

Applied Authorities

Statutory Authority of Border Patrol Agents (Immigration Officers)

- INA 287(a)(1)
 - Authority to, without warrant, interrogate any alien or person believed to be an alien as to his right to be in or remain in the United States
- INA 287(a)(2)
 - Authority to make an arrest of an alien, who in the officer's presence or view is entering or attempting to enter the United States in violation of law, or who the officer believes, or has reason to believe, that the person is in the United States in violation of law
- INA 287(a)(3)
 - Authority to, within a reasonable distance of the border, to board without warrant any vessel within the territorial waters of the United States, and any railway car, aircraft, or vehicle to search for aliens.
 - Authority to enter onto private lands without warrant for the purposes of patrolling the border to prevent the entry of illegal aliens
- INA 287(a)(4)
 - Authority to arrest for felonies committed in the officer's presence
- INA 287(a)(5)
 - Authority to make arrest without warrant for general crimes under federal law
 - Authority to carry firearms
 - Authority to execute and serve any order, warrant, subpoena, summons or other process issued under the authority of the United States.
- INA 287(b)
 - Authority to administer oaths and consider evidence concerning an individual's right to be in or remain in the United States.
- INA 287(c)
 - Authority to search, without warrant, persons and personal effects of applicants for admission.
- INA 287(d)
 - Authority to remove aliens for any violation at the Federal, State, or Local level for any violation of the Controlled Substance Act (CSA).
- INA 287(f)
 - Authority to fingerprint and photograph any alien 14 years of age or older
- INA 235(a)(3)
 - Authority to inspect all aliens who are applicants for admission into the United States
- INA 235(b)(1)
 - Authority to inspect aliens who have not been admitted or paroled
- INA 235(b)(2)(A)
 - Authority to inspect all other applicants for admission, and if deemed not admissible the officer can begin removal proceedings
- INA 235(d)(1)
 - Authority to board and search any vessel, aircraft, railway car, or other conveyance which the officer believes aliens are being brought into the United States. This authority may be used in all districts and places inside the United States (NO LIMITS on distance to border)
- INA 235(d)(3)
 - Authority to administer oaths and take and consider evidence. Officers also have the authority to place an individual under oath and determine an alien's right to be in or remain in the United States.
- INA 274(c)
 - Authority to seize vehicles, vessels, or aircraft when there is probable cause to believe the conveyance has been used for Alien Smuggling

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Border Patrol Agents have authority covering several titles of the United States Code:

- Title 6: Homeland Security Statutes
- Title 8: Immigration Statutes
- Title 18: General US Statutes
- Title 19: Customs Statutes
- Title 21: Controlled Substance Statutes
- Title 31: Money Statutes

Level of Suspicion Continuum

- Zero or No Suspicion
 - Operate Checkpoints
- Some or Mere Suspicion
 - Refer an individual to secondary for immigration violation
- Reasonable Suspicion
 - Perform a roving patrol stop
 - Refer a vehicle to secondary for anything other than immigration
- Probable Cause
 - Arrest for violations of law
- Reasonable Certainty
- Proof Beyond a Reasonable Doubt
 - Necessary for conviction in a criminal trial

Articulate facts are the “building blocks” of each level of suspicion, and are required to increase an officer’s suspicion. Articulate facts must be:

- 1) **Objective**: They must represent a specific and observable fact that an agent can describe in words. These are typically based on each agents personal observations
- 2) **Quality**: The quality of the fact will determine how high an agents suspicion can go. However, there are not qualitative measurements to indicate how each fact should be weighed.
- 3) **Viewed in light of Experience and Expertise**: The judge must look at the facts presented based on the knowledge, experience, and expertise of a law enforcement officer; not that of an untrained member of the public.
- 4) **Considered in “totality”**: Articulate facts are not evaluated independently. An agent, and judge, must consider the “totality of the circumstances” by examining all the articulate facts presented. The level of suspicion does not hinge on one particular fact taking out of contexts.

Articulate facts can be obtained from a variety of sources. Such as:

- 1) An agent’s careful observation of people and things
- 2) Physical evidence
- 3) Intelligence sources
- 4) Information gathered by other law enforcement officers

Articulate facts are the “building blocks” of each function of a Border Patrol Agent’s job. Each function requires a different level of suspicion, and a Border Patrol Agent must be understand what is required when performing different aspects of the job.

Applied Authorities

The Border Patrol Academy compiled Statutory Law, Criminal Law, and Authorities into one course known as Applied Authorities. Authority is having the power to take action in specific situations

Sources of Authority

- 1) The United States Constitution
- 2) Statutes Enacted by Congress
- 3) Administrative Regulations
- 4) Judicial Rulings

All law enforcement agencies in the United States are restricted in their ability to enforce the laws. The same sources of authority that allow law enforcement officers to enforce the law also impose restrictions. Different agencies have different jurisdictions depending upon the laws they have been sworn to uphold. Law enforcement officers are generally protected from criminal and civil liabilities as long as they operate within the scope of their authority.

