

IN THE SUPREME COURT OF THE UNITED STATES

ENRIQUE LOPEZ LARA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the circumstances of petitioner's stop for questioning in an airport customs area, in alleged violation of the Fourth Amendment, required the suppression of evidence of his identity.

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No. 17-9310

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1) is not published in the Federal Reporter but is reprinted at 714 Fed. Appx. 432.

JURISDICTION

The judgment of the court of appeals was entered on March 9, 2018. The petition for a writ of certiorari was filed on June 7, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted on one count of making a false claim of U.S. citizenship, in violation of 18 U.S.C. 911. Pet. App. B1. The district court sentenced petitioner to ten months of imprisonment, to be followed by one year of supervised release. Id. at B2. The court of appeals affirmed. Id. at A1.

1. Petitioner is a native and citizen of Mexico named Enrique Lopez Lara. D. Ct. Doc. 27, at 2 (Aug. 18, 2016); see Rearraingment Tr. 3. On May 14, 2016, petitioner flew from Mexico to Dallas Fort-Worth Airport (DFW). D. Ct. Doc. 25, at 1 (Aug. 16, 2016). Petitioner entered information into an automated passport control kiosk, which directed him to a Customs and Border Protection (CBP) officer for further inspection. Ibid. Petitioner handed the CBP officer a U.S. passport for a different person, named "Juan Francisco Martinez Reyes." Ibid. The officer examined it and, treating petitioner as a U.S. citizen, admitted petitioner past the primary inspection area. Ibid. Petitioner then collected his luggage, which was still within the restricted customs zone. At that point, a second CBP officer assigned to random inspections asked petitioner additional routine questions. Based on his responses, the officer directed him to a second checkpoint, where petitioner was questioned by a CBP baggage officer and a

supervisor. Id. at 2. The supervisor took petitioner to a secure area for further questioning. Ibid.

After the supervisor posed questions about the birth date and location listed on the passport petitioner had provided, petitioner admitted that he was born in Mexico and was not the person identified in the passport. D. Ct. Doc. 25, at 2. The supervisor terminated the interview and escorted petitioner to the passport control area for processing. Ibid.

2. A federal grand jury in the Northern District of Texas charged petitioner with one count of making a false claim of U.S. citizenship, in violation of 18 U.S.C. 911. Presentence Investigation Report (PSR) ¶ 3.

a. Petitioner filed a motion to suppress the evidence obtained during the questioning at DFW airport. He argued that his Fourth Amendment rights had been violated, on the theory that CBP officers lacked reasonable suspicion to detain him after he had cleared the primary inspection area in the guise of a U.S. citizen, and that his subsequent admission of his true identity should be suppressed. D. Ct. Doc. 25, at 4-5. The district court denied the motion. Id. at 6.

The district court observed that "searches made at the border" are exempt from the Fourth Amendment's traditional warrant and probable-cause requirements. D. Ct. Doc. 25, at 3. "[B]order searches," the court explained, "are considered reasonable based 'on the single fact that the person or item in question had entered

into our country from outside,' and have never depended on the existence of probable cause." Ibid. (quoting United States v. Ramsey, 431 U.S. 606, 619 (1977)). The court further observed that "[t]his border search exception applies not only at geographic borders, but also at functional equivalents," including "[a]n airport where a plane is arriving from a foreign city." Ibid. (citing Almeida-Sanchez v. United States, 413 U.S. 266, 272-273 (1973)). At those locations as well, "a stop * * * is justified even without a showing of probable cause or reasonable suspicion." Ibid.

The district court then explained that "any search that occurs before the person completely exits customs is the functional equivalent of a border search." D. Ct. Doc. 25, at 4. "Thus," the court continued, "in an airport, a stop that occurs after the primary inspection area is not a 'second' stop, but a part of a continual inspection process that may occur before a person completely exits the customs inspection area." Ibid. The court pointed to the Second Circuit's decision in Correa v. Thornburgh, 901 F.2d 1166, 1171-1172 (1990), which held that a resident alien who had been detained after passing through the primary inspection area "was not free from official restraint because her inspection by customs was not complete -- she could still be stopped and searched before exiting the restricted customs enclosure." Ibid.

The district court accordingly rejected petitioner's claim that CBP officers violated the Fourth Amendment when they stopped

him after he cleared the primary inspection checkpoint but before he had completed customs. "At the time he was stopped," the court found, petitioner "was not free to leave and still had to pass through a final inspection point." D. Ct. Doc. 25, at 5. Because that stop was "part of a continual inspection at the functional equivalent of a border," the court determined that no reasonable suspicion was required. Id. at 5-6.

b. Petitioner entered a conditional guilty plea, reserving the right to appeal the district court's suppression ruling. PSR ¶ 6. As part of the plea, petitioner stipulated that his true name was "Enrique Lopez Lara" and that he was a citizen of Mexico. D. Ct. Doc. 27, at 2 (Aug. 18, 2016); see also Rearraignment Tr. 3 (petitioner reports his full name as "Enrique Lopez Lara").

