

Disease Surveillance and the Fourth Amendment

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Current work

- *Government Surveillance in an Age of Pandemics*,
Lawfare (Mar. 23, 2020),
<https://www.lawfareblog.com/government-surveillance-age-pandemics>
- *Disease Surveillance and the Fourth Amendment*,
Lawfare (Apr. 7, 2020),
<https://www.lawfareblog.com/disease-surveillance-and-fourth-amendment>

Claim 1: We're going to need disease surveillance

Purposes:

- Contact Tracing
- Isolation/Quarantine Enforcement

Evidence:

- East Asia example
- AEI & Harvard Plans

Claim 2: Current Fourth Amendment doctrine permits almost any disease surveillance

Standard searches require warrants:

- Ex ante authorization
- Probable cause level of individualized suspicion

“Special needs” searches require less:

- Can't be for traditional law-enforcement purposes
- Otherwise must merely be “reasonable”

Claim 3: We should add additional safeguards

- Individualized suspicion when possible
- Proportionality
- Limit discretion through ex ante review, clear guidelines, oversight, and transparency
- Democratic legitimacy through legislation and reauthorization

Claim 4: The Fourth Amendment should be read as requiring additional safeguards

- One option: courts impose by themselves
- Another option: legislators impose first and courts follow