
- During a lawful arrest, ERO officers may still seize a cell phone
- During a lawful arrest, ERO officers may still examine the physical aspects of the phone to ensure it will not be used as a weapon, e.g., checking between the phone and its case for a razor blade



Search Incident to Arrest: Cell Phones (continued)

- To search the content of the phone, ERO officers must either secure a judicial search warrant or rely on another exception to the warrant requirement, e.g., consent, exigent circumstances or plain view
- Consent to search the phone of individual being arrested should always be requested and if possible, documented in writing
- Exigent circumstances examples: texts being sent to armed and dangerous accomplices or location data of missing children in an abductor's cell phone. However, such searches must be limited to addressing the exigency; and cannot be used as a means to collect evidence



Search Incident to Arrest: Cell Phones (continued)

- Plain view exception to the warrant requirement may apply if
 - § the officer or agent witnessed the messages or calls without taking any affirmative steps to see these messages or calls, such as by turning on a dark screen to see if there are missed calls or text messages; or
 - § if an officer or agent witnessed the calls or messages while taking legitimate steps to protect cell phone data from loss or while examining the physical aspects of the phone to ensure that it will not be used as a weapon.



Search Incident to Arrest:

Vehicles

Gant Rule – The search of a vehicle incident to a lawful arrest of recent vehicle occupants is authorized only when either:

- The arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search; or,
- It is reasonable to believe *evidence relevant to the crime of arrest* might be found in the vehicle.



Protective Sweep

- **Not automatic simply because officers are in a house to arrest someone.**
- Requires:
 - § In-home arrest and RS based on specific and articulable facts an area harbors individual(s) posing a danger to the officers; or
 - § No in-home arrest, but lawful presence at a location and PC based on specific and articulable facts an area harbors individual(s) posing a danger to the officers



Protective Sweep

- Examples of specific and articulable facts that may aid in justifying a protective sweep
 - § History of weapons use and/or possession
 - § Violent criminal history; gang involvement
 - § Noise from supposedly unoccupied part of house
 - § Information from surveillance
- Officers are permitted to look only in locations where a person can hide and the search should last no longer than is necessary to dispel suspicion.



Vehicle Inventory

- After taking custody of a vehicle, police may conduct an inventory search provided the officer's custody was lawful and it is done according to policy.
- A vehicle inventory search cannot be done without a written policy. **ERO does not have such a policy and therefore cannot do a vehicle inventory.**



Plain View Seizure

- Officer must have plain view from lawful vantage point
- Must have lawful right of access
- Illegal/evidentiary nature must be immediately recognizable



Exigent Circumstances: Hot Pursuit

- Applies if:
 - § Probable cause to arrest the suspect;
 - § Crime involved is serious; and
 - § In immediate or continuous pursuit of suspect.



Exigent Circumstances: Hot Pursuit

- The “hot pursuit” will not come into play for routine “knock and talks.”
- Also, “hot pursuit” requires a probable cause of a serious crime (not an administrative offense).
- Possible applications: (b)(5)

(b)(5)



Exigent Circumstance: Emergency Aid and Officer Safety

- Exception permits law enforcement officers to enter a home or curtilage without a warrant based on the need to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.
 - § Has also been used for warrantless GPS searches and vehicle stops in cases of imminent danger to a victim.
- Officer safety can also permit the entry of a home without a warrant but the cases that discuss this exception involve immediate unambiguous threats.



Exigent Circumstance: Imminent destruction of evidence

- Articulable belief that evidence will be removed and/or destroyed (likely rare for ERO)
- A developing area of the law with different rules in different jurisdictions



Violations of the Fourth Amendment

- DHS is required to establish alienage to begin every case; usually alien's admission is in I-213.
- *Exclusionary rule* is applied if officer did not have a warrant and there was no applicable exception to the need for a warrant.
 - § All evidence obtained in violation of the Fourth Amendment will be inadmissible at trial, including all derivative evidence in I-213.
 - § Arrested individual may be released and case may be terminated.
 - § Officer may be personally liable for his/her actions.
- OPR investigation • *Bivens* action • *Giglio* disclosure



Violations of the Fourth Amendment

- Exclusionary rule applies differently in different Circuit Courts of Appeal in civil immigration proceedings.
 - § Second, Third, Eighth, and Ninth Circuits lead the way in finding officers' conduct to be "egregious" warranting exclusion of evidence.
 - § First, Sixth, Seventh, and Tenth Circuits acknowledge the "egregiousness" exception without fully articulating the standard.
 - § Validity of the exception remains an open question in Fourth, Fifth, and Eleventh Circuits.
- Get guidance from your local Office of Chief Counsel.



