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

In the matter of

Maria Mora Villalpando,

Respondent.

In removal proceedings.

A. No. 213-075-808

Respondent's Motion to Terminate

Immigration Judge: Brett M. Parchert

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

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

FACTS

I. Political Context.

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

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

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

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

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



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

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

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

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

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

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

¹⁵ *Id.*



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

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

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



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

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

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

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



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

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

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

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



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

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

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

In October 2016, she attended a meeting in San Diego with the United Nations Working Group Against Arbitrary Detention. She presented a talk about the current conditions in NWDC and submitted a report written in collaboration with the International Human Rights Law Clinic at University of Washington Law School. *Id.* at ¶ 29. In March 2017, she testified before the Inter-American Commission for Human Rights and gave a presentation that included photos of people detained and details about the conditions faced inside NWDC. *Id.* at ¶ 30. In 2017, she organized and carried out several Resistance Workshops across the state of Washington to educate the immigrant community on ICE and DHS's February 2017 memos on enforcement implementation. *Id.* at ¶ 31.



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

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

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

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

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

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

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

ARGUMENT

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

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

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

A. IJs Have Authority to Adjudicate Motions to Terminate.

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



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

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

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

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



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

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



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

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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

CONCLUSION

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



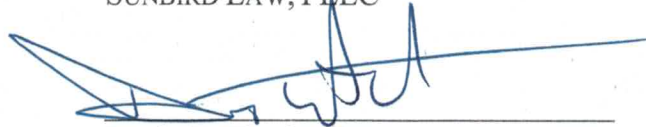
speech to strive to establish worth, standing, and respect for the speaker's voice." *Citizens United*, 558 U.S. at 899.

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

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

Respectfully submitted this 12th day of March, 2018.

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