UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
18201 S.W. 12TH ST
MIAMI, FL 33194

IMMIGRATION CLINIC E-256
SHARPLESS, REBECCA, ESQ.
1311 MILLER DRIVE
CORAL GABLES, FL 33146

IN THE MATTER OF [redacted]

FILE [redacted]

I, THE UNDERSIGNED EMPLOYEE OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, SAY THAT ON THE DATE INDICATED BELOW I SERVED THE ATTACHED DOCUMENT/NOTICE(S) UPON THE FOLLOWING PERSON(S):

DISTRICT COUNSEL/ANDREW BROWN, ADC, TA
DEPARTMENT OF HOMELAND SECURITY
MIAMI, FL

IMMIGRATION CLINIC E-256
SHARPLESS, REBECCA, ESQ.
1311 MILLER DRIVE
CORAL GABLES, FL 33146

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.
(AUTHORITY:28 U.S.C. 1746.)

DATE OF MAILING: Aug 12, 2013

COURT CLERK CP

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
KROME SERVICE PROCESSING CENTER
MIAMI, FLORIDA

IN THE MATTER OF	)	
[redacted]	)	[redacted]
Respondent	)	**IN REMOVAL PROCEEDINGS**

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act: an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Motion to Suppress; and
Motion to Terminate.

ON BEHALF OF THE RESPONDENT

Rebecca Sharpless, Attorney at Law
University of Miami School of Law
Immigration Clinic
1311 Miller Drive E273
Coral Gables, Florida 33146

ON BEHALF OF THE DEPARTMENT

Andrew Brown, Assistant Chief Counsel
Department of Homeland Security
18201 S.W. 12th Street
Miami, Florida 33194

WRITTEN DECISION AND ORDER

I. Procedural History

[redacted] (Respondent) is a twenty-four-year-old single male. Officers from the Hollywood Police Department encountered Respondent on January 11, 2013 in Hollywood, Florida. The officers seized Respondent and transferred him to the custody of U.S. Customs and Border Protection (CBP) hours later. That same day, Respondent was issued a Notice to Appear (NTA), alleging that he is a native and citizen of Honduras who is present without being admitted or paroled, and thus is removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act).

On March 27, 2013, Respondent submitted to the Court, through counsel, a Motion to Suppress to withhold all evidence allegedly obtained illegally by the Hollywood Police Department and CBP. Respondent argues that statements he made to Hollywood police officers and the CBP regarding alienage must be suppressed because they were made after his Fourth and Fifth Amendment constitutional rights were violated. The Department filed a Motion to Strike Respondent's Motion to Suppress, stating that the identity of a person in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, with certain exceptions that the Department argues do not apply in the present case. On April 2, 2013, Respondent also filed, through counsel, a Motion to Terminate Proceedings and Incorporated Memorandum of Law.

On April 11 and 17, 2013 and May 6, 7, and 23, 2013, the Court heard testimony from Respondent, Officer Daniel McEvoy, Officer Andrew Laframboise, Officer Melvin Attkisson, Agent German Catala, Agent Samantha Hashitani-Choy, Officer Henry Cardoso, Agent John Ramos, Officer Derrick Mears, Officer Brian Kalish, Sergeant Richard Losenbeck, Sergeant Steven Bolger, Agent Blanca Flanagan, Officer Justin Lang, and Mr. Carlos Gomez. On July 1, 2013, both Respondent and the Department submitted their closing arguments.

II. Documentary Evidence Considered

The Court considered the following exhibits:

Exhibit 1: Notice to Appear, dated January 11, 2013.

Exhibit 1A: Additional Charges of Inadmissibility/Deportability, dated March 20, 2013.

Exhibit 2: Record of Deportable/Inadmissible Alien, Form I-213.

Exhibit 3: Department's Notice of Filing I (March 5, 2013):

- Witness List;
- Incident/Investigation Report, dated January 10, 2013;
- Incident/Investigation Report, dated January 11, 2013;
- Broward County Complaint Affidavit, dated February 13, 2013;
- Department's Affidavit for Respondent, dated January 11, 2013;
- Department's Warrant for Arrest of Alien, dated January 11, 2013;
- Department's Warning as to Rights-Interview Log;
- "Rap Sheet" for Uriel Lorenzo Avecilla.

Exhibit 4: Department's Notice of Filing II (March 19, 2013):

- Marion County Sheriff's Office Incident Report for Case Number 12037513;
- Information for Travel Document or Passport, Form I-217;
- Declined Voluntary Departure and Verification of

Departure Form;
- Notice of Rights and Request for Disposition, Form I-826;
- Respondent's Image and Fingerprints;
- U.S. Border Patrol Miami Field Office Case Acceptance Request;
- Eight passport-size photographs of Respondent;
- Photographs of Respondent's Injuries, dated January 11, 2013.

Exhibit 5: Color Photographs of Respondent's Injuries.

Exhibit 6A: Case Supplemental Report.

Exhibit 7: Google Maps Image of Stop-N-Go Food Store at 6100 Washington Street.

Exhibit 8: Dispatch Transcript of Emergency Call on January 10, 2013.

Exhibit 8A: Amended Dispatch Transcript of Emergency Call on January 10, 2013.

Exhibit 9: Hollywood Police Department Incident Recall.

Exhibit 10: Google Maps Aerial Image of 6100 Washington Street, Hollywood, FL 33023.

Exhibit 11: Google Maps Aerial Image of 6100 Washington Street, Hollywood, FL 33023 (zoom-in).

Exhibit 12: Department's Notice of Filing II (May 8, 2013)
- CBP Emails to the Hollywood Police Department dated January 11, 2013.

Exhibit 13: Respondent's Notice of Filing I (May 20, 2013):
Tab A: Letter to Rebecca Sharpless, Counsel for Respondent, from Joel D. Cantor, Office of General Counsel for Hollywood Police Department, dated May 9, 2013;
Tab B: Concise Officer History of Hollywood Police Officers Daniel McEvoy, Bryan Kalish, Steven Bolger, and Justin Lang;
Tab C: Email from Andrew Brown, Assistant Chief Counsel, U.S. Immigration and Customs Enforcement (ICE), to Hollywood Police Officers;
Tab D: Email from Andrew Brown, Assistant Chief Counsel, ICE, to Hollywood Police Officer Henry Cardoso;
Tab E: Jeffrey S. Weiner, Canines and the Constitution. Florida Defender (Winter 2011);
Tab F: Standard Operating Procedure Manual for Hollywood Police Department (compact disc).

Exhibit 14: Complaint Brochure for the Hollywood Police Department

Exhibit 15: Google Maps Image of Stop-N-Go Food Store at 6100 Washington Street and Intercept Investigative Agency at 6120 Washington Street, Hollywood, FL.

Exhibit 16: Google Maps directions from 6325 Plunkett St., Hollywood, FL, 33023 to 600 S. 62nd Ave., Hollywood, FL 33023 and aerial image of map with directions.

Exhibit 17: Sworn Declaration of Respondent.

Exhibit 18: Sworn Declaration of Alexander R. Vail.

III. Summary of Testimonial and Documentary Evidence

A. Search and Arrest of Respondent

1. Dispatch Transcript, Ex. 8; 8A

The dispatch transcript reflects the following entries. On January 10, 2013, a 911 emergency call was made at 11:30 p.m. by Robert Ehrbar. See Ex. 8A at 1. Mr. Ehrbar told the dispatch operator that when he left his house on 63rd Street and Plunkett Avenue he saw a Latin male with black hair, a black shirt, and a black trash bag behind his neighbor's car. See id. at 1-2. Mr. Ehrbar told the operator that the man started running north on 63rd Avenue once he asked the man what he was doing. See id. At 11:33 p.m., the operator informed officers in the area that a complainant saw a Latin male with a "black shirt, pants" and a "big bag" behind a neighbor's truck. See id. at 2.

Canine-1 responded to the operator and said he was in the area. See id. at 2. At 11:42 p.m., Canine-1 informed the operator that he had a subject on the 6200 block of Funston Street. At 11:43 p.m., Canine-1 told the operator that the subject, a Latin male, dropped a "whole bunch of burglary tools" or a "bunch of wrenches and what not" and ran northbound to Washington Street between 63rd and 62nd Avenue. See id. at 3.

At around 11:43 p.m. an officer on dispatch set up a box perimeter and stated that he was covering 62nd Avenue and Funston. The officer requested the first unit on 63rd Avenue and Washington Street. See Ex. 8A at 3. An officer on dispatch also requested another unit on 62nd Avenue and Washington Street and 63 Avenue and Funston Street. See id. When an officer asked on dispatch for "Mac" to describe the subject, "Mac" stated it was a Latin male in black shorts, a black shirt, and a little shorter than six feet tall. See id.

Also at about 11:43 p.m. an officer asked "Danny" where he was, to which an officer responded "don't worry about it just fill in on the other blocks we got Canine-2, and 20, 51 to the other location." Ex. 8 at 4. Later an officer requested extra officers on Dawson Street and Dewey Street in both 62nd Street and 63rd Street. See id. at 5.

At 11:50 p.m., Canine -2 informed dispatch that he would be out with the dogs. See id. At 11:59 pm, Canine-1 and Canine-2 informed dispatch that they were working northbound to Dawson Street. See id. On January 11, 2013 at 12:04 a.m. Canine-1 and Canine-2 said they would be working westbound on 62nd Avenue and Dewey Street. At 12:25 a.m., an officer tells "Danny" on dispatch to meet him at 63rd Avenue. An officer stated on dispatch "Mac its Lang meet me over at 63 and Dewey." Id. at 7. At 12:27 a.m., an officer informed dispatch that he was clearing Washington and Dewey Streets on 62nd and 63rd Avenue. See id. at 7.

At 12:34 a.m., an officer asked "Lang you on" to which another officer responded "here." The dispatch report further shows that an officer immediately asked "Do you have your phone on you," and the response was "Yea 10-4." Ex. 8A at 7.

At 12:57 a.m., Canine-20 told dispatch "he's in custody you can clear the box thank you." Id. at 7.

At 7:22 a.m., a female called 911 and told the operator that she saw someone a few minutes ago break into her truck and steal some tools out of it. When asked for further information, a male talked to the operator and stated that he went out that morning and had not realized someone had broken into his car and taken his tools. See id. at 9.

2. Testimony of Officer Daniel McEvoy

Officer Daniel McEvoy told the Court that he works for the Hollywood Police Department in the canine unit. Officer McEvoy testified that he has been with the canine unit for five years and completed a course, as well as consistently trains, to be in the canine unit.

Officer McEvoy claimed that he recognized Respondent because he was the subject taken into custody on January 11, 2013. Officer McEvoy testified that he responded to dispatch when dispatch advised of a complaint about a possible break in of a pick-up truck in the area of 6325 Plunkett Street. Officer McEvoy stated that a minute had passed between the time he was informed of the complaint and the time he arrived to the scene of the complaint. Officer McEvoy stated that he checked the area in which the subject was last seen and continued in his patrol car going westbound. He claimed that he observed Respondent at the north swale of 6205 Funston Street, two blocks from the original location, crouched in between two vehicles on the north side and shoving a black duffle bag (Which he described as a black cloth bag with straps) underneath one of the vehicles. Officer McEvoy also stated that there was a blue bucket on the north side of the parked vehicles. Officer McEvoy told the Court that once he saw Respondent he put his patrol vehicle in park, exited his vehicle, walked within a foot of Respondent, and initiated verbal contact with him.

Officer McEvoy testified that he identified himself as a police officer and asked to see his hands. Officer McEvoy also testified that Respondent complied and moved away from the vehicles and told Officer McEvoy that he was visiting someone at 6205 Funston Street. Officer McEvoy stated that almost immediately the resident of 6205 Funston Street came out of his home and asked Respondent what he was doing at his home and said that he did not know Respondent. Officer McEvoy also stated that he asked Respondent to step away from the black bag and to come closer to the police vehicle so that the officer could get his personal information and Respondent complied by getting closer to Officer McEvoy's patrol car, but he did not answer Officer's McEvoy's questions and stated that he understood very little English.

Officer McEvoy testified that when he asked Respondent for identification, Respondent fled on foot, running westbound on Funston Street before turning right and

heading north. Officer McEvoy later stated that Respondent was heading westbound, diagonal to the northwest sidewalk, onto a front lawn and eventually into a backyard. Officer McEvoy testified that after Respondent took off on foot he told Respondent several times to stop and Respondent did not do so and only looked back at him. Officer McEvoy claimed that when Respondent fled he already had committed the crime of loitering and prowling, and the crime of possession of burglary tools. Officer McEvoy also stated that when Respondent fled on foot he had the authority to arrest him because he was loitering and prowling.

Officer McEvoy informed the Court that when Respondent fled, McEvoy transmitted the location to which he fled and gave a description of him to dispatch. Officer McEvoy stated that he went through the trouble of trying to capture Respondent because he did not know if Respondent was armed, he was carrying multiple tools at night, he had fled from a uniformed police officer, and he believed Respondent was a threat to the neighborhood. Officer McEvoy explained that it is normal to communicate where you are if an officer has a visual on a suspect or when a subject is apprehended, but only if it is tactically sound. Officer McEvoy stated that an officer can also use his cell phone to communicate, although it is not common procedure. Officer McEvoy further explained that on the dispatch he is identified by a call sign and his call sign at the time was Canine-1. Officer McEvoy also admitted that sometimes he is called "Danny" or "Mac." He stated that he did not know who "Wayne" is, but stated that it could be possible that "Wayne" is Officer Lang. Officer McEvoy stated that it was possible that he asked Officer Lang to get on his cell phone, as reflected by the dispatch transcript. See Ex. 8A at 7.

Officer McEvoy stated that he waited until responding police units took a designated perimeter position and boxed off avenues of escape, spanning from south 67th Avenue to south 63rd Avenue. Officer McEvoy stated that during the time that he was waiting for the perimeter to be secured he held his own perimeter point at 62nd Avenue and Funston Street. Officer McEvoy also stated that as he was waiting he looked inside the black duffle bag and the blue bucket and saw a circular saw and wrenches. Officer McEvoy testified that after the box perimeter was set up, at 11:45 p.m., he met with Officer Kalish and his canine partner Blaze, who was on a fifteen foot leash.

Officer McEvoy also stated that he and Officer Kalish met with Officer Lang on 63rd Avenue because Officer Lang wanted to describe to Officer McEvoy a subject he suspected was the perpetrator described in the 911 emergency call. Officer McEvoy explained that the subject Officer Lang believed was the suspect was a known burglar and drug addict in the area, but Officer McEvoy stated that he informed Officer Lang that the subject did not fit the description. Officer McEvoy testified that during the course of their search Officer Lang separated from Officer Kalish and himself.

Officer McEvoy explained that a police canine uses the odor of thousands of skin flakes to track a subject. Officer McEvoy further explained that canines can hurt someone, can act aggressively without command, and can be commanded to apprehend. Officer McEvoy stated that Blaze acquired Respondent's scent. Officer McEvoy testified

that although Blaze at one point lost track of Respondent's scent he led them northbound to Dawson Street, then through the south side of Dawson Street, then east bound into a small duplex, and finally went north bound across from Funston Street to Dewey Street, until alerting the officers that he acquired Respondent's scent, by barking and lunging. Officer McEvoy said that sometime after midnight he and Officer Kalish saw Respondent moving eastbound at a slow run on the 6100 block of Washington Street, three blocks to the north from the first location from which Respondent had fled. Officer McEvoy claimed that he again lost sight of Respondent when Respondent turned south, off of Washington Street, into a Stop-N-Go store's parking lot, but as Officer McEvoy made the same turn he saw Respondent within the glass front of the store. Officer McEvoy testified that the second time he saw Respondent he reported it to dispatch and the area of the "box" was expanded to include 61st Avenue.

Officer McEvoy stated that Officer Lang was in the Stop-N-Go store before him because he was ahead of Officer Kalish and him, but he was unsure of how Officer Lang knew to go to the Stop-N-Go store. Officer McEvoy explained that Officer Lang went into the Stop-N-Go store when Respondent was in the Stop-N-Go store to "keep an eye" on Respondent, to prevent Respondent from seeing him approach, and to prevent Respondent from fleeing the scene through the rear of the store. Officer McEvoy stated that he walked into the Stop-N-Go store and walked directly beside Respondent and told him to step outside with him, but Respondent stated that he was buying a sandwich and he wanted to finish his sandwich. Officer McEvoy testified that he told Respondent that he needed to leave the sandwich and follow him and Officer Lang outside, and Respondent complied.

Officer McEvoy stated that he held Respondent by the back of his shirt and brought him to the front of the store and to the west wall of the business or the east wall of the next business. Officer McEvoy explained that Sergeant Bolger and Officer Kalish, with his dog, were at the wall, but Blaze was ten to fifteen feet away from Respondent. Officer McEvoy stated that Sergeant Bolger patted down Respondent, Respondent was placed in handcuffs, and he was walked to the patrol car without any force being used. McEvoy explained that it could be considered a use of force if a subject is restrained using handcuffs, but it is not a use of force if an officer is restraining someone who is resisting. Officer McEvoy stated that he was taunted verbally by Respondent as Respondent stated in English to bite him and if he went to jail Officer McEvoy would go to jail as well. Officer McEvoy also testified that once Respondent was taken into custody the perimeter was broken.

Officer McEvoy told the Court that he got a good look at Respondent's face at the store and when he was handcuffed and he did not observe any injuries. When shown the pictures of Respondent's injuries, he did not know how such injuries came about but noted that Respondent had to encounter multiple fences when he ran from the police. Officer McEvoy stated that he did not see any officer being violent to Respondent.

