

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JEAN MONTREVIL;)
)
 Petitioner,)
)
 v.)
)
 THOMAS R. DECKER, in his official)
 capacity as New York Field Office Director)
 for U.S. Immigration and Customs)
 Enforcement;)
)
 MATTHEW ALBENCE, in his official)
 capacity as Acting Director of U.S.)
 Immigration and Customs Enforcement;)
)
 U.S. IMMIGRATION AND CUSTOMS)
 ENFORCEMENT;)
)
 CHAD WOLF, in his official capacity as)
 acting Secretary of Homeland Security;)
)
 U.S. DEPARTMENT OF)
 HOMELAND SECURITY;)
)
 WILLIAM P. BARR, in his official capacity)
 as Attorney General of the United States;)
)
 and)
)
 U.S. DEPARTMENT OF JUSTICE)
 EXECUTIVE OFFICE FOR IMMIGRATION)
 REVIEW,)
 Respondents.)
 _____)

Civil Action No. 20-264

**PETITION FOR WRIT OF HABEAS
CORPUS**

PRELIMINARY STATEMENT

1. In January 2018, U.S. Immigration and Customs Enforcement (ICE) agents surveilled, arrested, detained, and deported Jean Montrevil to Haiti as part of a coordinated

effort to silence immigrant rights leaders of the New Sanctuary Coalition. These actions were in line with ICE's recent pattern of targeting activists for detention and deportation across the country. Petitioner Jean Montrevil respectfully asks this Court to remedy his wrongful deportation and order his return to the United States, as Respondents' actions against Mr. Montrevil constitute unlawful retaliation in violation of the First Amendment and the Due Process Clause of the Fifth Amendment, as well as a violation of Mr. Montrevil's constitutional, statutory, and regulatory rights to access justice and be protected from wrongful deportation.

2. Mr. Montrevil, a father of four U.S. citizen children, has been a prominent voice in the immigrant rights movement since 2005. As a member of Families for Freedom and a co-founder of the New Sanctuary Coalition of New York City, Mr. Montrevil has been highly critical of U.S. immigration policy and its impact on his community. Federal immigration officials made their disdain for Mr. Montrevil's activism known on multiple occasions, speaking in denigrating terms about his media appearances, warning him to stop speaking out, and retaliating against him for doing so. Mr. Montrevil's sudden arrest and deportation came nearly 25 years after his deportation order and followed more than a decade of ICE supervision authorizing Mr. Montrevil to live in the United States.

3. ICE's abrupt actions against Mr. Montrevil violated their own regulations, practices, and procedures, and violated Mr. Montrevil's constitutional and statutory rights. ICE agents arrested Mr. Montrevil outside of his home in Queens, New York during his lunch break on January 3, 2018, despite the fact that he was scheduled for a regular check-in later that month and had a motion to reopen his case pending before the Board of Immigration Appeals (BIA). ICE officials engaged in *ex parte* communication with the BIA

regarding Mr. Montrevil's detention in order to expedite his deportation; repeatedly misled Mr. Montrevil's attorney and community members as to the reason for his detention, his location, and the status of his case; and deported him to Haiti early on the morning of January 16, 2018, despite pending court proceedings, before his attorney could obtain an emergency stay from a court.

4. As a result of ICE's retaliation against him, Mr. Montrevil has been separated from his family, including his teenage son who suffers from a number of severe health conditions including monitoring for recurrence of a brain tumor. None of his four U.S. citizen children were able to say goodbye to him before he was deported. Political instability and violence in Haiti have also severely limited Mr. Montrevil's ability to communicate with his family and community in the United States and speak out against U.S. immigration policy as he previously did.

5. In deporting Mr. Montrevil for his protected speech, ICE sought to send a chilling message to immigrants who might consider exercising their First Amendment right to speak out on behalf of their communities. But the Constitution does not allow ICE to retaliate against those who choose to criticize them. Nor does the Constitution permit ICE to violate the laws governing deportation in order to deprive people of their liberty and access to justice. This Court should correct Respondents' unlawful actions against Mr. Montrevil and prevent ICE from silencing its critics and violating due process in defiance of the First and Fifth Amendments of the U.S. Constitution.

JURISDICTION

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, and the Suspension Clause of the United States Constitution. Petitioner's

causes of action arise under the laws and Constitution of the United States, including the First and Fifth Amendments, the Immigration and Nationality Act (“INA”), and 5 U.S.C. §§ 702-706 ((Administrative Procedure Act) (“APA”)).

7. Mr. Montrevil is “in custody” for the purposes of habeas jurisdiction, as he has been deported from the United States. 28 U.S.C. § 2241(c). Mr. Montrevil has been stripped of his authority to enter the United States, and would be subject to civil exclusion and criminal liability were he to attempt to reenter. 8 U.S.C. §§ 1182(a)(9)(A), 1326. His freedom of movement has been severely restricted. The Second Circuit has declared the custodial status of deported individuals “obvious,” relying on longstanding precedent. *Ragbir v. Homan*, 923 F.3d 53, 75 (2d Cir. 2019); *see also id.* at 75 n.29 (“As to the custodial status of a deported individual, the Supreme Court ‘has repeatedly held’ that the writ of habeas corpus is available to aliens excluded from the United States.” (quoting *Jones v. Cunningham*, 371 U.S. 236, 239–40 (1963))).