3. The court of appeals summarily affirmed in an unpublished per curiam decision. Pet. App. A1. Petitioner acknowledged that existing circuit precedent precluded his suppression argument, and the court agreed. Ibid. The court explained that it had held that, "even if there was a Fourth Amendment violation, evidence of an alien's identity is not suppressible." Ibid. (emphasis omitted) (citing United States v. Hernandez-Mandujano, 721 F.3d 345, 351 (5th Cir. 2013) (per curiam), cert. denied, 134 S. Ct. 2134 (2014); and United States v. Roque-Villaneuva, 175 F.3d 345, 346 (5th Cir. 1999)).

ARGUMENT

Petitioner contends (Pet. 4-9) that his stop for questioning at DFW airport before he completed customs was unconstitutional, and (Pet. 9-11) that the evidence thereby obtained, including his statements about his identity to a CBP officer, should be suppressed. Those arguments lack merit for several reasons and do not warrant further review.

1. At the outset, the only question petitioner purports to present here (Pet. i) is whether "an undocumented alien [may] suppress his identity when it was discovered in violation of the Fourth Amendment." But the petition itself includes no argument for why the court of appeals erred in determining that suppression was not required, even assuming a Fourth Amendment violation had occurred, or why the suppression question would warrant this Court's review.

Most of the petition instead argues (Pet. 4-9) that petitioner's stop at DFW airport was unconstitutional, a fact-dependent issue that is not presented as a separate question and does not warrant this Court's review. On the suppression question, petitioner merely asserts in a single sentence (Pet. 10) that "all evidence" obtained from the search must be suppressed. But that begs the question whether that rule applies to evidence of the body or identity of the defendant.

In any event, the court of appeals' decision is correct. "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.” INS v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). And this Court has repeatedly denied review of petitions raising the contrary position. See Montes-Nunez v. United States, 137 S. Ct. 493 (2016) (No. 16-5592); Cardona-Castillo v. United States, 137 S. Ct. 298 (2016) (No. 16-5241); Hernandez-Mandujano, 134 S. Ct. 2134 (2014) (No. 13-8018); Andrade-Rivera v. United States, 571 U.S. 864 (2013) (No. 12-10722); Rodriguez-Castorena v. United States, 571 U.S. 830 (2011) (No. 10-9760); Farias-Gonzalez v. United States, 558 U.S. 833 (2009) (No. 08-10195); Ortiz-Hernandez v. United States, 549 U.S. 876 (2006) (No. 05-11763); Perez-Reyes v. United States, 543 U.S. 837 (2004) (No. 03-10542); Sanchez-Sanchez v. United States, 538 U.S. 909 (2003) (No. 02-7654); Rocha-Gonzalez v. United States, 535 U.S. 906 (2002) (No. 01-7109).¹ The same result is warranted here.

2. As the government has previously noted, some disagreement exists in the courts of appeals over the circumstances in which identity-related information is subject to the

¹ In 2010, the Court granted a writ of certiorari in a state case involving the prosecution of a motor-vehicle offense that presented the question whether preexisting government records are subject to the exclusionary rule when law enforcement accesses those records after ascertaining a defendant’s identity in an illegal stop. The Court dismissed the writ of certiorari as improvidently granted following oral argument. See Tolentino v. New York, 563 U.S. 123, 124 (2011) (per curiam).

exclusionary rule in prosecutions for illegal reentry, in violation of 8 U.S.C. 1326. See Br. in Opp. 10-11, Cardona-Castillo, supra (No. 16-5241). But it is unclear whether that disagreement extends to a defendant's statement of his name, or fingerprints taken administratively. See id. at 12. In any event, this would be a particularly poor vehicle for addressing whether evidence of the defendant's identity is suppressable. Petitioner's detention for questioning in customs at DFW airport was constitutional and, regardless, his identity as Lopez Lara, a Mexican citizen, could have been introduced into evidence at trial.

a. As the district court correctly determined, see D. Ct. Doc. 25, at 6, petitioner's stop for questioning in customs at DFW airport was consistent with the Fourth Amendment. It is well-settled "[t]hat searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." United States v. Ramsey, 431 U.S. 606, 616 (1977); see ibid. (describing this as the "plenary customs power"); see also United States v. Cardenas, 9 F.3d 1139, 1147 (5th Cir. 1993). That rule applies not merely at the Nation's physical borders, but also at their "functional equivalents." Almeida-Sanchez v. United States, 413 U.S. 266, 272 (1973). An airport where an international flight has landed is a "clear[]" example of such a functional equivalent to the border itself. Id. at 273; see, e.g.,

United States v. Klein, 592 F.2d 909, 911 n.1 (5th Cir. 1979). Here, petitioner was stopped at an international airport (DFW) before he had finished going through customs upon his arrival from Mexico. See D. Ct. Doc. 25, at 1-2. His stop was therefore consistent with the Fourth Amendment, regardless of whether the CBP officer who stopped him had probable cause or reasonable suspicion. See id. at 4-6.

