
AILA

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Cyrus D. Mehta
Editor-in-Chief

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Secure in Their Persons, Houses, Papers, and Effects

Suppression in Immigration Court in an Age of Widespread Fourth Amendment Violations

Sarah Cade and Raisa Cohen*

Abstract: This article examines when, if ever, evidence may be suppressed in immigration court. Although *INS v. Lopez-Mendoza* held that the exclusionary rule generally does not apply in removal proceedings, the decision left open limited room for suppression in cases involving egregious violations and suggested that widespread Fourth Amendment violations could alter the analysis. In the decades since, the circuits have taken uneven approaches, and suppression remains difficult to obtain in practice.

This article reviews how courts have interpreted those openings and where the doctrine has stalled. It argues that current enforcement conditions, including increasingly aggressive tactics and recurring allegations of Fourth Amendment violations, warrant closer judicial attention to suppression claims.

It also offers practical guidance for practitioners, focusing on how to build a record, satisfy initial burdens, and avoid common mistakes that weaken suppression arguments. At a time of heightened enforcement, closer attention to suppression is warranted.

Introduction

Most Americans know at least a little bit about the exclusionary rule, even if they have never been to law school. Whether from television and movies, news coverage of criminal prosecution, or civics classes, terms like “fruit of the poisonous tree” and “tossing out” evidence in trial are embedded into our lexicon. The contemporary rule was crafted by the Supreme Court out of a need to find a remedy for violations of the Fourth and Fifth Amendments to the Constitution.

Noncitizens also enjoy the “inalienable” Fourth Amendment constitutional right “to be secure in their persons, houses, papers and effects, against unreasonable search and seizures.” But in the context of removal proceedings, the exclusionary rule has generally not been available to respondents.

However, suppression is not categorically unavailable in removal proceedings. When evidence is obtained through an unlawful search or seizure, especially where the conduct is egregious or part of a broader pattern, counsel may have a viable basis to seek exclusion. The Supreme Court preserved that

limited remedy, and this article contends that contemporary enforcement realities warrant renewed judicial engagement with it.

History of the Rule in Immigration Courts

The agency's first precedential decision on the application of the exclusionary rule was *Matter of Sandoval*.¹ Applying a "balancing test" between the "societal costs" of applying the exclusionary rule and the need to deter unlawful conduct by immigration officers, the Board of Immigration Appeals (BIA)—relying on the fact that the exclusionary rule had not been applied to civil proceedings by the Supreme Court—concluded that the exclusionary rule did not apply to deportation proceedings.² The BIA reasoned that, since any evidence gained could not be used in criminal prosecution, that along with any internal U.S. Immigration and Naturalization Service (INS) correction mechanisms would be sufficient to deter agent misconduct.³

The Supreme Court had the chance to address exclusion of evidence in *INS v. Lopez-Mendoza*, which remains the seminal case on the issue.⁴

The two arrests that had undergirded the Supreme Court's conclusion in *INS v. Lopez-Mendoza* were, by our contemporary experience, quite tame. Adan Lopez-Mendoza was arrested when agents went to his place of employment without a warrant based on a tip and while one of the agents spoke to the proprietor the other entered the shop without permission and questioned Lopez-Mendoza about his immigration history. Elias Sandoval-Sanchez (not related to the respondent in *Matter of Sandoval*, *supra*), whose case was also addressed by the Supreme Court sub nom *INS v. Lopez-Mendoza*, had been a potato processing plant worker whose employer had given permission to agents to search; the officers positioned themselves at the entrance to the plant and questioned employees entering and exiting, and briefly detained anyone who appeared evasive such those "who averted their heads, avoided eye contact, or tried to hide themselves in a group."⁵ After being detained at the plant, Sandoval-Sanchez was taken with a group of others to a county jail, where he requested a deportation hearing, and he was then questioned further about his immigration history.⁶

Lopez-Mendoza had not objected to the submission of evidence regarding his admission to illegal entry but had objected to being placed into proceedings after an unlawful arrest. Sandoval-Sanchez had objected to the evidence of his admission to alienage and manner of entry. The agency had applied *Matter of Sandoval* in both cases, finding that the exclusionary rule did not apply, but had been reversed by the Ninth Circuit.

