

**U.S. Immigration and Customs Enforcement
Office of Training and Development**

ICE Academy



ICE Fourth Amendment and Policy Refresher

Briefing Plan

Field Operations Training Program

EXPECTED SEQUENCE/EVALUATION CRITERIA:

- 1 Conducted visual survey [REDACTED] (b)(7)(E)
- 2 Used tactics appropriate for the level of perceived threat.

[REDACTED] (b)(7)(E)

5 The level(s) of force used by the LEO(s) appeared reasonable throughout the scenario.

6 Were there any other significant issues or officer safety violations observed? If so explain in the comments section.



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Control Page

Developed By:

DATE MON YEAR

Signature

Signature

Content Approved By:

DATE MON YEAR

Signature

Signature

Instructional Design Reviewed By:

DATE MON YEAR

Signature

Signature

Instructional Design Approved By:

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Record of Changes

Date of Change	A=Add. M=Mod D=Del.	Description of Change	Reason for Change	Approved By (FN, LN, Operational Unit Chief or IMU Representative)
12/2010	A, M	Initial	Major course revision	

BRIEFING DESCRIPTION

I. BRIEFING NAME

ICE Fourth Amendment and Policy Refresher

II. COURSE OR AUDIENCE

Field Operations Training Program

III. PURPOSE

This briefing reviews and reiterates the Fourth Amendment and ICE / ERO Policies that were taught in the Legal and Policy Based Instruction for ERO Field Operations Computer Based Training (CBT) course. The students will be informed of the limitations imposed by the Fourth Amendment on, as well as applicable policy provisions relating to, the duties of an immigration officer executing administrative warrants of removal/deportation.

This will increase awareness and understanding of these laws and regulations; thereby, resulting in even better Fourth Amendment and policy compliance.

IV. OVERVIEW OF MAIN IDEAS

The refresher covers topics that were taught in the Computer Based Training Prerequisite – Legal and Policy Based Instruction for ERO Field Operations. Compliance with the Fourth Amendment and applicable policies concerning the execution of administrative warrants is critical in order for immigration officers to avoid lawsuits, official complaints, internal agency investigations, and, in egregious situations, possible prosecution.

V. TOTAL LESSON TIME

PRESENTATION	DEMONSTRATION	AUDIENCE PARTICIPATION	TOTAL
2hr	30min	30min	3hrs

BRIEFING ADMINISTRATION

I. BRIEFING NAME

ICE Fourth Amendment and Policy Refresher.

II. RISK ASSESSMENT

N/A

III. FACILITY REQUIREMENTS

- Classroom
- The instructor will need a computer with projector and projector screen functionality

IV. TRANSPORTATION REQUIREMENTS

None

V. REQUIRED STAFF

The instructor should be an attorney who has experience as a prosecutor and who is familiar with the duties and the nature of the work performed by the DFOTP students.

VI. TRAINING AIDS/EQUIPMENT

- Fourth Amendment Refresher Lesson Plan
- Presentation slides
- Instructor station with presentation equipment

VII. STUDENT PROVIDED EQUIPMENT

Participant workbook for each student

VIII. STUDENT HANDOUTS/MATERIALS

None

IX. ATTACHMENTS

PowerPoint Slide Deck

X. REFERENCES

- FLETC Legal Division Handbook
- FLETC Legal Division Reference Book
- Legal and Policy Based Instruction for ERO Field Operations
- United States Constitution, Amendment IV
- Various decisions of the United States Supreme Court
- Various ICE policy memoranda
- DRO Lesson Plan 7070.02, Fourth Amendment and Administrative Authority

Briefing Plan

ICE Fourth Amendment and Policy Refresher

INTRODUCTION

I. Motivation

Baltimore, January 2007. A Fugitive Operations Team is searching for fugitives and ends up arresting 24 Latino men in and around the parking lot of a 7-11. A Washington Post article reports details from that incident, discloses statements from an internal investigation and casts the actions of the ICE officers in a negative light. At the request of Acting Assistant Secretary Torres to the DHS Inspector General, a second investigation is launched to determine whether some of the officers provided varying accounts of what happened. A lawsuit is filed against ICE by three of those who were arrested.

