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Zane Gilmer

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CASE NOTE

CRIMINAL LAW—Determining the Suppressibility of a Defendant’s Fingerprints Following an Unlawful Arrest; *United States v. Olivares-Rangel*, 458 F.3d 1104 (10th Cir. 2006).

Zane Gilmer*

INTRODUCTION

Following up on a tip from an informant, United States Border Patrol Agents, Luis Armendariz and Mark Marshall, went to a New Mexico trailer park on February 2, 2004.¹ The agents saw a truck pulling out of a driveway, and they blocked the truck from leaving.² Agent Armendariz instantly recognized the passenger of the vehicle as an illegal alien he had previously arrested for being in the United States illegally.³ The agents questioned the two people in the truck about their citizenship status without *Miranda* warnings.⁴ The defendant admitted to being an illegal alien and the agents took him to the border-patrol station where they fingerprinted him and asked about his biographical information.⁵ The defendant’s fingerprints led the agents to the defendant’s immigration record (A-file), indicating the defendant’s deportation history.⁶ Finally, Agent Armendariz read the defendant his *Miranda* warnings.⁷

A grand jury indicted the defendant on March 4, 2004, for his presence in the United States after deportation.⁸ Due to the defendant’s previous felony conviction, prosecutors charged him with a separate violation, making him eligible for a maximum prison sentence of twenty years.⁹ The defendant filed a motion to suppress any physical evidence and statements obtained as a result of his unlawful seizure and interrogation.¹⁰ The defendant claimed the interrogation

* University of Wyoming College of Law J.D. Candidate, 2009.

¹ U.S. v. Olivares-Rangel, 458 F.3d 1104, 1106 (10th Cir. 2006).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Olivares-Rangel*, 458 F.3d at 1106.

⁷ *Id.*

⁸ *Id.* at 106-07. The grand jury indicted the defendant according to 8 U.S.C. § 1326(a) (2000). *Id.*

⁹ *Olivares-Rangel*, 458 F.3d at 1107. The federal statute prohibiting immigrants from being in the United States following deportation is 8 U.S.C. § 1326(b). Reentry of Removed Aliens, 8 U.S.C. § 1326(a) (2000).

¹⁰ *Olivares-Rangel*, 458 F.3d at 1107.

and detention violated his Fourth Amendment right of unreasonable seizure and Fifth Amendment right against self incrimination.¹¹ The United States District Court for the District of New Mexico granted the motion to suppress, concluding that the defendant's stop and arrest violated his Fourth Amendment rights.¹² Furthermore, the court found the defendant's fingerprints and statements were the "fruit of the poisonous tree" and required suppression.¹³ The court also rejected the government's argument that the defendant's identity or body is never suppressible as fruit of an unlawful arrest based on *INS v. Lopez-Mendoza*.¹⁴ The court rejected this argument stating the Supreme Court in *Lopez-Mendoza* only addressed jurisdictional challenges under the Fourth Amendment and not evidentiary challenges as existed in this case.¹⁵ As a result, that case did not prohibit this court from suppressing illegally obtained evidence.¹⁶ The government appealed the suppression of evidence.¹⁷ The issue on appeal for the Tenth Circuit Court of Appeals became whether a defendant's identity, specifically fingerprints, are suppressible following an unlawful arrest.¹⁸ The court held a defendant's fingerprints obtained in certain unconstitutional manners are suppressible.¹⁹

The *Rangel* court correctly interpreted leading case law in the area of the suppressibility of a defendant's identity in order to make its decision. This case note will analyze the leading cases regarding the suppressibility of a defendant's identity.²⁰ More specifically, this case note will explore the circuit court split regarding the suppressibility of a defendant's identity.²¹ Finally, this case note will focus on the Tenth Circuit Court's analysis of case law and doctrines relating to the suppressibility of a defendant's identity, specifically a defendant's fingerprints, in *United States v. Olivares-Rangel*.²²

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 1108; *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

¹⁵ *Olivares-Rangel*, 458 F.3d at 1108.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1112-16.

²⁰ See *infra* notes 74-133 and accompanying text.

²¹ See *infra* notes 36-40 and accompanying text.

²² See *infra* notes 69-133 and accompanying text.

BACKGROUND

INS v. Lopez-Mendoza: *The Precedent is Set for Misunderstanding*

There is a long line of cases dealing with the admissibility and suppressibility of a defendant's identity.²³ These cases form the necessary framework to fully understand the law's current state and to understand how the court in *United States v. Olivares-Rangel* came to its conclusion.²⁴ These cases will be further discussed in the sections that follow; however, it is important to initially discuss *INS v. Lopez-Mendoza* since this case note continuously refers to this case.²⁵

The U.S. Supreme Court in *INS v. Lopez-Mendoza* reasoned a defendant's body or identity is never suppressible in a criminal or civil proceeding, even following an unlawful search or seizure.²⁶ Furthermore, the Court noted, at his deportation hearing, Lopez-Mendoza objected only to being summoned to the hearing, not to the evidence introduced against him.²⁷

²³ See, e.g., *Davis v. Mississippi*, 394 U.S. 721 (1969) (holding a detention for the sole purpose of obtaining a suspect's fingerprints is unlawful); *U.S. v. Crews*, 445 U.S. 463 (1980) (holding a witness's in-court identification of the defendant is not suppressible as a fruit of an unlawful arrest when the witness was discovered prior to any unlawful police misconduct); *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (holding the body or identity of a defendant is never suppressible as a fruit of an unlawful arrest in the context of a defendant's challenge to their presence in court. Furthermore, the Court refused to extend the exclusionary rule to civil deportation hearings); *U.S. v. Guzman-Bruno*, 27 F.3d 420, 421 (9th Cir. 1994) (holding no remedy exists for a defendant when an illegal arrest leads to the defendant's identity, which in turn leads to other incriminating evidence. The court relied on *Lopez-Mendoza's* holding that the body or identity of a defendant is never a suppressible fruit of an unlawful arrest).

²⁴ See *Olivares-Rangel*, 458 F.3d at 1109-10; see *infra* notes 74-133 and accompanying text.

²⁵ See *infra* notes 76-133 and accompanying text.

²⁶ *Lopez-Mendoza*, 468 U.S. at 1038 ("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."). Although the Court in *Lopez-Mendoza* stated the defendant's body or identity is never suppressible in a criminal or civil proceeding, as explained in the analysis section of this note, the proposition is not as absolute as it appears. See *infra* notes 74-97 and accompanying text. *Lopez-Mendoza* addressed two separate issues regarding two defendants. See *Lopez-Mendoza*, 468 U.S. at 1034. First, Immigration and Naturalization Service (INS) agents arrested Adan Lopez-Mendoza for being in the country illegally. *Id.* at 1040. The evidence that Lopez-Mendoza did not object to included an affidavit he signed after being arrested, admitting being in the country illegally. *Id.* At his deportation hearing, Lopez-Mendoza objected to being summoned to the deportation hearing following an unlawful arrest, but did not object to any evidence entered against him. *Id.* The immigration judge found that, contrary to Lopez-Mendoza's argument, any supposed illegal arrest of Lopez-Mendoza was irrelevant to the deportation hearing and therefore found Lopez-Mendoza deportable. *Id.* at 1035-36.

