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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RODRIGUEZ ROMERO, ET AL : CIVIL ACTION
VERSUS : NO. 3:25-1106-JWD-EWD
LADWIG, ET AL : JANUARY 7, 2026

=====

MOTION HEARING
BEFORE THE HONORABLE JOHN W. DEGRAVELLES
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR PETITIONERS:

NATIONAL IMMIGRATION PROJECT
BY: BRIDGET PRANZATELLI, ESQUIRE
BY: STEPHANIE M. ALVAREZ-JONES, ESQUIRE
1763 COLUMBIA ROAD NW
SUITE 175 #896645
WASHINGTON, DC 20009

RIGHTS BEHIND BARS
BY: LYDIA WRIGHT, ESQUIRE
1800 M ST. NW FRONT 1 #33821
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FOR RESPONDENTS:

DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY'S OFFICE
BY: JUSTIN ALAN JACK, ESQUIRE
BY: KATHERINE KRUPA GREEN, ESQUIRE
451 FLORIDA STREET, SUITE 300
BATON ROUGE, LOUISIANA 70801

REPORTED BY: NATALIE W. BREAUX, RPR, CRR
UNITED STATES COURTHOUSE
777 FLORIDA STREET

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY USING
COMPUTER-AIDED TRANSCRIPTION SOFTWARE

1 (JANUARY 7, 2026)

2 PROCEEDINGS

3 THE LAW CLERK: ALL RISE.

4 (CALL TO THE ORDER OF COURT)

5 THE COURT: YOU MAY BE SEATED, FOLKS. GOOD
6 MORNING.

7 OKAY. WE'RE HERE THIS MORNING IN
8 *RODRIGUEZ ROMERO* AND OTHERS. I WANT -- BEGINNING
9 WITH THE PLAINTIFFS' COUNSEL, ENTER AN APPEARANCE FOR
10 THE RECORD.

11 MS. PRANZATELLI: YOUR HONOR, BRIDGET
12 PRANZATELLI OF THE NATIONAL IMMIGRATION PROJECT HERE
13 FOR PETITIONERS ALONGSIDE CO-COUNSEL STEPHANIE
14 ALVAREZ-JONES, ALSO OF THE NATIONAL IMMIGRATION
15 PROJECT, AND LYDIA WRIGHT OF RIGHTS BEHIND BARS.

16 MR. JACK: GOOD MORNING, YOUR HONOR. SORRY.
17 JUSTIN JACK ON BEHALF OF THE FEDERAL
18 RESPONDENTS. AND I'M JOINED WITH KATHERINE GREEN.
19 AND WE'RE BOTH FROM THE U.S. ATTORNEY'S OFFICE.

20 THE COURT: ALL RIGHT, GREAT.

21 ALL RIGHT, FOLKS. SO I'VE READ ALL THE
22 BRIEFS AND AM PREPARED FOR ARGUMENT. AND LET'S BEGIN
23 WITH THE PETITIONER.

24 MS. PRANZATELLI: THANK YOU, YOUR HONOR.
25 YOUR HONOR, THIS CASE CONCERNS FOUR

1 MEN, AGES 43 TO 72, WITH A VARIETY OF SIGNIFICANT
2 MEDICAL ISSUES AND FAMILY RESPONSIBILITIES WHOM ICE
3 ITSELF ALREADY DETERMINED IT COULD NOT REMOVE IN THE
4 REASONABLY FORESEEABLE FUTURE. NEVERTHELESS, AND
5 DESPITE PERFECT COMPLIANCE WITH THE CONDITIONS OF
6 THEIR PRIOR RELEASE FROM IMMIGRATION DETENTION, THESE
7 MEN WERE ARBITRARILY REDETAINED LAST SUMMER, IN
8 VIOLATION OF THEIR PROCEDURAL AND SUBSTANTIVE DUE
9 PROCESS RIGHTS. NOW, MONTHS LATER, PETITIONERS
10 REMAIN IN CIVIL DETENTION INSIDE OF ANGOLA PRISON
11 WITH NO END IN SIGHT.

12 THE GOVERNMENT'S APPROACH IN THIS CASE
13 OF *DETAIN FIRST AND JUSTIFY LATER* DOES NOT COMPORT
14 WITH THE CONSTITUTION. PETITIONERS BRING THREE
15 CLAIMS CHALLENGING THEIR DETENTION, EACH OF WHICH IS
16 SUFFICIENT ALONE TO WARRANT RELEASE. FIRST,
17 PETITIONERS WARRANT RELEASE BECAUSE IT IS UNDISPUTED
18 THAT THEY DID NOT RECEIVE THE FULL PROCESS DUE TO
19 THEM WHEN THEY WERE REDETAINED LAST SUMMER, IN
20 VIOLATION OF BINDING REGULATIONS AND THEIR PROCEDURAL
21 DUE PROCESS RIGHTS.

22 SECOND, PETITIONERS WARRANT RELEASE
23 BECAUSE THEY ARE STILL DETAINED TODAY, WHICH BETRAYS
24 THAT THERE WAS NO REMOVAL PLAN IN PLACE AT THE TIME
25 THAT THEY WERE REDETAINED LAST SUMMER, IN VIOLATION,

1 AGAIN, OF DHS REGULATIONS AND OF PETITIONERS'
2 SUBSTANTIVE DUE PROCESS RIGHTS.

3 AND, THIRD, PETITIONERS WARRANT RELEASE
4 BECAUSE REMOVAL IS STILL NOT FORESEEABLE TODAY, IN
5 VIOLATION OF THEIR SUBSTANTIVE DUE PROCESS RIGHTS
6 UNDER *ZADVYDAS V DAVIS*.

7 I WILL TAKE EACH CLAIM IN TURN AND
8 ADDRESS THE GOVERNMENT'S CONTENTIONS FROM THEIR
9 OPPOSITION. FIRST, THESE MEN HAVE BEEN DETAINED FOR
10 MORE THAN FIVE MONTHS, AND IT HAS BEEN UNLAWFUL THE
11 ENTIRE TIME. AS A PRELIMINARY MATTER, THE GOVERNMENT
12 DOES NOT ASSERT, NOR COULD THEY, THAT THESE
13 PETITIONERS RECEIVED THE FULL PROCESS THAT WAS DUE TO
14 THEM UNDER 8 C.F.R. 241.4 AND 8 C.F.R. 241.13. THOSE
15 REQUIREMENTS ARE NOTICE AND INTERVIEW; THAT THAT
16 DECISION IS MADE BY A DESIGNATED OFFICIAL AND,
17 DEPENDING ON WHO THAT OFFICIAL IS AFTER REQUIRED
18 FINDINGS --

19 **THE COURT:** WHAT ABOUT THE ARGUMENT THAT
20 THEY ARE GETTING THEIR DUE PROCESS NOW; THEY'VE GOT
21 LAWYERS REPRESENTING THEM, ALL THESE ARGUMENTS ARE
22 BEING VETTED AND NO HARM, NO FOUL?

23 **MS. PRANZATELLI:** YOUR HONOR, AS THE WESTERN
24 DISTRICT OF TEXAS RECENTLY STATED IN THE DECISION
25 *MARQUEZ-AMAYA V THOMPSON*, THE GOVERNMENT CANNOT CURE

1 THE WRONGFUL COMMENCEMENT OF DETENTION THROUGH SOME
2 SORT OF AFTER-THE-FACT JUSTIFICATION, WHETHER THAT BE
3 A DETERMINATION OF POTENTIALLY EXPEDITIOUS REMOVAL OR
4 SOME SORT OF PROCESS.

5 THE CONTENTION THAT BECAUSE A
6 PETITIONER CAN CHALLENGE THEIR DETENTION IN FEDERAL
7 COURT, THEIR DETENTION IS SOMEHOW LAWFUL, OR THE FACT
8 THAT SOMEONE CAN CHALLENGE A DUE PROCESS VIOLATION
9 RENDERS THE VIOLATION CURED WOULD RENDER THE DUE
10 PROCESS CLAUSE OF THE CONSTITUTION MEANINGLESS.

11 **THE COURT:** IF THE COURT WAS TO FIND THAT
12 REMOVAL IS REASONABLY FORESEEABLE BUT THERE WAS A DUE
13 PROCESS VIOLATION, WHAT WOULD THE RELIEF BE?

14 **MS. PRANZATELLI:** THE RELIEF IN THAT CASE,
15 YOUR HONOR, WOULD BE IMMEDIATE RELEASE. AND THAT IS
16 A CONSENSUS THAT MANY COURTS IN THIS CIRCUIT AND
17 ACROSS THE COUNTRY HAVE REACHED. A LIST OF SOME OF
18 THOSE COURTS IS EXHIBITED AT EXHIBIT 1 TO OUR REPLY
19 IN SUPPORT OF THE ORIGINAL PETITION.

20 AND THE REASON FOR THAT, YOUR HONOR, IS
21 THAT AT THIS POINT PETITIONERS HAVE BEEN SUBJECT TO
22 UNLAWFUL DETENTION FOR MONTHS. AND SO AS THE COURT
23 IN *VILLANUEVA V TATE* FOUND, THE ONLY WAY TO REMEDY AT
24 THIS POINT THAT UNCONSTITUTIONAL DETENTION --

25 **THE COURT:** OKAY. SO THEY'RE RELEASED AND

1 THEN THEY'RE DETAINED AGAIN AND THEN THEY'RE -- AND
2 THEN THEY'RE SHIPPED OUT. I MEAN, IS THAT BASICALLY
3 IT? I MEAN, WOULDN'T IT BE A CATCH AND RELEASE? I
4 THINK THAT'S A PHRASE SOMEBODY USED IN ONE OF THE
5 BRIEFS.