There have been a number of court cases that determine how Border Patrol Agents enforce the laws of the United States. Here are a few examples:

Taylor vs Fine (1953)

- Border Patrol may enter onto private lands with either; Consent, Warrant, or Property is notorious for illegal aliens

United States vs Preston (1964)

- A warrantless search of a vehicle of an arrested person must be conducted in a timely fashion (before the person and vehicle are removed from place of arrest)

Terry vs Ohio (1968)

- An officer may perform a "pat down" (henceforth known as a Terry Frisk) a person stopped for questioning, if the subject is believed to be armed. The frisk is only for weapons, however, anything found as a result is admissible.

Chimel vs California (1969)

- Outlined "Search Incident to Arrest" (SIA)
- Following a lawful arrest an officer may search the person and the area under his or her immediate control. It has been held that the search of the entire passenger compartment of a vehicle constitutes "immediate area."

United States vs Almeida-Sanchez (1973)

- Dealt with roaming patrol and stipulated when a vehicle is subject to search outside of a "Border Search"
- The three situations when a vehicle maybe searched are: Consent, Warrant, or Probable Cause

United States vs Brignoni-Ponce (1975)

- The Border Patrol must have Reasonable Suspicion that a vehicle contains aliens in order to stop the vehicle other than at a border or its "functional equivalent."

United States vs Martinez-Fuerte (1976)

- Vehicles may be referred to secondary inspection with MINIMAL SUSPICION
- The Supreme Court also stipulated checkpoints **DO NOT** constitute a 4th amendment violation.

United States vs Watson (1976)

- Officers are authorized to arrest, without warrant, with PROBABLE CAUSE for felonies, regardless of likelihood of escape.

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Frequently Asked Questions Concerning Authority

- Q) Do I need to be read my Miranda Rights following arrest?
- A) Not necessarily. It depends on what the officer plans to do following arrest. Two elements are necessary to constitute a necessity for an individual to be read their Miranda Rights. Those two elements are arrest and interrogation. If an individual is under arrest, but will not be questioned, then he/she is not required to be read their Miranda Rights.
- Q) Can the Border Patrol use race as a factor?
- A) Yes, and No. There are specific times when the race of an individual can be used. Such as Be On the Lookouts (BOLs) for a specific person. However, race can not be used as the only articulable fact to raise an officers level of suspicion; there must be other, higher level, articulable facts.
- Q) Can a K9 sniff a car without a warrant or probable cause?
- A) Yes! A K9 does not need a warrant or probable cause to sniff a car. Any vehicle already stopped, or in a public place can be smelled by a K9 without warrant or probable cause. This is a variation of the "Plain View Doctrine."
- Q) Can a law enforcement officers look into a vehicle lawfully parked in a parking lot
- A) Yes! Providing the vehicle is parked in an area where the public is allowed to go, then the vehicles parked do not have any "Reasonable Expectation of Privacy." Additionally, if a vehicle is in the checkpoint and lawfully stopped, the Agent may look inside or around the outside of the vehicle as well as use a flashlight if during the night. This is accomplished under the "Plain View Doctrine."
- Q) What level of force can a Border Patrol Agent utilize to affect an arrest?
- A) Whatever force is necessary and proper to affect the arrest. Utilizing the Use of Force continuum an agent can use whatever level of force is necessary and proper for any specific scenario.
- Q) Am I under arrest when a Border Patrol Agent is questioning my citizenship?
- A) No. The Supreme Court as determined this to be an "Investigative Detention." An individual is being detained for questioning, but no arrest has been made. Upon conclusion of questioning the individual is released or arrested.
- Q) What questions can a Border Patrol Agent ask at the checkpoint?
- A) Anything. A Border Patrol Agent at the checkpoint can ask any person any question. The difference between what can be asked, and what information a person is required to provide. If a person wishes not to answer any questions other than to state their citizenship, that is their right. However, most Agents ask other questions to disrupt the coaching methods employed by the smuggling organizations; and to be friendly.
- Q) Doesn't the Border Patrol Checkpoint violate the 4th amendment to the U.S. Constitution?
- A) No. In the case of the United States vs. Martinez-Fuerte in 1976 the Supreme Court ruled that the use of interior checkpoints by the United States Border Patrol represents only a minimal intrusion into a person privacy. The court weighed the individual's right to privacy vs. the public interest when issuing it's ruling.
- Q) What is the jurisdiction of the United States Border Patrol?
- A) The Border Patrol has nationwide authority to enforce immigration law through the Immigration and Nationality Act section 235. The Border Patrol has very specific and increased legal authority to conduct operations within 100 miles of the border, and further increased legal authority within 25 miles of the border.