

The Burger Court Opinion Writing Database

INS v. Lopez-Mendoza

468 U.S. 1032 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

June 21, 1984

'84 JUN 21 11:25

Re: 83-491 - INS v. Lopez-Mendoza

Dear Sandra:

Apparently the best we can do is show me
joining in the judgment.

Regards,



Justice O'Connor

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 25, 1984

RE: 83-491 - INS v. Lopez-Mendoza

Dear Sandra:

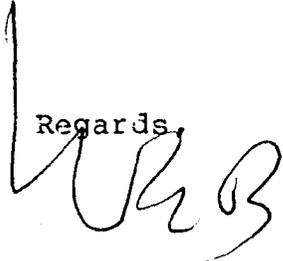
On further examination, I will join your opinion except for Part V.

I see no point in intimating that constitutional adjudication will weave and bob with some sort of Gallup Poll reflection of how many 4th amendment violations occur.

Rather than write separately - a business we nastly overdo - you can insert something like this:

"The Chief Justice joins all but
part V of the opinion.

or words to that effect.

Regards,


Justice O'Connor

copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1984

No. 83-491

INS v. Lopez-Mendoza

Dear Bryon,

Thurgood, John, you and I are in
dissent in the above. Would you
undertake the dissent?

Sincerely,

Paul

Justice White

Copies to: Justice Marshall
Justice Stevens

22:0A P-YM AS

202
202

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

RECEIVED
SUPREME COURT, U.
JUSTICE MARSHAL

June 15, 1984

'84 JUN 15 P12

No. 83-491

Immigration and Naturalization
Service v. Lopez-Mendoza

Dear John,

Please join me in your dissent in
the above.

Sincerely,



Justice Stevens

Copies to the Conference

M

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

July 3, 1984

INS v. Lopez-Mendoza
No. 83-491

Dear John:

Do you mind if I withdraw from your separate dissenting opinion in the above. I have decided that I should either join Thurgood's dissent or file my own.

Sincerely,



W.J.B., Jr.

Justice Stevens
Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

July 3, 1984

INS v. Lopez-Mendoza
No. 83-491

Dear Thurgood:

Your separate circulation in the above understandably relied on the dissents in Calandra and Janis. I think the rationale set forth in the recently circulated Leon dissent sufficiently differs from the arguments advanced in those opinions that perhaps the attached is more up to date. Do you agree and, if so, could you join it?

Sincerely,



Justice Marshall

.51 11-3 11-13

INS v. LOPEZ-MENDOZA

No. 83-491

JUSTICE BRENNAN, dissenting.

I fully agree with JUSTICE WHITE that under the analysis developed by the Court in such cases as United States v. Janis, 428 U.S. 433 (1976), and United States v. Calandra, 414 U.S. 338 (1974), the exclusionary rule must apply in civil deportation proceedings. However, for the reasons set forth today in my dissenting opinion in Massachusetts v. Sheppard, ante, at ____, 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. My view of the exclusionary rule would, of course, require affirmance of the Court of Appeals. In this case, federal law enforcement officers arrested respondents Sandoval-Sanchez and Lopez-Mendoza in violation of their Fourth Amendment rights. The subsequent admission of any evidence secured pursuant to these unlawful arrests in civil deportation proceedings would, in my view, also infringe those rights. The Government of the United States bears an obligation to obey the Fourth Amendment; that obligation is not lifted simply because the law enforcement officers were agents of the Immigration and Naturalization Service, nor because the evidence obtained by those officers was to be used in civil

To: The Chief Justice
Justice White
Justice Marshall
Justice Brennan
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: JUL 3 1984

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[July 5, 1984]

JUSTICE BRENNAN, dissenting.

I fully agree with JUSTICE WHITE that under the analysis developed by the Court in such cases as *United States v. Janis*, 428 U. S. 433 (1976), and *United States v. Calandra*, 414 U. S. 338 (1974), the exclusionary rule must apply in civil deportation proceedings. However, for the reasons set forth today in my dissenting opinion in *Massachusetts v. Sheppard*, *ante*, at —, 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. My view of the exclusionary rule would, of course, require affirmance of the Court of Appeals. In this case, federal law enforcement officers arrested respondents Sandoval-Sanchez and Lopez-Mendoza in violation of their Fourth Amendment rights. The subsequent admission of any evidence secured pursuant to these unlawful arrests in civil deportation proceedings would, in my view, also infringe those rights. The Government of the United States bears an obligation to obey the Fourth Amendment; that obligation is not lifted simply because the law enforcement officers were agents of the Immigration and Naturalization Service, nor because the evidence obtained by those officers was to be used in civil deportation proceedings.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1984

Re: 83-491 - INS v. Lopez-Mendoza

Dear Bill,

I shall undertake the dissent in this case.

