

**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

GILBERTO PEREIRA BRITO,  
FLORENTIN AVILA LUCAS, and JACKY  
CELICOURT, individually and on behalf of  
all those similarly situated,

*Plaintiffs-Petitioners,*

v.

WILLIAM BARR, Attorney General, U.S.  
Department of Justice, MARCOS  
CHARLES, Acting Field Office Director,  
Enforcement and Removal Operations, U.S.  
Immigration and Customs Enforcement,  
MARK MORGAN, Acting Director, U.S.  
Immigration and Customs Enforcement,  
KEVIN MCALEENAN, Secretary, U.S.  
Department of Homeland Security, JAMES  
MCHENRY, Director, Executive Office of  
Immigration Review, U.S. Department of  
Justice, ANTONE MONIZ, Superintendent  
of the Plymouth County Correctional  
Facility, YOLANDA SMITH,  
Superintendent of the Suffolk County House  
of Correction, STEVEN SOUZA,  
Superintendent of the Bristol County House  
of Correction, CHRISTOPHER BRACKETT,  
Superintendent of the Strafford County  
Department of Corrections, and LORI  
STREETTER, Superintendent of the Franklin  
County House of Corrections, in their official  
capacities,

*Defendants-Respondents.*

Case No. \_\_\_\_\_

**HABEAS CORPUS PETITION AND**  
**CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE**  
**RELIEF**

**INTRODUCTION**

1. Liberty is supposed to be the norm throughout the American legal system, and detention a carefully limited exception. In immigration proceedings, however, this principle is reversed. Although these are civil proceedings, U.S. Immigration and Customs Enforcement (ICE) is jailing numerous alleged noncitizens—including Petitioners Gilberto Pereira Brito, Florentin Avila Lucas, and Jacky Celicourt—simply for failing to affirmatively prove, to the satisfaction of an immigration judge, that they should be free. Courts have repeatedly held that such detention is unlawful, but the government’s practice has not abated. Unless this Court intervenes, ICE will continue to imprison the Petitioners and others like them without ever being required to prove that this imprisonment is necessary to protect public safety or ensure their appearance in immigration court.

2. Petitioners bring this action to compel the government to provide constitutionally adequate detention hearings (colloquially known as “bond hearings” in immigration court) for them and a class of similarly situated people. The proposed class would include all people who are or will be detained under 8 U.S.C. § 1226(a), either within Massachusetts or otherwise within the jurisdiction of the Boston Immigration Court. On behalf of themselves and the class, Petitioners seek declaratory and injunctive relief that prohibits further detention without an adequate bond hearing. That hearing is one in which the government bears the burden to prove

by clear and convincing evidence that detention is necessary because the detainee is a danger to others or a flight risk, and that there is no condition or combination of conditions that will reasonably assure the detainee's future appearance and the safety of the community, and which includes consideration of the detainee's ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision.

### **PARTIES**

3. Petitioner<sup>1</sup> Gilberto Pereira Brito is a resident of Brockton, Massachusetts. He has been held in immigration detention since March 3, 2019. He is currently detained by ICE at Plymouth County Correctional Facility in Plymouth, Massachusetts.

4. Petitioner Florentin Avila Lucas is a resident of Claremont, New Hampshire. He has been held in immigration detention since March 20, 2019. He was initially detained at the Strafford County Department of Corrections in Dover, New Hampshire. He was then transferred by ICE to the Plymouth County Correctional Facility in Plymouth, Massachusetts, where he is currently detained.

5. Petitioner Jacky Celicourt is a resident of Nashua, New Hampshire. He has been held in immigration detention since January 16, 2019. He was initially detained at the Strafford County Department of Corrections in Dover, New Hampshire. He was then transferred by ICE to the Plymouth County Correctional Facility in Plymouth, Massachusetts, where he is currently detained.

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<sup>1</sup> Plaintiffs-Petitioners will be referred to throughout as "Petitioners," and Defendants-Respondents will be referred to throughout as "Respondents."

6. Respondent Antone Moniz is the Superintendent of the Plymouth County Correctional Facility, and is the immediate custodian of Mr. Avila Lucas, Mr. Pereira Brito, Mr. Celicourt, and numerous members of the putative class. He is sued in his official capacity.

7. Respondent Yolanda Smith is the Superintendent of the Suffolk County House of Correction, and is the immediate custodian of numerous members of the putative class. She is sued in her official capacity.

8. Respondent Steven Souza is the Superintendent of the Bristol County House of Correction, and is the immediate custodian of numerous members of the putative class. He is sued in his official capacity.

9. Respondent Lori Streeter is Superintendent of the Franklin County Jail and House of Correction, and is the immediate custodian of numerous members of the putative class. She is sued in her official capacity.

10. Respondent Christopher Brackett is the Superintendent of the Strafford County Department of Corrections in Dover, New Hampshire, and is the immediate custodian of numerous members of the putative class. He is sued in his official capacity.

11. Respondent Marcos Charles is the Acting Field Office Director for the Boston Field Office of ICE's Enforcement and Removal Operations (ERO), located in Burlington, Massachusetts. He is sued in his official capacity. The Boston Field Office is responsible for and has authority over ICE's apprehension, detention, and removal operations in Massachusetts, New Hampshire, Connecticut, Rhode Island,

Maine, and Vermont. Mr. Charles is the immediate legal custodian of Petitioners and all members of the putative class.

12. Respondent Mark Morgan is the Acting Director of ICE. In this capacity, he directs all ICE operations. As a result, Respondent Morgan has responsibility for the administration of the immigration laws, and is a legal custodian of the Petitioners. He is sued in his official capacity.

13. Respondent Kevin McAleenan is the Acting Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, he directs each of the component agencies within DHS, including ICE. As a result, Respondent McAleenan has responsibility for the administration of the immigration laws, and is a legal custodian of the Petitioners. He is sued in his official capacity.

14. Respondent James McHenry is the Director of the Executive Office for Immigration Review (EOIR), a component of the U.S. Department of Justice. In this capacity, he is responsible for the policies and operations of the immigration courts. He is sued in his official capacity.

15. Respondent William Barr is the Attorney General of the United States. In this capacity, he is responsible for the policies and operations of the U.S. Department of Justice, including EOIR. He is sued in his official capacity.

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction, including pursuant to 28 U.S.C. §§ 2241 *et seq.*, Art. I § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 1361 (mandamus statute).

17. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and (e), and 28 U.S.C. §§ 2241 *et seq.* Petitioners and most members of the putative class are detained within this District, and a substantial part of the events giving rise to the claims and relevant facts occurred within this District, including the activities and decisions of the Boston Immigration Court and the Boston Field Office of ICE-ERO. Respondent Charles is located within this District and possesses day-to-day authority over the custody of Petitioners and all class members.

**DETENTION UNDER THE IMMIGRATION AND NATIONALITY ACT,**  
**8 U.S.C. § 1226(a)**

18. Although individuals detained under 8 U.S.C. § 1226(a) are eligible for release on bond, the government places the burden of proof in the bond hearing on the individual, and fails to consider whether conditions of release can mitigate risk or whether a bond amount is within an individual's ability to pay. These inadequate bond hearings violate Petitioners' constitutional and statutory rights.

19. Immigration removal proceedings begin when ICE accuses a person of being a noncitizen subject to being removed (commonly, "deported") from the United States. The person may contest that they are subject to deportation, and may also apply for various forms of relief from deportation. Many people placed in removal proceedings will not ultimately be deported. However, it takes months or years for the courts to decide if a person should be deported or if they are legally entitled to remain in the United States.

20. The government's authority to jail people during their removal proceedings is generally governed by 8 U.S.C. § 1226. Those people are eligible to be

released on bond under 8 U.S.C. § 1226(a) unless they are subject to a mandatory detention provision, 8 U.S.C. § 1226(c), which prohibits release on bond for noncitizens who are removable on the basis of certain criminal or national security grounds.

21. ICE makes an initial custody determination to decide if an individual should be detained or released on bond or other conditions of supervision. 8 C.F.R. § 1236.1(c)(8).

22. The individual may then request a custody redetermination of ICE's decision from an immigration judge, through what is colloquially referred to as a "bond hearing."<sup>2</sup> See 8 C.F.R. § 1236.1(d)(1).

23. Neither the statute nor the regulations require the individual to bear any burden of proof in his or her bond hearing. Indeed, from 1976 to 1999, the Board of Immigration Appeals (BIA)—which makes controlling precedent for immigration judges—held that "[a]n alien generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk," and required that the government provide reasons to justify detention. See *Matter of Patel*, 15 I&N Dec. 666, 666-67 (BIA 1976) (citations omitted).

24. In 1999, the BIA arbitrarily reversed course and made detainees bear the burden of proof in bond hearings. See *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA

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<sup>2</sup> Consistent with the usual terminology, a detention hearing in immigration court will be referred to throughout as a "bond hearing." To be clear, however, the "bond hearing" requested through this action would include consideration of conditions of release other than a monetary bond.

1999). In doing so, the BIA failed to provide a reasoned explanation for reversing its prior precedent, and incorrectly relied upon an inapplicable regulation contained in 8 C.F.R. § 236.1(c)(8). *See id.* Under *Adeniji* and its progeny, the BIA currently requires that people seeking release prove to the satisfaction of an immigration judge that they do not pose a danger to property or persons, and are likely to appear for any future proceeding. *See id.* at 1113; *see also* Ex. A (Noureddine Aff't) ¶¶3-5; *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006).

25. Consequently, ICE routinely holds allegedly removable people in jail without ever being required to show that such detention is necessary. These people may receive bond hearings before immigration judges. However, at those hearings, the *individuals* bear the burden to prove that they should *not* be jailed because they are *not* a danger to the community and *not* a flight risk. People are being deprived of freedom—jailed, and separated from their families and livelihoods—because they cannot prove a negative.

26. Furthermore, individuals who satisfy this unfair evidentiary burden may face an additional hurdle: their release is routinely conditioned on a bond set without consideration of their ability to pay. *See* Ex. A (Noureddine Aff't) ¶6; *see also Guerra*, 24 I. & N. Dec. at 40 (enumerating factors that the immigration judge may consider in setting bond, without mention of ability to pay). Bail set beyond a person's ability to pay is simply a *de facto* detention order. Nor do immigration judges generally consider individuals for alternative conditions of release that do not require the posting of bond.



27. Courts have repeatedly held that the government is violating detainees' constitutional rights by providing these flawed bond hearings. *See Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018), *appeal dismissed by gov't*, No. 18-1691 (1<sup>st</sup> Cir. Dec. 26, 2018); *Padilla v. ICE*, No.18-928, 2019 WL 1506754, at \*9 (W.D. Wash. Apr. 5, 2019); *Doe v. Tompkins*, No. 18-12266, 2019 U.S. Dist. LEXIS 22616, at \*3 (D. Mass. Feb. 12, 2019), *appeal noticed*, No. 19-1368 (1<sup>st</sup> Cir.); *Diaz Ortiz v. Tompkins*, No. 18-12600, 2019 U.S. Dist. LEXIS 14155, at \*1 (D. Mass. Jan. 29, 2019), *appeal noticed*, No. 19-1324 (1<sup>st</sup> Cir.); *Brevil v. Jones*, No. 17-1529, 2018 WL 5993731, at \*4 (S.D.N.Y. Nov. 14, 2018); *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018); *Alvarez Figueroa v. McDonald*, No. 18-10097, 2018 WL 2209217, at \*5 (D. Mass. May 14, 2018); *see also Hernandez v. Sessions*, 872 F.3d 976, 990-94 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Lett v. Decker*, 346 F. Supp. 3d 379, 389 (S.D.N.Y. 2018), *appeal noticed*, No. 18-3714 (2d Cir.); *Brissett v. Decker*, 324 F. Supp. 3d 444, 454 (S.D.N.Y. 2018).<sup>3</sup>

28. Nevertheless, in this District and elsewhere, the government continues to make individuals bear the burden of proof when they seek release from detention, and to detain individuals on bond without consideration of their financial circumstances or suitability for alternative conditions of release. *See Ex. A (Noureddine Aff't) ¶¶4-6.*

29. Unless this Court orders class-wide relief, the government's practices will routinely deny fundamental due process to immigration detainees. To comport

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<sup>3</sup> *Cf.* 18 U.S.C. § 3142(c)(2); *United States v. Mantecon-Zayas*, 949 F.2d 548, 551 (1<sup>st</sup> Cir. 1991).

with the Due Process Clause and other governing law, at a bond hearing for an 8 U.S.C. § 1226(a) detainee, the government must be required to prove by clear and convincing evidence: (1) that the detainee is a danger to others or a flight risk; and (2) that no condition or combination of conditions will reasonably assure his/her future appearance and the safety of the community. Additionally, where an immigration judge determines that release on bond is warranted, the immigration judge must consider the detainee's ability to pay the bond before determining the bond amount, as well as whether alternative, nonmonetary conditions are sufficient to permit his or her release.

30. As described below, Petitioners' continued civil detention is unlawful because they have not received a bond hearing that meets these standards. Instead, each received a bond hearing in which the immigration court placed the burden of proof on him. Each was prejudiced by the government's error and remains detained.

### **STATEMENT OF FACTS**

#### **I. Petitioner Gilberto Pereira Brito is not dangerous, does not present a flight risk, and was prejudiced by a flawed bond hearing.**

31. Petitioner Gilberto Pereira Brito has been detained under 8 U.S.C. § 1226(a) since March 3, 2019. Although he is the primary breadwinner and support for three U.S. citizen children and a U.S. citizen wife with serious health problems, an immigration judge denied him bond based on motor vehicle charges from more than a decade ago.

32. Mr. Pereira Brito is 39 years old and lives in Brockton, Massachusetts, with his wife and three children, ages 10 years old, 4 years old, and 11 months old.

33. Mr. Pereira Brito's wife is disabled and cannot work. His family depends on him to support the family financially. Before being detained, he worked as a painter and in light construction. Without him, his family is unable to pay their rent and other expenses.

34. Mr. Pereira Brito was born in Brazil. He entered the United States in April 2005 and was apprehended shortly thereafter. He was released on personal recognizance and given a putative Notice to Appear. However, the putative Notice to Appear did not provide him with the date, time, and place of his scheduled hearing, but rather purported to order him to appear at the JFK Federal Building at 1:30 a.m., when the immigration court was not in session and no hearing was scheduled. A removal order entered the next day *in absentia*.

35. In 2007, Mr. Pereira Brito was pulled over in Dorchester, Massachusetts, and charged with unlicensed operation of a motor vehicle and operation of a motor vehicle under the influence of alcohol. In August 2008, he admitted sufficient facts, and the case was continued without a finding until July 2009.<sup>4</sup>

36. In May 2009, Mr. Pereira Brito was charged in Hingham, Massachusetts, with driving after suspension of his license. He was released on personal recognizance at arraignment. Mr. Pereira Brito misunderstood the judge's instructions and was incorrectly under the impression that the case was resolved. It

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<sup>4</sup> Police also initially alleged that a marijuana cigarette was found in the vehicle (which had three passengers when it was pulled over, in addition to Mr. Pereira Brito), but the possession charge against Mr. Pereira Brito was dropped at the request of the Commonwealth.

appears a default entered in June 2009, although the Commonwealth took no further action. It also appears that this charge triggered a violation of probation notice in the original 2007 case. But the notice was mailed to the wrong address, and Mr. Pereira Brito was not aware of it.

37. Since May 2009—more than a decade ago—Mr. Pereira Brito has not been arrested, and has not been charged with or convicted of any crimes.

38. ICE arrested Mr. Pereira Brito at his home on March 3, 2019. Mr. Pereira Brito has been held in immigration detention continuously since that time, now more than three months.

39. After being detained, Mr. Pereira Brito filed a motion to reopen his removal proceeding. That motion was granted by the immigration court on or about March 18, 2019.

40. Mr. Pereira Brito intends to apply for relief, including cancellation of removal, a defense to removal that is available to certain individuals who have been in the United States for more than 10 years and have U.S. citizen family members who would suffer an “exceptional and extremely unusual hardship” if the noncitizen were removed.<sup>5</sup>

41. On April 4, 2019, Mr. Pereira Brito received a bond hearing before an immigration judge in the Boston Immigration Court pursuant to 8 U.S.C. § 1226(a). The immigration judge required that, in order to be released on bond, Mr. Pereira

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<sup>5</sup> Mr. Pereira Brito is also the beneficiary of an approved I-130, Petition for Alien Relative, filed by his wife. That petition could become the basis for an application for lawful permanent resident status at a future date.

Brito bear the burden to prove that he is not a danger or flight risk. *See* Ex. B (memorandum of bond decision).

42. In connection with that bond hearing, Mr. Pereira Brito's counsel submitted an affidavit by his wife, Darcy Pereira Brito. *See* Ex. C (D. Pereira Brito Aff't). His counsel also submitted medical documentation and Social Security Administration documentation relating to her disability. Additionally, his counsel filed documents demonstrating his strong ties to the community, including letters of support and family photographs. *See, e.g.*, Exs. D & E. For example, Dr. Nancy Chapin, the family's pediatrician, explained that "without [Mr. Pereira Brito's] emotional and financial support his family would suffer tremendously." *See* Ex. D.

43. At the bond hearing, Mr. Pereira Brito learned that his 2007 and 2009 cases were still open, and that the government was relying on these decade-old cases as bases to argue that he should remain detained.

44. The immigration judge denied bond. In a subsequent explanatory decision, the immigration judge acknowledged that Mr. Pereira Brito "has been in the United States for over a decade, has a fixed address, and has existing family ties." However, the court nevertheless ruled that Mr. Pereira Brito "did not meet his burden to demonstrate that he neither poses a danger to the community nor is a risk of flight," based on the two decade-old cases and his purported failure to demonstrate that "he has a strong case for eligibility for relief from removal." *See* Ex. B (memorandum of bond decision).

45. Mr. Pereira Brito appealed this decision to the BIA on or about May 3, 2019. The appeal remains pending.

46. On May 30, 2019, Mr. Pereira Brito's immigration attorney filed a motion for a new bond hearing based on a change in circumstances, including his wife's deteriorating medical condition. The motion was denied on or about June 10, 2019.

