



IMMIGRATION ENFORCEMENT AND THE EXCLUSIONARY RULE



June 2010

For duplication & redistribution of this article, please contact the Public Agency Training Council by phone at 1.800.365.0119.

Article Source: http://www.llrmi.com/articles/legal_update/immigration_exclusion.shtml

Printable Version: http://www.patc.com/weeklyarticles/print/immigration_exclusion.pdf

Stay up to date on these and other legal decisions by reading the weekly article updates available at [patc.com](http://www.patc.com)

©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute (llrmi.com), Lately, much debate is taking place regarding immigration enforcement. Further, much of this debate is centered on the active role local law enforcement agencies are taking in immigration enforcement pursuant to state law, such as in Arizona, and participation in a federal program typically called *Section 287(g)*. Although this is a current topic, the United States Supreme Court decided in 1984 the *Immigration and Naturalization Service v. Lopez-Mendoza et al.*,ⁱ which is instructive to local law enforcement agencies and officers involved in immigration enforcement.

Lopez-Mendoza is actually two separate cases that were combined by the United States Supreme Court based upon the similarity of the issues. The first case involved Lopez-Mendoza who was arrested by INS agents at the automobile repair shop at which he was employed. Apparently, agents went to the repair shop and asked the owner if they could speak to his employees. The owner of the shop refused to allow the agents in during working hours. However, while one agent spoke with the owner, another agent entered the shop and questioned Lopez-Mendoza regarding his name and nationality. Lopez-Mendoza gave his name, said that he was from Mexico, and said he had no close family ties in the United States. The agent then arrested Lopez-Mendoza and took him to the INS office. There, he admitted that he was born in Mexico, was still a Mexican citizen and had entered the United States illegally. He then executed an affidavit making the same admissions and the agents completed paperwork for his deportation.

At the deportation hearing, Lopez-Mendoza asserted that he should not be deported because his arrest was illegal under the *Fourth Amendment*. The immigration judge ruled that the legality of the arrest was not relevant to the deportation proceeding. Lopez-Mendoza appealed to the Board of Immigration Appeals (BIA). They held, like the Immigration Judge, that the legality of the arrest was irrelevant. Further, they held that the exclusionary rule is not applicable in deportation hearings. Lopez-Mendoza appealed to Ninth Circuit Court of Appeals who remanded the case back to the

©2010 Article published in the free PATC E-Newsletter: 800.365.0119

Link to Article online: http://www.llrmi.com/articles/legal_update/immigration_exclusion.shtml

<http://www.patc.com> | <http://www.llrmi.com> | <http://www.fsti.com> | <http://www.school-training.com> | <http://www.patctech.com>

Immigration Judge for a determination of whether the defendant's *Fourth Amendment* rights had been violated. The federal government applied for certiorari with the United States Supreme Court, who agreed to hear the case.

The second case involved Sandoval-Sanchez. In this incident, INS agents went into a potato processing plant, with the permission of the personnel manager, to check for illegal aliens. Agents were positioned at the doors while another agent went into the lunchroom and identified himself as an INS agent. Many workers got up and walked toward the exit while others began to run while leaving their equipment. Two agents were standing at the plant entrance watching people coming to work. Specifically, they were looking for workers that averted their heads, avoided eye contact, or tried to hide in a group. Those individuals were then asked innocuous questions in English. If the worker was unable to respond in English or otherwise aroused the suspicions of the agents, they were specifically questioned in Spanish regarding their immigration status.

Sandoval-Sanchez was observed being evasive to the agents in that he averted his head and turned around and walked away when he saw the agents. Sandoval-Sanchez and approximately thirty-six others were detained and transported to the county jail. Many of workers accepted voluntary departure and were put on a bus to Mexico. Sandoval-Sanchez exercised his right to a deportation hearing and was therefore further questioned regarding his immigration status. He admitted that he was in the United States illegally.

At the immigration hearing, Sandoval-Sanchez argued that the evidence of his illegal immigration status should be suppressed as fruit of an unlawful arrest based on the exclusionary rule and the fruit of the poisonous tree doctrine. The Immigration Judge held that Sandoval-Sanchez had not been illegally arrested, but even if he had, the circumstances of the arrest had not affected the voluntariness of his admission. Further, following existing precedent, he held that the exclusionary rule does not apply to immigration hearings. Sandoval-Sanchez appealed to the Ninth Circuit Court of Appeals; that court held that the detention violated the *Fourth Amendment*, and that the statements were a product of the illegal detention and subject to the exclusionary rule. Thus, the Ninth Circuit reversed the deportation order for Sandoval-Sanchez.

The federal government applied for certiorari with the United States Supreme Court, who agreed to hear the case. This case was then combined with Lopez-Mendoza's case.