The Supreme Court's five-member plurality decision agreed with the BIA that the exclusionary rule did not generally apply in civil immigration proceedings.

However, the decision left open a question about whether there may be some exceptions to that general rule. The opinion in *INS v. Lopez-Mendoza* was issued in multiple parts. Parts I through IV were joined by five justices, addressing how in general the exclusionary rule did not apply. Part V of the opinion was joined only by four justices. There were, additionally, four dissenters, who would have held that the exclusionary rule should be applied in civil immigration proceedings.

Part V of the opinion is a single paragraph, which reads in its entirety as follows:

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. *Cf. INS v. Delgado*, 466 U.S. 210 (1984). 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. *Cf. United States v. Leon*, ante at 468 U.S. 928 (Blackmun, J., concurring). 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. *Cf. Rochin v. California*, 342 U.S. 165 (1952). 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.⁷

From that paragraph has arisen almost all subsequent case law on the exclusionary rule in immigration court.

Interpreting Part V of *INS v. Lopez-Mendoza*

Since *INS v. Lopez-Mendoza*, the BIA has not issued a published decision directly addressing the “egregious” or “widespread” violation language.

The closest the BIA has come was in *Matter of Barcenas*, addressed further below, in which the BIA held that a respondent seeking to have evidence suppressed bears the burden of making a prima facie case that the evidence is not probative, was erroneous, or was a result of coercion or duress, and only after a prima facie claim is made does the burden shift to the government to justify the manner in which the evidence was obtained.⁸

However, almost every circuit court addressing the issue has reasoned that, since four justices would have applied the exclusionary rule and four additional justices concluded it might apply in certain circumstances, that suppression of evidence might be available in immigration court. Even so,

most of the courts have not yet encountered a case where they concluded suppression was warranted, and the circuits have varying levels of acceptance for when suppression might be available.

So far, only two circuits have been presented with violations that they concluded warranted suppression or a remand for the agency to consider whether suppression was warranted—the Ninth and the Third.

The Ninth Circuit, which has addressed the issue of suppression most extensively, permits suppression of evidence where a constitutional right was violated, and the agents “committed the violations deliberately or by conduct a reasonable officer should have known would violate the Constitution.”⁹ In such a circumstance, once the immigration judge ascertains that a right has been violated, he or she must then go on to examine whether the violation evidenced bad faith on the part of the government agent.¹⁰

Pursuant to this test, the Ninth Circuit has found suppression of evidence warranted several times. These have included instances where the Ninth Circuit found a warrantless entry without consent constituted an egregious violation,¹¹ a seizure based on ethnicity,¹² and where evidence was gathered as a result of detention which violated regulations.¹³

The Third Circuit, for its part, has held in *Oliva-Ramos v. Attorney General of the United States* that evidence is suppressible due to an “egregious” violation if the record shows “(a) that a constitutional violation that was fundamentally unfair had occurred, or (b) that the violation—regardless of its unfairness—undermined the reliability of the evidence in dispute.” In evaluating egregiousness, the Third Circuit has called for “a flexible case-by-case approach . . . based on a general set of background principles,” including “evidence of any government misconduct by threats, coercion, or physical abuse,” evidence of “physical brutality” or an “unreasonable show or use of force.”¹⁴

