



**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

USCA 01-1034

UNITED STATES OF AMERICA,

Appellant,

v.

MANUEL RODRIGUEZ-ARREOLA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION
HONORABLE LAWRENCE L. PIERSOL, CHIEF JUDGE

APPELLEE'S BRIEF

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**SUMMARY OF THE CASE AND REQUEST
FOR ORAL ARGUMENT**

Appellee Manuel Rodriguez-Arreola adopts the government’s Summary of the Case, subject to the following qualification: his Motion to Suppress requests suppression of “all evidence and statements obtained as a result of said encounter.” The phrase “including his identity” is the government’s characterization and does not appear in Mr. Rodriguez’s Motion to Suppress.

Appellee Rodriguez also requests fifteen minutes for oral argument because the legal arguments are so directly dependent on the court’s findings of fact.

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PRELIMINARY STATEMENT

Appellee Manuel Rodriguez-Arreola shall be referred to as “Rodriguez.”

South Dakota Highway Patrol Officer Chris Koltz shall be referred to as “the trooper.” Rodriguez’s companion Esteban Molina shall be referred to as “the driver.”

The transcript of the motion hearing shall be referred to with the capital letter “T,” followed by the page number. The transcript of the arrest video tape is an addendum to this brief, and shall be referred to as “VT,” followed by the page number. Two excerpts from this transcript are appended to the government’s brief as Ex. A and B.

The Magistrate’s Report and Recommendation, Docket Number 31, shall be referred to as “Mag. Rep.,” followed by the page number. The district court’s Memorandum Opinion and Order, Docket Number 37, shall be referred to as “Order,” followed by the page number. Both court opinions appear in the addendum of the government’s brief. All other docketed items shall be referred to with the abbreviation “D. No.,” followed by the page number.

JURISDICTIONAL STATEMENT

Rodriguez adopts the Jurisdictional Statement in the government's brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE INTENSITY, SCOPE, AND DURATION OF THE SEIZURE OF RODRIGUEZ EXCEEDED THE TROOPER'S REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT.

Authorities

1. *United State v. Brignoni-Ponce*, 422 U.S. 873 (1975)
2. *United States v. Beck*, 140 F.3d 1129 (8th Cir. 1998)
3. *United States v. Restrepo*, 890 F.Supp.180 (E.D.N.Y, 1995)

II. WHETHER RODRIGUEZ'S INCRIMINATING TELEPHONIC STATEMENTS TO THE CHICAGO INS AGENT WERE SOLICITED IN VIOLATION OF *MIRANDA v. ARIZONA*.

Authorities

1. *Miranda v. Arizona*, 384 U.S. 436 (1966)
2. *United States v. Johnson*, 64 F.3d 1120 (8th Cir. 1995)

III. WHETHER RODRIGUEZ'S WASHINGTON STATE ID CARD AND HIS ADMISSIONS TO THE TROOPER AND TO THE CHICAGO INS AGENT MUST BE SUPPRESSED.

Authorities

1. *Florida v. Royer*, 460 U.S. 491 (1983)
2. *Rakkas v. Illinois*, 439 U.S. 128 (1978)
3. *United States v. Mendoza-Carrillo*, 107 F.Supp.2d 1098 (D.S.D. 2000)

STATEMENT OF THE CASE

Rodriguez adopts the Statement of the Case in the government's brief with the following exception: Rodriguez's suppression motion was filed October 24, 2000.

STATEMENT OF FACTS

On September 14, 2000, South Dakota Highway Patrol Officer Chris Koltz observed a green Ford Taurus automobile traveling eastbound on Interstate 90 near Hartford, South Dakota. The posted speed limit was 75 miles per hour, but the car was traveling approximately 86 miles per hour. The trooper pulled the vehicle over at 1:42 p.m. T 7-9, 27.

The trooper approached the car on foot, requested and received the driver's license and registration, and led the driver back to the police cruiser. T 9-10. In the early moments of the stop, the trooper made the following observations:

1. The Taurus had tinted windows. T 9. (After viewing the video tape, the district court found it to be a light tint that allowed objects inside the vehicle to be seen from the outside). Order 2.
2. There was one male passenger in the vehicle with the driver. The two men were neither the same age nor related. T 9, 19. (This passenger

was Manuel Rodriguez-Arreola).

3. There was “no debris, no trash, no food wrappers...no soft drinks” littering the inside of the vehicle. T 10.
4. There were coats or jackets on the back seat of the vehicle, but no luggage in the passenger compartment. T 11.
5. The Taurus had Washington state license plates. T 13.
6. The driver appeared nervous and did not make eye contact with the trooper. T 11.

