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**Edgar SOLANO**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
LOS ANGELES, CALIFORNIA**

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In the Matter of:

Edgar SOLANO CONTRERAS,

Respondent,

In Removal Proceedings.

No. [REDACTED]

Hearing date: March 4, 2020

Hearing time: 9:00 A.M.

Before: Hon. Sebastian T. Patti

Courtroom: 14C

**AMENDED MOTION TO TERMINATE PROCEEDINGS  
OR, IN THE ALTERNATIVE, SUPPRESS EVIDENCE**



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**INTRODUCTION**

Respondent Edgar Solano, by and through counsel, hereby moves to terminate these proceedings or, in the alternative, suppress evidence because Customs and Border Protection (CBP) officials arrested him in violation of controlling regulations and the United States Constitution.

Mr. Solano first filed a motion to terminate these proceedings on July 17, 2018. On September 19, 2018, the Ninth Circuit issued an opinion clarifying the proper standard for immigration courts considering motions to terminate proceedings and/or suppress evidence for regulatory violations. *Sanchez v. Sessions*, 904 F.3d 643, 652 (9th Cir. 2018) [hereinafter *Sanchez II*]. In light of the new opinion, Mr. Solano files this amended motion to terminate proceedings, or in the alternative suppress evidence. The Department has not yet filed an opposition to Mr. Solano's motion nor introduced any evidence in this matter (including Mr. Solano's I-213).

## STATEMENT OF FACTS

Mr. Solano is a resident of Los Angeles, where he works as a property manager and a handyman. Declaration of Edgar Solano ¶ 2. He has developed a network of clients across southern California, and at times travels within the region to provide services at his clients' residences. *Id.* On January 11, 2018, Mr. Solano agreed to help a client at a property in Indio. *Id.* ¶ 3. Because his car was out of order, Mr. Solano took a Greyhound bus from Los Angeles to Indio, and then an Uber to the jobsite. *Id.*

When he finished work in the evening, Mr. Solano returned to the Greyhound station. *Id.* He intended to take the 9:25 p.m. bus back to Los Angeles—the last bus of the day—but the bus was delayed. *Id.* He waited at the station. *Id.* ¶¶ 4-5

Over an hour after the bus's scheduled departure time, as Mr. Solano stood in line to finally board, two men in plain clothes approached him and asked him to state his name and where he lives. *Id.* ¶ 5. Mr. Solano gave his name and answered that he lives in Los Angeles. *Id.* Next, the men asked Mr. Solano to step out of the line and show his identification. *Id.* As the line was advancing and this was his last opportunity to board a bus home for the evening, Mr. Solano replied that he would rather not. *Id.* He attempted to show the men his ticket, which was on his cell phone, and insisted that he needed to board. *Id.*

One of the men—who is Latino—ordered Mr. Solano to step out of the line. *Id.* ¶ 6. He then took Mr. Solano by the upper arm and steered him away from the bus toward an unmarked pickup truck in the parking lot. *Id.* Mr. Solano felt he had no choice but to walk with the man who had ordered him to step aside and taken him by the arm. *Id.* As Mr. Solano and the men walked away from the bus toward the pickup truck, one of the men indicated to the bus driver that he could drive away—and indeed, as soon as the bus finished boarding, it left the station. *Id.*

When Mr. Solano and the two men reached the pickup truck, one of the men instructed him to turn around and handcuffed him. *Id.* Once Mr. Solano was cuffed, the men told him that they are immigration enforcement agents and showed badges reading “Customs and Border Protection.” *Id.* ¶ 7.

After he was handcuffed, the officers asked Mr. Solano questions. *Id.* ¶ 8. They asked again for his identification, and he said he had none with him because he had left his license in his car in Los Angeles. *Id.* They asked for his country of origin and if he has papers authorizing his presence in the United States. *Id.* ¶ 9. When they asked about his travel that day, Mr. Solano described how he got from Los Angeles to the jobsite and back to the station. *Id.* One of the officers indicated he did not believe Mr. Solano: he told him not to lie, and to admit that he had just recently crossed the border. *Id.* Mr. Solano insisted this was not true and reiterated that he could prove he had a ticket if he could show the officers his telephone. *Id.* The officers asked him how he paid for the ticket, and Mr. Solano replied that he had used his credit card. *Id.*

Next, the Latino officer turned to the other and made a comment about Mr. Solano’s shoes looking suspicious. *Id.* ¶ 10. Mr. Solano was surprised: although one of his shoes was untied, there was nothing unusual about his attire. *Id.* He had simply changed from his work clothing back into his everyday street clothing to make the trip home. *Id.*