Officer McEvoy stated he did not talk to Respondent once he was placed in the patrol car, and he is not sure how long Respondent stayed in the patrol car, Officer

McEvoy stated that he, Officer Kalish, Officer Lang, and Sergeant Bolger left the scene after this incident. Officer McEvoy testified that Respondent was not charged on that date because it was decided by someone to call CBP because Respondent was an illegal alien. Officer McEvoy stated that he does not believe the original 911 caller was brought in to do a line-up or show-up to identify Respondent.

Officer McEvoy told the Court that he drafted a report shortly after the incident but did not draft a "use of force" report. Officer McEvoy explained that if the subject has an injury an officer is required to document the injury by filing a "use of force" report, which is reviewed by a supervisor.

Officer McEvoy told the Court that a few complaints had been lodged against him with Internal Affairs due to a couple of shootings. Officer McEvoy admitted that he was sued for using excessive force and it involved pushing a subject down on a glass table, but he was exonerated.

3. Testimony of Officer Bryan Kalish

Officer Bryan Kalish has worked with the Hollywood police department, canine unit, since July 2012. Prior to that he had worked with road patrol since July 2007. Officer Kalish stated that when he was assigned to the canine unit in July 201, he completed a five and a half month training and was given his dog, Blaze, in December 2012.

Officer Kalish claimed he recognized Respondent because of the incident starting on January 10, 2013 that resulted in his arrest. Officer Kalish stated that he was involved in Respondent's arrest because he, along with his canine partner, Blaze, was asked to assist in locating Respondent after he had fled from Officer McEvoy. Officer Kalish admitted that on the date of the incident Officer McEvoy was identified as Canine-1 and he was identified as Canine-2 on dispatch. Officer Kalish explained that when someone flees from the scene of the crime the canine unit is sent to respond. Officer Kalish stated that he met with Officer McEvoy around 11:30 p.m. at the 6200 block of Plunkett Street. Officer Kalish testified that when he got to the scene of the crime Officer McEvoy told him that he had seen Respondent standing next to a bucket of tools between two cars before he fled, and McEvoy described the subject they were looking for. Officer Kalish told the Court that he saw the bucket with tools, which was a Home Depot bucket, but he does not remember if the bucket was on the swale, on the Street, or in between two cars, and he could not remember if there was a black duffle bag. Officer Kalish stated that although the Incident Recall (see Ex. 9) stated that he reported to dispatch that he arrived on scene with Officer McEvoy at 11:52 p.m., that does not mean he arrived at that time since an officer can report to dispatch on a later time as the radio is only used for emergency communication and it is not an emergency to note an officer's location.

Officer Kalish told the Court that Blaze acquired a scent at the location where Officer McEvoy had last seen Respondent, and started heading northbound along the west side of 6211 Funston Street. Officer Kalish explained that the canine alerts to dead skin cells that are constantly falling off of people. Officer Kalish further claimed that it is

easier to track someone who is fearful, because they emit a fear odor, especially when a person is running from a police officer, as allegedly was the case with Respondent. Officer Kalish stated that the area in which they were searching was a residential area, and there were various fences, and in an attempt to stay on scent they had to jump some fences. Officer Kalish specified they had to jump two fences, one on the north side of Funston Street and another on south side of Dawson Street. Officer Kalish admitted that Blaze had lost Respondent's scent when they were on Washington Street, although he later said the scent was lost on Dawson Street. Officer Kalish testified that after they lost the scent they did a tactic called "area search," which entailed having the dog search the area by leading him in a circular motion, and Blaze was able to find Respondent's scent again after twenty minutes.

Officer Kalish noted that he never uses his cell phone when he is working with a dog. Officer Kalish also noted that at some point, after they lost Respondent's scent, Officer McEvoy used his cell phone to try to contact Officer Lang, but Officer Kalish is unsure if they were able to speak with each other. Officer Kalish testified that he had learned, after the search was over, that Officer Lang had told Officer McEvoy of a subject that matched the description of the suspect and gave him the address of where the subject lived but Officer Lang is unsure of how or when this information was communicated to Officer McEvoy.

Officer Kalish stated that when the scent was reacquired they headed eastbound along Washington Street towards a Stop-N-Go store, and they were able to see Respondent in front of them. Officer Kalish stated that when they were behind a building that went towards the Stop-N-Go store, while they were at the west of the store, Officer McEvoy observed Respondent inside the store through the glass window. Officer Kalish testified that he also saw Respondent through the glass window talking to the clerk at the counter but had to step out of view because he had Blaze with him. Officer Kalish stated that he and Officer McEvoy waited about ten minutes for Respondent to come out of the store and during this time they met with Officer Lang. Later on during his testimony, Officer Kalish stated that the estimated ten minutes referred to the time an officer went into the Stop-N-Go store until the time Respondent was escorted out. Officer Kalish also testified later on in his testimony that he was not sure if he and Officer McEvoy met with Officer Lang in front of the Stop-N-Go store or later on as his secondary backup. Officer Kalish stated that at some point an officer, perhaps Officer Lang, went inside the Stop-N-Go store as a recon mission and came out while another officer, perhaps Officer Lang or Officer McEvoy, went inside and escorted Respondent out of the Stop-N-Go store. Officer Kalish stated that he and Blaze stayed outside because it was unsafe to go into the Stop-N-Go store and because Respondent could have left through the back of the Stop-N-Go store.

Officer Kalish stated that when Respondent was taken out of the Stop-N-Go store he was brought towards the west side of the Stop-N-Go store, on the south side of Washington Street, and up against a white wall of the next business. Officer Kalish testified that Respondent had his hands on his head, was checked for weapons and placed into a patrol vehicle. Officer Kalish told the Court that he was unsure if he was at the

sidewalk or at the parking lot when Respondent was arrested because the sidewalk and parking lot are a relatively short distance away from each other. Officer Kalish stated that the parking lot was well lit. Officer Kalish testified that Respondent did not appear to be injured or have anything at all that would need the attention of a medic.

Officer Kalish told the Court that he reported to dispatch that he left the scene at 1:50 a.m. but that is not necessarily the exact time he left. Officer Kalish also does not remember if he and Officer McEvoy left at the same time.

Officer Kalish stated that normally when a suspect flees the scene an officer will inform dispatch of his/her location so that other officers have the opportunity to respond. Officer Kalish also stated that sometimes a big occurrence will be reported on dispatch.

4. Testimony of Sergeant Steven Bolger

Sergeant Bolger works for the Hollywood police department and is a sergeant in the canine unit. Sergeant Bolger stated he has been a sergeant since last year but has been in the canine unit for thirteen years. Sergeant Bolger supervises four officers, including Officer McEvoy and Officer Kalish.

Sergeant Bolger claimed that he recognized Respondent because he took him into custody in the 6100 block of Washington Street sometime in January 2013. Sergeant Bolger stated that his involvement in this case started when he heard on the police radio that a suspect, who was involved in a suspicious incident and was loitering in the area, fled from Officer McEvoy. Sergeant Bolger testified that his call number on dispatch that night was Canine-20. Sergeant Bolger stated that two canine units deployed after it was reported on dispatch that a subject fled from Officer McEvoy. Sergeant Bolger testified that he met Officer McEvoy and Officer Kalish on 62nd Avenue and Funston Street, at the initial stage of the search. Sergeant Bolger stated that when he got to Officer Kalish and Officer McEvoy, Officer Kalish already had deployed his canine and he and Officer McEvoy were walking about ten to fifteen feet behind Officer Kalish. Sergeant Bolger testified that he and the other officers headed north from Dawson Street to Dewey Street doing a methodical search. Sergeant Bolger specified that he walked between 62nd and 63rd Avenue on Funston Street and Dawson Street, 62nd Avenue and Dewey Street, and 75% of 63rd Avenue and Dewey Street. Sergeant Bolger stated that in the interest of efficiency, he split from Officer Kalish and Officer McEvoy at Dewey Street, walked back to his car to get his canine, Broq, drove to 63rd Avenue and Dewey Street to deploy from west end of block, and began searching with his canine. Sergeant Bolger stated that at some time Officer Lang joined him as his backup officer, and was ten to fifteen feet to the left of him.

Sergeant Bolger stated that he searched the areas of Washington Street to Dewey Street south of 61st Avenue until 62nd Avenue. Sergeant Bolger told the Court that Broq picked up a scent on the southwest corner of Washington Street, between 62nd and 63rd Avenue. Sergeant Bolger testified that after just searching one block, Broq alerted him to the underside of a car parked at southwest corner of 62nd Avenue. Sergeant Bolger had Officer Lang check under the car. Sergeant Bolger stated that when Officer Lang saw

someone under the car, he spoke to the subject and the person underneath the car exited from underneath the vehicle on the west side of the vehicle. Sergeant Bolger stated that the subject was not breathing heavily and said that he was staying with someone in an apartment adjacent to the car, but when the subject was given the chance to knock on the door no one responded.

Sergeant Bolger stated that he got a good look at the subject's face as there was enough light and saw that the subject was wearing a black shirt with red writing on it. Sergeant Bolger claimed that the subject was Respondent. Sergeant Bolger stated that he thought that the description of the suspect was a person in a red shirt with black writing so he let the subject go. Sergeant Bolger also stated that the subject proceeded to walk eastbound on the south side of Washington Street while he continued his search of the block and Officer Lang stayed with Sergeant Bolger as his backup until Sergeant Bolger went back to his car.

Sergeant Bolger testified that he later met with Officer McEvoy and Officer Kalish at 62nd Avenue and Dawson, once he returned his canine partner to the car. Sergeant Bolger testified that Officer McEvoy cleared up the misunderstanding in regards to the suspect's clothing, but he did not recall what Officer McEvoy did once Sergeant Bolger informed him the suspect he had seen earlier matched Officer McEvoy's description. Sergeant Bolger also does not recall where he went after he met Officer Kalish and Officer McEvoy.

Sergeant Bolger stated that a patrol officer directed him to a Stop-N-Go store, but he did not remember the his name. Sergeant Bolger then testified that he got notified of the location of the suspect at the Stop-N-Go store by McEvoy via dispatch. Later on in his testimony, Sergeant Bolger testified that he did not remember how he knew to go to the Stop-N-Go store at 62nd Avenue and Washington Street except for the fact that Officer McEvoy was at the location. Sergeant Bolger stated that initially only Officer McEvoy and Officer Kalish were in the area around the Stop-N-Go store, but Officer Lang later appeared in the area. Later on in his testimony, Sergeant Bolger testified that he did not remember the sequence of when the officers arrived at the store. Sergeant Bolger told the Court that Officer McEvoy entered the Stop-N-Go store to confirm it was the suspect and he took him into custody. Sergeant Bolger testified that he does not recall Officer Lang going inside the store. Sergeant Bolger stated that when Respondent was arrested he was brought to the wall of the building due west of the convenience store, had his hands placed on the wall, was handcuffed by him, and put in back of a patrol car. Sergeant Bolger also stated that Officer Kalish' s dog was in proximity, approximately ten to fifteen feet, to Respondent once he was removed from the store. Sergeant Bolger testified that there was no violence when Respondent was arrested, but Respondent did try to taunt the police officers by telling them in English to hit or bite him with the dog. Once Respondent was arrested and put in the patrol car Sergeant Bolger stated that he did not see any injuries on Respondent.

Sergeant Bolger did not draft a report for this case, but as their supervisor he reviewed Officer McEvoy's and Officer Kalish' s reports. Sergeant Bolger stated that it

is possible that someone used their cell phone during the course of the search because things that are not essential are sometimes transmitted over the phone so that the police radio will not be tied up for those officers that are actually searching.

5. Testimony of Officer Justin Lang

Officer Justin Lang has worked with the Hollywood police department for four years as a patrol officer. Officer Lang stated that in preparation for his testimony he read through a packet given to him by the Department that contained pictures of Respondent, transmissions, and police reports.

Officer Lang claimed he recognized Respondent from events that took place on January 11, 2013. Officer Lang stated that the events of January 11, 2013 started from a dispatch call for a suspicious person, a Latin male, and based on this dispatch call he headed to a designated box position. Officer Lang testified that he did not recall his assignment for the box position. Officer Lang stated that to get into box position he drove his patrol car to the position, initiated emergency lights, and stayed inside his vehicle to see if there was any suspect that fit the description. Officer Lang did not remember how long he stayed in that position. Officer Lang told the Court that he left his box position to meet with Sergeant Bolger, who had contacted him to be his "standby for security." Officer Lang explained that as "standby for security," he made sure that no one could ambush him and Sergeant Bolger as he stood behind Sergeant Bolger while Sergeant Bolger was with his canine. Officer Lang recalled that this incident took place in the night, but did not recall where he met with Sergeant Bolger or how long he spent with Sergeant Bolger.

Officer Lang claimed that during his search with Sergeant Bolger they encountered Respondent, who was sleeping underneath a vehicle with a tarp over it. Officer Lang testified that he lifted the tarp, observed Respondent, and gave a verbal command for Respondent to exit from under the vehicle. Officer Lang told the Court that Respondent hesitated but came out from underneath the vehicle and told Sergeant Bolger and Officer Lang that he had been sleeping. Officer Lang told the Court that Sergeant Bolger needed to determine if Respondent was the person they were looking for, but he does not recall if he or Sergeant Bolger reported it to dispatch. Officer Lang stated that Respondent initially headed westbound to try to go to a neighbor's house and then walked eastbound on Washington Street. Officer Lang explained that Respondent was allowed to walk away because he and Sergeant Bolger did not think Respondent was the suspect. Officer Lang stated that at the time there were lights on the Street but it was not well lit.

Officer Lang claimed that after Respondent walked away that night, he saw Respondent again at the Stop-N-Go store. Officer Lang stated that what led to finding Respondent at the Stop-N-Go was because he was advised that Respondent could possibly be in that store, but he does not recall who had advised him of that. When asked why he was looking for Respondent in the Stop-N-Go store when he already had released Respondent a first time because he believed Respondent was not the suspect Officer Lang, remained silent.

Officer Lang stated that after he stopped tracking with Sergeant Bolger, he went directly to the Stop-N-Go store by car and once there he saw Respondent inside the store. Officer Lang testified that Officer McEvoy also was in the area. Officer Lang told the Court that he next went into the Stop-N-Go store to determine if Respondent was in fact the person he saw earlier and to determine if there were any avenues of escape inside the store.

Officer Lang said that he observed Respondent was sweaty and had dirt on him. Officer Lang testified that when he left the Stop-N-Go store he walked to Christ Ministries, located on Washington Street, and Sergeant Bolger, Officer McEvoy, and Officer Kalish were in the area. Officer Lang told the Court that the next time he saw Respondent was on Washington Street on the north side of the Christ Ministry as he was being led out of the store by Officer McEvoy. Officer Lang stated that at the time Respondent was arrested he was standing fifteen to twenty feet away from Respondent. Officer Lang does not recall seeing Respondent on the ground or whether Respondent said anything to the officers. Officer Lang stated that he does not recall whether the officers used force to take him into custody, or whether Respondent had any injuries on him. Officer Lang testified that he does not remember who placed the handcuffs on Respondent or who took him into custody, but remembered that Sergeant Bolger, Officer McEvoy and Officer Kalish were with Respondent at that point and that Respondent was placed in a patrol car. Officer Lang does not recall in whose patrol car Respondent was placed or how long he stayed at the scene after Respondent was arrested. Officer Lang told the Court he does not recall what happened between 12:34 a.m. until 12:57 a.m., when the suspect was placed in custody.

Officer Lang does not recall if he ever used a cell phone during his search but believes that the Hollywood police department allows the use of cell phones. Officer Lang stated that an officer can routinely not report to dispatch and use his/her cell phone in the middle of an investigation if needed, but does not know when this would be appropriate. Officer Lang admitted that using dispatch is an important way to share relevant information about an investigation to others that are also working on that investigation. Officer Lang also did not know of any reason that he would have had to use his cell phone during the search. Officer Lang testified that "Mac" and "Danny" are names he uses to call Officer McEvoy. Officer Lang cannot recall why he said on dispatch "Mac its Lang meet me at 63rd Avenue and Dewey Street." Officer Lang also does not recall what his, Officer McEvoy's, or Sergeant Bolger's call numbers were. Officer Lang stated he did not write a police report in regards to this incident because he had minimal contact and because he was not the one to arrest Respondent.

Officer Lang stated that the officers working in internal affairs are Sergeant Ferguson and Lieutenant Anterio. Officer Lang stated that Scott Pardon is a major and Vincent Affanado is the acting police chief. Officer Lang testified that he did not talk to Sergeant Ferguson, Lieutenant Anterio, Major Pardon, or Chief Affenado in regards to this case.

6. Testimony of Pablo Gomez

Mr. Pablo Gomez said he has deferred action under the Deferred Action for Childhood Arrival (DACA) process. Mr. Gomez stated he received deferred action a year ago, and has received his work permit. Mr. Gomez testified that he recognized Respondent because Respondent goes to the Stop-N-Go store where he works at 6100 Washington Street. Mr. Gomez testified that he has worked in the same Stop-N-Go store for the last five years. Mr. Gomez said he sometimes saw Respondent outside of the store.

Mr. Gomez stated that he saw Respondent have an encounter with police at his store on January 10, 2013. Mr. Gomez said that around midnight that day he was with his co-worker working at the Stop-N-Go store. Mr. Gomez testified that he was attending customers when Respondent first walked in on that night. Mr. Gomez told the Court that Respondent did not appear to be injured or sweaty. Mr. Gomez stated that he did not remember the exact color of Respondent's shirt but he remembered that Respondent's shirt was a dark color and he had a type of white dirt on it. Mr. Gomez told the Court he asked Respondent why he was dirty and Respondent told him that he got into a fight. He claimed that Respondent walked toward the bakery area to get something to eat and stayed there for five minutes. Mr. Gomez testified that at night they sell the food at a discount because they are going to dispose of it.

