DA: December 28, 2018
FR: ORPE Human Rights Advocates Immigrant's Rights Clinic
RA: Sample Motion to Suppress for Pro Bono Representatives

This is only a sample exercise related to the motion to suppress evidence and a supporting declaration. This motion was first prepared by Edward T. Moises as a guided research project under the supervision of Jan TING, Professor of Immigration Law at Temple University Beasley School of Law. Now, the motion was adapted to fit the need of supporting and preparing pro bono activity associated with ORPE Human Rights Advocates' pro bono and internship program. The motion focuses on immigration legal defense and representing individuals apprehended through immigration raids. Accordingly, the law is heavily drawn on cases from the Ninth Circuit. Based on reports of raids that have occurred nationwide, the sample motion assumes the following facts:

- A raid by Immigration and Customs Enforcement (ICE) agents on an individual's home,
- The existence of an unidentified document that ICE agents brought when they entered the home, in light of reports that ICE has been using either administrative warrants or old deportation orders to enter homes,
- The use of coercive tactics such as the display of weapons, large numbers of agents, blocking of exits, an early-morning raid, etc.,
- The possibility of racial profiling based on Latino-sounding last names or appearance.

Of course, every case will require its own independent fact gathering.

This motion legal arguments are based on violations of the Fourth and Fifth Amendments, and violations of Department of Homeland Security (DHS) regulations. Although the sample motion places relatively greater weight on the Fourth Amendment arguments, other motions might emphasize either the Fifth Amendment or regulatory violation arguments, depending on the facts.

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BALTIMORE, MD

In the Matter of:	)	Alien No.: A-- --- ---
	)	
PERREIRA, Arture,	)	
	)	**MOTION TO SUPPRESS EVIDENCE**
Respondent,	)	
	)	Date of Hearing: ----------
In Removal Proceedings	)	Time of Hearing: ----------
_____	)	Before: Honorable: ----------

MOTION TO SUPPRESS EVIDENCE

The Respondent in the above matter moves for the suppression and exclusion of all evidence, physical and testimonial, obtained or derived from or through or as a result of ICE's unlawful search, seizure, interrogation, arrest, and detention which occurred on or about May 10, 2007, at 1828 Crenshaw Rd, Baltimore, MD 21217.

Specifically, Respondent moves for the suppression and exclusion of the following:

1. ICE Forms I-213, I-214, or any other statements or forms completed from information that may have been given by the Respondent and any forms signed by the Respondent on or about May 10, 2007 and at any time thereafter, including forms completed from information that may have been given by the Respondent but which the Respondent refused to sign.

2. Any statement by the Respondent on Form I-215B, any other statement made by the Respondent, signed or unsigned, or any oral statements or confessions made by the Respondent.
3. Any and all other property, papers, information, or testimony pertaining to the Respondent, obtained or taken from him, on or about May 10, 2007 and at any time thereafter, by agents of ICE, or by any other person acting in concert with them.
4. Any and all other property, papers, information or testimony pertaining to the Respondent obtained as the fruit of the illegal search, seizure, detention, interrogation and arrest that occurred on or about May 10, 2007.

INTRODUCTION

Respondent Arture Perreira files this motion to suppress evidence gathered by Immigration and Customs Enforcement ("ICE") agents using tactics prohibited by the Fourth Amendment, Fifth Amendment, and Department of Homeland Security ("DHS") regulations. ICE agents violated the Fourth Amendment in four main ways. First, ICE agents barged into Mr. Perreira's home without Mr. Perreira's voluntary consent, and without a valid warrant. Second, ICE agents deliberately used coercion and duress to conduct the search and seizure. Third, ICE agents had no articulable reason to harbor suspicion that Mr. Perreira had violated the law. Fourth, ICE agents targeted Mr. Perreira based on his race. The ICE agents' violations of the Fourth Amendment were egregious because the agents acted deliberately and violated rules with which any reasonable immigration officer should have been familiar. The ICE agents also violated the Fifth Amendment by coercing Mr. Perreira into making statements involuntarily and in a fundamentally unfair manner. The ICE agents' blatant violations of the Fifth Amendment require this Court to suppress the evidence before it. Finally, ICE agents also violated agency regulations, providing yet another reason for this Court to suppress the evidence before it. The ICE agents violated various regulations codified at 8 C.F.R. § 287 that required them to obtain a valid warrant or Mr. Perreira's consent before the search, develop reasonable suspicion before questioning and seizing him, refrain from placing Mr. Perreira under coercion or duress during the search, and adhere to certain procedures during arrests. The violated regulations were meant to protect Mr. Perreira, and mirrored the requirements of the

Fourth and Fifth Amendments. Moreover, the ICE agents' actions caused prejudice to Mr. Perreira.

