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EDWIGE MYRTIL

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWIGE MYRTIL,

Petitioner,

v.

SCOTT FRAUENHEIM, in his official capacity as Facility Administrator, CENTRAL VALLEY ANNEX;

MOISES BECERRA, in his official capacity as Field Office Director of the San Francisco Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement;

DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

MARKWAYNE MULLIN, in his official capacity as U.S. Secretary of Homeland Security; and

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents.

Case No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Date Filed: July 23, 2026

Trial Date: Not set

I. INTRODUCTION

1. This case concerns whether Immigration and Customs Enforcement ("ICE") can—without reason, adequate notice, or any process whatsoever—arbitrarily arrest and indefinitely detain Petitioner Edwige Myrtil (hereinafter "Petitioner" or "Mr. Myrtil"), whom ICE itself previously released and placed on community supervision. Mr. Myrtil has made every effort to comply with the conditions of his release from immigration detention for more than 10 years. Yet he was arbitrarily arrested on May 20, 2026, and is currently detained at the Central Valley Annex in McFarland, California.

2. Mr. Myrtil is a native and citizen of Haiti who has lived in the United States since 1994. In 2013, an immigration judge granted Mr. Myrtil deferral of removal to Haiti under the Convention Against Torture. Mr. Myrtil was then released from ICE custody pursuant to an Order of Supervision ("OSUP"), after ICE made an express determination that he did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)–(h).

3. Once an OSUP has been granted, ICE's own regulations govern when and how it may be revoked, and who can revoke it. *See* 8 C.F.R. §§ 241.4(l), 241.13(i). These regulations provide core due process protections—they guard against arbitrary revocation by low-level officers and require both notice and an opportunity to be heard.

4. Despite Mr. Myrtil's prior release from immigration custody on an OSUP, Respondents re-arrested Mr. Myrtil on May 20, 2026. This re-detention followed Mr. Myrtil's arrest by Orange County, FL police based on an outstanding warrant for failure to appear in county court at a hearing related to driving on a suspended license. At the time of his arrest by Florida police, Mr. Myrtil was not aware of any outstanding warrant in his name. Although Mr. Myrtil was swiftly released from police custody on a minimal cash bond, he was detained by ICE and taken to Baker County Detention Center in Macclenny, Florida.

5. At the time of his arrest, Respondents did not explain the reasons for revoking Mr. Myrtil's OSUP. Respondents did not provide individualized or particular reasons in writing for revoking Mr. Myrtil's OSUP. Nor did Respondents ask him any questions or provide him with an

interview. There were no changed circumstances following Mr. Myrtil's initial release from immigration detention that could lead Respondents to believe that he is a danger to the community or a flight risk. To the contrary, since his initial release, Mr. Myrtil has strengthened his community ties, lengthened his clean record, and established a pattern of compliance with his OSUP.

6. The only new event identified in the administrative record is Mr. Myrtil's arrest by state police on a nonviolent traffic-related offense arising from driving without a valid license. Unlike a violent offense, a new felony, or conduct demonstrating that Petitioner poses a danger to the community or presents a heightened risk of flight, this minor traffic-related incident does not reasonably explain why, after approximately a decade of successful compliance with supervision, ICE abruptly determined that continued release was no longer appropriate.

7. Moreover, there is no evidence that Respondents have any specific plans to remove Mr. Myrtil in the reasonably foreseeable future. Mr. Myrtil has a specific, diplomatic barrier to removal, because on August 21, 2013, before the Miami Immigration Court, an immigration judge granted Mr. Myrtil deferral of removal to Haiti under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Respondents did not in any way indicate (and have not indicated) that they have overcome these barriers to removal when they re-detained Mr. Myrtil.

8. Since his arrest, Mr. Myrtil has been locked in immigration detention thousands of miles from his family and community. He has already been transferred multiple times without advance notice to him or his counsel – first from Florida to Louisiana, then to Texas, Arizona and finally California, where he remains detained at the Central Valley Annex. Mr. Myrtil continues to be deprived of his liberty and separated from his family. All available evidence suggests that Respondents intend to detain Mr. Myrtil indefinitely.

9. Because his OSUP was revoked in blatant violation of law, because his ensuing detention serves no lawful purpose, and because there is no substantial likelihood of his removal in the reasonably foreseeable future, Mr. Myrtil seeks an order requiring his immediate release.

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus authority); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and Article I, Section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

11. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

12. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Le v. Chesnut*, No. 1:26-CV-01750 JLT SAB, 2026 WL 809891, at *3 (E.D. Cal. Mar. 24, 2026).