At the heart of that case are Fourth Amendment issues such as consensual encounters, articulable facts, investigative detentions/Terry stops and random sweeps.

A solid understanding of the Fourth Amendment and relevant agency policies, as well as the manner in which they impact the performance of your duties, will go a long way to helping you to be prepared for, address and deal with similar incidents while complying with all Constitutional requirements and applicable policies. However, there is virtually nothing that can be done to impede media coverage of an event that a newspaper chooses to publish an article about. And there is often little that can be done to prevent a lawsuit from being filed by an attorney on behalf of a client who thinks his rights have been violated. In such cases, however, knowledge of and compliance with the Fourth Amendment improve the chances for a favorable result for ICE and the officers involved, and may provide some peace of mind during the time the lawsuit is pending.

II. Purpose

The purpose of this class is to provide a review of the limitations imposed by the Fourth Amendment on, as well as pertinent policy provisions relating to, the duties of an immigration officer executing administrative warrants of removal/deportation as well as criminal arrest and search warrants.

This will increase awareness and understanding of these laws and regulations; thereby, resulting in even better Fourth Amendment and policy compliance.

III. Overview

This class will act as a briefing to review and reiterate Fourth Amendment principles and ICE / ERO polices that were taught in the Legal and Policy Based Instruction for ERO Field Operations Computer Based Training (CBT) course :

- Reasonable Expectation of Privacy (REP)
- Surveillance
- Curtilage
- Consent
- Protective sweeps
- Vehicle stops
- Searches incident to arrest
- Working with different agencies
- Consensual encounters
- Investigative detentions
- Enforcement near sensitive locations
- Hot pursuit
- Compliance with 8 CFR 287.8(c)(2) / 3 questions

IV. Agenda

Instructor lecture and PowerPoint presenting key principles and pertinent cases

Discussion about 'real world' examples

Discuss the CBT – areas of concern from the test or where clarification is needed

Group activity – case work (*optional*)

Legal and Policy for ERO Field Operations Exam

V. Transition

A good football team prepares for an upcoming game by watching film of its most recent game, reviewing film of games the opponent has played and practicing constantly. Schemes are inserted that attempt to take advantage of the strengths of the team that is preparing, as well as exploiting weaknesses of the opponent. After the game has been played, film from that contest is broken down and reviewed as the coaches and players try to find out what worked and what did not, all in an effort to improve and have the best chance for success the next weekend. Not unlike that process, you have studied the CBT and taken a test before coming to this training. Although we will review key Fourth Amendment principles and related policies as a whole, this class is primarily addressed to problem areas and challenging topics, both from the CBT and real world experiences. The goal is for improvement to the point where, hopefully, you are prepared to take another test and pass it.

BODY

I. Explanation of Main Points

A. *Administrative Warrant*

1. Definition of Fugitive Alien
 - a. An alien who
 - b. Has failed to comply with a final order of removal or
 - c. Failed to report or appear as demanded by ICE
2. Documentation of Operational Activity
 - a. FOW
 - b. After an arrest – I-213
 - c. Key detail
3. Surveillance
 - a. Should be conducted before every operation
 - b. Promotes officer safety and increases the likelihood of finding the target
 - c. Do not invade an area with REP
 - d. Use of equipment to enhance senses is permitted
4. Liaison
 - a. NFOP guidelines require local LE be notified prior to conducting operations
 - b. Other agencies working with ICE work under their authority, not ICE's
5. Curtilage
 - a. A concept from an earlier time, but still relevant today
 - b. Closely related to the high level of REP in a home
 - c. Protects families and personal privacy in an area linked to the home
 - d. Four (4) key factors to consider
 - e. Back yard - generally has a higher level of REP than front
 - f. Often does not prevent a LEO's right to access a residence
 - g. Never permissible to enter area with locked gate or privacy fence
 - h. "Opens fields" – unoccupied and undeveloped; no REP
6. Consent
 - a. An established exception to the warrant requirement
 - b. Must be given by someone with actual or apparent authority
 - c. The consent-giver must be 18 or older (policy)
 - d. Common authority
 - e. Consent must be voluntary and not the result of coercion
 - f. Must have consent to enter and to search/look around
 - g. Be aware of factors that may result in coercion – number of officers at door, weapons displayed, tone of voice, etc.

