IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

Case No. 12-71363

[redacted],

Petitioner,

v.

ERIC HOLDER, JR.,

Respondent.

On Petition for Review of a Final Order
from the Board of Immigration Appeals

BRIEF OF THE AMERICAN IMMIGRATION COUNCIL AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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CORPORATE DISCLOSURE STATEMENT

I, Matthew E. Price, attorney for *Amicus Curiae*, certify that the American Immigration Council is a non-profit organization that does not have any parent corporations or issue stock and consequently there exists no publicly held corporation which owns 10% or more of its stock.

/s/ Matthew E. Price

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STATEMENT REGARDING CONSENT

Counsel contacted the parties to seek their position regarding *Amicus Curiae*'s participation. Petitioner consented, and the government took no position.

STATEMENT OF INTEREST

The American Immigration Council ("Council") is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America's immigrants. The Council has a substantial interest in the issues presented in this case, which implicate the constraints imposed by the Fourth Amendment on immigration enforcement and the widespread nature of immigration officers' Fourth Amendment violations.[1] Below, *Amicus* focuses only on selected issues that justify vacatur and remand, although the remaining issues raised in Petitioner's brief also warrant that relief.

[1] Pursuant to Fed. R. App. P. 29(c)(5), *Amicus* the Council states that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than the *Amicus Curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

STATEMENT OF THE ISSUES

1. Whether the Board of Immigration Appeals ("BIA") erred in holding the government's detention of Petitioner to be lawful under *Michigan v. Summers*, 452 U.S. 692 (1981), when the purpose of Petitioner's detention was investigatory.

2. Whether the BIA erred in holding that immigration officers had reasonable suspicion to detain Petitioner merely because he was an employee of a restaurant chain suspected of hiring undocumented workers.

3. Whether the Fourth Amendment violation in this case is part of a pattern of widespread Fourth Amendment violations by the government, warranting the suppression of evidence under *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984).

SUMMARY OF ARGUMENT

Mr. [redacted] argues in his brief that the government violated the Fourth Amendment because his detention exceeded the length and scope of a permissible detention under *Michigan v. Summers*, 452 U.S. 692 (1981). Pet. Br. at 31-42. Amicus agrees, but does not repeat those arguments in this brief. Even if Mr. [redacted]'s detention were not unreasonably intrusive and prolonged, as Petitioner's briefs argue, the detention would still fall entirely outside the scope of conduct authorized by *Summers*. That case does not allow the government to use a search warrant as a pretext for conducting suspicionless investigatory detentions.

Allowing such pretextual use of *Summers* would permit the government to circumvent the warrant requirement, which requires that a magistrate find probable cause for each of the particular things or persons the government intends to seize.

The government's warrant in this case extended only to documents and other tangible things it sought to seize from the El Balazo restaurants. The government had no particularized suspicion that Mr. [redacted] had committed any immigration violation; it therefore could not have obtained a warrant to arrest or detain him without further investigation. Yet, as the record in this case makes plain, the government's intention from the outset was to use its search warrant to enter the restaurant and, once inside, to detain and interrogate the restaurant's employees, including Mr. [redacted], concerning their immigration status.

The BIA upheld the government's seizure of Mr. [redacted] on the ground that, under *Summers*, the government is entitled to detain the occupants of a premises while the premises is being searched, even without probable cause or reasonable suspicion. *See* Administrative Record ("AR")-4 (adopting and affirming Decision of the Immigration Judge, AR-845-47). The Supreme Court crafted the *Summers* exception for the narrow purpose of facilitating the execution of search warrants and, in particular, ensuring officer safety. The Court has made clear that the government may not rely on Fourth Amendment exceptions of this kind – which allow the government, under limited circumstances, to seize people

or conduct searches without any individualized suspicion – as a pretext for conducting investigatory searches or seizures. *See, e.g., Florida v. Wells*, 495 U.S. 1, 4 (1990). Thus, the government cannot rely on *Summers* to whitewash the plainly illegal detention that it had planned from the outset. The government has more appropriate tools at its disposal to facilitate the interrogation of large numbers of workers: Immigration and Customs Enforcement ("ICE") can obtain warrants issued upon probable cause that there are unnamed workers currently on the premises who are unlawfully present in the United States, and, once on the premises, conduct consensual interviews with the workers it finds there. *See, e.g., Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 553 (9th Cir. 1986).

In the alternative, the BIA upheld the government's seizure of Mr. [redacted] on the theory that the government could reasonably suspect any El Balazo worker of having violated the immigration laws, merely because the restaurant chain – which had eleven restaurants located in the Bay Area – was suspected of hiring undocumented workers. *See* AR-4. The case law precludes any such inference. In *Ybarra v. Illinois*, 444 U.S. 85 (1979), the Supreme Court held that the government lacked reasonable suspicion to detain the occupants of a tavern, merely because it possessed probable cause to search the premises for evidence of

illegal activity. Rather, individualized suspicion was necessary to justify the detention of the occupants.

The government's exploitation of the *Summers* doctrine in this case in order to conduct an investigatory seizure is consistent with a widespread pattern of Fourth Amendment violations. Not only are Fourth Amendment violations by ICE commonplace, Pet. Br. 42-45, but, as this brief underscores, the *specific type* of violation at issue here is also widespread. ICE routinely conducts workplace and home raids, designed to result in the detention and interrogation of everyone on the premises, under the pretense of conducting a search for documents or executing an arrest warrant for one individual. Even if suppression of evidence is not always available as a remedy in immigration removal proceedings, widespread Fourth Amendment violations of this kind require suppression of evidence. *Lopez-Mendoza*, 468 U.S. at 1050-51 (plurality op.); *Oliva-Ramos v. Att'y Gen.*, 694 F.3d 259, 275 (3d Cir. 2012). Accordingly, the BIA decision should be vacated and the case remanded.

ARGUMENT

I. ICE's Warrant Did Not Authorize the Seizure of Mr. [redacted].

The Supreme Court has repeatedly held that a "basic principle of Fourth Amendment law" is that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Groh v. Ramirez*, 540 U.S. 551, 559 (2004)

(quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)). The same rule applies to business premises. *See v. City of Seattle*, 387 U.S. 541, 546 (1967). In order to obtain a warrant, the government must persuade the magistrate that probable cause exists. U.S. Const. amend. IV. The rationale for this requirement is that the neutral magistrate "is a more reliable safeguard against improper searches than the hurried judgment of the law enforcement officer." *United States v. Leon*, 468 U.S. 897, 913-14 (1984) (quoting *United States v. Chadwick*, 433 U.S. 1, 9 (1977)).

Officers are not allowed merely to persuade a magistrate that probable cause exists in the abstract; rather, they must identify the particular items, or the particular persons, who will be the object of the search or seizure. *See Stanford v. Texas*, 379 U.S. 476, 481, 485-86 (1965). The particularity requirement "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987); *see also United States v. SDI Future Health, Inc.*, 568 F.3d 684, 702 (9th Cir. 2009).

In this case, the government obtained a warrant to search eleven El Balazo restaurants for documents. *See* AR-818 (attachment to search warrant identifying the items to be seized as including "personnel records," "payroll records," "Immigration forms," "correspondence related to employee wages," "records … related to the ownership of properties," and "devices or media … capable of

transmitting and receiving emails…"). The warrant did not authorize the search or seizure of persons, let alone Mr. [redacted] specifically. AR-815 (showing magistrate authorized search of the premises but not of persons). Indeed, the record contains no suggestion that ICE even knew of Mr. [redacted] prior to encountering him at the restaurant.

Notwithstanding the lack of any warrant authorizing ICE to seize Mr. [redacted], the BIA upheld the constitutionality of his detention on two alternative grounds. First, relying on *Summers*, 452 U.S. 692, the BIA held that the ICE agents were permitted to detain the occupants of the restaurant without any individualized suspicion while the agents conducted a search for documents, and, once the occupants were lawfully detained, the agents were permitted to interrogate them concerning their immigration status. *See* AR-4 ("The search warrant for the restaurant was facially valid, and the agents acted reasonably in executing the search warrant, including using reasonable force to secure the restaurant," citing *Summers* and *Muehler v. Mena*, 544 U.S. 93, 100-01 (2005)). Second, the BIA held that because "the subject of the search warrant was to gather evidence regarding the hiring and harboring of illegal aliens" at El Balazo, and Mr. [redacted] "was clearly dressed as a worker at the restaurant," the ICE agents "acted reasonably" in questioning Mr. [redacted] "about his immigration status." AR-4. Neither ground has merit.

II. Mr. [redacted]'s Detention Cannot Be Justified Under *Michigan v. Summers*.

Amicus agrees with Petitioner that his detention exceeded the length and scope of a permissible *Summers* detention, and for that reason violated the Fourth Amendment. *See* Pet Br. 31-42. Amicus argues here that the detention cannot be justified by *Summers* for an additional reason, too: *Summers* does not authorize the government to exploit a search warrant for documents in order to conduct a mass seizure of persons.

A. *Summers* Does Not Allow the Government to Use a Search Warrant as the Pretext for Conducting a Suspicionless Seizure.

In *Summers*, the Supreme Court held that officers were permitted "to detain the occupants of the premises while a proper search is conducted," even absent probable cause or reasonable suspicion of illegal activity by the occupants. *Summers*, 452 U.S. at 705. The government's authority to conduct a detention under *Summers* is "categorical" and does not depend "on the 'quantum of proof justifying detention,'" *Mena*, 544 U.S. at 98 (quoting *Summers*, 452 U.S. at 705 n.19). However, the detention must be carried out in a reasonable manner, must not involve excessive force, and must not be prolonged beyond the time reasonably required to complete the search. *Id.* at 101-02; *Tekle v. United States*, 511 F.3d 839, 845-47 (9th Cir. 2007); *Ganwich v. Knapp*, 319 F.3d 1115, 1121-23 (9th Cir. 2003). The Court's primary justification for this exception to the probable-cause

requirement of the Fourth Amendment was "the interest in minimizing the risk of harm to the officers," by allowing them to "exercise unquestioned command of the situation." *Summers*, 452 U.S. at 702-03. The Court also noted the law enforcement interests in facilitating the completion of the search, *id.* at 703, and "preventing flight in the event that incriminating evidence is found." *Id.* at 702.

Although the government is not required to prove that a particular detention furthered these purposes, at the same time the Court should not disregard evidence of a separate and impermissible motive for the detention. In explaining the Fourth Amendment "reasonableness" of a detention under *Summers*, the Supreme Court specifically noted that "the type of detention imposed here is not likely to be exploited by the officer or unduly prolonged in order to gain more information, because the information the officers seek normally will be obtained through the search and not through the detention." *Id.* at 701. Because the power to seize persons without any individualized suspicion is a potent and potentially dangerous exception to the Fourth Amendment, courts must take care to protect against the exception's misuse. "An exception to the Fourth Amendment rule prohibiting detention absent probable cause must not diverge from its purpose and rationale." *Bailey v. United States*, 133 S. Ct. 1031, 1038 (2013).

Thus, the Supreme Court has repeatedly made clear that the government is not permitted to engage in the pretextual use of such exceptions in order to carry

out searches and seizures for investigatory purposes. To be sure, an individual officer's subjective intention does not invalidate a seizure when the seizure is objectively justified by probable cause or individualized suspicion. *See Whren v. United States*, 517 U.S. 806, 810-13 (1996). But the Court has "expressly distinguished cases where [it] had addressed the validity of searches conducted in the absence" of any suspicion at all. *City of Indianapolis v. Edmond*, 531 U.S. 32, 45 (2000); *see Whren*, 517 U.S. at 811-12. As the Court explained, "purpose is often relevant when suspicionless intrusions pursuant to a general scheme are at issue." *Edmond*, 531 U.S. at 47.

For example, inventory searches, conducted pursuant to law enforcement's "caretaking functions," *see South Dakota v. Opperman*, 428 U.S. 364, 371 n.5 (1976), may be conducted without probable cause or reasonable suspicion. Because the purpose of inventory searches removes them from the normal Fourth Amendment protections, pretextual inventory searches could be uniquely dangerous. Thus, the Supreme Court has held, "an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence." *Wells*, 495 U.S. at 4 (quoted in *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012) (quotation marks omitted)); *United States v. Bowhay*, 992 F.2d 229, 231 (9th Cir. 1993) ("an inventory search is invalid if it was a pretext for an investigative search"). Nor can an inventory search be used as "a purposeful and general means

of discovering evidence of crime." *Wells*, 495 U.S. at 4 (quoting *Colorado v. Bertine*, 479 U.S. 367, 376 (1987) (Blackmun, J., concurring)). The Court "recognized the danger to privacy interests protected by the Fourth Amendment if officers were at liberty in their discretion to conduct warrantless investigative searches when they suspected criminal activity, which searches they would subsequently justify by labeling them as 'inventory searches.'" *United States v. Lopez*, 547 F.3d 364, 370 (2d Cir. 2008) (citing *Wells*, 495 U.S. at 4).

