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12 *Of Counsel*

13 [See next page for additional counsel.]

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

17 SYLVIA HAYDEE URIBE-REYNA;
ADOLFO HUERTA,

18 *Petitioners,*

19 v.

20 MICHAEL CHERTOFF, Secretary of
21 Homeland Security; JULIE L.
22 MEYERS, Assistant Secretary for
Immigration and Customs
Enforcement; ALBERTO
23 GONZALES, Attorney General;
24 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT;
25 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,

26 *Respondents.*

Case No.: 07-CV-59-TUC-DCB
Date: 02/07/07

Alien Registration No.:
A200-056-620

**PETITIONERS' APPLICATION
TO ENFORCE INJUNCTION
AND MOTION FOR
RECONSIDERATION OF
DISMISSAL**

1 JUDY RABINOVITZ* (NY Bar No. 2079788)
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18 *Of Counsel*

19 * application for admission *pro hac vice* forthcoming

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1 On Friday, February 2, 2007, Respondents filed a Response in Opposition to
2 Petitioners' Motion, arguing, *inter alia*, that the Court lacked jurisdiction to
3 review orders of expedited removal. Respondents did not request or move for
4 dissolution or modification of the TRO or for permission to remove Ms. Uribe-
5 Reyna prior to the scheduled hearing.

6 Petitioners' counsel immediately began preparing a Reply to Respondents'
7 Opposition addressing the jurisdictional and other issues raised in Respondents'
8 Opposition and to prepare for the scheduled-"February 8, 2007" hearing. Counsel
9 planned to file Petitioners' Reply on or before February 7, 2007 (i.e., the
10 Wednesday preceding the scheduled hearing). As part of that response, counsel
11 had also begun to prepare applications for cancellation of removal and adjustment
12 of status for filing on February 7, 2007.

13 On Monday, February 5, 2007 at approximately 4:20pm MST, the Court
14 issued an order that *sua sponte* lifted the temporary stay of removal, vacated the
15 hearing date, and dismissed the habeas corpus petition for lack of jurisdiction.
16 *See* Order, 07-CV-59-TUC-DCB (Feb. 5, 2007). Petitioners learned of the order
17 at approximately 7:26pm MST when undersigned counsel was able to obtain
18 computer access. *See* Exhibit ("Exh.") 1 (Declaration of Vikram K. Badrinath,
19 Esq.), Item 5. Counsel received no prior notice that the Court was considering
20 lifting the TRO and did not receive any notice other than the computerized order
21 by CM/ECF that the TRO had been lifted. In preparing to respond to
22 Respondent's opposition, counsel had relied on the Court's order granting the
23 TRO, which *specifically* provided that the TRO would remain in effect until the
24 hearing on February 8, 2007. *See* Exh. 1 (Declaration of Vikram K. Badrinath,
25 Esq.), Item 13.

26 Immediately up learning of the Court's order, counsel consulted with the
27 pro hac vice counsel awaiting admission and began preparing an Emergency

1 Motion for Injunction (to Stay Removal) Pending Appeal as required by Rule 8 of
2 the Federal Rules of Appellate Procedure and simultaneously began drafting an
3 Emergency Motion for Stay Pending Appeal for submission to the Ninth Circuit in
4 the event the District Court denied the stay. Shortly thereafter, Petitioners’
5 emergency motion for a stay pending appeal was filed in the District Court that
6 same evening at approximately 12:35 am MST (on February 6, 2007). *Id.*, Item 6.
7 Subsequently, counsel filed a Notice of Appeal in the District Court that same day.