Relying on Cardenas, supra, petitioner contends (Pet. 4-9) that his stop was unlawful, asserting that it was an "extended" border search, not a border search, and that reasonable suspicion is required before performing an "extended" border search but was lacking here. But as Cardenas itself recognizes, the "extended" border search rule it articulates applies only "beyond the border or its functional equivalent." 9 F.3d at 1148 (second emphasis added). The search here did not occur "beyond" the border's functional equivalent; it occurred at DFW airport before petitioner had cleared customs. See D. Ct. Doc. 25, at 4-5. The district court thus correctly determined that this case involves a border search, not an "extended" border search. See id. at 4 ("[A]ny search that occurs before the person completely exits customs is the functional equivalent of a border search and not an extended border search."); Correa v. Thornburgh, 901 F.2d 1166, 1171-1172 (2d Cir. 1990) (rejecting a similar claim brought by an alien who had passed through primary inspection but had not completed customs).

b. In addition, the outcome of petitioner's case would likely have been the same even if his suppression motion had been granted. Even if the stop had violated the Fourth Amendment, and even if the identity information obtained as a result of that search should have been suppressed, that same evidence could have been introduced at trial from another source. In particular, petitioner's alien file is a preexisting and independent government record containing proof of his true identity as Lopez Lara, and that evidence could have been introduced at trial regardless of any potential problem with respect to the admissibility of his statements to CBP officers.

In United States v. Crews, 445 U.S. 463 (1980), the Court held that a victim-witness's in-court identification of the defendant was not suppressible as a fruit of the defendant's unlawful arrest. Id. at 470-471. The Court explained that the witness had based her testimony on her memory of the defendant's appearance from the crime itself. Id. at 475. A plurality of the Court reasoned that, before arresting the defendant, "the police had already obtained access to the 'evidence' that implicated him in the robberies, i.e., the mnemonic representations of the criminal retained by the victims." Ibid.² Accordingly, the

² Justice Brennan was joined by Justices Stewart and Stevens for the last portion of his opinion (the rest of which constituted a majority opinion for the Court). Crews, 445 U.S. at 474 n.*. The other Justices did not join that portion of Justice Brennan's opinion only because they would have adopted a broader rule that a defendant's face can never be a suppressible fruit of an unlawful arrest -- an issue they believed Justice Brennan had left open --

"unlawful arrest served merely to link together two extant ingredients in his identification." Ibid. The unlawful arrest did not require suppression in that case, the plurality concluded, because "[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality." Ibid.; see Maryland v. Macon, 472 U.S. 463, 471 (1985) (reaffirming that, under Crews, the exclusionary rule does not apply to evidence "already in the lawful possession of the police" before an illegal arrest).

Under Crews, the contents of petitioner's alien file are not suppressible. The information in the file was compiled before the airport customs stop and was thus in the government's possession "prior to any illegality." 445 U.S. at 475. Petitioner's alien file contains, among other things, information about petitioner's prior deportation, his fingerprints, and a photograph of him. See PSR ¶ 16 (documenting petitioner's Mexican citizenship and prior encounter with immigration officials); United States v. Farias-Gonzalez, 556 F.3d 1181, 1184 n.2 (11th Cir.) ("[A]n alien file will have evidence of prior deportations from, or lawful entries into, the United States. Additionally, the alien file contains the alien's fingerprints and photograph."), cert. denied, 558 U.S. 833 (2009). The information in petitioner's alien file therefore

and not out of any disagreement with the plurality's reasoning so far as it went. See id. at 477 (Powell, J., concurring in part); id. at 477-478 (White, J., concurring in the result).

would provide an independent basis for proving that petitioner was not a U.S. citizen named "Juan Francisco Martinez Reyes" but instead Lopez Lara, a Mexican citizen. D. Ct. Doc. 25, at 1.

Furthermore, because petitioner could be held lawfully for deportation regardless of the outcome of this criminal case, Immigration and Customs Enforcement may obtain "a set of untainted fingerprints * * * in the civil deportation proceedings" that could have been used to prove his identity in a criminal prosecution, as the Eighth Circuit has explained. United States v. Guevara-Martinez, 262 F.3d 751, 756 (2001). Those fingerprints would constitute not the fruit of an unlawful arrest but rather the product of lawful immigration detention, and thus would not be subject to suppression. See ibid.; see United States v. Perez-Perez, 337 F.3d 990, 994 (8th Cir.) (fingerprints taken in parallel deportation proceedings that had begun by time of the criminal prosecution were "untainted" and thus admissible), cert. denied, 540 U.S. 927 (2003); cf. New York v. Harris, 495 U.S. 14, 17-21 (1990) (statements taken at police station, after an arrest in violation of Payton v. New York, 445 U.S. 573 (1980), are the fruit of the lawful retention of custody of the defendant and not of the original illegal arrest); United States v. Navarro-Diaz, 420 F.3d 581, 585-588 (6th Cir. 2008) ("If the government were forced to drop its prosecution of Navarro-Diaz, the police could simply approach him on his way out of the courtroom door and demand that he identify himself.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2018