In the police cruiser, “[w]hile writing the speeding ticket, the trooper questioned [the driver] about the origin, destination, and purpose for his trip. . . . Three minutes into the traffic stop [the trooper] asked if [the driver] was a United States citizen, if he was a resident alien, and whether he had a “green card” with him.” Mag. Rep. 2; T 12-14. The transcript from the arrest video tape shows the driver struggling to communicate in English, but he did manage to get across to the trooper that he was a legal alien with a “green card,” and that he and his companion were traveling from Washington state to Chicago to visit his companion’s brother. VT 1-2; Mag. Rep. 2; T 13. The trooper then began to question the driver about his passenger’s immigration status. Mag. Rep. 2. Although the trooper testified that the driver told him that Rodriguez was not in the

United States legally, the magistrate made no finding on that point. The video tape transcript is unclear whether the driver understood the question and what his response was to the question. VT 3-4; T 17; Mag. Rep. 2.

Ten minutes after stopping the car, the trooper had the driver sign the ticket, and asked him to stand in the ditch next to the highway. Mag. Rep. 2; T 16, 38-39. The paperwork on the speeding citation was completed, but the trooper did not relinquish the ticket or the driver's license. He told the driver he would be free to leave after the radio check on the license "came back" and after the trooper's "drug dog" had sniffed the outside of the car. T 15-16.

The trooper's drug dog, a hefty German Shepherd-like breed, was in the back seat of the police cruiser during the trooper's interrogation of the driver. It can be heard barking and whining on the arrest video tape. T 59; VT 2, 5, 6, 7, 9, 10, 11, and 12. Before taking the dog out to sniff around the car, the trooper commanded Rodriguez to get out of the Ford Taurus. T 16. "[I]mmediately" and "within the first ten seconds of the encounter," the trooper confronted Rodriguez with adversarial questions. The questions included "how well do you understand English" (when Rodriguez said 'nada,' the Trooper said 'I'll bet you do'), 'do I need to get INS on the phone,' 'are you a resident of this country,' 'where's your green card,' and 'you're not here legally, are you?'" Mag. Rep. 2. The trooper

testified that Rodriguez admitted to being an illegal alien, contrary to the video tape transcript which portrays a one-sided conversation where Rodriguez responded primarily by gestures to the trooper's questions. VT 7-8; T 18. Rodriguez did produce for the trooper a Washington state I.D. card in the name of Manuel Rodriguez-Arreola. T 17.

The trooper then ordered Rodriguez to stand in the ditch next to the driver. The trooper removed the drug dog from the police cruiser and performed an "exterior sniff" of the Ford Taurus. The dog's reaction suggested the presence of illegal drugs. T 18-19. However, after the trooper conducted a "thorough search" of the car, he found no contraband. T 20, 52.

The trooper then ran a radio check on Rodriguez's Washington state I.D. card. That check included a call to the Central States Command Center of the Immigration and Naturalization Service in Chicago, Illinois. After the trooper provided the names of both the driver and Rodriguez to the INS, the Chicago agent "indicated that they did not want the driver held; however, they did want the passenger. . . . [I]t was . . . Manuel Rodriguez-Arreola that they wanted detained for them." T 20-21.

After receiving instructions from the INS to detain Rodriguez, the trooper summoned Rodriguez to the cruiser and allowed him to converse in Spanish over

the telephone with the Chicago INS agent. T 23. During that conversation, Rodriguez made incriminating admissions to the Chicago INS agent. VT 11. Rodriguez received no *Miranda* warnings from the trooper or from the Chicago INS agent at any time prior to making the incriminating admissions. T 41-42, 68; *Miranda v. Arizona*, 385 U.S. 436 (1966).

At this point, the trooper gave the driver the speeding citation which had been written 30 minutes earlier, told him he was free to leave, and transported Rodriguez to the Minnehaha County, South Dakota jail. T 23.

SUMMARY OF ARGUMENT

The trooper had reasonable suspicion of nothing beyond a traffic violation when he violated the Fourth Amendment after expanding the scope of the seizure and search to include an investigation into Rodriguez's immigration status.

By the time Rodriguez began to speak over the telephone to the Chicago INS agent, he was in custody. Yet, in violation of *Miranda v. Arizona*, he was never told that he had a right to remain silent and a right to consult with counsel.

