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IN FOCUS

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Fourth Amendment Search Warrant Requirements

The Fourth Amendment prohibits unreasonable searches and seizures. As a result, law enforcement generally must obtain a search warrant from a "neutral and detached magistrate" before entering a private space to look for evidence. The Amendment states that "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." This In Focus provides examples of judicial interpretations of this provision regarding what is required from law enforcement seeking to obtain a search warrant.

Probable Cause

Pursuant to the Fourth Amendment, a warrant must be based on probable cause, a standard the Supreme Court has described as "incapable of precise definition or quantification into percentages." Exact formulations vary, but the Supreme Court has characterized the probable-cause standard as "the kind of 'fair probability' on which 'reasonable and prudent'" people act. The Court has said probable cause is a higher standard than "reasonable suspicion," but does not require proof that something is "more likely true than false." Under Rule 41 of the Federal Rules of Criminal Procedure, law enforcement may make the probable-cause showing to a magistrate through a written affidavit or, if "reasonable under the circumstances," by sworn testimony—both of which embody the Fourth Amendment requirement that a warrant must be supported by "oath or affirmation."

Criminal Activity and Nexus to Location

To obtain a search warrant, law enforcement must establish probable cause that the materials sought are contraband, evidence that will "aid in a particular apprehension or conviction," or otherwise "seizable by virtue of being connected with criminal activity." Law enforcement must also demonstrate "a fair probability" that these materials "will be found in a particular place." (This may include a place occupied by a person not "implicated in the crime.") In practice, some federal courts employ a simplified formulation of probable cause, requiring that there must be a "reasonable likelihood evidence of wrongdoing will be found" at the place to be searched.

Select Holdings and Examples:

Totality of the Circumstances: When determining whether a warrant affidavit establishes probable cause, a magistrate looks to the totality of the circumstances presented in the affidavit. The Supreme Court has described the magistrate's probable cause analysis as a "practical, common-sense decision." In *Illinois v. Gates*, a case involving an anonymous informant, the Supreme Court concluded that the veracity, basis of knowledge, and reliability of the informant are some of the relevant factors an issuing magistrate might consider. Although the informant's anonymous letter in that case might have alone been insufficient under those factors, the Court concluded that the issuing magistrate could have found probable cause based on other factors, such as the fact that an initial investigation by law enforcement had verified several predictions contained in the letter.

Common Sense: Magistrates may employ common sense and make reasonable inferences when deciding whether evidence is likely to be found in a particular location. In *United States v. Garza*, law enforcement documented the defendant's involvement in delivering cocaine to another person, and obtained a warrant to search the defendant's home for evidence of drug trafficking activity. Even absent any evidence related to the defendant's home, the court upheld the issuance of the warrant, reasoning that depending on "the nature of the evidence and the type of offense, a magistrate may draw reasonable inferences about where evidence is likely to be kept," and that, "'[i]n the case of drug dealers, evidence is likely to be found where the dealers live.'"

Speculation: While inferences may support a finding of probable cause, mere speculation generally does not. In *United States v. Wilson*, law enforcement obtained a warrant to search the defendant's girlfriend's home after the defendant brandished a gun at a Waffle House. The Fifth Circuit affirmed the district court's ruling that the warrant was invalid, because "the affidavit offered nothing—no observations, no inferences, no corroborated tips—linking the Waffle House incident" to the apartment searched. The court found that while some "inherently domestic" items like personal papers could be reasonably inferred to be in a home without further factual support, the same could not be said for firearms, and "[s]peculation about what might be found at a residence cannot satisfy the Fourth Amendment."

Training and Experience: Law enforcement may rely on training and experience to support a finding of probable cause. In *United States v. Corleto*, law enforcement obtained a warrant to search the defendant's home and vehicle for evidence of child pornography. The affidavit did not provide specific reasons to believe the illegal material would be in a vehicle, but the court upheld the issuance of the warrant because the agent who authored the affidavit "relied on his training and experience in child-pornography investigations to express the hardly surprising opinion that 'it is not uncommon' for individuals with such contraband to store it on portable devices 'in multiple locations'" on their premises and in vehicles.

