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# Chapter 3

## Seizure

### PROBABLE CAUSE

Probable cause of a violation of the statute is required prior to a seizure. Probable cause has been defined as a reasonable ground for a belief of guilt, supported by less than prima facie evidence but more than mere suspicion.<sup>1</sup> In the conveyance seizure context, probable cause exists when the facts and circumstances, together with inferences, cause a reasonable person ~~of reasonable caution~~ to believe that the conveyance has been used or is being used in violation of Sec. 274(a) of the INA. The Seizing Agent may rely on his or her experience in drawing reasonable inferences from the relevant facts and circumstances.

Simply having probable cause to believe that an alien in a conveyance is unlawfully present in the United States is insufficient to justify seizure of the conveyance. Rather, probable cause must exist as to each element of the offense. For example, for a violation of section 274(a)(1)(A)(ii), the Seizing Agent must have probable cause that 1) the owner/operator knew or recklessly disregarded the fact that the alien had come to, entered, or remained in the United States unlawfully; 2) the owner/operator transported or moved the alien, or attempted to do so; and 3) that he or she did so in furtherance of the violation.

Probable cause may be based on a number of factors.

### *Statements From the Violators or Witnesses*

Statements should be obtained from violators, informants, witnesses and Service Officers and these statements may be used to support the probable cause for the

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<sup>1</sup>See Appendix V, Glossary of Forfeiture Terms for the Non-Lawyer in the Federal Asset Forfeiture Program, Department of Justice, Criminal Division, February, 1991.

violation. Sworn statements are preferable because they have greater evidentiary value than unsworn statements or narrative reports.

In taking a statement, the Seizing Agent should attempt to obtain the following information:

- The identities and immigration status of the violators with details regarding any false claims presented;
- The relationships between the individuals participating in the violation;
- The stated destination and purpose of any attempted entry and the actual destination and purpose;
- The basis for the alien's inadmissibility or unlawful presence in the United States;
- Any history of problems at entry, warnings of seizure provisions, refusals or referrals to secondary inspection at ports of entry;
- Information concerning smuggling arrangements and payments; and
- Knowledge of inadmissibility.

When the registered owner is not present at the time of the violation, the Seizing Agent should determine the operator's relationship to the registered owner, as well as the operator's right to use and control the conveyance. This information is useful in determining the beneficial owner of the seized conveyance. The individual who has actual use of the conveyance will be considered the beneficial owner. In most cases, the registered owner and the beneficial owner will be one and the same individual. However, in some cases, the actual user of the vehicle will not be the registered owner. When this occurs, the actual user of the vehicle may be considered a beneficial owner.

*Physical Evidence*

A seized conveyance may contain physical evidence to support the probable cause for the violation. Physical evidence may include:

- Photocopies of documents used to assert identity;
- Evidence of documented false claims to citizenship or immigration status;
- Evidence of illegal status (residency or employment documents, resumes, letters, bills, bank books, or licenses);
- Round trip airline tickets purchased in or indicating travel originating in the United States;
- Maps or directions to unguarded ports of entry;
- Lists of information to be memorized to support a false claim;
- Other physical evidence (coins, bus tickets, clothing, luggage, matchbooks, or papers with smugglers' phone numbers); and
- Photographs (mud-caked floor boards, or compartments).

Physical evidence should be secured as evidence and photographs taken for inclusion in the conveyance seizure file.

#### *Investigative Reports*

Probable cause to seize a conveyance may be developed during the course of any Service investigation, such as an employer sanctions investigation. ~~It must be stressed that all information surrounding the probable cause and seizure must be reported in an investigative report.~~ It is very important that all facts, circumstances, and inferences (emphasizing the agent's experience) be included in the investigative report.

Investigative reports may be in any of the following formats:

- Memorandum of Investigation, G-166C;

- Report of Apprehension or Seizure, I-44;
- Memorandum;
- Prosecution Report; and
- Case Summary.

#### *Record Checks*

Record checks may be used to establish probable cause for the violation. Official records of the Service or the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law, may be used to establish that the alien was illegal. [Sec. 274(b)(5)(B) of the INA]. In addition, record checks from the various computer systems showing license information or conveyance registration may prove to be valuable circumstantial evidence of unlawful residence in the United States. Record checks from foreign or domestic law enforcement agencies may be used to prove a criminal record which renders the alien inadmissible.

#### *Information From Informants*

Information received from informants may be used to establish the probable cause for the violation. Informants must have a history of reliability or the information provided must be corroborated.

#### *Information From Other Law Enforcement Agencies*

Information provided by other agencies may be used to establish probable cause. The information must have been obtained as a result of a lawful investigation by an officer having the authority to conduct the investigation.