The remedy for the violations of Rodriguez's rights under the Fourth and Fifth amendments to the United States Constitution is suppression of all evidence and statements obtained during and after the stop, including his Washington state I.D. card and his telephonic admissions to the Chicago INS agent. Arguments by

the government about Rodriguez’s lack of standing and the legal impossibility of suppressing “identity” are inapposite and without merit.

STANDARD OF REVIEW

This Court assumes a deferential posture toward the district court’s factual determinations and they will not be overturned unless clearly erroneous. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

How the district court applied the law to these facts and its ultimate conclusion about the presence or absence of a constitutional violation is reviewed de novo by this Court on appeal. 517 U.S. at 699.

This Court “review[s] the district court’s decision to [grant] the defendant’s motion to suppress under a clearly erroneous standard. . . . [W]e must affirm the district court unless its decision is unsupported by substantial evidence, based on an erroneous interpretation of applicable law, or, in light of the entire record, we are left with a firm and definite conviction that a mistake has been made.”

United States v. McClinton, 982 F.2d 278, 281 (8th Cir. 1992) (citations omitted).

ARGUMENT

I. THE INTENSITY, SCOPE, AND DURATION OF THE SEIZURE OF RODRIGUEZ EXCEEDED THE TROOPER’S REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT.

The Fourth Amendment to the United States Constitution forbids

“unreasonable searches and seizures[.]” The Fourth Amendment applies not only to full-blown arrests, but to all “seizures of the person, including brief investigatory stops[.]” *United States v. Cortez*, 440 U.S. 411, 417 (1981).

Three levels of encounters between police and individuals are recognized: consensual encounters which may be initiated without any objective level of suspicion; limited investigative stops which must be supported by a “reasonable, articulable suspicion” of criminal activity; and arrests which must be supported by probable cause. . . . Only the last two types are “seizures” within the Fourth Amendment. . . . An extended incident with the police may involve more than one of these types of encounters. A traffic stop “constitutes a limited seizure within the meaning of the Fourth and Fourteenth Amendments.” . . . A traffic stop must be supported either by “probable cause or a reasonable suspicion, based on specific and articulable facts, of unlawful conduct.”

United States v. Restrepo, 890 F.Supp.180, 192 (E.D.N.Y, 1995) (citations omitted) (cited in Order).

Because of the often fluid nature of these encounters between citizens and police, an officer’s reasonable suspicion justifying a stop is not necessarily sufficient to justify his acts that come after the stop.

[A] search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope. . . . The scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible. . . . [I]n

determining whether the seizure and search were “unreasonable” our inquiry is a dual one - whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

Terry v. Ohio, 392 U.S. 1, 18-20 (1968).

No investigative stop may last “longer than is necessary to effectuate the purpose of the stop,” and the methods of investigation used by the police should be the “least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). “[A]n investigative stop must cease once reasonable suspicion or probable cause dissipates.” *United States v. Watts*, 7 F.3d 122, 126 (8th Cir. 1993).

“It is the State’s burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope or duration to satisfy the conditions of an investigative seizure.” *Florida v. Royer*, 460 U.S. at 500.

A. RODRIGUEZ WAS SEIZED BY THE TROOPER.

At pages 8-9 of its brief, the Government suggests that Rodriguez may not have been seized in the first place. It cites *Florida v. Bostick*, 501 U.S. 429, 434 (1991), for the proposition that consensual encounters between police and citizens do not require the police to have reasonable suspicion and do not trigger Fourth

Amendment analysis. *Bostick* reversed the Florida Supreme Court which had held that the police practice of boarding interstate buses and interrogating passengers at random about drug possession is a seizure requiring reasonable suspicion.

The government's reliance on *Bostick* is misplaced. The court simply cautioned the Florida Supreme Court against adopting a per se rule that a seizure occurs every time police board a bus, and remanded the case for additional consideration utilizing all relevant circumstances. 501 U.S. at 437.

In this case, taking into account all relevant circumstances, Rodriguez was seized by the trooper. In the words of *Florida v. Bostick*, a reasonable person in Rodriguez's position would not have felt "free 'to disregard the police and go about his business[.]'" 501 US at 434. The trooper took possession of Rodriguez's I.D. card, the registration documents for the vehicle, and the license of the driver. He ordered Rodriguez and the driver to remain in the ditch next to an interstate highway while he searched their vehicle for drugs and investigated their immigration status. In virtually identical circumstances, this Court held that a reasonable person "ordered out of his vehicle in order to permit a drug dog sniff . . . would not have felt free to leave." *United States v. Beck*, 140 F.3d 1129, 1136 (8th Cir. 1998).