6 WOULD YOUR DUE PROCESS RELIEF BE THAT
7 YOU'RE RELEASED BUT ONLY TO BE ARRESTED AGAIN AND
8 DETAINED; AND, IF IT IS, IN FACT, REASONABLY
9 FORESEEABLE, THAT THEY WOULD BE DEPORTED?

10 **MS. PRANZATELLI:** WELL, ON A PRACTICAL NOTE,
11 YOUR HONOR, THE REGULATIONS IN 241.13 REQUIRE, FOR
12 THAT STANDARD OF A REASONABLY FORESEEABLE REMOVAL, A
13 SPECIFIC AND INDIVIDUALIZED CHANGE IN CIRCUMSTANCE
14 THAT RENDERS REMOVAL REASONABLY FORESEEABLE. AND SO
15 ASSUMING THAT RELEASE IS CONDITIONED ON THE FACT THAT
16 THE GOVERNMENT WOULD HAVE TO FOLLOW THAT REGULATION
17 WERE THEY TO REDETAIN PETITIONERS, THE GOVERNMENT
18 WOULD HAVE TO SHOW A SPECIFIC INDIVIDUALIZED CHANGED
19 CIRCUMSTANCE BEFORE REDETAINING THEM, AND THEN
20 REDETENTION WOULD BE LAWFUL.

21 AND IN ANY EVENT, EVEN IF THAT CONCRETE
22 REMOVAL PLAN WERE PUT IN PLACE QUITE RAPIDLY
23 FOLLOWING RELEASE, RELEASE ITSELF IS STILL MEANINGFUL
24 RELIEF BECAUSE IT ALLOWS PETITIONERS TO HAVE THEIR
25 FREEDOM, AS IS THEIR RIGHT, UNTIL REMOVAL IS ACTUALLY

1 IMMEDIATE. AND THE COURT IN *NGUYEN V BONDI* KIND OF
2 REALLY PUT A FINE POINT ON WHAT THAT STANDARD IS AND
3 REQUIRED THE GOVERNMENT TO HAVE A SPECIFIC TRAVEL
4 DOCUMENT OR A SPECIFIC TIMELINE AS TO REMOVAL TO
5 JUSTIFY REDETENTION UNDER 241.13.

6 **THE COURT:** AND SO JUST BULLET-POINT FOR ME
7 THE -- YOUR BURDEN UNDER *ZADVYDAS* IS TO SHOW THAT
8 REMOVAL IS NOT REASONABLY FORESEEABLE. RIGHT?

9 **MS. PRANZATELLI:** WELL, UNDER A TRADITIONAL
10 *ZADVYDAS* CASE, THE PETITIONERS' BURDEN IS TO SHOW
11 PRELIMINARILY A REASON TO BELIEVE THAT REMOVAL IS NOT
12 REASONABLY FORESEEABLE. AND THAT BURDEN IS MET BY A
13 DIPLOMATIC BARRIER TO REMOVAL UNDER THE CASE
14 *ESCALANTE V NOEM*.

15 **THE COURT:** WHAT DO YOU MEAN *IT'S MET BY*
16 *DIPLOMATIC BARRIERS*?

17 **MS. PRANZATELLI:** THE EASTERN DISTRICT OF
18 TEXAS IN *ESCALANTE V NOEM* KIND OF SPELLED THIS OUT
19 AND SAID THAT A PETITIONER MEETS THEIR INITIAL BURDEN
20 OF SHOWING THAT THERE IS A GOOD REASON TO BELIEVE
21 REMOVAL IS NOT REASONABLY FORESEEABLE IF THE
22 PETITIONER SHOWS THAT THERE IS A DIPLOMATIC -- ANY
23 SORT OF DIPLOMATIC BARRIER TO THEIR REMOVAL.

24 AND SO IN THIS CASE, THREE -- ONE
25 PETITIONER HAS PROTECTION UNDER THE CONVENTION

1 AGAINST TORTURE PRECLUDING HIS REMOVAL TO THE ONLY
2 COUNTRY TO WHICH HE HAS CITIZENSHIP. AND THE OTHER
3 THREE PETITIONERS CANNOT BE REMOVED -- OR WILL NOT BE
4 REMOVED TO THE COUNTRY TO WHICH THEY HAVE CITIZENSHIP
5 BECAUSE THAT COUNTRY HAS DENIED THEM. AND SO THAT IN
6 AND OF ITSELF IS --

7 **THE COURT:** WELL, I'M CONFUSED. WHAT ABOUT
8 DEPORTATION TO THIRD COUNTRIES IN THIS CASE -- MEXICO
9 SPECIFICALLY -- FOR THE THREE CUBANS?

10 **MS. PRANZATELLI:** SO I'LL JUST SPLIT TWO
11 THINGS OUT HERE, YOUR HONOR. SO, FIRST OF ALL, IN
12 SITUATIONS SUCH AS THESE WHERE A PETITIONER WAS FIRST
13 RELEASED AND REDETAINED, THE CORRECT BURDEN IS
14 ACTUALLY ON THE GOVERNMENT TO SHOW THAT A CHANGE IN
15 CIRCUMSTANCE MAKES REMOVAL MORE LIKELY NOW THAN IT
16 WAS PREVIOUSLY.

17 **THE COURT:** WHAT'S THE SOURCE OF THAT --

18 **MS. PRANZATELLI:** AND THE SOURCE --

19 **THE COURT:** -- CHANGE?

20 **MS. PRANZATELLI:** -- OF THAT, YOUR HONOR --
21 IF YOU'LL JUST PERMIT ME A MOMENT. THE SOURCE OF
22 THAT, YOUR HONOR, IS *MARQUEZ-AMAYA V THOMPSON* IN THE
23 WESTERN DISTRICT OF TEXAS. AND THAT CASE COLLECTS
24 CASES THAT FIND THE SAME.

25 **BUT EVEN UNDER A MORE STANDARD ZADVYDAS**

1 APPROACH OUTSIDE OF THE RELEASE AND REDETENTION
2 CONTEXT, THE PETITIONERS' INITIAL BURDEN IS ONLY THE
3 DIPLOMATIC BARRIER TO REMOVAL AS TO THE COUNTRY TO
4 WHICH THEY HAVE CITIZENSHIP OR STATUS. AND THAT'S
5 CLEAR IN *ESCALANTE V NOEM* AND OTHER CASES LIKE IT.

6 AND THEN THE GOVERNMENT MUST SHOW
7 EVIDENCE TO REBUT. AND EVIDENCE TO REBUT CANNOT BE
8 MET BY KIND OF GENERALIZED ASSERTIONS OF A COUNTRY'S
9 POLICIES. IT HAS TO SHOW THAT REMOVAL IS REASONABLY
10 FORESEEABLE AS TO AN INDIVIDUAL PETITIONER.

11 AND SO HERE, YOUR HONOR, IN THIS CASE
12 THERE IS ONE PETITIONER, MR. [REDACTED], FOR WHOM FIVE
13 MONTHS AFTER BEING REDETAINED THE ONLY THING THE
14 GOVERNMENT CAN SAY IS THAT IT'S CONSIDERING REMOVAL
15 TO CANADA, A COUNTRY TO WHICH MR. [REDACTED] HAS NO
16 CLAIM TO CITIZENSHIP OR STATUS, WITH NO KIND OF
17 TIMELINE OR DOCUMENTS THERE.

18 AND THEN AS TO THE THREE CUBAN
19 PETITIONERS, YOUR HONOR, THE GOVERNMENT CITES TO KIND
20 OF THIS GENERALIZED POLICY THAT MEXICO ACCEPTS MEN
21 OVER 60. BUT, AGAIN, THIS IS NOT INDIVIDUAL TO ANY
22 ONE PETITIONER. AND, IN FACT, OTHER ICE OFFICERS
23 HAVE REPRESENTED TO THE PETITIONERS IN THIS CASE THAT
24 MEXICO WILL NOT ACCEPT INDIVIDUALS WITH MEDICAL
25 ISSUES OR WITH DISABILITIES, WHICH WOULD CERTAINLY

1 EXCLUDE MR. RODRIGUEZ ROMERO, WHO, OF COURSE, HAS
2 PARKINSON'S AND ALZHEIMER'S AND MANY OTHER MEDICAL
3 ISSUES.

4 **THE COURT:** AND LET ME ASK YOU: WHAT ARE
5 THE PRACTICAL -- DO YOU KNOW THE PRACTICAL
6 REQUIREMENTS FOR MEXICO SPECIFICALLY? WE KNOW FROM
7 THE BRIEFING THAT THEY AT ONE TIME HAD A "WE'RE NOT
8 GOING TO TAKE ANYBODY OVER 60" RULE THAT THEY
9 REMOVED, OKAY? BUT IN TERMS OF PRACTICALITY, WHAT
10 ARE THE CRITERIA THAT MEXICO WILL USE IN
11 DETERMINING -- YOU MENTIONED DISABILITIES. AND WHERE
12 DOES THAT COME FROM? I HAVEN'T SEEN ANYTHING IN THE
13 RECORD THAT GIVES THAT INFORMATION.

