UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HARTFORD, CONNECTICUT

File: [redacted]

In the Matter of:	)	
	)	
[redacted]	)	**IN REMOVAL**
	)	**PROCEEDINGS**
Respondent	)	

CHARGE(S): Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"): An alien present in the United States without being admitted or paroled ... is inadmissible.

Section 237(a)(1)(A) of the INA: An alien who at the time of entry ... was ... inadmissible ... is deportable.

APPLICATION(S): Motion to Suppress
Motion to Terminate Removal Proceedings

ON BEHALF OF RESPONDENT:
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ON BEHALF OF DHS:
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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

A Notice to Appear ("NTA") was served upon [redacted] ("Respondent"), in person, on June 6, 2007. In the NTA, the Department of Homeland Security ("DHS" or "the Government") alleges that Respondent is a native and citizen of Mexico who entered the United States at an unknown place on an unknown date and was not then inspected by an immigration officer. Accordingly, the Government charged Respondent with removability pursuant to INA § 212(a)(2)(6)(A)(i). The NTA was filed with the Court on June 13, 2007, thereby vesting the Court with jurisdiction over these proceedings. See 8 C.F.R. § 1003.14(a) (2008). On April 22, 2008, Respondent filed his responsive pleadings, stating his intention to file a motion to suppress evidence and terminate proceedings. He filed such motions, and has submitted supplementary briefs,

declarations, documentary evidence, and other evidence.

The Form I-213 recounts Respondent's arrest as such: The Hartford, Connecticut Fugitive Operations team encountered Respondent while conducting an enforcement operation. The target of the search, an alien fugitive (A# [redacted] with an outstanding warrant of removal, was not found. The form states "[e]ntry into the residence was granted by [redacted]

Respondent asserts, in his motion and supporting briefs, that Immigration and Customs Enforcement ("ICE") agents egregiously violated his Fourth Amendment right against unreasonable searches and seizures. Specifically, he avers that ICE agents illicitly entered his home without a warrant and without consent. He also claims that ICE agents egregiously violated his Fifth Amendment right to equal protection and fundamental fairness in his immigration proceedings. Specifically, Respondent asserts that he was targeted solely on the basis of his race and because ICE agents coerced him into making certain statements. Moreover, he claims that ICE agents' violation of ICE regulations and sub-regulatory rules, which bear on his fundamental rights, require termination of his removal proceedings.[1]

The DHS submitted a response to Respondent's Motions to Suppress Evidence and Terminate Proceedings. Therein, the DHS contends Respondent has failed to establish a *prima facie* showing that: 1) his Fourth Amendment rights were egregiously violated by ICE agents, 2) his Fifth Amendment rights were egregiously violated by ICE agents, and 3) ICE agents violated any applicable regulation necessitating the suppression of evidence or the termination of proceedings.

Respondent has also filed a number of subpoena requests relating to immigration agents involved in his arrest and detention, some dated April 2, 2008.

II. Testimonial Summary

A. Respondent's Testimony

Respondent lived in the apartment at [redacted] New Haven, Connecticut, with his cousin, his cousin's wife, and their two children. He asserted his Fifth Amendment privilege when asked what identification he provided to the officers.

The following is a synopsis of his testimony as it relates to the discrete

1 Respondent also contends that his arrest was conducted in a manner that egregiously violated his First and Tenth amendment rights. The Court has been unable to find precedent for the proposition that First and Tenth Amendment claims may be properly entertained in a removal proceeding. In fact, the Second Circuit has expressly declined to fashion an exclusionary rule for evidence obtained in violation of an individual's First Amendment rights in the context of removal proceedings. See Montero v. I.N.S., 124 F. 3d 381, 386 (2d. Cir. 1997). "Beyond violations of the Fourth Amendment, it is clear from Lopez-Mendoza that the exclusionary rule is applicable, if at all, only to deprivations that affect the fairness or reliability of the deportation proceeding." Id. Thus, because it is not within the competence of this Court to resolve such claims, they will not be considered.

constitutional claims he has proffered:

At 6:30 a.m. on June 6, 2007, Respondent was sleeping when he was awakened by knocking on his bedroom door. He woke up and, upon turning towards the door, observed someone standing in the doorway. When asked whether it was light or dark out, he stated that 'he could see' because there was a 'little light' emanating from the television. His room light was not on. Respondent spoke first, asking 'what happened,' and he heard 'it's the police' as an answer. One of the officers instructed him, in English, to put clothes on and to come to him, as well as by motioning to him and pantomiming putting on pants. Respondent did not understand the instruction made in English, but discerned the instructions by the officer's motions. ICE agents then instructed the Respondent, in English, to show them his identification, and he complied by giving the agents identification. The officers did not ask him any additional questions.

B. Respondent's Declaration and Supplemental Declaration

Respondent attested to the following in his Declaration and Supplemental Declaration, dated November 28, 2007 and February 20, 2008, respectively:

Respondent is 25 years old and has lived on the first floor of [redacted] New Haven, Connecticut for the past seven years, with his cousin [redacted] and his cousin's family. Respondent has not graduated from high school.

Respondent was sleeping in his bedroom on June 6, 2007, when at around 6:30 a.m., officers entered his room while he was sleeping, turned the lights on, and yelled "police". The officers ordered Respondent into the living room. When he entered the living room, he could see [redacted] in his bedroom with an agent. Respondent was told to sit down. There were officers at both exits of his apartment. He did not give his consent for the officers to enter and no one else in the house consented to their entry. Additionally, he "did not feel ... free to leave when the officers blocked off all of the exits and ordered [him] into the living room."

One of the agents instructed the Respondent, in Spanish, to put a shirt on and he complied by retrieving a shirt from his room. Respondent was then handcuffed and sat in the living room for several minutes. He asked the officers several times what was happening, but they refused to answer. A few minutes later, [redacted] emerged from his room with an officer and sat in a chair next to him. Respondent does not recall exactly how many officers were in the apartment, but he remembers at least four, some of whom were armed.

When the officers ordered Mr. [redacted] into the living room, "no one had asked [him] any questions. The only information the officers knew about [him] was [his] appearance and the fact the [he] spoke Spanish."

C. Testimony of [redacted] (A# [redacted])

Mr. [redacted] has lived in Connecticut for approximately fifteen years. He has lived at [redacted] New Haven, Connecticut, for eight or nine years. Mr. [redacted] rents the apartment and lives with his family, composed of his son, daughter, wife, and his cousin. He speaks Spanish and has limited comprehension of English. He asserted his Fifth Amendment privilege to the following inquires: The date he entered the United States, if and for how long he resided in Virginia, where he went to high school, in what language he was educated, and whether his wife and cousin were born in the United States.

The following is a synopsis of Mr. [redacted] testimony as it relates to the discrete constitutional claims he has proffered:

On the morning of June 6, 2007, Mr. [redacted] was at home with his then ten-year old daughter and his cousin. At about 6:30 a.m., he was in his bathroom brushing his teeth when someone began knocking on the back door. His daughter came to tell him that someone was at the door. Mr. [redacted] then exited the bathroom, approached the door, and asked, in Spanish, 'who is it?' 'It's the police' was the reply, communicated in English. Mr. [redacted] opened the door 'a little,' and saw the men. Agents then pushed the door open completely but did not say anything to him. Approximately four officers entered the premises. Mr. [redacted] did not tell the officers to leave because he had no time to tell them. At some point he asked what was going on and did not receive an answer. Rather, the agents only smiled at him. With his daughter by his side, Mr. [redacted] was asked who else was in the apartment and he replied, in English, that his cousin was sleeping in his room. He was then asked, in English, whether or not he knew a fugitive identified in a photograph shown to him. He replied 'no' in English. He was also asked for identity documentation and Mr. [redacted] told the agents that his identification was in his room. He offered them a Virginia driver's license. He does not recall whether he was asked additional questions. Without asking Mr. [redacted] an ICE agent instructed his daughter to call his wife, and Mr. [redacted] was instructed to sit down on a chair in the living room. His daughter remained with the officer.

D. Declaration and Supplemental Declaration of [redacted] (A# [redacted]

Mr. [redacted] attested to the following in his Declaration dated November 28, 2007:

Mr. [redacted] is 30 years old. He attended school until the age of 16. He lives on the first floor of [redacted] New Haven, Connecticut and has lived there for the past eight years. He lives there with his wife, their two children, and his cousin, Respondent. His apartment has three bedrooms and two doors – one in the front facing the street, and one in the back facing the adjoining parking lot.

At 6:30 a.m. on June 6, 2007, Mr. [redacted] was in his bathroom. His wife was at work, his son with a babysitter, and his daughter and cousin were asleep in their bedrooms. He heard someone banging very loudly on the back door. Mr. [redacted]

daughter came into the bathroom, and fearfully told him there was someone at the door. He went to the back door and asked 'who is it?' and someone replied "police" through the door. He also heard people climbing the stairs to the apartment on the second floor.

Because he thought something might be wrong, Mr. [redacted] opened the door 'just a crack.' The man on the other side of the door 'pushed open the door' and four officers ran into the premises. One of the officers asked him where the front door was located. Two officers blocked off the front door and one officer stood at the back door. He did not "give [his] consent for the officers to enter. No one in [h]is house consented to their entry." The officers wore jackets emblazoned with "ICE" or "POLICE". Some of the officers were armed.

