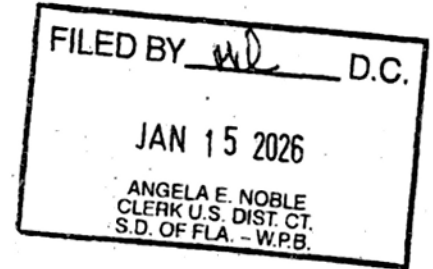


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No: 25-cv-61632-RAR



EVELYN VASQUEZ VEGA
Petitioner

v.

UNITED STATES ATTORNEY GENERAL
WARDEN BROWARD TRANSITIONAL CENTER
Respondents

**MOTION TO LEAVE TO FILE A PETITION FOR
A TEMPORARY RESTRAINING ORDER / PRELIMINARY INJUNCTION**

COMES NOW, the petitioner, EVELYN VASQUEZ VEGA pro se, and respectfully, moves for leave to file a petition for a temporary restraining order which the petitioner is entitled "if the jurisdiction is threatened by an imminent deportation of Plaintiff, asking, inter alia, an injunction requesting the Plaintiff's relocation to the Broward Transitional Center during the pendency of the action for the "convenience of parties and witnesses, in the interest of justice"; since that the evidence show that ICE planned to use transfers to "evade the jurisdiction of the Court", and in support allege as follows:

(1) The Plaintiff has a substantial likelihood of success on the merits:

The plaintiff filed a supporting authorities to the petition for writ of habeas corpus which was based in a recent rule of this court under similarly situated individuals throughout this district have recently faced the same constitutional violations and injustices perpetuated by the Respondents against the law, and Courts have ordered the release of those individuals pursuant

to habeas corpus petitions. See *Grigorian v. Bondi*, 2025 U.S. LEXIS 175489 (S.D. Fla. Sep. 9, 2025) (“Officials must comply with the requirements of applicable regulations...Because they failed to do here, Petitioner may demonstrate entitlement to a writ of habeas corpus ...where the government failed to meet its burden of proof that there was a significant likelihood of removal in the reasonably foreseeable future.”)

Under the Fifth Circuit standard, Plaintiff's likelihood of success on the merits is particularly enhanced, when It is just another attempt by ICE to “evade the jurisdiction of this Court, to emasculate its ability to decide the present case, and to evade its prior judgments” See *Royal Ins. Co. v. Quinn-L Capital Corp.*, 759 F. Supp. 1216 (5th Cir. Tex., 1990) (“the irreparable injury facing Royal is the compromise or nullification of the Court's ...Judgment and the Court's ability to adjudicate the present controversy...if Royal were allowed to lose the benefit of the prior Judgment”).

Petitioner also assert in her habeas corpus petition based on the so-called *Accardi* doctrine and asserts a claim under the Fifth Amendment and the Administrative} Procedures Act for violation of applicable detention standards. The *Accardi* doctrine arises from *United States ex. rel Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954), and Plaintiffs say the rule arising from that case is that agencies must follow their own rules and regulations. Plaintiffs allege that an agency which violates its own rules and regulations violates the Administrative Procedures Act (“APA”) and the Fifth Amendment's Due Process Clause.

Immigration detainees, like the Petitioner here, are subject to the same rights as civil detainees. *Mehmood v. Guerra*, 783 F. App'x 938, 941 (11th Cir. 2019) (holding that the district court improperly classified immigration detainee as a prisoner rather than as a civil detainee). And civil detainees are afforded “more constitutional protection, more considerate treatment, and conditions of confinement than criminals whose conditions of confinement are designed to punish.” *Youngberg v. Romeo*, 457 U.S. 307, 321-22, 102 S. Ct. 2452, 73 L. Ed. 2d 28 (1982). The Government may not impose on civil detainees conditions that would violate a convicted prisoner's Eighth Amendment rights. See *Hamm v. DeKalb Cty.*, 774 F.2d 1567, 1573-74 (11th Cir. 1985) (citing *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244, 103 S. Ct. 2979, 77 L.

Ed. 2d 605 (1983) ("[T]he due process rights of a [pretrial detainee] are at least as great as the Eighth Amendment protections available to a convicted prisoner.")

The minimum standard of care to be provided to civil detainees under the Due Process Clause of the Fifth Amendment is the same as that allowed by the Eighth Amendment for convicted persons. *Hamm*, 774 F.2d at 1574; *see also Bell v. Wolfish*, 441 U.S. 520, 535 n. 16, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979) (holding that the Due Process rights of a civil detainee are at least as great as the Eighth Amendment protections available to a convicted prisoner). The Due Process Clause similarly "imposes a duty on state actors to protect or care for citizens when the state affirmatively places a particular individual in a position of danger the individual would not otherwise have faced." *Gregory v. City of Rogers, Ark*, 974 F.2d 1006, 1010 (8th Cir. 1992) (en banc).

The Eighth Amendment prohibits the infliction of cruel and unusual punishment. *Robinson v. California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962). Under that provision, the Government may not impose punishments that shock the conscience, involve unnecessary and wanton infliction of pain, offend evolving notions of decency, or are grossly disproportionate to the offense for which they are imposed. *See Estelle v. Gamble*, 429 U.S. 97, 102-03, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976); *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976); *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958). Various conditions, "alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. Such conditions could be cruel and unusual under the contemporary standard of decency." *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). On that basis, courts have held that government actors violate the Eighth Amendment when they are deliberately indifferent to a detainee's serious medical needs. *See, e.g. Estelle*, 429 U.S. at 106.

The Government violated the Eighth Amendment when they impose punishments in the plaintiff when ICE planned to use transfers to "evade the jurisdiction of the Court, which shock the conscience, involve unnecessary and wanton infliction of pain, offend evolving notions of decency, or are grossly disproportionate to the offense for which they are imposed, and "does not deprive this court of jurisdiction to order ICE to keep petitioner in the (Southern) District

pending further order of this court). See *Gonzalez v. Sterling*, 2025 U.S. Dist. Lexis 222020 (N.D.GA. November 3, 2025) (Motion for TRO granted restraining respondents from removing Petitioner). See also *Bautista v. Santacruz*, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application...the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention”). Which the Plaintiff has a substantial likelihood of success on the merits.