Staleness: Courts have also determined that probable cause that evidence of an offense may be found at a particular

location is time sensitive. As the Sixth Circuit wrote in *United States v. Abboud*, "a warrant is stale if the probable cause, while sufficient at some point in the past, is now insufficient as to evidence at a specific location." Applying factors from Sixth Circuit precedent for staleness (including the "character of the crime," "the criminal," "the thing to be seized," and "the place to be searched"), the court determined that probable cause to search the defendant's home for records of financial crimes occurring in 1999 was not stale in 2002 because "ongoing criminal activity at a given time may be sufficient to defeat a claim of staleness," and business records are "created for the purpose of preservation."

Deference to Probable Cause Determination: Reviewing courts afford "great deference" to a magistrate's initial probable cause determination. Under one formulation, the key inquiry on review is whether the issuing magistrate had a "substantial basis for concluding that a search would uncover evidence of wrongdoing." For example, in *United States v. Conley*, a municipal law enforcement officer sought a search warrant for a building to gain "better insight into the internal works of [an alleged] gambling operation." Although that statement "in isolation" might have been insufficient to establish probable cause, on appeal the Third Circuit agreed with the issuing magistrate's probable cause determination based on allegations in the affidavit. The affidavit alleged that investigators had traced illegal gambling machines to a company registered to the address to be searched and identified the company's owner as someone previously convicted of a state offense involving illegal gambling devices.

Particularity and Overbreadth

The Fourth Amendment dictates that search warrants must "particularly describ[e] the place to be searched, and the persons or things to be seized." On this score, the Court has said that the "requirement that warrants shall particularly describe the things to be seized makes general searches under them impossible and prevents the seizure of one thing under a warrant describing another." For a discussion of particularity and overbreadth considerations unique to the digital landscape, see CRS Report R48852, *Geofence and Keyword Searches: Reverse Warrants and the Fourth Amendment*, by Peter G. Berris and Clay Wild (2026).

Select Holdings and Examples:

Contextual Approach: A defect arising from a warrant's failure to precisely describe the items to be seized can sometimes be cured by limiting seizure to evidence of particular statutory offenses and incorporating a detailed affidavit describing the violations. In *United States v. Chaney*, the defendants challenged a search warrant authorizing seizure of "patient files" in a search of a doctor's office alleged to be issuing fraudulent prescriptions. Applying a "common-sense, contextual approach," the Sixth Circuit concluded that the warrant "directed the officers to seize evidence of money-laundering violations related to the pill-mill scheme described in detail and at length in the affidavit," and that "[t]herefore, the officers' discretion was sufficiently guided."

Evidentiary Determinations in Execution: A warrant limiting seizure to records constituting evidence of a particular offense, without more, may be insufficiently particular. The court in *United States v. Cardwell* invalidated a warrant where the "only limitation on the search and seizure of appellants' business papers was the requirement that they be the instrumentality or evidence" of federal tax evasion under 26 U.S.C. § 7201. The Ninth Circuit stated that limiting "the search to only records that are evidence of the violation of a certain statute is generally not enough," in part because it requires the officers executing the warrant to make legal determinations about what records would constitute evidence.

Specificity Unfeasible: Even a warrant that describes the items to be seized in broad or generic terms may be valid if greater specificity is not possible. In *United States v. Janus Industries*, the Tenth Circuit upheld a warrant to search the defendant's business where the warrant described the "drug paraphernalia" subject to seizure by reference to a statutory definition. Recognizing that describing "items to be seized in broad and generic terms may be valid if the description is as specific as circumstances and nature of the activity under investigation permit," the court found that the "criminal activity under investigation in the present case—a drug paraphernalia business—makes it difficult to list with great particularity the precise items desired to be seized which evidence such activity."

The Exclusionary Rule

If a court finds that a warrant has not satisfied the requirements of the Fourth Amendment, the typical consequence is for any evidence obtained from that search, and sometimes further evidence gathered as a consequence of the illegal search, to be excluded at trial. The Supreme Court has observed that this "exclusionary rule" is a "judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." In recognition of the fact that "some guilty defendants may go free" under this general approach to deterring law enforcement overreach, the Court has established a "good-faith exception" to the exclusionary rule allowing for admission of evidence "when an officer acting with objective good faith has obtained a search warrant from a judge or magistrate and acted within its scope."

Congressional Considerations

Courts would likely invalidate, as exceeding Congress's constitutional authority, any legislation purporting to reduce Fourth Amendment protections as interpreted by courts. Congress has augmented Fourth Amendment protections in various contexts, however, including by imposing stricter protocols for wiretap warrant applications. In another example, Congress limited the extent to which law enforcement can search or seize certain news media and related materials by enacting the Privacy Protection Act of 1980.

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