

DA: February 6, 2008  
FR: Stanford Law School Immigrants Rights' Clinic  
RE: Introduction to Sample Motion to Suppress for Raids *Pro Bono* Lawyers

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The following is a sample motion to suppress evidence and a supporting declaration. The motion was prepared for use by *pro bono* and immigration lawyers representing individuals apprehended through immigration raids in the Bay Area. Accordingly, the law is based heavily on cases from the Ninth Circuit.

Based on reports of raids that have occurred in Northern California and nationwide, the sample motion assumes the following facts:

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

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

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

If you use the sample motion as the basis for your motion to suppress, the Clinic would be interested in hearing about your experience. Please do not hesitate to contact us at [immigrants.rights@law.stanford.edu](mailto:immigrants.rights@law.stanford.edu).

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11 UNITED STATES DEPARTMENT OF JUSTICE  
12 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
13 OFFICE OF THE IMMIGRATION JUDGE  
14 SAN FRANCISCO, CALIFORNIA

15 In the Matter of:

16 Juan CALDERON,

17 Respondent,

18 In Removal Proceedings.

19 Alien No.: A-- --- ---

20 **MOTION TO SUPPRESS EVIDENCE**

21 Date of Hearing: -----

22 Time of Hearing: ----

23 Before: Honorable -----

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29 **Motion to Suppress Evidence**

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**MOTION TO SUPPRESS EVIDENCE**

The Respondent in the above matter moves for the suppression and exclusion of all evidence, physical and testimonial, obtained or derived from or through or as a result of ICE's unlawful search, seizure, interrogation, arrest, and detention which occurred on or about July 1, 2007, at 123 Main Street, Apt. B, East Redwood City.

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

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

2. Any statement by the Respondent on Form I-215B, any other statement made by the Respondent, signed or unsigned, or any oral statements or confessions made by the Respondent.

3. Any and all other property, papers, information, or testimony pertaining to the Respondent, obtained or taken from him, on or about July 1, 2007 and at anytime thereafter, by agents of ICE, or by any other person acting in concert with them.

4. Any and all other property, papers, information or testimony pertaining to the Respondent obtained as the fruit of the illegal search, seizure, detention, interrogation and arrest that occurred on or about July 1, 2007.

**INTRODUCTION**

Respondent Juan Calderon files this motion to suppress evidence gathered by Immigration and Customs Enforcement ("ICE") agents using tactics prohibited by the Fourth Amendment, Fifth Amendment, and Department of Homeland Security ("DHS") regulations. ICE agents violated the Fourth Amendment in four main ways. First, ICE agents barged into Mr. Calderon's home without Mr. Calderon's voluntary consent, and without a valid warrant. Second, ICE agents deliberately used coercion and duress to conduct the search and seizure.

1 Third, ICE agents had no articulable reason to harbor suspicion that Mr. Calderon had violated  
2 the law. Fourth, ICE agents targeted Mr. Calderon based on his race. The ICE agents' violations  
3 of the Fourth Amendment were egregious because the agents acted deliberately and violated  
4 rules with which any reasonable immigration officer should have been familiar.

5 The ICE agents also violated the Fifth Amendment by coercing Mr. Calderon into  
6 making statements involuntarily and in a fundamentally unfair manner. The ICE agents' blatant  
7 violations of the Fifth Amendment require this Court to suppress the evidence before it.

8 Finally, ICE agents also violated agency regulations, providing yet another reason for this  
9 Court to suppress the evidence before it. The ICE agents violated various regulations codified at  
10 8 C.F.R. § 287 that required them to obtain a valid warrant or Mr. Calderon's consent before the  
11 search, develop reasonable suspicion before questioning and seizing him, refrain from placing  
12 Mr. Calderon under coercion or duress during the search, and adhere to certain procedures during  
13 arrests. The violated regulations were meant to protect Mr. Calderon, and mirrored the  
14 requirements of the Fourth and Fifth Amendments. Moreover, the ICE agents' actions caused  
15 prejudice to Mr. Calderon.

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

### 19 STATEMENT OF FACTS

20 On July 1, 2007, Juan Calderon woke up in the middle of the night because he heard loud  
21 banging on the front door of his home. In a half-awake state, Mr. Calderon got out of bed and  
22 looked outside of the door's peephole. He saw several men wearing dark uniforms, holding  
23 guns, and shining bright flashlights outside of his door. He did not know who they were. He  
24 heard one of the uniformed men call out his name and order him to open the door several times.  
25 Calderon Decl.

26 Exhausted and confused, Mr. Calderon cracked open the door so that he could ask what  
27 they wanted. As he opened the door, he asked, "who are you and why are you here?" at which  
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1 point flashlights were shined into his eyes and the door was pushed open. Seven ICE agents, all  
2 displaying guns, walked into the apartment. None of the agents asked Mr. Calderon whether  
3 they had permission to enter. One of the agents thrust a piece of paper in front of Mr. Calderon,  
4 and then quickly put the document away before Mr. Calderon had a chance to examine it. Two  
5 of the agents stood by the door of Mr. Calderon’s apartment, blocking the door. Mr. Calderon  
6 was very frightened. While tapping his gun, one of the ICE agents asked Mr. Calderon if his  
7 name was “Juan Calderon,” to which Mr. Calderon said yes. Id.

