

Attorney for Appellant.

**SUMMARY OF THE CASE AND REQUEST FOR
ORAL ARGUMENT**

Manuel Rodriguez-Arreola was indicted for illegal reentry in violation of

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TABLE OF AUTHORITIES

CASES:

Berkemer v. McCarty, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317
(1984) 6
1275 (1983) .

United States v. Cummins, 920 F.2d 498, 501 (8th Cir. 1990) 14

United States v. Foley

objections to the Magistrate's report and recommendation on December 6, 2000.

On December 22, 2000, the district court granted the motion to suppress.

The government has filed an interlocutory appeal to this Court, appealing the district court's order granting the motion to suppress. The government appeals on

SUMMARY OF THE ARGUMENT

The questions as to immigration status did not prolong the stop. Those questions led to Trooper Koltz having reasonable suspicion that the Defendant was in the United States illegally. In *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984), the Supreme Court distinguishes a traffic stop from an arrest and reasons that most traffic stops resemble in duration and atmosphere the type of detention authorized by *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20

ARGUMENT AND APPLICABLE STANDARD OF REVIEW

I.

DURING THE COURSE OF A STOP FOR A TRAFFIC VIOLATION, AN OFFICER'S UNRELATED INQUIRIES OF THE DRIVER AS TO THE DEFENDANT PASSENGER'S IMMIGRATION STATUS DID NOT VIOLATE THE FOURTH AMENDMENT RIGHTS OF THE DEFENDANT.

The standard of review for a district court's factual determination of a motion to suppress is the clearly erroneous standard. *United States v. Lewis*

not be given a Miranda-type warning that he may remain silent. *See Berkemer v. McCarty*

it reasonably takes to “investigate the circumstances that provoke suspicion.” 468

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the driver might have been involved in illegal drug activity or that he was illegally in the country. He asked the driver if he was legally in the country and after displaying some confusion, the driver stated he was. T 14. He stated his passenger was not.

violation . . . [because] detention, not questioning, is the evil at which *Terry's*

II.

THE DISTRICT COURT ERRED IN SUPPRESSING EVIDENCE OF THE DEFENDANT'S IDENTITY AS AN ILLEGAL ALIEN IN A PROSECUTION FOR ILLEGAL REENTRY.

A. Standard of review

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prosecutions where “the illegal arrest leads to determining the defendant’s identity

identity; they obtained his fingerprints in an attempt to match them to prints found at the scene of a rape. 394 U.S. at 722-723. In other words, in both of these cases

¹Even if this Section 1326 prosecution against the Defendant is dismissed as
(continued...)

CONCLUSION

Based on the arguments and authorities submitted herein, the United States respectfully requests that this Court affirm the judgment and sentence in this case in all respects.

Respectfully submitted this _____ day of February, 2001.

TED L. MC BRIDE

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