Accordingly, this Court should suppress evidence of Mr. Perreira's alienage collected through the ICE agents' egregious Constitutional violations and regulatory violations or, in the alternative, hold an evidentiary hearing to determine whether suppression is warranted

STATEMENT OF FACTS

On May10, 2007, Arture Perreira woke up in the middle of the night because he heard loud banging on the front door of his home. In a half-awake state, Mr. Perreira got out of bed and looked outside of the door's peephole. He saw several men wearing dark uniforms, holding guns, and shining bright flashlights outside of his door. He did not know who they were. He heard one of the uniformed men call out his name and order him to open the door several times. Perreira Decl. Exhausted and confused, Mr. Perreira cracked open the door so that he could ask what they wanted.

As he opened the door, he asked, "who are you and why are you here?" at which point flashlights were shined into his eyes and the door was pushed open. Seven ICE agents, all displaying guns, walked into the apartment. None of the agents asked Mr. Perreira whether they had permission to enter. One of the agents thrust a piece of paper in front of Mr. Perreira, and then quickly put the document away before Mr. Perreira had a chance to examine it. Two of the agents stood by the door of Mr. Perreira's apartment, blocking the door. Mr. Perreira was very frightened. While tapping his gun, one of the ICE agents asked Mr. Perreira if his name was" Arture Perreira," to which Mr. Perreira said yes. Id. One of the agents asked Mr. Perreira for his passport and green card. Mr. Perreira was frightened and went to his bedroom. The agent followed him. Mr. Perreira opened his nightstand drawer, and showed the agent his Mexican passport while the agent stood by the bedroom door. The agent asked Mr. Perreira whether he had a green card. The agent continued to stand by the bedroom door. Id. Mr. Perreira could hear his wife being interrogated, and could also hear his two young daughters, ages 2 and 4, crying in the other room. Afraid for the safety of his family, he told the agent that he did not have a green card and that he did not have papers to be in the United States. The ICE agent then handcuffed Mr. Perreira. Many of the

residents in Mr. Perreira's apartment building are Latino, and Mr. Perreira's name is displayed on his mailbox. Id.

ARGUMENT

Respondent Requests this Court to Suppress All Alienated Evidence Of Mr. Perreira's Since ICE Obtained These Evidence Through Egregious Violations Of The Fourth Amendment.

The Supreme Court has recognized that courts should suppress evidence in the case of "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness." INS v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984)[1]. The clearly established law" in the Ninth Circuit provides that during immigration proceedings, "evidence must be suppressed if it was obtained through an egregious violation of the Fourth Amendment." *Orhorhaghe v. INS*, 38 F.3d 488, 493 (9th Cir. 1994). Egregious violations occur when government agents have either engaged in "conduct a reasonable officer should have known would violate the Constitution" or "committed the violations deliberately." Id. at 493. Indeed, "all bad faith violations" of the Fourth Amendment "are considered sufficiently egregious to require application of the exclusionary sanction" in immigration proceedings. Gonzalez-Rivera v. INS, 22 F.3d 1441, 1449 (9th Cir. 1994). Evidence collected through egregious violations requires suppression regardless of the evidence's probative value. Orhorhaghe, 38 F.3d at 501-02; Adamson v. Commissioner of Internal Revenue, 745 F.2d 541, 545 (9th Cir. 1984). Here, ICE agents engaged in at least four types of egregious violations of the Fourth Amendment. First, they searched Mr. Perreira's home without either a constitutionally judicially authorized search warrant or Mr. Perreira's voluntary consent. Second, the ICE agents used coercion and duress during the search. Third, they lacked reasonable suspicion to seize Mr. Perriera. Fourth, the ICE agents targeted Mr. Perreira based on his race and Latino- sounding last name.

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[1]. The INS v. Lopez-Mendoza court stated, however, that evidence collected through "peaceful arrests by INS officers" does not warrant application of the Fourth Amendment's exclusionary rule in deportation hearings. Id. at 1051.

