

US Supreme Court**Case:** *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984)**Date:** July 5, 1984**Votes:** 5-4 for INS (Burger, Blackmun, Powell, Rehnquist, O'Connor / Brennan, White, Marshall, Stevens)**Opinion:** O'Connor**Dissents:** Brennan; White; Marshall; Stevens**Tags:** Immigration, deportation, 4th Amendment, search & seizure, suppression, exclusionary rule, civil v. criminal proceedings, unlawful presence, workplace raids, mass arrests, fundamental fairness**Question(s) Presented:** "whether an admission of unlawful presence in this country made subsequently to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing." 1034**Holdings:** "We hold that the exclusionary rule need not be applied in such a proceeding." 1034**Rationale:**

- **R1:** can't exclude the *body or identity* of the individual (compelled presence at deportation proceeding), despite unlawful arrest (and this Respondent had not objected to the *evidence* offered against him).
- **R2:** This one had objected to the *evidence* offered at the deportation proceeding, but social costs outweigh the benefit of 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."** 1046

Facts: 1034-37 Citizens of Mexico "challenged the regularity of [removal] proceedings on grounds related to the lawfulness of their respective arrests." **R1 (CA):** INS agents arrested him without warrant at work; he admitted EWI upon questioning. **R2 (WA):** arrested by INS agents who showed up at work and targeted individuals who wouldn't make eye contact with officers or couldn't answer innocuous questions in English. "[Agent] Bower was certain that no one was questioned about his status unless his actions had given the agents reason to believe that he was an undocumented alien." 1037 Respondent didn't realize he had a right to remain silent and admitted EWI while at county jail.

Procedural History:

- **IJ:** Ordered removed.
- **BIA:** Affirmed. Illegal arrest has no bearing on subsequent deportation proceedings. "The BIA also noted that the exclusionary rule is not applied to redress the injury to the privacy of the search victim, and that the BIA had previously concluded that application of the rule in deportation proceedings to deter unlawful INS conduct was inappropriate." 1036
- **9th Circuit:** vacated and remanded both cases, finding in one that the Respondent's "admission of his illegal presence in this country was the fruit of an unlawful arrest, and that the exclusionary rule applied

in a deportation proceeding,” and sending the other case back to the BIA to decide about the 4th Am violation. 1034

- “On appeal the Court of Appeals concluded that Sandoval-Sanchez’ detention by the immigration officers violated the Fourth Amendment, that the statements he made were a product of that detention, and that the exclusionary rule barred their use in a deportation hearing.” 1038

Appeals to Statute & Precedent:

- **8 U.S.C. §1252(b)(4):** decision of deportability needs to be based on reasonable, substantial, and probative evidence.
- ***Matter of Sandoval*, 17 I&N Dec. 70 (BIA 1979):** exclusionary rule not applied in deportation proceedings.
- ***Bugajewitz v. Adams*, 228 U.S. 585 (1913):** deportation hearings & respondent’s right to remain
- ***Fong Yue Ting v. United States*, 149 U.S. 698 (1893):** deportation hearings & respondent’s right to remain
- ***Navia-Duran v. INS*, 568 F.2d 803, 808 (1st Cir. 1977):** “absence of *Miranda* warnings does not render an otherwise voluntary statement by the respondent inadmissible in a deportation case.” 1039
- ***Avila-Gallegos v. INS*, 525 F.2d 666, 667 (2nd Cir. 1975):** Same
- ***Chavez-Raya v. INS*, 519 F.2d 397, 399-401 (7th Cir. 1975):** Same
- ***Abel v. United States*, 362 U.S. 217 (1960):** “search permitted incidental to an arrest pursuant to an administrative warrant issued by the INS” 1039
- ***United States ex rel Bilokumsky v. Tod*, 263 U.S. 149, 157 (1923) (Brandeis, J.):** “involuntary confessions admissible at deportation hearing” 1039 “A person arrested on the preliminary warrant is not protected by a presumption of citizenship comparable to the presumption of innocence in a criminal case. There is no provision which forbids drawing an adverse inference from the fact of standing mute.” (at 153-154)
- ***Gerstein v. Pugh*, 420 U.S. 103, 119 (1975):** can’t suppress the body or identity of respondent despite unlawful arrest
- ***Frisbie v. Collins*, 342 U.S. 519, 522 (1952):** same
- ***United States v. Eighty-Eight Thousand, Five Hundred Dollars*, 671 F.2d 293 (8th Cir. 1982):** can’t suppress contraband or forfeitable property in forfeiture proceedings
- ***Wong Sun v. United States*, 371 U.S. 471 (1963):** can suppress evidence in a criminal proceeding if obtained unlawfully and linked relevantly with unlawful conduct.
- ***United States v. Janis*, 428 U.S. 433 (1976):** “a framework for deciding in what types of proceeding application of the exclusionary rule is appropriate” 1042
- ***United States v. Leon*, :** exclusionary rule not applicable when officers are acting in objective good faith (“good faith exception”)
- ***United States v. Calandra*, 414 U.S. 338 (1974):** Fourth Amendment

