UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Claudio Marcelo Rojas,

Plaintiff-Petitioner,

Marc J. MOORE, Field Office Director, Miami Field Office, Immigration and Customs Enforcement; Liana J. CASTANO, Assistant Field Office Director, Miami Field Office, Immigration and Customs Enforcement; Mitchell DIAZ, Assistant Field Office Director, Miami Field Office, Immigration and Customs Enforcement; Juan ACOSTA, Officer in Charge, Krome Service Processing Center, Immigration and Customs Enforcement; Kirstjen NIELSEN, Secretary of Homeland Security; William BARR, Attorney General; and the U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendants-Respondents.

Case No. 1:19-cv-20855-JLK

Agency Number: 089-232-994

FIRST AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENT REQUESTED

1. Plaintiff-Petitioner, Claudio Marcelo Rojas, ("Plaintiff-Petitioner," "Mr. Rojas" or "Claudio"), is a high-profile activist and critic of the federal government's immigration policies. On the brink of the Miami Film Festival's showing of the critically-acclaimed film, *The Infiltrators*—which features Mr. Rojas' political views about U.S. immigration policy—immigration enforcement agents from U.S. Immigration and Customs Enforcement ("ICE") arrested and detained Mr. Rojas and now seek his imminent deportation. ICE took this abrupt action and continues to detain Mr. Rojas despite Mr. Rojas's pending application for a T nonimmigrant visa ("T visa"), a form of status made available to victims of human trafficking who are present in the U.S.; his pending application for a U nonimmigrant visa ("U visa), a form of status made available to certain crime victims; and his related complaint to the U.S. Department of Labor. As a result of his detention, Mr. Rojas has been separated from his wife,

two sons, and grandson, all of whom live in Florida. To prevent his imminent deportation and secure his release, Mr. Rojas concurrently files an emergency motion for a hearing and stay of removal and temporary restraining order.

2. Mr. Rojas brings this Verified Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus ("Complaint-Petition") pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act ("INA") and regulations thereunder; the Administrative Procedure Act ("APA"), 5 U.S.C § 701, and Article I, Section 9, Clause 2 of the United States Constitution (Suspension Clause), and the First, Fourth and Fifth Amendments of the United States Constitution. Plaintiff-Petitioner's current arrest and detention – and the rushed efforts to remove him – constitutes a "severe restraint" on his individual liberty such that Plaintiff-Petitioner is "in custody" of the Defendants-Respondents in violation of the . . . laws of the United States. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241. Plaintiff-Petitioner seeks release from detention, a stay of removal, and other relief as described herein.

PRELIMINARY STATEMENT

3. Mr. Rojas is a husband, father, grandfather and beloved member of his community who has resided in the United States for nearly 20 years. A victim of human trafficking and serious crime who has previously been detained by ICE, Mr. Rojas has spoken out about the abuses he has suffered and witnessed at great risk to himself. His outspoken criticism of immigration detention policy, in particular, has captured the national spotlight. *See* Exh. 1, News articles featuring Mr. Rojas; Exh. 9, Declaration of Cristina Ibarra ("Ibarra Decl.").[1]

[1] Monique O. Madan, *He exposed abuse at a Florida immigration center. Now he's in prison.* Miami Herald (Mar. 3, 2019), *at* https://www.miamiherald.com/news/local/immigration/

4. Mr. Rojas originally came to the U.S. from Argentina in 2000. *See* Exh. 4, Updated Declaration of Sandy Pineda ("Pineda Decl."). He was placed into removal proceedings on or about 2010 after his son was stopped at a checkpoint and he came to his son's aid. *Id.* He was ordered to depart the U.S. voluntarily, but remained in the U.S. because of his wife's failing eyesight, to care for her and their two children, both of whom are recipients of Deferred Action for Childhood Arrivals—a temporary immigration status that entitles them to a work permit. *Id.* Mr. Rojas was redetained in 2012 but then released after a public campaign. During his detentions, Mr. Rojas organized detainees in peaceful demonstrations and shared information about abuses in detention with the National Immigrant Youth Alliance and other activist groups, hoping to spur changes in the immigration system. Exh. 9, Ibarra Decl.[2]

5. For seven years following his 2012 release from immigration detention, Mr. Rojas has lived with authorization in the U.S. on an order of supervision, with which he has fully complied. *See* Exh. 2, Order of Release. But following the debut of the documentary film *The Infilitrators* at Sundance Film Festival, depicting Mr. Rojas's brave activism while detained at Broward Transitional Center, Mr. Rojas was seized by ICE on or about February 27, 2019 when he reported to ICE for a scheduled appointment. *See* Exh. 1, News articles featuring Mr. Rojas; Exh. 9, Ibarra Decl. ICE has detained Mr. Rojas with the intention of imminent removal. Mr. Rojas

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article227043044.html; Tim Elfrink and Isaac Stanley-Becker, *He stars in a new film about infiltrating an ICE detention center. Now ICE has locked him up again.* Washington Post (Mar. 4, 2019), *at* https://www.washingtonpost.com/nation/2019/03/04/he-stars-new-film-about-infiltrating-an-ice-detention-center-now-ice-has-locked-him-up-again/?utm_term=.30cae0c05d73

[2] *See, e.g.,* Episode 498: *The one thing you're not supposed to do,* This American Life (Jun. 21, 2013) https://www.thisamericanlife.org/498/transcript; Michael May, *Los Infiltradores*, The American Prospect (Jun. 21, 2013), *at* https://prospect.org/article/los-infiltradores; Auro Bogado, *Dreamers Fight Deportations,* The Nation (Jan. 30, 2013), *at* https://www.thenation.com/article/dreamers-fight-deportations/.

was not given any prior notice, warning or any meaningful opportunity at a meaningful time to challenge his detention or his imminent removal.[3]

6. Mr. Rojas's detention and imminent removal comes at a time when immigrant activists have become increasingly targeted for detention and deportation following high profile advocacy.[4] Whistleblowers and journalists have uncovered reports of ICE and other immigration agencies keeping tabs and files on immigrant activists and peaceful gatherings.[5] There are at least two pending federal lawsuits alleging a pattern-and-practice of ICE targeting immigrants and immigrant rights organizations in violation of the First Amendment. *See Ragbir et al. v. Homan at al.*, No. 18-1597-CV (2d Cir.); *NWDC Resistance et al. v. ICE et al.*, 2:18-cv-01558 (W.D.Wa). Evidence of ICE surveillance and targeting of immigrant activists is mounting.

7. Moreover, at the time of his detention Mr. Rojas was pursuing a lawful process to regularize his immigration status made available to victims of trafficking and crime, including those with orders of removal like Mr. Rojas. Mr. Rojas has a pending I-914, Application for T Nonimmigrant Status (for victims of trafficking) and I-918, Application for U Nonimmigrant Status (for victims of crime), as well as a motion to reopen his removal proceedings notifying the Board of Immigration Appeals of these applications. *See* Exh. 3, I-914 ("T visa application") and I-918 ("U visa application"). His T visa and U visa applications are both based on labor

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[3] Associated Press, *Star of Immigration Film Says Detention Feels Like Reprisal* (Mar. 6, 2019), https://www.nytimes.com/aponline/2019/03/06/us/ap-us-immigrant-activist-detained.html.

[4] *See* John Burnett, *Meet the 20+ Immigration Activists Arrested Under Trump*, NPR (Mar. 16, 2018), https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump

[5] *See*, *e.g.*, Tom Jones et al., *Leaked Documents Show the U.S. Government Tracking Journalists and Advocates Through a Secret Database*, NBC San Diego (Mar. 6, 2019), https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html; Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on Anti-Trump Protesters in New York*, The Nation (Mar. 6, 2019), https://www.thenation.com/article/ice-immigration-protest-spreadsheet-tracking/.

trafficking Mr. Rojas experienced at the hands of his former employer. The Department of Labor, Wage and Hour ("Department of Labor") is currently in the process of investigating Mr. Rojas's former employer. *See* Exh. 10, Letter from Department of Labor ("Labor Dept. Letter"). Due to Mr. Rojas's detention by ICE, the Department of Labor had to interview Mr. Rojas on March 4, 2019 via telephone from Krome Processing Center where he is being jailed by ICE. *See* Exh. 4, Declaration of Sandy Pineda (Pineda Decl.). If removed, Mr. Rojas will no longer be eligible for a T Visa, nor will he or his qualifying family members be eligible for "deferred action" and work authorization pursuant to a U Visa.

8. Upon Mr. Rojas's detention, counsel for Mr. Rojas filed a request for a stay of removal noting Mr. Rojas's T Visa Application and the pending investigation by the U.S. Department of Labor. On March 6, 2019, ICE denied Mr. Rojas's stay request. *See* Exh. 11, 2019 ICE Stay Denial Letter. Relevant factors for consideration of stay requests include a person's prospects for immigration relief, any criminal and immigration history, and impact on family members. *Id.* Mr. Rojas has pending T visa and U visa applications, no criminal history, has fully complied with his order of supervision, is working with the Department of Labor in its ongoing investigation of trafficking, and has a large family in the U.S. Yet the stay denial letter states only that "[t]he circumstances of your client's case are such that we are unable to grant a Stay of Deportation or Removal." *Id.*

9. ICE has taken these adverse actions as a result of Mr. Rojas's activism. To date, ICE has offered no other explanation of why it has summarily revoked Mr. Rojas's order of supervision and taken him into custody. Nor has ICE explained why it has denied Mr. Rojas's request for a stay of removal and is attempting to deport Mr. Rojas despite his pending T and U Visa Applications.

10. Without this Court's intervention, the Defendants-Respondents will continue to detain Mr. Rojas, immediately remove him in violation of law, and inflict further cruel and unnecessary harm on his already traumatized family and community.

JURISDICTION

11. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 *et seq.*, as protected under Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*; the regulations implementing the INA's procedures for adjudicating applications for T nonimmigrant visa status; and the Administrative Procedure Act ("APA"), 5 U.S.C §§ 701 *et seq.*; the Due Process Clause of the Fifth Amendment, the First Amendment and the Fourth Amendment.

12. Plaintiff-Petitioner's current detention as enforced by Defendants-Respondents constitutes a "severe restraint[] on [Plaintiff-Petitioner's] individual liberty," such that Plaintiff-Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

13. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their detention by DHS. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

14. Federal district courts have jurisdiction to hear habeas claims by noncitizens seeking their due process rights to adjudicate pending applications or motions for relief. *See Ibrahim v. Acosta*, No. 17-CV-24574, 2018 WL 582520, at *4 (S.D. Fla. Jan. 26, 2018).

15. Federal district courts have jurisdiction under 28 U.S.C. §1331; Article III, §2; and the First Amendment to hear civil claims seeking redress for violations of the First Amendment.

16. Pursuant to its jurisdiction, this Court may grant various forms of relief pursuant to its inherent authority, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651, and has the ability to enjoin federal officials pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619-21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S. 536, 545 (1926) (same).

VENUE

17. The Southern District of Florida is the proper venue to resolve Mr. Rojas's petition for a writ of habeas corpus, as Defendants-Respondents are presently jailing Mr. Rojas at Krome Service Processing Center in Miami, Florida. Mr. Rojas has lived in Miramar, Florida for several years and was apprehended in Miramar, Florida. Mr. Rojas is being detained under the authority of Defendants-Respondents Marc J. Moore, Liana J. Castano, Mitchell Diaz, and Juan Acosta, among others, and these Defendants-Respondents have offices within the Southern District of Florida. Most of the substantial events relevant to the present case occurred within the District, including Mr. Rojas' removal proceedings and his re-detention. Furthermore, this Petition was filed on March 5, 2019, while Mr. Rojas was physically present within the Southern District of Florida, as he is presently being jailed at Krome Service Processing Center, in Miami, Florida.

PARTIES

18. Plaintiff-Petitioner Claudio Rojas is a resident of Miramar**,** Florida. He is currently being detained under the direction of Defendants-Respondents at Krome Service Processing Center in Miami, Florida.