A. Mr. Perreira's Unconsented ICE's Unlawful and Coercive Home Search Without A Constitutionally Sufficient Warrant Constituted An Egregious Violation Of The Fourth Amendment.

The Supreme Court has long held that searches of the home require either a warrant or the consent of the owner:

One governing principle, justified by history and by current experience, has consistently been followed [in the Fourth Amendment]: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant. Camara v. Municipal Court, 387 U.S. 523, 528-29 (1967) (emphasis added). See also Payton v. New York, 445 U.S. 573, 585 (1980) ("physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed"). The ICE agents' failure to obtain a judicial warrant amounts to an egregious violation of the Fourth Amendment because any reasonable ICE agent should know that the Constitution required either a judicially authorized search warrant or the resident's voluntary consent. In Orhorhage v. INS, the Ninth Circuit held that egregious violations of the Fourth Amendment occurred during four INS agents' "nonconsensual warrantless entry" into an alien respondent's home. 38 F.3d at 492. The Ninth Circuit also noted that any "reasonable officer who receives" internal INS training "should be aware of basic principles of Fourth Amendment law which have been consistently espoused for over a decade." Id. at 503 & n.23 (emphasis added).

Furthermore, any ICE agent should know that they were required under the Fourth Amendment to obtain a valid search warrant "issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense." Steagald v. United States, 451 U.S. 204, 213 (1981). The warrant must "describe with the requisite particularity the person to be seized." International Molders' and Allied Workers' Local Union No. 164 v. Nelson, 643 F. Supp. 884, 890 (N.D. Cal. 1986). International Molders' found invalid the then-INS' use of administrative warrants which failed to name the specific persons to be searched during an investigation of factories in Northern California, noting that "a warrant authorizing the search of premises and specified individuals is not an adequate basis to search all individuals on those premises." Id. at 891 (emphasis in original). The court also stated that "[t]he Ninth Circuit [] has

made it abundantly clear" that the use of immigration-related warrants is "to be scrutinized under traditional fourth amendment doctrine." Id. at 892 (emphasis added).[2]

ICE bears the burden of proving that the "piece of paper" they brought with them was a valid search warrant. Perreira Decl. at 5; Matter of Barcenas, 19 I. & N. Dec. 609, 611 (BIA 1988). Absent evidence to the contrary, this Court should conclude that the ICE agents did not have a constitutionally sufficient warrant when they barged into Mr. Perreira's home.

Assuming that the ICE agents lacked a valid search warrant, the ICE agents were required by the Fourth Amendment to obtain Mr. Perreira's voluntary consent before conducting the search. The Supreme Court has long held that the government bears the burden of showing that consent was "voluntarily given, and not the result of duress or coercion, express or implied." Orhorhaghe, 38 F.3d at 500, citing Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973). Courts have found that non-citizens did not voluntarily consent to searches by immigration agents based on factors such as, inter alia, the early morning or late evening hour of the search; the failure of immigration agents to advise individuals of their right to refuse consent; the number of immigration agents compared to the number of immigrants; immigration agents' display of weapons; and immigration agents' assertions of authority to conduct the search. See LaDuke v. Nelson, 762 F.2d 1318, 1326 (9th Cir. 1985); Orhorhaghe, 38 F.3d at 500. Here, any consent provided by Mr. Perreira resulted from coercion and duress, and was therefore involuntary. The ICE agents pushed Mr. Perreira's

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[2] Other jurisdictions have held that the use of any document other than a judicial warrant, signed upon a showing of probable cause, does not permit immigration agents to search and seize individuals like Mr. Perreira. See also Illinois Migrant Council v. Pilloid, 531 F. Supp. 1011, 1020-22 (N.D. Ill. 1982) (stating that "administrative warrants may not be used by INS to justify the seizure of persons" and the "sort of warrant the [Supreme] Court has always required for the search of a dwelling is a warrant based upon judicial determination of probable cause ");

door open with such force that he nearly fell to the floor. Perreira Decl. at 5. The fact that the ICE agents pushed open Mr. Perreira's door, by itself, demonstrates that he did not consent to the agents' entry into his apartment. See United States v. Shaibu, 920 F.2d 1423, 1427 (9th Cir. 1990) (holding that "there is no authority that an open door gives police legal grounds to enter the home" where officers followed resident into his home through an open do or). Furthermore, the agents' actions placed Mr. Perreira under coercion and duress, thus making it impossible for him to voluntarily consent to the search. ICE agents knocked on Mr. Perreira's home at approximately 4 a.m., a time when Mr. Perreira and his family were asleep and unable to fully comprehend their motivation.