Mr. Gomez stated that during the five minutes Respondent was at the store, he told Mr. Gomez that the police were following him because a neighbor had seen him, he hid under a car to escape the police, and when the police found him again they let him go.

Mr. Gomez told the Court that after the five minute period was over a police officer came into the store and he went towards the bakery and pulled out a drink. Mr. Gomez stated the officer looked at Respondent and recognized him and Respondent got nervous. Mr. Gomez then stated that the police officer came to pay for the drink with his credit card but because there has to be a minimum five dollar charge on a credit card Mr. Gomez told the police officer that he could have the drink for free.

Mr. Gomez said that after the police officer left the store Respondent asked his co-worker for one of his shirts, since his co-worker had two shirts, but his co-worker refused. Mr. Gomez testified that Respondent then ran to the restroom and took a jacket that was hanging on the door. Mr. Gomez stated that one or two minutes after that Respondent was approached by a police officer and the police officer told Respondent to walk with him. Mr. Gomez told the Court that Respondent told the officer that he had not done anything and asked why he was taking him. Mr. Gomez stated that the officer took Respondent outside of the store and to the left side of the building where it was dark and he could not see anything.

Mr. Gomez stated that the first time he spoke about the incidents on January 10, 2013 was with Respondent's cousin, who wanted to know what happened to Respondent.

Mr. Gomez testified that Respondent's cousin told him that Respondent woke up in a hospital after the police took him. Mr. Gomez stated that Respondent's cousin then passed Mr. Gomez his phone to talk to Respondent. Mr. Gomez told the Court that Respondent talked to him to let him know what happened to him and Respondent also asked Mr. Gomez for some money and to help him get the video recordings the Stop-N-Go had of that night. Mr. Gomez told the Court that he asked his boss for the video recordings but his boss refused to hand over the recordings and told Mr. Gomez that he would look suspicious and he did not want to get involved.

Mr. Gomez stated that two weeks after that Respondent's cousin came to the store again but his boss told him not to speak to Respondent's cousin, again because he did not want Mr. Gomez to be involved in anything. Mr. Gomez said that two people from the University of Miami came to talk to him about the incident and he told them what happened. Mr. Gomez told the Court that the people from the University of Miami came back again with a document that had a summary of everything he had told them. Mr. Gomez explained that the summary did not contain everything he had told them, specifically it did not contain the part about Respondent telling him that he was running away from the police. Mr. Gomez stated that he told the people from the University of Miami about the mistake and they fixed it and he thereafter signed the document but he never got a copy. Mr. Gomez testified that the last person he spoke about the incident to was the Department and he wrote everything that happened but had to write it fast.

Mr. Gomez stated that the Hollywood police officers go to the store to buy various things. When asked why he wanted to give the drink to the police officer for free Mr. Gomez stated that he wanted to do that because "the police protect people from other bad people and they do a good thing." Mr. Gomez also stated that the store also gives a 10% discount to police officers.

7. Testimony of Respondent

Respondent told the Court that Spanish is the language he speaks best and he speaks very little English. Respondent stated that he lives in a trailer complex and has been there for about a month. Respondent was working in a construction company and he was working from eight in the morning until the afternoon, and often working after midnight, sometimes seven days a week.

Respondent states that on the night of January 10, 2013, he got out of work at 8 p.m. Respondent said that he walked from his house to the Stop-N-Go store and he arrived at the store by midnight. Respondent told the Court that he knows the area around the Stop-N-Go store well, but he does not walk around the area very much. Respondent stated that he remembers eating a hamburger, drinking an Arizona ice tea and having two beers to take home with him. Respondent later told the Court that he had bought a sandwich, chicken wings, and Arizona ice tea. Respondent said that he got the food at a lower price because it was food left over from the day.

Respondent recalled that after he purchased his food he began talking to Mr. Gomez about soccer. Respondent explained that he saw Mr. Gomez often when he went

to the store to eat. Respondent stated that a police officer came into the Stop-N-Go store, went into the restroom, spoke to the cashier, and left.

Respondent said that another police officer entered the Stop-N-Go store five to ten minutes later, walked half-way to Respondent, and told Respondent to come forward. Respondent stated that when he finally came forward, the police officer held Respondent's shirt from his right shoulder and pulled him out of the store. Respondent told the Court that Mr. Gomez witnessed when Respondent was taken out of the store by the police officer.

Respondent testified that the police officer walked Respondent to the next building, which was a building with a blue roof, a church. Respondent explained that the police officer walked west with Respondent and brought him to the middle of a parking lot. When given a picture of the parking lot to identify where he was taken, Respondent pointed to the area in the parking lot close to the sidewalk. See Ex. 15 at 4. Respondent testified that at this parking lot there was a patrol car with the lights off and three other officers waiting in the area, one of whom was holding a dog. Respondent told the Court that the area was mostly dark because there were a lot of trees.

Respondent stated that the three police officers looked to be upset or furious and as he was walking towards them they seemed to be mocking him. Respondent said the police searched him, asked him to put his hands on his head and spread his legs. Respondent told the Court that after he put his hands on his head he felt pain in his ankle, he thinks from a possible kick from one of the police officers, before he fell to the ground. Respondent stated that when he was on the floor he felt two or three other hits on top of him and an officer handcuffed him. Respondent said that there were no people walking by as this was happening to him. Respondent testified that while he was on the floor one of the police officers was telling the dog to bite Respondent or lunge at him. Respondent stated that he was put inside a patrol car and driven to another area. Respondent told the Court he was not read his rights.

B. Transfer of Custody from Hollywood Police to CBP

1. Testimony of Officer Melvin Atkinson

Officer Melvin Attkisson has worked for the Hollywood police department for the past five years as a patrol officer. Officer Attkisson claimed that he recognized Respondent as the prowler from a prowling and loitering call received on January 10, 2013. Officer Attkisson said based on that call, his sergeant set up the box perimeter near midnight. Officer Attkisson stated that when he received the information from dispatch he drove to that location, took a position on the box perimeter and stayed in his vehicle for thirty minutes to an hour.

Officer Attkisson stated that when he heard on dispatch that the subject was in custody and that they could clear their positions, he drove to where the subject was in custody. Officer Attkisson testified that once he arrived where the subject was held, he found Respondent in custody. Officer Attkisson told the Court that the police told him to

tell Respondent in Spanish why he was arrested and to give them his name. Officer Attkisson testified that when he first arrived, Officer McEvoy and Officer Lang were there, but he specifically spoke with Officer Laframboise, Officer McEvoy and Officer Mears on that night. Officer Attkisson said that Respondent was inside Officer Laframboise's vehicle and the window was down as he was talking to Respondent from outside of the car. Officer Attkisson testified that he did not notice any injuries on Respondent nor did he witness anyone mistreat him. Officer Attkisson stated that Respondent was acting cocky, like the police were in the wrong and he was right and unafraid. Officer Attkisson testified that he introduced himself to Respondent and told him he was being charged with loitering and prowling and possession of burglary tools. Officer Attkisson stated that Respondent told him that the tools in the bag were his. Officer Attkisson also testified that he asked Respondent his name and date of birth. Officer Attkisson stated that the police could not find Respondent's name in "David." He explained that "David" is a system that contains DMV information. Officer Attkisson stated that when he could not find Respondent's name in the system, he went back to ask Respondent for an identification card, and Respondent informed him that he was an illegal alien and was from Honduras. Officer Attkisson testified that Respondent told the officers to let him go home and a police officer responded that "the only place you are going is jail." Officer Attkisson also testified that Respondent told the officers to send him to Honduras and an officer responded by saying "we can accommodate that."

Officer Attkisson told the Court that Officer Laframboise was able to contact CBP on his second attempt. Officer Attkisson stated that after CBP was called, he parked parallel to Officer Laframboise and they both did paperwork as Respondent was in the back seat of Officer Laframboise's vehicle. Officer Attkisson stated that CBP came an hour after they were called and he saw Respondent duck inside Officer Laframboise's patrol car. Officer Attkisson said that Officer Mears and Officer Laframboise opened the back door of Officer Laframboise's vehicle and Respondent was "playing possum" or playing dead. Officer Attkisson stated that he saw one of the officer's open the vehicle's door and gave a verbal command two times for Respondent to wake up, and when Respondent did not wake up they told Officer Laframboise to get an ammonia packet. Officer Attkisson testified that when he came back with the ammonia packet Officer Mears was performing a sternum rub on Respondent.

Officer Attkisson explained that it is normal procedure to perform a sternum rub when a subject is unresponsive. Officer Attkisson, however, stated that based on what he has learned if he had an ammonia packet he would personally not perform a sternum rub. Officer Attkisson also explained that if he was by himself he would not use a sternum rub for safety reasons, as the person who the sternum rub is being performed to might punch him in the face.

Officer Attkisson told the Court that when Officer Mears was performing the sternum rub, Respondent was scrunching his eyes and fighting not to wake up, but when the ammonia packet was put near his face Respondent woke up.

Officer Attkisson stated that when Respondent woke up he was taken out of the patrol car and the CBP officer talked to Respondent to determine if he was illegal, to which Respondent answered that he was an illegal alien. Officer Attkisson told the Court that when handcuffs were being exchanged from the Hollywood handcuffs to CBP's there was a problem with Officer Laframbroise's handcuffs and Respondent was moving back and forth so Officer Mears had to hold him by the chest. Officer Attkisson stated that Respondent got upset because Officer Mears touched him and said that he did not want that "black guy" to touch him. Officer Attkisson stated that after Respondent made that comment, he told Respondent that he will not allow an officer or a civilian to be racist and if Respondent cooperated with them they would be on their way. Officer Attkisson stated that after they exchanged handcuffs, the CBP officer left with Respondent. Officer Attkisson told the Court that he immediately went back on duty when Respondent left but did not write a report on the incident.

Officer Attkisson told the Court that he did not observe any injuries on Respondent's face. When Officer Attkisson was shown a picture of a bump on Respondent's forehead he stated that he had seen similar injuries like that when a suspect hits his head against the cage of a patrol car. Officer Attkisson also stated that if he would have seen a bump on Respondent's head like the one depicted in the picture he would have taken Respondent to the hospital.

Officer Attkisson stated that normal protocol when communicating on dispatch is to limit communication to inform police of when someone comes across the suspect or because of safety issues. Officer Attkisson further stated that communication between other officers that is of less significance can be discussed in another channel rather than the main one.

2. Testimony of Officer Derrick Mears

Officer Derrick Mears works for the Hollywood police department. Officer Mears has worked with the Hollywood police department for almost eight years as a police officer.

Officer Mears recognized Respondent from the incident that took place on January 2013. Officer Mears stated that his involvement in the case was mostly being assigned to a perimeter position, on south 62nd Avenue and Washington Street, in his marked vehicle, where he sat and waited for about thirty minutes. When asked again where exactly he was positioned in the perimeter he said he was at 63rd Avenue and Washington Street. Officer Mears testified that the perimeter was set up to box the suspect in while Officer McEvoy and Officer Kalish attempted to locate Respondent. Officer Mears testified that he thinks Respondent was detained by Hollywood police at 12:58 a.m. Officer Mears stated that he left his position when it was transmitted via dispatch that Respondent was detained, and from there went to 6100 block of Washington Street. Officer Mears stated that when he got to the 6100 block of Washington Street, facing west of the Stop-N-Go store, he saw Officer McEvoy and Officer Lang escort Respondent to Officer Laframboise's marked police vehicle. Officer Mears stated he was able to see Officer McEvoy, Officer Lang and Respondent because he was close to them.

Later in his testimony Officer Mears stated that he did not get a chance to see when Respondent was placed inside the vehicle. Officer Mears stated that after Respondent was seized he was moved to another location and Officer Laframboise's vehicle, where Respondent was being held, was at 62nd Avenue. Officer Mears explained that Officer McEvoy and Officer Lang were not in the second location.

Officer Mears told the Court that CBP arrived at the location in a marked vehicle. Officer Mears came in contact with Respondent when Officer Attkisson and he opened the rear door of Officer Laframboise's patrol car. Officer Mears told the Court that Respondent did not appear hurt or injured. Officer Mears stated that when the door was opened, Respondent had half his body laid out on the seat as he was handcuffed and his eyes were closed. Officer Mears stated that he had had a chance to see Respondent beforehand in Officer Laframboise's vehicle and he had been sitting in the back seat. Officer Mears testified that when he saw Respondent laid out in the back seat he told Respondent to get out of the car but Respondent kept laying there. Officer Mears told the Court that he laid Respondent on his side, head facing Officer Mears, while Respondent was still in the vehicle, and rubbed his upper chest and sternal area. Officer Mears stated that when the sternal rub was being applied, Respondent began to grit his teeth and appeared like he was trying not to give a reaction and fight through it.

Officer Mears explained that a sternum rub is to check someone's level of consciousness. Officer Mears told the Court that he learned to do a sternum rub while he was in the police academy and it was a 40 to 50 hour course. Officer Mears told the Court that the sternum rub is primarily used by medical professionals. Officer Mears does not believe that a sternum rub can result in leaving scratches on the person on whom it is being performed. Officer Mears told the Court that he does not believe he caused the scratch and red bruising in part of the area on Respondent's chest, but admitted it is possible that the bruising in the middle of the chest could have been caused by the sternum rub. Officer Mears believes that Respondent just did not want to get out of the patrol vehicle.

Officer Mears stated that Respondent woke up when Officer Attkisson gave him smelling salts and after he was awakened he was taken out of the car. Officer Mears testified that none of the officers laughed at Respondent when he woke up. Officer Mears told the Court that once Respondent was awake he began to scream obscenities in Spanish. Officer Mears stated that Respondent called him a derogatory phrase involving chocolate. Officer Mears testified that once he was taken out of car the CBP officer walked over and took Respondent to his vehicle.

Officer Mears does not recall Respondent having any injuries or a bump on his head. Officer Mears told the Court that his call number on dispatch is probably 17. Officer Mears testified that an officer should report to dispatch when a subject is detained, if an officer is on perimeter, and if they change location. Officer Mears did not get any communication from his supervisor or internal affairs regarding this case.

3. Testimony of Officer Andrew Laframboise

Officer Laframboise is a police officer with the Hollywood police department. Officer Laframboise has been a police officer since September 2012. Before that he was a military police officer for over six years.

Officer Laframboise stated that he recognized Respondent from the incidents that occurred January 12, 2013. Officer Laframboise stated that he was advised at 11:32 p.m. by dispatch of a suspicious person, heard Officer McEvoy say there was a Latin male running away from him, and was at the scene where the suspicious person had fled in less than ten minutes. Officer Laframboise stated that the police set up a box perimeter and because he was in the area he went to 6325 Plunkett Street to meet with Mr. Ehrbar, the original 911 emergency caller. Officer Laframboise told the Court that he was a floating patrol officer, as all of the perimeter locations already were assigned. Officer Laframboise explained that as a floating patrol officer he drove around the area that was boxed, in particular 62nd and 64th Avenue and Plunkett Street, to see if he could locate the suspicious person. Officer Laframboise said that after a while, he took the place of an officer that was stationed at 62nd Avenue and Washington Street.

Officer Laframboise stated that he heard via dispatch that the Latin male had been caught at the 6100 block of Washington Street. Officer Laframboise stated that he drove to the 6100 block of Washington, where there were three police officers, and some of them were from the canine unit, but he did not see any dogs. Officer Laframboise stated that although he did not see who arrested Respondent, Officer Lang was the officer who walked Respondent to Officer Laframboise's vehicle. Officer Laframboise explained that the reason Respondent was arrested was because he was loitering and prowling, in possession of various tools, and obstruction of justice without violence. Officer Laframboise testified that Respondent was searched by him and then placed on the right side of his backseat. Officer Laframboise also testified that he drove Respondent to 62nd Avenue and Plunkett Street, where he met with his sergeant, other police officers involved in the incident, and Officer Cardoso was called to come to the scene. Officer Laframboise stated that Respondent was detained in the back of his car for at most thirty to forty minutes.

Officer Laframboise stated that during the time Respondent was in the patrol car, Officer Laframboise walked over to where Officer McEvoy stated Respondent had fled and examined the tools in the bucket and trash bag. Officer Laframboise also stated he did a canvas of the neighborhood, asking people if they were missing their tools, at around 1:30 a.m. Officer Laframboise told the Court that Mr. Ehrbar was never contacted to do line-up or show-up with Respondent to determine if Respondent was the suspicious person at his neighbor's house, but Officer McEvoy showed up to identify Respondent as the suspect that had fled from him. Officer Laframboise noted that he had tried to ask Respondent questions regarding the tools in question, but because he asked Respondent in English, Respondent could not understand him.

Officer Laframboise also stated that Respondent was sweating profusely, seemed agitated and cocky, and asked in English for water but Officer Laframboise stated that he did not have any water. Officer Laframboise told the Court that Respondent did not appear injured in any way. Officer Laframboise explained that if Respondent had been injured he would have taken Respondent to the hospital. Officer Laframboise stated that he never saw anyone threaten Respondent. Officer Laframboise testified that Respondent said in English that he wanted to go back to Honduras and he tried to provide his name in English, but it was hard to translate, so Officer Attkisson talked to him in Spanish.

