CILA Compilation of Suppression and Termination Caselaw

Select Fifth Circuit Cases, Select BIA Cases and Helpful Tools[1]

April 15, 2019

[1] This is not an exhaustive compilation of cases. It is intended to serve as a starting point for research on termination and suppression issues in removal proceedings. Requests for technical assistance on individual cases can be submitted via CILA's online form at http://www.cilacademy.org/request-assistance/.

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Select Fifth Circuit Court of Appeals Suppression and Termination Cases

Egregiousness & Reasonable Suspicion

Case Name/Citation	Holding/Result	Key Language[2]
Rios-Arias v. Sessions, 684 Fed.Appx. 441 (Mem) (5th Cir. 2017) (unpublished) (per curiam)	Denying petition for review of BIA decision affirming denial of motion to suppress I-213 allegedly containing information obtained as a result of egregious violations of Fourth Amendment rights.	The Fourth Amendment's exclusionary rule does not generally apply to civil removal proceedings, though the Supreme Court has left open the possibility that it might apply to egregious violations. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984). Rios-Arias asserts that the agents violated his constitutional rights by entering his apartment without consent; conducting an unlawful search; coercing him into signing a consent to search form; unlawfully detaining him; and unlawfully arresting him without explanation. However, substantial evidence supports the IJ's and BIA's finding that Rios-Arias and his wife voluntarily consented to allow the agents to enter their apartment and conduct a search. *See Carbajal-Gonzalez*, 78 F.3d at 197. Alternatively, even assuming both that a Fourth Amendment violation occurred and that an egregious violation would warrant exclusion in civil removal proceedings, Rios-Arias has not shown that the BIA and IJ erred in finding that the conduct of the immigration agents was not egregious in this case. *See Lopez-Mendoza*, 468 U.S. at 1050-51, 104 S.Ct. 3479; see also *Rochin v. California*, 342 U.S. 165, 166-67, 72 S.Ct. 205, 96 L.Ed. 183 (1952). In addition, we have held that violations of the Code of Federal Regulations relied on by *Rios-Arias* do not create any enforceable rights or remedies. *See 8 C.F.R. § 287.12; Ali v. Gonzales*, 440 F.3d 678, 682 (5th Cir. 2006). Although Rios-Arias challenged the voluntariness of the search of his apartment, he did not challenge the accuracy of the alienage and immigration status information contained in the Form I-213. In fact, he invoked the Fifth Amendment when the Government attempted to question him about the statements concerning his alienage and immigration status. Because the decisions of the IJ and the BIA were based on Rios-Arias's alienage and immigration status information, which Rios-Arias has not shown was inaccurate, there is no merit to his argument that the form was inadmissible and insufficient to prove his alienage and immigration status. *See Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988). In addition, there is no merit to his argument that the IJ violated his due process rights by not allowing him to cross-examine the officers in regard to the statements contained in the Form I-213 or abused his discretion by refusing to subpoena the officers. *See Bustos-Torres v. INS*, 898 F.2d 1053, 1055-56 (5th Cir. 1990). Finally, Rios-Arias's assertion that the BIA abused its discretion and violated his due process rights by failing to consider his argument that the Form I-213 was insufficient to sustain the burden of proof of showing his alienage, is without merit; the BIA ruled that the burden of proof had been met, and the BIA is not required to "address evidentiary minutiae or write any lengthy exegesis." *Abdel-Masieh v. INS*, 73 F.3d 579, 585 (5th Cir. 1996). Accordingly, the petition for review is DENIED.
United States v. Hernandez-Mandujano, 721 F.3d 345 (5th Cir. 2013) (per curiam), *cert.*	Border Patrol agents lacked reasonable suspicion of illegal activity when they stopped motorist, but motorist's admission	Although we have found the agents clearly violated the Fourth Amendment in stopping Hernandez, our inquiry does not end here, for we must further ask whether we may grant his motion to dismiss. We note that we may affirm the district court's denial of a motion to suppress on any basis established in the record. *United States v. Aguirre*, 664 F.3d 606, 610 (5th Cir.2011), *cert. denied* —— U.S. ——, 132

[2] "Key Language" section includes verbatim excerpts from opinions only (no re-wording). In some instances and as noted, citations to footnotes have been omitted.

denied 134 S. Ct. 2134 (2014)	that he was a Mexican citizen unlawfully present in the U.S. was not suppressible (*but see* special concurring opinion by Judge Jolly, indicating that Court of Appeals has misapplied the Supreme Court's holding in *I.N.S. v. Lopez–Mendoza)*.	S.Ct. 1949, 182 L.Ed.2d 803 (2012). When the agents illegally stopped Hernandez, he admitted that he was a Mexican citizen unlawfully present in the United States. This evidence led to and is the basis of Hernandez's conviction and 33–month incarceration. This evidence is also what Hernandez now seeks to suppress. This Court, however, has previously held that an alien's INS file and even his identity itself are not suppressible. *Roque–Villanueva*, 175 F.3d at 346. In *Roque–Villanueva*, federal authorities learned of a deported alien's unlawful reentry after an allegedly unconstitutional stop. *Id.* In reviewing the alien's motion to suppress all evidence derived from the stop, this Court concluded neither his identity nor his INS file could be suppressed and affirmed the district court's denial of the defendant's motion. *Id.* Accordingly, we are bound by precedent and affirm the denial of Hernandez's motion to suppress. The judgment of the district court is, therefore, AFFIRMED.
Santos v. Holder, 506 Fed.Appx. 263 (5th Cir. 2013) (unpublished) (per curiam)	Denying petition for review of BIA decision affirming denial of motion to suppress asserting that immigration agents' conduct constituted an egregious violation of the Fourth Amendment.	The Fourth Amendment's exclusionary rule does not generally apply to civil removal proceedings, though the Supreme Court has left open the possibility that it might apply to egregious violations. *INS v. Lopez–Mendoza,* 468 U.S. 1032, 1050–51, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984). The Petitioners assert that the agents violated the Fourth Amendment in this case because Saul's consent to the search of his apartment was involuntary and/or limited in scope. However, substantial evidence supports the IJ's and BIA's finding that Saul voluntarily consented to a search of the apartment, as well as the finding that his consent was unlimited in scope. *See Carbajal–Gonzalez,* 78 F.3d at 197. Alternatively, even assuming both that a Fourth Amendment violation occurred and that an egregious violation would warrant exclusion in civil removal proceedings, the Petitioners have not shown that the BIA and IJ erred in finding that the conduct of the immigration agents was not egregious in this case. *See Lopez–Mendoza,* 468 U.S. at 1050–51, 104 S.Ct. 3479; *see also Rochin v. California,* 342 U.S. 165, 166–67, 72 S.Ct. 205, 96 L.Ed. 183 (1952). Although the Petitioners assert that racial profiling is per se egregious conduct that warrants suppression, we do not address the issue as the BIA found that the immigration agents did not engage in racial or ethnic profiling in the instant case, and substantial evidence supports that finding. *See Carbajal–Gonzalez,* 78 F.3d at 197. The Petitioners' Fifth Amendment claim is similarly unavailing. They argue that the immigration agents in this case violated due process by failing to comply with their own regulations, specifically, 8 C.F.R. § 287.8(f)(2). Their conclusional assertion notwithstanding, the record establishes that the agents in fact complied with § 287.8(f)(2) by obtaining consent for their search from Saul prior to entry. The BIA additionally concluded that the agents acted in compliance with § 287.8(b)(2), which authorized them to briefly detain a person for questioning if a reasonable suspicion of an immigration violation arises, and the Petitioners have waived any challenge to that finding by failing to brief it. *See Thuri v. Ashcroft,* 380 F.3d 788, 793 (5th Cir.2004). Because the Petitioners have not shown a regulatory violation, the due process claim fails.
Torres-Hernandez v. Holder,	Denying petition for review of BIA decision affirming denial of motion to suppress I-213 containing information allegedly	The BIA and IJ did not err in denying Torres–Hernandez's motion to suppress. Even if she had shown a constitutional violation, the airport immigration agent obtained only her identity from her Texas identification card, and her identity is not suppressible. *See INS v. Lopez–Mendoza*, 468 U.S. 1032, 1038–39, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984). Further, Torres–Hernandez's alienage and immigration status

482 Fed.Appx. 931 (5th Cir. 2012) (unpublished) (per curiam)	obtained as result of immigration agents' egregious violation of Fourth and Fifth Amendment rights.	were not suppressible as this information was obtained through an independent search of the Traveler Enforcement Compliance System (TECS) after immigration agents learned her identity. *See id*. at 1043, 104 S.Ct. 3479; *United States v. Herrera–Ochoa*, 245 F.3d 495, 498 & n. 4 (5th Cir.2001); *United States v. Roque–Villanueva*, 175 F.3d 345, 346 (5th Cir.1999). Further, the BIA and IJ did not err in finding that the conduct of the immigration agents was not egregious. *See Lopez–Mendoza*, 468 U.S. at 1050–51, 104 S.Ct. 3479; *Gonzalez–Reyes v. Holder*, 313 Fed.Appx. 690, 692–95 (5th Cir.2009) (affirming denial of motion to suppress by 14–year–old unaccompanied alien who alleged that he answered questions because he was fearful and confused; officer was irritated and angry; he was made to sign papers he did not understand; and if he had known he could remain silent, he would have done so and called his mother). Torres–Hernandez has not shown that the BIA improperly made fact findings or substituted its judgment for that of the IJ concerning the voluntariness of her actions or statements. Neither the IJ nor the BIA based their decisions on the voluntariness of Torres–Hernandez's actions and statements. The BIA considered Torres–Hernandez's testimony that the airport immigration agent "took" her Texas identification card and reasonably inferred that the agent learned her identity from her identification card. The BIA found that the record reflected that agents confirmed Torres–Hernandez was an illegal alien through a search of the TECS. The BIA did not make any improper fact findings that were inconsistent with the IJ's fact findings or unsupported by the record. Torres–Hernandez argues that the form was inadmissible in the absence of the testimony of the maker because she challenged the accuracy of the form and argued that the information was obtained under coercion or duress. The IJ considered and rejected her argument, finding that the form was admissible because she testified that she answered the questions truthfully and because her testimony did not establish that the information in the form was inaccurate. The IJ and BIA found there were no egregious circumstances and implicitly found that her statements were not obtained under coercion or duress. Although Torres–Hernandez challenged the voluntariness of her actions and statements, she did not challenge the accuracy of the alienage and immigration status information in the form. Because the decisions of the IJ and the BIA were based on her alienage and immigration status which she did not show was inaccurate, she has not shown that the IJ and BIA erred in finding that the form was admissible to prove her alienage and immigration status. *See, e.g., Matter of Barcenas*, 19 I & N Dec. 609, 611, 1988 WL 235448 (BIA 1988).
United States v. Olivares-Pacheco, 633 F.3d 399 (5th Cir. 2011)	Border Patrol agents did not have reasonable suspicion to stop truck	"To temporarily detain a vehicle for investigatory purposes, a Border Patrol agent on roving patrol must be aware of specific articulable facts together with the rational inferences from those facts, that warrant a reasonable suspicion that the vehicle is involved in illegal activities, such as transporting undocumented immigrants." "[T]he stop and inquiry must be reasonably related in scope to the justification for their initiation. The officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause." Because Olivares–Pacheco admitted his immigration status before any prolongation of the detention, we review only whether the agents had reasonable suspicion (to make the stop, not whether there was probable cause for any prolongation of the detention. "The reasonable suspicion analysis is a fact-intensive test in which the