Sincerely yours,



Justice Brennan

Copies to: Justice Marshall
Justice Stevens

cpm

83-491-1-1011

1011

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

74 JUN -5 P2:02

Re: 83-491 - INS v. Lopez-Mendoza

Dear Sandra,

In due course, as it is said, I shall
file a dissent in this case.

Sincerely yours,



Justice O'Connor

Copies to the Conference

cpm

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 14 A9:40

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: JUN 14 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE WHITE dissenting.

The Court today holds that the exclusionary rule does not apply in civil deportation proceedings. Because I believe that the conclusion of the majority is based upon an incorrect assessment of the costs and benefits of applying the rule in such proceedings, I respectfully dissent.¹

The paradigmatic case in which the exclusionary rule is applied is when the prosecutor seeks to use evidence illegally obtained by law enforcement officials in his case-in-chief in a criminal trial. In other classes of cases, the rule is applicable only when the likelihood of deterring the unwanted conduct outweighs the societal costs imposed by exclusion of relevant evidence. *United States v. Janis*, 428 U. S. 433, 454 (1976). Thus, the Court has, in a number of situations, refused to extend the exclusionary rule to proceedings other than the criminal trial itself. For example, in *Stone v. Powell*, 428 U. S. 465 (1976), the Court held that the deterrent effect of

¹I also question the Court's finding that Lopez failed to object to the evidence. The Court of Appeals held that he had made a proper objection, *Lopez-Mendoza v. INS*, 705 F. 2d 1059, 1060, n. 1. (CA9 1983), and the Government did not seek review of that conclusion, Brief for Petitioner 8, n. 8. Moreover, the fact that changes in an opinion are made between the time of the slip opinion and the bound volume has never before been considered evidence that the holding of a case is "unsettled." See *ante*, at 7, n. 1.

Stylistic and pp. 1, 4, 6

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 21 P2:10

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: _____

Recirculated: JUN 21 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE WHITE, dissenting.

The Court today holds that the exclusionary rule does not apply in civil deportation proceedings. Because I believe that the conclusion of the majority is based upon an incorrect assessment of the costs and benefits of applying the rule in such proceedings, I respectfully dissent.¹

The paradigmatic case in which the exclusionary rule is applied is when the prosecutor seeks to use evidence illegally obtained by law enforcement officials in his case-in-chief in a criminal trial. In other classes of cases, the rule is applicable only when the likelihood of deterring the unwanted conduct outweighs the societal costs imposed by exclusion of relevant evidence. *United States v. Janis*, 428 U. S. 433, 454 (1976). Thus, the Court has, in a number of situations, refused to extend the exclusionary rule to proceedings other than the criminal trial itself. For example, in *Stone v. Powell*, 428 U. S. 465 (1976), the Court held that the deterrent effect of

¹ I also question the Court's finding that Lopez failed to object to admission of the evidence. *Ante*, at 7 and n. 1. The Court of Appeals held that he had made a proper objection, *Lopez-Mendoza v. INS*, 705 F. 2d 1059, 1060, n. 1. (CA9 1983), and the Government did not seek review of that conclusion, Brief for Petitioner 8, n. 8. Moreover, the fact that changes in an opinion are made between the time of the slip opinion and the bound volume has never before been considered evidence that the holding of a case is "unsettled." See *ante*, at 7, n. 1.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1984

Re: No. 83-491-INS v. Lopez-Mendoza

Dear Sandra:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice O'Connor

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 22 P1:14

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

Circulated: JUN 22 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE MARSHALL, dissenting.

I agree with JUSTICE WHITE that application to this case of the mode of analysis embodied in the decisions of the Court in *United States v. Janis*, 428 U. S. 433 (1976), and *United States v. Calandra*, 414 U. S. 338 (1974), compels the conclusion that the exclusionary rule should apply in civil deportation proceedings. *Ante*, at —. However, I continue to believe that that mode of analysis fails to reflect the constitutionally mandated character of the exclusionary rule. See *United States v. Janis*, 428 U. S., at 460 (BRENNAN, J., joined by MARSHALL, J., dissenting). In my view, a sufficient reason for excluding from civil deportation proceedings evidence obtained in violation of the Fourth Amendment is that there is no other way to achieve “the twin goals of enabling the judiciary to avoid the taint of partnership in official lawlessness and of assuring the people—all potential victims of unlawful government conduct—that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government.” *United States v. Calandra*, 414 U. S., at 357 (BRENNAN, J., joined by MARSHALL, J., dissenting).