B. THE SEIZURE OF RODRIGUEZ AND HIS INVESTIGATION OF THE IMMIGRATION STATUS EXCEEDED THE SCOPE OF THE TROOPER'S REASONABLE SUSPICION.

“[A] traffic violation - - however minor - - creates probable cause to stop the driver of a vehicle.” *U.S. v. Beck*, 140 F.3d at 1133. See also *United States v. Mendoza-Carrillo*, 107 F.Supp. 2d 1098, 1102 (DSD 2000) (in the case of vehicle with nonfunctioning tail lights, “the initial traffic stop was proper.”). In this case, the question is not whether the trooper’s observation that the Taurus was exceeding the posted speed limit by eleven miles per hour justified the stop. The question is whether that observation justified the subsequent seizure of Rodriguez and the investigation of immigration issues having nothing to do with the traffic offense. If not, the issue becomes whether the trooper observed anything beyond the speeding that would have justified the further intrusion.

The district court, after the magistrate judge’s initial review, carefully considered every potential basis the government argued presented reasonable suspicion sufficient to justify an intrusion beyond a routine traffic stop. The windows were tinted, but by the trooper’s own admission, the light tint did not prevent him from looking in the windows to observe the lack of debris and the lack of luggage in the passenger compartment. T 10-11. The lack of debris was no

more or less suggestive of criminal activity than this Court found the presence of debris to be in *U.S. v. Beck*, 140 F.3d at 1139. The *Beck* opinion also disposed of out-of-state license plates and lack of luggage in the passenger compartment as providing reasonable suspicion for a seizure, either as a single factor or in combination with other facts. 140 F.3d at 1137-1139. “[N]ervousness” and “lack of eye contact” are frequently noted by officers as a basis for reasonable suspicion, but are as frequently discounted by courts that find the physical reactions not surprising in a stressful situation. See *U.S. v. Beck*, 140 F.3d at 1139; *U.S. v. Mendoza-Carrillo*, 107 F.Supp. 2d at 1102; *U.S. v. Restrepo*, 890 F.Supp. at 195. In this case, the trooper’s reliance on the driver’s “nervousness” to supply suspicion is undercut by his later assertion elsewhere that he became suspicious because during “our entire conversation...[Rodriguez] had a smile on his face,” T 11, 42.

It may be argued that Rodriguez’s failure to provide “satisfying” answers to the trooper’s questions about citizenship status justified his seizure of Rodriguez beyond the traffic stop, followed by further investigation of possible immigration offenses. That line of reasoning begs the question. The trooper’s aggressive questioning aimed at Rodriguez about his immigration status is part of what constituted his seizure. Neither his answers nor his lack of answers can be used to

retroactively justify the unwarranted intrusion. *U.S. v. Beck*, 140 F.3d at 1135 (citing *United States v. Hathcock*, 103 F.3d 715, 718 (8th Cir. 1997), *cert denied*, 521 U.S. 1127 (1997) and *United States v. Angell*, 11 F.3d 806, 809 (8th Cir. 1993), for the proposition that intimidating questioning and tone of voice is one factor in deciding whether seizure has occurred). What the trooper learned after seizing Rodriguez does not provide reasonable suspicion for initiating the seizure:

[T]he Government contends that the Magistrate Judge did not consider [the trooper's] statement that he did not become suspicious that Defendant was an illegal alien until Defendant could not produce identification. The fact that [trooper] became suspicious that there was criminal activity afoot after he detained Defendant is not relevant to the question of whether [the trooper] had reasonable suspicion to detain Defendant. Indeed, such a statement supports the finding that [the trooper] did not have the requisite reasonable suspicion prior to detaining Defendant.

U.S. v. Mendoza-Carrillo, 107 F.Supp 2d at 1104 (emphasis added).

In *United State v. Brignoni-Ponce*, 422 U.S. 873 (1975), the Supreme Court held that even in areas near the Mexican frontier, the United States Border Patrol could not stop vehicles at random simply because the drivers “looked Mexican” and then ask the occupants questions about their immigration status. In order to detain motorists and to ask those questions, the Border Patrol was required to have particularized and articulable suspicions that an immigration offense was occurring.