In *Oliva-Ramos*, officers came to an apartment at 4:30 a.m. with an administrative warrant for an occupant who was not present. According to a government agent’s testimony, officers were given permission to enter the apartment, though Erick Rodolfo Oliva-Ramos disputed that. The agents then herded everyone into the living room and began questioning them about their immigration status during a 45-minute encounter. The residents were not permitted to leave the living room, even when one of the women began menstruating and asked permission to get sanitary products. They were also not permitted to eat, drink, or speak without permission from the officers. Although two of them were allowed to use the bathroom they were forced to keep the door open while an officer stood outside the bathroom. Afterward, Oliva-Ramos was taken into a vehicle, which made additional stops and arrested more individuals before arriving at the U.S. Immigration and Customs Enforcement (ICE) office where he was told to fill out papers and was questioned later that afternoon; he was not given food or water until approximately six or seven o’clock in the evening.

In remanding the case to the agency for further consideration of the suppression request, the Third Circuit was principally focused on the fact that the immigration judge had denied a request by Oliva-Ramos to subpoena agency records regarding the arrest, the BIA had denied a motion to reopen once those records (which helped support Oliva-Ramos's version of events) were obtained, and that the agency failed to address Oliva-Ramos's argument that the violations he experienced were part of a widespread and systemic pattern by ICE.¹⁵

Thus far, no other circuit has been persuaded that violations with which they were presented were existent or sufficiently egregious, though several have set forth standards for reviewing alleged violations.

The First Circuit stated that *INS v. Lopez-Mendoza* has left only a "glimmer of hope of suppression" in removal proceedings, and that suppression would require evidence of, at least, "government misconduct by threats, coercion, or physical abuse."¹⁶ However, in the cases where the First Circuit set that standard, the alleged violations occurred during non-threatening questioning in otherwise consensual engagements with agency officials, and the circuit wrestled with the extent to which the petitioners' rights were even violated.¹⁷ The First Circuit has elsewhere reiterated that it would be open to applying the exclusionary rule in instances of "egregious" or "widespread" violations.¹⁸

The Second Circuit has held that *INS v. Lopez-Mendoza* allows suppression of evidence from two types of "egregious" violations—one in which the violations "transgress notions of fundamental fairness" and others in which the violations "undermine the probative value of the evidence."¹⁹ When evaluating whether the violation was fundamentally unfair, an adjudicator must focus on the "characteristics and severity of the offending conduct," and technical violations of constitutional rights may not be sufficient.²⁰

Relevant to the documented practice of arrests solely on race, ethnicity, or foreign language usage, the Second Circuit has held that stops based solely on ethnicity or race are always egregious, though a respondent would need to provide evidence beyond speculation that it was based only on their race.²¹ Other examples provided by the Second Circuit of what might constitute an "egregious" violation have included unreasonable use of force or an unreasonably lengthy stop.²²

The Fourth Circuit has implied that an "egregious" violation might warrant suppression but has not found such an instance yet.²³

The Fifth Circuit has repeatedly stated that constitutional violations do not permit suppression of evidence in removal proceedings.²⁴ However, an unpublished decision has suggested that egregious violations might warrant suppression if there is also a showing of "substantial prejudice."²⁵

The Sixth Circuit has only addressed suppression in a case where the issue was moot, as the petitioner had otherwise admitted alienage before the immigration judge separate and apart from the government's evidence.²⁶ However,

the Sixth Circuit did state that evidence would only be subject to suppression if there was an “egregious” constitutional violation.²⁷

The Seventh Circuit has principally addressed suppression in immigration court in the context of a series of cases arising from a fraud investigation known as Operation Durango, in which the government set up fake “travel agencies” where people could unlawfully purchase I-551 stamps marking them as permanent residents.²⁸ The Seventh Circuit repeatedly held that the operation did not involve violations of constitutional rights, but left open the possibility that evidence could be suppressed if a respondent persuasively showed “widespread and egregious” violations of rights.²⁹ In another context, the Seventh Circuit held that “very minor physical abuse [consisting of the petitioner’s arms being lifted uncomfortably behind his back while being handcuffed] coupled with aggressive questioning [...] and verbal demands that a person sign documents” do not constitute “searches and seizures that could violate the Fourth Amendment.”³⁰