8 At no time during the evening while counsel was preparing the emergency
9 stay did counsel receive any notice, actual or otherwise, that Respondents were
10 actually preparing to physically remove Ms. Uribe-Reyna from the United States
11 to Mexico that very night, and/or were in the midst of actually processing her for
12 removal. If counsel had at any time learned from Ms. Uribe-Reyna or from
13 Respondents that Ms. Uribe-Reyna might actually be removed during the night,
14 counsel would have sought an *immediate* ruling on the already-filed emergency
15 stay motion by seeking an emergency district court judge and, if necessary, an
16 emergency order from the U.S. Court of Appeals for the Ninth Circuit pursuant to
17 Ninth Circuit practice for obtaining emergency relief. *See* Exh. 1 ((Declaration of
18 Vikram K. Badrinath, Esq.), Item 12. Despite counsel’s filing of the emergency
19 stay pending appeal (to stay removal) at approximately 12:35 a.m. MST,
20 Respondents removed Ms. Uribe from the United States at approximately 2:55
21 a.m. MST, *significantly* after the application for a stay was filed.

22 Throughout the evening, Respondents were preparing Ms. Uribe’s removal
23 in order to effectuate her physical departure that night. Despite her repeated
24 requests, she was never permitted to contact her counsel or inform him of what
25 was transpiring. In particular, at or about 6:30 p.m. MST on February 5, 2007,
26 Ms. Uribe-Reyna was instructed by an ICE Deportation Enforcement Officer that
27 she “had to leave.” *See* Exh. 1 (Declaration of Vikram K. Badrinath, Esq.), Item

1 10. She was transferred to a holding cell, where she waited for several hours. At
2 or about 9:30 p.m. MST, Ms. Uribe-Reyna was told that she would be deported.
3 *Ibid.* Ms. Uribe-Reyna told the ICE officers that she had an attorney, that she had
4 a stay of removal, and that she wished to call her attorney. *See* Exh. 1
5 (Declaration of Vikram K. Badrinath, Esq.), Item 10.

6 The ICE officers denied her request to contact her attorney, and instructed
7 her that she “could call [her] attorney from Mexico.” Ms. Uribe-Reyna attempted
8 to ask another detainee to call her counsel, but the ICE officials refused to permit
9 the other detainee to do so. *See* Exh. 1 (Declaration of Vikram K. Badrinath,
10 Esq.), Item 10.

11 After Ms. Uribe-Reyna was processed for removal, she was transported by
12 bus with approximately forty-one (41) other individuals from Florence, Arizona, at
13 approximately 12:00 or 12:30 am MST on February 6, 2007. *Ibid.* Ms. Uribe-
14 Reyna was told by deportation officers that if there was a stay in effect, she would
15 be brought back to the United States, as her removal was effectuated in error. Ms.
16 Uribe-Reyna arrived at the Nogales, Arizona - Nogales, Sonora border at
17 approximately 2:55 a.m. MST on February 6, 2007. *See* Exh. 1 (Declaration of
18 Vikram K. Badrinath, Esq.), Item 10.

19 Thereafter, at approximately 4:14 p.m. MST that same day, the Court
20 entered an order granting Petitioners’ Emergency Motion for Injunction (to Stay
21 Removal) Pending Appeal. *See* Minute Entry, Order, 07-CV-59-TUC-DCB (Feb.
22 6, 2007). Counsel immediately contacted Respondents to request that Ms. Uribe
23 be promptly returned to the United States. As of this filing, Respondents have
24 stated that they are considering counsel’s request and have neither agreed to nor
25 rejected it. *See* Exh. 1 (Declaration of Vikram K. Badrinath, Esq.), Item 14.

1 insure that the rights of all concerned are protected, Rule 65(b) prescribes certain
2 safeguards for the issuance of temporary restraining orders that must be
3 scrupulously honored.”). Indeed, Rule 65(b) Fed.R.Civ.Proc. makes clear that
4 *before* a TRO is vacated, the party who sought the TRO *must* be provided with
5 notice:

6
7 On 2 days’ notice to the party who obtained the temporary restraining
8 order without notice or on such shorter notice to that party as the
9 court may prescribe, the adverse party may appear and move its
10 dissolution or modification and in that event the court shall proceed
11 to hear and determine such motion as expeditiously as the ends of
12 justice require.