Officer Laframboise told the Court that his sergeant told him to give Respondent to the Department of Homeland Security (DHS) instead of charging Respondent with a misdemeanor. Officer Laframboise stated that he had initially called DHS but Officer Attkisson talked with the individuals at DHS because they were speaking Spanish to each other. Officer Laframboise told the Court that DHS came to the scene thirty to forty minutes after they were called.

Officer Laframboise testified that it was part of a police officer's work to collaborate with other law enforcement agencies, including CBP. Officer Laframboise explained that if the police had probable cause about a suspect they can hold an undocumented person until CBP arrives and if a suspect is arrested and booked the suspect is automatically transferred to Immigration at the end of the criminal case. Officer Laframboise further explained that if suspect going to be arrested then there is no reason to call Immigration.

Officer Laframboise stated that when DHS came, he got out of his patrol car to greet him and when he came back to his vehicle, Respondent was "playing possum." Officer Laframboise explained that Respondent was hunched over in his seat with his eyes closed. Officer Laframboise told the Court that he opened his vehicle's door and asked Respondent to step out of the vehicle, but Respondent did not respond to any of his commands. Officer Laframboise stated that Officer Mears showed up, and Officer Laframboise told him that Respondent was being unresponsive but breathing. Officer Laframboise testified that Officer Mears initiated a sternum rub. Officer Laframboise explained that a sternum rub is when a person makes a fist and uses his/her knuckles to rub the sternum in an upwards and downwards motion to check to see if the other person is conscious. Officer Laframboise further explained that the sternum rub is a painful but normal procedure to check to see if a subject is alert and responsive and if the person does not respond then the police would call rescue.

Officer Laframboise testified that when Officer Mears was doing a sternum rub on Respondent, Respondent was rolling his eyes behind closed eyelids and was gritting his teeth. Officer Laframboise also testified that an ammonia packet, which acts like smelling salts and emits a smell of ammonia, was placed under his nose and at that point Respondent became conscious and started yelling in Spanish.

Officer Laframboise stated that Respondent started yelling and jumping up and down when his handcuffs were being switched from the Hollywood police handcuffs to

DHS's handcuffs. Officer Laframboise stated that after Respondent's handcuffs were switched the immigration officer took Respondent into his custody and left the scene. Officer Laframboise told the Court that after the immigration officer left, he took the tools from the blue bucket and forty gallon black trash bag and had Officer Cardoso take pictures of them. Officer Laframboise stated that he filled out an evidence form for the tools and took the tools into custody for safe keeping.

Officer Laframboise told the Court that within two hours after the incident, he wrote a police information narrative, and a few weeks later he wrote a probable cause affidavit. Officer Laframboise told the Court that if the incident includes an injury to the suspect, the police report must include the injury and in this case Officer Laframboise did not note any injury on Respondent. Officer Laframboise testified that after the incident he contacted a complainant who had reported a burglary of his conveyance in the vicinity where the incident took place, and the complainant told him that he was missing a jigsaw and two or three saws. Officer Laframboise testified that the tools stolen from the victim were the same tools recovered from Respondent, and he knew this because he talked to the detective in charge of the burglary case. Officer Laframboise told the Court that he wrote the probable cause affidavit on February 10, 2013, because that is when they had enough probable cause to charge Respondent with burglary.

4. Testimony of Sergeant Richard Losenbeck

Sergeant Richard Losenbeck works with the Hollywood police department. Sergeant Losenbeck has been a sergeant for a year. Prior to that he worked in road patrol for five years, and before that he worked as a narcotics detective.

Sergeant Losenbeck stated that he was involved with the incident that occurred on January 10, 2010 because he was the shift supervising sergeant for the west side of the city where the incident occurred. Sergeant Losenbeck explained that he became involved because his duty as sergeant is to monitor radio traffic and on that day a canine officer requested other officers to box off the area where a suspect had fled. Sergeant Losenbeck explained that it was his job to further enhance the perimeter by using Google map and assigning four points to box the area. Sergeant Losenbeck stated that the perimeter was set up at the lieutenant's office and communicated over the radio. Sergeant Losenbeck stated that he left the station at some point after midnight, and went to the scene where Respondent was arrested, which was at 62nd Avenue south of Washington Street.

Sergeant Losenbeck told the Court that the tools were in between two cars. Sergeant Losenbeck testified that he saw Respondent at the back of the police car as he was standing a couple of feet away and could tell he was male but could not decipher his race.

Sergeant Losenbeck believed that the police had probable cause to arrest Respondent because he was loitering and prowling. Sergeant Losenbeck stated that he spoke to Officer Attkisson, who told him that Respondent had stated he was an illegal alien and that the officers had contacted CBP, who were responding. Sergeant

Losenbeck stated he respected their decision and did not find it inappropriate. Sergeant Losenbeck explained that the Hollywood police department had a mutual aid and inter local agreement with federal law enforcement agencies, and CPB is one of these agencies.

Sergeant Losenbeck does not recall hearing of any force used during the arrest and does not know of any injuries Respondent sustained during the arrest. Sergeant Losenbeck stated that if there are visible injuries on a subject, then he has to go to the hospital, and if these injuries are alleged to have been caused by a police officer then the Hollywood police department has to fill out the necessary paper work. Sergeant Losenbeck testified that there have been some problems with the Broward Sheriff's office and detention offices where the subjects complained of having been injured during arrest but those injuries actually resulted from their time spent in jail.

Sergeant Losenbeck told the Court that when there is an allegation of a person being injured during an arrest it either goes to Internal Affairs to investigate, or it goes through administrative review when Internal Affairs deems it not to be under their jurisdiction. Sergeant Losenbeck explained that there are two police officers working in Internal Affairs, Sergeant Ferguson and Lieutenant Anterio, and they report to the Police Chief. Sergeant Losenbeck stated that once it gets sent to be administratively reviewed it gets sent to him and he conducts an investigation and submits a memo to Internal Affairs. Sergeant Losenbeck testified that "none of that" happened in Respondent's case.

Sergeant Losenbeck stated he did not recall anyone using cell phones during the search but said that cell phone use is appropriate when conducting a search and the only time it is not allowed is when an officer is driving a patrol car. Sergeant Losenbeck stated that cell phone communication is quite common in this type of scenario as the radio should only be used for emergency communication.

Sergeant Losenbeck told the Court that after the arrest he had a conversation with his supervisor, Sergeant Wolfkill, about the incidents that transpired that day because the tools recovered that night were reported stolen and they agreed that a probable cause affidavit should be completed. Sergeant Losenbeck stated that a probable cause affidavit was drafted by Officer Laframboise at his request.

Sergeant Losenbeck explained that a sternum rub and smelling salts are tools or methods utilized by fire rescue to elicit a reaction from unconscious people. Sergeant Losenbeck admitted that a sternum rub produces pain when administered, but to his knowledge it does not cause injuries. Sergeant Losenbeck stated that police officers are first responder and CPR certified, and are therefore in a position to assist a subject who has a medical condition or render aid if a subject is unconscious. Sergeant Losenbeck testified that it is appropriate to perform a sternum rub to a subject who is feigning sleep because if someone is feigning illness it helps an officer determine what next step should be in handling the subject.

5. Testimony of Officer Henry Cardoso

Officer Henry Cardoso works for the Hollywood police department in code enforcement for the last three to four months. Officer Cardoso stated that on January 10, 2013, he was working with the Hollywood police department. His job entailed photographing and processing stolen items. Officer Cardoso stated that he recognized Respondent from responding to a call via dispatch in regards to a possible burglary in progress at 62nd Avenue and Plunkett Street. Later on in his testimony Officer Cardoso acknowledged that his report stated the incident was at 62nd Avenue and Funston Street. Officer Cardoso stated that when he got to the scene there were four Hollywood police officers there: Officer Attkisson, Officer Mears and two other officers whose names he could not recall. Officer Cardoso stated that Officer Laframboise informed him that there was a possible theft involving some tools and a bag but it was unknown to whom the tools belonged. Officer Cardoso testified that he observed that the power tools were in a bucket and a bag, and he was able to see these tools even though it was night time, using a flashlight and the street light. Officer Cardoso stated that the tools were in the middle of the road. Officer Cardoso told the Court that he proceeded to photograph the items, the property was noted in his records, and the photographs were deposited to a specialist. Officer Cardoso stated that he did not take any fingerprints because they did not know if the items were involved in a crime or just property. Officer Cardoso stated that he heard that the following day that an individual came forward to claim the property.

Officer Cardoso stated that when he first saw Respondent, he was in the back of the police vehicle on the swale of 62nd Avenue. Officer Cardoso told the Court that he was able to see Respondent's face clearly as he didn't need a flashlight, and did not notice any injuries on Respondent.

6. Testimony of Agent German Catala

Agent German Catala works with U.S. Customs and Border Patrol (CBP). Agent Catala stated that he has been working at CBP for twenty years. Agent Catala testified that his duty as a CBP officer is to prevent the illegal entry of aliens into the United States. Agent Catala said he has arrested over 100 people, and has had many cases where the person has fled from him or the police.

Agent Catala recognized Respondent from the time he was arrested by Hollywood police on January 11, 2012. Agent Catala explained that Hollywood police called his dispatch at 1:45 a.m. or 2:00 a.m. and reported that Respondent was in custody because he had tried to escape from the police. Agent Catala stated that CBP was interested in Respondent because the police had told him that he was an illegal alien in the United States. Agent Catala testified that Respondent was being held at 68th Avenue and Dawson Street. Agent Catala stated that it took twenty-five to thirty minutes from the time he received the order from dispatch until he got to the location Respondent was being held. Agent Catala stated that when he got to the scene, there were three police officers, one police car and Respondent was inside the vehicle. Agent Catala described the area as being dark and although there were street lights they did not give off a lot of

light. Agent Catala testified that the officers were outside of the police car and explained to him that Respondent was apprehended by them, had tried to escape from them, and he was being very resistant. Agent Catala told the Court that Respondent looked like he was sleeping inside the patrol car when the officers opened the patrol car door. Agent Catala stated that the police officers told him that they wanted to awaken Respondent and that they believed Respondent was faking his state of consciousness. Agent Catala testified that he was five to six feet from Respondent when a police officer put his hands over Respondent's chest and started rubbing it, but Respondent did not wake up. Agent Catala stated the police officers also used an ammonia packet on Respondent. Agent Catala told the Court that when the ammonia packet was administered to Respondent he woke up. Agent Catala testified that when Respondent finally did wake up the police officers laughed at him because they thought he had been playing dead.

Agent Catala told the Court that once Respondent awoke was outside of the car, he tried to escape and had to be restrained. Agent Catala stated that he interviewed Respondent for about five to six minutes. Agent Catala testified that he had not read Respondent his rights because it was unnecessary for him to do that because at the time he had reason to believe Respondent was in the United States illegally. Respondent explained that if Respondent was going to be charged than he would be read his rights. Agent Catala said that Respondent started to complain, and was being very belligerent and aggressive with the police officers. Agent Catala stated that Respondent was telling him that the police officers had beat him, especially the black police officer who had touched Respondent's rear end, organs and chest many times. Agent Catala also stated that when he had told Respondent that the officers were required to touch him in order to check for weapons, Respondent told him that the officers had still touched him more than normal. Agent Catala testified that Respondent also told him that he was illegally in the United States because he had crossed the border and that he was from Honduras. Agent Catala told the Court that although Respondent was complaining about the police officers he did not call Agent Catala any names.

Agent Catala stated that after he interviewed Respondent, the police officers took off their handcuffs and he put his handcuffs on Respondent. Agent Catala stated that Respondent was resisting by jumping and screaming when the handcuffs were being placed on him. Agent Catala testified that there was an issue with respect to the handcuffs because he could not use his key to unlock the Hollywood police department handcuffs. Agent Catala stated that after they exchanged handcuffs, he and Respondent went to the CBP station.

7. Testimony of Respondent

Respondent stated that after he was arrested and removed to another area, he noticed there were other patrol cars and more officers. Respondent told the Court he was not shown the tools they alleged he had stolen, not shown to the 911 caller, not placed in a line-up, and that his picture and or fingerprints were not taken. Respondent testified that he demanded someone that spoke Spanish, and after a time a Spanish-speaking police officer arrived, and lowered the window of the back seat of the car. Respondent told the Court that the police officer "read him his rights" in Spanish when he arrived, but

explained that by this he meant that the police office told him the charges against him. He stated that the police did not read him his rights with regards to remaining silent and being entitled to a lawyer.

Respondent testified that when the police officer was asking him questions he felt he did not have any other option but to cooperate, because he already was arrested. He said cooperated because he was in a lot of pain and because he feared that they would tell the U.S. Immigration and Customs Enforcement (ICE) if he did not. Respondent stated that after the Spanish-speaking police officer arrived, he was asked if he had stolen the tools in the bag and the bucket, although he never got a chance to see them and he responded "if you say they are mine say whatever you want." Respondent also stated that an officer told him he was in custody because he had fled from the police. Respondent stated that he also was asked questions regarding his name and other information. Respondent also stated that he told the police officer his place of birth after the police officer could not find him in the system and after the officer told him that he could be deported if he did not tell them his place of birth. Respondent told the Court that he felt pain in his head, specifically his left temple, and on his heel. Respondent said that the police officer entered his information into the computer, but could not find any background information on him. Respondent told the Court that when he told the police officer where he was from, the police officer said in mockery that he was going back to that country to "eat pupusas" because Immigration was coming for him.

Respondent stated that at one point, while he was sitting in the patrol car, he felt that there was not enough oxygen because the car was off and the air conditioner was turned off. Respondent told the Court that he asked the police officer for the air conditioner to be turned on and to be given some water, and the police officer turned on the air conditioner but stated that he had no water. Respondent testified that he recalled putting his head against the door but does not recall if he was conscious or not at the time. Respondent stated that while his head was resting on the door he felt a jerk from the front of his head that brought him down to the seat and then felt a lot of pain centered on his chest. Respondent also stated that ammonia was shoved near his nose. Respondent testified that the ammonia made him turn to see the police officers, who were laughing at him, and one of the police officers commented that now that Immigration was here he did not want to go.

Respondent stated that he was taken out of the patrol car and he saw Agent Catala and his vehicle a bit further from where the police's patrol car was. Respondent testified that as they were trying to switch handcuffs, Agent Catala placed his handcuffs on top of the police officers' handcuffs and tried to remove the police officers' handcuffs. Respondent also testified that during the exchange of handcuffs he started screaming because two police officers kept his hands up, to a point where the handcuffs were hurting him, but when he told the officers this they did not alter their behavior and an African American officer was touching his chest and rear. Respondent stated that the entire time after the police officers handed him over to CBP he was having problems walking.

Respondent told the Court that Agent Catala walked him from the patrol car to his vehicle, and Respondent recalls that Agent Catala was able to see Respondent's face. Respondent stated that he told Agent Catala that it was urgent that a report be made against the police officers since he had witnessed the abuses being committed against him but Agent Catala responded by saying that it was not possible to create such a report since he did not want any problems with the police. Respondent also stated that Agent Catala told Respondent that a report would be made in due time once they arrived to the station.

C. Custody of Respondent

1. Testimony of Agent German Catala

Agent German Catala told the Court that the ride to the station from the place he had picked up Respondent took about fifteen minutes. Agent Catala stated that during the time Respondent was in his vehicle he told Agent Catala that he was beaten. Agent Catala testified that when they got to the station, he took Respondent to the processing area and that is when he saw that Respondent had a big lump on the left side of his forehead and he was walking with a limp. Agent Catala told the Court that if he would have seen the bump on Respondent's head earlier he never would have taken Respondent into his custody because they have a regulation that they cannot take into custody someone who is injured or hurt. Agent Catala told the Court that he could not release Respondent because Respondent was already in his custody. Agent Catala explained that although CBP has the authority to release Respondent he himself did not have the authority to release Respondent. Agent Catala also told the Court that he had not seen the limp, bruises, scrapes, or cuts before he took Respondent to the station. Agent Catala stated that after he saw the bump he called emergency contact radio dispatch and dispatch called the hospital. Agent Catala told the Court that Respondent told him that he got the bump because the police beat him and Agent Catala replied that Respondent got the bump because he was running away from the police. Agent Catala stated that he did not tell Respondent that Respondent's problems were not his problem.

Agent Catala stated that the ambulance came to the station and Respondent was taken to the hospital while Agent Catala followed them to the hospital. Agent Catala told the Court that Respondent still seemed lucid and coherent but complained about pain in his head. Agent Catala told the Court that when Respondent arrived at the hospital they took him to the emergency room and the hospital staff took Respondent to get x-rayed. Agent Catala testified that he was with Respondent throughout the time Respondent was at the hospital, which was two hours. Agent Catala testified that the only place he was not with Respondent was when the hospital staff was taking x-rays of Respondent. Agent Catala stated that after Respondent was x-rayed he was placed in a room and they waited for the results of the other tests in order for Respondent to be released and taken back to the station. Agent Catala said Respondent was lucid at the hospital and was complaining about being beaten by the police officers. Agent Catala said that Respondent was in the hospital bed for two to three hours but he never saw him sleep.

Agent Catala told the Court that he was replaced by Agent Hashitani-Choy and he was released to go back to station. Agent Catala stated that he told Agent Hashitani-Choy that Respondent was running from the police and the police had to use canines to apprehend him. Agent Catala said that he does not believe Respondent was forcibly detained by Hollywood police but explained that the use of force is necessary when apprehending someone that is trying to escape. Agent Catala testified that Agent Hashitani-Choy brought Respondent back to the station once he was released from the hospital and placed him in a holding cell.