13. Venue properly lies with this Court under 28 U.S.C. § 1391(b), (e)(1) because Petitioner is detained within the Eastern District of California, his immediate physical custodian is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District. Venue is also proper under 28 U.S.C. § 2241(d) because Mr. Myrtil is detained at a facility within this District.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

14. There is no statutory requirement to exhaust here. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Further, administrative exhaustion is not required because no other forum exists in which Petitioner can adequately raise his claims, exhaustion would be futile, there is no requirement to exhaust before challenging the constitutionality of an arrest or detention, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Here, Mr. Myrtil has no meaningful administrative remedies to exhaust, he raises constitutional questions that the agency is not empowered to redress, there are significant individual liberty interests at stake that weigh in favor of immediate judicial review, the factual context is not particularly complex or technical

requiring the agency to apply any special expertise, and the Court would not be aided by an administrative record.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

15. The Court must grant the petition for writ of habeas corpus or issue an Order to Show Cause ("OSC") to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an Order to Show Cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

16. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation modified).

V. PARTIES

17. Petitioner Edwige Myrtil is a 36-year-old Haitian national who has lived in the United States for 32 years, since he arrived in 1994 at age four as a refugee. Though Mr. Myrtil has a final order of removal, he cannot be removed to Haiti because he was granted deferral of removal under CAT in 2013. Respondents released Mr. Myrtil on an OSUP in 2016. Over ten years after his release, Mr. Myrtil was arrested by Respondents on May 20, 2026, and he is currently detained at the Central Valley Annex in McFarland, California.

18. Respondent Scott Frauenheim is sued in his official capacity as Facility Administrator, Central Valley Annex. Respondent Frauenheim is the immediate legal custodian of Petitioner Myrtil.

19. Respondent Moises Becerra is sued in his official capacity as Field Office Director, San Francisco Field Office, Enforcement and Removal Operations, ICE, which oversees

ICE's operations in Northern California. Respondent Becerra is a legal custodian of Petitioner Myrtil.

20. Respondent David Venturella is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Venturella is a legal custodian of Petitioner Myrtil.

21. Respondent Markwayne Mullin is sued in his official capacity as Secretary of the Department of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner Myrtil's ultimate legal custodian.

22. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. As Acting Attorney General, Respondent Blanche oversees the immigration court system, including the immigration judges who conduct removal proceedings and bond hearings as his designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). He is legally responsible for administering Petitioner Myrtil's immigration proceedings, and as such, he is a legal custodian of Edwige Myrtil.

VI. STATEMENT OF FACTS

23. Mr. Myrtil is a native and citizen of Haiti. He has lived in the United States since 1994, when he was admitted as a refugee. He has no immigration status, citizenship, or other claim or right to travel or live in any third country.

24. On February 1, 2008, Mr. Myrtil was convicted in Florida for robbery, robbery with a firearm, third-degree grand theft, attempted burglary of a dwelling, and possession of cocaine with intent to sell or deliver. Mr. Myrtil was sentenced to ten years of incarceration. Mr. Myrtil served his sentence and the State of Florida released and transferred him to ICE custody in August 2015.[1] While he was incarcerated, Mr. Myrtil learned to read and write, obtained his

[1] Once a person has served their criminal sentence imposed by the state, the state no longer has any interest in incarcerating them. *See Foucha v. Louisiana*, 504 U.S. 71, 72 (1992) ("Although a State may imprison convicted criminals for the purposes of deterrence and retribution," no such interest exists where a criminal penalty is not being imposed). It is well-settled that ICE detention cannot be used as a legal substitute for criminal detention. *See Zadvydas*, 533 U.S. at 690 (explaining that "[t]he proceedings at issue [in the immigration context] are civil, not criminal, and we assume that they are nonpunitive in purpose and effect. There is no sufficiently strong special justification here for indefinite civil detention—at least as administered under this statute.").

GED, and tutored other inmates in reading and writing. Mr. Myrtil received training that earned him a residential electrical certificate. Mr. Myrtil also attended and earned certificates in the Narcotics Anonymous and Addicts Anonymous Programs.

25. Mr. Myrtil was placed in removal proceedings in immigration court in 2008. He went forward with his immigration proceedings while serving his criminal sentence.

26. On August 21, 2013, the Immigration Judge ("IJ") ordered Mr. Myrtil removed to Haiti. Mr. Myrtil's removal order became administratively final on September 20, 2013. *See* 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1003.38(b).

27. At the time Mr. Myrtil was ordered removed, the IJ concurrently granted his application for deferral of removal to Haiti under the Convention Against Torture. The Department of Homeland Security did not appeal the IJ's decision. The IJ found that Mr. Myrtil was likely to be tortured in Haiti, and therefore, Respondents were and are prevented from removing Mr. Myrtil to Haiti.

28. In August 2015, Mr. Myrtil completed his sentence and was released from custody by the state of Florida. At that time, he was taken into custody by ICE. From August 31, 2015 until January 11, 2016, Mr. Myrtil remained in ICE custody while the government attempted to remove him. Having made no headway on removing Mr. Myrtil to Haiti or anywhere else, ICE finally released him after more than 90 days of detention.