47. While detained, Mr. Pereira Brito has engaged criminal defense counsel to help him resolve the two old cases. The violation of probation proceeding in the 2007 case has now been dismissed, and the case is therefore resolved. The 2009 case is scheduled for a hearing on June 17, 2019, at which time it will likely be resolved.

48. Mr. Pereira Brito's immigration proceedings have been pending since March and will likely continue for some time. His next hearing is currently scheduled for June 28, 2019.

49. Without an adequate bond hearing, Mr. Pereira Brito will likely remain detained throughout the pendency of these proceedings. He has already been in jail for more than three months.

50. Had Mr. Pereira Brito received an adequate bond hearing, he could have—and likely would have—been released. Mr. Pereira Brito was prejudiced by the error.

**II. Petitioner Florentin Avila Lucas is not dangerous, does not present a flight risk, and was prejudiced by a flawed bond hearing.**

51. Petitioner Florentin Avila Lucas has been detained pursuant to 8 U.S.C. § 1226(a) since March 20, 2019. He has never been charged with or convicted of any

crime. Since 2006, he has lived and worked at the same dairy farm in Claremont, New Hampshire. Nevertheless, an immigration judge denied him bond based on the government's allegation that—when approached and questioned by a plainclothes Border Patrol agent at a thrift store—he did not immediately permit himself to be handcuffed.

52. Mr. Avila Lucas is 40 years old. He works 60 to 70 hours per week.

53. On March 20, 2019, Mr. Avila Lucas drove with a friend into Lebanon, New Hampshire. Mr. Avila Lucas planned to take his friend out for lunch for his birthday. Lebanon is located approximately 95 miles south of the U.S.-Canada border.

54. In Lebanon, Mr. Avila Lucas and his friend stopped at a thrift store so that his friend could buy some new work clothes.

55. Mr. Avila Lucas was unaware that two plainclothes Border Patrol agents in an unmarked vehicle were conducting a surveillance operation in the area. The agents trailed his vehicle and followed him into the store.

56. While Mr. Avila Lucas was in the store, one of the Border Patrol agents approached him and asked him to step out to the parking lot. In the parking lot, the agent asked Mr. Avila Lucas several questions. The agent then grabbed Mr. Avila Lucas, pushed him to the ground, handcuffed him, and took him into custody.

57. On or about March 26, 2019, the government served Mr. Avila Lucas with a Notice to Appear charging that he is a removable alien and seeking his deportation to Guatemala.

58. On May 2, 2019, Mr. Avila Lucas received a bond hearing before an immigration judge in the Boston Immigration Court pursuant to 8 U.S.C. § 1226(a). The immigration judge required that, in order to be released on bond, Mr. Avila Lucas bear the burden to prove that he is not a danger or flight risk.

59. In connection with that bond hearing, Mr. Avila Lucas's counsel submitted letters from members of the Claremont community attesting to his good character and work ethic. The family that operates the dairy farm where Mr. Avila Lucas works described him as "a valued part of our team and like family to us," extolled his "quiet, calm demeanor," and noted that "[h]is moral conduct is something we should all strive for" and that "[t]he work ethic he shows on a daily basis is one not often seen in today's society." *See* Ex. F (letters).

60. Also in connection with that bond hearing, the government submitted reports of Mr. Avila Lucas's arrest prepared by the Border Patrol agents. Among other things, these documents assert that, when the Border Patrol agent—who was not in uniform, and was operating far from any international boundary—first showed Mr. Avila Lucas the handcuffs, Mr. Avila Lucas withdrew his hands and stepped away. The documents further claim that the Border Patrol agent then pulled Mr. Avila Lucas to the ground, and that Mr. Avila Lucas had his hands under his body and said "no" when instructed to withdraw them. The documents state that "[a]fter a short time," Mr. Avila Lucas was handcuffed and became cooperative. *See* Ex. G.

61. Despite the fact that Mr. Avila Lucas has no criminal record and is an established member of his community, the immigration judge denied Mr. Avila



Lucas's request for release. Instead, based upon the Border Patrol agents' allegations, the immigration judge ruled that Mr. Avila Lucas "failed to meet his burden of proof to show that he is not a danger or flight risk." *See* Ex. H (May 2, 2019 Order).

62. Mr. Avila Lucas appealed this decision to the BIA on or about May 30, 2019. The appeal remains pending.

63. Mr. Avila Lucas's immigration proceedings have been pending since March and will likely continue for some time. Mr. Avila Lucas has filed a motion to suppress various evidence—including evidence that the government is relying upon to prove his alienage—based upon the government's egregious violations of law in connection with his interrogation and arrest on March 20, 2019. *See* Ex. I (motion to suppress and declaration of Mr. Avila Lucas). A hearing is currently scheduled for June 18, 2019. If that motion is denied, or the government is otherwise able to prove that Mr. Avila Lucas is a removable alien, then Mr. Avila Lucas expects to apply for relief from removal, including withholding of removal based on a likelihood of persecution if he is deported to Guatemala.

64. Without an adequate bond hearing, Mr. Avila Lucas will likely remain jailed throughout the pendency of these proceedings. He has already been in jail for almost three months.

65. Had Mr. Avila Lucas received an adequate bond hearing, he could have—and likely would have—been released. Mr. Avila Lucas was prejudiced by the error.

**III. Petitioner Jacky Celicourt is not dangerous, does not present a flight risk, and was prejudiced by a flawed bond hearing.**

66. Petitioner Jacky Celicourt has been detained under 8 U.S.C. § 1226(a) since January 16, 2019. Mr. Celicourt fled to the United States to escape political persecution after being the victim of an attempted murder. The immigration judge denied him bond based on an allegation that he had attempted to steal a pair of headphones worth \$5.99.

67. Mr. Celicourt is 37 years old. He resides in Nashua, New Hampshire. Before being detained, he worked in construction.

68. Mr. Celicourt was born in Haiti. He was a volunteer and political activist for one of Haiti's political parties, including during the turbulent election period in 2015 and 2016.

69. In 2017, Mr. Celicourt was the target of an attempted murder based on his political activity. He fled the country in December 2017, and resided briefly in the Dominican Republic. In March 2018, he entered the United States on a tourist visa.

70. About nine months later, in December 2018, Mr. Celicourt went to a discount store in Nashua, New Hampshire, to purchase socks and gloves for work. While he was there, he decided to also purchase a pair of \$5.99 earbuds. He received a phone call while in the store, and used the earbuds to answer the call. He then placed the earbuds in his pocket.

71. When Mr. Celicourt went to the checkout counter, he paid for his gloves and socks, but he forgot about the earbuds. A store employee asked him about the

earbuds, and he offered to pay for them. Instead, the employee demanded his identification. When the employee saw his Haitian identification documents, she told him, “I don’t want your money, I want you deported back to your country,” or words to that effect. She called the police.

72. The police charged Mr. Celicourt with a single count of Theft by Unauthorized Taking between \$0 and \$1,000. He was released on personal recognizance. *See* Exs. J (docket) & K (bail order).

73. On January 16, 2019, Mr. Celicourt appeared as required in the Nashua district court in Nashua, New Hampshire, to respond to the charge. Mr. Celicourt pled guilty and was fined \$310.<sup>6</sup> *See* Ex. J (docket). ICE arrested him as he walked out of the courtroom.

74. Shortly after he was arrested by ICE, the government served Mr. Celicourt with a Notice to Appear charging that he is a removable alien and seeking his deportation to Haiti.

75. On February 7, 2019, Mr. Celicourt received a bond hearing before an immigration judge in the Boston Immigration Court pursuant to 8 U.S.C. § 1226(a). The immigration judge required that, in order to be released on bond, Mr. Celicourt bear the burden to prove that he is not a danger or flight risk.

76. In connection with that bond hearing, Mr. Celicourt’s counsel submitted eight letters of support from friends. The letters described Mr. Celicourt as “a very excellent person to everyone,” “a very hard working gentleman,” “kind with my

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<sup>6</sup> Court staff have informed counsel that the fine was suspended for one year.

children,” and “one of the most helpful human being[s] that I know.” *See* Ex. L (letters of support).

77. At the bond hearing, the government submitted no evidence of any criminal history except for Mr. Celicourt’s recent arrest and conviction for neglecting to pay for less than six dollars’ worth of merchandise, which the government asserted was a “crime of moral turpitude.” *See* Ex. M (bond hearing transcript) & N (bond order).

78. The immigration judge denied bond. The judge found that Mr. Celicourt had “failed to meet his burden of proof to show he is not a danger to property or a flight risk” because he had been convicted of taking the \$5.99 earbuds, had overstayed his visa, and had worked without employment authorization. *See* Ex. M (bond hearing transcript) & N (bond order).

79. Mr. Celicourt’s immigration proceedings have been pending since January and will likely continue for some time. Mr. Celicourt applied for asylum and withholding of removal based on his persecution and the attempt to murder him in Haiti. On April 10, 2019, the immigration judge found that Mr. Celicourt was “a credible witness,” but nevertheless denied his application. Mr. Celicourt appealed the denial to the BIA on or about May 9, 2019. That appeal remains pending. The appeal may result in Mr. Celicourt being granted asylum, or in his case being remanded to the immigration judge for further proceedings, or (if the denial of asylum is affirmed) in his filing a petition for review in the U.S. Court of Appeals for the First Circuit.

80. Mr. Celicourt remains detained pursuant to 8 U.S.C. § 1226(a) and eligible for release.

81. Without an adequate bond hearing, Mr. Celicourt will likely remain detained throughout the pendency of these proceedings. He has already been in jail for almost six months.

82. Had Mr. Celicourt received an adequate bond hearing, he could have—and likely would have—been released. Mr. Celicourt was prejudiced by the error.

### **CLASS ALLEGATIONS**

83. The foregoing allegations are re-alleged and incorporated herein.

84. Petitioners seek to represent a class defined as people who, now or at any future time, are detained pursuant to 8 U.S.C. § 1226(a), and either are being held in immigration detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court. The class thus includes individuals who are detained in New Hampshire, or other New England states, but appear in the Boston Immigration Court for their bond hearings and removal proceedings. It also includes individuals who are detained in western Massachusetts but appear in the Hartford Immigration Court. The members of the class are readily ascertainable through Respondents' records.

85. Petitioners bring this action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(2), and as a representative habeas class action, on behalf of themselves and all other similarly-situated persons who are either are being held in immigration

detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court.

86. The class is so numerous that joinder of all members is impracticable. Publicly available information concerning the number of ICE detainees in Massachusetts and New Hampshire indicates that the portion of the class consisting of current detainees under 8 U.S.C. § 1226(a) consists of at least several hundred individuals. In the past six months alone, at least 268 bond hearings in the Boston and Hartford immigration courts resulted in a denial of bond. The class is substantially larger when all future potential detainees under § 1226(a) are included.

87. There are multiple questions of law and fact common to the members of the proposed class. These common questions include, but are not limited to, the following:

a. Whether Respondents are violating the Petitioners' and the class members' due process rights by detaining them without a hearing in which the government bears the burden to prove the necessity of detention, and by failing to consider their ability to pay in determining the appropriate amount of bond and to determine if they may be released on alternative conditions of supervision;

b. Whether Respondents' bond hearing practices violate Petitioners' statutory rights.

88. Petitioners' claims are typical of the claims of the proposed class, and Petitioners will fairly and adequately protect the interests of the proposed class.

Petitioners' interests do not conflict with those of other members of the proposed class, and Petitioners have retained competent counsel experienced in class actions and immigration law.

89. Moreover, certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because class members are subject to a common practice by Respondents: subjecting them to detention based upon an inadequate bond hearing at which the detainee bears the burden of establishing that he or she is not a flight risk and does not pose a danger to the community.

### **CLAIMS FOR RELIEF**

#### **Count One – Detention in Violation of the U.S. Constitution**

90. The foregoing allegations are re-alleged and incorporated herein.

91. Petitioners, and all members of the putative class, are or will be subjected to detention without a bond hearing at which the government bears the burden to justify continued detention by proving by clear and convincing evidence that the detainee is a danger to others or a flight risk, and, even if he or she is, that no condition or combination of conditions will reasonably assure the detainee's future appearance and the safety of the community, and which includes consideration of the detainee's ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision.

92. Petitioners, and all members of the putative class, are or will be detained without receiving a bond hearing that satisfies the requirements of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

**Count Two – Detention in Violation of the Immigration and Nationality Act  
and the Administrative Procedures Act**

93. The foregoing allegations are re-alleged and incorporated herein.

94. Petitioners, and all members of the putative class, are or will be detained in violation of the Immigration and Nationality Act and the Administrative Procedures Act. The BIA decision establishing the present burden allocation, *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999), constituted a departure from prior precedent without reasoned explanation, and incorrectly relied upon inapplicable regulations.

**PRAYER FOR RELIEF**

Wherefore, Petitioners asks this Court to grant them the following relief:

1. Enter an order compelling the release of each named Petitioner unless, within seven days of this Court's order, he is provided with an adequate bond hearing as described in paragraph 4, below.
2. Certify a class defined as: All people who, now or at any future time, are detained pursuant to 8 U.S.C. § 1226(a), and either are being held in immigration detention in Massachusetts or are otherwise subject to the jurisdiction of the Boston Immigration Court.
3. Name the individually named Petitioners as representatives of the class, and appoint Petitioner's counsel as class counsel.
4. Declare that each class member is entitled to a bond hearing at which the government bears the burden to justify continued detention by proving by clear and convincing evidence that the detainee is a danger to others or a flight risk, and, even if he or she is, that no condition or combination of conditions will reasonably assure the detainee's future appearance and the safety of the community, and which includes consideration of the detainee's ability to pay in selecting the amount of any bond and suitability for release on alternative conditions of supervision.
5. Order that each class member be released unless provided with a bond hearing consistent with paragraph 4 within a reasonable period, determined by the Court, after this order enters or after their detention under 8 U.S.C. § 1226(a) begins.



6. Grant attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 *et seq.*, if applicable; and
7. Grant any other and further relief that this Court may deem fit and proper.

Dated: June 13, 2019

Respectfully submitted,

GILBERTO PEREIRA BRITO, FLORENTIN AVILA LUCAS, and JACKY CELICOURT,  
individually and on behalf of all those  
similarly situated,

By and through their counsel,

/s/ Susan M. Finegan  
Susan M. Finegan (BBO # 559156)  
Susan Cohen (BBO # 546482)  
Andrew Nathanson (BBO # 548684)  
Mathilda S. McGee-Tubb (BBO # 687434)  
Ryan Dougherty (BBO # 703380)  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY AND POPEO, P.C.  
One Financial Center  
Boston, MA 02111  
(617) 542-6000  
[smfinegan@mintz.com](mailto:smfinegan@mintz.com)  
[sjcohen@mintz.com](mailto:sjcohen@mintz.com)  
[annathanson@mintz.com](mailto:annathanson@mintz.com)  
[msmcgee-tubb@mintz.com](mailto:msmcgee-tubb@mintz.com)  
[rtdougherty@mintz.com](mailto:rtdougherty@mintz.com)

Matthew R. Segal (BBO# 654489)  
Daniel L. McFadden (BBO# 676612)  
Adriana Lafaille (BBO# 680210)

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF MASSACHUSETTS,  
INC.

211 Congress Street

Boston, MA 02110

Tel: (617) 482-3170

[msegal@aclum.org](mailto:msegal@aclum.org)

[dmcfadden@aclum.org](mailto:dmcfadden@aclum.org)

[alafaille@aclum.org](mailto:alafaille@aclum.org)

Gilles R. Bissonnette (BBO # 669225)

Henry R. Klementowicz (BBO # 685512)

SangYeob Kim (N.H. Bar No. 266657)\*

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF NEW HAMPSHIRE

New Hampshire Immigrants' Rights Project

18 Low Ave.

Concord, NH 03301

Tel.: 603.333.2081

[gilles@aclu-nh.org](mailto:gilles@aclu-nh.org)

[henry@aclu-nh.org](mailto:henry@aclu-nh.org)

[sangyeob@aclu-nh.org](mailto:sangyeob@aclu-nh.org)

Michael K. T. Tan\*

ACLU FOUNDATION IMMIGRANTS'

RIGHTS PROJECT

125 Broad Street, 18<sup>th</sup> Floor

New York, New York 10004

Tel: 212-549-2660

[mtan@aclu.org](mailto:mtan@aclu.org)

\*Application for admission pro hac vice  
forthcoming

*Attorneys for Petitioners*

# Exhibit A

**Affidavit of Attorney Elena Nouredine**

I, Elena Nouredine, do hereby depose and say that the following is true to the best of my knowledge, understanding and belief:

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts.
2. I am currently an attorney on staff at the Political Asylum/Immigration Representation (PAIR) Project. I supervise PAIR's Detention Center Initiative (DCI) program. In Massachusetts, PAIR is the only organization with negotiated access to all the major jails in the state, where non-citizens are held. I specialize in removal defense in immigration court and in particular, my focus is on representing non-citizens detained by Immigration and Customs Enforcement (ICE). As a staff attorney in PAIR's DCI program, I work with hundreds of detained clients over the course of the year through "Know Your Rights" presentations at the detention facilities, intake and consultation, direct representation, and mentor of *pro bono* attorneys who we have found to represent our clients.
3. I have represented clients in bond hearings for approximately four years and a half before the Boston Immigration Court and have represented many individuals in custody and bond proceedings, seeking release from detention. I mentor all of our *pro bono* attorneys who take on bond cases through our organization, as well as two detention staff attorneys who, almost exclusively, represent immigrants detained by ICE. PAIR, through in-house staff and *pro bono* attorneys, represents approximately over 50 individuals in seeking bond every year. I either mentor, supervise, or personally represent all of those clients.
4. In every case that I have done, the burden has always been placed on the detainee. In every case that I have mentored, for *pro bono* attorneys and PAIR staff attorneys, the burden has always been placed on the detainee.
5. Our staff is before the Boston Immigration Court, on average, for three to four master calendar hearing sessions per week. Bond hearings take place during master calendar hearings. During each session we attend (either morning, afternoon, or both), we see approximately 3-6 bond hearings being held. Of all the bond hearings we have observed, we have always seen the burden placed on the detainee.
6. When setting a bond amount, the immigration judges do not typically consider an individual's ability to pay. All of our clients at PAIR are indigent and, based on their indigency, are represented by our organization *pro bono*. On several cases I have personally done, I have been told by an Immigration Judge that an individual's ability to pay is not part of the consideration in setting the bond amount. In the Boston Immigration Court, over the past several years, typical bonds ranged from \$5,000 to \$7,500. However, recently we have been seeing significantly higher bond averages - our last three most recent cases being granted in the amounts \$20,000, \$15,000, and \$10,000. Historically, we have had many clients who have been granted bond (after

being found not to be a danger to the community or a flight risk), be forced to stay in detention due to their inability to pay the bond amount imposed. This is becoming an even bigger concern as our bond amounts drastically increase. Rather than a bond to ensure their presence, often the bond amounts are so high that they ensure that a person remains detained. Notably, in the immigration context, individuals are not allowed to pay a bond with a security interest of any sort. They must pay the entire amount to the Department of Homeland Security.