13 *Id.* (emphasis added). While the Court may choose to provide a period of notice
14 shorter than two (2) days, the Rule is clear that *some* notice is required before
15 dissolution may be entertained by the Court.

16 In this case, Petitioners had no notice that dissolution or vacatur was
17 contemplated, had no opportunity to respond, and the unanticipated dissolution of
18 the TRO while a scheduled hearing was only a few days away deprived petitioners
19 of their opportunity to seek and obtain a stay of removal pending appeal from this
20 court or the court of appeals prior to any actual removal and without the
21 extraordinary night-time measures that would have been necessary in this case had
22 counsel known of what was transpiring. In addition and independently, petitioners
23 were deprived of the opportunity to submit the applications for relief while she
24 was in the country that were being prepared for submission prior to the scheduled
25 hearing on February 8, 2007.

26 Petitioners were also severely prejudiced by Respondents’ failure to give
27 counsel any notice of their intention to remove Ms. Uribe-Reyna forthwith, and by

1 Respondents’ obstruction of Ms. Uribe-Reyna’s repeated efforts to communicate
2 with her counsel. *Cf. Zepeda-Melendez v. INS*, 741 F.2d 285, 288-89 (9th Cir.
3 1984) (holding that noncitizen’s deportation was unlawful where the government
4 failed to provide actual notice to his counsel); *Mendez v. INS*, 563 F.2d 956, 958-
5 59 (9th Cir. 1977) (same). As noted, if counsel had been provided notice of
6 Respondents’ intention to remove Ms. Uribe-Reyna in the middle of the night,
7 counsel would have sought an immediate ruling on Petitioners’ emergency motion
8 from this Court and, if necessary, from the Ninth Circuit, prior to Ms. Uribe-
9 Reyna’s removal.

10 In light of the *serious* prejudice suffered by Petitioners as a result of the lack
11 of notice of the Court’s *sua sponte* reconsideration, as well as the lack of notice by
12 Respondents of Ms. Uribe-Reyna’s imminent removal and Respondents’ actions
13 obstructing Ms. Uribe-Reyna’s communications with counsel, the Court should act
14 to enforce the injunction staying removal by ordering Ms. Uribe-Reyna returned to
15 the United States.

16
17 **B. The Court has the Power to Enforce Its Stay Order and to**
18 **Require that Ms. Uribe-Reyna Be Returned to the U.S.**

19 It is clear that the Court has the power to order this relief pursuant to 28
20 U.S.C. § 1651 and 28 U.S.C. § 2243. “It is well settled that the courts of the
21 United States have the inherent and statutory (28 U.S.C. § 1651) power and
22 authority to enter such orders as may be necessary to enforce and effectuate their
23 lawful orders and judgments, and to prevent them from being thwarted and
24 interfered with by force, guile, or otherwise.” *Fong v. Ashcroft*, 317 F. Supp. 2d
25 398, 404 (citation omitted) (holding that the district court had authority under the
26 All Writs Act, 28 U.S.C. § 1651, to order noncitizen habeas petitioner returned to
27

1 the U.S. when she had been deported in violation of the Court’s order staying her
2 removal). Indeed, in *Mendez v. INS*, 563 F.2d 956 (9th Cir. 1977), the Ninth
3 Circuit ordered a noncitizen returned after he was deported without notice to
4 counsel. *See id.* at 959 (“We order the Immigration and Naturalization Service to
5 admit appellant into the United States, granting appellant the same status he held
6 prior to the . . . deportation.”).

7 Title 28, U.S.C. § 2243 likewise vests the Court with the equitable authority
8 in habeas corpus cases to order relief as required to carry out the ends of justice.
9 Section 2243 provides that the court “shall summarily hear and determine the
10 facts, and dispose of the matter as law and justice require.” Section 2243 provides
11 a court with flexibility to fashion relief appropriate to the case at hand. *See, e.g.*,
12 *Carafas v. LaVallee*, 391 U.S. 234, 239 (1968) (explaining that § 2243’s “mandate
13 is broad with respect to the relief that may be granted”); *In re Bonner*, 151 U.S.
14 242, 261 (1894) (holding that predecessor statute to § 2243 “invested [the courts]
15 with the largest power to control and direct the form of judgment to be entered in
16 cases brought up before it on habeas corpus”). Section 2243 reflects a
17 congressional directive that courts sitting in habeas make every effort to provide
18 some appropriate remedy to those whose liberty is unlawfully restrained.