Violations of the Fourth Amendment

- Most likely setting for challenge to evidence is when officers enter a residence
- Attorneys in local Office of Chief Counsel will try to salvage cases where Immigration Judges exclude evidence based on Fourth Amendment violations
- But if the alien's admission in the I-213 is the only evidence of alienage, and the I-213 is excluded based on a Fourth Amendment violation, your case will be terminated and the alien will go free
- Termination will occur regardless of the alien's dangerousness, since DHS cannot prove case without evidence of alienage



Bivens Action:

- Is a lawsuit against an individual officer that alleges the individual officer knowingly violated the plaintiff's constitutional rights
- Is filed against the individual(s) only, for \$\$ damages
- Usually arises from an officer's personal involvement in a violation of a "clearly established" Federal constitutional right
- Requires that the violation result from knowing, deliberate indifference or plain incompetence
- Requires that DOJ representation be requested
- Is conducted as a trial by jury and punitive damages and attorneys fees may be awarded



Hypothetical #1

- (b)(5)
-
-
-



ICE

Hypothetical #1 (cont'ed)

(b)(5)



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Attorney Work-Product/For Review Only/Not For Distribution

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Hypothetical #1 (cont'ed)

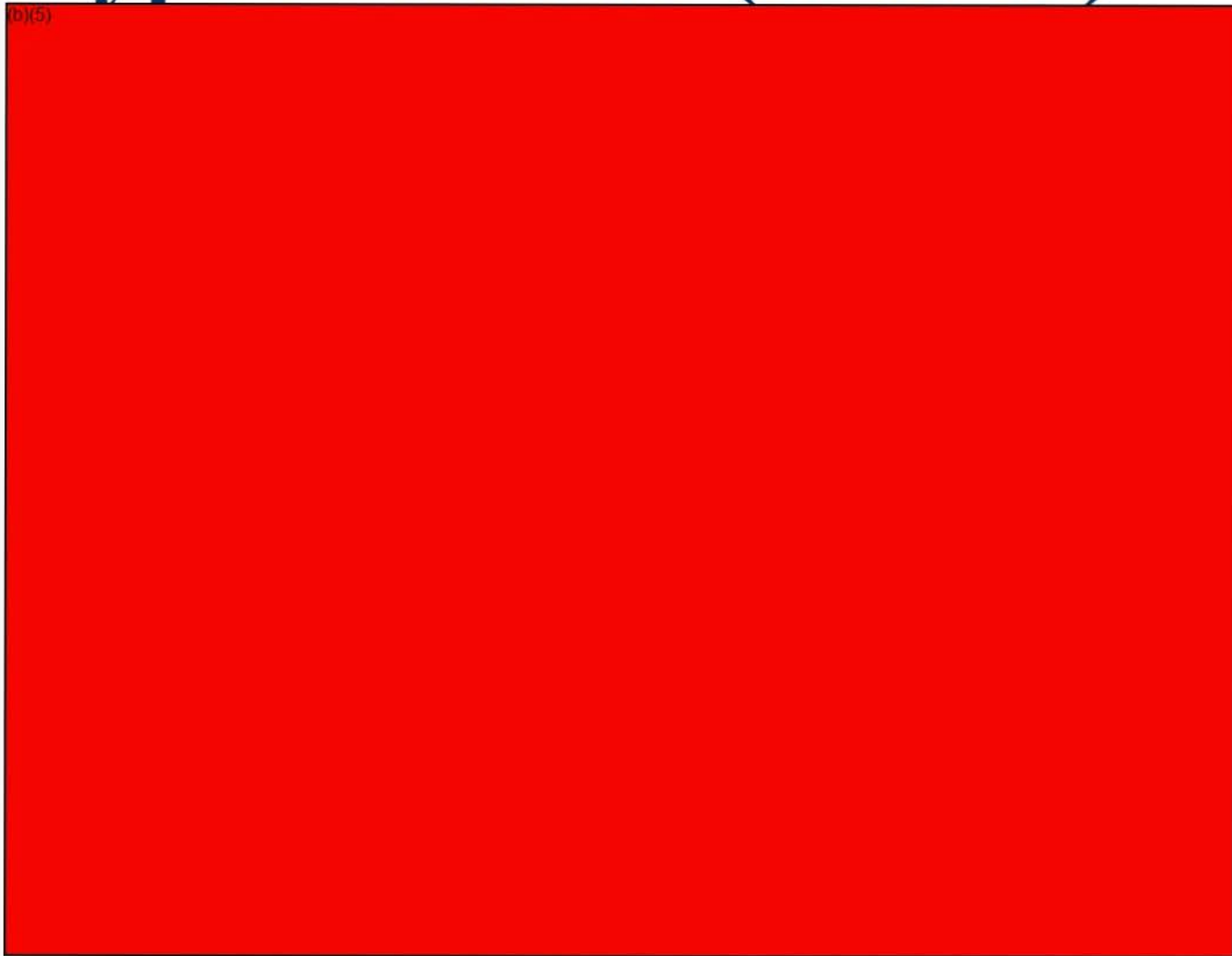
- (b)(5)
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Hypothetical #1 (cont'ed)

