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U. S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
DEC - 4 1978
JOSEPH McELROY, JR., CLERK
BY Maline G. Crawford
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

MISC. ORDER NO. 23.

ORDER ESTABLISHING THE PROCEDURE FOR ISSUANCE OF INSPECTION WARRANTS FOR ENTRY ON PREMISES BY COMPLIANCE OFFICERS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U. S. DEPARTMENT OF LABOR

It appearing to the Court that the Supreme Court has determined that a non-consensual inspection without a warrant or its equivalent pursuant to § 8(a) of the Occupational Safety and Health Act of 1970 violated the Fourth Amendment. And it further appearing to the Court that compliance officers of the Occupational Safety and Health Administration, United States Department of Labor, in this District will, in all likelihood, seek a large number of such warrants; it is, therefore, the opinion of this Court that the following procedure be established for the processing of such requests.

All requests by the Occupational Safety and Health Administration, United States Department of Labor, for the issuance of a warrant or order to allow entry on premises for the purpose of inspections and investigations and review of records authorized by Title 29, United States Code, Sections 657(a) and 657(c), shall be titled "Request for Inspection Warrant" and shall be in the form attached hereto as Exhibit A, along with an affidavit of the appropriate official of the United States Department of Labor, Occupational Safety and Health Administration, which shall be in the form attached hereto as Exhibit B, and the order issued by this Court shall be titled "Inspection Warrant, Occupational Safety and Health Administration," and shall be in the form attached hereto as Exhibit C.

Approval for filing of the foregoing instruments must be first secured from either the United States Attorney, Assistant United States Attorney, the Regional Solicitor for the United States Department of Labor, or any attorney in the Regional Solicitor's Office, and such approval will be evidenced by the signing of the "Request for Inspection Warrant" (Exhibit A).

These instruments shall be filed with the United States Magistrate, who shall have full authority to issue the appropriate warrant or order after finding that probable cause exists for issuance of a warrant authorizing and directing inspection and investigation of and on the premises and place of employment described in the afforesaid application and affidavit. The instruments shall be filed by an appropriate official of the Occupational Safety and Health Administration who will appear before the United States Magistrate, and give sworn testimony in the form of an affidavit in support of his or her application. The appearance of an Assistant United States Attorney or an attorney representing the United States Department of Labor will not be required, however, an Assistant United States Attorney or a duly authorized attorney representing the United States Department of Labor shall personally sign, rather than a photo reproduction of a signature, said Request for Inspection Warrant which shall

> ...constitute a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it....

These instruments will be received by the United States Magistrate and filed under an appropriate numbering system and will be kept by the Magistrate and not delivered to the United States District Clerk.

The Magistrate shall issue the inspection warrant or deny same from the facts and circumstances presented to him under oath. The Magistrate is a neutral officer to determine whether the inspection is reasonable under the Constitution, and is authorized by statute. The Magistrate is not expected to nor shall he provide counsel or guidance to the Compliance Officer in the event a request for an inspection warrant is denied.

The Secretary's entitlement to inspect does not depend on his demonstrating probable cause to believe that conditions in violation of OSHA exist on the premises. Probable cause in the criminal law sense is not required. For an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment.

Upon the execution of the Warrant or Order pursuant to these Rules, the appropriate representative of the Occupational Safety and Health Administration shall leave a copy

of the Inspection Warrant, Affidavit of Compliance Officer, and Request for Inspection Warrant with the employer, and such representative of OSHA will not be required to make a return of execution to the Court.

The foregoing procedures are effective immediately.

SIGNED this 4th day of December, 1978.

CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

AFFIDAVIT OF COMPLIANCE OFFICER, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR	)	INSPECTION WARRANT DOCKET NO._____

I, _____, after having been first duly sworn, do state as follows:

I am a duly appointed Compliance Officer of the Occupational Safety and Health Administration, United States Department of Labor. It is a part of my official duties to conduct inspections and investigations as authorized by the provisions of 29 U.S.C. §657, and regulations issued pursuant to the Occupational Safety and Health Act, 29 U.S.C. §651, et seq.