7. The Boston Immigration Court is also responsible for hearing all cases of immigrants detained in New Hampshire ("NH"). It is my understanding that there is only one detention facility in the state of NH that houses immigration detainees. The facility is the Strafford County House of Corrections in Dover, NH. Our NH clients have all been held at this facility. Employees of the Strafford County Sherriff's Office often transport detained individuals from the facility to and from the Boston Immigration Court. Strafford County Sheriff Officers also often accompany detainees into and out of the immigration courtroom and provide courtroom security. I have personally witnessed employees of the Stratford County Sherriff's Office escorting our clients to the Boston Immigration Court for their immigration hearings.

Signed under penalties of perjury this 12th day of June 2019.



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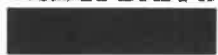
Elena Nouredine

# Exhibit B

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
BOSTON, MASSACHUSETTS

IN THE MATTER OF:

PEREIRA-BRITO, Gilberto )  
 )  
 )  
 )



Respondent

In Bond Proceedings  
DETAINED

**CHARGE:** Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"): Alien who, is present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

**APPLICATION:** Motion for Custody Redetermination

**ON BEHALF OF RESPONDENT**

Sidra Vitale, Esq.  
Law Office of Sidra Vitale  
P.O. Box 692148  
Quincy, MA 02269

**ON BEHALF OF DHS**

Justine Bavaro, Esq.  
Assistant Chief Counsel  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
15 New Sudbury Street, Room 425  
Boston, Massachusetts 02203

**MEMORANDUM CONCERNING THE APRIL 4, 2019,  
DECISION OF THE IMMIGRATION COURT**

This memorandum, submitted pursuant to 8 C.F.R. § 1236.1(d) (2019), explains why the Boston Immigration Court ("Court") denied the Respondent's request for a change in custody status.

**I. PROCEDURAL HISTORY**

On May 7, 2005, the Department of Homeland Security ("DHS") initiated removal proceedings against the Respondent, Gilberto Pereira-Brito, through the filing of a Notice to Appear ("NTA") with the Court. Exh. 1. On April 4, 2019, the Court convened for a custody redetermination hearing at the Respondent's request. At the hearing, the Court was unable to find that the Respondent met his burden of proof to show that he does not pose a danger to persons or property. Further, even if he had, he has not demonstrated that the risk of flight present in his case could be ameliorated by posting of bond. Accordingly, the Court denied his request for a change in custody status.

## II. APPLICABLE LAW

The Court may review the custody status of an alien in removal proceedings, provided that the alien is not subject to mandatory detention pursuant to section 236(c) of the Act. INA § 236(a) (2019). When reviewing an alien's custody status, the Court may order DHS to (1) continue to detain the alien or (2) release the alien on either a bond of not less than \$1,500.00 or conditional parole. *Id.* For the Court to order an alien's release, the alien must establish to the satisfaction of the Court that he does not pose a danger to persons or property, is not a threat to national security, and does not pose a flight risk. See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (relying on *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999)); see also 8 C.F.R. §§ 1003.19(h)(3), 1236.1(c)(8).

The Board of Immigration Appeals ("BIA" or "Board") has consistently held that the following factors are significant in a custody redetermination:

1. Fixed address in the United States. *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979);
2. Length of residence in the United States. *Matter of Shaw*, 17 I&N Dec. 177, 178 (BIA 1979);
3. Family ties in the United States, particularly those which can confer immigration benefits on the alien. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667;
4. Employment history in the United States, including length and stability. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667;
5. Immigration record and eligibility for relief from removal. *Matter of Andrade*, 19 I&N Dec. 488, 491 (BIA 1987); *Matter of Shaw*, 17 I&N Dec. at 178;
6. Attempts to escape from authorities or other flight to avoid prosecution. *Matter of San Martin*, 15 I&N Dec. 167, 169 (BIA 1974);
7. Prior failures to appear for court proceedings. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of San Martin*, 15 I&N Dec. at 169; and
8. Criminal record, particularly if such record indicates consistent disrespect for the law. *Matter of Andrade*, 19 I&N Dec. at 490-91.

The Court may base a custody or bond determination upon any information that is available or that is presented by the alien or DHS. 8 C.F.R. § 1003.19(d). It is the responsibility of the Court and parties to ensure that the bond record establishes the nature and substance of the information considered. *Matter of Adeniji*, 22 I&N Dec. at 1115.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As the Respondent's removal proceedings are ongoing and as DHS did not allege that he is subject to mandatory detention, the Court has jurisdiction to consider the Respondent's request that he be released from custody. INA § 236(a), (c). To establish that he should be released, the Respondent must prove to the satisfaction of the Court that he neither poses a danger to the community nor is a risk of flight. See *Matter of Guerra*, 24 I&N Dec. at 40; see also 8 C.F.R. §§



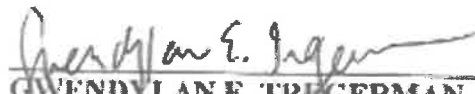
1003.19(h)(3), 1236.1(c)(8). Although the Respondent admitted to his aged criminal history and testified to taking measures to rectify his actions, the Respondent failed to provide the Court with his criminal dockets. As such, the Respondent was unable to demonstrate the exact scope of his criminal activity, or meet his burden to prove that he does not pose a danger to the community. Even assuming that the Respondent was able to meet his burden of proof to show that he does not pose a danger the community.

The Court acknowledged the Respondent has been in the United States for over a decade, has a fixed address, and has existing family ties. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667. However, the Court is troubled by the Respondent's inability to complete his prior probation sentences. A continuance without a finding was entered against the Respondent for the charge of operating under the influence ("OUI") and he was sentenced to probation. The Respondent did not complete probation and defaulted on his sentence. The Respondent was also charged with possession of marijuana, a charge that was later dismissed, and defaulted on the resulting probation sentence. The Respondent did not provide any explanation as to why he did not complete his probation sentences. Accordingly, the Court found that the Respondent's inability to complete probation and his propensity to commit further violations of criminal law was indicative of his risk of dangerousness to persons and property. As the Supreme Court has noted, driving motor vehicles under the influence of alcohol is a highly dangerous activity. *Begay v. United States*, 533 U.S. 137 (2008).

As to risk of flight, the Respondent has not demonstrated that he has a strong case for eligibility for relief from removal. While he has indicated he intends to seek cancellation of removal, he has not presented any evidence from which this Court could determine that he would be statutorily eligible for such relief, in that he has not established that he has been present in the United States for a 10-year period prior to the date of service of his Notice to Appear and subsequent hearing notice.

Thus, upon consideration of the record, the Court ruled that the Respondent did not meet his burden to demonstrate that he neither poses a danger to the community nor is a risk of flight. See *Matter of Guerra*, 24 I&N Dec. at 38. Accordingly, the Court ordered that there be no change in the Respondent's custody status.

May 21, 2019  
Date

  
GWENDYLAN E. TRIGGERMAN  
United States Immigration Judge

# Exhibit C

**AFFIDAVIT OF DARCY PEREIRA BRITO**

I, Darcy Pereira Brito, being duly sworn, depose and say:

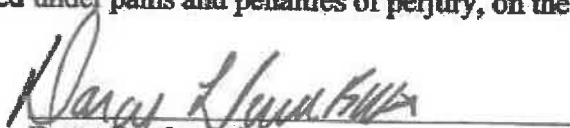
1. My name is Darcy Pereira Brito, my maiden name is Darcy France. I am married to Gilberto Pereira Brito. I am a U.S. citizen, born in Stoughton, MA in [REDACTED]
2. Gilberto's been in the U.S. since 2005. We got married October 20, 2013 but were a couple for several years before then. We live together at [REDACTED]  
We've lived together over 10 years and have three children, age 10, 4, and about 8 months.
3. We met in about April or May 2007, and became a couple July 2007. We've been together ever since. He's never left the U.S. in the time that I've known him, he's been living here in the U.S. all this time. To my knowledge, he's never been in trouble with the police, either.
4. Our three children are [REDACTED]  
[REDACTED]
5. My husband is the breadwinner for the family, working in construction and painting.
6. I do not work. I'm a stay at home mom. I collect SSDI benefits and have for about 2 years. I have post-traumatic stress disorder (PTSD) and panic disorder with depression, and complications from gastric bypass, which makes me weak and sick constantly, so I can't hold a full-time job.
7. Right now, while my husband is in custody, I'm meeting with my therapist twice a week, once in person and once later in the week by phone. She comes to my house to treat me. Her name is Kathryn Wells, she's with South Bay Community Resources. She's been my therapist for 8 or 9 years.
8. Prior to my husband being taken into custody, I was seeing her biweekly, that's every two weeks. I need her assistance so much more because my husband is not with me.
9. I feel lost and alone, and I don't know how I can pay for diapers for the baby if my husband isn't

DS

released. I can't pay rent on my disability – that's \$1150/mo, and I get hundreds less than that in SSDI benefits. The math simply doesn't work without Gilberto. I need him to come home right away.

10. Every other Friday there's a morning mingle at my 4-year-old daughter's school, and Gilberto is usually the only man there, which I find pretty funny, but also kind of sad, dads want to be with their kids but the expectation is that only moms will go. The mingles are to get families to know each other. He also recently signed up for Daddy and Me classes for our 4-year old daughter, but he can't go while he's in detention, so he's missing the classes right now.
11. Our children are really upset, their lives have been completely disrupted. I've been too depressed to go out and do anything since Gilberto was detained, so there's no more mingles or anything other than just going to school. I'm able to get the kids to school and feed them, but I feel like I'm holding on by my fingernails. I need my husband.
12. Gilberto's been a rock, because of him, I was able to get off my medications. I've been taking one medication or another practically my whole life, and I've been able to transition off with his help and support. I need his help to keep it that way.
13. Gilberto's a family man, and we are a tight-knit family. It's like there's a hole in the family with him gone. Even our landlord is asking after him, and not just because rent is due next week.
14. Since Gilberto was detained, I have been overwhelmed with people messaging me on Facebook, text messaging, calling me, to find out what's going on, is he OK, when is he coming home to us. I must have gotten 300 messages of one kind or another since he's been detained. He's valued by his friends, and of course missed desperately by his family.

Signed under pains and penalties of perjury, on the 28<sup>th</sup> day of March, 2019.

  
Darcy Pereira Brito

24

# Exhibit D

# PEDIATRIC ASSOCIATES INC., of BROCKTON

PEDIATRICASSOCIATESOFBROCKTON.COM

(508) 584-1234



March 12, 2019

Peter D. Rappo, MD  
 Nancy L. Chapin, MD  
 Kevin J. Murphy, MD  
 David S. Chung, MD  
 Aziza Zaman, MD  
 Yevgeniya Fabrikant, MD  
 Yanatan E. Weinberg, MD  
 Victoria J. Tah, MD  
 Anshu Kumari, MD  
 Margaret F. Larrumbide, MD  
 Mary Ellen Dickinson, PNP

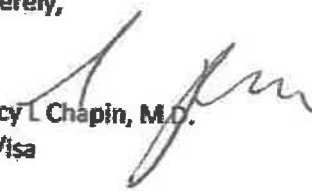
To whom it may concern;

Re: Pereira Brito Family

██████████ ██████████ and ██████████  
 Pereira Brito are patients mine here at Pediatric Associates Inc of Brockton. Their father is Gilberto Pereira Brito who lives with them and their mother. He is deeply involved with his family and provides emotional and financial support to the family. Please allow Mr Pereira Britto to remain in the United States because without his emotional and financial support his family would suffer tremendously.

If you have any further questions or concerns, please do not hesitate to call me at 508 584 1234.

Sincerely,

  
 Nancy L. Chapin, M.D.  
 NLC/lsa

370 Oak Street, Ste A  
 Brockton, MA 02301  
 Fax # 508 584-0230

291 E. Center Street  
 West Bridgewater, MA 02379  
 Fax # 508 584-6934

692 Main Street  
 Hanson, MA 02341  
 Fax# 781 294-4357

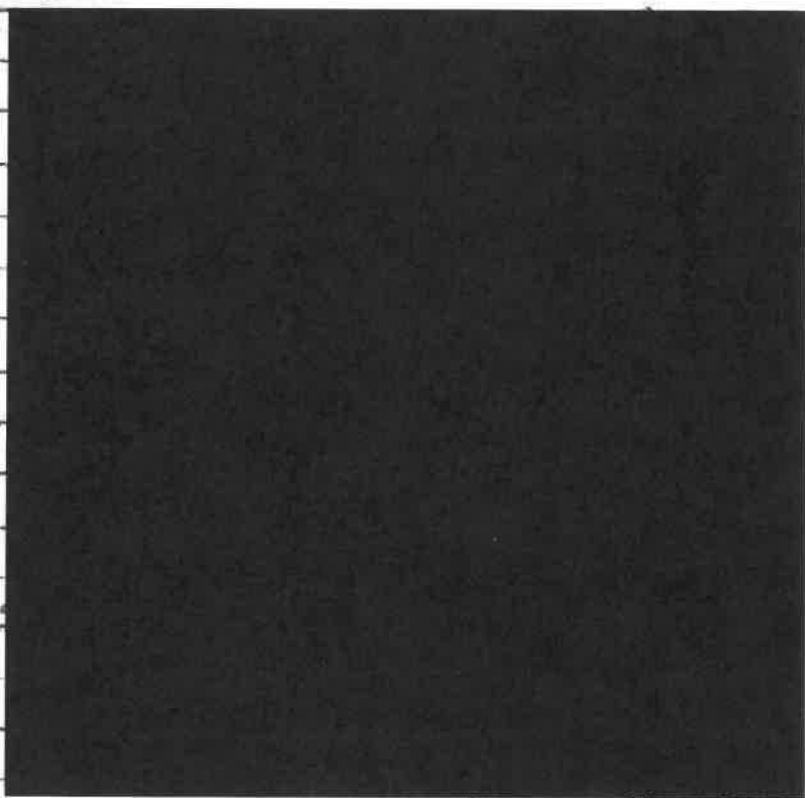
412



To: Honorable Judge:

Please allow Gilberto Pereira Brito, to stay in the United States,  
to take care of his wife, and three children.

Jacqueline A. Westfield  
 Thank Westfield  
 Chris Roggen  
 J. Payne  
 Jane E. Crevens  
 Robert McFee  
 Irene McFee  
 Anoushka & Chazara  
 Anne White, Sebble  
 Trama McFee  
 Bob McFee  
 Mark E. Roggen  
 Christa Roggen  
 Brenda Brooks  
 Marie A. Lane



# Exhibit E





# Exhibit F

[REDACTED]  
4/15/2019

**To Whom It May Concern:**

I am writing on behalf of Mr. Florentin Avila-Lucas. I first came to know Mr. Avila-Lucas in 2009. I began my internship with [REDACTED] Mr. Avila-Lucas's employer, in June of that year. Mr. Avila-Lucas was extremely kind, welcoming, and respectful, even though I was a young, female, college student with a lot to learn. Over the course of that summer internship we worked together frequently. It was always a fun day when I had the opportunity to learn from Mr. Avila-Lucas. He was patient and answered the many questions that I had, considerate in taking the time to explain why tasks were done, and extremely knowledgeable of the protocols followed to achieve high cow health and efficiency in the dairy profession. I remember being motivated and striving to complete tasks as correctly and swiftly as Mr. Avila-Lucas. I had the privilege of working with and learning from Mr. Avila-Lucas for two full summers. He was a motivating leader at the workplace. After I returned to college and took other internships and opportunities, I continued to visit [REDACTED]. Mr. Avila-Lucas always greets me with a smile and respect.

In the time since Mr. Avila-Lucas and I were co-workers, I have met many people. It is rare that I meet someone with equal quality of character as Mr. Avila-Lucas. He set the expectations extremely high for the people in my life. Mr. Avila-Lucas is a large asset for [REDACTED]. His reliability in showing up to work every day, determination to improve in his work as well as in life, and his kindness to other people and the animals he works with is an inspiration. His skill set and experience is hard to improve upon. I consider myself lucky to know Mr. Florentin Avila-Lucas.

Sincerely,  
[REDACTED]



4/4/19

To whom it may concern,

I am writing this letter in support of Mr. Arturo Avila who I have known for over ten years which he has been working here in Claremont, NH for my friend and neighbor [redacted] I believe that his official given name is Florentine Avila Lucas.

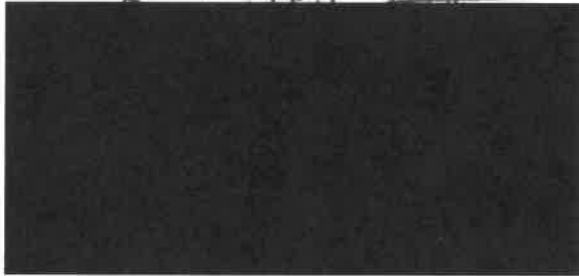
About ten years ago I was visiting the [redacted] Farm and I overheard the Spanish language being spoken. Because I am a reasonably competent Spanish speaker, I began speaking with them and we became friends. Over the years I have been able to assist them on occasions with finding medical and dental care here in Claremont and translating as needed, with Arturo reasonably well, and I am glad to know that knowledge, Mr. Avila Lucas, courteous man, 70 hours per week at the farm, is a highly valued employee and has never gotten into any trouble of any kind in or around Claremont, NH.