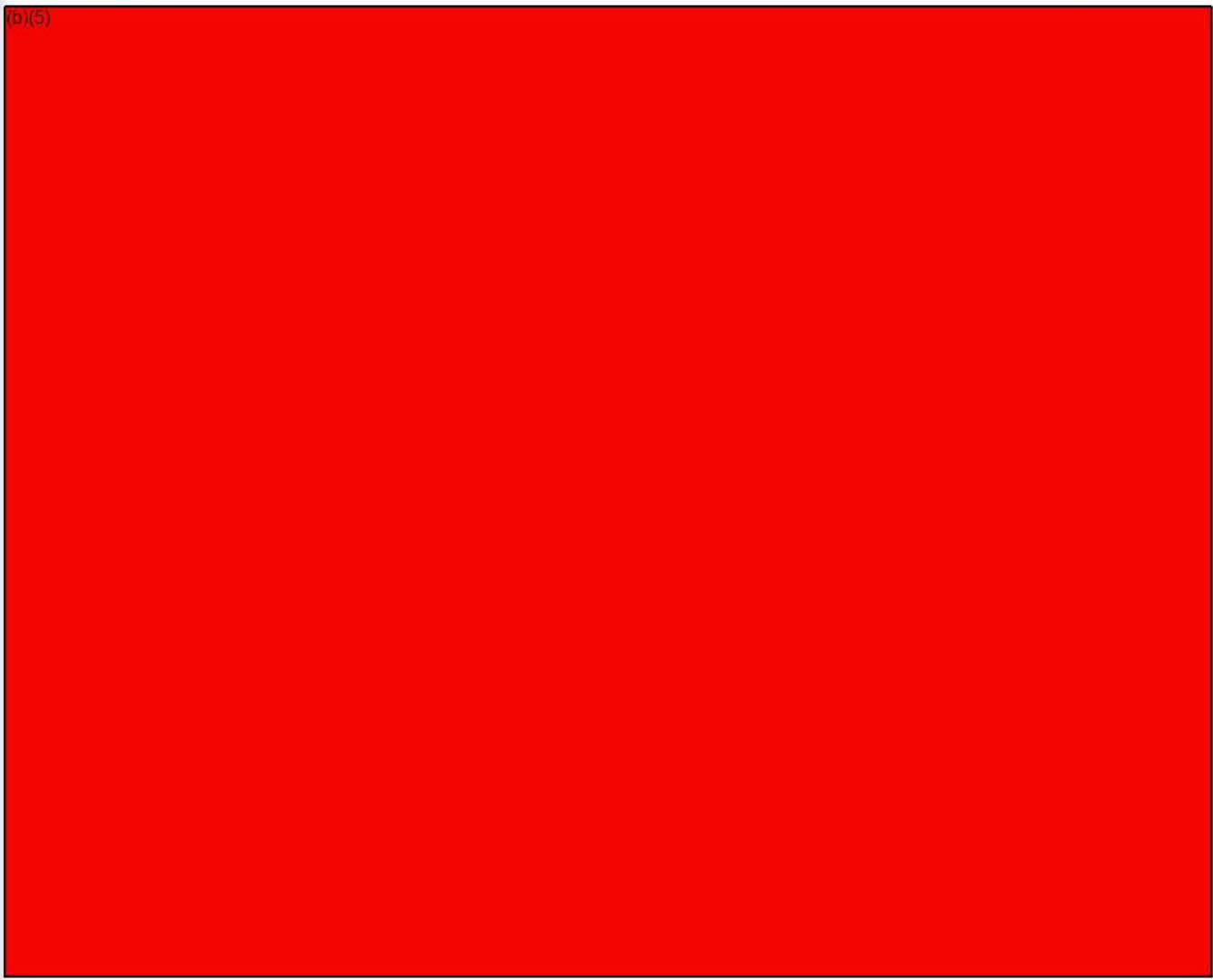
(b)(5)