8. An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

VENUE

9. Venue is proper in this district under 28 U.S.C. § 1391. Prior to his deportation, Mr. Montrevil resided in Far Rockaway, Queens. A substantial part of the events giving rise to this action occurred in this judicial district, including Respondents’ surveillance and civil arrest of Mr. Montrevil in Far Rockaway, Queens.

PARTIES

10. Petitioner Jean Montrevil was a resident of Queens, New York until his sudden deportation in 2018. He currently lives in Port-Au-Prince, Haiti. He is a prominent immigrant-rights activist and co-founder of the New Sanctuary Coalition of New York City. Mr. Montrevil became a Lawful Permanent Resident of the United States in 1986. He received a final order of removal in 1994 and was placed on an Order of Supervision in 2005, authorizing him to live in, and obtain work authorization in, the United States.

11. Respondent Thomas R. Decker *in his official capacity as New York Field Office Director for U.S. Immigration and Customs Enforcement* is the duly appointed Field Office Director of the Office of Detention and Removal for ICE, in New York, NY, and is the official charged with the oversight and direction of the agents of ICE in New York. He supervised Mr. Montrevil's surveillance, arrest, detention, and deportation. As the duly appointed field officer for New York, NY, he therefore serves as a custodian for the purposes of this petition. He is headquartered in New York, NY.

12. Respondent Matthew Albence *in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement* is the duly appointed Acting Director of U.S. Immigration and Customs Enforcement, and is the official charged with oversight and direction of ICE, its field offices, and its agents. He supervises Respondent Decker and oversees the New York ICE Field Office. He therefore serves as a custodian of Mr. Montrevil for purposes of this petition. He is headquartered in Washington, D.C.

13. Respondent Chad Wolf *in his official capacity as acting Secretary of Homeland Security* is the duly appointed acting Secretary of Homeland Security, and bears responsibility for the administration and enforcement of all the functions, powers, and duties

of ICE, including maintaining and enforcing Mr. Montrevil's custody, setting terms of parole and supervised release, and deportations. He is responsible for the administration and enforcement of the immigration laws, including against Mr. Montrevil. He supervises Respondents Decker and Albence. He therefore serves as a custodian of Mr. Montrevil for purposes of this petition. He is headquartered in Washington, D.C.

14. Respondent William P. Barr *in his official capacity as Attorney General of the United States* is the duly appointed, qualified, and confirmed Attorney General of the United States, and as such is the official charged with the enforcement of the laws of the United States. He is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review. 8 U.S.C. §1103(g). He is responsible for Mr. Montrevil's removal proceedings, and supervises immigration judges and the Board of Immigration Appeals within the Executive Office for Immigration Review. He is legally responsible for administering Mr. Montrevil's removal proceedings and the standards used in those proceedings, and as such is a custodian of Mr. Montrevil. He is headquartered in Washington, D.C.

15. Respondent U.S. Department of Homeland Security (DHS) is an executive department of the United States Government. Respondent DHS is the agency that bears responsibility for the administration and enforcement of all the functions, powers, and duties of ICE, including maintaining and enforcing Mr. Montrevil's custody, setting terms of parole and supervised release, and deportations. DHS is responsible for the administration and enforcement of the immigration laws, including against Mr. Montrevil, and therefore is a custodian of Mr. Montrevil. DHS is headquartered in Washington, D.C.

16. Respondent U.S. Immigration and Customs Enforcement (ICE) is a component of DHS. ICE oversaw Mr. Montrevil's surveillance, arrest, detention, and deportation. ICE is therefore a custodian of Mr. Montrevil. ICE is headquartered in Washington, D.C.

17. Respondent U.S. Department of Justice Executive Office for Immigration Review (EOIR) is an executive department of the United States Government. EOIR is responsible for removal proceedings in the United States, and is responsible for the immigration judges and the Board of Immigration Appeals within EOIR that preside over removal proceedings and appeals of the outcomes in those proceedings. EOIR administered Mr. Montrevil's removal proceedings and the standards used in those proceedings, and as such is a custodian of Mr. Montrevil. EOIR is headquartered in Washington, D.C.

FACTUAL ALLEGATIONS

18. Mr. Montrevil is an immigrant rights leader and loving father of four U.S. citizen children who was separated from his home, family, and community in 2018 when ICE abruptly arrested him outside his home in Queens, New York and deported him to Haiti, enforcing a decades-old deportation order and revoking without cause a longstanding Order of Supervision that allowed Mr. Montrevil to live in, and obtain work authorization in, the United States. Mr. Montrevil and his family have been prominent voices in the immigrant rights movement since 2005. As a member of Families for Freedom and a co-founder of the New Sanctuary Coalition of New York City, Mr. Montrevil has been highly critical of U.S. immigration policy and its impact on his community.