May 29, 1984

Re: No. 83-491 - INS v. Lopez-Mendoza

Dear Sandra:

Thank you for letting me have a preview of your opinion in this case. I have read it with interest. I think it is faithful to Janis, and I could join it in the form in which it is written.

The case will probably provoke a stinging dissent, directed at the BIA's long-held opposite position, and what the dissent would regard as reasonable alternatives and the weakness of the so-called practicalities. I think your waste-dump analogy is a good one, but the dissent might take the position it is an unfortunate symbol when it is used to compare the hazards of the presence of illegal aliens.

I might tease you about citing my concurring opinion in Leon. Perhaps now you will join it!

Sincerely,

HAB

Justice O'Connor



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 4, 1984

Re: No. 83-491 - INS v. Lopez-Mendoza

Dear Sandra:

Please join me.

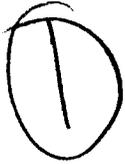
Sincerely,

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

04 JUN -4 P2:49

Justice O'Connor

cc: The Conference



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -4 12:02

June 4, 1984

83-491 INS v. Lopez-Mendoza

Dear Sandra:

Please join me.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States
Washington, D. C. 20543

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUN 12 P3:36

June 12, 1984

Re: No. 83-491 Immigration and Naturalization Service v.
Lopez-Mendoza

Dear Sandra,

Please join me.

Sincerely,

Justice O'Connor

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 15 10 55

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: JUN 15 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE STEVENS, dissenting.

Because the Court has not yet held that the rule of *United States v. Leon*, — U. S. — has any application to warrantless searches, I do not join the portion of JUSTICE WHITE'S opinion that relies on that case. I do, however, agree with the remainder of his dissenting opinion.

Join

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 19 A9 53

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

Circulated: _____

Recirculated: JUN 18 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE STEVENS, with whom JUSTICE BRENNAN joins,
dissenting.

Because the Court has not yet held that the rule of *United States v. Leon*, — U. S. — has any application to warrantless searches, I do not join the portion of JUSTICE WHITE's opinion that relies on that case. I do, however, agree with the remainder of his dissenting opinion.

Supreme Court of the United States
Washington, D. C. 20543

(one copy only)
man

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 22, 1984

No. 83-491 INS v. Lopez-Mendoza

Dear Harry,

Aloha!

I hesitate to add to your paper flow when you have been away for a few days. I know only too well how quickly it mounts on one's desk. Nevertheless, because this draft relies primarily on your opinion in the Janis case, I wanted to invite you to preview my draft to let me know if you think I have dealt with your framework of analysis in an acceptable manner.

Sincerely,

Sandra

Justice Blackmun

no refer to the fact of 2/12 to 199
part of the Janis
ok Leon case
we get a strong dis
by a man
attorney says
internal plan
waste dump.

✓ Pp. 4, 6, 7, 8, 9, 10, 14

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN -4 A9:52

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: JUN 1 1984

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez's deportation order was vacated and his case remanded to the BIA to determine whether the Fourth Amendment had

*Next Dissent
B & W*

Reproduced from the Collections of the Manuscript Division, Library of Congress

PR 4, 6, 12

~~S DO
I am not the draft
M~~

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Conn

Circulated: _____

Recirculated: JUN 5 1984

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

JUN -5 AM 11:30 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

**IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER v. ADAN LOPEZ-MENDOZA**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT**

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez's deportation order was vacated and his case remanded to the BIA to determine whether the Fourth Amendment had

Y R 15

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 12 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez's deportation order was vacated and his case remanded to the BIA to determine whether the Fourth Amendment had

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 15 10:55

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

JUN 15 1984

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez's deportation order was vacated and his case remanded to the BIA to determine whether the Fourth Amendment had

Stylistic Changes Throughout

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 JUN 19 P1:45

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: JUN 19 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez-Mendoza's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez-Mendoza's deportation order was vacated and his case remanded to the BIA to determine whether the

4 P. 18

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 22 P1:14

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: Jun 22

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[June —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez-Mendoza's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez-Mendoza's deportation order was vacated and his case remanded to the BIA to determine whether the

Reproduced from the Collections of the Manuscript Division, Library of Congress

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 22 P2:46

June 22, 1984

Re: No. 83-491 INS v. Lopez-Mendoza

Dear Chief,

With your concurrence in the judgment and the circulation of Thurgood's dissent, this case is now ready to be announced whenever Leon is ready. There are citations to Leon in this case.