- h. Ruses are permissible as long as they are not coercive
 - i. Discuss recent adverse decisions
 - j. Consent-giver need not know of right to refuse
 - k. Always seek to obtain a verbal expression of consent
 - l. Scope of consent – an objective standard
 - m. The burden is always on the government to prove that the consent was given voluntarily
 - n. Withdrawal / revocation of consent
 - o. Communicate discovery of target to FOT members
 - p. Record the name of the consent-giver, scope of consent, time and other witnesses on the FOW
 - q. If an arrest is made, also record the info on the I-213
7. Protective Sweep
- a. Allowed only if there are articulable facts warranting a reasonable belief there is a person posing danger to officers
 - b. Is a limited, cursory search for the person who poses the threat to those present
 - c. Should last no longer than needed to dispel suspicion of danger or complete the arrest/search
 - d. Does not permit the opening of locked doors; seek consent
 - e. Not automatic and not permitted for “officer safety”
 - f. Learn as much as possible about the criminal record and background of those who live at the location
8. Three Questions
- a. ICE policy
 - b. Medical issues, children and travel documents
 - c. Suggestion - combine with 8 CFR 287.8(c)2)(iii) notice
9. Prosecutorial Discretion
- a. Need to carefully allocate limited detention resources
 - b. Those resources are focused on fugitive aliens, previously removed aliens, removable aliens convicted of crimes and those subject to mandatory detention
 - c. Should not detain aliens who are physically or mentally ill, disabled, elderly, pregnant, nursing or sole caretakers of children or infirm
 - d. Otherwise, need FOD approval and SEN to HQ
10. Place of Employment
- a. Entry permitted onto open fields not farms or other outdoor agricultural operations
 - b. Entry permitted into the public area of a business
 - c. Obtain consent from person with authority in order to enter non-public areas of a business
 - d. Manager/assistant manager, not hostess/waitress
11. Vehicle Stops / Search Incident to Arrest (SIA)
- a. Vehicle stops permitted for FOT members with training
 - b. Vehicles must be equipped to meet state emergency equipment requirements
 - c. SIA permits search of person and area within immediate control for weapons and evidence that can be concealed or destroyed
 - d. In vehicle context can only conduct SIA if the arrestee is

unsecured or it is reasonable to believe the car contains evidence relevant to the crime of arrest

- e. Admin warrant arrest – no crime of arrest

B. *Fugitive Alien Removal*

1. Consensual Encounters

- a. One of 3 types of encounters a person can have with LEOs
- b. OK for LEO to approach a person in a public place and ask if willing to answer questions
- c. OK for LEO to go to a residence, knock and ask if the person will answer some questions or provide consent to enter
- d. The person must retain freedom to decline to answer questions, to terminate the encounter and to leave
- e. Must have consent to enter and to look around

2. Investigative Detention

- a. Another of the 3 types of encounters
- b. The LEO must have a reasonable, articulable suspicion that criminal activity is occurring
- c. Should be temporary in nature, diligently pursued and last no longer than needed to carry out the reason for the stop
- d. Be careful that the encounter does not turn into an arrest before probable cause has been established

3. Conducting Surveillance

- a. Should be conducted before every operation
- b. Promotes officer safety and increases the likelihood of finding the target
- c. Do not invade an area with REP
- d. Use of equipment to enhance senses is permitted

4. Enforcement near Sensitive Locations

- a. Policy – absent exigent circumstances should refrain from enforcement actions (arrests) at a sensitive location
- b. Schools, churches, day-care centers, hospitals, nursing homes, and funerals or other religious ceremonies
- c. Covert surveillance at such locations permissible as long as there is no display of weapons
- d. OK at universities, colleges and vocational schools with the cooperation of campus authorities