29. On January 11, 2016, DHS released Mr. Myrtil with an OSUP, requiring him to comply with several conditions of release, including to appear in person before an immigration officer periodically for identification; to provide information to ICE about his nationality, circumstances, habits, associations and activities and other information ICE considered appropriate; to notify ICE of changes of residence or employment within 48 hours; to not travel outside Florida for more than 48 hours without notifying ICE of the dates and places of travel; to help ICE obtain any necessary travel documents; and obey all federal, state, and local laws or ordinances, and notify ICE of any new arrests or convictions. *See* Exhibit 1, Order of Supervision.

30. After Mr. Myrtil's release from immigration custody in 2016, Mr. Myrtil complied with the terms of his OSUP to the best of his abilities. He did not travel without permission, or

move without notifying ICE. He attended annual check-ins with ICE in Orlando, Florida until 2020. When he tried to attend a check-in in 2020, during the height of the COVID pandemic, he was informed that he was not allowed to enter the building and that he would be contacted about future check-ins. He repeatedly attempted to return to ICE's offices for a check-in, but was never permitted to enter. He took photographs of himself in front of the ICE building in order to document his attempts to comply with his OSUP check-in requirements. No one from ICE ever contacted Mr. Myrtil to reschedule his check-ins.

31. Following his release from immigration detention (and following his completion of his criminal sentence), Mr. Myrtil has been a model citizen, working hard to avoid the negative influences that led to his arrest as a teenager, and engaging in substantial efforts throughout his community to help other young people avoid drugs and crime and remain out of prison. He founded a nonprofit called Z.M.F. that provides mentoring and coaching for previously incarcerated individuals and troubled youth. Aside from the arrest described below related to driving without a valid license, Mr. Myrtil has had no criminal arrests or convictions since ICE released him in 2016. Instead, he has been living a quiet life near his parents and siblings in Orlando, Florida.

32. In 2025, Mr. Myrtil attempted to renew his Florida driver's license and was informed that, in order to comply with the stricter Real ID guidelines imposed by the State of Florida, he needed to provide a copy of an employment authorization document issued by USCIS. He promptly submitted his I-765 application for an employment authorization document to USCIS, but that application has been pending for nearly a year. As a result, he has been unable to renew his Florida driver's license and received a citation for driving without a valid license in Seminole County, Florida. Mr. Myrtil inadvertently wrote down the wrong date for his court hearing on this citation, and therefore showed up one day late to court. The court clerk informed him that he had missed his hearing but stated that no warrant had been issued for his arrest. Mr. Myrtil's attorney informed him that the attorney would work on rescheduling the hearing.

33. Without Mr. Myrtil's knowledge, a warrant was in fact issued following his failure to appear in court regarding the citation for driving without a valid license. On May 19, 2026, Mr.

Myrtil was arrested in Orange County, Florida, on the outstanding warrant. The next day, Mr. Myrtil was released from police custody after paying a minimal cash bond. He was thereafter immediately arrested by ICE, who transferred him to immigration custody at the Baker County Detention Center in Macclenny, Florida.

34. ICE did not provide Mr. Myrtil or his counsel with any notice specifying the reasons for revoking his release. Mr. Myrtil has not been informed of the basis for his recent arrest and re-detention. Before he obtained counsel, ICE officers at Baker County Detention Center in Florida tried to get Mr. Myrtil to sign documents without giving him the opportunity to review them. Because the officers would not allow him to review the documents, Mr. Myrtil refused to sign them. When Mr. Myrtil's counsel asked him to request his detention documents from the Baker County Detention Center staff, an ICE officer told Mr. Myrtil to tell his attorney to file a FOIA request with ICE.

35. Mr. Myrtil was not provided with any interview to respond to the reasons for his re-detention as required by DHS regulations. *See* 8 C.F.R. § 241.4(i)(3), (l)(1). Had Mr. Myrtil been provided with such an interview, he would have offered evidence of his years-long compliance with the OSUP requirements, ICE's previous unsuccessful attempt to remove him in 2015 and 2016, the efforts he is making to renew his driver's license, and his longstanding ties to his community.

36. When Mr. Myrtil asked for a copy of the 2013 order granting him deferral of removal under CAT protection, the ICE officer who handed him a copy of the order told him they were going to deport him to an unspecified third country.

37. DHS has not sought to terminate Mr. Myrtil's grant of deferral of removal under CAT in immigration court.

38. Mr. Myrtil has fully complied with ICE's efforts to remove him for the last 10 years. Since his recent detention, Mr. Myrtil has been given no paperwork, travel documents, or interviews with consular officials regarding the steps taken to remove him. ICE has not named any specific country other than Haiti as an option for removal.

39. Despite Mr. Myrtil's long history of compliance with the terms of his OSUP and there being no intervening circumstances suggesting that he has become a flight risk or a danger to the community, Respondents arrested Mr. Myrtil without a warrant and transferred him first to Baker County Detention Center in Florida, then to Winn Correctional Center in Louisiana, El Paso East Camp Montana Detention Center in Texas, and finally to the Central Valley Annex in California. He has now been detained for 64 consecutive days (as of July 23, 2026) and is being held thousands of miles from his family. When this period of detention is combined with his prior ICE detention, he has been detained for 198 days.