		court looks at all circumstances together to weigh not the individual layers, but the laminated total." "Factors that ordinarily constitute innocent behavior may provide a composite picture sufficient to raise reasonable suspicion in the minds of experienced officers." We have emphasized that eight factors predominate in this sort of stop: (1) the area's proximity to the border; (2) the characteristics of the area; (3) usual traffic patterns; (4) the agents' experience in detecting illegal activity; (5) the driver's behavior; (6) the aspects or characteristics of the vehicle; (7) information about recent illegal trafficking of aliens or narcotics in the area; and (8) the number of passengers and their appearance and behavior. (citations omitted) **Note: Decision includes helpful review of cases in which the Fifth Circuit has found reasonable suspicion, as well as cases in which the court has found a lack thereof. Compare with reasoning in *United States v. Cervantes*, 797 F.3d 326 (5th Cir. 2015).**
Escobar v. Holder, 398 Fed.Appx. 50 (5th Cir. 2010) (unpublished) (per curiam)	*Inter alia*, occupant's consent was effective; agents had reasonable suspicion to search; and agents had reasonable suspicion to seize petitioners.	The Natarens contend that because Acosta was their landlord, his consent was invalid under *Chapman v. United States.* In that case, the Supreme Court held that a landlord who owned but did not live in a property, and who possessed limited rights of access, could not consent to a police search of the home. As in the instant case, however, the Court has made clear that an individual also living at a property can consent to a search on behalf of a cotenant not currently objecting. There is no reason that a financial relationship between roommates should limit this power to consent. Indeed, this exception is sufficiently broad to allow Acosta to provide consent even if he had not actually lived in the home, but merely reasonably appeared to the officers to be an occupant. Since a reasonable appearance of cotenancy is sufficient for consent, there is no reason that receiving rent from an actual cotenant should render Acosta's consent defective. The Natarens also argue that the purported entrance of other agents prior to Acosta's consent requires suppression of all evidence from the raid. The immigration judge and the BIA found that there was insufficient evidence of such an entrance, and the record does not compel a contrary view. Moreover, we note that Acosta's effective consent cures any defect through the inevitable discovery exception to the exclusionary rule. Where evidence would be discovered through an alternative process, unrelated to a purported violation, the Supreme Court has held that the evidence may be admitted. Here, even accepting the Natarens' factual account, the agents entering with consent were only moments behind the agents entering without consent and Acosta, unaware of their presence, would have admitted the others regardless. Thus, there are no grounds for application of the exclusionary rule. (citations omitted)
United States v. Rangel-Portillo, 586 F.3d 376 (5th Cir. 2009)	Under the totality of the circumstances, the agent's stop of defendant's vehicle was without reasonable suspicion, despite the proximity of the stop to the border and the fact that it was conducted in an area known for drug or illegal alien smuggling.	"To temporarily detain a vehicle for investigatory purposes, a Border Patrol agent on roving patrol must be aware of 'specific articulable facts' together with rational inferences from those facts, that warrant a reasonable suspicion that the vehicle is involved in illegal activities, such as transporting undocumented immigrants." *United States v. Chavez-Chavez,* 205 F.3d 145, 147 (5th Cir.2000). In considering whether the agent had reasonable suspicion to stop Rangel-Portillo's vehicle, "[n]o single factor is determinative; the totality of the particular circumstances known to the agents are examined when evaluating the reasonableness of a roving border patrol stop." *United States v. Hernandez,* 477 F.3d 210, 213 (5th Cir.2007). "Factors that may be considered include: (1) the characteristics of the area in which the vehicle is encountered; (2) the arresting agent's previous experience with criminal activity; (3) the area's

		proximity to the border; (4) the usual traffic patterns on the road; (5) information about recent illegal trafficking in aliens or narcotics in the area; (6) the appearance of the vehicle; (7) the driver's behavior; and, (8) the passengers' number, appearance and behavior." *Id.* "No single factor is dispositive, and each case must be examined based on the totality of the circumstances known to the agents at the time of the stop and their experience in evaluating such circumstances." *Rodriguez,* 564 F.3d at 741. … What is more indicative of a stop lacking in reasonable suspicion is not what is found in the record, but rather in this case, it is what is missing from the record. In the current case, there is no evidence that the officer observed the defendant driving erratically in response to observing his presence; the vehicle itself did not display any of the usual characteristics of a vehicle transporting illegal aliens; the time of the stop was not suspicious; and there is no evidence to indicate that the officer received a tip from an anonymous informant. The overwhelming absence of any of these additional factors-factors that this Court has consistently held are rationally related to a finding of reasonable suspicion-undermines the district court's conclusion that the officer had reasonable suspicion to stop Rangel-Portillo's vehicle. *See Melendez-Gonzalez,* 727 F.2d at 412 (noting the significance of "the absence in this case of certain factors which have been considered persuasive in the past in judging the validity of a stop by a roving patrol.") (internal citations omitted). In cases that "presen[t] no evidence of erratic driving ... no features on the defendant's vehicle that would make it a likely mode of transportation for illegal aliens ... [and] no tips by informants," this Court has been quite reluctant to conclude a stop was based on reasonable suspicion. *Id.* "The absence of these factors as well as the unpersuasive nature of the factors that were offered by the Government leads us to conclude that the stop in this case was illegal." *Id* (citations omitted)
Gonzales-Reyes v. Holder, 313 Fed.Appx. 690 (5th Cir. 2009) (unpublished)	*Inter alia*, statements by minor alien on I-213 in response to questioning by immigration officer were not obtained in egregious violation of alien's Fourth and Fifth Amendment rights; IJ could properly accept alien's admissions to factual allegations made during an interview with immigration officer; and failure to allow cross-examination of immigration officer who prepared processing form did not violate alien's due process rights.	Since the Supreme Court's 1984 decision in *Lopez–Mendoza,* we have never reversed, based on a finding of egregious violation of an alien's constitutional rights, an IJ's admitting into evidence an alien's statements. *See, e.g., Bustos–Torres v. INS,* 898 F.2d 1053, 1056–57 (5th Cir.1990) (ruling that the I–213 was properly admitted because it was "clearly relevant and material and ... not repetitious", despite an immigration officer's failure to give a *Miranda*-like warning). One circuit found egregious violations in other contexts. *E.g., Lopez–Rodriguez v. Mukasey,* 536 F.3d 1012 (9th Cir. 2008) (entering aliens' residence without a warrant and without consent); *Gonzalez–Rivera v. INS,* 22 F.3d 1441 (9th Cir. 1994) (race-based border stops). "The test for admissibility of evidence in a [removal] proceeding is whether the evidence is probative and whether its use is fundamentally fair so as not to deprive the alien of due process of law." *Bustos–Torres,* 898 F.2d at 1055. An I–213 is admissible to prove alienage and removability, absent an indication that the form "contains information that is incorrect or was obtained by coercion or duress". *Matter of Barcenas,* 19 I. & N. Dec. 609, 611 (BIA Mar. 23, 1988). Gonzalez does not assert that the statements reflected in the I–213 are not his, or that they are incorrect. *See id.* To the contrary, in his post-removal-hearing affidavit, Gonzalez stated he answered truthfully the immigration officer's questions. Instead, Gonzalez claims the statements reflected in the I–213 should have been suppressed because they were obtained through improper interrogation techniques used on a minor.