8 One of the agents asked Mr. Calderon for his passport and green card. Mr. Calderon was  
9 frightened and went to his bedroom. The agent followed him. Mr. Calderon opened his  
10 nightstand drawer, and showed the agent his Mexican passport while the agent stood by the  
11 bedroom door. The agent asked Mr. Calderon whether he had a green card. The agent continued  
12 to stand by the bedroom door. Id.

13 Mr. Calderon could hear his wife being interrogated, and could also hear his two young  
14 daughters, ages 1 and 3, crying in the other room. Afraid for the safety of his family, he told the  
15 agent that he did not have a green card and that he did not have papers to be in the United States.  
16 The ICE agent then handcuffed Mr. Calderon. Many of the residents in Mr. Calderon’s  
17 apartment building are Latino, and Mr. Calderon’s name is displayed on his mailbox. Id.

## 18 ARGUMENT

### 19 **I. This Court Should Suppress All Evidence Of Mr. Calderon’s Alienage Because** 20 **ICE Obtained The Evidence Through Egregious Violations Of The Fourth** 21 **Amendment.**

22 The Supreme Court has recognized that courts should suppress evidence in the case of  
23 “egregious violations of Fourth Amendment or other liberties that might transgress notions of  
24 fundamental fairness.” INS v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984).<sup>1</sup> The “clearly  
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27 <sup>1</sup> The INS v. Lopez-Mendoza court stated, however, that evidence collected through “peaceful  
28 arrests by INS officers” does not warrant application of the Fourth Amendment’s exclusionary  
29 rule in deportation hearings. Id. at 1051.

1 established law” in the Ninth Circuit provides that during immigration proceedings, “evidence  
2 must be suppressed if it was obtained through an egregious violation of the Fourth Amendment.”  
3 Orhorhaghe v. INS, 38 F.3d 488, 493 (9th Cir. 1994).

4 Egregious violations occur when government agents have either engaged in “conduct a  
5 reasonable officer should have known would violate the Constitution” or “committed the  
6 violations deliberately.” Id. at 493. Indeed, “all bad faith violations” of the Fourth Amendment  
7 “are considered sufficiently egregious to require application of the exclusionary sanction” in  
8 immigration proceedings. Gonzalez-Rivera v. INS, 22 F.3d 1441, 1449 (9th Cir. 1994).  
9 Evidence collected through egregious violations requires suppression regardless of the  
10 evidence’s probative value. Orhorhaghe, 38 F.3d at 501-02; Adamson v. Commissioner of  
11 Internal Revenue, 745 F.2d 541, 545 (9th Cir. 1984).

12 Here, ICE agents engaged in at least four types of egregious violations of the Fourth  
13 Amendment. First, they searched Mr. Calderon’s home without either a constitutionally  
14 judicially authorized search warrant or Mr. Calderon’s voluntary consent. Second, the ICE  
15 agents used coercion and duress during the search. Third, they lacked reasonable suspicion to  
16 seize Mr. Calderon. Fourth, the ICE agents targeted Mr. Calderon based on his race and Latino-  
17 sounding last name.

18 **A. ICE’s Unlawful and Coercive Search Of Mr. Calderon’s Home Without Either**  
19 **A Constitutionally Sufficient Warrant Or His Voluntary Consent Constituted**  
20 **An Egregious Violation Of The Fourth Amendment.**

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

23 [O]ne governing principle, justified by history and by current experience, has *consistently*  
24 *been followed* [in the Fourth Amendment]: except in certain carefully defined classes of  
25 cases, a search of private property without proper consent is ‘unreasonable’ unless it has  
26 *been authorized by a valid search warrant.*

1 Camara v. Municipal Court, 387 U.S. 523, 528-29 (1967) (emphasis added). See also Payton v.  
2 New York, 445 U.S. 573, 585 (1980) (“physical entry of the home is the chief evil against which  
3 the wording of the Fourth Amendment is directed”).

4 The ICE agents’ failure to obtain a judicial warrant amounts to an egregious violation of  
5 the Fourth Amendment because any reasonable ICE agent should know that the Constitution  
6 required either a judicially authorized search warrant or the resident’s voluntary consent. In  
7 Orhorhage v. INS, the Ninth Circuit held that egregious violations of the Fourth Amendment  
8 occurred during four INS agents’ “nonconsensual warrantless entry” into an alien respondent’s  
9 home. 38 F.3d at 492. The Ninth Circuit also noted that any “reasonable officer who receives”  
10 internal INS training “should be aware of *basic principles of Fourth Amendment law* which have  
11 been consistently espoused for over a decade.” Id. at 503 & n.23 (emphasis added).