14 WHAT ARE THE CRITERIA THAT MEXICO WOULD
15 USE TO DECIDE WHETHER WE'RE GOING TO TAKE ANY OF
16 THESE FOLKS?

17 **MS. PRANZATELLI:** SO THAT REPRESENTATION
18 THAT I JUST MENTIONED FROM THE ICE OFFICER REGARDING
19 MEDICAL ISSUES IS IN THE DECLARATIONS THAT ARE
20 EXHIBITED IN OUR REPLY IN SUPPORT OF OUR PETITION.
21 SO THAT'S AT 20-3, 20-4 -- PARDON ME. 20-3 AND 20-4.

22 **THE COURT:** IS THAT YOUR CLIENTS'
23 DECLARATIONS?

24 **MS. PRANZATELLI:** CORRECT, YOUR HONOR.

25 **THE COURT:** AND WHERE DID THEY GET THAT

1 INFORMATION?

2 MS. PRANZATELLI: FROM AN ICE OFFICER WHO
3 VISITED THEM IN CAMP 57 INSIDE OF ANGOLA PRISON.

4 THE COURT: DO YOU HAVE ANYTHING MORE FORMAL
5 THAN THAT?

6 MS. PRANZATELLI: NO, YOUR HONOR. AND I
7 THINK THAT'S ACTUALLY EXACTLY THE ISSUE HERE, IS THAT
8 THERE IS NOTHING FORMAL IN THE RECORD SHOWING WHAT
9 EXACTLY MEXICO'S CRITERIA ARE AND HOW OUR PETITIONERS
10 MEET THEM.

11 AND MR. GASTON SANCHEZ, FOR EXAMPLE,
12 WAS BROUGHT ALL THE WAY TO THE MEXICAN BORDER A FEW
13 MONTHS AGO UNDER, SUPPOSEDLY, THE GOVERNMENT'S
14 UNDERSTANDING THAT MEXICO WOULD RECEIVE HIM, ONLY TO
15 BE REJECTED. AND HE'S SITTING IN ANGOLA HERE TODAY.
16 SO THAT IS PRECISELY WHY OTHER COURTS TO CONSIDER
17 THIS VERY QUESTION DO REQUIRE --

18 THE COURT: IN THAT SITUATION THAT YOU JUST
19 DESCRIBED, WHAT WAS IT -- GIVE ME THE ACTUAL STORY.
20 SO THEY ACTUALLY TOOK HIM TO THE BORDER AND SOMEBODY
21 SAID *NO, YOU'RE NOT COMING IN?* I MEAN, WHAT
22 HAPPENED?

23 MS. PRANZATELLI: SO THAT, YOUR HONOR, IS
24 DETAILED IN THE PETITION. BUT, YOU KNOW, EXACTLY
25 WHAT HAPPENED IS MR. GASTON SANCHEZ WAS TAKEN OUT OF

1 ANGOLA AND TRANSFERRED TO VARIOUS DETENTION CENTERS;
2 FIRST TO A STAGING FACILITY IN ALEXANDRIA, LOUISIANA,
3 AND THEN CLOSER TO THE BORDER. HE WAS HELD IN
4 MULTI-POINT RESTRAINTS FOR AN ENTIRE DAY, BROUGHT ALL
5 THE WAY TO THE BORDER, AND THEN ULTIMATELY WAS NOT
6 ALLOWED TO CROSS. AND NOW IS BACK AT ANGOLA WITH
7 KIND OF THE SAME ASSERTIONS FROM THE GOVERNMENT THAT
8 MEXICO IS PREPARED TO RECEIVE HIM AT ISSUE AGAIN NOW.

9 AND, YOUR HONOR, I JUST WANT TO
10 REITERATE A DIFFERENT AND KIND OF RELATED POINT,
11 WHICH IS THAT THIS QUESTION ABOUT THE PETITIONERS'
12 BURDEN AND THE GOVERNMENT'S BURDEN, IT IS VERY
13 RELEVANT AS TO THE PETITIONERS' THIRD CLAIM AS TO
14 WHETHER THEIR DETENTION IS JUSTIFIED NOW AND KIND OF
15 IN A FORWARD-LOOKING WAY.

16 BUT PETITIONERS' FIRST AND SECOND
17 CLAIM, THIS KIND OF INQUIRY IS NOT RELEVANT TO THAT.
18 THOSE TWO CLAIMS ARE ABOUT WHETHER OR NOT THERE WAS A
19 SPECIFIC CHANGE IN CIRCUMSTANCE AT THE TIME THAT THEY
20 WERE REDETAINED. AND AGAIN, I'LL JUST --

21 **THE COURT:** IF THE REASON FOR REDETENTION
22 WAS NOT CHANGED CIRCUMSTANCES BUT WAS TO EFFECTUATE
23 REMOVAL OR DEPORTATION, WHAT RELEVANCE DOES CHANGED
24 CIRCUMSTANCES OR AN ABSENCE OF CHANGED CIRCUMSTANCES
25 HAVE?

1 **MS. PRANZATELLI:** SO, YOUR HONOR, IN 241.13,
2 THE REGULATIONS ARE VERY CLEAR THAT IF THE DETENTION
3 IS FOR THE PURPOSES OF TO EFFECTUATE A REMOVAL, THERE
4 MUST BE A CHANGE IN CIRCUMSTANCE MAKING THAT REMOVAL
5 MORE FORESEEABLE OR MORE IMMINENT THAN IT PREVIOUSLY
6 WAS. AND SO THE FACT THAT MEXICO MIGHT HAVE THIS
7 POLICY TODAY IS COMPLETELY IRRELEVANT TO THE FACT
8 THAT PETITIONERS' PROCEDURAL AND SUBSTANTIVE DUE
9 PROCESS RIGHTS WERE VIOLATED LAST SUMMER WHEN THEY
10 WERE REDETAINED WITHOUT A CONCRETE REMOVAL PLAN IN
11 PLACE; A TRAVEL DOCUMENT, A SPECIFIC ASSURANCE FROM
12 MEXICO AS TO A SPECIFIC PETITIONER, SOMETHING MORE
13 TANGIBLE.

14 **THE COURT:** AND LET ME ASK YOU THIS. WHEN
15 THINGS ARE OPERATING NORMALLY OR, IN YOUR VIEW, HOW
16 THEY SHOULD OPERATE, SO WHAT WOULD THE GOVERNMENT
17 HAVE IN HAND BEFORE THEY WOULD BE PERMITTED TO DEPORT
18 SOMEBODY? YOU MENTIONED TRAVEL DOCUMENTS. I'M
19 TRYING TO GET THE LOGISTICS OF HOW IT'S SUPPOSED TO
20 WORK.

21 **MS. PRANZATELLI:** SURE. SURE. SO THE COURT
22 IN *NGUYEN V BONDI* SPECIFICALLY ENUMERATED TRAVEL
23 DOCUMENTS, AND SO THAT'S WHY THAT'S THE EXAMPLE THAT
24 I KEEP RETURNING TO. I'M NOT, YOU KNOW, HERE
25 NECESSARILY TO, LIKE, ARTICULATE AN ENTIRE LIST OF

1 WHAT THOSE DOCUMENTS MIGHT BE.

2 **THE COURT:** WELL, I'M TRYING TO GET A NORMAL
3 SENSE OF HOW IT WORKS.

4 **MS. PRANZATELLI:** YES. I THINK MY
5 UNDERSTANDING OF HOW THIS GENERALLY WORKS IS THAT
6 SOME -- UNDER THE LAW, LAWFULLY -- IS THAT SOMEONE
7 WOULD RECEIVE NOTICE WITH SPECIFIC ALLEGATIONS AS TO
8 THE SPECIFIC CHANGED CIRCUMSTANCES THAT MAKE REMOVAL
9 MORE REASONABLY FORESEEABLE NOW THAN IT PREVIOUSLY
10 HAD BEEN AND, THEREFORE, JUSTIFIES SUDDEN DETENTION
11 FOR THE PURPOSE OF EFFECTUATING THAT REMOVAL. THE
12 PERSON WOULD THEN RECEIVE AN OPPORTUNITY TO HAVE AN
13 INTERVIEW AND CONTEST THOSE SPECIFIC AND TAILORED
14 ALLEGATIONS. AND THEN, YOU KNOW, THESE OTHER TWO
15 FINDINGS WOULD -- AND OTHER FINDINGS WOULD ALSO HAVE
16 TO BE MET.

17 THAT DOCUMENT WOULD HAVE TO BE EITHER
18 SIGNED BY THE EXECUTIVE ASSOCIATE DIRECTOR OR BY A
19 DISTRICT DIRECTOR UPON FINDING THAT THEY DIDN'T HAVE
20 TIME TO REFER IT TO AN EXECUTIVE ASSOCIATE DIRECTOR;
21 AND IT'S IN THE PUBLIC INTEREST TO REVOKE RELEASE
22 IMMEDIATELY RATHER THAN WAITING TO REFER; AND, ALSO,
23 KIND OF HAVE SOME DOCUMENTARY EVIDENCE OF THOSE
24 CHANGED CIRCUMSTANCES LISTED IN THE NOTICE. THAT IS
25 THE FULL APPLICATION OF 241.4 AND 241.13 AS THEY'RE

1 WRITTEN.

2 AND SO HERE MANY ELEMENTS THERE ARE
3 MISSING, YOU KNOW. AS TO NOTICE, WE HAVE ONE
4 PETITIONER WHO THERE IS NO NOTICE IN THE RECORD FOR
5 HIM AT ALL AND OTHER PETITIONERS WHO THERE IS A
6 NOTICE THAT CONTAINS ONLY BOILERPLATE LANGUAGE AND
7 KIND OF A RESTATEMENT OF THE REGULATIONS WITH NO
8 INDIVIDUALIZED FINDINGS. IT'S COMPLETELY UNDISPUTED
9 THAT NONE OF THESE PETITIONERS RECEIVED AN INTERVIEW
10 AT ALL.