Furthermore, while in his bedroom, and before making statements about his alienage, Mr. Perreira feared for the safety and well-being of his wife and two young children. Id. at 8. Under these circumstances, Mr . Perreira could not have voluntarily consented to the search of his home. Accordingly, this Court should find that ICE agents egregiously violated the Fourth Amendment by conducting an unlawful search of Mr. Perreira's home without either a valid warrant or Mr. Perreira's voluntary consent.

B. ICE Engaged in Egregious Violations Since They Deliberately Violated the Fourth Amendment, As Evidenced by the Use of Duress and Coercion.

When government agents act deliberately to violate the Constitution, their actions are egregious. See Adamson, 745 F.2d at 545. As the Ninth Circuit stated, "the government's manner of obtaining evidence can be so offensive as to warrant suppression." Orhorhage, 38 F.3d. at 502 (emphasis in original). Although physical violence may demonstrate the existence of an egregious violation, the courts have "not impose[d] a requirement that a search or seizure involve physical brutality to warrant suppression." Id. & n.20 (emphasis in original). Here, the ICE agents' actions

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United States v. Karathanos, 399 F. Supp. 185, 188 (E.D.N.Y. 1975) (finding "no support whatsoever for a standard of probable cause to search for 'illegal' aliens less rigorous than that prevailing in searches relating to matters generally considered to be crimes").

inside Mr. Perreira's apartment were deliberate, coercive, and intended to place him under duress. None of the ICE agents' actions were accidental or even necessary. The agents chose to knock on Mr. Perreira's door in the middle of the night, and chose to shine flashlights into the viewing hole of the front door. They chose not to ask him for permission to enter his home, and instead pushed open the door themselves to begin their unlawful search. Once inside, the ICE agents deliberately displayed their weapons to Mr. Perreira, and blocked the doors of his apartment and bedroom. Even if this Court finds that a reasonable ICE agent would not know that their actions violated the Fourth Amendment, the Court should find that the agents deliberately caused the violations, so that the violations were egregious. Therefore, this Court should find that the ICE agents' actions also constituted egregious violations because they deliberately violated the Fourth Amendment, as evidenced by their use of coercion and duress.

C. Mr. Perreira was Unlawful Seizure by ICE, Without Reasonable Suspicion, Constituted An Egregious Violation Of The Fourth Amendment.

The Fourth Amendment clearly requires immigration agents to have reasonable suspicion before seizing a non-citizen. Brignoni-Ponce, 422 U.S. 873, 886-87 (1975); Orhorhaghe, 38 F.3d at 494. A seizure occurs when a "reasonable person...believe[s] that he [is] not free to leave" the presence of government agents, United States v. Mendenhall, 446 U.S. 544, 554 (1980), including when a government officer "merely indicate[s] by his authoritative manner that the person is not free to leave." United States v. Patino, 649 F.2d 724, 727 (9th Cir. 1981). Moreover, where a search occurs in a private home, as it did here, the Ninth Circuit has stated that this "militates strongly in favor of finding a seizure." Orhorhaghe, 38 F.3d at 495; see also La Duke, 762 F.2d at 1328-29 (establishing that a place of residence has the highest "measure of protection" under the Fourth Amendment). Reasonable suspicion must provide a "rational basis for separating out the illegal aliens from American citizens and legal aliens." Nicacio v. I.N.S., 797 F.2d 700, 704 (9th Cir. 1985). Reasonable suspicion also requires "specific articulable facts." Gonzales-Rivera, 22 F.3d at 1445. In Gonzales-Rivera, for example, the Ninth Circuit held that no reasonable suspicion existed where the immigration agent claimed that he stopped the immigrant based on "Gonzalez' failure to look at the Border Patrol car; the fact that he appeared to have a 'dry' mouth; the fact that he was blinking; and Gonzalez' Hispanic appearance." Gonzales-Rivera, 22 F.3d at 1446. Any reasonable ICE agent should be well-versed in these requirements.3 Mr. Perreira was clearly