²⁷ *Lopez-Mendoza*, 468 U.S. at 1040.

The Court also addressed the arrest of Elias Sandoval-Sanchez in *Lopez-Mendoza*.²⁸ Sandoval-Sanchez argued that officers arrested him unlawfully and evidence offered against him to prove his unlawful presence in the country was suppressible as fruit of that unlawful arrest.²⁹

In evaluating the case on appeal, the Supreme Court compared Sandoval-Sanchez's situation to *Lopez-Mendoza*'s and recognized them as distinguishable.³⁰ The Court found Sandoval-Sanchez's claim for suppression of evidence more persuasive because, unlike *Lopez-Mendoza*, Sandoval-Sanchez objected to the evidence being presented against him at the deportation hearing rather than simply objecting to his presence at the hearing.³¹ The Court then identified the general rule in criminal proceedings: evidence obtained due to an unlawful arrest is suppressible.³² The Court then recognized, however, that the exclusionary rule's use beyond criminal proceedings is less clear.³³

In an attempt to define the exclusionary rule's applicability beyond criminal proceedings, the Court evaluated and balanced the costs and benefits of applying the doctrine to civil proceedings such as civil deportation hearings.³⁴ Determining that the exclusionary rule does not apply to civil deportation hearings, the Supreme Court held the arrest did not violate Sandoval-Sanchez's Fourth Amendment rights and his statements were admissible.³⁵

²⁸ *Id.* at 1040-41. Officers arrested Sandoval-Sanchez independently of *Lopez-Mendoza*. *Id.* at 1034. INS agents arrested Sandoval-Sanchez at his work for being in the country illegally. *Id.* at 1036. INS agents questioned Sandoval-Sanchez following his arrest and recorded him admitting to being in the country illegally. *Id.* at 1037.

²⁹ *Id.* at 1037. An immigration judge rejected this claim, finding the legality of his arrest irrelevant to the proceedings. *Id.* at 1037-38. The judge found Sandoval-Sanchez deportable based in part on his admission. *Id.* On appeal, the Ninth Circuit found the arrest violated Sandoval-Sanchez's Fourth Amendment rights and held his statements inadmissible and ultimately reversed his deportation order. *Id.* at 1038.

³⁰ *Id.* at 1040.

³¹ *Lopez-Mendoza*, 468 U.S. at 1040.

³² *Id.* at 1040-41. The Court made this statement in reference to the applicability of the exclusionary rule being unclear in non-criminal cases such as various civil proceedings like deportation hearings. *Id.*

³³ *Id.* at 1041.

³⁴ *Id.* at 1042-50. The Court relied on *United States v. Janis*, 428 U.S. 433 (1976), which set forth elements for deciding in which type of judicial proceedings the exclusionary rule should apply. *Lopez-Mendoza*, 468 U.S. at 1042-50. Based on application of these elements, the Court decided the circumstances and complications of civil deportation proceedings prevented the exclusionary rule's application in such cases. *Id.* at 1050.

³⁵ *Lopez-Mendoza*, 468 U.S. at 1051.

Circuit Courts Split Over the Admissibility of Identifying Evidence

In interpreting *Lopez-Mendoza*, some courts, including the Ninth Circuit in *United States v. Guzman-Bruno*, have held the exclusionary remedy is not available when a defendant's illegal arrest leads to the defendant's identity, which lead in turn to the discovery of an official file or other evidence.³⁶ Other courts, including the Eighth Circuit in *United States v. Guevara-Martinez*, have held that the availability of the exclusionary remedy will depend on the purpose for which the identification procedure is performed.³⁷ If, for example, fingerprinting

³⁶ *U.S. v. Guzman-Bruno*, 27 F.3d 420, 421 (9th Cir. 1994). INS officers detained Guzman-Bruno for suspicion of being in the country illegally and Guzman-Bruno admitted to this suspicion and to a prior drug conviction. *Id.* Following this admission, the government indicted Guzman-Bruno under federal statutes for being in the country illegally after deportation and having a prior felony conviction. *Id.* Guzman-Bruno moved to have all of the evidence resulting from his arrest suppressed, arguing the unlawfulness of the initial detention. *Id.* The District Court for the Central District of California suppressed all evidence resulting from Guzman-Bruno's arrest but refused to suppress his admission of his name to officers. *Id.* The Ninth Circuit acknowledged and relied on *Lopez-Mendoza*, and found the defendant's body or identity is never suppressible as a fruit of an illegal arrest. *Guzman-Bruno*, 27 F.3d. at 422.

In 2001, the Ninth Circuit decided *U.S. v. Parga-Rosas*, 238 F.3d 1209 (9th Cir. 2001). The court refused to exclude from evidence the defendant's fingerprints taken following an illegal arrest. *Id.* It determined the State took the fingerprints from the defendant to prove the defendant's identity and not for investigatory purposes. *Id.* at 1215. Therefore, the fingerprints were not suppressible. *Id.*

³⁷ *U.S. v. Guevara-Martinez*, 262 F.3d 751 (8th Cir. 2001). During a traffic stop, officers placed Martin Guevara-Martinez under arrest after officers found methamphetamine in his car. *Id.* at 753. Following the arrest, Guevara-Martinez gave officers a false name, but admitted to being in the country illegally. *Id.* Also following the arrest, officers fingerprinted Guevara-Martinez which revealed his true identity and discovery of an INS file showing a previous deportation. *Id.* The Eighth Circuit held that without evidence showing officials took the defendant's fingerprints during a routine booking process, and not for obtaining evidence for an INS proceeding against Guevara-Martinez, the district court properly suppressed the evidence. *Id.* at 753. Other cases support the proposition if fingerprints are taken during the routine booking process, then those fingerprints are admissible against the defendant for an unrelated charge or prosecution for another crime. *See* *People v. McInnis*, 6 Cal.3d 821 (Cal. 1972); *Paulson v. State*, 257 So.2d 303(Fla. Dist. Ct. App. 1972). In *Guevara-Martinez*, the court was referencing the fact the government failed to show that the initial fingerprints were taken as part of the routine booking process for the possession of methamphetamine charge. *Guevara-Martinez*, 262 F.3d at 755-56. If that was the case, then the court is insinuating those fingerprints might be admissible against Guevara-Martinez in prosecuting him for being in the country illegally since that was a separate charge. *Id.* Nevertheless, because the government failed to show the fingerprints were taken during the routine booking process, the court does not further address this issue or speculate on any potential outcome. *Id.* at 756.

