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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 (912) 267-3429 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting https://www.fletc.gov/legal-resources.

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Human Trafficking: Global Problem – Global Solutions

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Is "globalism" a good thing or a bad thing? Depending on whom you ask and what part of it you are looking at, you will likely receive very different points of view. A great debate, worldwide, on this phenomenon is occurring in our lifetimes. On one hand, we have seen a tremendous increase in global trade, communications, and travel. You can find Greek yogurt and Swiss chocolate at the neighborhood grocery store, for example. On the other hand, it has distorted local economies, led to increased transnational organized crime and contributed to environmental degradation, just to list a few criticisms.

One thing virtually everyone does agree on, however, is that international trafficking of human beings is a tragic reality in today's globalized world. It is easy to think that human slavery was a thing of a bygone era; yet sadly, modern slavery is thriving throughout the world today. In fact, many facets of globalization such as open borders, increased global telecommunications, and widespread international travel have increased human trafficking.[1]

People are trafficked for nefarious purposes such as the commercial sex trade, organ harvesting, debt bondage, the unlawful recruitment and use of child soldiers, and various kinds of forced labor, including domestic servitude, factory sweatshops and farm labor. Numerous factors contribute to human trafficking, such as: corruption of public officials; lax law enforcement; porous borders; poor economic conditions; lack of education; and lack of understanding the scope of the problem at the policy and implementation level. These are but a few of the conditions, which allow this phenomenon to proliferate.

Accordingly, many programs designed to prevent and combat, with the eventual goal to eliminate human trafficking have been, and continue to be, put forth by governments around the world, as well as many non-governmental organizations (NGOs), both domestic and international. More and more efforts are being taken to inform people about this problem and how they can help, even in their own hometowns.

However, we are tempted to think of this as a horrible, yet remote problem somewhere on the other side of the world; therefore, since we are not affected we do not need to be involved. But this premise is wrong. Human trafficking is everywhere, whether we realize it or not, including in the United States. More than 162,000 cases of human trafficking tips related to possible human trafficking cases in the United States have been reported to the National Human Trafficking Hotline since 2007.[2] Steps are being taken at the federal, state, and local levels all across the U.S. to help combat trafficking both here and abroad. One example is that of the Federal Law Enforcement Training Centers (FLETC) which, through its involvement with the International Law Enforcement Academy (ILEA) in New Mexico, is making an impact throughout the world.

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[1] These same factors contribute to the widespread increase in trafficking in arms and drugs as well, and are all interrelated with transnational organized criminal groups, which profit greatly from these trades.
[2] See https://humantraffickinghotline.org/states.

ILEA is a U.S. Government program,[3] with five locations worldwide.[4] The only campus in the United States is in Roswell, New Mexico ("ILEA-R"). The purpose of the ILEA program, generally stated, is to provide advanced legal and law enforcement education to senior law enforcement officers, prosecutors, and judges from countries around the world.[5] The focus of the training is to promote international legal standards and best practices currently utilized by criminal justice actors in the United States and around the world.

Several different federal agencies support the ILEA program by providing instruction, case studies, and examples of U.S. law and practice currently used to combat problems all countries face.[6] ILEA-R has certain thematic focal areas for each of the sessions held throughout the year. Topics for these sessions include transnational organized crime, anti-corruption, financial crimes, drug trafficking, firearms trafficking, and human trafficking and child sexual exploitation.[7] The FLETC campus in Artesia, New Mexico, located 40 miles south of Roswell, provides regular, direct support to the ILEA-R. The Artesia Legal Division provides course instruction and written materials in U.S. Constitutional law and the U.S. criminal justice system, as well as an in-depth introduction to the federal court system, including procedure and practice. FLETC's support also includes training in leadership concepts, organizational management, and ethics in the criminal justice sector.