One of the officers showed Mr. [redacted] a picture of a man and asked, in English, if he recognized the individual in the photo, whose last name was 'Chavez'. He stated that he did not know the man. Mr. [redacted] did not feel "free to leave when the officers blocked off all of the exits and began questioning [him]."

An officer asked him if anyone else lived in the apartment. After he responded that his cousin lived there and was sleeping in his bedroom, one of the other agents opened the door to [redacted] room and went inside. Mr. [redacted] kept asking who the officers were and why they had entered the premises, but "[n]o one would answer [him] and several of the agents started laughing."

Mr. [redacted] daughter was very scared and tried to stand by her father. Then a "female agent grabbed her roughly and took her into her bedroom." The agent "terrified" the daughter, who was on the precipice of crying "because she thought it was the police." His daughter did not resist and went with the agent, who asked her where her mother was. The daughter replied her mother was at work. A male agent instructed Mr. [redacted] to go to his bedroom, and the officer followed him in.

Later, Mr. [redacted] daughter and the female officer entered his bedroom. The female agent had instructed the daughter, without Mr. Trujillo's permission, to dial the phone number of her mother's workplace (the number was posted on a note on the dresser mirror).

"After the agent dialed the numbers," she instructed Mr. [redacted] daughter to speak to her mother and his daughter related that the police were there and that she should come home. The female agent and his daughter then left the room.

Another officer told him to go back to the living room, where he saw Respondent, handcuffed, sitting in a chair. Mr. [redacted] was ordered to sit down and complied. One of the agents requested his identification. Mr. [redacted] replied it was in his bedroom. The agent followed him into the bedroom so he could retrieve his identification. He gave the agent his identification – a Virginia state identification card.

Mr. [redacted] wife arrived at the house. One of the agents handcuffed him in front

of his wife and daughter, and 'they' told him to '[s]ay goodbye to [his] family'.

Mr. [redacted] attested to the following, in pertinent or novel part, in his Declaration dated February 20, 2008:

He is 'of Latino appearance.' The walls in his apartment are thin, which allow voices and footsteps of people in the hallway, living room, and kitchen, to be heard from inside the bathroom.

E. Affidavit provided by the DHS

1. On February 12, 2009, the Government submitted an affidavit from Richard McCaffrey, a Supervisory Detention and Deportation Officer, and an affidavit from Deportation Officer David Hamilton:

The following is a synopsis of the relevant contents of Mr. McCaffrey's affidavit:

Richard McCaffrey has worked in the immigration enforcement field for fifteen years. In 2006, ICE Detention and Removal Operations ("DRO") implemented 'Operation Return to Sender,' which was aimed at apprehending immigration absconders. The operation was planned for June 6, 2007 and a target list was prepared.

With respect to the execution of the enforcement operation at issue, Mr. McCaffrey is "not aware of any internal report that any Deportation Officer needed to brandish his or her firearm for any reason." Furthermore, "at no time during or after the completion of ... this operation" did Mr. McCaffrey "observe or learn that any house or apartment was entered without informed, voluntary consent," and he did not observe and was not informed "that any consent was withdrawn."

With regards to Respondent's arrest, Mr. McCaffrey was initially outside [redacted] along with ICE agents, and "there may have been outside law enforcement officers there as well." He proceeded to the rear of the building and entered the common hallway area.

At that point, he observed Officer David Hamilton standing in the hallway talking to a man, later identified as Mr. [redacted] Mr. [redacted] was standing in an open doorway to the first floor apartment. Mr. McCaffrey observed Officer Hamilton show a photograph to him and asked him, in English, whether he knew the man in the photo.

At this point, Mr. McCaffrey interrupted their conversation and asked Mr. [redacted] if they could come in to talk. Respondent said 'yes' and stepped out of the doorway and into the apartment and both Mr. McCaffrey and Officer Hamilton followed him in. Then, "[o]nce an interpreter arrived at the apartment, additional questioning led to the arrest of [Respondent."

2. The following is a synopsis of the relevant contents of Mr. Hamilton's affidavit:

David Hamilton is a Deportation Officer for ICE, assigned to 'Deportation Case Management.' He was assigned to assist in a fugitive enforcement operation that took place in New Haven, Connecticut on or about June 6, 2007 and specifically participated in the arrest of Respondent.

As part of that operation, Mr. Hamilton was assigned to go to the back door of the building ([redacted] and attempt to make contact with the occupants on the first floor. Mr. Hamilon went 'into a common hallway area and knocked on the first floor apartment and a male occupant,' later identified as Mr. [redacted] 'opened the door.'

Mr. Hamilton identified himself as a police officer to Mr. [redacted] and asked if he lived at the present site. Mr. [redacted] replied that he did. Mr. Hamilton then asked if he could talk to Mr. [redacted] and he agreed. Mr. Hamilton then showed a photograph of a fugitive alien that they were targeting at the address and asked Mr. [redacted] if he knew the person in the photo.

At that moment, Mr. McCaffrey arrived and intervened by asking Mr. [redacted] if the both he and Mr. Hamilton could speak with him in his apartment. Mr. [redacted] agreed and began walking to the kitchen. Both officers followed him.

The DHS also sought to introduce both a computer screen printout from ENFORCE, an immigration-enforcement related data collection program and a transfer data sheet relaying information incident to a later-scheduled JPATS flight. However, the Court will not consider this submission. First, the materials were only offered to the Court well after Respondent had testified. The Court had provided multiple notices to both parties regarding the durational limits for submission of supplementary materials and the administrative record was closed. The Court also notes that the Government has not established an adequate foundation for introduction of either document into the evidentiary record.[2]

III. Exhibit List

Exhibit List – Omnibus Appended Materials to Motion to Suppress – Filed November 30, 2007

Exhibit A – Declaration of law student Intern Stella Burch.

Exhibit B – Declaration of Respondent.

Exhibit C – Policy Document from Junta for Progressive Action & Unidad Latina en

2 The Court notes that, while the DHS "submits the attached evidence regarding the respondent's alienage and removability [were] obtained prior to and independently of [Respondent's] arrest," the submission does not elaborate on this contention. The DHS does not adequately explain the mode or method by which it obtained the documents. Thus, the DHS fails to make a detailed offer as to its admissibility irrespective of Respondent's contested seizure, arrest, and detention.

Accion, "A City to Model: Six Proposals for Protecting Public Safety and Improving Relationships Between Immigrant Communities and the City of New Haven" (2005).

Exhibit D – William Yardley, "New Haven Mayor Ponders ID Cards for Illegal Immigrants," N.Y. Times, Oct. 8, 2005.

Exhibit E – Jennifer Medina, "New Haven Welcomes Immigrants, Legal or Not," N.Y. Times, Mar. 5, 2007.

Exhibit F – New Haven Police Department General Order 06-02.

Exhibit G – Mary O'Leary, "Group Wants ID Cards Ready Sooner," New Haven Register, Dec. 26, 2006.

Exhibit H – Mary O'Leary, "Leader of Hispanic Church Welcomes All, Including Undocumented," New Haven Register, July 1, 2007.

Exhibit I – "Time to Fix Immigration," N.Y. Times, Oct. 14, 2005.

Exhibit J – Allan Appel, "Mayor, Chief Promise to Build on Immigrant Plan,: New Haven Independent, Jan. 19, 2007.

Exhibit K – Transcript of NBC news clip: "In Depth: Whose America? Local Governments Find Different ways of Dealing with Illegal Immigrants Who Congregate on Streetcorners Looking for Work," NBC Nightly News, March 20, 2007.

Exhibit L – Anthony Fiola, "Looking the Other way on Immigrants; Some Cities Buck Federal Policies," Washington Post, April 12, 2007.

Exhibit M – Robert Jamieson, "Is Seattle Ready to Be Immigrant Sanctuary?" The Seattle Post-Intelligencer, April 12, 2007.

Exhibit N – Michele Wucker, "A Safe Haven in New Haven," N.Y. Times, April 15, 2007.

Exhibit O – Letter from Julie Myers to John DeStefano, dated July 2, 2007.

Exhibit P – Copy of email messages between unidentified ICE agent and Trooper Carmine Verino, of the Connecticut Department of Public Safety.

Exhibit Q – City of New Haven Board of Aldermen Minutes, Finance Committee, May 17, 2007.

Exhibit R – Henry Fernandez, "Today I am Proud to Call New Haven My Hometown," New Haven Independent, June 5, 2007.

Exhibit S – Statement of Mayor John DeStefano, Jr. to Board Of Alderman Finance Committee on Municipal Identification Program, May 17, 2007.

Exhibit T – Melissa Bailey, "City ID Plan Approved," New Haven Independent, June 5, 2007.

Exhibit U – Mary E. O'Leary, "Ortiz Again Claims No Knowledge of Raid," New Haven Register, June 19, 2007.

Exhibit V – City of New Haven, Elm City Resident Card Fact Sheet.

Exhibit W – Mary O'Leary, "Municipal ID Cards Likely," New Haven Register, May 18, 2007.

Exhibit X – Abbe Smith, "More than 1,000 March Downtown," June 17, 2007.

Exhibit Y – Mara Revkin, "Offering Noncitizens a Local Identity," American Prospect, July 30, 2007.