19. Defendant-Respondent Kirstjen Nielsen is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of

the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of Florida; supervises Defendants-Respondents Moore, Castano, Diaz, and Acosta; is legally responsible for pursuing Plaintiff-Petitioner's detention and removal; and as such is the legal custodian of Plaintiff-Petitioner. Respondent Nielsen's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

20. Defendant-Respondent Marc J. Moore is named in his official capacity as the Field Office Director of the Miami Field Office for ICE within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations, supervises Defendants-Respondents Castano, Diaz, and Acosta, and is legal custodian of Plaintiff-Petitioner. Respondent Moore's address is Miami ICE Field Office Director, 8801 NW 7th Ave., Miami, Florida 33150.

21. Defendants-Respondents Liana J. Castano and Mitchell Diaz are named in their official capacities as the Assistant Field Office Directors of the Miami Field Office for ICE within the United States Department of Homeland Security. In this capacity, they are responsible for the administration of immigration laws and the execution of detention and removal determinations, and are legal custodian of Plaintiff-Petitioner. Defendants-Respondents Castano and Diaz are located at Krome Service Processing Center in Miami, Florida.

22. Respondent Juan Acosta is named in his official capacity as the Officer in Charge of Krome Service Processing Center, where Plaintiff-Petitioner is detained. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations, and is a legal custodian of Plaintiff-Petitioner. Respondent Acosta is located at Krome Service Processing Center in Miami, Florida.

23. Defendant-Respondent William Barr is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the Southern District of Florida, is legally responsible for administering Plaintiff-Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Plaintiff-Petitioner. Defendant-Respondent Barr's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

24. Defendant-Respondent Department of Homeland Security ("DHS") is the federal agency responsible for enforcing Plaintiff-Petitioner's continued detention pending his removal proceedings. DHS's address is U.S. Department of Homeland Security, 800 K Street, N.W. #1000, Washington, District of Columbia 20528.

STATEMENT OF FACTS

Mr. Rojas's Immigration History and Applications for T Visa and U Visa Status

25. Mr. Rojas was born September 14, 1965 in Argentina. *See* Exh. 5, Release Request. He has resided in the United States for nearly 20 years and is a husband, father, grandfather and beloved member of his community. *Id.* Mr. Rojas has been married to his wife for 33 years. *Id.* He has been employed consistently in the United States and paid his taxes. *Id.* Two of Mr. Rojas's children are recipients of Deferred Action for Childhood Arrivals ("DACA"). *Id.* His grandson in a U.S. citizen.

26. On or about September 24, 2010, Mr. Rojas was granted voluntary departure by an Immigration Judge. *See* Exh. 6, IJ Order. However, due to the medical condition of Mr. Rojas's

wife he was not able to depart from the United States. Mr. Rojas's wife suffers from visual impairment and he has consistently assisted in her care. *See* Exh. 5, Release Request.

27. On or about August 7, 2012, Mr. Rojas submitted a Motion to Reopen to the Immigration Judge. On or about August 10, 2012, the Immigration Judge denied the Motion to Reopen. Mr. Rojas filed a timely appeal of the Motion to Reopen with the Board of Immigration Appeals ("BIA"). *See* Exh. 7, BIA Decision. The appeal was dismissed on November 27, 2012. *Id.*

28. In 2012, Mr. Rojas was detained by ICE for several months. After he was released from detention in 2012, ICE gave Mr. Rojas permission to live and work in the U.S. through an order of supervision. *See* Exh. 2, Order of Release. Mr. Rojas complied with any and all requests by ICE after he was released from detention on his order of supervision in 2012, including attending regularly scheduled check-in appointments.

29. In 2015, Mr. Rojas began to work for a man who ran a landscaping business. *See* Exh. 3, T visa application and U visa application; Exh. 4, Pineda Decl. Mr. Rojas initially worked part-time for this individual in landscaping and property preservation. *See id.* From 2016 to 2018, Mr. Rojas experienced problems with compensation from this individual, but felt trapped in the position because the individual promised to help Mr. Rojas with his immigration status. *See id.* In 2018, Mr. Rojas's employer promised that he would petition for immigration status for Mr. Rojas as a worker for a new company he opened, seeking Mr. Rojas's financial investment. *See id.* But nothing ever happened with the promised immigration petition or business. *See id.* Instead, Mr. Rojas is owed tens of thousands of dollars, which was taken by his employer, as well as backpay and expenses. *See id.*

30. Mr. Rojas filed a T nonimmigrant visa application arguing that he was a victim of severe form of trafficking in persons because his employer obtained his labor or services using fraud

and coercion, subjecting Mr. Rojas to involuntary servitude and forced labor. Through an elaborate scheme, the employer used Mr. Rojas's immigration status, violated his trust, withheld wages and took money from Mr. Rojas that he had "invested" in the employer's company. Mr. Rojas believed that he needed to continue to work in hopes that he would see that money again, and his employer used false hope and promises to keep Mr. Rojas performing work. *See id.*

31. Mr. Rojas's application for a T visa was pending at the time he was detained by ICE on February 27, 2019. *See* Exh. 3, T visa application and U visa application. The U.S. Department of Labor was in the process of investigating the trafficking of Mr. Rojas and the Plaintiff-Petitioner was participating in this investigation, including via a phone interview on March 4, 2019. *See* Exh. 4, Pineda Decl; Exh. 10, Labor Dept. Letter.

32. On February 27, 2019, Mr. Rojas, through counsel, filed a stay request with ICE, citing Mr. Rojas's eligibility and pursuit of the T nonimmigrant visa. On March 6, 2019, ICE denied the request for a stay of removal, stating only that "[t]he circumstances of your client's case are such that we are unable to grant a Stay of Deportation or Removal." Exh. 11, 2019 Stay Request Denial.

33. On March 1, 2019, Mr. Rojas, through counsel, filed an emergency *sua sponte* motion to reopen, an emergency motion for stay, and a motion to expedite with the Board of Immigration Appeals, citing Mr. Rojas's eligibility and pursuit of the T nonimmigrant visa. The motions are currently pending. *See* Exh. 8, Motion to Reopen.

34. Mr. Rojas, through counsel, subsequently applied for a U nonimmigrant visa. *See* Exh. 3, T visa application and U visa application.

35. The Department of Labor's investigation is ongoing. *See* Exh. 10, Labor Dept. Letter.

ICE's Targeting of Mr. Rojas

36. During his time in the United States, Mr. Rojas has also been an outspoken activist who has worked with immigrant youth activists to expose the inner workings of the immigrant detention system.

37. In 2012, when Mr. Rojas was detained in Broward Transitional Center in Pompano Beach, Florida, he worked with two activists at the National Immigrant Youth Alliance ("NIYA") to expose the abuses at the detention center. *See* Exh. 9, Ibarra Decl. In detention, Mr. Rojas was disturbed by the treatment of people in the detention center, which was run by The GEO Group, a private prison corporation. Mr. Rojas passed along information of people who needed assistance to people outside of the detention center, who mobilized community support to seek their release. *Id.*

38. Together with the activists from NIYA, Mr. Rojas continued to advocate for people's release from Broward and to expose the conditions to the outside world. Mr. Rojas organized individuals who were detained with him in peaceful protest of detention policies. *Id.* He participated in a spiritual fast and was placed in isolation in a medical unit. *Id*. Viewed as a leader of organizing, he was transferred to Krome Service Processing Center. *Id.* After a large public campaign by NIYA, Mr. Rojas was finally released after several months of detention. *Id.* After he was released, he spoke out about the abuses in the U.S. immigration detention system.[6]

39. Mr. Rojas's involvement in immigrant activism was most recently featured in *The Infiltrators*, a documentary that debuted at the Sundance Film Festival in January 2019. *See* Exh.

[6] *See* Auro Bogado, *Dreamers Fight Deportations,* The Nation (Jan. 30, 2013), https://www.thenation.com/article/dreamers-fight-deportations/; Episode 498: *The one thing you're not supposed to do,* This American Life (Jun. 21, 2013) https://www.thisamericanlife.org/498/transcript; Michael May, *Los Infiltradores*, The American Prospect (Jun. 21, 2013), https://prospect.org/article/los-infiltradores.

9, Ibarra Decl. The critically-acclaimed, award-winning film was described by several media outlets during the lead-up to the festival. *See, e.g.,* Exh. 1, News articles featuring Claudio Rojas; Exh. 9, Ibarra Decl.; Exh. 12, International Documentary Association Letter.[7] In addition, *The Infilitrators* was slated for its Miami debut at the upcoming Miami Film Festival in March 2019, which Mr. Rojas was scheduled to attend and speak at. *See* Exh. 9, Ibarra Decl.

40. On February 27, 2019, Mr. Rojas reported to ICE for his previously scheduled, routine supervision appointment, at which point ICE detained him for imminent deportation.

41. Through counsel at his February 27, 2019 check-in, Mr. Rojas explained to ICE that he had a T nonimmigrant visa pending and asked not to be detained. However, an ICE Officer indicated that the decision to arrest and detain Mr. Rojas had already been made by the "district director."

42. People held in ICE custody are listed by facility on an ICE Online Locator System. Mr. Rojas's name has been removed from the ICE Online Locator System with no explanation.

43. People held in ICE custody may receive visitors, including journalists. A journalist attempted to meet with Mr. Rojas, but her request to meet with Mr. Rojas was denied. Exh. 4, Pineda Decl. There is no process by which journalists may call Mr. Rojas in the facility. He may call out of the facility, but the phone calls are monitored.

44. In addition to the impairment of Mr. Rojas's political speech, Mr. Rojas's detention has also had a chilling effect on the documentary film community. The Miami Film Festival made a last minute decision not to formally present the film at the festival citing "political" reasons. *See* Exh. 9, Ibarra Decl. Moreover, documentary filmmakers generally have expressed deep

[7] *See, e.g.,* Jordan Hoffman, *The Infiltrators review – angry and impressive immigration docudrama*, The Guardian (Jan. 27, 2019), https://www.theguardian.com/film/2019/jan/27/the-infiltrators-review-angry-and-impressive-immigration-docudrama

concerns about the chilling effect that targeting will have on their ability to feature activists in their work. *See* Exh. 12, International Documentary Association Letter ("It is of grave concern to the documentary community that a willing protagonist in a documentary film may be punished for expressing his opinion within a film, and we believe that this will have a chilling effect on the work of journalists and their sources seeking to explore and understand issues of national concern. As a result of ICE's actions, the American public will now lose Mr. Rojas' voice in the many upcoming national conversations about our immigration policy."); Tabitha Jackson, *A Silenced Voice?,* Sundance Institute (Mar. 7, 2019), at https://www.sundance.org/blogs/a-silenced-voice-a-note-concerning-the-infiltrators-protagonist-claudio-rojas ("We call attention to Claudio Rojas' arrest and voice our concern at any act which can be perceived as intimidation toward either artist or subject. Only when we can speak freely, without fear of retaliation or abuse of due process, can we trust in the basic tenets of a true democracy and gain crucial perspectives that illuminate the policies and actions that shape our society.").

ICE's Pattern and Practice of Targeting Immigrant Rights Activists

45. Since January 2017, federal immigration authorities across the country have engaged in a pattern and practice of targeting outspoken immigrant rights activists who publically criticize U.S. immigration law, policy, and enforcement.

46. Federal immigration authorities have investigated, surveilled, harassed, raided, arrested, detained, and even deported these activists in order to silence them. They have arrested activists immediately following press appearances and news conferences. They have detained spokespeople and directors of immigration advocacy organizations. They have surveilled the organizations' headquarters and targeted their members. They have identified prominent immigrants as enforcement priorities even before a final order of removal is in place. They have

instructed activists that their immigrant rights organizations may be detrimental to them. And they have targeted communities identified by the federal government as "sanctuary cities" to punish those communities for taking legislative, municipal, and political action to limit official cooperation with federal immigration enforcement.[8]

47. This sharp spike in immigration enforcement specifically targeting the most vocal immigration activists is intended to stifle dissent. According to U.S. Representative Jerry Nadler: "These are well-known activists who've been here for decades, and [ICE is] saying to them: Don't raise your head."[9] Similarly, U.S. Representative Luis Gutierrez has stated: "I have long suspected that very vocal advocates were harshly targeted after they spoke out. … I would go to … an immigration hearing, and the person who made the biggest impression? I'd find out that they'd been detained. And that started last year."[10]

48. Since 2017, media organizations have reported on many immigrants whom ICE has detained or taken other adverse action against based on their speech or other protected activities, including but not limited to individuals and organizations described herein. There are at least two

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[8] *See, e.g.*, Tom Jones et al., *Leaked Documents Show the U.S. Government Tracking Journalists and Advocates Through a Secret Database*, NBC San Diego (Mar. 6, 2019), https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html; Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on Anti-Trump Protesters in New York City*, The Nation (Mar. 6, 2019), https://www.thenation.com/article/ice-immigration-protest-spreadsheet-tracking/; John Burnett, Meet the 20+ Immigration Activists Arrested Under Trump, NPR (Mar. 16, 2018), https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump; Nick Pinto, *No Sanctuary: As ICE Targets Immigrant Rights Activists for Deportation, Suspicious Vehicles Outside Church Stoke Surveillance Fears*, The Intercept (Jan. 19, 2018), https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/.