40. Mr. Myrtil's detention has been very difficult for him and his family. Mr. Myrtil's family was not allowed to visit him while he was detained at Baker County Detention Center in Florida. On July 2, 2026, when ICE began his transfer and relocation to Louisiana, Mr. Myrtil was shackled for hours inside a bus without proper air-conditioning because the plane taking him and other noncitizens to Louisiana was running late. In Louisiana, Mr. Myrtil and other noncitizens were shackled and left outdoors for hours while waiting for the bus taking them to an airport in El Paso. In Texas, Mr. Myrtil was not fully processed at the detention center, but given a blanket and put in a holding cell in close proximity with other noncitizens during the predawn hours of the day. Later, Mr. Myrtil and other noncitizens were shackled from what seemed like mid-afternoon to midnight inside a bus, without water or toilet paper, while they waited for the plane to transfer them to Arizona. There, he suffered a panic attack inside the bus and had to be taken to a nurse for evaluation. The nurse did not provide medication to help him with the panic attack, but instead had him put in a holding cell while he recovered. Once in Arizona, Mr. Myrtil and other noncitizens were unshackled and put in a holding cell, because there was a disease outbreak at the nearby detention center. Mr. Myrtil and other noncitizens were forced to sleep on the floor with blankets made of foil. The following day, Mr. Myrtil experienced chest pain and stomach cramps, and had to be taken to a nearby hospital, where he was evaluated and prescribed medication for the painful stomach cramps. The plane taking Mr. Myrtil from Arizona to California made a stop in Salt Lake City, Utah, where some noncitizens were dropped off and

other noncitizens boarded the plane. Mr. Myrtil was not able to go to the bathroom during the six days he was transferred between detention centers.

VII. LEGAL FRAMEWORK

A. ICE's Own Regulations Require Adherence to Certain Procedures When Revoking Orders of Supervision.

41. When a noncitizen has been ordered removed from the United States, the government must generally remove that person within a 90-day period. 8 U.S.C. § 1231(a). After that initial 90-day removal period, ICE may only detain noncitizens if they are (1) inadmissible, (2) removable due to certain enumerated violations, or (3) "ha[ve] been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal[.]" *Id.* § 1231(a)(6). In *Zadvydas*, the Supreme Court read a prohibition on *indefinite* post-removal-period detention into § 1231(a)(6), reasoning that detaining a noncitizen awaiting removal for over six months may raise constitutional concerns. 533 U.S. at 699–701.

42. ICE may also release a noncitizen from detention after the removal period, subject to certain conditions, on an OSUP. 8 U.S.C. § 1231(a)(1)(A).

43. DHS has promulgated two regulations, 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13, that govern when a noncitizen may be released on an OSUP and when that release may be revoked. Section 241.4 provides generally applicable requirements governing the use of OSUPs. Section 241.13 applies specifically when OSUPs are used or revoked because there has been a change in the likelihood of the noncitizen's removal in the reasonably foreseeable future.

44. Release on an OSUP requires a fact-intensive inquiry into the noncitizen's suitability for release and extensive administrative review. 8 C.F.R. § 241.4(e); *see also* 8 C.F.R. § 241.4(i). Once released on an OSUP, a noncitizen must comply with the OSUP's requirements, which can include periodic in-person reporting or obtaining advance approval before traveling outside of a prescribed boundary. 8 C.F.R. §§ 241.4(i), 241.5(a).

45. Regardless of the reason for the noncitizen's release, the government may only revoke an OSUP when a noncitizen violates their "conditions of release," or certain circumstances, such as the likelihood of their removal, have changed. 8 C.F.R. § 241.4(l)(1).[2]

46. 8 C.F.R. § 241.4(l) and § 241.13(i)(3) outline the procedural protections ICE must provide to released noncitizens whom they seek to re-detain. These regulations impose four key requirements.

47. First, the **designated officials and findings requirement.** Only certain ICE officials have authority to revoke release. The OSUP revocation regulations clearly explain that only the Executive Associate Commissioner[3] has the authority to revoke an OSUP. 8 C.F.R. § 241.4(l)(2). A lower-ranking ICE official, the "district director," may revoke an OSUP, but only after making findings that revocation is "in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." *Id.*

48. Second, the **notice requirement**. 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3) both require that "[u]pon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release." These reasons must be specific enough to allow the noncitizen an opportunity to meaningfully respond to them.

49. Third, the **interview requirement**. 8 C.F.R. § 241.4(l)(1) and § 241.13(i)(3) both require ICE to provide noncitizens with "an initial informal interview promptly after his or her return to Service custody[.]" The purpose of this interview is "to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." *Id.*

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[2] Specifically, an OSUP may be revoked when the ICE Executive Associate Director or the district director determines that: "(i) The purposes of release have been served"; (ii) The [noncitizen has] violate[d] [a] condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a [noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2).