Exhibit Z – Mary E. O'Leary, "City Irate, Claims It's Retaliation Over IDs," New Haven Register, June 7, 2007.

Exhibit AA – Nina Bernstein, "Promise of ID Cards is Followed by Peril of Arrest for Illegal Immigrants," N.Y. Times, July 23, 2007.

Exhibit BB – Copy of Letter from the Connecticut Congressional Delegation to Secretary Chertoff, June 11, 2007.

Exhibit CC – Mark Spencer, "New Haven's Immigration Drama Grows," Hartford Courant, June 15, 2007.

Exhibit DD – Copy of Letter from Julie Myers to National Immigration Forum, July 6, 2007.

Exhibit EE – Mark Zaretsky, "Fear Grips Immigrant Community," New Haven Register, June 17, 2007.

Exhibit FF – Jennifer Medina, "Arrests of 31 in U.S. Sweep Bring Fear in New Haven," N.Y. Times, June 8, 2007.

Exhibit GG – Copy of Letter from Secretary Chertoff to Senator Chris Dodd, June 14, 2007.

Exhibit HH – Department of Homeland Security Office of Inspector General, An Assessment of United States Immigration and Customs Enforcements' Fugitive Operations Teams, March 2007.

Exhibit II - Print-out from ICE Office of Detention and Removal Operations National Fugitive Operations Program.

Exhibit JJ – Melinda Tuhus, "Despite Raids, IDs for All," In These Times, Aug. 2007.

Exhibit KK – Elizabeth Hamilton, "Passion for Justice," Hartford Courant, July 23, 2007.

Exhibit LL – Donna Schaper, "Punishing Immigrants, Whatever Happened to Land of Welcome and Opportunity," Hartford Courant, June 17, 2007.

Exhibit MM – Copy of the ICE Pre-Operations Plan.

Exhibit NN – Robert C. Davis & Edna Erez, "Immigration Populations as Victims," National Institute of Justice (1998).

Exhibit OO – Orde F. Kittrie, "Federalism, Deportation, and Crime Victims Afraid to Call the Police," 91 Iowa L. Rev. 1449, 1450-51 (2006).

Exhibit PP – Robert C. Davis, Edna Erez & Nancy Avitabile, "Access to Justice for Immigrants Who are Victimized: The Perspectives of Police and Prosecutors," 12 Crim. Justice Policy Rev. 183 (2001).

Exhibit QQ – Virginia MOU and its adverse Implications for Immigrant Women and Girls, Tahirih Justice Center.

Exhibit RR – Nawal H. Ammar, et al., "Calls to Police and Police Response: A Case Study of Latina Immigrant Women in the USA," 7 Int'l J. of Pol. Sci. and Management 230 (2005).

Exhibit SS – "City of New Haven, Board of Aldermen Approve Acceptance of Funds for Municipal Identification Program".

Exhibit TT – Statement by Richard D. Clarke, Former White House National Security Coordinator for Security and Counter-Terrorism in the Clinton and Bush Administrations, Oct. 19, 2007.

Exhibit UU – Mary E. O'Leary, "City IDs Don't Prove Voter Eligibility, Blumenthal Rules," New Haven Register, Sept. 7, 2007.

Exhibit VV – Mary O'Leary, "Group may Urge Illegal Aliens to Make City their Destination," New Haven Register, June 14, 2007.

Exhibit WW – In re: Herrara-Priego, USDOJ EOIR (New York, N.Y., July 10, 2003) (Lamb, IJ).

Exhibit XX – Letter from Karen V. Lang to Congresswoman Zoe Lofgren Letter on ICE raids, dated March 14, 2007.

Exhibit YY – Declaration of Father James Manship, St. Rose of Lima Catholic Church, New Haven, Connecticut, dated June 20, 2007.

Exhibit ZZ – M-69: The Law of Arrest, Search, and Seizure for Immigration Officers, last updated January 1993 by Patrick McDermott, William Odencrantz, Liz Hacker, and Judith Patterson. Available on Lexis-Nexis, at INS Manuals 80-89.

Omnibus Appended Materials to Respondent's Reply to the Government's Brief in Opposition – Filed February 25, 2008

Exhibit A – Declaration of Law Student Intern Stella Burch.

Exhibit B – Supplemental Declaration of Respondent.

Exhibit C – Declaration of [redacted]

Exhibit D – Photograph of Respondent's Living Room.

Exhibit E – Photograph of Respondent's Kitchen.

Exhibit F – Photograph of Respondent's Back Stairway.

Exhibit G – Photograph of [redacted] Bedroom.

Exhibit H – Photograph of Respondent's Bathroom.

Exhibit I – Declaration of Law Student Intern Jane Lewis.

Exhibit J – Floor Plan of Respondent's Apartment.

Exhibit K – Barrera v. Boughton, No. 3:07-cv-01436 (D. Conn.) (Nov. 26, 2007); Dacorim v. DHS, No. 3:06-cv-01992 (D. Conn.) (complaint filed Dec. 14, 2006).

Exhibit L – El Badrawi v. DHS, No. 3:07-cv-01436 (D. Conn.) (amended complaint filed Nov. 26, 2007); DACORIM v. DHS, No. 3:06-cv-01992 (D. Conn.) (complaint filed Dec. 14, 2006).

Exhibit M – In re: Herrera-Priego, US DOJ EOIR (New York, N.Y., July 10, 2003) (Lamb, IJ).

Exhibit N – In re: RABANI, USDOJ EOIR (New York, N.Y.).

Exhibit O – Aguilar v. ICE, No. 07-cv-08224 (S.D.N.Y.) (complaint filed Sept. 20, 2007)

and supporting affidavits.

Exhibit P – Motion to Suppress & Affidavit filed in Immigration Court for Dionisio Chicas Moran, US DOJ (New York, N.Y.).

Exhibit Q - Motion to Suppress & Affidavit filed in Immigration Court for Carlos Lopez Ramos, US DOJ (New York, N.Y.).

Exhibit R – Nina Bernstein, Raids were a Shambles, Nassau Complains to U.S., N.Y. Times, Oct. 3, 2007.

Exhibit S – Affidavit filed in Immigration Court for Gonzalo Juarez of Newark, NJ.

Exhibit T – Motions to Suppress and Terminate, Memorandum of Law, and Supporting Affidavit filed in Immigration Court for Roberto Cervantes Valerio of Memphis, TN.

Exhibit U – Flores-Morales v. George and ICE, No. 07-cv-00050 (M.D. Tenn.) (complaint filed July 27, 2007) and supporting affidavits.

Exhibit V – Mancha v. ICE, No. 06-cv-12650 (N.D. Ga.) (complaint filed Nov. 1, 1006).

Exhibit W – Testimony of Marie Justeen Mancha before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law Hearing on: "Problems with ICE Interrogation, Detention, and Removal Procedures" February 13, 2008.

Exhibit X – Reyes v. ICE, No. 07-cv-02271 (N.D. Cal.) (complaint filed April 26, 2007)

Exhibit Y – Paloma Esquivel, Civil Rights Groups Allege Immigrant Workers were Denied Rights, L.A. Times, Feb. 15, 2008.

Exhibit Z – Affidavit of Jose Ordonez Salanec of TX.

Exhibit AA – UFCW v. Chertoff, No. 07-cv-00188 (N.D. Tex.) (class action complaint filed Sept. 12, 2007).

Exhibit BB – Testimony of Michael Graves, Member of the United Food and Commercial Workers International Union (UFCW), Local 1149 before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law for the Hearing: "ICE Interrogation, Detention, Removal Issues" Feb. 13, 2008.

Exhibit CC – Barrera v. DHS, No. 07-cv-03879 (D. Minn.) (complaint filed Sept. 4, 2007).

Exhibit DD – Border Network for Human Rights v. County of Otero, No. 07-cv-10145 (D.N.M.) (complaint filed Oct. 17, 2007).

Exhibit EE – Daniel T v. Board of Commissioners of the County of Otero (D.N.M.) (complaint filed October 17, 2007).

Exhibit FF – Matter of X- (Seattle, WA Immigration Court Feb. 8, 2007).

Exhibit GG – Written Testimony Kara Hartzler, Esq. Florence Immigrant & Refugee Rights Project U.S. House of Representatives Subcommittee on Immigration, Feb. 13, 2008.

Omnibus Exhibits in Support of Respondent's Motion to Supplement the Record and to Advise Court of Recent Authority – Sept. 9, 2008

Exhibit A – Declaration of law student intern Anant Saraswat.

Exhibit B – Series of emails dated May 21, 2007.

Exhibit C – Series of emails dated June 4, 2007.

Exhibit D – Letter from Michelle L. Colson, AUSA, to Michael Wishnie, dated July 23, 2008.

Exhibit E – – Letter from Michelle L. Colson, AUSA, to Michael Wishnie, dated July 29, 2008.

Exhibit F - – Letter from Michelle L. Colson, AUSA, to Michael Wishnie, dated August 4, 2008.

Exhibit G - – Letter from Michelle L. Colson, AUSA, to Michael Wishnie, dated August 19, 2008.

Omnibus Appended Materials to Respondent's Motion to Supplement the Record – November 14, 2008

Exhibit A – Declaration of law student intern Sara Edelstein.