[9] Maria Sacchetti and David Weigel, *Ice has Detained or Deported Prominent Immigrant Rights Activists*, Washington Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.5be0c8e2393b.

[10] *Id.*

pending federal lawsuits alleging a pattern-and-practice of ICE targeting immigrants and immigrant rights organizations in violation of the First Amendment. *See Ragbir et al. v. Homan at al.*, No. 18-1597-CV (2d Cir.); *NWDC Resistance et al. v. ICE et al.*, 2:18-cv-01558 (W.D. Wash.). Some of the stories profiled in these and other lawsuits and news articles are listed below.

Ravi Ragbir, Jean Montrevil, and the New Sanctuary Coalition

49. In January 2018, ICE conducted a coordinated operation to detain and deport Ravi Ragbir, Executive Director of the New Sanctuary Coalition ("NSC") and Jean Montrevil, one of NSC's co-founders. NSC had led members of the public, clergy, and elected officials in peaceful public protests of ICE and immigration law and polices broadly. ICE's actions against Mr. Ragbir and Mr. Montrevil following several high profile events and media reports of NSC's work, and remarks criticizing ICE by Mr. Ragbir and Mr. Montrevil specifically during public rallies and on media outlets like *Democracy Now!*. Upon information and belief, ICE officials expressed "resentment" at the criticism and surveilled both Mr. Ragbir and Mr. Montrevil at their homes and at Judson Memorial Church, where the NSC office is located.[11]

50. In January 2018, ICE detained and deported Mr. Montrevil to Haiti.[12] ICE detained Mr. Ragbir on January 11, 2018, but due to federal court intervention, his deportation was stayed and he was released. In ordering Mr. Ragbir's release, the federal court remarked with concern the First Amendment issues, and noted that ICE's actions in abruptly detaining him was "treatment

[11] *See* Nick Pinto, *ICE Is Targeting Political Opponents for Deportation, Ravi Ragbir and Immigrant Rights Groups Say in Court,* The Intercept (Feb. 9, 2018), https://theintercept.com/2018/02/09/ravi-ragbir-ice-immigration-deportation/.

[12] Lydia McMullen-Laird, *Life After Deportation: Their Father was Returned to Haiti. Now What?*, The Indypendent (Feb. 2, 2018), https://indypendent.org/2018/02/life-after-deportation/

we associate with "regimes we revile." *Ragbir v. Sessions*, 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018).

51. Mr. Ragbir, NSC, and several immigrant rights organizations subsequently have filed a lawsuit challenging ICE's nationwide practice and pattern of targeting immigrant rights activists. The case is pending at the U.S. Court of Appeals for the Second Circuit, which has issued a stay of Mr. Ragbir's removal pending its consideration of the case. *Ragbir v. Homan*, No. 18-1597-CV, Dkt. 168 (2d Cir. Nov. 1, 2018) (ordering a stay of removal pending appeal).

Daniela Vargas

52. On or about March 1, 2017, in Jackson, Mississippi, ICE agents detained Daniela Vargas, a 22-year-old activist and DACA recipient as she left a news conference where she had spoken alongside other immigration advocacy groups.[13] Vargas had witnessed ICE's arrest of her family the previous month, and was not detained at that time because she explained to the officers that she had DACA status. That status had expired, but Vargas was in the process of applying for renewal. At the conference, she asked President Trump to protect her.

53. ICE agents arrested Vargas about five minutes after she spoke to reporters outside Jackson City Hall. A person present at the arrest reported that ICE agents opened the car door saying "you know who we are and you know why we're here." Although she had a pending DACA case, ICE agents claimed that she was listed as a "visa overstay" and would have to be detained.[14] When asked to comment about Ms. Vargas' arrest, ICE provided a statement indicating that it was a "targeted" enforcement operation. On March 9, 2017, days after ICE

[13] Phil Helsel, *'Dreamer' Applicant Arrested After Calling for Immigrant Protection*, NBC News (Mar. 2, 2017), https://www.nbcnews.com/news/us-news/dreamer-applicant-arrested-after-calling-immigrant-protections-n727961.

[14] *ICE Intimidates Latino Community With Arrest of DACA Recipient Practicing Free Speech*, HuffPost (Mar. 3, 2017), https://www.huffingtonpost.com/entry/ice-intimidates-latino-community-with-arrest-of-daca_us_58b9dd6de4b02b8b584dfb6d

arrested Ms. Vargas, a Dreamer with an active DACA application, it tweeted that "active DACA recipients are typically a lower level of enforcement priority." ICE has not provided any explanation for its failure to follow its own policy in the case of Ms. Vargas.[15]

Migrant Justice

54. ICE has targeted multiple members of Migrant Justice, a community based non-profit organization of Vermont dairy farmworkers and their families. A majority of Vermont dairy workers are immigrants, and Migrant Justice has engaged in campaigns to defend the rights of their members as workers and as immigrants. In particular, Migrant Justice has sought to hold immigration enforcement agencies including ICE accountable for rights violations.

55. On April 21, 2016, ICE arrested Jose Victor Garcia Diaz outside a Mexican cultural event in Stowe, Vermont.[16] Mr. Garcia Diaz is a public spokesperson for Migrant Justice's Milk with Dignity campaign. The day before his arrest, he had returned from a gathering of the Food Chain Workers Alliance in Los Angeles, California. Mr. Garcia Diaz represented Vermont farmworkers at the meeting in an effort to build a unified movement for respect for human rights in food supply chains. His immigration removal proceedings are ongoing.

56. On March 17, 2017, the day after Migrant Justice announced an escalation of its Milk with Dignity campaign with respect to Ben & Jerry's, ICE arrested Jose Enrique Balcazar Sanchez shortly after he left a meeting at Migrant Justice's office. ICE had previously identified Balcazar as a target for enforcement.[17] He has been a very visible representative of Migrant

[15] Ray Sanchez, "DREAMer Daniela Vargas released, immigration group says," *CNN* (Mar. 10, 2017) https://www.cnn.com/2017/03/10/us/dreamer-daniela-vargas-ordered-released/index.html.
[16] Compl. ¶ 16, *Migrant Justice v. U.S. Dep't of Homeland Sec.*, No. 17-cv-197 (D. Vt. Oct. 11, 2017).
[17] On September 22, 2016, ICE arrested Miguel Alfredo Alcudia Gamas, another Migrant Justice member. Mr. Alcudia Gamas is also a public spokesperson for Migrant Justice's Milk with Dignity campaign. When ICE arrested Mr. Alcudia Gamas, ICE officers made statements

Justice and publicly promoted policies to limit ICE's entanglement with local law enforcement. Over the past few years, Balcazar Sanchez has served as one of Migrant Justice's primary spokespeople in its campaigns for driver's licenses and for a fair and impartial policing policy. He served on a task force established to advise the Vermont Attorney General on immigration issues, which resulted in guidance for Vermont cities and towns to limit their role in immigration law enforcement.

57. On March 17, 2017, ICE also arrested Zully Victoria Palacios Rodriguez, who was a passenger in Balcazar Sanchez's car. Palacios Rodriguez is a key Migrant Justice organizer. Just prior to her arrest, she had also just left Migrant Justice's office. Notably, Palacios was arrested on the grounds that she had overstayed her visa—a civil violation—by approximately eight months. She was held without bail, which is extremely atypical treatment for an immigrant who has merely overstayed a visa.[18]

58. On June 17, 2017, two more Migrant Justice activists were arrested for immigration violations as they returned home from a march for better work conditions. Esau Peche and Yesenia Hernandez participated in the march with approximately 200 others walking from Montpelier Vermont, to a Ben & Jerry's factory in Waterbury. After the March, they drove home to East Franklin, which is north of Waterbury. They were stopped by Border Patrol, arrested and turned over to ICE. A Border Patrol spokesperson stated that the two Mexican

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implying that they were targeting a fellow Migrant Justice leader, Jose Enrique Balcazar Sanchez. *Id.* ¶ 18.

[18] Milton J. Valencia, *Hundreds in Boston Will Protest Vermont ICE Arrests*, The Boston Globe (Mar. 26, 2017), https://www.bostonglobe.com/metro/2017/03/26/hundreds-protest-vermont-ice-arrests-boston-monday/MdxOtwc9TP6sVHsgEjEAY/story.html

nationals "appeared to the agent to have come across the border" and were stopped as part of routine operations.[19]

59. Migrant Justice is currently engaged in First Amendment litigation and Freedom of Information Act litigation on behalf of migrant workers. Compl., *Migrant Justice v. Nielsen*, No. 5:18-cv-192 (D. Vt. Nov. 14, 2018); Compl., *Migrant Justice, et. al v. United States Dep't of Homeland Security, et. al*, No. 17-cv-197 (D. Vt. Oct. 11, 2017).

Emilio Gutiérrez Soto and Oscar Gutiérrez Soto

60. Emilio Gutiérrez Soto is an award-winning Mexican journalist who fled Mexico in 2008 as a persecuted journalist, only to find that in the United States, he would also be targeted by authorities as a result of his public statements on immigration policy.

61. Mr. Gutiérrez Soto and his son, Oscar, presented themselves at the United States border and applied for admission on June 16, 2008. They were interviewed by an asylum officer who found that they had a credible fear of persecution. From 2008 through 2017, they were paroled into the United States as arriving aliens with a credible fear of persecution.

62. In February 2017, internal ICE emails show that Mr. Gutiérrez Soto was placed on a list as a "candidate for arrest" in an email string titled "Non-Detained Target List," despite the fact that Mr. Gutiérrez Soto and his son had been paroled into the United States legally and were awaiting a decision from the immigration judge regarding his asylum claim. ICE has not stated whether it maintains other "Non-Detained Target" lists, and how it determines whether an immigrant will be targeted (whether or not a final order of removal is in place).

63. In July 2017, an immigration judge denied Mr. Gutiérrez Soto's and his son's asylum claims. The decision became final in August 2017.

[19] Elizabeth Murray, *Protesters decry farmworkers' arrest after Ben & Jerry's march* (June 19, 2017), http://www.burlingtonfreepress.com/story/news/local/vermont/2017/06/19/border-patrol-arrests-2-immigrants-east-franklin/408333001/.

64. In the following months, Mr. Gutiérrez Soto was publicly critical of the United States government and its immigration policy. For example, on October 4, 2017 the National Press Club awarded Mr. Gutiérrez Soto the John Aubuchon Award for Press Freedom on behalf of Mexican journalists. During his acceptance speech, Mr. Gutiérrez Soto criticized the United States' policy on asylum and, *inter alia*, stated that United States immigration authorities were "bartering away international law" with regard to asylum seekers.

65. On November 20, 2017, Mr. Gutiérrez Soto and his son filed motions to reopen their cases with the BIA.

66. On December 7, 2017, Mr. Gutiérrez Soto and his son appeared for a previously scheduled check-in with ICE, and were immediately arrested and detained. ICE tried to deport both of them that very day. However, before they could be deported, the BIA granted them a stay of removal pending consideration of their motion to reopen. In light of this stay, Mr. Gutiérrez Soto and his son were not deported, but sent to a detention center 90 miles away from El Paso, far from their communities and attorneys.

67. On December 22, the BIA granted Mr. Gutiérrez Soto's and his son's motion to reopen and reinstated their appeal. But Mr. Gutiérrez Soto and his son remained in detention.