		Gonzalez' allegations of coercion are insufficient to establish the interviewing immigration officer committed the requisite "egregious violation" of Gonzalez' constitutional rights. The immigration officer's alleged failure to advise Gonzalez of his right to remain silent and his right to counsel (at no expense to the Government), would not be egregious, because, as noted, removal proceedings are "civil, not criminal in nature". *Sewani v. Gonzales,* 162 Fed.Appx. 285, 288 (5th Cir. 2006) (unpublished) ("*Miranda* warnings are not required in the deportation context".) (citing *Bustos–Torres,* 898 F.2d at 1056). Likewise, the immigration officer's alleged repeated questioning of Gonzalez and raising his voice do not rise to the level of the requisite egregious violation that would render the admission in evidence of the I–213 fundamentally unfair. Furthermore, other than his affidavit, nothing in the record supports Gonzalez' allegations of egregious constitutional violations. At his 19 February 2004 removal hearing, he refused to testify, although, as a minor, he did not face criminal prosecution and was so advised. "Where a party wishes to challenge the admissibility of a document, the mere offering of an affidavit is not sufficient to sustain his burden." *Barcenas,* 19 I. & N. Dec. at 611. "If the affidavit is such that the facts alleged, if true, could support a basis for excluding the evidence in question, then the claims must also be supported by testimony." *Id.*
United States v. Garcia, 942 F.2d 873 (5th Cir. 1991), *cert denied*, 502 U.S. 1080 (1992)	(1) Border patrol agents' reliance on erroneous information from dispatcher regarding recency of involvement of defendant's vehicle with illegal aliens was in good faith and objectively reasonable, and articulable and reasonable suspicion of criminal activity justified investigatory stop of vehicle even without the use of that information, and (2) defendant's actions gave agents necessary probable cause to continue search of his wallet until they established his identity and citizenship.	An agent may conduct a brief investigatory stop of a vehicle and its occupants, without probable cause, based solely on the "reasonable suspicion" that the person is engaged, or about to be engaged, in criminal activity. The reasonableness of the stop is determined by the totality of the circumstances at the time of the stop. In *United States v. Brignoni–Ponce,* the Supreme Court noted that roving border patrols must have "specific articulable facts, together with reasonable inferences from those facts," to stop a vehicle suspected of containing illegal aliens. The agent must have a particularized and objective basis for suspecting the detained individual of criminal activity. In *Brignoni–Ponce,* the Supreme Court listed several factors that support reasonable suspicion. These factors include the vehicle's characteristics, the proximity to the border, traffic patterns, previous experience with alien traffic, and driver behavior, such as attempts to evade agents. (citations omitted) … Even though an individual subject to an investigatory stop may refuse to give his or her name, Garcia refused to answer the agent's inquiry as to his citizenship or immigration status. The government has statutory authority to question individuals believed to be aliens about their right to be present in the United States. A person's apparent illegal status in this country may be equivalent to "criminal activity" and can support a finding of reasonable suspicion. The record demonstrates that Garcia's actions provided ample reason for the agents to suspect he was illegally in this country. Also, the search conducted by the agents was limited solely to ascertaining Garcia's citizenship. It is clear that once the Texas driver's license was discovered during the initial search of the wallet, the agents stopped their search of Garcia's wallet. It was only after Garcia refused to disclose his citizenship and to confirm his identity that the agents resumed the search of Garcia's wallet to confirm his name and citizenship status. The actions and inactions of Garcia gave the agents the necessary probable cause to continue the search of his wallet. It was during this second search that the pawn shop receipt was

		discovered. After the pawn receipt was discovered by the agents, Garcia finally acknowledged his identity and citizenship. (citations omitted)

DHS Failure to Produce Officer Who Prepared I-213

Case Name/Citation	Holding/Result	Key Language
Bustos-Torres v. INS, 898 F.2d 1053 (5th Cir. 1990)	*Inter alia*, form I-213 prepared by a DHS investigator as result of his interview with an allegedly deportable alien was admissible in a deportation proceeding, notwithstanding the DHS's failure to produce the officer who prepared the form.	Bustos alleges that the Form I–213 amounts to hearsay and is not properly admissible without the testimony of the officer who filled out the form, so that he may be available for cross examination. First we note that the rules of evidence applicable in the courts are not applicable in deportation proceedings. *Soto–Hernandez v. INS,* 726 F.2d 1070 (5th Cir.1984). Nonetheless, due process standards of fundamental fairness extend to the conduct of deportation proceedings. *Bridges v. Wixon,* 326 U.S. 135, 65 S.Ct. 1443, 89 L.Ed. 2103 (1945). The test for admissibility of evidence in a deportation proceeding is whether the evidence is probative and whether its use is fundamentally fair so as not to deprive the alien of due process of law. *See, e.g., Calderon–Ontiveros v. INS,* 809 F.2d 1050 (5th Cir.1986); *Baliza v. INS,* 709 F.2d 1231 (9th Cir.1983); *Tashnizi v. INS,* 585 F.2d 781 (5th Cir.1978); *Trias–Hernandez v. INS,* 528 F.2d 366 (9th Cir.1975). … The affidavit of the examining officer shows that the information in the Form I–213 is based upon statements of the petitioner, and the petitioner does not contest their validity. In *Tejeda–Mata v. INS,* 626 F.2d 721, 724 (9th Cir.1980), the court held that the authenticity of a Form I–213 was sufficiently established by the testimony of the examining officer, who identified it as the form prepared by him when he questioned the alien. Here there was no such testimony by the examining officer, but his affidavit to that effect was introduced into evidence. Because the rules of evidence do not apply in deportation hearings, the admission of this affidavit was not error, for it is probative, and not fundamentally unfair. Official INS documents have been admitted in deportation proceedings without being identified by the signer when the person to whom the document refers does not attempt to impeach the information in the document. *Vlisidis v. Holland,*245 F.2d 812 (3d Cir.1957). *Cf. Baliza v. INS,* 709 F.2d 1231, 1234 (9th Cir.1983). Bustos does not contest that the Form I–213 reflects the officer's examination, nor did he attempt to impeach the information on the form. A similar INS apprehension report was admitted in *Calderon–Ontiveros* for the purpose of showing that the alien had been out of the country and then returned, and there is no indication that the officer who had completed the form testified at the later hearing. 809 F.2d at 1053. The court did not find the report inadmissible because it was hearsay, holding that "[t]he Administrative Procedure Act, which governs such hearings, excludes only 'irrelevant, immaterial, or unduly repetitious evidence.' 5 U.S.C. § 556(d)." *Id.* The Form I–213 relating to Bustos is clearly relevant and material and is not repetitious, so it was properly admitted. (citations omitted)

Notice of Hearing

Case Name/Citation	Holding/Result	Key Language
Barahona-Cardona v. Holder, 417 Fed. Appx. 397, 398–99 (5th Cir. 2011) (unpublished) (per curiam)	IJ erred in concluding that respondent's affidavit indicating she did not receive notice of her deportation proceeding was insufficient as a matter of law.	In support of her motion to reopen, Barahona submitted an affidavit stating that she did not receive notice of the deportation hearing. The IJ refused to consider her affidavit stating: "[t]he Court cannot simply rely on the self-serving statements in her affidavit regarding receipt of the notice." The IJ's assertion that he "cannot" rely on the affidavit was erroneous as a matter of law. Although an affidavit is inadequate to rebut the presumption of delivery of certified mail, an affidavit of non-receipt can be sufficient to rebut the weaker presumption of delivery that arises under regular mail. *See Maknojiya*, 432 F.3d at 590 ("[I]n the case of failed mail delivery when regular mail is used, the 'only proof' is the alien's statement that he or she did not receive notice."). The Government argues that because Barahona moved to Los Angeles without notifying the immigration court of her change of address, the affidavit that she did not receive notice is insufficient as a matter of law. *See Gomez–Palacios v. Holder*, 560 F.3d 354, 361 (5th Cir.2009) (affirming denial of motion to reopen where the alien did not receive notice because he did not apprise the immigration court of his change of address). However, the Government does not dispute her sworn testimony that she moved in May 1990, after the December 20, 1989 notice and the April 11, 1990 hearing; nor does the Government present any evidence that it attempted to notify Barahona of hearings after she was ordered removed *in absentia*. Therefore, Barahona's failure to notify the immigration court of her new address does not defeat her motion to reopen. Though the IJ was not required to find that Barahona's affidavit was credible, the IJ's denial of Barahona's motion here was based on his erroneous conclusion that the affidavit was insufficient as a matter of law rather than an evidentiary finding that the affidavit was unreliable. (citations omitted)
Gomez-Palacios v. Holder, 560 F.3d 354 (5th Cir. 2009)	Alien received required notice in NTA charging removability; and *in absentia* removal order would not be revoked where alien failed to keep immigration court apprised of current mailing address.	In this case, the BIA held that Gomez–Palacios was not entitled to rescission of his removal order because his failure to receive actual notice of the time of his postponed hearing was the result of not complying with his obligation to keep the immigration court apprised of his current mailing address. Such a failure is grounds for denying rescission of a removal order under § 1229a(b)(5)(C)(ii). In light of the fact that the record shows that the NOH for the August 28, 2002, hearing was mailed to the last address provided by Gomez–Palacios and returned to the immigration court stamped "attempted, not known," and in the absence of any record evidence submitted by Gomez–Palacios showing that the address provided to the immigration court was in fact his mailing address and that he had not moved, we find that there is substantial evidence to support the BIA's finding that Gomez–Palacios did not receive notice of his August 28, 2002 hearing because he failed to comply with his obligation to provide the immigration court with current address information. (citation omitted)

Notice of BIA Briefing Schedule

Case Name/Citation	Holding/Result	Key Language
Chike v. INS, 948 F.2d 961 (5th Cir. 1991)	(1) Alien was deprived of significant liberty interest without due process when, through administrative mistake, he was not given notice of briefing schedule before BIA to enable him to present brief to that forum, and (2) denial of opportunity to be heard was, in and of itself, substantial prejudice	Among other things, Petitioner contends that he was denied a full and fair hearing and was therefore deprived of a significant liberty interest without due process of law. *See* U.S. Const. amend. V. Although Petitioner is an alien and deportation is a civil proceeding, even cases cited by the Government hold that "[d]eportation is a process of such serious moment" that due process concerns are implicated. *United States ex rel. Bilokumsky v. Tod,* 263 U.S. 149, 156–57, 44 S.Ct. 54, 57, 68 L.Ed. 221 (1923), *overruled on other grounds by INS v. Lopez–Mendoza,* 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984). The full panoply of due process protections does not apply to deportation proceedings, however. Rather, "proof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice." *Ka Fung Chan v. INS,* 634 F.2d 248, 258 (5th Cir. Jan. 1981). In the words of Justice Brandeis, "To render a hearing unfair the defect, or the practice complained of, must have been such as might have led to a denial of justice, or there must have been absent one of the elements deemed essential to due process." *United States ex rel. Bilokumsky v. Tod,* 263 U.S. at 157, 44 S.Ct. at 57. Even under this more stringent due process standard, Petitioner has shown that his constitutional rights were infringed. "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing.'" *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542, 105 S.Ct. 1487, 1493, 84 L.Ed.2d 494 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950)). The opportunity to be heard is a "'root requirement'" of due process. *Id.* (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379, 91 S.Ct. 780, 786, 28 L.Ed.2d 113 (1971)). By showing that he was denied the opportunity to be heard before the Board of Immigration Appeal, Petitioner has shown substantial prejudice. This defect "'impinged upon the fundamental fairness of the hearing in violation of the fifth amendment.'" *Ramirez–Durazo v. INS,* 794 F.2d 491, 500 (9th Cir.1986) (quoting *Magallanes–Damian v. INS,* 783 F.2d 931, 933 (9th Cir.1986)). We do not hold that the Due Process Clause requires the INS to afford an appeal. The INS does allow an appeal, however, and the appellant and appellee are allowed to file briefs. In Mr. Chike's case, a mistake deprived him of this opportunity. In these circumstances, the Board of Immigration Appeal could not render a decision in accord with the Due Process Clause.

