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SEATTLE, WA

BEFORE THE DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SEATTLE IMMIGRATION COURT

In the matter of

Maria Mora Villalpando,

Respondent.

In removal proceedings.

A. No. 213-075-808

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON
RECEIVED 3, 12, 18

Respondent's Motion to Terminate

Immigration Judge: Brett M. Parchert

Master hearing: March 15, 2018, 8:30AM

Respondent Maria (“Maru”) Mora-Villalpando¹ respectfully moves to terminate proceedings in this case. The Court should grant her Motion because she has been unlawfully targeted for removal proceedings because of her political speech, in violation of regulation that binds agencies to protect political speech that is covered by the First Amendment of the U.S. Constitution.

FACTS

I. Political Context.

Beginning in 2015, Donald Trump campaigned for President on an explicitly racist and anti-immigrant platform. He started his presidential bid in June 2015 by saying: “When Mexico sends its people, they’re not sending their best. They’re sending people that have lots of problems and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists.”² He repeated the sentiment in August 2015 when he said: “The Mexican government . . . send[s] the bad ones over because they don’t want to pay for them. They don’t want to take care of them.”³ In August 2016, Trump responded to a presidential debate question about immigration by saying: “We have some bad hombres here, and we’re going to get them out.”⁴

¹ The Notice to Appear in this matter references Maria Mora Villapando, but she commonly uses the nickname “Maru Mora-Villalpando.”

² *Full Text: Trump announces a presidential bid*, Wash. Post, June 16, 2015, https://www.washingtonpost.com/news/post-politics/wp.2015-06-16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.6fa0170ce812

³ Andrew O’Reilly, *At GOP debate, Trump says ‘stupid’ U.S. leaders are being duped by Mexico*, Fox News, Aug. 6, 2015, <http://www.foxnews.com/politics/2015/08/06/at-republican-debate-trump-says-mexico-is-sendingcriminals-because-us.html>. 7

⁴ Katie Zezima, *Trump on immigration: There are ‘bad hombres’ in the United States*, Wash. Post, Aug. 30, 2017,



- In January 2018, Amer Othman Adi, a 57-year-old Cleveland deli owner, began a hunger strike while in ICE custody. As his case drew media attention, his Congressman introduced a private bill to allow him to remain in the country. The bill passed the House Judiciary Committee, but before it could become law, ICE deported Adi to Jordan.¹²
- In March 2017, Daniela Vargas, a 22-year-old activist who came from Argentina when she was seven, was detained by ICE agents as she was leaving a news conference in Jackson, Mississippi, where she had spoken out in favor of DACA.¹³
- In March 2017, in Vermont, ICE arrested José Enrique Balcazar Sanchez and Zully Victoria Palacios Rodriguez, two leading organizers with Migrant Justice, a workers-rights organization. Despite being arrested only for overstaying a visa, Palacios was held without bail.¹⁴
- In June 2017, ICE arrested two other Migrant Justice activists, Yesenia Hernández-Ramos and Esau Peche-Ventura, after they took part in a demonstration outside a Ben and Jerry's plant on behalf of predominantly noncitizen dairy-farm workers.¹⁵

II. Maru Mora-Villalpando Is a Dedicated Anti-ICE Activist.

Respondent Maru Mora-Villalpando is one of these activists who has been targeted by ICE for her political speech. Ms. Mora-Villalpando is a community organizer, trainer, and the founder of Latino Advocacy, an immigrant rights group. Declaration of Maria Mora-Villalpando at ¶ 1. She has more than 15 years of experience working on issues of immigration, racial, and reproductive justice. *Id.* Her work focuses on highlighting and ending injustices committed by local and federal authorities against immigrants and immigrant detainees. *Id.* She is also a single mother raising a mature critical thinker and beautiful college student who frequently joins her in her activism. *Id.* at ¶ 2.

¹² Lindsay Buckingham, *Kucinich to protest deportation of Youngstown business owner*, Fox 8 Cleveland, Jan. 21, 2018, <http://fox8.com/2018/01/21/kucinich-to-protest-deportation-of-youngstown-business-owner>

¹³ Christine Hauser, *A Young Immigrant Spoke Out About Her Deportation Fears. Then She Was Detained*, NY Times, Mar. 2, 2017, <https://www.nytimes.com/2017/03/02/us/immigrant-daca-detained.html>

¹⁴ Nick Pinto, *ICE IS Targeting Political Opponents for Deportation, Ravi Ragbir and Rights Groups Say in Court*, The Intercept, Feb. 9, 2018, <https://theintercept.com/2018/02/09/ravi-ragbir-ice-immigration-deportation>.

¹⁵ *Id.*

Over the course of the past decade, Ms. Mora-Villalpando has organized multiple local and state-wide campaigns and protests in support of immigrants and immigrant detainees and against ICE and other federal and local authorities. *Id.* at ¶ 3. In 2006, she organized a successful campaign in Snohomish County, Washington to ensure that immigrants in local hospitals are provided with adequate language interpretation. *Id.* at ¶ 4. In 2007, she organized the Latino community in the city of Lynwood, Washington against Lynwood Police hosting ICE agents in their police station. *Id.* at ¶ 5. In 2011, she led an effort to defeat four anti-immigrant bills in the 2011 Washington State Legislative session. *Id.* at ¶ 6.