Sincerely,

Sandra

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 25, 1984

MEMORANDUM TO THE CONFERENCE:

Re: Case Held for INS v. Lopez-Mendoza, No. 83-491

No. 83-963, Bd. of License Commissioners v. Pastore

Respondents' "Attic Lounge" was searched pursuant to a warrant and found to contain stolen property.

R.L.
Petitioner held a hearing at which respondents failed to show cause why their liquor license should not be suspended for permitting state law to be violated on its premises. Petitioner voted to revoke the license. Respondents appealed to the State Liquor Control Administrator. In a criminal proceeding a state judge then ruled that the search violated the Fourth Amendment. The Administrator held a de novo hearing and concluded there remained no justification for revoking the license.

✓
The R.I. Supreme Court ultimately affirmed the Administrator's decision on Fourth Amendment grounds. "[T]he Supreme Court has not yet decided whether the exclusionary rule will be construed to apply to administrative hearings.... [W]e feel that there is sufficient basis upon which to conclude that the exclusionary rule is applicable to a liquor license revocation hearing." The R.I. Court did mention, as a source of support, the CA9's decision in Lopez-Mendoza, but the discussion was brief and not central to the decision. The Court did state that Lopez-Mendoza "has a more compelling fact pattern than the case at bar to apply the exclusionary rule" The primary authority relied on by the R.I. Court was, however, One Plymouth Sedan v. Commonwealth of Pennsylvania, 380 U.S. 693 (1965), with additional reference to United States v. Calandra, 414 U.S. 338 (1974), and United States v. Janis, 428 U.S. 433 (1976).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 25, 1984

MEMORANDUM TO THE CONFERENCE:

Re: Case Held for INS v. Lopez-Mendoza, No. 83-491

No. 83-1535, INS v. Olivas-Monorrez

Respondent was arrested while travelling in a car, as a result of an INS border sweep operation. After his arrest he admitted that he had entered the U.S. illegally. At respondent's deportation hearing the immigration judge found that respondent had not established that his arrest was illegal and that, in any event, the exclusionary rule does not apply to civil deportation proceedings. Respondent's confession was admitted into evidence. In lieu of deportation, the immigration judge allowed respondent to depart voluntarily.

The BIA dismissed respondent's appeal. Even assuming that the arrest was unlawful, the exclusionary rule is not applicable in deportation proceedings. The circumstances surrounding the arrest were not so egregious as to warrant exclusion on the ground that use of the confession would be fundamentally unfair.

The Ninth Circuit reversed, squarely on the authority of its holding in Lopez-Mendoza v. INS, and remanded to the BIA for consideration of respondent's claim that he had been unlawfully arrested.

I recommend the case be "GVR'd" in light of Lopez-Mendoza. CK

Sincerely,



Sandra D. O'Connor

PP. 18

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 28 A9:38

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: _____ 27

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[July —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez-Mendoza's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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. Lopez-Mendoza's deportation order was vacated and his case remanded to the BIA to determine whether the

Reproduced from the Collections of the Manuscript Division, Library of Congress

P. 1

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

From: Justice O'Connell

'84 JUN 29 AM 11:33

Circulated: _____

JUN 29 1984

Recirculated: _____

8th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-491

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER *v.* ADAN LOPEZ-MENDOZA ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[July —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.†

This litigation requires us to decide whether an admission of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing. We hold that the exclusionary rule need not be applied in such a proceeding.

I

Respondents Adan Lopez-Mendoza and Elias Sandoval-Sanchez, both citizens of Mexico, were summoned to separate deportation proceedings in California and Washington, and both were ordered deported. They challenged the regularity of those proceedings on grounds related to the lawfulness of their respective arrests by officials of the Immigration and Naturalization Service (INS). On administrative appeal the Board of Immigration Appeals (BIA), an agency of the Department of Justice, affirmed the deportation orders.

The Court of Appeals for the Ninth Circuit, sitting en banc, reversed Sandoval's deportation order and vacated and remanded Lopez-Mendoza's deportation order. 705 F. 2d 1059 (1983). It ruled that Sandoval'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 pro-

†THE CHIEF JUSTICE joins all but Part V of this opinion.

Reproduced from the Collections of the Manuscript Division, Library of Congress