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The Informer – November 2017

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Supreme Court Preview

Byrd v. United States

Decision below: [679 Fed.Appx. 146 \(3rd Cir. 2017 - unpublished\)](#)

A police officer stopped Byrd for a traffic violation. Byrd told the officer the car was rented and gave the officer a copy of the rental agreement. The officer noticed that the rental agreement did not list Byrd as the renter or as a permissive driver of the vehicle. During the stop, the officer searched the car and found heroin and body armor in the trunk.

Prior to trial, Byrd filed a motion to suppress the evidence discovered in the trunk, arguing that the search violated the Fourth Amendment. Without deciding whether the search was lawful, the district court determined that Byrd had no expectation of privacy because he was not listed on the rental agreement; therefore, he did not have standing to challenge the search of the vehicle.

Byrd appealed to the Third Circuit Court of Appeals, which affirmed the judgment of the district court. The Third Circuit recognized that there is a split among the circuits as to whether the sole occupant of a rental vehicle has a Fourth Amendment expectation of privacy when that occupant is not named in the rental agreement. However, the Third Circuit has determined that such a person has no expectation of privacy and therefore no standing to challenge a search of the vehicle.

Byrd appealed to the Supreme Court.

The issue before the Court is:

1. Does a driver have a reasonable expectation of privacy in a rental car when he has the renter's permission to drive the car but is not listed as an authorized driver on the rental agreement?

The Court will hear oral arguments in this case on January 9, 2018.

Carpenter v. United States

Decision Below: [819 F.3d 880 \(6th Cir. 2016\)](#)

The government charged Carpenter and Sanders with several counts of armed robbery. At trial, the government's evidence included records from the defendants' wireless carriers, which revealed the defendants' cell-site location information (CSLI) for several months. The CSLI indicated that Carpenter and Sanders used their cellphones within a half-mile to two miles of several robbery locations during the time robberies occurred. The government obtained these records with a court order issued by a magistrate judge pursuant to *Section 2703(d)* of the Stored Communications Act (SCA). A court order under *§2703(d)* does not require a finding of probable cause. Instead, the SCA authorizes a court to issue a disclosure order under *§2703(d)* whenever the government "offers specific and articulable and material facts showing that there are reasonable grounds to believe" that the records sought "are relevant and material to an ongoing criminal investigation."

The defendants filed a motion to suppress the CSLI evidence, arguing that the government violated the Fourth Amendment by not obtaining a search warrant based on probable cause to obtain this information.

The Sixth Circuit Court of Appeals disagreed. The Fourth Amendment protects the content of personal communications between individuals. Here, the business records maintained by the defendants' wireless carriers did not reveal anything about the content of any cell phone calls. Instead, the records included non-content related information, which wireless carriers gather in the ordinary course of business. For example, carriers track their customers' phone across different cell-site sectors to connect and maintain their customers' calls. The carriers also keep records of this data to find weak spots in their network and to determine if roaming charges apply. Consequently, the court held that the government's collection of cell-site records created and maintained by the defendants' wireless carriers was not a search under the Fourth Amendment.

The defendants appealed to the Supreme Court.

The issue before the Court is:

1. Whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 127 days is permitted by the Fourth Amendment.

The Court will hear oral arguments in this case on November 29, 2017.

City of Hays, Kansas v. Vogt

Decision Below: [844 F.3d 1235 \(10th Cir. 2017\)](#)

Vogt was employed as a police officer with the City of Hays, Kansas. During an internal investigation, the Hays police chief compelled Vogt to provide a statement describing how Vogt had come into possession of a knife. Based on Vogt's compelled statement, as well as other evidence, Vogt was charged in Kansas state court with two felony counts related to his possession of the knife. Following a probable cause hearing, the state district court determined that probable cause was lacking and dismissed the charges.

Vogt filed a lawsuit under *42 U.S.C. § 1983* against the City of Hays claiming, among other things, that the use of his compelled statements to support the prosecution during the probable cause hearing violated his Fifth Amendment right against self-incrimination.