12 Furthermore, any ICE agent should know that they were required under the Fourth  
13 Amendment to obtain a valid search warrant “issued by a magistrate upon a showing that  
14 probable cause exists to believe that the subject of the warrant has committed an offense.”  
15 Steagald v. United States, 451 U.S. 204, 213 (1981). The warrant must “describe with the  
16 requisite particularity the person to be seized.” International Molders’ and Allied Workers’ Local  
17 Union No. 164 v. Nelson, 643 F. Supp. 884, 890 (N.D. Cal. 1986). International Molders’ found  
18 invalid the then-INS’ use of administrative warrants which failed to name the specific persons to  
19 be searched during an investigation of factories in Northern California, noting that “a warrant  
20 authorizing the search of premises and specified individuals is not an adequate basis to search *all*  
21 individuals on those premises.” Id. at 891 (emphasis in original). The court also stated that  
22 “[t]he Ninth Circuit [] has made it abundantly clear” that the use of immigration-related  
23 warrants is “to be scrutinized under traditional fourth amendment doctrine.” Id. at 892 (emphasis  
24 added).<sup>2</sup>

25  
26 <sup>2</sup> Other jurisdictions have held that the use of any document other than a judicial warrant, signed upon a showing of  
27 probable cause, does not permit immigration agents to search and seize individuals like Mr. Calderon. See also  
28 Illinois Migrant Council v. Pilloid, 531 F. Supp. 1011, 1020-22 (N.D. Ill. 1982) (stating that “administrative  
warrants may not be used by INS to justify the seizure of persons” and the “sort of warrant the [Supreme] Court has  
always required for the search of a dwelling is a warrant based upon judicial determination of probable cause”);

1 ICE bears the burden of proving that the “piece of paper” they brought with them was a  
2 valid search warrant. Calderon Decl. at 5; Matter of Barcenas, 19 I. & N. Dec. 609, 611 (BIA  
3 1988). Absent evidence to the contrary, this Court should conclude that the ICE agents did not  
4 have a constitutionally sufficient warrant when they barged into Mr. Calderon’s home.

5 Assuming that the ICE agents lacked a valid search warrant, the ICE agents were  
6 required by the Fourth Amendment to obtain Mr. Calderon’s voluntary consent before  
7 conducting the search. The Supreme Court has long held that the government bears the burden  
8 of showing that consent was “voluntarily given, and not the result of duress or coercion, express  
9 or implied.” Orhorhaghe, 38 F.3d at 500, citing Schneckloth v. Bustamonte, 412 U.S. 218, 248  
10 (1973). Courts have found that non-citizens did not voluntarily consent to searches by  
11 immigration agents based on factors such as, *inter alia*, the early morning or late evening hour of  
12 the search; the failure of immigration agents to advise individuals of their right to refuse consent;  
13 the number of immigration agents compared to the number of immigrants; immigration agents’  
14 display of weapons; and immigration agents’ assertions of authority to conduct the search. See  
15 LaDuke v. Nelson, 762 F.2d 1318, 1326 (9th Cir. 1985); Orhorhaghe, 38 F.3d at 500.

16 Here, any consent provided by Mr. Calderon resulted from coercion and duress, and was  
17 therefore involuntary. The ICE agents pushed Mr. Calderon’s door open with such force that he  
18 nearly fell to the floor. Calderon Decl. at 5. The fact that the ICE agents pushed open Mr.  
19 Calderon’s door, by itself, demonstrates that he did not consent to the agents’ entry into his  
20 apartment. See United States v. Shaibu, 920 F.2d 1423, 1427 (9th Cir. 1990) (holding that “there  
21 is no authority that an open door gives police legal grounds to enter the home” where officers  
22 followed resident into his home through an open door). Furthermore, the agents’ actions placed  
23 Mr. Calderon under coercion and duress, thus making it impossible for him to voluntarily  
24 consent to the search. ICE agents knocked on Mr. Calderon’s home at approximately 4 a.m., a  
25 time when Mr. Calderon and his family were asleep and unable to fully comprehend their  
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27 United States v. Karathanos, 399 F. Supp. 185, 188 (E.D.N.Y. 1975) (finding “no support whatsoever for a standard  
28 of probable cause to search for ‘illegal’ aliens less rigorous than that prevailing in searches relating to matters  
generally considered to be crimes”).

29 **Motion to Suppress Evidence**



1 surroundings. Calderon Decl. at 3-4. Throughout the search, Mr. Calderon was scared and  
2 frightened, or felt that he had no other option but to comply with the ICE agents' demands. *Id.* at  
3 4-8. The agents shined flashlights into the peephole of Mr. Calderon's front door, making it  
4 difficult for him to identify who the agents were. *Id.* at 5. Once inside, the ICE agents displayed  
5 guns. *Id.* at 6. They outnumbered Mr. Calderon, seven to one. *Id.* at 5. When Mr. Calderon  
6 walked to his bedroom and showed his Mexican passport to the ICE agent, he did not believe he  
7 had any choice but to acquiesce to the agent's request. *Id.* at 7. Furthermore, while in his  
8 bedroom, and before making statements about his alienage, Mr. Calderon feared for the safety  
9 and well-being of his wife and two young children. *Id.* at 8. Under these circumstances, Mr.  
10 Calderon could not have voluntarily consented to the search of his home.

