



INSTRUCTION

I. Explanation and Demonstration

A. EPO 1: Describe the legal requirements to execute an administrative warrant.

1. Administrative arrest warrant (Form I-200) (included in Attachments)
 - a. The basics
 - 1) Issued with some, but not all, Notices to Appear (NTAs).
 - 2) Directs ERO Officers to take named subjects into custody pursuant to INA § 236(a).
 - b. Executing an administrative arrest warrant
 - 1) An administrative arrest warrant does NOT alone authorize a 4th Amendment search of any kind.
 - 2) Access to the subject of an administrative arrest warrant will occur either in an “open field” or in a REP-protected area because of a warrant or probable cause exception (most commonly consent).
 - 3) Example: ERO Officers armed with an administrative arrest warrant for Mr. Smith arrive at his residence. They approach Mr. Smith’s front door via a walkway and knock. A man they believe to be Mr. Smith answers the door, and the ERO Officers ask if they can enter to ask him a few questions; Mr. Smith consents. While inside, the officers confirm Mr. Smith’s identity and arrest him pursuant to the administrative arrest warrant.
2. Warrant of removal/deportation (I-205) (included in Attachments)
 - a. The basics
 - 1) Issued with every order of removal. Obviously, for persons already in custody, during their removal proceedings, this warrant does not require additional action on the part of the ERO Officer.
 - 2) Directs ERO Officers to take named subjects into custody AND remove them pursuant to INA § 241(a).
 - 3) Like arrests pursuant to administrative arrest warrants, these arrests often occur under circumstances in which the



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initial encounter was consensual, but they do not have to occur in this way. They can also take place in conjunction with vehicle stops.

- b. Executing warrant of removal/deportation
 - 1) A warrant of removal/deportation does NOT alone authorize a 4th Amendment search of any kind.
 - 2) Like administrative arrest warrants, these warrants are most often, but not always, used to arrest someone under circumstances in which the initial encounter was consensual.
 - 3) Example: Mr. Jones has been ordered removed, and as a result, there is a warrant of removal/deportation for him. He is one of the targets you have been tasked with bringing in. Armed with your warrant of removal, you can arrest him anywhere you can lawfully be, making sure you are also in compliance with policy. Based on your surveillance, you determine the best manner to arrest him is by using a vehicle stop (you have the required driver training and the required approval). Shortly after Mr. Jones drives away from his home, you turn on your emergency lights and he pulls over. You approach his vehicle, and after confirming his identity, you arrest him.

EPO 2: Describe the legal requirements regarding a federal search and/or seizure warrant per Rule 41.

“... [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.” 4th Amendment, U.S. Constitution

1. General rule for Rule 41 search warrants
 - a. To comply with the 4th Amendment, ERO Officers must have a warrant, supported by Probable Cause, that authorizes the search and/or seizure, and the warrant must be executed in a reasonable manner. There is a strong preference for warrants under the Constitution. Whenever possible, you should get a warrant before you search or seize.
 - b. As a cautionary note, each federal circuit may approach the issuance and execution of warrants slightly different, so when you report to your duty station and are called upon to “get” a warrant, make sure to check with fellow ERO Officers and local Assistant United States Attorneys (AUSAs) regarding the local requirements.



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2. A federal warrant may be issued under Rule 41 for any of the following:
 - a. Evidence of a crime.
 - b. Contraband, fruits of crime, or other items illegally possessed.
 - c. Property designed for use, intended for use, or used in committing a crime.
 - d. A person to be arrested or a person who is unlawfully restrained.
3. Four primary federal warrants are identified in Rule 41 of the Federal Rules of Criminal Procedure:
 - a. Seizure/arrest warrant.
 - b. Search warrant.
 - c. Warrant seeking electronically stored information.
 - d. Warrant for a tracking device.
4. **Note for any warrant:** If the ERO Officer intends to arrest a subject with an arrest warrant, then the ERO Officer must remember that to serve that arrest warrant, the ERO Officer must have lawful access to the subject.
 - a. In *Peyton v. New York*, 445 U.S. 573 (1980), the Supreme Court said it was permissible to conduct a search for an individual named in an arrest warrant in his/her dwelling when there is reason to believe that he/she is inside. It is generally preferred, however, to search based on a search warrant, even when armed with an arrest warrant. Certainly, if the home is not the subject's dwelling, a search warrant would be required.
 - b. Example: If an ERO Officer knows that a subject is located in a home at 123 Maple Street, the mere fact that the ERO Officer has an arrest warrant for the subject may not justify the entry into the home because entering would constitute a search, and arrest warrants generally only authorize seizures. However, if the ERO Officer knew the home was also the subject's residence and if he were able to articulate why he had reason to believe the subject was inside, he could rely on the arrest warrant for entry into the home to arrest the subject. If the home was not the subject's residence, the ERO Officer could obtain a search warrant based on Probable Cause.
5. A federal warrant (search or arrest/seizure) consists of three parts: the actual warrant, the affidavit of probable cause, and the inventory/receipt.



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- a. The actual warrant (types):
 - 1) Search warrant – The actual warrant identifying the place to be searched, the things to be seized, and the Probable Cause that those items will be found at a particular location.
 - 2) Arrest warrant – The actual warrant identifying the person to be arrested and the Probable Cause to support the arrest.
 - 3) Warrant seeking electronically stored information – The actual warrant identifying the electronically stored information to be seized.
 - 4) Tracking device warrant – The actual warrant identifying the person or property to be tracked.
- b. The affidavit of probable cause, which is attached to the warrant.
- c. The inventory/receipt is also attached to the warrant. The inventory lists the items taken from a location searched, and the receipt is provided to a person responsible for the location from which the property was taken.
- d. See Warrant Application (AO-106) and Search and Seizure Warrant (AO-93) forms (included in Attachments)

c. **EPO 3: Explain the process to obtain and execute a Rule 41 search warrant.**

- 1. Obtaining a Rule 41 search warrant
 - a. The ERO Officer prepares a warrant application with an attached affidavit of probable cause.
 - b. The warrant and affidavit of probable cause is presented to the magistrate.
Note: Most U.S. attorney offices have a policy that an AUSA must review a warrant application before it can be submitted to a U.S. magistrate judge.
 - c. The ERO Officer is placed under oath and swears to the accuracy of the information contained in the application and affidavit of probable cause.

Note: The magistrate will likely have questions about the application for the ERO Officer.