The Eighth Circuit has declined to explicitly hold that an “egregious” violation compels exclusion of evidence in removal proceedings.³¹ However, the Eighth Circuit has stated that, if they were to make such a holding, the circuit would use a “totality of the circumstances” approach, with considerations including whether there was unreasonable use of force, detention without any articulable suspicion, a detention based solely on race or appearance, or other evidence that an officer’s conduct shocked the conscience or offended the “community’s sense of fair play and decency.”³²

The Tenth Circuit has implied that suppression is available only where the admission of the evidence would be “fundamentally unfair,” such that a due process violation might be required.³³

The Eleventh Circuit has not directly addressed the issue of the exclusion of evidence obtained as a result of Fourth Amendment violations.

The Third and Eighth Circuits have also distinguished between violations by immigration officers and those committed by state or local law enforcement.³⁴ Support for this position comes from the Supreme Court’s 1976 decision *United States v. Janis*, where the Supreme Court disallowed suppression in the civil tax context of evidence collected by state criminal authorities.³⁵ The given justification for permitting such evidence is that the social interest in excluding evidence of violations is reduced when those violations are committed by local or state law enforcement. However, both the Third and Eighth circuits have also suggested that a sufficiently egregious violation or evidence of widespread violations could nonetheless warrant suppression.³⁶

Read together, the circuit cases share a common posture. Courts generally accept that suppression remains available in removal proceedings for egregious violations, and several have suggested that a credible showing of widespread misconduct could alter the *Lopez-Mendoza* analysis. Yet suppression is rarely granted. The doctrine has developed through case-specific factual disputes, not through records that squarely test institutional practices or recurring

enforcement patterns. As a result, the circuits have not meaningfully addressed suppression in the context of widespread or systemic violations by Customs and Border Protection or ICE.

Suppression of “Identity”

We would like to make one brief note on the suppression of the “identity” of the respondent, which presently has a circuit court split.

In *INS v. Lopez-Mendoza*, the Supreme Court stated that the “body or identity of a defendant or respondent in criminal or civil proceeding is never itself suppressible as fruit of an unlawful arrest.”³⁷

The Fourth, Eighth, and Tenth circuits have concluded that the Supreme Court was simply recognizing the well-established rule that an unlawful arrest does not deprive the court of jurisdiction over an arrestee.³⁸

The Third, Fifth, and Sixth circuits, however, have held that statement in *INS v. Lopez-Mendoza* means evidence of identity is also not suppressible, though in the case of the Third and Sixth Circuits that limitation explicitly applies only in cases where violations are not “egregious.”³⁹

Regulatory Violations

Violations of constitutional rights are not the only kind of violations that might lead to suppression of evidence or termination. The BIA and several circuit courts, including the Second, Fourth, and Ninth, have held that violations of regulations might also result in suppression or termination, though this is typically permitted only where the regulation is designed with a “purpose of benefit to the alien” and the respondent was prejudiced by its violation.⁴⁰

However, establishing prejudice in such an instance can be difficult. For instance, with violations of 8 C.F.R. § 287.3, the courts have typically held that voluntary statements made by the respondent after an unlawful arrest are not suppressible absent evidence of coercion or involuntariness.⁴¹

Now that the legal background for suppression in removal proceedings has been addressed, we turn to discussing strategies for practitioners.

Suppression and the Record

Suppression of evidence will only assist a respondent if evidence gained from the violation is the sole basis for establishing removability.

This means that practitioners must be aware of any prior filings or concessions. For instance, written or oral pleadings made in conjunction with a motion to change venue, petitions filed before the U.S. Citizenship and Immigration Services, submissions made in a bond record, or documents filed

in conjunction with an I-589 to preserve the one-year filing deadline could nonetheless be submitted to establish removability.⁴²

The sole exception to this general rule might be a defensively filed asylum application submitted first to the Immigration Court, as such an application “shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his or her alienage or deportability” pursuant to 8 C.F.R. § 1240.11(e).

