

### 9.13 Particular Rights—Fourth Amendment—Unreasonable Search—Generally

As previously explained, plaintiff [name] has the burden of proving that the act[s] of defendant[s] [name/s] deprived plaintiff [name] of particular rights under the United States Constitution. In this case, plaintiff [name] alleges defendant[s] [name/s] deprived plaintiff [name] of rights under the Fourth Amendment to the Constitution when [insert factual basis of the plaintiff's claim].

Under the Fourth Amendment, a person has the right to be free from an unreasonable search of [[his] [her] [other pronoun]] [[person] [residence] [vehicle] [other object of search]]. To prove defendant[s] [name/s] deprived plaintiff [name] of this Fourth Amendment right, plaintiff [name] must prove the following additional elements by a preponderance of the evidence:

First, [name/s] of applicable defendant[s] searched plaintiff [name]'s [person] [residence] [vehicle] [other object of search];

Second, in conducting the search, [name/s] acted intentionally; and

Third, the search was unreasonable.

[A person acts “intentionally” when the person acts with a conscious objective to engage in particular conduct. Therefore, plaintiff [name] must prove defendant [name] intended to search plaintiff [name]'s [person] [residence] [vehicle] [other object of search]. It is not enough if plaintiff [name] only proves defendant [name] acted negligently, accidentally or inadvertently in conducting the search. However, plaintiff [name] does not need to prove defendant [name] intended to violate plaintiff [name]'s Fourth Amendment rights.]

[In determining whether the search was unreasonable, consider all of the circumstances, including:

- (a) the scope of the particular intrusion;
- (b) the manner in which it was conducted;
- (c) the justification for initiating it; and
- (d) the place in which it was conducted.]

[If the search was conducted pursuant to a search warrant, then also consider whether the actual search conducted exceeded the terms of the warrant.]

Comment

Use this instruction in conjunction with the applicable elements instructions, Instructions 9.3-9.8, and an applicable definition of an unreasonable search, such as Instruction 9.14 (Particular Rights—Fourth Amendment—Unreasonable Search—Exception to Warrant Requirement—Search Incident to Arrest) and Instruction 9.16 (Particular Rights—Fourth Amendment—Unreasonable Search—Exception to Warrant Requirement—Consent). In cases in which there is no applicable definition of unreasonableness in another instruction, consider using the second bracketed paragraph of this instruction, which sets out general principles for assessing the reasonableness of a search, derived from *Bell v. Wolfish*, 441 U.S. 520, 559 (1979); *see also* *Byrd v. Maricopa Cnty. Sherriiff’s Dep’t*, 629 F.3d 1135, 1141 (9th Cir. 2011) (en banc).

In a multi-plaintiff or multi-defendant case, the trial judge should consider naming each individual specifically in lieu of using the generic term “officers” or “defendants.” In *Chinaryan*, the Ninth Circuit explained that the jury instructions were “confusing” where the instructions stated that “to establish an unreasonable seizure in this case, the plaintiffs must prove by a preponderance of the evidence that the officers”—plural—“used excessive force.” *Chinaryan v. City of Los Angeles*, 113 F.4th 888, 905 (9th Cir. 2024) (emphasis in original). The “officers” jury instruction language was confusing because it “required the jury to evaluate the excessiveness of the force used by the officers collectively rather than consider whether any single officer used excessive force.” *Id.* In light of *Chinaryan*, the trial judge may consider using a special verdict to identify the specific findings as to each plaintiff and defendant.

“When the Government obtains information by physically intruding on persons, houses, papers, or effects, a ‘search’ within the original meaning of the Fourth Amendment has undoubtedly occurred.” *United States v. Ngumezi*, 980 F.3d 1285, 1289 (9th Cir. 2020) (quoting *Florida v. Jardines*, 569 U.S. 1, 5 (2013)); *see also* *United States v. Dixon*, 984 F.3d 814, 820 (9th Cir. 2020) (“[A] search occurs when the government ‘physically occup[ies] private property for the purpose of obtaining information.’” (quoting *United States v. Jones*, 565 U.S. 400, 404 (2012))); *Jardines*, 569 U.S. at 11-12 (holding that the government’s use of a drug dog within the curtilage of a home used “to investigate the home and its immediate surroundings” was a search within meaning of the Fourth Amendment); *Jones*, 565 U.S. at 404 (holding installation of GPS device tracking device on underside of vehicle to monitor vehicle’s movements constitutes search within meaning of Fourth Amendment); *Olson v. County of Grant*, 127 F.4th 1193, 1998 (9th Cir. 2025) (holding that the county attorney’s review, without consent, without a warrant, and without suspicion of further criminal activity, of a cell phone extraction obtained by another state’s law enforcement agency with the plaintiff’s consent, was an unreasonable search violating the plaintiff’s Fourth Amendment rights); *cf.* *United States v. Esqueda*, 88 F.4th 818 (9th Cir. 2023) (holding that when “an officer enters a premises with express consent, and secretly uses recording equipment to capture only what he can see and hear by virtue of that consented entry, no Fourth Amendment search occurs under the trespassory, unlicensed physical intrusion framework as articulated in

*Jones and Jardines*”). In addition to cabining physical intrusions on a constitutionally protected area, “the Fourth Amendment protects ‘certain expectations of privacy.’” *United States v. Rosenow*, 50 F.4th 715, 737 (9th Cir. 2022) (quoting *Carpenter v. United States*, 585 U.S. 296, 304 (2018)). “When an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause.” *Id.*; see also *Carpenter*, 585 U.S. at 315 (holding that the government’s acquisition of cell-site records that provide comprehensive details of a user’s past movements was search within the meaning of Fourth Amendment). For assessing a reasonable expectation of privacy in a commercial premise, see generally *United States v. SDI Future Health, Inc.*, 568 F.3d 684, 695 (9th Cir. 2009).