The officers asked Mr. Solano several more questions about his background, including how long he had been in the United States, his marital status, whether he has children, and whether he has a criminal history. *Id.* ¶ 11. Mr. Solano answered these questions truthfully. *Id.* The officers then asked why Mr. Solano did not run into the station when he saw the men approach. *Id.* ¶ 12. Mr. Solano replied that he wanted to make sure he could take the last bus home, and further, that he had no reason to fear the two men. *Id.*

Finally, the men made a few calls on their radios and ordered Mr. Solano to board the pickup truck. *Id.* ¶ 13. They told Mr. Solano he was under arrest for being the United States without authorization. *Id.* They drove Mr. Solano to a nearby Border Patrol station, where he spent the night. *Id.* The following morning, agents from Immigration and Customs Enforcement took custody of Mr. Solano and drove him to the San Bernardino field station, and from there to the Adelanto Detention Facility. *Id.* ¶ 15.

Mr. Solano spent more than two months in detention, separated from his partner and his two stepdaughters. *Id.* ¶ 17. Because Mr. Solano is the principal provider for his family, they experienced hardship while he was away: they fell behind on car and insurance payments and lost their vehicle, and Mr. Solano feared they would go hungry and lose utilities for failure to pay the bills. *Id.*

On March 19, 2018 Mr. Solano had a bond hearing and was granted a \$5,000 bond. *Id.* ¶ 16. After raising funds from his friends, family, and employers, Mr. Solano paid the bond and was released, subject to ankle monitoring, on March 30, 2018. *Id.*

### **SUMMARY OF ARGUMENT**

Mr. Solano respectfully moves for termination of these proceedings or, in the alternative, for suppression of any unlawfully obtained evidence against him (including but not limited to any Record of Inadmissible/Deportable Alien, Form I-213, that the Department may seek to introduce in this case). CBP officers detained Mr. Solano without individualized reasonable suspicion to believe he was a noncitizen subject to removal from the United States, in violation of 8 C.F.R. § 287.8(b)-(c) and the Fourth Amendment to the United States Constitution. The Ninth Circuit has established that courts must suppress evidence if it was obtained in violation of 8 CFR 287.8(b)(2), and they must terminate proceedings if the violation of the person's statutory and constitutional

rights was egregious. *Sanchez II*, 904 F.3d at 651–52. For these reasons—and because the Department has not yet introduced *any* evidence of alienage, much less clear and convincing admissible evidence—this Court should grant Mr. Solano’s motion to terminate.

## ARGUMENT

### I. CBP Detained Mr. Solano Without Reasonable Suspicion.

Mr. Solano’s detention was in violation of governing regulations, statute, and the Fourth Amendment to the Constitution. The Code of Federal Regulations sets out the rules that “*must* be adhered to by every immigration officer involved in enforcement activities.” 8 C.F.R. 287.8 (emphasis added). As relevant here, immigration officers may only “briefly detain [a] person for questioning” if they have “reasonable suspicion, based on specific articulable facts, that the person being questioned” is a noncitizen without authorization to remain in the United States. 8 C.F.R. 287.8(b). Absent such suspicion, an official may only question an individual so long as that person knows that he or she is free to leave. *See Enhancing the Enforcement Authority of Immigration Officers*, 59 FR 42406, 42411, 59 FR 42406-01, 42411; *see also* 59 Fed. Reg. 42406, 42411 (Aug. 17, 1994) (“[Q]uestioning must not lead the person being questioned to believe that he or she is not free to leave the presence of the officer.”); *I.N.S. v. Delgado*, 466 U.S. 210 216-17 (1984). This standard mirrors the Fourth Amendment to the Constitution. *See, e.g., Orhorhaghe v. INS*, 38 F.3d 488, 494 (9th Cir. 1994).

A person’s race or ethnicity cannot provide reasonable suspicion to stop and detain them. “Hispanic-looking appearance and presence in an area where [noncitizens without status] frequently travel are not enough to justify a stop to interrogate the occupants of a vehicle. More is required.” *Nicacio v. U.S. I.N.S.*, 797 F.2d 700, 703 (9th Cir. 1985), *overruled in part on other grounds by Hodgers–Durgin v. de la Vina*, 199 F.3d 1037, 1045 (9th Cir.1999) (en banc); *see also Sanchez II*, 904 F.3d at 656 (“It is beyond question that detentions and interrogations based on



racial or ethnic profiling and stereotyping egregiously violate § 287.8(b)(2)'s requirement that all detentions be based on reasonable suspicion.”); *Manzo–Jurado*, 457 F.3d at 935 (individuals’ appearance as a Hispanic work crew, inability to speak English, proximity to the border, and unsuspicious behavior, taken together, did not provide a federal immigration officer reasonable suspicion to conduct a stop); *Orhorhaghe*, 38 F.3d at 494 (“[A]llowing INS agents to seize and interrogate an individual simply because of his foreign-sounding name *or* his foreign-looking appearance risks allowing race or national-origin to determine who will and who will not be investigated.”).