The Eighth Circuit made this decision after determining that *Davis* and *Hays* controlled, rather than *Lopez-Mendoza*. *Id.* at 753. The Eighth Circuit reasoned that *Lopez-Mendoza* did not control in this case because it does not stand for the proposition that a suspect's identity or body can never be a fruit of an unlawful detention or arrest, but that *Lopez-Mendoza* actually strictly addressed only jurisdictional issues. *Id.* Supporting its position, the court explained that the *Lopez-Mendoza* Court, when dealing with the issue relating to *Sandoval-Sanchez*, did not distinguish between identity related evidence and other types of suppressible evidence following an unlawful arrest. *Guevara-Martinez*, 262 F.3d at 753. The court reasoned that if the *Lopez-Mendoza* Court meant identity

occurs as part of the routine booking process, then the exclusionary rule will not be available.³⁸ But if fingerprinting is consciously undertaken for the purpose of obtaining evidence for us, say, in INS proceeding, then the defendant will be entitled to suppression of any evidence derived from the fingerprinting.³⁹

Several years following the Eighth Circuit's decision in *Guevara Martinez*, the Tenth Circuit faced a similar issue regarding the suppressibility of a defendant's fingerprints, in *United States v. Olivares-Rangel*.⁴⁰

PRINCIPAL CASE

Following a tip, Border Patrol Agents arrested Gustavo Olivares-Rangel for being in the country illegally.⁴¹ Fingerprints taken from Rangel led the agents to Rangel's immigration file (A-file), proving that Rangel was in the country following a previous deportation.⁴² The United States District Court for the District of New Mexico granted Olivares-Rangel's motion to suppress various pieces of evidence including his fingerprints and A-file based on his unlawful arrest.⁴³

The issue on appeal for the United States Court of Appeals for the Tenth Circuit turned on whether evidence of a defendant's identity, including fingerprints,

related evidence is never suppressible in a criminal proceeding, then it would have said that when dealing with the evidentiary challenge from *Sandoval-Sanchez*. *Id.* at 754. Instead, the Court made the statement that the body or identity is never suppressible when discussing the jurisdictional issue with the *Lopez-Mendoza* matter. *Id.* Additionally, the *Lopez-Mendoza* Court never mentioned possible exceptions to the exclusionary rule. *Id.* at 1040-41. The Court only said the exclusionary rule still applies to the criminal process, but its application is less clear beyond that. *Id.* Since the *Lopez-Mendoza* Court made that statement in reference to the jurisdictional issue regarding *Lopez-Mendoza*, and not in reference to *Sandoval-Sanchez*'s evidentiary issue, the Court did not intend the holding to mean identity related evidence can never be suppressed. *Guevara-Martinez*, 262 F.3d at 754. Furthermore, the Eighth Circuit reasoned that because *Lopez-Mendoza* never mentioned *Davis* or *Hayes*, *Lopez-Mendoza* did not overrule those cases. *Id.* Therefore, the Eighth Circuit had an obligation to follow those earlier cases. *Id.* The court rejected the government's contention that *Davis* and *Hayes* do not apply because *Guevara-Martinez* was not arrested for the sole purpose of collecting his fingerprints. *Id.* at 755. The court, however, reasoned the exclusionary rule is applicable whenever the government obtains evidence due to exploiting the primary illegality, regardless of whether the detention was for the sole purpose of collecting the fingerprints. *Id.* The court found the government neglected to offer evidence showing the government obtained the fingerprints during the routine booking process instead for purposes to pursue INS proceedings against *Guevara-Martinez*. *Guevara-Martinez*, 262 F.3d at 755. Given the circumstances of how the government obtained the evidence, the court ordered the suppression of the evidence. *Id.*

³⁸ See *U.S. v. Guevara-Martinez*, 262 F.3d 751 (8th Cir. 2001).

³⁹ See *id.*

⁴⁰ *U.S. v. Olivares-Rangel*, 458 F.3d 1104 (10th Cir. 2006).

⁴¹ *Id.* at 1106.

⁴² *Id.*

⁴³ *Id.* at 1107-08.

statements, and A-file, are suppressible as the fruit of an unlawful arrest.⁴⁴ The Court of Appeals also addressed the government's argument that *Lopez-Mendoza* held that a suspect's identity or body is never suppressible.⁴⁵ The appeals court rejected the government's blanket claim, and interpreted *Lopez-Mendoza* to mean that a suspect's identity is not suppressible when a suspect argues the court lacks jurisdiction due to an unlawful arrest.⁴⁶ The court stated, however, that *Lopez-Mendoza* did not pertain to evidentiary issues relating to a defendant's identity following an illegal arrest or detention.⁴⁷ For evidentiary issues, the court should use the traditional Fourth Amendment exclusionary rule to determine if evidence relating to a defendant's identity is suppressible.⁴⁸

In evaluating the admissibility of the defendant's fingerprints, the court recognized the government's argument on appeal did not go beyond the *Lopez-Mendoza* argument that the identity or body of the defendant is never suppressible.⁴⁹ The court, however, already rejected such a blanket claim.⁵⁰ In the alternative, the government claimed that even if *Lopez-Mendoza* did not preclude the suppression of the defendant's fingerprints, then traditional principles of the exclusionary rule preclude their suppression.⁵¹ The government based this contention on the theory that this case is distinguishable from *Davis* and *Hayes*.⁵²

⁴⁴ *Id.* at 1108. *Rangel's* dissent reasoned the majority needlessly engaged in the debate regarding whether evidence relating to a defendant's identity is suppressible as a fruit of an unlawful arrest. *Olivares-Rangel*, 458 F.3d at 1121-22 (Baldock, J., dissenting). The dissent contended that engaging in this debate was unnecessary because the agents lawfully arrested the defendant. *Id.* at 1122 (Baldock, J., dissenting). Specifically, the dissent argued that reasonable suspicion existed for the agents to initially stop *Rangel's* truck and subsequently, sufficient probable cause existed for the INS agents to lawfully arrest *Rangel*. *Id.* at 1122-23 (Baldock, J., dissenting). Therefore, the agents lawfully arrested *Rangel* so any evidence derived from the arrest, including *Rangel's* fingerprints and A-file, were admissible. *Id.* (Baldock, J., dissenting). In response to these arguments, the majority justified its decision to not address these issues claiming that the state failed to raise the issue of lawful arrest on appeal and therefore conceded that the agents unlawfully arrested *Rangel*. *Id.* at 1107. Therefore, the majority stated the only issue as whether a defendant's identity is suppressible following an unlawful arrest. *Olivares-Rangel*, 458 F.3d at 1108.

⁴⁵ *Id.* at 1109-10.

⁴⁶ *Id.*

⁴⁷ *Id.* at 1112.

⁴⁸ *Id.*

⁴⁹ *Olivares-Rangel*, 458 F.3d at 1112.

⁵⁰ *Id.*

⁵¹ *Id.* at 1112. The government argued the fingerprints were admissible since the government did not seize them for the purpose of linking *Olivares-Rangel* to a crime. Brief for Petitioners at 10, *U.S. v. Olivares-Rangel*, 458 F.3d 1104 (2006) (No. 04-2194), 2004 WL 5536709.

⁵² *Olivares-Rangel*, 458 F.3d at 1112. *Davis v. Mississippi* held that the Fourth Amendment applies to investigatory stages and, therefore, a detention for the sole purpose of obtaining a suspect's fingerprints is unlawful. *Davis v. Mississippi*, 394 U.S. 721, 725-29 (1969). *Hayes v. Florida*, reaffirmed a similar proposition. *Hayes v. Florida*, 470 U.S. 811, 816 (1985).