19. From 2005 through 2018, Mr. Montrevil has been a leader in the immigrant rights movement. His story has been featured in numerous outlets, including the *Village Voice*, *The New York Times*, and *Democracy Now!* A religious man, Mr. Montrevil felt a

moral calling to speak out on behalf of immigrants when faith leaders recruited him to serve as the public face of the New Sanctuary Coalition. While Mr. Montrevil engaged in traditional activism such as rallies and vigils, he primarily engaged in community leadership through his church and religion, sharing his story with congregations across the country. When few were sharing their own stories to the public, Mr. Montrevil spoke out against the cruelty of the deportation system and advocated for change.

20. In 2018, as part of a coordinated action to surveil and deport leaders of the New Sanctuary Coalition, ICE surveilled Mr. Montrevil in his home in Far Rockaway, Queens. ICE arrested him outside his home during his lunchbreak, weeks before a scheduled check-in and notwithstanding his pending motion to reopen his case before the BIA. Mr. Montrevil was handcuffed, placed in an unmarked vehicle, and detained in jails in New Jersey and then Florida. ICE revoked his Order of Supervision without notice or an interview on the reason for its revocation, and despite Mr. Montrevil's full compliance for more than a decade. ICE initially denied to members of Mr. Montrevil's family and community that it had arrested and detained him, and denied Mr. Montrevil's request to speak with his attorney. Once it confirmed his detention, ICE prevented Mr. Montrevil's attorney from meeting with him and misinformed Mr. Montrevil's attorney and supporters about the reasons for Mr. Montrevil's detention and his location. ICE communicated *ex parte* with the BIA to inform it of Mr. Montrevil's detention in order to expedite a denial of his case and deport him before he could obtain a stay of removal. Mr. Montrevil's attorney was not notified when the BIA denied his motion late on Friday, January 12, 2018, and he was deported to Haiti at 7:38 AM on the next business day, thwarting his attorney's ability to seek an emergency hearing on a stay of his removal. An ICE official later admitted that Mr. Montrevil's abrupt, covert

detention was intentionally designed to take out a “high profile” leader in a way that would circumvent public backlash.

21. Because of ICE’s retaliatory actions, Mr. Montrevil is no longer able to actively speak out about the cruelty of the U.S. immigration system, despite his efforts to share his views. The current political instability and violence in Haiti have left Mr. Montrevil without a permanent and safe place to live, and have limited his ability to speak with family and community members in the U.S.

22. Most painfully, ICE’s actions have separated Mr. Montrevil from his four children, Antoine (age 29), Janiah (age 21), J.T. (age 16), and J.B. (age 12). Because of his abrupt, secretive detention, none of his children were able to say goodbye to him before his deportation. Mr. Montrevil’s loving ex-wife Jani Cauthen has twice made the trip to Haiti to bring their children to see him, but they were only able to stay briefly and had to cancel a later trip due to the instability in the region and concerns for the children’s safety.

23. This prolonged separation has taken a difficult toll on Mr. Montrevil and all of his children, particularly J.T. J.T. suffers from a number of physical and mental health conditions following the removal of a brain tumor, and Mr. Montrevil took primary responsibility for his medical care before his deportation. Although Mr. Montrevil and his children attempt to speak regularly by phone and video chats, the increasingly violent political situation in Haiti has made communication even more difficult and infrequent in recent months. Their communication is frequently cut short or prevented due to routine blackouts.

24. Mr. Montrevil’s commitments to immigrant rights and to his family and community remain unwavering, but the circumstances—namely, his wrongful surveillance,

detention, and deportation in retaliation for his activism—have silenced his speech and made family unity an impossibility.

A. Mr. Montrevil's Immigration History and Community Leadership

25. Mr. Montrevil was born in Haiti in 1968 along with his twin sister Rose. Their father fled political persecution in Haiti around the time they were born, and their mother passed away when they were six. Raised by an abusive step-parent, Mr. Montrevil and his sister ran away from home at the age of ten. By the time they arrived in the U.S. at the age of 17, having secured Lawful Permanent Resident status, they had endured years of neglect and abuse.¹

26. Mr. Montrevil settled in Flatbush, Brooklyn, in 1986. He struggled to adapt to his new life, and dropped out of school. He was arrested on drug charges and related charges in the late 1980s. He received his last arrest at the age of 21. The resulting convictions led to his incarceration under mandatory minimum sentencing from 1989 through 2000.²

27. In 1992, while Mr. Montrevil was still serving his criminal sentence in Virginia, the Immigration and Naturalization Service notified Mr. Montrevil that it was initiating removal proceedings against him. Mr. Montrevil's individual hearing was plagued by a number of unusual circumstances. First, his immigration attorney withdrew the day before his individual hearing and failed to notify him. Then, on the day of the hearing, the Immigration Judge rescheduled the hearing from 1:00 PM to 10:00 AM without explanation and refused to wait for Mr. Montrevil's witnesses, who were on their way and believed the hearing was at 1:00 PM. The Immigration Judge entered an order of deportation in Mr. Montrevil's case in June 1994, denying his application for an INA § 212(c) waiver. The

¹ Exhibit A, Declaration of Jean Montrevil at ¶¶ 3-4.