The Court has adopted a similar approach with respect to administrative searches, which involve the inspection of business premises by authorities responsible for enforcing a pervasive regulatory scheme in a closely regulated industry without individualized suspicion of regulatory violations. *See New York v. Burger*, 482 U.S. 691 (1987). In *Burger*, the Court permitted a warrantless search without any probable cause, but emphasized that the State "was not using [the administrative scheme] as a 'pretext' to enable law enforcement authorities to gather evidence of penal law violations," and that there was "no reason to believe that the instant inspection was actually a 'pretext' for obtaining evidence of respondent's violation of the penal laws." *Id.* at 716 n.27.

Likewise, in the context of "special needs" searches and seizures, such as sobriety checkpoints, the Supreme Court has allowed suspicionless seizures so long as their primary purpose is not general law enforcement that would ordinarily

require a warrant. In *Michigan Department of State Police v. Sitz*, for example, the Supreme Court upheld warrantless seizures, without any probable cause or reasonable suspicion, at highway sobriety checkpoints in order to combat drunk driving. 496 U.S. 444, 451-53 (1990). But in *Edmond*, the Supreme Court clarified that the State could not exploit this exception to the probable-cause requirement when its "primary purpose" was "to detect evidence of ordinary criminal wrongdoing." 531 U.S. at 41; *id.* at 41-42 ("Because the primary purpose of the . . . checkpoint program is to uncover evidence of ordinary wrongdoing, the program contravenes the Fourth Amendment."); *see Ashcroft v. al-Kidd*, 131 S. Ct. 2074, 2080 (2011) ("special-needs and administrative-search cases" are examples of situations where "actual motivations do matter." (internal quotation marks omitted)).

Summers detentions are analogous. Because of the specific purpose served by detaining occupants during the execution of search warrants, the government may conduct *Summers* detentions without any individualized suspicion of wrongdoing, so long as the detention is not prolonged or carried out in an unreasonable manner. *See Mena*, 544 U.S. at 100-01. Precisely because *Summers* "grants substantial authority to police officers to detain outside of the traditional rules of the Fourth Amendment," it "must be circumscribed." *Bailey*, 133 S. Ct. at 1042. Like inventory searches, administrative searches, and special needs searches

and detentions, which can also be carried out without any individualized suspicion, *Summers* cannot be used as a pretext to conduct investigatory detentions that would ordinarily require some quantum of individualized suspicion. Just as those exceptions to the probable-cause requirement "do not apply where the officer's purpose is not to attend to the special needs or to the investigation for which the administrative inspection is justified," *al-Kidd*, 131 S. Ct. at 2081, so too, when law enforcement officers exploit *Summers* in order to carry out suspicionless investigatory seizures, their actions violate the Fourth Amendment.

Thus, nothing in *Summers* licenses government agents to use a search warrant as a pretext for conducting an investigatory detention, without any individualized suspicion of wrongdoing. *See Ganwich*, 319 F.3d at 1121 n.10 (noting that "[t]he Supreme Court in *Summers* implied that questioning witnesses is not a legitimate justification for a *Summers*-type detention" when it stated that a *Summers* detention was "not unreasonable under the Fourth Amendment because it 'is not likely to be exploited by the officer or unduly prolonged in order to gain more information, because the information the officers seek normally will be obtained through the search and not through the detention.'" (quoting *Summers*, 452 U.S. at 701)). To ignore improper exploitation where it does occur would be to let the tail wag the dog: an exception to the probable-cause requirement, intended to facilitate the government's legitimate and lawful search of a premises,

could motivate the government's decision to obtain a search warrant, even when the government's actual intention is to question and arrest individuals rather than conduct a search.

To be sure, the Supreme Court held in *Mena* that no separate Fourth Amendment issue was raised by questioning a person about her immigration status during a proper *Summers* detention. But that case did not involve any argument that Mena's detention was a mere pretext for interrogating her about her immigration status. *See generally* Br. of Respondent, *Muehler v. Mena*, No. 03-1423, *available at* 2004 WL 2542382. To the contrary, the search in *Mena* was for "deadly weapons and evidence of gang membership" of a suspect in a gang shooting, and the officers expected to encounter armed men. *Mena*, 544 U.S. at 95-96, 101.

Prohibiting the government from using *Summers* in order to circumvent fundamental Fourth Amendment protections would by no means cripple the government's immigration enforcement efforts. ICE could have obtained a warrant to enter the premises based upon probable cause that unnamed and unknown workers were unlawfully present in the United States. *See Int'l Molders*, 799 F.2d at 553. Once lawfully on the premises, ICE could then have engaged in consensual questioning of the workers. *See INS v. Delgado*, 466 U.S. 210, 218 (1984).

Significantly, both *International Molders* and *Delgado* were decided *after* *Summers*, and neither so much as hints that workers present on the premises during an immigration raid may lawfully be detained without any individualized suspicion. Indeed, this Court emphasized in *International Molders* that, in order to justify the seizure of any particular worker, the government needed to establish "'probable cause particularized with respect to that person. . . . This requirement cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another or to search the premises where the person may happen to be.'" *Int'l Molders*, 799 F.2d at 552 n.5 (quoting *Ybarra*, 444 U.S. at 91 (citation omitted)).

B. The Record in This Case Establishes That the Government Exploited *Summers* to Conduct a Suspicionless Investigatory Detention.

As discussed in Petitioner's brief, *see* Pet. Br. 32-35, the record in this case presents strong evidence that, from the outset, ICE intended to use its warrant to search for documents in order to gain entry into the El Balazo restaurants, and, once inside, to conduct investigatory detentions of workers that it had no particularized reason to suspect of any wrongdoing.

Upon entering the restaurant, the government seized all but two of the workers, handcuffed them, and began interrogating them. *See* AR-395; AR-401-03; AR-709-13. The government released the remaining two restaurant workers.

AR-757-58; AR-833. One of those released, a bartender, appeared to Agent Webster to be "Caucasian." AR-509; AR-757-58; AR-835. The other, a manager, appeared to Agent Webster to be "Caucasian, but it seemed like she might have had Hispanic accent." AR-757. The government initially handcuffed and detained her, and released her when she produced evidence of her legal presence in the United States. AR-156; AR-511. The fact that the government selectively detained only those workers that appeared Hispanic, and released those who appeared Caucasian, cannot be squared with the notion that the detentions were carried out under *Summers* for reasons of officer safety.[2] To the contrary, the government's selective detention of workers who appeared to be Latino shows that the detentions were investigatory in nature. Moreover, the officer who interrogated Mr. [redacted] did not even believe that he was detained – despite the fact that he was in handcuffs. *See* AR-740 ("Q. So if he had, while the investigation in the restaurant was still ongoing, if he had said no, I don't want to answer your questions, he would have been allowed to leave the restaurant? A. Yes…."); AR395, 738, 833. This Court should not allow the government to whitewash a

[2] No identifiable officer safety concerns were presented during the raid. *See, e.g.*, AR-717-18 ("It was without incident. It seemed like there were no problems. Everything went as planned orderly."); AR-735 (Tr. 407:16-19) (Q. You mentioned . . . that it was a very orderly process, that it was fairly calm. A. Uh-huh. Q. So when you went into the kitchen [where [redacted] was found], is it correct that . . . you didn't see anything that gave you cause for alarm? A. Correct.").

plainly illegal investigatory detention by relying, for litigation purposes, on *Summers*.

Other record evidence further confirms that the government intended from the outset to use the search warrant in order to detain the workers for investigatory purposes. ICE staffed the operation in anticipation of detaining and investigating the immigration status of multiple individuals working at the restaurant, rather than to merely carry out a search for documents. AR-704-04; AR-724-25. Out of the twelve agents ICE assigned to the raid on Mr. [redacted]'s restaurant, five were interviewers. AR-725-26. The team also included agents from Enforcement and Removal Operations, who brought a "detention van" to the raid, for use in transporting the individuals that the government anticipated arresting through its execution of the warrant. AR-752-53.

Finally, the operation against this restaurant was part of a larger operation involving eleven El Balazo restaurants and the arrest of more than 60 employees. AR-705; AR-722-25; AR-1045 (Petitioner's motion to suppress). Each raid was conducted in a similar manner. AR-119 (Petitioner's brief in support of appeal of February 10, 2011 Decision of the Immigration Judge); AR-705; AR-822 (warrant); AR-1040 (Petitioner's motion to suppress); *see also* Opening Brief, ECF. No. 16, *Jose Luis Sanchez Lopez v. Holder*, No. 13-70431 (9th Cir. filed July 31, 2013) (case remanded on Dec. 30, 2013); Opening Brief, ECF No. 16, *Gloria*

Aparicio Zavala v. Holder, No. 12-70225 (9th Cir. filed June 26, 2012) (case remanded on Nov. 28, 2012).

Although the government has refused to turn over its El Balazo operations plan, the record in this case is consistent with the *modus operandi* described in ICE's pre-operations plan for another workplace raid, also conducted in 2008. In that raid, which took place in Van Nuys, California, ICE had obtained a warrant authorizing a search for documents and the arrest of a handful of specific employees.[3] Yet ICE's pre-operations plan for that raid – which was obtained through Freedom of Information Act (FOIA) litigation – does not describe the scope of the warrant.[4] Instead, the pre-operations plan identifies the operation's true objective as the seizure of hundreds of workers: "OI [Office of Investigations] is targeting 150-200 undocumented workers."[5] The plan states that detention vehicles, personnel, and ankle bracelets would be provided for detainees, and that bed space had been obtained in anticipation of 200 arrests.[6] As shown by the

[3] *See In re Perez-Cruz*, No. A95-748-837, Decision and Order of the Immigration Judge at 3 & n.2 (Immigration Court, L.A. Feb. 10, 2009), discussing the warrant, which authorized a search for documents and for either three or eight particular persons. (The Immigration Court decision is attached as Attach. A to this brief.)

[4] *See* Attach. B to this brief, at 11 (Exhibit B to Respondent's June 2, 2009 Supplement to Mot. to Terminate and Suppress, *In re Paxtor*, No. A095-748-753 (Immigration Court, L.A. June 2, 2009)).

[5] *Id.*

[6] *Id.* at 12.

record evidence discussed above, this case fits the same pattern: a worksite raid, targeting individuals, carried out under the pretext of a search for documents.

The government should not be permitted to rely upon *Summers* as a pretext for conducting the investigatory, suspicionless detention of individuals without reasonable suspicion, carried out as part of a program involving such raids. *See Edmond*, 531 U.S. at 47 ("[A] program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar."). The Fourth Amendment prohibits the government from using *Summers* as "a purposeful and general means of discovering evidence of crime." *Wells*, 495 U.S. at 4.

III. The Government Did Not Have Reasonable Suspicion to Detain Mr. [redacted].

The BIA upheld Mr. [redacted]'s detention on the alternative ground that ICE had reasonable suspicion to believe that he had violated the immigration laws merely because he was an employee of a restaurant chain believed to have employed at least some undocumented workers. AR-4 (finding "reasonable suspicion that [Respondent wa]s in the United States illegally" because "the subject of the search warrant was to gather evidence regarding the hiring and harboring of illegal aliens" at El Balazo, and Mr. [redacted] "was clearly dressed as a worker at the restaurant").

As discussed in Petitioner's brief, Pet. Br. 24-30, that alternative holding is flatly inconsistent with well-established Supreme Court precedent. As the Supreme Court has held, "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." *Ybarra*, 444 U.S. at 91; *see also Maryland v. Pringle*, 540 U.S. 366, 371 (2003). And where the standard is reasonable suspicion (as with a *Terry* stop), a search or seizure must be supported by reasonable suspicion particularized with respect to that person. *See United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013); *see also Ybarra*, 444 U.S. at 91. Thus, this Court has held, in the context of workplace raids, that "to detain a worker short of an arrest, an INS officer must have an objectively reasonable suspicion that *the particular worker* is an illegal alien." *Martinez v. Nygaard*, 831 F.2d 822, 827 (9th Cir. 1987) (emphasis added)); *Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983) (in context of workplace raid, "INS investigators may not detain workers for citizenship status questioning unless the investigators are able to articulate objective facts providing them with a reasonable suspicion that *each questioned person*, so detained, is an alien illegally in this country." (emphasis added)).

Here, ICE lacked any individualized or particularized suspicion concerning Mr. [redacted], other than the fact that he worked at a restaurant that was believed to have hired, at some point in time, some number of undocumented

workers. *See* AR-710-11. But just as "probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase" inside the van, *United States v. Ross*, 456 U.S. 798, 824 (1982), so too, probable cause to believe that incriminating documents will be found at a business will not create individualized suspicion of every worker on the premises. As the Court held in *Ybarra*: "[A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." 444 U.S. at 91; *see also United States v. Prieto-Villa*, 910 F.2d 601, 604 (9th Cir. 1990) ("Even when police have a warrant, the mere fact that a person is in the company of persons for whom a warrant has been issued does not constitute probable cause.").