### **VIOLATIONS**

In order to subject a conveyance to seizure pursuant to Sec. 274(b) of the INA, there must first be probable cause to believe that the conveyance, including any vessel, vehicle, or aircraft, has been or is being used in the commission of a violation of Sec. 274(a) of the INA. At the time of the seizure, the Seizing Agent must be able to identify one or more violations of subsection (a). For additional information on each of the violations, please refer to the Law Outline in Volume 2.

## *PROCEDURES*

The following procedural steps must be taken after the decision to seize a conveyance has been made.

### *Determination of Property Interests*

The Service shall attempt with due diligence to identify all ownership interests in the seized conveyance. [8 C.F.R. §274.5(a)]. Department of Motor Vehicle (DMV) records should be checked to identify the registered owner. This record check should be completed within twenty-four (24) hours of the seizure. Record checks for lienholders must also be expeditiously completed.

### *Check for Stolen Conveyances*

The Seizing Agent must check records to determine whether the conveyance has been reported as stolen. This check should be completed within twenty-four (24) hours of the seizure.

### *Inventory*

The following procedures should be followed by Service employees at the time of the seizure or as soon as possible thereafter.

- An inventory of the seized conveyance should be conducted by one Service Officer and witnessed by another Officer.

- As much personal property as possible must be removed from the conveyance and returned to the owner at the time of the seizure. Generally, a list of all of the property returned should be made in order to document this action. If possible, the owner should sign a receipt for the returned property. The owner's property may be given to the operator if there is no indication that the conveyance is stolen. Whatever the owner (or operator) takes at the time of seizure will not be subject to abandonment proceedings. (See Chapter 11).
- The owner (or the owner's agent) should be given a reasonable opportunity to make arrangements for the removal of any remaining property. Generally, the owner should be afforded seventy-two (72) hours to remove any remaining personal property. Personal property promptly removed will not be subject to abandonment proceedings.
- At the time of the inventory, the owner may elect to voluntarily abandon to the Government all interest in some or all of the personal property. A list of all personal property which the owner decides to voluntarily abandon should be made and the owner should sign this inventory list thereby granting consent to the voluntary abandonment of the listed personal property. (See Appendix C).
- After the expiration of the seventy-two (72) hour period, most of the personal property should have been returned to the owner or voluntarily abandoned. If any personal property remains in Service custody, it should be listed on a separate inventory form and abandonment proceedings should be initiated.
- The owner must be given written notice that the remaining personal property is subject to abandonment proceedings. (See Appendix G). If the owner or operator does not receive the Personal Property Notice in person, the owner of the personal property must be sent the notice in the mail. The notice should be sent to the owner's address of record. This notice must inform the owner that all personal property not claimed within seven (7) days of receipt of the notice will be considered voluntarily abandoned to the United States.

- All closed containers must be opened and their contents inventoried as part of the inventory, unless their contents can be accurately ascertained by examination of the container.
- At the time of the inventory, Service employees must be on the alert for evidence which would identify the person who regularly uses the conveyance. For example, insurance cards, gasoline credit card receipts and repair invoices may serve to identify the true user of the seized conveyance.
- Any items of special value must be individually identified and described. Expert appraisals of their value should be obtained, if necessary, by telephone.
- Every reasonable effort shall be made to return perishable products to the owner or his/her agent.
- Attach the warning sticker (I-638) to the conveyance. (See Appendix X).
- Any damage or rust observed in or on the conveyance should be documented. Any obvious repairs needed on the conveyance should be listed on a damage report. Note whether certain basic equipment is missing and, if possible, attach photographs to the report. List all special equipment in the conveyance including CB radios, stereo cassettes, extra speakers and handicap accessible features. The damage report form should be included in the seizure file. (See Appendix L).

#### *Documentation*

The following documentation should be completed as soon as possible after the seizure.

- Information on the seizure should be entered into the Consolidated Assets Tracking System (CATS).
- A stolen conveyance check should be completed and a copy should be included in the seizure file.

- The seizure form should be completed. The case number should be included on the form. Either the Record of Seized Vehicle, Vessel or Aircraft (I-620) or the Consolidated Asset Tracking System (CATS) Seizure Form will be used. (See Appendix D).
- The investigative reports which set forth the probable cause for the violation should be completed. Investigative reports may be in memorandum form. Any relating Record of Deportable Alien (I-213), Memorandum of Investigation (G-166C), Report of Apprehension or Seizure (I-44), Prosecution Reports, and Sworn Statements should be included in the seizure file.
- The inventory forms (see Appendix C), the damage report (see Appendix L) and the Personal Property Notice (see Appendix G) should be completed and included in the seizure file.
- Custody of the conveyance should be transferred to the USMS. The USMS must be notified of the seizure and the availability of the conveyance for transfer. Custody should be transferred to the USMS as soon as possible, including those conveyances which may be returned to the owner pursuant to 8 C.F.R. §274.5. (See Chapter 6). The documentation showing transfer to USMS custody must be maintained in the seizure file. Documents to be used include: Seizure Form (I-620 or CATS), Report of Property Shipped (G-504), or Seized Property and Evidence Control (USMS-102). (See Appendix D for Seizure Form, Appendix E for G-504 and Appendix F for USMS-102).
- A registration check should be completed. This check will assist in the identification of additional owners, lienholders or others having a perfected property interest in the conveyance. A copy of the registration check must be included in the seizure file.
- A copy of the notification letter must be maintained in the seizure file. The copy should also reflect the manner of service, such as personal service or certified mail. (See Chapter 14, Document 1).



UNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

RECORD OF SEIZED VEHICLE, VESSEL OR AIRCRAFT (Under 8 USC 1324 (b))

(See Instructions on Reverse Before Completing)

1. Type of conveyance <input type="checkbox"/> Car A. <input type="checkbox"/> Truck <input type="checkbox"/> Vessel <input type="checkbox"/> Aircraft <input type="checkbox"/> Other		2. Year	3. Make	4. Model	5. Style
6. Color	7. License (State/County/Yr/No)	8. Vehicle Identification Number	9. Engine (Cubic In)	10. No. of Cylinder	
11. Weight	12. Wheel Base	13. Size & Condition of Tires	14. Mileage Reading	15. Condition	16. Appraised Value \$
EQUIPMENT AND ACCESSORIES (See Reverse)			REPAIRS REQUIRED		
FACTS TO ESTABLISH PROBABLE CAUSE (Attach the underlying G-166 or I-44 which sets forth probable causes for seizure. Enter date of attached G-166 or I-44.)					
17. Seized From B.		18. Place Seized		19. Date Seized	
20. Conveyance is Registered in the Name of		21. Address		22. Date Notified of Seizure	
23. Name and Address of Lienor			24. Amount of Lien \$	25. Date Notified of Seizure	
26. Is the Conveyance Suitable for Official Use <input type="checkbox"/> Yes <input type="checkbox"/> No		27. Seizing Officer (s)		28. Signature of Supervisor	
C. RECEIPT OF THE ABOVE PROPERTY IS ACKNOWLEDGED BY					
29. Name of Firm and Contract Custodian					
30. Address					
31. Date Received			32. Storage Rate		
33. Receipt Signature of Representative			Title or Position of Representative		
34. Signature of Officer Placing Conveyance in Storage			35. Signature of Regional Commissioner		

## INSTRUCTIONS

Form I-620 must be prepared in quadruplicate as soon as possible following seizure of a conveyance. When a vessel or aircraft seizure is being reported, a separate sheet on white bond will be attached to the Form I-620 describing the conveyance in full detail. Care must be taken to align all copies in order that the required information is within the designated blocks. Distribution will be as follows:

- a. The original will be forwarded to the Regional Commissioner.
- b. One copy will be attached to the windshield or other conspicuous place on the conveyance.
- c. Two copies will be retained in the district or sector office (or one copy in the sub-office or sector as appropriate).

If all information called for in Part B is not known at the time the form is prepared, a copy may be placed on the windshield of the stored conveyance with only Parts A and C completed. However, all of the information must be furnished on the copies transmitted to the region or an explanation given under "Facts to Establish Probable Cause".

In determining the appraised value, the "domestic" (retail) value must be given, not the wholesale value. As an aid in making the determination of value, an "official used car guide" may be used. Also it may be appropriate to inquire of a reputable dealer of the conveyance in the area as to value. Required repairs will reduce value.

"Equipment and Accessories," this is necessary in order to properly describe and appraise the value of all conveyance. Include such items as Radio; AM, AM/FM, AM/FM with tape and abbreviate when possible as follows:

AT	= Automatic Transmission	PB	= Power Brakes
3sp.	= 3 Speed Manual	AC	= Air Conditioned
4sp.	= 4 Speed Manual	VT	= Vinyl Top
PS	= Power Steering		

Under "Facts to Establish Probable Cause" attach a copy of the Form G-166 or I-44 with the facts to establish probable cause underlined. It will not be necessary to list facts of each instance where the vehicle was utilized in violation of the law. This space may be utilized to explain why requested information on the form was not provided.

The amount of the lien must be given. Such terms as "unknown" and "unavailable" are not acceptable.

In the block "Seizing Officer(s)" only the principal officer(s) who actually made the seizure, and the officer who verified the information on this form should be shown. The responsible supervisor will sign in the block "Signature of Supervisor".

Conveyances should generally be placed in storage in the judicial district where the seizure was made, however, when appropriate to protect the property, storage may be made in another district.