KEKER, VAN NEST & PETERS LLP
ERIN E. MEYER - # 274244
emeyer@keker.com
TRILLIUM E. CHANG - # 368475
tchang@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

THE BIRD PROJECT INC.
ARCELIA RODRIGUEZ - (*pro hac vice*)
arceliarodriguezesq@gmail.com
251 Valencia Avenue
#140674 Coral Gables, FL 33114
Telephone: 786 516 3709

Attorneys for Petitioner
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. 1:26-cv-05762

REPLY IN SUPPORT OF HABEAS PETITION AND TEMPORARY RESTRAINING ORDER

Date Filed: July 23, 2026

Trial Date: Not set

More than a decade ago, an immigration judge granted Mr. Myrtil deferral of removal under the Convention Against Torture. Verified Petition for Writ of Habeas Corpus, ECF No. 1 ("Pet.") ¶¶ 2, 26–27, 37. ICE thereafter released him from detention, and as a result determined that he was not a danger to the community, was not a flight risk, and was not likely to be removed to a third country in the reasonably foreseeable future. Pet. ¶¶ 3, 18. For the following ten years, Mr. Myrtil complied with every condition of the Order of Supervision ("OSUP") that ICE issued upon his release. Pet. ¶¶ 19–22, 30–32. Yet after local police arrested and released him for driving without a valid license in May 2026 (Pet. ¶¶ 4, 33), ICE re-detained Mr. Myrtil, transferred him repeatedly to facilities far from his home and family (Pet. ¶¶ 8, 39–40), and then attempted to remove him to Mexico (ECF No. 12-4)—all while fully aware that specific federal regulations entitled Mr. Myrtil to particular processes before ICE could re-detain him or remove him from the United States.

Respondents' Opposition fails for two independently sufficient reasons. *First*, it entirely ignores this Court's prior orders addressing the precise issues presented by Mr. Myrtil's due-process challenge to the unlawful revocation of his OSUP, despite the Court's July 29, 2026 Minute Order directing Respondents to specifically address those decisions. *Second*, Respondents' sole remaining argument–that Mr. Myrtil's purported "failure to cooperate" defeats his *Zadvydas* claim–is unsupported by even a shred of evidence. Opp. at 1. The government's purported notice of removal is dated only *after* he filed a Motion for a Temporary Restraining Order and, more importantly, does not show that he was ever told ICE intends to remove him to Mexico, much less that he attempted to obstruct that third-country removal. ECF No. 12-4. Nor have Respondents met their burden to show that his removal is significantly likely in the reasonably foreseeable future. In any event, his detention has already exceeded *Zadvydas*'s presumptively reasonable six-month period. The Court should therefore grant Mr. Myrtil's Petition and/or the temporary restraining order.[1]

[1] The Court's minute order indicated that the Court may adjudicate Mr. Myrtil's habeas petition on the merits in place of ruling on the motion for temporary restraining order. ECF No. 9. Mr. Myrtil has no objection to the Court considering his habeas petition on the merits.

I. RESPONDENTS DO NOT–AND CANNOT–DISTINGUISH THIS CASE FROM THIS COURT'S PRIOR OSUP-REVOCATION RULINGS.

This Court's reasoning in its prior cases confirms that immediate release is warranted on Mr. Myrtil's first claim for relief, where, as here, the government violates a noncitizen's procedural due process rights by failing to comply with its own regulations governing notice and an opportunity to be heard before revoking an Order of Supervision. This Court's July 29, 2026 Minute Order directed Respondents to address whether this case is materially distinguishable from *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D. Cal. July 16, 2025), *Vuong v. Becerra*, No. 1:25-cv-01847-DC-CSK, 2025 WL 3707172 (E.D. Cal. Dec. 22, 2025), and *El-Ghazaly v. Chestnut*, No. 1:25-cv-01621-DC-CKD, 2025 WL 3485030 (E.D. Cal. Dec. 4, 2025)–each granting emergency relief where a noncitizen was re-detained following OSUP revocation without notice, a meaningful opportunity to respond, or a showing of changed circumstances under 8 C.F.R. § 241.13. ECF No. 9. Respondents do not–and cannot–distinguish this case from the Court's prior orders: their Opposition does not cite or attempt to distinguish any of these decisions, nor does it argue that Respondents complied with, or should be excused from complying with, their regulatory obligations. *See Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, 2026 WL 309563, at *7 (E.D. Cal. Feb. 5, 2026) (granting relief where respondents identified no distinction from the same line of authority).