(2) The preliminary injunction is necessary to prevent irreparable injury:

Petitioner alleges that her unlawful confinement is depriving her of her liberty, which constitutes irreparable harm. Petitioner has been in the United States for four years and resides with her boyfriend and sister in law, all whom are U.S. citizens. There is not evidence that she has been convicted of any crime or that she is a risk of flight or a danger to the community. Presumably, under these circumstances, she would likely be considered a strong candidate for release on bond. So based on the facts and circumstances presented in this case, protracted civil detention clearly threatens irreparable harm to petitioner. See *S.D.B.B. v. Johnson*, No. 1:25-CV-882, 2025 U.S. District LEXIS 198023 (2025 WL 2845170, at *10 (M.D.N.C., Oct 7, 2025) (“During his time detained, Petitioner is separated from his family... this loss of liberty in the absence of a TRO would constitute irreparable harm.”)

(3) Balance of Equities and Public Interest:

Petitioner argues that the irreparable harm she suffers from continued detention outweighs any potential harm to the government. This court should find that the Petitioner’s interest in receiving a bond hearing is significant. Although Respondents have not addressed this factor, the court acknowledges that Respondents have a considerable interest in controlling the presence of aliens in this country. However, a TRO in Petitioner’s favor would merely prevent Respondents from applying Section 1225(b) in an unlawful manner to petitioner. See *Vasquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 U.S. District LEXIS 182412, 2025 WL 2676082, at *23 (D. Nev. Sept. 17, 2025) (“And because the Court has found it is likely that Respondents are

unlawfully detaining Petitioner under § 1225(b)(2) “neither equity or the public interest are furthered” by allowing Respondent’ violation of the INA to continue—quite the opposite”.)

(4) The preliminary injunction would not be averse to the public interest:

Petitioner argues that “where the BIA has no authority to adjudicate a detainee’s constitutional rights---this court is the proper forum to challenge the constitutionality of DHS’ procedures...accordingly, the Government’s interest in preserving the BIA’s authority without judicial intervention has no weight in this context...also weighs against the Government” See *Vasquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 U.S. District LEXIS 182412, 2025 WL 2676082, at *23 (D. Nev. Sept. 17, 2025).

(5) Prejudice:

The Immigration Judge's constitutional error prejudiced Petitioner. See *Singh v. Barr*, 400 F. Supp. 3d at 1019. The Immigration Judge's denial of bond was based on the DHS’s testimony about a fraudulent address with her application. The Service repeatedly charged that the Petitioner had submitted a fraudulent address with her application, and that her requests for relief should be denied because of this misrepresentation.

The Petitioner describes this issue as a "classic red herring" and claims that she submitted to the ICE a copy of the two address of the actual sponsor’s residence. The court need not resolve this authenticity issue, because it is readily apparent that the ICE's decision to continue the Petitioner's detention was based in large part on confidential information offered by the government, and because the court is unable to presume that the ICE's decision would have been the same in absence of the secret evidence, see *Bridges v. Wixon*, 326 U.S. 135, 155, 89 L. Ed. 2103, 65 S. Ct. 1443 (1945). Second, the decision is by ICE itself, not an outside arbiter such as an immigration judge. Finally, the regulations do not provide for an in-person hearing, where Petitioner can present his argument, call witnesses and confront the Government's evidence.

Petitioner has provided sufficient evidence that "the Government might find difficult to overcome if it had to demonstrate affirmatively that Petitioner poses a risk of flight or danger to the community necessitating (her) continued detention." *Jimenez v. Decker*, No. 21 Civ. 880,

2021 U.S. Dist. LEXIS 40727, 2021 WL 826752, at *9 (S.D.N.Y. Mar. 3, 2021) (internal quotation marks omitted). As the period of confinement grows, "so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." The Government has now detained Petitioner for eight months and Petitioner's withholding-only proceedings are still pending in appeal.

While an immigration judge recently denied Petitioner's applications and removal order on June 9, 2025, she filed a notice of appeal. As her first appeal to the BIA took two months between filing notice on June 24, 2025 and receiving a decision of a filing receipt for appeal date on August 18, 2025; Petitioner will likely remain in detention for at least the next several months and, if her case is remanded again, for much longer. Pending the resolution of those proceedings and any eventual removal, a bond hearing would help mitigate the "risk of error inherent in the truth-finding process."

WHEREFORE, Turning to the question of remedy, this Court will find that Petitioner's Motion for Temporary Restraining Order should be granted as follows:

1. Respondent's should remain ENJOINED from removing Petitioner from the Southern District Court of Florida until further order of this court.
2. Respondent's should remain ENJOINED from executing the relocating of Petitioner from the Detention center located at Laredo Detention Center, 4702 East Saunders St. Laredo, Texas, 7840, to the Southern District Court of Florida until further order of this court.
3. This honorable Court granted this petition for writ of habeas corpus and/or in the alternative a conditional relief or any other appropriate relief that this honorable court deem just and proper.

OATH

UNDER PENALTIES OF PERJURY, I, Evelyn Vasquez Vega, declare that I have read the foregoing document, and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: 12-30-2025

Evelyn Vasquez Vega
Evelyn Vasquez Vega
Pro se Respondent
A#: ~~XXXXXXXXXX~~
Laredo Detention Center
4702 East Saunders St.
Laredo, Texas, 78401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the Bureau of Immigration and Customs Enforcement review, to Immigration and Custom Enforcement. Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, and all the lawyers on record via e-filing court system, on this day December, 30, 2025.

Respectfully Submitted:

Evelyn Vasquez Vega
Evelyn Vasquez Vega
Pro se Respondent
A#: ~~XXXXXXXXXX~~
Laredo Detention Center
4702 East Saunders St.
Laredo, Texas, 78401

Headquarters Post-Order Detention Unit
Bureau of Immigration and Customs Enforcement
Department of Homeland Security
801 I Street NW, Suite 800
Washington, D.C. 20536

Request of Custody Review

To whom it may concern:


I request that the Bureau of Immigration and Customs Enforcement review Ms. Vasquez Vega's custody status. Ms. Vasquez Vega has been in detention more than 180 days after being ordered removed, and it is unlikely that she will be deported to Colombia in the reasonably foreseeable future.

Ms. Vasquez Vega was seized by the Bureau of Immigration and Customs Enforcement on December 2024. On June 9, 2025 Immigration Judge Siegel, Pompano Beach Immigration Court, ordered Ms. Vasquez Vega removed. The Board of Immigration Appeals remains in review of her appeal. Ms. Vasquez Vega did not receive a Notice to Alien of File Custody Review from Deportation Officer. A custody review was not conducted after the appeal was filed, and Ms. Vasquez Vega was not released.