68. In the meantime, activists continued to protest publicly for the release of Mr. Gutiérrez Soto and his son. ICE officials complained of this negative publicity to William McCarren, the Executive Director of the National Press Club, who stated under oath that an ICE official told him to "tone it down" during a meeting regarding Mr. Gutierrez-Soto. McCarren interpreted the comment in the context of the conversation to mean that the media should stop attracting attention to petitioners' cause.

69. On March 6, 2018, Mr. Gutiérrez Soto and his son filed a habeas petition in the District Court of the Western District of Texas. They asserted, among other things, that ICE violated their First Amendment rights by arresting and detaining them unnecessarily on the basis of Mr. Gutiérrez Soto's public criticism of immigration enforcement officials. That case, *Gutierrez-Soto v. Sessions*, is pending. The court has held that "taking all . . . evidence into account, Petitioners have offered enough evidence to create a genuine issue of material fact regarding whether Respondents [ICE] violated their First Amendment rights." *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d, 917, 933 (W.D. Tex. July 10, 2018).

Maru Mora-Villalpando

70. Ms. Maru Mora-Villalpando is a longtime member and leader of Detention Watch Network ("DWN"), specifically through her leadership of the Northwest Detention Center Resistance ("NWDC Resistance"). For years, she has educated other DWN members on some of the innovative practices used by NWDC Resistance, and has regularly spoken at other DWN conferences and conventions. She has lived in the United States for 22 years.

71. In 2017, she organized and carried out several Resistance Workshops across the state of Washington to educate the immigrant community on ICE and DHS's February 2017 memos on enforcement implementation.

72. In December 2017, ICE served Ms. Mora Villalpando with a Notice to Appear ("NTA") for removal proceedings.[20] ICE noted on its December 2017 I-213 Form—an official ICE document that sets forth the basis to support a person's alleged alienage and removability—that Ms. Mora-Villalpando has "extensive involvement with anti-ICE protest and Latino advocacy

[20] Maria Sacchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration Activists*, Washington Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.64d28708d652.

programs" and that she "has become a public figure." The only purported evidence of Ms. Mora-Villalpando's immigration status or removability was an interview she gave to "Whatcom Watch" six months earlier, in June 2017.

73. Ms. Mora-Villalpando has resided in the United States for over 25 years. She raised a daughter in the United States: Josefina Alanis Mora, who is now a university student. She has no criminal history.

74. Ms. Mora-Villapando was well-known to federal officials for many years before she was issued an NTA. She met with federal officials during the Obama administration, when she helped publicize detainees' hunger strikes and other protests in Washington State. She acted as a spokeswoman for immigrants held at the Northwest Detention Center in Tacoma, Washington. There is no explanation for ICE's sudden issuance of a NTA other than as a retaliatory response to Ms. Mora-Villalpando's "extensive involvement with anti-ICE protest and Latino advocacy programs."[21] The I-213 associated with Ms. Mora-Villalpando's case-the official internal ICE enforcement record that lays out the basis for initiating proceedings against her-expressly notes that she "has extensive involvement with anti-ICE protest and Latino advocacy programs." [22]

75. She explained to the *Washington Post* that "[t]here's no way for them to know about me except for the work that I do."[23]

76. In February 2018, Ms. Mora-Villalpando requested documents from ICE and other agencies under the Freedom of Information Act. *Inter alia*, she sought documents reflecting ICE guidance regarding enforcement actions against individuals who make public statements to the media or are involved in "anti-ICE" and/or "immigrant rights" activism. ICE has not

[21] *Supra* ¶ 108.
[22] *ICE Targetes Undocumented Immigrants Who Share their Story in the Media*, Mijente (Feb. 26, 2018), https://bit.ly/2Lh4Owq.
[23] *Id.*

substantively responded to this request, forcing Ms. Mora-Villalpando to file a complaint in the United States District Court of the Western District of Washington to seek the release of these documents. ICE is required to release these documents under the Freedom of Information Act. Ms. Mora-Villalpando's organization, the Northwest Detention Center Resistance, is also the plaintiff in a First Amendment lawsuit against ICE. *NWDC Resistence v. ICE*, No. 2:18-cv-01558 (W.D.Wa Oct. 23, 2018).

Baltazar Aburto Gutierrez

77. In early December 2017, Baltazar "Rosas" Aburto Gutierrez was detained by an ICE agent who explicitly referenced the fact that he had spoken to a newspaper in November 2017.[24] Though his comments were made anonymously in a *Seattle Times* article, a second article in the *Chinook Observer* referenced his nick-name ("Rosas").[25] In addition, his partner's full name and details of the ICE action to arrest and deport her were reported in both articles. Neither article detailed Mr. Gutierrez's immigration status.

78. Mr. Gutierrez had commented to the press about the wrenching circumstances of his partner's arrest by ICE and her deportation to Mexico in November 2017. ICE at that time declined to arrest Mr. Gutierrez, stating that while his partner had a prior deportation order, he did not.

79. The next month, the agent who arrested Mr. Gutierrez approached him again stating, "You are Rosas," and "You are the one from the newspaper."[26] Mr. Gutierrez also stated that the agent told him "My supervisor asked me to come find you because of what appeared in the

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[24] Nina Shapiro, *ICE Tracks Down Immigrants Who Spoke to Media in SW Washington: "You Are the One from the Newspaper,"* Seattle Times (Dec. 3, 2017), https://www.seattletimes.com/seattle-news/ice-tracks-down-immigrant-who-spoke-to-media-in-sw-washington-you-are-the-one-from-the-newspaper.

[25] *Id.*

[26] *Id*.

newspaper."[27] ICE did not explain why the rationale that prevented Mr. Gutierrez's arrest the month before had changed.

Eliseo Jurado

80. Eliseo Jurado was born in Mexico and came to the United States as a teenager. His father is a United States citizen; his mother is a green card holder. He is married to Encalada Latorre, a Peruvian woman who has taken sanctuary in churches in Boulder Colorado since December 2016. The couple has two U.S. citizen children. Jurado's wife, Latorre has been the subject of extensive news coverage since she moved into a local church to avoid deportation.

81. Although local ICE Field Office Director Jeffrey Lynch denied that Mr. Jurado's arrest was related to his wife's decision to take sanctuary, he confirmed in a statement that Mr. Jurado came to the agency's attention during an investigation into Encalada Latorre.[28]

Amer Othman Adi

82. Amer Othman Adi, a 57-year-old businessman, husband and father, arrived in the United States at 19 years old. He was placed into removal proceedings decades ago. Adi was told that he would be deported in 2016 and prepared himself and his United States citizen wife for a scheduled departure on January 7 departure. Then, ICE granted a temporary stay that prevented his January 7 deportation.

83. On January 16, 2018, ICE arrested Mr. Adi and placed him in detention. To protest his deportation, Mr. Adi began a hunger strike. Ohio Democratic congressman Tim Ryan introduced a private bill to grant Mr. Adi lawful permanent resident status, which would allow him to remain in the United States. The House Judiciary Subcommittee on Immigration and

[27] *Id*.
[28] John Bear & Jenn Fields, *Husband of Peruvian Woman Taking Sanctuary at Boulder Church Detained by ICE*, The Denver Post (Jan. 11, 2018), https://www.denverpost.com/2018/01/11/ingrid-encalada-latorre-husband-detained-immigration-boulder-sanctuary.

Border Security approved the private bill, asking ICE to grant Adi a six-month stay of deportation. In an extraordinary move, described as "highly irregular" by Representative Tim Ryan of Ohio, ICE reversed its prior stay and rejected the congressional request to stay Adi's deportation. Mr. Adi was deported to Jordan on January 29, 2018.

Jesus Chavez Flores

84. In February 2018, ICE placed Jesus Chavez Flores into solitary confinement as punishment for leading a hunger strike. The hunger strike, which began to protest conditions at the detention facility, began on February 7, 2018 and involved approximately 120 immigrants housed in the detention center.

85. Mr. Chavez remained in solitary confinement for 20 days, while attorneys filed a lawsuit to enjoin the detention center and ICE from continuing to retaliate against Mr. Chavez. Mr. Chavez was subsequently released from solitary confinement, only to be transferred to a higher security detention facility, without reason. He has stated that he continues to fear further retaliation for his protest.[29]

Alejandra Pablos

86. On March 7, 2018, ICE detained Alejandra Pablos. Ms. Pablos is a member of Detention Watch Network, and an activist well known for her anti-ICE protests. Ms. Pablos is a legal permanent resident who came to the United States as an infant. Her detention appears to be related to a January 2018 incident in which she was arrested by ICE officers during a protest,

[29] *See* ACLU-WA, "ACLU-WA Lawsuit Seeks to Uphold Free Speech Rights of Hunger Striker at Northwest Detention Center" (Feb. 23, 2018), https://www.aclu-wa.org/news/aclu-wa-lawsuit-seeks-uphold-free-speech-rights-hunger-striker-northwest-detention-center; Pl.'s Mot. for Leave to File Second Am. Compl., *Chavez Flores v. United States Immigration and Customs Enforcement*, No. 18-cv-05139 (W.D. Wash. May 21, 2018) (Dkt. No. 45).

while speaking in front of an ICE building. No other person was arrested, and observers later stated that Pablos was singled out by the ICE officer without justification.[30]

87. When Pablos arrived for the March 7 ICE check-in at which she was detained, an officer informed her that after the January arrest, ICE officials in Virginia notified their Arizona counterparts to make sure they knew she'd been arrested again. Ms. Pablos was detained for 43 days.

Manuel Duran Ortega

88. In April 2018, ICE unnecessarily detained Manuel Duran Ortega. Mr. Duran Ortega is a 42-year-old journalist from El Salvador who fled to the United States in 2006 after his life was threatened. Mr. Ortega has lived in Memphis Tennessee since 2006, and is a well-known member of the local press.

89. In 2018, Mr. Duran Ortega published numerous articles criticizing DHS, including publishing an article in *Memphis Noticias* regarding unjust conditions at DHS detention facilities and an article on the devastating impact of family separation caused by immigration enforcement. He also published several stories regarding the Memphis Police Department's collaboration with ICE, which the Memphis Police Department had publicly denied.

90. On April 3, 2018, reporter Mr. Duran Ortega was arrested by local police at a protest against the Memphis Police Department's collaborations with ICE. At the time, Mr. Duran Ortega wore his press credentials, a bright yellow badge labeled "Press," around his neck, spoke into the camera he carried, observed and described the activities, and did not join the protestors in their chants. When instructed by police to move aside, he attempted to do so, but was nonetheless arrested by officers. He was the only member of the press arrested on that day.

[30] Ray Stern, "Latina Activist Alejandra Pablos Jailed by ICE; 'Retaliation' for Protest, Group Claims," *Phoenix New Times* (Mar. 7, 2018), http://www.phoenixnewtimes.com/news/latina-activist-alejandra-pablos-jailed-in-tucson-by-ice-10210545.

Despite attempts by Mr. Duran Ortega's partner to pay a bond for his release, and the subsequent dismissal of charges against him, Mr. Duran Ortega remained detained, until he was transferred to ICE custody.

91. Ordinarily, detainees at the Shelby County jail where Mr. Duran Ortega was held are transferred into DHS custody through a processing facility in Memphis. Those detainees then typically spend several days at a small short-term detention center in Mason, Tennessee, before they are transferred to a longer-term ICE detention facility such as LaSalle Detention Center in Louisiana.

92. ICE departed from this usual practice in the case of Mr. Duran Ortega. On April 5, 2018, ICE shackled Mr. Duran Ortega's wrists, ankles, and waist and forced to him to endure an eight-hour ride directly to LaSalle Detention Center in Jena, Louisiana without access to a bathroom.

Immigrant Sanctuaries

93. ICE has also targeted communities that it identifies as "sanctuary cities" to punish those communities for taking legislative, municipal and political action to limit official cooperation with federal immigration enforcement.[31] These are communities where activists have successfully lobbied to prevent local government from assisting the federal government in immigration enforcement actions against immigrant residents.