Exhibit B – 'Target List' of June 2007 ICE enforcement operation in New Haven, CT.

Exhibit C – Danahar v. Freedom of Information Com'n, 2008 WL 4308212 (Conn. Super., Sept. 5, 2008).

Exhibit D – Letter from Henri Alexandre, Assistant Attorney General of the State of Connecticut, to Michael Wishnie, dated October 20, 2008.

Exhibit E – Series of E-mails dated June 11, 2007.

Exhibit F – Letter from Douglas P. Morabito, Assistant United States Attorney, to Micheal Wishnie, dated Oct. 15, 2008.

Exhibit G – Declaration of Lawrence Mulvey, Police Commissioner of Nassau Country, New York.

Omnibus Brief and Exhibits to Supplement Record – December 3, 2008

Exhibit A – Declaration of law student intern Hunter Smith.

Exhibit B – Target List, for the June 2007 enforcement operation in New Haven, CT.

Exhibit C – Vaughn Index, ULA v. DHS, No. 3:07-cv-1224 (MRK), Dkt. # 53, 1-2 (D. Conn., filed November 6, 2008).

Exhibit I – Declaration of law student intern Sara Edelstein.

Exhibit J – Letter from Michael Wishnie and Deborah Marcuse to Michael Cameron, dated October 30, 2007.

Respondent has also submitted two additional exhibits dated March 3, 2009: Respondents' omnibus brief in response to the Government's evidentiary submissions, and Respondent's motion to supplement the record.

IV. Legal Standards

A. Motion to Suppress in Removal Proceedings

1. Respondent's *prima facie* burden

A motion to suppress must be made in writing and be accompanied by a detailed affidavit that explains the reasons why the evidence in question should be suppressed. Matter of Wong, 13 I & N Dec. 820, 822 (BIA 1971). The individual seeking to suppress evidence initially bears the burden of proof and must establish a *prima facie* case that the evidence should be suppressed. Matter of Tang, 13 I & N Dec. 691 (BIA 1971). To establish a *prima facie* case, the individual seeking suppression must provide specific, detailed statements based upon personal knowledge; such allegations cannot be general, conclusory, or be based on counsel. Id.; see also Matter of Barcenas, 19 I & N Dec. 609 (BIA 1988); Matter of Wong, 13 I & N Dec. at 821-22; Matter of Tang, 13 I & N Dec. at 692.

"Where a party wishes to challenge the admissibility of a document, the mere offering of an affidavit is not sufficient to sustain his burden. First, if an affidavit is offered, which, if accepted as true, would not form a basis for excluding the evidence, the contested document may be admitted into the record . . . If the affidavit is such that the facts alleged, if true, could support a basis for excluding the evidence in question, then

the claims must also be supported by testimony. The respondent's declaration alone is therefore insufficient to sustain his burden." Id. at 611-612. Even a technically defective arrest of an alien does not necessarily render the deportation proceeding null and void. See Avila-Gallegos v. Immigration and Naturalization Service, 525 F.2d 666 (2d. Cir. 1975). Lastly, it is important to note "[r]espondents may only litigate what happened to them." INS v. Delgado, 466 U.S. 210, 2221 (1984).

2. Responsive Government Burden

When a respondent comes forward with proof establishing a *prima facie* case for suppression, the DHS then must assume the burden of justifying "the manner in which it obtained the evidence." Barcenas, 19 I & N Dec. at 611. Furthermore, an alien in removal proceedings is entitled to cross-examine witnesses the Government deploys against them. INA § 240(b)(4)(B).

As to the first point, the Court is aware of no authoritative precedent revealing the precise quantum of evidence the Government must proffer 'to justify the manner in which it obtained the evidence.' However, logic informs that to meet the *prima facie* case established by the respondent (of an egregious constitutional violation), the burden on the Government must therefore be equivalent.

Then, it is the Government's obligation to submit a facially sustaining affidavit, as well as make reasonable attempts to produce supporting testimony from the agents with knowledge of the contested events. See Barcenas, 19 I. & N. Dec. at 611.

As to the second point, evidence is generally admissible in immigration proceedings if it is probative and its use is fundamentally fair, Matter of Velasquez, 19 I. & N. Dec. 377, 380 (BIA 1996). Furthermore, an "immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case..." 8 C.F.R. §1240.7(a).

Three circuit courts have required that the DHS make reasonable attempts to produce witnesses before finding the admission of affidavits or sworn statements to be fundamentally fair. See Singh v. Mukasey, 553 F. 3d 207, 212 n.1 (2d. Cir. 2009) (Without further broaching the subject, noting that the First, Fifth and Ninth Circuits have agreed that the government violates principles of fundamental fairness when it submits an affidavit without first attempting to secure the presence of those potential witnesses for cross-examination); see also Ocasio v. Ashcroft, 375 F. 3d 105, 107 (1st. 2004) ("One of these outer limits is that the INS may not use an affidavit from an absent witness 'unless the INS first establishes that, despite reasonable efforts, it was unable to secure the presence of the witness at the hearing.'") (quoting Olabanji v. INS, 973 F. 2d 1232, 1234 (5th Cir. 1992); Saidane v. INS, 129 F. 3d 1063, 1065 (9th Cir. 1997). In particular, federal circuit courts have expressed concern that INA § 240(b)(4)(B)'s purpose would be thwarted "if the government's choice of whether to produce a witness or to use a hearsay statement were wholly unfettered." See, e.g., Baliza v. INS, 709 F. 2d 1231, 1234

(9th Cir. 1983).[3]

Furthermore, INA § 240(b)(4) provides an alien in removal proceedings "shall have a reasonable opportunity to examine the evidence against the alien ... and to cross-examine witnesses presented by the Government..." 8 U.S.C. § 1229a(b)(4)(B).[4]

This statutory provision is steeped in Fifth Amendment due process rights. "It is well established that the Fifth Amendment affords aliens due process of law during deportation proceedings." See Singh v. Mukasey, 553 F. 3d 207, 214 (2d. Cir. 2009). A failure in admitting unsupported evidence may constitute a constitutional due process violation if its inclusion prejudices the respondent.[5] See Farrokhi v. INS, 900 F. 2d 697, 702 (4th Cir. 1990).

So, while the rules of evidence do not govern removal proceedings, Felzcerek v. INS, 75 F. 3d 112, 116 (2d. Cir. 1996), and "an IJ has some latitude to receive evidence without demanding live testimony ... an IJ's evidentiary rulings must comport with due process." Marku v. Board of Immigration Appeals, No. 03-40871, 2005 WL 1162978, *1 (2d. Cir. May 16, 2005) (unpublished decision). The Court also has a concomitant responsibility to help establish and develop the record. See Yang v. McElroy, 277 F. 3d 158, 162 (2d. Cir. 2002). The United States Court of Appeals for the Second Circuit has previously recognized that a fact finder who assesses testimony together with witness demeanor is in the best position to evaluate credibility. See Zhou Yun Zhang v. United States INS, 386 F. 3d 66, 73 (2d. Cir. 2004).

Furthermore, in removal proceedings, hearsay testimony is admissible if it is probative, and its use is not fundamentally unfair because the alien has an opportunity to cross-examine the witness and offer rebuttal testimony. See Olowo v. Ashcroft, 368 F. 3d

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3 The Court notes that the DHS has refused to produce the affiants for in-court examination. Furthermore, in addition to submitting affidavits to the Court, Mr. Hamilton is also the author of the contested Form I – 213 and Mr. McCaffrey is listed as the examining officer. Nor has the Government offered the individual credited on the Form I – 213 with the location and apprehension of Respondent, Ms. Michelle Vetrano-Antuna, for testimony. The Court does not wish to imply an author of an I – 213, or its designees, in the ordinary course, need substantiate the narrative contained therein by means of live testimony. However, where Respondent has advanced a viable claim and fulfilled an initial demanding *prima facie* burden of establishing a constitutional violation, testimony by an author of this crucial piece of evidence would have great probative value.

4 We note that, subsequent to the commencement of proceedings, and assuming a petitioning party has met the statutory preconditions, if an IJ is satisfied that a witness will not appear to testify and that his or her testimony is essential, the IJ possesses exclusive jurisdiction to issue subpoenas requiring, *inter alia*, the attendance of that witness. 8 C.F.R. § 1003.35(b)(1),(3). Respondent has filed numerous subpoena requests. See Respondents' Subpoena Requests (April 2, 2008); Respondents' Subpoena Requests (October 20, 2008). However, these requests were made before Respondent testified and established his requisite *prima facie* case; thus, the Court was not satisfied that the ICE agents' evidence was 'essential.' And our disposition of Respondent's Motion to Suppress Evidence and Motion to Terminate Proceedings obviates the need to gauge if the ICE agents' evidence is now indeed 'essential.' In any event, the Government has in no uncertain terms refused to produce any of the agents involved for testimony.

5 The Notice to Appear (Form I – 862), the seminal document referring an alien to his or her rights in a removal proceeding, and the filing of which commences removal proceedings, states that the alien 'will have the opportunity ... to cross-examine any witnesses presented by the Government.'