Moreover, even if the government could infer in an appropriate case that a person was reasonably suspected to have violated the immigration laws merely because the person had been employed by a restaurant suspected of hiring undocumented workers, the evidence cannot support that inference in this case. The BIA does not cite any evidence at all concerning whether El Balazo was still believed to be employing undocumented workers; how many such workers it was believed to employ; what fraction of the work force was believed to be undocumented; or any other information one might need in order to assess the reasonableness of the inference that Mr. [redacted] had violated the immigration

laws merely because he was employed at the restaurant. Thus, the BIA's decision cannot be affirmed on its alternative ground. *See SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947) (stating that "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.").

IV. ICE's Unlawful Conduct Is Part of a Widespread Pattern of Similar Conduct.

The government's violation of the Fourth Amendment in this case was not an isolated occurrence, but rather, as discussed briefly above, was consistent with a widespread pattern of similar constitutional violations by ICE. And, although the exclusionary rule may not generally apply in immigration removal proceedings, *Lopez-Mendoza*, 468 U.S. at 1050, suppression of evidence is warranted when there is "good reason to believe that Fourth Amendment violations by [immigration] officers [are] widespread." *Id.* at 1050 (O'Connor, J., plurality op.); *Oliva-Ramos*, 694 F.3d at 275.[7]

[7] As discussed in Petitioner's brief, suppression is also warranted when the Fourth Amendment violations are "egregious" or "transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Lopez-Mendoza*, 468 U.S. at 1050-51 (O'Connor, J., plurality op.); *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1452 (9th Cir. 1994). "[U]nder Ninth Circuit law, all 'bad faith violation[s] of an individual's fourth amendment rights' are considered sufficiently egregious to 'require[ ] application of the exclusionary sanction in a civil ... proceeding.'" *Gonzalez-Rivera*, 22 F.3d at 1449 (quoting *Adamson v. Comm'r*, 745 F.2d 541, 545 (9th Cir. 1984) (alterations in original)). Here, the Fourth Amendment violations were egregious, and suppression is warranted for that

The evidence of widespread violations includes internal ICE memoranda, empirical research, and anecdotal evidence from the El Balazo and other raids, all of which demonstrates that ICE has a widespread practice of relying upon a narrowly drawn search warrant for documents or arrest warrant for a small number of persons in order to enter a premises, when its true purpose from the outset is to conduct sweeping raids aimed at detaining and investigating large numbers of individuals regarding whom it has no particularized suspicion.

As an initial matter, ICE's conduct in the El Balazo raids is itself sufficient to establish a widespread violation. Eleven El Balazo restaurants were raided in a coordinated fashion, involving 100 agents and resulting the arrest of more than 60 workers. AR-119; AR-705; AR-722-25; AR-822; AR-1045.

At each of the El Balazo locations, ICE arrived at the raid with detention vans to transport the workers it expected to detain, and it staffed the raids with substantial numbers of officers whose sole role was to interrogate the workers it found on the premises. *See* AR-752-53; AR-919-20 (referring to and citing declarations of El Balazo workers indicating that at each restaurant ICE followed

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reason as well: obtaining a warrant for a search for documents, when the officer's true intention is to conduct a sweep for persons but lacks the probable cause to obtain a warrant on that basis, exhibits the kind of bad faith that the exclusionary rule is designed to deter. *Cf. Franks v. Delaware*, 438 U.S. 154, 171 (1978). Moreover, a reasonable officer familiar with the Supreme Court's case law allowing searches without individualized suspicion would know that those doctrines cannot be used as a pretext to conduct an ordinary investigation. *See supra* at 8-15.

uniform procedure of bringing detention vans, then corralling and seizing workers before asking questions).[8]

As discussed above, ICE's *modus operandi* in the El Balazo raids is consistent with its pre-operations plan for a roughly contemporaneous workplace raid in Van Nuys, California. *See supra* at 17-18. Although the Van Nuys raid was ostensibly to seize documents and a handful of particular individuals,[9] the pre-operation plan did not describe the scope of the warrant but instead described the operation's objective as the arrest of hundreds of unnamed workers.[10] The post-operation memorandum evaluating the raid's success made no mention of whether the documents or the specific individuals sought under the warrant were ever found.[11] Rather, the memo describes the purpose of the raid as having "targeted approximately 150 undocumented workers," and reports that 130 foreign nationals were ultimately arrested.[12] These documents plainly indicate that the warrant obtained in advance of the Van Nuys raid was a pretext to gain access to the site in

[8] The declarations themselves are not included in the Administrative Record, although they were evidently submitted as exhibits. *See* AR-893-94.

[9] *See* Attach. A at 3 & n.2.

[10] *See* Attach. B at 11.

[11] Attach. B at 14-15 (Exhibit C to Respondent's June 2, 2009 Supplement to Mot. to Terminate and Suppress, *In re Paxtor*, No. A095-748-753 (Immigration Court, L.A. June 2, 2009)).

[12] *Id.*

order to facilitate the true purpose of the raid, which was to detain and interrogate all of the workers present, despite the absence of any individualized suspicion for the vast majority of them.

Data on ICE arrests during the 2007 "Return to Sender" operation further demonstrate that ICE routinely uses search warrants or arrest warrants naming a small number of particular individuals as pretexts to make "collateral" arrests of unnamed bystanders who happen to be found on the premises. The "Return to Sender" operation purportedly targeted known, criminal fugitives, yet during the operation, thirty-seven percent of arrests nationwide, and nearly sixty percent of arrests in the San Diego area, were of collateral arrestees. *See* Elliot Spagat, *Immigrants are "Collateral Arrests" In Crackdown on Fugitives, Agents Pick up Others*, Sun-Sentinel (Ft. Lauderdale), April 6, 2007, at A3; *see also* Margot Mendelson et al., Migration Policy Institute, *Collateral Damage: An Examination of ICE's Fugitive Operations Program* 11 (2009) (finding forty percent of 2007 arrests were collateral);[13] Tom Lochner, *ACLU asks for details on migrant deportations*, InsideBayArea.com, Mar. 10, 2007 (reporting that forty percent of arrestees in northern and central California were collateral arrestees). These figures strongly suggest that ICE engages in the systematic practice of exploiting limited warrants to seize bystanders without any particularized suspicion.

[13] *Available at* http://www.migrationpolicy.org/pubs/NFOP_feb09.pdf.

This practice was confirmed by a 2008 report by the United Nations Special Rapporteur, who found that "[i]n many cases, ICE enters a home with a warrant to arrest one or several immigrants and then proceeds to sweep the entire building, knocking on other doors and demanding to see immigration papers from all the inhabitants. . . . These raids are carried out as coordinated efforts with a massive law enforcement presence."[14] Another comprehensive study reached a similar conclusion after analyzing 206 immigration raids conducted during 2006-2007.[15] Of 530 deportations occurring in five southern California counties, "[t]he majority of these were bystanders, 'collateral' arrests, swept up by ICE as they executed orders of deportation for others." *Over-raided* at 5 (quotation marks omitted). In New Haven, Connecticut, ICE conducted thirty-one arrests while serving only four arrest warrants. *See id.* at 5-6. In Santa Fe, New Mexico and Richmond, California, immigrants told stories of ICE arresting bystanders after learning that the subject of the arrest warrant was not on the premises. *See id.* at 8, 9. In

[14] Jorge Bustamante, Report of the Special Rapporteur on the Human Rights of Migrants, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, Addendum ¶ 65, Human Rights Council, U.N. Doc. A/HRC/7/12/Add.2 (Mar. 5, 2008), *available at* http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx

[15] National Network for Immigrant and Refugee Rights, *Over-raided, Under Siege* (2008), *available at* http://www.nnirr.org/~nnirrorg/drupal/shop/publications ("*Over-raided*").

Butterfield, Missouri, ICE obtained two federal criminal search warrants, yet arrested 136 workers after questioning every employee one by one. *See id.* at 21.

Likewise, an extensive empirical report by the Cardozo Immigration Justice Clinic detailed ICE's use of "home raids for purported targets as a pretext to enter homes and illegally seize mere civil immigration violators."[16] The Cardozo report catalogues "the lawsuits, suppression motions and news accounts [that] all tell a similar story of ICE agents abandoning focus on a purported target and instead immediately seizing and questioning all occupants about their immigration status regardless of any legal basis to do so." Cardozo Report at 17. The pretextual nature of the home raids was underscored by the fact that in one large-scale operation, ICE targeted incorrect addresses in over ninety percent of the raids. *Id.* at 16. Moreover, in approximately sixty-five percent of the home raids studied, ICE arrest reports failed to provide any basis at all for the seizure and questioning of those detained. *See id.* at 11. The data also revealed a troubling hallmark of racial profiling in collateral arrests: nearly thirty percent more Latinos were arrested as collaterals than as targets during home raids. *Id.* at 12. Although the report focused on data from New Jersey and New York, "the consistency of the . . . data on most points, at a minimum, raises the possibility of an agency-wide

[16] Bess Chiu et al., Cardozo Immigration Justice Clinic, *Constitution on ICE: A Report on Immigration Home Raid Operations* 11 (2009), *available at* http://cw.routledge.com/textbooks/9780415996945/human-rights/cardozo.pdf ("Cardozo Report").

problem." *Id.* The study found a five-fold increase in the grant rate of suppression motions between 2006 and 2009, confirming the unconstitutionality of these practices. *Id.* at 14.

Academic works have also extensively chronicled ICE's widespread practice of using narrowly drawn search warrants as a pretext to conduct workplace sweeps or home raids targeted at unnamed and unknown inhabitants. *See generally* Raquel Aldana, *Of Katz and 'Aliens': Privacy Expectations and the Immigration Raids*, 41 U.C. Davis L. Rev. 1081, 1081 (2008) (finding ICE routinely relies on "general or defective warrants and executes them in a discriminating dragnet-style, mostly against Latinos"); Stella Burch Elias, "*Good Reason To Believe": Widespread Constitutional Violations in the Course of Immigration Enforcement and the Case for Revisiting Lopez-Mendoza*, 2008 Wis. L. Rev. 1109 (2009) (arguing Fourth Amendment violations have become widespread in immigration raids); Katherine Evans, *The ICE Storm in US Homes: An Urgent Call for Policy Change*, 33 N.Y. Rev. L. & Soc. Change 561 (2009) (discussing pervasive constitutional violations in home raids); Bill Ong Hing, *Institutional Racism, ICE Raids, and Immigration Reform: The Demonization of Immigrant Workers*, 44 U.S.F. L. Rev. 307 (2009) (describing abusive practices and mass detentions without reasonable suspicion during workplace raids); Nathan Treadwell, *Fugitive Operations and the Fourth Amendment: Representing Immigrants Arrested in Warrantless Home Raids*, 89

N.C. L. Rev. 507 (2011) (noting widespread Fourth Amendment violations by ICE). Indeed, in 2008, the year of Mr. [redacted]'s arrest, the Justice Department itself highlighted in its newsletter the "[i]ncreased use of warrantless arrests by ICE," noting that "[p]erhaps the most salient characteristic of increased enforcement is the widespread use of warrantless arrests."[17]

Judicial opinions provide further evidence of widespread constitutional violations by ICE. For example, in *Oliva-Ramos*, ICE agents exploited an administrative warrant pertaining to a specific individual to gain entry into an apartment, then blocked the entrances and questioned all of the residents for forty-five minutes despite the fact that the individual sought was not there. *See* 694 F.3d at 262-63. Sometimes ICE does not bother to obtain a warrant at all. In *Lopez-Rodriguez v. Mukasey*, officers went to a residence looking for a particular person. This Court suppressed evidence of another resident's alienage after finding that the officers entered the home absent exigent circumstances, without a warrant, and without consent. *See Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1016, 1019 (9th Cir. 2008).

Mr. [redacted] attempted to introduce evidence establishing that ICE was engaged in widespread constitutional violations, AR-889-92, yet was rebuffed. *See*

[17] Sara A. Stanley & Daniel L. Swanwick, Exec. Office for Immigration Review, Dep't of Justice, *Suppression: Respondents Look for a Shield and Sword in Immigration Proceedings*, Immigr. L. Advisor, June 2008, at 1, *available at* http://www.justice.gov/eoir/vll/ILA-Newsleter/ILA%20Vol%202/vol2no6.pdf.

AR-351-52 (IJ describing that evidence as not "terribly relevant"). The case should be remanded to allow Mr. [redacted] to create such a record. *See Oliva-Ramos*, 694 F.3d at 281 (concluding that petitioner "must be permitted to present evidence to support his contention that the Government's conduct here falls within the exception [for widespread violations] the Supreme Court was careful to allow in *Lopez–Mendoza*.").