No Suppression of INS File/Identity (Criminal Context)

Case Name/Citation	Holding/Result	Key Language
United States v. Rodriguez, 672 Fed.Appx. 451 (Mem) (5th Cir. Dec. 29, 2016) (unpublished) (per curiam)	Affirming district court's denial of pretrial motion to suppress where defendant was arrested following an immigration inspection stop and claimed evidence obtained by Border Patrol agents (including his verbal statements, his fingerprints, and his A-file) should have been suppressed as fruits of illegal seizure.	As Rodriguez concedes, even assuming that the immigration stop was illegal, his argument that the district court should have suppressed his identity evidence is foreclosed. *See United States v. Hernandez–Mandujano*, 721 F.3d 345, 348, 351 (5th Cir. 2013); *United States v. Roque–Villanueva*, 175 F.3d 345, 346 (5th Cir. 1999). Rodriguez asks this court to adopt precedent that recognizes the suppression of an alien's identity evidence when it is discovered after an illegal detention. However, we may not overrule a prior decision of another panel in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the Supreme Court. *United States v. Traxler*, 764 F.3d 486, 489 (5th Cir. 2014).
United States v. Duble-Ramos, 619 Fed.Appx. 329 (5th Cir. 2015) (unpublished) (per curiam)	Defendant waived argument that his statements were subject to suppression, and district court did not commit plain error in failing to suppress statements.	Duble–Ramos's challenge to the district court's ruling denying the suppression of his statements fails because an alien's "INS file and even his identity itself are not suppressible." *United States v. Hernandez–Mandujano*, 721 F.3d 345, 351 (5th Cir.2013). Moreover, even if the court erred in finding the statements not suppressible, the error would not affect Duble–Ramos's substantial rights because the contested statements regarding his nationality and immigration status were not necessary to establish the elements of the offense of conviction. *See United States v. Solis*, 299 F.3d 420, 446 (5th Cir.2002). Thus, he has not made the required showing that the error affected the outcome. *See United States v. Mondragon–Santiago*, 564 F.3d 357, 364 (5th Cir.2009).
United States v. Roque-Villanueva, 175 F.3d 345 (5th Cir. 1999)	Border patrol agent's allegedly illegal stop which revealed that Petitioner had been deported did not require suppression of Petitioner's identity or his INS file in prosecution for illegal re-entry into the United States.	We have held that a defendant's INS file need not be suppressed because of an illegal arrest. In *United States v. Pineda–Chinchilla,* 712 F.2d 942 (5th Cir.1983), the defendant, an illegal alien who had been previous deported, was charged with illegally reentering the United States in violation of 8 U.S.C. § 1326. Maintaining that his arrest was illegal, the defendant moved to suppress his INS file as the "fruit of the poisonous tree." *Pineda–Chinchilla,* 712 F.2d at 943. The district court denied the defendant's motion and he was convicted. We affirmed the denial of the defendant's motion to suppress, holding that the defendant had no legitimate expectation of privacy in his INS file and, therefore, had no standing to challenge its introduction into evidence. *See id.* at 944. Other courts have indicated that an individual's identity is not suppressible. In *I.N.S. v. Lopez–Mendoza,* 468 U.S. 1032, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984), the respondent objected to being summoned to a civil deportation proceeding following his unlawful arrest. *See id.* at 3484. Rejecting the respondent's argument, the Supreme Court stated that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest." *Id.* at 3483. In *U.S. v. Guzman–Bruno,* 27 F.3d 420 (9th Cir.1994), an alien convicted of illegally reentering the United States in violation of 8 U.S.C. § 1326 argued that the district court erred by refusing to suppress all evidence of his identity learned from his unlawful arrest. Affirming the conviction, the Ninth Circuit held that the "district court did not err when it held that neither [the defendant's] identity nor the records of his previous convictions and deportations and convictions could be suppressed as a result of the illegal arrest." *Id.* at 422.

Select BIA Decisions

Admissibility of Evidence Generally

Case Name/Citation	Holding/Result	
Matter of Barcenas, 19 I. & N. Dec. 609 (BIA 1988)	(1) An alien who raises the claim questioning the legality of evidence must come forward with proof establishing a prima facie case before the Immigration and Naturalization Service will be called upon to assume the burden of justifying the manner in which it obtained evidence. *Matter of Burgos*, 15 I. & N. Dec. 278 (BIA 1975), followed; (2) where an alien wishes to challenge the admissibility of a document, the mere offering of an affidavit is not sufficient to sustain his burden; and (3) if the affidavit is such that the facts alleged, if true, could support a basis for excluding the evidence, then the claims must also be supported by testimony.	On appeal, the respondent contends that the evidence against him should be suppressed because of an alleged violation of Service regulations. The respondent also asserts that his statements were made in an allegedly coercive environment and were not voluntary. He therefore requests that the proceedings against him be terminated. In the alternative, he seeks a grant of voluntary departure. We find the respondent's contentions to be without merit. The Form I–213 was properly admitted into evidence. Deportation proceedings are civil in nature and are not bound by the strict rules of evidence. *Tashnizi v. INS,* 585 F.2d 781 (9th Cir. 1978). Rather, the tests for the admissibility of documentary evidence in deportation proceedings are that evidence must be probative and that its use must be fundamentally fair. *Trias—Hernandez v. INS*, 528 F.2d 366 (9th Cir. 1975); *Marlowe v. INS*, 457 F.2d 1314 (9th Cir. 1972); *Matter of Toro*, 17 I. & N. Dec. 340 (BIA 1980). Border Patrol Officer Tatro testified concerning the respondent's admissions in regard to his alienage and deportability. The Form I–213 reflects that Officer Tatro completed the form based upon admissions made by the respondent. The respondent admitted that he was a citizen of Mexico who entered the United States without inspection by an immigration officer. He did not testify during the deportation proceedings. While counsel objected to the admission of Form I–213 into evidence, he offered no evidence to even suggest that the contents of the form did not relate to the respondent, that the information was erroneous, or that it was the result of coercion or duress. Absent any indication that a Form I–213 contains information that is incorrect or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability. *Matter of Mejia*, 16 I. & N. Dec. 6 (BIA 1976); *Matter of Davila*, 15 I.& N. Dec. 781 (BIA 1976), *remanded, Davila—Villacaba v. INS*, 594 F.2d 242 (9th Cir. 1979); *see also Tejeda—Mata v. INS*, 626 F.2d 721 (9th Cir. 1980). We therefore find that the Form I–213 was properly authenticated and admitted into evidence. We also observe that '[o]ne who raises the claim questioning the legality of the evidence must come forward with proof establishing a prima facie case before the Service will be called on to assume the burden of justifying the manner in which it obtained the evidence.' *Matter of Burgos*, 15 I&N Dec. 278, 279 (BIA 1975); see also Matter of Ramirez—Sanchez, 17 I. & N. Dec.

		503, 505 (BIA 1980); *Matter of Wong*, 13 I. & N. Dec. 820, 821–22 (BIA 1971); *Matter of Tang*, 13 I. & N. Dec. 691, 692 (BIA 1971). Where a party wishes to challenge the admissibility of a document, the mere offering of an affidavit is not sufficient to sustain his burden. First, if an affidavit is offered, which, if accepted as true, would not form a basis for excluding the evidence, the contested document may be admitted into the record. Such was the case here. If the affidavit is such that the facts alleged, if true, could support a basis for excluding the evidence in question, then the claims must also be supported by testimony. The respondent's declaration alone was therefore insufficient to sustain his burden.
Matter of Toro, 17 I. & N. Dec. 340 (BIA 1980)	1) To be admissible in deportation proceedings, evidence must be probative and its use fundamentally fair so as to not deprive respondents of due process of law; 2) the fact that given evidence resulted from a search and seizure in violation of fourth amendment rights will not of necessity result in a finding that use of the evidence is fundamentally unfair; 3) the circumstances surrounding an arrest and interrogation may in some cases render evidence inadmissible under the due process clause of the Fifth Amendment; 4) with or without a voluntariness issue, cases may arise where the manner of acquisition of evidence is so egregious that to rely on the evidence would offend fifth amendment fundamental fairness requirements; and 5) where investigating officer apparently stopped and questioned the respondent in 1974 solely because she appeared to be of Hispanic descent, consideration of her resulting voluntary admissions was not fundamentally unfair where the officer was acting in accordance with a Service policy that was then held in good faith.	On the record before us, we cannot find that the arresting officers had a reasonable suspicion that the respondent was an alien when she was first stopped. Absent contrary testimony, it would appear that the respondent was stopped solely because of her "Latin appearance." Accordingly, the present record reflects that the initial stop of the respondent was in violation of her fourth amendment rights. … In the instant case, we assume that the arresting officers' conduct did not comport with Fourth Amendment requirements as clarified under present case law. The incident in question, however, occurred in 1974, before the Supreme Court's decision in *United States* v. *Brignoni-Ponce, supra,* and while the Government position (as argued before the Court in that case) was that immigration officers were vested with the authority under section 287(a) of the Act to make inquiries of the type involved here. Under these circumstances, where the investigating officers were acting in accordance with Service policy, where the Service position was apparently held in good faith and not rejected by the Supreme Court until nearly one year after the incident in question, and where there was no evidence offered or alleged that the respondent's admissions were either involuntary or otherwise affected by the circumstances of her arrest, we do not find that the admission into evidence of the Form I-213 was fundamentally unfair. We make this finding assuming all of the facts alleged in respondent's offer of proof to be true. The appeal will accordingly be dismissed.