The government claimed this case is distinguishable because in both *Davis* and *Hayes*, the defendant's fingerprints were taken in an attempt to link the defendant to a crime, but here the agents did not take the fingerprints with the purpose of linking Olivares-Rangel to a crime.⁵³ The court neither directly accepted nor rejected this argument, but rather analyzed the holdings in *Davis* and *Hayes* in conjunction with *Lopez-Mendoza*.⁵⁴

In its analysis, the appeals court distinguished between fingerprints obtained as a result of an unconstitutional investigation, which are suppressible, and fingerprints obtained as part of a routine booking procedure, which are not suppressible.⁵⁵ Fingerprints obtained through routine booking procedures, even if obtained following an unlawful arrest, are not suppressible.⁵⁶ This is based on the importance of identifying suspects the government has in custody.⁵⁷ Conversely, if an illegal arrest or detention occurs for the purpose of obtaining a person's fingerprints for investigatory reasons, the fingerprints are then fruits of the poisonous tree and suppressible.⁵⁸ In determining the government's purpose behind a suspect's arrest and fingerprinting, the court stated it must evaluate the government's intent.⁵⁹ The court determined the record was unclear as to the government's intent when it fingerprinted the defendant.⁶⁰ Therefore, the court remanded the case to determine the government's purpose in fingerprinting the defendant.⁶¹

Admissibility of INS File

The court of appeals then addressed the admissibility of the defendant's A-file.⁶² Specifically, the court discussed the government's contention that the A-file is not suppressible since the government did not discover it solely because of the defendant's illegal detention.⁶³ The government contended the A-file was

⁵³ Brief for Petitioners at 10, *U.S. v. Olivares-Rangel*, 458 F.3d 1104 (2006) (No. 04-2194), 2004 WL 5536709.

⁵⁴ See *Olivares-Rangel*, 458 F.3d at 1112-16. Ultimately the court remanded the case in order to determine the purpose for which the government seized Olivares-Rangel's fingerprints. *Id.* at 1113.

⁵⁵ *Id.*

⁵⁶ *Id.* at 1112-13.

⁵⁷ *Id.*

⁵⁸ *Id.* at 1114.

⁵⁹ *Olivares Rangel*, 458 F.3d at 1116.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 1117.

not suppressible because the contents of the file were compiled independently from the defendant's illegal seizure.⁶⁴ The appeals court determined the A-file's admissibility rests only on whether the defendant's fingerprints were suppressible.⁶⁵ The court determined if the fingerprints were suppressible, so too is the A-file.⁶⁶ The fingerprints ultimately led to the A-file's discovery, regardless of whether the government compiled the file prior to, or independently of, the illegal seizure.⁶⁷ Thus, the court also remanded this issue for reconsideration in conjunction with the issue of the fingerprints' admissibility.⁶⁸ Analysis of this case requires a look at the other circuit court decisions addressing the suppressibility of a defendant's identity and fingerprints.

ANALYSIS

The circuit court split has caused confusion concerning the issue of the admissibility or suppressibility of a defendant's fingerprints following an unlawful arrest.⁶⁹ Nevertheless, the Tenth Circuit's holding in *Olivares-Rangel* illustrates the correct approach to analyzing this issue because the holding appropriately characterizes *Lopez-Mendoza* as only applying to civil cases and jurisdictional issues.⁷⁰ Several things will be discussed and analyzed in this analysis to support this argument. First, the authority the Court in *Lopez-Mendoza* cited for its proposition that the body or identity of the defendant is never suppressible fruit dealt with jurisdictional challenges, not evidentiary challenges.⁷¹ Second, the attenuation doctrine supports the *Olivares-Rangel* holding.⁷² Finally, as *Olivares-Rangel* points out, case law supports distinguishing between the purpose in which the government obtains a defendant's fingerprints for the purposes of applying the exclusionary rule.⁷³

⁶⁴ *Olivares-Rangel*, 458 F.3d. at 1117.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 1119.

⁶⁹ *See Olivares-Rangel*, 458 F.3d at 1110.

⁷⁰ *Id.* at 1112; *see generally* David R. Miller and James M. Beach, *Employer Options Under The OSHA Inspection Warrant Procedure: A Rock and a Hard Place*, 20 SETON HALL L. REV. 804, n.54 (1990) (explaining the holding in *Lopez-Mendoza* as standing for the proposition that the exclusionary rule does not extend to civil deportation hearings); Michelle D. Grady, *Fourth Amendment-Evidence Unconstitutionally Seized From a Parolee's Residence is Admissible at the Parolee's Revocation Hearing Because Parole Boards are not Required by Federal Law to Exclude Evidence Obtained in Violation of the Fourth Amendment*-Pennsylvania Board of Probation and Parole v. Scott, 118 S. Ct. 2014 (1998), 10 SETON HALL CONST. L.J. 215, 228-31 (1999) (explaining the *Lopez-Mendoza* Court refused to apply the exclusionary rule in this case, in part, because of the high social costs of applying the rule to civil deportation hearings).

⁷¹ *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984); *see infra* notes 74-97 and accompanying text.

⁷² *See infra* notes 98-133 and accompanying text.

⁷³ *See infra* notes 111-133 and accompanying text.

I. *Lopez-Mendoza as a Jurisdictional, Not an Evidentiary Holding*

As the *Rangel* court correctly explained, *Lopez-Mendoza* does not stand for the broad proposition that a defendant's identity is never suppressible as fruit of an unlawful arrest in the context of evidentiary challenges.⁷⁴ In fact, the statement in *Lopez-Mendoza* that the body or identity of a defendant is never a suppressible fruit of an unlawful arrest does not even apply to evidentiary issues, but rather jurisdictional-based issues.⁷⁵ The Court made this statement in reference to *Lopez-Mendoza's* objection that the deportation court lacked jurisdiction over him because of the unlawful arrest.⁷⁶ *Lopez-Mendoza* cites as authority both *Frisbie v. Collins* and *Gerstein v. Pugh* as holding the defendant's body or identity is never suppressible as fruit, in discussing *Lopez-Mendoza's* jurisdictional objection.⁷⁷ Both of these cases deal with jurisdictional challenges, not evidentiary challenges.⁷⁸

A. *The True Meaning of Frisbie v. Collins and Gerstein v. Pugh*

Citing *Frisbie* and *Gerstein*, *Lopez-Mendoza* stated, "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."⁷⁹ In *Frisbie*, a defendant challenged his conviction claiming Michigan officers forcibly seized him while living in Chicago and brought him to Michigan to stand trial for murder.⁸⁰ The Court asserted the government satisfied *Frisbie's* due process rights because he received notice of the charges against him, stood trial for those charges, and was then convicted following a fair trial.⁸¹ Furthermore, the Court stated the Constitution can not

⁷⁴ *Olivares-Rangel*, 458 F.3d at 1112 (explaining the language in *Lopez-Mendoza* stating that a defendant's identity or body is never a suppressible fruit refers only to jurisdictional challenges); *U.S. v. Guevara-Martinez*, 262 F.3d 751, 754 (8th Cir. 2001) (concluding *Lopez-Mendoza* has no bearing on the suppression of illegally obtained identity related evidence in a criminal proceeding).

