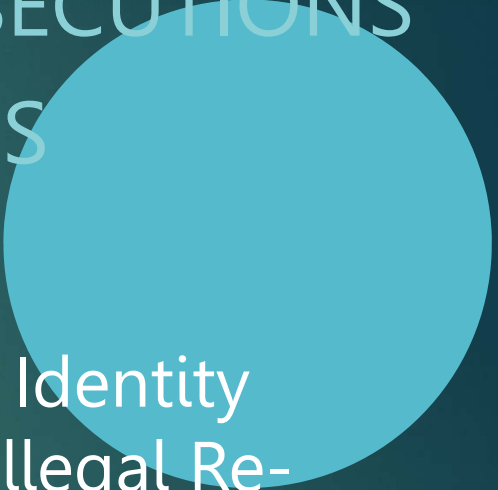




# FIGHTING ILLEGAL RE-ENTRY PROSECUTIONS WITH MOTIONS TO SUPPRESS



Yes, Virginia (and Oklahoma), There Is A  
Suppression Santa Claus. You Can Exclude Identity  
Evidence And Immigration Records In An Illegal Re-  
Entry Prosecution, 8 U.S.C. 1326.

# Three Scenarios:

A. Unconstitutional Arrest By ICE/HSI Agents.

B. Unlawful Warrantless Arrest By ICE/HSI Agents That Violates 8 U.S.C. § 1357(a).

C. Arrests By State/Local Law Enforcement For Suspected Immigration Violations That Exceed The Limits of 8 U.S.C. § 1252c.

# Scenario One:

## Unconstitutional Arrest By HSI/ICE

Suppression of Identity Evidence and A File?

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

**Yes**, Virginia, *U.S. v. Oscar-Torres*, 507 F.3d 224 (4th Cir. 2007)

**No**, *U.S. v. Garcia-Beltran*, 443 F.3d 1126 (9th Cir. 2006), and  
*U.S. v. Farias-Gonzalez*, 556 F.3d 1181 (11th Cir. 2009)

Circuit Split for Supreme Court.



## Oscar-Torres Case

ICE Gauntlet at only street entrance to apartment complex



Response after forced to lift his shirt at ICE Gauntlet  
"JUST MY ALMA MATER"



# Exclusionary Rule Applies to Identity Evidence and Attendant Record Evidence Government Needs to Prove Violation of 8 U.S.C. § 1326

Fingerprints Taken After Arrest

Immigration A-File,  
Especially Prior Deportation Record



## Key To Suppression: Purpose of Obtaining Fingerprints

Fingerprints “obtained for an investigatory purpose” suppressed  
*Olivares-Rangel*, 458 F.3d at 1121.

If “both investigative and administrative purposes motivated the illegal arrest and fingerprinting . . . the fingerprint evidence and attendant record evidence [A File] must be suppressed.”  
*Oscar-Torres*, 507 F.3d at 232.



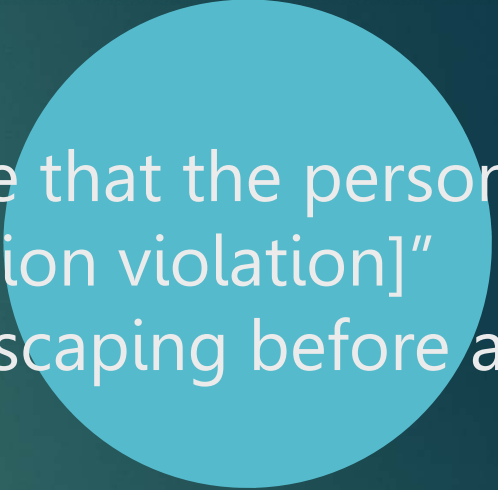
## Scenario Two:

Unlawful Warrantless Arrest by HSI/ICE.

Suppression for Statutory Violation of 8 U.S.C. 1357(a) that "Implicates Important" Constitutional "Interests."