The Fourth Amendment’s protection against unreasonable searches extends beyond criminal investigations. See *Grady v. North Carolina*, 575 U.S. 306, 309 (2015) (per curiam) (holding that the state conducts search subject to the Fourth Amendment when it attaches a tracking device to recidivist sex offender’s person without consent after civil proceedings); *United States v. Motley*, 89 F.4th 777, 786 (9th Cir. 2023) (holding that a defendant does not have an objectively reasonable expectation of privacy in his prescription opioid records maintained in government database, given the long-standing and pervasive regulation of opioids as a controlled substance and regulatory disclosure of opioid prescription records).

Section 1983 “contains no state-of-mind requirement independent of that necessary to state a violation of the underlying constitutional right.” *OSU Student All. v. Ray*, 699 F.3d 1053, 1072 n.12 (9th Cir. 2012) (quoting *Daniels v. Williams*, 474 U.S. 327, 328 (1986)). It is well settled that “negligent acts do not incur constitutional liability.” *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002), *abrogated on other grounds by County of Los Angeles v. Mendez*, 581 U.S. 420 (2017); see *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1110 (9th Cir. 2022) (“[T]he Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.” (quoting *Daniels*, 474 U.S. at 328)). The question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); *United States v. Reese*, 2 F.3d 870, 885-86 (9th Cir. 1993); see also *Reese v. County of Sacramento*, 888 F.3d 1030, 1044-45 (9th Cir. 2018).

With respect to the Fourth Amendment, the Supreme Court has defined a seizure as “a governmental termination of freedom of movement *through means intentionally applied*.” *Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original); see also *Nelson v. City of Davis*, 685 F.3d 867, 876-77 (9th Cir. 2012) (discussing intent and concluding that defendant officers intentionally seized plaintiff under the Fourth Amendment). The Committee assumes the same intentional mental state is required to prove a § 1983 claim based on an unreasonable search in violation of the Fourth Amendment, although there does not appear to be any Supreme Court or Ninth Circuit decision directly on point. Thus, this instruction

includes an optional definition of the term “intentionally” for use when it would be helpful to the jury.

“Determining the reasonableness of any search involves a two-fold inquiry: first, one must consider whether the . . . action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.” *C.B. v. City of Sonora*, 769 F.3d 1005, 1023 (9th Cir.2014) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985)); *see also Cates v. Stroud*, 976 F.3d 972, 978-84 (9th Cir. 2020) (examining search of prison visitor and holding that prior to strip search, the visitor must be given the opportunity to leave prison); *Ortega v. O’Connor*, 146 F.3d 1149, 1162-64 (9th Cir. 1998) (examining search of a private office); *cf. Maryland v. King*, 569 U.S. 435, 448 (2013) (holding that a court should weigh “the promotion of legitimate governmental interests against the degree to which [the search] intrudes upon an individual’s privacy” (alteration in original) (quoting *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)) (internal quotation marks omitted)).

“[T]o determine whether the government exceeded the scope of a warrant, we compare the terms of the warrant to the search actually conducted.” *Snitko v. United States*, 90 F.4th 1250, 1263 (9th Cir. 2024) (deciding that search of contents of safe deposit boxes exceeded the terms of warrant and violated the owners’ Fourth Amendment rights).

When a warrantless search is conducted pursuant to a condition of probation, the court may wish to consider drafting a “totality of the circumstances” instruction. *See United States v. Knights*, 534 U.S. 112, 118 (2001); *Smith v. City of Santa Clara*, 876 F.3d 987, 992 (9th Cir. 2017). Similarly, the Supreme Court has upheld suspicionless searches of parolees based on the totality of the circumstances. *Samson v. California*, 547 U.S. 843, 856-57 (2006). *See also United States v. Payne*, 99 F.4th 495, 505 (9th Cir. 2024) (“This totality of the circumstances approach is sound, especially considering that a parole search is an exception to the warrant requirement, well-situated in broader Fourth Amendment jurisprudence.”); *United States v. Cervantes*, 859 F.3d 1175, 1183 (9th Cir. 2017) (“A search of a parolee that complies with the terms of a valid search condition will usually be deemed reasonable under the Fourth Amendment.”); *United States v. Dixon*, 984 F.3d 814 (9th Cir. 2020) (“[B]efore [a search] condition authorizes a warrantless search, officers must have a sufficient ‘degree of knowledge’ that the search condition applies to the place or object to be searched.”). To conduct a warrantless search of a residence of a California parolee or probationer subject to a condition that allows a warrantless search of their residence, officers must have probable cause to believe that the parolee or probationer is a resident of the residence to be searched. *United States v. Grandberry*, 730 F.3d 968, 973 (9th Cir. 2013); *United States v. Barry*, 140 F.4th 1105, 1107 (9th Cir. 2025).

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