⁷⁵ *Olivares-Rangel*, 458 F.3d at 1112; *Guevara-Martinez*, 262 F.3d at 754; see *infra* notes 74-97 and accompanying text (explaining how *Lopez-Mendoza* only applies to jurisdictional and not evidentiary challenges because the Court made the statement in reference to *Lopez-Mendoza's* jurisdictional challenge and not *Sandoval-Sanchez's* evidentiary challenge).

⁷⁶ *Lopez-Mendoza*, 468 U.S. at 1040.

⁷⁷ *Id.* at 1039; *Frisbie v. Collins*, 343 U.S. 519 (1952); *Gerstein v. Pugh*, 420 U.S. 103 (1975).

⁷⁸ *Lopez-Mendoza*, 468 U.S. at 1039; *Frisbie*, 343 U.S. at 519; *Gerstein*, 420 U.S. at 103; Abraham Abramovsky, *Transfer of Penal Sanctions Treaties: An Endangered Species?* 24 VAND. J. TRANSNAT'L L. 449, n.86 and accompanying text (1991) (explaining *Frisbie* is part of the *Ker-Frisbie* doctrine which stands for the proposition that an unlawful arrest can not impair the ability of a court's jurisdiction over the defendant and further that this proposition has been subsequently upheld in *Gerstein*).

⁷⁹ *Lopez-Mendoza*, 468 U.S. at 1039-40.

⁸⁰ *Frisbie*, 342 U.S. at 520.

⁸¹ *Id.* at 522.

possibly require a guilty person, who was correctly convicted, to escape justice simply because he stood trial against his will.⁸² *Frisbie* does not stand for the proposition that a person's identity is never suppressible as fruit of an unlawful arrest.⁸³ Rather, the issue there was jurisdictional.⁸⁴ This decision stands for the idea that a defendant's conviction is not reversible simply because of an unlawful arrest.⁸⁵

Similarly, the second case the *Lopez-Mendoza* Court cited for its proposition, *Gerstein*, did not concern evidentiary issues when discussing the admissibility of a defendant's identity.⁸⁶ Rather, *Gerstein's* issue concerned whether officials can arrest a defendant and force him to face charges for a crime with only a prosecutor's information, and with no subsequent probable cause hearing in front of a judicial officer.⁸⁷ The *Lopez-Mendoza* Court cited *Frisbie*, stating that an illegal arrest or detention will not void a subsequent conviction.⁸⁸ It did so, however, in the context of explaining that a suspect who is in custody may request a probable cause hearing to determine the lawfulness of his detention, but failure to provide a probable

⁸² *Id.*

⁸³ U.S. v. Olivares-Rangel, 458 F.3d 1104, 1111 (10th Cir. 2006) (explaining *Frisbie* deals with the jurisdiction over a person and not with a defendant's challenges to his illegally obtained identity); U.S. v. Guevara-Martinez, 262 F.3d 751, 754 (8th Cir. 2001) (stating the Court in *Frisbie* held the power of the court to hear a case is not destroyed simply because the government brought the defendant within the court's jurisdiction against his will); See Ashley Wright Baker, *Forcible Transborder Abduction: Defensive Versus Offensive Remedies For Alvares-Machain*, 48 ST. LOUIS U. L.J. 1373, 1394-95 (2004) (explaining the exclusionary rule did not apply in *Frisbie* because there was no evidence to be suppressed since the objection was to the jurisdiction of the court over the defendant).

⁸⁴ *Olivares-Rangel*, 458 F.3d at 1111 (explaining *Frisbie* dealt with the jurisdiction over a person and not with a defendant's challenges to his illegally obtained identity); *Guevara-Martinez*, 262 F.3d at 754; see Baker, *supra* note 83, at 1394-95 (explaining *Frisbie* combined with *Ker v. Illinois*, 119 U.S. 436 (1886) make up the *Ker-Frisbie* doctrine which is often cited to uphold jurisdiction over a defendant; moreover, the *Ker-Frisbie* doctrine stands for the proposition that a court maintains criminal jurisdiction over a defendant, regardless of the illegal method used to provide the court in personam jurisdiction over the defendant).

⁸⁵ *Olivares-Rangel*, 458 F.3d at 1111 (explaining a defendant can be brought before a court and stand trial even though the government unlawfully arrested him); *Guevara-Martinez*, 262 F.3d at 754 (stating *Gerstein v. Pugh* later affirmed the *Frisbie* holding when *Gerstein* held an illegal arrest does not void a subsequent prosecution and conviction).

⁸⁶ *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) (stating the issue on appeal as whether a defendant arrested and held on a prosecutor's information is entitled to a judicial determination of probable cause); see Surell Brady, *Arrests Without Prosecution and the Fourth Amendment*, 59 MD. L. REV. 1, n.320 (2000) (citing *Gerstein* for the proposition that an illegal arrest does not void a subsequent prosecution and conviction).

⁸⁷ *Gerstein*, 420 U.S. at 111; see Brady, *supra* note 86, at n.320 and accompanying text (citing *Gerstein* for the proposition that an illegal arrest does not void a subsequent prosecution and conviction).

⁸⁸ *Gerstein*, 420 U.S. at 119.

cause hearing will not result in a defendant's conviction being overturned.⁸⁹ Like *Frisbie*, *Gerstein* did not address any admissibility of evidence issues regarding a defendant's identity.⁹⁰ Rather, *Gerstein* simply addressed jurisdictional issues.⁹¹

B. The Misunderstood Identity of Lopez-Mendoza

The second reason supporting the proposition that *Lopez-Mendoza* stands for jurisdictional and not evidentiary challenges is the fact that *Lopez-Mendoza* itself was addressing a challenge to jurisdiction and not evidence.⁹² When the *Lopez-Mendoza* Court stated a defendant's identity is never suppressible, it did so not in addressing the evidentiary challenges made by Sandoval-Sanchez, but rather was made in reference to Lopez-Mendoza's jurisdictional challenge.⁹³ Sandoval-Sanchez objected to the use of the evidence the INS agents seized, arguing the agents unlawfully arrested him so any evidence obtained as a result cannot be used against him.⁹⁴ Conversely, Lopez-Mendoza challenged the court summoning him to a deportation hearing following an unlawful arrest.⁹⁵ It was in reference to this jurisdictional challenge the Court stated a defendant is never himself suppressible as a fruit of an unlawful arrest.⁹⁶ Therefore, the Court did not anticipate the statement of a defendant's body or identity never being a suppressible fruit to apply beyond the jurisdictional context in which it used it.⁹⁷

⁸⁹ *Id.*

⁹⁰ *Id.*; see Brady, *supra* note 86, at nn. 67 & 320.

⁹¹ U.S. v. Olivares-Rangel, 458 F.3d 1104, 1111 (10th Cir. 2006); U.S. v. Guevara-Martinez, 262 F.3d 751, 754 (8th Cir. 2001); see Brady, *supra* note 86, at nn. 67 & 320.

⁹² See *Olivares-Rangel*, 458 F.3d at 1111 ("Lopez argued only that the immigration court lacked personal jurisdiction over him due to the illegal arrest" and "did not challenge the admissibility of his statements to officers disclosing his identity").