CONCLUSION

For the foregoing reasons, and those given in the Petitioner's brief, the BIA's decision should be vacated and the case remanded.

January 3, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(C), I certify that this brief complies with the type-volume limitation because this brief contains 6,952 words.

/s/ Matthew E. Price

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of January, 2014, a true and correct copy of the foregoing Brief of the American Immigration Council as *Amicus Curiae* In Support of Petitioner was served on all counsel of record in this appeal via CM/ECF.

/s/ Matthew E. Price

ATTACHMENT A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA.

File: **A95 748 837**	)	
	)	
	)	
In the Matter of:	)	
	)	
PEREZ-Cruz, Gregorio	)	**IN REMOVAL PROCEEDINGS**
	)	
	)	
Respondent.	)	

CHARGE: Section 212(a)(6)(A)(I) of the Immigration and Nationality Act ("Act").
- Present without being admitted or paroled.

APPLICATION: Motion to Terminate/Suppress.

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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

On March 17, 2008, the Government personally served Respondent with a Notice to Appear ("NTA"). In the NTA, the Government alleged that Respondent, a native and citizen of Mexico, entered the United States at an unknown place on an unknown date in 1997, and was not then inspected by an immigration officer. Accordingly, the Government charged Respondent with removability pursuant to section 212(a)(2)(6)(A)(i) of the Act. The NTA was filed with the Court on March 28, 2008, thereby vesting it with jurisdiction over these proceedings pursuant to 8 C.F.R. §1003.14(a) (2008).

On August 5, 2008, Respondent appeared at his scheduled hearing with counsel. Respondent denied all factual allegations and contested the charge of removability contained in

the NTA. To support its charge, the Government submitted a Record of Deportable/Inadmissible Alien ("Form I-213"). The Form I-213 reports that Respondent was arrested on February 7, 2008, at his place of employment and that Respondent freely admitted he was born in Mexico and had no permission to enter or reside in the United States. During his initial hearing, Respondent indicated his intention to file a Motion to Suppress the Form I-213.

On October 6, 2008, Respondent, through counsel, filed a Motion to Terminate Proceedings and, Alternatively, to Suppress Evidence with supporting affidavits and documents. On November 6, 2008, the Government filed an Opposition to Motion to Terminate and Motion to Suppress. On November 21, 2008, Respondent filed a Reply to the Government's Opposition.

On November 19, 2008, Respondent, through counsel, filed a Motion to Continue. He asked the Court to continue his hearing originally scheduled for December 9, 2008, because Respondent's co-counsel was scheduled to appear before the Ninth Circuit on the same day as Respondent's hearing. The Court held a hearing on the motion on November 20, 2008, and granted Respondent's motion. Respondent's hearing was reset to January 13, 2009.

On December 19, 2008, the Government filed a copy and certified translation of Respondent's birth certificate from the state of Puebla, Mexico with a sworn declaration from ICE Special Agent Gustavo Valerio, the agent who obtained the birth certificate. On December 30, 2008, Respondent filed an objection to the Government's submission, arguing that if the Government used information from Respondent's interrogation to obtain the birth certificate, then the document is a "fruit" of the illegal arrest and interrogation that must be suppressed.

On January 13, 2009, Respondent was present with counsel at his scheduled hearing. The Court verified that the government is not seeking administrative closure of these proceedings pending any district court action by Respondent. In addition, the government confirmed that the government's opposition to Respondent's motions does not challenge the alleged facts by Respondent. The case was then taken under submission for issuance of a written decision.

On January 15, 2009, the Government filed a brief in support of the filing of documents. The Government states that to obtain Respondent's birth certificate, the Government relied on information concerning Respondent's name, date of birth, and place of birth. According to the Government, all of these facts are related to Respondent's identity which cannot be suppressed in removal proceedings according to INS v. Lopez-Mendoza, 468 U.S. 1032, 1039 (1984). The Government therefore contends that the birth certificate is sufficient evidence to prove alienage.

II. Statement of Facts

As an initial matter, the Court notes that the Government has explicitly conceded that they do not dispute the facts as alleged by Respondent in his motions. Therefore, in the absence of any evidence to the contrary and in light of the government's representations, the Court will

make the following findings of fact and give them appropriate weight in the adjudication of Respondent's motion:[1]

On February 7, 2008, agents from the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("ICE") entered the premises of Micro Solutions Enterprise ("MSE") factory in Van Nuys, California pursuant to a search warrant issued on February 5, 2008, by U.S. Magistrate Judge Jeffrey W. Johnson in U.S. District Court, Central District of California. The search warrant authorized any special agent of ICE or any other authorized officer to search the premises of MSE for all documents and records relating to the employment of individuals at MSE from January 1, 2000, to the present. On the same day the search warrant was issued, three criminal complaints were filed in the U.S. District Court, Central District of California, alleging that three MSE employees made materially false representations or presented false documents to illegally obtain employment.[2]

Around 3:30 p.m. on the day of the raid, approximately 100 armed and uniformed ICE agents entered MSE from various entrances and ordered all workers to stop working and move into a large hallway. The ICE agents were visibly armed with guns and carried plastic handcuffs. ICE agents did not allow any person to talk on his or her cell phone and shouted at those who attempted to do so. All visible exits from the factory were manned and blocked by ICE agents. Eyewitnesses observed an agent handcuff one man who tried to leave the premises. The agents then separated the women from the men. The women were escorted into the cafeteria and the men were ordered to gather in a large hallway that led to the cafeteria.

After separating the men from the women, ICE agents ordered the men to form two distinct lines - one line for United States citizens or legal permanent residents and one line for those who had no permission to work in the United States. The agents took those who claimed to be citizens or permanent residents out of Respondent's sight. Respondent remained in the hallway.

ICE agents ordered the men in the hallway, including Respondent, to stand against the wall. The agents conducted a pat down of each man and during the search, they took Respondent's wallet. Respondent states that the officers were "very rude, shouting at us. When

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[1] The Court's findings of fact are derived from Respondent's supporting documents submitted in support of his Motion, including Respondent's declaration (Tab B), the declaration of Maria Tavares (Tab C), the declaration of Denise Shippy (Tab D), the declaration of Claire Cox (Tab E), the declaration of Michael E. Whitehead (Tab F), the declaration of Joseph Viramontes (Tab G), the declaration of Irina Demidova (Tab H), the search warrant issued by the U.S. District Court (Tab K), criminal complaints filed against three MSE employees (Tab J), and the declaration of Pedro Vasquez (Tab Q).

[2] In his motion, Respondent states that ICE obtained authorization to arrest approximately 8 people at MSE on criminal charges; however, he only submits criminal complaints for three MSE employees in support of his motion.

anyone tried to talk, the guards would shout at us, and tell us to be quiet." See Respondent's Motion to Terminate, Tab B.

After conducting the pat downs, the agents systematically questioned each man in line while simultaneously placing them in handcuffs. Two ICE agents placed Respondent in plastic handcuffs and asked Respondent his name, where he was from, his date of birth, and how long he had worked at the factory.

Agents then moved Respondent and others to a different hallway, during which time Respondent remained handcuffed. Agents again questioned Respondent regarding his name and country of origin. By this time, Respondent states he had been detained for about an hour. Respondent also states that ICE agents refused to let people use the bathroom during this time.

ICE agents took groups of people to prearranged buses parked outside of the factory. Before boarding the bus, an officer took Respondent's photograph and again asked him questions regarding his name and country of origin. Respondent then waited on the bus, handcuffed, for over an hour. The bus took Respondent to downtown Los Angeles where ICE agents then ordered him off the bus, searched him again, and took off his handcuffs.

Respondent was held in a large room with other workers. He states that by the time he arrived at the detention facility, he was hungry and thirsty. Workers were allowed to use the bathroom for the first time at this facility, which Respondent approximates was the first time anyone was allowed to use the bathroom in six hours. Respondent was not provided any water, so he drank from a faucet in the bathroom. He slept on the concrete floor of the holding cell, and in the middle of the night, he was called by ICE agents for another interview. At this time, agents took his photograph and fingerprints. They questioned him about his name, date of birth, immigration status, and criminal history. Respondent states that no agent or officer ever advised him of any rights, never told him that he had the right to an attorney, nor told him that whatever he said could later be used against him. Respondent states that he was never given any advisals at any time during his time at the factory or at the detention facility.

After the interrogation, Respondent returned to his cell. Later, the next day, Respondent was questioned by a Latina officer who asked him questions similar to those he had already been asked, and similarly she did not advise him of any of his rights. After approximately 18 hours from when Respondent first encountered agents at the factory, agents brought Respondent a small portion of food. A few hours later, he received a larger meal. After several more hours, officers told Respondent he could leave and gave him papers to sign for his release. According to Respondent, he was released around 1:00 a.m. on Saturday, February 9, 2008.

III. Arguments

A. Respondent's Motion to Terminate

In his motion, Respondent asks the Court to terminate proceedings due to the regulatory violations committed by the Government during Respondent's arrest and interrogation.

Alternatively, Respondent asks the Court to suppress all evidence obtained as a result of his arrest and interrogation, including the Form I-213, because all evidence was obtained in violation of the Fourth and Fifth Amendments. Finally, Respondent asks that if the Court finds that Respondent has established a *prima facie* case but finds that the motion cannot be resolved, that the Court schedule an individual evidentiary hearing on the motion or order the Government to produce evidence of other potential violations. Respondent requests these remedies on the following bases:

1. Termination for Regulatory Violations

Respondent first argues that his case should be terminated because the Government detained Respondent without reasonable suspicion or an arrest warrant in violation of 8 C.F.R. § 287.8(b) & (c). Under these regulations, an immigration officer may only detain a person in a manner that does not restrain the individual's freedom, if the officer has reasonable suspicion based on articulable facts that the individual is unlawfully present in the United States. Also, an immigration officer may not arrest an individual without an arrest warrant unless the individual is likely to escape before a warrant can be obtained. Here, Respondent argues that ICE agents detained every worker in the factory without individualized reasonable suspicion that each person in the factory, including Respondent, was unlawfully present in the United States. Respondent argues that at the time ICE agents entered the factory, his freedom was restrained and he did not feel free to leave. Thus, he argues that ICE officers detained him in violation of 8 C.F.R. § 287.8(b). Also, he argues that ICE officers arrested him without an arrest warrant, even though they could have obtained a warrant as evidenced by the fact that they obtained arrest warrants for approximately 8 workers at the factory prior to the raid. He also argues that there was no indication that he was likely to escape; therefore, he was arrested in violation of 8 C.F.R. § 287.8(c).

Second, Respondent argues that his case should be terminated because Respondent was unlawfully interrogated by ICE officers in violation of 8 C.F.R. § 287.3. He argues that, pursuant to this regulation, ICE officers were required to provide certain notices and advisals to him upon arrest, including 1) the reasons for his arrest, 2) the right to be represented by an attorney at no expense to the government, 3) a list of free legal service providers, and 4) that any statement may be used against him in subsequent proceedings. Respondent argues that he was arrested either at the point he was handcuffed at the factory or at the time he was transported by bus to the detention facility. Regardless of when he was arrested, Respondent maintains that he was never given any of the above required advisals at any time prior to any interrogation. He thus asserts that the Government violated 8 C.F.R. § 287.3 by failing to provide him the advisals required by regulation.

Due to these violations, Respondent argues that his case should be terminated according to the Board of Immigration Appeal's ("Board") decision in Matter of Garcia-Flores, 17 I&N Dec. 325 (BIA 1980). In its decision, the Board held that regulatory violations require termination when the regulation's purpose is to benefit the alien and a violation prejudices the interests of the alien protected by the regulation. Id. at 328. Also, the Board held that prejudice to the alien may be presumed when compliance with the regulation is mandated by the Constitution. Id. at 329. Here, Respondent argues 1) that the purpose of 8 C.F.R. § 287.8(b) &

(c) and 8 C.F.R. § 287.3 is to benefit Respondent because they serve to protect him from illegal arrest and interrogation, and 2) Respondent was prejudiced by violations of such regulations because he would not have answered the officers' questions or submitted to an interrogation if he knew he did not have to do so. Alternatively, Respondent suggests that prejudice in his case should be presumed because the regulations at issue closely mirror the framework and purpose of the Fourth and Fifth Amendments. Therefore, he asks the Court to terminate his case pursuant to the holding in Garcia-Flores.

2. Suppression for Egregious Constitutional Violations

Alternatively, Respondent asks the Court to suppress all evidence derived from the illegal arrest and interrogation due to the egregious Constitutional violations that occurred in his case.