## Warrantless Arrest Requires Both Probable Cause *and* Likelihood of Escape



8 U.S.C. § 1357(a) requires “reason to believe that the person so arrested is guilty of a felony [or immigration violation]” and that “there is likelihood of the person escaping before a warrant can be obtained.”  
§ 1357(a)(4).



## Courts Supposed to Take § 1357(a) “Seriously”

The likelihood-of-escape requirement “is always seriously applied.” *United States v. Cantu*, 519 F.2d 494, 496-97 (7th Cir. 1975).

“INS must have reasonable belief both that the alien is in the country illegally *and* that the alien is likely to escape before a warrant can be obtained.” *United States v. Harrison*, 168 F.3d 483, 1999 WL 26921, at \*4 (4th Cir. Jan. 25, 1999) (unpublished) (emphasis in original).

*Arizona v. United States*, 567 U.S. 387, 408 (2012) (federal officers warrantless arrest authority limited by 8 U.S.C. § 1357(a)’s “likely to escape” requirement).



## Suppression for Statutory Violation Warranted Where Unlawful Arrest “**Implicates Important**” Constitutional “**Interests**.”



*Sanchez-Llamas v. Oregon*, 548 U.S. 331, 348-49 (2006) (citing S. Ct. cases where “the excluded evidence arose directly out of statutory violations that implicated important Fourth and Fifth Amendment interests”).

Importantly, violation of Constitutional right not required.

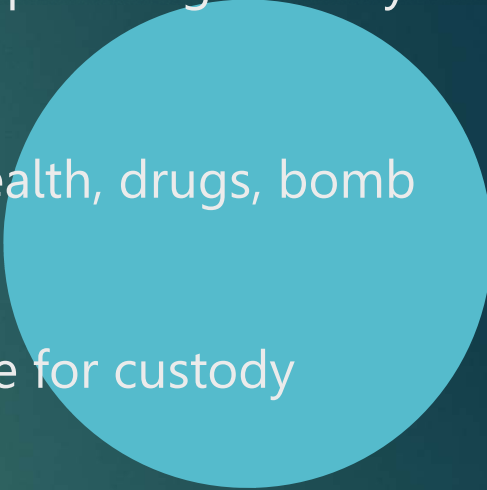


*U.S. v. Segura-Gomez,*  
4:17-CR-65-FL (E.D.N.C.)

HSI/ICE Violates one Provision of Title 8 to  
Prosecute Client for Another.



# FACTS



HSI/ICE tip from mother of client's infant son about upcoming custody hearing

DSS previously took custody from mother (mental health, drugs, bomb threat)

Client worked with DSS to establish paternity, prepare for custody

ICE Agents arrest client walking into family court

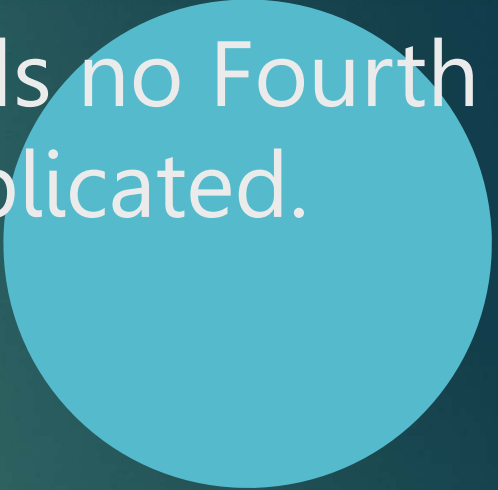
ICE did not get warrant (I-200), though had client information for one month



Magistrate Rejects Government Argument  
That No Warrant Required.

Warrantless Arrest Violated 8 U.S.C. 1357(a).  
M & R, *Segura*, Docket Entry 35.

No Suppression, No Remedy. Reason Given:  
No Constitutional Violation.  
Objections to M & R; Docket Entry 38.