⁹³ *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-40 (1984) (stating the body or identity of a defendant is never suppressible as a fruit of an unlawful arrest and on that basis alone the issue relating to *Lopez-Mendoza* is decided). The Court went on to decide the evidentiary issue regarding Sandoval-Sanchez and without discussing the admissibility of a defendant's identity, determined that Sandoval-Sanchez cannot object to the evidence offered against him because the Court determined the exclusionary rule should not apply to civil deportation hearings. *Id.* at 1040-47; Henry G. Watkins, *The Fourth Amendment and the INS: An Update on Locating the Undocumented and a Discussion on Judicial Avoidance of Race-Based Investigative Targeting in Constitutional Analysis*, 28 SAN DIEGO L. REV. 499, 548-50 (1991) (explaining Lopez-Mendoza objected to the deportation proceeding against him, not to the actual evidence being entered against him; whereas, Sandoval-Sanchez objected to the actual evidence offered by the INS agents).

⁹⁴ *Lopez-Mendoza*, 468 U.S. at 1037-38.

⁹⁵ *Id.* at 1040.

⁹⁶ *Id.* at 1039-40.

⁹⁷ *Id.*

II. How Attenuation Plays a Role

The general rule of admissibility of evidence seized as a result of an unlawful arrest is the court should suppress it.⁹⁸ However, it is not enough for the discovery of the evidence to simply follow an unlawful arrest; the important issue is whether the unlawful arrest was a but-for cause of the discovery of the evidence.⁹⁹ In other words, it is not sufficient the government's discovery of the evidence follow the unlawful conduct, but rather, the question is but-for the unlawful conduct of the government, would the government have discovered the evidence?¹⁰⁰ For instance, there are times when a court will still hold evidence admissible even though the police discovered the evidence as a result of an unlawful arrest.¹⁰¹ An example of this is when the court determines attenuation exists.¹⁰²

Attenuation exists "when the casual connection between the illegal government conduct and the discovery of evidence is so 'remote as to dissipate' the taint from the illegal conduct."¹⁰³ Three factors the Supreme Court uses in

⁹⁸ See, e.g., *Illinois v. Krull*, 480 U.S. 340, 347 (1987); see David R. Childress, *Maryland v. Garrison: Extending the Good Faith Exception to Warrantless Searches*, 40 BAYLOR L. REV. 151, 151 (1988) (explaining evidence should generally be excluded from defendant's trial when the government unconstitutionally seizes it).

⁹⁹ See J. Spencer Clark, *Hudson v. Michigan: "Knock and Announce"—An Outdated Rule?*, 21 BYU J. PUB. L. 433, 438-39 (2007) (explaining but-for causation as a necessary, but not a sufficient condition for suppressibility of evidence that is seized following unlawful conduct by the government).

¹⁰⁰ See *id.* (stating but-for causation is a necessary condition for suppression of evidence).

¹⁰¹ See *Wong Sun v. U.S.*, 371 U.S. 471, 487-88 (1963) (holding evidence seized resulting from unlawful conduct is inadmissible except when it is sufficiently attenuated from the taint of the unlawful conduct); *U.S. v. Crews*, 445 U.S. 463, 474 (1980) (holding photographs the police took of the defendant following the unlawful arrest were suppressible, but the in court testimony of the victim was not since the victim's recollection of the defendant was attenuated from the unlawful arrest and was thus untainted by the unlawful arrest); see *Hudson v. Michigan*, 547 U.S. 586, 592 (2006) (refusing to suppress evidence seized following a search of a home simply because the officers failed to knock prior to entry, stating that even though the entry was a but-for cause of the discovery of the evidence, the police would have executed the warrant properly and found the same evidence); Joe Rivera, *When is Good Faith Good Enough? The History, Use, And Future of Texas Code of Criminal Procedure Article 38.23(B)*, 59 BAYLOR L. REV. 919, 948 (2007); The Georgetown University Law Center, *Warrantless Searches and Seizures*, 36 GEO. L.J. ANN. REV. CRIM. PROC. 38, 89-90 (2007) (explaining evidence discovered following an unlawful search may be admissible if subsequent consent given by the defendant was sufficient to attenuate the discovery of the evidence from the unlawful search).

¹⁰² See David Carn, *Hey Officer, Didn't Someone Teach you to Knock? The Supreme Court Says No Exclusion of Evidence For Knock-and-Announce Violations in Hudson v. Michigan*, 58 MERCER L. REV. 779, 785 (2007) (stating evidence the government illegally obtained may be admissible if attenuation occurs, that is, when the causal connection between the illegal government act and the discovery of the evidence "is so remote to dissipate the taint from the illegal conduct"). Two other exceptions to the exclusionary rule exist, which are inevitable discovery and independent source. *Id.* at n.56.

¹⁰³ *Id.* at 785.

evaluating whether the causal chain has been sufficiently attenuated are the time between the government's illegal conduct and the discovery of the evidence, whether intervening circumstances exist, and the purpose and flagrancy of the government's illegal conduct.¹⁰⁴ Since the exclusionary rule's sole purpose is to deter future police misconduct, the focus behind the principle of attenuation is to determine the point at which the diminishing returns of the deterrent principle no longer outweigh the social costs of exclusion.¹⁰⁵

United States v. Crews demonstrates an application of this rule and why the Court in *Crew* allowed a robbery victim to provide in court testimony identifying the defendant as the person who robbed her, even though the police unlawfully arrested him.¹⁰⁶ The Supreme Court held a defendant is never himself suppressible as fruit of the poisonous tree.¹⁰⁷ The defendant moved to have all identifying evidence of him suppressed including line-up photographs and in-court identifications made by witnesses.¹⁰⁸ The Court reasoned suppressing the victim's in-court testimony would not serve the purpose of deterring future police misconduct.¹⁰⁹ Evidence suppression would not deter future misconduct in this case because a victim's memory of a suspect is too attenuated from the misconduct of the police.¹¹⁰

¹⁰⁴ *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975); Jack A. Levy, *The Exclusionary Rule*, 85 GEO. L.J. 969, 976-77 (1997).

¹⁰⁵ See Wayne R. LaFave, Search and Seizure § 11.4(a), at 235 (3d ed. 1996); E. Martin Estrada, *A Toothless Tiger in the Constitutional Jungle: The "Knock and Announce Rule" and the Sacred Castle Door*, 16 U. FLA. J.L. & PUB. POL'Y 77, n.62 and accompanying text (2005) (explaining that application of the cost-benefit analysis of the attenuation principle may result in the admissibility of unlawfully seized evidence if excluding the evidence would provide little or no benefit in the form of deterrence, but would result in large societal costs of allowing a crime to go unpunished); See Estrada, *supra* note 105, at 90; Jennifer Yackley, *Hudson v. Michigan: Has the Court Turned the Exclusionary Rule into the Exclusionary Exception?*, 30 HAMLINE L. REV. 409, 429 (2007) (stating when "there is no appreciable deterrent effect, the Court does not consider the exclusionary rule an appropriate remedy").

¹⁰⁶ *Crews*, 445 U.S. at 463-66 (holding photographs the police took of the defendant following the unlawful arrest were suppressible, but the in court testimony of the victim was not since the victim's recollection of the defendant was attenuated from the unlawful arrest and was thus untainted by the unlawful arrest).