More recently, Ms. Mora-Villalpando's activism has focused on the Northwest Detention Center ("NWDC"), an ICE detention facility operated by the GEO Group ("GEO"). She organized a shutdown action and protest there on February 24, 2014. *Id.* at ¶ 7. The shutdown blocked deportation buses at the facility for one day and helped introduce NWDC to the public as a place where thousands of immigrants are detained. *Id.* In part as a response to the action, in March 2014, immigrant detainees in NWDC initiated a hunger strike. *Id.* at ¶ 8. Ms. Mora-Villalpando subsequently co-founded the "NWDC Resistance" movement along with other undocumented activists to support the hunger strikers. NWDC Resistance helped sustain hunger strikes for fifty-six days. *Id.*

On May 8, 2014 Representative Adam Smith introduced federal legislation to improve standards and conditions at immigration detention centers because of the 2014 hunger strike. *Id.* at ¶ 9. The following year, Ms. Mora-Villalpando helped organize a second shutdown action of the NWDC facility along with her daughter Josefina. *Id.* at ¶ 10. Throughout this time, NWDC Resistance instituted almost weekly actions outside NWDC aimed at shedding light on all parties implicated in the abuses that ICE and GEO commit against immigrant detainees. The actions



were also aimed at giving non-immigrant communities the opportunity to participate and join efforts to end deportations and detentions. *Id.* at ¶ 11.

NWDC Resistance has helped maintain resistance efforts inside NWDC by reporting on abuses and supporting hunger strikes in the facility. Examples of the abuses NWDC Resistance has made public include NWDC denying a detainee with a cancerous tumor access to surgery, holding a detainee in solitary confinement for over a year, denying the release of over sixty Cuban asylees even though most had received credible fear determinations, and refusing to fix broken air conditioning in a pod for weeks. *Id.* at ¶ 12.

Between 2014 and 2018, NWDC Resistance supported thirteen hunger strikes inside the NWDC and organized two hunger strikes in a protest encampment outside the facility. *Id.* at ¶ 13. Starting in 2016, NWDC Resistance has held an annual “People’s Tribunal” event outside of NWDC to support detainees, generate media coverage, and bring hundreds of people to the facility. *Id.* at ¶ 14. In 2017, Ms. Mora-Villalpando encamped outside of NWDC for four weeks to highlight the plight of detainees. This action attracted local and state media attention. *Id.* at ¶ 15. In March of 2018, NWDC Resistance succeeded in stopping the Tacoma City Council from labeling NWDC as a correctional facility and expanding the facility. *Id.* at ¶ 16.

On July 7, 2017 Ms. Mora-Villalpando attended a rally in California to support hunger strikes at Adelanto detention center. *Id.* at ¶ 17. On November 13, 2017 NWDC Resistance held its Third Annual “Día de los Muertos” weekend encampment at NWDC to highlight detainees who have died or attempted suicide in NWDC and other detention centers across the nation. *Id.* at ¶ 18. NWDC Resistance also supports immigrants in removal proceedings who are not detained and has successfully prevented the deportation of many individuals. *Id.* at ¶ 19.



As part of NWDC Resistance's campaign against the facility, Ms. Mora-Villalpando has helped mobilize a large coalition of groups to maintain pressure on NWDC and support for detainees. These groups include I Love Movement, Anakbayan, FIGHT (Formerly Incarcerated Group Healing Together), University of Puget Sound, Pacific Lutheran University, Evergreen State College, Coalition of Anti-Racist Whites, League of Women Voters, Kadima, Jewish Voices for Peace, Familias Unidas por la Justicia and Community to Community. *Id.* at ¶ 20. She supported the creation of a new grassroots organizing group, Gorge ICE Resistance, in Oregon and aided their efforts in support of hunger strikes in the Northern Oregon Regional Correctional Facility. *Id.* at 21.

III. Ms. Mora-Villalpando Has Aided Litigation Against NWDC, ICE, and GEO.

For the past five years, Ms. Mora-Villalpando has helped initiate cases for litigation against GEO, NWDC, and ICE by connecting detainees with legal representation and reporting abuses. *Id.* at ¶ 22. During the 2014 hunger strike, she connected hunger strikers to legal representation. With the help of Columbia Legal Services and the ACLU of Washington, twenty hunger strikers were released from solitary confinement. *Id.* at ¶ 23.

On September 12, 2017, alongside national groups, she filed a Freedom of Information Act request seeking information on Operation Mega and staged a press conference at ICE's offices in downtown Seattle. *Id.* at ¶ 24. On September 20, 2017, after years of Ms. Mora-Villalpando supporting hunger strikers' in their demand for a change to the \$1 per day work program at NWDC, the Washington State Attorney General filed a lawsuit against GEO for violating the state's minimum wage law. During the press conference announcing the lawsuit, the State Attorney General cited the hunger strikers. *Id.* at ¶ 25.