[3] This title refers to a position under the now-defunct Immigration and Naturalization Service (INS). The modern-day equivalent is the Executive Associate Director of ICE. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) ("[T]he Executive Associate Commissioner [of] INS is equivalent to the Executive Associate Director [of] ICE." (citing 8 C.F.R. § 1.2)); *see also* ICE Leadership, Department of Homeland Security, https://www.ice.gov/leadership (last accessed July 15, 2026) (listing Marcos Charles, John Condon, and Susan Dunbar as the current Executive Associate Directors and Acting Executive Associate Directors of ICE).

50. Fourth, the **finding of likelihood of removal requirement**. When ICE seeks to revoke an OSUP not because of a violation or change in the appropriateness of release, but instead to effect removal, the agency must make a specific finding as to the likelihood of removal. ICE can only revoke an OSUP in these circumstances if it can show that "*on account of changed circumstances*," "there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added).

51. ICE may revoke a noncitizen's OSUP and take them back into custody only after meeting all of these requirements.

B. Procedural Due Process and the *Accardi* Doctrine Require Certain Procedures When ICE Revokes Noncitizens' Orders of Supervision.

52. The Fifth Amendment's Due Process Clause protects all persons present in the United States, regardless of immigration status, from arbitrary deprivations of liberty and property. *Zadvydas*, 533 U.S. at 693. Freedom from imprisonment "lies at the heart of the liberty that [the Due Process] Clause protects." *Id.* at 690. The government violates the procedural component of the Due Process Clause when it deprives an individual of their liberty without sufficient procedural protections. *See United States v. Salerno*, 481 U.S. 739, 755 (1987); *Mathews v. Eldridge,* 424 U.S. 319, 332 (1976).

53. Under the *Accardi* doctrine, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (holding that Board of Immigration Appeals must follow its own regulations in its exercise of discretion); *see also Church of Scientology of California v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990) ("Pursuant to the *Accardi* doctrine, an administrative agency is required to adhere to its own internal operating procedures.").

54. The Ninth Circuit has explained that this obligation flows directly from the Due Process Clause. *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998). The government's obligations under this principle are at their highest when the regulations at question

are designed to protect individual rights. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.").

55. As established *supra*, DHS has promulgated two regulations that protect the individual rights of noncitizens who are re-detained after being on OSUPs. 8 C.F.R. § 241.4(l)(1)–(2) and 8 C.F.R. § 241.13(i)(2)–(3).

56. These regulations bear on a person's most fundamental individual right, liberty, which can only be taken away in compliance with procedural due process. *See Mathews*, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'") (citation modified); *Barraza Enriquez v. Mullin*, No. 2:25-CV-02352-LK, 2026 WL 947931, at *6 (W.D. Wash. Apr. 8, 2026) ("regulations governing revocation of release are intended to provide due process in that they are fairly construed to be part of a procedural framework designed to ensure the fair processing of an action affecting an individual") (citation modified); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL 2898977, at *3 (S.D. Cal. Oct. 10, 2025) ("ICE failed to comply with the required procedures, thereby violating Petitioner's due process rights.").

57. It is well established in the Ninth Circuit that failure to comply with the procedural requirements in ICE's regulations governing OSUP revocation violates the *Accardi* doctrine and Due Process Clause. *See, e.g.*, *Yan-Ling X. v. Lyons*, 813 F. Supp. 3d 1157, 1166 (E.D. Cal. 2025) ("Courts have held that where an immigration regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute and ICE fails to adhere to it, the challenged action is invalid.") (citation modified); *Le,* 2026 WL 809891, at *8 ("Though the government has significant discretion to enforce immigration laws, it must do so consistent with the requirements of its own regulations and the Due Process Clause. DHS's failure to follow its own procedural regulations constitutes a due process violation in this case.") (citation modified); *Tiraturian v. Bondi*, 817 F. Supp. 3d 883, 886 (C.D. Cal. 2025) (ordering release where ICE failed to provide proper due process necessary for OSUP revocation).

58. There is a growing consensus among district courts across the country that when ICE revokes an OSUP in violation of its own regulations in 8 C.F.R. § 241.4 and § 241.13,

detention is unlawful and **immediate release is appropriate**. *See, e.g.*, *Yan-Ling X.*, 813 F. Supp. 3d at 1167; *Le*, 2026 WL 809891, at *9; *Tiraturian*, 817 F. Supp. 3d at 889.

C. Substantive Due Process Bars ICE From Revoking Orders of Supervision Absent a Change in Circumstances Suggesting Petitioner is a Danger to the Community or a Flight Risk.

59. Civil detention is only constitutional if it serves a "legitimate nonpunitive governmental objective[.]" *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997); *see also Jackson v. Indiana*, 406 U.S. 715, 737 (1972) (to comply with the Due Process Clause, detention must always bear "some reasonable relation to the purpose for which the individual [was detained]"); *Hernandez*, 872 F.3d at 990.

60. The only constitutional purposes for immigration detention under 8 U.S.C. § 1231(a) are "'ensuring the appearance of [noncitizens] at future immigration proceedings' and 'preventing danger to the community.'" *Zadvydas*, 533 U.S. at 690 (citation omitted). Detaining a noncitizen to effectuate any other goal is without statutory basis and thus arbitrary and unconstitutional. *Jackson*, 406 U.S. at 737; *Foucha*, 504 U.S. at 79.