First, Respondent argues that all evidence obtained as a result of his detention should be suppressed because ICE agents egregiously violated his Fourth Amendment rights. Respondent argues that ICE agents violated his Fourth Amendment rights by detaining him without reasonable suspicion. Overall, Respondent asserts that the Government egregiously violated his rights because the violations were deliberately pre-meditated and executed in a manner in which reasonable ICE agents would not have believed their actions were lawful under the Fourth Amendment.

Second, Respondent argues that all evidence obtained as a result of his interrogations at the detention facility should be suppressed because Respondent's statements were not voluntary and because ICE's conduct "shocks the conscience." Specifically, he argues that because he was held for 18 hours without food or water and forced to sleep on a cold floor, "his will would have been overborne by any agent attempting to elicit any statement from him," and thus any statements he gave were involuntary. He asks the Court to suppress all evidence obtained after "the government engaged in this heinous abuse."

In the event that the Court suppresses all evidence obtained as a result of Respondent's arrest and interrogation, including but not limited to the Form I-213, Respondent asks the Court to terminate his case on the ground that the Government would then fail to meet its burden to prove Respondent's removability by clear and convincing evidence.

3. Request for Evidentiary Hearing or Order for Production of Documents

Finally, Respondent requests that if the Court finds that Respondent has made a *prima facie* case but that material disputes of fact prevent resolution of this motion, that the Court schedule an individual evidentiary hearing on the motion. Also, if the Court is unable to resolve the motion on the grounds set forth therein, Respondent asks the Court to use its subpoena power to compel the Government to produce evidence concerning other potential violations that may have occurred that would justify suppression or termination in Respondent's case.

B. Government's Opposition

The Government opposes Respondent's motion to terminate on various grounds. First, the Government asserts that the Court should not fully consider the merits of Respondent's motion to suppress evidence, because the federal courts are in the best position to do so. The Government argues that any in-depth Constitutional issues involving application of the Fourth Amendment's exclusionary rule is best left to the federal courts. Also, the Government asserts that Respondent has already initiated legal action in the federal court, and that it is highly likely that the same issues will arise during litigation in federal district court; thus, the Government argues that Respondent should not be allowed to have "two bites at the apple."

Regarding the Form I-213 pertaining to Respondent, the Government argues that the I-213 comports with Fifth Amendment's basic standards of fairness and equity, establishes Respondent's alienage, and sustains the ground of removability against him. The Government argues that, under current case law, admission of the I-213 into evidence would be probative and fundamentally fair. Also, according to the Government, the I-213 is inherently trustworthy because it was prepared by government agents in the ordinary course of business. The Government maintains that Respondent has not argued that the information contained therein does not relate to him or is erroneous; therefore, the document is admissible. Also, the Government argues that Respondent has not sufficiently shown that the information contained in the I-213 was obtained by coercion or duress.

In addition, the Government argues that removability has been established through evidence sufficiently attenuated from any Fourth Amendment violation. It argues that a respondent's identity is not suppressible; therefore, the Government is not precluded from using Respondent's identity to investigate evidence independent of his arrest.

Further, the Government argues that Respondent's detention at the MSE factory was not illegal. According to the Government, ICE agents entered the MSE factory lawfully with a federal search warrant, and after 20 minutes, asked men and women to separate into separate lines. The Government argues that during those 20 minutes, Respondent does not claim that he was handcuffed or told that he was not free to leave. The Government's position is that Respondent identified himself as being an illegal worker by placing himself in the line for those who do not have legal authorization to work in the United States. At that point, the Government contends ICE agents had legal authority to detain Respondent pursuant to 8 C.F.R. § 287.8(b)(3). The Government therefore contends that ICE agents did not violate any federal regulations; however, even if the Court finds that the ICE agents violated 8 C.F.R. § 287.8(b)(3), the Government argues that Respondent has failed to show that he suffered prejudice as a result of the violation so as to merit termination of his case pursuant to Matter of Garcia-Flores, 17 I&N Dec. 325 (BIA 1980). Similarly, the Government contends that, based on the ICE agents' actions, Respondent was not detained in violation of the Fourth Amendment. However, the Government argues that if the Court finds that a Constitutional violation occurred, the exclusionary rule should not apply in immigration proceedings. In the alternative, if the Court finds that the exclusionary rule does apply in limited circumstances, the Government contends that Respondent has failed to establish that he suffered any egregious Constitutional violations that warrant employment of the exclusionary rule.

Finally, the Government argues that Respondent has failed to show that ICE illegally interrogated Respondent in violation of 8 C.F.R. 287.3(c) or the Fifth Amendment. According to the Government's interpretation of 8 C.F.R. 287.3(c), a respondent is not entitled to any advisals until he or she is arrested *and* placed in removal proceedings. Since Respondent was not formally placed into removal proceedings until after he was questioned at the detention facility, the Government contends that no advisals were required by the regulations. Also, the Government argues that Respondent has not established that his statements were given involuntarily in violation of the Fifth Amendment.

Based on the foregoing, the Government asks the Court to deny Respondent's Motion to Terminate and Motion to Suppress.

C. Respondent's Reply

In response to the Government's Opposition, Respondent first argues that it is proper for the Immigration Court to consider the merits of Respondent's claims, including the Constitutional claims. Respondent contends that even though he has initiated a legal action in federal district court, the nature of the action is to seek production of documents pursuant to a Freedom of Information Act ("FOIA") request. Respondent states that any federal litigation in his case will not lead to adjudication of Constitutional issues raised in this case, such as the legality of his detention or interrogation; therefore, it is appropriate for this Court to consider these issues as they pertain to Respondent's immigration case.

Also, Respondent maintains that ICE agents violated 8 C.F.R. 287.8(b) by detaining him absent any individualized reasonable suspicion that he was unlawfully present in the United States. Respondent argues that the Government cited to no legal authority to support its position that ICE can detain hundreds of workers based only on a warrant to search for documents and arrest 8 unrelated individuals. Respondent reiterates his position that he was detained at the moment ICE agents entered the MSE factory, blocked all exits, ordered all workers to stop working, and restricted all bathroom or cell phone use.

Further, Respondent contends that the Government's interpretation of the advisals requirement under 8 C.F.R. 287.3(c) is incorrect and in plain contradiction to the wording of the regulation. According to Respondent's interpretation, advisals are required upon arrest of an individual – not after he or she has been formally placed in removal proceedings as the Government contends. To do so would render a nullity the purpose of the regulations. Also, Respondent opposes the Government's contention that Respondent has not shown that the conditions he faced during detention rendered his statements involuntary. To the contrary, Respondent argues that being held for 18 hours with no food and water and being forced to sleep on a concrete floor during winter is coercive in nature and in violation of due process.

In conclusion, Respondent asks the Court to terminate proceedings or suppress all evidence due to the Government's regulatory and constitutional misconduct.

IV. Law and Analysis

The Court finds it proper to adjudicate Respondent's motion to terminate and suppress on the merits, despite the Government's contention that the federal courts are the appropriate forum for such arguments. See e.g., de Rodriguez-Echeverria v. Mukasey, 534 F.3d 1047 (9th Cir. 2008) (finding violations of the regulations by ICE agents, but remanding the case to the BIA and the immigration court to for adjudication of the motion to suppress in the first instance). Moreover, although Respondent has initiated action in federal court, the nature of his claim in federal court is substantially different than his arguments before this Court. The district court action seeks information under the Freedom of Information Act as the procedures that the government followed in planning and initiating the raid at the factory. Therefore, the Court finds that it is proper for it to consider Respondent's motions before the Court.

A. Motion to Terminate

The Board has held that removal proceedings may be "invalidated" or terminated when the Government violates its own regulations and infringes on the rights of a respondent. Matter of Garcia-Flores, 17 I&N Dec. 325 (BIA 1980). In Garcia-Flores, the respondent was arrested without a warrant at a food processing plant and interviewed by Immigration and Naturalization Service ("INS") agents. The agent who interviewed the respondent testified that he never advised the respondent that she had the right to an attorney at any point during the interview. The Board found that the respondent's interview was subject to 8 C.F.R. 287.3 (1977), which required agents to advise aliens arrested without a warrant of the reason for their arrest, their right to be represented by counsel, and that any statement they make may be held against them. Id. at 326. The Board observed that "an 'agency of the government must scrupulously observe rules, regulations, or procedures it had established' and that when 'it fails to do so, its action cannot stand and courts will strike it down.'" Id. at 327 (quoting U.S. v. Heffner, 420 F.2d 809, 811 (4th Cir. 1969)). Also, it stated that when "the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. . . even where the internal procedures are possibly more rigorous than otherwise would be required." Id. at 328 (citing Morton v. Ruiz, 415 U.S. 199, 235 (1974)).

However, the Board also recognized that not every regulatory violation should result in termination of proceedings. Id. at 327 ("A rigid rule has not emerged, however, under which every violation of an agency regulatory requirement results in the invalidation of all subsequent agency action or the exclusion of evidence from administrative proceedings."). Therefore, the Board adopted a two-prong test to determine if a regulatory violation warrants termination of proceedings. First, the regulation in question must serve the purpose of benefitting the alien. Id. at 328. Second, the "regulatory violation will render the proceeding unlawful 'only if the violation prejudiced interests of the alien which were protected by the regulation.'" Id. (quoting U.S. v. Calderon-Medina, 591 F.2d 529, 531 (9th Cir. 1979)). Regarding the second prong, the Board stated that an alien must specifically demonstrate that the violation harmed the alien's interests in such a way as to affect potentially the outcome of his deportation proceeding. Id. at 328-29.

Here, Respondent contends that the Government violated 8 C.F.R. § 287.8(b) & (c) and 8 C.F.R. § 287.3. The Court will thus consider the unrebutted evidence set forth by Respondent, n light of the controlling regulations and the two-prong test set forth in Matter of Garcia-Flores,to determine if termination of proceedings is appropriate.[3]

1. 8 C.F.R. § 287.8(b) & (c)

Respondent argues that proceedings should be terminated because the Government violated 8 C.F.R. § 287.8(b) & (c) by illegally detaining Respondent without reasonable or individualized suspicion that he was unlawfully in the United States. The regulation states in relevant part:

> (b) *Interrogation and detention not amounting to arrest.* (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.
>
> (2) If the immigration officer has a 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, the immigration officer may briefly detain the person for questioning.
>
> © *Conduct of arrests.* (2) *General Procedures.* (I) An arrest shall be made only when the designated immigration officer 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.
>
> (ii) 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.

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[3] The Court recognizes that the Board's decision in Matter of Garcia-Flores was published in 1980. The Board has not issued a decision regarding the scope and purpose of 8 C.F.R. § 287.3 since that time. The Ninth Circuit similarly recognized and addressed this fact in de Rodriguez-Echeverria v. Mukasey, 534 F.3d 1047 (9th Cir. 2008). In that case, the Ninth Circuit remanded to the Board for guidance on how to interpret 8 C.F.R. § 287.3 "given the considerable changes to the law since the BIA last interpreted this regulation and the apparent disagreement among government agencies as to what § 287.3 requires." de Rodriguez-Echeverria, 534 F.3d at 1052. Here, although the Court recognizes that statutory changes have been made to 8 C.F.R. § 287.3 since Matter of Garcia-Flores, the Board's decision is still controlling law as to the issue before this Court, namely whether Government violation of its own regulation warrants invalidation or termination of proceedings. Until the Board issues further guidance on this issue, the Court will adhere to the prevailing case law.

8 C.F.R. § 287.8(b) & (c).

Therefore, under the regulation, an immigration officer has the right to question an individual as long as the officer does not restrain the freedom of an individual to walk away. 8 C.F.R. § 287.8(b); see also Orhorhanghe v. INS, 38 F.3d 488, 494 (9th Cir. 1994). However, if an encounter rises to the level of a detention or "seizure," the officer must have a reasonable, articulable basis for his/her actions. The Ninth Circuit has held that to justify the seizure, the agent must "articulate objective facts providing a reasonable suspicion that [the subject of the seizure] was an alien illegally in this country." Orhorhanghe, 38 F.3d at 497. In other words, when ICE agents detain an individual for questioning, there must be individualized suspicion that the individual is illegally in the United States. See Martinez v. Nygaard, 831 F.2d 822, 827 (9th Cir. 1987) ("Our own cases hold that to detain a worker short of an arrest, an INS officer must have an objectively reasonable suspicion that the particular worker is an illegal alien.").

To determine whether a detention or seizure has occurred, the crucial test is whether "taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" Id. at 494 (citing Florida v. Bostick, 501 U.S. 429). The Ninth Circuit has articulated several factors to be considered, including; (a) whether the individual was faced with the presence of several officers; (b) whether the individual's physical access to an exit was limited; © whether the officer displayed or otherwise referenced his/her weapon; (d) whether the encounter occurred in a private-nonpublic setting; (e) whether the officers acted an authoritative manner; (f) whether the individual was informed of his rights, or warned that he/she had the freedom to leave or decline to answer the officer's questions; and, (g) whether the individual was provided misinformation, or led to believe that he was not free to leave. Id. at 494-96.