Let me say a few words about myself.

over →  
 (2)

I am a 40 plus year resident of Claremont,  
and I own a small family farm here where  
my wife and I raise beef cattle. I am a farmer  
& term mayor of Claremont and also a former City  
Manager here in Claremont.

MR Drila Lucas, in conducting has been  
a good friend and a good citizen in Claremont.  
during the time that I have known him, which you  
for your consideration of this letter.

Respectfully,  


To Whom It May Concern:

April 7, 2019

Florentin Avila-Lucas has worked for our farm for 14 years. He is a valued part of our team and like family to us. The work ethic he shows on a daily basis is one not often seen in today's society. He is responsible, empathetic towards the cows and always willing to lend a helping hand. No matter who the employee or visitor, Florentin shows them respect and offers to answer any questions they may have – from a newly hired high school kid to the semi-retired elderly truck drivers.

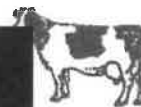
When Florentin first came to work for us he started as a milker and skid loader operator. He excelled at these positions, helped to improve our protocols and trained others to do similar work. About three years ago we offered him a promotion to Feeder for the herd. He accepted the position and began training. The learning curve is steep and took place over a period of weeks. It wasn't long before his accuracy and efficiency far exceeded others who previously had this job.

Florentin is a valued member of our farm and the community of Claremont. He is a patron of many local stores, restaurants, auto repair facilities and auto parts stores. Everyone who knows him has nothing but kind things to say. His moral conduct is something we should all strive for. Florentin will have full time employment and housing here at [REDACTED] indefinitely. Please feel free to call us with any questions at [REDACTED] We appreciate your time and consideration.

Sincerely,

[REDACTED]

[REDACTED]



3



Dear Your Honor:

April 9, 2019

Florentin Avila-Lucas has worked for us since the fall of 2005. He is a very dependable employee at the farm, doing whatever needs to be done. He has milked, operated skid steers and now does the feeding for our herd. He has done a very commendable job at all tasks he has undertaken. His quiet, calm demeanor is a great asset around the animals and also with our other employees. Whether new hires, full time or part time employees, Florentin treats them equally.

Florentin is known in our community at local stores, restaurants and auto shops. He treats people with respect and it is returned similarly. I have been told on numerous occasions by prominent community members that he is a pleasure to have in the City of Claremont. They comment that he is pleasant and respectful in all circumstances. Florentin has a job and home here as long as he wants it.

Sincerely,



April 2, 2019

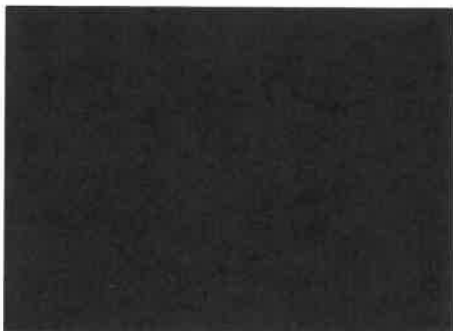
To whom it may concern,

I am a Dairy Nutritional Adviser with Poulin Grain in Newport, Vermont.

I make weekly visits to the [REDACTED] in Claremont, NH- where I am in contact with Florentin Avila-Lucas.

He is an excellent employee. Mr. Avila-Lucas takes extreme pride in his job, as well as being a team leader in supervising other employee's on the farm.

Florentin Avila-Lucas is a valued employee and an important team member at the [REDACTED] !







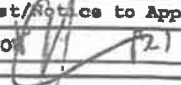


# Exhibit G

U.S. Department of Homeland Security

Subject ID: [REDACTED]

Record of Deportable/Inadmissible Alien

Family Name (CAPS) <b>AVILA-LUCAS, FLORENTIN</b>		First	Middle	Sex <b>M</b>	Hair <b>BRO</b>	Eyes <b>BRO</b>	Complexion <b>MED</b>
Country of Citizenship <b>GUATEMALA</b>	Passport Number and Country of Issue [REDACTED]	File Number [REDACTED]		Height <b>65</b>	Weight <b>180</b>	Occupation <b>LABORER</b>	
U.S. Address [REDACTED]				Scars and Marks <b>NONE VISIBLE</b>			
Date, Place, Time, and Manner of Last Entry <b>Unknown Date, Unknown Time, 0 mile(s) of UNK, A FOOT</b>			Passenger Boarded at				
Number, Street, City, Province (State) and Country of Permanent Residence <b>GUATEMALA</b>				F.B.I. Number [REDACTED]			
Date of Birth [REDACTED] <b>Age: 40</b>		Date of Action <b>03/20/2019</b>	Location Code <b>SWB/BVB</b>	<input type="checkbox"/> Single <input type="checkbox"/> Divorced <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated			
City, Province (State) and Country of Birth <b>LA ESPERANZA, QUETZALTENANGO, GUATEMALA</b>		Form: (Type and No.) <input checked="" type="checkbox"/> Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>					
NIV Issuing Post and NIV Number		Social Security Account Name					
Date Visa Issued		Social Security Number					
Immigration Record <b>NEGATIVE</b>			Criminal Record <b>None Known</b>				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) <b>See Narrative</b>				Number and Nationality of Minor Children <b>4 GUATEMALA</b>			
Father's Name, Nationality, and Address, if Known <b>See Narrative</b>			Mother's Present and Maiden Names, Nationality, and Address, if Known <b>See Narrative</b>				
Monies Due/Property in U.S. Not in Immediate Possession <b>None Claimed</b>		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Systems Checks <b>See Narrative</b>	Charge Code Word(s) <b>I6A</b>			
Name and Address of (Last)(Current) U.S. Employer		Type of Employment	Salary	Employed from/to Hr			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) <b>FINS # : [REDACTED]</b>							
							
		<b>Left Index Print</b>			<b>Right Index Print</b>		
<b>ARREST COORDINATES:</b> ----- Latitude: <b>43.6423</b> Longitude: <b>-72.2518</b>							
<b>CONSEQUENCE DELIVERY SYSTEM:</b> ----- Classification: <b>SOTA</b>							
Alien has been advised of communication privileges		 <b>3/20/19</b> Date/Initials		<b>JEREMY FORKEY</b> Border Patrol Agent (Signature and Title of Immigration Officer)			
Distribution:  <b>A File</b> <b>Chief</b> <b>INTEL</b>		<b>BVB-19-08</b>		Received: (Subject and Documents) (Report of Interview)  Officer: <b>JEREMY FORKEY</b> on: <b>March 20, 2019 at 1847</b> (time) Disposition: <b>Warrant of Arrest/Notice to Appear</b> Examining Officer: <b>CHARLES SNO</b> 			

U.S. Department of Homeland Security

Continuation Page for Form

I213

Alien's Name AVILA-LUCAS, FLORENTIN	File Number [REDACTED]	Date 03/20/2019
--	---------------------------	--------------------

OTHER ALIASES KNOWN BY:

-----  
 AVILA-LUCAS, CARLOS [REDACTED]

SPOUSE NAME AND ADDRESS:

-----  
 [REDACTED]

FATHER NAME AND ADDRESS:

-----  
 [REDACTED]

MOTHER NAME AND ADDRESS:

-----  
 [REDACTED]

FUNDS IN POSSESSION:

-----  
 United States Dollar 382.00 *FLORENTIN AVILA*

RECORDS CHECKED:

-----  
 CLAIM Negative  
 ABIS Negative  
 IAFIS Positive  
 NCIC Negative

NARRATIVE:

-----  
 ENCOUNTER/ARREST:

On March 20, 2019, Border Patrol Agents (BPA) James Loomis and BPA Brendan Burns were conducting roving patrols in the West Lebanon, New Hampshire area. BPA Loomis and BPA Burns were utilizing an unmarked service vehicle and plain clothes with no badges or weapons visible. At approximately 12:30 p.m., BPA Loomis ran records on a white Chevrolet Suburban bearing New Hampshire license plate [REDACTED]. The plate returned to a 2003 Chevrolet Suburban registered to a LUCAS, Florentin from Claremont, New Hampshire. Further analysis revealed no valid social security associated to the registered owner of the

Signature

JEREMY [Signature]

Title

Border Patrol Agent

U.S. Department of Homeland Security

Continuation Page for Form

I213

Alien's Name AVILA-LUCAS, FLORENTIN	File Number [REDACTED]	Date 03/20/2019
--	---------------------------	--------------------

the vehicle. BPA Loomis and BPA Burns continued to follow the vehicle until it pulled into Listen Thrift store in West Lebanon, NH. BPA Loomis and BPA Burns pulled into a parking lot across the street from the thrift store and continued to surveil the vehicle and its occupants. Moments later, BPA Loomis and BPA Burns observed two males who appeared to be of Hispanic decent exit the vehicle and enter the thrift store.

After the two subjects were inside the store for approximately five minutes, BPA Loomis entered the store to further observe them and potentially engage in a consensual encounter. BPA Loomis observed the two subjects he had seen exit the Chevrolet Suburban inside the thrift store browsing at electronics. BPA Loomis also began browsing electronics near the subjects and eventually asked one of the man (later identified as AVILA-Lucas, Florentin), "How are you today", AVILA responded in broken English, "Good, thank you". BPA Loomis then responded to the subject saying, "They have some good stuff in here don't they", AVILA appeared confused as if he didn't quite understand what BPA Loomis had said. AVILA appeared uninterested with conversing with BPA Loomis so the conversation ended.

BPA Loomis then moved over to the area that the second subject (later identified as BATZ-Tzul, Miguel Antonio) who had been seen exiting the Chevrolet Suburban was browsing. After a few moments, BPA Loomis observed BATZ pick up a small speaker. BPA Loomis asked Batz, "Hey sir, is that a speaker?" Batz replied in very broken English, "Yes, this speaks." as he motioned his hand to imply a mouth talking. BPA Loomis then asked BATZ, "I'm looking for a microwave, do you know where they keep those?" BATZ looked confused and stated, "No speak English." BPA Loomis then ask BATZ, "You don't speak English, what language do you speak?" BATZ replied, "Spanish." BPA Loomis then asked BATZ, "Where are you from?" BATZ replied, "Guatemala." At this time BPA Loomis left the area that the two subjects were browsing and eventually left the store, returning to the unmarked service vehicle operated by BPA Burns.

At this time, it was suspected by BPA Loomis and BPA Burns that the two subjects in the thrift store who had occupied the Chevrolet Suburban may be undocumented immigrants. The suspicion was due to the record checks that indicated the registered owner of the vehicle may not have a valid social security number and the consensual encounter that BPA Loomis had with the subjects inside the thrift store. During this encounter both subject exhibited difficulty with the English language and with BATZ' admission that he did not speak English and that he was from Guatemala.

At the time of this encounter, approximately 1:10 p.m., the thrift store was busy with numerous customers inside. Due to this, BPA Loomis and BPA Burns decided to continue surveillance of the Chevrolet Suburban and AVILA and BATZ and wait until they exited the thrift store, so the business was not interrupted. BPA Loomis and BPA Burns waited until approximately 1:35 p.m. for the subject to exit the store but they did not. At this time BPA Loomis and BPA Burns decided to enter the thrift store and approached the subjects and identified themselves as law enforcement and ask AVILA and BATZ to exit the store and speak to them outside. AVILA and BATZ consented and exited the store, following BPA Loomis and BPA Burns to their service vehicle.

Once outside at the vehicle, BPA Loomis and BPA Burns identified themselves as Border Patrol Agents and separated the subjects with BPA Burns speaking to AVILA and BPA Loomis

Signature JEREMY FORKEY	Title Border Patrol Agent
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3 of 5 Pages

U.S. Department of Homeland Security

Continuation Page for Form

I213

Alien's Name AVILA-LUCAS, FLORENTIN	File Number [REDACTED]	Date 03/20/2019
<p>speaking to BATZ. BPA Burns through questioning was able to determine that AVILA was a citizen and national of Guatemala and did not have any legal immigration documents that would allow him to be in or remain in the United States legally. AVILA was placed under arrest and transported to the Beecher Falls Border Patrol Station for processing.</p> <p><b>ALIENAGE:</b> Once at the Beecher Falls Border Patrol Station, AVILA's fingerprints and biographical information was entered into the IAFIS/IDENT systems and revealed no valid immigration status in the United States.</p> <p><b>ENTRY DATA:</b> AVILA claimed to have last entered the United States illegally by crossing through the desert in 2002.</p> <p><b>IMMIGRATION HISTORY:</b> Subject has one previous apprehension in 2002 by the US Border Patrol in Hidalgo, TX. At that time AVILA gave an alias name of AVILA-Lucas, Carlos DOB: [REDACTED]</p> <p><b>CRIMINAL HISTORY:</b> Subject has no criminal history.</p> <p><b>DERIVATIVE CITIZENSHIP DATA:</b> Subject stated that his father was born in Guatemala, was a citizen of Guatemala, and had never attempted to attain U.S. Citizenship or legal status. Subject stated that his mother was born in Guatemala, is a citizen of Guatemala, and has never attempted to attain U.S. Citizenship or legal status. Subject has no claim to derivative status in the United States.</p> <p><b>PENDING PETITIONS:</b> A search of CIS and CLAIMS databases show no pending petitions for Subject. Subject has no known petitions pending nor have any been filed on his behalf.</p> <p><b>CREDIBLE/REASONABLE FEAR:</b> Subject stated he does not fear returning to his native country.</p> <p><b>CONSULATE RIGHTS/NOTIFICATION:</b> Subject requested to contact the Guatemala Consulate in New York at 10:00 pm.</p> <p><b>ADMINISTRATIVE RIGHTS:</b> Subject was advised of his administrative rights as per Service Form I-826, I-862 and I-286.</p> <p><b>PROPERTY:</b> G-589: 3575597, 3575596 and I-77 7200385</p> <p><b>HEALTH/MEDICAL HISTORY:</b> Subject claims no adverse medical conditions. Subject appears to be in good general health at this time. Subject was evaluated by a Border Patrol EMT's for minor injuries sustained</p>		
Signature JEREMY FORKEY	Title Border Patrol Agent	

4 of 5 Pages

U.S. Department of Homeland Security

Continuation Page for Form

I213

Alien's Name  
AVILA-LUCAS, FLORENTIN

File Number

Date

03/20/2019

while being arrested. Medical clearance/evaluation form is in the file.

**LEGAL SERVICES:**

Subject was given a copy of free legal service providers in the area.

**DISPOSITION:**

Subject was processed as a "Warrant of Arrest/Notice to Appear"

Supervisory Detention and Deportation Officer (SDDO) Tim Stevens was contacted regarding this arrest. After being advised of the facts of this case, and the subject's criminal record, SDDO Stevens authorized detention space at the Strafford County Jail in Dover, NH.

Signature

JEREMY FORKEY



Title

Border Patrol Agent

5 of 5 Pages

Event No: BVB1903000007

U.S. Department of Homeland Security

## MEMORANDUM OF INVESTIGATION

<b>File Number</b>	<b>Title:</b> Primary Subject: BATZ-TZUL MIGUEL A	<b>Control Office</b> SWB/BVB
--------------------	--	----------------------------------

## Memorandum of Investigation

On Wednesday, March 20, 2019, I, Border Patrol Agent (BPA) Brendan Burns was performing roving patrol operations in Lebanon, NH, while assigned to the Beecher Falls Station. At approximately 1330 hours, BPA James Loomis informed me that he had engaged in a consensual encounter with two (2) adult males (later identified as AVILA-Lucas, Florentin [REDACTED] and BATZ-Tzul, Miguel Antonio [REDACTED] inside a thrift store located at 387 Miracle Mile Road. BPA Loomis informed me that during this encounter, one of the subjects had told him that he was from Guatemala and that he did not speak English. Based on this information, and information that BPA Loomis had discovered while running records checks on the vehicle that the subjects had been riding in, we decided to perform immigration inspections on both subjects.

BPA Loomis and I entered the thrift store and made contact with the subjects. We asked the subjects to accompany us outside into the parking lot because the store was busy. I identified myself as a U.S. Border Patrol agent and spoke with AVILA while BPA Loomis spoke with BATZ. While speaking with AVILA, he informed me that he was a citizen of Guatemala and that he had a work visa allowing him to be in the United States. I then asked AVILA to produce his immigration documents, at which time he retrieved a black zippered case from his vehicle. When AVILA opened the case, I could see a Guatemalan passport inside. AVILA attempted to conceal the passport with other papers inside the case, and instead handed me an international driver's license. I told AVILA that I saw his passport and I asked him for it. A review of his passport revealed no U.S. visas or stamps granting him any privilege to enter, pass through, or remain in the United States. At this time, having probable cause to believe that AVILA was unlawfully present in the United States, I ordered him to place his hands on the hood of my service vehicle, and I told him that I would be placing him in handcuffs. By this time, BPA Loomis had completed his immigration inspection with BATZ and had informed him that he was under arrest. I believe that AVILA had overheard this, because I was standing next to him and I overheard it.

AVILA walked to the front of our service vehicle and initially complied by placing his hands on the hood. When I produced handcuffs, AVILA said "no" and began to walk away from me. I again informed AVILA that he was under arrest and ordered him to place his hands on the truck. AVILA kept saying "no" and continued to walk to the driver side of our service vehicle. I then attempted to control AVILA's wrists in order to place him in handcuffs while giving him verbal commands to place his hands on the truck. AVILA repeatedly pulled his arms away from me and attempted to push my hands off of his wrists. During this exchange, AVILA turned away from me, and in doing so, pushed my chest with either his hand or forearm. At this time, I grabbed AVILA by the upper body and pulled him to the ground. AVILA continued to resist by pushing my hands away and by attempting to keep his hands between his body and the ground. I continued to give AVILA commands to place his hands behind his back, while AVILA continued to say "no". After a short time, I was able to place handcuffs on AVILA. BPA Loomis and I then assisted AVILA to his feet and into our service vehicle.