61. Given the regulatory framework prescribing when and how an OSUP may be rescinded, *see supra* ¶¶ 41–51, re-detention is only justified—and therefore only constitutional—if there has been a change in circumstances that leads the agency to believe that the noncitizen has become a danger or a flight risk in the intervening years, such as a new conviction for a violent or other serious crime or a failure to attend required check-ins, or that there is now a significant likelihood of removal in the reasonably foreseeable future. *See Le*, 2026 WL 809891 (granting habeas relief and ordering immediate release where respondents failed to show changed circumstances or a significant likelihood of removal after 26 years on OSUP); *Yan-Ling X.*, 813 F. Supp. 3d at 1164-65 (granting preliminary injunction where asserted travel-document review did not show why removal was likely now); *Phan v. Becerra*, No. 25-cv-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025) (holding "intent to complete a travel-document request [did] not make [removal] significantly likely"); *Phongsavanh v. Williams*, 809 F. Supp. 3d 864, 871 (S.D. Iowa 2025) (ordering immediate release when "nothing in the record explains

what has changed during the 25 years Phongsavanh was under supervision that would now justify his detention"); *see also* 8 C.F.R. § 241.4(i)(2).[4]

62. When there has been no new change in circumstances indicating danger or flight risk, ICE may only rely on a reasonably foreseeable removal to justify detention. *See* 8 C.F.R. §§ 241.4(l)(2), (i)(2). But as explained *infra* ¶¶ 64–69, to establish reasonably foreseeable removal as a basis for detention—especially where there are specific, diplomatic barriers to removal—ICE must show individualized evidence as to removability, more than merely "good faith efforts," or a theoretical possibility of eventually being removed. *Zadvydas*, 533 U.S. at 702; *Vishal v. Chesnut*, 811 F. Supp. 3d 1179, 1184-85 (E.D. Cal. 2025) (rejecting generalized assertions of ongoing third-country removal efforts); *Yan-Ling X.*, 813 F. Supp. 3d at 1164 (holding a mere "possibility that the designated country . . . will accept [p]etitioner at some point is not the same as a significant likelihood [of acceptance] in the reasonably foreseeable future") (citation modified). ICE must also provide individualized evidence of impending removal beyond "conclusory statements that they [are] taking steps to remove [petitioners]." *Escalante v. Noem*, No. 25-cv-00182-MJT, 2025 WL 2206113, at *3–4 (E.D. Tex. Aug. 2, 2025); *see also Nguyen v. Albarran*, No. 25-cv-1926-CSK, 2026 WL 184513, at *6 (E.D. Cal. Jan. 23, 2026) ("[C]onclusory statement in the Notice of Revocation offers no information regarding the alleged 'changed circumstances'"). Changes in government priorities alone do not constitute a change in circumstances. *Singh v. Andrews*, 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025) ("The law requires a change in relevant facts, not just a change in the government's attitude.") (citation modified).

[4] Without more, an arrest related only to a citation for driving without a valid license is not enough to show changed circumstances. Courts regularly hold that arrests (without convictions) are not enough to re-arrest and re-detain noncitizens in the absence of a finding that the noncitizen is now a danger to the community or a flight risk. *See, e.g. Selis Tinoco v. Noem*, 818 F. Supp. 3d 1141, 1152 (E.D. Cal. 2025) (granting release of a petitioner who had been "arrested for driving under the influence" because no neutral arbiter determined that a DUI arrest showed the petitioner is a "danger to the community"); *see also Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083, at *1, 6 (E.D. Cal. Nov. 21, 2025) (ordering petitioner's immediate release and enjoining and restraining respondents from re-detaining petitioner, despite petitioner being charged with driving under the influence); *Nolasco-Gomez v. Noem*, No. 25-cv-02217-RFB-DJA, 2025 WL 3514758 (D. Nev. Dec. 8, 2025) (same).

63. In sum, without a demonstrable change to the noncitizen's danger to society, flight risk, or the foreseeability of their removal, ICE detention is unmoored from its "carefully limited" statutory purpose and therefore unconstitutional. *See Salerno*, 481 U.S. 739 at 755; *Jackson*, 406 U.S. at 737.

D. Substantive Due Process and 8 U.S.C. § 1231(a)(6) Bar ICE from Detaining Noncitizens Indefinitely.

64. The Supreme Court has interpreted § 1231(a)(6) to authorize post-order detention only for "a period reasonably necessary to bring about [the noncitizen]'s removal from the United States." *Zadvydas*, 533 U.S. at 689. Acknowledging that the government may need more than 90 days to effectuate removals in certain instances, the Supreme Court recognized that "six months is the appropriate period[]" for post-order detention. *Id.* at 680. However, "as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.* at 701.