District Court Adopts M & R, holds no Fourth  
or Fifth Amendment Interests Implicated.  
*Segura*, Docket Entry 43.

## Key Question:

What does “implicate important” constitutional “interests” mean?

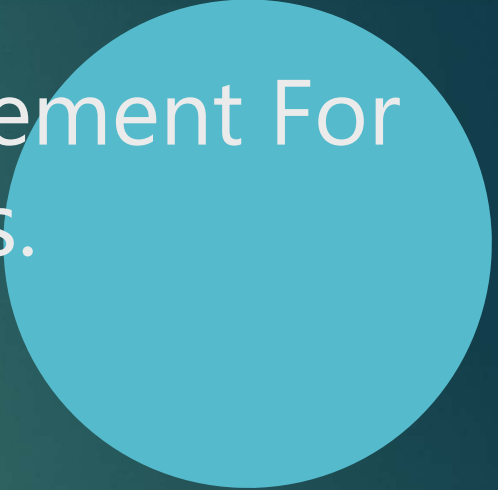
Logically, cannot equate to violation of constitutional right, as M & R concluded.

Pending Appeal: *U.S. v. Santos-Portillo*, 7:18 -CR-1009-H (EDNC); 20-4159 (4<sup>th</sup> Cir.)



## Third Scenario:

Arrests By State/Local Law Enforcement For  
Suspected Immigration Violations.  
8 U.S.C. § 1252c



Official Website of the Department of Homeland Security



ICE

Report Crimes: [Email](#) or Call [1-866-DHS-2-ICE](#)

## Immigration Enforcement

Immigration Enforcement

### Law Enforcement Support Center

ERO

The center protects and defends the US by sharing timely and relevant ICE information with our law enforcement partners around the world.



The Law Enforcement Support Center is a national enforcement operations facility administered by U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security (DHS). The center is a single national point of contact that provides timely immigration status, identity information, and real-time assistance to local, state, and federal law enforcement agencies on aliens suspected, arrested, or convicted of criminal activity. The center protects and defends the United States by sharing timely and relevant ICE information with our law enforcement partners around the world.

Located in Williston, Vermont, the center operates 24 hours a day, 7 days a week, 365 days a year. The primary users of the center are state and local law enforcement officers seeking information regarding aliens encountered in the course of their daily enforcement activities. The center serves as a national enforcement operations center, responding to inquiries from federal, state, and local criminal justice agencies concerning aliens under investigation or arrested.

# 8 U.S.C. § 1252c

(a) In general

Notwithstanding any other provision of law, **to the extent permitted by relevant State and local law**, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States; and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain **appropriate confirmation** from the Immigration and Naturalization Service of the status of such individual and **only for such period of time as may be required** for the Service to take the individual into Federal custody **for purposes of deporting or removing the alien from the United States.**

# Possible Challenges To Reliance On 8 U.S.C. § 1252c's Provisions:

"to the extent permitted by relevant State and Local Law"

"appropriate confirmation from" HSI/ICE

"only for such period of time as may be required" for ICE to take custody

"for purposes of deporting or removing the alien from the United States" (statute does not say for criminal prosecution).

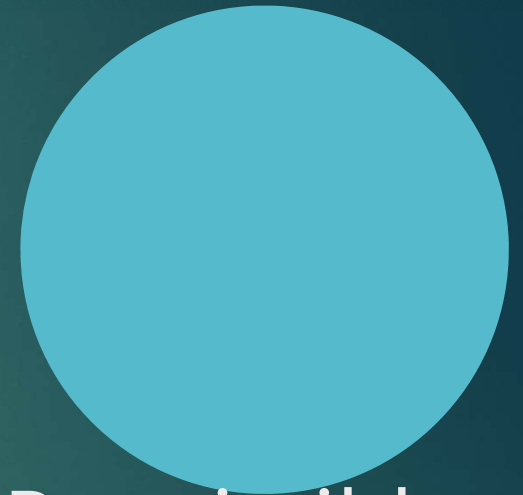
*U.S. v. Jiminez-Delatorre*, 2016 WL 6037637, Case No. 16-20020-01-JAR (D. Kan. Oct. 14, 2016) ("Courts have subsequently distinguished between **arrests for civil removability**, which local officers have **no general authority to conduct**, and arrest for federal criminal immigration offenses.").