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Hypothetical #1 (cont'ed)

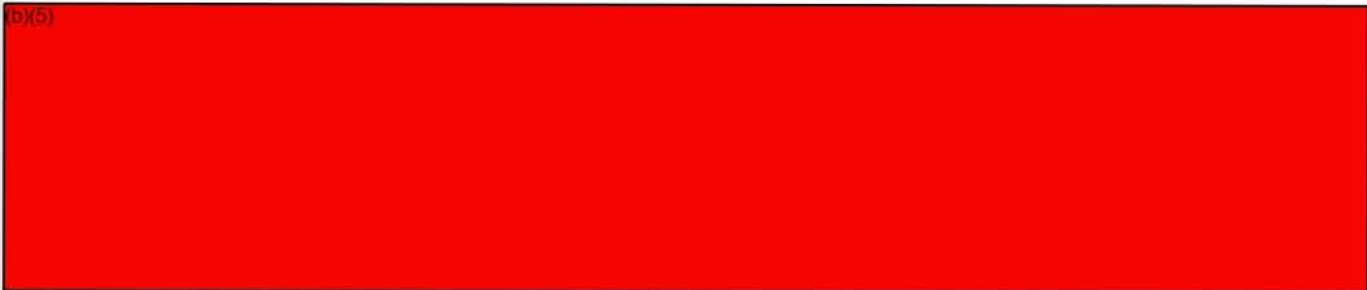


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Hypothetical #1 (cont'ed)

(b)(5)



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Hypothetical #2

- (b)(5)
-
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ICE

Hypothetical #2: Answer (cont'ed)

(b)(5)



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Hypothetical #3

- (b)(5)
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Hypothetical #3 (cont'ed)

- (b)(5)
-



Hypothetical #3 (cont'ed)

(b)(5)



Hypothetical #4

- (b)(5)
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Hypothetical #4 (cont'ed)

-

(b)(5)

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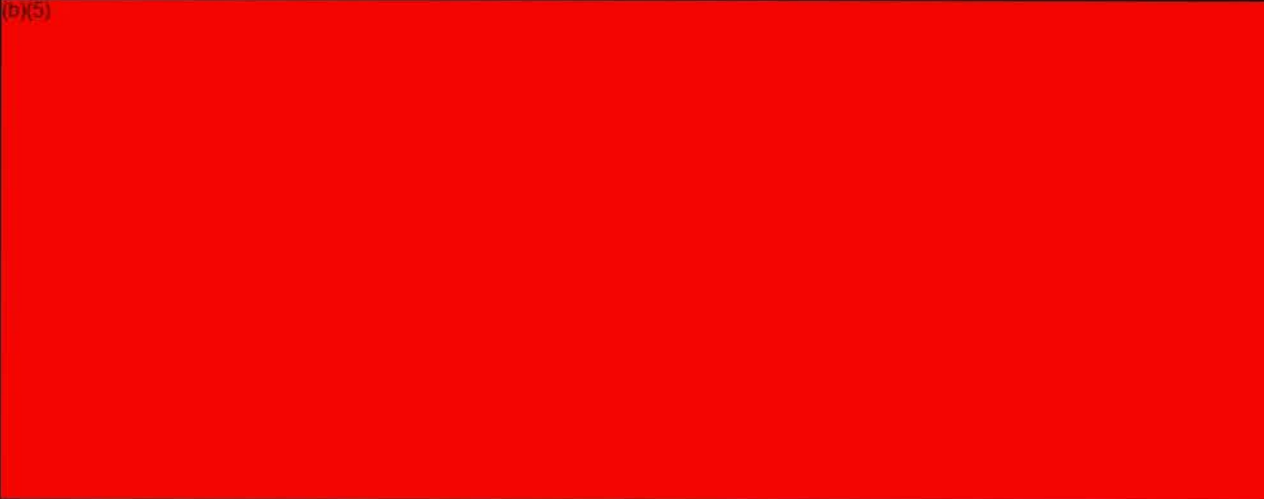