Ms. Vasquez Vega has admitted that she entered the United States with inspection through Miami Florida Airport. It appears that she has no criminal record in the United States. Ms. Vasquez Vega has reported that for several years she resided at Orlando Florida, the address where she was seized by federal authorities. While she provided proof of residence and employment authorization card, the Immigration Judge determined that it was likely that she would, indeed, come to court to pursue her case. Thus, if Ms. Vasquez Vega were released, she does not appear to be a flight risk.

At this point, it does not appear that Ms. Vasquez Vega will be removed to Colombia in the reasonably foreseeable future. Consequently, Respondent requests respectfully that she be released under an order of supervision.

Yours truly,

Evelyn Vasquez Vega
EVELYN VASQUEZ VEGA
A # 
Laredo Detention Center
4702 East Saunders St.
Laredo, Texas, 78401

MOTION FOR REQUEST OF CUSTODY REVIEW

The respondent, EVELYN VASQUEZ VEGA prose, moves to request to the office Headquarters Post-Order Detention Unit, Bureau of Immigration and Customs Enforcement Department of Homeland Security, his reconsideration in bond proceedings under section 242(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. 1252(a)(2)(B), since that the respondent's due process had been violated.

Respondent, who, has been in the custody of the Immigration and Custom Enforcement (ICE) pending the resolution of her removal proceedings. Her petition alleges Two grounds for release: (1) the Respondent's detention violates the Due Process Clause because it is based on secret evidence that she has not had the opportunity to examine or confront; (2) her continued detention violates her due process rights because the government's evidence consists of uncorroborated hearsay accusations which she should rebutted; since that respondent was never charged with any crime. The court should held that due process was violated by the nondisclosure of evidence, as follows:

A. The Immigration Judge denied the Respondent's request for release on bond, an appeal is pending in the Board of Immigration Appeals.

B. There is a presumption that the respondent will be release from the Immigration and Naturalization Service's custody, if the alien demonstrates that she is not a threat or danger to the community, due to her arrest was based in a "false arrest" without charges being filed, and she is likely to appear for any scheduled hearings and due to her family ties is not flight risk; all those requisite are meet by the respondent, as follows:

(1) Respondent has a fixed address in the United States: and in support submitted the address showed in the affidavit of the sponsor, attach herein as Exhibit A.

(2) Respondent's length of residence in the United States: is since the year 2021.

(3) Respondent's family ties in the United States: is her sister in law who is an American citizen; and who is also the current sponsor; and my boyfriend who is lawful permanent resident in the United States.

(4) Respondent's employment history, has no records of any adverse conduct exists.

(5) Respondent's record of appearance in court: is document in this court as excellent.

(6) Respondent's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses: are not present in this case, despite of the DHS's affidavit, no clear and convincing evidence had been presented in this court about a Respondent's criminal record.

(7) Respondent's history of immigration violations: no exists in the present case and no clear and convincing evidence had been presented.

(8) Any attempts by the Respondent to flee prosecution or otherwise escape from authorities: no exists in the present case and no clear and convincing evidence had been presented

(9) Respondent's manner of entry to the United: was legally

This court shall to consider also the following factors in determining whether Respondent is a flight risk or poses a danger to the community:

I. Summary of Issues

Whether ICE was detaining Respondent in violation of a Department of Homeland Security "DHS" regulation, and the Due Process Clause of the Fifth Amendment to the United States Constitution, and

Whether if it would violate current policy to proceed, a judgment in the prior determination of release on bond may be set aside, due to the respondent should be member of the new injunction and precedent rendered on *Bautista v. Santacruz*, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application...the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention").

II. Arguments

1. ICE' failed to follow its own regulations as established in sections 8 C.F.R. 287.3:

The section 8 C.F.R. 287.3 provides that aliens arrested without a warrant should be advised, *inter alia*, of the reasons for their arrest and that statements made could be used against them in subsequent proceedings. Here, the DHS/Agent's affidavit used as evidence was obtained in violation of section 8 C.F.R. 287.3,

Respondent's custody was not privileged hinged upon the conclusion that government failed to comply with due process and its own regulations in its continued detention of Respondent, which is the result of an unreasonably restrictive reading of the regulations, and an unjustifiable departure from applicable law, due to ICE' failed to follow its own regulations as established in sections 8 C.F.R. 287.3, as follows:

a) The respondent was not advised, *inter alia*, of the reasons for her arrest and that statements made in the affidavit could be used against her in subsequent proceedings.

b) The immigration authorities violated section 287.3, on August 6, 2025 when presented its allegations of criminality in camera, previously "unopposed" upon the NTA and subsequent immigration arrest. The Respondent was thus denied the opportunity to meaningfully cross-examine even one person during her extended detour through the ICE' administrative procedures.

c) The respondent cites authority for the proposition that a suppression remedy would be appropriate for violations of section 287.3, since that this board has established that : " the immigration judge erred in denying her motion to suppress the evidence in question in view of the testimony of the Service investigator that he had not advised the respondent of her rights under 8 C.F.R. 287.3 and under the fifth amendment.... the immigration judge should have allowed her to testify regarding the circumstances of her arrest and interrogation" Matter of GARCIAFLORES, 17 I. & N. Dec. 325 (BIA 1980).

d) The respondent relied in the regulations filing a Motion for reconsideration. The court's decision is enforced by an additional constitutional concern: the Respondent alleges that the failure of the ICE to provide detailed information to the Immigration Court disabled the IJ from meaningfully exercising its discretion.

The respondent may show prejudice since that this particular statement should have been suppressed and since she did not admitted her removability. Reasonable adjudicator would be compelled to draw contrary conclusion, since that the IJ's denial of the Respondent's application may have been impermissibly prejudged based on a confidential list of "unsavory characters," including Agent's affidavit, that had been issued by the ICE/DHS's Agent, since that not criminal charges had been filed against the respondent.