[31] These activities align with broader efforts of the current administration. On January 25, 2017, the President issued an Executive Order entitled, "Enhancing Public Safety in the Interior of the United States." Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). The Executive Order announces that it is the Executive Branch's policy to withhold federal funds from "sanctuary jurisdictions," directs the Attorney General and Secretary of Homeland Security to ensure that sanctuary jurisdictions do not receive federal grants, and directs the Attorney General to take enforcement action against any local entity that "hinders the enforcement of Federal law." *Id.* at 8801. In July 2017, the Department of Justice increased pressure on sanctuary cities by imposing additional requirements for federal grants. Pete Williams, *Attorney General Sessions Raises Stakes for Sanctuary Cities*, NBC News (July 25, 2017), https://www.nbcnews.com/politics/politics-news/attorney-general-sessions-raises-stakes-sanctuary-cities-n786546.

94. In September 2017, ICE announced that it would undertake a series of raids designed to target sanctuary cities, and publically designated the action, "Operation Safe City." According to ICE, Operation Safe City would target cities and regions "where ICE deportation officers are denied access to jails and prisons to interview suspected immigration violators or jurisdictions where ICE detainers are not honored."[32] Operation Safe City resulted in hundreds of arrests in communities that had taken actions to limit local government's cooperation with federal immigration enforcement. These communities included New York, Philadelphia, Los Angeles, Boston, Denver, and Portland, Oregon.[33]

95. Following the Operation Safe City raids, on October 5, 2017, California Governor Jerry Brown signed SB54 into law, a statute cancelling almost all state and local cooperation with federal deportation officers. The statute was the result of, among other things intense lobbying from immigrant rights organizations. The next day, Former Acting Director Thomas Homan, in direct response to the California legislation, made the following threats in an official statement:

> SB54 will negatively impact ICE operations in California by nearly eliminating all cooperation and communication with our law enforcement partners in the state, voiding the delegated authority that the Orange County Sheriff's Office has under the 287g program, and prohibiting local law enforcement from contracting with the federal government to house detainees.
>
> *ICE will have no choice but to conduct at-large arrests in local neighborhoods and at worksites, which will inevitably result in additional collateral arrests, instead of focusing on arrests at jails and prisons where transfers are safer for ICE officers and the community. ICE will also likely have to detain individuals*

[32] ICE, *ICE Arrests over 450 on federal immigration charges during Operation 'Safe City,'* (Sept. 28, 2017), https://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city.

[33] Miriam Jordan, *Immigration Agents Arrest Hundreds in Sweep of Sanctuary Cities*, N.Y. Times (Sept. 28, 2017), https://www.nytimes.com/2017/09/28/us/ice-arrests-sanctuary-cities.html.

> *arrested in California in detention facilities outside of the state, far from any family they may have in California*.[34]

96. In addition, ICE has increased its presence in sanctuary city communities,[35] and has warned that communities that choose to cease participation in the "287(g)" program that they will be subject to increased immigration enforcement.[36]

97. These are just some of the examples of ICE First Amendment retaliation under the current administration, of which Mr. Rojas's unlawful detention is the latest example.

LEGAL FRAMEWORK

98. The power of ICE to arrest, detain and deport immigrants is not without limitations. To the contrary, the power of ICE to act is delineated by a specific set of statutes and federal regulations, and subject to the limitations of the U.S. Constitution.

99. An individual who has been permitted to live and work in the U.S. on an order of supervision following a past deportation order is protected by Constitutional, statutory, and regulatory rights.

100. In this case, the First, Fourth, and Fifth Amendments provide relevant constitutional constraints on ICE's authority. Under the First Amendment, ICE cannot retaliate or discriminate

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[34] ICE, Statement from ICE Acting Director Tom Homan on California Sanctuary Law (Oct. 6, 2017), https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law (emphasis added).

[35] An administration official stated that ICE has sent more officers to California to compensate for the "lack of cooperation from local police in turning over undocumented immigrants." Marisa Schultz, White House Slams California's Sanctuary City Policy Ahead of Trump Visit, New York Post (Mar. 12, 2018), https://nypost.com/2018/03/12/white-house-slams-californias-sanctuary-city-policy-ahead-of-trump-visit/ (last visited May 22, 2018).

[36] ICE warned that if a local Sheriff's Office followed through on a campaign promise to end the county's participation in the 287(g) program, there could be ramped up activity on the part of ICE. Alex Olgin & Nick de la Canal, ICE Warns if 287(g) Ends, it will Ramp Up Enforcement, WFAE (May 9, 2018), http://wfae.org/post/ice-warns-if-287g-ends-it-will-ramp-enforcement#stream/0. ICE then carried out its threat. *See* Tina Vasquez, *No End In Sight for Retaliatory ICE Raids*, Rewire (Feb. 14, 2019), https://rewire.news/article/2019/02/14/no-end-in-sight-for-retaliatory-immigration-raids-in-north-carolina/.

against immigrants based on their protected political speech and viewports. Under the Fourth Amendment, ICE cannot conduct warrantless arrests of immigrants with no judicial determination of probable cause. Under the Fifth Amendment, ICE cannot deprive an immigrant of notice and an opportunity to be heard on a pending visa application or other form of relief from deportation, nor can ICE detain an immigrant who is not a flight risk or danger.

101. In this case, several statutes and federal regulations provide government agencies with the power to act and provide important restraints. The Immigration and Nationality Act and implementing regulations both authorize and place important limits on some acts of detention and deportation. Moreover, those provisions must be read harmoniously with the Trafficking Victims Protection Act and the Administrative Procedure Act. The Trafficking Victims Protection Act demonstrates Congress's intent to protect trafficking victims and victims of crime by providing them status in the U.S. and preventing ICE from deporting them pending the investigation of a bona fide claim. The Administrative Procedure Act prevents arbitrary agency action. Federal regulations ensure that immigrants with pending T visa and U visa applications are not summarily deported, and protect those who are participating in ongoing investigations.

102. This case is therefore not about ICE enforcing the law, but about ICE violating the law by targeting Mr. Rojas for detention and deportation, in violation of his constitutional, statutory, and regulatory rights.

Mr. Rojas's Due Process, Statutory, and Regulatory Rights to an Adjudication of his T Visa and U Visa Applications

103. T visa status is a form of immigration relief for non-citizen victims of human trafficking[37] in the U.S and provides a pathway to lawful permanent residency. Recognizing that many

[37] The Trafficking Victims Protection Act (hereinafter 'TVPA") defines human trafficking as the "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or

noncitizens eligible for T visa status are in removal proceedings as a part of their trafficking exploitation,[38] the INA does not prevent a detained victim in removal proceedings with a final order of removal from applying with United States Citizenship and Immigration Services (USCIS), which has sole jurisdiction over such applications. 8 C.F.R. §214.11(d); INA §214.11(9). Congress provided for T visa status precisely to protect individuals in Mr. Rojas's situation from being deported, and to ensure cooperation with law enforcement.

104. There are four eligibility requirements for T visa status.[39] At issue in this case is the "physical presence requirement." 8 U.S.C. §1101(a)(15)(t) (as amended). The applicant's physical presence in the U.S. must be on account of a severe form of trafficking in persons. DHS has historically interpreted this requirement in the "present tense", meaning that the victim has not left the U.S. since the trafficking occurred. 8 CFR §214.11(g)(2002); *see also* "Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status"; www.federalregister.gov/d/2016-29900/p-222. Therefore, an executed order of removal from the U.S. would render a non-citizen survivor of human trafficking ineligible to apply for T Nonimmigrant Status because they are no longer present in the U.S.

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services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." INA §101(a)(15)(t)(as amended); 8 U.S.C. §101(a)(15)(T).

[38] Moreover, Congress envisioned that non-citizen victims of trafficking would be detained or incarcerated in the most limited of circumstances in light of their exploitation. Congressional testimony specifically states that while nothing can stop DHS from instituting removal proceedings, this should occur for conduct only *after* a victim has been admitted into the U.S. via T visa status or for failure to disclose in their initial application. *See* "Trafficking Victims Protection Act of 2000, Protection and Assistance for Victims of Trafficking. (H.R. 8558, H.R. 8879)." Sec. 107(b)(1)(B). Congressional Record (October 5, 2000).

[39] The other remaining requirements are: (1) must be a victim of a severe form of human trafficking, (2) reported their experiences to a law enforcement agency, (3) and will suffer severe harm upon return to their home country. INA §101(a)(15)(t)(as amended); 8 U.S.C. §101(a)(15)(T).

105. Like the T Visa, the U Visa reflects lawmakers' recognition that a crime victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes. Pursuant to 8 U.S.C. § 1184(p)(2), only 10,000 U Visas are issued to crime victims per fiscal year. *See* 8 C.F.R. § 214.14(d)(1). Crime victims who are eligible for a U Visa, but are not granted the status because of the cap, are placed on a waiting list. 8 C.F.R. § 214.14(d)(2). Those on the waiting list and their qualifying family members are granted deferred action—a decision to stay their deportation as an act of prosecutorial discretion—while their petitions are pending. *Id.* USCIS may also grant these individuals and their qualifying family members work authorization. *Id.* While an applicant for a U visa may still pursue his or her U visa as a whole even if deported, "deferred action" and the rights it entails are no longer available.

106. Immigrants who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. The fundamental requirement of Due Process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Elridge,* 424 U.S. 319, 332 (1976). Procedural due process "imposes constraints on government decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth amendment." *Id*. Once a Plaintiff-Petitioner has identified protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *Id.* In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probably value, if any, of additional or substitute procedural requirement would entail;" (3) "the government's

interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

107. Due process cases recognize a broad liberty interest rooted in both the *fact* of deportation and the *process* of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated from home and family). While this liberty interest typically arises in removal proceedings, courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Rojas v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar. 29, 2018) (concluding that "Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause" to asylum-seeker subclasses both in and out of removal proceedings).

108. Mr. Rojas is entitled to due process because he filed an I-914 Application for T Nonimmigrant Status. The only two federal courts to have addressed this issue have agreed that Plaintiff-Petitioners seeking T Nonimmigrant Status have liberty interests to be protected. *See* Exh. *See S.N.C. v. Sessions,* No. 18 CIV. 7680 (LGS), 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018) (ordering release of Plaintiff-Petitioner detained despite pending T visa); *Bangally Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (ordering a stay of petitioner's removal pending adjudication of a T visa).

109. Mr. Rojas has a liberty interest and property interest at stake under the statute. Moreover, federal regulations provide that if the government determines that his T Nonimmigrant Status

application is bona fide, he will receive an automatic stay of removal pending adjudication. 8 C.F.R. § 214.11(d)(1)(ii). If granted a T Nonimmigrant Status, Mr. Rojas is able to remain in the U.S. his wife, children and community. Yet ICE is attempting to shortchange this process by deporting Mr. Rojas before U.S. Citizenship and Immigration Services can make any of these determinations.

110. Similarly, Mr. Rojas is entitled to due process because he filed an I-918 Application for U Nonimmigrant Status. Mr. Rojas has a liberty interest and property at stake under the statute. Although deportation does not prevent an applicant from ultimately receiving a U visa, it does prevent an applicant from receiving "deferred action" status pending their U visa—a status designed specifically to prevent deportation. 8 C.F.R. § 214.14(d)(2). If granted deferred action pending his U visa adjudication, Mr. Rojas would be able to remain in the U.S. with his wife, children and community. Yet ICE is attempting to shortchange this process by deporting Mr. Rojas before U.S. Citizenship and Immigration Services can make any of these determinations.

111. Interpreted in light of the Constitution, the INA and its applicable regulations do not permit potential deportation while an individual is engaged in the process of attempting to regularize his immigration status through T and U visa applications. The INA seeks to protect individuals who live in the United States unlawfully, are under final orders and removal, and are victims of human trafficking and/or the victims of crime.

112. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arevalo* v. *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). Mr. Rojas has a protected due process interest in his ability to

have his T and U visa status adjudicated and to remain in the United States and ultimately receive lawful permanent residence status.

113. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

114. Moreover, individuals who participate with government investigations are also protected from abrupt deportation. The INA provides that "it shall be unlawful . . . for any alien to depart . . . from . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." 8 U.S.C. § 1185(a)(1). Pursuant to this statutory provision, the Executive promulgated a series of regulations that bar the departure of immigrants whose departure would be "prejudicial to the United States." *See* 8 C.F.R. §§ 215.2 (citing as authority 6 U.S.C. §§ 202(4), 236; 8 U.S.C. §§ 1101, 1103, 1104, 1184, 1185, 1365a, 1379, 1731-32; and Exec. Order 13323, 69 Fed. Reg. 241, 241 (Jan. 2, 2004)); *see also* Control of Aliens Departing from the United States, 45 Fed. Reg. 65,515, 65,515-16 (Oct. 3, 1980) (promulgating into the immigration regulations a copy of the State Department's pre-existing list in 22 C.F.R. Part 46). If an immigrant's departure meets this definition, he "shall" not depart the United States, and any departure-control officer "shall temporarily prevent the departure of such alien" until, after certain procedures are followed, the immigrant's departure is determined to no longer be prejudicial to the United States. 8 C.F.R. § 215.2. For these immigrants, the Executive is required to provide specific procedural guarantees:

a hearing, a "special inquiry officer," the taking and receiving of evidence, and certain rights for the immigrant. 8 C.F.R. §§ 215.4, 215.5.

Mr. Rojas's First Amendment Rights to Freedom of Speech Without Government Retaliation or Discrimination

115. "[T]he Government may not retaliate for exercising First Amendment speech rights." *Wilkie v. Robbins*, 551 U.S. 537, 555 (2007). The Government may not take action against an individual "because of his constitutionally protected speech or associations," even if the Government could lawfully take such action for "any number of [other] reasons." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

116. The right to criticize the government and its officials lies at the First Amendment's very heart. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274-75 (1964). "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *City of Houston v. Hill*, 482 U.S. 451, 462-63 (1987).

117. The Supreme Court has held, across a wide range of domains, that governmental actions "that fall short of a direct prohibition against the exercise of First Amendment rights" still violate the Constitution. *Laird v. Tatum*, 408 U.S. 1, 11 (1972). Such retaliatory actions are prohibited, period. Allowing them would permit the government to silence its critics, when the government has no right to silence its critics at all. *See Perry*, 408 U.S. at 597-98.

118. In this case, Mr. Rojas was engaged in political speech and activity when he was targeted for detention and imminent deportation by ICE. His criticism of ICE is core political speech entitled to the highest First Amendment protections.

119. In *Reno v. AADC,* the Supreme Court rejected the selective enforcement claim of a group of immigrants whom the government alleged had been involved in the material support of terrorists groups. 525 U.S. 471, 473 (1999). *AADC* has no application here.

120. First, this is not a national security case. The activities alleged in *AADC*—material support of alleged terrorists—are not protected under the First Amendment. Mr. Rojas's case, by contrast, involves the detention and deportation of an immigrant activist and labor trafficking victim. His speech and activities—outspoken advocacy criticizing ICE and immigration policy itself—go to the core of the First Amendment's protections. This is a classic case of First Amendment retaliation and discrimination—something the Supreme Court has not addressed in *AADC*.

121. Second, *AADC* does not extend to the context of individuals who have been permitted to reside in the U.S. and then have that permission revoked. *AADC* was motivated out of concern for the implications of permitting individuals who had engaged in material support of terrorist activity to remain in the U.S. "in ongoing violation of law." 525 U.S. at 491 (emphasis omitted). Mr. Rojas has no criminal record, let alone any involvement in national security issues, and ICE authorized Mr. Rojas to remain in the U.S. following his release from detention in 2012 through an order of supervision. ICE is now the one changing the status quo by revoking its authorization of Mr. Rojas's presence in the U.S., years after his removal proceedings were complete, because of Mr. Rojas's protected speech.

122. Third, even if *AADC* applied to First Amendment claims in this particular context, First Amendment retaliation and discrimination of the kind Mr. Rojas has suffered would fall under the "outrageous" exception to *AADC*'s own holding. *AADC*, 525 U.S. at 491. The detention of

an immigrant rights activist for his activism is, after all, "treatment we associate with regimes we revile as unjust." *Ragbir v. Sessions*, 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018).

123. Finally, nothing in *AADC* applies to challenges to the legality of detention, which was not the question raised in the case. 525 U.S. at 482.

124. Federal courts after *AADC* have recognized these distinctions. In the immigration context, at least one federal court has recognized the viability of First Amendment claims of a journalist who alleged that he was targeted by ICE for detention following his criticism of the agency and U.S. immigration law and policy, prompting his release. *See Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 933-35 (W.D. Tex. 2018); Julian Aguilar, *Mexican reporter and his son released from immigration detention in Texas*, Texas Tribune (Jul. 26, 2018), *at* https://www.texastribune.org/2018/07/26/mexican-reporter-and-son-released-immigration-detention-texas/. Another federal appellate court has issued a stay of removal while it adjudicates the appeal of an immigrant rights activist, along with several immigrant rights organizations, targeted for detention and deportation based on their criticism of ICE and U.S. immigration policy. *See Ragbir v. Homan*, No. 18-1597-CV, Dkt. 168 (2d Cir. Nov. 1, 2018) (ordering a stay of removal pending appeal).

125. Here, Mr. Rojas's First Amendment claims are strong given both the proximity of his detention and imminent deportation to the release of the film *The Infiltrators* as well as the evidence of the ongoing pattern and practice of targeting of immigrant activists. *See Gutierrez-Soto*, 317 F. Supp. 3d at 933-35; *supra* (cases of individuals and organizations targeted by ICE for protected political speech). For seven years, Mr. Rojas was permitted to stay in the U.S. under an order of supervision. But under the current administration, Mr. Rojas's activism became a liability.

Mr. Rojas's Due Process, Statutory, and Regulatory Rights to Release from Detention or, in the Alternative, a Bond Hearing

126. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at 690-691; *Guerrero-Sanchez*, 905 F.3d at 225; *Diop v. ICE*, 656 F.3d 221, 233–234 (3d Cir. 2011); *Gordon v. Shanahan*, No. 15-Civ-261, 2015 WL 1176706 at *10 (S.D.N.Y. Mar. 13, 2015). Individuals who are not flight risks or dangers may not be detained. *Ragbir v. Sessions*, 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018). In addition, individuals whose removal is not reasonably foreseeable may not be detained. *Zadvydas*, 533 U.S. at 690. Finally, due process also requires the right to a hearing before liberty is deprived. *Matthews v. Eldridge*, 424 U.S. at 332.

127. Detention power is also limited by the Fourth Amendment, which prevents unreasonable seizures. In the context of immigration detention, as with all arrests, this requires a neutral judicial determination of probable cause, either before the arrest (in the form of a warrant) or promptly afterward (in the form of a prompt judicial probable cause determination). *See Gerstein v. Pug*h, 420 U.S. 103, 114 (1975). Absent a bona fide emergency or other extraordinary circumstance, failure to receive a judicial probable cause determination within 48 hours of detention violates the Fourth Amendment as a matter of law. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). The 48 hours includes weekends.

128. Any detention of immigrants with final orders of removal is further authorized and limited by 8 U.S.C. § 1231, the statute governing detention following a final order of removal ("post-order detention"). 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. The third subclause of 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory

removal period "*shall* be subject to supervision" (emphasis added) under specific terms, including requirements that he or she appear periodically before an immigration officer and obey any written restrictions. *See also* 8 C.F.R. § 241.5 (specific conditions for release—involving but not limited to reporting requirements and travel document acquisition requirements—should an order of supervision be issued).

129. Furthermore, 8 U.S.C. § 1231(a)(7) provides that work authorization can be issued when the removal of an individual is impossible as a result of travel document related issues or "otherwise impracticable or contrary to the public interest." *See also* 8 C.F.R. §§ 241.5(c); 274a.12(c)(18).

130. When an order of supervision is revoked, federal regulations require ICE to provide the individual with particularized notice of the reason(s) of the revocation of his release and an opportunity to respond to the allegations contained therein. 8 C.F.R. §§ 241.4(l) and 241.13(i). Even then, detention is not necessarily authorized. Instead, an immigrant may be entitled to an orderly departure, i.e., the opportunity to settle one's affairs and depart by a date specified, without being detained. *See Rombot v. Souza*, No. 17-11577-PBS, 2017 U.S. Dist. LEXIS 185244, at *12 (D. Mass. Nov. 8, 2017).

CLAIMS FOR RELIEF

COUNT I

PLAINTIFF-PETITIONER'S REMOVAL PRIOR TO ADJUDICATION OF HIS T AND U NONIMMIGRANT STATUS APPLICATIONS AND MOTION TO REOPEN VIOLATES PROCEDURAL DUE PROCESS UNDER THE U.S. CONSTITUTION

131. Plaintiff-Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

132. Due process protects a noncitizen's liberty and property interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself").

133. Plaintiff-Petitioner has a protected procedural due process interest in his ability to remain eligible for T visa status and "deferred action" pursuant to U visa status, and to reopen his removal proceedings. Due process challenges are evaluated under the *Mathews v. Eldridge* balancing test. 424 U.S. 319, 335 (1976).

134. Respondent's removal of Plaintiff-Petitioner prior to the adjudication of Plaintiff-Petitioner's T visa application and consideration of "deferred action" through Plaintiff-Petitioner's U visa application violates due process. *See S.N.C. v. Sessions,* No. 18 CIV. 7680 (LGS), 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018); *Bangally Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (holding that a detained non-citizen victim of human trafficking with a pending application for T Nonimmigrant Status satisfied the *Elridge* Test).

135. First, Mr. Rojas has a vested liberty interest in preventing his removal. Courts have long recognized that removal implicates substantial liberty interests, such that 'the Due Process Clause protects an alien subject to a final order of deportation." *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *see also Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

136. Mr. Rojas faces a risk of erroneous deportation. If Mr. Rojas is removed before his application for T visa status is adjudicated or his removal case is reopened, he will be deprived of a viable defense to removability. If granted T visa status, Mr. Rojas will obtain valid nonimmigrant status and will be allowed to remain in the country. 8 C.F.R. §214.11(d)(9); 8 U.S.C. §1255(1), INA §245(1). However, as physical presence in the United States is a condition

of eligibility, his T Nonimmigrant status cannot be granted once he is removed. 8 C.F.R. 214.11(g).

137. Similarly, if Mr. Rojas is removed before his application for U visa status is adjudicated or his removal case is reopened, he will be deprived of access to "deferred action." If granted "deferred action," Mr. Rojas will be allowed to remain and work in the country and await a U visa (along with other relief). 8 C.F.R. § 214.14(d)(2). Deferred action is designed to prevent removal and is thus unavailable if he is deported.

138. Denial of the opportunity to have his motion to reopen and subsequent appeals adjudicated also violates Mr. Rojas's Due Process Rights under the Fifth Amendment.

139. Mr. Rojas has a liberty interest in litigating his motion to reopen, which would allow him to avoid his deportation. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945), *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001). He also has a liberty interest in avoiding separation from his two children and U.S. citizen grandchild. *See Southerland v. City of New York*, 680 F.3d 127, 142 (2d Cir. 2012) (recognizing a liberty interest in parents' custody and management of their children).

140. Mr. Rojas additionally has a liberty and property interest in availing himself of the statutory process of appealing his motion to reopen and receiving an adjudication. *See Calderon v. Sessions*, 330 F. Supp. 32 at 958 (recognizing a "right to try" to obtain immigration relief); *De Jesus Martinez v. Neilson*, 341 F.Supp.3d 400 at 407 (D.N.J. Sept. 14, 2018), appeal docketed, No. 18-3478 (3d Cir. Nov. 09, 2018) (granting a stay of removal because Plaintiff-Petitioner "has the right to complete the process created for individuals in his position, and because the government's attempt to frustrate that process violates his rights"); *Devitri v. Cronen*, 289 F. Supp. 3d 287, 295 (D. Mass. 2018) ("Here, there is a statutory right to move to reopen and an entitlement to not be deported to a country where persecution would occur…Thus, Plaintiff-

Petitioners do have a significant interest in the right to file a motion to reopen and the opportunity to have their fears of persecution and torture adjudicated before removal."); *see also United States v. Copeland*, 376 F.3d 61, 71 (2d Cir. 2004) (discussing the right to have relief adjudicated as distinct from the right to relief itself).

141. Mr. Rojas's liberty and property interests outweigh any government interest in his deportation. Any efforts by ICE to remove Plaintiff-Petitioner, without allowing him to avail himself of the procedures created by the INA and its regulations, and without providing any meaningful process at a meaningful time, violate and would violate procedural due process in the Constitution.