"seized" within the meaning of the Fourth Amendment because he was not free to leave the ICE agents' interrogation during ICE's unauthorized presence in his home. As soon as the seven ICE agents pushed open his front door, two agents stood by the door with weapons, which would have caused any reasonable person to believe that he was not free to leave his apartment. Perreira Decl. at 7. When another agent demanded to know if Mr. Perreira was "Arture Perreira," the agent tapped on his gun, thus bringing Mr. Perreira's attention to the fact that they were armed and prepared to force Mr. Perreira to comply with their demands. Id. at 6. When an agent demanded that Mr. Perreira show him his passport and green card, Mr. Perreira moved to his bedroom, and the agent stood by the door of Mr. Perreira's bedroom. Id. at 7. Mr. Perreira believed he had no choice but to comply with the agent's orders. Id. Moreover, throughout the seizure, the ICE agents lacked a reason to suspect that Mr. Perreirahad violated any federal immigration law. They lacked reasonable suspicion because they appear to have had no information about Mr. Perreira's immigration status at the time they knocked on his front door. Once inside his home, they had no objective, articulable basis for the seizure because they had not gathered any evidence to suggest that Mr. Perreira had violated any immigration provisions. By the time the agent demanded Mr. Perreira's passport and green card, Mr. Perreira had not provided the agent with any reason to believe he had violated any law. Accordingly, the ICE agents seized him without reasonable suspicion.

D. ICE Agents Seized Mr. Perreira Because of His Latino-Sounding Name and Latino Appearance, Which the Ninth Circuit Has Already Held to Constitute an Egregious Violation of the Fourth Amendment.

The Supreme Court has explicitly prohibited immigration agents from relying on racial characteristics to conduct a seizure. Brignoni-Ponce, 422 U.S. at 884-885. The Ninth Circuit has specifically held that searches and seizures based on race are egregious violations of the Fourth Amendment. Gonzales-Rivera v. INS, 22 F.3d 1441, 1452; Orhorhaghe v. INS, 38 F.3d 488, 503

As discussed infra at Part III.B, ICE's own agency regulations clearly prohibit officers from restraining the ability of a person in Mr. Perreira's situation from "walk[ing] away" from the interrogation unless the officer has "reasonable suspicion, based on specific articulable facts." 8 C.F.R. § 287.8(b)(1)-(2).

(9th Cir. 1994). In Orhorhage, the appellate court found that evidence of racial profiling on the basis of the alien's "Nigerian-sounding name" constituted an egregious violation. Orhorhage, 38 F.3d at 503. The Ninth Circuit's reasoning was based on the fact that the Supreme Court had explicitly held "over a decade" earlier, in Brignoni-Ponce, that investigative seizures based on an alien's Hispanic appearance were unconstitutional. Id. at 503; Brignoni-Ponce, 422 U.S. at 884-85. Accordingly, "[b]ecause the Brignoni-Ponce principle was firmly established at the time" the INS investigation took place, the Orhorhage court found that "a reasonable officer should have known that both the seizure of Orhorhage and the unlawful entry into his apartment violated the Constitution." Orhorhage, 38 F.3d at 503. Today, this Court can expect any reasonable ICE agent to know that searches and seizures based on race are unlawful. ICE agents appear to have entered Mr. Perreira's home because of his race. Mr. Perreira was at home asleep at the time the ICE agents chose to knock on his front door. The ICE agents lacked any reason to target him for questioning. Once inside his apartment, Mr. Perreira was dazed, confused, and exhausted because the agents had roused him from sleep, and he did not do anything to give rise to reasonable suspicion. However, Mr. Perreira resides in a Majority-Latino neighborhood, has a Latino-sounding last name which appears on his mailbox, and is of Latino descent. If Mr. Calderon presents prima facie evidence of the improper use of race by the ICE agents, then ICE bears the burden of showing that their actions were not motivated by race.

Matter of Barcenas, 19 I. & N. Dec. at 611. Mr. Perreira presents prima facie evidence that ICE violated the Fourth Amendment by targeting Mr. Perreira on the basis of his race and Latino-sounding last name. Absent evidence presented by ICE to refute the prima facie evidence, this Court should find that the ICE agents seized Mr. Perreira due to his race.

I. This Court Should Suppress Mr. Perreira's Statements Regarding His Immigration Papers Because ICE Agents Engaged in Fundamentally Unfair Violations Of The Fifth Amendment.