11 AS TO THE DESIGNATED OFFICIALS AND
12 FINDINGS, THE GOVERNMENT PUTS INTO THE RECORD THIS
13 DELEGATION ORDER THAT GIVES SIGNATORY AUTHORITY TO A
14 MORE INFERIOR OFFICIAL. THAT ORDER ONLY APPLIES TO
15 MR. RODRIGUEZ ROMERO BECAUSE MR. ██████████ WAS IN
16 BALTIMORE, NOT MIAMI. AND MR. GASTON SANCHEZ AND MR.
17 BLANCO CHOMAT WERE REDETAINED A MONTH BEFORE THAT
18 ORDER WAS SIGNED.

19 BUT IN ANY EVENT, EVEN ASSUMING THAT
20 THE OFFICIALS WHO SIGNED THOSE NOTICES HAD THE
21 AUTHORITY TO, THERE IS NO RECORD THAT THE NECESSARY
22 FINDINGS WERE MADE, WHICH IS ALSO A VIOLATION OF THE
23 RECORD. AND THEN, OF COURSE, EVEN TODAY THERE IS
24 NOTHING CONCRETE IN THE RECORD TO SUGGEST THAT A
25 SPECIFIC AND INDIVIDUALIZED CHANGE OF CIRCUMSTANCE

1 OCCURRED AS TO ANY OF THESE FOUR PETITIONERS.

2 **THE COURT:** COULD THE DUE PROCESS --
3 PROCEDURAL DUE PROCESS DEFICIENCIES BE CURED AT THIS
4 POINT; THAT IS TO SAY, COULD THE PETITIONERS BE GIVEN
5 THE RIGHT KIND OF NOTICE, BE GIVEN THE INITIAL
6 INTERVIEW, THE OPPORTUNITY TO OBJECT AND SO ON?
7 COULD THEY DO THAT NOW? COULD THE GOVERNMENT DO THAT
8 NOW?

9 **MS. PRANZATELLI:** NO, YOUR HONOR. AND THE
10 REASON FOR THAT IS THAT PETITIONERS' DETENTION HAS
11 BEEN UNCONSTITUTIONAL SINCE THE VERY MOMENT THAT THEY
12 WERE REDETAINED MANY MONTHS AGO. AND SO AT THIS
13 POINT, ADDITIONAL PROCESS WOULD NOT SO MUCH CURE
14 THEIR UNCONSTITUTIONAL DETENTION AS PROLONG IT.

15 AND THAT'S PRECISELY WHY THE COURT IN
16 *VILLANUEVA V TATE*, AFTER RUNNING THROUGH THE FAMILIAR
17 *MATHEWS V ELDRIDGE* TEST, FOUND THAT THE ONLY WAY TO
18 VINDICATE THE PETITIONERS' RIGHTS IN THAT INSTANCE
19 WAS TO ORDER IMMEDIATE RELEASE. AND THAT'S ALSO WHY
20 MANY OTHER DISTRICT COURTS ACROSS THIS COUNTRY, AS,
21 YOU KNOW, INCLUDED AT EXHIBIT 1 OF OUR REPLY, HAVE
22 ORDERED THE SAME.

23 **THE COURT:** THANK YOU.

24 **MS. PRANZATELLI:** THANK YOU, YOUR HONOR.

25 **MR. JACK:** GOOD MORNING, YOUR HONOR.

1 **THE COURT:** MR. JACK, TELL ME: WHY DIDN'T
2 YOU GIVE THESE FOLKS -- WHY DIDN'T THE GOVERNMENT
3 GIVE THESE FOLKS THE NOTICE THAT THEY WERE REQUIRED?

4 **MR. JACK:** WELL, I THINK FOR THREE OF THE
5 PETITIONERS THEY WERE GIVEN NOTICE.

6 **THE COURT:** BUT THOSE WERE GENERALIZED.
7 THEY WERE NOT SPECIFIC OR TAILORED TO EACH
8 INDIVIDUAL. WERE THEY JUST A GENERIC BOILERPLATE
9 LANGUAGE, LIKE COUNSEL JUST SAID?

10 **MR. JACK:** I THINK AT LEAST TWO OF THE
11 NOTICES WERE PRETTY DEFINED. AND PARTICULARLY THE
12 ONE PROVIDED TO PETITIONER CHOMAT AND ALSO PETITIONER
13 ROMERO, I BELIEVE.

14 **THE COURT:** SO YOU CONCEDE THAT TWO DID NOT
15 GET THE PROPER NOTICE? TWO DID NOT GET THE PROPER
16 NOTICE?

17 **MR. JACK:** WELL, AT WORSE, IT'S ONE, YOUR
18 HONOR. I THINK --

19 **THE COURT:** ONE DIDN'T GET PROPER NOTICE.
20 ALL OF THEM DIDN'T GET AN INITIAL INTERVIEW. RIGHT?

21 **MR. JACK:** THE INITIAL INTERVIEW REQUIREMENT
22 IS NOT DEFINED, AT LEAST IN THE REGULATION. I THINK
23 THE AGENCY'S PERSPECTIVE IS THAT THAT TYPICALLY
24 HAPPENS PART AND PARCEL WITH THE ACTUAL NOTICE OF
25 REMOVAL. BUT AT -- TO YOUR POINT, YOUR HONOR, WE

1 DON'T HAVE ACTUAL DOCUMENTATION THAT SAYS --

2 **THE COURT:** AND, IN FACT, THAT MEANS THAT
3 THEY DIDN'T GET IT. RIGHT? BECAUSE IF YOU'D HAVE
4 HAD DOCUMENTATION, YOU'D HAVE PROVIDED IT TO THE
5 COURT. I MEAN, LET'S GIVE SOME CANDOR TO THE COURT.
6 THEY DIDN'T GET THE INITIAL INTERVIEW. RIGHT, MR.
7 JACK?

8 **MR. JACK:** I GUESS OUR POSITION IS THAT
9 IT -- EVEN NOT WITHSTANDING THAT, YOUR HONOR, I THINK
10 THE ISSUE HERE IS THE SUBSTANTIAL PREJUDICE
11 REQUIREMENT. IN THE PETITIONERS' ARGUMENTS I DIDN'T
12 HEAR THAT PHRASE AT ALL AS FAR AS SUBSTANTIAL
13 PREJUDICE. AND I GUESS OUR POSITION IS THAT IT'S NOT
14 A CHECKLIST. RIGHT? SO, I MEAN, IF THERE IS TEN
15 REQUIREMENTS, IF YOU MISS ONE OR TWO OR THREE, THAT
16 IS NOT NECESSARILY RESOLVED IN A PROCEDURAL DUE
17 PROCESS CLAIM. I THINK WE MADE THIS POINT --

18 **THE COURT:** YOU'RE NOT ANSWERING MY
19 QUESTION. THE QUESTION I'M ASKING YOU -- I'M TALKING
20 ABOUT A SPECIFIC BOX THAT WASN'T CHECKED; THAT WAS,
21 THEY DIDN'T GET AN INITIAL INTERVIEW THAT THE STATUTE
22 SAYS OR THAT THE REGULATION SAYS THEY'RE ENTITLED TO.
23 AM I CORRECT ABOUT THAT?

24 **MR. JACK:** WE DON'T HAVE ANY DOCUMENTATION,
25 YOUR HONOR, THAT THEY WERE GIVEN --

1 **THE COURT:** MEANING THAT THEY DIDN'T GET IT.
2 RIGHT?

3 **MR. JACK:** YES, YOUR HONOR.

4 **THE COURT:** THANK YOU.

5 ALL RIGHT. SO IS THIS SORT OF A -- IS
6 THIS A GENERALIZED POLICY? BECAUSE I'VE SEEN ALL
7 THESE OTHER CASES WHERE THIS IS HAPPENING. WHY --
8 I'M JUST BEFUDDLED AS TO -- IF THE REGULATION -- IF
9 THE C.F.R. SAYS THEY GET THIS AND THEY'RE NOT GETTING
10 IT, HOW COME?

11 **MR. JACK:** THAT, I'M NOT EXACTLY SURE, YOUR
12 HONOR. BUT I THINK AT LEAST IN THIS CASE -- AND
13 AGAIN, I TURN BACK TO SUBSTANTIAL PREJUDICE
14 REQUIREMENT. AT LEAST IN THE FIFTH CIRCUIT -- IN OUR
15 ACTUAL RESPONSE MEMO, I MEAN, WE BASICALLY SAID, YOU
16 KNOW, EVEN IF PETITIONERS DID NOT RECEIVE THESE
17 THINGS -- INFORMAL INTERVIEWS, NOTICE, PERHAPS
18 NOTICES NOT SIGNED BY THE PROPER PERSON -- EVEN IF
19 THOSE THINGS WEREN'T FOLLOWED TO A TEE, THIS CASE
20 STILL DOES NOT ESTABLISH SUBSTANTIAL DUE PROCESS
21 CLAIM, AND PARTICULARLY BECAUSE OF THE SUBSTANTIAL
22 PREJUDICE REQUIREMENT.