I hereby apply for an Inspection Warrant or Order authorizing me to enter, inspect, and investigate the following described premises and place of employment. The premises house the work place of employees employed by an employer who is engaged in a business affecting commerce and subject to the provisions of the Occupational Safety and Health Act, 29 U.S.C. §651, et seq., and the desired inspection is designed to assure compliance with the Act.

I believe that said employer is engaged in a business affecting commerce, and is within the jurisdiction of OSHA because

Consent to inspect without a warrant was denied on the _____ day of _____, 19_____, by _____, who advised me that he was the _____ of this employer.
(position or title)

The facts and circumstances within your affiant's knowledge, and of which I have reasonably trustworthy information causing me to believe that at the present time conditions in violation of OSHA exist on said premises of the employer are as follows:

_____
Signature of Affiant

Sworn to before me and subscribed in my presence at _____, Texas, on the _____ day of _____, 19_____.

_____
UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

REQUEST FOR INSPECTION WARRANT	)	INSPECTION WARRANT
	)	DOCKET NO._____
	)	

TO: UNITED STATES MAGISTRATE

Attached hereto is the proposed affidavit of _____, Compliance Officer, Occupational Safety and Health Administration, United States Department of Labor, _____ Area.

I have read the Affidavit of Compliance Officer _____ and to the best of my knowledge and information said affidavit shows reason to believe the employer for whom the inspection warrant is sought is engaged in a business affecting commerce, is within the jurisdiction of the Occupational Safety and Health Act of 1970 (OSHA), is failing presently to furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to said employees, and has refused to consent to an inspection without a warrant.

When the proposed affidavit has been properly sworn to and subscribed in your presence, we request that you issue an Inspection Warrant or Order authorizing the Compliance Officer to enter the premises located at _____

_____

for the purpose of inspecting and investigating for safety hazards and violations of OSHA regulations within a reasonable time and within reasonable limits and manner such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and the questioning privately of any employer, owner, operator, agent or employee, as authorized by the provisions of Title 29, United States Code, Section 657(a), and to review records required by Title 29, United States Code, Section 657(c), and regulations promulgated pursuant thereto, and other records which are directly related to the purpose of the inspection.

DATE:_____

By: SOLICITOR OF LABOR

REGIONAL SOLICITOR

_____

Counsel for Occupational Safety and Health

Or: UNITED STATES ATTORNEY

_____

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

INSPECTION WARRANT	)	
	)	INSPECTION WARRANT
OCCUPATIONAL SAFETY AND	)	DOCKET NO._____
HEALTH ADMINISTRATION	)	

TO: _____AND ANY OTHER DULY APPOINTED COMPLIANCE OFFICERS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR

The United States having filed a request for an inspection warrant to search the work area of the below described employment facility, and an affidavit(s) having been made before me by _____, a duly appointed Compliance Officer of the Occupational Safety and Health Administration, United States Department of Labor, that (s)he has reason to believe this employer is engaged in a business affecting commerce, is within the jurisdiction of the Occupational Safety and Health Act of 1970 (OSHA), and at the place of employment described below is failing to furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to said employees, and I am satisfied that there is probable cause to believe that said employer is within the jurisdiction of OSHA, that said employees presently are not being provided reasonably necessary safe and healthful employment and places of employment, and that grounds for request for issuances of the inspection warrant exist as stated in the supporting affidavit(s).

YOU ARE HEREBY COMMANDED to enter the following described premises within a period of ten (10) days and during regular working hours and at other reasonable times, for the purpose of inspecting for safety hazards and violations of OSHA regulations including inspecting and investigating, within reasonable limits and in a reasonable manner, all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, to question privately any employer, owner, operator, agent, or employee, to review records required by Title 29, United States Code, Section 657(c) and regulations promulgated pursuant thereto, and to review other records which are directly related to the purpose of the inspection, all as authorized by the provisions of 29 U.S.C., Section 657 and regulations promulgated by the Secretary of Labor under authority granted in 29 U.S.C., Section 651, et seq.

DESCRIPTION OF PREMISES:

No return of this warrant need be made to the Court.

DATED this _____ day of _____, 19_____.

_____
UNITED STATES MAGISTRATE