However, the regulation at 8 C.F.R. § 1240.11(e), arguably, excludes only the contents of a Form I-589 application and may not extend to evidence or testimony in support of it. The asylum application instructions require, for instance, submission of a passport in company with an asylum application, and some immigration judges have held that absence of a passport, which is otherwise available, means an application is not “complete” under *Matter of C-A-R-R*.⁴³ Birth certificates, or corroboratory evidence listing an applicant’s nationality or place of birth, or common questions in testimony such as where someone was born, could also be relied on as alternative evidence of alienage and eliminate any appellate argument in favor of suppression or termination.

This exception under 8 C.F.R. § 1240.11(e) also does not apply to referred applications submitted first to the asylum office, which can be used as evidence of foreign birth or alienage.

No other application carries the same regulatory benefit, meaning statements or admissions of foreign birth on any other application for relief could be used as evidence of alienage.

This means that, if suppression is denied and the client has potentially viable forms of relief from removal, that any arguments in favor of suppression might become moot upon the filing of any applications for relief. Practitioners should make sure their clients understand the risks and strategies available to them.

Shifting Burdens

When moving to suppress evidence of removability, the initial burden is on the moving party to establish a *prima facie* case of an egregious, widespread, or prejudicial violation, and only once that *prima facie* showing is met does the burden shift to the government to justify how it obtained the evidence.⁴⁴

This is a fact-intensive inquiry, so corroborating evidence should be compiled ahead of time and submitted with the motion to suppress. Examples of useful evidence might include affidavits from witnesses of the events to establish the egregiousness of the violations at issue in the case, but also evidence of how the violations are “widespread,” which might include applicable training materials from ICE directing agents to commit Fourth Amendment violations or other examples in media of similar incidents.

An affidavit from the client should also be submitted in most cases. However, care should be taken in drafting the affidavit so evidence of removability

is not included within the submission. Also, testimony will, in many cases, be required on the issue of suppression; the testimony regarding suppression should focus on the event and not the client's immigration or personal history. If the OPLA (Office of the Principal Legal Advisor) attorney attempts to question the client on where he or she was born or his or her immigration history, this should be considered as outside the scope of direct and objected to, arguing that the purpose of testimony at that juncture is to address the issue of whether the Department of Homeland Security's (DHS's) evidence should be suppressed and not the respondent's removability more broadly.

If a client is directed to answer questions on their place of birth or nationality, practitioners may want to consider advising their client on their Fifth Amendment right against self-incrimination. Before making that strategic choice, practitioners should remember that the Fifth Amendment applies to only testimony that could lead to criminal—not civil—liability, and immigration judges can take an adverse inference from a respondent's choice to invoke the Fifth Amendment.⁴⁵ Practitioners can argue that silence in response to questions of removability should not, standing alone, be sufficient to meet DHS's burden of establishing alienage by evidence that is clear, convincing, and unequivocal; however, silence alongside other evidence of place of birth or entry to the United States might be sufficient for DHS to meet its burden, according to the BIA's 1990 decision in *Matter of Guevara*.⁴⁶

Practitioners should also be reminded that there the Supreme Court has not held that race, ethnicity, or use of a non-English language are a sufficient basis on which to stop or detain a person. Although the Supreme Court did vacate a stay prohibiting such stops in *Perdomo v. Noem*,⁴⁷ the vacatur of a stay does not mean the justices agree with the practice being stayed. The sole defense of such stops (also known colloquially now as "Kavanaugh stops") was in Justice Brett Kavanaugh's concurrence, which was not joined by any other justice.