In INS v. Delgado, 466 U.S. 210 (1984), the Supreme Court considered whether "factory surveys" conducted by INS agents constituted a "seizure" within the meaning of the Fourth Amendment. In Delgado, the respondents claimed that their Fourth Amendment rights were violated when armed INS agents entered their place of employment and systematically began asking each worker several questions regarding his or her citizenship. 466 U.S. at 212-13. INS agents positioned themselves at the building's exits, and although the agents were armed, no weapons were ever drawn. Id. at 212. Also, during the survey, "employees continued with their work and were free to walk around within the factory." Id. at 213. Based on these facts, the Supreme Court held that the entire work force was not "seized" as a collective unit. The Court noted that the manner in which the respondents were questioned "could hardly result in a reasonable fear that respondents were not free to continue working or to move about the factory." Id. at 220-21. The Court also held that "unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention." Id. at 216.

Similarly, in LaDuke v. Nelson, 762 F.2d 1318 (9th Cir. 1985), the Ninth Circuit considered whether INS farm and ranch checks of migrant housing units constituted a "seizure"

under the Fourth Amendment. The Ninth Circuit held that Fourth Amendment seizures occurred when immigration officers "cordoned off migrant housing during early morning or late evening hours, surrounded the residences in emergency vehicles with flashing lights, approached the homes with flashlights, and stationed officers at all doors and windows." Id. at 1321. The agents then proceeded house-to-house, conducting searches without voluntary consent of the residents. Id. The Ninth Circuit found that, unlike in Delgado where workers were free to move around the factory and were only asked a few questions, the INS agents in LaDuke obtained no warrants prior to the raid, had no particularized suspicion that any particular housing units contained illegal aliens, and created a intimidating atmosphere characterized by a substantial showing of force and authority. Id. at 1329-30. Also, the Ninth Circuit found it significant that the raids took place in the respondents' homes as opposed to at their workplace because at a person's home, there is a higher expectation of privacy. Id. at 1328-29. For these reasons, the Ninth Circuit held that this routine practice by INS constituted seizure of the entire housing unit. Id. at 1328.

In the present case, Respondent claims that he was detained at the time ICE agents entered the MSE factory, blocked the exits, and ordered all workers to cease working. The Government argues that the ICE agents had a lawful right to be in the factory and did not restrain any person's freedom for approximately 20 minutes.[4] The Government argues Respondent subsequently self-identified himself as a person with no authorization to work in the United States, giving agents the legal authority to detain or arrest him in accordance with the regulations.

According to Respondent, approximately 100 ICE agents entered the MSE factory around 3:30 p.m. and ordered all workers to stop working. The agents were visibly armed. They physically blocked all points of entry and exit within the factory, and ordered all workers into a large hallway. According to eyewitnesses, the agents yelled at anyone who attempted to use a cell phone and handcuffed one man who tried to leave the premises. The agents restricted all workers' movement, separated the men from the women, and prevented any person from using the bathroom. In his declaration, Respondent stated that when the agents shouted at him to stop working and ordered him into the large hallway, "It was obvious that I could not leave." See Respondent's Motion, Tab B, Para. 7. He also stated, "As I walked out, some of the workers were crying, while other agents shouted at people to stop working and move out to the hallway. It seemed as though nearly all of the workers in the factory were placed in this hallway." Id. at para. 8. Maria Tavares, an employee who was present at the MSE factory on the day of the raid, stated in her declaration that when she and other women were led into the cafeteria, "the agents started screaming at us and treating us more harshly. The [sic] told us 'don't you understand, you have to get in line, you can't go anywhere.'" See Respondent's Motion, Tab C, Para. 5. Ms. Tavares also stated that agents told them that they had to answer their questions and say what country they were from or the agents would pick a country for them and could arrest them for up

[4] The government's assertion here is in conflict with Respondent's factual allegations, and has not been supported by evidence. See Sembiring v. Gonzales, 499 F.3d 981, 984 (9th Cir. 2007) ("statements in motions are not evidence and are, therefore, not entitled to evidentiary weight.").

to 30 days. Id. at para. 6. Other declarants stated that the agents loudly issued commands, had their hands on their holstered weapons, and told every worker where to go or where to stand. See e.g. Respondent's Motion, Tab G, Para. 6 & 7. The Government has not offered any evidence to rebut Respondent's version of the facts. Therefore, based on Respondent's undisputed account and the undisputed accounts of others who submitted declarations in support of his motion, the Court finds that Respondent was detained in violation of 8 C.F.R. § 287.8(b).

First, the Court finds that Respondent was detained at the time ICE agents entered the MSE factory, blocked all exits, ordered all workers to stop working, and forcefully guided all workers into a large hallway, thereby restricting their movement within the factory. Under these circumstances, the Court finds that a reasonable person would not feel free to leave. The course of action taken by INS agents upon entry to the factory would have "communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." See Orhorhanghe, 38 F.3d at 494. The Court finds it significant that 1) approximately 100 agents entered the factory, 2) the agents were in uniform and visibly armed, 3) the agents blocked all exits to the factory, 4) no evidence suggests that agents initially informed any person that they had the right to leave, and 5) the agents spoke and behaved in an authoritative and forceful manner. See Orhorhanghe, 38 F.3d at 494 (specifying the relevant factors to consider to determine if a seizure occurred).

Unlike the workers in Delgado, Respondent was not free to move around the factory while ICE agents systematically questioned all individuals. Instead, he was ordered to stop working and move into a designated area of the factory by armed individuals who shouted orders in an authoritative, forceful, and intimidating manner. Although in the present case, the raid did not occur at a private home in early morning or late evening as in LaDuke, the Court finds that the facts of Respondent's case are more akin to the facts in LaDuke than those in Delgado. As in LaDuke, all points of entry or exit were cut off to Respondent and the manner in which the ICE agents conducted their sweep was sudden, intimidating, and forceful so that a reasonable person would not believe they had any option but to comply with an agent's orders. Just as the Ninth Circuit in LaDuke held that the circumstances of the encounter were so intimidating so as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, so here the Court finds that the circumstances surrounding the ICE raid, as recounted by Respondent and other declarants, were such that Respondent's freedom of movement was restrained and a reasonable person would not have felt free to leave. Therefore, the Court finds that Respondent was detained as defined by prevailing case law.

Second, the Court finds that Respondent's initial detention was illegal. Under the regulations, an immigration officer may briefly detain an individual for questioning if the officer has a reasonable suspicion, based on specific articulable facts, that the person is illegally in the United States. 8 C.F.R. § 287.8(b). The officer's suspicions must be particularized towards each individual worker whom he or she seeks to detain. See Orhorhanghe, 38 F.3d at 497; Nygaard, 831 F.2d at 827. Here, there is no evidence that ICE had a warrant for Respondent's arrest or any other pertinent information regarding Respondent's immigration status. Nor is there any evidence that ICE agents had any particularized reason to suspect that Respondent, as an individual apart from all other workers in the factory, was in the United States illegally. Instead,

ICE agents entered the factory and ordered all individuals to stop working and gather in a large hallway, regardless of their citizenship or immigration status. After detaining all individuals, agents then asked all workers to self-identify themselves as citizens, legal permanent residents, or those without any work authorization. By making this request, ICE agents demonstrated that they possessed no individualized suspicion regarding the status of any particular worker. The agents had to rely on the workers themselves to indirectly communicate their immigration status, and this did not take place until after they had been detained by ICE. This practice is in violation of 8 C.F.R. § 287.8(b); thus, the Court finds that ICE violated its own regulation when it detained Respondent without reasonable suspicion that he was in the United States unlawfully.[5]

2. 8 C.F.R. § 287.3

In addition, Respondent argues that his case should be terminated because ICE agents failed to provide him the requisite advisals in violation of 8 C.F.R. § 287.3©, which states in relevant part:

> © *Notifications and information.* Except in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, an alien arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government. The examining officer will provide the alien with a list of the available free legal services . . . The officer will also advise the alien that any statement made may be used against him or her in a subsequent proceeding.

The regulations also state that when an officer makes a warrantless arrest, an officer must adhere to the procedures set forth in 8 C.F.R. § 287.3(c). 8 C.F.R. § 287.8(c)(2)(iv).

In deRodriguez-Echeverria v. Mukasey, 534 F.3d 1047 (9th Cir. 2008), the Ninth Circuit addressed the issue of when advisals must be given to an alien. In that case, the respondent, a legal permanent resident, was stopped by Customs and Border Patrol agents as she attempted to enter the United States from Mexico. Id. at 1048-49. She was escorted into a building, fingerprinted, photographed, and made to remove her belt and shoelaces. Id. at 1048. After spending the night in a locked room, the respondent was taken to an office to give her declaration. Id. At her immigration hearing, the respondent claimed that immigration officers never informed her that she had a right to an attorney or that her statements could be used

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[5] The Court recognizes that it is a reasonable assumption that in a factory setting, there may be illegal workers present. However, as stated in the Court's legal analysis, generalized reasonable suspicion is insufficient to justify detention of an entire workforce. The Court finds that to allow such a sweeping detention of all employees of a factory would be to promote the policy that unlawful detention of citizens is permissible so long as the odds are good that a percentage of those detained will in fact be illegal workers. The Court does not find a regulatory or Constitutional basis for such a policy.

against her, and she asked the Court to suppress the Form I-213 which contained any statements she made to officers during her interrogation. Id. at 1050. The Ninth Circuit found that the respondent's overnight detention at the border constituted a warrantless arrest because her freedom to walk away was clearly restrained. Id. at 1051. After finding that the respondent had been arrested rather than merely detained, the Ninth Circuit held that "the arresting officers were accordingly obligated to comply with the requirements of § 287.3(c)." Id. However, the Ninth Circuit remanded the case to the Board to determine "whether § 287.3(c) requires the officers to warn [the respondent] prior to interrogation that she had a right to counsel and that her statements could be used against her." Id.

Similar to the respondent in de Rodriguez-Echeverria, Respondent was taken by bus in handcuffs to downtown Los Angeles, where he was placed in a cell and held. The Court thus finds that Respondent was under warrantless arrest and was therefore entitled to the advisal of his rights pursuant to 8 C.F.R. § 287.3.

Respondent claims, and the Government has not disputed, that no ICE agent ever advised Respondent of the reason for his arrest, his right to hire an attorney, or that any statement he made could be used against him in subsequent proceedings. The Government argues that Respondent, even if placed under arrest, was not entitled to the requisite advisals because the regulation states that advisals are only required once an alien is placed in removal proceedings. Because Respondent was not formally served the NTA until March 17, 2008, the Government argues that ICE agents were not required to advise him of his rights during detention. Respondent argues that to interpret the regulation in such a manner is impractical because "the regulation would serve no purpose if it required officers to tell suspects that their statements may be used against them *after* the statements have been taken." See Respondent's Motion, page 21. Neither the Board nor the Ninth Circuit has published a decision clearly interpreting 8 C.F.R. § 287.3(c) as to when the advisals are required. In de Rodriguez-Echeverria, the Ninth Circuit remanded to the Board to determine whether advisals must be given prior to interrogation. 534 F.3d at 1051. The Board has yet to publish an authoritative decision on this issue.

Therefore, in the absence of settled law, the Court will adopt an interpretation of the regulation based on its plain meaning and practical purpose. Based on the language of the regulation, the Court finds a reasonable interpretation to be that unless an alien is subject to expedited removal (and is thus subject to placement in removal proceedings in the alternative), any alien who is arrested without a warrant is entitled to the requisite advisals prior to being interrogated. The Court agrees with Respondent that to advise an alien that any statement he makes may be used against him in subsequent proceedings would afford no protection to the alien if that advisal is not required until after he has already been questioned or interrogated. Thus, the Court finds that Respondent was entitled to the advisals set forth in § 287.3(c) after his arrest but before his interrogation. The Court therefore finds that ICE violated its own regulation when ICE agents failed to advise Respondent of his rights at any time while he was detained or interrogated.

The Court notes that, in this case, it may be irrelevant whether advisals are required before interrogation as Respondent contends or upon service of the NTA as the Government argues. Here, there is no evidence that Respondent was given advisals at *any* time. The NTA

was sent to Respondent via certified mail over one month after he was released from detention, and while the NTA informs Respondent of the charge against him and that he has the right to hire an attorney, it does not contain a warning that any statement made by Respondent can be used against him in later proceedings. Thus, according to either interpretation of the regulation, the Court finds that ICE violated 8 C.F.R. § 287.3(c) in Respondent's case due to its failure to provide him complete advisals at any time.