The Tenth Circuit Court of Appeals agreed. The Fifth Amendment's Self Incrimination Clause, which applies to the states through incorporation of the Fourteenth Amendment, protects individuals from being compelled to incriminate themselves in any "criminal case." This protection extends to police officers and prohibits the government from compelling officers to make incriminating statements in the course of their employment. As a law enforcement officer, Vogt was protected under the Fifth Amendment against the use of his compelled statements in a criminal case.

The Tenth Circuit Court of Appeals then held that the phrase "criminal case" includes probable cause hearings as well as trials. As a result, the court concluded that Vogt had adequately alleged a Fifth Amendment violation consisting of the use of his compelled statements in a criminal case.

The court noted that there is a split among the circuits on this issue. The 3rd, 4th, and 5th Circuits have held that the Fifth Amendment only provides rights at trial, while the 2nd, 7th, and 9th Circuits have held that certain pre-trial uses of compelled statements violate the Fifth Amendment.

The issue before the Court is:

1. Whether the Fifth Amendment is violated when compelled statements are used at a probable cause hearing.

The Court has not yet scheduled oral arguments in this case.

Collins v. Virginia

Decision Below: [790 S.E.2d 611 \(Va. 2016\)](#)

On two occasions, police officers attempted to stop a motorcycle after the driver committed traffic violations. However, in both cases, the driver increased his speed and eluded the officers. A few months later, one of the officers developed evidence that Collins was the person operating the motorcycle and went to Collins' house. While standing in the street, the officer saw a motorcycle covered with a tarp parked in the driveway. The officer walked up the driveway, lifted the tarp, and uncovered the motorcycle. The officer confirmed the motorcycle appeared to be the same one that had previously eluded him and recorded the motorcycle's vehicle identification number (VIN). A computer search of the VIN revealed the motorcycle had been stolen several years before. The officer arrested Collins for receiving stolen property.

After he was convicted, Collins appealed, arguing that the trial court should have suppressed the VIN information. Specifically, Collins argued that the officer violated the Fourth Amendment when he walked up the driveway, without permission or a search warrant, and removed the motorcycle tarp to reveal the VIN.

The Supreme Court of Virginia disagreed and affirmed Collins' conviction. The court held that the officer's entry onto Collins' driveway and lifting the tarp was a valid warrantless search under the automobile exception to the Fourth Amendment's warrant requirement. The court commented that the United States Supreme Court has "never limited the automobile exception such that it would not apply to vehicles parked on private property." In addition, the Virginia Supreme Court noted that it "has held that there is no reasonable expectation of privacy in a vehicle parked on private property yet exposed to public view."

Collins appealed to the Supreme Court.

The issue before the Court is:

1. Whether the Fourth Amendment's automobile exception permits a police officer to uninvited and without a warrant, to enter private property, approach a home, and search a vehicle parked a few feet from the house.

The Court will hear oral arguments in this case on January 9, 2017.

Dahda v. United States

Decision Below: [853 F.3d 1101 \(10th Cir. 2017\)](#)

Dahda was convicted of conspiracy to distribute marijuana. Much of the evidence against Dahda was obtained through wiretaps of cell phones used by Dahda and four co-conspirators. The wiretap orders were issued by the United States District Court for the District of Kansas. The wiretap orders authorized interception of cell phones located outside the District of Kansas, using listening posts that were also stationed outside the court's territorial jurisdiction.

Dahda argued that the wiretap evidence should have been suppressed because the wiretap orders allowed the government to use stationary listening posts located outside the District of Kansas, in violation of Title III.

The Tenth Circuit Court of Appeals agreed that the wiretap orders violated the general rule that interception orders must occur within the issuing court's territorial jurisdiction. The court further held that the statutory exception that allows the government to listen to calls outside the issuing court's territorial jurisdiction by using a "mobile interception" device did not apply. In this case, the court concluded the exception did not apply because the wiretap orders authorized interception of cell phones that were outside of the court's territorial jurisdiction by using stationary listening posts that were also outside of the court's jurisdiction. However, the court held that while the wiretap orders exceeded the district court's territorial jurisdiction, Dahda's motion to suppress was properly denied.

The court noted that not all deficiencies in wiretap applications and orders require suppression of evidence. Instead, suppression is required only if the violation "directly and substantially" affects one of Congress' core concerns when it enacted Title III. The court stated that Congress' concerns for Title III included the protection of the privacy of oral and wire communications as well as the establishment of a uniform basis for authorizing the interception of these communications. The court found that suppression of wiretap evidence in this case was not appropriate because the territorial defect did not directly and substantially affect either of these underlying Congressional concerns.