Sufficiency or Reliability of Evidence and Termination

When making arguments regarding the motion to suppress, also consider whether any documents were created or statements gleaned under coercion or duress of the person being questioned, in a way that might affect their probative value. Evidence must be fundamentally fair and probative.⁴⁸ Questioning a person in certain contexts might make their answers unreliable; for instance, if questioning was done shortly after the person had experienced or observed law enforcement violence or after a threat from officials, while loved ones were endangered, or during a long detention where necessities such as restroom breaks or water or medical care was being denied, could all reduce the reliability of the evidence. Such evidence of coercion or duress might undermine the presumption of inherent reliability of an I-213 or other government-created documents.

Documents that lack sufficient indicia of reliability cannot ordinarily meet DHS's burden of establishing removability by evidence that is clear, convincing, and unequivocal.⁴⁹

When moving for suppression of evidence or a hearing on reliability, be prepared for the possibility that OPLA may attempt to gain additional evidence of removability from alternative sources. The First Circuit, for instance, has held in *Garcia-Aguilar v. Lynch* that evidence obtained from some third party—in *Garcia-Aguilar*, a birth certificate ICE obtained by inquiring with the Mexican consulate—is not fruit of the poisonous tree, even though ICE officers would not have known about Marcia Garcia-Aguilar's presence in the country or her nationality absent a Fourth Amendment violation.⁵⁰ If OPLA is seeking a continuance for this purpose, practitioners may want to consider objecting to the request, particularly if the motion for a continuance is untimely.

However, even where evidence is reliable and not gained as a result of an egregious violence, two circuits have left open the possibility that some violations of rights or regulations might be so egregious that they warrant termination of proceedings outright, even if ICE has independent evidence of alienage. The Ninth Circuit permitted termination in one such case in *Sanchez v. Sessions*, holding that termination can be warranted if the violation “involved conscience-shocking conduct,” “deprived the petitioner of fundamental rights, or prejudiced the petitioner.”⁵¹ In *Sanchez v. Sessions*, the Ninth Circuit held that standard was satisfied when the Coast Guard, which had been contacted via a 911 call from a boat in distress, detained the boating party upon their return from shore, demanded Luis Enrique Sanchez's identification documents and belongings apparently based solely on his race, and contacted CBP, which then interrogated Sanchez about his place of birth and entry. The Second Circuit has also left open the possibility that egregious regulatory violations might warrant termination even in the presence of other, reliable evidence of alienage, though in the case addressing the issue the circuit found the violations at issue (principally under 8 C.F.R. § 287.8) were not sufficiently egregious.⁵²

When raising these issues to the Immigration Court, practitioners should keep in mind the need to present all arguments to the immigration judge lest the BIA—and subsequently any circuit court—deem the arguments waived. Filing a thorough motion to suppress is key, and practitioners should be sure to include all arguments they might want to include in any agency or circuit court appeal.

Corollary Effects and Prejudice

If a client has been the victim of a violation of their rights, practitioners should also keep in mind how this might impact the client in ways that might establish prejudice.

For instance, a violent or armed arrest by immigration officials could trigger or exacerbate post-traumatic stress disorder for clients who experienced

or observed violence in their country of origin, particularly if perpetrated by government forces. Practitioners might want to consider having the client evaluated or re-evaluated by a mental health professional and submitting that evaluation. If the mental health crisis is sufficiently severe it could, if submitted as part of a motion to suppress, be evidence of prejudice to the client insofar as the diagnosis or relapse might affect their ability to prepare the case or testify about what occurred to them in their home country. The mental health trauma could also be an equity for discretionary forms of relief or serve to bolster the credibility of testimony regarding the lingering impacts of persecution.

During illegal searches and arrests, the government might also, in some cases, seize personal belongings or documents belonging to the detainee, such as identity documents, cell phones, laptops, or travel documents. The seizure of these documents, particularly if not returned to the client, could also help to establish prejudice by showing that the client was unable to obtain necessary corroboration for their case as a result of the seizure.