"The evidence presented establishes that the underlying convictions which served as the basis for the respondent being found subject to removal have been vacated due to a defect in the criminal proceedings. ...Considering the entirety of circumstances presented... these proceedings are terminated" In re: Kirk Sean Marlon Young, File: A035 922 976 (BIA 2017); In re: Melvin Santiago Rodriguez File: A044 924 477 (BIA 2015), In re: Gabrae Orlando Hylton File: A096-732-564 (BIA 2021) (See exhibits attached herein). "Prejudice will have to be specifically demonstrated... however, that 8 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien... Further, the respondent should be given the opportunity to testify concerning the circumstances of her arrest and questioning. Matter of GARCIA FLORES, 17 I. & N. Dec. 325 (BIA 1980).

Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures... even where the internal procedures are possibly more rigorous than otherwise would be required.' Morton v. Ruiz, 415 U. S. 199, 235 (1974); See also Vitarelli v. Seaton, 359 U.S. 535 (1959); Service v. Dulles, 354 U.S. 363 (1957); U.S. ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954). Regulations have the force and effect of law (Matter of A, A-6178382, 3, I. & N. Dec. 714, 716; United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (March 15, 1954)). The ICE' own regulations as established in section 8 C.F.R. 287.3, an agency still has a duty to obey them.' United States v. Caceres, supra at 1471, n. 14.

This change in policy and with regard to the respondent (1) was arbitrary and capricious; (2) was contrary to law and agency rules; and (3) unreasonably delayed or unlawfully withheld

adjudication of respondent imprisonment, and "was arbitrary and capricious under the APA because the Acting Secretary offered no reason for terminating the forbearance policy" *Department of Homeland Security v. Regents of Univ. of Cal.*, 591 U.S.140 S. Ct. 1891(2019). See also, *Bridges v. Wixon*, 326 U.S. 135 (1945) (deportation order vacated because of noncompliance with evidentiary requirements). "Whether the Services violation of a regulation is a per se due process violation" cf. *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957). Here the "Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980).

Because the Board had accepted the same relief in other cases, due to the change in the current policy to proceed in the respondent's case, this supports that the application in the respondent's case was arbitrary and capricious. "Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary." *Contractors Transport Corp. v. United States*, 537 F.2d 1160, 1162 (4th Cir. 1976); *NLRB v. Washington Star Co.*, 235 U.S. App. D.C. 372, 732 F.2d 974, 977 (D.C. Cir. 1984) ("The present sometimes-yes, sometimes-no, sometimes-maybe policy . . . cannot, however, be squared with our obligation to preclude arbitrary and capricious management of the Board's mandate."); *Doyle v. Brock*, 821 F.2d at 786 & n.7; *Professional Airways Systems Specialists v. Federal Labor Relations Auth.*, 258 U.S. App. D.C. 14, 809 F.2d 855, 859 (D.C. Cir. 1987)" *VARGAS, v. INS*, 938 F.2d 358 (2nd Cir. 1991).

2. The change was immaterial:

The Supreme court has established that "the court has no right to proceed any further in the progress of the case for want of an indictment. If there is nothing before the court which the prisoner, in the language of the Constitution, can be "held to answer," he is then entitled to be discharged so far as the offense originally presented to the court by the indictment is concerned. There was nothing before the court on which it could hear evidence. . . the Respondent is entitled to (release)" *Ex parte Bain*, 121 U. S. 1, 30 L. ed. 849, 7 Sup. Ct. Rep. 781, 6 Am. Crim. Rep. 122. Which the respondent's "claims of false arrest and false imprisonment were not jurisdictionally barred under 8 USCS 1252(a)(2)(B)(ii) because immigration officials do not have discretion to violate U.S. Constitution. *Rashad Ahmad Refaat El Badrawi v Dep't of Homeland Sec.* (2008, DC Conn) 579 F.Supp 2d 249.

3. The Charge was waived:

a) The Charge was waived by ICE/DHS, without a modification on the NTA, was based in an uncorroborated hearsay document violates her Fifth Amendment right to procedural due process.

Section 242(b)(3) of the Immigration and Nationality Act grants an alien a reasonable opportunity to cross-examine witnesses presented by the government in deportation hearings. A recognized exception to the right of cross-examination in deportation hearings is where a hearsay document is offered to establish an uncontested fact.

The Respondent claims that the decision of the ICE to detain her, primarily on the basis of an uncorroborated hearsay document violates her Fifth Amendment right to procedural due process. Respondent asserts that the allegedly poor quality of the evidence presented by the ICE raises a due process claim because it denied a meaningful opportunity to her to cross-examine her accusers. This constitutional claim raises due process issues of the reliability of the government's evidence separate from the concerns inherent in the use of *in camera*, *ex parte* procedures. The Respondent alleges that to detain an individual on the weight of a single, unsworn, unsigned, and uncorroborated hearsay document of this character these circumstances violate due process, even if the evidence had been submitted in open court.

The Respondent advances *Bridges v. Wixon*, 326 U.S. 135, 89 L. Ed. 2103, 65 S. Ct. 1443 (1945), that detention based on unreliable hearsay evidence raises due process concerns because it frustrates the right to confront one's accusers. The *Bridges* Court found that the ICE had violated its own regulations by basing a deportation order on unsigned, unsworn, hearsay allegations. *Id.* at 150-151. The Court noted that the applicable ICE regulations prohibited the admission of hearsay statements as substantive evidence except in very limited circumstances, and cautioned: "Meticulous care must be exercised lest the procedure by which [the detainee] is deprived of [his] liberty not meet the essential standards of fairness." *Id.* at 154.

This court should reverse here the findings of fact where "any reasonable adjudicator would be compelled to conclude to the contrary." (quoting 8 U.S.C. 1252(b)(4)(B)), as follows:

1. The use of affidavits from persons who are not available for cross-examination does not satisfy the constitutional test of fundamental fairness unless the INS first establishes that despite reasonable efforts it was unable to secure the presence of the witness at the hearing. Which the government's introduction of the affidavit deprived appellant of her right to cross-examine witnesses against her. This Board should turn to consider the quality of the evidence proffered by the ICE in opposition to Respondent's applications for release on bond and for relief from removal.

2. Reasonable adjudicator would be compelled to draw contrary conclusion, since that the IJ's denial of the Respondent's application may have been impermissibly prejudged based on a confidential list of "unsavory characters," including Agent's affidavit, that had been issued by the ICE/DHS's Agent, since that not criminal charges had been filed against the respondent.