In 2018, Ms. Mora-Villalpando recruited ACLU attorneys to expose NWDC violence after guards at the facility physically assaulted detainees who participated in hunger strikes and placed one in isolation for 20 days. *Id.* at ¶ 26.

IV. Ms. Mora-Villalpando Has Spoken Out Against ICE Publicly on a Regular Basis.

Ms. Mora-Villalpando is known to be an outspoken activist on behalf of immigrants and she is regularly invited to speak in local, state and international forums as an expert on immigration detention and deportations in Washington and beyond. *Id.* at ¶ 27. She served on the Blue-Ribbon Commission convened by the National Day Laborer's Organizing Network, a commission comprised of undocumented and formerly undocumented immigrants tasked with putting together recommendations for then President Obama on immigration-related Executive Actions. *Id.* at ¶ 28.

In October 2016, she attended a meeting in San Diego with the United Nations Working Group Against Arbitrary Detention. She presented a talk about the current conditions in NWDC and submitted a report written in collaboration with the International Human Rights Law Clinic at University of Washington Law School. *Id.* at ¶ 29. In March 2017, she testified before the Inter-American Commission for Human Rights and gave a presentation that included photos of people detained and details about the conditions faced inside NWDC. *Id.* at ¶ 30. 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. *Id.* at ¶ 31.

Ms. Mora-Villalpando is regularly featured or invited to comment on state and local news items on immigration detention, deportation and enforcement. She has also written news articles of her own highlighting her work as an undocumented activist. *Id.* at ¶ 32.

V. **ICE Has Targeted Ms. Mora-Villalpando in Retaliation for Her Activism and Political Speech.**

In 2014, it became clear that ICE was tracking Ms. Mora-Villalpando's activism. On August 4, 2014 she received a notification from LinkedIn, a profession-oriented social networking service, that Bryan Wilcox, then Deputy Field Office Director at ICE Seattle, had viewed her LinkedIn profile. *Id.* at ¶ 33. On November 3, 2014 she received another notification from LinkedIn that the "Policy/Program Administrator at US Immigration and Customs Enforcement" had viewed her profile. *Id.* at ¶ 35.

On December 20, 2017 she received a Notice to Appear by certified mail at her home address *Id.* at ¶ 36. After requesting a copy of her I-213 from Senator Maria Cantwell's office, she received it on January 26, 2018. *Id.* at ¶ 37. The I-213 is dated December 7, 2017. *Id.* The I-213 specifically notes Ms. Mora-Villalpando's "extensive involvement with anti-ICE protests and Latino advocacy programs." *Id.* The only evidence against her that the I-213 includes is an interview that she gave to "Whatcom News." *Id.*

On February 13, 2018 she discovered that the Washington State Department of Licensing ("WA-DOL") provided her address information to ICE upon ICE's request. *Id.* at ¶ 38. On February 14, 2018 WA-DOL sent her a copy of their e-mail to ICE. The e-mail was addressed to the same ICE officer who signed off on her I-213, Timothy Black. *Id.* at ¶ 39.

Ms. Mora-Villalpando has dedicated her life to the fight for immigrant justice, demanding an end to detention and deportation. None of the usual triggers for deportation—



contact with the police, raids, prior deportations—apply in her case. ICE only knows about her because of her political work.

ARGUMENT

The Federal Government has bound all its agencies to “respect and protect the freedom of persons and organizations to engage in religious and political speech,” 82 Fed. Reg. 21675 (attached as App. A). It has promulgated a regulation to protect the political speech that is covered by the First Amendment of the U.S. Constitution. *Id.* ICE’s deliberate policy of targeting immigrant rights activists—including Ms. Mora-Villalpando—violates this regulation. When ICE violates a regulation that is binding upon it, and where that regulation is “mandated” by the Constitution, Immigration Judges (“IJs”) must terminate removal proceedings. *Matter of Garcia-Flores*, 17 I. & N. Dec. 325, 327 (BIA 1980).

Freedom of speech is a right that is “preeminent” above all others. *Procunier v. Martinez*, 416 U.S. 396, 429 (1974) (Douglas, J., concurring). It is the cornerstone of a democratic society. Ms. Mora-Villalpando’s retaliatory removal proceedings not only denies her own First Amendment right to speak on matters of concern to the immigrant community. It also chills the speech of countless other activists, and denies citizens and noncitizens alike of their freedom of association related to their deep political concerns about immigration policy.

I. An IJ is Required to Terminate Removal Proceedings Where ICE Violates Regulations that Protect Fundamental Constitutional Rights.