In November 2017, the focus of the ILEA-R session was on human trafficking and child sexual exploitation. El Salvador, Guatemala and Honduras each sent delegations, including prosecutors, law enforcement officials and an NGO representative. Each of these three countries is experiencing the effects of human trafficking as source, transit, and destination countries. The program for this session addressed such issues as: developing a model national response to human trafficking and child sexual exploitation; an introduction of the work of the U.S. National Center for Missing and Exploited Children; victim's assistance programs, including treatment, outreach and improved communication methods; cyber-elements of human trafficking and child sexual exploitation; investigations; improving criminal enforcement statutes; and prosecution of perpetrators in the U.S. criminal justice system. The delegates from each of the countries noted upon their departure how they plan to put what they learned at ILEA-R into practice to help combat trafficking in persons and child sexual exploitation when they returned home.

Earlier this year delegations from Benin, Ghana, and Cote d'Ivoire participated in a session at the ILEA-R, which focused on trafficking in persons in West Africa.[8] Having several countries from the same region, just as the session in November did for Central America, allowed the delegates

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[3] It is funded by the U.S. State Department, Bureau of International Narcotics and Law Enforcement Affairs (INL).
[4] Gaborone, Botswana; San Salvador, El Salvador; Budapest, Hungary; Bangkok, Thailand; and Roswell, NM, USA.
[5] Please see the ILEA website for a full listing of participating counties: https://www.state.gov/j/inl/c/crime/ilea/.
[6] Federal agencies supporting the ILEA programs include the Departments of State, Justice, Labor, Health and Human Services, and Homeland Security as well as the Drug Enforcement Agency, Federal Bureau of Investigation, and the U.S. Agency for International Development.
[7] The segment for human trafficking was created, developed, and coordinated by DHS Homeland Security Investigations' Human Trafficking Unit and the Department of State's Office to Monitor and Combat Trafficking in Persons. The segment for child exploitation was created, developed, and coordinated by the Child Exploitation and Obscenity Section of the Department of Justice's Criminal Division.
[8] The segment for human trafficking was created, developed and coordinated by Homeland Security Investigations' Human Trafficking Unit and Department of State's Office to Monitor and Combat Human Trafficking in Persons (J-TIP.) The segment for child exploitation was created, developed, and coordinated by the Child Exploitation and Obscenity Section of the Department of Justice's Criminal Division.

to share experiences and establish working relationships with similar agencies in other countries fighting this same battle. Both sets of delegates noted their increased appreciation of the importance of inter-agency cooperation and coordination for more effectively combating trafficking in persons in their respective regions. Promoting bilateral and regional agreements to improve the exchange of criminal intelligence, evidence gathering, and victim response, repatriation, and reintegration in society is an important part of this program.

Another of the issues covered in this session was the increased use of technology and social media to recruit and exploit minors and other vulnerable individuals. This is a relatively new problem for many law enforcement agencies and prosecution offices to confront, given the explosive growth in technology and use of social media around the world.

The Benin delegation, during and after their time at ILEA-R, identified five key human trafficking and child sexual exploitation issues most prevalent and in need attention in their country: child labor, the forced marriage of minors, child pornography, the sexual abuse of minors, and sexual tourism involving minors. While at ILEA-R, delegations draft action plans to address specific challenges facing their respective countries. The Benin action plan incorporated a victim-centered approach, including improving victim support through attention to psychological effects of human trafficking and related needs. The need for rigorous prosecution and appropriate punishment of offenders was also emphasized throughout these sessions in order to more effectively counter trafficking in persons locally and globally.

On a personal note, I worked in Kosovo for a number of years, which also struggles with human trafficking, due to its porous borders, widespread public corruption, and levels of poverty. I worked together with international and local police, prosecutors, and courts to combat human trafficking there and throughout the region. During the decade I spent there, I met a number of victims of trafficking who had been rescued by police. My organization worked with victim assistance groups to help those who had been rescued, providing physical and psychological assistance. We also monitored investigations and prosecutions of the traffickers to add an additional measure of accountability to the court system. It gave me a vivid appreciation of the depth and complexity of this problem; and it put a human face on this public scourge.