Dahda appealed to the Supreme Court.

The issue before the Court is:

1. Whether Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §§ 2510-2520, requires suppression of evidence obtained pursuant to a wiretap order that is facially insufficient because the order exceeds the judge's territorial jurisdiction.

The Court has not yet scheduled oral arguments in this case.

District of Columbia v. Wesby

Decision below: [765 F.3d 13 \(D.C. Cir. 2014\)](#)

Police officers responded to a noise disturbance call at a house. When the officers arrived, they discovered twenty-one men and women having a party. One of the women told the officers a woman, named Peaches, who was renting the house had given her permission to be in the house, while others said they had been invited to the party by another guest. Peaches was not present, but when one of the officers spoke to her on the phone Peaches told the officer she had permission to be at the house. The officer eventually contacted the homeowner who denied Peaches was renting the house and denied the partygoers had his permission to be inside his house. The officers arrested everyone in the house for unlawful entry, a violation of District of Columbia law. Subsequently, sixteen of the arrestees sued the officers for false arrest.

The District of Columbia Circuit Court of Appeals held that the officers were not entitled to qualified immunity.

First, the court held it was unreasonable for the officers to believe the plaintiffs had entered the house unlawfully, as they knew the plaintiffs had been invited to a party at the house. Second, the officers had explicit, uncontested statements from Peaches and another guest at the scene that Peaches had told the people inside the house that they could be there. Finally, the officers had a statement from the homeowner that he had been trying unsuccessfully to arrange a lease with Peaches and that he had not given the people in the house permission to be there. However, the homeowner never told the officers that he or anyone else had told the plaintiffs that they were not welcome in the house. The court found that all of the information the officers obtained by the time of the arrests made it clear the plaintiffs believed they had lawfully entered the house with the consent of someone they believed to be the lawful occupant. As a result, the court concluded that the officers did not have probable cause to arrest the plaintiffs for unlawful entry.

The officers appealed the denial of qualified immunity to the Supreme Court.

The issues before the Court are:

1. Whether the officers had probable cause to arrest under the Fourth Amendment. Specifically, whether, when the owner of a vacant home informs the police that he has not authorized entry, an officer assessing probable cause to arrest those inside for trespassing may discredit the suspects' questionable claims that they were lawfully inside the house.
2. Even if there was no probable cause to arrest the apparent trespassers, whether the officers were entitled to qualified immunity because the law was not clearly established in this regard.

The court heard oral arguments in this case on October 4, 2017.

Oral Argument Audio: https://www.supremecourt.gov/oral_arguments/audio/2017/15-1485

Oral Argument Transcript:

https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/15-1485_2924.pdf

United States v. Microsoft Corporation

Decision below: [829 F.3d 197 \(2d Cir. 2016\)](#)

The government obtained a warrant issued under § 2703 of the Stored Communications Act (SCA) that directed Microsoft to seize and produce the contents of an email account that it maintained for a customer who used the company's electronic communications services. The government then served the warrant on Microsoft at its headquarters in Redmond, Washington.

Microsoft provided the government the customer's non-content related information that was located on a server in the United States. However, Microsoft determined that to comply fully with the warrant, it would need to access customer content stored and maintained on a server located in Ireland. Microsoft refused to provide the government this data and filed a motion to quash the warrant. Microsoft argued that a warrant issued under the SCA could not require it to produce data that was stored on servers located outside the United States.

The government argued Microsoft was required to produce the data, pursuant to the warrant, no matter where the data was located, as long as Microsoft had custody and control of the data.

The court held § 2703 of the SCA does not authorize a United States court to issue and enforce an SCA warrant, even against a United States-based service provider, for the contents of a customer's electronic communications stored on servers located outside the United States. Consequently, the court held the SCA warrant in this case could not lawfully compel Microsoft to produce the contents of a customer's email account stored on servers located in Ireland.

The government appealed.

The issue before the court is:

1. Whether a United States provider of email services must comply with a probable-cause-based warrant issued under § 2703 by making disclosure in the United States of electronic communications within that provider's control, even if the provider has decided to store that material abroad.