COUNT II:

PLAINTIFF-PETITIONER'S REMOVAL PRIOR TO THE ADJUDICATION OF HIS T NONIMMIGRANT STATUS APPLICATION VIOLATES THE ADMINISTRATIVE PROCEDURES ACT, THE TRAFFICKING VICTIMS PROTECTION ACT, THE IMMIGRATION AND NATIONALITY ACT, AND FEDERAL REGULATIONS

142. Plaintiff-Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

143. Under the Administrative Procedures Act, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. §704. The reviewing court "shall … hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §706(2)(A), (E). A court reviewing agency action "must assess … whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment; it must "examine[e] the reasons for agency decisions- or, as the case may be, the absence of such reasons." *Encino Motorcars LLC v. Navarro,* 136 S. Ct 2117, 2125 (2016) (quoting *Motor Vehicles Mfrs. Assn of U.S. State Farm*

Mut. Auto. Ins. Co. 462 U.S. 29, 43 (1983)); *Judulang v. Holder*, 565 U.S. 42, 53 (2011)(quotations omitted).

144. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. *See* 5 U.S.C. 553. DHS followed these rulemaking procedures to establish Trafficking Victims Protection Act ("TVPA"), authorizing T Nonimmigrant Status, *see* 867 Fed. Reg. 4784.

145. Plaintiff-Petitioner's deportation under the facts alleged here is a violation of the APA and causes prejudice to the U.S. per 8 C.F.R. §215.3(h) for four key reasons.

146. First, Plaintiff-Petitioner's deportation would render him statutorily ineligible for T Nonimmigrant Status, which would be a direct violation of the APA since it is not in accordance with the law and is an abuse of discretion. 5 U.S.C. §706(2)(A). In order to be statutorily eligible for a T visa, the Plaintiff-Petitioner *must* be physically in the U.S. on account of trafficking per 22 U.S.C. §7102(8); INA §101(a)(15)(T)(i).

147. Second, in attempting to execute Plaintiff-Petitioner's order of removal, the Government has attempted to strip the Plaintiff-Petitioner's right to pursue a T visa. Congress institutionalized the TVPA with specific regulations designed to grant T Nonimmigrant Status to detained victims with final orders of removal with the underlying goal of treating victims as "… victims, not criminals." Trafficking Victims Protection Act of 2000, Purpose and Findings (H.R. 8856)." Sec.102(b)(17). Congressional Record (October 5, 2000) ("[e]xisting laws fail to make clear distinctions between victims of trafficking and the perpetrators"); *see also* Senator Clinton (NY), Trafficking Victims Protection Act of 2000, *Congressional Record*. (July 16, 2004) p. S8276 (noting that many victims are mischaracterized as "illegal" migrants and are deported). Therefore, if Plaintiff-Petitioner is deported without his application being determined as bona

fide or before the automatic stay is granted or before his case is otherwise adjudicated, he can no longer pursue the relief he has been congressionally afforded in this specific posture. He would be denied the opportunity to try to live in T visa status in the U.S. with a work permit as well as a viable path to legal permanent residency.

148. Similarly, Mr. Rojas, as a victim of crime, will no longer be able to pursue "deferred action status" through his U visa application if he is deported. Like the T Visa, the U Visa reflects lawmakers' recognition that a crime victim's cooperation, assistance, and safety are essential to the effective detection, investigation, and prosecution of crimes. Pursuant to 8 U.S.C. § 1184(p)(2), only 10,000 U Visas are issued to crime victims per fiscal year. *See* 8 C.F.R. § 214.14(d)(1). Crime victims who are eligible for a U Visa, but are not granted the status because of the cap, are placed on a waiting list. 8 C.F.R. § 214.14(d)(2). Those on the waiting list and their qualifying family members are granted deferred action—a decision to stay their deportation as an act of prosecutorial discretion—while their petitions are pending. *Id.* USCIS may also grant these individuals and their qualifying family members work authorization. *Id.* Should ICE execute its removal order against Mr. Rojas prior to a determination of Mr. Rojas's U Visa eligibility, he and his family will be denied an automatic grant of deferred action and the ability to seek work authorization, causing him and his family irreparable harm.

149. Third**,** by attempting to deport Plaintiff-Petitioner, the Government violates its own Prosecutorial Discretion Memo, thereby causes prejudice to the U.S. under 8 C.F.R. § 215.3(h) and renders their actions invalid, arbitrary, and capricious. In the June 17, 2011 ICE Memo, Plaintiff-Petitioner should have been protected under this Memo as a survivor of human trafficking. Therefore, by attempting to deport a known survivor of human trafficking, the government acts in an arbitrary and capricious manner.

150. Fourth**,** in addition to the Plaintiff-Petitioner's due process interests, there is also a significant government interest favoring a stay to effectuate the T visa program and permit victims of human trafficking to assist law enforcement to detect and disrupt criminal activity. T Nonimmigrant Status was created to "substantially allow for more aggressive prosecution." Trafficking Victims Protection Act of 2000, Section 12. Strengthening Prosecution and Punishment of Traffickers. (H.R. 8881)." Sec.102(a). Congressional Record (October 5, 2000); *see also* Senator Brownback (WY). "Victims of Trafficking and Violence Protection Act of 2000". *Congressional Record* (October 10, 2000) p. S10139. U Nonimmigrant Status is similarly created to ensure cooperation with law enforcement in the investigation of crimes.

151. If Mr. Rojas is deported, he would be unable to continue assisting in an investigation by the Department of Labor. Exh. 10, Labor Dept. Letter. The INA provides that "it shall be unlawful . . . for any alien to depart . . . from . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." 8 U.S.C. § 1185(a)(1). Pursuant to this statutory provision, the Executive promulgated a series of regulations that bar the departure of immigrants whose departure would be "prejudicial to the United States." *See* 8 C.F.R. §§ 215.2 (citing as authority 6 U.S.C. §§ 202(4), 236; 8 U.S.C. §§ 1101, 1103, 1104, 1184, 1185, 1365a, 1379, 1731-32; and Exec. Order 13323, 69 Fed. Reg. 241, 241 (Jan. 2, 2004)); *see also* Control of Aliens Departing from the United States, 45 Fed. Reg. 65,515, 65,515-16 (Oct. 3, 1980) (promulgating into the immigration regulations a copy of the State Department's pre-existing list in 22 C.F.R. Part 46). If an immigrant's departure meets this definition, he "shall" not depart the United States, and any departure-control officer "shall temporarily prevent the departure of such alien" until, after certain procedures are followed, the immigrant's departure is determined to no longer be

prejudicial to the United States. 8 C.F.R. § 215.2. For these immigrants, the Executive is required to provide specific procedural guarantees: a hearing, a "special inquiry officer," the taking and receiving of evidence, and certain rights for the immigrant. 8 C.F.R. §§ 215.4, 215.5. Here, Mr. Rojas has been pursuing a complaint with the U.S. Department of Labor. It is in the interest of the government for the complaint to be considered. Thus, Defendants-Respondents are violating their governing statute and regulations.

152. In circumventing these processes, including an ongoing Department of Labor investigation and consideration by the U.S. Citizenship and Immigration Services of the pending applications, the Defendants-Respondents' actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" 5 U.S.C. 706(2)(C) and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C).

COUNT III

PLAINTIFF-PETITIONER'S REMOVAL PRIOR TO THE ADJUDICATION OF HIS MOTION TO REOPEN VIOLATES THE ADMINISTRATIVE PROCEDURES ACT, THE IMMIGRATION AND NATIONALITY ACT, AND FEDERAL REGULATIONS

153. Plaintiff-Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

154. Mr. Rojas has a statutory and regulatory right to appeal the denial of his motion to reopen his removal order before the BIA. *See* 28 U.S.C. §1229a(c)(7); *see also* 8 C.F.R. § 1003.2. The process to file a motion to reopen is "an 'important safeguard' intended 'to ensure a proper and lawful disposition' of immigration proceedings." *Kucana v. Holder*, 558 U.S. 233, 242 (2010) (quoting *Dada v. Mukasey*, 554 U.S.1, 18 (2008); *see also Toor v. Lynch*, 789 F.3d 1055, 1061 (9th Cir. 2015) (invalidating a regulation that barred post-departure motions to reopen on the

grounds that the INA provides a "statutory right to file a motion to reopen"); *Prestol Espinal v. Attorney Gen. of U.S.*, 653 F.3d 213, 218 (3d Cir. 2011) (similar).

155. Additionally, under the Administrative Procedures Act, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. §704. The reviewing court "shall … hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §706(2)(A),(E).

156. ICE is seeking to, arbitrarily and in violation of the law, deny Mr. Rojas his right to litigate his motion to reopen.

COUNT IV:

PLAINTIFF-PETITIONER'S DETENTION AND REMOVAL CONSTITUTE RETALIATION IN VIOLATION OF THE FIRST AMENDENT

157. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

158. To sustain a First Amendment retaliation claim, a plaintiff must show "first, that his speech or act was constitutionally protected; second, that the defendant's retaliatory conduct adversely affected the protected speech; and third, that there is a causal connection between the retaliatory actions and the adverse effect on speech." *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11th Cir. 2005).

159. Plaintiff-Petitioner has engaged in speech protected by the First Amendment. Mr. Rojas has criticized U.S. immigration law and policy, exposed the inner workings of the U.S. immigration detention system, and urged government officials to change it. Mr. Rojas's speech about U.S. immigration law and policy pertains to matters of public concern and seeks political change. It is therefore entitled to the highest level of protection under the First Amendment.

160. Defendants-Respondents have taken actions against Mr. Rojas that adversely affected his speech. Defendants-Respondents have detained Mr. Rojas, locking him away in the very system that he has publicly criticized. Defendants-Respondents have physically impairing Mr. Rojas's participation in upcoming events surrounding public discourse over the *The Infiltrators* documentary and U.S. immigration law and policy in general. Defendants-Respondents now seek to deport Mr. Rojas, which would deprive him of the opportunity to pursue his longstanding application for a T visa, in an attempt to ensure that he will not be able to return to the U.S. and engage in his protected public speech.

161. There is a causal connection between Mr. Rojas's protected speech and Defendants-Respondents' actions adversely affecting his speech. Defendants-Respondents have targeted, detained, and are attempting to deport Mr. Rojas because of his speech. After the debut of *The Infiltrators* documentary featuring Mr. Rojas and its exposure in the media and public discourse, and days before Mr. Rojas was set to speak about the film at the Miami Film Festival, ICE detained Mr. Rojas at his routine ICE check-in, after years of previously permitting him to live freely in the United States as he pursued his T visa. *Cf. Gutierrez-Soto v. Sessions*, No. EP-18-CV-00071-DCG, 2018 WL 3384317, at *10 (W.D. Tex. July 10, 2018).

162. As a result, this Court should declare that Defendants-Respondents' retaliatory actions violate the First Amendment; enter a preliminary and permanent injunction restraining Defendants-Respondents from taking any action to surveil, detain, deport, or otherwise take adverse action against Mr. Rojas unless Defendants-Respondents prove that is untainted by unlawful retaliation; and order Mr. Rojas's release, restoring him to the position he was in prior to Defendants' retaliatory actions.

COUNT VI:

PLAINTIFF-PETITIONER'S DETENTION AND REMOVAL CONSTITUTE CONTENT, VIEWPOINT, AND SPEAKER DISCRIMINATION IN VIOLATION OF THE FIRST AMENDMENT

163. Plaintiff-Petitioner incorporates the preceding paragraphs as if fully set forth herein.

164. Government action that targets speech based on its content is presumptively unconstitutional and is justified only if the Government demonstrates that it is narrowly tailored to serve a compelling state interest. *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015).

165. Defendants-Respondents' detention and attempted deportation of Mr. Rojas on the basis of his protected speech criticizing U.S. immigration law and policy and the U.S. immigration detention system targets speech based on its content, does not serve a compelling state interest, and is not narrowly tailored.

166. Government action that targets private speech based on the viewpoint taken by the speaker is unconstitutional. *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011).