CASE SUMMARIES

Circuit Courts of Appeal

Fourth Circuit

Hensley v. Price, 2017 U.S. App. LEXIS 23258 (4th Cir. N.C. Nov. 17, 2017)

Around 6:15 a.m., two deputies went to Hensley's house after Hensley's mother-in-law called 911 and reported a domestic disturbance. The deputies were told that Hensley was on the porch yelling and screaming at someone inside the house and that he might be under the influence of drugs. As the deputies approached Hensley's house in separate vehicles, a man flagged down one of the deputies and stated that Hensley "had kept the neighborhood up all night." In the meantime, the 911 dispatcher told the deputies that Hensley may have injured his granddaughters.

When the deputies pulled into Hensley's driveway, they saw Hensley, his older daughter, Rachelle, and his minor daughter, H.H. come out of the house onto the front porch. Both deputies saw Hensley holding a handgun and one of the deputies radioed dispatch, stating, "It's a gun! Gotta gun!" The officers then saw Hensley briefly struggle with Rachelle and H.H., striking Rachelle with the handgun. After that altercation, Hensley descended the porch stairs and walked toward the deputies, holding the handgun with its muzzle pointed at the ground. During this time, Hensley and the deputies did not acknowledge each other's presence. Hensley never raised the gun toward the deputies or made any overt threats toward them and the deputies did not order Hensley to stop, to drop the gun, or issue any type of warning. The deputies exited their patrol cars and shot Hensley, who was approximately thirty feet away, walking toward them with the gun in his hand. The dispatcher's audio log indicated that less than fifteen seconds elapsed from the time the deputy stated, "It's a gun! Gotta gun!" to the time the deputies shot Hensley. Hensley died from his injuries.

The plaintiffs, Hensley's wife and two daughters, sued the deputies under *42 U.S.C. § 1983* claiming, among other things, that the deputies use of deadly force against Hensley violated the Fourth Amendment. The deputies filed a motion for summary judgment based on qualified immunity arguing that they acted reasonably in using deadly force against Hensley.

The Fourth Circuit Court of Appeals agreed with the district court, with two of the three judges on the appellate panel holding that the deputies were not entitled to qualified immunity.

The court explained that in reviewing a denial of summary judgment based on qualified immunity, it was bound to consider only whether the undisputed facts, considered "in the light most favorable to the plaintiff," established that the defendants violated clearly established law. At this stage, the court noted that it could not consider the defendants' version of events or resolve any factual disputes between the parties.

Against this backdrop, based on the plaintiffs' version of the incident, the court held that Hensley did not pose a threat of serious physical harm to the deputies or his daughters when the deputies shot him; therefore, the officers seized him in violation of the Fourth Amendment.

The court found that if a jury believed the plaintiffs' version of the incident, it could conclude that the deputies shot Hensley only because he was holding a gun, even though he never raised the gun to threaten the deputies. The court commented that Hensley never pointed the gun at anyone and concluded that the deputies had ample time to warn Hensley to drop his gun or stop before shooting him.

The court further held that the deputies' use of deadly force was not necessary to protect Rachelle from serious physical injury because when the deputies shot Hensley, his physical conflict with her had ended. The court found that the short struggle between Hensley and Rachelle "had little bearing on whether Hensley was prepared to take the substantial step of escalating a domestic disturbance into a potentially deadly confrontation with two armed police officers."

Finally, even if the deputies reasonably could have believed that Hensley posed a threat of serious physical harm, their failure to warn him or order him to drop the gun before shooting him was unreasonable. Before an officer may use deadly force he should give a warning if it is feasible. The court stated this means, "an officer should give a warning before using deadly force unless there is an immediate threatened danger." Here the court held that a jury could find that the deputies were not in any immediate danger when they shot Hensley.

