**Department of Homeland Security**
**Federal Law Enforcement Training Center**
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# The Federal Law Enforcement –Informer–

MONTHLY LEGAL RESOURCE AND COMMENTARY FOR FEDERAL LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Division of the Federal Law Enforcement Training Center is dedicated to providing federal law enforcement officers with quality, useful and timely Supreme Court and Circuit Court 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 Center. *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) 267-2179 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 the Legal Division web page at: http://www.fletc.gov/legal.

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# PodCasts

# 4th Amendment Roadmap

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## 4th AMENDMENT ROADMAP

**A** step by step guide to searches

**Posted Now**

- **Introduction to 4th Amendment Searches**
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## HOT ISSUES

Supreme Court cases and emergent issues

**Posted Now**

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- **Anticipatory Warrants – *US v. Grubbs***
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- **Use of Force – *Scott v. Harris***
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- **FISA Parts 1 and 2 – An Overview for Officers and Agents**

**Coming Soon**

- **Use of Force Continuum**

## SELF INCRIMINATION ROADMAP

A step by step guide to Lawful Interviews

- **Self Incrimination: *Miranda* and the 5th Amendment**
- ***Miranda* Waivers and Invocations**
- **Self Incrimination: 6th Amendment Right to Counsel**

## MILITARY INTERROGATIONS

The 5th Amendment, *Miranda*, and Article 31

- **Article 31(b), UCMJ**
- **Military Interrogations – The Fifth Amendment and *Miranda***

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# Supreme Court
# and
# Circuit Courts of Appeals
# Case Summaries

## SUPREME COURT

***Logan v. U.S.,*** 2007 U.S. LEXIS 12922, December 4, 2007

**There is a mandatory 15 year sentence under the Armed Career Criminal Act of 1984 for those with at least three prior convictions for violent felonies. 18 U.S.C. §924(e)(1). A conviction *for which a person has had civil rights restored* does not count. 18 U.S.C. §921(a)(20). A violent felony conviction that did not result in any loss of civil rights does count. The ordinary meaning of the word "restored"--giving back something that has been taken away--does not include retention of something never lost.**

Click **HERE** for the court's opinion.

* * * *

## 4th CIRCUIT

***U.S. v. Oscar-Torres,*** 2007 U.S. App. LEXIS 25988, November 08, 2007

Looking at this issue for the first time, the Court decides:

**In *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), the Supreme Court's held that**

> **The "body" or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.**

**That holding does not establish a broad rule that evidence of a defendant's identity (in this case, fingerprints) can never be suppressed. It simply means that illegal police activity does not affect the jurisdiction of the trial court or otherwise serve as a basis for dismissing the prosecution. *Lopez-Mendoza* does not prohibit suppression of identity-related *evidence* in *criminal proceedings*.**

**The 8th and 10th Circuits agree** (cites omitted)**.**

**The 3rd, 5th, and 6th Circuits disagree** (cites omitted)**.**

**The 9th Circuit has reached inconsistent results** (cites omitted)**.**

**Identity evidence such as fingerprints and records are not automatically suppressible simply because they would not have been obtained *but for* illegal police activity. Rather, this evidence is suppressible only if obtained by "*exploitation*" of the initial police illegality. Police may not forcibly transport an individual to a police station and detain him to obtain his fingerprints for "investigative" purposes without probable cause. When police officers use an illegal arrest as an investigatory device in a criminal case "for the purpose of obtaining fingerprints without a warrant or probable cause," then the fingerprints are inadmissible under the exclusionary rule as "fruit of the illegal detention." But when fingerprints are "administratively taken . . . for the purpose of simply ascertaining . . . the identity" or immigration status of the person arrested, they are "sufficiently unrelated to the unlawful arrest that they are not suppressible." Fingerprints obtained for *administrative* purposes, and intended for use in an *administrative* process — like deportation — may escape suppression. An alien's fingerprints taken as part of routine booking procedures but intended to provide evidence for a criminal prosecution are still *motivated* by an investigative, rather than an administrative, purpose. Such fingerprints are, accordingly, subject to exclusion.**

**The 8th, 9th, and 10th Circuits agree** (cites omitted)**.**

Click **HERE** for the court's opinion.

* * * *

## 7th CIRCUIT

***Hall v. Bates,*** 2007 U.S. App. LEXIS 26478, November 15, 2007

**When a suspect does not ask whether he is free to leave, there is a rebuttable inference that he does not want to terminate the questioning but instead wants to use the opportunity to deflect the suspicion of the police.**

**The Supreme Court has a rejected** (cite omitted) **a *Miranda*-like rule requiring police whenever they question someone at a police station to advise him that he is not under arrest and is therefore free to leave at any time. All a person has to do in order to test the right of police to detain him is to ask them whether he is free to leave. Such an approach—placing on the suspect the burden of ascertaining whether he is in fact detained—is preferable to speculation by judges or juries on whether the circumstances of a particular interrogation were so intimidating that the average person being questioned would have thought himself under arrest even though he made no effort, as he could easily have done, to determine whether he was.**

Click **HERE** for the court's opinion.

* * * *

## 8th CIRCUIT

***U.S. v. Grooms,*** 2007 U.S. App. LEXIS 25779, November 06, 2007

**A search incident to arrest need not be conducted immediately upon the heels of the arrest, but sometimes may be conducted well after the arrest, so long as it occurs during a continuous sequence of events (search of a car one hour after the arrest** (cite omitted)**).**

**A person's classification as a "recent occupant" of a car may depend on his spatial and temporal relationship to the car at the time of arrest and search; however, it does not turn on whether he was inside or outside the car at the moment the officer first initiated contact. Grooms was arrested near the car he had exited some time before. Searching the car eight minutes after the arrest is sufficiently contemporaneous to be incident to the arrest. Eight minutes is not a long period of time, and some of the delay can be attributed to Grooms' attempts to offer explanations for his prior criminal conviction, for his return to the pub, and for his possession of the two gun cases subsequently seized.**

Click **HERE** for the court's opinion.