# Look For Possible Fourth Amendment Violations

Seizure Without Particular  
Reasonable Suspicion

Limit Scope and Extent of  
Stop to Grounds for Initial Seizure

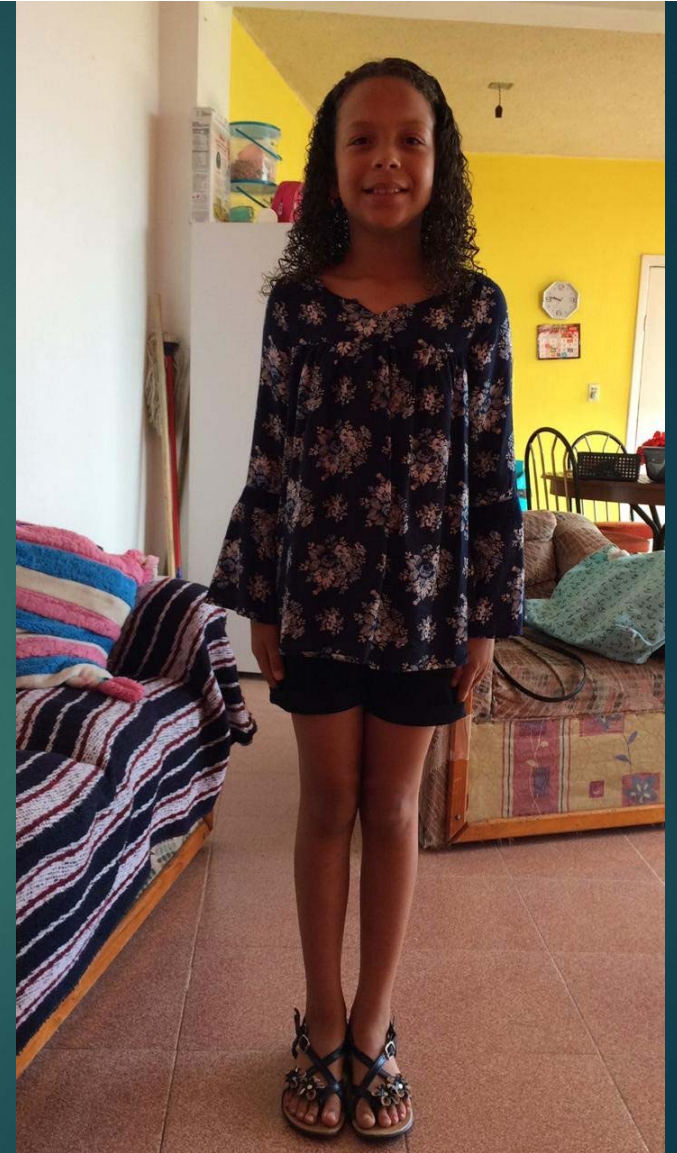
Permissible



# Argue 8 U.S.C. § 1357(a)'s Limits on Warrantless Arrests Apply to State/Local Officers, and to 8 U.S.C. § 1252c.

*Arizona v. U.S.*, 567 U.S. 387, 408 (2012) (striking down Arizona law that “attempts to provide state officers even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers,” citing § 1357(a)).

Roblero Mendez's Daughter in Chiapas, Mexico



# Lessons Learned From Challenging Illegal Re-Entry Arrests And Prosecutions

Fight for Pretrial Release

Pay Attention to the Stone in your Shoe

Tilt At Windmills

Fight For and Respect Client Dignity

“Take it easy, but Take it.”

Woody Guthrie (native Oklahoman)

