

Victory Against the Knock on the Door

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The “knock on the door” for a surprise raid of a physician’s office—or his home—is a terrifying experience. This was one of the reasons why the colonists fought for independence against the King of England, whose agents would search homes and businesses in colonial America with impunity. These unjustified searches caused a climate of fear and resentment of British authorities among the colonists.

John Adams attributed the genesis of the American Revolution to the arbitrary surprise searches by British officials, based merely on a general writ of assistance that did not specify the location or items to be searched, and without probable cause of any wrongdoing by the owner. After King George II died in 1760, Massachusetts attorney James Otis, Jr., argued in a 5-hour speech inside the Old Boston State House in February 1761 against Massachusetts courts allowing renewal of this odious practice under the authority of the new King George III.

“Then and there was the first scene of the first Act of opposition to the Arbitrary claims of Great Britain. Then and there the Child Independence was born. In fifteen years i.e. in 1776 he grew up to Manhood, & declared himself free,” Adams wrote in his memoirs many years later.¹

The Old Boston State House is the oldest surviving public structure in that historic city, as built in 1713, and is one of the oldest public buildings in the entire United States that is still standing. It was in the square located directly in front of this building that British soldiers fired on colonists in 1770, killing five, in what became known as the Boston Massacre. The first public reading in Boston of the Declaration of Independence was from a balcony in this building in 1776.

At the same time, the fiery rhetoric of James Otis, the finest orator in all of colonial Massachusetts, was often a topic of denunciation across the Atlantic in the British Parliament. It was Otis who popularized the expression that “taxation without representation is tyranny.” He would surely have been a signer of the Declaration of Independence except that he was clubbed in the head with a walking stick by a British customs officer in 1769, and never fully recovered mentally.²

In 1761, Otis lost his fierce argument against renewal of the use of the general writs of assistance, which allowed warrantless searches of homes without probable cause. Many colonists remained on edge in their homes and businesses without the comfort of knowing that they had protection against authorities barging into and conducting a search against innocent people.

This was a full 30 years before the Fourth Amendment was added to the U.S. Constitution to provide this protection against arbitrary searches and seizures of one’s home, business, personal papers, and other property. For Massachusetts residents, John Adams inserted protections against warrantless searches into its state constitution in 1780, and James Madison used this as a model for drafting the Fourth Amendment that became part of

the U.S. Constitution in 1791.

Massachusetts initially refused to ratify the U.S. Constitution without a promise to add that protection for individual liberty. New York and Virginia, which were the most influential states, felt likewise. These prominent colonies all properly insisted on a Bill of Rights to protect against warrantless searches and other invasions of freedom as a condition for ratifying the U.S. Constitution in 1788.

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.³

The Fourth Amendment thereby protects Americans against a surprise search of their home or business unless there is a warrant signed by a judicial officer, specifying the location to be searched and a precise list of the items or persons sought.

These warrants can be issued only upon the signature of a neutral magistrate or judge who has no personal stake in the matter, based on a sworn affidavit that establishes probable cause for the search. Typically, that supporting evidence is not provided immediately to the person along with the warrant, but a judge should not issue a warrant unless he has received and reviewed that supporting affidavit as part of an application for it.

Search warrants for homes, in contrast to places of public accommodation, should be particularly difficult for the government to obtain, and the recipient of a search warrant on a home should review it carefully. Does it accurately describe the address? Does it narrow the search area to a particular floor or location of the home? Does it identify with particularity the items to be seized? Is it actually signed by a judge or magistrate? If not, then it is probably invalid.

If consent by the occupants is granted for a search, then no warrant is needed, and no constitutional protections against the search have any effect. Hence it is very important that objections be raised immediately and clearly to any surprise search. It is important for a physician to train his staff how to react to a “knock on the door” seeking to search a medical clinic, as the physician may not be there at the time. In addition to objecting and not consenting, an occupant may request a delay of the search until a defense attorney can arrive at the scene.

Several exceptions to the warrant requirement include an emergency, such as a criminal suspect fleeing into a home to evade arrest, upon which a warrant is not required for law enforcement to enter that home for the purpose of apprehending a dangerous suspect. Items seen in plain view from the front door or anywhere that a government agent is lawfully located

may also be seized without a warrant if it appears to be unlawful. Automobiles can be searched without a warrant if an officer has probable cause to think there is something illegal in them.

Searches of Medical Offices

Surprise searches of medical offices are not justified by any emergency exception. If a medical board needs patient records, then it can serve a subpoena on the physician to retrieve and produce records in a confidential, orderly manner. There is no justification for jeopardizing patient privacy, exposing confidential medical information to the prying eyes of strangers. Leaks to the internet become possible, or even likely, when confidential information about someone's health or sexual history is grabbed by strangers.