A. IJs Have Authority to Adjudicate Motions to Terminate.

IJs are authorized to determine removability, adjudicate applications for relief, order withholding of removal, and “[t]o take any other action consistent with applicable law and



regulations as may be appropriate.” 8 C.F.R. §1240.1(a)(iv). This includes authorization to “terminate proceedings when the DHS cannot sustain the charges [of removability] *or in other specific circumstances consistent with the law* and applicable regulations.” *Matter of Sanchez-Herbert*, 26 I. & N. Dec. 43, 45 (BIA 2012) (emphasis added). In deciding individual cases, an immigration judge “shall exercise his or her independent judgment and discretion and may take any action consistent with their authorities under the Immigration and Nationality Act and regulations that is appropriate and necessary for the disposition of such cases.” 8 C.F.R. § 1003.10(b). After evaluating the factors underlying a motion to terminate, an immigration judge must provide an informed adjudication on the motion. *Matter of G-N-C*, 22 I. & N. Dec. 281, 284 (BIA 1988).

B. A Regulatory Violation Mandated By the Constitution Requires Termination of Removal Proceedings.

On May 17, 2017, the President of the United States of America, Donald J. Trump, issued an Executive Order entitled “Promoting Free Speech and Religious Liberty.” 82 Fed. Reg. 21675. It stated: “All executive departments and agencies shall, to the greatest extent practicable and to the extent permitted by law, respect and promote the freedom of persons and organizations to engage in religious and political speech.” *Id.* This regulation, published in the Federal Register, hinds all agencies—including ICE—to respect political speech. It codifies the First Amendment, and turns it into an agency rule. By targeting Ms. Mora-Villalpando, ICE has violated this provision.¹⁶

¹⁶ We note here that *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999) (“AADC”), is not applicable to this case. Unlike AADC, the respondent here is asserting her claim not on the constitution itself but on the violation of federal regulations that happen to implicate her constitutional First Amendment rights.



Rules promulgated by a federal agency, which regulate the rights and interests of others, are binding. *See Columbia Broad.Sys. v. United States*, 316 U.S. 407, 422 (1942). The principle that agencies must be bound by their own rules is fundamental. In *United States ex rel. Accardi v. Shaughnessy*, the Supreme Court vacated a deportation order because the proceeding below violated the agency's own rules. 347 U.S. 260 (1954). The doctrine applies not only to deportation orders; it also has been applied to vacate discharges of employees and overturn convictions. *See Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

When ICE violates agency rules and regulations to collect its evidence, immigration courts must terminate proceedings where (1) the regulation at issue was promulgated for the benefit or protection of the noncitizen, and (2) the violation has the potential to prejudice the noncitizen's interests. *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir. 1979); *Matter of Garcia-Flores*, 17 I. & N. Dec. 325, 328 (BIA 1980). Prejudice exists where the agency violation "affect[s] potentially the outcome of [the] deportation proceedings." *United States v. Rangel-Gonzalez*, 617 F.2d 529, 530 (9th Cir. 1980) (finding prejudice because noncitizen might have obtained legal counsel and avoided deportation if immigration agents had adhered to agency regulation). In addition, even where the effect of the violation on the outcome of the proceedings is not clear, "where compliance with the regulation is mandated by the Constitution, prejudice may be presumed." *Matter of Garcia Flores*, 17 I. & N. Dec. at 329; *see also United States v. Caceres*, 440 U.S. 741, 749 (1979) ("[a] court's duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution



or federal law”). Here, the regulation is mandated by the First Amendment right to freedom of speech.

In short, an agency’s own rules are binding upon it. *Accardi*, 347 U.S. 260 (due process requires that an agency follow its regulations). The Ninth Circuit recently reaffirmed this principle in *Sanchez v. Sessions*, 870 F.3d 901, 913 (9th Cir. 2017). There, the Government violated a regulation that was “mandated by the constitution.” For that reason, the court invalidated a noncitizen’s deportation order. *See also Waldron v. INS*, 17 F.3d 511, 518 (2d Cir. 1994) ([W]hen a regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and the INS fails to adhere to it, the challenged deportation proceeding is invalid); *Montilla*, 926 F.2d at 166 (“[T]he rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency.”).

II. ICE Has Retaliated Against Ms. Maru-Villalpando For Her Political Speech In Violation of Regulation and The First Amendment.

ICE wants to silence critics of U.S. immigration law and policy by surveilling, detaining, and deporting them. This is conduct “we associate with regimes we revile as unjust.” *Ragbir v. Sessions*, 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018).

Retaliation by the Government for the exercise of a constitutional right “offends the Constitution [because] it threatens to inhibit exercise of the protected right.” *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998). The law thus “is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). The Government may not act against an individual “because of his constitutionally protected speech,” even if the Government



could lawfully take such action for “any number of [other] reasons.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

“[D]ebate on public issues should be uninhibited, robust, and wide-open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Speech on topics like immigration policy therefore “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation marks omitted). Because Ms. Mora-Villalpando’s speech “involves interactive communication concerning political change,” it constitutes “core political speech,” where “First Amendment protection ... is at its zenith.” *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186-87 (1999).

