



## **PRACTICE ADVISORY<sup>1</sup>**

Updated August 1, 2017

### **MOTIONS TO SUPPRESS IN REMOVAL PROCEEDINGS: A GENERAL OVERVIEW**

By the American Immigration Council<sup>2</sup>

*“Every INS agent knows, therefore, that it is highly unlikely that any particular arrestee will end up challenging the lawfulness of his arrest in a formal deportation proceeding.”*

*INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984)

This practice advisory discusses issues, strategies, and procedures relating to the filing of motions to suppress in removal proceedings. Long used in criminal trials, motions to suppress seek to exclude evidence obtained in violation of an individual’s constitutional or other legal rights. Though federal immigration officers often disregard the rights of noncitizens, legal and practical obstacles prevent many respondents in removal proceedings from challenging the manner in which they were arrested. More frequent use of motions to suppress will help protect the rights of noncitizens, promote greater accountability by law enforcement officers, and result in the termination of proceedings in some cases.

Part I of this practice advisory discusses basic principles underlying motions to suppress. Part II addresses motions to suppress evidence obtained in violation of the Fourth Amendment and related provisions of federal law. Part III discusses motions to suppress evidence obtained in violation of the Due Process Clause of the Fifth Amendment and related provisions of federal law. Finally, Part IV discusses the procedures for filing motions to suppress.

This practice advisory focuses on misconduct by federal immigration officers. It does not discuss unique issues relating to misconduct committed by, or resulting from cooperation with, state and

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<sup>2</sup> The American Immigration Council thanks Ami Patel, a third-year law student at The George Washington University Law School, for her invaluable assistance with the 2017 update to this practice advisory. Ben Winograd was the principal author of the original version, which Mary Kenney and Melissa Crow assisted in drafting. Rex Chen, Matthew Guadagno, Dan Kesselbrenner, and Michael Wishnie provided insightful comments on previous drafts. David Antón Armendáriz, Celia Figlewski Hicks, Kristin Macleod-Ball, Matthew Price, and Professor Katharine Tinto and her former students at Cardozo Law School, Karla Ostolaza Ortiz and Naomi Fisher, provided helpful assistance with previous updates. Questions regarding this practice advisory should be directed to [clearinghouse@immcouncil.org](mailto:clearinghouse@immcouncil.org).

local law enforcement officers.<sup>3</sup> Nor does it discuss misconduct by U.S. Customs and Border Protection (CBP) officers.<sup>4</sup>

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<sup>3</sup> See American Immigration Council Practice Advisory, *Motions to Suppress in Removal Proceedings: Cracking Down on Fourth Amendment Violations by State and Local Law Enforcement Officers*.

<sup>4</sup> See American Immigration Council Practice Advisory, *Motions to Suppress in Removal Proceedings: Fighting Back Against Unlawful Conduct by U.S. Customs and Border Protection*.

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