In conclusion, the court did not consider whether fatally shooting Hensley under these circumstances violated clearly established law. The court explained that because the officer failed to raise this issue, they waived any argument that their use of deadly force against Hensley did not violate clearly established law.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/16-1294/16-1294-2017-11-17.pdf?ts=1510947026

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Brown v. Elliott, 2017 U.S. App. LEXIS 23525 (4th Cir. S.C. Nov. 21, 2017)

Deputies received a tip that Melvin Lawhorn would be transporting a large quantity of cocaine in a truck on a specific route through Kershaw County, South Carolina. In response, several deputies set up a perimeter along the route. When Deputy Elliott saw the truck, he initiated a traffic stop after he determined the truck was speeding and had crossed the centerline. Deputy Elliott approached the truck from the passenger side, where Lawhorn was sitting with his window halfway down. Another deputy approached the truck from the driver's side and noticed the driver, Darryl Herbert, had his foot on top of the gas pedal and that the truck's engine was still running.

When Deputy Elliott arrived at the passenger door, Lawhorn lunged toward the driver's seat, put his left foot on top of the driver's foot, which was still on the gas pedal, and attempted to shift the truck into drive. The deputies shouted "freeze" and "don't move." Deputy Elliott leaned inside the passenger-side window to grab Lawhorn, however; Lawhorn successfully shifted the truck into drive, and the truck began to move forward. Deputy Elliott fired one shot into the truck, which struck Lawhorn in the back and killed him.

Lawhorn's personal representative, Arlean Brown, sued Deputy Elliott under *42 U.S.C. § 1983* for using excessive force against Lawhorn in violation of the Fourth Amendment.

The district court held that Deputy Elliott was entitled to qualified immunity. Even viewing the evidence "in the light most favorable to Ms. Brown," the court concluded that Deputy Elliott did not violate clearly established law. Brown appealed.

Without deciding whether Deputy Elliott's use of force was reasonable under the Fourth Amendment, the Fourth Circuit Court of Appeals held that existing law did not clearly establish that Deputy Elliott violated the Fourth Amendment in his use of deadly force against Lawhorn under the circumstances. First, the court found that it was undisputed that Lawhorn put Deputy Elliott in danger by placing the truck in motion while Elliott was leaning in through the passenger window. Next, the court found that it was undisputed that Deputy Elliott's torso was inside the truck when he shot Lawhorn. Third, the court held there was no case law that put Deputy Elliott on notice that using deadly force under these circumstances violated the Fourth Amendment. Finally, the court held that Deputy Elliott's conduct was not so extreme that he should have known that his conduct violated established law.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca4/16-2214/16-2214-2017-11-21.pdf?ts=1511294454

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Fifth Circuit

Melton v. Phillips, 875 F.3d 256 (5th Cir. Tex. Nov. 13, 2017)

In June 2009, Deputy Phillips interviewed an assault victim and filled out an incident report identifying the alleged assailant by the name "Michael David Melton." After Deputy Phillips submitted the report, an investigator with the Sheriff's Office began investigating the assault. One year later, the victim provided the investigator with a sworn affidavit identifying the alleged assailant as "Mike Melton." The County Attorney's Office then filed a complaint against "Michael Melton," and four days later, a County judge issued a *capias* warrant identifying the assailant "Michael Melton." In May 2012, Melton was arrested on assault charges and detained for sixteen days before being released on bond. The assault charges against Melton were eventually dismissed for insufficient evidence.

Melton then sued Deputy Phillips under *42 U.S.C. § 1983*, claiming that he was arrested for an assault committed by another man with the same first and last names. Melton further claimed that Deputy Phillips was responsible for his arrest because Deputy Phillips included false information in his incident report.

Deputy Phillips filed a motion for summary judgment based on qualified immunity.