To sustain a claim for official retaliation in violation of the First Amendment, a claimant must show that (1) the official’s conduct would chill a person of ordinary firmness from future First Amendment activity; and (2) the official’s desire to chill her speech was a “but-for” cause of the allegedly unlawful conduct. *Skoog v. Cty. of Clackamas*, 469 F.3d 1221, 1232 (9th Cir. 2006); *see also Bartlett v. Nieves*, 2017 U.S. App. LEXIS 20682, 2017 WL 4712440 (9th Cir. Oct. 6, 2017).

First, by placing Ms. Mora-Villalpando in removal proceedings, ICE has taken drastic action against her. The prospect of deportation would chill any person of ordinary firmness from continuing to speak out on immigration policy—a matter of great public importance. The Supreme Court considers deportation a “particularly severe penalty,” *Pudilla v. Kentucky*, 559 U.S. 356, 365 (2010), and a “drastic measure.” *Fong Haw Tan v. Phelan*, 333 U.S. 6, 7 (1948). Indeed, deported immigrants may face lifetime separation from their homes, families, and



livelihoods, sent to countries where they may not have family or friends, where they may not speak the language, and where they may face serious persecution or death. *See* Peter L. Markowitz, *Deportation is Different*, 13 U. PA. J. CONT. L. 1299, 1301 (2011). It “may result in the loss of all that makes life worth living.” *Bridges v. Wixon*, 326 U.S. 135, 146 (1945). It is a “savage penalty.” *Jordan v. DeGeorge*, 341 U.S. 223, 243 (1951) (Jackson, J., dissenting).

Second, there is a clear causal connection between Ms. Mora-Villalpando’s protected speech and the government’s adverse actions. ICE did not hide the fact that it was placing Ms. Mora-Villalpando into proceedings because of her “anti-ICE” activism and comments to the press. The I-213 stated:

Maria MORA VILLALPANDO came to the attention of Seattle, WA, ICE-ERO after an interview was published in the “Whatcom Watch” wherein she stated that she is “undocumented” and that “many people like me come on a visa and then do not return to their countries when the visa has expired. . . . Upon review of the article and available information regarding her situation it should also be noted that she has extensive involvement with anti-ICE protests and Latino advocacy programs. VILLALPANDO has become a public figure primarily in Whatcom County, where she currently resides.

ICE’s actions against Ms. Mora-Villalpando fall into a pattern and practice of retaliation against immigrant-rights activists based on their protected speech about U.S. immigration law and policy. ICE’s pattern and practice of targeting activists independently violates the First Amendment because it burdens protected speech based on its content, viewpoint, and speaker. “Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2226 (2015). Because ICE’s actions against immigrant-rights activists across the country are based upon “the topic discussed or the idea or message expressed,” *id.* at 2227--

namely, criticism of U.S. immigration law and policy—they are patently content-based. This targeting serves no legitimate governmental interest at all, let alone a compelling one.

Indeed, ICE’s targeting of activists constitutes “an egregious form of content discrimination”—“viewpoint discrimination.” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995). “When the government targets not subject matter, but views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Id.* Such viewpoint discrimination is always unconstitutional. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571 (2011); *Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017); *id.* at 1768 (Kennedy, J., concurring in part and concurring in the judgment).

This case illustrates the grave danger of viewpoint discrimination. ICE has targeted critics of its own enforcement policies and the laws it administers, and sought to banish those critics from this country. ICE’s pattern and practice also unconstitutionally discriminates against a class of speakers. “Quite apart from the purpose or effect of regulating content, ... the Government may commit a constitutional wrong when by law it identifies certain preferred speakers.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340 (2010). Because “[t]he First Amendment protects speech and speaker, and the ideas that flow from each,” the Government may not “deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.” *Id.* at 341. Yet that is precisely what ICE is doing here—singling out certain speakers for surveillance, detention, and worse. This conduct violates their own Executive Order, which codifies the First Amendment, and is binding upon all agencies, including ICE. *Id.* at 491.

In analogous circumstances, the Supreme Court has held that restrictions that render speech less effective—even if speech is not banned altogether—may impermissibly burden



expression. In *McCullen v. Coakley*, 134 S. Ct. 2518 (2014), for example, the Court invalidated a law imposing a buffer zone around abortion clinics. The law did not prohibit the plaintiffs — individuals who sought to counsel women on alternatives to abortion—from speaking. But the law rendered their speech “far less frequent” and “far less successful” by preventing them from engaging in personal conversations with the women they wished to counsel. The loss of these “primary methods” of expression “effectively stifled” the plaintiffs’ speech. *Id.* at 2536-37; *see also Sorrell*, 564 U.S. at 564; *Davis v. FEC*, 554 U.S. 724, 736 (2008).