3. *Termination due to Regulatory Violations*

Although the Court has found that ICE violated both 8 C.F.R. §§ 287.3(c) & 287.8(b) in Respondent's case, the Board has held that regulatory violations, standing alone, do not automatically warrant termination of proceedings. See Matter of Garcia-Flores, 17 I&N Dec. 325, 327 (BIA 1980). To determine whether termination is appropriate, the Court must consider 1) whether the regulations serve a purpose of benefitting Respondent, and 2) whether the violations prejudiced the interests of Respondent which were protected by the regulations. Id. at 328.

Here, Respondent contends and the Government does not dispute that both § 287.3(c) & § 287.8(b) serve a purpose of benefitting Respondent. Section 287.8(b) serves to protect individuals from unlawful detention in instances where an officer does not have either an arrest warrant or any reasonable suspicion based on articulable facts that may serve as a lawful basis for even a brief detention. Section 287.3(c) similarly serves to protect individuals from unlawful or coercive interrogation tactics by informing them that any statement may be used against them at a later time and that they have the right to hire an attorney. See also 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 Court must then determine whether Respondent has met his burden of proof that he was prejudiced by the Government's regulatory violations. To meet his burden, Respondent must specifically demonstrate that the violation harmed the alien's interests in such a way as to potentially affect the outcome of his deportation proceeding. See Matter of Garcia-Flores, 17 I&N Dec. at 328-29. Respondent states in his declaration, "This agent also did not advise me of any rights, tell me why I was arrested, or let me know that the answers I gave could be used against me. Had I been given this advice at any point, I would not have answered the questions." See Respondent's motion, Tab B, para. 28. Respondent thus contends that he would not have responded to any questions posed by ICE agents if he knew that his statements could later be used against him. This contention is significant, for Respondent was placed in formal removal proceedings based exclusively upon the information Respondent provided to ICE agents during his interrogation. The Form I-213 states:

> Perez freely admitted that he was born in Puebla, Mexico on 9/6/1985. Subject stated that he was brought illegally into the U.S. through an unknown place when he was about 9 years old. Subject stated that he does not have any permission to enter or reside in the U.S., nor does he have any applications pending with the U.S. Citizenship and Immigration Services.

As a result, the Form I-213 indicates that the "Disposition" in Respondent's case was "Warrant of Arrest/Notice to Appear," thereby placing Respondent in formal removal proceedings. In fact, the factual allegations contained in the NTA closely mirror the information reportedly given by Respondent during his interview, showing that Respondent's answers to ICE questions served as the basis for his placement in removal proceedings. Moreover, the Form I-213, which the government relies on to meet its burden of proof rests entirely on information obtained from Respondent after the illegal detention, arrest, and interrogation. Thus, as the evidence shows, had Respondent known that his statements could later be used against him, he would not have answered the ICE agents' questions, thereby changing the government's decision and ability to place Respondent in removal proceeding or subject him to a finding of removability based solely on his own statements.

In addition, the conditions under which Respondent was placed during his detention and subsequent interrogations demonstrate that Respondent was subjected to an intimidating and coercive environment in which a reasonable person would feel more compelled to provide answers or information that one might not otherwise provide under different circumstances. See, e.g., Schneckloth v. Bustamonte, 412 U.S. 218, 226-27 (1973) (holding that a combination of circumstances, such as food or sleep deprivation, length of detention, or absence of counsel, can comprise an inherently coercive environment in which an individual's will may be overborne); Navia-Duran v. INS, 568 F.2d 803, 810 (1st Cir. 1977) (finding that if INS agents had complied with 8 C.F.R. § 287.3, "the atmosphere of coercion would have vanished"); Matter of Garcia-Flores, 17 I&N Dec. at 327 (finding that failure to comply with 8 C.F.R. § 287.3 bears on the question of whether a respondent's statements were given voluntarily). Respondent states that he was held in a cold cell overnight and forced to sleep on the concrete flooring. He was also deprived of food and drinking water for approximately 18 hours. Under these conditions, ICE agents questioned Respondent without informing him the reasons for his arrest or that his statements could be used against him in removal proceedings. In this case, the government's numerous violations of the regulations, that are intended to protect the interest of Respondent and integrity of subsequent court proceedings, prejudiced the very interests of Respondent that the regulations seek to protect; namely his right to be free from an illegal detention, arrest and interrogation resulting in evidence used against him to meet the government's burden of proof in removal proceedings. Thus, the Court finds that Respondent was prejudiced by the Government's violations of the regulations under 8 C.F.R. § 287.3(c) & § 287.8(b).

As a final note, the Court recognizes that any claim of prejudice would be diminished upon evidence that Respondent made statements to ICE agents at any time before his unlawful detention or interrogation that would establish a basis for the charge of removability against him. See Matter of Garcia-Flores, 17 I&N Dec. at 329 (remanding to the Immigration Judge to determine whether evidence supporting a finding of deportability arose prior to the apparent regulatory violation). However, here, neither Respondent nor the Government has submitted any evidence to show that the charge of removability can be independently established apart from Respondent's statements made after his illegal detention or during his illegal interrogation. The Government has provided a copy of Respondent's birth certificate, which the Government admits was obtained using information such as Respondent's birthday and place of birth.

However, the Court finds that these facts were also obtained as a result of Respondent's unlawful detention and interrogation and fall outside the scope of "identity" evidence. Lopez-Mendoza, 468 U.S. at 1039 (distinguishing between "body" or "identity" of an alien and information relating to "alienage"). Therefore, the birth certificate cannot serve as independent evidence to establish removability. Thus, the Court finds that Respondent suffered prejudice as a result of the Government's regulatory violations, for all statements and evidence obtained as a result of statements he made after his initial unlawful detention and during an unlawful interrogation served as the basis for placing him in removal proceedings.

The Court therefore finds that the two-prong test set forth in Matter of Garcia-Flores has been met in Respondent's case. 17 I&N Dec. at 328. The Court will grant Respondent's motion to terminate.[6]

ORDER

IT IS HEREBY ORDERED that Respondent's motion to terminate proceedings be GRANTED with prejudice.

DATE: 2/10/2009

A. Ashley Tabaddor
Immigration Judge

[6] To the extent that Respondent's motion to terminate is granted, the Court finds it unnecessary to address his remaining claims and arguments. See Jean v. Nelson, 472 U.S. 846, 854-55 (1985) (finding that if a case can be resolved by interpreting the relevant immigration statutes or regulations, there is no need to address Constitutional issues).

ATTACHMENT B

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UCLA School of Law Students

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
LOS ANGELES, CALIFORNIA

In the Matter of: PAXTOR, Ingrid Respondent, In Removal Proceedings.	File No. A095 748 753 Hearing Date: June 26, 2009 Hearing Time: 1:00 pm Before Hon: JUDGE TRAVIESO

RESPONDENT'S JUNE 2, 2009 SUPPLEMENT TO MOTION TO TERMINATE AND SUPPRESS

Respondent hereby supplements her filings of March 5, 2009 and May 15, 2009 with new and previously unavailable evidence that was received by undersigned counsel on June 1, 2009. Specifically, Respondent submits to this Court documentation that was recently released by the Department of Homeland Security in conjunction with Freedom of Information Act litigation. *See* National Immigration Law Center (NILC) et al., v. Dept. of Homeland Security (DHS) et al., No. 08-cv-7092 (C.D. Cal. filed Oct. 2008); Ex. A, Decl. of Karen Tumlin. This documentation includes what appear to be pre-operation and post-operation memoranda issued regarding the February 7, 2008 worksite raid at MicroSolutions Enterprises.

The government has claimed in this case that, although it did not have individualized suspicion to question Ms. Paxtor, its actions were justified because it had a warrant. The search warrant issued by a federal magistrate judge in this case was to search for documentation and for computers related to employment without authorization – not to search for individual workers. Exh. M to Motion to Suppress. However, the documents just released by the government as a result of a Freedom of Information Act request support the conclusion that the government was not planning to search for documentation and computers at all. Instead, the government's strategy from the initial stages of planning the raid was to search for workers – without ever obtaining a warrant to allow them to conduct such a search.

The pre-operation plan for the raid states that "OI [Office of Investigations] will be conducting a search warrant and expects to make 150-200 arrests." Exh. B at 3. Two buses and five vans were scheduled for the raid. Id. at 4. This pre-operation plan demonstrates that the detention and questioning of Ms. Paxtor and the other workers was

part of a pre-planned strategy to detain absent individualized suspicion and absent a warrant of arrest. The pre-operation plan shows that the search warrant was merely pretextual to allow DHS to enter the factory and that the purpose of the operation was in fact to arrest "150-200 undocumented workers." Exh. B at 3. The search warrant issued by a federal magistrate judge was to search for documentation and for computers related to employment without authorization. Exh. M to Mot. to SuppressHowever, the pre-operation plan mentions nothing of the scope of the search warrant and instead focuses on the arresting of 150-200 individuals at the raid site.

In addition, the post-operation plan (Exh. C) confirms that 126 individuals were arrested and that Detention and Removal did "not receive the first apprehension until 12 hours after the operation began." Exh. C at 2. Nowhere does the post-operation plan mention the search warrant or the time it took to execute the warrant, in relation to this 12 hour period. Nor does the post-operation plan mention the seizure of any documents or computers – the very items that they had requested the authority to enter and find. This further confirms that the execution of the search warrant was pretextual to DHS gaining admission into the factory, and that the interrogation and detention of Ms. Paxtor was not carefully tailored to the purpose of the search warrant.

The government attempts to convince this Court that its suspicionless detention of Ms. Paxtor was somehow justified because it was necessary to the completion of the search warrant for documents and a computer. The Ninth Circuit has made clear that such a seizure is only lawful if it is not more intrusive than necessary and carefully tailored to its underlying justification. *Ganwich v. Knapp*, 319 F.3d 1115, 1122 (9th Cir. 2003) (citing *Florida v. Royer*, 460 U.S. 491, 504 (1983)). Here, both the pre-and post-

operation plans support the conclusion that agents were not looking for documents and a computer – but, in fact, had planned the raid with the intent of searching for and deporting 150-200 workers. Ms. Paxtor was not detained for the ancillary purpose of securing the location to execute a search warrant. Rather, she was detained as the government conducted a warrantless, suspicionless, roving search for undocumented workers, with the purpose of interrogating her regarding her citizenship status. Under such circumstances, her interrogation cannot possibly be construed as "carefully tailored to the justification underlying a *Summer*s-type detention." *Id.* at 1124. As the Ninth Circuit warned in *Knapp*, where law enforcement officers executing a search warrant for documents use the guise of the warrant to detain and interrogate workers without probable cause, the Fourth Amendment is violated.

For this reason, in addition to grounds stated in Ms. Paxtor's previous filings, this Court should conclude that Ms. Paxtor was unlawful detained and interrogated without individualized suspicion, in violation of the governing regulations and the Fourth Amendment.

DATED: June 2, 2009

Respectfully Submitted,

Van Der Hout, Brigagliano & Nightingale, LLP

Stacy Tolchin
Attorney for Respondent

Vivek Mittal
Leslie Mahley
UCLA School Of Law
Students Authorized Pursuant to 8 C.F.R. § 1292.1 for Respondent, Ingrid Paxtor[1]

[1] Notice for Appearance as Representative before the Immigration Court has been filed and is pending.

EXHIBITS IN SUPPORT OF RESPONDENT'S JUNE 2, 2009 SUPPLEMENT TO MOTION TO TERMINATE AND SUPPRESS

A. Declaration of Karen Tumlin, dated June 2, 2009 1

B. Pre-operation memorandum for "Operation Micro Solutions," dated February 4, 2008 3

C. Post-operation memorandum for Operation "Inkblot," dated February 11, 2008 5

EXHIBIT A

DECLARATION OF KAREN C. TUMLIN

I, Karen Tumlin, declare that the following is true and correct to the best of my knowledge:

1. I am an attorney, licensed to practice law in the State of California (SBN 234691). I am one of the attorneys representing Plaintiff the National Immigration Law Center in a Freedom of Information Act (FOIA) lawsuit regarding the worksite enforcement operation carried out by U.S. Immigrations and Customs Enforcement (ICE) on February 7, 2008 at the Micro Solutions Enterprise plant in Van Nuys, California. *National Immigration Law Center (NILC) et al., v. Dept. of Homeland Security (DHS) et al.*, No. 08-cv-7092 (C.D. Cal. filed Oct. 2008).

2. I have personal knowledge of the matters set forth herein, and if called, could and would competently testify thereto, under oath.

3. The original FOIA request in the *NILC v. DHS* case was made on March 4, 2008. The federal government did not produce any documents in response to this request until after plaintiffs filed a lawsuit in October 2008.

4. On March 31, 2009, ICE produced to plaintiffs' counsel the first responsive documents under this FOIA request. On this date, 299 pages of documents, many of which were redacted in part, were produced to plaintiffs' counsel. I have personally reviewed these documents.

5. On April 30, 2009, ICE produced its final production in response to this FOIA request. On this date, 1,501 pages of documents, many of which were redacted in part, were produced to plaintiffs' counsel. I have personally reviewed these documents.