19 It is, of course, undisputed that this Court retains jurisdiction over the
20 pending habeas petition to afford the relief requested and to enforce its stay
21 despite her removal from the country. *See infra*. In sum, Petitioners respectfully
22 request that under the *unique* circumstances of this case, the Court act to enforce
23 its injunction staying removal by entering an order directing Respondents to return
24 Ms. Uribe-Reyna to the U.S. and restoring her to the status she held prior to
25 removal. Indeed, this Court issued its injunction staying removal (pending appeal)
26 on the basis that Petitioner would be able to litigate her case to the Ninth Circuit
27 and intended that Petitioner be afforded such an opportunity. Respondents’

1 actions to remove Petitioner from the United States without notice to counsel at
2 approximately 2:55 am MST thwarts the Courts interest in entering the injunction
3 and in affording Petitioner her day in court.

4
5 **II. Motion to Reconsider: The Court Erred in Dismissing This Case**
6 **for Lack of Jurisdiction**

7
8 Petitioners also respectfully move this Court for reconsideration of its
9 February 5, 2007, decision dismissing this case for lack of jurisdiction. In support
10 of this motion, Petitioners present arguments that the Court did not have before it
11 at the time it entered the February 5, 2007 order; Petitioners are prepared to
12 present full briefing or argument on these issues if that would assist the Court.
13 Significantly, Respondents' Brief in Opposition to Petitioners' Motion for TRO
14 failed entirely to address the *serious* constitutional issues that would arise under
15 the Suspension Clause if judicial review is precluded in this case, even though
16 Petitioners specifically raised these issues in their Petition and Complaint. *See*
17 Petition and Complaint, at ¶¶ 1, 19-21.

18 As an initial jurisdictional matter, Petitioners note that Ms. Uribe-Reyna's
19 removal does not divest the Court of jurisdiction over the Petition and Complaint.
20 *See, e.g., Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 878 (9th Cir. 2003) ("We
21 retain jurisdiction over a removed alien's habeas petition when, as here, it was
22 filed before removal took place and there are collateral consequences arising from
23 the removal."); *see also Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (holding that the
24 jurisdictional custody requirement of habeas is satisfied where the petitioner was
25 in custody at the time the habeas petition was filed). Here, Petitioners continue to
26 suffer consequences from the expedited removal order. In particular, Ms. Uribe-
27 Reyna is subject to a potentially permanent bar on her inadmissibility to the U.S.

1 because she was charged with having made a false claim to U.S. citizenship, a
2 charge that she has had no opportunity to contest. *See* 8 U.S.C. §
3 1182(a)(6)(C)(ii).

4 The statutory provision authorizing habeas review of expedited removal
5 orders, 8 U.S.C. § 1252(e), can and must be interpreted to permit judicial review
6 of the legal validity of Ms. Uribe-Reyna’s expedited removal order, in order to
7 avoid the serious constitutional problems that would otherwise result under the
8 Suspension Clause.

9 As the Supreme Court made clear in *INS v. St. Cyr*, 533 U.S. 289 (2001) the
10 Suspension Clause of the United States Constitution, Art. I, § 9, Cl. 2, protects the
11 right of all noncitizens to judicial review of their removal orders. The Court’s
12 ruling makes clear that it is equally applicable to aliens at the border seeking
13 admission. *See* 533 U.S. at 313 n.36 (discussing “the historic use of [28 U.S.C.] §
14 2241 jurisdiction as a means of reviewing deportation and *exclusion* orders”)
15 (emphasis added).