In *Hoac*, this Court ordered immediate release where a noncitizen who had complied with an OSUP for roughly two years was re-detained and denied the informal interview required by 8 C.F.R. § 241.13(i)(3), and the government could show no changed circumstances establishing a significant likelihood of removal. 2025 WL 1993771, at *4–5. In *Vuong*, this Court ordered release where a noncitizen who had complied with an OSUP for fourteen years was re-detained on an unspecified allegation with no notice or interview under § 241.13(i). 2025 WL 3707172 at *1, *3-5. And in *El-Ghazaly*, this Court ordered release where a noncitizen on an OSUP for over twenty years, whose removal ICE had never been able to effectuate, was re-detained at a routine check-in and told only that ICE intended to remove him, without the changed-circumstances showing § 241.13(i)(2) requires. 2025 WL 3485030 at *2, *4-6. Each case is on all fours with Mr. Myrtil's: like the petitioners in *Hoac*, *Vuong*, and *El-Ghazaly*, Mr. Myrtil complied with his

OSUP for over a decade, received no notice or interview before his re-detention, and was never told that ICE intended to remove him to a third country. Pet. ¶¶ 6, 34; Supplemental Declaration of Edwige Myrtil, Ex. A ("Myrtil Suppl. Decl.") ¶ 7.

Mr. Myrtil was re-arrested on May 20, 2026 without notice, an interview, or any showing of changed circumstances, despite a decade of OSUP compliance and ICE's own 2016 determination that he was neither dangerous nor a flight risk. Pet. ¶¶ 3, 18. Nothing has changed since. This Court's reasoning in its prior cases confirms that revocation of conditional release without constitutionally adequate pre-deprivation process violates procedural due process and warrants immediate restoration of the noncitizen's prior release. *See also Altin v. Chestnut*, No. 1:26-cv-00792-DC-CSK, 2026 WL 309563 (E.D. Cal. Feb. 5, 2026); *Suarez Otero v. Robbins*, No. 1:25-cv-1790-CSK, 2026 WL 593183 (E.D. Cal. Mar. 3, 2026). Because Respondents offer no justification for denying Mr. Myrtil an opportunity to be heard "at a meaningful time and in a meaningful manner," *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), Mr. Myrtil's first claim for violation of procedural due process independently warrants release and an injunction against re-detention absent constitutionally adequate process.

II. RESPONDENTS' "FAILURE-TO-COOPERATE" THEORY FAILS.

Respondents' sole argument in their Opposition—that Mr. Myrtil has failed to cooperate with third-country removal—is meritless at best and disingenuous at worst. *First*, the government's barebones notice of intent to remove Mr. Myrtil to Mexico, with a purported "Refused" to sign notation (ECF No. 12-4), does not indicate that this form was ever even shown to Mr. Myrtil, much less that it evidences the extreme level of obstruction that defeats a *Zadvydas* claim under *Pelich* or *Lema*. *Second*, Respondents have not carried their burden to show that removal to Mexico, or anywhere else, is significantly likely in the reasonably foreseeable future. *Third*, Mr. Myrtil's detention has already exceeded *Zadvydas*'s presumptively reasonable six-month period, regardless of how the Court resolves the cooperation issue.