The Court has not yet scheduled oral arguments in this case.

Lozman v. City of Riviera Beach, Florida

Decision Below: [681 Fed. Appx. 746 \(11th Cir. 2017 - unpublished\)](#)

In June 2006, Lozman filed a lawsuit against the City of Riviera Beach attempting to invalidate the City's approval of a redevelopment plan, which affected his residence. In November 2006, the City Council held a regular public meeting and Lozman was granted to permission to speak during the "public comments" portion of the meeting. When Lozman began to speak about the recent arrest of a Palm Beach County Commissioner on corruption charges, one of the City Council members told Lozman that he could not speak about that incident. After Lozman told the council member, "Yes, I will," the council member directed a City police officer to remove Lozman from the meeting. After Lozman refused to the officer's request to walk outside, the officer arrested Lozman and charged him with disorderly conduct and resisting arrest without violence. Although the state's attorney determined there was probable cause to arrest Lozman, the charges were dismissed because there was "no reasonable likelihood of a successful prosecution."

Lozman sued the City under *42 U.S.C. § 1983*. Lozman alleged, among other things, that the City arrested him in retaliation for his opposition to the City's redevelopment plan, in violation of the First Amendment.

At trial, the jury found that the officer had probable cause to arrest Lozman for disturbing a lawful assembly under *Fla. Stat. § 871.01*. On appeal, the Eleventh Circuit Court of Appeals held that the jury's finding that probable cause to arrest Lozman was supported by the evidence. In addition, the court held that the jury's determination that Lozman's arrest was supported by probable cause defeated Lozman's First Amendment retaliatory arrest claim as a matter of law. Lozman appealed.

The issue before the Court is:

1. Does the existence of probable cause defeat a First Amendment retaliatory-arrest claim as a matter of law?

The Court has not yet scheduled oral arguments in this case.

CASE SUMMARIES

Circuit Courts of Appeal

First Circuit

United States v. Orth, 2017 U.S. App. LEXIS 20028 (1st Cir. N.H. Oct. 13, 2017)

An officer stopped a vehicle after he suspected the driver was intoxicated. As the officer approached the vehicle, he saw that it contained three occupants. After the officer asked the driver to produce his license and registration, he gave the officer his license but not the registration. When the officer asked the driver to check the glove box for the registration, he refused to do so. While speaking to the driver, the officer saw a “large black cylinder item” resting between the front passenger’s leg and the center console. The officer asked the driver to identify the object, but he refused to answer the officer. When the officer repeated his question, the front- passenger, Orth, uttered profanity to the officer and held up the object to reveal that it was a large flashlight.

The officer requested back up, ordered the driver out of the vehicle, and told Orth to place his hands on the dashboard. Orth shouted profanity at the officer and finally placed his hands on the dashboard after the officer repeated his request several times. The officer frisked the driver and discovered a large utility knife that the driver said he used for construction work. In the meantime, Orth continued to yell at the officer and at one point, reached towards the floorboard of the vehicle.

When the backup officer arrived, the officer ordered the back-seat passenger and Orth out of the vehicle. After the officer frisked both men, he approached the vehicle to search it. In response, Orth tried to close the door and eventually pushed the officer in the chest. While the officers tried to handcuff Orth, the driver reached into the vehicle, grabbed a jacket from the floorboard near where Orth had been sitting, and fled. As the driver fled, he dropped the jacket. The officers recovered the jacket, which contained a loaded pistol, a digital scale, and heroin.

The government charged Orth with several drug and firearm related offenses.

Orth filed a motion to suppress the evidence seized from his jacket.

First, the court held that the officer reasonably extended the duration of the stop beyond its original purpose for drunk driving when he ordered the occupants out of the vehicle and frisked them for weapons.

Second, the court held that the officer established reasonable suspicion that the occupants were armed and dangerous; therefore, he was justified in frisking the men. Specifically, the court noted that the driver’s reluctance to open the glove box and the presence of the large flashlight, among other factors, justified frisking him. In addition, the officer was justified in frisking Orth because of his argumentative behavior, use of profanity, refusal to keep his hands on the dashboard, and reaching to the floorboard area near his seat.