Discussion:

- “A deportation proceeding is a purely **civil** action to determine eligibility to remain in this country, not to punish an unlawful entry, though entering or remaining unlawfully in this country is itself a crime.” 1038
- “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.” 1038
- “The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws.” 1039
- “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.” 1039
- “The general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible if the link between the [1041] evidence and the unlawful conduct is not too attenuated. . . . **The reach of the exclusionary rule beyond the context of a criminal prosecution, however, is less clear.**” 1040-41
 - “the Court has never squarely addressed the question before. Lower court decisions dealing with this question are sparse.” 1041
- *Janis* test for exclusion:
 - “weigh the likely social benefits of excluding unlawfully seized evidence against the likely costs.” 1041
 - Benefit: deter unlawful police conduct
 - Cost: loss of probative evidence; “secondary costs that flow from the less accurate or more cumbersome adjudication that therefore occurs” 1041
- “[in] the complex and turbulent history of the rule, the Court never has applied it to exclude evidence from a **civil** proceeding, federal or state.” *Janis* at 447 (footnote omitted); quoted 1041-42.
- “While it seems likely that the deterrence value of applying the exclusionary rule in deportation proceedings would be higher than it was in *Janis*, it is also quite clear that the social costs would be very much greater as well.” 1042
- **“The likely deterrence value of the exclusionary rule in deportation proceedings is difficult to assess. On the one hand, a **civil** deportation proceeding is a **civil** complement to a possible criminal prosecution, and to this extent it resembles the **civil** proceeding under review in *Janis*.”**
 - “the prospect of losing evidence that might otherwise be used in a criminal prosecution undoubtedly supplies some residual deterrent to unlawful conduct by INS officials.” 1042
 - But most of this happens in **civil** proceedings. 1043

- “**First**, regardless of how the arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation.” 1043
 - **Second**—not that many people would need to challenge a search or the circumstances of arrest. 1044
 - “When an occasional challenge is brought, the consequences from the point of view of the officer's overall arrest and deportation record will be trivial. In these circumstances, the arresting officer is most unlikely to shape his conduct in anticipation of the exclusion of evidence at a formal deportation hearing.” 1044
 - **Third**—INS deters 4th Am violations by officers with rules! Inservice training!
 - “Evidence seized through intentionally unlawful conduct is excluded by Department of Justice Policy from the proceeding for which it was obtained.” 1045
 - “The INS's attention to Fourth Amendment interests cannot guarantee that constitutional violations will not occur, but it does reduce the likely deterrent value of the exclusionary rule. Deterrence must be measured at the margin.” 1045
 - **Fourth**—alternative remedies
- “application of the exclusionary rule to **civil** deportation proceedings [1046] can be justified only if the rule is likely to add significant protection to these Fourth Amendment rights.” 1045-46
 - Not to mention that if you apply the exclusionary rule, you encourage the social harm of illegal entry. 1046
 - It's like returning contraband explosives to someone just because they were seized illegally!
 - Or like concealing evidence of a hazardous waste dump!
 - “Precisely the same can be said here. 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.” 1047 [Note that the Court pivots quickly to the **CRIMINAL** after leaning on the **CIVIL** to excuse its conclusions about the exclusionary rule.]
 - Also, it's expensive to keep trying these cases! 1048
 - *Sandoval*—diversion of attention from the main thing when 4th Am gets into immigration hearings! (BIA)
 - Also, a lot of the evidence that would be excluded was probably gathered lawfully! 1049
 - Also, INS wouldn't be able to do its raids and mass arrests, which are so important for its mission!
 - “The demand for a precise account of exactly what happened in each particular arrest would plainly preclude mass arrests, even when the INS is confronted, [*1050] as it often is, with massed numbers of ascertainably illegal aliens, and even when the arrests can be and are conducted in full compliance with all Fourth Amendment requirements.” 1049-50