A. The Government's Barebones Notice to Remove Does Not Satisfy *Pelich* or *Lema*.

Respondents contend that Mr. Myrtil's supposed "refusal to assent" to removal to Mexico is the sole obstacle to his removal. Opp. at 1 (ECF No. 12). But their only evidence is a one-

sentence notice stating that ICE "intends" to remove him to Mexico, with the word "Refused" handwritten on the acknowledgment line. ECF No. 12-4. Respondents submit no evidence demonstrating that this form was ever shown to Mr. Myrtil, that he was told of Respondents' intent to remove him to Mexico, or that he ever refused to cooperate. Respondents bear the burden to justify any extension of the removal period and cannot satisfy that burden through inference alone. *Diouf v. Mukasey*, 542 F.3d 1222, 1231 & n.4 (9th Cir. 2008). They have not carried that burden here: the notice establishes neither that Mr. Myrtil knowingly refused to cooperate nor that any conduct by him delayed or prevented his removal.

Since arriving at Central Valley Annex, Mr. Myrtil has never met or spoken with an ICE officer. Myrtil Suppl. Decl. ¶ 2. Around 3:00 a.m. on July 30, a facility officer told him only that he would be taken to Fresno for an "interview." *Id.* ¶ 3. She never mentioned Mexico or removal, showed him any papers, or asked him to sign anything. *Id.* ¶¶ 4, 7. Mr. Myrtil first learned that ICE intended to remove him to Mexico from his lawyers after they reviewed Respondents' Opposition in this case. *Id.* ¶ 8. He therefore could not have knowingly refused to participate in, much less obstructed, the proposed removal to Mexico.

Respondents' only Mexico-specific evidence is a one-sentence notice stating that ICE "intends" to remove Mr. Myrtil to Mexico, with "Refused" written on the acknowledgment line. ECF No. 12-4. This notice is dated after the Court ordered Respondents to respond to Mr. Myrtil's motion for a temporary restraining order. *Id.* The notice's contents expose the pretextual nature of Respondents' theory: it requests no assent, document, information, or other action, and Respondents identify no removal step that depended on his signature. Nor do they offer a declaration from the purported serving officer to rebut Mr. Myrtil's sworn account that no ICE officer met with him and that he learned of the proposed Mexico removal from counsel. Myrtil Suppl. Decl. ¶¶ 2–8. Even crediting the certificate, it establishes at most a refusal to acknowledge receipt, not conduct that delayed or prevented removal. *Cf. Diouf*, 542 F.3d at 1230–31 & n.4 (finding obstruction where the noncitizen failed to appear for removal and repeatedly refused to depart, thereby frustrating ICE's removal efforts, and emphasizing that the government must document the conduct extending the removal period).

That bears no resemblance to *Pelich*, where the noncitizen refused to complete a Polish

passport application and supplied conflicting identifying information, or *Lema*, where the noncitizen misrepresented his nationality and then refused to reapply or provide requested documentation. *Pelich*, 329 F.3d at 1059–61; *Lema*, 341 F.3d at 855–57. In both cases, the noncitizen's conduct directly frustrated the issuance of travel documents. Even if Mr. Myrtil had been presented with any paperwork and even if he had notice of an intended removal to Mexico, refusing to sign a notice does nothing to frustrate the government's attempted removal. Neither *Pelich* nor *Lema* holds that refusing to consent to removal to an unrelated third country constitutes noncooperation. District courts within the Ninth Circuit have squarely rejected that theory. See *Boza-Rosales v. Blanche*, No. C26-0624-TSZ, 2026 WL 1412456, at *2–3 (W.D. Wash. May 15, 2026); *Abramian v. Bondi*, 820 F. Supp. 3d 1050, 1059 (C.D. Cal. 2026). Further, courts have recently held that consent-dependent removal to Mexico is not reasonably foreseeable when the noncitizen does not consent. See *Rea-Hernandez v. Bondi*, 824 F. Supp. 3d 1124, 1132–33 (W.D. Wash. 2026); *Sanchez v. Bondi*, No. C25-2573-KKE, 2026 WL 160882, at *3–4 (W.D. Wash. Jan. 21, 2026); *Coke v. Bondi*, No. C26-71-MLP, 2026 WL 221514, at *2–3 (W.D. Wash. Jan. 28, 2026).