422 U.S. at 884-885. Detaining Rodriguez and questioning him about his immigration status was a seizure which, under the Fourth Amendment, required reasonable suspicion. Even if the trooper had reasonable suspicion to believe that traffic laws were being violated, the seizure of the passenger and the interrogation of both driver and passenger about matters having nothing to do with the traffic violation were not justified. The trooper did not become aware of any new information after the commencement of the stop, but before the seizure of Rodriguez, which would have provided reasonable suspicion that Rodriguez was in violation of immigration laws. No such reasonable suspicion emerged. The scope of Rodriguez's seizure exceeded whatever reasonable suspicion the trooper used to justify the initial stop, in clear violation of the Fourth Amendment.

II. RODRIGUEZ'S INCRIMINATING TELEPHONIC STATEMENTS TO THE CHICAGO INS AGENT WERE SOLICITED IN VIOLATION OF *MIRANDA v. ARIZONA*.

Under the Fifth Amendment to the United States Constitution, a person in custody may not be interrogated by the police unless he has been advised that his voluntary statement is admissible against him, that he is entitled to the advice of counsel before or while speaking to law enforcement, and that he has the right to remain silent. *Miranda v. Arizona*, 384 U.S. 436 (1966).

Whether a suspect is in custody depends on the totality of relevant circumstances showing whether the suspect is “deprived of his freedom of action in any significant way.” *United States v. Johnson*, 64 F.3d 1120, 1125 (8th Cir. 1995) (quoting *Miranda*, 384 U.S. at 444). “*Miranda* warnings are not necessary during ordinary *Terry* stops because they generally do not amount to custodial interrogation.” 64 F.3d at 1126; *Berkemer v. McCarty*, 468 U.S. 420, 439-440 (1984).

If an individual’s “freedom of action is curtailed to a degree associated with formal arrest,” then he is in custody. . . . Factors useful in considering whether custody is involved are whether the suspect was advised that he was free to go, whether he was restrained, whether he initiated contact with authorities, whether strong arm tactics or deceptive stratagems were used, whether the atmosphere was police dominated, and whether the suspect was placed under arrest at the termination of questioning.

U.S. v. Johnson, 64 F.3d at 1126 (citing *United States v. Griffin*, 922 F.2d 1343, 1348 (8th Cir. 1990)).

When he spoke to the Chicago INS agent over the trooper’s car phone, Rodriguez was in custody. His I.D. had been seized by the trooper along with the driver’s license and the vehicle registration. He had been questioned aggressively by the trooper and accused of lying. He had been ordered to stand in the ditch

beside a busy interstate highway while the vehicle was first subjected to a dog sniff, and then to a “thorough search” by the trooper. He was not advised that he was free to go. He was taken to the Minnehaha County Jail directly from the scene of the stop. No reasonable person in Rodriguez’s position would have failed to “understand the nature of his situation.” *Johnson*, 64 F.3d at 1125.

Moreover, the decision to transport Rodriguez to jail had already been made before Rodriguez picked up the phone to talk to the Chicago INS agent. The Chicago INS office told the trooper to detain Rodriguez: They “indicated that they did not want the driver held, however, they did want the passenger held. I ran both names and dates of birth through the Central States Command Center, and it was the name of Manuel Rodriguez-Arreola that they wanted detained for them.” T 21.

When Rodriguez answered the questions of the Chicago INS agent, he was in custody. He gave the Chicago INS agent an account of his immigration status, prior deportations, and criminal history. VT 11. At no time was he given the warnings mandated by the Fifth Amendment and *Miranda v. Arizona*.

III. RODRIGUEZ’S WASHINGTON STATE I.D.

**CARD AND HIS ADMISSIONS TO THE
TROOPER AND THE CHICAGO INS AGENT
MUST BE SUPPRESSED.**

“[S]tatements given during a period of illegal detention are inadmissible even if voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will.” *Florida v. Royer*, 460 U.S. at 501. See also *Terry v. Ohio*, 392 U.S. at 12-13; *Miranda v. Arizona*, 384 U.S. 436; *Wong Sun v. United States*, 371 U.S. 471 (1963). For statements made and evidence seized during an illegal detention in violation of the Fourth Amendment, as well as for admissions illegally obtained in violation of the Fifth Amendment and *Miranda v. Arizona*, the recognized remedy is suppression of the fruits of the poisonous tree. The government has two objections to suppression of the evidence in this case, neither of which has merit.

**A. RODRIGUEZ HAS STANDING TO ASSERT HIS
CONSTITUTIONAL RIGHTS.**

The government argues at pages 7-8 of its brief that Rodriguez does not have standing to raise his Fourth Amendment claim. The government raises this issue for the first time on appeal. This Court “will not address arguments raised for the first time on appeal.” *Colonial Insurance Co. of California v. Spirco Environmental, Inc.*, 137 F.3d 560, 561 (8th Cir. 1998).