692, 700 (7th Cir. 2004) ("In a due process analysis, problems of fundamental fairness associated with hearsay testimony are dispelled when the testimony is subject to cross-examination.") (internal citations omitted). "It is clear that the burden of producing a government's hearsay declarant that a petitioner may wish to cross-examine is on the government..." Hernandez-Guadarrama v. Ashcroft, 394 F.3d 674, 682 (9th. Cir. 2005) (internal quotations and citations omitted).

Ultimately, once a respondent has satisfied his initial obligation to provide a personal-knowledge based affidavit and sworn testimony, and successfully establishes a *prima facie* case that his constitutional rights were egregiously violated, the Government then has a reciprocal obligation to the Respondent (and the Court) to produce and make available agents involved in the enforcement operation at issue for examination in court (insofar as it seeks to admit contested evidence of alienage authored by an agent, or it submits a written declaration or affidavit by the agent). See Lopez-Rodriguez, 536 F. 3d at 1015-17. (court determination, that IJ's full adoption of Respondent's testimony, characterized as 'conclusive' factual findings, regarding the contested entry into her private residence, where Government failed to produce any of the agents involved in the raid, to be supported by substantial evidence); see also In re: Ruben Cruz-Campos, A44 555 267, 2006 WL 3088780, *1 (BIA Aug. 7, 2006) (unpublished decision).

B. "Egregiousness"

1. Supreme Court

The Supreme Court ruled in I.N.S. v. Lopez-Mendoza, 468 U.S. 1032 (1984) that the exclusionary rule is not generally applicable in removal proceedings. Lopez-Mendoza, 468 U.S. at 1050. However, a plurality of the Court made plain that their conclusion did "not deal with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained."[6] Id. As the issues in the case addressed "the exclusion of credible evidence gathered in connection with peaceful arrests" by immigration officials at a workplace factory site, no such concerns were implicated. Id.

2. United States Court of Appeals for the Second Circuit

The Second Circuit "adopted the reservations of the Lopez-Mendoza plurality as part of the 'law of [the] circuit,'" Pinto-Montoya v. Mukasey, 540 F. 3d 126, 131 (2d. Cir. 2008), holding that evidence ought to be suppressed only when the evidence established either "that an egregious violation that was fundamentally unfair had occurred, or [] that the violation . . . undermined the reliability of the evidence in dispute." Almeida-Amaral v. Gonzales, 461 F. 3d 231, 235 (2d. Cir. 2006).

As to the "fundamental fairness" prong, the Court posited that since the egregiousness of a constitutional violation "cannot be gauged solely on the basis of the

6 Black's Law Dictionary defines 'egregious' as "extremely or remarkably bad; flagrant." Black's Law Dictionary (8th ed. 2004).

[invalidity] of the stop, but must also be based on the characteristics and severity of the offending conduct," not all Fourth Amendment violations authorized the suppression of evidence in removal proceedings. Id. Instead, the Court devised a sliding scale: A seizure suffered for no reason at all would constitute an egregious violation only if it was sufficiently severe, or if the stop was based on race or some other "grossly improper consideration." Id.

The Court noted that their formulation was non-exhaustive but remarked suppression would require "more than a violation;" it would "demand[] egregiousness." Id. at 236; cf. Gonzales-Rivera v. INS, 22 F. 3d 1441 (9th Cir. 2004).[7] The Court listed two factors that might render a seizure "gross or unreasonable" in excess of its unlawfulness and meet the 'egregious' threshold: a "particularly lengthy" initial illegal stop and the show or use of force. Id. Ultimately, the Court concluded the petitioner had failed to marshal sufficient evidence to support any such finding.

The Court, in dicta, did state that if the stop in question was based on race, the violation would have been egregious. However, as the petitioner "offered nothing other than his own intuition to show that race played a part in the arresting agent's decision," his argument failed. Id. at 236; see also Pinto-Montoya, 540 F. 3d at 131 (finding that the court in Almeida-Amaral concluded "that petitioner's mere assertion, without more, that he was stopped on the basis of race was insufficient to establish that the stop was race-based.").

Another Second Circuit case that followed, Melnitsenko v. Mukasey, 517 F. 3d 42 (2d. Cir. 2008), focused the analysis on alleged violations where race did not play a consideration. The Court concluded that a three-hour detention of an alien, at a checkpoint about 100 miles from the Canadian-United States border, was not an egregious constitutional violation and that the agent's actions at bar were less severe than the agent's actions in Lopez-Mendoza, as petitioner was neither arrested nor taken to jail during the complained-of seizure. Id. at 47 (even assuming that "once she was stopped, she was escorted to a trailer by four or five uniformed officers and interrogated, fingerprinted, and photographed, for three hours without any evidence of Miranda or other warnings given," and "even assuming the Checkpoint itself was illegal," the complained-of conduct fell short of egregious conduct.) Id.

C. Consent

1. "It is well settled under the Fourth Amendment that a search conducted without a warrant issued upon probable cause is 'per se unreasonable' . . . subject only to a few specifically established and well-delineated exceptions." Schneckloth v. Bustamonte, 412

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7 The Ninth Circuit's characterization of 'egregiousness' is less circumscribed that the Second Circuit's. In the Ninth Circuit, "all bad faith violations [*i.e.* where 'evidence is obtained by deliberate violations of the fourth amendment, or by conduct a *reasonable officer should have known* is in violation of the Constitution'] of an individual's fourth amendment rights are considered sufficiently egregious to require application of the exclusionary sanction in a civil proceeding." Gonzales-Rivera v. INS, 22 F. 3d at 1449 (internal quotations and citations omitted) (emphasis in original).

U.S. 218, 219 (1973); Payton v. New York, 445 U.S. 573, 586 (1980) ("It is a basic principle of Fourth Amendment law that searches and seizures inside a home, absent a warrant, are presumptively unreasonable."). "It is equally well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." Schneckloth, 412 U.S. at 218.

Consent must be given voluntarily and by an individual possessing the requisite authority. See Illinois v. Rodriquez, 497 U.S. 177, 181 (1990). Voluntariness is a question of fact determined by a 'totality of all the circumstances.' United States v. Isiofia, 370 F. 3d, 226, 231 (2004) (quoting Schneckloth, 412 U.S. at 227). While knowledge of the right to refuse consent is not a *sine qua non* to a finding of voluntariness, "it may be a factor in ascertaining whether the consent was coerced." Schneckloth, 412 U.S. at 248-49.

Specific factors bearing on whether consent was given, and whether it was freely given, in the context of an initial entry encounter with police at the door of a private residence, include 1) whether the officers knocked, 2) whether the officers identified themselves (in a non-coercive manner), 3) whether the officers engaged in threatening or abusive actions to induce a resident to open the door and admit them, 4) whether the door was opened for the officers, and 5) whether the police entry was protested. See United States v. Valencia, 645 F. 2d 1158, 1165 (1980); United States v. Ledbetter, No. 02-1757, 2003 WL 22221347, *2 (2d. Cir. Sept. 26, 2003) (unpublished decision); United States v. Crespo, 834 F. 2d 267, 269 (2d. Cir. 1987) (district court's finding that agents' display of weapons and kicking of door caused the door to be opened by the threat of force and not with consent, met with approval by reviewing court).

"Fourth Amendment privacy interests are most secure when an individual is at home with doors closed and curtains drawn tight." United States v. Gori, 230 F. 3d 44, 51 (2d. Cir. 2000); Matter of Louissaint, 24 I & N Dec. 754, 761 (BIA 2009) (Pauley, J., concurring) (citing Payton as an exemplar for the axiom that "[t]he home is an area of utmost privacy, uniquely protected under our law."). In Gori, the majority took umbrage with the dissent's characterization of their opinion and emphatically stated that "the mere opening of a "door to a home does not transform[] the entire home into a public place. [The dissent] generalizes the holding and reach of the opinion beyond its scope or ambition, where the critical fact was that the interior of the apartment was exposed to public view when the door was voluntarily opened." Id. at 52.

An individual, by words or acts, may limit the scope of consent he has given, or revoke his consent, in whole or in part. See United States v. Moran Vargas, 376 F. 3d 112, 113-14 (2d. Cir. 2004). Finally, though consent can be constructed from an individual's words, acts or conduct, Krause v. Penny, 837 F. 2d 595, 597 (2d. Cir. 1988), "the ultimate question presented is whether the officer had a reasonable basis for believing that there had been consent to the search." Garcia, 56 F. 3d 418, 423 (1995) (internal quotations and citations omitted).

2. There are also regulatory restrictions regarding consent in the immigration

context. Regarding 'site inspections,' which are "enforcement activities untaken [by the BTSD] to locate and identify aliens illegally in the United States . . . where there is a reasonable suspicion, based on articulable facts, that such aliens are present." 8 C.F.R. 287.8(f)(1). Subsection (f)(2) delimits the authority of an immigration officer to enter into a private residence to act in their official capacity:

> An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence . . . except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.
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> 8 C.F.R. 287.8(f)(2).

D. Seizure

1. "A person is seized by the police . . . when the officer by means of physical force or show of authority terminates or restrains his freedom of movement through means intentionally applied." Brendlin v. California, 127 S. Ct. 2400, 2405 (2007).