The issue before the United States Supreme Court was *whether an admission of unlawful presence in this country made subsequent to an unlawful arrest must be excluded as evidence in a civil deportation hearing?*

In its analysis of the issue, the Supreme Court first noted that a deportation proceeding is a purely *civil* action. The Court stated:

A deportation hearing is held before an immigration judge. The judge's sole power is to order deportation; the judge cannot adjudicate guilt or punish the respondent for any crime related to unlawful entry into or presence in this country. Consistent with the civil

nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing... The Courts of Appeals have held, for example that the absence of *Miranda* warnings does not render an otherwise voluntary statement by the respondent inadmissible in a deportation case... **In short, a deportation hearing is intended to provide a streamlined determination of eligibility to remain in this country, nothing more. The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws.**ⁱⁱ [emphasis added][internal citations omitted]

Thus, civil deportation proceedings were held to have a different purpose than criminal proceedings, and, as such, different rules may apply.

The Supreme Court next considered whether the identity or body of a person is “suppressible” as fruit of an unlawful arrest. The Court noted that it has previously held:

The “body” or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.ⁱⁱⁱ [emphasis added]

The Supreme Court then held, regarding Lopez-Mendoza’s case, the decision of the Ninth Circuit must be reversed because Lopez-Mendoza’s only issue on appeal was the fact that *he* was summoned to a deportation hearing after an illegal arrest. In other words, Lopez-Mendoza did not object to any specific evidence obtained from his arrest; he only objected to the fact that his unlawful arrest ultimately led to him being summoned to a deportation hearing. The Supreme Court then affirmed the ruling of the BIA which held “*the mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding.*”^{iv}

On the other hand, Sandoval-Sanchez had a slightly different argument for appeal. He argued that his illegal arrest led to his confession and other evidence against him. He argues that this evidence should be suppressed under the exclusionary rule as fruit of the poisonous tree.

The Supreme Court noted that, in the *United States v. Janis*^v, they stated that when deciding whether to apply the exclusionary rule in a particular case, they must weigh the social benefits of excluding the evidence against the likely costs of excluding the evidence.^{vi} Typically, the “benefit” and key purpose of the exclusionary rule is that it tends to deter future unlawful police conduct; the cost is typically losing the use of important evidence and any secondary costs that flow from the loss of the evidence.^{vii}

In Sandoval-Sanchez’s case, the Supreme Court noted that there are several factors that minimize the deterrent value of applying the exclusionary rule to civil deportation proceedings.

First, the Court noted that regardless of how the arrest is made, there will likely be other evidence that is not derived from the arrest that can support the deportation. In other words, the government may

be able to prove alienage by other, independent means. The burden then shifts to the defendant to prove legal entry into the United States.

Second, the Supreme Court noted, at least at the time of this decision, over 97.5% of people subject to deportation agree to voluntary deportation. Thus, the Court found that the challenges to deportation are so rare that using the exclusionary rule would be unlikely to shape the behavior of INS agents.

Third, and “*most important*” as the Supreme Court noted, was the INS’s own agency policy in place to deter *Fourth Amendment* violations. The Court stated

To safeguard the rights of those who are lawfully present at inspected workplaces the INS has developed rules restricting stop, interrogation, and arrest practices. These regulations require that no one be detained without reasonable suspicion of illegal alienage, and that no one be arrested unless there is an admission of illegal alienage or other strong evidence thereof. New immigration officers receive instruction and examination in *Fourth Amendment* law, and others receive periodic refresher courses in law. Evidence seized through intentionally unlawful conduct is excluded by Department of Justice policy from the proceeding for which it was obtained. The INS also has in place a procedure for investigating and punishing immigration officers who commit *Fourth Amendment* violations.^{viii} [emphasis added]

Thus, the Supreme Court gave great weight to the fact that the INS trains their agents regarding lawful contacts, has a policy that prohibits unlawful contacts, and enforces that policy with agency discipline. The Supreme Court stated that, while the INS’s attention to the *Fourth Amendment* may not guarantee that constitutional violations will not occur, it does reduce the deterrent value of the exclusionary rule.

Finally, the Supreme Court reasoned that there are remedies other than the exclusionary rule if the INS conducted repeated *Fourth Amendment* violations. For example, under certain conditions, a court could order declaratory relief against the agency prohibiting practices that violate the *Fourth Amendment*. [Authors note: Additionally, persons illegally detained by officers can also file suit for *Fourth Amendment* violations via 42 U.S.C. § 1983.]