2. Testimony of Agent Samantha Hashitani-Choy

Agent Samantha Hashitani-Choy works for the CBP, exclusively in the Dania Beach station, as a border patrol agent since January of 2001. Agent Hashitani-Choy told the Court that her duties as an agent are to enforce immigration laws and arrest aliens entering or attempting to enter illegally. Agent Hashitani-Choy testified that the Dania Beach station receives a lot of calls from local law enforcement agencies, at least once a day. Agent Hashitani-Choy explained that these local enforcement agencies call when they don't have enough information to arrest a person but the person admitted to being illegally in the United States.

Agent Hashitani-Choy recognized Respondent from her encounter with him on January 11, 2013 at the Broward General Hospital at Ft. Lauderdale. Agent Hashitani stated that she came into work at 6 a.m. in the morning that day and was told that Agent Catala was in the hospital with Respondent since 3:45 a.m. and she needed to relieve him. Agent Hashitani-Choy testified that she met Agent Catala when she arrived at the hospital at 6:20 or 6:30 a.m., and he told her that Respondent was injured, was brought to the hospital, and the hospital had not discharged him yet. Agent Hashitani-Choy stated that Respondent was in the emergency room and handcuffed to a bed. Agent Hashitani-Choy testified that Respondent looked very tired, in some pain, and agitated. Agent Hashitani-Choy stated that Respondent asked her to turn off the light and she did and went out so that he could sleep. Agent Hashitani-Choy said that she was outside Respondent's room for twenty to thirty minutes until doctors told her that he was cleared for detention at 7:00 a.m., gave her Respondent's hospital paperwork, and a Ibuprofen prescription for Respondent. Agent Hashitani-Choy stated that when Respondent left the hospital he seemed to be coherent and was not walking with a limp.

Agent Hashitani-Choy testified that after Respondent was released from the hospital she took him back to the station. Agent Hashitani-Choy stated that if an alien is hungry while at the station a meal would be provided for them. Agent Hashitani-Choy testified that Respondent told her while he was at the station that he was in pain and wanted ibuprofen but she told him that they did not have ibuprofen and he would have to wait until he got to a detention center. Agent Hashitani-Choy told the Court that Respondent was processed and a Form I-213 was completed at 7:46 a.m. Agent Hashitani-Choy stated that the Form I-213 was completed instead of giving Respondent time to rest because CBP's policy is to process aliens as quickly as possible and have them transferred as their facility is not made for long term comfort. Agent Hashitani-Choy further explained that getting an alien processed takes about an hour. Agent

Hashitani-Choy explained that the Form I-213 contained information regarding Respondent's name, date of birth, and nationality. Agent Hashitani-Choy told the Court that she used the information she obtained from Agent Catala, who had obtained Respondent's information from the Hollywood police, to fill out the Form I-213 for Respondent. Agent Hoshitani-Choy testified that while she was gathering this information Respondent was in a holding cell. Agent Hoshitani-Choy explained that a holding cell at the station consisted of a toilet, a sink, and a solid concrete bench along both sides of the wall.

Agent Hoshitani-Choy testified that midway through processing, Respondent made a complaint against the Hollywood police department. Agent Hoshitani-Choy stated that after she talked with her supervisor, her supervisor decided it best to accommodate Respondent's request and have Respondent make a statement under oath of his mistreatment by the police officers and have Agent Ramos take pictures of Respondents injuries to send to the Hollywood police department.

Agent Hoshitani-Choy told the Court that two sworn statements were taken by her and Agent Ramos after the Form I-213 was filled out. Agent Hoshitani-Choy stated that two statements, lasting only five minutes, were taken because they were on different matters, one concerned deferred action and the other concerned Respondent's alleged mistreatment by the Hollywood police. Agent Hoshitani-Choy testified that before she took his sworn statement Agent Ramos read Respondent his rights, including his right to a lawyer, and asked if he was willing to give a sworn statement. Agent Hoshitani-Choy told the Court that while Agent Ramos and she took Respondent's sworn statement Respondent seemed lucid and calm and only became agitated when he started to talk about the police officers.

When asked if CBP has the authority to release someone known to be an illegal alien Agent Hoshitani-Choy said that it is a process and permission must be obtained from a sector branch. Agent Hoshitani-Choy testified that CBP does not take someone into custody if the person is injured or intoxicated

3. Testimony of Agent John Ramos

Agent John Ramos stated that he has worked with CBP for seventeen and a half years, and was working on January 11, 2013. Agent Ramos testified that he is fluent in Spanish. Agent Ramos stated that he was at the station when Respondent was getting processed and he was asked by his supervisor, Blanca Flannigan, to take a sworn statement from Respondent. Agent Ramos told the Court that Agent Flannigan told him that Respondent was alleging that he had an encounter with the local police department. Agent Ramos explained that Agent Flannigan wanted him to take pictures of any scuff or bump Respondent had and take Respondent's sworn statement concerning the incident. Agent Ramos told the Court that the purpose of taking the pictures and the sworn statement was because Agent Flannigan was going give everything to the Hollywood police department's Internal Affairs unit. Agent Ramos told the Court that the evidence collected regarding the police officers was not something that was going to be used against Respondent but being used to help him because the evidence was going to be

turned in on his behalf. Agent Ramos testified that Respondent's sworn statement took about twenty minutes, was taken in the processing area of the station in the presence of Agent Hoshitani-Choy, and occurred after Respondent had been processed as an entry without inspection. Agent Ramos testified that Respondent was advised of his rights in Spanish, including the right to an attorney. Agent Ramos testified that Respondent waived his right to an attorney. Agent Ramos observed that during the sworn statement Respondent appeared to be calm and he did not see Respondent in any kind of pain. Agent Ramos testified that he had asked Respondent if his name was true and correct, what country he was born in, and his date of birth. Agent Ramos stated that he does not doubt that Respondent is from Honduras.

4. Testimony of Agent Blanca Flanagan

Agent Flanagan is the patrol agent in charge of the CBP Dania Beach station. Agent Flanagan has worked at the same agency since 1988. Agent Flanagan told the Court that her CBP officers arrest aliens referred to them by other local law enforcement agents, including Hollywood police department, the Broward Sheriff's office, the Fort Lauderdale police department, the Pembroke Pines police department and other federal law enforcement partners. Agent Flanagan testified that there is a written agreement with respect to arrest with local DHS federal partners, but is not aware of any written agreements with respect to DHS handling immigration matters for state or local authorities.

Agent Flanagan stated that her involvement in this case is that she supervises the agents that came into contact with Respondent, specifically Agent Catala, Agent Ramos, and Agent Hashitani-Choy. Agent Flanagan testified that the case was brought to her attention because she is involved with the cases that have a significant incident and in Respondent's case the significant incident was the fact that he had to go to the hospital via ambulance. Agent Flanagan explained that she read in an e-mail from one of her supervisors that Respondent had to be taken to the hospital on January 12, 2013 so she decided to talk to the agents involved in that situation and went to the processing area to see Respondent. Agent Flanagan told the Court that Respondent had complained while at the station and before he was taken to the hospital that he was having trouble breathing. Agent Flanagan told the Court that when she saw Respondent he seemed upset but okay. Agent Flanagan testified that when she personally spoke to Respondent he went through the events of his arrest and told her that he was arrested at the convenience store for no reason, beaten by the police, and touched inappropriately in the buttocks and the chest. Agent Flanagan also testified that Respondent showed her bruises on his body and the welt on his head. Agent Flanagan told the Court that Respondent was not incoherent or dizzy and could understand him clearly while she was talking to him.

Agent Flanagan stated that she sent an email to Major Pardon of the Hollywood police department. Agent Flanagan claimed that she had googled the Hollywood police department and looked for a contact number of someone who was of an equivalent rank to her. Agent Flanagan testified that it was a courtesy email to inform the Hollywood police department that Respondent had accused them of beating him. Agent Flanagan stated that she was contacted by Internal Affairs a couple of weeks after she talked to

Major Pardon. Agent Flanagan said that she felt that the Hollywood police Internal Affairs office was dealing with the information she had forwarded about Respondent as a complaint about their treatment of Respondent. Agent Flanagan also said that the officer from Internal Affairs told her on the phone that sometimes the use of force is necessary and said it in regards to Respondent's case. Agent Flanagan testified that she explained to Internal Affairs that she was not investigating but providing information regarding Respondent as a courtesy to them. Agent Flanagan told the Court that she also told Internal Affairs that her intent was not to question the Hollywood police department's arrest procedure or policy. Agent Flanagan explained that the reason she sent an email to the Hollywood police department regarding Respondent's accusation was to make sure that Respondent could differentiate between the initiating agency and the CBP because she did not want Respondent to accuse CBP of mistreating him. Agent Flanagan stated that if she would have received an email accusing one of her agents of beating a subject she would have investigated the matter.

Agent Flanagan told the Court that as a supervising patrol agent she is aware of all pertinent policies concerning the office. Agent Flanagan stated that it is the policy of the office, and occurs almost every day, for CBP to respond to a police call even if the police are not arresting the suspect so that the CBP agent can determine the suspect's alienage. Agent Flanagan told the Court that she has the authority to release a subject from CBP custody, but CBP agents cannot release the subject after they have been taken into custody unless they first discuss this and get the approval from someone with at least her level of authority. Agent Flanagan specified that she can suggest to the agents that it is not a good time to arrest someone and to collect their information for deferred inspection at another time. Agent Flanagan told the Court that CBP cannot set a bond because that is under the jurisdiction of the U.S. Customs and Enforcement, office but they can suggest a bond.

Agent Flanagan stated that if Agent Catala would have seen Respondent's injuries before he was taken into custody he would have had to talk to his supervisor. Agent Flanagan also stated that depending on the level of intoxication and injury of a subject and based on a case by case basis, a CBP officer cannot take an intoxicated or injured subject into custody. Agent Flanagan testified that Agent Catala and Agent Hashitani-Choy might have misconstrued this to mean there is a policy in regards to not taking into custody an intoxicated or injured person. Agent Flanagan testified that the idea is that CBP does not take into custody anyone that is significantly injured. Agent Flanagan admitted that the injuries Respondent had were significant and if Agent Catala would have called her before he took Respondent into custody she would most likely have advised Agent Catala not to take Respondent into custody.

Agent Flanagan told the Court that she did not believe her agents did anything incorrectly and believed they handled the situation well. Agent Flanagan testified that Respondent was treated very well by her agents because he was given immediate and proper medical attention, her agents did not question whether Respondent was faking his injuries, and because he was fed, clothed and given the opportunity to tell his story to the agents.

5. Testimony of Respondent

Respondent testified that Agent Catala took him to the CBP Dania Beach station, where he was put in a cell. Respondent described the cell as a room with two stone benches on each side and a toilet. Respondent stated that he told the agents that he was in pain but they gave him a grey blanket and told him to wait a while until they filed a report. Respondent stated that as he was lying down he felt very bad and was having severe respiratory problems so he said that he needed medical assistance. Respondent stated that the officer called the ambulance and the ambulance took him to the hospital. Respondent told the Court that once at the hospital he was taken to the emergency room, the hospital placed him in a room, and x-rays were taken. Respondent told the Court that during the time he was in the hospital an immigration officer was present at all times and he was in handcuffs during the whole time he was at the hospital, except for when he was having his x-rays taken. Respondent explained that Agent Catala was with him in the hospital but when Agent Catala's shift was over a female officer, Agent Hashitani-Choy, replaced him just before Respondent was released from the hospital. Respondent stated he was very tired and was unable to sleep because he was in pain.

Respondent told the Court that he was brought back to the station by Agent Hashitani-Choy and taken back to the cell. Respondent said that once he was back at the station he was still in pain and asked for his medication but his request was denied. Respondent stated that after a time the officers started to ask him questions, but he told them that they had to write a report on everything that had happened to him and the agents responded by saying that a report could be written but he had to collaborate with them. Respondent told the Court that at no time were his rights read to him by any of the CBP agents. Respondent felt that he was obligated to answer all of the questions the officers asked of him because without their help he could not later make allegations against the Hollywood police officers. Respondent stated that he was interviewed by Agent Hashitani-Choy and another male officer. Respondent explained that the officer first did the immigration report and he refused to give a lot of information, like the name of his parents, date of birth and his place of birth. Respondent testified that the date of birth and city of birth were things provided by the Hollywood police. Respondent stated that while he was answering their questions he felt tired, depressed and under a lot of pressure. Respondent testified that at one point one of the officers said that the Hollywood police were "sons of bitches" and that he would make sure that the report reached the highest ranking officials of Hollywood police because the police had no right to physically or morally abuse anyone. Respondent told the Court that when the officers said they were going to submit the report to the Hollywood police department he was doubtful because he had the same impression of the immigration officers that he had of the Hollywood police because the immigration officers had collaborated in his detention and had not filed a report while the officer was at the scene. Respondent told the Court that there did come a time when the immigration officers took his testimony concerning the Hollywood police officers abuse against him, took fingerprints and took photographs of his injuries.

IV. Statement of the Law

A. Credibility

It is unusual for the Court to be called upon to judge credibility before the relief stage of proceedings, but case law developed in determining applications for relief is helpful in this context. Indications of credible testimony include consistency on direct and cross examination and consistency with ... written [materials] ... ." See Ruiz v. U.S. Att'y Gen., 440 F.3d 1247, 1255 (11th Cir. 2006) (citing Matter of B-, 21 I&N Dec. 66, 70 (BIA 1995)). A trier of fact may base a credibility determination on the demeanor, candor or responsiveness of a witness, the inherent plausibility of his or her account, the consistency between the witness' written and oral statements (whether or not under oath), the internal consistency of each statement, and the consistency of such statements with other evidence of the record, and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of a claim, or any other relevant factor. Cf. Sections 208(b)(1)(B)(iii); 240(c)(4)(C) of the Act. A trier of fact must base the determination on consideration of the totality of the circumstances and all relevant factors. See id.

B. Burden of Proof on Motions to Suppress

A Motion to Suppress must be made in writing and be accompanied by a detailed affidavit that explains the reasons why the evidence in question should be suppressed. Matter of Wong, 13 I & N Dec. 820, 822 (BIA 1971). The individual seeking to suppress evidence initially bears the burden of proof and must establish a *prima facie* case that the evidence should be suppressed. Matter of Tang, 13 I&N Dec. 691 (BIA 1971). To establish a *prima facie* case, the individual seeking suppression must provide specific, detailed statements based upon personal knowledge; such allegations cannot be general, conclusory, or be based on counsel. Id.; see also Matter of Barcenas, 19 I&N Dec. 609 (BIA 1988); Matter of Wong, 13 I&N Dec. at 821-22; Matter of Tang, 13 I&N Dec. at 692.

It is the government's burden in removal proceedings to establish the respondent's alienage by clear and convincing evidence. See Matter of Tijerina-Villarreal, 13 I & N Dec. 327 (BIA 1969); see also Woodby v. INS, 385 U.S. 276 (1966) (concluding no deportation order may be entered unless the grounds for deportation are found by clear and convincing evidence). Once this burden is satisfied, the burden shifts to the respondent to prove citizenship by a preponderance of credible evidence. See Matter of Rodriguez-Tejedor, 23 I & N Dec. 153 (BIA 2001).

"Absent any indication that a Form I–213 contains information that is incorrect or was obtained by coercion or duress, Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 505-06 (BIA 1980), that document is inherently trustworthy and admissible as evidence to prove alienage and deportability." Barcenas, 19 I&N Dec. at 611; see also Matter of Toro, 17 I&N Dec. 340, 343 (BIA 1980) (evidence must be relevant, probative and its

use fundamentally fair to satisfy the requirements of due process under the Fifth Amendment); Murphy v. I.N.S, 54 F. 3d 605, 610 (9th Cir. 1995) (government failed to prove alienage by clear, unequivocal, and convincing evidence where Board gave significant weight to evidence that was inherently unreliable); Matter of Garcia, 17 I & N Dec. 319, 321 (BIA 1980) (admission found involuntary where respondent was "led to believe that his return to Mexico was inevitable, that he had no rights whatsoever, that he could not communicate with his attorney (his attempts to do so being actively interfered with), and that he could be detained without explanation of why he was in custody," and when "admission was made only after a "significant period in custody had elapsed...").[1]

"Where a party wishes to challenge the admissibility of a document, the mere offering of an affidavit is not sufficient to sustain his burden. First, if an affidavit is offered, which, if accepted as true, would not form a basis for excluding the evidence, the contested document may be admitted into the record . . . If the affidavit is such that the facts alleged, if true, could support a basis for excluding the evidence in question, then the claims must also be supported by testimony. The respondent's declaration alone is therefore insufficient to sustain his burden." Barcenas. at 611-612.

Only when the respondent comes forward with proof establishing a *prima facie* case for suppression will DHS be called upon to assume the burden of justifying the manner in which it obtained the evidence. Barcenas, 19 I&N Dec. at 611.

The Court may draw an adverse inference from the silence of a respondent who has been confronted with evidence of his alienage. Matter of Guevara, 20 I&N Dec. 238, 242 (BIA 1990). In the absence of any other evidence of record, an alien's silence alone cannot shift the burden from ICE to show alienage and an adverse inference is improper. Id. at 242;[2] Matter of J-, 8 I&N Dec. 568, 572 (BIA 1960) (adverse inference from silence not proper where ICE had not established a prima facie case of alienage).