So too here. Ms. Mora-Villalpando’s presence in the United States is essential to her ability to effectively convey her ideas and views about U.S. immigration law and policy. Ms. Mora-Villalpando expresses her views about the immigration system through meetings with elected officials, presentations at conferences and media events, and by protesting at detention centers. Absent termination of these removal proceedings, Ms. Mora-Villalpando will lose all these avenues for expression. It is “no answer” to say that Ms. Mora-Villalpando can continue to voice her opinions about U.S. immigration policy from outside the United States. *McCullen*, 134 S. Ct. at 2537. That mode of expression is no substitute for the direct contact and exchange that is essential to Ms. Mora-Villalpando’s advocacy and speech. The harm Ms. Mora-Villalpando faces is not just a chill on her protected speech, but also a deprivation of her ability to engage in effective and meaningful speech in support of immigrant rights in the United States.

CONCLUSION

The federal government’s power to enforce immigration law is “subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). Punishing speech by “undocumented” activists is classic speaker discrimination. Excluding a person or group of people from the right to speak “deprives the disadvantaged person or class of the right to use



speech to strive to establish worth, standing, and respect for the speaker's voice." *Citizens United*, 558 U.S. at 899.

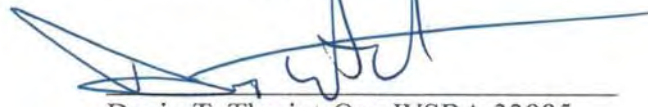
In the criminal context, the Supreme Court has stated there are cases where the "conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction[.]" *U.S. v. Russell*, 411 U.S. 423 (1973). Deportation proceedings can be "tainted from their roots" so as to call for a "prophylactic remedy[.]" *Castaneda-Delgado v. INS*, 525 F.2d 1295, 1302 (7th Cir. 1975). Retaliatory arrests are the type of outrageous conduct that taints the entire proceeding, and which should bar the government from invoking judicial processes to obtain removal. Here, the unconstitutional conduct also violates a regulation, and mandates termination.

In *Accardi*, the Supreme Court invalidated a deportation order for an immigrant who had been placed on a list of "unsavory characters" that the Attorney General expressly wished to be deported. 347 U.S. at 261. Today, the Trump Administration has placed Ms. Mora-Villalpando on its own list of "unsavory characters"—because it disagrees with the content of her First Amendment-protected speech about matters of immigration policy. However, the Trump Administration has also promulgated rules that bind its agencies to protect First Amendment political speech. Because ICE violated Ms. Mora-Villalpando's right to freedom of speech, her deportation proceedings must be terminated.



Respectfully submitted this 12th day of March, 2018.

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Motion to Terminate

Respondent's name: Maria Mora-Villalpando

Case Number: A213-075-808

Appendix A – Executive Order

Presidential Documents

Executive Order 13798 of May 4, 2017

Promoting Free Speech and Religious Liberty

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to guide the executive branch in formulating and implementing policies with implications for the religious liberty of persons and organizations in America, and to further compliance with the Constitution and with applicable statutes and Presidential Directives, it is hereby ordered as follows:

Section 1. *Policy.* It shall be the policy of the executive branch to vigorously enforce Federal law's robust protections for religious freedom. The Founders envisioned a Nation in which religious voices and views were integral to a vibrant public square, and in which religious people and institutions were free to practice their faith without fear of discrimination or retaliation by the Federal Government. For that reason, the United States Constitution enshrines and protects the fundamental right to religious liberty as Americans' first freedom. Federal law protects the freedom of Americans and their organizations to exercise religion and participate fully in civic life without undue interference by the Federal Government. The executive branch will honor and enforce those protections.

Sec. 2. *Respecting Religious and Political Speech.* All executive departments and agencies (agencies) shall, to the greatest extent practicable and to the extent permitted by law, respect and protect the freedom of persons and organizations to engage in religious and political speech. In particular, the Secretary of the Treasury shall ensure, to the extent permitted by law, that the Department of the Treasury does not take any adverse action against any individual, house of worship, or other religious organization on the basis that such individual or organization speaks or has spoken about moral or political issues from a religious perspective, where speech of similar character has, consistent with law, not ordinarily been treated as participation or intervention in a political campaign on behalf of (or in opposition to) a candidate for public office by the Department of the Treasury. As used in this section, the term "adverse action" means the imposition of any tax or tax penalty; the delay or denial of tax-exempt status; the disallowance of tax deductions for contributions made to entities exempted from taxation under section 501(c)(3) of title 26, United States Code; or any other action that makes unavailable or denies any tax deduction, exemption, credit, or benefit.

Sec. 3. *Conscience Protections with Respect to Preventive-Care Mandate.* The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg-13(a)(4) of title 42, United States Code.

Sec. 4. *Religious Liberty Guidance.* In order to guide all agencies in complying with relevant Federal law, the Attorney General shall, as appropriate, issue guidance interpreting religious liberty protections in Federal law.

Sec. 5. *Severability.* If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

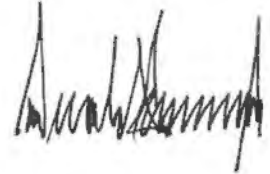
Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
May 4, 2017.