65. To determine how long a person has been detained post-order, most courts have concluded that the detention period is cumulative. Courts therefore consider a petitioner's previous periods in immigration detention; to do otherwise would allow the federal government to skirt constitutional requirements by repeatedly releasing and re-detaining a noncitizen. *See, e.g.*, *Nguyen v. Andrews*, No. 1:26-cv-00015, 2026 WL 263058, at *5 (E.D. Cal. Feb. 2, 2026) (holding that an "earlier period of detention should be aggregated with the current period of detention in determining whether petitioner remains within the presumptively reasonable" period of detention); *Siguenza v. Moniz*, No. 25-CV-11914-ADB, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) ("Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them.") (citation omitted).

66. While detention is presumptively reasonable for up to six months, *Zadvydas*, 533 U.S. at 701, reasonableness is measured "primarily in terms of the statute's basic purpose, namely, assuring the [noncitizen's] presence at the moment of removal." *Id.* at 699. Once a noncitizen establishes there is "good reason to believe that there is no significant likelihood of

removal in the reasonably foreseeable future," such as showing that there exists a specific, diplomatic barrier to removal, the government must "furnish evidence sufficient to rebut that showing." *Id.* at 680.

67. Six months is not a bright-line rule. A noncitizen may challenge their post-order detention prior to the six-month mark if they can prove that there is no significant likelihood of their removal in the reasonably foreseeable future. *See, e.g.*, *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) ("At no point did the *Zadvydas* Court preclude a noncitizen from challenging their detention before the end of the presumptively reasonable six-month period."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) ("The Supreme Court in *Zadvydas* outlined a 'guide' for approaching these detention challenges . . . not a prohibition on claims challenging detention less than six months.") (quoting *Zadvydas*, 533 U.S. at 700–01); *Uzzhina v. Chestnut*, No. 1:25-cv-01594-DAD-SCR, 2025 WL 3458787, at *3 n.3 (E.D. Cal. Dec. 2, 2025) ("The fact that a noncitizen has been held in-custody less than six months does not foreclose a claim that his or her detention is unlawful under *Zadvydas*."); *accord Ali v. Dep't of Homeland Sec.*, 451 F. Supp. 3d. 703, 706–07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits.") (citation omitted).

68. Previous unsuccessful attempts—no matter from how long ago—to remove the Petitioner support a showing that there is no significant likelihood of removal in the reasonably foreseeable future. See *Zadvydas*, 533 U.S. at 701 (ordering release where the government had failed to deport the petitioner three times to a number of countries); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1082 (9th Cir. 2006) (holding the petitioner sufficiently established no significant likelihood of his removal in the reasonably foreseeable future based on his grant of asylum and CAT protection because "the government [was] not entitled to remove [him] to Sri Lanka, and no other country has been identified to which [he] might be removed."); *Ndandu v. Noem*, 819 F. Supp. 3d 1155, 1160 (S.D. Cal. 2026) (granting habeas to a petitioner who was "detained for less than six months" because "he [could not] be removed to his country of origin, [] removals to third

countries are historically rare, . . . and [] Mexico, the only country ICE identified, declined to accept him").

69. At bottom, if ICE "has no idea of when it might reasonably expect [a petitioner] to be repatriated," then a "Court certainly cannot conclude that [a] removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019) (emphasis in original).

VIII. CAUSES OF ACTION

FIRST CLAIM

Violation of Fifth Amendment Right to Procedural Due Process (*Accardi*)

(Unlawful Revocation of Order of Supervision)

70. Mr. Myrtil realleges and incorporates by reference the paragraphs above.

71. Procedural due process requires that the government follow the regulations it promulgates that limit its power and the scope of its conduct. *Accardi*, 347 U.S. at 268.

72. 8 C.F.R. §§ 241.4(l)(1)–(2) and 241.13(i)(2–3) govern when and how the government may revoke a noncitizen's Order of Supervision. Here, Mr. Myrtil's OSUP was revoked (a) by someone other than the Executive Associate Director where there is no reason to believe the case could not be referred to the Executive Associate Director, (b) without any notice provided, (c) without any informal interview taking place before, during, or shortly after the revocation, and (d) without any specific information regarding the likelihood of reasonably foreseeable removal, contrary to the procedures laid out in ICE's regulations. *See* 8 C.F.R. §§ 241.4(l)(1)–(2), 241.13(i)(2–3).

73. Mr. Myrtil was arrested despite longstanding compliance with his OSUP. There were no urgent or extenuating circumstances justifying his arrest without referral to the Executive Associate Director.

74. Mr. Myrtil was provided no notice of revocation of his OSUP.

75. Mr. Myrtil did not receive any interview regarding the revocation of his OSUP.

76. Mr. Myrtil has received little to no information about any attempted removal to any third country. Mr. Myrtil has not had any consular interviews and is not aware of any specific travel document or upcoming removal date.

77. Because Mr. Myrtil was detained in violation of his procedural due process rights, his ensuing detention is unlawful. *Rodriguez Romero*, 827 F. Supp. 3d 779, 791 (M.D. La. 2026); *Villanueva*, 801 F. Supp. 3d 689, 693 (S.D. Tex. 2025).