C. Due Process Concerns under the Fifth Amendment

The Due Process Clause of the Fifth Amendment states, in relevant part: "No person shall be ... deprived of life, liberty, or property, without due process of law." Specifically, it entitles noncitizens to "fair" removal proceedings. See Bridges v. Wixon, 326 U.S. 135, 154 (1945)("Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom . . . Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness."). It also requires that evidence be used in a "fundamentally fair" manner. Matter of Toro, 17 I&N

[1] 8 C.F.R. § 287.8(c)(2)(vii) proscribes "[t]he use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement...". See also Rajah v. Mukasey, 544 F. 3d 427, 445 (2d. Cir. 2008).

[2]("If the only evidence necessary to satisfy [ICE's] burden were the silence of the other party, then for all practical purposes, the burden would actually fall upon the silent party from the outset. Under this standard, every deportation proceeding would begin with an adverse inference which the respondent would be required to rebut. We cannot rewrite the Act to reflect such a shift in the burden of proof.")

Dec. 340, 343 (BIA 1980)("To be admissible in deportation proceedings, evidence must be probative and its use fundamentally fair so as to not deprive respondents of due process of law as mandated by the fifth amendment.").

Quintessential examples of fundamentally unfair evidence are statements or admissions obtained involuntarily, through duress or under coercive circumstances. See, e.g., Singh v. Mukasey, 553 F.3d 207 (2d Cir. 2009); Navia-Duran v. INS, 568 F.2d 803 (1st Cir. 1977); Bong Youn Choy v. Barber, 279 F.2d 642 (9th Cir. 1960); Garcia, 17 I&N Dec. 319. The focus of a voluntariness determination is if the individual "was coerced by the government into making the statement." United States v. Mendoza–Cecelia, 963 F.2d 1467, 1475 (11th Cir. 1992) (quoting Colorado v. Connelly, 479 U.S. 157, 170 (1986)). Government coercion is a necessary predicate to a finding of involuntariness under the Fifth Amendment. Hubbard v. Haley, 317 F.3d 1245, 1252 (11th Cir. 2003). "In short, the true test of admissibility is that the confession is made freely, voluntarily and without compulsion or inducement of any sort." Haynes v. State of Washington, 373 U.S. 503, 513 (quoting Wilson v. United States, 162 U.S. 613, 623).

The Eleventh Circuit held that sufficient coerciveness generally could involve an exhaustingly long interrogation, the application or threat of physical force, or promises that induce a confession. Mendoza-Cecelia, 963 F.2d at 1475. In Matter of Garcia, the Board found the respondent's concession to alienage was involuntary after arresting officers physically prevented him from giving his attorney's phone number to his employer; failed to advise him of his rights under 8 C.F.R. § 287.3(c); and refused his requests to contact counsel. 17 I&N Dec. 319, 320 (BIA 1980). In Matter of Ramirez-Sanchez, the Board stated that other factors that could be used to demonstrate coercion include physical abuse, lengthy interrogation, denial of food or drink, threats or promises, or interference with a respondent's attempts to exercise his rights. 17 I&N Dec. 503, 506 (BIA 1980).

To determine if a statement was voluntary, the Court must examine the totality of the circumstances surrounding the statement. Hubbard, 317 F.3d at 1252. The Court must consider "the defendant's intelligence, the length of his detention, the nature of the interrogation, the use of any physical force against him, or the use of any promises or inducements by police." Id. at 1253. The failure to comply with certain ICE regulatory requirements also is relevant in assessing any question of voluntariness. Garcia, 17 I&N at Dec. 327. Federal regulations, for example, prohibit immigration officers from using threats, coercion, or physical abuse to induce a suspect to waive his or her rights or to make a statement. 8 C.F.R. § 287.8(c)(2)(vii). The Supreme Court held that a federal agency must follow its own regulations if failure to do so would violate due process of law. Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954).

Under 8 C.F.R. § 287.3(c), noncitizens arrested without a warrant are entitled to receive certain Miranda-like advisals following their arrest and includes advising "of the reasons for his or her arrest and the right to be represented at no expense to the Government." 8 C.F.R. § 287.3(c) also requires that "[t]he officer will also advise the alien that any statement made may be used against him or her in a subsequent

proceeding." In Matter of E-R-M-F & A-S-M-, 25 I&N Dec. 580 (BIA 2011), the Board held that noncitizens arrested without a warrant do not need to receive these advisals until *after removal proceedings* have been initiated by the filing of a NTA. The Board stated that "any statements made prior to the initiation of formal proceedings are not obtained in violation of 8 C.F.R. § 287.3(c), and the fact that no advisals were given at that time does not render the documents containing those statements inadmissible in removal proceedings." Id. at 588.

D. The Exclusionary Rule under the Fourth Amendment as Applied to Removal Proceedings.

In criminal proceedings, the "exclusionary rule" is a judicially created remedy to prevent the introduction of evidence that is the fruit of unlawful official conduct that violates the Fourth Amendment. INS v. Lopez-Mendoza, 468 U.S. 1032, 1040 (1984). Its purpose is not to provide relief to the victim but to deter government officers from purposely engaging in similar misconduct in the future. Elkins v. United States, 364 U.S. 206, 217 (1960). Evidence obtained from an unlawful search or seizure is generally subject to exclusion as "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484-85 (1963). Courts also will suppress evidence that is the indirect product of the illegal police activity as "fruit of the poisonous tree." See United States v. Oscar-Torres, 507 F.3d 224, 227 (4th Cir. 2007) (citing Wong Sun, 371 U.S. at 471). The Court has explained that a court:

> need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint."

Wong Sun v. United States, 371 U.S. 471, 487-88 (1963). In other words, if the evidence was discovered by "exploitation" of the underlying illegal seizure or arrest, it is subject to possible suppression; on the other hand, where the evidence came to the authorities' attention by means "sufficiently distinguishable to be purged of the primary taint," it will not be excludable. In addition, sufficient intervening events can destroy the causal link between the illegal search or seizure and the evidence obtained. Id. at 491. Moreover, any evidence obtained independently of the constitutional violation may be relied upon. Matter of Cervantes-Torres, 21 I&N Dec. 351, 353 (BIA 1996).

The Fourth Amendment protects individuals from unreasonable government searches and seizures. U.S. CONST. Art. IV. The Fourth Amendment does not proscribe all contact between law enforcement and civilians, but is designed "to prevent arbitrary and

oppressive interference by enforcement officials with the privacy and personal security of individuals." United States v. Martinez–Fuerte, 428 U.S. 543, 554 (1976).

Assuming that a search or seizure transpired, its constitutionality always hinges on whether it was reasonable. See Michigan v. Fisher, 130 S. Ct. 546 (2009). The answer, in turn, will depend on the circumstances surrounding the particular conduct. The test for determining reasonableness is objective, not subjective. See Brigham City v. Stuart, 547 U.S. 398, 404 (2006). Therefore misconduct is judged against how the officer acted when taking into consideration the objective facts available to him and not his subjective intentions with regard to the victim.

There are a number of reasonable, legal ways that an officer may approach an individual on the street. First, he may have an arrest warrant, which is always presumed to be reasonable, or probable cause to believe an individual has committed a crime and would have the attendant right to stop and arrest that individual. See Dunaway v. New York, 442 U.S. 200, 208-09 (1979). Probable cause generally requires a combination of facts sufficient to create a reasonable belief that a violation of law has occurred, see Wong Sun, 371 U.S. at 480 (quoting Carroll v. United States, 267 U.S. 132, 162 (1925)), and courts determine this by examining the facts known to the officer at the time the search or arrest occurred, Devenpeck v. Alford, 543 U.S. 146, 152 (2004). Second, he may have a reasonable suspicion based on "articulable facts" that the individual poses some type of threat and may briefly detain the individual and pat him down to check for weapons. Terry v. Ohio, 268 U.S. 1 (1968). An officer may also stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct. U.S. v. Cortez, 449 U.S. 411, 417 (1981). If during the course of a brief investigative stop or detention the officer discovers additional information sufficient to create probable cause to believe the individual is breaking the law, he may then arrest that individual pursuant to this probable cause. See United States v. Mosquera–Ramirez, 729 F.2d 1352, 1356 (11th Cir. 1984). However, if the officer finds nothing, he may not prolong or elevate the stop without running afoul of the Fourth Amendment. Id. Therefore, an investigative stop or brief detention, which only requires reasonable suspicion, can turn into an arrest if the detention is sufficiently prolonged and officers do not develop the probable cause required to place a person under arrest. Placing a person in a confined area, even for a limited period, has also been found to be an arrest. See Florida v. Royer, 460 U.S. 491 (1983).

An immigration officer may stop and question a person about his immigration status if he has a reasonable suspicion that such a person might be an alien. § 287(a)(1) of the Act; 8 C.F.R. § 287.3; see INS v. Delgado, 466 U.S. 210, 214, 216 (1984); United States v. Brignoni-Ponce, 422 U.S. 873, 877 (1975). Such an encounter is not, on its own, a "seizure" under the Fourth Amendment "[u]nless the circumstances of the encounter [were] so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded." Delgado, 466 U.S. at 216. An individual is "seized" only when "his freedom of movement is restrained" through "physical force or a show of authority." United States v. Mendenhall, 446 U.S. 544, 553 (1980).

An immigration officer authorized by 8 C.F.R. § 287.5(c)(1) has the power to arrest aliens for immigration violations. See § 287(a)(2) of the Act. An officer may arrest a person only when he has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States. 8 C.F.R. § 287.8(c)(2)(i). "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

"Where, [] the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right 'to be secure in their persons . . . against unreasonable . . . seizures' of the person." Graham v. Connor, 490 U.S. 386, 394 (1989). The Supreme Court has stated that "the 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397.

In Lopez-Mendoza, the Supreme Court held that the exclusionary rule generally is not applicable in immigration proceedings, which are civil rather than criminal. 468 U.S. at 1044-51. However, four Justices agreed that "egregious violations" of the Fourth Amendment might serve as grounds for suppression, even in a civil immigration case, and four Justices separately stated that the exclusionary rule should apply to evidence gained from any Fourth Amendment violation within an immigration proceeding. See id. at 1050-51 ("[W]e do not deal here with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained"); id. at 1051 (Brennan, J., dissenting); id. at 1053 (White, J., dissenting); id. at 1060 (Marshall, J., dissenting); id. at 1061 (Stevens, J., dissenting).[3]

At this time, four circuits have adopted and defined the "egregious violation" exception outright,[4] five have acknowledged the exception,[5] and the remaining two have

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[3] See also Orhorhaghe v. INS, 38 F.3d 488 (9th Cir. 1994) (finding an "egregious" Fourth Amendment violation when INS agents conducted a warrantless entry into alien's home based on his Nigerian-sounding name); Gonzalez-Rivera v. INS, 22 F.3d 1441 (9th Cir. 1994) (finding an "egregious constitutional violation" where border patrol officers stopped a deportee based solely on his Hispanic appearance).

[4] Almeida-Amaral v. Gonzales, 461 F.3d 231, 234 (2d Cir. 2006) ("exclusion of evidence is appropriate under the rule of Lopez-Mendoza if . . . an egregious violation that was fundamentally unfair had occurred"); Oliva-Ramos v. Attorney General, 694 F.3d 259, 278 (3d Cir. 2012)("evidence will be the result of an egregious violation within the meaning of Lopez-Mendoza, if the record evidence establishe[s] either (a) that a constitutional violation that was fundamentally unfair had occurred, or (b) that the violation—regardless of its unfairness—undermined the reliability of the evidence in dispute."); Puc-Ruiz v. Holder, 629 F.3d 771 (8th Cir. 2010) (egregious Fourth Amendment violations would include cases of physical brutality, racial profiling, or law enforcement lacking any reasonable suspicion whatsoever); Lopez-Rodriguez v. Mukasey, 536 F.3d 1012 (9th Cir. 2008) (finding an egregious Fourth Amendment violation when immigration officers entered the aliens' home without a warrant or consent).

[5] Kandamar v. Gonzalez, 464 F.3d 65, 70 (1st Cir. 2006); Santos v. Holder, 2013 U.S. App. LEXIS 367, *3 (5th Cir. Jan. 4, 2013) (unpublished per curiam decision)(the Supreme Court left open the possibility of

not clearly spoken on the issue.[6] The Eleventh Circuit has discussed the matter only once, in an unpublished decision in which the court stated that "assuming arguendo an 'egregious' violation . . . would warrant suppression in an immigration case," the evidence in the proceeding did not establish such a violation. Rampasard v. U.S. Att'y Gen., 147 Fed. Appx. 90 at *4 (11th Cir. 2005)

Lopez-Mendoza also suggested that suppression of evidence in an immigration proceeding may be appropriate where official actions "transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." 468 U.S. at 1050-51 n.5 (citing Matter of Garcia, 17 I&N Dec. 319 (BIA 1980)).

Therefore, egregious violations of the Fourth Amendment and official actions that transgress notion of fundamental fairness and undermine the probative value of the evidence obtained applies to immigration proceedings.

The Board in Matter of Sandoval, found that the exclusionary rule did not apply to immigration proceedings because it did not believe that the likelihood that exclusion of unlawfully seized evidence from proceedings would significantly affect the conduct of immigration officers when compared to societal costs that could result from such an action. 17 I&N Dec. 70, 82 (BIA 1979). In a footnote, the Board stated that there was "significant support in Janis [United States v. Janis, 428 U.S. 433 (1976)] for the conclusion that evidence unlawfully seized by federal and state police officers in pursuance of criminal investigations should not be excluded from deportation hearings." Id. at 77 n.16 (emphasis omitted); see United States v. Janis, 428 U.S. 433, 459-460 (1976) ("We therefore hold that the judicially created exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign."); see also Lopez-Gabriel v. Holder, 653 F.3d 683, 686 (8th Cir. 2011) ("The case for exclusion of evidence is even weaker where the alleged misconduct was committed by an agent of a separate sovereign. If evidence were suppressed in a federal civil immigration proceeding, any deterrent effect on a local police officer would be highly attenuated . . . Especially where, as here, there is no evidence that federal officers participated in the allegedly unconstitutional seizure, or that the state officer making the seizure acted solely on behalf of the United

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an exception for egregious violations); United States v. Navarro-Diaz, 420 F.3d 581, 587 (6th Cir. 2005) (acknowledging the egregiousness standard); Martinez Camargo v. INS, 282 F.3d 487, 492 (7th Cir. 2002) (exclusionary rule may apply in cases involving "egregious violations of the Fourth Amendment"); United States v. Olivares-Rangel, 458 F.3d 1104, 1116 n.9 (10th Cir. 2006) (noting that in "deportation proceedings . . . the exclusionary rule does not apply absent an egregious violation of the Fourth Amendment").

[6] United States v. Oscar-Torres, 507 F.3d 224, 227 n.1 (4th Cir. 2007) ("we need not consider whether egregious violations of the Fourth Amendment might warrant a suppression remedy"); Rampasard v. U.S. Att'y Gen., 147 Fed. Appx. 90 at *4 (11th Cir. 2005) (assuming "arguendo" that an egregious Fourth Amendment violation warrants suppression).

States, we doubt that even an egregious violation by a state officer would justify suppression of evidence in a federal immigration proceeding." (citations omitted)).

However, the Board made its holding in Matter of Sandoval before the Supreme Court in dicta stated that the exclusionary rule might apply to "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness" in its decision in Lopez-Mendoza. 468 U.S. at 1051. The Supreme Court, in fact, noted in a footnote that "subsequent to its decision in Matter of Sandoval [], the BIA held that evidence will be excluded if the circumstances surrounding a particular arrest and interrogation would render use of the evidence obtained thereby 'fundamentally unfair' and in violation of due process requirements of the Fifth Amendment." Id. at 1051 n.5 (citing to Matter of Toro, 17 I&N Dec. 340, 343 (1980) and Matter of Garcia, 17 I&N Dec. 319, 321 (1980)). This is significant because prior to being heard by the Supreme Court the Board had denied the respondent's Motion to Suppress in Lopez-Mendoza based on Matter of Sandoval and the Supreme Court cited to Matter of Sandoval in its decision but still made mention, at the outcome of its decision, a possible exception.

In addition, the Supreme Court's decision in United States v. Janis does not preclude applying the exclusionary rule in civil immigration proceedings where state or local officers engaged in unconstitutional conduct. In United States v. Janis, the local police obtained a warrant, based on the affidavit of a police officer, and found evidence of illegal wagering records which resulted in the arrest of two individuals and the evidence being forwarded to the Internal Revenue Service (IRS). 428 U.S. at 436-437. The evidence was suppressed in the state criminal proceeding because the court found the police officer's affidavit defective, civil litigation using the evidence followed, and the Supreme Court had to decide whether to apply the exclusionary rule in federal civil proceedings involving local or state police officers. Id. By engaging in a balancing test, the Supreme Court found that the exclusionary rule did not apply to evidence seized by a state criminal law enforcement agent because empirical studies had not shown that excluding from federal civil proceedings evidence unlawfully seized by a state criminal enforcement officer would be likely to deter the conduct of the state police such that the deterrence would outweigh the societal costs of excluding accurate evidence. Id. at 1060-1061. The Supreme Court reasoned that state police officers are already deterred or punished by the exclusion of their evidence in state and federal criminal proceedings because the entire criminal enforcement process, which is a police officer's duty and concern, is frustrated. Id. at 448. The Supreme Court also reasoned that federal proceedings, whether civil or criminal, is not the state police officer's primary interest and would therefore not have a significant deterrent effect. Id. at 458 ("common sense dictates that the deterrent effect of the exclusion of relevant evidence is highly attenuated when the "punishment" imposed upon the offending criminal enforcement officer is the removal of that evidence from a civil suit by or against a different sovereign . . . It falls outside the offending officer's zone of primary interest.").