Yet this invasion of privacy was being done repeatedly in Texas based on a mere administrative subpoena, as signed by someone at the Texas Medical Board rather than by a neutral judge. Mere administrative subpoenas—not search warrants—were being used in Texas to make surprise searches of medical clinics without giving them any advance notice or opportunity to object in court prior to the search, or any ability to protect the confidential patient information in the medical records.

The administrative state had run amok so badly in Texas that surprise raids of physicians' offices, with all the confidential patient information, were being done for years based merely on an administrative subpoena signed by someone on the staff of the medical board. No search warrant, no independent review by a judge, and none of the other Fourth Amendment protections were in place.

These abuses have stopped now due in part to our legal efforts, including amicus briefs we've filed over the past decade on this issue in the U.S. Court of Appeals for the Fifth Circuit, which is the federal appellate court that presides over Texas. But the immense harm caused by these lawless searches has not yet been remedied.

A Humble Physician Opens an Affordable Clinic

Courtney Morgan, M.D., is a humble physician with his father's love of music. Dr. Morgan received an engineering degree in college, and then completed medical school, internship, and residency with the ultimate goal of serving a community with affordable medical care. He started, owned, opened and operated two medical clinics in Victoria, Texas: Hop Medical Services and Drive Thru Doc. Victoria is a town of about 67,000 people, and is known as the "Crossroads" because it is a roughly two-hour drive from San Antonio, Houston, and Austin. It is named after Guadalupe Victoria, who was the first president of Mexico, and its remarkable history includes having been under the jurisdiction of Spain, France, Mexico, and the Republic of Texas. Victoria has a U.S. District Court there, as part of the Southern District of Texas.

Dr. Morgan's Hop Medical Services clinic was devoted to general family medicine, while Drive Thru Doc focused on only simpler medical issues treatable within 30 days. At Drive Thru Doc, Dr. Morgan treated non-life-threatening illnesses such as rashes, toothaches, strep throat, and sexually transmitted diseases, at a discounted rate in order to help uninsured patients.

Dr. Morgan never stored, retained, or dispensed any controlled substance at either clinic. Established in 2013, Drive Thru Doc was an affordable new clinic to serve the medical needs of the Victoria, Texas, community. It was the type of medical clinic that rural and small-town America most needs. Confidentiality was necessary and respected, particularly for issues like sexually transmitted diseases. Insurance was not required of patients, and the clinic served a compelling need in treating the uninsured. This was obviously not a pain management clinic, as anyone could observe by merely standing outside and watching legitimate patients going into it. Volume was not high, and there were none of the characteristics of a so-called pill mill, for which a tell-tale sign would be long lines outside. Instead, Drive Thru Doc provided services for simple medical issues at a discounted rate for uninsured patients.

Ordinary folks in this community greatly appreciated the accessibility and affordability of Dr. Morgan's care and his gentle personality. He was there to help them with everyday medical problems—services that uninsured patients are generally unable to obtain elsewhere. As the number of uninsured patients increases, clinics like Dr. Morgan's clinics are increasingly needed.

Yet, on Jul 18, 2013, an armed agent with the Texas Department of Public Safety, along with two additional Medical Board agents, two Drug Enforcement Administration agents, a local Victoria, Texas, police officer, and an investigator for the Texas Medical Board, conducted a surprise search of Dr. Morgan's clinics without a search warrant. Dr. Morgan was confined in an examination room, and his employees were prevented from communicating with each other. The staff objected to the search, but the government agents barged in anyway, without a warrant.

The government officials collected all of the staffs' cell phones, which of course contained highly personal and confidential information. Officials took documents that were not listed in the subpoenas. At least one staff member was reduced to uncontrolled sobbing from this life-changing, terrifying experience. Patient medical records, containing confidential information about illnesses and sexual histories, were seized and taken without any patient authorization.

Legal Standard for Searches of Physician Clinics

The Fourth Amendment requires probable cause supported by an affidavit, approved by a neutral judge, and specifying with particularity the location and items to be seized, before searching a home or business. There is a heightened expectation of privacy by patients in their records in a medical clinic, even more than in many homes. In this sense the Fourth Amendment protections should apply at least as strongly to a medical clinic, or even more strongly than to someone's private residence.

Accordingly, the general rule is that the Fourth Amendment protects ordinary medical clinics against warrantless searches, as long as the physician or his staff objects to the search. But the government may insist on searching anyway, by pretending that it falls within narrow exceptions to Fourth Amendment protections, none of which applied to Dr. Morgan's medical clinics, or to most physicians' clinics.

