



**The United States Court of Appeals for the Ninth Circuit joins other federal courts in holding that a hostage situation provides exigent circumstances for entering a house without first obtaining a warrant**



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In *United States v. Mancinas-Flores*, 588 F.3d 677 (9th Cir. 2009), the United States Court of Appeals for the Ninth Circuit was asked to review the conviction and sentence of Defendant Bernardo Mancinas-Flores. Mancinas-Flores was convicted in the District Court on a variety of offenses arising out of his involvement in smuggling undocumented aliens into the United States and holding them for ransom in a stash house. The relevant facts are as follows.

On October 6, 2005, Immigration and Customs Enforcement (“ICE”) agents in Phoenix, Arizona, learned that a Michigan resident had reported that smugglers were holding a relative of the Michigan resident hostage in Phoenix pending payment of a ransom. On October 7, 2005, Phoenix ICE agents also learned that a Kansas resident had called ICE agents in Kansas City and had reported that smugglers were holding his relative hostage in Phoenix. The Kansas City resident knew the smugglers’ phone number, and ICE commenced an investigation by working with the telephone service provider to locate the phone that the smugglers were using to make their demands. ICE also coordinated and recorded additional calls between the Kansas City resident and the smugglers, and during such calls, the Kansas City resident persuaded the smugglers to give him until October 10, 2005, to pay the ransom.

On October 10, 2005, at approximately 11:00 a.m., ICE identified a residence in Phoenix where the smugglers were holding the undocumented aliens. ICE then contacted the Phoenix Police Department’s Special Assignments Unit (“SAU”) and requested that officers enter the residence and rescue the hostages. When ICE initially discussed the situation with SAU, SAU determined that exigent circumstances justifying a warrantless entry into the residence were not present. ICE and SAU discussed the possibility of a “knock and talk” operation in which officers would knock on the door of the stash house and request permission to enter it. However, between 11:30 a.m. and 11:45 a.m., an ICE agent reported that the Michigan resident had just called again and stated that during the October 6 call, the smugglers had threatened to rape and beat his female relative unless he paid the ransom immediately. Based upon this information, SAU decided that exigent circumstances existed and, at about 12:15 p.m., executed a warrantless entry into the stash house, discovering seventeen undocumented aliens and a loaded shot gun. The hostages identified Defendant Mancinas-Flores and Andres Vazquez-Vera as the smugglers.

The Government initially charged Mancinas-Flores and Vazquez-Vera with conspiracy to commit hostage taking, hostage taking, conspiracy to harbor illegal aliens, and harboring illegal aliens. In a superseding indictment, the Government added a fifth count of possession or use of a firearm in a crime of violence in violation of 18 U.S.C. § 924(C). Mancinas-Flores’s co-defendant, Vazquez-Vera, eventually pleaded guilty.

However, Mancinas-Flores moved to suppress the evidence obtained from the entry into the stash house. The District Court denied the motion and held that Mancinas-Flores had no legitimate expectation of privacy in the

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stash house and that, even if he had, exigent circumstances justified the search. The District Court also denied Mancinas-Flores' motion to bar the admission of evidence that he had sexually assaulted a female alien.

On the morning of trial, the parties informed the District Court that Mancinas-Flores had decided to plead guilty to the firearm count in exchange for the Government's dismissing the remaining counts and agreeing to a sentencing range of twenty to thirty years. The District Court replied that it would reject any plea agreement that limited the sentence to thirty years but that it would entertain a plea agreement calling for a higher sentence. The parties then reached a new plea agreement under which Mancinas-Flores would plead guilty to the firearm charge in exchange for dismissal of the remaining counts and a sentencing range of twenty-five to forty years.

During the pleas colloquy, the District Court asked Mancinas-Flores if he was pleading guilty because he was guilty. Mancinas-Flores responded: "Well, I'm really not guilty." As a result, the District Court immediately called for the jury to be brought into the courtroom and started the trial. At the end, the jury found the Mancinas-Flores guilty on all five counts charged in the superseding indictment. Thereafter, the District Court sentenced Mancinas-Flores to life imprisonment on the hostage taking counts, to 120 months on the harboring counts, and to eighty-four months on the firearm count, all concurrent, except for the firearm sentence, which was consecutive. Mancinas-Flores then filed a timely notice of appeal to the Ninth Circuit.