United States v. Janis can be distinguished from this case because the balancing test was made in the context of civil tax proceedings. Unlike in tax proceedings the

Supreme Court has held that immigration proceedings could result in "[t]he 'drastic measure' of deportation or removal" and "is now virtually inevitable for a vast number of noncitizens convicted of crimes." Padilla v. Kentucky, 559 U.S. 356, 357 (2010). The Supreme Court has stated that being deported is "at times the equivalent of banishment or exile." Fong Haw Tan v. Phelan, 333 U. S. 6, 10 (1948). More importantly, the Supreme Court has also stated that "as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." Padilla, 559 U.S. at 362.

Using the exclusionary rule would be likely to deter the conduct of the state and local police such that the deterrence would outweigh the societal costs of excluding accurate evidence. First, unlike in the context of the evidence obtained in United States v. Janis, evidence acquired by police officers based on alienage cannot be applied in state criminal cases. See Arizona v. United States, 132 S. Ct. 2492, 3502 (2012)("permitting the State to impose its own penalties from the federal [immigration] offenses here would conflict with the careful framework Congress adopted."). The Court notes, however, that immigration related prosecutions in federal criminal court accounts for a large amount of criminal fillings. See New Data on Federal Court Prosecutions Reveal Non-Violent Immigration Prosecutions Up, American Immigration Council, Immigration Policy Center, available at http://www.immigrationpolicy.org/just-facts/new-data-federal-court-prosecutions-reveal-non-violent-immigration-prosecutions (Last Updated on February 4, 2010). But even though there are many immigration related prosecutions in federal criminal courts, the penalty of deportation, which as stated above, is the most important part of a penalty to a noncitizen, only occurs in civil immigration proceedings. See Padilla, 559 U.S. at 362.

Second, although tax liability was considered secondary to state police officers in United States v. Janis, the same cannot be said of the implementation of immigration laws for state and local police officers. One of the broadest grants of authority for state and local immigration enforcement activity stems from section 133 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which amended section 287 of the Act to permit the delegation of certain immigration enforcement functions to state and local officers. The Attorney General is authorized under section 287(g)(1) of the Act:

> to enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the [Secretary of Homeland Security] to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

In addition, agreements entered pursuant to Section 287(g) of the Act enable specially trained state or local officers to perform specific functions relating to the investigation, apprehension, or detention of aliens, during a predetermined time frame and under federal supervision. §287(g)(5) of the Act; 8 U.S.C. §1357(g)(5). Local and State police officers are considered to be acting under color of federal law for purposes of liability and immunity from suit in any civil actions brought under federal or state. §287(g)(7)-(8) of the Act; 8 U.S.C. §1357(g)(7)-(8). Yet no agreement is necessary in order for a state or local officer to "otherwise [] cooperate ... in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States." §287(g)(10) of the Act, 8 U.S.C. §1357(g)(10). The Supreme Court stated that although "[t]here may be some ambiguity as to what constitutes cooperation under the federal law[,] ... no coherent understanding of the term would incorporate the unilateral decision of state officers to arrest an alien for being removable absent any request, approval, or other instruction from the Federal Government." Arizona v. United States, 132 S. Ct. 2492, 2507 (2012).

The section 287(g) program is only one of several cooperative arrangements with state and local law enforcement that is administered by ICE, under the umbrella of the Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) program. See generally U.S. Immigration and Customs Enforcement, ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS), available at http://www.ice.gov/news/library/factsheets/access.htm.

Secure Communities, for example, is a program that is used to identify criminal aliens in local law enforcement custody. Secure Communities is a program, implemented nation-wide in 2012, that relies upon the sharing of information regarding persons arrested by state and local law enforcement to identify aliens who may be removable. See, e.g., U.S. Immigration and Customs Enforcement, Secure Communities: The Basics, available at http://www.ice.gov/secure_communities. Another example is the Criminal Alien Program (CAP), which entails having ICE officers assigned to federal, state, and local prisons to identify criminal aliens in order to facilitate their removal, including through the placement of detainers upon such aliens so that federal immigration authorities can take them into custody upon completion of their criminal sentences. See generally U.S. Immigration and Customs Enforcement, Fact Sheet: Criminal Alien Program, Nov. 19, 2008, available at www.ice.gov/news/library/factsheets/cap.htm.

Since federal immigration enforcement plays such a large part in state and local police enforcement there would be a substantial deterrent effect on local or state police officers if the exclusionary rule is applied in removal proceedings. This deterrent effect would outweigh any social costs that would result from exclusion.

V. Analysis

A. Credibility

1. Testimony of Hollywood Police Officers was not Credible

The Court finds that the testimony of the Hollywood Police Officers was not credible. Their testimony was riddled with inconsistencies and implausible in light of the objective facts. In addition, many of the admitted circumstances of the arrest (e.g., the fact that Respondent was taken to a dark area without cameras to be arrested, the failure to follow police procedures in this case, the unexplained injuries to Respondent, the officers' unprofessional behavior in administering a painful procedure when they allegedly believed Respondent was sleeping but failing to call rescue and laughing at him) support the finding that Hollywood police department did not act with good intent.

The testimony of these officers was rife with inconsistencies, both internally and with each other. Officer McEvoy, Officer Kalish, Sergeant Bolger, and Officer Lang all have differing accounts on what happened while they were searching for Respondent. Officer Kalish stated that he met with Officer McEvoy at around 11:30 p.m. at the 6200 block of Plunkett Street but Officer McEvoy told the Court that he met with Officer Kalish at around 11:45 p.m. at 62nd Avenue and Funston Street. Yet the dispatch transcript states the 911 emergency call occurred at 11:30 p.m. therefore making it impossible for Officer McEvoy and Officer Kalish to have met at or around 11:30 p.m. See Ex. 8 at 1. While Officer McEvoy, as Canine-1, reported to dispatch that he saw Respondent for the first time when he was alone at 6211 Funston Street at 11:42 p.m., and thus making it unlikely that Officer McEvoy and Officer Kalish met around 11:45 p.m. See id. at 2. More importantly, Officer McEvoy and Officer Kalish are inconsistent as to where they met as Officer McEvoy stated that they met at 62nd Avenue and Funston Street while Officer Kalish stated that they met at the 6200 block of Plunkett Street. Sergeant Bolger also testified that he was searching for Respondent with Officer McEvoy and Officer Kalish at 62nd Avenue and Funston Street but neither Officer McEvoy nor Officer Kalish mentioned meeting with Sergeant Bolger before they got to the Stop-N-Go store. Sergeant Bolger also stated that he met with Officer McEvoy and Officer Kalish once more at 62nd Avenue and Dawson Street before heading to the Stop-N-Go store. In addition, Officer McEvoy testified that he met with Officer Lang on 63rd Avenue but Officer Kalish testified that Officer McEvoy only communicated via cell phone with Officer Lang before they reached the store, while Officer Lang never mentioned meeting with Officer McEvoy or Officer Kalish before getting to the Stop-N-Go store nor does he recall calling Officer McEvoy. While these inconsistencies seem tangential, they are material to the case since they throw off the entire timeline of events, and in addition to the evidence below, they undercut the claim that Respondent was the "suspect" seen by officers earlier in the evening.

Officer McEvoy's testimony was inconsistent with the dispatch report in other key respects. Officer McEvoy claimed that Respondent had been advised of possible

break in of a truck, but the dispatch report noted only that there was a man loitering behind the complainant's neighbor's truck. Ex. 8A at 1-2. Officer McEvoy reported that the suspect had a black duffle bag, while dispatch stated that it was a "big" trash bag.

One of the most significant inconsistencies is whether Respondent was the suspect seen by Sergeant Bolger and Officer Lang earlier in the evening. Sergeant Bolger's and Officer Lang's testimony diverge from Officer McEvoy and Officer Kalish' s testimony with respect to Respondent's location before Respondent was found at the Stop-N-Go store. Sergeant Bolger and Officer Lang stated that they were searching jointly for Respondent and found him underneath a car at south 62nd Avenue but they did not report this to dispatch and let him go because they did not think or were not sure that he was the suspect. Sergeant Bolger also testified that he spoke to Officer McEvoy about the suspicious person he and Officer Lang found underneath the car and was told by Officer McEvoy that the suspect matched the description of the person that had fled from him. However, Officer McEvoy and Officer Kalish testified to the contrary. They told the Court t that they were only informed of this suspicious person from Officer Lang, and Officer McEvoy stated that the suspicious person Officer Lang had described *was not Respondent, but rather a known burglar and drug addict and did not match Officer McEvoy's description of the suspect.* This undermines other parts of the testimony, since if Respondent was not the suspect that Officer Lang had seen earlier, it contradicts his testimony that he recognized Respondent from that encounter, and that he went into the Stop-N-Go store to see if he recognized Respondent from earlier in the evening. This also throws into question Officer's Bolger's claim that he got a good look at the suspect who came out from under the car and it was Respondent.

The fact that the suspect was "tracked" by canines would seem to be objective support for the finding that Respondent was the suspect that ran from Officer McEvoy, but this evidence is rife with problems. First, the canine did not pick up a sent from the tools or bag that Office McEvoy saw abandoned at the scene. Rather, he followed a scent that he was able to pick up in the same area as the scene. One of the officers claimed that dogs alert to the smell of fear, so they believed this scent would have been the suspects. However, there was no scientific support offered for this claim. Finally, the canines lost the scent of the suspect several times. The testimony of the officers was that Blaze lost the scent twice before finally "alerting" in front of the Stop-N-Go. The other dog, Broq, did not follow the scent of the suspect under the car to the scene. From all the breaks in the scent of an unknown fearful person, and the question as to whose scent or scents th dogs were following, this evidence is not helpful.

There were several inconsistencies concerning the use of the police officers' cellphones during the search for Respondent. The dispatch transcript shows that at 12:34 a.m. an officer asked if "Lang" was on, to which another officer responded "here," and another officer immediately asked "Do you have your phone on you." Ex. 8A at 7. After being shown the dispatch transcript Officer McEvoy stated that it was possible that he used his cellphone to call Officer Lang but he was not sure. Officer Lang also was shown this transcript and stated that he did not recall using his cellphone and did not know of any reason why he would have needed to use his cellphone during the search.

Officer Kalish, on the other hand, stated that Officer McEvoy had used his cellphone to try to contact Officer Lang while they were searching for Respondent after the dog lost his sent. While the officers all testified that the use of a cell phone was not unusual under the circumstances and would be for innocuous reasons, the timing of this conversation and the failure of any of the officers to remember and reveal its content is suspicious.

Officer Kalish' s testimony was internally inconsistent. In Officer Kalish' s testimony he stated that when he and Officer McEvoy first saw Respondent go inside the Stop-N-Go store they waited for about ten minutes outside of the store and during this time they met with Officer Lang. Later on, however, Officer Kalish stated that the estimated ten minutes referred to the time an officer went into the Stop-N-Go store until the time Respondent was escorted out. He also stated later on in his testimony that he was not sure if he and Officer McEvoy met with Officer Lang in front of the Stop-N-GO store or later on as secondary backup.

The officers' testimony also diverges in regards to who went into the Stop-N-Go store and who escorted Respondent out of the store. Officer McEvoy stated that Officer Lang had gotten to the Stop-N-Go store before him and had stayed in the store and help him escort Respondent out. Officer Kalish, on the other hand, believes that perhaps Officer Lang went into the Stop-N-Go store and another officer, other than the first that entered the store, escorted Respondent out. Officer Bolger does not recall Officer Lang going into the Stop-N-Go store. While Officer Lang stated that he went into the Stop-N-Go store but then went out, and contrary to Officer McEvoy's claim stated that he did not accompany Officer McEvoy in escorting Respondent out of the store.

The officers' testimony also has several inconsistencies regarding key facts involving Respondent's search and arrest. Officer Kalish testified that Respondent placed his hands on his head but Sergeant Bolger stated that Respondent had his hands placed on the wall. Officer McEvoy told the Court that Respondent had left a black duffle bag when he first saw him, but the original 911 caller had stated the suspect had a black trash bag, dispatch had stated it was a black trash bag, and the other officers stated that the item Respondent had left on the floor was a black trash bag. See Exs. 8; 8A at 1-2. In fact, Officer Laframboise had specifically said that the bag was a forty gallon trash bag.

Sergeant Bolger and Officer Lang also do not recall how they arrived at the Stop-N-Go store. Sergeant Bolger first testified that an officer, who he no longer remembers, directed him to the Stop-N-Go store but later stated that he got notified of Respondent's location by Officer McEvoy via dispatch. See Exs. 8; 8A. There was, however, no mention on dispatch of Respondent's location. See id. Officer Lang also stated that he was advised that Respondent was at the Stop-N-Shop but he does not recall how he knew that.

It is implausible that Sergeant Bolger or Officer Lang found Respondent underneath a car because it is unlikely that police officers would not report to dispatch about a suspicious person sleeping underneath a car while they are searching for a

suspect. Officer Lang admitted that using dispatch is an important way to share relevant information with other police officers and seeing a person that both Sergeant Bolger and Officer Lang suspect to be the perpetrator is important information. Furthermore, Officer McEvoy admitted that it is normal for a police officer to communicate on dispatch if he/she has a visual on a suspect unless it is not tactically sound. In this case, Officer Lang and Sergeant Bolger both saw a person they believed could be a suspect and there was no valid tactical reason for them not to report it on dispatch.

Officer McEvoy's testimony is also implausible in regards to his first encounter with Respondent. The dispatch transcript reflects that only one minute had passed between the times Officer McEvoy informed dispatch that he had a subject on 6200 Funston Street and between the time that the subject fled from him. Yet according to Officer McEvoy's testimony, he had the time to have a conversation with Respondent, have a neighbor come out and talk to Respondent and Officer McEvoy, and have Respondent flee from him. The Court does not believe that everything Officer McEvoy described could have occurred during this short period of time and finds it implausible. The Court also finds it is implausible that Officer McEvoy was able to get a good look of Respondent's face, if, indeed, it was Respondent, when their encounter only lasted a minute. The Court also is concerned about Officer's McEvoy's judgment to use a canine to track someone suspected of a misdemeanor offense. His claim that he did so because he did not know if suspect was armed is not plausible. There was nothing to indicate that the suspect he encountered was different from any other suspect of a misdemeanor offense in this fashion. An officer would not know if any misdemeanor suspect was armed. The claim that the canine unit was justified because the suspect was carrying tools at night also does not inherently justify the decision. The claim that use of a canine was justified because he fled also does not seem significantly important to justify the use of this resource. Finally, the claim that the suspect was "a threat to the neighborhood" is without objective support.

The statements of the officers also are inconsistent with the documented injuries sustained by Respondent. It is uncontested that these injuries appeared after Respondent's arrest. They were first noticed when the CBP Officer who picked Respondent up saw him in the light. When Officer McEvoy was shown the pictures of Respondent's injuries he said he did not know how they came about but suggested that when Respondent fled from the police he was bound to encounter multiple fences. Yet if Respondent's injuries were the result of his escape from the police then his injuries should have been noticeable when he was seen in the Shop-N-Go store or when he was being arrested. Nevertheless, Officer McEvoy stated that he clearly saw Respondent's face while Respondent was at the store and when Respondent was arrested and there were no visible injuries. Another officer suggested that these injuries could have been inflicted by Respondent himself when he was in the police car, yet the testimony of the officers on the scene shows that Respondent was not unattended and it is unlikely he could inflict such injuries without being observed by the officers on the scene. One of the officers even claimed that he had seen Respondent duck down in the seat right before he was asked to depart the car, supporting the allegation that he was faking unconsciousness or sleep. If such a small action allegedly observed, certainly

Respondent's actions in beating his head against a partition enough to cause bruising, swelling, and abrasions would have been seen. See Ex. 5.

It is highly suspicious that no one communicated through dispatch during the twenty minutes prior to Respondent being arrested. See Exs. 8; 8A at 7. Various officers in their testimony stated that they only use dispatch for important information but there is no report by any of the officers as to when Respondent was sighted on Washington Street, when Respondent was sighted at the Shop-N-Go store, or anything that happened thereafter. The only information that was reported on dispatch was by Sergeant Bolger, Canine-20, at 12:57 a.m., when he reported that Respondent was in custody. See id. Although Officer McEvoy stated that he had reported to dispatch the second time he saw Respondent at the Shop-N-Go store and Officer Bolger confirmed that Officer McEvoy did report to dispatch when Respondent was sighted at the Shop-N-Go store, this is not reflected on dispatch. The Court finds the silence on dispatch highly suspicious and none of the officers were able to sufficiently explain this large gap of time in which dispatch was silent before Respondent's arrest. This initiation of this silence corresponds started after Officer Lang was asked if he had his cell phone, suggesting that the cell phone was used for communication at this time. This twenty minute silence appears to be contrary to police procedure, which requires officers to report their location to dispatch. Ex. 13, tab F.

There were also several inconsistencies in the testimony of Officers Laframboise, Attkisson and Mears. Some of these inconsistencies involved who exactly made the decision to call CBP, who exactly called CBP to have them pick up Respondent, and how long it took for CBP to respond to the call. Officer Laframboise stated that Sergeant Losenbeck had told him to call CBP, but Sergeant Losenbeck stated that he had never given that order and that Officer Attkisson had informed him that the officers had called CBP once he had arrived at the scene. In regards to who called CBP, Officer Attkisson stated that Officer Laframboise called CBP once but failed to reach them and then called again and was able to contact them. While Officer Laframboise stated that he had initiated the call but Officer Attkisson was the one that talked to CBP. There is also a big disparity as to how long it took for CBP to arrive as Officer Attkisson stated it took an hour for CBP to arrive while Officer Laframboise stated that it took thirty to forty minutes for CBP to arrive.