11 Accordingly, this Court should find that ICE agents egregiously violated the Fourth  
12 Amendment by conducting an unlawful search of Mr. Calderon's home without either a valid  
13 warrant or Mr. Calderon's voluntary consent.

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

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

22 Here, the ICE agents' actions inside Mr. Calderon's apartment were deliberate, coercive,  
23 and intended to place him under duress. None of the ICE agents' actions were accidental or even  
24 necessary. The agents chose to knock on Mr. Calderon's door in the middle of the night, and  
25 chose to shine flashlights into the viewing hole of the front door. They chose not to ask him for  
26 permission to enter his home, and instead pushed open the door themselves to begin their  
27 unlawful search. Once inside, the ICE agents deliberately displayed their weapons to Mr.  
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1 Calderon, and blocked the doors of his apartment and bedroom. Even if this Court finds that a  
2 reasonable ICE agent would not know that their actions violated the Fourth Amendment, the  
3 Court should find that the agents deliberately caused the violations, so that the violations were  
4 egregious.

5 Therefore, this Court should find that the ICE agents' actions also constituted egregious  
6 violations because they deliberately violated the Fourth Amendment, as evidenced by their use of  
7 coercion and duress.

8 **C. ICE's Unlawful Seizure of Mr. Calderon, Without Reasonable Suspicion,**  
9 **Constituted An Egregious Violation Of The Fourth Amendment.**

10 The Fourth Amendment clearly requires immigration agents to have reasonable suspicion  
11 before seizing a non-citizen. Brignoni-Ponce, 422 U.S. 873, 886-87 (1975); Orhorhaghe, 38  
12 F.3d at 494. A seizure occurs when a "reasonable person...believe[s] that he [is] not free to  
13 leave" the presence of government agents, United States v. Mendenhall, 446 U.S. 544, 554  
14 (1980), including when a government officer "merely indicate[s] by his authoritative manner that  
15 the person is not free to leave." United States v. Patino, 649 F.2d 724, 727 (9th Cir. 1981).  
16 Moreover, where a search occurs in a private home, as it did here, the Ninth Circuit has stated  
17 that this "militates strongly in favor of finding a *seizure*." Orhorhaghe, 38 F.3d at 495; see also  
18 La Duke, 762 F.2d at 1328-29 (establishing that a place of residence has the highest "measure of  
19 protection" under the Fourth Amendment).

20 Reasonable suspicion must provide a "rational basis for separating out the illegal aliens  
21 from American citizens and legal aliens." Nicacio v. I.N.S., 797 F.2d 700, 704 (9th Cir. 1985).  
22 Reasonable suspicion also requires "specific articulable facts." Gonzales-Rivera, 22 F.3d at  
23 1445. In Gonzales-Rivera, for example, the Ninth Circuit held that no reasonable suspicion  
24 existed where the immigration agent claimed that he stopped the immigrant based on "Gonzalez'  
25 failure to look at the Border Patrol car; the fact that he appeared to have a 'dry' mouth; the fact  
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1 that he was blinking; and Gonzalez' Hispanic appearance." Gonzales-Rivera, 22 F.3d at 1446.  
2 Any reasonable ICE agent should be well-versed in these requirements.<sup>3</sup>

3 Mr. Calderon was clearly "seized" within the meaning of the Fourth Amendment because  
4 he was not free to leave the ICE agents' interrogation during ICE's unauthorized presence in his  
5 home. As soon as the seven ICE agents pushed open his front door, two agents stood by the door  
6 with weapons, which would have caused any reasonable person to believe that he was not free to  
7 leave his apartment. Calderon Decl. at 7. When another agent demanded to know if Mr.  
8 Calderon was "Juan Calderon," the agent tapped on his gun, thus bringing Mr. Calderon's  
9 attention to the fact that they were armed and prepared to force Mr. Calderon to comply with  
10 their demands. Id. at 6. When an agent demanded that Mr. Calderon show him his passport and  
11 green card, Mr. Calderon moved to his bedroom, and the agent stood by the door of Mr.  
12 Calderon's bedroom. Id. at 7. Mr. Calderon believed he had no choice but to comply with the  
13 agent's orders. Id.

14 Moreover, throughout the seizure, the ICE agents lacked a reason to suspect that Mr.  
15 Calderon had violated any federal immigration law. They lacked reasonable suspicion because  
16 they appear to have had no information about Mr. Calderon's immigration status at the time they  
17 knocked on his front door. Once inside his home, they had no objective, articulable basis for the  
18 seizure because they had not gathered any evidence to suggest that Mr. Calderon had violated  
19 any immigration provisions. By the time the agent demanded Mr. Calderon's passport and green  
20 card, Mr. Calderon had not provided the agent with any reason to believe he had violated any  
21 law. Accordingly, the ICE agents seized him without reasonable suspicion.