In the landmark case of *New York v. Burger*,⁴ the U.S. Supreme Court held that only if a business is in a "closely regulated

industry” may it be searched by government officials without first obtaining a valid warrant. These industries include:

- Liquor stores
- Firearms dealers
- Junkyards
- Mining operations
- Pain management clinics.

Most physicians’ offices, such as walk-in clinics including Dr. Morgan’s, are not pain management clinics. States typically provide a statutory test for what constitutes a pain management clinic. In Texas, a pain management clinic is a medical office at which a majority of patients receive on a monthly basis prescriptions for opioids, benzodiazepines, barbiturates, or carisoprodol. Notice that suboxone (buprenorphine/naloxone) is not included in this group of medications that triggers designation as a pain management clinic.

Pain management clinics have a duty to register in some, but not all, states. Florida, Georgia, Texas, West Virginia, and Ohio are a few of the states that require registration, and make it unlawful to operate a clinic that qualifies as a pain management clinic without first registering. Physicians whose pattern of prescribing pain medication exceeds the statutory thresholds in those states should inquire as to whether they need to register as a pain management clinic. Such clinics may not be protected by the Fourth Amendment against a search without a valid warrant, if there is a special state law or regulation applicable to those clinics.

There are a few additional narrow exceptions to the warrant requirement. In practice such searches are rare and unnecessary, as there are easier ways to request medical records while providing greater protection for their confidential information, other than by a surprise search.

The Test for Overcoming a Defense of Qualified Immunity

When a search has a reasonable justification, and is not pretextual to fish for evidence, the doctrine of qualified immunity has been created by courts to protect government employees, such as members of a state medical board, from liability for civil damages to the extent their conduct did not violate clearly established statutory or constitutional rights. A plaintiff must show that the right—and thus the violation of the right—was then known to a reasonable person, in order to overcome a defense of qualified immunity.

Before it was known that a particular type of search of someone’s property needed a search warrant under the Fourth Amendment, a law enforcement officer who performed such a search would have qualified immunity against liability for performing the illegal search. Proving that a constitutional right was violated by a government agent is not enough to overcome qualified immunity in those cases. A plaintiff must also show that the constitutional right against his conduct was well-established such that a reasonable person would have been aware of that right.

This is an issue of law for a court to decide, typically on a motion for summary judgment, before a trial is held. If the government employee prevails in asserting a defense of qualified immunity, then the case never goes to trial before a jury.

Courts have used a two-part approach to decide whether a government official is entitled to qualified immunity. One part of this test is whether the facts constitute a violation of a constitutional right. If they do, then the other part of this test is whether the right was “clearly established” when a defendant engaged in the alleged misconduct. Courts are allowed to choose which of these parts of this test they want to consider first.

The Supreme Court has emphasized that the requirement of a “clearly established” rule is not to be analyzed in vague, general terms, but with some particularity as to the misconduct at issue. It has been clearly established since the Fourth Amendment was ratified in 1791 that a search of a home without a warrant or consent by the homeowner is a violation of this constitutional right, but how about a search of a car? It depends on the circumstances.

If there is a reasonable basis for a search, then it is easy to obtain a search warrant, which must be signed by a judge who does not have any conflict of interest, and based on a sworn affidavit explaining the justification for the search. One might wonder whether any non-emergency searches without a warrant should be allowed, given that requests for warrants are almost always granted.

It is estimated that requests for search warrants in the federal system are denied less than 1 percent of the time. Data about a particular type of search warrant found that out of 17,475 requests for a “sneak and peak” federal warrant, only 25 were denied. That is only a 0.14 percent denial rate. A “sneak and peak” warrant is a secretive warrant authorized by the PATRIOT Act as enacted in 2001,⁵ whereby a federal search of premises is done when no occupant is there, and no one is told immediately that it even happened. Normally, a copy of a warrant is left on the premises along with a list of what was taken, but not for a sneak-and-peak warrant. Notice of that is not given until weeks later. There is nearly a 99.9 percent rate of judicial approval for this type of warrant, and it was used more than 17,400 times by the federal government in 2024! The rates of approval of requests for search warrants under state law are also very high.

Warrantless Searches of Physicians’ Clinics

A warrantless search of a physician’s clinic is unconstitutional in Texas, and in most places, unless it is a pain management clinic. But the Texas Medical Board had a practice of authorizing surprise searches of physicians’ clinics based on merely an administrative subpoena, called an “instant subpoena,” as printed and signed by the TMB staff without any judicial review or approval. These are not warrants and thus do not satisfy the Fourth Amendment requirements unless the targeted office is a pain management clinic.