Another inconsistency was how Respondent was positioned when Respondent was found to be unresponsive in Officer Laframboise's vehicle. Officer Mears stated that when he opened Officer Laframboise's vehicle Respondent had half his body laid out on the seat, while Officer Laframboise stated that Respondent had been hunched over his seat. This is a marked inconsistency since the position of Respondent's body was part of the objective evidence allegedly used by the police who described Respondent's behavior as "playing possum."

There also was an inconsistency between Officer Laframboise's testimony and the documents in the record. Officer Laframboise stated that Respondent was inside his vehicle for at most forty minutes, yet based on the documentary and testimonial evidence

it was much more than that. The dispatch transcript and other testimony shows that Respondent was taken into custody and placed in Officer Laframboise's car at 12:57 a.m. See Ex. 8. Yet the I-213 states that a call was made to CBP at 2:30 by Officer Laframboise. See Ex. 2. The Court notes that Agent Catala testified that dispatch had received a call from the Hollywood police department at 1:45 or 2:00 a.m. and it took him about twenty-five to thirty minutes to arrive. Regardless of whether Agent Catala arrived at 2:30, 2:45 or 3:00 a.m. Respondent was in Officer Laframboise's car for well over forty minutes. This is important, since it would be much more likely for Respondent to have fallen asleep if he were in the car for a longer time.

There are disturbing inconsistencies between Agent Catala's and Officer Mears' testimony relating to what happened when the painful stimulus of a sternum rub was administered to Respondent. Agent Catala said that when Respondent woke up, after Officer Mears had performed the sternum rub and an ammonia packet was placed under Respondent's nose, the officers at the scene laughed at him. Officer Mears stated that no one laughed at Respondent when he woke up and no one else who had testified and was present at the scene (i.e. Officer Laframbroise and Officer Attkisson) said they had laughed at Respondent. Officer Catala's testimony on this point is credible. First, unlike Officer Mears, Officer Laframboise, and Officer Attkisson, Officer Catala generally testified consistently. The Hollywood Officers' testimony had several inconsistencies and were otherwise lacking in credibility. Secondly, this is akin to a statement against interest in some ways. Officer Catala regularly works with the Hollywood police and would know that their laughter would show them in a negative light.

Finally, the Court does not find the officers' testimony a sternum rub was necessary and appropriate to be credible. There is no explanation as to why it would be administrated after Officer Laframboise was sent to get the ammonia packet. As Officer Atkisson testified, there was no reason to use the sternum rub when an ammonia packet was on the way, and the stimulus is so painful that it may provoke violence. Also Officer Laframboise stated that if a subject does not respond to a sternum rub then an ambulance would be called, but when Respondent did not awaken in response to the sternum rub the police did not call an ambulance. Finally, the fact that the police officers laughed at Respondent shortly after the sternum rub was administered was at the very least disrespectful, discourteous, and unprofessional. It was stated by various officers that a sternum rub is a painful stimuli. Officer Mears admitted that some of the injuries on Respondent were likely due to the sternum rub. It is not appropriate for any police officer to laugh when someone is injured and in pain, even if they believe the person had committed a crime.

2. Testimony of Pablo Gomez was not Credible

The Court does not find Mr. Gomez's testimony to be credible. One of the reasons the Court finds Mr. Gomez is not credible is because of his obvious favoritism to police officers. This favoritism was seen by Mr. Gomez's willingness to give a police officer a free drink from his store. When Mr. Gomez was asked why he was willing to give the police office a free drink he stated it was because the police do a good thing by protecting others from bad people. In addition, Mr. Gomez's boss also shows a marked

favoritism towards police as Mr. Gomez admitted that police officers get a discount at the store he works at. According to the declaration from Alexander R. Vail, a third year law student at the University of Miami, Mr. Gomez had told him that his boss was very friendly with the police. See Ex. 18. Moreover, when Respondent had requested that Mr. Gomez to give him security videos from the Stop-N-Go, Mr. Gomez's boss told him not to get involved and he told Mr. Gomez not to speak to Respondent's cousin. The fact that Respondent asked for the videos suggests that he thought that it would serve to vindicate him and Mr. Gomez's boss' refusal shows an attempt to try to protect the police.

Another reason the Court does not find Mr. Gomez's testimony to be credible is because of the contradictions between his testimony and the declaration from Mr. Vail. Mr. Gomez stated in his testimony that Respondent had told him, while they were at the Stop-N-Go store, that the police were searching for Respondent because he had fled from the police. Mr. Vail's declaration, however, stated that the first two times he had visited Mr. Gomez in regards to the incidents of January 10, 2013, Mr. Gomez had told him that he had no idea why Respondent was seized by the Hollywood police. See Ex. 18. Yet on Mr. Vail's third visit to Mr. Gomez, Mr. Gomez told him that the police had been looking for Respondent. See id. Mr. Gomez also stated in his testimony that Respondent was dirty when he came to the Stop-N-Go store yet he made no mention of this when he was speaking with Mr. Vail until Mr. Vail's second visit to see Mr. Gomez. See Ex. 18. The Court also finds implausible that Respondent stole the jacket Mr. Gomez accused him of taking from the Stop-N-Go store. The Court does not believe it was likely that Respondent stole the jacket because none of the police mentioned that Respondent had put on a jacket in the store or mention this jacket when they were describing the events after Respondent was escorted out of the store.

Mr. Gomez's marked favoritism for police officers coupled with the contradictions between his statements and Mr. Vail's declaration leads the Court to find that Mr. Gomez is not credible.

3. Testimony of Agent Catala, Agent Hashitani-Choy, Agent Ramos and Agent Flanagan was Credible

The Court finds that Agent Catala Agent Hashitani-Choy, Agent Ramos and Agent Flanagan are credible. The Court finds that each CBP agent's testimony was internally consistent and detailed. Their testimony is also consistent with one another and the documentary evidence further corroborates their statements. Some of the corroborating documentary evidence includes the Record of Deportable Alein, Form I-213 and the e-mails that Agent Flanagan sent to Major Pardon. See Exs. 1; 12.

4. Credibility of Respondent's Testimony

The Court finds that Respondent, for the most part, testified credibly. His testimony was internally consistent and detailed, especially in regards to the beating and mistreatment he received at the hands of the Hollywood police department. The CBP agents' testimony, for the most part, also corroborates with Respondent as they also told

the Court that since they came into contact with Respondent he complained about being mistreated by the Hollywood police. Most importantly, the pictures of Respondent's injuries, taken a few hours after he was in the custody of the Hollywood police officers, corroborate with his testimony and that of the CBP agents. See Ex. 1.

The Court, however, notes a significant inconsistency between Respondent and the testimonies from the CBP Agents. During his testimony Respondent stated that none of the CBP agents read him his rights yet Agent Hashitani-Choy and Agent Ramos stated that they read him his rights in Spanish. Since Agents Hashitani-Choy and Ramos both stated he was read his rights and otherwise have testified credibly, the Court finds in this case that the agents testified credibly in this respect also. See generally United States v. Armstrong, 517 U.S. 456, 4664 (1996)("[i]n the absence of clear evidence to the contrary, courts presume that [government agents] have properly discharged their official duties."). Therefore, in so far as it does not contradict the CBP agents' testimony concerning whether or not Respondent was read his rights, the Court finds that Respondent is credible. In this respect, the Court believes Respondent's inability to recall being read his rights was probably due to disorientation by his lack of sleep and his injuries. The Court believes that this is a failure in Respondent's memory and not deliberate intent to mislead the Court.

B. Respondent's Statements were Coerced and Should be Suppressed under the Fifth Amendment

In making this decision, the totality of the circumstances surrounding the statements given to CBP have been examined. The Court has found Respondent's claim that he was beaten and mistreated by the Hollywood police department to be credible. More specifically, Respondent was escorted from the well-lit Shop-N-Go store, with video camera surveillance, and taken to a dark, unpopulated parking lot, where he was kicked in the ankle, fell to the floor, was hit repeatedly while lying on the ground, and was threatened by a police officer who was telling his dog, while holding it in the presence of the Respondent, to bite him. He suffered injuries to his head and leg as a result of the beatings. Ex. 5.

After being beaten, Respondent was placed in a patrol car for a significant amount of time and thereafter questioned about his country of birth. After being in the car, he was having trouble breathing and lost consciousness (either through fatigue or otherwise). When Respondent came to, a police officer was performing the painful procedure of a sternum rub on his chest which caused bruising and abraisions, an ammonia packet was placed next to his face, and officers were laughing at him. Respondent was taken to Agent Catala where he proceeded to ask questions establishing alienage and taken to the Dania Beach CBP Station. When Respondent arrived at the station he was taken to the hospital because of his injuries, but was not given a chance to sleep. He was returned to the station, not given medicine which was prescribed for pain when he asked for it, and was immediately taken to be processed. Respondent was told that if he cooperated with CBP they would help him make a report against the Hollywood police.

Based on the totality of the circumstances, Respondent's statements to the Hollywood Police (which were used by the CBP) and the CBP were coerced. Respondent's statement was coerced because he answered the Hollywood police department's questions shortly after he had been beaten by them. Respondent told the Court that he felt he had no other option but to cooperate and he was in a lot of pain because of the previous beating. In Respondent's affidavit, he also stated that a police officer had told him that if he did not answer the questions he would be deported. See Ex. 17. Respondent's answers to the Hollywood police department's questions were significant because the answers were used as a reason for the Hollywood police department to call CPB and were also used in writing the Record of Deportable Alien, Form-213. See Sims v. Georgia, 389 U.S. 404 (1967) ("It needs no extended citation of cases to show that a confession produced by violence or threats of violence is involuntary and cannot constitutionally be used against the person giving it."). Specifically, Agent Hoshitani-Choy said that she had used the information Agent Catala had given her about Respondent and Agent Catala had in turn garnered this information from the Hollywood police's coercive tactics.

The statements Respondent gave to Agent Catala also were coerced because they were given shortly after Respondent had suffered through a second round of mistreatment by the Hollywood police officers before he was questioned by Agent Catala. Agent Catala even admitted being a witness to the mistreatment and saw the Hollywood police laughing at Respondent after causing him pain, but still proceeded to ask Respondent questions about his alienage without reading Respondent his rights. The Court believes that although Agent Catala did not mistreat Respondent, mistreatment at the hands of the Hollywood police department occurred so shortly before Agent Catala questioned Respondent, that such statements were coerced. Using those statements against the Respondent in removal proceedings would be fundamentally unfair.

Respondent's statements also were coerced because before he was finally processed by CBP, his arrest and detention was an exhaustingly long ordeal. Respondent was arrested at 12:57 p.m., but did not get processed until sometime after 7:00 a.m. See Exs. 1; 8A at 7. Respondent was in pain after being physically mistreated twice in one night by Hollywood police officers. Respondent did not have a chance to sleep during the night and was exhausted. In addition, he was not given medicine to alleviate the pain caused by his injuries. CBP still interrogated Respondent even though they knew about his exhausted state and the ordeals he had faced that night. When asked why Respondent was not given a chance to sleep, Agent Hoshitani-Choy stated that it was because it was CBP's policy to get an alien processed as quickly as possible. The Court, however, does not believe this was a good judgment call when a person has suffered an ordeal such as Respondent had suffered.

Finally, the statements given by Respondent were coerced because CBP told Respondent that if he cooperated with them they would write a report about the abuse he suffered at the hands of the Hollywood police department. Respondent felt that he was obligated to answer all of the questions the officers asked of him at the station because he

felt that without CBP's help he would not be able to make allegations against the Hollywood police officers. The Court believes that given Respondent's intelligence, as a twenty-four-year-old noncitizen, who does not speak English, this was a reasonable assumption to make. Therefore the statements Respondent made to CBP at the station were coerced because there were based upon promises that induced a confession.

Thus, based on the reasons stated above, the Court believes that the statements given by Respondent to CBP concerning his alienage, and documents made in reliance to these statements, primarily the Record of Deportable Alien, Form-213, should be suppressed because they were obtained by coercion, and including such evidence in Respondent's immigration proceeding would be a violation of the Fifth Amendment.

C. **Respondent's Statements were the Product of an Egregious Violation of the Fourth Amendment and Should be Suppressed.**

In this case, Respondent was first arrested in public without a warrant by Hollywood police officers, handcuffed, beaten, and placed into a patrol car for a substantial amount of time. In order for the Hollywood police officers to have legally arrested Respondent they had to have had probable cause. Although various police officers testified that they had probable cause at the time of the arrest because they believed Respondent had committed the crimes of "loitering and prowling" and "possession of burglary tools," based on the facts found in this case there were insufficient facts at the time the arrest occurred that would lead a person to reasonably believe a crime had occurred.

Respondent had walked from his house to the Shop-N-Go store, was seized by a police officer while in the store, taken out of the store, and arrested shortly thereafter without being asked any questions. Such facts are insufficient to establish a reasonable belief that Respondent had committed a crime.

The Court does not credit the testimony of the Hollywood police officers to determine if the officers at the time had probable cause to arrest Respondent because, as stated before, the Court found that almost all of the Hollywood police officers were not credible. Other than the police officers' testimony there is no evidence to tie Respondent to the suspicious person that was reported by the original 911 caller, the suspicious person Officer McEvoy saw around the scene of the alleged crime, or the tools that were dropped by said suspicious person. It should be noted that at the time of the 911 call there was no report of stolen tools; the report was that a person was standing next to a truck. Merely having tools, which the officer described as construction tools, does not present probable cause for a crime. Officer McEvoy may be correct that the suspect he saw was "loitering and prowling," but there is insufficient evidence that the suspect McEvoy saw was Respondent. In the absence of any evidence that the Respondent physically resembled the suspicious person for whom the officers were searching, or that they otherwise had reason to believe the Respondent was suspected of criminal acts, the Court cannot find that the officers had "reasonable grounds to believe" the Respondent

was wanted for any past criminal conduct. Therefore the Court finds that the Hollywood police committed an illegal arrest.

Respondent's arrest by Hollywood police officers also was a violation of the Fourth Amendment because of the Hollywood police officers' use of excessive force. As stated before, Respondent was knocked to the floor and beaten before he was placed under arrest. Respondent, the officers and Mr. Gomez testified that he had not resisted the officers in any way when he was taken outside of the Stop-N-Go store, yet he was still hit hard enough to force him to the ground and while on the ground beaten various times by the police officers. None of the Hollywood police officers that initially arrested Respondent testified or reported that he was physically resisting arrest shortly before he was handcuffed and placed inside the patrol car. Based on these facts, the officers' actions were not objectively reasonable and they acted with excessive force. After Respondent was arrested he was also made to endure a sternum rub, a painful procedure which left bruises and abrasions on Respondent's body, before using an ammonia packet, because his eyes were closed and he did not respond to the police officers' commands. The Court finds that using the sternum rub was an excessive use of force by the Hollywood police and was not objectively reasonable as the ammonia packet, which was within their immediate reach, was a less painful, and according to Officer Laframboise, more preferable alternative.

Therefore, Respondent's arrest was a violation of the Fourth Amendment because there was no probable cause and because of the excessive use of force during and while Respondent was arrested.

Respondent's illegal arrest is an egregious violation of the Fourth Amendment. As discussed before, Respondent was not asked any questions when he first interacted with the police officer in the Stop-N-Go store and was thereafter taken to a parking lot, pushed to the ground and beaten. When Respondent was arrested and about to be transferred to CBP custody the Hollywood police unnecessarily subjected Respondent to a sternum rub, a painful procedure. There were numerous bruises and swelling on Respondent's body, including a huge bump on his head, caused directly because of the Hollywood police department's mistreatment. See Ex. 5. The Court thus finds that Respondent's illegal arrest was an egregious violation of the Fourth Amendment because of the extent of the excessive force used against Respondent and the various injuries that resulted from this force

Additionally, the statements that were given by Respondent to Agent Catala were evidence obtained and subject to exclusion as fruit of the poisonous tree. Shortly after Respondent was illegally arrested and beaten by the Hollywood police he was turned over to CBP and was asked a few questions about alienage by Agent Catala. According to Agent Catala and Agent Hoshitani-Choy, the officers involved in the illegal arrest also provided Agent Catala with information that was used in the Record of Deportable Alien, Form-213. The Hollywood police officer's statements to Agent Catala and the statements from Respondent's initial interview with CBP were obtained from the exploitation of the illegal arrest. If not for the evidence that the Hollywood police

obtained from Respondent's illegal arrest, specifically his alienage, CBP would not have been contacted and Agent Catala would not have had the chance to interview Respondent.

The statements given by Respondent to CBP officers while he was at the CBP Dania Beach station were also subject to exclusion as fruit of the poisonous tree. Although an argument can be made that there were various intervening events, such as being detained by another law enforcement agency or Respondent's stay at the hospital, the Court does not believe that these events were sufficiently distinguishable for the statements to have been purged of the primary taint. These statements were not sufficiently distinguishable because the Respondent gave them in order to get the assistance of the CBP in complaining about the Hollywood police officer. The CBP officers, therefore, exploited the underlying illegal arrest and Respondent's statements are considered to be evidence obtained from the fruit of the poisonous tree.

Thus, Respondent's statements and all documents resulting from the unlawful arrest are subject to exclusion as fruit of the poisonous tree.

VI. Conclusion

In light of the foregoing reasons, the following order is entered.

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to Suppress is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Respondent's Motion to Terminate is **GRANTED, and the proceedings are hereby TERMINATED.**

DATED this 12th day of August, 2013.

Honorable Denise Noonan Slavin
Immigration Judge

Appeal Due September 11, 2103.