Finally, the court held that the officer was justified in attempting to search the car for weapons. The officer’s reasonable suspicion that the occupants were armed and dangerous justified a search for weapons that could be easily accessed from the passenger compartment of the vehicle.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/16-1436/16-1436-2017-10-13.pdf?ts=1507924805>

United States v. Levin, 2017 U.S. App. LEXIS 21354 (1st Cir. Mass. Oct. 27, 2017)

In September 2014, the Federal Bureau of Investigation (FBI) began investigating an internet forum named “Playpen” for sharing child pornography hosted on “The Onion Router” (Tor). Tor, along with similar networks, collectively known as the Dark Web, exists to provide anonymity to Internet users by masking user data and hiding information by funneling it through a series of interconnected computers.

In January 2015, FBI agents gained access to Playpen servers and relocated the website content to servers in a secure government facility in the Eastern District of Virginia. The agents assumed administrative control of the site. Although FBI investigators could monitor Playpen traffic, it could not determine who was accessing Playpen because of the Tor encryption technology.

In February 2015, the FBI applied for a warrant in the Eastern District of Virginia to search computers that accessed Playpen by using a Network Investigative Technique (NIT). The warrant described the application of the NIT, which sent computer code to Playpen users' computers that instructed the computers to transmit certain information back to the government. The information sent to the government included the computer's Internet Protocol (IP) address, operating system information, operating system username, and its Media Access Control (MAC) address, which is a unique number assigned to each network modem. Although Playpen was hosted in the Eastern District of Virginia, the warrant explained that, “the NIT may cause [a defendant's] computer--wherever located--to send to a computer controlled by or known to the government, network level messages containing information that may assist in identifying the computer.” A United States magistrate judge signed the warrant, and the FBI began collecting the personal data of Playpen users.

During the warrant period, Levin accessed Playpen and the FBI located him in Massachusetts through information obtained from the NIT. The FBI subsequently obtained a warrant in the District of Massachusetts to search Levin's computer. When the agents searched Levin's computer, they found eight media files containing child pornography.

The government charged Levin with possession of child pornography.

Levin filed a motion to suppress the evidence obtained through the NIT.

The district court suppressed the evidence obtained through the NIT, holding that the magistrate judge in the Eastern District of Virginia exceeded her statutory authority by issuing the NIT warrant beyond her district court's jurisdictional boundaries. The government appealed.

The exclusionary rule was designed to deter misconduct by police officers. As a result, when the police exhibit “deliberate, reckless, or grossly negligent” disregard for Fourth Amendment rights, the exclusion of evidence is warranted. However, when police officers act with an objectively reasonable good-faith belief that their conduct is lawful, exclusion of evidence is not appropriate, as there is no bad conduct to deter.

In this case, the government presented the magistrate judge with a request for a warrant, containing a detailed affidavit from an experienced officer, describing in detail its investigation, including how the NIT works, which places were to be searched, and which information was to be seized. To the extent that a mistake was made in issuing the warrant, it was made by the magistrate judge and not by the executing officers. In addition, the executing officers had no reason to suspect that a mistake had been made and the warrant was invalid, as this was the first time the issue of NIT warrants and their scope had been challenged. Consequently, the court concluded there was no law enforcement conduct to deter and vacated the judgment of the district court suppressing the evidence discovered pursuant to the NIT warrant and the warrant authorizing the search of Levins' computer. Instead, the court stated that such conduct should be encouraged because it "leaves it to the courts to resolve novel legal issues," such as the one faced by the agents and the magistrate judge in this case.

The court added that recently the Eight and Tenth Circuits reached similar results in cases involving the execution of the same NIT warrants as issue in this case. (See: [United States v. Horton](#), 863 F.3d 1041 (8th Cir. 2017) and [United States v. Workman](#), 863 F.3d 1313 (10th Cir. 2017). In addition, on December 1, 2016, *Federal Rule of Criminal Procedure 41(b)(6)* was added to provide an additional exception to the magistrate's jurisdictional limitation by allowing warrants for programs like the NIT. See https://www.law.cornell.edu/rules/frcrmp/rule_41.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/16-1567/16-1567-2017-10-27.pdf?ts=1509132604>