16 *St. Cyr*’s holding relied upon the Supreme Court’s decision in *Heikkila v.*
17 *Barber*, 345 U.S. 233 (1953), in which the Supreme Court reviewed the history of
18 judicial review of immigration orders and emphasized that judicial scrutiny of a
19 noncitizen’s removal is required by the Constitution. The Court explained that,
20 from the enactment of statutes restricting judicial review in 1891 until enactment
21 of the 1952 Immigration Act, the only judicial review of removal orders available
22 was the minimum review which was “required by the Constitution.” *Heikkila*, 345
23 U.S. at 345; *see also Flores-Miramontes v. INS*, 212 F.3d 1133, 1142-43 (9th Cir.
24 2000).

25 Throughout this period, the federal courts regularly exercised habeas corpus
26 jurisdiction to review orders against noncitizens seeking entry, even though
27 judicial review had been reduced to the constitutional minimum. *See, e.g., Ekiu v.*

1 *United States*, 142 U.S. 651, 660 (1892) (holding that “[a]n alien immigrant,
2 prevented from landing . . . and thereby restricted of his liberty, is doubtless
3 entitled to a writ of habeas corpus to ascertain whether the restraint is lawful”); *see*
4 *also, e.g., Ng Fung Ho v. White*, 259 U.S. 276 (1922); *Kwock Jan Fat v. White*,
5 253 U.S. 454 (1920); *Gegiow v. Uhl*, 239 U.S. 3, 9-10 (1915); *Chin Yow v. United*
6 *States*, 208 U.S. 8, 11 (1908).

7 Further, the Supreme Court has made clear that the *scope* of habeas review
8 required by the Constitution includes review of the precise type of claims raised
9 by Petitioners. *See St. Cyr*, 533 U.S. at 302 (stating that throughout history, the
10 scope of habeas review “encompassed detentions based on errors of law, including
11 the erroneous application or interpretation of statutes”); *id.* at 307 (“Habeas courts
12 also regularly answered questions of law that arose in the context of discretionary
13 relief.”).

14 To read the statute as precluding review of Ms. Uribe-Reyna’s claims would
15 thus violate the Suspension Clause by denying her any judicial avenue for review
16 of the questions of law raised in this case. *See St. Cyr*, 533 U.S. at 305 (“a serious
17 Suspension Clause issue would be presented if we were to accept the INS’
18 submission that the 1996 statutes have withdrawn th[e] power [to issue the writ of
19 habeas corpus] from federal judges and provided no adequate substitute for its
20 exercise”).

1 Against this constitutional backdrop, 8 U.S.C. § 1252(e)¹ can and must be
2 read to permit review over the claims raised in this case. Significantly, at least
3 one federal court has held that the scope of review in § 1252(e)(2) includes
4 questions closely analogous to the ones raised in this case. *See American-Arab*
5 *Anti-Discrimination Committee v. Ashcroft*, 272 F.Supp.2d 650 (E.D. Mich. 2003)
6 (hereinafter “AADC”) (holding that § 1252(e) confers “jurisdiction on habeas
7 review to determine whether the expedited removal statute was *lawfully applied* to
8 petitioners in the first place”); *accord Li v. Eddy*, 259 F.3d 1132, 1137-40 (9th Cir.
9 2001) (Hawkins, J. dissenting) (concluding that § 1252(e) authorizes review of the
10 government’s compliance with the expedited removal provision’s statutory
11 prerequisites), *vacated as moot*, 324 F.3d 1109 (9th Cir. 2003).

12 Section 1252(e)(5)’s provision for review over “whether such an order *in*
13 *fact* was issued and whether it *relates to* the petitioner” (emphasis added)
14 encompasses review of whether the expedited removal provision was lawfully
15 applied. Thus, claims in this case fall within the scope of review provided by §

16
17 ¹ Title 8 U.S.C. § 1252(e)(2) provides:

18 Judicial review of any determination made under section 235(b)(1) [8
19 U.S.C. § 1225(b)(1)] is available in habeas corpus proceedings, but
20 shall be limited to determinations of—

21 (A) whether the petitioner is an alien;

22 (B) whether the petitioner was ordered removed under such section;
23 and

24 (C) whether the petitioner can prove by a preponderance of the
25 evidence [that the petitioner is a lawful permanent resident, refugee,
26 or asylee.]