B. Respondents Have Failed to Meet Their Burden to Show a Significant Likelihood of Removal.

Respondents also fail to show a significant likelihood of removal in the reasonably foreseeable future as pled by Petitioner's Third Claim. Pet. ¶¶ 90-96. Once a noncitizen provides "good reason" to believe removal is not significantly likely, the government must rebut that showing with evidence or release him. *Zadvydas*, 533 U.S. at 701; *Pelich*, 329 F.3d at 1060. Mr. Myrtil has met that burden: his cumulative detention exceeds six months; his CAT deferral bars removal to Haiti and is "a powerful indication of the improbability of his foreseeable removal"; and Respondents identify no country that has agreed to accept him, no available travel documents, and no diplomatic communication concerning his removal. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081–82 (9th Cir. 2006), *abrogated on other grounds*.

Respondents offer only a one-sentence notice, dated July 29 but purportedly served on July 30—the same day they filed their Opposition—stating that ICE "intends" to remove Mr. Myrtil to Mexico. ECF No. 12-4. But Mr. Myrtil never even received this notice; nor did he have

the chance to "refuse" it. Myrtil Supp. Decl. ¶ 7. Further, even if properly served, that notice establishes neither Mexico's acceptance nor any concrete progress toward removal. Generalized assertions that ICE is "pursuing" removal are insufficient. *Vishal v. Chestnut*, 811 F. Supp. 3d 1179, 1184–85 (E.D. Cal. 2025); *L.R. v. Noem*, 826 F. Supp. 3d 1252, 1269–70 (D. Nev. 2026).

Respondents' failure also confirms the *Accardi* violation alleged in the Petition's First Claim. ECF No. 1 at 18-19. ICE's own regulation permitted it to revoke Mr. Myrtil's OSUP to effect removal only upon a determination that, "on account of changed circumstances," removal had become significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2); Pet. ¶¶ 50, 72. Yet ICE re-detained Mr. Myrtil on May 20 without identifying any such changed circumstances. A Mexico notice generated more than two months later (and only after Mr. Myrtil had filed a motion for a temporary restraining order) cannot retroactively supply that missing regulatory predicate, much less cure ICE's separate failures to notify Mr. Myrtil of the reasons for revocation and provide the required prompt interview. *See* 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3); Pet. ¶¶ 72–76.[2]

Finally, Respondents' own theory defeats foreseeability. They contend that Mr. Myrtil's unwillingness to go to Mexico is the sole obstacle to removal, while the evidence shows that Mexico accepts third-country nationals *only* if they are willing to go. *See Pantoja v. Bondi*, 818 F. Supp. 3d 1227, 1232–33 (W.D. Wash. 2026); *Suarez-Ramirez v. Bondi*, No. 2:25-cv-02369-MMD-EJY, 2026 WL 115020, at *2 (D. Nev. Jan. 15, 2026). And Respondents have provided no meaningful opportunity for Mr. Myrtil to raise his fear of removal to Mexico, as due process requires. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). At most, Respondents have shown the possibility of removal at some indeterminate point after Mexico agrees to accept Mr. Myrtil and the required fear-based process occurs. That is not a significant likelihood of removal in the reasonably foreseeable future. *See L.R.*, 826 F. Supp. 3d at 1270. Respondents' failure to satisfy either *Zadvydas* or ICE's own revocation regulations independently requires Mr. Myrtil's

[2] *Medhani* is not to the contrary. There, the government documented multiple instances in which the petitioner refused to sign or complete documents necessary to obtain travel documents. *Medhani v. Noem*, No. 3:26-cv-0594-CAB-JLB, 2026 WL 809914, at *2–3 (S.D. Cal. Mar. 24, 2026). Mr. Myrtil was instead purportedly served once with a bare notice of intended removal—not a travel-document application—under circumstances that do not establish that he knowingly declined to participate in any removal process.

release.