Hypothetical #4 (cont'ed)

- (b)(5)
-



Hypothetical #4 (cont'ed)

- (b)(5) 



Hypothetical #5

- (b)(5)
-
-

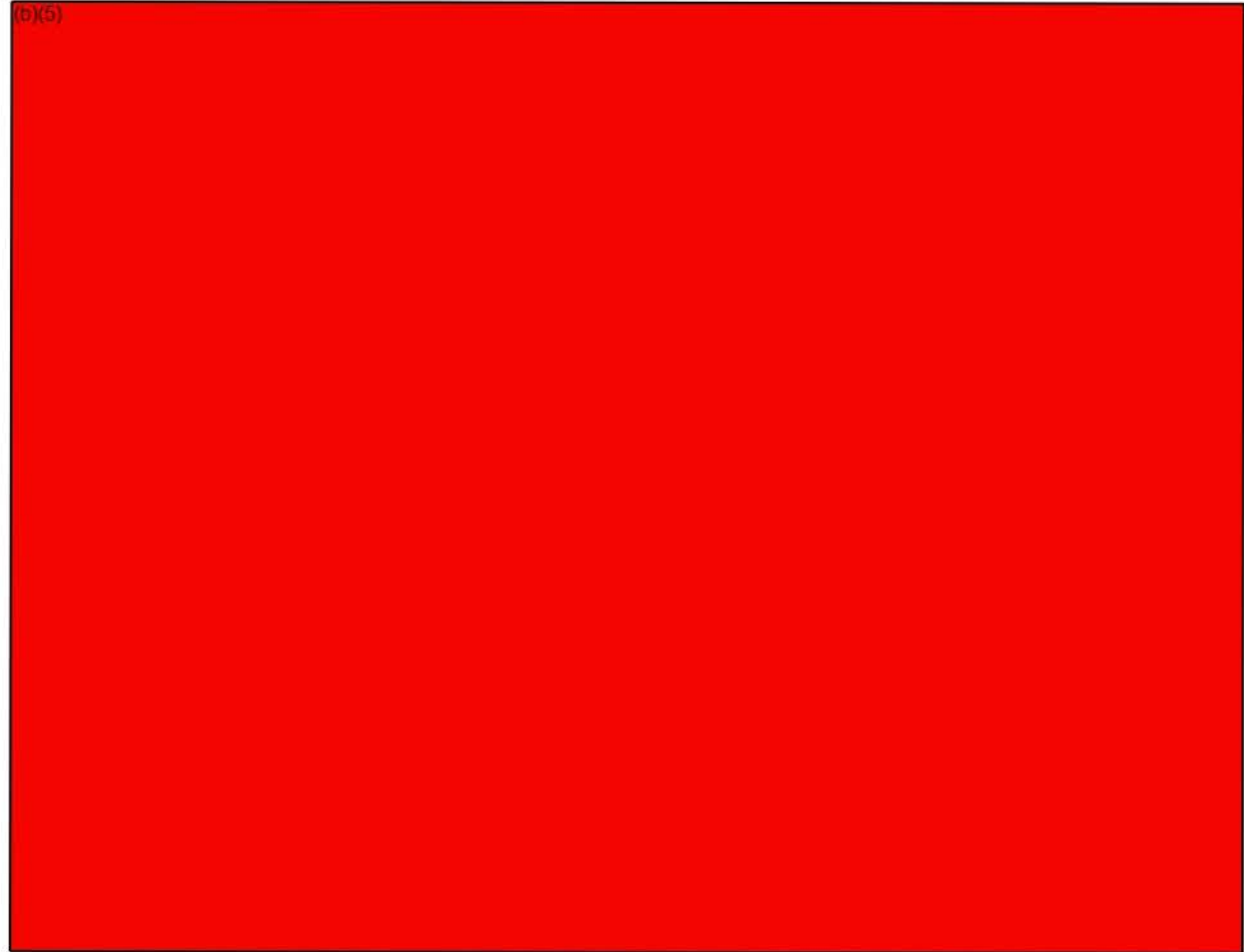