5. Hot Pursuit

- a. Five requirements: (1) probable cause to arrest for a serious offense; (2) immediate or continuous pursuit; (3) from a public place; (4) probable cause to believe the suspect is inside; and (5) there is an exigent circumstance
- b. Service of an administrative warrant – not a serious crime
- c. Two situations where may apply for ERO – (1) armed alien; and (2) serious federal offense (INA 287(a)(5)(A))
- d. Always consider officer safety

6. Requirements of Criminal Warrant
 - a. Coordinate with the USAO – arrest and/or search warrant
 - b. Arrest warrant / complaint / affidavit – p/c that offense was committed
 - c. Search warrant / application / affidavit – p/c that evidence of a crime and/or the target is present
 - d. Search warrant – see Rule 41, FRCrimP
 - e. Have examples available – may have to prepare all forms
 - f. Special requirement for search warrants – (1) prepare inventory; (2) leave copy of warrant and receipt; and (3) prompt return to the USMJ

II. Demonstration

The students had to take a quiz at the end of the CBT; this will be used as a guide for discussions.

The instructor will focus on 'high miss' questions and/or field questions from the students concerning areas of the CBT they did not fully understand or which need clarification.

The instructor should bring up the scenarios in the CBT and use those as demonstrations of how to or how not to carry out job tasks within 4th Amendment limitations.

III. Audience Participation (*Optional*)

Students are engaged in active discussion of their experience in the field and the CBT.

- Questions



CONCLUSION

I. Summary

It should be easily understood that few cases, if any, are ever the same and that each time you set out to conduct an enforcement action you are likely to encounter situations with differing facts. As a result, you need to be able to act quickly and to make sound decisions on short notice, both with respect to issues of officer safety as well as those involving legal and policy questions. In order to handle the latter, you need to be able to draw upon a solid understanding of Fourth Amendment principles and agency policies. Hopefully the combination of the CBT and this refresher class has prepared you to make sound decisions relating to search and seizure issues and to comply with policies that have been implemented by ICE and ERO.

II. Motivation

There can be repercussions when an officer/agent fails to comply with the requirements of the Fourth Amendment or to follow protocol and policy. Sometimes a lawsuit results while in other instances there might be an internal investigation. Occasionally some one may be injured. Even when the law and pertinent policies have been followed, groups supporting the alien community and/or the media may try to make it appear that you and your fellow officers/agents did something wrong. The best way to deal with such situations is to have a sound understanding of the Fourth Amendment and the policies of your agency.

III. Informal Assessment (Optional)

This exam is not optional. Students will be assessed in class via a 40 question exam. This exam is the final exam for the Computer Based Training. The minimum passing score is 70%. Students who score less than 70% will be remediated and given another exam. Students who fail the second exam will be removed from training.

The instructor needs to have the Training Tech, other individual who has access to the Accadia / TMSS system to activate the ERO Legal and Policy for Field Operations Master Exam and print out the necessary number of copies.

COURSE TITLE: ICE USE OF FORCE POLICY

LENGTH AND METHODS OF PRESENTATION:

<u>CLASSROOM</u>	<u>RANGE</u>	<u>TOTAL</u>
1:00		1:00

TERMINAL PERFORMANCE OBJECTIVE:

Upon completion of this course, the officer will be able to demonstrate an understanding of the U.S. Immigration and Customs Enforcement Use of Force Policy.

PERFORMANCE OBJECTIVES:

The officer will be able to demonstrate an understanding of:

1. Use of Force Guidelines
2. Graham v. Connor
3. Use of Force Continuum
4. Use of Deadly Force
5. Reporting Requirements
6. The Firearms and Use of Force Incident Review Committee
7. Procedures for officers involved in shootings

METHODOLOGY:

1. Classroom instruction and discussion.

EVALUATION:

1. Class participation.
2. Written examination.

REFERENCES:

1. U.S. Immigration and Customs Enforcement Interim Use of Force Policy, dated July, 2004.

TRAINING AIDS AND EQUIPMENT:

1. Course outline.
2. Powerpoint presentation