At the time Mr. Solano was arrested, CBP agents lacked reasonable suspicion to believe he was a noncitizen subject to removal—indeed, they knew nothing about him other than his name and appearance. *See* Declaration of Edgar Solano ¶¶ 5-6. CBP detained Mr. Solano while he was waiting to board a Greyhound bus from Indio, where he had completed a job, back to his home in Los Angeles. *Id.* ¶¶ 4-5. The CBP agents asked Mr. Solano to step out of line, despite his protestations that he wanted to board and would otherwise be unable to get home, seized him by the arm, walked him to a pickup truck, and placed him in handcuffs—without knowing anything about him but his name and that he appeared to be of Latino ethnicity. *Id.* ¶¶ 5-6. Then, agents indicated to the bus driver that he could drive away. *Id.* ¶ 7.

Mr. Solano did not feel free to leave, *id.* ¶ 6, nor was he. The officers’ actions, words, and demeanor “communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *Orhorhaghe*, 38 F.3d at 494 (relevant factors include whether a person’s path is blocked and whether officers act in an authoritative manner); *cf.* *Manzo–Jurado*, 457 F.3d at 934 n.3 (order requiring subject to “show hands” constituted detention). The fact that officers handcuffed Mr. Solano, Declaration of Edgar Solano ¶ 7, alone establishes that he was

detained. *United States v. Juvenile (RRA-A)*, 229 F.3d 737, 743 (9th Cir. 2000) (“[H]andcuffing was the clearest indication that [juvenile] was no longer free to leave and therefore [found] to be the point of arrest.”); *United States v. Bravo*, 295 F.3d 1002 (9th Cir. 2002) (handcuffed individual was detained). In addition, the officers made clear that Mr. Solano was not “free to leave” by demanding that he step out of line, taking him by the arm and escorting him to their vehicle, and permitting the bus to depart, Declaration of Edgar Solano ¶¶ 5-7. See *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (“Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, *some physical touching of the person of the citizen*, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.”) (emphasis added)).

The CBP agents who detained Mr. Solano knew nothing about him other than his name and his apparent ethnicity. See Declaration of Edgar Solano ¶¶ 5-6. It was only after he was seized and handcuffed that agents asked Mr. Solano questions that might have given rise to reasonable suspicion that he was in the country without authorization. *Id.* ¶¶ 7-12. Mr. Solano had no prior contact with immigration authorities, *id.* ¶ 14, and the officers had no other information from which reasonable suspicion might arise, *id.* ¶¶ 5-6. Indeed, when Mr. Solano asked why he had been singled out, agents told him it was because of his shoes, rather than because agents had any information about him in particular. *Id.* ¶ 10. This was insufficient to provide reasonable suspicion that Mr. Solano was a noncitizen subject to removal, 8 C.F.R. § 287.8(b)(1). CBP’s conduct was contrary to governing regulations, statute, and the Fourth Amendment.



## **II. The Court Should Suppress Evidence Obtained as a Result of Mr. Solano's Unlawful Detention.**

The Ninth Circuit recently reiterated that, “[f]or nearly four decades, it has been the law in our circuit that evidence may be excluded for a regulatory violation as long as three conditions are satisfied: (1) the agency violated one of its regulations; (2) the subject regulation serves a ‘purpose of benefit to the alien’; and (3) the violation ‘prejudiced interests of the alien which were protected by the regulation.’” *Sanchez II*, 904 F.3d at 650 (quoting *Matter of Garcia-Flores*, 17 I. & N. Dec. 325, 328 (BIA 1980)). *Sanchez II* further held that the regulation at issue in this case—8 C.F.R. 287.8(b)(2)—and the Fourth Amendment standard it reflects “are undoubtedly for the benefit of petitioners” like Mr. Mondragon. *Id.* at 652. Finally, *Sanchez II* held that “where, as here, ‘compliance with the regulation is mandated by the Constitution, prejudice may be presumed.’” *Id.* (quoting *Garcia-Flores*, 17 I. & N. Dec. at 328).

As established above, the Department violated one of its regulations because the CBP agents who detained Mr. Solano did so without reasonable suspicion. Because, as a matter of law, this regulation serves a purpose of benefit to Mr. Solano and prejudice may be presumed, Mr. Solano has established a prima facie case for suppression of the I-213 the government may seek to introduce in this case, as well as any evidence derived from CBP’s violation. DHS has yet to introduce *any* evidence—let alone demonstrate that any evidence is untainted by the violation. Therefore, suppression is appropriate, and this Court should terminate proceedings because DHS has failed to carry its burden to show alienage.