"The evidence presented establishes that the underlying convictions which served as the basis for the respondent being found subject to removal have been vacated due to a defect in the criminal proceedings. ...Considering the entirety of circumstances presented... these proceedings are terminated" In re: Kirk Sean Marlon Young, File: A035 922 976 (BIA 2017); In re: Melvin Santiago Rodriguez File: A044 924 477 (BIA 2015), In re: Gabrae Orlando Hylton File: A096-732-564 (BIA 2021)

3. The evidence obtained by the Service prior to the issue of the order to show cause violates section 242(b)(3) which requires that an alien be permitted a reasonable opportunity to examine the evidence against her, to present evidence in her own behalf and to cross-examine witnesses presented by the Government. Here, Respondent's deprivation of due process should have been

considered with merit since that the respondent did not received a fair and impartial hearing. Further, the respondent should be given the opportunity to testify concerning the circumstances of her arrest and questioning, in the light of this board decision in Matter of GARCIA FLORES, 17 I. & N. Dec. 325 (BIA 1980), as follows:

"Prejudice will have to be specifically demonstrated... however, that 8 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien. We will accordingly remand the record to allow the respondent the opportunity to demonstrate that the investigating officer's action prejudiced her interests that were protected by the regulation and that such prejudice affected the outcome of the deportation proceedings. In this regard, it should be determined whether evidence supporting a finding of deportability arose prior to the apparent regulatory violation. Moreover, on remand the parties to the proceeding should be given the opportunity to present their positions regarding the ambiguity of the regulatory requirements at issue here. Further, the respondent should be given the opportunity to testify concerning the circumstances of her arrest and questioning. Matter of GARCIA FLORES, 17 I. & N. Dec. 325 (BIA 1980):

4. Prejudice will have to be specifically demonstrated by the use of secret evidence:

The respondents attempt to distinguish Bridges from the present circumstances, arguing that because Bridges addressed the evidentiary requirements for establishing deportability, the holding does not encompass situations where the detainee seeks a discretionary benefit such as release on bond under INA 236. See, e.g., Cunanan, 856 F.2d at 1374 (finding that BIA denial of application for discretionary relief of voluntary departure violated due process where decision was based on hearsay affidavit and "Record of Deportable Alien" by declarants who were not available for cross-examination). The decision of the ICE to maintain Respondent's detention falls squarely within the directions of Bridges.

The Circuit Courts have considered the use of hearsay evidence in immigration cases, where the government typically attempts to proffer affidavits in lieu of live testimony. These decisions have fashioned the contours of the due process interest of Bridges. And they uniformly hold that, *for due process purposes*, the admissibility of hearsay evidence is determined by whether it is both probative and "fundamentally fair." See, e.g., Baliza v. ICE, 709 F.2d 1231, 1234 (9th Cir. 1997); Cunanan, 856 F.2d 1373, 1374; Olabanji v. ICE, 973 F.2d 1232, 1234 (5th Cir. 1992).

The Circuit Court decisions also require that the government acknowledge the detainee's right to cross-examine his or her accusers. The constitutionality of reliance on hearsay evidence thus turns on whether the government has made a reasonable effort to produce its witnesses for cross-examination. See Cunanan, 856 F.2d at 1375; Saidane v. ICE, 129 F.3d 1063, 1065 (9th Cir. 1997); Olabanji, 973 F.2d at 1236. See, e.g., Baliza, 709 F.2d at 1234 (finding "troubling" due process violation when government made no effort to locate witness before deportation hearing, despite government's submission of unsigned note by investigator stating that he could not locate affiant at her last known address); Hernandez-Garza v. ICE, 882 F.2d 945 (5th Cir. 1989) (prohibiting reliance on affidavit of Spanish speaker that was taken in English by ICE agents, where immigration judge prohibited cross-examination of agents regarding their fluency in

Spanish); Saidane, 129 F.3d at 1065-66 (barring use of hearsay affidavit when the ICE improperly attempted to shift the burden to produce witness onto alien.).

These cases declare that due process concerns are not satisfied unless the government provides the detainee with an opportunity to cross-examine the affiant, or at the minimum, submits a sworn statement by a witness who can address the reliability of the evidence. The Fifth Circuit's Olabanji decision thus ruled that the government could not constitutionally rely on the testimony of an ICE officer who had drafted an affidavit of the immigrant's ex-wife, because the affiant herself was not produced for cross-examination. Olabanji, 973 F.2d at 1234; cf. Bustos-Torres v. ICE, 898 F.2d 1053, 1056 (5th Cir. 1990) (accepting standardized form where government submitted affidavit of authentication from examining officer, where form was based on uncontested admissions of immigrant).

A court determining the reliability of hearsay evidence must consider whether the hearsay allegations have been corroborated by other government evidence, and whether the immigrant has produced evidence that rebuts the government's allegations. Ultimately, hearsay evidence offered by the government in immigration proceedings must be tested for reliability and trustworthiness.

Because the ICE submitted virtually all its substantive evidence *in camera* to the immigration judge, and because the respondent's brief and unlawful detention was vacated based on a constitutional violation, it is no longer a conviction for immigration purposes, neither Respondent nor this court had access previously to this other allegations made by the Service. *See Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). Considering the entirety of circumstances presented, the unopposed motion to terminate the removal proceedings against the respondent should be granted, and these proceedings are terminated, in the light of the following decisions: In re: Kirk Sean Marlon Young, File: A035 922 976 (BIA 2017); In re: Melvin Santiago Rodriguez File: A044 924 477 (BIA 2015), In re: Gabrae Orlando Hylton File: A096-732-564 (BIA 2021) (See exhibits attached herein).

The government attorney failed to make efforts to produce government's affiant. Petitioner was unaware of his affidavit until the hearing date, and therefore could not have known that cross-examining him would be essential to her defense. "Without this information, and without the government having made a reasonable effort to present the witness, petitioner was not afforded a reasonable opportunity to cross-examine him.... the statutory purposes behind 1252(b) (3) would be frustrated, "if the government's choice whether to produce a witness or to use a hearsay statement [were] wholly unfettered." Baliza v. INS, 709 F.2d 1231 (9th Cir. 1982).