For an officer to be subject to liability, the court recognized that an officer "must have assisted in the preparation of, or otherwise presented or signed a warrant application." It was undisputed that Deputy Phillips' involvement in the chain of events that led to Melton's arrest in 2012 ended with the incident report in 2009 and that Deputy Phillips did not present or sign the complaint upon which the *capias* warrant was issued. In addition, the court found there was no evidence of a policy or practice at the County Sheriff's office that would have allowed Deputy Phillips to anticipate that the incident report would be used to obtain a warrant. Instead, the court noted that unchecked boxes at the end of the incident report showed that Deputy Phillips chose not to file the report with a justice of the peace, a county attorney, or a district attorney. As a result, the court held that Deputy Phillips was entitled to qualified immunity because he had not assisted in preparing, presented, or signed the complaint, which led to the issuance of the *capias* warrant.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca5/15-10604/15-10604-2017-11-13.pdf?ts=1510619411

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Eighth Circuit

United States v. Samuels, 874 F.3d 1032 (8th Cir. Iowa Nov. 6, 2017)

Tamie Marie Samuels married her fourth husband, Randell Samuels, a citizen of Jamaica, on February 3, 2015, two days after he entered the United States on a non-immigrant visa. On March 12, 2015, Samuels filed an alien relative visa petition (Form I-130) for the benefit of Randell, and Randell filed a Form I-485 application for adjustment of status. On the Form I-130, Samuels stated that she had never previously filed a petition for any other alien.

A few months later, a United States Citizenship and Immigration Services (USCIS) officer interviewed Samuels and Randell as part of the Form I-130 decision process. At the interview, Samuels told the officer that she had never filed a Form I-130 petition for any other relative. Two days after the interview, the USCIS officer approved Samuels' I-130 petition.

In an unrelated investigation into suspected passport fraud by Samuels' third husband, a Homeland Security Investigations (HSI) special agent reviewed a Form I-130 filed by Samuels in 1997. On September 11, 2015, two HSI agents interviewed Samuels, who stated that she had filed a Form I-130 in 1997 on behalf of her second husband, Lobaton, but believed she had cancelled the petition.

The government charged Samuels with knowingly making a false statement with respect to a material fact in an immigration matter in violation of *18 U.S.C. § 1546(a).*

Samuels appealed her conviction, arguing that the government failed to produce sufficient evidence to establish that she knowingly made a false statement concerning the Form I-130 submitted in 2015. Samuels also argued that there was insufficient evidence to establish that her alleged false statement was made with respect to a material fact.

The court disagreed. First, the court found that two witnesses testified that Samuels admitted during the September 2015 interview that she had previously filed an I-130 on behalf of Lobaton. The court concluded that based on this admission "which occurred shortly after her submission of the 2015 Form I-130, the jury could reasonably conclude that she remembered her previous filing of the 1997 Form I-130 at the time she stated that she had never filed a prior petition." In addition to Samuels' admission, the government submitted evidence that no one had cancelled or attempted to cancel the 1997 Form I-130.

Next, the court held that Samuels' false statement on the 2015 Form I-130 was material to the activities or decisions of the USCIS. The court found that the investigation of prior marriages and Form I-130 petitions is capable of influencing USCIS decisions because it may raise an inference of immigration abuse that leads to the denial of the current petition, even if a prior Form I-130 petition was approved and the marriage never challenged as fraudulent.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca8/16-3871/16-3871-2017-11-06.pdf?ts=1509985852

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Ninth Circuit

United States v. Johnson, 2017 U.S. App. LEXIS 23911 (9th Cir. Cal. Nov. 27, 2017)

On February 2, 2014, Johnson's ex-girlfriend called 911 and reported that Johnson had threatened to kill himself with a gun. The girlfriend told the dispatcher Johnson was at his aunt's apartment and that the aunt, Luana McAlpine, had called her stating Johnson had shot himself. While on the way to McAlpine's apartment, officers discovered that Johnson was a suspect in a recent armed robbery. In addition, the officers learned that Johnson was currently on mandatory parole supervision and had prior arrests for murder, attempted murder, assault, kidnapping, false imprisonment, domestic violence, carjacking, and robbery.