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27 <sup>3</sup> As discussed *infra* at Part III.B, ICE's own agency regulations clearly prohibit officers from restraining the ability  
28 of a person in Mr. Calderon's situation from "walk[ing] away" from the interrogation unless the officer has  
"reasonable suspicion, based on specific articulable facts." 8 C.F.R. § 287.8(b)(1)-(2).

1                   **D. ICE Agents Seized Mr. Calderon Due to His Latino-Sounding Name and Latino**  
2                   **Appearance, Which the Ninth Circuit Has Already Held to Constitute an**  
3                   **Egregious Violation of the Fourth Amendment.**

4                   The Supreme Court has explicitly prohibited immigration agents from relying on racial  
5 characteristics to conduct a seizure. Brignoni-Ponce, 422 U.S. at 884-885. The Ninth Circuit  
6 has specifically held that searches and seizures based on race are *egregious* violations of the  
7 Fourth Amendment. Gonzales-Rivera v. INS, 22 F.3d 1441, 1452; Orhorhaghe v. INS, 38 F.3d  
8 488, 503 (9th Cir. 1994).

9                   In Orhorhage, the appellate court found that evidence of racial profiling on the basis of  
10 the alien’s “Nigerian-sounding name” constituted an egregious violation. Orhorhage, 38 F.3d at  
11 503. The Ninth Circuit’s reasoning was based on the fact that the Supreme Court had explicitly  
12 held “over a decade” earlier, in Brignoni-Ponce, that investigative seizures based on an alien’s  
13 Hispanic appearance were unconstitutional. Id. at 503; Brignoni-Ponce, 422 U.S. at 884-85.  
14 Accordingly, “[b]ecause the Brignoni-Ponce principle was firmly established at the time” the  
15 INS investigation took place, the Orhorhage court found that “a reasonable officer should have  
16 known that both the seizure of Orhorhage and the unlawful entry into his apartment violated the  
17 Constitution.” Orhorhage, 38 F.3d at 503. Today, this Court can expect any reasonable ICE  
18 agent to know that searches and seizures based on race are unlawful.

19                   ICE agents appear to have entered Mr. Calderon’s home because of his race. Mr.  
20 Calderon was at home asleep at the time the ICE agents chose to knock on his front door. The  
21 ICE agents lacked any reason to target him for questioning. Once inside his apartment, Mr.  
22 Calderon was dazed, confused, and exhausted because the agents had roused him from sleep, and  
23 he did not do anything to give rise to reasonable suspicion. However, Mr. Calderon resides in a  
24 majority-Latino neighborhood, has a Latino-sounding last name which appears on his mailbox,  
25 and is of Latino descent.

26                   If Mr. Calderon presents *prima facie* evidence of the improper use of race by the ICE  
27 agents, then ICE bears the burden of showing that their actions were not motivated by race.  
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1 Matter of Barcenas, 19 I. & N. Dec. at 611. Mr. Calderon presents *prima facie* evidence that ICE  
2 violated the Fourth Amendment by targeting Mr. Calderon on the basis of his race and Latino-  
3 sounding last name. Absent evidence presented by ICE to refute the *prima facie* evidence, this  
4 Court should find that the ICE agents seized Mr. Calderon due to his race.

5 **II. This Court Should Suppress Mr. Calderon’s Statements Regarding His**  
6 **Immigration Papers Because ICE Agents Engaged in Fundamentally Unfair**  
7 **Violations Of The Fifth Amendment.**

8 In addition to the Fourth Amendment violations, the ICE agents’ violations of the Fifth  
9 Amendment warrant suppression of the evidence. Where ICE officials engage in coercive tactics  
10 that cause individuals to make statements involuntarily, allowing such statements to serve as the  
11 basis for a removal hearing would be fundamentally unfair. Bong Youn Choy v. Barber, 279  
12 F.2d 642, 646-47 (9th Cir. 1960); Matter of Garcia, 17 I. & N. Dec. 319, 321 (BIA 1980).

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

25 The coercive tactics used by the ICE agents rendered it impossible for Mr. Calderon to  
26 make voluntary statements to the ICE agents. Before surrendering his Mexican passport, he had  
27 been woken up in the middle of the night after ICE agents barged into his private home without a  
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1 valid warrant, outnumbered him, and openly displayed their deadly weapons. Calderon Decl. at  
2 4-5. By the time he told the ICE agent that he did not have papers to be in the United States, he  
3 had already been intimidated by the ICE agents' behavior and had reason to fear for his family's  
4 safety. Indeed, he could hear the agents interrogating his wife and his two young children crying  
5 in the other room. Id. at 8. He believed that he would first have to answer the ICE agent's  
6 questions before attending to his children, particularly in light of the fact that the ICE agent stood  
7 blocking his bedroom door. Id. Mr. Calderon was also physically exhausted and mentally  
8 distressed under the circumstances. Id.

