



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

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31 Hopkins Plaza, Room 1600  
Baltimore, MD 21201**

**Name: SELTIK, FERINO SANCHEZ  
Riders:094-216-523**

**A 094-216-526**

**Date of this notice: 1/24/2013**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

**Donna Carr  
Chief Clerk**

Enclosure

**Panel Members:  
Guendelsberger, John  
Adkins-Blanch, Charles K.  
Manuel, Elise L.**

**TranC  
User team: Docket**

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)

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Falls Church, Virginia 22041

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Files: A094 216 526 – Baltimore, MD  
A094 216 523

Date:

JAN 24 2013

In re: FERINO SANCHEZ SELTIK  
TENORIO DAVILA JUVENTINO a.k.a. Tenorio Cuban Davila

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Maureen A. Sweeney, Esquire

ON BEHALF OF DHS: Jennifer Piateski  
Assistant Chief Counsel

APPLICATION: Termination

The respondents have appealed from the Immigration Judge's decision dated February 17, 2011. The Immigration Judge denied the respondents' motion to suppress on January 3, 2011, and granted the respondents' application for voluntary departure under section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b), on February 17, 2011. On appeal, the respondents argue that the Immigration Judge erred in denying their motion to suppress. The respondents' appeal will be sustained and the record will be remanded to the Immigration Judge for further proceedings.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Upon de novo review, we find it appropriate to remand the record to the Immigration Judge for further proceedings regarding the respondents' motion to suppress. The Immigration Judge stated in his January 3, 2011, decision that the exclusionary rule is not applicable in removal proceedings citing to *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). In *INS v. Lopez-Mendoza*, *supra* at 1050-51, the Supreme Court held that the Fourth Amendment exclusionary rule is generally inapplicable to deportation proceedings; however, a plurality suggested that this rule may be applied in civil removal proceedings if there are egregious Fourth Amendment violations that transgress Fifth Amendment notions of fundamental fairness. The Board recognized the same exception in *Matter of Toro*, 17 I&N Dec. 340, 343 (BIA 1980). In light of the foregoing, we find it appropriate to remand the record to the Immigration Judge to determine whether the Fourth Amendment violations alleged by the respondents in their motion to suppress, if true, are so egregious that they would transgress due process protections afforded under the Fifth Amendment. Accordingly, the following order will be entered.

ORDER: The respondents' appeal is sustained and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
Baltimore, Maryland

File Nos.: A 094 216 526  
A 094 216 523

February 17, 2011

In the Matter of )  
 )  
FERINO SANCHEZ SELTIK ) IN REMOVAL PROCEEDINGS  
TENORIO CUBAN DAVILA )  
 )  
Respondents )

CHARGE: Violation of Section 212(a)(6)(I) of the  
Immigration and Nationality Act.

APPLICATION: Application for post hearing voluntary departure.

ON BEHALF OF RESPONDENT:

Rebecca Peters

ON BEHALF OF DHS:

Jennifer E. Piateski

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondents are citizens and nationals of Mexico who were placed in removal proceedings when Notices to Appear were filed with the Immigration Court.

The respondents appeared at a Master Calendar and denied the allegations and denied the grounds of removability.

The respondents' counsel filed a motion to suppress. The Government responded to the motion and the Court has considered the evidence filed by the parties, as well as the briefs, and has

denied the motion to suppress.


The respondents' counsel indicated that the respondents qualified for voluntary departure, post hearing, and stated in her place that the respondents had not been granted voluntary departure in the past and that they had never been arrested except for Immigration purposes and that if granted voluntary departure, they would depart within the period of time before the expiration of the voluntary departure and pay their own way back to their home country of Mexico.

Accordingly, it appearing that the respondents are not a national security threat nor are they aggravated felons and being otherwise eligible for voluntary departure, the Court will grant post hearing voluntary departure for a period of 60 days, which would expire on April 18, 2011, or 60 days after any decision by an Appellate Court. The Court will require that a \$500 departure bond be posted for each person within five days of this hearing. If the respondents fail to depart on or before the expiration of their date of voluntary departure, then an automatic order of removal will go into effect and the respondents will be ordered removed from the United States to Mexico.

#### ORDERS

The Court hereby finds that the Government has shown by clear and convincing evidence that the respondents are removable from the United States in its charge and, therefore, find them removable.

The Court further orders that the respondents be granted post hearing voluntary departure for a period of 60 days until April 18, 2011, and that they post a departure bond of \$500 within five days of this hearing. If the respondents do not depart by the expiration of the period of voluntary departure, then the respondents will be ordered removed from the United States to Mexico automatically.

  
\_\_\_\_\_  
DAVID W. CROSLAND  
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before  
JUDGE DAVID W. CROSLAND, in the matters of:

FERINO SANCHEZ SELTIK  
TENORIO CUBAN DAVILA

A 094 216 526

A 094 216 523

Baltimore, Maryland

is an accurate, verbatim transcript of the recording as provided by  
the Executive Office for Immigration Review and that this is the  
original transcript thereof for the file of the Executive Office  
for Immigration Review.

Kristen J. Bellotti / TU  
Kristen J. Bellotti, Transcriber  
Free State Reporting, Inc.

April 8, 2011  
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies  
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paragraph.