

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
606 SOUTH OLIVE ST., 15TH FL.  
LOS ANGELES, CA 90014

NOEMI RAMIREZ, ESQ.  
523 W. 6th STREET, STE. 830  
LOS ANGELES, CA 90014

IN THE MATTER OF  
PEREZ, GREGORIO CRUZ

FILE A 095-748-837

DATE: Feb 12, 2009

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
P.O. BOX 8530  
FALLS CHURCH, VA 22041

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
606 SOUTH OLIVE ST., 15TH FL.  
LOS ANGELES, CA 90014

xx OTHER: Please see attached IJ order

\_\_\_ CJ  
COURT CLERK  
IMMIGRATION COURT

FF

CC: LEFT, JAMES, ESQ.  
606 S. OLIVE ST., 8TH FLOOR  
LOS ANGELES, CA, 900140000

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

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

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

**APPLICATION:** Motion to Terminate/Suppress.

**ON BEHALF OF RESPONDENT:**  
Noemi G. Ramirez, Esq. (Lead counsel)  
Law Office of Noemi G. Ramirez  
  
Ahilan R. Arulanantham (co-counsel)  
ACLU of Southern California

**ON BEHALF OF THE GOVERNMENT:**  
James M. Left  
Assistant Chief Counsel  
U.S. Department of Homeland Security  
606 South Olive Street, 8<sup>th</sup> Floor  
Los Angeles, California 90014

**DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I. Procedural History**

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

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

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

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

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

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

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

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

## **II. Statement of Facts**

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

make the following findings of fact and give them appropriate weight in the adjudication of Respondent's motion:<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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

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

### **III. Arguments**

#### **A. Respondent’s Motion to Terminate**

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

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

*1. Termination for Regulatory Violations*

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

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

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

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

## 2. *Suppression for Egregious Constitutional Violations*

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

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

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

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

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

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