27 8 U.S.C. § 1252(e)(2). Section 1252(e)(5) further provides that “[i]n determining
28 whether an alien has been ordered removed under section 235(b)(1), the court’s
inquiry shall be limited to whether such an order *in fact* was issued and whether it
relates to the petitioner.” (Emphasis added.)

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Dated: February 6, 2007 at Tucson, Arizona.

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* application for admission *pro hac vice* forthcoming

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 SYLVIA HAYDEE URIBE-REYNA;
ADOLFO HUERTA,

Case No.: 07-CV-59-TUC-DCB
Date: 02/07/07

9 *Petitioners,*

Alien Registration No.:
A200-056-620

10 v.

11 MICHAEL CHERTOFF, Secretary of
Homeland Security; JULIE L.
12 MEYERS, Assistant Secretary for
Immigration and Customs
13 Enforcement; ALBERTO
GONZALES, Attorney General;
14 UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT;
15 UNITED STATES DEPARTMENT
OF HOMELAND SECURITY,

CERTIFICATE OF SERVICE

16 *Respondents.*
17

18 I am a citizen of the United States over the age of 18 years, a resident of Pima
19 county and not a party to the instant action. My business address is: 100 North
Stone Avenue, Suite 302, Tucson, Arizona 85701-1514. On February 7, 2007, I
20 served a copy of the attached:

21 **Application to Enforce Injunction (Pending Appeal) and Motion for
Reconsideration of Dismissal for Lack of Jurisdiction**

22 by transmitting the same electronically through the U.S. District Court ECF/CM
23 System, and that such transmission complies with Paragraph II(D)(3), Arizona
ECF Administrative Policies and Procedures Manual (Apr. 3, 2006), in that it was
24 sent electronically to all registered users in this above-entitled action. By signing
below, I hereby certify that compliance was made as noted above by transmitting
25 to the Clerk's Office using the ECF/CM System for filing and transmittal of a
Notice of Electronic Filing for the following ECF/CM registrants:

26 ATTN: Cynthia M. Parsons, Esq.
U.S. Attorney's Office
27 *District of Arizona*

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Respectfully submitted,

s/Vikram K. Badrinath
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Of Counsel

* application for admission *pro hac vice* forthcoming

INDEX OF EXHIBITS FOR
APPLICATION TO ENFORCE INJUNCTION AND MOTION TO
RECONSIDER DISMISSAL FOR WANT OF JURISDICTION
URIBE-REYNA, Sylvia (A200-056-620)

I.

1. Declaration of Counsel, Vikram K. Badrinath, Esq.

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AFFIDAVIT OF COUNSEL
IN SUPPORT OF APPLICATION TO ENFORCE INJUNCTION AND
PETITION FOR WRIT OF HABEAS CORPUS

State of Arizona)
)
Pima County) ss.
)

I, Vikram K. Badrinath, after being duly sworn upon his oath, under penalty of perjury, 28 U.S.C. § 1746, hereby declare and state as true, accurate, and complete, the following specific facts and information:

1. That I am an attorney for the Petitioners/Plaintiffs in the above-captioned case.
2. That I am an attorney in the State of Arizona, admitted to practice before the United States District Court, District of Arizona.
3. That I have reviewed the facts, record of proceedings, and statements of my clients.
4. That on Monday, February 5, 2007, my computer failed to operate and I was therefore without access to my computer files, internet access, and other functions of my computer. As of the date of this Affidavit, my computer remains inoperable.
5. That on Monday, February 5, 2007, when I had an opportunity to check my email at approximately 7:25 pm on another office computer, I first learned that the Court had issued an order lifting the stay of removal, vacating the hearing date, and dismissing the previously filed Petition for Writ of Habeas Corpus and Complaint for Declaratory Relief.
6. That efforts were *immediately* commenced to draft and file an Emergency Motion for

1 Injunction (to Stay Removal) Pending Appeal to the U.S. Court of Appeals for the Ninth
2 Circuit, and a Notice of Appeal.
3

4
5 7. That the Motion for Injunction (to Stay Removal) Pending Appeal was filed with the
6 District Court at 12:36am on Tuesday, February 6, 2007.