## **III. Because the Violation of Mr. Solano's Rights Was Egregious, the Court Should Terminate These Proceedings.**

In *Sanchez II*, the Ninth Circuit clarified that “a petitioner is entitled to termination of their proceedings without prejudice as long as the following requirements are satisfied: (1) the agency violated a regulation; (2) the regulation was promulgated for the benefit of petitioners; and (3) the

violation was egregious, meaning that it involved conscience-shocking conduct, deprived the petitioner of fundamental rights, or prejudiced the petitioner.” 904 F.3d at 655. As above, Mr. Solano has established that CBP violated an agency regulation that, per *Sanchez II*, was promulgated for the benefit of petitioners like him.

The CBP officers committed an egregious violation of Mr. Solano’s constitutional rights when they detained him on the basis of his Latino appearance. “[R]ace and ethnicity alone can never serve as the basis for reasonable suspicion.” *Sanchez II*, 904 F.3d at 656; *accord Gonzales-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994). As described in detail in Part I, *supra*, the CBP officers who detained Mr. Solano knew nothing about him other than his name, his apparent ethnicity, and that he intended to board a Greyhound bus. *See generally* Declaration of Edgar Solano ¶¶ 5-12. In *Sanchez II*, the Ninth Circuit found it persuasive that Mr. Sanchez, whose arrest followed a Coast Guard rescue operation of his vessel in the ocean, was “*immediately* detained and met by a number of Coast Guard officers once they returned to the Channel Island Harbor.” 904 F.3d at 650 (emphasis in original). The Court continued: “the officers could not have reasonably suspected Sanchez was unlawfully present in this country . . . because they detained him and called CBP *before* they asked for identification and obtained Sanchez’s driver’s license.” *Id.* (emphasis in original). The same is true here: CBP officers took Mr. Solano out of the line to board his bus, despite his protestations, and detained him for questioning before learning anything about him that might properly give rise to reasonable suspicion—knowing only that he is a Latino man. *See* Declaration of Edgar Solano ¶¶ 5-12.

In *Sanchez II*, the court concluded the petitioner made a *prima facie* case that “the Coast Guard officers’ violation of § 287.8(b)(2) was conscience-shocking and therefore egregious. . . .

[W]e agree with Sanchez that the record indicates that the Coast Guard detained him on the basis of his Latino appearance.” *Id.* at 655. The court continued:

It is beyond question that detentions and interrogations based on racial or ethnic profiling and stereotyping egregiously violate § 287.8(b)(2)’s requirement that all detentions be based on reasonable suspicion. *See, e.g., Maldonado v. Holder*, 763 F.3d 155, 159 (2d Cir. 2014) (explaining that a seizure “may nevertheless qualify as an egregious violation if the stop was based on race (or some other grossly improper consideration)” (quoting *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 235 (2d Cir. 2006) ) ). “[W]e have long regarded racial oppression as one of the most serious threats to our notion of fundamental fairness and consider reliance on the use of race or ethnicity as a shorthand for likely illegal conduct to be ‘repugnant under any circumstances.’ ” *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1449 (9th Cir. 1994) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 571 n.1, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) ). “[D]iscrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 521, 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (Scalia, J., concurring). When the Government ignores this country’s commitment to equality and fairness by engaging in racial and ethnic profiling, it betrays all of its people—citizens, lawful permanent residents, visitors, and migrants alike who live within its borders.

*Id.* at 656. The violation of Mr. Solano’s rights, grounded in racial profiling, was similarly “grotesque” and “patently unlawful,” *id.* Termination is warranted.

Any alternative rationale the Department may offer to justify Mr. Solano’s arrest—and to date they have offered none—must also comply with the Constitution. A violation is egregious if the officer’s conduct was deliberate or if a reasonable officer should have known that conduct was unconstitutional. *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1018 (9th Cir. 2008). In the Ninth Circuit, it is clearly established that officers “cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law-abiding population.” *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (2006). A potential defense based on Mr. Solano’s choice of footwear would almost certainly rely broad generalizations that fall afoul of *Manzo-Jurado*.

Finally, in the alternative, Mr. Solano can demonstrate that this violation caused him prejudice because the Department had no evidence on which to base proceedings not obtained


from his unlawful arrest. Had he not been unlawfully seized by the CBP officer, Mr. Solano would have boarded the Greyhound bus as he intended and continued with his day, rather than spending six weeks in detention to the detriment of his family and fighting these removal proceedings.

\* \* \*

For the foregoing reasons, Mr. Solano respectfully requests that the Court terminate these proceedings.

Dated: February 18, 2020

Respectfully submitted,



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Attorneys for Mr. Solano