² *Id.* at ¶ 4; Exhibit B, Declaration of Jani Cauthen at ¶ 3.

order became final in October 1994 when the Board of Immigration Appeals denied his appeal.³

28. In denying Mr. Montrevil's appeal, the Board acknowledged serious procedural irregularities in his individual hearing but held that Mr. Montrevil was no longer eligible for the § 212(c) waiver due to the passage of additional time served in prison, referencing a new law that Congress had passed after Mr. Montrevil was convicted and sentenced that restricted access to waivers.⁴

29. While incarcerated, Mr. Montrevil committed himself to rehabilitation and bettering himself and the conditions of others. He focused on his faith, earned his GED, gained admission to community college, and completed vocational courses. He also participated in numerous programs, including Concerned Inmates Taking Action, through which he supported other inmates to improve conditions at the prison.⁵

30. On April 11, 2000, Mr. Montrevil was released from criminal custody at age 31. He was a changed man. He rejoined his family in Brooklyn, including his 10-year-old son Antoine Montrevil who was born shortly after Mr. Montrevil's arrest. Mr. Montrevil gave Antoine ten gifts, one for every birthday he had missed.⁶

31. Since his last offense in 1989, Mr. Montrevil has never been arrested for a crime. Following his release from prison in 2000, Mr. Montrevil spent the next 18 years living a law-abiding life in Brooklyn and Queens, New York. He began a five-year period of federal supervision upon his release, and he never fell out of compliance.⁷

³ Exhibit A at ¶¶ 7-9.

⁴ *Id.* at ¶ 9.

⁵ *Id.* at ¶¶ 5-6.

⁶ *Id.* at ¶ 10.

⁷ *Id.* at ¶¶ 4, 12.

32. Eager to leave behind the mistakes of his teenage years, Mr. Montrevil immersed himself in work, taking over his father's religious-goods business in Brooklyn. For the next five years, Mr. Montrevil worked hard, reported to his probation officer, and filed both individual and business taxes.⁸

33. In 2002, Mr. Montrevil met Jani Cauthen and the two began a long-term partnership. They had two children together, J.T. and J.B., and married in 2007.⁹ Mr. Montrevil also became a father figure for Ms. Cauthen's oldest child, Janiah Heard.¹⁰ J.T. developed a number of health issues as an infant, and Mr. Montrevil took primary responsibility for his medical care. J.T. suffered from severe allergies and asthma, and Mr. Montrevil took him to the emergency room in the middle of the night on multiple occasions.¹¹

34. Still, Mr. Montrevil describes 2004, the year before ICE detained him, as "the best of [his] life."¹² By this point he had turned the religious goods store into a fulfilling and profitable business and was doing well spiritually and financially. Most importantly, he was a family man, spending every moment possible with Ms. Cauthen and their children.

35. ICE detained Mr. Montrevil for the first time in February 2005, during a check-in with his probation officer. J.T. was just one year old at the time, and Mr. Montrevil was supposed to pick him up from daycare.¹³

36. ICE transferred Mr. Montrevil to Wicomico County Detention Center in Salisbury, Maryland where he remained in custody for more than six months. Ms. Cauthen,

⁸ *Id.* at ¶ 10, 12; Exhibit B at ¶ 3.

⁹ Although Mr. Montrevil and Ms. Cauthen have since divorced, they remain close and Mr. Montrevil is a dedicated father to J.T.M, J.B.M., and Janiah, as well as Antoine. Ms. Cauthen also maintains a close relationship with Antoine. Exhibit B at ¶¶ 12, 21.

¹⁰ *Id.* at ¶ 2.

¹¹ Exhibit A at ¶ 11.

¹² *Id.* at ¶ 11

¹³ *Id.* at ¶ 12.

suddenly a single mother, quickly searched for an immigration attorney online.

Unfortunately, the attorney she hired demanded \$3,000 and filed an ineffective motion to reopen when Mr. Montrevil asked him to file a habeas petition for his release.¹⁴

37. Lacking proper legal assistance, Mr. Montrevil became his own attorney inside the detention center. He conducted legal research and helped other detained immigrants at Wicomico County file habeas petitions challenging their detention.¹⁵ He began informing detained individuals of their rights, and learning more about the immigration system.