In addition to the Fourth Amendment violations, the ICE agents' violations of the Fifth Amendment warrant suppression of the evidence. Where ICE officials engage in coercive tactics that cause individuals to make statements involuntarily, allowing such statements to serve as the basis for a removal hearing would be fundamentally unfair. Bong Youn Choy v. Barber, 279 F.2d

642, 646-47 (9th Cir. 1960); Matter of Garcia, 17 I. & N. Dec. 319, 321 (BIA 1980). Involuntary statements include those made where government agents engaged in coercion, duress, threats, or interfered with an individual's attempt to exercise their rights. Matter of Ramirez-Sanchez, 17 I. & N. Dec. 503, 506 (BIA 1980); see also Matter of Garcia, 17 I. & N. Dec. at 321 (suppressing statement involuntarily given after respondent was denied right to contact attorney). In Bong Youn Choy, the Ninth Circuit noted that the respondent made a statement when he was in a "sleepless," "weary," and "distressed" state, and "sought to appease his official accusers by making the statement containing the admissions." 279 F.2d at 647. The Court suppressed the statement because "the improper conduct of the Immigration agents induced the admissions." Id. See also Matter of Toro, 17 I. &. N. 340, 343 (BIA 1980) (recognizing that "cases may arise in which the manner of seizing evidence is so egregious that to rely on it would offend the Fifth Amendment's due process requirement of fundamental fairness").

The coercive tactics used by the ICE agents rendered it impossible for Mr. Perreira to make voluntary statements to the ICE agents. Before surrendering his Mexican passport, he had been woken up in the middle of the night after ICE agents barged into his private home without a valid warrant, outnumbered him, and openly displayed their deadly weapons. Perreira Decl. at 4-5. By the time he told the ICE agent that he did not have papers to be in the United States, he had already been intimidated by the ICE agents' behavior and had reason to fear for his family's safety. Indeed, he could hear the agents interrogating his wife and his two young children crying in the other room. Id. at 8. He believed that he would first have to answer the ICE agent's questions before attending to his children, particularly in light of the fact that the ICE agent stood blocking his bedroom door. Id. Mr. Perreira was also physically exhausted and mentally distressed under the circumstances. Id. ICE's actions offend the Fifth Amendment's guarantee of fundamental fairness, and Mr. Perreira did not make his statements voluntarily. Accordingly, the results of Mr. Perreira's interrogation should be suppressed.

II. ICE's Search and Seizure of Mr. Perreira Violated Its Own Agency Regulations, Warranting Suppression of the Resulting Evidence.

Where ICE violates its own rules and regulations to collect evidence, immigration courts must suppress evidence where (1) the regulation at issue was promulgated for the benefit or protection of the alien, and (2) the violation has the potential to prejudice the alien's interests.

United States v. Calderon-Medina, 591 F.2d 529, 531 (9th Cir. 1979); Matter of Garcia-Flores, 17 I. & N. Dec. 325, 328 (BIA 1980). Prejudice exists where the agency violation "affect[s] potentially the outcome of [the] deportation proceedings." U.S. v. Rangel-Gonzalez, 617 F.2d 529, 530 (9th Cir. 1980) (finding prejudice because alien might have obtained legal counsel and avoided deportation if immigration agents had adhered to agency regulation). In addition, even where the effect of the violation on the outcome of the proceedings is not clear, "where compliance with the regulation is mandated by the Constitution, prejudice may be presumed." Matter of Garcia Flores, 17 I. & N. Dec. at 329; see also United States v. Caceres, 440 U.S. 741, 749 (1979) ("[a] court's duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law"). For instance, the Supreme Court has invalidated a deportation based on statements which did not comply with then-INS regulations aimed at providing due process to the alien. Bridges v. Wixon, 326 U.S. 135, 152-53 (1945). Here, the ICE agents engaged in numerous regulatory violations, which require suppression of the evidence before this Court. First, the entry into Mr. Perreira's home violated 8 C.F.R. § 287.8(f)(2). Second, the ICE agents' lack of reasonable suspicion in questioning and detaining Mr. Calderon violated 8 C.F.R. §§ 287.5(1) and 287.8(b). Third, the coercive nature of the search violated 8 C.F.R. § 287.8(c)(vii). Finally, the warrantless arrest violated Immigration and Nationality Act ("INA") § 287(a)(2) and 8 C.F.R. § 287.3(a).