- “The costs of applying the exclusionary rule in the context of **civil** deportation hearings are high. In particular, application of the exclusionary rule in cases such as *Sandoval-Sanchez*, would compel the courts to release from custody persons who would then immediately resume their commission of a crime through their continuing, unlawful presence in this country.” 1050
- “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.” 1050
- “Finally, we do not deal here with **egregious violations** of Fourth Amendment or other liberties that might **transgress notions of fundamental fairness** and undermine [*1051] 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.” 1050-51

Dissent #1: Brennan

- Exclusionary rule must apply in civil proceedings as well as in criminal. 1051
- “I believe the basis for the exclusionary rule does not derive from its effectiveness as a deterrent, but is instead found in the requirements of the Fourth Amendment itself.” 1051
- Believes the Respondents had 4th Am rights which were violated, and that admission of evidence would also infringe those rights.

Dissent #2: White

- The seized evidence falls within “the offending officer’s zone of primary interest” (*Janis* at 458)—it’s not peripheral (or “collateral”). Therefore, there’s a direct connection between suppression and deterrence. 1053
- “Because INS agents are law enforcement officials whose mission is closely analogous to that of police officers and because civil deportation proceedings are to INS agents what criminal trials are to police officers, I cannot agree with [the Court’s] assessment [that suppression doesn’t apply in civil deportation proceedings].” 1053
- “there is no principled basis for distinguishing between the deterrent effect of the rule in criminal cases and in civil deportation proceedings.” 1053
- Doesn’t matter if Respondents take advantage of an exclusionary rule only occasionally: criminal trials (as opposed to guilty pleas) also happen only occasionally. 1054
- And about those inservices: “rather than supporting a conclusion that the exclusionary rule is unnecessary, the existence of these programs instead suggests that the exclusionary rule has created incentives for the agency to ensure that its officers follow the dictates of the Constitution.” 1055
- “Since the deterrent function of the rule is furthered if it alters either ‘the behavior of individual law enforcement officers or the policies of their departments,’ *United States v. Leon*, ante, at 918, **it seems likely that it was the rule’s deterrent effect that led to the programs to which the Court now points of its assertion that the rule would have no deterrent effect.**” 1055

- Civil suits are unrealistic, given that the Respondents will have been deported (and many are probably illiterate) 1055 – “It is doubtful that the threat of civil suits by these persons will strike fear into the hearts of those who enforce the Nation’s immigration laws.”
- “The Court may be willing to throw up its hands in dismay because it is administratively inconvenient to determine whether [*1060] constitutional rights have been violated, but we neglect our duty when we subordinate constitutional rights to expediency in such a manner. Particularly is this so when, as here, there is but a weak showing that administrative efficiency will be seriously compromised.” 1059-60

Dissent #3: Marshall

- “the exclusionary rule should apply in civil deportation proceedings.” 1060
- We need this to avoid the impression that the government condones lawlessness, and also to assure all people that the government isn’t going to profit from lawless behavior.

Dissent #4: Stevens (nothing new)