Throughout the sequence of AVILA's arrest and resistance, BATZ continuously implored AVILA to calm down and to be compliant.

At no time were any strikes or intermediate force devices deployed.

After a short time in the service vehicle, AVILA had calmed down enough to talk to. While speaking with AVILA, he admitted to me that he had illegally entered the United States by walking across the border from Mexico in 2001, and that he was currently unlawfully present in the United States.

...(CONTINUED ON I-831)

Investigator  
BORDER PATROL AGENT

  
BRENDAN BURNS

Date  
March 20, 2019

U.S. Department of Homeland Security

Continuation Page for Form

G166C

Alien's Name  
Primary Subject: BATZ-TZUL MIGUEL A

File Number




Date

March 20, 2019

BPA Loomis and I turned both subjects over to other agents who transported them to the Beecher Falls Station for processing.

Signature

  
BRENDAN BURNS

Title

BORDER PATROL AGENT

2 of 2 Pages



# Exhibit H

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
BOSTON, MA

FILE: [REDACTED]

IN THE MATTER OF:

AVILA-LUCAS, FLORENTIN

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE  
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(e), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

ORDERED that the request for a change in custody status be denied.

ORDERED that the request be granted and that respondent be

released from custody on his own recognizance

released from custody under bond of \$ \_\_\_\_\_

OTHER *The Court finds that the respondent has failed to meet his burden of proof to show that he is not a danger or a flight risk.*  
Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived *(reserved by the respondent, due June 3, 2019)*

BOSTON --- BOSTON DETAINED

Date: May 2, 2019

MARIO J. STURLA  
Immigration Judge

XS

# Exhibit I



### Chaput Law Office

46 Bridge Street, Unit G

Nashua, NH 03060

Tel: (603) 883-0085

Fax: (603) 883-1172

Email: [mchaput@chaputlawoffice.com](mailto:mchaput@chaputlawoffice.com)

Website: [www.chaputlawoffice.com](http://www.chaputlawoffice.com)

May 29, 2019

*Sent via hand delivery*

The Honorable Mario J. Sturla  
Executive Office for Immigration Review  
Department of Justice  
15 New Sudbury Street, Room 320  
JFK Federal Building  
Boston, MA 02203

**RE: MOTION TO SUPPRESS EVIDENCE**  
**Florentin AVILA LUCAS, A# [REDACTED]**  
**Next Master Calendar Hearing: June 5, 2019 at 1:00pm**

Dear Sir/Madam:

I represent the above-named individual in his case before the immigration court. An EOIR-28 is on file with your office.

Enclosed for filing in the above-captioned case, please find the following:

- Motion to Suppress Evidence;
- Index of Documents in Support of Respondent's Motion to Suppress Evidence; and
- Proposed Order.

Please note that the enclosed Affidavit of the Respondent has not yet been signed by the Respondent. His sworn statement was provided to me through a translator and hand written, but I have not yet been able to obtain his signature on the typed version. A signed affidavit will be provided to the court as soon as it is available.

Thank you in advance for your assistance with this matter. As always please do not hesitate to contact me if you have any questions regarding this filing.

Sincerely,

*Melanie Chaput*  
Melanie M. Chaput

MMC/

cc: Florentin Avila Lucas  
Office of District Counsel

**DETAINED**

**FILE COPY**

EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
IMMIGRATION COURT  
1000 BOSTON AVENUE  
BOSTON, MASSACHUSETTS

2019 MAY 29 AM 12:52

RECEIVED  
DEPARTMENT OF JUSTICE

**Melanie M. Chaput  
Chaput Law Office  
46 Bridge Street, Unit G  
Nashua, NH 03060  
EOIR ID# IO998616**

**DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
BOSTON, MASSACHUSETTS**

**In the Matter of:** )  
 )  
**Florentin AVILA LUCAS** )  
A# [REDACTED] )  
 )  
**Respondent** )  
 )

**IN REMOVAL  
PROCEEDINGS**

Immigration Judge: Mario J. Sturla

Next Master Calendar Hearing: June 5, 2019 at 1:00pm

**MOTION TO SUPPRESS EVIDENCE**

COMES NOW, Florentin Avila Lucas ("Respondent"), by and through counsel, hereby in the above matter moves for the SUPPRESSION and EXCLUSION of all evidence, physical and testimonial, obtained or derived from or through or as a result of CBP and Immigration and Customs Enforcement's unlawful search, seizure, interrogation, arrest, and detention which occurred on or about March 20, 2019, in Claremont NH:

1. Specifically, Respondent moves for the suppression and exclusion of the following: 1. ICE Forms I-213, I-214, or any other statements or forms completed from information that may have been given by the Respondent and any forms signed by the Respondent on or about March 20, 2019 and at anytime thereafter, including forms completed from information that may have been given by the Respondent but which the Respondent refused to sign. 2. Any statement by the Respondent on Form I-215B, any other statement made by the Respondent, signed or unsigned, or any oral statements or confessions made by the Respondent. 3. Any and all other property, papers, information, or testimony pertaining to the Respondent, obtained or taken from him, on or about March 20, 2019 and at anytime thereafter, by agents of Customs and Border Control or ICE, or by any other person acting in concert with them. 4. Any and all other property, papers, information or testimony pertaining to the Respondent obtained as the fruit of the illegal search, seizure, detention, interrogation and arrest that occurred on or about March 20, 2019.

## INTRODUCTION

2. Respondent Florentin Avila Lucas files this motion to suppress evidence gathered by Customs and Border Patrol ("CBP") and/or Immigration and Customs Enforcement ("ICE") agents using tactics prohibited by the Fourth Amendment, Fifth Amendment, and Department of Homeland Security ("DHS") regulations. CBP agents violated the Fourth Amendment in four main ways. First, CBP agents improperly interrogated the Respondent, searched and seized him without a warrant. Second, CBP agents deliberately used coercion and duress to conduct the search and seizure. Third, CBP agents had no articulable reason to harbor suspicion that Mr. Avila Lucas had violated the law. Fourth, CBP agents targeted Mr. Avila Lucas based on his race. The CBP agents' violations of the Fourth Amendment were egregious because the agents acted deliberately and violated rules with which any reasonable immigration officer should have been familiar. The CBP agents also violated the Fifth Amendment by coercing Mr. Avila Lucas into making statements involuntarily and in a fundamentally unfair manner. The CBP agents' blatant violations of the Fifth Amendment require this Court to suppress the evidence before it. Finally, CBP agents also violated agency regulations, providing yet another reason for this Court to suppress the evidence before it.

3. The CBP agents violated various regulations codified at 8 C.F.R. § 287 that required them to obtain a valid warrant or Mr. Avila Lucas's consent before the search, develop reasonable suspicion before questioning and seizing him, refrain from placing Mr. Avila Lucas under coercion or duress during the search, and adhere to certain procedures during arrests. The violated regulations were meant to protect Mr. Avila Lucas, and mirrored the requirements of the Fourth and Fifth Amendments. Moreover, the CBP agents' actions caused prejudice to Mr. Avila Lucas. Accordingly, this Court should suppress evidence of Mr. Avila Lucas's alienage collected through the CBP agents' egregious constitutional violations and regulatory violations or, in the alternative, hold an evidentiary hearing to determine whether suppression is warranted.

## STATEMENT OF FACTS

4. On March 20, 2019, Mr. Avila Lucas and his friend went into Claremont, NH to do some shopping at a local thrift store. Affidavit of Florentin Avila Lucas at ¶ 3 & 4. While inside the store they were approached by a man who asked them a few questions in Spanish. Id. at ¶ 6 & 7. Mr. Avila Lucas did not know the stranger and the individual had no identifying information that he was a law enforcement agent. Id. at 6-9. The man asked Mr. Avila Lucas whether he owned the white Suburban outside. Id. at ¶ 6. He answered yes, and the man told him he needed to go outside with him because there was an issue with the registration. Id. at ¶ 6 & 7. The man was very aggressive in his tone and placed his hand on the back of Mr. Avila Lucas to lead him outside. Id. Mr. Avila Lucas did not understand who this man was, but left the store with him in order to avoid embarrassment as he was a regular of the thrift store. Id. Upon exiting the store, the man followed Mr. Avila Lucas to his vehicle. Id. at ¶ 6-10. The man asked Mr. Avila Lucas for his car registration. Id. Mr. Avila Lucas was not aware that the man asking him questions was a Border Patrol Agent until the agent grabbed his arm and brought it behind his back. Id. at ¶ 8-10. The Border Patrol Agent pushed Mr. Avila Lucas to the ground and placed handcuffs on him. Id. at ¶ 10. At no point prior to Mr. Avila Lucas' arrest did he state that he was a citizen of any country. The CBP agent illegally interrogated, searched and arrested Mr. Avila Lucas with no more information than the fact that he appeared Hispanic and spoke Spanish. The CBP officer never obtained a warrant for Mr. Avila Lucas' arrest and he did not have a reasonable suspicion that he was an undocumented immigrant. Mr. Avila Lucas denies that he resisted the arrest of the CBP agent or that he pushed or struck the officer in any way. Id. at ¶ 7-9.

## ARGUMENT

### **I. This Court Should Suppress All Evidence Of Mr. Avila Lucas's Alienage Because CBP Obtained The Evidence Through Egregious Violations Of The Fourth Amendment.**

5. The Supreme Court has recognized that courts should suppress evidence in the case of "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984). The *INS v. Lopez-Mendoza* court stated that evidence collected through "peaceful arrests by INS officers" does not warrant application of the Fourth Amendment's exclusionary rule in deportation hearings. Id. at 1051. The First Circuit has, "noted that *Lopez-Mendoza* provides only a 'glimmer of hope of suppression.' *Kandamar v. Gonzales*, 464 F.3d 65, 70 (1<sup>st</sup> Cir. 2006) (quoting *Navarro-Chalan v. Ashcroft*, 359 F. 3d 19, 22 (1<sup>st</sup> Cir. 2004))." See *Corado-Arriaza v. Lynch*, 844 F.3d 74. The Respondent must show that the search and seizure at issue "amounted to an "egregious violation[] of [the] *Fourth Amendment*" that so 'transgress[ed] notions of fundamental fairness and undermine[d] the probative value of the evidence obtained," as to constitute a *Fifth Amendment* violation of the right to due process." Id.

6. The First Circuit has applied the egregious violation standard in cases that have come before it, but has not expounded upon its meaning. See *Westover v. Reno*, 202 F.3d 475, 479 (1<sup>st</sup> Cir. 2000); *Navarro-Chalan v. Ashcroft*, 359 F.3d 19, 22-23 (1<sup>st</sup> Cir. 2004); *Kandamar v.*

Gonzales, 464 F.3d 65, 66 (1st Cir. 2006). The Board of Immigration Appeals in *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980) acknowledged that evidence obtained through egregious constitutional violations could be inadmissible, and specifically rejected a coercion or duress requirement for the exclusion of evidence. The Board in *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988) applied the broader *Toro* standard, but focuses on coercion, duress, and error due to the respondent's particular claims.

7. Here, CBP agents engaged in at least four types of egregious violations of the Fourth Amendment. First, they searched Mr. Avila Lucas's person and vehicle without either a constitutionally judicially authorized search warrant or Mr. Avila Lucas's voluntary consent. Second, the ICE agents used coercion and duress during the search. Third, they lacked reasonable suspicion to seize Mr. Avila Lucas. Fourth, the CBP agents targeted Mr. Avila Lucas based on his race and Latino sounding last name.

**A. CBP's Unlawful and Coercive Search Of Mr. Avila Lucas's Home Without Either A Constitutionally Sufficient Warrant Or His Voluntary Consent Constituted An Egregious Violation Of The Fourth Amendment.**

8. The Supreme Court has long held that searches either a warrant or the consent of the owner: [O]ne governing principle, justified by history and by current experience, has consistently been followed [in the Fourth Amendment]: except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant. *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1967) (emphasis added). The CBP agents' failure to obtain a judicial warrant amounts to an egregious violation of the Fourth Amendment because any reasonable CBP agent should know that the Constitution required either a judicially authorized search warrant or the owner of the vehicle's voluntary consent. In *Orhorhage v. INS*, the Ninth Circuit held that egregious violations of the Fourth Amendment occurred during four INS agents' "nonconsensual warrantless entry" into an alien respondent's home. 38 F.3d at 492. The Ninth Circuit also noted that any "reasonable officer who receives" internal INS training "should be aware of basic principles of Fourth Amendment law which have been consistently espoused for over a decade." *Id.* at 503 & n.23 (emphasis added). Furthermore, any CBP agent should know that they were required under the Fourth Amendment to obtain a valid search warrant "issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense." *Steagald v. United States*, 451 U.S. 204, 213 (1981). In this case, there were no exigent circumstances, reason to believe that Mr. Avila Lucas would flee the jurisdiction or any reasonable explanation as to why the CBP officer could not obtain a warrant to arrest Mr. Avila Lucas or his vehicle.

9. Other jurisdictions have held that the use of any document other than a judicial warrant, signed upon a showing of probable cause, does not permit immigration agents to search and seize individuals like Mr. Avila Lucas. See also *Illinois Migrant Council v. Pilloid*, 531 F. Supp. 1011, 1020-22 (N.D. Ill. 1982) (stating that "administrative warrants may not be used by INS to justify the seizure of persons" and the "sort of warrant the [Supreme] Court has always required for the search of a dwelling is a warrant based upon judicial determination of probable cause");



CBP bears the burden of proving that they have a valid search warrant. *Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988). Absent evidence to the contrary, this Court should conclude that the CBP agents did not have a constitutionally sufficient warrant when they searched and seized Mr. Avila Lucas and his vehicle.

10. Assuming that the CBP agents lacked a valid search warrant, the CBP agents were required by the Fourth Amendment to obtain Mr. Avila Lucas's voluntary consent before conducting the search. The Supreme Court has long held that the government bears the burden of showing that consent was "voluntarily given, and not the result of duress or coercion, express or implied." *Orhorhaghe*, 38 F.3d at 500, citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973). Courts have found that non-citizens did not voluntarily consent to searches by immigration agents based on factors such as, *inter alia*, the early morning or late evening hour of the search; the failure of immigration agents to advise individuals of their right to refuse consent; the number of immigration agents compared to the number of immigrants; immigration agents' display of weapons; and immigration agents' assertions of authority to conduct the search. See *LaDuke v. Nelson*, 762 F.2d 1318, 1326 (9th Cir. 1985); *Orhorhaghe*, 38 F.3d at 500. Here, any consent provided by Mr. Avila Lucas resulted from coercion and duress, and was therefore involuntary.

11. The CBP agent in this case pushed Mr. Avila Lucas's to the ground in order to effectuate an arrest. Affidavit of Avila Lucas at ¶6-10. The fact that the CBP agents were not dressed or identified as law enforcement in an unmarked vehicle and that Mr. Avila Lucas resisted the restraints, demonstrates that he did not consent to the agents' search and seizure. *United States v. Karathanos*, 399 F. Supp. 185, 188 (E.D.N.Y. 1975) (finding "no support whatsoever for a standard of probable cause to search for 'illegal' aliens less rigorous than that prevailing in searches relating to matters generally considered to be crimes").

12. Furthermore, the agents' actions placed Mr. Avila Lucas under coercion and duress, thus making it impossible for him to voluntarily consent to the search. Affidavit of Avila Lucas. CBP agents did not identify themselves prior to asking Mr. Avila Lucas to produce his car registration. *Id.* at ¶6-10. It was not until Mr. Avila Lucas was being handcuffed that the CBP agent identified himself as an "immigration" officer. *Id.* at ¶9. Throughout the search, Mr. Avila Lucas was confused and concerned about losing his vehicle. He felt that he had no other option but to comply with the CBP agents' demands.

13. Under these circumstances, Mr. Avila Lucas could not have voluntarily consented to the search of his vehicle. Accordingly, this Court should find that CBP agents egregiously violated the Fourth Amendment by conducting an unlawful search of Mr. Avila Lucas's vehicle and seizure of his person without either a valid warrant or Mr. Avila Lucas's voluntary consent.

**B. CBP Engaged in Egregious Violations Because They Deliberately Violated the Fourth Amendment, As Evidenced by the Use of Duress and Coercion.**

14. When government agents act deliberately to violate the Constitution, their actions are egregious. See *Adamson*, 745 F.2d at 545. As the Ninth Circuit stated, "the government's manner of obtaining evidence can be so offensive as to warrant suppression." *Orhorhage*, 38

F.3d. at 502 (emphasis in original). Although physical violence may demonstrate the existence of an egregious violation, the courts have “not impose[d] a requirement that a search or seizure involve physical brutality to warrant suppression.” *Id.* & n.20 (emphasis in original). Here, the CBP agents’ actions against Mr. Avila Lucas’s were deliberate, coercive, and intended to place him under duress. None of the CBP agents’ actions were accidental or even necessary. CBP generally is charged with policing the US border and ports of entry. Here the CBP was well within the interior of the United States over 100 miles from the Canadian Border although technically within its jurisdiction. They were allegedly conducting a roving patrol. The agents chose to pursue Mr. Avila Lucas despite the fact that he had lawfully registered his car in his own name, was lawfully present in a thrift store, and legally parked in the parking lot of this local business. Affidavit of Avila Lucas. They chose not to immediately identify themselves as law enforcement agents to begin their unlawful search. *Id.* at ¶6-10. The CBP agents did not disclose their true purpose in speaking with Mr. Avila Lucas until they were effectuating his arrest. *Id.* at ¶9. The incident was so concerning that the local police pulled up to the scene and asked the officers what they were doing there and what was going on. *Id.* at ¶11

15. Even if this Court finds that a reasonable CBP agent would not know that their actions violated the Fourth Amendment, the Court should find that the agents deliberately caused the violations, so that the violations were egregious. Therefore, this Court should find that the CBP agents’ actions also constituted egregious violations because they deliberately violated the Fourth Amendment, as evidenced by their use of coercion and duress.