38. Ms. Cauthen struggled to get by without Mr. Montrevil's financial and parenting support. She took a leave of absence from work, worried she would be fired for taking so much time off to take J.T. to the hospital.¹⁶ She was shocked that her child's father, a green card holder, had been suddenly torn from his family. Looking for support, she contacted Families For Freedom, a New York-based immigrants' rights organization. Ms. Cauthen became a member, and Families For Freedom began to advocate for Mr. Montrevil's release.¹⁷

39. After six months in detention, Mr. Montrevil filed a habeas petition for his release *pro se*. ICE elected to release Mr. Montrevil from detention shortly thereafter, in August 2005. ICE provided Mr. Montrevil with an Order of Supervision that gave him permission to live in, and obtain work authorization in, the U.S., pursuant to supervision requirements.¹⁸

40. Upon his release, Mr. Montrevil became an active member of Families For Freedom along with Ms. Cauthen. He completed a two-week organizer training and began

¹⁴ *Id.* at ¶ 13; Exhibit B at ¶ 9.

¹⁵ Exhibit A at ¶ 22.

¹⁶ Exhibit B at ¶ 8.

¹⁷ *Id.* at ¶¶ 9-10.

¹⁸ Exhibit A at ¶ 14.

regularly attending organizational meetings. Mr. Montrevil became active in the immigrant rights movement, speaking out publicly at rallies and advocating at elected officials' offices.¹⁹ Through Families for Freedom he met two faith leaders, Reverends Juan Carlos Ruiz and Donna Schaper.²⁰ Reverend Ruiz described Mr. Montrevil's natural abilities as a community leader:

I immediately admired the way that Jean was a natural organizer...Everywhere he went, he told the story of what immigration authorities did to his family and he connected deeply with the people who heard his story. I joke sometimes that Jean could talk to and organize a wall, that's how compelling he was.²¹

41. In late 2005, Mr. Montrevil traveled to Washington, D.C. to advocate for the Child Citizen Protection Act, legislation which would help prevent the type of family separation threatening Mr. Montrevil's family and many others. Mr. Montrevil also traveled to Illinois, Texas, and other parts of the country to speak out against the separation of families through U.S. immigration policies.²²

42. In late 2006, Reverend Ruiz told Mr. Montrevil about the new sanctuary movement, a national movement of churches that were committing to protect their most vulnerable members from deportation. Reverend Ruiz believed New York City churches should join this movement, and he asked Mr. Montrevil to serve as the face of the movement in the city.²³ Mr. Montrevil worried that becoming the public leader of an organization flouting ICE's authority would leave him and his family vulnerable to targeting. But he also knew that many people would be too afraid to share their story and that he had a

¹⁹ *Id.* at ¶¶ 15-16.

²⁰ Declaration of Reverend Donna Schaper, Exhibit D at ¶ 8.

²¹ Exhibit C, Declaration of Reverend Juan Carlos Ruiz at ¶ 3.

²² Exhibit A at ¶¶ 16, 19.

²³ Exhibit C at ¶ 4.

responsibility to speak out. As a deeply religious man, he felt a moral calling to do the right thing and give back to his community, and he accepted Reverend Ruiz's offer.²⁴

43. In May 2007, two months after J.M.'s birth, Mr. Montrevil helped found the New Sanctuary Coalition of New York City.²⁵ Mr. Montrevil's family partnered with Reverend Schaper's congregation at Judson Memorial Church as one of the nine founding families of the organization,²⁶ which has since grown into an interfaith network of congregations, organizations, and individuals, standing publicly in solidarity with families and communities resisting detention and deportation in order to stay together.

44. Following the creation of the New Sanctuary Coalition, Mr. Montrevil's case began to attract significant media and press attention. Mr. Montrevil gained the support of numerous elected officials and faith leaders, and educated them about the cruelty of the immigration system.²⁷

45. Throughout this period, Mr. Montrevil attended regular check-ins with ICE, pursuant to the terms of his Order of Supervision. Members of Judson Memorial Church and the New Sanctuary Coalition began to accompany Mr. Montrevil to his check-ins to demonstrate the community support behind him. While they waited for his appointment, which would sometimes take hours, Mr. Montrevil and the people accompanying him would talk to other immigrants in the waiting room, telling them about New Sanctuary Coalition's services for immigrants.²⁸

²⁴ Exhibit A at ¶¶17-18; Exhibit D at ¶ 10.

²⁵ See Albor Ruiz, Opinion, *Taking a Stand Against Anti-Immigration Folly*, New York Daily News (June 21, 2007), <https://www.nydailynews.com/new-york/brooklyn/stand-anti-immigration-folly-article-1.223167>.

²⁶ *Id.*; Exhibit D at ¶¶ 11-12.

²⁷ Exhibit D at ¶ 12; Exhibit A at ¶¶ 21-22.

²⁸ Exhibit A at ¶ 23; Exhibit D at ¶ 14.