23 **THE COURT:** NO HARM, NO FOUL.

24 **MR. JACK:** IN A SENSE, YOUR HONOR. I GUESS
25 THE ARGUMENT IS THAT, YOU KNOW, AT LEAST IN THE FIFTH

1 CIRCUIT THE SUBSTANTIAL PREJUDICE REQUIREMENT IS
2 REQUIRED TO STAY A PROCEDURAL DUE PROCESS CLAIM. AND
3 THE BURDEN IS ON THE PETITIONER TO DO SO. AND OUR
4 ARGUMENT, AS SUPPORTED BY CASES IN THE NORTHERN
5 DISTRICT OF TEXAS, IS THAT YOU CAN GET ALL OF THOSE
6 THINGS PLUS SOME IN THIS HABEAS PROCEEDING.

7 I MEAN, NOW WE'RE BEFORE A FEDERAL COURT --
8 NOT AN INFORMAL INTERVIEW, SO INFORMAL INTERVIEW
9 TIMES TEN, RIGHT -- BEFORE A FEDERAL COURT WHERE
10 PETITIONERS HAVE MADE ALL THEIR ARGUMENTS, AND ICE IS
11 STILL MOVING FORWARD WITH THEIR REMOVAL.

12 SO OUR ARGUMENT IS THAT NOT ONLY MUST
13 PETITIONERS ESTABLISH SUBSTANTIAL PREJUDICE, IT MUST
14 BE SUBSTANTIAL PREJUDICE THAT WILL IMPACT THE ACTUAL
15 OUTCOME. AND AGAIN, ICE HAS READ THE ENTIRE
16 PETITION, THEY KNOW ALL THE ARGUMENTS, AND THEY'RE
17 STILL MOVING FORWARD WITH THE ACTUAL REMOVAL. AND
18 AGAIN, THAT'S SUPPORTED BY CASES IN THE NORTHERN
19 DISTRICT OF TEXAS THAT HAVE SAID THAT. I MEAN, THAT
20 CASE IN PARTICULAR HAD MAYBE FOUR OR FIVE *EVEN IF'S*.
21 RIGHT? AND THE LAST *EVEN IF* WAS: EVEN IF THE COURT
22 DETERMINED THAT ALL OF THESE PROCESSES WERE NOT
23 FOLLOWED, THE PLAINTIFF STILL HAS NOT ESTABLISHED
24 SUBSTANTIAL DUE PROCESS TO MAKE A PROCEDURAL DUE
25 PROCESS CLAIM. AND THAT'S WHAT, IN OUR OPINION, IT

1 BOILS DOWN TO, IS WHAT IS THE ACTUAL PREJUDICE HERE.

2 AND OUR POSITION IS THAT PLAINTIFFS --
3 PETITIONERS HAVE HAD NOW FOUR OPPORTUNITIES TO
4 ESTABLISH SUBSTANTIAL PREJUDICE. THEY COULD HAVE
5 DONE SO IN THE PETITION, THEY COULD DONE SO IN THEIR
6 TRO MOTION, THEY COULD HAVE DONE SO IN THEIR REPLY IN
7 SUPPORT OF THE TRO, THEY COULD HAVE DONE SO IN THEIR
8 REPLY IN SUPPORT OF THE UNDERLYING PETITION. AND
9 NOWHERE IN THOSE FILINGS DID THEY ACTUALLY MAKE AN
10 ARGUMENT TO SUPPORT SUBSTANTIAL PREJUDICE. AND
11 AGAIN, THAT IS AN ACTUAL REQUIREMENT IN THE FIFTH
12 CIRCUIT.

13 IN PARTICULAR, AS STATED IN THE *AYALA*
14 *CHAPA* CASE, IT SAYS THAT BUT EVEN IF THE PETITIONERS
15 HAVE BROUGHT A PROCEDURAL DUE PROCESS CLAIM, HE HAS
16 NOT ALLEGED SUBSTANTIAL PREJUDICE. AGAIN, IT MAY BE
17 DIFFERENT IN PERHAPS, YOU KNOW, THE NINTH CIRCUIT OR
18 THE SECOND CIRCUIT, EVEN THE FIRST CIRCUIT. BUT AT
19 LEAST IN THE FIFTH CIRCUIT, THAT IS A REQUIREMENT TO
20 STATE A SUBSTANTIAL -- SORRY -- A PROCEDURAL DUE
21 PROCESS CLAIM. AND OUR POSITION IS THAT THEY JUST
22 SIMPLY DON'T IN ANY OF THEIR FILINGS. AND AGAIN,
23 THEY CAN GET ALL OF THE PROCESSES NOW IN THIS HABEAS
24 PROCEEDING.

25 SO IN SOME WAYS IT IS NO HARM, NO FOUL.

1 BUT THE CAVEAT BEING THAT, OF COURSE, THE AGENCY
2 SHOULD COMPLY WITH ALL THE REGULATIONS. I DON'T
3 THINK ANY GOVERNMENT ATTORNEY WILL ARGUE OTHERWISE.
4 BUT I GUESS THE ARGUMENT HERE: DOES THAT ACTUALLY
5 RESULT IN THE PROCEDURAL DUE PROCESS CLAIM IN THE
6 FIFTH CIRCUIT? AND OUR POSITION IS THAT IT SIMPLY
7 DOESN'T.

8 **THE COURT:** ALL RIGHT. LET ME ASK YOU THIS.
9 REGARDLESS OF WHOSE BURDEN IT IS TO PROVE OR TO SHOW
10 A REASONABLE SIGNIFICANT LIKELIHOOD OF REMOVAL IN THE
11 REASONABLY FORESEEABLE FUTURE, WHETHER IT'S THE
12 GOVERNMENT'S BURDEN OR THE BURDEN OF THE PETITIONERS,
13 WHAT EVIDENCE IS IN THE RECORD FROM ANY PARTY SHOWING
14 THAT THERE IS A REASONABLE POSSIBILITY OR A
15 SIGNIFICANT LIKELIHOOD OF REMOVAL IN THE REASONABLY
16 FORESEEABLE FUTURE FOR ANY OF THESE FOUR PETITIONERS?

17 **MR. JACK:** WELL, WE KNOW FOR AT LEAST THREE
18 OF THE FOUR -- THE THREE CUBAN NATIONALS -- MEXICO
19 HAS NOW AGREED TO ACCEPT --

20 **THE COURT:** THAT'S NOT EVIDENCE THAT THESE
21 PEOPLE WILL BE ALLOWED.

22 **MR. JACK:** SO, YOUR HONOR, WE'VE SUBMITTED
23 --

24 **THE COURT:** THAT JUST SAYS AN IMPEDIMENT.
25 THERE IS AN IMPEDIMENT. THAT IMPEDIMENT HAS BEEN

1 REMOVED. THAT IS NOT EVIDENCE SHOWING THAT THESE
2 PEOPLE -- THERE IS A REASONABLE CHANCE THAT THESE
3 PEOPLE WILL BE RECEIVED INTO MEXICO. I'M LOOKING FOR
4 EVIDENCE THAT TELLS ME THAT. AND THERE ISN'T ANY.
5 IS THAT CORRECT?

6 **MR. JACK:** I GUESS OUR -- I'LL SUBMIT THAT
7 OUR EVIDENCE IS THE SWORN AFFIDAVIT FROM THE AGENCY
8 SUPPORTING THAT AS OF DECEMBER 10TH. MEXICO HAS NOW
9 AGREED TO ACCEPT INDIVIDUALS OVER 60, WHICH IS NOT
10 THE CASE WEEKS AGO.

11 **THE COURT:** THAT DOESN'T -- THAT DOESN'T CUT
12 IT. I MEAN, SO WHAT? SO WHAT? WHAT DOES THAT TELL
13 US ABOUT MEXICO'S ABILITY TO RECEIVE THESE FOUR
14 INDIVIDUALS? ONE OF THEM'S 72, ONE OF THEM'S 66,
15 THEY'VE GOT VARIOUS DISABILITIES AND INFIRMITIES.
16 WHAT IS IN THE RECORD TELLING US, REGARDLESS OF WHOSE
17 BURDEN IT IS, THE PLAINTIFFS' -- PETITIONERS' BURDEN
18 TO SHOW THAT THERE IS NO REASONABLE LIKELIHOOD OR THE
19 GOVERNMENT'S THAT THERE IS? I DON'T SEE ANY EVIDENCE
20 THAT IS INDIVIDUALIZED TO THESE FOUR INDIVIDUALS THAT
21 ANYBODY IS WILLING TO TAKE THEM.

22 **MR. JACK:** AGAIN, I'LL TURN TO OUR
23 DECLARATION, YOUR HONOR. IT'S A SWORN AFFIDAVIT.

24 **THE COURT:** ALL YOUR DECLARATION SAYS IS
25 ABOUT THEY DON'T FORBID PEOPLE THAT ARE OVER 60.