United States v. Bain, 874 F.3d 1 (1st Cir. Mass. Oct. 13, 2017)

Police officers obtained a criminal complaint and arrested Bain for drug-related offenses after Bain walked out of a multi-family building and attempted to get into his car. During the search incident to arrest, the officers found a set of keys on Bain's person. The officers tried these keys on the front door of the multi-family building and on the doors to three apartments inside the building. The keys opened the main door to the multi-family building and to unit D, one of the apartments inside the building. The officers used this information in addition to other information to obtain a warrant to search the apartment. Inside the apartment, the officers found drugs, a firearm, and other evidence indicating that Bain was involved in drug trafficking.

The government charged Bain with drug and firearm-related offenses.

Bain filed a motion to suppress the evidence seized from his apartment. Bain argued that the officers conducted an unlawful search by turning his key in the locks to identify the unit to search, and that there was no probable cause to issue a warrant to search unit D without that identification.

The court agreed that the officers conducted an unlawful search by testing the key in the lock of Bain's apartment.

First, the court concluded that the inside of the front door lock to unit D was within the unit's curtilage; therefore, it was protected by the Fourth Amendment. Next, the court found that a physical intrusion into the curtilage to obtain information, in this case by putting the key in the lock to see if it fit, was a search that was not within the "implicit license" which allows a visitor to approach a home, knock on the front door and wait briefly to be received or not. Here, as long as the officers were lawfully in the building, they could approach the door and knock without

being deemed to have conducted a search. However, the court held that walking up to the door of a home and trying keys on the lock constituted a Fourth Amendment search.

The court further held that the search by the officers in this case was not reasonable. The government offered no evidence that the officers considered other possible means of determining in which unit Bain resided. In addition, the government did not claim that evidence was being destroyed, an immediate danger existed, or that any other exigency was present that required the officers to turn the key in the lock of unit D.

Even though the court found that the officers violated the Fourth Amendment by conducting an unlawful search, the court held that the suppression of evidence seized from Bain's apartment was not warranted. The court noted that at the time of the incident, under Massachusetts case law, an officer only needed reasonable suspicion to conduct a search by turning a key in a lock. In this case, the court found that under this standard, the officers established reasonable suspicion to believe that turning the key in the lock of unit D would lead to evidence of Bain's drug dealing. Consequently, the court concluded that the officers relied in good faith on the search warrant for unit D issued by the magistrate judge based on the state of the law prior to this decision.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca1/16-1140/16-1140-2017-10-13.pdf?ts=1507924804>

Seventh Circuit

United States v. Quiroz, 2017 U.S. App. LEXIS 21235 (7th Cir. Ill. Oct. 26, 2017)

Federal agents arrested Quiroz outside his mother's house and placed him in the back of a police car while the agents conducted a protective sweep of the house. After completing the sweep, one of the agents advised Quiroz of his Miranda rights. When the agent asked Quiroz if he understood his rights, Quiroz replied, "I did nothing." The agents then explained the investigation and told Quiroz about some of the evidence they had obtained. At that point, Quiroz made incriminating statements to the agents. The agents transported Quiroz to their office where Quiroz told the agents that he would not sign a Miranda waiver; however, he continued to speak with the agents and made more incriminating statements.

Quiroz filed a motion to suppress his statements to the agents. The district court denied Quiroz's motion, finding that Miranda warnings were given and that Quiroz voluntarily waived his rights. Quiroz appealed.

A defendant's waiver of Miranda rights must be voluntary, knowing, and intelligent. In addition, a suspect can implicitly waive his Miranda rights. To establish that an implicit waiver was valid, the government must show that: (1) Miranda warnings were given; (2) the suspect made an uncoerced statement; and (3) the suspect understood his rights.

Quiroz argued that his statements should have been suppressed because he did not understand his Miranda rights.

The court disagreed. First, the court found that during the proceedings Quiroz used words and sentences "consistent with the intelligence a person would need to understand the words read to him by the agent relating to his Miranda rights." In addition, the court credited the agent's testimony that Quiroz "seemed to understand everything" the agents were telling him.

Second, Quiroz's action indicated that he had "at least some knowledge of the system." For example, Quiroz told the agents that he would not sign anything but continued talking freely, telling them that he could help them but he would need to be on the street to do so.