B. ICE's Retaliatory Responses to Mr. Montrevil's Activism

46. In 2007, ICE officers began to question the presence of New Sanctuary Coalition volunteers in the check-in room, asking Mr. Montrevil why people were coming with him to his appointments. ICE officers eventually prevented people from accompanying Mr. Montrevil into the check in room.²⁹

47. In March 2008, ICE transferred Mr. Montrevil's supervision to the Intensive Supervision Appearance Program ("ISAP"), notwithstanding the fact that Mr. Montrevil had never missed any of his check-ins in the two and a half years since he was given an Order of Supervision. ISAP placed Mr. Montrevil on the highest supervision level—he was required to wear an electronic ankle monitor, remain on house arrest each day from 7:00 PM to 7:00 AM, and check in with ISAP three times per week, among other requirements.³⁰ Activists with New Sanctuary and Families For Freedom protested outside of the Varick Street Detention Center in response.³¹

48. ISAP required Mr. Montrevil to wear his electronic monitor for nearly a year, even after his doctor wrote a letter to ISAP explaining that the electronic monitor was irritating Mr. Montrevil's skin.³² Mr. Montrevil still has marks on his ankle from the bracelet to this day.³³

i. The *Village Voice* Profile and ICE's Detention of Mr. Montrevil in 2009

49. Undeterred, Mr. Montrevil continued to speak out against ICE and U.S. immigration policy. He spoke at a vigil outside of Senator Chuck Schumer's office in support

²⁹ Exhibit A at ¶ 24; Exhibit D at ¶ 14.

³⁰ See Julia Duin, *Because the Bible tells them so; Churches offer immigrant families decreed kindness of strangers*, The Washington Times, May 28, 2008, at A1, <https://advance.lexis.com/api/permalink/5983b95c-78aa-4f7d-bbf7-591b4b24c114/?context=1000516>; see also Exhibit A at ¶ 31.

³¹ Exhibit D at ¶ 19.

³² Exhibit E, Declaration of Joshua Bardavid at ¶ 4.

³³ Exhibit A at ¶¶ 25-26, 28.

of the Child Citizen Protection Act, and the *Village Voice* profiled him.³⁴ Mr. Montrevil also attended a Detention Watch Network conference in Washington, D.C., during which he met with the Secretary of the Department of Homeland Security to discuss issues facing immigrant families like his own.³⁵

50. Immigration officials made clear to Mr. Montrevil that they disapproved of his public attention. During an August 2008 ISAP check-in, Mr. Montrevil encountered ICE Officer Harrington, who was not an ISAP employee. In an apparent attempt to intimidate Mr. Montrevil when he asked to be removed from ISAP, Officer Harrington referenced the newspaper profile, asking him, “what, are you going to run to the *Village Voice*?”³⁶

51. In 2009, ICE finally lowered Mr. Montrevil’s supervision level, removing his electronic monitor and ending his curfew, while continuing to require regular check-ins.³⁷ Mr. Montrevil was relieved at first, but later that same year, during a routine check-in, ICE detained Mr. Montrevil for a second time. Once again, an ICE officer made clear to Mr. Montrevil that the agency was aware of his activism and displeased, saying Mr. Montrevil was the “one complaining to the *Village Voice*,” a reference to the profile. No further explanation was provided for why ICE had decided to suddenly detain Mr. Montrevil. ICE transferred Mr. Montrevil to York County Prison in Pennsylvania that same day.³⁸

52. The community outcry in response to Mr. Montrevil’s detention was swift and widespread. Within a week 100 people protested outside of Varick Street Detention Center. Nineteen people, including members of the clergy, were arrested for engaging in civil

³⁴ Maria Luisa Tucker, *The Long Goodbye*, *The Village Voice* (Apr. 8, 2008), <https://www.villagevoice.com/2008/04/08/the-long-goodbye-2/>.

³⁵ Exhibit A at ¶ 28.

³⁶ *Id.* at ¶ 27.

³⁷ *Id.* at ¶ 28.

³⁸ *Id.* at ¶¶ 29-30.

disobedience at protests demanding Mr. Montrevil's release.³⁹ Reverend Ruiz, one of the faith leaders arrested, explained, "If Jean was going to put his body on the line for us (immigrants), then I would put my body on the line for him."⁴⁰ Political leaders spoke out on Mr. Montrevil's behalf as well. New York State Senator Tom Duane told the Associated Press, "They're using a stupid, stupid reason to try to deport a valued member of our community... We are not going to let that happen."⁴¹

53. Mr. Montrevil received support from immigration activists across the country, who he knew through his participation in Detention Watch Network, a national immigrant rights organization. These supporters made numerous calls on Mr. Montrevil's behalf to the New York City ICE Field Office throughout his detention, demanding his release. Many of these callers were familiar with Mr. Montrevil from his speaking trips outside of New York.⁴²

54. Once again, Mr. Montrevil's family was left fatherless due to ICE's actions. It felt clear to his family that he had been targeted for his activism. Ms. Cauthen recalls, "It was clear to me and others in the immigration rights movement that Jean was being targeted for speaking out."⁴³ The whole family advocated for Mr. Montrevil's release. In a trip organized by Reverend Donna Schaper from Judson Memorial Church, Mr. Montrevil's children

³⁹ Kirk Semple, *Demonstrators Press for Haitian Advocate's Release*, The New York Times (Jan. 14, 2010), <https://www.nytimes.com/2010/01/15/nyregion/15deport.html>; see also Albor Ruiz, *President Obama has not followed through on his promise of fair immigration reform*, New York Daily News, (Jan. 7, 2010), <https://www.nydailynews.com/new-york/brooklyn/ruiz-president-obama-not-promise-fair-immigration-reform-article-1.461784>.