Eventually, the Immigration Judge directed the parties to question her through interrogatories in the hearing proceedings resumed in May 1, 2025. The Respondent claims that when the IJ asked the ICE attorneys if they sought to present any evidence in open court, they initially replied that they would present an ICE's affidavit. Under these circumstances the Respondent has raised serious questions about whether the ICE made reasonable efforts to produce the ICE's Affidavit for cross-examination, or whether "the only apparent reason for the ICE's decision not to call [the accuser] . . . was to avoid subjecting her to cross-examination." Saidane, 129 F.3d at 1065-66. However, the government committed far more serious error by failing to produce any

other witnesses in support of its allegations from the ICE. Respondent had raised "formidable doubts about the veracity of the allegations contained in the ICE reports."

Despite repeated requests from the Immigration Judge, the government made no recorded efforts to produce witnesses, either *in camera* or in public, to support its allegations of criminality. The Respondent was thus denied the opportunity to meaningfully cross-examine even one person during her extended detour through the ICE' administrative procedures. The ICE' actions unconstitutionally damaged Respondent's due process right to confront her accusers. The quality of the evidence offered by the government as the basis for Respondent's continued detention does not attain that level of reliability sufficient to satisfy the constitutional standard of fundamental fairness and some concerns about the reliability of some of the "classified information." There is ample evidence in the record that the respondent was not given an opportunity to examine the evidence against her and to prepare her defense in accordance with the regulation providing for interrogatories. Here, although the IJ apparently considered the classified information presented by the ICE, (See Exhibits E Attached), the judge found that based on the submissions of the Service, which consist of material from the ICE, Under these circumstances, the Board should find that the ICE' reliance on evidence that could not be tested for reliability denied the Respondent the independent adjudication to which she is entitled.

5. Due Process requirements establish that the Government, not the noncitizen, "must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond.

The Attorney General is still subject to the requirements of Due Process. And, under Circuit precedent, Due Process requires that the government, not the noncitizen, bear the burden at an immigration bond hearing. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall . . . be deprived of . . . liberty . . . without due process of law." U.S. Const. amend. V. "Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). The Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979) (string citation omitted).

In *Singh v. Holder*, the Ninth Circuit considered which party should bear the burden of proof at an immigration bond hearing where the noncitizen has been subjected to prolonged detention (a "Casas hearing") and what standard of proof should apply there. 638 F.3d 1196 (9th Cir. 2011) ("*Singh*"). The Circuit held that "[g]iven the substantial liberty interest at stake," the Government, not the noncitizen, "must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond at a Casas hearing." *Id.* at 1203.

Disagreement among the Circuits exists regarding which party shoulders the burden and quantum of proof at the individualized bond hearing. In first instance the Eleventh Circuit place the burden of proof on the criminal alien who must demonstrate that he is neither a flight risk nor a danger to others. *Sopo v. United States AG*, 825 F.3d 1199 (11th Cir. 2016)(adopting the procedures from 8.C.F.R. 1236.1(c)). But this decision was Vacated by, Appeal dismissed by

Sopo v. United States AG, 890 F.3d 952, 2018 U.S. App. LEXIS 12780 (11th Cir. Ga., May 17, 2018) Petition denied by Maxi Dinga Sopo v. United States AG, 2018 U.S. App. LEXIS 17147 (11th Cir., June 25, 2018).

Accordingly, this court will join the "consensus view" among District Courts concluding that after *Jennings v. Rodriguez* 583 U.S. 281, 306, 138 S. Ct. 830, (2018) "where . . . the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified." *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *see also*, *e.g.*, *Brito v. Barr*, 415 F. Supp. 3d 258, 2019 WL 6333093, at *4 (D. Mass. Nov. 27, 2019) ("[T]he Court holds that the Due Process Clause requires the Government bear the burden of proof in 1226(a) bond hearings."); *Rajesh v. Barr*, 420 F. Supp. 3d 78, 2019 WL 5566236, at *6 (W.D.N.Y. Oct. 29, 2019) ("The Court joins with these courts and concludes that the Fifth Amendment's Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that detention is justified at a bond hearing under 1226(a)."); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal, 2019) ("*Singh v. Barr*") ("The Court agrees with the reasoning of its sister courts and concludes that the Fifth Amendment's Due Process Clause requires the Government to bear the burden of proving, by clear and convincing evidence, that continued detention is justified at a 1226(a) bond redetermination hearing."); *Hernandez-Lara v. Immigration & Customs Enft.*, 2019 U.S. Dist. LEXIS 124144, 2019 WL 3340697, at *4 (D.N.H. July 25, 2019) ("This court finds persuasive those opinions that have held that, in 1226(a) cases, due process requires the burden be placed on the government."); *Diaz-Ceja v. McAleenan*, 2019 U.S. Dist. LEXIS 110545, 2019 WL 2774211, at *10 (D. Colo. July 2, 2019) ("The court finds that allocating the burden to a noncitizen to prove that he should be released on bond under 1226(a) violates due process"). This court will also join other District Courts to hold that due process requires the Government to carry its burden by clear and convincing evidence. *See, e.g.*, *Rajesh*, 420 F. Supp. 3d 78, 2019 WL 5566236, at *6; *Singh v. Barr*, 400 F. Supp. 3d 1018; *Marroquin Ambriz*, 420 F. Supp. 3d 953, 2019 U.S. Dist. LEXIS 186531, 2019 WL 5550049, at *8 (N.D. Cal. Oct. 28, 2019) ("Marroquin Ambriz is entitled to a hearing at which the government bears the burden of proof, by clear and convincing evidence, that he is dangerous or a flight risk.").

Moreover, as "the Government shall bear the burden of proving by clear and convincing evidence that his continued detention is justified" *Perez v. McAleenan*, 435 F. Supp. 3d 1055 (9th Cir. Cal. 2020).

On May 1, 2025, the respondent requested an initial bond redetermination hearing before an Immigration Judge pursuant to 8 C.F.R. 1003.19(b) & 1236.1(d)(1). The Immigration Judge denied the respondent's request for release on bond, concluding that she had failed to demonstrate that she would not pose a danger to persons or property if released or flight risk. The respondent did appeal this decision; and now asserts that she is not subject to mandatory custody under the terms of section 236(c) of the Act.

For the foregoing reasons "the current scheme of placing the burden on Respondent to prove that he should be released on bond contravenes due process" *L.G. v. Choate, et al.*, 744 F. Supp. 3d 1172 (D.C. Col 2024). The respondent is being detained in violation of the Constitution and laws of the United States, and that the court should determine whether their continued detention is justified.