1 THAT'S IT.

2 **MR. JACK:** I THINK OUR DECLARATION HAS AN
3 ADDITIONAL PARAGRAPH AS WELL WHERE IT SAYS AS OF
4 DECEMBER 10TH OF LAST YEAR, 2025, MEXICO HAS NOW
5 AGREED TO ACCEPT INDIVIDUALS OVER 60. AND THE WAY
6 THAT THE PROCESS WORKS IS THAT IN THIS CASE, IN
7 RESPECT TO THE COURT'S STAY ORDER THAT WAS ISSUED ON,
8 I BELIEVE, DECEMBER 12TH OR 11TH -- WE'VE NOT MOVED
9 FORWARD WITH THAT PROCESS IN RESPECT OF THE COURT'S
10 ORDER, OF COURSE.

11 BUT THE WAY IT WILL WORK ONCE THE ORDER
12 IS LIFTED PERHAPS IS THAT THOSE -- AT LEAST THOSE
13 THREE CUBAN NATIONALS WILL BE SENT FROM ANGOLA, THE
14 LOUISIANA ICE PROCESSING CENTER, TO FLORENCE,
15 ARIZONA, AND THEN IN PRETTY SHORT ORDER COULD BE
16 BUSSED FROM FLORENCE TO THE MEXICO BORDER AND THEN
17 WALKED ACROSS THE BORDER.

18 **THE COURT:** BUT YOU JUST TOLD ME HOW IT'S
19 SUPPOSED TO WORK. YOU'RE NOT TELLING ME ABOUT ANY
20 EVIDENCE IN THE RECORD. THERE IS NONE. THERE IS NO
21 EVIDENCE IN THE RECORD THAT'S INDIVIDUALIZED TO THESE
22 FOLKS THAT SAYS THAT THEY WOULD BE RECEIVED.

23 AND I'M LOOKING AT THE RECORD AS IT
24 EXISTS NOW, AND THERE ISN'T ANY, OTHER THAN THIS
25 BUSINESS ABOUT *WELL, THEY CAN TAKE PEOPLE OVER 60*

1 NOW. SO WHAT? THAT DOESN'T TELL ME ABOUT THE GUY
2 THAT'S 72 AND THE GUY THAT'S 66 AND THE GUY THAT'S
3 GOT THESE -- THEY ALL HAVE CRIMINAL RECORDS OF
4 VARIOUS KINDS.

5 I ASSUME THOSE ARE THINGS THAT MEXICO
6 WOULD LOOK AT BEFORE THEY WOULD DECIDE, *I'M GOING TO*
7 *TAKE THIS GUY OR NOT TAKE THIS GUY.* AND WE DON'T
8 HAVE ANYTHING IN THE RECORD TO SHOW THAT, WITH
9 RESPECT TO THESE PEOPLE, THEY WOULD BE.

10 SO, I MEAN, IN TERMS OF SIGNIFICANT
11 LIKELIHOOD OF REMOVAL IN THE REASONABLY FORESEEABLE
12 FUTURE, I'M NOT SEEING ANY EVIDENCE THAT ANSWERS THAT
13 QUESTION.

14 **MR. JACK:** IF I COULD JUST MAKE ONE POINT,
15 YOUR HONOR.

16 **THE COURT:** YES.

17 **MR. JACK:** THAT BEING THE TIMELINE OF IT.
18 OF COURSE, YOU KNOW, DECEMBER 10TH IS WHEN MEXICO
19 AGREED TO ACCEPT INDIVIDUALS OVER 60. AND THAT'S
20 KIND OF LIKE OUR INITIAL TIMELINE FOR AT LEAST THAT
21 PROCESS. I BELIEVE THE COURT'S ORDER STAYING US FROM
22 REMOVING THEM FROM THE DISTRICT OR THE COUNTRY WAS
23 ENTERED ON, I BELIEVE, DECEMBER 11TH OR 12TH. AND
24 OUR INSTRUCTIONS TO ICE --

25 **THE COURT:** WELL, LET ME ASK YOU. OUR STAY

1 DOESN'T PREVENT YOU FROM CONTINUING TO MAKE EFFORTS.
2 RIGHT? IT JUST SAYS YOU'RE NOT GOING TO REMOVE THEM
3 WHILE WE HAVE THIS CASE. BUT THAT DOESN'T STOP ICE
4 FROM MAKING WHATEVER EFFORTS IT'S GOING TO MAKE TO
5 LAY THE GROUNDWORK. RIGHT?

6 **MR. JACK:** THAT'S CORRECT. BUT OUT OF
7 RESPECT FOR THE COURT'S ORDER, JUST TO MAKE SURE THAT
8 THERE WAS NO CONFUSION AT ALL, ICE JUST HELD OFF ON
9 ANY TYPE OF PROCESS MOVING FORWARD. AGAIN, JUST TO
10 MAKE SURE THERE IS NO ISSUES AS FAR AS, YOU KNOW,
11 PERHAPS MISTAKEN REMOVAL OR ANYTHING LIKE THAT, THEY
12 JUST DECIDED NOT TO MOVE FORWARD AT ALL WITH REMOVAL,
13 AGAIN, GIVEN THE TIMELINE.

14 OF COURSE, YOU KNOW, DECEMBER 10TH IS
15 WHEN MEXICO SAID *WE'LL ACCEPT INDIVIDUALS OVER 60*.
16 THE COURT'S ORDER WAS ISSUED ON DECEMBER, I BELIEVE,
17 12TH. AT THAT POINT --

18 **THE COURT:** WELL, DIDN'T THEY HAVE -- DIDN'T
19 ICE HAVE IN ONE CASE 30 YEARS WHILE THE GUY WAS UNDER
20 OSUP OR WHATEVER TO GET HIM DEPORTED?

21 LET ME MAKE SURE I UNDERSTAND THIS. SO
22 WHEN ONE OF THESE NONCITIZENS IS UNDER OSUP, ICE
23 CONTINUES TO TRY TO DEPORT HIM. RIGHT? THEY'RE
24 MAKING --

25 **MR. JACK:** THAT'S CORRECT --

1 **THE COURT:** -- EFFORTS TO --

2 **MR. JACK:** -- IN TYPICAL CASES, I BELIEVE.

3 **THE COURT:** WELL, IS THIS ATYPICAL IN SOME
4 WAY?

5 **MR. JACK:** BUT AGAIN, I THINK ALL OF THEIR,
6 YOU KNOW, AT LEAST ORDERS OF SUPERVISION TELL THEM
7 THAT AT ANY MOMENT YOU COULD BE REMOVED FROM THIS
8 COUNTRY. AND, AGAIN, THEIR FINAL ORDERS OF REMOVAL
9 ARE NOT BEING CHALLENGED HERE, SO THAT MEANS THAT
10 THEY HAVE NO LEGAL RIGHT TO BE IN THIS COUNTRY. AND
11 ICE HAS DECIDED TO MOVE FORWARD --

12 **THE COURT:** THAT'S MY POINT. THAT'S EXACTLY
13 MY POINT. THAT ICE HAS HAD YEARS AND YEARS AND YEARS
14 TO MAKE WHATEVER EFFORTS IT'S GOING TO MAKE TO DEPORT
15 THESE PEOPLE. AND AFTER ALL OF THESE YEARS, DESPITE
16 WHAT'S HAPPENED SINCE THIS THING WAS FILED, LOOKING
17 BACK ON IT, THEY'VE HAD ALL THIS TIME TO DO THIS; AND
18 THERE IS NO EVIDENCE IN THE RECORD TO ANSWER THE
19 QUESTION OF IS THERE A SIGNIFICANT LIKELIHOOD OF
20 REMOVAL. AND, IN FACT, IT SEEMS TO ME THE ABSENCE OF
21 THAT EVIDENCE SHOWS THAT THERE ISN'T A REASONABLE --
22 THERE ISN'T A SIGNIFICANT CHANCE OF REMOVAL.

23 **MR. JACK:** AND OUR POSITION IS THAT, YOU
24 KNOW, AT THIS POINT REMOVAL AT LEAST FOR THE THREE
25 CUBAN NATIONALS IS NOT ONLY FORESEEABLE BUT IT'S ALSO

1 POTENTIALLY IMMINENT, GIVEN THE FACT THAT MEXICO HAS
2 NOW AGREED TO ACCEPT THOSE INDIVIDUALS OVER 60. AND
3 AGAIN, THE AGENCIES --

4 **THE COURT:** MR. JACK, I'M JUST NOT GETTING
5 THAT. I MEAN, I'M JUST NOT GETTING THE FACT THAT
6 THEY HAVE REMOVED THAT SINGLE IMPEDIMENT
7 AUTOMATICALLY MEANS THAT THE REMOVAL IS IMMINENT.
8 THERE IS A BIG DISCONNECT IN THE LOGIC THERE.

9 **MR. JACK:** AT LEAST -- I THINK YOU MENTIONED
10 THIS A MOMENT AGO, YOUR HONOR. BUT AT LEAST FOR ONE
11 OF THE PETITIONERS -- I BELIEVE PETITIONER SANCHEZ --
12 HE WAS ESSENTIALLY AT THE BORDER. HE WAS AT THE
13 STATE FACILITY IN FLORENCE READY TO BE DEPORTED TO
14 MEXICO. AND THAT'S WHEN MEXICO DECIDED NOT TO ACCEPT
15 INDIVIDUALS OVER 60. THAT HAS NOW CHANGED. AND IT'S
16 CHANGED NOT ONLY FOR HIM BUT ALSO FOR THE OTHER THREE
17 CUBAN NATIONALS.