⁴⁰ Exhibit C at ¶ 10.

⁴¹ Marcus Franklin, *NYers protest deportation of drug convict*, Associated Press, Jan. 5, 2010, [https://www.westlaw.com/Document/Ifd28f510fa4911de9acb89ea7643c634/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb11.0](https://www.westlaw.com/Document/Ifd28f510fa4911de9acb89ea7643c634/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb11.0).

⁴² Exhibit D at ¶¶ 20-22.

⁴³ Exhibit B at ¶ 19.

traveled to Washington, D.C. to meet with lawmakers regarding their father's immigration case.⁴⁴

55. Inside York County Prison, Mr. Montrevil's activism persisted. In protest of the poor food quality and other conditions in York County Prison, Mr. Montrevil led a hunger strike among immigrant detainees, which resulted in improved food quality and quantity.⁴⁵

56. In January 2010, ICE scheduled Mr. Montrevil for a flight to Haiti, but cancelled the flight when a nurse discovered one of the scheduled passengers had contracted swine flu.⁴⁶ Mr. Montrevil and the other passengers were placed in quarantine.⁴⁷

57. On January 13, 2010, the Department of Homeland Security announced a halt to removals to Haiti, following a devastating earthquake the day before that killed hundreds of thousands of Haitians.⁴⁸ Mr. Montrevil's attorney, Joshua Bardavid, filed a writ of habeas corpus seeking his release, and ICE released Mr. Montrevil a few days later.⁴⁹

58. Shortly after Mr. Montrevil's release, ICE Field Office Director Christopher Shanahan met with Jean and several of his supporters, including Reverend Donna Schaper. He made clear to Mr. Montrevil and Reverend Schaper that he was frustrated with the community response to Mr. Montrevil's detention.⁵⁰

⁴⁴ Associated Press News Alert, *Metro New York Day Schedule*, Associated Press, Jan. 4, 2010, [https://www.westlaw.com/Document/I73f9a180f8f111de88d2b9fa2527360f/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cb1t1.0](https://www.westlaw.com/Document/I73f9a180f8f111de88d2b9fa2527360f/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cb1t1.0); Exhibit D at ¶ 23.

⁴⁵ Exhibit A at ¶ 30; Eyana Adah Memillan, *Activist in York County Prison on hunger strike, wife says*, The York Dispatch (Jan. 7, 2010), http://yorkdispatch.inyork.com/news/ci_14141090?source=rss.

⁴⁶ Tom Joyce, *Haitians at York County Prison spared earthquake*, York Daily Record, January 27, 2010, 2010 WLNR 1747811.

⁴⁷ Exhibit A at ¶ 32.

⁴⁸ Colin Moynihan, *Close Call for Haitian in an Immigration Web*, N.Y. Times (Jan. 25, 2010)

<https://www.nytimes.com/2010/01/25/nyregion/25detainee.html>.

⁴⁹ Exhibit A at ¶ 34.

⁵⁰ Exhibit D at ¶ 24; Exhibit A at ¶ 36.

59. At the meeting, Director Shanahan advised Mr. Montrevil to keep a low profile if he wanted to avoid future problems with immigration enforcement.⁵¹ Director Shanahan said, “if you stop shutting our phone lines down, things would probably get a lot better around here,” in reference to Mr. Montrevil’s supporters’ calls.⁵² He even offered to consider deferred action for Mr. Montrevil if he kept his head down.⁵³

60. According to Reverend Schaper, this was a highly unusual meeting:

I was very surprised that Director Shanahan met with us to discuss Jean’s case, in my several years of working with New Sanctuary Coalition I had never heard of Director Shanahan meeting directly with an immigrant under his supervision to discuss their case. It became clear to me at this meeting that ICE had taken a special interest in Jean. Of the hundreds of people I had accompanied over the years since New Sanctuary Coalition was founded, I had never seen ICE single out an individual in this way.⁵⁴

61. Mr. Montrevil was shaken by his close call with deportation and began stepping back from the spotlight to protect his family.⁵⁵ He remained an active member of New Sanctuary, speaking to churches and other immigrants, but no longer served as the public face of the organization and declined media interviews.⁵⁶

62. When ICE resumed removals to Haiti in 2011, Mr. Montrevil was not deported. He was back on his Order of Supervision, authorized to continuing living in the U.S., and was only required to check in every few months.⁵⁷

63. Over the next several years, Mr. Montrevil focused on his family and work. Mr. Montrevil’s son J.T. began to experience severe nausea and vomiting, prompting Mr. Montrevil to take him to the doctor. The doctor discovered a tumor in J.T.’s brain, which

⁵¹ Exhibit E at ¶ 8; Exhibit A at ¶ 36.

⁵² Exhibit D at ¶ 26.

⁵³ Exhibit A at ¶ 36.