When the officers arrived at McAlpine's apartment, they discovered that Johnson was alive and unharmed. While speaking to Johnson and McAlpine outside, the officers obtained McAlpine's consent to search her apartment. Inside the apartment, officers found a pistol in a bedroom used by McAlpine's daughter, Norrisha Rivers. Inside the bedroom, the officers also found Johnson's clothing, mail, and three prescription bottles in his name.

Officers arrested Johnson and during an interview Johnson told the officers to check the call logs and text messages on his cell phone to prove that he had not contacted his ex-girlfriend or threatened to kill himself. An officer verified that no calls were made from Johnson's phone around the time of the 911 call. The officer then gave Johnson's phone to another officer for forensic analysis.

Three days later, after the forensics unit was unable to make a digital copy of the phone's contents, an officer manually scrolled through text messages sent from Johnson's phone. During this search, the officer found an incriminating text message related to the pistol seized from McAlpine's apartment.

On February 2, 2015, after Johnson had been indicted for being a felon in possession of a firearm but before trial, the government obtained a warrant to search Johnson's phone.

Before trial, Johnson filed a motion to suppress the handgun and the text messages the officers discovered on his cell phone.

First, Johnson argued that the warrantless searches of his cell phone violated the Fourth Amendment.

The court disagreed. The court held that because Johnson was a parolee, subject to warrantless search conditions under *Cal. Penal Code § 3067(b)(3)*, and under the Fourth Amendment, he had a reduced expectation of privacy. Consequently, the court held that the searches of his cell phone did not violate the Fourth Amendment.

Second, Johnson argued that his Fourth Amendment rights were violated because the cell phone searches conducted on February 5, 2014, and February 2, 2015, unreasonably prolonged the seizure of his phone.

Again, the court disagreed, holding that the delays in searching Johnson's phone were reasonable. The court reiterated Johnson's reduced privacy interests in his phone given his parolee status, and added that Johnson never requested the government return his phone. In addition, the court found

that the government obtained Johnson's phone lawfully and did not engage in intentional delay-tactics.

Finally, Johnson argued that the handgun should have been suppressed because McAlpine did not give valid consent to search the apartment.

The court held that the record supported the district court's finding that McAlpine gave the officers valid verbal consent to search her apartment

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca9/16-10184/16-10184-2017-11-27.pdf?ts=1511805686

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Smith v. City of Santa Clara, 2017 U.S. App. LEXIS 24307 (9th Cir. Cal. Nov. 30, 2017)

Police officers established probable cause to believe that Justine Smith had been involved in a theft of an automobile and a carjacking. The officers discovered that Justine was on probation and that the terms of her probation allowed the government to conduct warrantless searches of her residence. When the officers went to the house that Justine had reported as her residence, Josephine Smith, Justine's mother answered the door. The officers, who did not have a warrant, told Josephine that they were there to conduct a probation search for Justine. Josephine refused to allow the officers into the home without a warrant. Despite Josephine's objections, the officers entered the home to search for Justine but did not find her.

Josephine Smith sued several police officers and the City of Santa Clara under *42 U.S.C. § 1983*, claiming that the warrantless entry into her home to search for Justine violated her rights under the Fourth Amendment. Josephine also alleged that the officers violated *Cal. Civ. Code § 52.1(a)-(b)* (the Bane Act), which provides a cause of action for individuals whose "rights secured by" federal or California law have been interfered with "by threat, intimidation, or coercion."

The officers filed a motion for summary judgment based on qualified immunity, claiming that the warrantless search of Josephine's home was lawful. The officers argued that the Supreme Court has held that officers may search a probationer's residence without a warrant if they have reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity.

Josephine argued that the Supreme Court's 2006 decision in Georgia v. Randolph created an exception to the probation-search rule. In Randolph, the Court held that a warrantless search of a residence based on the consent of an occupant is unreasonable as to a co-occupant when that co-occupant is physically present and objects to the search. Josephine claimed that, under Randolph, because she was present and objected to the search of her home, that the officers' search of her home was unreasonable.