9 ICE's actions offend the Fifth Amendment's guarantee of fundamental fairness, and Mr.  
10 Calderon did not make his statements voluntarily. Accordingly, the results of Mr. Calderon's  
11 interrogation should be suppressed.

12 **III. ICE's Search and Seizure of Mr. Calderon Violated Its Own Agency Regulations,**  
13 **Warranting Suppression of the Resulting Evidence.**

14 Where ICE violates its own rules and regulations to collect evidence, immigration courts  
15 must suppress evidence where (1) the regulation at issue was promulgated for the benefit or  
16 protection of the alien, and (2) the violation has the potential to prejudice the alien's interests.  
17 United States v. Calderon-Medina, 591 F.2d 529, 531 (9th Cir. 1979); Matter of Garcia-Flores,  
18 17 I. & N. Dec. 325, 328 (BIA 1980).

19 Prejudice exists where the agency violation "affect[s] potentially the outcome of [the]  
20 deportation proceedings." U.S. v. Rangel-Gonzalez, 617 F.2d 529, 530 (9th Cir. 1980) (finding  
21 prejudice because alien might have obtained legal counsel and avoided deportation if  
22 immigration agents had adhered to agency regulation). In addition, even where the effect of the  
23 violation on the outcome of the proceedings is not clear, "where compliance with the regulation  
24 is mandated by the Constitution, prejudice may be *presumed*." Matter of Garcia Flores, 17 I. &  
25 N. Dec. at 329; see also United States v. Caceres, 440 U.S. 741, 749 (1979) ("[a] court's duty to  
26 enforce an agency regulation is most evident when compliance with the regulation is mandated  
27 by the Constitution or federal law"). For instance, the Supreme Court has invalidated a  
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1 deportation based on statements which did not comply with then-INS regulations aimed at  
2 providing due process to the alien. Bridges v. Wixon, 326 U.S. 135, 152-53 (1945).

3 Here, the ICE agents engaged in numerous regulatory violations, which require  
4 suppression of the evidence before this Court. First, the entry into Mr. Calderon's home violated  
5 8 C.F.R. § 287.8(f)(2). Second, the ICE agents' lack of reasonable suspicion in questioning and  
6 detaining Mr. Calderon violated 8 C.F.R. §§ 287.5(1) and 287.8(b). Third, the coercive nature of  
7 the search violated 8 C.F.R. § 287.8(c)(vii). Finally, the warrantless arrest violated Immigration  
8 and Nationality Act ("INA") § 287(a)(2) and 8 C.F.R. § 287.3(a).

9  
10 **A. ICE's Non-Consensual Entry Into Mr. Calderon's Residence, Without a**  
11 **Valid Search Warrant, Violated 8 C.F.R. § 287.8(f)(2) And Requires**  
12 **Suppression Of The Evidence.**

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

22 This Court should suppress the evidence because section 287.8(f)(2) was intended to  
23 protect Mr. Calderon and because the violation may have prejudiced Mr. Calderon in these  
24 proceedings. See Calderon-Medina, 591 F.2d at 531. First, section 287.8(f)(2) seeks to afford  
25 due process and privacy protections to individuals such as Mr. Calderon by curtailing the power  
26 of government agents to enter into people's homes.

27 Second, the agents' violation of section 287.8(f)(2) may have prejudiced Mr. Calderon.  
28 This Court should presume that prejudice to Mr. Calderon occurred because the ICE agents'

1 compliance with section 287.8(f)(2) is mandated by the Fourth Amendment. Indeed, section  
2 287.8(f)(2) mirrors the Fourth Amendment, which requires that government agents obtain a  
3 warrant or consent before entering a person’s home. Camara v. Municipal Court, 387 U.S. 523  
4 (1967); Payton v. New York, 445 U.S. 573 (1980). Had the ICE agents not entered Mr.  
5 Calderon’s home, they would not have illegally collected evidence of his alienage, which would  
6 certainly affect the outcome of the removal proceedings.

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

10 The ICE agents also violated the regulatory requirement that they have reasonable  
11 suspicion before questioning Mr. Calderon and restraining his ability to walk away from their  
12 interrogation.

13 8 C.F.R. § 287.5(1) prohibits an immigration agent from even questioning an individual  
14 if they do not have a warrant unless the person is “believed to be an alien.” 8 C.F.R. § 287.5(1);  
15 INA § 287(a)(1). In other words, before the ICE agents approached Mr. Calderon’s door, DHS  
16 regulations required them to have a reason to believe Mr. Calderon was an alien. However, the  
17 ICE agents had no reason to believe he was even “an alien,” 8 C.F.R. § 287.5(1), before they  
18 pounded on his door. Accordingly, the ICE agents violated section 287.5(1).