18 **THE COURT:** DO YOU KNOW -- IS THERE ANYTHING
19 IN THE RECORD TO SAY THAT THAT'S THE ONLY REASON THAT
20 THEY DID NOT ALLOW HIM IN, IS BECAUSE HE WAS OVER 60?

21 **MR. JACK:** I BELIEVE OUR DECLARATIONS
22 SUPPORT THAT. AND THE FACT THAT, YOU KNOW, LIKE ICE
23 WAS -- ICE WAS TOLD THAT AT THIS MOMENT WE'RE NOT
24 ACCEPTING THOSE OVER 60, AND NOW THEY ARE AS OF
25 DECEMBER 10TH.

1 SO AGAIN, OUR POSITION IS THAT THEIR
2 REMOVAL WAS NOT ONLY FORESEEABLE BUT IT'S POTENTIALLY
3 IMMINENT IF THE COURT LIFTS THE STAY ORDER PREVENTING
4 THEM FROM BEING REMOVED FROM THE DISTRICT OR THE
5 COUNTRY. AND AGAIN, AS THE DECLARATION STATES, THAT
6 CAN HAPPEN IN PRETTY SHORT ORDER AS SOON AS THE STAY
7 IS LIFTED.

8 **THE COURT:** WHY -- IF THAT'S TRUE -- WELL, I
9 MEAN, AGAIN, YOU'VE HAD -- YOU FOLKS HAVE HAD YEARS
10 TO DO IT. WHY AREN'T THERE TRAVEL DOCUMENTS? WHAT
11 WOULD -- LET ME ASK YOU THE SAME QUESTION I ASKED
12 COUNSEL FOR PETITIONERS. WHAT WOULD BE -- IN THE
13 NORMAL CASE, WHAT WOULD BE THE INFORMATION THAT WOULD
14 BE GATHERED BY ICE AND WOULD BE IN A RECORD TO SHOW
15 THIS PERSON IS READY TO BE DEPORTED? WOULD THERE BE
16 TRAVEL DOCUMENTS? WOULD THERE BE OTHER DIPLOMATIC
17 DOCUMENTS, DOCUMENTS FROM THE COUNTRY SAYING *WE'RE*
18 *PREPARED TO TAKE HIM. SEND HIM ON OR WHATEVER?* WHAT
19 WOULD BE THE NORMAL SITUATION?

20 **MR. JACK:** TYPICALLY, NORMALLY THERE IS SOME
21 TYPE OF TRAVEL DOCUMENT THAT SAYS, YOU KNOW, THE
22 COUNTRY HAS ACCEPTED THEM. POTENTIALLY THERE IS A
23 REMOVAL DATE. THERE IS A PLANE TICKET POTENTIALLY.
24 BUT AGAIN, AT LEAST FOR THE THREE CUBAN NATIONALS, WE
25 HAVEN'T MOVED FORWARD WITH THAT BECAUSE OF -- IN PART

1 PETITIONER [REDACTED] RECEIVED TRAVEL DOCUMENTS FOR
2 [REDACTED] AND THEN SOUGHT CAT PROTECTION TO DISALLOW
3 HIS REMOVAL TO [REDACTED]. SO I THINK --

4 THE COURT: WHICH HE GOT. RIGHT?

5 MR. JACK: HE DID GET, YOUR HONOR, YES.

6 THE COURT: SO [REDACTED] IS NOT AN ISSUE.
7 RIGHT?

8 MR. JACK: THAT'S CORRECT.

9 BUT I GUESS MY GREATER POINT IS ICE HAS
10 MADE ATTEMPTS TO EFFECTUATE THESE PERSONS -- THESE
11 PETITIONERS' REMOVALS IN THE PAST. AND AGAIN, AT
12 LEAST FOR THE THREE PETITIONERS NOW, THEIR REMOVAL
13 CAN HAPPEN IN PRETTY SHORT ORDER.

14 SO I THINK OUR POSITION, OF COURSE, IS
15 THAT -- OUR POSITION, OF COURSE, IS THAT ICE HAS MADE
16 ATTEMPTS IN THE PAST TO EFFECTUATE THESE REMOVALS.
17 AND AGAIN, REMOVAL CAN HAPPEN ESSENTIALLY AT ANY
18 TIME. AND THE AGENCY HAS DECIDED TO MOVE FORWARD
19 WITH THE REMOVAL OF THESE FOUR PETITIONERS,
20 ESPECIALLY GIVEN THE FACT THEY HAVE FINAL ORDERS OF
21 REMOVAL AND THEY HAD NO LEGAL BASIS TO BE IN THIS
22 COUNTRY.

23 UNLESS THE COURT HAS ANY OTHER
24 QUESTIONS, I'LL REST ON OUR BRIEFINGS.

25 THE COURT: ALL RIGHT. THANK YOU.

1 **MS. PRANZATELLI:** YOUR HONOR, IF I MAY, I
2 WOULD JUST LIKE TO RESPOND TO THE GOVERNMENT'S POINTS
3 REGARDING SUBSTANTIAL PREJUDICE.

4 THE GOVERNMENT STATES THAT THE FACT
5 THAT PETITIONERS MISSED ONE OR TWO OR THREE OR MORE
6 REQUIRED ELEMENTS OF THE PROCESS THAT WAS DUE TO THEM
7 WHEN THEIR RELEASE WAS REVOKED CONSTITUTES NO HARM,
8 NO FOUL. BUT THAT DOES NOT WORK HERE. THIS IS NOT A
9 MERE TECHNICAL DEFECT.

10 OPPORTUNITY -- PARDON ME. I'M A LITTLE
11 SHORTER THAN MR. JACK. AN OPPORTUNITY TO BE HEARD IS
12 AT THE VERY CORE OF WHAT THE DUE PROCESS CLAUSE IS
13 MEANT TO PROTECT. AND IT IS TRUE THAT THE FAILURE OF
14 AN AGENCY TO FOLLOW ITS OWN REGULATIONS IS NOT ALWAYS
15 A PER SE DENIAL OF DUE PROCESS, AND SUBSTANTIAL
16 PREJUDICE IS OFTEN REQUIRED. BUT UNDER SUPREME COURT
17 AND FIFTH CIRCUIT CASE LAW, THERE ARE SOME REGULATORY
18 VIOLATIONS SO SERIOUS THAT SUBSTANTIAL PREJUDICE IS
19 PRESUMED. AND THAT IS THE CASE HERE.

20 THESE REGULATIONS, THE REGULATIONS IN
21 QUESTION, WERE COMPELLED BY THE CONSTITUTION AND BY
22 STATUTE, AND THEY CONFER IMPORTANT PROCEDURAL
23 BENEFITS. AND THE GOVERNMENT HAS CONCEDED ELSEWHERE
24 IN OTHER HABEAS CASES THAT NONCITIZENS DO HAVE A DUE
25 PROCESS RIGHT TO THE PROCEDURES IN THESE REGULATIONS.

1 AND OTHER DISTRICT COURTS IN THIS CIRCUIT AND
2 ELSEWHERE AGREE THAT THAT'S THE CASE.

3 AND THE CASES TO WHICH RESPONDENTS
4 BRIEFLY CITED DO NOT COMPEL A DIFFERENT RESULT.
5 THOSE FIFTH CIRCUIT CASES LIKE AYALA AND THE LIKE
6 CONCERN REMOVAL PROCEEDINGS. AND REMOVAL PROCEEDINGS
7 ARE LONG, COMPLEX PROCESSES GOVERNED BY MANY
8 REGULATIONS, NOT ALL OF WHICH ARE COMPELLED BY THE
9 CONSTITUTION OR BY STATUTE. AND IN THOSE CASES THE
10 NONCITIZENS DID RECEIVE SIGNIFICANT PROCESS IN THE
11 FORM OF REMOVAL PROCEEDINGS.

12 AND IN THOSE PROCEEDINGS, IT IS
13 POSSIBLE TO MISS A SINGLE PROCEDURAL STEP; FOR
14 EXAMPLE, YOU KNOW, MISTRANSLATING A WORD OR, YOU
15 KNOW, APPLYING THE WRONG STANDARD IN A CASE WHERE THE
16 NONCITIZEN WOULD HAVE LOST THEIR CASE REGARDLESS OF
17 THE STANDARD THAT WAS USED WITHOUT IT CONSTITUTING
18 SUBSTANTIAL PREJUDICE.

19 BUT THAT'S NOT THE CASE HERE. HERE
20 PETITIONERS RECEIVED VIRTUALLY NO PROCESS AT ALL.
21 AND THIS CASE CONCERNS LIBERTY, THE MOST FUNDAMENTAL
22 INTEREST. AND SIMILARLY, THE NORTHERN DISTRICT OF
23 TEXAS CASES, YOU KNOW, REPRESENT A HYPER-MINORITY OF
24 CASES ON THIS TOPIC, AND THEY ALSO DO NOT ENGAGE WITH
25 THE STANDARD I JUST ARTICULATED.

1 AND THAT'S WHY THE VAST MAJORITY OF
2 COURTS AGREE THAT, YOU KNOW, WHERE A REGULATION, AS
3 HERE, WAS COMPELLED BY THE CONSTITUTION OR BY
4 STATUTE, VIOLATIONS THEREOF CONSTITUTE PER SE
5 SUBSTANTIAL PREJUDICE.