Hypothetical #5, cont'd

- (b)(5)
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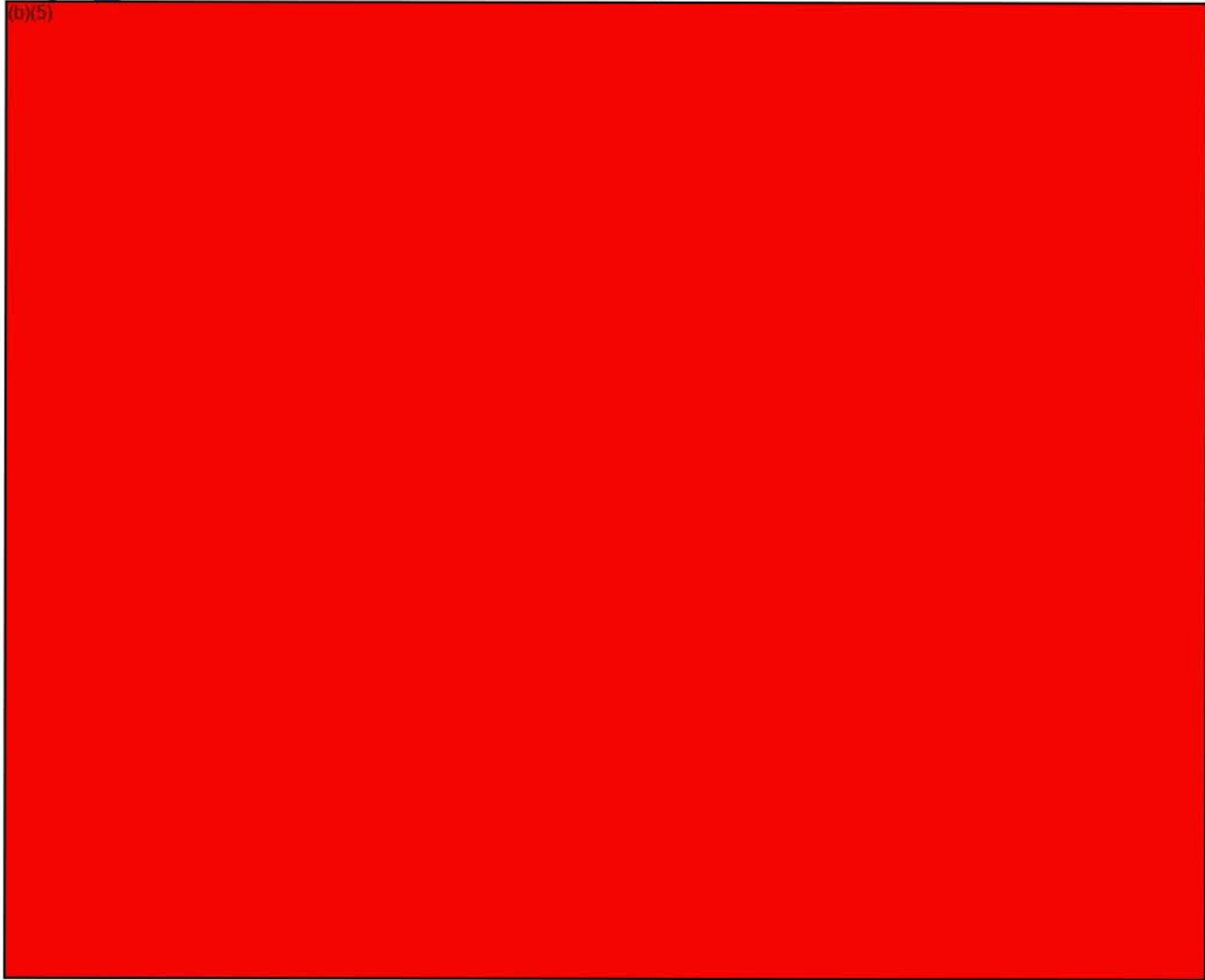
Hypothetical #5 (cont'ed)