**C. CBP’s Unlawful Seizure of Mr. Avila Lucas, Without Reasonable Suspicion, Constituted An Egregious Violation Of The Fourth Amendment.**

16. The Fourth Amendment clearly requires immigration agents to have reasonable suspicion before seizing a non-citizen. *Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975) A seizure occurs when a “reasonable person...believe[s] that he [is] not free to leave” the presence of government agents, *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), including when a government officer “merely indicate[s] by his authoritative manner that the person is not free to leave.” *United States v. Patino*, 649 F.2d 724, 727 (9th Cir. 1981). In *Morales v. Chadbourne*, 793 F.3d 208, (1<sup>st</sup> Cir. 2015)

Guided by this Supreme Court precedent, we have also required that immigration officers have reasonable suspicion to briefly stop individuals to question them regarding their immigration status and probable cause for any further arrest and detention. See, e.g., *United States v. Mendez-de Jesus*, 85 F.3d 1, 3 (1st Cir. 1996) (recognizing that *Brignoni-Ponce* stands for “the principle that an individual may not be [briefly] detained for questioning about citizenship, absent reasonable suspicion that the person is an illegal alien”); [\*\*13] *Lopez v. Garriga*, 917 F.2d 63, 69 (1st Cir. 1990) (noting that detention to inquire about an individual’s immigration status is “a seizure and implicate[s] the [F]ourth [A]mendment” (citing *Immigration & Naturalization Serv. v. Delgado*, 466 U.S. 210, 216-17, 104 S. Ct. 1758, 80 L. Ed. 2d 247 (1984); *Terry*, 392 U.S. at 21)); *Navia-Duran v. Immigration & Naturalization Serv.*, 568 F.2d 803, 809 n.7

(1st Cir. 1977) (recognizing that an immigration arrest and detention needs to be "supported by probable cause or reasonable suspicion").

17. In order to prove reasonable suspicion, the officer must provide a "rational basis for separating out the illegal aliens from American citizens and legal aliens." *Nicacio v. I.N.S.*, 797 F.2d 700, 704 (9th Cir. 1985). Reasonable suspicion also requires "specific articulable facts." *Gonzales-Rivera*, 22 F.3d at 1445. In *Gonzales-Rivera*, for example, the Ninth Circuit held that no reasonable suspicion existed where the immigration agent claimed that he stopped the immigrant based on "Gonzalez' failure to look at the Border Patrol car; the fact that he appeared to have a 'dry' mouth; the fact that he was blinking; and Gonzalez' Hispanic appearance." *Gonzales-Rivera*, 22 F.3d at 1446. Any reasonable CBP agent should be well-versed in these requirements.

18. In *U.S. v. Gonzalez*, the federal court specifically rejected the argument that the CBP has the authority in Puerto Rico (an island) to conduct warrantless searches within the interior without reasonable suspicion. *United States v. Gonzalez*, 2005 U.S. Dist. LEXIS 36728 (United States District Court for the District of Puerto Rico November 1, 2005). In this case, the government attempted to argue that they never needed to obtain a warrant or even have reasonable suspicion to conduct searches. See *id.* *New Hampshire* similar to Puerto Rico falls completely within the CBP jurisdiction because of the Canadian Border at the north and the Atlantic Ocean at the East. The court said:

The Border Patrol's authorization to apprehend aliens within the border or its proximity addresses the agency's administrative authorization for warrantless search to ease compliance with immigration policy not issues related to Fourth Amendment violation within a criminal prosecution context. See *Wayne R. LaFave, Search and Seizure*, § 10.5(g), n. 207 (Thomson-West 4th Edition, 2004). Otherwise, 8 U.S.C. § 1357 would allow search for aliens indiscriminately anywhere, including the entire coast land area of Puerto Rico, thus exempting *de facto* from its geographical scope the whole island of Puerto Rico, approximately 35 miles by 100 miles, except for some limited patches in the center rural and mountain areas.

Accordingly, we reject the Government's broad interpretation of the above cited statutes and its attempt to justify a roving patrol search under the administrative inspection doctrine because it would violate defendant's Fourth Amendment rights to be free of unreasonable searches and seizures. *Id.*

19. Thus, the court must analyze whether the CBP officers had a reasonable suspicion to follow and question Mr. Avila Lucas and whether the officer then had probable cause to arrest, search his vehicle and seize his documents. It is clear from the circumstances that CBP officers did not have reasonable suspicion. Most of the case law discusses "Terry Stops" where a law enforcement pulls over a moving vehicle for a traffic violation. In this case, there were no moving violations or suspicions of any crime being committed or investigated. The only basis for the CBP to interrogate Mr. Avila Lucas was the fact that he spoke Spanish and appeared to be of Hispanic origin. CBP is near the Canadian border and the Atlantic Ocean. It is not reasonable to assume that such an individual is undocumented based on these facts and his presence within the

interior of the United States conducting normal business at a local thrift store. Instead, it can only be inferred that the suspicion was on the basis of Mr. Avila Lucas's race and inability to speak English.

20. Mr. Avila Lucas was intimidated by the aggressive manner in which he was touched and spoken to by the man who later identified himself as a CBP officer. Affidavit of Avila Lucas at ¶6-10. He was never free to leave because when he reached down to get the registration that was thrown to the ground by the CBP officer he was immediately arrested. *Id.* at ¶9. He was not free to walk away from this incident. *Id.* at ¶6-10. Based on this behavior of the agents any reasonable person would not believe that he was free to leave. *Id.* Mr. Avila Lucas believed he had no choice but to comply with the agent's orders. *Id.* Moreover, throughout the seizure, the CBP agents lacked a reason to suspect that Mr. Avila Lucas had violated any federal immigration law. *Id.* They lacked reasonable suspicion because they appear to have had no information about Mr. Avila Lucas's immigration status at the time. Once the undercover agent asked questions inside the store, they had no objective, articulable basis for the seizure because they had not gathered any evidence to suggest that Mr. Avila Lucas had violated any immigration provisions. By the time the CBP officer grabbed Mr. Avila Lucas's documents, Mr. Avila Lucas had not provided the agent with any reason to believe he had violated any law. Accordingly, the CBP agents seized him without reasonable suspicion or probable cause.

21. As discussed *infra* at Part III.B, CBP's own agency regulations clearly prohibit officers from restraining the ability of a person in Mr. Avila Lucas's situation from "walk[ing] away" from the interrogation unless the officer has "reasonable suspicion, based on specific articulable facts." 8 C.F.R. § 287.8(b)(1)-(2).

#### **D. CBP Agents Seized Mr. Avila Lucas Due to His Latino-Sounding Name and Latino Appearance**

22. The Supreme Court has explicitly prohibited immigration agents from relying on racial characteristics to conduct a seizure. *Brignoni-Ponce*, 422 U.S. at 884-885. The First Circuit has not defined what constitutes egregious violations in the immigration context. However, the Ninth Circuit has specifically held that searches and seizures based on race are egregious violations of the Fourth Amendment. *Gonzales-Rivera v. INS*, 22 F.3d 1441, 1452; *Orhorhage v. INS*, 38 F.3d 488, 503 (9th Cir. 1994). In *Orhorhage*, the appellate court found that evidence of racial profiling on the basis of the alien's "Nigerian-sounding name" constituted an egregious violation. *Orhorhage*, 38 F.3d at 503. The Ninth Circuit's reasoning was based on the fact that the Supreme Court had explicitly held "over a decade" earlier, in *Brignoni-Ponce*, that investigative seizures based on an alien's Hispanic appearance were unconstitutional. *Id.* at 503; *Brignoni-Ponce*, 422 U.S. at 884-85. Accordingly, "[b]ecause the *Brignoni-Ponce* principle was firmly established at the time" the INS investigation took place, the *Orhorhage* court found that "a reasonable officer should have known that both the seizure of *Orhorhage* and the unlawful entry into his apartment violated the Constitution." *Orhorhage*, 38 F.3d at 503. Today, this Court can expect any reasonable CBP agent to know that searches and seizures based on race are unlawful. CBP agents appear to have targeted Mr. Avila Lucas's because of his race and lack of English speaking ability. The CBP agents lacked any reason to target him for questioning

besides his appearance. Once outside the store, Mr. Avila Lucas was confused, and he did not do anything to give rise to reasonable suspicion. However, Mr. Avila Lucas resides in a majority-white community, has a Latino-sounding last name which appeared in the search of his license plate, he is of Latino descent and he has darker skin than most white residents in the Claremont community.

23. If Mr. Avila Lucas presents prima facie evidence of the improper use of race by the CBP agents, then CBP bears the burden of showing that their actions were not motivated by race. *Matter of Barcenas*, 19 I. & N. Dec. at 611. Mr. Avila Lucas presents prima facie evidence that CBP violated the Fourth Amendment by targeting Mr. Avila Lucas on the basis of his race and Latino sounding last name. Absent evidence presented by CBP to refute the prima facie evidence, this Court should find that the CBP agents seized Mr. Avila Lucas due to his race.

**II. This Court Should Suppress Mr. Avila Lucas's Statements Regarding His Immigration Status Because CBP Agents Engaged in Fundamentally Unfair Violations Of The Fifth Amendment.**

24. In addition to the Fourth Amendment violations, the CBP agents' violations of the Fifth Amendment warrant suppression of the evidence. Where CBP officials engage in coercive tactics that cause individuals to make statements involuntarily, allowing such statements to serve as the basis for a removal hearing would be fundamentally unfair. *Matter of Garcia*, 17 I. & N. Dec. 319, 321 (BIA 1980). Involuntary statements include those made where government agents engaged in coercion, duress, threats, or interfered with an individual's attempt to exercise their rights. *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980); see also *Matter of Garcia*, 17 I. & N. Dec. at 321 (suppressing statement involuntarily given after respondent was denied right to contact attorney). In *Bong Youn Choy*, the Ninth Circuit noted that the respondent made a statement when he was in a "sleepless," "weary," and "distressed" state, and "sought to appease his official accusers by making the statement containing the admissions." *Bong Youn Choy v. Barber*, 279 F.2d 642, 646-47 (9th Cir. 1960) at 647. The Court suppressed the statement because "the improper conduct of the Immigration agents induced the admissions." *Id.* See also *Matter of Toro*, 17 I. & N. 340, 343 (BIA 1980) (recognizing that "cases may arise in which the manner of seizing evidence is so egregious that to rely on it would offend the Fifth Amendment's due process requirement of fundamental fairness").

25. The coercive tactics used by the CBP agents rendered it impossible for Mr. Avila Lucas to make voluntary statements to the CBP agents. Without reasonable suspicion and based on a racially motivated intent, Mr. Avila Lucas was interrogated without his consent and seized by being being to the ground and handcuffed. Affidavit of Avila Lucas at ¶6-10. Any statements made by Mr. Avila Lucas were made under coercion and duress. CBP's actions offend the Fifth Amendment's guarantee of fundamental fairness, and Mr. Avila Lucas did not make his statements voluntarily. Accordingly, the results of Mr. Avila Lucas's interrogation should be suppressed.

**III. CBP's Search and Seizure of Mr. Avila Lucas Violated Its Own Agency Regulations, Warranting Suppression of the Resulting Evidence.**

26. Where CBP violates its own rules and regulations to collect evidence, immigration courts must suppress evidence where (1) the regulation at issue was promulgated for the benefit or protection of the alien, and (2) the violation has the potential to prejudice the alien's interests. *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." *U.S. v. Rangel-Gonzalez*, 617 F.2d 529, 530 (9th Cir. 1980) (finding prejudice because alien 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"). For instance, the Supreme Court has invalidated a deportation based on statements which did not comply with then-INS regulations aimed at providing due process to the alien. *Bridges v. Wixon*, 326 U.S. 135, 152-53 (1945).

27. Here, the CBP agents engaged in numerous regulatory violations, which require suppression of the evidence before this Court. First, the CBP agents' lack of reasonable suspicion in questioning and detaining Mr. Avila Lucas violated 8 C.F.R. §§ 287.5(1) and 287.8(b). Second, the coercive nature of the search violated 8 C.F.R. § 287.8(c)(vii). Finally, the warrantless arrest violated Immigration and Nationality Act ("INA") § 287(a)(2) and 8 C.F.R. § 287.3(a).

**A. CBP's Interrogation Of Mr. Avila Lucas Without Reasonable Suspicion Violated 8 C.F.R. §§ 287.5(1) and 287.8(b), And Warrants Suppression Of The Evidence.**

28. The CBP agents also violated the regulatory requirement that they have reasonable suspicion before questioning Mr. Avila Lucas and restraining his ability to walk away from their interrogation.

29. 8 C.F.R. § 287.5(1) prohibits an immigration agent from even questioning an individual if they do not have a warrant unless the person is "believed to be an alien." 8 C.F.R. § 287.5(1); INA § 287(a)(1). In other words, before the CBP agents approached Mr. Avila Lucas, DHS regulations required them to have a reason to believe Mr. Avila Lucas was an alien. However, the CBP agents had no reason to believe he was even "an alien," 8 C.F.R. § 287.5(1), before they approached and interrogated him. Accordingly, the CBP agents violated section 287.5(1). 8 C.F.R. 287.8(b) further restricts an CBP agent's authority to detain persons for additional questioning unless the officers have "reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States." Unless they have reasonable suspicion, the CBP agents may not "restrain the freedom of an individual, not under arrest, to walk away." 8 C.F.R. § 287.8(b)(1). In this case, before the arrest of Mr. Avila Lucas, the only evidence they had was his Hispanic appearance and inability to speak English.

30. As discussed supra at Part I.C, the CBP agents restrained Mr. Avila Lucas's freedom to walk away from their interrogation by physically touching him, aggressively insisting that he go outside to show his registration, and intimidating him. Affidavit of Avila Lucas at ¶6-10. Under the circumstances, Mr. Avila Lucas could not have felt free to leave. In fact, when he attempted to take his registration from the ground he was handcuffed and then pushed to the ground by the CBP officer. Id. at ¶9. This Court should grant suppression because the regulatory provisions were intended to protect Mr. Avila Lucas and because the violations had the potential to prejudice Mr. Avila Lucas in these proceedings.

31. First, the aforementioned regulations seek to protect individuals, such as Mr. Avila Lucas, from unauthorized interrogation and detention by CBP agents. Second, the CBP agents' disregard for the regulatory provisions at issue prejudiced Mr. Avila Lucas. Prejudice to Mr. Avila Lucas should be presumed because the Fourth Amendment already mandates compliance with the regulation in question. *Matter of Garcia-Flores*, 17 I. & N. Dec. at 329. Indeed, 8 C.F.R. § 287.5(1) and 287.8(b) directly mirror the Fourth Amendment's reasonable suspicion and seizure requirements, discussed supra at Part I.B.3. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Furthermore, the CBP agents obtained evidence of Mr. Avila Lucas's alienage without providing him with an opportunity to consult with legal counsel before answering their questions. The evidence of Mr. Avila Lucas's alienage would clearly affect the outcome of the proceedings. Accordingly, the agency violations prejudiced Mr. Avila Lucas.

**B. CBP Violated 8 C.F.R. § 287.8(c)(vii) In Its Coercive Search and Seizure of Mr. Avila Lucas, Warranting Suppression of the Evidence.**

32. 8 C.F.R. § 287.8(c)(vii) clearly provides, "[t]he use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited." 8 C.F.R. § 287.8(c)(vii) (emphasis added). As discussed supra at Part I.B, the CBP agents subjected Mr. Avila Lucas to coercion and intimidation on multiple occasions, thereby violating their own agency regulations. Mr. Avila Lucas was approached by a man speaking to him first in Spanish and then in English. Affidavit of Avila Lucas at ¶6. He insisted that there was an issue with his car registration. Id. at ¶6 & 7. He aggressively ordered him to go outside of the store where he was shopping to prove his car registration was correct. Id. at ¶6-8. He stood behind Mr. Avila Lucas and demanded to see his documents. Id. at ¶7-10. When Mr. Avila Lucas attempted to obtain his paperwork from the ground he was handcuffed and pushed to the ground. Id. at ¶9. Section 287.8(c) was no doubt meant to benefit Mr. Avila Lucas by protecting him from coercive or otherwise abusive behavior, and ensuring his right to make statements voluntarily to the government.

33. Moreover, prejudice to Mr. Avila Lucas should be presumed because section 287.8(c)(vii) mirrors the Fifth Amendment's requirement that courts suppress statements made involuntarily as a result of coercion or duress. *Matter of Garcia*, 17 I. & N. Dec. at 321. If admitted into evidence, Mr. Avila Lucas's statements regarding his immigration status would prejudice his interests at the removal proceeding and materially affect the outcome of the proceeding. See *United States v. Rangel-Gonzales*, 617 F.2d 529, 530 (9th Cir. 1980).

**C. The CBP Agents' Warrantless Arrest of Mr. Avila Lucas Violated INA § 287(a)(2) and 8 C.F.R. § 287.3(a).**

34. Finally, the CBP agents' warrantless arrest of Mr. Avila Lucas violated INA § 287(a)(2) and 8 C.F.R. § 287.3(a). The arrest violated INA § 287(a)(2), which provides that a warrantless arrest may only take place if an officer "has reason to believe that the alien so arrested is in the United States in violation of any [ ] law or regulation and is likely to escape before a warrant can be obtained for his arrest," because Mr. Avila Lucas did nothing to demonstrate he was likely to escape. INA § 287(a)(2) (emphasis added). Mr. Avila Lucas conducted himself in a peaceful manner and did not try to escape during the CBP agents' unlawful search and seizure. The CBP agent had no reason to believe Mr. Avila Lucas would escape before obtaining a proper judicial warrant for his arrest.

35. The CBP agents also violated 8 C.F.R. § 287.3(a)'s requirement that Mr. Avila Lucas "be examined by an officer other than the arresting officer." 8 C.F.R. § 287.3(a). Here, the CBP agent who interrogated Mr. Avila Lucas also arrested him, despite the fact that other qualified officers were readily available to comply with the regulation. See *id.* (stating that the arresting officer may conduct the examine only if "no other qualified officer is readily available."). These statutory and regulatory guidelines exist to benefit individuals like Mr. Avila Lucas from illegal arrests. See *Au Yi Lau v. INS*, 445 F.2d 217, 222 (D.C. Cir. 1971) (analogizing "reason to believe" standard in INA § 287(a)(2) to Fourth Amendment probable cause requirement); *Matter of Garcia-Flores*, 17 I. & N. Dec. at 329 ("We are satisfied, however, that 8 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien.").