6 BUT IN ANY EVENT, PETITIONERS DID MEET
7 THE SUBSTANTIAL PREJUDICE STANDARD IN THEIR PETITION.
8 THEY ALLEGED SPECIFIC INFORMATION THAT THEY WOULD
9 HAVE BROUGHT TO AN INTERVIEW HAD THEY BEEN PROVIDED
10 ONE, INFORMATION THAT WOULD HAVE BEEN VERY RELEVANT
11 TO THE AGENCY IN MAKING THAT DETERMINATION. AND
12 PETITIONERS ALSO POINT OUT THAT IN 241.13, AGAIN, THE
13 GOVERNMENT IS REQUIRED TO SHOW THAT A SPECIFIC
14 INDIVIDUALIZED CHANGE MAKES REMOVAL MORE FORESEEABLE
15 NOW. AND THEY HAVE FAILED TO DO SO TO DATE. AND SO
16 HAD THAT REGULATION BEEN FOLLOWED, PETITIONERS WOULD
17 STILL BE FREE TODAY.

18 AND ON THAT LAST NOTE OF REMOVAL, YOUR
19 HONOR, I JUST WANT TO REITERATE THAT AS TO THE THREE
20 CUBAN PETITIONERS, AS YOUR HONOR STATED, REMOVAL OF A
21 SINGLE IMPEDIMENT DOES NOT RENDER REMOVAL
22 FORESEEABLE. AND AS TO MR. ██████████, HE
23 UNEQUIVOCALLY CANNOT BE REMOVED TO ██████████ BECAUSE
24 OF THE PROTECTION HE RECEIVED. SO JUST CLARIFYING
25 THE POINT.

1 **THE COURT:** I HAVE A COUPLE OF QUESTIONS.

2 **MS. PRANZATELLI:** THANK YOU, YOUR HONOR.

3 **THE COURT:** DO YOU KNOW THE ANSWER? WHEN
4 YOUR CLIENT, THE ONE THAT WAS BROUGHT TO THE BORDER
5 AND DENIED ACCESS -- WHAT DOES THE RECORD SHOW IS THE
6 REASON THAT HE WAS?

7 **MS. PRANZATELLI:** IT'S NOT CLEAR, YOUR
8 HONOR. IN ICE OFFICIAL DID REPRESENT TO US THAT PART
9 OF -- AT LEAST PART OF THE ISSUE WAS THAT HE WAS OVER
10 THE AGE OF 60. BUT WE DO NOT HAVE FULL VISIBILITY
11 INTO WHAT OTHER CRITERIA WERE AT ISSUE.

12 **THE COURT:** SO THE RECORD'S UNCLEAR ON THAT
13 POINT?

14 **MS. PRANZATELLI:** YES, YOUR HONOR.

15 **THE COURT:** OKAY. AGAIN, REGARDLESS OF
16 WHETHER YOU THINK IT'S RELEVANT OF WHETHER WHO'S GOT
17 THE BURDEN, I WANT TO KNOW WHAT YOU BELIEVE THE
18 EVIDENCE IN THE RECORD SHOWS WITH RESPECT TO WHETHER
19 THERE IS OR ISN'T A SIGNIFICANT LIKELIHOOD OF REMOVAL
20 IN THE REASONABLY FORESEEABLE FUTURE FOR YOUR FOUR
21 CLIENTS.

22 **MS. PRANZATELLI:** YOUR HONOR, THERE IS NO
23 SIGNIFICANT LIKELIHOOD OF REMOVAL IN THE REASONABLY
24 --

25 **THE COURT:** NO. WHAT EVIDENCE IS THERE THAT

1 SAYS THAT?

2 MS. PRANZATELLI: OKAY. SO, YOUR HONOR, AS
3 TO MR. ██████████, WHO IS AN ██████████ NATIONAL WITH NO
4 CITIZENSHIP OR CLAIM TO STATUS IN ANY OTHER COUNTRY
5 IN THE WORLD EXCEPT FOR HIS CAT PROTECT- -- HIS
6 PROTECTION UNDER THE CONVENTION AGAINST TORTURE IN
7 THE UNITED STATES, THERE IS -- THE RECORD IS
8 COMPLETELY SILENT AS TO ANY REASON THAT CANADA HAS TO
9 RECEIVE -- TO RECEIVE AN INDIVIDUAL WITH NO
10 CITIZENSHIP OR CLAIM TO STATUS THERE.

11 THE COURT: SO IT'S AN ABSENCE OF EVIDENCE,
12 WHICH IS THE EVIDENCE?

13 MS. PRANZATELLI: YES, YOUR HONOR.

14 THE COURT: WHAT ABOUT THE OTHER THREE?

15 MS. PRANZATELLI: AND REGARDING THE THREE
16 CUBAN PETITIONERS, SOMETHING SIMILAR CAN BE SAID,
17 WHICH IS THAT THE RECORD IS CLEAR THAT THOSE
18 PETITIONERS WILL NOT BE REMOVED TO CUBA. THE
19 GOVERNMENT'S OPPOSITION MAKES CLEAR THAT CUBA HAS
20 FLATLY REJECTED THEM. AND, LIKEWISE, THEY HAVE NO
21 CLAIM TO CITIZENSHIP OR STATUS ANYWHERE ELSE IN THE
22 WORLD. THE GOVERNMENT NOW RAISES MEXICO AS AN OPTION
23 FOR REMOVAL FOR THESE THREE. BUT THAT HAS BEEN
24 RAISED AS MERELY A GENERAL KIND OF BLANKET POLICY,
25 WHICH IS INSUFFICIENT TO SHOW THAT ANY INDIVIDUAL

1 PERSON CAN BE REMOVED THERE.

2 **THE COURT:** OKAY. I WANT TO ASK MR. JACK
3 THIS AGAIN. LET ME ASK YOU FIRST AND THEN I'LL ASK
4 MR. JACK.

5 **MS. PRANZATELLI:** YES, YOUR HONOR.

6 **THE COURT:** IT WAS REPRESENTED THAT IT'S THE
7 DESIRE OF THE GOVERNMENT TO MOVE THESE FOUR
8 INDIVIDUALS TO A FACILITY CLOSE -- AT LEAST THE THREE
9 CUBANS -- TO A FACILITY CLOSER TO MEXICO IN ORDER TO
10 FACILITATE THEIR DEPORTATION TO MEXICO. I'M CONFUSED
11 AS TO WHAT PURPOSE -- WHY CAN'T WHATEVER NEEDS TO BE
12 DONE DONE FROM THIS COURT AS OPPOSED TO -- AND FROM
13 CAMP 57 -- AS OPPOSED TO MOVING THEM TO A FACILITY
14 CLOSER TO TEXAS? WHAT DOES THAT HAVE TO DO WITH
15 ANYTHING?

16 **MS. PRANZATELLI:** YOUR HONOR, THAT DOES NOT
17 HAVE TO DO WITH ANYTHING. AND JUST ANECDOTALLY, WE
18 ARE AWARE OF OTHER INDIVIDUALS WHO ARE ABLE TO
19 RECEIVE TRAVEL DOCUMENTS AND HAVE THAT PROCESS KIND
20 OF CONTINUED AND FULFILLED FROM DETENTION CENTERS
21 ACROSS THE COUNTRY REGARDLESS OF HOW CLOSE TO THE
22 BORDER THEY ARE.

23 **THE COURT:** OKAY. AND, MR. JACK, IF YOU
24 DON'T MIND GIVING ME YOUR TAKE ON THAT QUESTION.

25 **MR. JACK:** SURE, YOUR HONOR. AS I

1 UNDERSTAND IT, THAT IS ICE'S PROCESS, IN PARTICULAR
2 FOR THOSE STAYS AT THE ANGOLA -- OR PROCESSING
3 CENTER, IS TO -- YOU KNOW, TO SEND THOSE THAT WILL BE
4 REMOVED TO MEXICO TO FIRST SEND THEM TO FLORENCE,
5 ARIZONA, AND THEN TO BUS THEM TO THE BORDER AND THEN
6 WALK THEM ACROSS THE BORDER. I THINK THAT'S THE --
7 AS FAR AS I'M AWARE FROM ICE, THAT'S THE STANDARD
8 PROCESS FOR THOSE INDIVIDUALS WHO WILL BE REMOVED IN
9 MEXICO.

10 **THE COURT:** ALL RIGHT. THANK YOU.

11 ALL RIGHT, FOLKS. WELL, THANK YOU VERY
12 MUCH. WE'LL TAKE IT UNDER ADVISEMENT. AND AS WE
13 MENTIONED IN OUR MINUTE ENTRY, WE'LL TRY TO GET THIS
14 OUT AS QUICKLY AS WE CAN.

15 **THE LAW CLERK:** ALL RISE.

16 THE COURT IS NOW ADJOURNED.

17 **(WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)**

18 **C E R T I F I C A T E**

19 I CERTIFY THAT THE FOREGOING IS A CORRECT
20 TRANSCRIPT FROM THE RECORD OF THE PROCEEDINGS IN THE
21 ABOVE-ENTITLED NUMBERED MATTER.

22 **S:/NATALIE W. BREAUX**

23 **NATALIE W. BREAUX, RPR, CRR**

24 **OFFICIAL COURT REPORTER**

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