Hypothetical #5, cont'd

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(b)(5)



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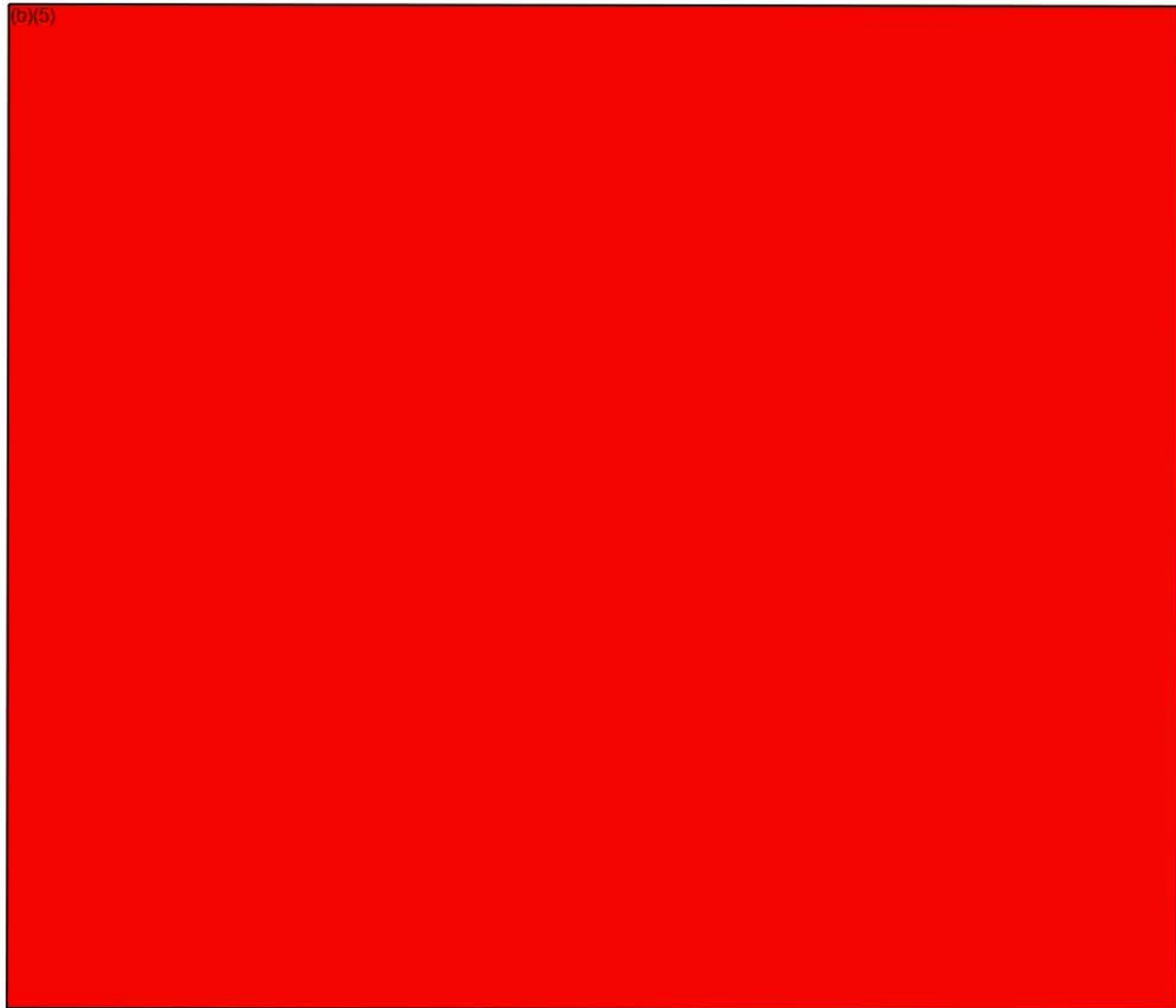
Hypothetical #5, cont'd

- (b)(5)
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Hypothetical #5, cont'd

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Hypothetical #5, cont'd

- (b)(5)
-
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QUESTIONS?



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