36. The CBP agents' violations during the arrest had the potential to prejudice Mr. Avila Lucas. If the agents had obtained a warrant for his arrest, Mr. Avila Lucas might have obtained counsel earlier and avoided interrogation. If two different agents had examined and arrested Mr. Avila Lucas, then one agent might have identified and avoided the many violations inflicted upon Mr. Avila Lucas. Accordingly, this Court should suppress any evidence that resulted from the improper arrest of Mr. Avila Lucas.

**IV. The Court Should Suppress All Evidence Obtained As the Result of the CBP Violations of Mr. Avila Lucas' Constitutional Rights**

36. In *Garcia-Aguilar v. Lynch*, 806 F.3d 671 (1st Cir. 2015), the First Circuit held that the government could establish alienage based on a birth certificate provided by the Mexican consulate following her unconstitutional arrest in the hope of securing the respondent's release from detention to care for her child. *Id.* at 676. However, in that case the passport was obtained in a different manner than in the case of Mr. Avila Lucas. The court should apply the doctrine of the fruit of the poisonous tree in regard to any documents obtained from Mr. Avila Lucas upon his arrest or any statements made by him. If the evidence was discovered by "exploitation" of the underlying misconduct, it is subject to possible suppression. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). The "exclusionary rule" is a judicially created remedy to prevent the introduction of evidence obtained as a result of a Fourth Amendment violation. Its purpose is not to provide relief to the victim but to deter government officers from engaging in similar misconduct in the future. *Elkins v. United States*, 364 U.S. 206, 217 (1960). *29 Illinois v. Krull*,

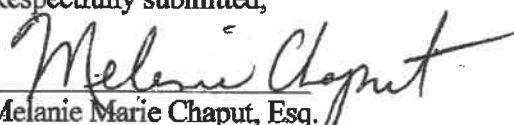


480 U.S. 340, 352-353 (1987) (internal quotation marks omitted). Consequently, for the exclusionary rule to apply, a court must weigh the cost of excluding evidence against the benefit of deterring future government misconduct. *Illinois v. Krull*, 480 U.S. 340, 352-353 (1987) (internal quotation marks omitted). In this case such exclusion is warranted, since the CBP's behavior was egregious as described in detail above.

**CONCLUSION AND PRAYER FOR RELIEF** For the foregoing reasons, the Respondent respectfully requests that this court suppress all evidence obtained during or as a result of the unlawful search and seizure. In the alternative, this Court should order an evidentiary hearing to determine whether to grant this Motion to Suppress.

5/29/2019  
Date

Respectfully submitted,


  
Melanie Marie Chaput, Esq.  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Suppress Evidence was hand delivered on this day to the:

Office of Chief Counsel  
Department of Homeland Security  
JFK Federal Building  
15 New Sudbury Street, Room 425  
Boston, MA 02203

5/29/2019  
Date

  
Melanie Marie Chaput, Esq.  
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**INDEX OF DOCUMENTS IN SUPPORT OF RESPONDENT'S MOTION TO SUPPRESS EVIDENCE**

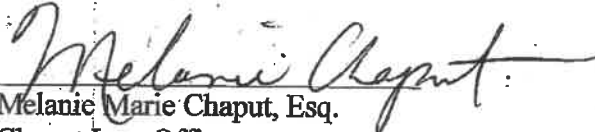
**Florentin AVILA LUCAS, A# [REDACTED]**

<b>Exhibit #</b>	<b>Page #</b>
A. Affidavit of Florentin Avila Lucas.....	1

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Index of Documents in Support of Respondent's Motion to Suppress Evidence and all attached documents were hand delivered on this day to the Department of Homeland Security, Office of District Counsel, 15 New Sudbury Street, Room 425, JFK Federal Building, Government Center, Boston, Massachusetts 02203.

5/29/2019  
Date

  
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**AFFIDAVIT OF FLORENTIN AVILA LUCAS, A#216-436-221**

I, Florentin Avila Lucas, hereby swear and state as follows:

1. My name is Florentin Avila Lucas. My alien number is [REDACTED]. I currently being detained by Immigration and Customs Enforcement ("ICE") at Plymouth County House of Corrections at 26 Long Pond Rd, Plymouth, MA 02360.
2. I write this affidavit in support of my Motion to Suppress before the Immigration Court. On March 20, 2019 I was arrested by Customs and Border Patrol ("CBP") and detained by Immigration and Customs Enforcement ("ICE").
3. On that day I had just finished working and I went directly to the thrift store with my co-worker and brother-in-law of my brother, Miguel Antonio Batz. He and I went to the store together. I called him and asked if he wanted to go to the store. I asked him if he wanted to go eat because it was his birthday. My schedule at work is 4:30a.m. -11:30am and then 2:45pm-8:00pm. Miguel and I work at a local dairy farm. We work six days a week. I called him around 11:30am. We left the house around 12:00pm.
4. I picked Miguel up at his house which was about one (1) minute away. We went directly to the store called LISTEN Thrift Store & Donation Center in Lebanon, NH. It is a second-hand store where I am a regular shopper. Miguel wanted to go to buy working clothes before we ate. I like going to this store. I usually go there every Saturday without issues. This was a Wednesday. We like the store because they have lots of clothing that are good quality and I buy boxes of things to send to my family including nephews and my immediate family.
5. When we pulled into the store I did not notice any CBP, ICE, or police officers following me or looking at me. I was a regular at the store and everything seemed the same as normal. I did not notice anything. Inside the store Miguel and I shopped. I bought a microwave and told Miguel I was going to buy it and bring it out to my vehicle, but that he could continue shopping. Then I noticed a vehicle with a person inside looking at me. This vehicle was parked next to me. I did not notice any markings of police, CBP or notice that it was a law enforcement vehicle. I brought the microwave to my vehicle and locked it up. I went back inside the store. When I got inside, Miguel was not inside the electronics but in with the clothes.
6. I asked Miguel in Spanish if he was done looking at the clothes. I felt something touch my shoulder. The man said in Spanish, "Hola." I responded, "hola." Then the man walked in front of me. He said in Spanish, "Tu tienes la registracion mal de tu carro." (Your car registration is wrong). He also asked in Spanish, "¿Tue eres dueno dela suburban blanca?" (Is that your white suburban outside?) I said, "Yes," in Spanish. I did not know he was police or immigration. It was very strange because I thought maybe it was someone I knew because I am a regular at the store. He was dressed in jeans, t-shirt, beige jacket and a beige cap. I did not know who he was. He insisted twice that I should go outside to see my registration for my vehicle. He was very direct about the registration. I had just registered my car a week before, so I thought maybe there was a problem. I was very confused about what this was about. In Spanish I asked if he was a

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police officer, he said, in English, "No, no just go outside." He started to be very aggressive in his tone. I said, "no I am not going outside." The man touched my back and started to push me forward on my back. I had a white cap in my hand and needed to pay for it. I told the man I needed to buy the cap in my hand. We were near the registers. I felt embarrassed because I was a regular at the store and knew the cashiers. I let go of the cap and went outside with the man. The man followed behind me.

7. In a very aggressive manner when we got near my vehicle, he said, "Open the door, I need to see the papers for your car." I was saying "wait, wait." He stood right behind me when I opened my vehicle. I opened the console inside my car and took out a red and black bag where I had my registration folded up with other papers. I never attempted to hide any papers, but was looking for the registration that he had asked me about. My license was similar to a booklet and I put back the other papers in the bag so I could obtain my license and the registration he was asking for. He took a look at what I handed him and threw the registration on the ground. In English, he said this registration is not valid. I was on the second step of my truck and the man was behind me. I was holding the red and black bag. He said this is not a valid license, "where are your papers?" in English. Then he grabbed the black and red bag. He said, "Do you have a visa for work?" I said you are not asking for a visa." He did not identify himself as a law enforcement officer. I asked him, "Why are you asking so many questions?" Then I tried to get off he step from my vehicle to pick up the registration from the ground. Then I got mad because I did not understand what was happening. The man said, "the problem is that you do not have papers to be here."
8. I did not understand what was happening with all the anti-immigrant talk in the news, I thought it might be a random person harassing me because I am speaking Spanish and having brown skin. I had a bad experience before when I had a lady sold me a car and she put the insurance and registration in her name. After I paid everything for the car she refused to sign the papers over to me. She kept the car and threatened to call the police on me. I was thinking that this man was like her and was trying to pull a scam to take my vehicle away from me. This man did not identify himself and I did not understand what was going on.
9. As I reached for the registration on the ground, the man grabbed my hand and put it around my back and pushed me very hard to the ground. When I was on the ground he put one of my hands in the handcuffs and then he said, "Calm down, I am immigration" in English. I was in some shock when I was pushed to the ground and may have said, "no." I said to him, "You are hurting me." When I hit the ground I hit my face at the chin on the pavement. I still had one hand free and I tried to reach for my face because I could feel the pain. When I took my hand away I saw the blood. The officer then grabbed my free hand and put it in a handcuff behind my back. I told him my legs were hurting and he said that was not his problem.
10. When I got up my knees hurt and I noticed my jeans were ripped. Then I saw Miguel in handcuffs. He told me in Spanish to calm down its immigration. The man who had arrested me showed me his badge after I was in handcuffs. I never said anything to the man about what country I was from. I never told the officer I had a work visa. I never responded to his questions or said where I was working. I did not intentionally pull away from the officer, pull my arms

away or push the officer in any way. I never had a chance, because he pushed me to the ground before I could do anything.

11. When I was being taken off the ground by the man, the local police pulled up and asked if everything was okay. The man said yes and he showed them his badge and they said they were immigration. The police left. My handcuffs were tight and were hurting my arms I told the officers but they told me to go inside their vehicle. Miguel and I were placed in the vehicles and brought to another parking lot where there were 5-6 vehicles hidden behind the tractors in the lot. There were more men in these vehicles using binoculars looking in the direction of the store. They took Miguel and I out of their vehicle. Another officer told me that he was going to take the handcuffs off, but told me if I moved he would punch me. While he said this he was making a fist. He put my hands in front of me and re-cuffed me. Then they drove us to an immigration office. They asked me some questions and took my fingerprints. I refused to sign their paperwork. Later they took me to Strafford County House of Corrections and then to Plymouth County House of Corrections. I have been detained for over two months.
12. Thank you for your consideration of my case. If you need to know anything else, I am happy to answer questions in court concerning my affidavit.

May 21, 2019

---

Florentin Avila Lucas

Subscribed and sworn to this 21st day of May 2019.

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3

United States Department of Justice  
Executive Office for Immigration Review  
Immigration Court  
Boston, MA

In the Matter of: Florentin Avila Lucas

A Number: [REDACTED]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's MOTION TO SUPPRESS EVIDENCE that the motion be

GRANTED  DENIED because:

- DHS does not oppose the motion.
- The respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition motion.
- Other:

Deadlines:

- The application(s) for relief must be filed by \_\_\_\_\_
- The respondent must comply with DHS biometrics instructions by \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Mario J. Sturla  
Immigration Judge

Certificate of Service

This document was served by:  Mail  Personal Service

To:  Alien  Alien c/o Custodial Officer  Alien's Atty/Rep  DHS

Date: \_\_\_\_\_ By: Court Staff \_\_\_\_\_

# Exhibit J

9TH CIRCUIT - DISTRICT DIVISION - NASHUA

**CASE SUMMARY**  
**CASE NO. 459-2019-CR-00025**

State v. Jacky Celicourt


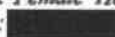
§  
§  
§  
§

Location: 9th Circuit - District Division -  
 Nashua  
 Filed on: 12/28/2018

CASE INFORMATION

<b>Offense</b>	<b>Statute</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b> Criminal
Jurisdiction: Nashua				
1. Theft by Unauthd Taking \$0-\$1000	637:3	VIOL	12/13/2018	Case Status: 01/16/2019 Closed
ChargeID: 1577691C ACN: 007025J181577691001				
Filed As: Theft by Unauthd Taking \$0-\$1000	MISDB		12/28/2018	
Arrest: 12/13/2018				

PARTY INFORMATION

**Defendant** Celicourt, Jacky  
  
*Black Female Height 5' 9" Weight 170*  
*DOB:  Age: 37*

**Arresting Agency** Nashua Police Department  
 PO Box 785  
 Nashua, NH 03061

DATE	EVENTS & ORDERS OF THE COURT	INDEX
12/19/2018	Bail Order	Index #1
01/02/2019	Complaint As Accepted For Filing	
01/16/2019	Arraignment on Complaint <i>interpreter requested through language bank 1/3/19 HB</i>	
01/16/2019	Plea (Judicial Officer: Introcaso, Julie A) 1. Theft by Unauthd Taking \$0-\$1000 Guilty	
01/16/2019	Disposition (Judicial Officer: Introcaso, Julie A) 1. Theft by Unauthd Taking \$0-\$1000 Finding of Guilty	
01/16/2019	Sentence (Judicial Officer: Introcaso, Julie A) 1. Theft by Unauthd Taking \$0-\$1000 Sentenced Fees Fines: \$310.00 Condition - Adult: 1. Good Behavior for One Year, no contact with ocean state job lot, 01/16/2019, Active 01/16/2019	
01/16/2019	Acknowledgement and Waiver of Rights (Judicial Officer: Introcaso, Julie A ) Party: Defendant Celicourt, Jacky	Index #2

A TRUE COPY ATTEST  
*Sherry R. Borden*  
 Clerk

①



9TH CIRCUIT - DISTRICT DIVISION - NASHUA

**CASE SUMMARY**

**CASE NO. 459-2019-CR-00025**

A TRUE COPY ATTEST

*Drew A. [Signature]*  
Clerk

2

# Exhibit K

30 Spring St  
Nashua NH

11-4-19  
1191514147  
Creole

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
http://www.courts.state.nh.us

Court Name: 9th Circuit - Nashua District Court  
Case Name: Jacky Celicourt [Redacted]  
Case Number: \_\_\_\_\_  
(if known)

CIRCUIT COURT BAIL ORDER

Police Dept. Nashua Agency Case Number: 18-89322

Date of Offense	Offense	Misd. A	Misd. B
<u>12/13/18</u>	<u>Theft By Unauth taking</u> <u>637:3</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

CH  
CH  
CH  
CH  
CH

It is hereby ordered, pending  arraignment  trial  other hearing  
on Wed Jan 16, 2019 at 8:15  AM  PM, that the defendant:  
 Be released on personal recognizance.  
 Be detained for not more than 72 hours to allow for filing of a probation violation.

Defendant's release is subject to the following conditions:

Defendant shall not commit a federal, state or local crime while on release, must appear at all court proceedings as ordered and must advise the court in writing of all changes of address within 24 hours.

- Shall have no contact, direct or indirect, or through a third party with \_\_\_\_\_ within \_\_\_\_\_ feet of where that person(s) may be.
- Shall live at: [Redacted]
- Shall not travel outside of New Hampshire.
- Shall not possess a firearm, destructive device, dangerous weapon, or ammunition.
- Shall refrain from excessive use of alcohol, and use of a narcotic drug or controlled substance as defined in RSA 318-B.
- Shall follow all terms and conditions of probation and/or parole.
- The Criminal Bail Protective Order issued on \_\_\_\_\_ remains in full force and effect.
- Other: Def must stay off all property of Ocean State  
Job Lot, 300 Main St, Nashua NH

no criminal history

The Court determines that the above conditions will:

A.  not reasonably assure the appearance of defendant as required by a preponderance of the evidence for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Case Name: Jacky Celicourt

Case Number: \_\_\_\_\_

**ORDERS AND CONDITIONS OF BAIL**

A1.  Having found that the following order imposing a financial condition will not be the sole cause for the defendant's continued detention, the court orders that the defendant shall be released on \$ \_\_\_\_\_ cash or corporate surety bail.

**AND/OR The Court determines that:**

B.  release will endanger the defendant or the public by *clear and convincing evidence* for the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_

**Therefore the Court orders that the defendant:**

B1.  be placed in preventive detention. (See RSA 597:2, IV(a)).  
 and/or such other restrictions as set forth below:  
\_\_\_\_\_  
\_\_\_\_\_

B2.  Having found that the following order imposing a financial condition will not be the sole cause for the defendant's continued detention, the court orders that the defendant shall be released on \$ \_\_\_\_\_ cash or corporate surety bail.

**Defendant Information:**

Name: Jacky Celicourt DOB: \_\_\_\_\_

Physical address: \_\_\_\_\_

Mailing address (if different): \_\_\_\_\_

Home phone #: \_\_\_\_\_ Cell phone #: 6035577482 E-mail: \_\_\_\_\_

Defendant Signature: [Handwritten Signature]

**So Ordered:**

Date: 12/13/18

Bail commissioner fee \$ 40

Signature of Bail Commissioner: [Handwritten Signature]

Name of Bail Commissioner: KATHY A. ROY

- Approved
- Approved as modified
- See Supplemental Bail Order

Date: \_\_\_\_\_

Signature of Judge: \_\_\_\_\_

Name of Judge: \_\_\_\_\_

- |   |   |                                    |
|---|---|------------------------------------|
| <input type="checkbox"/> County Attorney/AGs Office | <input type="checkbox"/> Sheriff's Department         | <input type="checkbox"/> Defendant |
| <input type="checkbox"/> Defense Counsel            | <input type="checkbox"/> NH Department of Corrections | <input type="checkbox"/> Surety    |
| <input type="checkbox"/> House of Corrections       | <input type="checkbox"/> Other _____                  |                                    |

# Exhibit L

To whom it may concern:

This letter comes from [REDACTED] and Family, we vache for Jacky Celicourt. He is a very helpful person and reasonable. Whenever i've asked him for help he has been there. Jacky is up for any task and handles it with responsibility. I can give faith and testimony that Jacky Celicourt is a very excellent person to everyone.