The district court held that the officers were entitled to qualified immunity on Josephine's Fourth Amendment claim under *§ 1983*. The court concluded that it was not clearly established that Randolph created an exception to the probation-search rule. However, the court denied the officers qualified immunity on the Bane Act claim. The court held that "qualified immunity of the kind applied to *§ 1983* claims does not apply to actions brought under the Bane Act." The case went to trial and the jury returned a verdict in favor of the officers on all claims.

Josephine appealed to the Ninth Circuit Court of Appeals arguing that under Randolph, her objection to the search required the officers to obtain a warrant before conducting a probation search for Justine.

The court disagreed. The court found that the Supreme Court's cases concerning probation searches are not analyzed as consent searches. Consequently, the court held that Randolph, which created an exception to the consent rule, did not apply to the search in this case. Instead, the court noted that the question is whether a warrantless probation search that affects the rights of a third party is reasonable under the totality of the circumstances.

In this case, it was undisputed that the officers knew, at the time of the search, that Justine was serving a felony probation term for a serious offense. In addition, the officers had probable cause to believe that Justine had just been involved in the theft of a car and a stabbing, and that she was still at large. Under these circumstances, the court concluded that the officers' need to protect the public from Justine outweighed Josephine's privacy interest in the home they shared. As a result, the court held that the warrantless search of the home over Josephine's objection was reasonable.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca9/14-15103/14-15103-2017-11-30.pdf?ts=1512065014

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Tenth Circuit

United States v. Mirabal, 2017 U.S. App. LEXIS 24096 (10th Cir. N.M. Nov. 29, 2017)

A police officer stopped Mirabal for a traffic violation after receiving a report that Mirabal, a convicted felon, had placed an assault rifle in the trunk of his car. When the officer opened the trunk to Mirabal's car, he could not see the back of the trunk because of a long speaker box that was blocking his view. To see into the trunk better, the officer entered Mirabal's car and pulled down an armrest in the backseat. When the officer pulled the armrest down, he saw a package that contained cocaine. The officer did not find any weapons in Mirabal's car.

The government charged Mirabal with several criminal offenses based on his involvement in a drug distribution ring.

Mirabal filed a motion to suppress the cocaine. Mirabal conceded that the officer had probable cause to believe there was an assault rifle in the trunk. However, Mirabel argued that the officer acted unreasonably by entering the back seat of his car and pulling the armrest down to access the trunk.

The court disagreed, holding that it was reasonable for the officer to enter the backseat and pull the armrest down. The officer testified that when he opened the trunk he could only see the front part of the trunk because a speaker box ran nearly the entire width of the trunk. The officer further testified that he could not see the space behind the speaker box, which was big enough to contain a rifle. At this point, once the officer determined that the speaker box would not move, he went into the backseat to see if he could access the trunk by folding the seats down.

For the court's opinion: https://cases.justia.com/federal/appellate-courts/ca10/16-2188/16-2188-2017-11-29.pdf?ts=1511974856

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Congress Restores FAA Registration and Marking Regulations for All sUAS.

H.R. 2810: National Defense Authorization Act for Fiscal Year 2018

Signed into law by the President on December 12, 2017

Sec. 1092. Collaboration between Federal Aviation Administration and Department of Defense on unmanned aircraft systems

(d) Restoration of rules for registration and marking of unmanned aircraft

The rules adopted by the Administrator of the Federal Aviation Administration in the matter of registration and marking requirements for small unmanned aircraft (FAA-2015-7396; published on December 16, 2015) that were vacated by the United States Court of Appeals for the District of Columbia Circuit in Taylor v. Huerta (No. 15-1495; decided on May 19, 2017) shall be restored to effect on the date of enactment of this Act.

https://www.govtrack.us/congress/bills/115/hr2810

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