As a result, the court held that Quiroz understood his rights and that his uncoerced statements after he was read his Miranda rights constituted a valid implicit waiver.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-3518/16-3518-2017-10-26.pdf?ts=1509051628>

Smith v. Anderson, 2017 U.S. App. LEXIS 21569 (7th Cir. Ill. Oct. 31, 2017)

Following a term of incarceration, Smith, a registered offender, was scheduled to begin a term of parole for one year. However, before releasing Smith on parole, Illinois law required that the Illinois Department of Corrections approve a host site. On his release date, Smith submitted two host sites; however, the Department had not investigated or approved either site. Instead of releasing Smith, his parole officer, Anderson, issued a parole violation report that contained incorrect information concerning the Department's attempt to place Smith at a host site. Smith spent another six months in custody before the Department released him on good-time credit.

Smith sued Anderson under *42 U.S.C. § 1983*, claiming that Anderson's parole violation report caused the Department to hold him beyond his release date in violation of the Fourth Amendment.

The court disagreed and held that Anderson was entitled to qualified immunity, finding that no court has held that the Fourth Amendment compels the release of sex offenders who lack lawful and approved living arrangements. As a result, the court concluded that when sex offenders lack these arrangements, their continued detention does not violate clearly established rights. The court further held that Anderson's incorrect statements in his parole violation report were irrelevant and could not form the basis for a cause of action under *§ 1983*.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca7/16-2333/16-2333-2017-10-31.pdf?ts=1509465641>

Eighth Circuit

United States v. Cobo-Cobo, 873 F.3d 613 (8th Cir. Iowa Oct. 12, 2017)

Federal agents arrested Mendoza-Marcos for being in the United States illegally. Mendoza-Marcos told the agents that he lived in an apartment with several roommates and allowed the agents to enter the apartment to retrieve some items to take with him to the immigration office. Once inside the apartment, the agents asked one of Mendoza-Marcos' roommates to gather everyone in the living room to speak to the agents. After the occupants could not provide government issued identifications, including Cobo-Cobo, and admitted to being in the country illegally, the agents arrested them. As a result of this incident, the government obtained Cobo-Cobo's employment identification card from his employer and placed it in Cobo-Cobo's "alien file."

Four years later, a deportation officer reviewed Cobo-Cobo's alien file and discovered that Cobo-Cobo had provided his employer a social security number that did not belong to him. The government charged Cobo-Cobo with misusing a social security number.

Cobo-Cobo filed a motion to suppress evidence obtained from his apartment.

First, Cobo-Cobo argued that Mendoza-Marcos did not voluntarily consent to the agents' entry into the apartment because he was under arrest, was not told that he could refuse consent, had not received Miranda warnings, and had no prior experience with law enforcement officers.

The court disagreed. The court found that none of the facts that Cobo-Cobo alleged automatically render a person's consent involuntary. In addition, officers are not required to provide Miranda warnings before requesting consent to search or tell arrestees of their right to refuse consent. Finally, the agents confronted Mendoza-Marcos in a public place and did not display their weapons, raise their voices, place restraints on him, or make promises to him before receiving his consent.

Cobo-Cobo further argued that the agents' suspicion that he was in the country illegally was based solely on his Hispanic heritage, which is prohibited.

Again, the court disagreed, finding that the agents' suspicion that Cobo-Cobo was in the country illegally was based on several considerations in addition to Cobo-Cobo's heritage. First, the court found that the agents, based on their experience, suspected that Cobo-Cobo was in the country illegally because it is common for unrelated illegal-alien males to live together. Second, when the agents seized Cobo-Cobo they had already arrested one of his unrelated male roommates for being an illegal alien. Third, none of the men in the apartment spoke English, which indicated that they had not been in the country for long. Finally, one of the agents testified that he had been to the same apartment several times and knew that the landlord rented to undocumented aliens. It was irrelevant that the agents also considered Cobo-Cobo's heritage in seizing him as heritage may be a "relevant factor," among others, in establishing reasonable suspicion.

For the court's opinion: <https://cases.justia.com/federal/appellate-courts/ca8/16-4097/16-4097-2017-10-12.pdf?ts=1507822263>