Sincerely,

[REDACTED]

6

To whom it may concern:

This letter is to let you know that I, [REDACTED] vouch for Jacky Celicourt. He is a very hard-working gentleman and for the time that I have known him he has never shown any disrespect for anyone. Jacky is very responsible and one of the most helpful human being that I know. Jacky is a very family-oriented man that only wants the best for [REDACTED]

Sincerely,

[REDACTED]

To whom it was concern:

I, [REDACTED] vouch for Jacky Celicourt. I am a good friend of Jacky, actually he has been living in my house for about 6 months. I don't have anything bad to about him; he is a very friendly and responsible person. My wife and I find ourselves as good friends of Jacky.

Sincerely,

[REDACTED]

8



To whom it was concern:

I, [REDACTED] vouch for Jacky Celicourt. All I have to say about Jacky is that he is a very good person and super friendly. He's kind with my children and is very responsible. I see Jacky as a well trusted person who has respect for other.

Sincerely,

[REDACTED]

To whom it may concern:

I, [REDACTED] vouch for Jacky Celicourt. I've known Jacky since i came to the United states. I've always seen and known him as a hard working person. Jacky was always there if you need a hand and even just hanging out with our family. He is very responsible when he has to do a task and gives his all, also overall he's a well known man who many people trust. Since i've known Jacky's he works hard to help [REDACTED]  
[REDACTED]

Sincerely,

[REDACTED]

02/06/19

To whom it may concern

My name is [REDACTED] and I will like to say I have known Jacky Celicourt for 4-6 months and he is a great person with awesome attitude

If you wish to contact me please email-

[REDACTED]

[REDACTED]

02/06/19

To whom it may concern

Hello, my name is [REDACTED]  
and I will like to inform To Whom It May  
Concern I have known Jacky Celicourt for about  
2 years and sometime now, he is a great person  
with great values.

[REDACTED]

02/06/19

To whom it may concern

My name is [REDACTED] and I will like to say that I have known Jacky Celicourt for around 2 years and I have nothing bad to say about Jacky. He is a great human being, very kind men.

If you wish to contact me please email me-

[REDACTED]

[REDACTED]

# Exhibit M

**In the Matter of:**

*In RE: Jackie Celicort*

---

*Hearing*

*February 07, 2019*

---

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& LEVINE**  
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In RE: Jackie Celicort

Hearing  
February 07, 2019

COMMONWEALTH OF MASSACHUSETTS  
UNITED STATES IMMIGRATION

Case no. [REDACTED]

\*\*\*\*\*

IN RE: \*

JACKIE CELICOURT, \*

\*\*\*\*\*

HEARING HELD ON FEBRUARY 7, 2019

BEFORE THE HONORABLE JUDGE MARIO J. STURLA

APPEARANCES:

For the DHS: CHRISTY DIORIO, ESQ.

For the Respondent: MELANIE M. CHAPUT, ESQ.

Transcription Service: Mary Indomenico, ACT, CET  
Perfect In Print  
212 Vineland Avenue  
East Longmeadow, MA 01028  
(413) 746-1778

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.



1 THE COURT: This is United States Immigration,  
2 Judge Mario J. Sturla presiding in custody redetermination  
3 proceedings in the Boston Massachusetts Immigration Court  
4 in the matter of Jackie Celicort, [REDACTED], the date is  
5 February 7, 2019.

6 The respondent is appearing via tele video from the  
7 Strafford County House of Corrections in Dover, New  
8 Hampshire, where he is detained by the DHS. Present on  
9 behalf of DHS, is Assistant Chief Counsel Christy DiOrio.  
10 Present on behalf of the respondent is Attorney Melanie M.  
11 Chaput.

12 Good afternoon, Ms. Chaput.

13 MS. CHAPUT: Good afternoon, Your Honor.

14 THE COURT: The courthouse is also joined by a  
15 telephonic Haitian Creole interpreter.

16 Madam Interpreter, good afternoon. Please state  
17 your name.

18 MS. DELVER: (Indiscernible) Delver (phonetic).

19 THE COURT: Thank you, ma'am. Have you been sworn  
20 in today?

21 MS. DELVER: Yes, Your Honor.

22 THE COURT: All right. To the respondent through  
23 the Haitian Creole interpreter who's previously been sworn  
24 in.

In RE: Jackie Celicourt

Hearing  
February 07, 2019

3

1 Good afternoon, sir, please state your name?

2 THROUGH INTERPRETER

3 MR. CELICOURT: Good afternoon, my name is Jackie  
4 Celicourt.

5 THE COURT: Thank you, sir. And this is your bond  
6 hearing. I am here to speak with your attorney and the  
7 government's attorney to determine whether or not a bond  
8 should be set in your case, understood?

9 MR. CELICOURT: Yes, yes sir.

10 THE COURT: Bond Exhibit 1 is a DHS Form I-286,  
11 notice of custody determination, reflected that on January  
12 16, 2019, the DHS determined to hold the respondent  
13 without bond, pending removal proceedings. Respondent did  
14 request a review of that on January 15th of 2019. Bond  
15 Exhibit 2, is a warrant for the respondent's arrest, I-200  
16 issued on January 16, 2019. Bond Exhibit 3 is a thirteen-  
17 page submission received today, motion for bond  
18 determination, Tab A as in apple through B as in boy,  
19 which is an eighteen-page brief, along with a -- it looks  
20 like a case summary for theft by unauthorized taking in  
21 the amount of zero dollars to \$1,000, closed on January  
22 16, 2019. He was found guilty, and there's a police  
23 report of this as well. There's also a letter from a  
24 [REDACTED] (phonetic) and some other individuals.

1 All right. Any additional documents from either  
2 party?

3 MS. CHAPUT: No, Your Honor.

4 THE COURT: All right, thank you. Bond Exhibit  
5 number 4 is a Form I-213, record of deportable  
6 inadmissible alien. Bond Exhibit number 5 is a December  
7 13, 2018 police report, along with a financial affidavit  
8 and application for court-appointed counsel.

9 Any objections to Bond Exhibits 1 through 5?

10 MS. CHAPUT: No, Your Honor.

11 THE COURT: All right, Ms. Chaput, why don't you go  
12 ahead and proffer to why you believe your client is not a  
13 danger to persons or property or a flight risk.

14 MS. CHAPUT: Thank you, Your Honor. My client is a  
15 37-year-old male who entered the United States from Haiti  
16 with a tourist visa on March 12, 2018. He's remained in  
17 the United States since that date.

18 He originally was in -- staying in Miami, Florida,  
19 and he moved to Nashua, New Hampshire where he's lived for  
20 the past ten months.

21 He's been working in construction and working to  
22 support himself since he entered.

23 He had previously traveled to the United States on  
24 two occasions with a tourist visa in 2006 and 2007. And

1 on those two occasions, he did not overstay his visa.

2       However, Your Honor, on his last entry, he did not  
3 return to Haiti because he fears persecution. The  
4 respondent experienced past persecution in Haiti. He was  
5 attacked with a car in an attempted kidnaping. He was a

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12       He'd work to [REDACTED]  
13 [REDACTED], and the respondent believes he was targeted  
14 because of his political activity and organization and the  
15 attempted kidnaping.

16       The respondent [REDACTED]  
17 [REDACTED]. He fears returning there, because he's afraid  
18 he'll be persecuted. He hopes that [REDACTED],  
19 [REDACTED]  
20 [REDACTED]

21       The respondent was served with an NTA on January  
22 16, 2019. He's been charged with overstaying his tourist  
23 visa; he's been detained for about two weeks. He was  
24 apprehended by ICE at the District Court in Nashua, New

In RE: Jackie Celicort

Hearing  
February 07, 2019

6

1 Hampshire, where he had appeared to answer a shoplifting  
2 charge, Your Honor.

3 I've included the documents at Tab A, which  
4 includes the disposition of the case, as well as the  
5 police report. This is his only contact that he's had  
6 with law enforcement since he's been in the United States,  
7 including on his previous two entries.

8 And Your Honor, just to give you an idea of what  
9 the incident of shoplifting is, I understand that, you  
10 know, it is -- it would most likely be considered a crime  
11 of moral turpitude, something that my client takes  
12 seriously. But what I think I described to you the facts  
13 of the case, you'll understand it's not as serious as it  
14 may appear.

15 My client was shopping at an Ocean State Job Lots,  
16 which is a discount store in Nashua, New Hampshire. He  
17 was planning to purchase a pair of inexpensive headphones,  
18 the cost of which was \$5.99. But in the meantime, he was -  
19 - received a phone call on his cell phone, and in order to  
20 be polite to the other shoppers, he thought he would use  
21 the headphones and pay for the packet -- you know, pay for  
22 it as he left the store. The conversation he had was an  
23 intense conversation, lasted almost an hour as he was  
24 shopping around the store. In the meantime, he also

1 picked up two other items. He went to the front of the  
2 store to pay for his items, and he had put the headphones  
3 and his phone together in the pocket, and forgot to pay  
4 for the headphones.

5 At the -- after the point of purchase, he was  
6 confronted by a security guard in the store who accused  
7 him of stealing the headphones. He offered to pay for the  
8 headphones at that time. They refused to accept his  
9 money, instead called the Nashua Police Department.

10 When the Nashua Police came, the security guard  
11 indicated in the police report that he had, you know,  
12 basically purposely gone to an aisle, had taken the  
13 package and put it out purposely, and then put the  
14 headphones in his -- in his pants in order to steal them.

15 The police report also says that, "I asked  
16 Celicourt if he had attempted to steal the headphones and  
17 the case, which Celicourt stated he had. But when Grey  
18 (phonetic) confronted him, he handed over to her and  
19 apologized."

20 My client disputes that he ever said that to the  
21 police officer. And I understand, Your Honor, that, you  
22 know, the officer isn't here to you know, testify. But I  
23 would say that, you know, my client essentially made a  
24 mistake.

In RE: Jackie Celicort

Hearing  
February 07, 2019

8

1           However, despite making this mistake, he attended  
2 his court hearing in Nashua, New Hampshire. He did plead  
3 guilty and paid a fine of \$310. And he accepts  
4 responsibility for the fact that what he did was not --  
5 was wrong.

6           He appeared in court, and like I said, he's already  
7 paid the fine when he was apprehended by ICE without  
8 incident.

9           My client has worked in the Nashua, New Hampshire -  
10 - or has been living in the Nashua, New Hampshire area for  
11 eight months. And despite the short time in the U.S., he  
12 has many community ties --

13           THE COURT: Did he have authorization to work?

14           MS. CHAPUT: He did not.

15           THE COURT: Did he apply for asylum?

16           MS. CHAPUT: He has not yet applied. His deadline  
17 -- his one-year filing deadline will be March 12, 2019.

18           Today one -- there's eight letters, Your Honor,  
19 from people in the Nashua community supporting his case.

20           In addition, [REDACTED] (phonetic), who's a U.S.  
21 citizen, is here in the courtroom today who's a resident  
22 of Canton, Massachusetts, she's here in support of his  
23 case. She had met him in 2014 in the Dominican Republic  
24 on a mission trip, where he helped her and they're good

1 friends.

2 So, despite a short time in the U.S., Your Honor,  
3 he does have strong community ties to the Nashua, New  
4 Hampshire area.

5 THE COURT: Was he living in the Dominican  
6 Republic?

7 MS. CHAPUT: I believe that he has traveled into  
8 the Dominican Republic on regular occasions --

9 THE COURT: Okay --

10 MS. CHAPUT: -- but I'm not --

11 THE COURT: Does he -- does he have any type of  
12 papers or permission to live in the Dominican Republic?

13 MS. CHAPUT: He does not, Your Honor.

14 THE COURT: So, is he working in the Dominican  
15 Republic as well?

16 MS. CHAPUT: I can ask him. I don't want to make a  
17 proffer on something I haven't discussed earlier with him.

18 THE COURT: All right. If you don't know, that's  
19 fine.

20 MS. CHAPUT: All right, Your Honor.

21 So, Your Honor, I would argue that my client is not  
22 a flight risk. That he's not a danger to the community.  
23 That, you know, he's a personal good moral character  
24 besides this contact with immigration -- or, I'm sorry,



In RE: Jackie Celicort

Hearing  
February 07, 2019

10

1 with the police. And we would ask, Your Honor, that a  
2 minimum bond be set in this matter.

3 THE COURT: Thank you. DHS?

4 MS. DIORIO: Your Honor, in regard to  
5 (indiscernible) this issue with the police. I  
6 specifically note that it's not (indiscernible) specific  
7 offense, because (indiscernible). Or it does not  
8 undermine the fact that the respondent does actually have  
9 (indiscernible) the respondent alleges and this issue with  
10 the police report state that he didn't give them to the  
11 police officer, but he intended to steal the headphones in  
12 question, the fact remains that there is a conviction for  
13 this crime.

14 Additionally, the police report does  
15 (indiscernible) specifically that parts of the package had  
16 been placed back on the shelf. It doesn't mention  
17 anything about the respondent wandering around for an hour  
18 using the headphones as (indiscernible) to the Court.

19 Because of this, Your Honor, the fact that it was  
20 (indiscernible), we'd request that the bond  
21 (indiscernible).

22 THE COURT: Ms. Chaput, do you have any indication  
23 of a fixed address here?

24 MS. CHAPUT: Yes, Your Honor. I have the address

1 that he's been living at here.

2 THE COURT: Do you have a lease or any utility  
3 bills or anything like that?

4 MS. CHAPUT: I don't. I do have, you know, the  
5 witnesses that are here today could certainly testify to  
6 his fixed address in Nashua, New Hampshire. They've known  
7 him for the last eight months and they visit him  
8 regularly. His address is [REDACTED] in  
9 Nashua, but I don't have a lease.

10 THE COURT: All right. Anything further from  
11 either party?

12 MS. DiORIO: No, Your Honor.

13 MS. CHAPUT: No, Your Honor.

14 THE COURT: Okay. So, the Court is confronted with  
15 an individual who recently overstayed his visa less than a  
16 year ago. So, that's one flight risk factor against him.  
17 He also worked without employment authorization. So, he's  
18 not following the laws here. Additionally, while the  
19 respondent disputes that he was actually stealing,  
20 ultimately I am duty bound to give full faith and credit  
21 to the respondent's unauthorized taking conviction out of  
22 New Hampshire, which appears to be a crime involving moral  
23 turpitude.

24 So, based on those factors, I find he's failed to

In RE: Jackie Celicort

Hearing  
February 07, 2019

12

1 prove he's not a danger to property or a flight risk.

2 Ms. Chaput, did you wish to reserve appeal?

3 MS. CHAPUT: Yes, Your Honor.

4 THE COURT: All right. That appeal would be due no  
5 later than March 11, 2019.

6 To the respondent through the Haitian Creole  
7 interpreter: Sir, I have denied your bond request.

8 Your attorney, however, has reserved your absolute  
9 right to appeal.

10 Any appeal would be due no later than March 11,  
11 2019.

12 Understand?

13 All right. With that, a bond order will issue. We  
14 stand adjourned in bond proceedings.

15

16 (Court recessed.)

17

18

19

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21

22

23

24

In RE: Jackie Celicort

Hearing  
February 07, 2019

13

C E R T I F I C A T I O N

I, MARY INDOMENICO, AN APPROVED COURT TRANSCRIBER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE AUDIO RECORDING PROVIDED TO ME BY THE OFFICE OF MINTZ LEVIN, IN THE PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

I, MARY INDOMENICO, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT DIRECTIVE ON TRANSCRIPT FORMAT.

I, MARY INDOMENICO, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

\_\_\_\_\_  
Mary C. Indomenico

\_\_\_\_\_  
June 12, 2019

\_\_\_\_\_  
212 Highland Avenue, East Longmeadow, MA 01028

\_\_\_\_\_  
413-746-1778

\_\_\_\_\_  
perfectinprint@aol.com

# Exhibit N

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
BOSTON, MA

FILE: [REDACTED]

IN THE MATTER OF:

CELICOURT, JACKY

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE  
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

ORDERED that the request for a change in custody status be denied.

ORDERED that the request be granted and that respondent be:

released from custody on his own recognizance

released from custody under bond of \$ \_\_\_\_\_

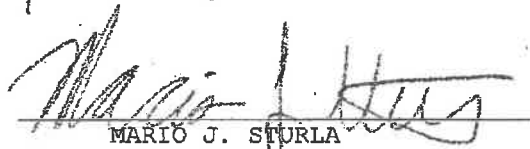
OTHER No bond

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived - (reserved ~~by~~ by the respondent, due 3/11/2019)

BOSTON -- BOSTON DETAINED

Date: Feb. 7, 2019

  
MARIO J. STURLA  
Immigration Judge

XS

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Gilberto Pereira Brito, Florentin Avila Lucas, and Jacky Celicourt, individually and on behalf of all those similarly situated

(b) County of Residence of First Listed Plaintiff Plymouth (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Susan M. Finegan, Mintz Levin, One Financial Center, Boston, MA, 617-542-6000

DEFENDANTS

William Barr, Attorney General, et al.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC 2241
Brief description of cause: Unlawful immigration detention under 8 USC 1226(a) where alien required to bear burden of proof in bond hearing

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Chief Judge Patti B. Saris DOCKET NUMBER 18-cv-10475-PBS

DATE 06/12/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Susan M. Finegan

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**JS44 (Continuation page)**

**VIII. Additional Related Cases**

Judge: Chief Judge Patti B. Saris

Docket Number: 18-cv-12600

Judge: Chief Judge Patti B. Saris

Docket Number: 18-cv-12266

Judge: Chief Judge Patti B. Saris

Docket Number: 18-cv-10097



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Gilberto Pereira Brito et al. v. William Barr, Attorney General, et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830\*, 835\*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820\*, 840\*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

Pensamiento v. McDonald, 18-cv-10475-PBS, and also 18-cv-12600-PBS, 18-cv-12266-PBS, and 18-cv-10097-PBS

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES  NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Susan M. Finegan

ADDRESS Mintz Levin, One Financial Center, Boston MA 02111

TELEPHONE NO. 617-542-6000