

PRESENTED AT

41st Annual Conference on Immigration and Nationality Law

October 25-27, 2017

Austin, Texas

Suppression in Removal Proceedings

Lance Curtright & Warren Craig

Lance Curtright & Warren Craig
De Mott, McChesney, Curtright &
Armendariz LLP
San Antonio, Texas

lance@dmcausa.com
210.354.1844

Imagine the following scenario. Your client wakes up at 5:00 AM one morning to loud banging on the door. She opens the door to find armed Immigration and Customs Enforcement (ICE) officers who yell, “Open up. Police. We need to come in and search your apartment. There are reports that there is a drug dealer in your neighbor.” Before your client has an opportunity to say no, the officers push her aside and barge into her home. They tell her to sit down and not move and then proceed to rifle through her personal belongings. After trashing her apartment, the officers place her in handcuffs. One of the officers points at her and says, “You’re illegal aren’t you? You better not lie to me or we will deport you and you won’t come back for 20 years.” Terrified, your client nods her head.

Several months later, your client appears before an Immigration Judge. The government alleges that she is a citizen of El Salvador who entered the United States without inspection and is therefore removable. The only evidence they offer in support of these allegations is an incident report (*i.e.*, the Form I-213, record of Deportable/Inadmissible Alien) written by one of the arresting ICE officers which states that your client admitted that she is not a citizen of the United States and that she entered the country illegally.

Is this evidence admissible? In a criminal proceeding, the answer is obviously no. In removal proceedings, the answer is more complicated.

Introduction

Like in criminal proceedings, persons in removal proceedings (who are referred to as “respondents”) can file motions to suppress evidence believed to be illegally obtained. Such evidence will generally fall into four categories: (1) evidence obtained in violation of the Fourth Amendment; (2) evidence obtained in violation of the Due Process Clause of the Fifth Amendment, such as a coerced or involuntary confessions; (3) evidence obtained in violation of statutory provisions, namely the provisions of the Immigration and Nationality Act (INA); (4) evidence obtained in violation of the regulations for the Department of Homeland Security (DHS), which are found in Chapter 8 of the Code of Federal Regulations (CFR). Often, this evidence will involve a statement made during an illegal seizure, such as a race-based traffic stop, prolonged detention pursuant to an ICE detainer, or coercive interrogation techniques. However, as discussed below, the standards for excluding illegally obtained evidence are different—and, in many cases, much more demanding—than in a criminal proceeding.

If the motion is granted, removal proceedings are not automatically terminated. But, the illegally obtained evidence will be excluded, and the DHS, which has the burden of proof over some matters in removal proceedings, may not be able to establish that the respondent is removable. In such cases, the

Also available as part of the eCourse

[2017 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the
41st Annual Conference on Immigration and Nationality Law session
"Removal Defenses: A View from the Trenches"