Ordinarily, the pertinent test is whether "a reasonable person would have believed that he was not free to leave if he [did] not respond[ ]" to the questions put to him. Pinto-Montoya, 540 F. 3d at 131 (citing INS v. Delgado, 466 U.S. 210, 216 (1984)); see also United States v. Mendenhall, 446 U.S. 544, 554 (1980). "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968) . "[A]n initially consensual encounter between a police officer and a citizen can be transformed into a [Fourth Amendment] seizure..." Delgado, 466 U.S. at 215.

"When a person 'has no desire to leave' for reasons unrelated to the police presence, the 'coercive effect of the encounter' can be measured better by asking whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.'" Brendlin, 127 S. Ct at 2405-06 (quoting Florida v. Bostick, 501 U.S. 429, 435-36 (1991).

2. When a police officer has restrained the freedom of an individual sufficient to constitute a 'seizure' under the Fourth Amendment, it must be 'reasonable'. U.S. v. Brignoni-Ponce, 422 U.S. 873, 878 (1975) (citing Terry, 392 U.S. at 16). "[T]he reasonableness of such seizures depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." Id. The Fourth Amendment forbids "stopping or detaining persons for questioning about

their citizenship on less than a reasonable suspicion that they may be aliens." Brignoni-Ponce, 422 U.S. at 884; see also Rajah v. Mukasey, 544 F. 3d 427, 441 (2d. Cir. 2008).[8]

In evaluating the validity of a stop, the Court must consider "the totality of the circumstances-the whole picture." United States v. Cortez, 449 U.S. 411, 417 (1981).

"Pertinent factors identifying a police seizure can include the threatening presence of several officers; the display of a weapon; physical touching of the person by the officer; language or tone indicating that compliance with the officer was compulsory; prolonged retention of a person's personal effects . . . and a request by the officer to accompany him to the police station or a police room." Gilles v. Repicky, 511 F. 3d 239, 245 (2007).

When stopping an individual, the Fourth Amendment requires "a police officer's actions be justified at its inception." U.S. v. Swindle, 407 F. 3d 562, 567 (2d. Cir. 2005) (quoting Terry, 392 U.S. at 20). "The settled requirement is . . . that reasonable suspicion must arise before a search or seizure is actually affected." Swindle, 407 F. 3d at 568 (citing Florida v. J.L., 529 U.S. 266, 271 (2000)).

3. The Immigration and Nationality Act ("INA"), and its attendant regulations, echo this sentiment. INA § 287(a)(1) states "[a]ny [authorized immigration officer] shall have power without warrant to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States..." With regards to interrogation and detention not amounting to arrest, interrogation is defined as "questioning designed to elicit specific information [not amounting to arrest]... an immigration officer . . . 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." 8 C.F.R. 287.8(b)(1).

However, "[i]f 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." 8 C.F.R. 287.8(b)(2).

E. Arrest

1. A warrantless arrest is unreasonable under the Fourth Amendment unless the arresting officer has probable cause to believe a crime has been or is being committed. Devenpeck v. Alford, 543 U.S. 146, 152 (2004). "Probable cause exists where the arresting officer has knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime." U.S. v. Delossantos, 536 F. 3d 155, 158 (2d. Cir. 2008) (internal quotations and citations omitted). "Because the standard is fluid and contextual, a court must examine the totality

8 The Second Circuit, in Rajah, noted that the Supreme Court has left unanswered whether "suspicion must be of illegal alienage or may be of mere alienage." Id. at 441.

of the circumstances of a given arrest. . . . These circumstances must be considered from the perspective of a reasonable police officer in light of his training and experience." Id. (internal quotations and citations omitted).

2. INA § 287(a)(2) allows authorized officers to arrest without warrant "any alien in the United States, if he has reason to believe that the alien so arrested is in the United States, in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest..." This subsection also allows officers to make arrests for felonies that have been committed or are in the process of being committed, but subjects them to several limitations. See INA § 287(a)(4), (a)(5)(B).

The concomitant regulations specify "[o]nly designated immigration officers are authorized to make an arrest." 8 C.F.R. § 287.8(c)(1) "An arrest shall only be made when the designated immigration officer has reason to believe that the person arrested has committed an offense against the United States or is an alien illegally in the United States." 8 C.F.R. § 287.8(c)(2)(i). A warrant for arrest must be obtained unless the officer has reason to believe that the person is likely to escape before a warrant can be obtained. 8 C.F.R. § 287.8(c)(2)(ii). The officer must identify himself or herself as an immigration officer authorized to make an arrest, state that the person is under arrest, and extrapolate the reason for the arrest, upon ensuring the communications can be made in safety. 8 C.F.R. § 287.8(c)(2)(iii).

F. Regulatory Violations

Regulatory violations counsel suppression of evidence when they are "egregious or fundamentally unfair or impaired the reliability of the evidence of ... deportability." Rajah, 544 F. 3d at 446.[9] It is noteworthy that no Court of Appeals has actually determined that deportation or removal proceedings should be terminated based on a violation of a regulation or internal agency guideline. It is true that the Second Circuit, in Waldron v. INS, 17 F.3d 511 (2d. Cir. 1993), determined that, when a regulation is promulgated to protect a fundamental right derived from the Constitution or federal statute, and the INS fails to adhere to it, the challenged proceedings is invalid and a remand is required. See Waldron, 17 F.3d at 518. However, there is no clear holding sanctioning that a violation of a regulation could result in termination of proceedings, thereby allowing a respondent to continue his unlawful presence in the United States, absent egregious conduct.

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9 Respondent also avers that ICE agents failed to inform him that he was entitled to be represented by counsel during any interrogation-by-examination, in derogation of 8 C.F.R. § 292.5(b) and his Fifth Amendment rights. The Second Circuit has not made an express determination on this ground, but noted in Melnitsenko that the petitioner's argument that "she was escorted to a trailer by four or five uniformed officers and interrogated, fingerprinted and photographed, for three hours without any evidence of any Miranda or other warnings given," did not enhance the officers' conduct to constitutionally 'egregious' conduct. Melnitsenko, 517 F. 3d at 47; see also Lopez-Mendoza, 468 U.S. at 1037 (Supreme Court concluded arrest of petitioner in violation of his Fourth Amendment rights, followed by brief detention and transfer to country jail for questioning, all without warning petitioner of his right to remain silent, did not constitute 'egregious' constitutional violation.).

G. Exclusionary Rule

Evidence obtained from an unlawful search or seizure is generally subject to exclusion as "fruit of the poisonous tree." Wong Sun v. United States, 371 U.S. 471, 484-85 (1963). Courts will also suppress evidence that is the indirect product of the illegal police activity as 'fruit of the poisonous tree.' See United States v. Oscar-Torres, 507 F. 3d 224, 227 (4th Cir. 2007) (citing Wong Sun, 371 U.S. at 471).

The relevant constitutional question for later-discovered evidence is "whether the connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint." United States v. Ceccolini, 435 U.S. 268, 273-74 (1975). "The so-called 'attenuation doctrine' allows introduction of evidence obtained after an unlawful arrest when 'the causal link' between a Fourth Amendment violation and a subsequent confession, identification, or other form of evidence is so long or tortuous that suppression of the evidence is unlikely to have the effect of deterring future violations of the same type." Mosby v. Senkowski, 470 F. 3d 515, 521 (2d. Cir. 2006) (internal quotations and citations omitted).

The United States Supreme Court has enumerated several factors germane to the attenuation analysis, including 1) "the temporal proximity of the arrest and the confession," 2) "the presence of intervening circumstances," and "particularly," 3) "the purpose and flagrancy of the official misconduct." Brown v. Illinois, 422 U.S. 590, 603-04 (1975).

In the context of obtaining fingerprints as an incident of arrest, gathered in the absence of a warrant or probable cause, the Supreme Court has on multiple occasions held that when an illegal arrest is used as an investigatory subterfuge to obtain fingerprints, the fingerprints are regarded as an inadmissible fruit of an illegal detention. See Davis v. Mississippi, 394 U.S. 721, 727-28 (1969); Hayes v. Florida, 470 U.S. 811, 817-18 (1985); see also United States v. Olivares-Rangel, 458 F. 3d 1104, 1115 (10th Cir. 2006).

Succinctly phrased by the United States Court of Appeals for the Tenth Circuit, "[t]he exclusionary rule applies whenever evidence has been obtained 'by exploitation' of the primary illegality instead of 'by means sufficiently distinguishable to be purged of the primary taint.' Evidence may be obtained 'by exploitation' of an unlawful detention even when the detention is not for the sole purpose of gathering evidence." Olivares-Rangel, 458 F. 3d at 1115 (10th Cir. 2006) (internal citations omitted).

Moreover, the Fourth Circuit has advanced even farther and held "an alien's fingerprints taken as part of routine booking procedures but intended to provide evidence for a criminal prosecution are still *motivated* by an investigative, rather than an administrative, purpose," and accordingly are "subject to exclusion." Oscar-Torres, 507 F. 3d at 232 (citing Olivares-Rangel, 458 F. 3d at 1114.).