7
8 8. That, at approximately, 8:32am undersigned counsel received notice that Petitioner
9 Sylvia URIBE had been physically removed from the United States by Respondents at
10 approximately 2:55am, February 6, 2007. Petitioner was transferred from the Florence,
11 Arizona immigration detention center at approximately 12:00-12:30 am, February 6,
12 2007.

13
14 9. That the Notice of Appeal to the U.S. Court of Appeals for the Ninth Circuit was filed
15 on February 6, 2007 at approximately 9:06 am on Tuesday, February 6, 2007.

16
17 10. That undersigned counsel spoke with Petitioner via telephone at approximately
18 10:35am, February 6, 2007. At that time, Petitioner related the following details of her
19 physical removal from the United States: At 6:30 pm (02/05/07), an ICE Deportation
20 Enforcement Officer called her and told her that she "had to leave"; ICE Agents then
21 transported her to a holding cell where she waited for several hours. At approximately
22 9:30pm, ICE Agents told Ms. URIBE that they were going to deport her. She told them
23 that she had an attorney and a stay of her removal and that she wanted to call her
24 attorney. ICE Agents instructed her that they "checked the computer" and that there was
25 no stay, and that she "could call [her] attorney from Mexico." Ms. URIBE attempted
26 to instruct another inmate to call undersigned counsel, but ICE Agents refused to permit
27 the other individual to do so. ICE Agents continued processing the removal (i.e., took
28 her photographs/fingerprints, etc.). At 12:00am-12:30am, Ms. URIBE was then

1 transported by bus from Florence, Arizona with approximately 41 other individuals. ICE
2 Agents also told her that they would check the computer, and if there was a stay,
3 then they would stop the bus, and/or if there was a stay in effect that they would bring
4 her back to the U.S. Ms. URIBE asserts that she arrived at the Nogales, Arizona-
5 Nogales, Sonora Border at 2:55am.
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8 11. That no representative from ICE informed myself, co-counsels, my office, staff,
9 secretaries, paralegals, or receptionist, that it had intended on physically removing
10 Petitioner URIBE from the United States on February 5, 2007 after dissolution of the
11 temporary restraining order.

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13 12. That had notice been provided to us by ICE or representatives of the U.S. Department
14 of Homeland Security that Petitioner's removal was imminent, we would have taken
15 immediate action to obtain an emergency stay from the District Court, or if necessary
16 from the U.S. Court of Appeals for the Ninth Circuit, in order to fully preserve
17 Petitioners claims and discretionary applications for relief.

18
19 13. That prior to these events, Petitioners' counsel immediately began preparing a Reply to
20 Respondents' Opposition addressing the jurisdictional and other issues raised in
21 Respondents' Opposition and to prepare for the February 8 hearing. Counsel planned to
22 file Petitioners' Reply on or before Wednesday, February 7, 2007. As part of that
23 response, counsel had also begun to prepare applications for cancellation of removal and
24 adjustment of status for filing on February 7, 2007.

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26 14. That undersigned counsel has contacted Respondents in this matter to discuss the
27 possibility that the Petitioner be returned to the United States, and such request remains
28 pending.

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15. That the foregoing facts are true and correct, to the best of my personal knowledge.

I, VIKRAM K. BADRINATH, SWEAR AND AFFIRM UNDER PENALTY OF PERJURY OF THE LAWS OF THE UNITED STATES OF AMERICA THE FOREGOING IN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND ABILITY.

/s Vikram K. Badrinath

02/07/2007

Vikram K. Badrinath, Esq.

Date