¹⁰⁷ *Id.* at 474. The defendant wanted to suppress not only any photographs used to identify him as the perpetrator, but he also wanted to suppress the use of any in court identifications of him by witnesses. *Id.* at 467-68. The Court held that the government can not be completely deprived of the opportunity to prove a suspect's guilt through untainted evidence from the illegal activity. *Id.* at 474. Thus, in-court identifications are not suppressible as "fruits of the poisonous tree" because they were not directly tainted by any unlawful police conduct. *Id.*

¹⁰⁸ *Crews*, 445 U.S. at 474.

¹⁰⁹ See *id.* at 463-64; Estrada, *supra* note 105, at n.62 and accompanying text.

¹¹⁰ *Crews*, 445 U.S. at 463-64; see also *U.S. v. Ceccolini*, 435 U.S. 268, 277-80 (1978) (admitting a witness's testimony even though officials discovered the witness' identity due to the unlawful arrest). The court held the witness' testimony was admissible because it was sufficiently attenuated from the taint of the unlawful arrest in part because of the likelihood the witness, through free will, would have come forward on her own and therefore been discovered through lawful means. *Id.*

III. Distinguishing How the Government Obtains Fingerprints

Further distinguishing but-for causation from the discovery of the evidence simply following the unlawful arrest, is the way in which the government obtained the evidence. For example, the *Rangel* court correctly distinguished between fingerprints taken as part of the routine booking process and fingerprints taken solely for investigatory purposes.¹¹¹ The Supreme Court first recognized this distinction in *Davis v. Mississippi*.¹¹² In *Davis*, the Court held the Fourth Amendment applies to the investigatory stages of the criminal process.¹¹³ Therefore, a detention for the sole purpose of obtaining a suspect's fingerprints is unlawful.¹¹⁴ Although the Court determined the police acted unlawfully, it conceded the possibility that some fingerprints obtained without probable cause may comply with the Fourth Amendment.¹¹⁵ The Court, however, neglected to elaborate on what kind of situation this may be as that narrow question was not before them.¹¹⁶ In applying the exclusionary rule, the Court suppressed the unlawfully seized fingerprints and overturned Davis' conviction.¹¹⁷

Various courts have also recognized the inherent differences between the booking process and other interactions with suspects that imply a more investigatory aspect.¹¹⁸ Courts make this distinction because the function of the

¹¹¹ *Olivares-Rangel*, 458 F.3d at 1112-13; see *Davis v. Mississippi*, 394 U.S. 721, 727 (1969); *Hayes v. Florida*, 470 U.S. 811, 816 (1985); *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980) (defining interrogation as including either "express questioning or its functional equivalent," including, "words or actions on the part of the police . . . which the police should know are reasonably likely to elicit an incriminating response from the suspect").

¹¹² *Davis*, 394 U.S. 721. In *Davis*, the police rounded up and detained dozens of black youths, without probable cause, and took them to the police station for the sole purpose of obtaining their fingerprints to link them to a rape. *Id.* at 722.

¹¹³ *Id.*

¹¹⁴ *Id.* The U.S. Supreme Court affirmed a similar proposition in *Hayes v. Florida*, 470 U.S. 811 (1985). In *Hayes*, a rape investigation focused on the petitioner as the primary suspect. *Hayes*, 470 U.S. at 811. The police went to the petitioner's home to obtain his fingerprints and the petitioner hesitated to comply with the officer's request. *Id.* The officers told him they would arrest him if he refused to accompany them to the police station for fingerprinting. *Id.* The petitioner finally submitted to the request because he said he would rather go to the police station under his own volition, rather than be arrested. *Id.* The Court held that forcing a defendant to the police station for investigatory fingerprinting, without probable cause, violates the Constitution. *Id.* at 816. The Court did leave open the possibility of briefly detaining a suspect in "the field," as part of a *Terry* stop, in order to fingerprint the suspect for identification purposes when reasonable suspicion exists, but not probable cause. *Hayes*, 470 U.S. at 816.

¹¹⁵ *Davis*, 394 U.S. at 727.

¹¹⁶ *Id.*

¹¹⁷ See *id.* at 727-28.

¹¹⁸ See *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02 (1990) (holding answers given during the routine booking process for administrative purposes are admissible); *U.S. v. Salgado*, 292 F.3d 1169, 1171 (9th Cir. 2002) (holding the defendant freely provided information about his place of

booking process is not investigatory by nature.¹¹⁹ In fact, the government cannot ask questions designed to incriminate the defendant, during this process.¹²⁰ Evidence obtained during the booking process is admissible as evidence against the defendant even if the evidence incriminates the defendant.¹²¹ However, the government cannot turn the booking process into an investigatory tool.¹²² The booking process has a long history of being afforded less protection than other criminal processes.¹²³ Because of this, evidence collected through the routine booking process lacks the same evidentiary protection that evidence would receive if discovered in an investigatory manner.¹²⁴

Rangel correctly recognized not all identifying evidence is admissible following an unlawful arrest.¹²⁵ The court determined the traditional exclusionary rule announced in *Wong Sun* still applies to evidence, including identifying evidence, if the evidence results from exploiting the original unlawful conduct.¹²⁶ As the *Rangel* court recognized, any evidence, if obtained in a manner for investigatory purposes by exploiting the illegal arrest, is suppressible even if the government

birth and citizenship as part of the routine booking process and officials sought the information as nothing more than for routine booking information, not incriminating information); U.S. v. Parra, 2 F.3d 1058, 1068 (10th Cir. 1993) (holding INS agent's questioning of defendant about his true name during the booking process in order to link him to his incriminating immigration file constituted unlawful interrogation so the evidence provided by the defendant about his identity should have been suppressed).

¹¹⁹ *Muniz*, 496 U.S. at 602.

¹²⁰ *Id.*

¹²¹ *Id.* at 601-02 (explaining that although some evidence obtained by the government during a routine booking process may incriminate the suspect, that evidence is admissible against the suspect since obtaining biographical information is necessary for the booking process).

¹²² *Id.*

¹²³ See U.S. v. Olivares-Rangel, 458 F.3d 1104, 1113-14 (10th Cir. 2006); Meghan S. Skelton and James G. Connell, III, *The Routine Booking Question Exception To Miranda*, 34 U. BALT. L. REV. 55, 60-62 (2004) (explaining a suspect's admissions made during the routine booking process are an exception to *Miranda* warnings because the routine booking process is not an interrogation and officers are not attempting to elicit incriminating information from suspects through the questions the officers ask); James C. Harrington, *Civil Rights*, 26 TEX. TECH. L. REV. 447, 493 (1995) (stating the police are allowed to ask suspects routine questions during the booking process without violating the suspects Fifth Amendment right of self incrimination).

¹²⁴ See, e.g., *Muniz*, 496 U.S. at 601-02.

¹²⁵ *Olivares-Rangel*, 458 F.3d at 1114; see *Davis v. Mississippi*, 394 U.S. 721, 727 (1969); *Hayes v. Florida*, 470 U.S. 811, 816 (1985); Roberto Iraola, *DNA Dragnets-A Constitutional Catch?*, 54 DRAKE L. REV. 15, 33-35 (2005) (discussing the rule announced in *Davis* that unlawful arrests for the sole purpose of collecting a defendant's fingerprints makes the fingerprints a fruit of the unlawful arrest and therefore suppressible); see *supra* notes 98-133 and accompanying text.