While the Second Circuit has not expressly pronounced its position on this issue,

it has in previous cases indicated its disapproval of a rigid illicit-purpose requirement. See United States v. Ortiz-Gonzalbo, 133 F. 3d 908, 909 (2d. Cir. 1997) (unpublished opinion) (rejecting a district court's ruling that a defendant's fingerprints are not excludable unless the police made the illegal arrest for the purpose of obtaining the fingerprints, and instead sustaining the lower court's denial of a motion to suppress on alternate grounds); Johnson v. Ross, 955 F. 2d 178, 182 (2d. Cir. 1992) (Newman, J., concurring) ("In some circumstances, evidence is deemed tainted by prior police misconduct even if the reliability of the subsequent evidence is not challenged."). Furthermore, that these indications have arisen in criminal case precedent does not seem to be the paramount, or even prominent, factor in the Second Circuit's analysis. See United States v. Alvarez-Porras, 643 F. 2d 54, 63 (2d. Cir. 1981) ("where flagrantly illegal arrests were made for the precise purpose of securing identifications that would not otherwise have been obtained, nothing less than barring any use of them can adequately serve the deterrent purpose of the exclusionary rule.") (quoting United States v. Edmons, 432 F. 2d 577, 584 (2d. Cir. 1977).

H. 'Body' or 'Identity' Evidence

The United States Supreme Court concluded, in Lopez-Mendoza, that "the 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." Lopez-Mendoza, 468 U.S. at 1039.

The United States Court of Appeals for the Tenth Circuit has interpreted this statement to mean, based on the cases cited in Lopez-Mendoza, to support the proposition, that the Court was referencing the Ker-Frisbie doctrine, that illegal police activity affects only the admissibility of evidence, and not the jurisdiction of the trial court or otherwise serves as a basis for dismissing the prosecution. Olivares-Rangel, 458 F.3d at 1110.

This view is in accord with both the Eighth Circuit, which has also concluded "that the 'identity' language in Lopez-Mendoza referred only to jurisdictional challenges and did not foreclose suppression of all identity related evidence," United States v. Guevera-Martinez, 262 F. 3d 751, 754 (8th Cir. 2001), as well as the Fourth Circuit, which has concluded "Lopez-Mendoza does not prohibit suppression of evidence of a defendant's identity." United States v. Oscar-Torres, 507 F. 3d 224, 228 (4th Cir. 2007). Thus, the United States Court of Appeals for the Fourth, Eighth, and Tenth Circuits all agree that "the Supreme Court's statement that the "body" or identity of a defendant are "never suppressible" applies only to cases in which the defendant challenges the jurisdiction of the court over him or her based upon the unconstitutional arrest, not to cases in which the defendant only challenges the admissibility of the identity-related evidence." Olivares-Rangel, 458 F. 3d at 1111.

Each of these Circuits have scrutinized two especially compelling keystones supporting their conclusion: 1) The Supreme Court's founding of its own statement on past cases elucidating the long-standing rule known as the Ker-Frisbie doctrine, and 2)

the fact that in Lopez-Mendoza, a consolidated appeal, the alien who objected to evidence offered against him was deemed to have a 'more substantial' claim than the alien who only objected to being hauled into deportation hearings and entered no objection to the evidence offered against him. See United States v. Oscar-Torres, 507 F. 3d at 228 (quoting Lopez-Mendoza, 468 U.S. at 1040); Guevera-Martinez, 262 F.3d at 754 ("These cases [relied upon by the Court in Lopez-Mendoza] deal with jurisdiction over the person, not evidence of the defendant's identity illegally obtained. The language in Lopez-Mendoza should only be interpreted to mean that a defendant may be brought before a court on a civil or criminal matter even if the arrest was unlawful.").[10]

While the Second Circuit has not explicitly voiced a stance on this issue, it has previously quoted United States v. Crew, 445 U.S. 463, 474 n.20 (1980), in a criminal context, recognizing that "[i]n some cases, of course, prosecution may effectively be foreclosed by the absence of the challenged evidence. But this contemplated consequence is the product of the exclusion of specific evidence tainted by the Fourth Amendment violation and is not the result of a complete bar to prosecution." Brown v. Doe, 2 F.3d 1236, 1243 (2d. Cir. 1993).

I. Custody / Bond Applications and Requests

With respect to custody and bond determinations, "[c]onsideration by the Immigration Judge of an application or request of a respondent regarding custody or bond ... shall be separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. 8 C.F.R. § 1003.19(d). Premised on this regulation, the Board has concluded that evidence presented only in an alien's removal proceeding cannot be considered during the separate bond proceeding. See In re Adeniji, 20 I & N Dec. 1102, 1115 (BIA 1991).

J. Consideration of Constitutional Claims

While "courts should not decide constitutional issues unnecessarily," courts ought to adjudicate such claims when they are "unavoidable." Jean v. Nelson, 472 U.S. 846, 854 (1985). For example, it is true that the federal rules of evidence do not apply in removal proceedings; however, evidence is properly admitted only so long as it "does not violate the alien's right to due process of law." Aslam v. Mukasey, 537 F. 3d 110, 114 (2d. Cir. 2008) (internal quotations omitted). The United States Court of Appeals for the Second Circuit has implicitly approved of frontal review by an Immigration Court of constitutional claims driving a motion to suppress evidence, at least insofar as the motions are premised on alleged Fourth and Fifth Amendment violations. See, e.g., Almeida-Amaral, 461 F. 3d at 232; Pinto-Montaya, 540 F. 3d at 127.

V. Respondent has established his requisite *prima facie* burden of an egregious

10 Oscar-Torres collects cases from the Third, Fifth, and Sixth Circuits that have diametrically determined that Lopez-Mendoza bars suppression of all evidence of identity. Oscar-Torres, 507 F. 3d at 228 (collecting cases). Oscar-Torres also recognizes that the Ninth Circuit has inconsistently come to different conclusions on the issue in different cases. Id. at 228 n.2.

Fourth Amendment violation.

A. The Court finds Respondent's testimony to be credible. Respondent submitted a facially adequate affidavit relating that he was in his bed sleeping when immigration agents opened his bedroom door, ordered him into the living room, and later arrested him. Respondent supplemented his documentary affirmations by testifying in open court and making himself amenable to cross-examination. He testified in a candid and straightforward manner, based upon his personal knowledge, chronicling the events that took place in his bedroom and apartment, on the morning of June 6, 2007.

At 6:30 a.m. in the morning, Respondent was sleeping when he was awakened by someone knocking on his bedroom door. Roused, he observed someone standing in his bedroom doorway. Respondent asked "what happened" and received as a reply "it's the police."

An agent instructed the Respondent, in English, to get up and sit in the living room. He was then directed to put clothes on and placed in handcuffs. He asked the agents several times what was happening, but received no answer.

Respondent's testimonial narrative is substantially consistent with his declarations, as well as the testimony and declarations supplied by his roommate, [redacted] Importantly, there are few discrepancies. Despite a few points of difference between his testimony and his declarations (*e.g.* whether the agents opened his bedroom door and then stood in the doorway or took a few steps in and entered his room), he presents a comprehensive and credible account of the events he observed the morning on June 6, 2007.

It is true that the Court cannot determine precisely when the agents asked Respondent for identity documentation or what identity documentation Respondent provided. Nor can we discern whether this exchange occurred before or after he was handcuffed. However, we nonetheless find Respondent's account to be consistent, credible, and sufficiently complete and, as discussed *infra*, his account allows the Court to tether its conclusion to the events preceding the exchange regarding the request and procurement of Respondent's identity documentation.

In sum, Respondent's declaration satisfied the evidentiary burdens imposed upon him and he substantiated the contents therein with credible testimony that was both specific, and based on his personal knowledge. Thus, the Court finds Respondent sustained his *prima facie* burden of establishing his constitutional rights were violated. The Court wishes to underscore the vital role our credibility determination plays in our accompanying determination that Respondent has successfully demonstrated a *prima facie* case that his Fourth Amendment rights were violated when, during an early morning raid, immigration agents entered his apartment without a warrant, probable cause, or consent, and proceeded to enter his bedroom.

B. Our analysis does not end there. An egregious constitutional violation must be 'sufficiently severe,' or 'gross or unreasonable,' in additional to being unlawful. Almeida-Amaral, 461 F. 3d at 235-37.

On June 6, 2007, near pre-dawn hours, Respondent was asleep in his bedroom. Someone knocked on his bedroom door and then opened the door without Respondent's acquiescence. An agent instructed him to sit down in the living room. Later, Respondent was handcuffed.

That this pre-dawn enforcement raid targeted a private residence is especially pertinent to our decision. The touchstone of the Fourth Amendment is 'reasonableness' and, by natural extension, one's reasonable expectation of privacy. Nowhere is that expectation of privacy more sacrosanct than in the confines of one's home and nowhere is that right more jealously guarded against encroachment. We are not addressing a claim made by an alien seeking admission into the country, outside of a restaurant, driving on the street, or at a workplace site. We are addressing a claim that immigration agents forcefully entered a private home without a warrant, without probable cause, and without consent.

Notably, there are scant facts that might furnish a plausible basis upon which communicated consent might reasonably have been interpreted by the agents during their initial entry into the apartment. Respondent's roommate testified that he opened the door ajar a few inches. Without saying a word, agents immediately and forcibly pushed the door wide open. Respondent's roommate did not consent to their entry and the DHS concedes that they had no warrant to enter the home.