Even if the Government had not waived its argument on standing, the argument is invalid. The search and seizure cases the government cites in its brief primarily focus on a defendant who sought the suppression of physical evidence illegally discovered in a place where a third party enjoyed a reasonable expectation of privacy, but the defendant did not. That has no bearing in this case.

[A]s a general proposition, the issue of standing involves two inquiries: first, whether the proponent of a particular legal right has alleged “injury in fact,” and, second, whether the proponent is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties. . . . [T]his Court’s long history of insistence that Fourth Amendment rights are personal in nature has already answered many of these traditional standing inquiries, and we think that definition of those rights is more properly placed within the purview of substantive Fourth Amendment law than with that of standing. . . . Analyzed in these terms, the question is whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it.

Rakas v. Illinois, 439 U.S. 128, 139-140 (1978).

B. RODRIGUEZ IS NOT SEEKING THE SUPPRESSION OF HIS “IDENTITY” IN THE SENSE OF *INS v. LOPEZ - MENDOZA*.

“The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as the fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.” *INS v. Lopez-*

Mendoza, 468 U.S. 1032, 1039 (1984). The government takes this sentence out of context and reads it to mean that the Supreme Court arbitrarily has created a category of evidence pertaining to one's identity, which for some reason is immune to the operation of the exclusionary rule. The district court's careful reading of *Lopez-Mendoza*, however, noted that it was a civil case in which the issue was personal jurisdiction rather than suppression of evidence in a criminal case. See also *U.S. v. Mendoza-Carillo*, 107 F.Supp.2d at 1105-1107. The *Lopez-Mendoza* court said the deportee's analysis was flawed, where an attempt was made to parlay an illegal seizure of evidence into a claim that the court had no personal jurisdiction over him. However, the court went on to say that a second deportee in the same position who did move to suppress the evidence had a more substantial claim.

The general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible. . . . The reach of the exclusionary rule beyond the context of a criminal prosecution, however, is less clear. . . . The INS does not suggest that the exclusionary rule should not continue to apply in criminal proceedings against an alien who unlawfully enters or remains in this country. ...

468 U.S. at 1040-1042.

To interpret the one cryptic sentence in *Lopez-Mendoza* as the government argues, would effectively overrule *United States v. Brignoni-Ponce*, supra, since

Border Patrol agents would be given license to seek incriminating evidence about immigration violations at random without meaningful sanctions. Plainly, that was not the intent of the *Lopez-Mendoza* court.

Rodriguez does not argue that suppression of evidence would mean the Government is barred from proving his identity. His position is simply that, because his constitutional rights, were violated, the government cannot utilize any proof of his identity that flows from the documents, physical evidence, and statements seized or made in the course of, and as the result of, the unconstitutional seizure, search, and interrogation.

CONCLUSION

Rodriguez asks this Court to rule that the facts found by the district court are not clearly erroneous, that its legal conclusions are correct, and to affirm its suppression of all evidence and statements obtained by the government as a result of its unlawful seizure of Rodriguez.

Dated this ____ day of March, 2001.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I mailed two copies of this brief and a 3 ½-inch computer diskette containing the full document to Assistant United States Attorney Michelle G. Tapken, Attorney for Appellant, United States Attorney's Office, PO Box 5073, Sioux Falls, SD 57117-5073 on the ____ day of March, 2001. The diskette has been scanned for viruses using Norton Anti Virus Version 5.0, and that scan showed that the diskette is virus-free.

In addition, I certify that I mailed a copy of this brief to Appellee Manuel Rodriguez-Arreola, Lyon County Jail, 402 S. Boone, Rock Rapids, IA 51242 on the ____ day of March, 2001.

Timothy J. Langley
Assistant Federal Public Defender
Attorney for Appellee

CERTIFICATE OF FILING

I certify that I filed ten copies of this brief and a 3 ½ -inch computer diskette containing the full document with the Clerk of the United States Court of Appeals, Thomas F. Eagleton Court House, Room 24.329, 111 South 10th Street, St. Louis, MO 63102, by sending it via Federal Express on the _____ day of March, 2001. The diskette has been scanned for viruses using Norton Anti Virus Version 5.0, and that scan showed that the diskette was virus-free.

Timothy J. Langley
Assistant Federal Public Defender
Attorney for Appellee

ADDENDUM