Finally, some clients might be eligible to make claims under the Federal Tort Claims Act if they can demonstrate certain kinds of harm, such as personal injury or property damage. Immigration practitioners who are not familiar with litigating such claims might want to consider referring their clients to an attorney experienced with these types of claims and ensure that any evidence regarding their damages is properly preserved.

Final Thoughts

Considering current practices by CBP and ICE's Enforcement and Removal Operations, suppression may be justified not only because of serious violations in individual cases but also due to the broader pattern of widespread, deliberate, and systemic misconduct. Although administrative adjudicators, such as immigration judges and the BIA, may be hesitant to fully engage with suppression arguments under the agency level, meaningful progress remains possible. Several circuit courts have signaled a willingness to recognize suppression where the facts warrant it, creating a significant opportunity to advance and strengthen this area of law through strategic litigation at the appellate level.

Notes

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1. *Matter of Sandoval*, 17 I. & N. Dec. 70 (BIA 1979).
2. *Id.* at 76.
3. *Id.* at 77-81.

4. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).
5. *Lopez-Mendoza*, 468 U.S. at 1036.
6. *Id.* at 1036-37.
7. *Id.* at 1050-51.
8. *Matter of Barcenas*, 19 I. & N. Dec. 609 (BIA 1988); *see also* *B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022) (as amended) (recognizing a presumption of regularity in how evidence is obtained, and stating the burden is on the respondent to present “clear evidence” that contradicts the presumption).
9. *Orhorhaghe v. INS*, 38 F.3d 488, 493 (9th Cir. 1994).
10. *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1445-52 (9th Cir. 1994).
11. *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016-19 (9th Cir. 2008).
12. *Gonzalez-Rivera*, 22 F.3d at 1452.
13. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019); *Oliva-Ramos v. Att’y Gen.*, 694 F.3d 259, 278 (3d Cir. 2012).
14. *Oliva-Ramos*, 694 F.3d at 278-79.
15. *Id.*
16. *Kandamar v. Gonzales*, 464 F.3d 65, 71 (1st Cir. 2006); *see also* *Navarro-Chalan v. Ashcroft*, 359 F.3d 19, 22 (1st Cir. 2004).
17. *Kandamar v. Gonzales*, 464 F.3d at 70-72; *Navarro-Chalan v. Ashcroft*, 359 F.3d at 22-23.
18. *Garcia-Aguilar v. Lynch*, 806 F.3d 671, 674 n.2 (1st Cir. 2015).
19. *See, e.g., Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006).
20. *Almeida-Amaral*, 461 F.3d at 235.
21. *Id.* at 237.
22. *Id.* at 236; *see also* *Pinto-Montoya v. Mukasey*, 540 F.3d 126, 131-33 (2d Cir. 2008).
23. *Yanez-Marquez v. Lynch*, 789 F.3d 434, 450 (4th Cir. 2015).
24. *See, e.g., Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006); *Mendoza-Solis v. INS*, 36 F.3d 12, 14 (5th Cir. 1994) (“It is well established that the fourth amendment exclusionary rule is not to be applied in deportation proceedings.”).
25. *Aziz v. Gonzales*, 185 F. App’x 349 (5th Cir. 2006).
26. *See Miguel v. INS*, 359 F.3d 408 (6th Cir. 2004).
27. *Id.* at 411 n.3.
28. *See, e.g., Wroblewska v. Holder*, 656 F.3d 473, 477-78 (7th Cir. 2011).
29. *Id.* (quoting *Krasilych v. Holder*, 583 F.3d 962, 967 (7th Cir. 2009)).
30. *Gutierrez-Berdin v. Holder*, 618 F.3d 647, 652-53 (7th Cir. 2010).
31. *Lopez-Fernandez v. Holder*, 735 F.3d 1043 (8th Cir. 2013).
32. *Carcamo v. Holder*, 713 F.3d 916, 923 (8th Cir. 2013); *see also* *Puc-Ruiz v. Holder*, 629 F.3d 771, 778 (8th Cir. 2010).
33. *Luevano v. Holder*, 660 F.3d 1207, 1212 (10th Cir. 2011); *Aguayo v. Garland*, 78 F.4th 1210 (10th Cir. 2023).
34. *Yoc-us v. Att’y Gen.*, 932 F.3d 98 (3d Cir. 2019); *Lopez-Gabriel v. Holder*, 653 F.3d 683 (8th Cir. 2011).
35. *United States v. Janis*, 428 U.S. 433, 457-58 (1976).
36. *Yoc-us*, 932 F.3d at 111-12; *Lopez-Gabriel*, 653 F.3d at 686-87.
37. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1036 (1984).