Prejudice:

The Immigration Judge's constitutional error prejudiced respondent. *See Singh v. Barr*, 400 F. Supp. 3d at 1019. The Immigration Judge's denial of bond was based on the DHS's testimony about a fraudulent address with her application. The Service repeatedly charged that the Respondent had submitted a fraudulent address with her application, and that her requests for relief should be denied because of this misrepresentation. The Respondent describes this issue as a "classic red herring" and claims that she submitted to the ICE a copy of her actual sponsor's residence. The court need not resolve this authenticity issue, because it is readily apparent that the ICE's decision to continue the Respondent's detention was based in large part on confidential information offered by the government, and because the court is unable to presume that the ICE's decision would have been the same in absence of the secret evidence, see *Bridges v. Wixon*, 326 U.S. 135, 155, 89 L. Ed. 2103, 65 S. Ct. 1443 (1945).

Changed circumstances:

The respondent can now show that her circumstances have materially changed since the last bond decision, and in support submit proof that the charge presented against the respondent was false.

"[C]ourts must consider that Respondent has produced evidence that may well indicate that she is not a danger to the community on account of her past. She expressed a willingness to enroll in an ankle-monitor treatment program, if should she be released from detention. Given this evidence, "[i]t is not unreasonable to think a different determination might have obtained if the government was forced to bear the burden of proof by a clear and convincing standard." *Singh v. Barr*, 400 F. Supp. 3d at 1020.

6. False arrest as a basis for deportation:

Moreover, the Immigration judge should reconsider his bond determination, finding August 6, 2025, upon Petitioner's Motion for Bond redetermination, that a false arrest is a basis for deportation and denial of her bond relief, finding that:

According to USCIS Policy Manual:

"Generally moral turpitude is not inherent in violations of such regulatory statutes. Thus, in the absence of fraud or evil intent, moral turpitude *does not* emerge from violations of *immigration laws*. 382"

See <https://www.uscis.gov/policy-manual/updates>, with the May 21, 2020 Technical Update. Chapter 71 Grounds for Deportation, 71.05 Deportability Based on the Commission of Criminal Offenses, [1] Crimes Involving Moral Turpitude, [d] CIMTs Scope of Crimes; Classification of Specific Crime, [ii] Specific Crimes Considered, [E] Crimes Against Authority of Government."

ICE/DHS failed to comply with due process and its own regulations in its continued detention of Respondent, in violation of the section 8 C.F.R. 287.3.

Respondent claim that was victim of a false imprisonment/wrongful confinement which: (1) the defendant intended to confine Respondent; without a search warrant which Respondent's

initial confinement was not authorized by law; (2) the Respondent was conscious of the confinement; since that was transported to Orange County jail where criminal charges were not presented; (3) the Respondent did not consent to the confinement; "where there was evidence on the record to support Respondent's allegation that officers fabricated the (evidence) in an effort to manufacture probable cause for detention" *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004), and (4) the confinement was not otherwise privileged, since that due to the a false imprisonment, was impose an immigration hold over the Respondent, as follows:

It is well settled that the regulations which the Service promulgates have the force and effect of law and are binding on the Service and the Immigration Court. A "Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980).

The Immigration court should reject DHS' arguments as forfeited, as established upon a Board precedent, due that Petitioner does not present a danger to the community.

"When the Government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). The violation of the *Accardi* doctrine constitute "a violation of the Fifth Amendment's Due Process Clause" *United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation.); *Jeân v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) ("Agency deviation from its own regulations and procedures may justify judicial relief"). Further, "[i]t is well established that an agency acts arbitrarily . . . when it does not follow its own procedures." *Torres v. U.S. Dep't of Homeland Sec.*, No. 17-cv-01840, 2017 U.S. Dist. LEXIS 161406, (S.D. Cal. 2017)(holding that "[the] failure [of Defendants, DHS, USCIS, U.S. Immigration and Customs Enforcement, and CBP] to follow the termination procedures set forth . . . is arbitrary, capricious, and an abuse of discretion" because . . . a fundamental principle of federal law is that a federal agency must follow its own procedures" (citations omitted)); see also *Andriasian v. INS*, 180 F.3d 1033, 1046 (9th Cir. 1999). See also, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-38 (D.D.C. 2018) (APA claim based on DHS failure to comply with an ICE Parole Directive).

Here, the violation of the *Accardi* doctrine, constitute a violation of the Fifth Amendment's Due Process Clause, according case law precedents and USCIS Policy Manual, a finding that the Petitioner present a danger to the community, "it would violate current policy to proceed; a criminal judgment may be set aside" *Matter of ANDRADE*, 14 I. & N. Dec. 651 (BIA 1974). Moreover, Petitioner does not present a danger to the community and the government failed to prove that Petitioner posed a danger to the community.

7. Respondent does not present a threat to national security:

The respondent is not "properly included" in the category of aliens subject to mandatory detention pursuant section 236(c) of the Immigration and Nationality Act, for bond or custody purposes. 8 C.F.R. 3.19(h)(2)(ii), according to USCIS Policy Manual; where is established:

[E] Crimes Against Authority of Government:

"Offenses found *not* to involve moral turpitude because fraud or evil intent was lacking include *possessing an altered immigration document* with knowledge that it was altered, but without its use or intent to use it unlawfully.... Generally, moral turpitude is not inherent in violations of such regulatory statutes. Thus, in the absence of fraud or evil intent, moral turpitude *does not* emerge from violations of *immigration laws*. 382" See <https://www.uscis.gov/policy-manual/updates>, with the May 21, 2020 Technical Update. Chapter 71 Grounds for Deportation, 71.05 Deportability Based on the Commission of Criminal Offenses, [1] Crimes Involving Moral Turpitude, [d]-CIMTs Scope of Crimes; Classification of Specific Crime, [ii] Specific Crimes Considered, [E] Crimes Against Authority of Government."

It is well settled that the regulations which the Service promulgates have the force and effect of law and are binding on the Service and the Immigration Court. A "Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." Matter of Garcia-Flores, 17 I&N Dec. 325 (BIA 1980).

The Immigration court should reject DHS' arguments as forfeited, as established upon a Board precedent, and due that Respondent does not present a threat to national security "it would violate current policy to proceed, a criminal judgment may be set aside" Matter of ANDRADE, 14 I. & N. Dec. 651 (BIA 1974). Moreover, Respondent does not present a threat to national security, and the government failed to prove that Respondent presented a threat to national security.