6. I discussed the FOIA documents produced by ICE with attorney Stacy Tolchin, counsel for Ingrid Paxtor, for the first time on June 1, 2009. On the same date, I shared some of these FOIA documents with Ms. Tolchin via electronic mail.

EXHIBIT A

Specifically, I sent the following documents from this FOIA to Ms. Tolchin: pages consecutively labeled ICE.000001.2008FOIA1644 through ICE.000075.2008FOIA1644.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed in the City of Los Angeles, California on June 2, 2009.

Karen C. Tumlin, Declarant

EXHIBIT B

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OI WORKSITE ENFORCEMENT BRIEF
DRO RESPONSE COORDINATION DIVISION
Operations Coordination Unit

LOCATION: VAN NUYS, CALIFORNIA
NAME: OPERATION "MICRO SOLUTIONS"
DATE OF OPERATION: FEBRUARY 7, 2008

SYNOPSIS:

* The original date of this operation was changed from Tuesday, February 5, 2008 to Thursday, February 7, 2008.

ICE Office of Investigations (OI) Los Angeles will conduct a worksite operation at Micro Solutions Enterprises (MSE) in Van Nuys, California on February 7, 2008. OI will be conducting a search warrant and expects to make 150-200 arrests. Nationalities involved are Mexico, Guatemala and Colombia. OI has requested DRO assistance in the form of transportation and detention beds. The Los Angeles (LOS) Field Office has been contacted to determine what level of support they can provide and what outside resources they will need.

POC OI:
(b)(6), (b)(7)c SSA (213) 83(
GS (213) 830- (b)(6), (b)(7)c

POC DRO:
(b)(6), (b)(7)c HQ (202) 732- (b)(6), (b)(7)c
SDDO/LOS (213) 830- (b)(6), (b)(7)c
(b)(6), (b)(7)c DFOD (A) (805) 432- (b)(6), (b)(7)c

SIGNIFICANT DETAILS:

- OI is targeting 150-200 undocumented workers.
- The ratio of apprehensions is 60 percent male and 40 percent female.
- OI will be using the ICE Office located at 300 N. Los Angeles Street to detain and process all arrested individuals.

CONCERNS / UNRESOLVED ISSUES:

- The date of the operation was changed from February 5, 2008 to February 7, 2008.
- Flytecomm was apprised of this operation and will not be able to install Flytecomm Cell phones at the DRO location as they only have one technician and he will be covering the Salt Lake City operation.

DRO COMMITMENTS:

- DRO will provide (b)(2)High, (b)(7)e to support this operation to include (b)(2)High, (b)(7)e (this number includes (b)(2)High, (b)(7)e.

EXHIBIT B 003

- DRO vehicles provided for this operation will be 2 buses and 5 vans.
- DIHS will have 6 staffers on site including one TDY officer who will be the Team Leader.
- ATD - The RCD has coordinated with the Alternatives to Detention Unit to provide the Enhanced Supervision Reporting (ESR) Program in Los Angeles. There will be 8 G4S Contractors and [redacted] on site to enroll people in the ESR Program. They will have 100 ankle bracelets on site. (*Note: Per Logistics and Fleet Management and Alternatives to Detention, the ATD vehicles have been completed at the manufacturer and are awaiting Verizon to provide Broadband capabilities for the computer equipment. Once Verizon has completed the broadband installation the vehicles will go to OCIO for configuration.)
- CENTIX, HQ Financial Management Unit has been engaged to provide funding strings and labels to support this operation.

DRO DOCC REQUIREMENTS

- The DOCC has been contacted to locate bed space outside the LOS Area of Responsibility (AOR). 51 male final order cases will be moved to El Paso on Monday February 4, 2008, to make room for this operation.

LOCAL DRO BED SPACE PLAN

- DRO LOS will have 200 detention beds available to support the operation
  - Mira Loma Detention Center which is 70 miles (1 ½ hours) from the processing site
  - Santa Ana City Jail which is 35 miles (1 hour) from the processing site. All females that remain in custody will be detained in Santa Ana

Prepared by: Response Coordination Division, WSE Unit (202) 616 [redacted]
Brief Date: February 4, 2008

EXHIBIT C

Incident Response Unit

[redacted]

Operations Coordination Unit

- Operation "Inkblot" took place on February 7, 2008, in Van Nuys, CA. During the operation 130 foreign nationals were apprehended, however 4 were released by OI, on site, via G-56 call in letters. The following numbers reflect those aliens transported by DRO for processing. 126 foreign national were apprehended and transported by DRO to the processing site at the Los Angeles ICE office. The majority of those apprehended were from Mexico and El Salvador. 42 of those apprehended were released by OI for humanitarian concerns, 14 were released on bond, 24 on Alternatives to Detention and 12 were released on recognizance. 34 remain in ICE custody pending removal proceedings.

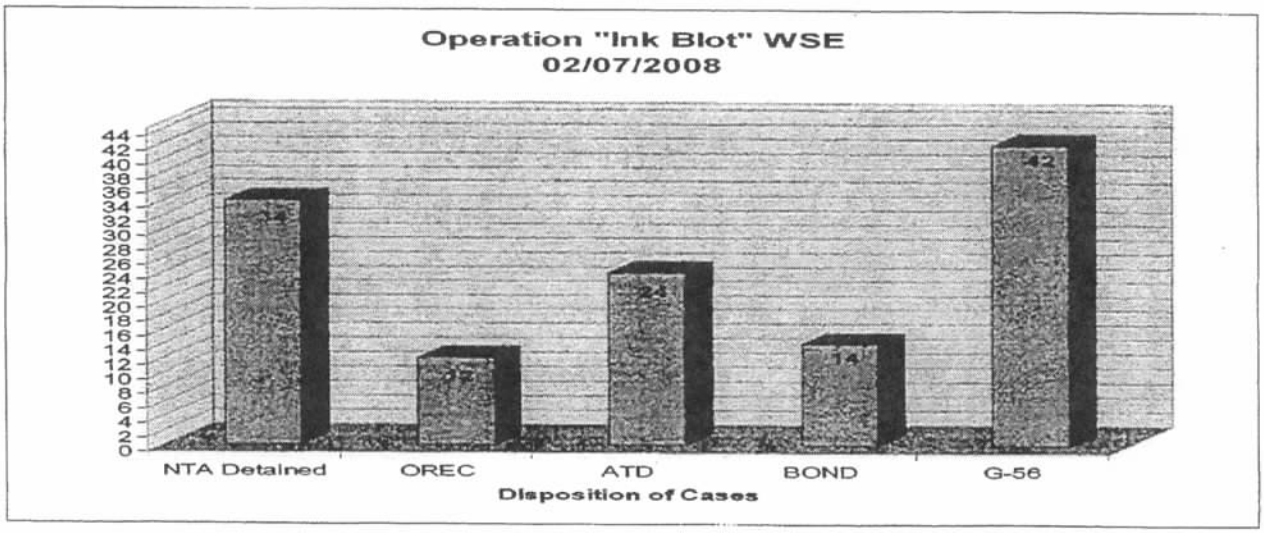

EXHIBIT C 005

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WSE OPERATION "MICROSOLUTIONS"
LOS ANGELES, CA

OVERVIEW:

Operation Micro Solutions targeted approximately 150 undocumented workers believed to be employed at Micro Solutions Inc. (8201 Woodley Ave, Van Nuys, CA 91406). The U.S. Immigration and Customs Enforcement (ICE), Office of the Special Agent in Charge, Los Angeles (SAC/LA), Worksite Enforcement/Critical Infrastructure Protection II (WSE/CIP II) initiated a worksite investigation of Micro Solutions Enterprises (MSE) based on an anonymous tip received from the DHS-2ICE tip line. The caller claimed that MSE was allegedly employing approximately 200-300 undocumented aliens. This ICE led investigation was being worked in conjunction with the Office of the Inspector General Social Security Administration Office of Investigations. Agents anticipated administratively arresting approximately 150 to 200 unauthorized workers, who were believed to be nationals of Guatemala, Colombia, and Mexico illegally present in the United States. In addition, agents anticipated charging up to twelve employees with criminal violations ranging from 18 USC 1015 (e), 18 USC 1028 and 18 USC 1546 (b) (1) (2) (3).

OPERATIONAL STATS:

	F	M
• Total arrested: 126	51	75
• Total Criminals: 0	0	0
• Total Non-criminals: 126	51	75
• Total Juveniles: 0	0	0
• Colombia: 3	2	1
• El Salvador: 25	12	13
• Guatemala: 8	5	3
• Honduras: 1	0	1
• Mexico: 85	33	52
• Peru:4	0	4

DISPOSITION OF CASES:

	F	M
• Cases VR'd to Mexico:	0	0
• Criminal cases prosecuted:	0	0
• Cases NTA'd and detained:	0	34
• Released: 92	52	40
• Bond: 14	3	11
• OREC, GS4 (ATD): 78	49	29

HQ DRO SUPPORT:

The Response Coordination Division provided:

- [redacted]

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ICE.000002.2008FOIA1644

- 1 DIHS TDY Officer
- 8 Contract personnel from the GS4 Group Enhanced Supervision Reporting Program.
- 2 JPATS Flights.

LOCAL DRO SUPPORT

- [redacted]
- 6 DIHS Officers.
- 5 DRO Vans and 2 DRO Buses.

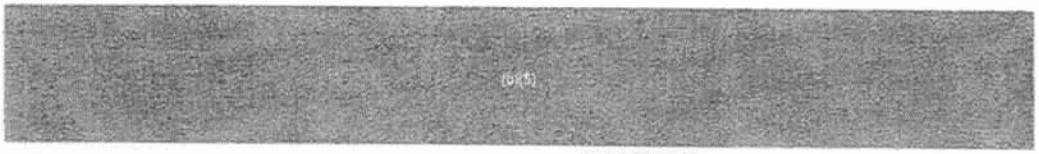
LESSONS LEARNED:

- Make contingency plans to provide more shifts of ATD contractors to enroll participants in the event that the processing evolution continues for more than 24 hours.
- The use of form I-216 at the arrest site for all aliens that were loaded on a vehicle prior to departure to the processing site assisted with maintaining an accurate count for reporting purposes. Recommend this be standard procedure for all future WSE operations.
- The DRO Officer/Supervisor at the arrest site along side OI provided a consistent and accurate hourly report. Recommend this be standard procedure for all future WSE operations.
- The Detainee Tracking Sheet was amended to include ICE detention location. Before this information was entered in the comments area. Every spreadsheet will be modified to include the ICE Detention Location and a field for date and time OI turns the alien over to DRO.
- Wording will be incorporated in all future DRO Op Plans to ensure that all aliens are fully processed by the arresting agents according to the January 11, 2005 ICE Detention, Transportation, Processing Memorandum signed by Vic Cerda and Marcy Forman, along with all required signatures and accurate information on charging documents.
- OI must agree in writing to complete all paperwork associated with alternatives to detention, ankle bracelet, etc.
- A local MOU between OI and DRO should be created during the initial meetings and signed by the SAC and FOD of each respective unit. This will ensure what functions OI and DRO will handle, which will eliminate miscommunication during the actual operation.

CONCERNS/ISSUES:

- The processing time continues to be a concern with these operations. DRO did not receive the first apprehension until 12 hours after the operation began.
- The operation began at 1500 hours on Thursday February 7th. The last detainee came into DRO custody on Saturday morning February 9th 0300 hours.
- These operational concerns affect DRO in a negative light including but not limited to:
  1. Family members concerned for their loved ones.
  2. The length of stay in hold rooms and processing centers.
  3. Unwanted media attention.
  4. AILA and NGO's monitoring the WSE Operations.

- Recommendations:



Prepared by: Response Coordination Division (202) 732 [redacted]
Date: February 11, 2008

PROOF OF SERVICE BY MAIL

In the Matter of: Ingrid PAXTOR A number: A095 748 753

I, Stacy Tolchin, the undersigned, say:

I am over the age of eighteen years and not a party to the within action or proceedings; my business address is Van Der Hout, Brigagliano & Nightingale, LLP, 634 S. Spring St. Suite 714, los Angeles, CA 90014.

On June 2, 2009, I caused to be served the within:

RESPONDENT'S JUNE 2, 2009 SUPPLEMENT TO MOTION TO TERMINATE AND SUPPRESS

on the opposing counsel by depositing one copy thereof, enclosed in a sealed envelope with postage fully pre-paid, in a mailbox regularly maintained by the United States Postal Service at Los Angeles, California, addressed as follows:

Carlos Maury
Department of Homeland Security
Office of the Chief Counsel
U.S. Immigration and Customs Enforcement
606 South Olive St. 8th Floor
Los Angeles, CA 90014

Executed on June 2, 2009, at Los Angeles, California. I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

Stacy Tolchin
Declarant