INS Met Burden of Establishing Minor's Deportability

Case Name/Citation	Holding/Result
In Re Ponce-Hernandez, 22 I. & N. Dec. 784 (BIA 1999)	INS met its burden of establishing a minor respondent's deportability for entry without inspection by clear, unequivocal, and convincing evidence, where (1) a Record of Deportable Alien (Form I-213) was submitted, documenting the respondent's identity and alienage; (2) the respondent, who failed without good cause to appear at his deportation hearing, made no challenge to the admissibility of the Form I-213; and (3) there were no grounds for a finding that the admission of the Form I-213 would be fundamentally unfair (*but see* dissenting opinion, agreeing with IJ that deportability was not established by clear, unequivocal and convincing evidence in this case, involving minor).

IJ Can Accept Unrepresented Minor's Admissions to Factual Allegations

Case Name/Citation	Holding/Result
Matter of Amaya-Castro, 21 I. & N. Dec. 583 (BIA 1996)	(1) Service of an Order to Show Cause issued against a minor under 14 years of age may properly be made on the director of a facility in which the minor is detained pursuant to 8 C.F.R. § 103.5a(c)(2)(ii) (1996); (2) although under 8 C.F.R. § 242.16(b) (1996), an Immigration Judge may not accept the admission to a charge of deportability by an unaccompanied and unrepresented minor under the age of 16, the regulation does not preclude an Immigration Judge from accepting such a minor's admissions to factual allegations, which may properly form the sole basis of a finding that such a minor is deportable; and (3) even where an unaccompanied and unrepresented minor under the age of 16 years admits to the factual allegations made against him, an Immigration Judge must take into consideration the minor's age and pro se and unaccompanied status in determining, after a comprehensive and independent inquiry, whether the minor's testimony is reliable and whether he understands any facts that are admitted, such that his deportability is established by clear, unequivocal, and convincing evidence.

Provision of I-770 to Minor

Case Name/Citation	Holding/Result	Key Language
In re Rudi Maynor Gabriel-Pelico, A200 905 405 – NY, 2015 WL 3488725 (BIA April 14, 2015) (unpublished)	Affirming IJ's denial of respondent's motion to terminate where UC respondent was 17 and a half and alleged DHS had not provided him an I-770 nor permitted him to make a phone call to his parents or an adult relative during his first two days in custody prior to transfer to a UC shelter.	To the extent that the respondent requested termination based on the DHS' alleged failure to provide him with a Form I-770, or to permit him to telephone his parents or an adult relative, the Immigration Judge found that the DHS had rebutted this contention based upon its submission of a copy of the Form I- 770 signed by the respondent on January 29, 2011, which indicated that he had been permitted to make a telephone call (Exh. 3, Tab B) (I.J. at 3-4). Furthermore, even if the respondent had not been provided a copy of the Form I-770, the Immigration Judge held that none of his fundamental rights had been violated to merit termination under *Waldron v. INS*, 17 F.3d 511 (2d Cir. 1993). In this regard, he noted that the respondent had been afforded hearings, at which he had been represented by a representative, and that his presence at the hearings indicated that he had received notice of the removal charges (I.J. at 4-5). Finally, even though the Form I-770 indicated that the respondent requested voluntary departure, the Immigration Judge noted that the DHS did not act on his request, but rather placed him in removal proceedings, which ensured that he would receive a hearing before an Immigration Judge (I.J. at 6).

Service of NTA When Respondent is a Minor

Case Name/Citation	Holding/Result	Key Language
In re W-L-G-L-, AXXX XXX 013 (BIA April 3, 2018) (unpublished)	Rescinding *in absentia* order because NTA did not contain sufficient detail to demonstrate conformance with regulations governing service on minors under 14 years of age.	The Notice to Appear contains a certificate of service dated May 20, 2014, when the respondent was 13 years of age, with a notation that the document was served via personal service (Exh. l). In the space reserved for the signature of the recipient, the Notice to Appear contains a stamp reading, "served on conservator" (Id). Neither the name nor the title of the conservator are listed. Further, the respondent's address at the time of service-that is, the location where the respondent was in custody at the time of service and presumably the location over which the unnamed "conservator" presided-is not provided. Under these circumstances, the Notice to Appear does not contain sufficient detail to establish that it was served in conformity with 8 C.F.R. § l03.8(c)(2)(ii). *Cf Matter of Amaya*, 21 l. & N. Dec. at 584 (upholding the service of a Notice to Appear on a minor under the age of 14 where the address of detention center was provided and corresponded to the title of the individual named in the certificate of service). Nor are we persuaded by the DHS's contention that it properly served the Notice to Appear or cured the aforementioned defects by subsequently serving the adult sponsor with whom the respondent resided upon release from custody. *See* 8 C.F.R. § 103.8(c)(2)(ii); *Matter of W-A-F-C-,* 26 I&N Dec. at 882. The record does not contain any evidence that the Notice to Appear in this case was in fact served on the adult sponsor (*cf.* DHS's Br. at 2-3). *See* section 240(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229(b)(5)(A) (requiring "clear, unequivocal, and convincing evidence" that service was proper).
In re Brenda Yamileth Bonilla-Mejia, No.: AXXX XX7 418 - HAR, 2017 WL 7660474 (BIA Oct. 26, 2017) (unpublished)	Rescinding *in absentia* order because NTA was not properly served on respondent who was then a 12-year-old minor.	We conclude that the NTA was improperly served on a minor. The parties do not dispute that the respondent was under the age of 14 at the time of service of the Notice to Appear (DHS Opposition to Respondent's Appeal; Respondent's Brief). It is unclear whether the respondent, who was 12 years old at the time, or her cousin signed the NTA (Exh. 1). Even assuming that the individual who signed the NTA is the respondent's cousin, we conclude that service of the NTA was not properly effected in accordance with the pertinent regulations. The record does not establish the respondent resided with her cousin at the time of service, instead it shows that she was in the custody of the DHS (Exhs. 1, 2A; DHS's Opposition to the Motion to Reopen; Respondent's Brief). See 8 C.F.R. § 103.8(c)(2)(ii) (stating that "service shall be made upon the person with whom the . . . minor resides"); *see also Matter of Gomez-Gomez*, 23 I&N Dec. 522, 527-28 (BIA 2002) (holding that an 8-year-old respondent received proper notice where the NTA was served on her father, with whom she was residing); *Matter of Mejia-Andino*, 23 I&N Dec. 533, 536 (BIA 2002) (concluding that, "when it appears that the minor child will be residing with her parents in this country, . . . the regulation requires service on the parents, whenever possible").
In re Jordan Omar Nunez-Zepeda, No.: AXXX XX5 824 - HAR, 2017 WL 6555121 (BIA	Rescinding *in absentia* order where respondent was 7 years old at time of hearing, NTA was not served on mother, and I-	The regulation at 8 C.F.R. § 103.8(c)(2)(ii) requires service of the NTA on a minor to be made upon the person with whom the minor resides if the minor is under 14 years of age. Furthermore, the Board has held that the regulations require service on the parent or parents, if possible, when it appears that the minor child will be residing with the child's parents in the United States. *Matter of Mejia-Andino*, 23 I&N Dec. 533, 536 (BIA 2002). There is no dispute in this matter that the NTA was not served on the

Sept. 29, 2017) (unpublished)	213 did not contain reliable information.	respondent's mother when she took custody of the respondent on September 23, 2003, or any time thereafter. Nor does the record show that any attempt was made to serve the respondent's mother with the NTA. We add that there was some confusion about whether the respondent's mother was, in fact, his mother as opposed to his older sister, based on documents in the record. However, given that the applicable regulation requires that service be made whenever possible on the "near relative, guardian, committee, or friend," service on the respondent's older sister would have likely sufficed in this case. *See* 8 C.F.R. § 103.8(c)(2)(ii).3 Because there was no service of the NTA on the respondent's mother, who was living in the United States, we conclude that service of the NTA was not proper. In *Matter of G-Y-R-*, 23 I&N Dec. 181, 185 (BIA 2001), this Board determined that an Immigration Judge is precluded from entering an *in absentia* order of removal if an alien has not received the NTA advising him of his statutory obligation to provide contact information to immigration officials. The Immigration and Nationality Act allows a hearing to be conducted *in absentia*, but only when the alien has been provided written notice of the hearing at the most recent address provided under section 239(a)(1)(F) of the Act. See section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A). As we explained in *Matter of G-Y-R-*, 23 I. & N. Dec. at 186-87, the language of this provision requires that the address be one provided by the alien and "under section 239(a)(1)(F)" of the Act. See 8 U.S.C. § 1229(a)(1)(F). The *in absentia* provisions in section 240(b)(5)(A) of the Act, when read in light of section 239(a)(1)(F) itself, mean that the alien cannot provide a "section 239(a)(1)(F)" address unless the alien has been advised to do so. *See Matter of G-Y-R-*, 23 I. & N. Dec. at 187. Without proper service of the NTA, the respondent cannot provide an address under section 239(a)(1)(F) of the Act or be required to submit a change of address for purposes of the service of the notice of the hearing. Because the NTA in this case was not properly served, the Immigration Judge should not have ordered the respondent removed *in absentia*. We are also concerned that the order of removal appears to have been based on information in the Form I-213 (Record of Deportable/Inadmissible Alien) (Exh. 2). It was clear by the time of the hearing that the Form I-213 contained false information and was not reliable. According to information in the Form I-213, the respondent was travelling with an adult male who first claimed to be the respondent's father. It was determined by the immigration officers at the Brownsville Border Patrol station that the adult male was not the respondent's father, and the adult male then claimed that he was a minister and that he and his wife ("Martha Hernandez") were the respondent's caretakers. The adult male stated that the respondent's parents had abandoned the respondent and so the couple raised the respondent as their own. The adult male stated that his wife was in New Jersey and that he and the respondent were travelling to be with her. The Form I-213 states that the respondent's mother was living in Honduras and that all biographical information about the respondent "was obtained from the Guardian Martha Hernandez the Childs'.' Given that Ms. Hernandez was allegedly in New Jersey, it is unclear how she was the source of the information provided at the Brownsville Border Patrol station. In any event, by the time the respondent's hearing took place, the respondent had been placed with IES and then transferred to the custody of his mother, who was not living in Honduras. It was clear at the time of the hearing that the Form I-213 did not contain reliable information. To the extent the Immigration Judge relied on the Form I-213, that reliance was misguided. Yet, there appears to have been no other document in the record at the time of the hearing to support removability. Thus, the record did not contain clear, convincing, and unequivocal