167. Defendants-Respondents' detention and attempted deportation of Mr. Rojas on the basis of his protected speech criticizing U.S. immigration law and policy and the U.S. immigration detention system targets private speech based on the viewpoint of the speaker.

168. Government action that targets speech based on the identity of the speaker is presumptively unconstitutional and is justified only if the Government demonstrates that it is narrowly tailored to serve a compelling state interest. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

169. As a result, this Court should declare that Defendants-Respondents' targeting of Mr. Rojas for detention and deportation on the basis of his protected speech criticizing immigration

policy violates the First Amendment; enter a preliminary and permanent injunction restraining Defendants-Respondents from taking any action to surveil, detain, remove, or otherwise take adverse action against Mr. Rojas unless Defendants-Respondents prove it is untainted by unlawful discrimination; and order Mr. Rojas's release, restoring him to the position he was in prior to Defendants' discriminatory actions.

COUNT VII:

PLAINTIFF-PETITIONER'S DETENTION IS UNCONSTITUTIONAL BECAUSE IT BEARS NO REASONABLE RELATIONSHIP TO ANY LEGITIMATE PURPOSE

170. Plaintiff-Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

171. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at 690-691; *Guerrero-Sanchez*, 905 F.3d at 225; *Diop v. ICE*, 656 F.3d 221, 233–234 (3d Cir. 2011); *Gordon v. Shanahan*, No. 15-Civ-261, 2015 WL 1176706 at *10 (S.D.N.Y. Mar. 13, 2015).

172. Mr. Rojas is neither a danger nor a flight risk. The detention of Mr. Rojas, approximately seven years after his release is arbitrary on its face. For almost seven years, Mr. Rojas has dutifully complied with every condition of his order of supervision. Further, because Mr. Rojas's order of removal became administratively final as of 2010, his continued detention is arbitrary and violates due process. *See supra,* Fourth Cause of Action.

173. Because Mr. Rojas's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention without a bond hearing is unlawful.

COUNT VIII:

PLAINTIFF-PETITIONER'S DETENTION VIOLATES THE INA, REGULATIONS THEREUNDER, AND DUE PROCESS BECAUSE HE HAS BEEN RELEASED ON A VALID ORDER OF SUPERVISION

174. Plaintiff-Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

175. Defendants-Respondents' presumed basis for re-detaining Mr. Rojas is 8 U.S.C. § 1231, the statute governing detention following a final order of removal ("post-order detention"). Under the terms of this statute and the governing regulations, Mr. Rojas's detention is unlawful.

176. 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. The third subclause of 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory removal period "*shall* be subject to supervision" (emphasis added) under specific terms, including requirements that he or she appear periodically before an immigration officer and obey any written restrictions. *See also* 8 C.F.R. § 241.5 (specific conditions for release—involving but not limited to reporting requirements and travel document acquisition requirements—should an order of supervision be issued).

177. Furthermore, 8 U.S.C. § 1231(a)(7) provides that work authorization can be issued when the removal of an individual is impossible as a result of travel document related issues or "otherwise impracticable or contrary to the public interest." *See also* 8 C.F.R. §§ 241.5(c); 274a.12(c)(18).

178. The 90-day statutory removal period in Mr. Rojas's case ran from on or about October 24, 2010, the date upon which the removal order became effective.

179. Mr. Rojas was detained in 2012 but released on an order of supervision ("OSUP").

180. To the extent that the Government has revoked Mr. Rojas's OSUP without notice or an opportunity to be heard, the Government has violated the statute and the applicable regulations – 8 C.F.R. §§ 241.4(l) and 241.13(i) – by failing to provide Mr. Rojas with a particularized notice of the reason(s) of the revocation of his release or an opportunity to respond to the allegations contained therein. When the Government fails to comply with its own federal regulations, as it did when it revoked Mr. Rojas's release in violation of its own procedures, the action should be found invalid. *See e.g., Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403-04 (S.D.N.Y. 2004) (granting habeas petition where Plaintiff-Petitioner was deported fewer than seventy-two hours after her arrest and regulation mandated a seventy-two-hour rule); *see also Rombot v. Souza*, No. 17-11577-PBS, 2017 U.S. Dist. LEXIS 185244, at *12 (D. Mass. Nov. 8, 2017).

181. Moreover, under the Administrative Procedures Act, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing Court "shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be—. . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §§ 706(2)(A), (E).

182. The decision to detain Mr. Rojas, who had previously been released on an order of supervision, and neither violated nor failed to comply with the conditions thereto for almost seven years until his re-detention on February 27, 2019, must be reviewed by this Court and found to be "arbitrary, capricious, an abuse of discretion and not in accordance with the law." 5 U.S.C. §§ 706(2)(A), (E). Absent this Court's intervention, Mr. Rojas does not have any "remedy" to challenge the decision of the Defendants-Respondents.

183. The INA specifies circumstances upon which a person may be released from custody, and it does not provide for re-detention except impliedly for a violation of those terms. The relevant

regulatory framework (8 C.F.R. §§ 241.4(l) and 241.13(i)) authorizes revocation of an individual's release on an order of supervision only in certain contexts. Section 241.4(l) specifies revocation may occur upon violation of the conditions of release or when, in the district director's opinion, revocation is in the public interest because one of four conditions is met: "(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). Section 241.13(i) provides further conditions where release decisions may be revoked, only for the purpose of removal. Notably, several of these provisions are found only in the regulations and not the statute and are ultra-vires, but even to the extent they apply, Defendants-Respondents have failed to comply with the process.

184. Under 8 C.F.R. § 241.13(i), Mr. Rojas has, at minimum, a regulatory right to a detailed explanation for the reasons of revocation as well as an interview to contest the basis for the revocation. Upon information and belief, Mr. Rojas has been provided with neither proper notice nor an opportunity for an interview, and certainly not one where counsel was informed or could be present. Nor are these minimum regulatory requirements legally sufficient, in that these paper hearings go before the same immigration officials that decided to detain him in the first place—making them both judge and jailer. Nonetheless, at minimum, "ICE has the duty to follow its own federal regulations." *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003) (quoting *Nelson v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000)). It has failed to do so here.

185. In addition, the Government's actions have also deprived Mr. Rojas of due process of law. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth

Amendment. *See Matthews v. Eldridge*, 424 U.S. at 332; see also *Perry v. Sindermann*, 408 U.S. at 601-03 (1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

186. Mr. Rojas's Order of Supervision creates legitimate liberty and property interests.

187. First, Mr. Rojas has a liberty interest in his freedom from physical confinement, which his order of supervision and stay of removal help to secure. *See Zadvydas v. Davis,* 533 U.S. at 690.

188. Second, Mr. Rojas also has a property interest in his Order of Supervision. Property interests "are created and their dimensions are defined by existing rules or understandings that . . . secure certain benefits and that support claims of entitlement to those benefits." *Board of Regents of State Colleges v. Roth*, 408 U.S. at 577.

189. Mr. Rojas has complied with the terms of his order of supervision since 2012.

190. To the extent that the Government revoked Mr. Rojas's Order of Supervision without prior notice or opportunity to be heard, the Government has acted in violation of statute, regulations, and the U.S. Constitution.

COUNT IX:

PLAINTIFF-PETITIONER'S DETENTION VIOLATES THE FOURTH AMENDMENT BECAUSE HE HAS BEEN ARRESTED WITHOUT A JUDICIAL PROBABLE CAUSE DETERMINATION

191. Plaintiff-Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

192. The Fourth Amendment requires that all arrests entail a neutral judicial determination of probable cause, either before the arrest (in the form of a warrant) or promptly afterward (in the form of a prompt judicial probable cause determination). See Gerstein v. Pugh, 420 U.S. 103, 114 (1975). Absent a bona fide emergency or other extraordinary circumstance, failure to receive a judicial probable cause determination within 48 hours of detention violates the Fourth Amendment as a matter of law. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). The 48 hours includes weekends.

193. Defendants-Respondents did not provide a judicial probable cause determination at any time for Mr. Rojas. Defendants-Respondents' failure to provide Mr. Ramirez with a prompt, judicial probable cause determination has resulted in his continued imprisonment in violation of his Fourth Amendment right to be free from unreasonable seizures.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Petitioner requests that this Court:

a. Exercise jurisdiction over this matter;

b. Temporarily stay Mr. Rojas's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Declare that any deportation of Mr. Rojas prior to the full adjudication of his applications for a T visa and U visa would violate the Due Process Clause of the Fifth Amendment, the TVPA, INA, APA, and federal regulations;

d. Declare that any deportation of Mr. Rojas prior to the full adjudication of his motion to reopen removal proceedings would violate the Due Process Clause of the Fifth Amendment, the INA, APA, and federal regulations;

e. Declare that Defendants-Respondents' retaliation against Mr. Rojas on the basis of his protected political speech about U.S. immigration law and policy violates the First Amendment;

f. Declare that Defendants-Respondents' discrimination against Mr. Rojas based on the content and viewpoint of his speech and the identity of the speaker violates the First Amendment;

g. Order Mr. Rojas's immediate release or, in the alternative, a constitutionally adequate, individualized hearing before a neutral decisionmaker in which Defendants-Respondents bear the burden of establishing that Mr. Rojas's continuing detention is justified;

h. Order a stay of removal until Mr. Rojas's applications for a T visa and U visa are fully adjudicated, including all administrative appeals;

i. Order Defendants-Respondents to refrain from taking any action to surveil, detain, remove, or otherwise take adverse action against Mr. Rojas unless Defendants-Respondents demonstrate to the Court's satisfaction that such action is untainted by unlawful retaliation or discrimination against protected speech;

j. Award Plaintiff-Petitioner costs and reasonable attorneys' fees; and

k. Order such other relief as this Court may deem just and proper.

March 14, 2019
Miami, Florida

Respectfully submitted,

By: /s/ *Rebecca Sharpless*

Rebecca Sharpless
Florida Bar No. 0131024
Immigration Clinic
University of Miami School of Law
1311 Miller Drive Suite E-273
Coral Gables, Florida 33146
Tel: (305) 284-3576, direct

Tel: (305) 284-6092, clinic
rsharpless@law.miami.edu

Alina Das*
Jessica Rofé*
Washington Square Legal Services
Immigrant Rights Clinic
New York University School of Law
245 Sullivan Street, 5th Floor
New York, NY 10012
(212) 996-6430
alina.das@nyu.edu
jessica.rofe@nyu.edu

Gregory P. Copeland, Legal Director*
Sarah T. Gillman, Legal Director*
NSC Community Legal Defense
81 Prospect Street (WeWork Ste. 7000)
Brooklyn, New York 11201
Phone: (212) 433-0914/(917)449-2823
Fax: (212) 257-7033

Sandy R. Pineda
Francisco Javier Lopez, Jr.*
Angel F. Leal, Jr., P.A.
8700 W. Flagler Street, Suite 402
Miami, Florida 33174
(305) 856-3139
spineda@angelleal.com
flopez@angelleal.com

*Motion to appear pro hac vice forthcoming

Counsel for Plaintiff-Petitioner

PLAINTIFF-PETITIONER VERIFICATION

I am submitting this verification on behalf of the Plaintiff-Petitioner because I am one of the Plaintiff-Petitioner's attorneys. I have discussed with the Plaintiff-Petitioner's legal team the events described in this Amended Complaint and Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Amended

Complaint and Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

By: /s/ *Rebecca Sharpless*

Rebecca Sharpless
Florida Bar No. 0131024
Immigration Clinic
University of Miami School of Law
1311 Miller Drive Suite E-273
Coral Gables, Florida 33146
Tel: (305) 284-3576, direct
Tel: (305) 284-6092, clinic
rsharpless@law.miami.edu

CERTIFICATE OF SERVICE

I hereby certify that, on March 14, 2018, I electronically served a true and correct copy of the foregoing on counsel for Defendants/Respondents via transmission of a Notice of Electronic Filing generated by the CM/ECF system of the U.S. District Court of the Southern District of Florida.

By: /s/ *Rebecca Sharpless*

Rebecca Sharpless
Florida Bar No. 0131024
Immigration Clinic
University of Miami School of Law
1311 Miller Drive Suite E-273
Coral Gables, Florida 33146
Tel: (305) 284-3576, direct
Tel: (305) 284-6092, clinic
rsharpless@law.miami.edu