A. ICE's Non-Consensual Entry Into Mr. Perreira's Residence, Without a Valid Search Warrant, Violated 8 C.F.R. § 287.8(f)(2) And Requires Suppression Of The Evidence.

The ICE agents' entry into Mr. Calderon's apartment violated of section 287.8(f)(2) of the Code of Federal Regulation, Part 8. Section 287.8(f)(2) explicitly prohibits immigration officers from "enter[ing] into...a residence...for the purposes of questioning the occupants or employee concerning their right to be or remain in the United States unless the officer has either a warrant or consent of the owner." 8 C.F.R. § 287.8(f)(2) (emphasis added). Despite the fact that agency regulations required them to have either a valid warrant or Mr. Perreira's voluntary consent before even entering his home, they appear to have lacked a constitutionally sufficient warrant and certainly did not obtain Mr. Pereira's voluntary consent, as discussed supra at Part I. A. This Court should suppress the evidence because section 287.8(f)(2) was intended to protect Mr. Perreira and

because the violation may have prejudiced Mr. Perreira in these proceedings. See Calderon-Medina, 591 F.2d at 531. First, section 287.8(f)(2) seeks to afford due process and privacy protections to individuals such as Mr. Perreira by curtailing the power of government agents to enter into people's homes. Second, the agents' violation of section 287.8(f)(2) may have prejudiced Mr. Perreira. This Court should presume that prejudice to Mr. Perreira occurred because t he ICE agents' compliance with section 287.8(f)(2) is mandated by the Fourth Amendment. Indeed, section 287.8(f)(2) mirrors the Fourth Amendment, which requires that government agents obtain a warrant or consent before entering a person's home. Camara v. Municipal Court, 387 U.S. 523 (1967); Payton v. New York, 445 U.S. 573 (1980). Had the ICE agents not entered Mr. Perreira's home, they would not have illegally collected evidence of his alienage, which would certainly affect the outcome of the removal proceedings.

B. ICE's Interrogation Of Mr. Perreira Without Reasonable Suspicion Violated 8 C.F.R. §§ 287.5(1) and 287.8(b), And Warrants Suppression Of The Evidence.

The ICE agents also violated the regulatory requirement that they have reasonable suspicion before questioning Mr. Perreira and restraining his ability to walk away from their interrogation. 8 C.F.R. § 287.5(1) prohibits an immigration agent from even questioning an individual if they do not have a warrant unless the person is "believed to be an alien." 8 C.F.R. § 287.5(1); INA § 287(a)(1). In other words, before the ICE agents approached Mr. Perreira's door, DHS regulations required them to have a reason to believe Mr. Perreira was an alien. However, the ICE agents had no reason to believe he was even "an alien," 8 C.F.R. § 287.5(1), before they pounded on his door. Accordingly, the ICE agents violated section 287.5(1). 8 C.F.R. 287.8(b) further restricts an ICE agent's authority to detain persons for additional questioning unless the officers have "reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States." Unless they have reasonable suspicion, the ICE agents may not "restrain the freedom of an individual, not under arrest, to walk away." 8 C.F.R. § 287.8(b)(1). As discussed supra at Part I.C, the ICE agents restrained Mr. Perreira's freedom to walk away from their interrogation by blocking the doors, displaying guns, and intimidating him. Under the circumstances, where government officials barged into Mr. Perreira's home in the middle of the

night in a group of seven agents, and Mr. Perreira feared for the safety of his family, Mr. Perreira could not have felt free to leave.

This Court should grant suppression because the regulatory provisions were intended to protect Mr. Perreira and because the violations had the potential to prejudice Mr. Perreira in these proceedings. See Calderon-Medina, 591 F.2d at 531. First, the aforementioned regulations seek to protect individuals, such as Mr. Perreira, from unauthorized interrogation and detention by ICE agents.

Second, the ICE agents' disregard for the regulatory provisions at issue prejudiced Mr. Perreira. Prejudice to Mr. Perreira should be presumed because the Fourth Amendment already mandates compliance with the regulation in question. Matter of Garcia-Flores, 17 I. & N. Dec. at 329. Indeed, 8 C.F.R. § 287.5(1) and 287.8(b) directly mirror the Fourth Amendment's reasonable suspicion and seizure requirements, discussed supra at Part I.B.3. United States v. Mendenhall, 446 U.S. 544, 554 (1980). Furthermore, the ICE agents obtained evidence of Mr. Perreira's alienage without providing him with an opportunity to consult with legal counsel before answering their questions. The evidence of Mr. Perreira's alienage would clearly affect the outcome of the proceedings. Accordingly, the agency violations prejudiced Mr . Perreira.