C. The Zadvydas Six-Month Presumptively Reasonable Period Has Expired.

The Petition's Third Claim alleges that Mr. Myrtil's continued detention violates § 1231(a)(6) and *Zadvydas* because his aggregate detention exceeds six months and his removal is not reasonably foreseeable. Pet. ¶¶ 90–96. Respondents' reliance on the Mexico notice does not defeat that claim—and ignores the date of the notice: by the time of its purported service on July 30, Mr. Myrtil's aggregate post-removal-order detention period had already exceeded *Zadvydas*'s presumptively reasonable six-month period. He had accrued 198 days of detention when he filed the Petition—134 days in 2015-16 plus 64 days in 2026—and approximately 209 days as of this Reply. Pet. ¶ 39. Because each period arose from the same removal order, those periods aggregate for purposes of the six-month presumption. *Nguyen v. Andrews*, No. 1:26-cv-00015-DAD-SCR, 2026 WL 263058, at *5 (E.D. Cal. Feb. 2, 2026). The original ninety-day removal period expired long before his current detention, as ICE's 2016 decision to release him on an OSUP confirms. His current detention therefore falls under § 1231(a)(6), and no "documented obstruction" has extended or restarted the removal period. *See Diouf*, 542 F.3d at 1230–31.[3]

That timing matters. Because Mr. Myrtil's detention is no longer presumptively reasonable, Respondents must rebut his showing that removal is not significantly likely in the reasonably foreseeable future with evidence—not a bare statement of intent. *Zadvydas*, 533 U.S. at 701; *Nguyen*, 2026 WL 263058, at *5–6. As explained above, Mr. Myrtil's CAT deferral bars removal to Haiti, no country has agreed to accept him, and Respondents identify no travel documents or diplomatic progress toward removal. The Mexico notice establishes none of those things. Respondents therefore have not rebutted Mr. Myrtil's showing, and the Petition's Third Claim independently warrants release.

Even if the Court declined to aggregate Mr. Myrtil's detention, the result would be the

[3] Respondents conflate the statutory 90-day removal period with *Zadvydas*'s separate six-month presumption. Opp. 3-4. *Diouf* held that documented obstruction may restart the former; it did not hold that obstruction erases prior detention or restarts the latter. 542 F.3d at 1230–33. Indeed, after calculating a restarted 90-day period, *Diouf* separately applied *Zadvydas* and recognized that the petitioner's detention had "undoubtedly" exceeded six months. *Id.* Because Mr. Myrtil's prior and current detention arise from the same removal order, they aggregate for *Zadvydas* purposes. *See Nguyen*, 2026 WL 263058, at *5. Regardless, Respondents establish no documented obstruction capable of restarting even the 90-day period.

same. Six months is not a jurisdictional waiting period, and a noncitizen may obtain relief earlier upon an individualized showing that removal is not reasonably foreseeable. *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092–93 (C.D. Cal. 2020); *Uzzhina v. Chestnut*, No. 1:25-cv-01594-DAD-SCR, 2025 WL 3458787, at *3 n.3 (E.D. Cal. Dec. 2, 2025). And regardless of the *Zadvydas* calculation, the Petition's First Claim independently requires release because ICE violated the regulations governing revocation of Mr. Myrtil's OSUP.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and/or enter a temporary restraining order directing Respondents to immediately release Mr. Myrtil from custody on reasonable conditions of supervision, and to refrain from re-detaining him absent compliance with constitutionally adequate procedures.

Dated: August 3, 2026

KEKER, VAN NEST & PETERS LLP

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

THE BIRD PROJECT INC.

ARCELIA RODRIGUEZ *(pro hac vice pending)*

Attorneys for Petitioner
EDWIGE MYRTIL