Our conclusion that the agents' entry into the apartment and then into his bedroom violated Respondent's Fourth Amendment rights is not the end of our inquiry. As outlined *supra*, the constitutional violation, when not based on race or some other improper consideration, must be 'gross' or 'unreasonable' in addition to having no plausible legal ground. Thus, the Court must examine the actual conduct of the immigration agents involved in the violation, including their physical entry into Respondent's home and their subsequent encroachment into his bedroom.

The agents' unlawful early morning entry into a private residence strongly implicates "unreasonable" unlawful conduct. The agents did not limit their entry into the immediate area of the apartment; they instead entered into the closed-door bedroom of Respondent. The subsequent conduct of the immigration officers lends further support to our conclusion that Respondent has displayed the necessary aggravating circumstances, a *sine qua non* for his claim. Specifically, examination of the agents' subsequent conduct confirms Respondent's Fourth Amendment rights were flagrantly violated.

The agents impermissibly entered into Respondent's home and bedroom without permission. The agents failed to explain to Respondent why they were in his home, the identity of the individual or individuals they sought, or why they had ordered Respondent to get out from his bed and sit in the living room, despite Respondent's multiple queries.

It is true the Court is not aware precisely when the agents asked Respondent for identity documentation or what documentation Respondent provided in response. Nor do we know, based on Respondent's testimony, precisely when Respondent was handcuffed in relation to the aforementioned exchange. However, the Court concludes that Respondent satisfied his *prima facie* burden on events preceding the agents' consideration of his proffered identity documentation. After consideration of all the facts present in the record, up to that point, we find sufficient evidence sustaining Respondent's demanding initial burden.

The facts at bar reflect that, unlike in Lopez-Mendoza, the evidence gathered here was not in connection with 'peaceful arrests' made by immigration officers. However the term 'peaceful'[11] may be defined, it cannot be reasonably squared with the agents' conduct in this case.

To conclude, Respondent has established a *prima facie* case for the suppression of evidence directly connected to the unlawful entry of his home, such as the Form I – 213. Respondent submitted a motion to suppress that specified the requisite constitutional basis for his motion, gave a detailed and specific account of the events leading to his arrest, specified the evidence to be suppressed, and cogently supported his position with in-court testimony, and provided testimony in response to questions asked by the DHS on cross-examination.

VI. The DHS, while submitting affidavits from two of the agents who entered into Respondent's home, categorically refused to produce the affiants for live testimony.

The DHS submitted affidavits from two of the agents involved in the arrest of Respondent, Mr. McCaffrey and Mr. Hamilton. Considered in conjunction, both affirm that consent to enter the premises was freely and voluntarily granted by Respondent's roommate, Mr. [redacted]

Specifically, Mr. Hamilton states that he was assigned to make contact with the occupants on the first floor of the residence. He walked into the common hallway area and knocked on the first floor apartment door. When [redacted] opened the door, Mr. Hamilton identified himself as a police officer, asked [redacted] whether he lived at the apartment, and showed him a photograph of a fugitive alien the enforcement operation was targeting.

At that point, Mr. McCaffrey arrived and asked [redacted] if they could 'come in and talk to him.' [redacted] replied that they could and turned, walking into the kitchen. Both officers followed. This event is affirmed by both officers.

The DHS has adduced affidavits from two officers that directly contravene

11 Black's law dictionary defines 'peaceful' as "[a] state of public tranquility; freedom from civil disturbance or hostility." Black's Law Dictionary (8th ed. 2004).

[redacted] testimony concerning the agents' entry into his apartment. However, the affidavits submitted are incomplete as they relate to Respondent's seizure and arrest. No affidavit is provided by any agent who may have opened Respondent's bedroom door, ordered him into the living room, handcuffed him, asked him for identity documentation, analyzed that documentation and made a determination of the legality of his presence in the United States, or eventually arrested him. In fact, neither submitted affidavit broaches on the subject of Respondent's seizure and arrest post-entry save Mr. McCaffrey's declaration that "[o]nce an interpreter arrived at the apartment, additional questioning led to the arrest of [Respondent] from this apartment..."

The DHS has not submitted affidavits from any of the immigration agents involved in Respondent's arrest. No affidavit was submitted by the interpreter who was called in and whose additional questioning led to Respondent's arrest.[12] His or her identity is not stated in the affidavit and the DHS has not attempted to explain why no affidavit from the interpreter was produced.

Nor have all the agents listed on the Form I – 213, the document Respondent seeks to suppress, come forward and submitted affidavits. 'Michelle Vetrano-Antuna' is listed as the arresting officer, but she had not submitted written testimony, nor is she referred to by either affiant.

The Form I – 213 lists Mr. Hamilton as the author of the narrative contained therein. He states Respondent was interviewed, and later arrested, by Deportation Officer Vetrano-Antuna, though this information is not found in his affidavit. Mr. Hamilton's affidavit says nothing about agents addressing Respondent in his bedroom or the later questioning or arrest of Respondent.[13]

Ultimately, much more fundamental to our determination than the aforementioned evidentiary omissions, is the refusal to make available either affiant in this case for cross-examination. Respondent, who has satisfied his exacting initial burden, was thus absolutely deprived a reasonable opportunity to confront and cross-examine Mr. McCaffrey and Mr. Hamilton. This due process requires.[14] Functionally, the upshot is that the Court can give but scant, if any, weight to these submissions.

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12 Mr. McCaffrey's affidavit, in pertinent part, indicates that the exchange involving Respondent and the interpreter provided the necessary information needed to arrest Respondent.

13 It may be that the narrative documented by Officer Hamilton is based not on his personal knowledge, but upon what he was told by fellow agents. Even if this is true, it fails to explain why no testimony was produced by these individuals. The Court is mindful that the Federal Rules of Evidence do not apply and hearsay evidence is and routinely admitted in removal proceedings. However, the current case stands at a starkly divergent and demanding procedural posture, from the ordinary course of removal proceedings and, where the onus is on the Government to "justify the manner in which it obtained the evidence." Resolution of this issue would have been immensely aided by the production of affidavits from those other agents directly involved in Respondent's seizure and arrest.

14 Apart from Respondent's constitutional privilege to cross-examine the Government's affiants, the testimony elicited therefrom would be exceptionally probative, as Respondent's and the Government's account of how entry was effectuated are in stark contradiction to one another, and our finding that the agents lacked consent to enter the apartment is a primary basis upon which the Court determined that Respondent has satisfied his *prima facie* burden.

The Court has demanded Respondent file a satisfactory declaration based on his personal knowledge, present himself before the Court and provide testimony, be subject to the DHS' cross-examination, and sustain his *prima facie* burden of establishing that his constitutional rights were egregiously violated. Respondent has complied with each of these demands and met his obligations. Case law dictates that the burden now falls on the DHS to produce evidence in support of its burden of "justifying the manner in which it obtained the evidence." Barcenas, 19 I & N Dec. at 611. The DHS has simply failed to do so.

The Court would be afield to juxtapose our decision in relation to the Supreme Court's identification of one benefit of utilizing the exclusionary rule in immigration hearings: deterrence of immigration agents' unconstitutional conduct. Lopez-Mendoza, 468 U.S. at 1041. This issue falls outside the Court's judicial ken. We remark, however, that this case, as it has been factually represented before us in the record, does not appear to be on the margins. Here, the raid was conducted in the early morning hours while some of the occupants, including a young girl, were sleeping. Agents forcibly entered, without warrant or consent, into a private home and then into a private bedroom. The agents failed to ask preliminary questions that might demonstrate probable cause or at least reasonable suspicion. Neither Respondent, nor anyone else present in the apartment, was the targeted fugitive alien sought by the agents.

The Court finds that there was an egregious violation of the Fourth Amendment that was fundamentally unfair. See Almeida Amaral, 461 F.3d at 236. It realizes that reasonable people can differ on their interpretation of the term egregious. In considering all the evidence in the record, this Court finds that the Respondent's Fourth Amendment rights were egregiously violated.

VII. Conclusion

Considering the totality of the circumstances, the Court determines that Respondent has demonstrated a *prima facie* case that the immigration agents' conduct worked an egregious violation to his Fourth Amendment rights.[15] Thus, the Court finds that the contested Form I – 213 must be suppressed.

Furthermore, based on the record before us, it appears that Respondent was placed in removal proceedings exclusively upon the information that he provided to immigration agents during the course of their interrogation. The Form I – 213 expressly states that Respondent was "interviewed at his residence" and "questioned," and was arrested on the basis of his admissions and resultant information that was subsequently gathered.

Furthermore, the Government has not produced additional evidence to sustain the charge of removability independent of the Form I – 213.

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15 Because of our disposition in this case, *supra*, we have no occasion to evaluate Respondent's other constitutional, regulatory, and sub-regulatory claims.

Finally, we agree with Respondent that his removal proceedings must be terminated, because the Government has not introduced admissible independent evidence supporting the factual allegations stated in the NTA, and thus it has failed to meet its burden of establishing Respondent's removability by clear and convincing evidence. See INA § 240(c)(3)(A).

VIII. Orders

Based on the foregoing, the following **ORDERS** shall enter:

IT IS ORDERED that Respondent's Motion to Suppress be **GRANTED**;

IT IS FURTHER ORDERED that Respondent's Motion to Terminate removal proceedings be **GRANTED**.

June 2, 2009
Date

MICHAEL W. STRAUS
Immigration Judge