		evidence that the respondent was subject to removal as charged. See 8 C.F.R. § 1003.26(c)(1). (citations omitted)
In re Carlos David Belloso-Guzman, Kevin Josue Oxcal-Guzman, No.: AXXX XX8 279 - ARL, 2017 WL 2570198 (BIA May 22, 2017) (unpublished)	Sustaining DHS appeal from IJ's decision terminating removal proceedings against minor respondents.	The respondents, who are cousins, were both under the age of 14 when they entered the United States on or about November 10, 2014. It was determined that each respondent entered as an "unaccompanied alien child." On November 11, 2014, the DHS issued a Notice to Appear (NTA) for each respondent charging them with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i), as aliens present in the United States without being admitted or paroled. Both NTAs indicate that they were personally served on the respondents but were not signed by either respondent. The NTAs are accompanied by a sheet of paper stating "ALL FORMS SERVED UPON CONSERVATOR." On November 12, 2015, both respondents appeared at a master calendar hearing accompanied by their fathers (Tr. at 2-3). At that time, the DHS offered to re-serve the NTAs on the respondents' fathers (Tr. at 5). On June 2, 2016, the respondents moved to terminate proceedings, asserting that service of the NTAs was deficient. The DHS opposed the motion. On July 6, 2016, the Immigration Judge granted the motion and terminated the proceedings after concluding that DHS did not comply with the regulatory requirements for serving an NTA on a minor who is under the age of 14. *See* 8 C.F.R. § 103.8(c)(2)(ii). It is not in dispute that the NTAs were re-served on the respondents' fathers at the November 12, 2015, hearing. Under these circumstances, termination of the removal proceedings was not appropriate. *See generally Matter of E-S-I-*, 26 I. & N. Dec. 136, 145 (BIA 2013) (recognizing that, under certain circumstances, re-service of the NTA may be appropriate to ensure compliance with applicable regulations); *see also Matter of W-A-F-C-*, 26 I. & N. Dec. 880 (BIA 2016) (holding that where the DHS seeks to re-serve a respondent to effect proper service of an NTA that was defective under the regulatory requirements for serving minors under the age of 14, a continuance should be granted for that purpose).
In re Jose Adrian Alvarado-Cordova, No.: AXXX XX4 823 - ARL, 2017 WL 2570246 (BIA May 5, 2017) (unpublished)	Sustaining DHS appeal where IJ terminated proceedings against UC under the age of 14 finding DHS failed to show proof of proper service; instructing IJ on remand to allow DHS to re-serve NTA.	Inasmuch as the respondent in this case appeared with counsel at his scheduled hearing to contest the NTA, it is evident that he had actual notice that removal proceedings had been initiated against him, notwithstanding the allegedly defective service of that document. Under the circumstances, we do not find that any violation of due process that may have occurred in this matter warranted termination of the proceedings. *See Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002) (to prevail on a due process claim, an alien must demonstrate prejudice affecting the outcome of the proceeding); *Id.* at 883 (*citing Matter of Hernandez*, 21 I&N Dec. 224, 228 (BIA 1996) (holding that an Immigration Judge can and should take corrective action short of termination when the Government violates its regulations regarding service of the charging document).
Matter of W-A-F-C-, 26 I. & N. Dec. 880 (BIA 2016)	Where DHS seeks to re-serve a respondent to effect proper service of NTA that was defective under the regulatory	The respondent does not address whether his mother or his counsel received the Notice to Appear in his appellate brief. However, the record reflects that the DHS offered to personally serve the respondent's parent at his removal hearing in February 2016. Because the DHS made requests and efforts to re-serve the Notice to Appear and the respondent appeared with counsel at both of his master calendar

	requirements for serving minors under the age of 14, a continuance should be granted for that purpose; *Matter of E-S-I-*, 26 I&N Dec. 136 (BIA 2013), followed.	hearings, this case is distinguishable from *Matter of Mejia-Andino*. That decision involved service of the Notice to Appear on a 7-year-old minor who did not appear at two hearings. We upheld the Immigration Judge's termination of proceedings because there was no indication that the DHS made any effort to serve the Notice to Appear on the respondent's parents, who apparently lived in the United States. *Matter of Mejia-Andino*, 23 I&N Dec. at 535-37. Considering the circumstances of this case, we conclude that the Immigration Judge should have granted a continuance to give the DHS an opportunity to effect proper service. In *Matter of E-S-I-*, 26 I&N Dec. at 145, which addressed the requirements for service on individuals who lack mental competency, we stated that "[i]f the DHS did not properly serve the respondent where indicia of incompetency were either manifest or arose during a master calendar hearing that was held shortly after service of the Notice to Appear, the Immigration Judge should grant a continuance to give the DHS time to effect proper service." The Immigration Judge in this case distinguished *Matter of E-S-I*-because, at the time of service, the DHS knew the respondent's age, which is not a "variable condition" like competency. *Matter of E-S-I-*, 26 I&N Dec. at 144. He therefore decided that the DHS should not be afforded an opportunity to re-serve the Notice to Appear on the respondent. We are unpersuaded by this reasoning. In *Matter of E-S-I-* we noted that the DHS was aware of indicia of the respondent's incompetency at the time of service since the respondent in that case had been transferred into DHS custody from a psychiatric hospital. *Id.* at 137, 144-45. We nevertheless held that remand was warranted because proper service had not been established, stating that the Immigration Judge should grant the DHS a continuance to properly serve the respondent on remand, if appropriate. *Id.* at 145-46; *see also Matter of Hernandez*, 21 I&N Dec. 224, 228 (BIA 1996) (holding that an Immigration Judge can and should take corrective action short of termination when the Government violates its regulations regarding service of the charging document). *See generally Matter of M-J-K-*, 26 I&N Dec. 773, 777-78 (BIA 2016) (discussing continuances for service of the Notice to Appear under *Matter of E-S-I-*). Considering the circumstances in this case, we conclude that the DHS should be afforded another opportunity to effect proper service under *Matter of E-S-I-*. We will therefore vacate the Immigration Judge's decision, reinstate the removal proceedings, and remand the record to the Immigration Judge. On remand, the Immigration Judge should assess whether the DHS re-served the Notice to Appear in accordance with 8 C.F.R. § 103.8(c)(2)(ii) and, if warranted, determine whether the DHS should be permitted to re-serve the Notice to Apear. (citations omitted)
In Re: Justo Rojop-Hernandez, No.: AXXX XX7 894 - PHO, 2014 WL 2919244 (BIA Apr. 23, 2014) (unpublished)	Sustaining respondent's appeal and vacating IJ's decision denying his motion to reopen and removal order pursuant to *Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004), which held that notice in cases involving juveniles must be provided to adult into whose	The United States Court of Appeals for the Ninth Circuit in *Flores-Chavez v. Ashcroft*, held that juveniles must be released by the former INS to a responsible adult. *See Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1156 (9th Cir. 2004) (holding that service of a charging document on a person under age 18 is not proper unless a qualified adult is served as well). This requirement makes clear that "juveniles are presumed unable to appear at immigration proceedings without the assistance of an adult." *Id*. at 1157. "Without an adult who is charged with ensuring the juvenile's well-being and compliance, the juvenile is at risk of failing to keep his obligations to the court. Therefore, a legally responsible adult must be charged with ensuring the juvenile's appearance at the hearing." *Id.; see also* 8 C.F.R. § 236.3(a) (defining juveniles as aliens under the age of 18 years). The court went on to find that the INS's service of the notice of hearing

	custody they have been released; proceedings remanded.	on Flores-Chavez, without also serving the adult who took custody of him, deprived him of the proper notice and that the Board acted "contrary to law" in failing to reopen proceedings. (*quoting Caruncho v. INS*, 68 F.3d 356, 360 (9th Cir. 1995)). Here, it is not clear why the respondent was released on his own recognizance. The Form I-213 reflects that the respondent was 17 years old when the NTA was personally served. Exh. 3. Accordingly, additional notice provisions were required in this case. In light of *Flores-Chavez*, supra, we cannot find that the respondent received adequate notice in this case. Thus, we will vacate the Immigration Judge's orders denying reopening and also finding the respondent removable. We will remand in order to allow the Immigration Judge to adjudicate the respondent's case, including any relief for which he may be eligible. *See Matter of Ruiz*, 20 I&N Dec. 91 (BIA 1989) (stating that following the grant of a motion to reopen and rescind an *in absentia* order, an alien is not required to demonstrate prima facie eligibility for relief).
Matter of Cubor-Cruz, 25 I. & N. Dec. 470 (BIA 2011)	Personal service of NTA on minor who is 14 years of age or older at time of service is effective, and regulations do not require that notice also be served on adult with responsibility for minor.	We therefore conclude that personal service of a Notice to Appear on a minor who is 14 years of age or older at the time of service is effective, even though notice was not also served on an adult with responsibility for the minor. While nothing in the regulations or this decision precludes the Department of Homeland Security, as a matter of policy or practice, from also serving an adult when a minor is between the ages of 14 and 18, we agree with the Immigration Judge that service of the Notice to Appear on the respondent's step-father or another legal guardian was not required under the regulations. The record reflects that the Notice to Appear was served personally on the respondent. The document bears the respondent's signature and fingerprint to acknowledge his receipt. Furthermore, the Immigration Judge noted that the respondent was given oral notice in Spanish of the time and place of his hearing and of the consequences of his failure to appear. Personal service of the Notice to Appear on the respondent and his acknowledgment of its receipt supports a finding that he was aware that he had been placed in removal proceedings. *See* section 239(a)(1) of the Act; *see also Nolasco v. Holder,* Nos. 09-5206-ag, 10-2780-ag, 2011 WL 668035 (2d Cir. Feb. 25, 2011) (stating that due process is generally satisfied where an alien received notice of the required information in the Notice to Appear and had a meaningful opportunity to participate in the removal proceedings). We therefore conclude that the respondent failed to meet his burden of demonstrating that he did not receive proper notice of the hearing. 8 C.F.R. § 1003.23(b)(4)(ii). Accordingly, the respondent's appeal will be dismissed. (citation omitted)
Matter of Gomez-Gomez, 23 I. & N. Dec. 522 (BIA 2002)	INS met its burden, in an *in absentia* removal proceeding, of establishing a minor's removability by clear, unequivocal, and convincing evidence where (1) a Record of Deportable/Inadmissible Alien	The Immigration Judge's finding, while proceeding in part from a laudable desire to protect the rights of alien juveniles, does not withstand analysis and is insufficiently grounded in evidence of record to impugn the contents of the Form I-213 in this case. *See Matter of Ponce-Hernandez, supra.* Initially, we note that it is unclear whether the Immigration Judge could properly take administrative notice of circumstances arising in other cases or respecting the practice in her region whereby adult aliens apprehended with juveniles would be accorded more favorable treatment in terms of the Service's release policy.[2] We need not resolve this thorny question. Even assuming proper notice was taken, there