[FR Doc. 2017-09574
Filed 5-8-17; 11:15 am]
Billing code 3295-F7-P

Motion to Terminate

Respondent's name: Maria Mora-Villalpando

Case Number: A213-075-808

Declaration of Maria Mora-Villalpando

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON**

In re: Maria Mora Villalpando
 A # 213 075 808

**Declaration of Maria Mora-Villalpando in Support of her Motion to Terminate
Proceedings**

I, Maria Mora-Villalpando, upon my personal knowledge, and in accordance with 28 U.S.C. § 1746, declare as follows:

1. I am a political activist, state-wide community organizer, trainer and the founder of Latino Advocacy, an immigrant rights group. I have more than fifteen years of experience working on issues of immigration, racial and reproductive justice. My work focuses on highlighting and ending injustices committed by local and federal authorities against immigrants and immigrant detainees.
2. I am a single mother raising a mature critical thinker and beautiful college student who frequently joins me in my activism.

My Efforts Organizing Against ICE and Other Federal and Local Authorities

3. In the past decade I have organized multiple local and state-wide campaigns and protests in support of immigrants and immigrant detainees and against U.S. Immigration and Customs Enforcement ("ICE") and other federal and local authorities.
4. In 2006, I organized a successful campaign in Snohomish County, Washington to ensure that immigrants in local hospitals are provided with adequate language interpretation.

5. In 2007, I organized the Latino community in the city of Lynwood, Washington against Lynwood Police hosting ICE agents in their police station.
6. In 2011, I lead an effort to defeated four anti-immigrant bills in the 2011 Washington State Legislative session.
7. On February 24, 2014 I helped organize a shutdown action and protest at the Northwest Detention Center ("NWDC"), an ICE detention facility operated by the GEO Group ("GEO"). The shutdown blocked deportation buses at the facility for one day and helped introduce NWDC to the general public as a place where thousands of immigrants are detained. *See Exhibit A, "Protestors Try To Block Deportations From Northwest Detention Center, KUOW News."*
8. In March 2014, immigrant detainees in NWDC initiated a hunger strike in part as a response to the shutdown action I helped organize in February. I subsequently co-founded the "NWDC Resistance" movement along with other undocumented activists to support the hunger strikers. NWDC Resistance helped sustain hunger strikes for fifty-six days. *See Exhibits B-D.*
9. On May 8, 2014 Representative Adam Smith introduced federal legislation to improve standards and conditions at immigration detention centers as a result of the 2014 hunger strike. *See Exhibit E, "Detainee Hunger Strike In Tacoma Sparks Federal Bill, KUOW News."*
10. On September 21, 2015 I helped organize a second shutdown action of the NWDC facility along with my daughter Josefina. *See Exhibit F, "Protesters Are Blocking Three Exits at One of the Biggest Immigrant Detention Centers in the US Right Now, The Stranger."*

11. Throughout this time, NWDC Resistance instituted almost weekly actions outside NWDC aimed at shedding light on all parties implicated in the abuses that ICE and GEO commit against immigrant detainees. The actions were also aimed at giving non-immigrant communities the opportunity to participate and join efforts to end deportations and detentions.
12. NWDC Resistance has helped maintain resistance efforts inside NWDC by reporting on abuses and organizing hunger strikes in the facility. Examples of the abuse NWDC Resistance has made public include NWDC denying a detainee with a cancerous tumor access to surgery, holding a detainee in solitary confinement for over a year, denying the release of over sixty Cuban asylees even though most had received credible fear determinations and not fixing broken air conditioning in a pod for weeks.
13. Between 2014 and 2018, NWDC Resistance supported thirteen hunger strikes inside the NWDC and organized two hunger strikes in a protest encampment outside the facility.
14. Starting in 2016, NWDC Resistance has held an annual "People's Tribunal" event outside of NWDC to support detainees, generate media coverage, and bring hundreds of people to the facility. *See Exhibits G, H.*
15. In 2017, I encamped outside of NWDC for four weeks to highlight the plight of detainees and attracted local and state media attention, and I engaged in a week of hunger strike myself.
16. In March of 2018, NWDC Resistance succeeded in stopping the Tacoma City Council from labeling NWDC as a correctional facility and expanding the facility.

See Exhibit I, "Tacoma Takes a Harder Line Against Immigrant Detention. Too Late, Say Activists, Seattle Weekly."