19 8 C.F.R. 287.8(b) further restricts an ICE agent’s authority to detain persons for  
20 additional questioning unless the officers have “reasonable suspicion, based on specific  
21 articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense  
22 against the United States or is an alien illegally in the United States.” Unless they have  
23 reasonable suspicion, the ICE agents may not “restrain the freedom of an individual, not under  
24 arrest, to walk away.” 8 C.F.R. § 287.8(b)(1). As discussed *supra* at Part I.C, the ICE agents  
25 restrained Mr. Calderon’s freedom to walk away from their interrogation by blocking the doors,  
26 displaying guns, and intimidating him. Under the circumstances, where government officials  
27



1 barged into Mr. Calderon's home in the middle of the night in a group of seven agents, and Mr.  
2 Calderon feared for the safety of his family, Mr. Calderon could not have felt free to leave.

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

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

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

20 8 C.F.R. § 287.8(c)(vii) clearly provides, "[t]he use of threats, coercion, or physical abuse  
21 by the designated immigration officer to induce a suspect to waive his or her rights or to make a  
22 statement *is prohibited*." 8 C.F.R. § 287.8(c)(vii) (emphasis added).

23 As discussed *supra* at Part I.B, the ICE agents subjected Mr. Calderon to coercion and  
24 intimidation on multiple occasions, thereby violating their own agency regulations. The ICE  
25 agents outnumbered Mr. Calderon seven to one, and carried weapons. Calderon Decl. at 5.  
26 They pushed their way into his apartment in the middle of the night, when Mr. Calderon was in a  
27 sleep-deprived and disoriented state. Id. at 3-5. They displayed their guns to him and blocked  
28

1 the exits while questioning him. Id. 6-7. Finally, when Mr. Calderon finally made a statement  
2 regarding his alienage, he did so under the pressure of hearing his two young children's crying,  
3 and his wife's interrogation. Id. at 8.

4 Section 287.8(c) was no doubt meant to benefit Mr. Calderon by protecting him from  
5 coercive or otherwise abusive behavior, and ensuring his right to make statements voluntarily to  
6 the government.

7 Moreover, prejudice to Mr. Calderon should be presumed because section 287.8 (c)(vii)  
8 mirrors the Fifth Amendment's requirement that courts suppress statements made involuntarily  
9 as a result of coercion or duress. See Bong Youn Choy, 279 F.2d at 646-47; Matter of Garcia, 17  
10 I. & N. Dec. at 321. If admitted into evidence, Mr. Calderon's statements regarding his  
11 immigration status would prejudice his interests at the deportation proceeding and materially  
12 affect the outcome of the proceeding. See United States v. Rangel-Gonzales, 617 F.2d 529, 530  
13 (9th Cir. 1980).

14 **D. The ICE Agents' Warrantless Arrest of Mr. Calderon Violated INA §**  
15 **287(a)(2) and 8 C.F.R. § 287.3(a).**

16 Finally, the ICE agents' warrantless arrest of Mr. Calderon violated INA § 287(a)(2) and  
17 8 C.F.R. § 287.3(a). The arrest violated INA § 287(a)(2), which provides that a warrantless  
18 arrest may only take place if an officer "has reason to believe that the alien so arrested is in the  
19 United States in violation of any [] law or regulation *and is likely to escape before a warrant can*  
20 *be obtained for his arrest,*" because Mr. Calderon did nothing to demonstrate he was likely to  
21 escape. INA § 287(a)(2) (emphasis added). Mr. Calderon conducted himself in a peaceful  
22 manner and did not try to escape during the ICE agents' unlawful search and seizure. He also  
23 has a family in the United States. The ICE agent had no reason to believe Mr. Calderon would  
24 escape before obtaining a proper judicial warrant for his arrest.

25 The ICE agents also violated 8 C.F.R. § 287.3(a)'s requirement that Mr. Calderon "be  
26 examined by an officer other than the arresting officer." 8 C.F.R. § 287.3(a). Here, the ICE  
27 agent who interrogated Mr. Calderon also arrested him, despite the fact that six other qualified  
28

1 officers were readily available to comply with the regulation. See id. (stating that the arresting  
2 officer may conduct the examine only if “no other qualified officer is readily available.”).

3 These statutory and regulatory guidelines exist to benefit individuals like Mr. Calderon  
4 from illegal arrests. See Au Yi Lau v. INS, 445 F.2d 217, 222 (D.C. Cir. 1971) (analogizing  
5 “reason to believe” standard in INA § 287(a)(2) to Fourth Amendment probable cause  
6 requirement); Matter of Garcia-Flores, 17 I. & N. Dec. at 329 (“We are satisfied, however, that  
7 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien.”).

8 The ICE agents’ violations during the arrest had the potential to prejudice Mr. Calderon.  
9 If the agents had obtained a warrant for his arrest, Mr. Calderon might have obtained counsel  
10 earlier and avoided interrogation. If two different agents had examined and arrested Mr.  
11 Calderon, then one agent might have identified and avoided the many violations inflicted upon  
12 Mr. Calderon. Accordingly, this Court should suppress any evidence that resulted from the  
13 improper arrest of Mr. Calderon.