	(Form I-213) was submitted, documenting the respondent's identity and alienage; (2) the respondent, who failed without good cause to appear at her removal hearing, made no challenge to the admissibility of the Form I-213; (3) there were no grounds for a finding that the admission of the Form I-213 would be fundamentally unfair; and (4) no independent evidence in the record supported the Immigration Judge's conclusion that the respondent may not have been the child of the adult who claimed to be the respondent's parent and who furnished the information regarding her foreign citizenship. *Matter of Ponce-Hernandez*, 22 I&N Dec. 784 (BIA 1999), followed. The respondent, a minor who could not be expected to attend immigration proceedings on her own, was properly notified of her hearing, through proper mailing of a Notice to Appear (Form I-862) to the last address provided by her parent, with whom she was residing. (*but see* dissenting opinion by P. Wickham Schmidt in which 5 other board members joined).	is no evidence of record regarding the extent of this practice and the degree to which it may result in such adult aliens making false claims of a familial relationship to minors found in their company. There is thus a clear and crucial absence of any factual basis for undermining the trustworthiness of the allegations contained in the Form I-213, most importantly the assertions that the respondent is Guatemalan and that Carlos is her father. Moreover, the Form I-213 in this case contains the information that Carlos was "in the company" of the respondent when they were arrested during a routine bus check. Although the Form I-213 notes that "all information" therein came from Carlos, the fact that the two were in each other's company clearly reflects an observational fact of the arresting agent; the information subsequently set forth in the Form I-213 is preceded, as this observation is not, by the words the "father stated." The fact that Carlos was in the company of the respondent, in the setting of a bus depot or on the bus (the Form I-213 is unclear on this point), reinforces the likelihood of a genuine familial relationship between them, as he has asserted. We emphasize that while generally considered to be reliable and sufficient to establish alienage, not every Form I-213 that alleges alienage must be ultimately so found. The Service would be well advised to include as many indicia of trustworthiness regarding the information in that document as are practicable, such as the source of the information and the circumstances of the alien's apprehension, as was done here. Unlike the Immigration Judge, we perceive no adequate basis in this instance for discounting the reliability of the information contained in the Form I-213, with respect to both the fact that the adult provider of the information is the respondent's father, as alleged, and the fact that they are aliens from Guatemala. No claim is made that the information in the Form I-213 was obtained through coercion or duress. As previously discussed, the sole basis for doubting its veracity is the Immigration Judge's speculation that the respondent may not be the child of the adult who so alleged and who furnished the information about her Guatemalan citizenship. (citations omitted) … The Immigration Judge also found, however, that even if Carlos was the respondent's father, he was not required to produce the respondent for her hearing, and that "it would be a fundamental violation of [her] due process rights to penalize [her] for failing to appear … given … that it is impossible for a child that young to be expected to appear for a hearing on … her own." We disagree. The Immigration Judge's holding effectively means that no alien under the age of 14 could ever be deported in absentia (at least absent the assignment of an adult guardian to each such alien). Even if the minor alien received proper notice of the hearing, no one would bear the responsibility for the alien's subsequent appearance, a burden that could also not be placed upon the minor alien. If that were Congress's intent, section 240(b)(5)(A) of the Act, 8 U.S.C. § 1229a(b)(5)(A)(2000), the statute that mandates entry of an in absentia order when an alien fails to appear, would presumably contain such an exception. Contrary to the Immigration Judge, we believe it is implicit in the statute and regulations dealing with notice that an adult relative who receives notice on behalf of a minor alien bears the responsibility to assure that the minor appears for the hearing, as required.[7] *See Matter of Amaya, supra*, at 585 (observing that the purpose of the regulation at 8 C.F.R. § 103.5a(c)(2)(ii) is to provide for service upon the "person or persons who are most likely to be responsible for ensuring that an alien appears before

		the Immigration Court at the scheduled time"); *cf. also Gonzalez v. Reno*, 212 F.3d 1338, 1348-54 (11th Cir.), *cert. denied*, 530 U.S. 1270 (2000). Accordingly, we conclude that the respondent was properly notified of her hearing, through mailing to the address provided by her father, with whom she was residing.
Matter of Mejia-Andino, 23 I. & N. Dec. 533 (BIA 2002) (en banc)	Removal proceedings against a minor under 14 years of age were properly terminated because service of the NTA failed to meet the requirements of 8 C.F.R. § 103.5a(c)(2)(ii) (2002), as it was served only on a person identified as the respondent's uncle, and no effort was made to serve the notice on the respondent's parents, who apparently live in the United States (*see also* concurring opinion by C.M. Espenoza in which 4 other board members joined, addressing additional issue of reliability of I-213 when the information comes through 7 year-old child).	The regulations governing service of a Notice to Appear on a minor respondent do not explicitly require service on the parent or parents in all circumstances. If a minor respondent's parents are not present in this country, service on an uncle or other near relative accompanying the child may suffice. However, when it appears that the minor child will be residing with her parents in this country, as in this case, the regulation requires service on the parents, whenever possible, in addition to service that may be made on an accompanying adult or more distant relative. Therefore, under the facts in this case, we find that the Immigration Judge correctly determined that the Service failed to demonstrate clear, unequivocal, and convincing evidence of proper service of the Notice to Appear. (citations omitted)

Egregiousness

Case Name/Citation	Holding/Result	
In re Santiago Marin-Hernandez, AXXX XX9 865 – DAL, 2018 WL 1872042 (BIA Jan. 12, 2018) (unpublished)	Dismissing respondent's appeal of denial of motions to suppress and terminate and request for voluntary departure; DHS did not file response.	In removal proceedings, an alien seeking the exclusion of evidence based on the Fourth Amendment bears the burden of establishing a prima facie case that evidence should be suppressed. *Matter of Tang*, 13 I&N Dec. 691 (BIA 1971). While the Fourth Amendment exclusionary rule is generally inapplicable to deportation proceedings, this rule may be applied if there are egregious Fourth Amendment violations that transgress Fifth Amendment notions of fundamental fairness, undermining the probative value of the evidence. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984); *Matter of Sandoval*, 17 I&N Dec. 70 (BIA 1979); *Matter of Toro*, 17 I&N Dec. 340, 343 (BIA 1980). Only when an alien has come forward with adequate evidence in support of suppression will the burden shift to the DHS to justify the manner in which it obtained the evidence. *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988). We affirm the Immigration Judge's decision denying the respondent's motions to suppress and to terminate the removal proceedings. We reject the respondent's argument that the Supreme Court's Fourth Amendment case law should not be applied to immigration proceedings in which a state or local police officer was involved in the respondent's arrest. The Fifth Circuit has clearly upheld the Supreme Court's holding in *INS v. Lope-Mendoza* that the Fourth Amendment does not apply in removal proceedings absent some egregious violations of the Fourth Amendment. *See Mendoza-Solis v. INS*, 36 F.3d 12, 14 (5th Cir. 1994) (stating, in a case involving actions by a deputy sheriff, that it is well established that the Fourth Amendment exclusionary rule is not to be applied in deportation proceedings); *see also Ali v. Gonzales*, 440 F.3d 678, 681 (5th Cir. 2006) (noting that the Supreme Court has specifically refused to extend the exclusionary rule to immigration proceedings, citing the high societal costs of allowing an alien to remain illegally in this country and the incompatibility of the rule with the administrative nature of those proceedings). Further, we discern no clear error in the Immigration Judge's finding that the state police officers extended the duration of the respondent's traffic stop by almost an hour without specific authority to detain illegal aliens but that the Fourth Amendment violation was not egregious. As the Immigration Judge found, the transcript of the respondent's arrest shows that the police officers did not use threats, coercion, physical abuse, promises, or unreasonable force and did not engage in brutal conduct or intentional harm that would shock the conscience. In addition, some of the delay in detaining the respondent was attributable to coordination with the Customs and Border Patrol and to the respondent's brother and attempts to verify whether a Form I-130 had been filed by the brother. The respondent offers