On appeal, Mancinas-Flores raised three issues: (1) whether the District Court erred in denying his motion to suppress the evidence obtained against him pursuant to a warrantless search of the stash house; (2) whether the District Court erred in rejecting his guilty plea and requiring him to proceed to trial; and (3) whether the District Court erred in admitting evidence of a sexual assault at his sentencing hearing. This article will focus on Mancinas-Flores' first issue: whether the District Court erred in denying his motion to suppress after concluding that exigent circumstances existed that justified law enforcement officers entering the house where the hostages were being held without first obtaining a warrant.

On this issue, the Ninth Circuit reiterated that "warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)(quoting *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978)). "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Id.* Indeed, the Ninth Circuit held that, "[m]any courts, including this one, have recognized that an ongoing hostage situation presents exigent circumstances." *Mancinas-Flores*, 588 F.3d at 687; *Satchell v. Cardwell*, 653 F.2d 408, 411-12 (9th Cir. 1981)(recognizing that exigent circumstances justified warrantless entry into home where officer reasonably believed that woman was being held hostage inside); *United States v. Washington*, 573 F.3d 279, 288 (6th Cir. 2009)("In burglary cases, the possibility that a lawful resident has been injured or is being held hostage gives rise to exigent circumstances."); *United States v. De Jesus-Batres*, 410 F.3d 154, 159 (5th Cir. 2005)(exigent circumstances justified warrantless search of garage suspected of containing smuggled alien hostage); *United States v. Richards*, 937 F.2d 1287, 1291 (7th Cir. 1991)(recognizing that officer does not need a warrant to enter the apartment of someone who is holding hostages inside); *Montana v. Hammer*, 233 Mont. 101, 759 P.2d 979, 983-84 (Mont. 1988)(exigent circumstances justified warrantless entry into home where defendant was holding hostages). Accordingly, the Ninth Circuit concluded that, in light of the principle that an on-going hostage situation presents exigent circumstances, the law enforcement agents' entrance and search of the stash house was reasonable.

The Ninth Circuit reached this conclusion based upon the following facts. In the original phone call, the smugglers threatened to kill and rape the hostages if the ransom remained unpaid. The smugglers agreed to

give family members until October 10th to pay the ransom before harming the hostages. But, the ICE agents did not locate the stash house until October 10th, and thus, time was running out.

Furthermore, the testimony at the hearing on the motion to suppress indicated that the law enforcement agents' conclusion that they did not have time to obtain a warrant once they pinpointed the location of the stash house was reasonable. Both an ICE agent and a SAU officer testified about instances in which they waited too long to enter a stash house, resulting in people being raped or killed.

The Ninth Circuit rejected Mancinas-Flores' argument that the Government should have prepared, in advance, to obtain a warrant even if exigent circumstances existed and that the law enforcement's failure to do so rendered the search unreasonable. The Ninth Circuit explained that, under the circumstances presented, the Government was not required to anticipate exigent circumstances and to prepare, in advance, to obtain a warrant because the ICE agents were not required to predict what would happen during the investigation. Although the ICE agents had hoped that they would locate the hostages with help from the telephone service provider, the investigation could have taken a different turn during the days leading up to the search. Prior to locating the stash house, ICE did not even know if the hostages were being held inside a residence, inside a business, or out in the desert. Until ICE located the stash house and confirmed the hostages' presence therein, ICE did not know that a warrant would be necessary or what to state in an affidavit. Upon locating the stash house, the on-going threat of harm to the hostages justified an immediate entry. Therefore, the Ninth Circuit agreed with the District Court that the law enforcement officers were not required to apply for a warrant ahead of time or to arrange for a telephonic warrant, and the Ninth Circuit affirmed the District Court's decision to deny Mancinas-Flores' motion to suppress the fruits of the search of the stash house.

Ultimately, the Ninth Circuit vacated the District Court's rejection of Mancinas-Flores' guilty plea and remand for a new plea hearing. Because the Ninth Circuit remand for a new plea hearing, the Court did not address the District Court's decision to admit evidence of a sexual assault or its sentence.