78. Immediate release of Mr. Myrtil is therefore appropriate.

SECOND CLAIM

Violation of Fifth Amendment Right to Substantive Due Process

(Unlawful Revocation of Order of Supervision)

79. Mr. Myrtil realleges and incorporates by reference the paragraphs above.

80. Substantive due process requires that detention always bear "some reasonable relation to the purpose for which the individual [was] committed." *Jackson*, 406 U.S. at 738.

81. The only constitutional purposes for immigration detention under 8 U.S.C. § 1231(a) are "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (citation modified).

82. When a noncitizen has been released pursuant to an OSUP, the government must make a determination that, *inter alia*, the noncitizen does not present a danger to the community, does not present a flight risk, and is not likely to be removed in the reasonably foreseeable future. *See* 8 C.F.R. §§ 241.4(e), 241.13(f)–(h).

83. Therefore, re-detention is only consistent with substantive due process if there is a change in circumstances leading the government to believe that the noncitizen now presents a danger, presents a flight risk, or is likely to be removed in the reasonably foreseeable future.

84. Here, Mr. Myrtil was released from immigration detention on an OSUP after the government made a determination that Mr. Myrtil did not present a danger to the community, did not present a flight risk, and was not likely to be removed in the reasonably foreseeable future. *Id.*

85. Since being released a decade ago, Mr. Myrtil has strengthened his community ties, lengthened his clean record, and is diligently working to obtain the paperwork needed to renew his driver's license and address the prior citation for driving without a valid license.

86. Mr. Myrtil has a specific, diplomatic barrier to removal which remains in place. This is because he was granted deferral of removal under the Convention Against Torture, and is unlikely to be accepted to a third country due to his criminal history.

87. Therefore, just as there was no lawful reason to hold Mr. Myrtil in detention at the time that he was released, there is no lawful reason to hold Mr. Myrtil in detention now.

88. Because Mr. Myrtil's detention serves no lawful purpose, it is not constitutional.

89. Immediate release of Mr. Myrtil is therefore appropriate.

THIRD CLAIM

Violation of 8 U.S.C. § 1231(a)(6) and Fifth Amendment Right to Substantive Due Process (*Zadvydas*)
(Unlawful Indefinite Detention)

90. Mr. Myrtil realleges and incorporates by reference the paragraphs above.

91. *Zadvydas* authorized detention only for "a period reasonably necessary to bring about that [noncitizen]'s removal from the United States[.]" 533 U.S. at 679. Therefore, if a noncitizen can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must furnish evidence sufficient to rebut that showing." *Id.* at 680.

92. Mr. Myrtil has been detained by ICE for a cumulative period of at least 198 days.

93. Here, Mr. Myrtil has shown there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. Mr. Myrtil has a specific, diplomatic barrier to removal: deferral of removal under CAT protection.

94. The government cannot furnish evidence sufficient to rebut this showing. In fact, the government previously determined that removal was not reasonably foreseeable as to Mr. Myrtil—indeed, that is why he was released pursuant to an OSUP. *See* 8 C.F.R. § 241.13. Mr. Myrtil spent months in immigration detention previously while the government sought to remove him, to no avail.

95. Because removal is not reasonably foreseeable, continued detention violates both 8 U.S.C. § 1231(a)(6) and the U.S. Constitution. *See Zadvydas*, 533 U.S. at 699.

96. Immediate release of Mr. Myrtil is therefore appropriate.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time;
3. Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the pendency of these proceedings;
4. Declare Respondents' detention of Petitioner unlawful;
5. Issue a writ of habeas corpus ordering that Respondents immediately release Petitioner from custody and reinstate his OSUP with the same conditions in place at the time of his unlawful re-detention;
6. Order the immediate return of all of Petitioner's private property, including but not limited to any identification and immigration documents;
7. Order that Respondents may not re-detain Petitioner without first providing a pre-deprivation hearing before an impartial adjudicator in which Respondents bear the burden to prove by clear and convincing evidence that Petitioner's re-detention is necessary because he has demonstrated changed circumstances such that Petitioner presents a danger to the community or a flight risk;
8. Retain jurisdiction to ensure compliance with the Court's orders; and
9. Grant such further relief as this Court deems just and proper.

Dated: July 23, 2026

KEKER, VAN NEST & PETERS LLP

By: */s/ Erin E. Meyer*
ERIN E. MEYER
TRILLIUM E. CHANG

Attorneys for Petitioner
EDWIGE MYRTIL

Dated: July 23, 2026

THE BIRD PROJECT INC.

By: */s/ Arcelia Rodriguez*
ARCELIA RODRIGUEZ (*pro hac vice forthcoming*)

Attorneys for Petitioner
EDWIGE MYRTIL

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: July 23, 2026

THE BIRD PROJECT INC.

By: */s/ Arcelia Rodriguez*
ARCELIA RODRIGUEZ (*pro hac vice forthcoming*)

Attorneys for Petitioner
EDWIGE MYRTIL