¹²⁶ *Olivares-Rangel* 458 F.3d at 1115-16.

did not intend the arrest to procure the evidence.¹²⁷ Evidence obtained as a result of exploiting an illegal arrest, warrants suppression if the conduct's purpose was investigatory rather than administrative in nature, such as the routine booking process.¹²⁸

Therefore, applying the principle of attenuation to *Rangel* helps explain the distinction based on the purpose whether the exclusionary rule should be applied in order to suppress the fingerprints and A-file.¹²⁹ Suppressing *Rangel's* fingerprints and A-file would have a deterrent effect if the government's purpose for obtaining *Rangel's* fingerprints was to obtain evidence against *Rangel* since the agents could foresee that the action of collecting the fingerprints is easily traced to the unlawful arrest.¹³⁰ Suppressing the fingerprints in that instance would deter the government from randomly rounding up suspects, without probable cause, in order to collect their fingerprints and use them as evidence.¹³¹ However, if the government's purpose in collecting *Rangel's* fingerprints was not to uncover evidence to use against him, but rather, was for the routine booking process, then there is no deterrent value in suppressing the evidence since the agents may not

¹²⁷ *Id.*

¹²⁸ *Id.*; see *supra* notes 98-105 and accompanying text (explaining how attenuation play role in determining among other things, the foreseeability on the part of the officer as to whether the evidence is related to the unlawful conduct for purposes of deterrence).

¹²⁹ See *supra* notes 98-105 and accompanying text (explaining why attenuation is important and how to apply it).

¹³⁰ See generally *Brown v. Illinois*, 422 U.S. 590, 603-04 (1975) (discussing the importance of evaluating the government's purpose of the misconduct that produced the evidence in evaluating whether the evidence is sufficiently attenuated from the unlawful conduct to render it admissible); *U.S. v. Recalde*, 761 F.2d 1448, 1458-59 (10th Cir. 1985) (holding evidence of automobile search tainted where the purpose of the officer's illegal seizure was designed to uncover evidence). As the *Rangel* Court recognized in remanding the case back to the district court, the imperative question in determining whether *Rangel's* fingerprints and A-file are suppressible turns on the purpose behind the government's seizure of the *Rangel's* fingerprints. See *supra* notes 98-105 and accompanying text (explaining how attenuation play role in determining among other things, the foreseeability on the part of the officer as to whether the evidence is related to the unlawful conduct for purposes of deterrence); WAYNE R. LAFAVE, JEROLD H. ISRAEL & NANCY J. KING, *CRIMINAL PROCEDURE* 511 (Thomson/West 2004) (stating when an officer can reasonably foresee the challenged evidence as a product of his illegal conduct then there is a deterrent value and applying the exclusionary rule makes sense).

¹³¹ See generally Sarah Hughes Newman, *Proving Probable Cause: Allocating the Burden of Proof in False Arrest Claims Under § 1983*, 73 U. CHI. L. REV. 347, 372 (2006) (explaining the exclusionary rule does not deter police from arresting people without probable cause because the exclusionary rule only applies to the exclusion of evidence seized; however, the rule does act as a deterrent against police unlawfully arresting people in order to use evidence subsequently seized against them, since the rule does apply to evidence); LaFave, Israel & King, *supra* note 130, at 511 (stating when an officer can reasonably foresee the challenged evidence as a product of his illegal conduct then there is a deterrent value and applying the exclusionary rule makes sense).

foresee the evidence as a product of their unlawful arrest.¹³² Even though the original arrest may still be unlawful, in this instance, the court should not suppress the evidence since little, if any, deterrent value exists in suppressing it.¹³³

CONCLUSION

The *Rangel* court correctly held Rangel's fingerprints and A-file are suppressible, if the district court determines upon remand that the government obtained the evidence through an investigatory procedure rather than because of a routine booking process.¹³⁴ Since *Davis*, the U.S. Supreme Court has held the Fourth Amendment prohibits detentions for the sole purpose of collecting a suspect's fingerprints.¹³⁵ Furthermore, courts of varying jurisdictions have dealt with the admissibility of fingerprints including *Lopez-Mendoza*.¹³⁶ Thus, the task that courts have faced following *Davis* has been to determine when and how the exclusionary rule actually applies to evidence of a suspect's identity.¹³⁷ Although some confusion exists among the varying circuit courts as to the applicability of *Lopez-Mendoza*, the *Rangel* court correctly interpreted that opinion, holding that *Lopez-Mendoza* applies only to jurisdictional challenges and not to evidentiary

¹³² See LaFave, Israel & King, *supra* note 130, at 511 (stating when an officer can reasonably foresee the challenged evidence as a product of his illegal conduct then there is a deterrent value and applying the exclusionary rule makes sense).

¹³³ See generally Eric Johnson, *Causal Relevance in the Law of Search and Seizure*, 88 B.U.L. REV. 113, 167 (2008) (stating a court's focus in determining whether evidence is sufficiently causally related to the government's unlawful conduct to warrant suppression should focus on "the extent to which the basic purpose of the exclusionary rule—the deterrence of police misconduct—will be advanced by its application in any particular case." *Id.* (quoting *United States v. Ceccolini*, 435 U.S. 268, 276 (1968))).

¹³⁴ *U.S. v. Olivares-Rangel*, 458 F.3d 1104, 1116-17 (10th Cir. 2006).

¹³⁵ *Davis v. Mississippi*, 394 U.S. 721, 727 (1969).

¹³⁶ See, e.g., *U.S. v. Guzman-Bruno*, 27 F.3d 420 (9th Cir. 1994) (relying on *Lopez-Mendoza*, holding a defendant's identity or body is never suppressible even following an unlawful arrest); *U.S. v. Guevara-Martinez*, 262 F.3d 751 (8th Cir. 2001) (holding *Lopez-Mendoza* does not stand for the broad proposition that a defendant's identity is never suppressible); *Olivares-Rangel*, 458 F.3d 1104 (holding *Lopez-Mendoza* does not stand for the broad proposition that a defendant's identity is never suppressible).

¹³⁷ See, e.g., *Guzman-Bruno*, 27 F.3d 420 (holding that a body or identity is never suppressible so the exclusionary rule does not apply to evidence of a defendant's identity); *Guevara-Martinez*, 262 F.3d 751 (holding *Lopez-Mendoza* does not stand for the broad proposition that a defendant's body or identity is never suppressible and therefore there are situations where the exclusionary rule may act to suppress evidence of a defendant's fingerprints); *Olivares-Rangel*, 458 F.3d 1104 (holding *Lopez-Mendoza* does not stand for the broad proposition that a defendant's body or identity is never suppressible and therefore there are situations where the exclusionary rule may act to suppress evidence of a defendant's fingerprints).

challenges.¹³⁸ Furthermore, the court correctly characterized the issue regarding fingerprint admissibility based on the doctrine of attenuation and the purpose for which the government obtain them.¹³⁹

¹³⁸ *Olivares-Rangel*, 458 F.3d at 1112; *supra* notes 74-97 and accompanying text.

¹³⁹ *Supra* notes 98-133 and accompanying text.