8. Respondent does not present a danger to the community:

The Respondent contends that there was no reasonable ground for regarding as a danger to the security of the country in which she is, or who, having "not been" convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country, where the evidence of danger to the community was not clear and convincing.

According to USCIS Policy Manual:

"Generally moral turpitude is not inherent in violations of such regulatory statutes. Thus, in the absence of fraud or evil intent, moral turpitude *does not* emerge from violations of *immigration laws*. 382"

See <https://www.uscis.gov/policy-manual/updates>, with the May 21, 2020 Technical Update. Chapter 71 Grounds for Deportation, 71.05 Deportability Based on the Commission of Criminal Offenses, [I] Crimes Involving Moral Turpitude, [d] CIMTs Scope of Crimes; Classification of Specific Crime, [ii] Specific Crimes Considered, [E] Crimes Against Authority of Government.”

It is well settled that the regulations which the Service promulgates have the force and effect of law and are binding on the Service and the Immigration Court. A “Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation.” *Matter of Garcia-Flores*, 17 I&N Dec. 325 (BIA 1980). Which respondent does not present a danger to the community.

“When the Government has promulgated “[r]egulations with the force and effect of law,” those regulations “supplement the bare bones” of federal statutes. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266, 268, 74 S. Ct. 499, 98 L. Ed. 681 (1954). The violation of the *Accardi* doctrine constitute “a violation of the Fifth Amendment’s Due Process Clause” *United States v. Teers*, 591 F. App’x 824, 840 (11th Cir. 2014) (recognizing that an *Accardi* violation may be a due process violation.); *Jean v. Nelson*, 727 F.2d 957, 976 (11th Cir. 1984) (“Agency deviation from its own regulations and procedures may justify judicial relief”). Further, “[i]t is well established that an agency acts arbitrarily . . . when it does not follow its own procedures.” *Torres v. U.S. Dep’t of Homeland Sec.*, No. 17-cv-01840, 2017 U.S. Dist. LEXIS 161406, (S.D. Cal. 2017)(holding that “[the] failure [of Defendants, DHS, USCIS, U.S. Immigration and Customs Enforcement, and CBP] to follow the termination procedures set forth . . . is arbitrary, capricious, and an abuse of discretion” because “a fundamental principle of federal law is that a federal agency must follow its own procedures” (citations omitted)); see also *Andriasian v. INS*, 180 F.3d 1033, 1046 (9th Cir. 1999). See also, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-38 (D.D.C. 2018) (APA claim based on DHS failure to comply with an ICE Parole Directive).

Here, a finding that the respondent present a danger to the community, “it would violate current policy to proceed, a criminal judgment may be set aside” *Matter of ANDRADE*, 14 I. & N. Dec. 651 (BIA 1974). Moreover, Respondent does not present a danger to the community.

9. Respondent does not present a risk of flight from further proceedings:

Upon the Board decision, if “the Court finds the respondent is a flight risk but that this risk is sufficiently reduced if she posts a bond. “The Court applied the general bond provisions contained in Section 236(a) of the Act which require that the respondent demonstrate that he is not likely to abscond, is not a threat to the national security, and is not a threat to the community... The Court finds the respondent is a flight risk but that this risk is sufficiently reduced if he posts a bond. In the *Matter of: Hedfonso CASTILLO-Andara*, File: A079-021-941 (BIA JUN 30, 2010)(nonprecedent). Here, the respondent is entitled to the same relief, since that Respondent does not present a risk of flight from further proceedings.

Because the Board had accepted the same relief in other cases, "The present sometimes-yes, sometimes-no, sometimes-maybe policy . . . cannot, however, be squared with our obligation to preclude arbitrary and capricious management of the Board's mandate. . . decision in Respondent's case was arbitrary and capricious. . . Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary" VARGAS, v. INS, 938 F.2d 358 (2nd Cir. 1991). Moreover, Respondent does not present a risk of flight from further proceedings, since that "this risk is sufficiently reduced if she posts a bond" In the Matter of: Iledfonso CASTILLO Andara, File: A079-021-941 (BJA JUN 30, 2010) (nonprecedent). Patently inconsistent application of agency standards to similar situations lacks rationality and is arbitrary.

CONCLUSION

For the foregoing reasons, the respondent respectfully requests that the immigration court granted this consideration in the bond decision, since that the respondent should be member of the new injunction, and precedent rendered on *Bautista v. Santacruz*, 2025 U.S. District LEXIS, 233085, Case: 5:25-cv-01875-SSS-BFM, 2025 LX: 533872 (S.D. Cal. November 20, 2025) (Petitioners sought an order to prohibit Respondents from relocating Petitioners outside this District pending final resolution of this litigation, the court granted the application. . . the court ordered Respondents to provide Petitioners with an individualized bond hearing or release Petitioners from detention").

WHEREFORE, the respondent, Evelyn Vasquez Vega, prose, respectfully moves to request that the Bureau of Immigration and Customs Enforcement review and reconsider a bond determination, and scheduled a hearing time, since that comparing Respondent's circumstances against the factors, her case for release on bond presents all the positive equities. There is no indication that service actually submitted any evidence on any of the factors in opposition to Respondent's request to be released from custody. A bond relief accordingly should be warranted on the bond amount that this Bureau deem just and proper.

OATH

UNDER PENALTIES OF PERJURY, I, Evelyn Vasquez Vega, declare that I have read the foregoing document, and I Understand its content; this document is filed in good faith and is timely filed, I understand its content in English, has potential merit, and that facts contained in the documents are true and correct.

Date: 12-30-2025

Evelyn Vasquez Vega

Evelyn Vasquez Vega

Pro se Respondent

A#:

Laredo Detention Center

4702 East Saunders St.

Laredo, Texas, 78401

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct original of the foregoing document has been furnished by U.S. Mail-postage prepaid to The Clerk of the Bureau of Immigration and Customs Enforcement review, to Immigration and Custom Enforcement. Department of Homeland Security, Chief Counsel, Deputy Chief Counsel, Assistant Chief Counsel, and all the lawyers on record via e-filing court system, on this day December, 30, 2025.

Respectfully Submitted:

Evelyn Vasquez Vega

Evelyn Vasquez Vega

Pro se Respondent

A#:

Laredo Detention Center

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Laredo, Texas, 78401