38. *United States v. Olivares-Rangel*, 458 F.3d 1104, 1106 (10th Cir. 2006); *United States v. Oscar-Torres*, 507 F.3d 224, 228-29 (4th Cir. 2007); *United States v. Guevara-Martinez*, 262 F.3d 751, 754-55 (8th Cir. 2001).

39. *United States v. Bowley*, 435 F.3d 426, 430-31 (3d Cir. 2006); *United States v. Navarro-Diaz*, 420 F.3d 581, 588 (6th Cir. 2005); *United States v. Roque-Villanueva*, 175 F.3d 345, 346 (5th Cir. 1999). *But see* *United States v. Hernandez-Mandujano*, 721 F.3d 345 (5th Cir. 2013) (Grady Jolly, J., concurring).

40. *Matter of Garcia-Flores*, 17 I. & N. Dec. 325, 328 (BIA 1980); *Montero v. INS*, 124 F.3d 381, 386 (2d Cir. 1997) (“[I]f the regulation does not affect a fundamental right derived from the Constitution, the proceeding will be invalidated only if the petitioner shows prejudice[.]”); *see also* *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018); *Martinez-Camargo v. INS*, 282 F.3d 487 (7th Cir. 2002); *Delgado-Corea v. INS*, 804 F.2d 261, 262-63 (4th Cir. 1986).

41. *See, e.g.*, *Martinez-Camargo*, 282 F.3d at 492.

42. *See, e.g.*, *Matter of Cervantes*, 21 I. & N. Dec. 351, 353 (BIA 1996).

43. *Matter of C-A-R-R-*, 29 I. & N. Dec. 13 (BIA 2025).

44. *Matter of Barcnas*, 19 I. & N. Dec. 609 (BIA 1988); *B.R. v. Garland*, 26 F.4th 827, 832 (9th Cir. 2022) (“The exclusionary rule is generally not available in immigration proceedings, but we hold that once an alien makes a *prima facie* showing of an egregious regulatory or Fourth Amendment violation warranting suppression and submits specific evidence that the government’s evidence is tainted, the government has the burden and opportunity to rebut that claim of taint.”); *Cortzojay v. Holder*, 725 F.3d 172 (2d Cir. 2013) (same).

45. *See, e.g.*, *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984); *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976).

46. *Matter of Guevara*, 20 I. & N. Dec. 238 (BIA 1990).

47. *Perdomo v. Noem*, No. 25A169 (Sept. 8, 2025).

48. *Bridges v. Wixon*, 326 U.S. 135 (1945); *Matter of DeVera*, 16 I. & N. Dec. 266, 268-69 (BIA 1977).

49. *See, e.g.*, *Rosa v. Bondi*, 144 F.4th 37 (1st Cir. 2025); *Pouhova v. Holder*, 726 F.3d 1007, 1009 (7th Cir. 2013).

50. *Garcia-Aguilar v. Lynch*, 806 F.3d 671, 675-76 (1st Cir. 2015).

51. *Sanchez v. Sessions*, 904 F.3d 643, 655 (9th Cir. 2018).

52. *Rajah v. Mukasey*, 544 F.3d 427, 447 (2d Cir. 2008).