C. ICE Violated 8 C.F.R. § 287.8(c)(vii) In Its Coercive Search and Seizure of Mr. Perreira, Warranting Suppression of the Evidence.

8 C.F.R. § 287.8(c)(vii) clearly provides, "[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 is prohibited." 8 C.F.R. § 287.8(c)(vii) (emphasis added). As discussed supra at Part I.B, the ICE agents subjected Mr. Perreira to coercion and intimidation on multiple occasions, thereby violating their own agency regulations. The ICE agents outnumbered Mr. Perreira seven to one, and carried weapons. Perreira Decl. at 5. They pushed their way into his apartment in the middle of the night, when Mr. Perreira was in a sleep-deprived and disoriented state. Id. at 3-5. They displayed their guns to him and blocked the exits while questioning him. Id. 6-7. Finally, when Mr. Perreira finally made a statement regarding his alienage, he did so under the pressure of hearing his two young children's crying, and his wife's interrogation. Id. at 8. Section 287.8(c) was no doubt meant to benefit Mr. Perreira by protecting him from coercive or otherwise abusive behavior, and ensuring his right to make statements voluntarily to the government. Moreover, prejudice to Mr.

Perreira should be presumed because section 287.8 (c)(vii) mirrors the Fifth Amendment's requirement that courts suppress statements made involuntarily as a result of coercion or duress. See Bong Youn Choy, 279 F.2d at 646-47; Matter of Garcia, 17 I. & N. Dec. at 321. If admitted into evidence, Mr. Perreira's statements regarding his immigration status would prejudice his interests at the deportation proceeding and materially affect the outcome of the proceeding. See United States v. Rangel-Gonzales, 617 F.2d 529, 530 (9th Cir. 1980).

D. The ICE Agents' Warrantless Arrest of Mr. Perreira Violated INA § 287(a)(2) and 8 C.F.R. § 287.3(a).

Finally, the ICE agents' warrantless arrest of Mr. Perreira violated INA § 287(a)(2) and 8 C.F.R. § 287.3(a). The arrest violated INA § 287(a)(2), which provides that a warrantless arrest may only take place if an officer "has reason to believe that the alien so arrested is in the United States in violation of any [] law or regulation and is likely to escape before a warrant can be obtained for his arrest," because Mr. Perreira did nothing to demonstrate he was likely to escape. INA § 287(a)(2) (emphasis added). Mr. Perreira conducted himself in a peaceful manner and did not try to escape during the ICE agents' unlawful search and seizure. He also has a family in the officers were readily available to comply with the regulation. See id. (stating that the arresting officer may conduct the examine only if "no other qualified officer is readily available."). These statutory and regulatory guidelines exist to benefit individuals like Mr. Perreira from illegal arrests. See Au Yi Lau v. INS, 445 F.2d 217, 222 (D.C. Cir. 1971) (analogizing "reason to believe" standard in INA § 287(a)(2) to Fourth Amendment probable cause requirement); Matter of Garcia-Flores, 17 I. & N. Dec. at 329 ("We are satisfied, however, that 8 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien."). The ICE agents' violations during the arrest had the potential to prejudice Mr. Perreira. If the agents had obtained a warrant for his arrest, Mr. Perreira might have obtained counsel earlier and avoided interrogation. If two different agents had examined and arrested Mr. Perreira, then one agent might have identified and avoided the many violations inflicted upon Mr. Perreira. Accordingly, this Court should suppress any evidence that resulted from the improper arrest of Mr. Perreira.United States. The ICE agent had no reason to believe Mr. Perreira would escape before obtaining a proper judicial warrant for his arrest. The ICE agents also violated 8 C.F.R. § 287.3(a)'s requirement that Mr. Perreira "be examined by an

officer other than the arresting officer." 8 C.F.R. § 287.3(a). Here, the ICE agent who interrogated Mr. Perreira also arrested him, despite the fact that six other qualified.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, the Respondent respectfully requests that this court suppress all evidence obtained during or as a result of the unlawful search and seizure. In the alternative, this Court should order an evidentiary hearing to determine whether to grant this Motion to Suppress.

Dated: ---------

Respectfully submitted,

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