17. On July 7, 2017 I attended a rally in California to support hunger strikes at Adelanto detention center. *See Exhibit J, "Immigrant groups hold rally to support Adelanto hunger strikers, Inland Empire Community News."*
18. On November 13, 2017 NWDC Resistance held a "Dia de Muertos" weekend encampment at NWDC to highlight detainees who have died or attempted suicide in NWDC and other detention centers across the nation. This was the third annual Dia de Muertos weekend. *See Exhibit K, "A Night and Day of the Dead at the Detention Center, The Trail."*
19. NWDC Resistance also supports immigrants in removal proceedings who are not detained and has successfully prevented the deportation of a number of individuals.
20. As part of NWDC Resistance's campaign against the facility, I have helped mobilize a large coalition of groups to maintain pressure on NWDC and support for detainees. These groups include 1LoveMovment, Anakbayan, FIGHT (Formerly Incarcerated Group Healing Together), University of Puget Sound, Pacific Lutheran University, Evergreen State College, Coalition of Anti-Racist Whites, League of Women Voters, Kadima, Jewish Voices for Peace, Familias Unidas por la Justicia and Community to Community.
21. I supported the creation of a new grassroots organizing group, Gorge ICE Resistance, in Oregon and aided their efforts in support of hunger strikes in the Northern Oregon Regional Correctional Facility. *See Exhibits L, M.*

My Efforts Aiding Litigation Against NWDC, ICE and GEO

22. For the past five years, I have helped initiate cases for litigation against GEO, NWDC and ICE by connecting detainees with legal representation and reporting abuses.
23. During the 2014 hunger strike, I connected hunger strikers to legal representation. With the help of Columbia Legal Services and the ACLU of Washington, twenty hunger strikers were released from solitary confinement. *See Exhibit N, "Lawsuit Challenges Retaliation Against Hunger Strikers at NW Detention Center, ACLU of Washington."*
24. On September 12, 2017, alongside national groups, I filed a Freedom of Information Act request seeking information on Operation Mega and staged a press conference and massive FOIA deliver at ICE's offices in downtown Seattle. *See Exhibits O, P.*
25. On September 20, 2017, after years of my supporting hunger strikers' in their demand for a change to the \$1 per day work program at NWDC, the Washington State Attorney General filed a lawsuit against GEO for violating the state's minimum wage law. During the press conference announcing the lawsuit, the State Attorney General cited the hunger strikers. *See Exhibits Q, R.*
26. In 2018, I recruited ACLU attorneys to expose NWDC violence after guards at the facility physically assaulted detainees who participated in hunger strikes and placed one in isolation for 20 days. *See Exhibit S, "ACLU-WA Sues to Uphold Free Speech Rights of Hunger Striker, ACLU of Washington."*

My Efforts as a Public Speaker and Activist on Behalf of Immigrants

27. I am known to be an outspoken undocumented activist on behalf of immigrants and am regularly invited to speak in local, state and international forums as an expert on immigration detention and deportations in Washington and beyond.
28. I served on the Blue-Ribbon Commission convened by the National Day Laborer's Organizing Network, a commission comprised of undocumented and formerly undocumented immigrants tasked with putting together recommendations for then President Obama on immigration-related Executive Actions.
29. In October 2016, I attended a meeting in San Diego with the United Nations Working Group Against Arbitrary Detention. I presented a talk about the current conditions in NWDC and submitted a report written in collaboration with the International Human Rights Law Clinic at University of Washington Law School. *See Exhibit T, "US urged to protect rights defenders as activist Maru Mora Villalpando faces deportation case, OHCHR."*
30. In March 2017, I testified before the Inter-American Commission for Human Rights and gave a presentation that included photos of people detained and details about the conditions faced inside NWDC. *See Exhibit U.*
31. In 2017, I 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.

32. I am regularly featured or invited to comment on state and local news items on immigration detention, deportation and enforcement. I have also written news articles of my own highlighting my work as an undocumented activist. See Exhibits V-AC

DHS Targets Me In Retaliation for My Activism

33. In 2014, it became clear that ICE was tracking my activism.

34. On August 4, 2014 I received a notification from LinkedIn, a profession-oriented social networking service, that Bryan Wilcox, then Deputy Field Office Director at ICE Seattle, has viewed my LinkedIn profile. See Exhibit AD, "LinkedIn Screenshot I."

35. On November 3, 2014 I received another notification from LinkedIn that the "Policy/Program Administrator at US Immigration and Customs Enforcement" had viewed my profile. See Exhibit AE, "LinkedIn Screenshot II."

36. On December 20, 2017 I received a Notice To Appear by certified mail at my home address. See Exhibit AF.

37. On January 26, 2018 I received a copy of my I-213 from Senator Maria Cantwell's office following up on a request for I-213. See Exhibit AG, E-Mail from Cantwell. The I-213 is dated December 7, 2013. The I-213 specifically notes my "extensive involvement with anti-ICE protests and Latino advocacy programs." The only evidence against me that it includes is an interview that I gave to "Whatcom News." See Exhibit AH, "I-213."

38. On February 13, 2018 I discovered that the Washington State Department of Licensing ("WA-DOL") provided my address information to ICE upon ICE's request.
39. On February 14, 2018 WA-DOL sent me a copy of their e-mail to ICE. The e-mail was addressed to the same ICE officer who signed off on my I-213, Timothy Black. *See Exhibits AI-AK.*
40. I have dedicated my life to the fight for immigrant justice, demanding an end to detention and deportation. None of the usual triggers for deportation—contact with the police, raids, prior deportations—apply in my case. ICE only knows about me because of my political work.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed:


Maria Mora-Villalpando

March 12th, 2018
Date