14 **CONCLUSION AND PRAYER FOR RELIEF**

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

19 Dated: -----

20 Respectfully submitted,

21 \_\_\_\_\_  
[Name]

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29 **Motion to Suppress Evidence**

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11 UNITED STATES DEPARTMENT OF JUSTICE  
12 EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
13 OFFICE OF THE IMMIGRATION JUDGE  
14 SAN FRANCISCO, CALIFORNIA

15 In the Matter of:

16 Juan CALDERON,

17 Respondent,

18 In Removal Proceedings.

19 Alien No.: A-- --- ---

20 **DECLARATION OF JUAN  
21 CALDERON IN SUPPORT OF  
22 MOTION TO SUPPRESS EVIDENCE**

23 Date of Hearing: -----

24 Time of Hearing: ----

25 Before: Honorable -----

1 I, Juan Calderon, do hereby state and declare:

- 2
- 3 1. My name is Juan Calderon. My alien number is 12-345-678. I am submitting this
- 4 declaration in support of my Motion to Suppress Evidence. I have personal knowledge of
- 5 the facts set forth herein, and if called to testify as a witness thereto, could do so
- 6 competently and under oath.
- 7
- 8 2. I live at 123 Main St., Apt. B, East Redwood City, CA. I live with my wife, Maria, and
- 9 our two daughters, Paloma and Graciela. My daughter Paloma is a year old, and my
- 10 daughter Graciela is three years old. My daughters are both United States citizens.
- 11
- 12 3. On July 1, 2007, in the middle of the night, I heard loud banging on the door. I also
- 13 heard yelling in the hallway of our apartment building. My wife and I had been sleeping
- 14 in our bedroom, and my daughters were sleeping in the other bedroom. We were very
- 15 tired because my daughter Paloma, who is one, had been sick for the past few days and
- 16 was not sleeping well. I looked at the clock, which said it was around 4 in the morning. I
- 17 got out of bed and went to the living room to answer the door.
- 18
- 19 4. When I got to the door, I heard loud voices calling "Juan Calderon, are you in there?"
- 20 The people outside were banging loudly on the door. I looked out the peephole in the
- 21 door. I saw several people waiting outside in the hallway. I could see the people because
- 22 it was dark in my apartment and there was a light in the hallway. It looked like the
- 23 people outside were wearing dark uniforms, like police officers. I also saw a few of them
- 24 put their hands on their hips, where there were guns in their belts. Then a bright light
- 25 shone directly into the peephole and I couldn't see anything. I was really frightened. The
- 26 people outside knocked on my door again and said a few times, "Juan Calderon, are you
- 27 in there? Open the door."
- 28
- 29 5. I was really scared because they were calling my name and I was afraid that they might
- break down the door or use a gun. So I cracked open the door and stuck my head outside.
- Even though I was scared, I asked "who are you and why are you here?" in a loud voice.
- But I couldn't see anything because someone was shining a bright light into my eyes.

1 Then I felt the door being pushed open, and I almost fell to the floor. Seven people  
2 walked into our apartment. I counted them with my eyes, and realized that all of them  
3 had guns on. They didn't ask me if they could come in. When I saw their hats that said  
4 "ICE," I realized that they were immigration agents. I got really scared because I could  
5 hear people in the hallway slamming doors and shouting. One of the agents took a piece  
6 of paper out of his jacket and thrust it in front of my face. I didn't recognize the paper,  
7 and I didn't have time to look at it closely, because a few seconds after that the agent put  
8 the paper away.

- 9
- 10 6. When I stood up, two of the immigration agents moved next to the door, and guarded it.  
11 Then one of the agents, who was tall and had a mustache, put his hand on his gun and  
12 patted it. He asked me if my name was Juan Calderon. I was scared, so I nodded. He  
13 asked me again, even louder, and this time, I said "yes, my name is Juan Calderon."  
14
- 15 7. One of the agents then asked me for my passport and green card. I was scared that  
16 something would happen to my wife and kids, so I went into the bedroom to get my  
17 papers. The agent followed me. I opened the nightstand drawer and got out my passport  
18 from Mexico. The agent was still standing in the doorway of my bedroom. I showed  
19 him my passport. He took it from me, and then asked me if I had a green card.  
20
- 21 8. I was so tired and confused. When he asked me if I had a green card, I heard another one  
22 of the officers asking my wife Maria lots of questions in the hallway between the two  
23 bedrooms. Paloma and Graciela were both crying loudly. Maria sounded scared too. I  
24 wanted to get into the hallway to make sure she and the girls were ok so I told the agent I  
25 didn't have a green card and that I didn't have immigration papers. The agent then  
26 grabbed me. He put my arms behind my back and put handcuffs on me.  
27
- 28 9. The agent pushed me out of my bedroom. I tried to tell my wife Maria that everything  
29 would be ok, but I think she couldn't hear me since the girls were crying so loudly. The  
same agent then pushed me out of my apartment, past the lobby where all of the

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mailboxes are. My name is on the mailbox. Most of the people who live in the building are Latino.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this \_\_\_ day of \_\_\_\_\_ 2007 at \_\_\_\_\_, California.

\_\_\_\_\_

Juan Calderon