In light of the above four considerations, the Supreme Court concluded that applying the exclusionary rule in deportation hearings would be

unlikely to provide significant, much less substantial, additional deterrence. Important as it is to protect the *Fourth Amendment* rights of all persons, there is no convincing indication that application of the exclusionary rule in civil deportation proceedings will contribute materially to that end.^{ix}

The Supreme Court also weighed the costs of applying the exclusionary rule to deportation proceedings.

The first cost noted was that the application of the exclusionary rule to situations such as Sandoval-Sanchez's case would allow continuing violations of the law. For example, the Supreme Court stated

Presumably no one would argue that the exclusionary rule should be invoked to prevent an agency from ordering corrective action at a leaking hazardous waste dump if the evidence underlying the order had been improperly obtained, or to compel police to return contraband explosives or drugs to their owner if the contraband had been unlawfully seized. On the rare occasions that it has considered costs of this type the Court has firmly indicated that the exclusionary rule does not extend this far.^x

In other words, if applying the exclusionary rule meant releasing a person who was illegally present in the United States, back into our society, then the court would be permitting a continuing violation of the law. The Supreme Court went on to state

Sandoval-Sanchez is a person whose unregistered presence in this country, without more, constitutes a crime. His release within our borders would immediately subject him to criminal penalties. His release would clearly frustrate the express public policy against an alien's unregistered presence in this country. Even the objective of deterring *Fourth Amendment* violations should not require such a result. The constable's blunder may allow the criminal to go free, but we have never suggested that it allows the criminal to continue in the commission of an ongoing crime. When the crime in question involves unlawful presence in this country, the criminal may go free, but he should not go free within our borders.^{xi}

The Supreme Court stated that they have never accepted costs of this character in applying the exclusionary rule.

Another cost of applying the exclusionary rule in deportation hearings would be the reduction of the efficiency of the hearings. The Supreme Court noted the high volume of cases that flow through these hearings. The hearings are set up to handle simple factual allegations and matters of proof. Raising *Fourth Amendment* issues at such hearings would slow the process and have an adverse impact on the effective administration of immigration laws.^{xii}

Finally, the Supreme Court noted that allowing the application of the exclusionary rule in deportation proceedings could result in the suppression of large amount of *lawfully* obtained information. This is because INS detentions are often conducted in crowded and confusing circumstances. The agents follow INS policy in these mass arrest situations, and these policies protect the *Fourth Amendments* rights of those detained by INS. However, the application of the exclusionary rule would often require precise information which is difficult to articulate in these mass arrest situations.

After weighing the costs and benefits of the exclusionary rule, the Supreme Court noted that the INS has already taken sensible and reasonable steps to deter Fourth Amendment violations by its officers, and this makes the likely additional deterrent value of the exclusionary rule minimal.^{xiii} The Supreme Court thus held that the exclusionary rule does not apply in situations such as Lopez-Mendoza and Sandoval-Sanchez's cases.

The Supreme Court did seem to offer some caution for immigration law enforcement. Particularly, the Supreme Court stated

We do not condone any violations of the *Fourth Amendment* that may have occurred in the arrests of respondents Lopez-Mendoza or Sandoval-Sanchez. Moreover, no challenge is raised here to the INS's own internal regulations. **Our conclusions concerning the exclusionary rule's value might change, if there developed good reason to believe that *Fourth Amendment* violations by INS officers were widespread. Finally, we do not deal here with egregious violations of *Fourth Amendment* or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained.** At issue here is the exclusion of credible evidence gathered in connection with peaceful arrests by INS officers. We hold that evidence derived from such arrests need not be suppressed in an INS civil deportation hearing.^{xiv} [internal citations omitted] [emphasis added]

Key Points for Local Law Enforcement Agencies Involved in Immigration Enforcement

- Provide thorough training on applicable statutes to all agency members involved in enforcing immigration violations.
- Have a clear agency policy on the legal requirements for enforcing immigration violations. Make this policy be consistent with *Fourth Amendment* standards for investigative detentions (reasonable suspicion) and arrests (probable cause).
- Provide thorough training on the agency policy to enforcement personnel.
- Properly enforce the agency policy, for example, through remedial training for unintentional violations and negative discipline for serious or intentional violations of the policy.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

CITATIONS:

ⁱ 468 U.S. 1032 (1984)

ⁱⁱ *Id.* at 1038

ⁱⁱⁱ *Id.* at 1039 (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952); *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149 (1923))

^{iv} *Id.* at 1040

^v 428 U.S. 433 (1976)

^{vi} *Id.* at 1041

^{vii} *Id.*

^{viii} *Id.* at 1044-1045

^{ix} *Id.* at 1046

^x *Id.*

^{xi} *Id.* at 1047

^{xii} *Id.* at 1049

^{xiii} *Id.* at 1050

^{xiv} *Id.* at 1050-1051