		no compelling basis for departing from the general principle that the exclusionary rule does not apply to removal proceedings and has not shown that his detention was purposely prolonged as a deliberate constitutional violation or that the officers' conduct was egregious. *See INS v. Lopez-Mendoza*, 468 U.S. at 1050-51 & n.5. Further, the Immigration Judge did not clearly err in finding that the I-213 contains probative evidence of the respondent's alienage and that its use is fundamentally fair. The respondent has not argued that the evidence showing alienage on the I-213 is inaccurate or that it was obtained by coercion or duress or that it has been undermined by the manner in which the record of deportable alien was prepared. Absent any indication that the I-213 contains information that is incorrect or was obtained by coercion or duress, it is inherently trustworthy and admissible to prove alienage. *Matter of Ponce-Hernandez*, 22 I&N Dec. 784 (BIA 1999); *Matter of Barcenas*, 19 I&N Dec. at 611; see also *Bustos-Torres v. INS*, 898 F.2d 1053, 1056-57 (5th Cir. 1990) (ruling that the I-213 was properly admitted because it was "clearly relevant and material and . . . not repetitious").
In re Abel Chum-Hernandez Edilcer Maximo Roblero Roblero, AXXX XX1 578 - MIA, 2017 WL 4946966 (BIA Aug. 31, 2017) (unpublished)	Dismissing respondents' appeal from IJ decision denying their motion to suppress evidence and terminate removal proceedings; finding insufficient evidence in the record establishing that the respondents made their admissions in the face of any coercion or duress or that the Forms I-213 contain inaccurate information.	The Immigration Judge found that the respondents did not meet their burden to show a prima facie case that the authorities lacked consent when they entered and searched the apartment where the respondents lived. Upon review of the record, we discern no clear error in the Immigration Judge's factual findings. 8 C.F.R. § 1003.1(d)(3)(i). For the reasons discussed by the Immigration Judge in his decision, there is insufficient evidence to establish that (1) the ICE agents actually broke the respondents' door, and (2) they did not have consent to enter the residence (IJ at 14-15). … We uphold the Immigration Judge's determination that the actions taken by ICE agents during the May 8, 2014, incident were not so egregious as to require suppression of evidence (IJ at 14-17). *INS v. Lopez-Mendoza*, 468 U.S. at 1050-51. Absent sufficient evidence of forced entry and lack of consent, and apart from one instance where the agents pushed the co-respondent, there is no indication that the respondents were physically abused, threatened, subjected to prolonged interrogations, or otherwise mistreated during the incident in question. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980); *Ghysels-Reals v. U.S. Att'y Gen.*, 418 F. App'x 894, 895-96 (11th Cir. 2011) (unpublished) ("Nothing in the record suggests that [the alien in this case] was subjected to abuse, force, racial profiling, or other conduct that rises to the level required for exclusion."). As the respondents have not established that the actions of the ICE agents were sufficiently egregious, the Immigration Judge did not err in relying on

		the Forms I-213 as evidence of the respondents' alienage (IJ at 17; Exhs. 2(B), 6(R)). The respondents provided information about their alienage during their interview with immigration officers that is reflected in the Form I-213 for each respondent, and this constitutes clear and convincing evidence of the respondents' foreign birth (*Id*). *Matter of Gomez-Gomez*, 23 I&N Dec. 522, 526-527 (BIA 2002). Absent any indication that the Form I-213 contains information that is incorrect or was obtained by coercion or duress, it is inherently trustworthy and admissible to prove alienage. *Id; see also Matter of Ponce-Hernandez*, 22 I. & N. Dec. 784 (BIA 1999); *Matter of Barcenas*, 19 I&N Dec. at 611. There is insufficient evidence in the record establishing that the respondents made their admissions in the face of any coercion or duress or that the Forms I-213 contain inaccurate information (IJ at 17; Exhs. 4; Tr. at 92-141, 294-321). Thus, it is not fundamentally unfair to consider the Forms I-213 as reliable evidence of alienage. Moreover, even if we assume there was an egregious violation of the Fourth Amendment, the DHS submitted independent evidence demonstrating the respondents' alienage, namely their Guatemalan passports (IJ at 17; Exhs. 2(G), 6(S)). The record reflects that after the respondents were arrested and detained for questioning and fingerprinting on May 8, 2014, they were both released on the same day with ankle monitors (IJ at 16-17; Exh. 4(A), (C)). They returned the following day and presented their Guatemalan passports to officials (IJ at 17; Tr. at 26, 44-46). (citations omitted)

Standard for Invalidating Proceedings Based on Violation of Regulation

Case Name/Citation	Holding/Result	Key Language
Matter of Garcia-Flores, 17 I&N Dec. 325 (BIA 1980)	1) Violation of a regulatory requirement by a Service officer can result in evidence being excluded or proceedings invalidated where the regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation; and 2) where respondent alleged violation of the "warning" requirements set forth in 8 C.F.R. 287.3, record is remanded to clarify the regulatory requirements in this regard, and to provide the respondent the opportunity to demonstrate that the investigating officer's actions prejudiced her interests in a manner affecting the outcome of the deportation proceedings.	In reviewing these precedents, the United States Court of Appeals for the Ninth Circuit has concluded that a two-prong test should be used to determine whether deportation proceedings should be invalidated where a Service regulation has been violated. *See United States v. Calderon–Medina, supra*. First, the regulation in question must serve a "purpose of benefit to the alien." *Calderon–Medina* at 531. Secondly, if it does, the Ninth Circuit has held that the regulatory violation will render the proceeding unlawful "only if the violation prejudiced interests of the alien which were protected by the regulation." *Calderon–Medina, id*. In that case, where detained aliens had not been advised at the time of their deportation proceedings of the right to communicate with a consular or diplomatic officer of their country of nationality, criminal proceedings were remanded to allow the aliens the opportunity to "specifically" identify any prejudice resulting from the violation. The District Court was directed to determine whether the violation "harmed the aliens" interests in such a way as to affect potentially the outcome of their deportation proceeding." *Calderon–Medina at 532.* We will adopt this "prejudice" test set forth by the Ninth Circuit. In those cases where agency action has been invalidated by the Supreme Court there has either been an expressed or clearly apparent prejudice to the individual as a result of a violation of a rule or regulation promulgated at least in part to bestow a procedural or substantive benefit on the individual in question. Where compliance with the regulation is mandated by the Constitution, prejudice may be presumed. Similarly, where an entire procedural framework, designed to insure the fair processing of an action affecting an individual is created but then not followed by an agency, it can be deemed prejudicial. *See Vitarelli v. Seaton, supra*; *Service v. Dulles, supra; U.S. ex rel. Accardi v. Shaughnessy, supra*. As a general rule, however, prejudice will have to be specifically demonstrated. We do not find that the case before us is one in which the claimed regulatory violation may be presumed to have prejudiced the respondent. We are satisfied, however, that 8 C.F.R. 287.3 was intended to serve a purpose of benefit to the alien. We will accordingly remand the record to allow the respondent the opportunity to demonstrate that the investigating officer's action prejudiced her interests that were protected by the regulation and that such prejudice affected the outcome of the deportation proceedings. In this regard, it should be determined whether evidence supporting a finding of deportability arose prior to the apparent regulatory violation. Moreover, on remand the parties to the proceeding should be given the opportunity to present their positions regarding the

		ambiguity of the regulatory requirements at issue here. *See* footnote 3, *supra*. Further, the respondent should be given the opportunity to testify concerning the circumstances of her arrest and questioning.

Fifth Amendment Violation

Case Name/Citation	Holding/Result	
"Wilson Four" Decisions (series of related, unpublished decisions) *In re Luis Miguel Nava*, A 095-422-302, 2006 Immig. Rptr. LEXIS 8918 (BIA Nov. 29, 2006) (unpublished) *In re Yuliana Huicochea*, A 095-422-308, 2006 Immig. Rptr. LEXIS 8420 (BIA Nov. 29, 2006) (unpublished) *In re Jaime H. Damian*, A 095-422-307, 2006 Immig. Rptr. LEXIS 7890 (BIA Nov. 29, 2006) (unpublished) *In re Oscar J. Corona*, A 095- 422-301, 2006 Immig. Rptr. LEXIS 7854 (BIA Nov. 29, 2006) (unpublished)	Per sources available[3], finding children's statements were properly suppressed under the Fifth Amendment where CBP interrogated them for nine hours, threatened to deport them to Mexico, and refused their requests to call a parent or lawyer.	[CILA has not yet been able to obtain a copy of these decisions.]

[3] See, e.g., ACLU Border Litigation Project Practice Advisory, November 2015, Representing Immigrant Children Following Release from Border Patrol Custody, by James Duff Lyall, p. 16, available at https://www.acluaz.org/sites/default/files/field_documents/aclu_practice_advisory_representing_immigrant_children_following_release_from_border_patrol_custody_nov_2015_0.pdf

Helpful Practitioner Tools

Child-Specific Vera Practice Advisory

Practice Advisory, March 2015, Strategies for Suppressing Evidence and Terminating Removal Proceedings for Child Clients, Produced for the Vera Institute of Justice's Unaccompanied Children Program Practice Advisory, by Helen Lawrence, Kristen Jackson, Rex Chen, and Kathleen Glynn
https://cliniclegal.org/sites/default/files/strategies_for_supressing_evidence_and_terminating_removal_proceedings_for_child_clients_with_appendices.pdf

Other Practice Advisories

American Immigration Council Practice Advisory, updated August 1, 2017, Motions to Suppress in Removal Proceedings: A General Overview
https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/motions_to_suppress_in_removal_proceedings_a_general_overview.pdf

AILA Practice Advisory, Posted December 29, 2015, Challenges and Strategies Beyond Relief, by Dree K. Collopy, Melissa Crow, and Rebecca Sharpless
https://www.aila.org/File/Related/11120750b.pdf

ILRC Motions to Suppress Supplement: Developments in Circuit Case Law, December 2017
https://www.ilrc.org/sites/default/files/resources/motion_to_suppress-update-2017.pdf

ACLU Border Litigation Project Practice Advisory, November 2015, Representing Immigrant Children Following Release from Border Patrol Custody, by James Duff Lyall
https://www.acluaz.org/sites/default/files/field_documents/aclu_practice_advisory_representing_immigrant_children_following_release_from_border_patrol_custody_nov_2015_0.pdf

Helpful Template for Motion to Suppress/Sample Immigration Judge Order

Immigration Law and Defense, September 2018 Update, National Immigration Project of the National Lawyers Guild, Appendix E: Challenging Government Misconduct (Sample Motion to Suppress and Exclude Evidence)
2 Immigr. Law and Defense Appendix E-1 (available on Westlaw)

San Francisco IJ Interim Decision (April 24, 2012) on Interior Enforcement Motion to Suppress and Terminate (appendix to Child-Specific Vera Practice Advisory at Appendix 13.A, available here at p.237:

https://cliniclegal.org/sites/default/files/strategies_for_supressing_evidence_and_terminating_removal_proceedings_for_child_clients_with_appendices.pdf)

EOIR Benchbook Sections (Legacy)

Preliminary Issues
https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/preliminary-issues-suppress.pdf

Outline for Issue Spotting
https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/outline-spotting.pdf

Fourth Amendment
https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/4th-amendment.pdf

Fifth Amendment
https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/5th-amendment.pdf

Regulatory Violations
https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/15/regulatory-violations.pdf