There has been a series of cases by the U.S. Court of Appeals for the Fifth Circuit prohibiting this practice and discussing whether this illegality by the TMB was “clearly established” such that the physician-victim can recover damages from government officials who searched his office without a real warrant. In *Cotropia v. Chapman*, the Fifth Circuit held that the relevant inquiry for deciding whether the TMB staff employee was entitled to qualified immunity is whether a reasonable officer could believe that the plaintiff was operating the clinic

in the same manner as a pain management clinic, such that the search would have fallen within their statutory authority.

Dr. Morgan was not operating a pain management clinic, and there is evidence that an armed agent with the Texas Department of Public Safety used the administrative subpoena improperly to search his clinic without a warrant.

The Big Win

Oral argument was held on Mar 31, 2026, in the majestic en banc courtroom of the historic courthouse for the U.S. Court of Appeals for the Fifth Circuit in New Orleans. This author argued this case there for Dr. Morgan, and questioning was lively by all of the three-judge panel.

This federal appellate court issued their unanimous decision on Jun 29, 2026, in favor of Dr. Morgan obtaining a trial on the allegedly improper search of his clinics by a government agent. The Court held: “Even under a valid inspection regime, the administrative search cannot be pretextual.”⁶ This has been the longstanding rule since at least 1986, when the U.S. Supreme Court emphasized this in *New York v. Burger*.⁴ That case concerned an inspection of an automobile junkyard, which (unlike an affordable urgent care medical clinic) is considered to be a closely regulated business. The Supreme Court held in *New York v. Burger*, in reliance on its 1967 decision in *See v. City of Seattle*,⁷ that:

The Court long has recognized that the Fourth Amendment’s prohibition on unreasonable searches and seizures is applicable to commercial premises, as well as to private homes. An owner or operator of a business thus has an expectation of privacy in commercial property, which society is prepared to consider to be reasonable.... This expectation exists not only with respect to traditional police searches conducted for the gathering of criminal evidence but also with respect to administrative inspections designed to enforce regulatory statutes.⁴

In other words, a law enforcement officer may not participate in an administrative search as a pretext to try to uncover evidence for a criminal prosecution. Nothing in state law can justify the bypass of the Fourth Amendment requirement for law enforcement purposes, and officers may not use administrative subpoenas as a pretext for fishing for information to use to press charges.

As to Defendant John Kopacz, who was the armed agent with the Texas Department of Public Safety who participated in this search, the Fifth Circuit held that:

Even assuming arguendo that the subpoena process was constitutional because Kopacz believed Morgan was operating the equivalent of a pain management clinic, the facts...show a genuine dispute that goes to a material constitutional issue: pretext.⁸

The Fifth Circuit explained further that:

There is significant coordination between the timing and focus of Kopacz’s pre-existing criminal investigation and his presence at the administrative search, which as Kopacz admits, puts Kopacz closer to the analogous extended constitutional liability of a non-affiant officer. Kopacz reached out to [TMB employee] Chapman

before the search to discuss reports about Morgan’s clinic, Chapman invited Kopacz to the search, Kopacz requested the TMB investigative report after the search, and the report was used to bring criminal charges.^{8, footnote omitted}

The Court found that these facts, “with the inferences drawn in Morgan’s favor, can therefore support a different version of the story” than provided by the government attorneys who argued for Kopacz. Namely, there is an inference “that Kopacz was conducting his own independent criminal investigation into Morgan and was in a position to understand his responsibility as our warrant cases require to find liability.”^{8, quotation omitted}

The Fifth Circuit continued:

[Kopacz] was present at the search at Chapman’s invitation, and his connection to the search allowed him to gain information—the TMB report and documents seized from Morgan’s clinic—that was used to bring criminal charges [which were dismissed] with information he otherwise would not have access to without a warrant. The two different inferences cannot be resolved at summary judgment so long as the reasonable inferences exist; the question belongs to a jury.⁸

A jury is who decides issues of credibility, weighing of the evidence, and drawing proper inferences from the facts, and this factual dispute should not be decided on a motion for summary judgment before trial. “Given it was clearly established at the time of the search that an administrative search cannot be pretextual, any such search violated Morgan’s constitutional rights such that Kopacz **would not be entitled to qualified immunity on that claim**,” the Court concluded [emphasis added, quotation omitted].⁸

With this spectacular victory by Dr. Morgan in the Fifth Circuit, this case returns to the federal district court in Victoria, Texas, for a trial by jury.

Conclusion

More than a decade of litigation and two trips to the U.S. Court of Appeals for the Fifth Circuit have resulted in an upcoming “day in court” for this victim of an unlawful search of his medical clinics. Throughout this time, Courtney Morgan, M.D., has helped countless patients with affordable care during the pendency of his quest for justice. Fortunately, a jury of his peers in the community will be deciding liability for this violation of his constitutional rights.

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