

SUMMARY AND REQUEST FOR ORAL ARGUMENT

In this appeal, Villa-Velazquez asks the Court to reverse the district court's opinion with respect to the officers' authority to arrest, and recognize the full extent of the illegality of Villa-Velazquez's arrest. Villa-Velazquez also seeks suppression of all of the evidence obtained illegally by the officers, contending that it was obtained through

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I. WHETHER A SCOTTSBLUFF POLICE SERGEANT HAD AUTHORITY TO ARREST VILLA-VELAZQUEZ FOR A VIOLATION OF FEDERAL IMMIGRATION LAW, WHEN BOTH FEDERAL AND STATE LAW REQUIRE THAT A STATE LAW OFFICER POSSESS REASONABLE CAUSE TO BELIEVE A DEFENDANT HAS COMMITTED A FELONY PRIOR TO MAKING A WARRANTLESS ARREST, AND WHEN THE INFORMATION KNOWN TO THE OFFICER DID NOT CONSTITUTE PROBABLE CAUSE TO BELIEVE THAT VILLA-VELAZQUEZ HAD COMMITTED A FELONY. 2

II. WHETHER THE DISTRICT COURT SHOULD HAVE iELAZQUEZ ’

SUMMARY OF THE ARGUMENT

TABLE OF AUTHORITIES

CASES

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| <i>Brown v. Illinois</i> , 422 U.S. 590 (1975) | 2, 18, 19, 24 |
| <i>INS v. Lopez-Mendoza</i> , 468 U.S. 1032 (1984) | 20, 21 |
| <i>New York v. Harris</i> | |

STATUTES

JURISDICTIONAL STATEMENT

1. Ramon Villa-Velazquez appeals from the judgment including sentence imposed by the Honorable Richard G. Kopf, Chief United States District Judge for the

STATEMENT OF THE CASE

Ramon Villa-Velazquez was indicted for illegal reentry into the United States following a prior deportation, a violation of 8 U.S.C. § 1326. Villa-Velazquez filed a motion to suppress the evidence obtained against him following his arrest, contending

Sergeant Ferguson was familiar with Villa-Velazquez from an encounter several years before, and was apparently anxious to take Villa-Velazquez into custody. (Tr. 13-14) After making inquiries, Sergeant Ferguson learned that Villa-Velazquez's wife and children lived at 1107 Avenue R. (Tr. 15) Sergeant Ferguson immediately went to that address to begin surveillance. (*Id.*) Using binoculars to

Velazquez's

& Recomm. p. 4) Nevertheless, the magistrate judge recommended that the motion to suppress be granted. Citing *Payton*, the magistrate judge noted that it is unconstitutional for a law enforcement officer to make a warrantless entry into a person's home in the absence of consent or exigent circumstances. Finding that neither were present in Villa-Velazquez's case, the magistrate judge concluded that "the evidence obtained after Sergeant Ferguson entered the residence should be suppressed as being obtained in violation of the Fourth Amendment." (Rpt. & Recomm. p. 6)

Both parties objected to the magistrate judge's Report and Recommendation. While the government sought review of the Fourth Amendment determination, Villa-Velazquez contested the magistrate judge's finding that Sergeant Ferguson had

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jurisprudence, it is inadmissible.

STANDARpfF REVIEW2

I. NEITHER STATE NOR FEDERAL LAW AUTHORIZED SERGEANT FERGUSON'S ARREST OF VILLA-VELAZQUEZ ON THE BASIS OF A CONFIDENTIAL INFORMANT'S UNCORROBORATED ALLEGATION OF VILLA-VELAZQUEZ'S ILLEGAL STATUS IN THE UNITED STATES.

Contrary to the district court's conclusion, Sergeant Ferguson was not empowered

removing the alien from the United States.

(emphasis added). Thus, any evaluation of Sergeant Ferguson's authority to take Villa-Velazquez into custody must begin with an examination of the extent to which state

**II. THE COURT SHOULD SUPPRESS NOT ONLY THE EVIDENCE
BUTY THEFINGERPRINTS AND OATHEE EVIDENCE**

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v. Guevara-Martinez, ___ F.3d ___, No. 00-3855, 2001 WL 935871 (8th Cir. Aug. 20, 2001), in which this Court announced for the first time that fingerprints discovered after an illegal arrest could be suppressed under *Wong Sun*. In *Guevara-Martinez*, law enforcement officers stopped a car in which Guevara-Martinez was a passenger and ultimately found methamphetamine. *Guevara-Martinez*, 2001 WL 935871 at * 1. Guevara-Martinez was arrested and jailed in Omaha, Nebraska. *Id.*

holding that *Lopez-Mendoza*'s statement about the suppression of i44808 Tc ('s) Tj 11.25 0 ing

constitutional

documents obtained the day of his arrest, and any other information derived from that evidence.

CONCLUSION

NO. 01-2784

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

UNITED STATES OF AMERICA,
Appellee,

vs.

RAMON VILLA-VELAZQUEZ,
Appellant.

CERTIFICATE OF COMPLIANCE

MARY H. BUCKLEY, after being first duly sworn, states:

1. The

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NO. 01-2784

IN THE UNITED STATES COURT OF APPEALS