⁵⁴ Exhibit D at ¶ 25.

⁵⁵ Exhibit A at ¶ 40.

⁵⁶ *Id.* at ¶ 37; Exhibit D at ¶ 27.

⁵⁷ Exhibit A at ¶ 37; *see also* Julia Preston, *Haitian Deportations to Resume*, *The New York Times* (Apr. 6, 2011), <https://www.nytimes.com/2011/04/07/us/07brfs-Washington.html>.

they feared was cancerous. This news shocked Mr. Montrevil and Ms. Cauthen. Doctors were able to remove J.T.'s brain tumor. J.T. still has a scar on his head from this operation and receives annual follow-up scans to ensure he has not developed any new tumors. Shortly after the operation, doctors diagnosed J.T. with Attention Deficit Disorder (ADD), saying the condition was related to his tumor.⁵⁸

64. During those years, Mr. Montrevil continued regularly attending check-ins with ICE without any problems. These check-ins generally occurred every three or six months. In 2016, Director Shanahan granted Mr. Montrevil a one-year stay of removal, which was subject to renewal.⁵⁹

ii. Mr. Montrevil's "High Profile" and ICE's 2017-2018 Operation to Target, Surveil, and Arrest Mr. Montrevil in Queens

65. In January 2017, Thomas Decker replaced Christopher Shanahan as Field Office Director for New York Enforcement and Removal Operations. According to a declaration filed by Mr. Decker on March 7, 2018, his staff informed him of Mr. Montrevil's case shortly thereafter.⁶⁰ Decker stated in his declaration that Mr. Montrevil's case was "noteworthy because [his] removal potentially could garner media attention."⁶¹ Mr. Decker later retracted this statement in his amended declaration, filed on March 14, 2018. Mr. Decker's amended declaration stated that he learned of Mr. Montrevil's case on April 5, 2017: "On April 5, 2017, pursuant to my standing direction to inform me of high-profile cases, my staff informed me of Jean Montrevil."⁶²

⁵⁸Exhibit B at ¶¶ 4-5; Exhibit A at ¶ 39.

⁵⁹ Exhibit E at ¶11.

⁶⁰ Declaration of Field Office Director Thomas R. Decker at ¶ 13, *Ragbir et al. v. Homan*, No. 18-CV-1159 (S.D.N.Y. 2018), ECF No. 51.

⁶¹ *Id.*

⁶² Declaration of Field Office Director Thomas R. Decker at ¶ 12, *Ragbir et al. v. Homan*, No. 18-CV-1159 (S.D.N.Y. 2018), ECF No. 58.

66. During the spring of 2017, Mr. Montrevil decided it was time to start speaking out publicly against ICE again. He was worried about how this might affect his own case, but pervasive anti-immigrant rhetoric moved him to stop laying low, as Director Shanahan had told him to do.⁶³

67. A few weeks before Mr. Montrevil's check-in, he attended a "Jericho Walk" outside of 26 Federal Plaza. New Sanctuary members participate in these walks every Thursday, during which they march and pray silently in protest of U.S. immigration policies. Mr. Montrevil spoke in front of a crowd following the Jericho Walk, during which he criticized the U.S. immigration system.⁶⁴

68. On June 22, 2017, Mr. Montrevil attended his ICE check-in at 26 Federal Plaza, accompanied by his attorney Mr. Bardavid and several supporters.⁶⁵

69. Mr. Montrevil and the others waited for nearly two hours before his name was called. Once he was called, two ICE officers met Mr. Montrevil and Mr. Bardavid in a back room. The officers told Mr. Montrevil and Mr. Bardavid that they were detaining Mr. Montrevil for deportation. When Mr. Bardavid told the officers that Mr. Montrevil had a pending motion with the BIA, the officers responded that their records did not reflect this.⁶⁶

70. Mr. Montrevil was taken into a back room for processing, and Mr. Bardavid began preparing a habeas petition for his release.⁶⁷

71. ICE released Mr. Montrevil the same day, before Mr. Bardavid filed the habeas petition. The officers did not explain to Mr. Montrevil why he was released, or why he had

⁶³ Exhibit C at ¶ 14; Exhibit A at ¶ 42.

⁶⁴ Exhibit D at ¶ 31; Exhibit A at ¶ 42.

⁶⁵ Exhibit E at ¶ 11.

⁶⁶ *Id.*

⁶⁷ *Id.* at ¶¶ 11-12.

been detained in the first place. Mr. Montrevil was told only that the decision came from “upstairs.” Mr. Montrevil was given a month until his next check-in.⁶⁸

72. Following his brief detention in June, Mr. Montrevil felt that he was once again being targeted by immigration authorities for his activism. On July 13, 2017, members of New Sanctuary organized a Jericho Walk to support Mr. Montrevil.⁶⁹

73. On July 19, 2017, Mr. Montrevil, Mr. Bardavid, and Mr. Montrevil’s daughter Janiah Heard participated in a video interview with *Democracy Now!* In the interview they spoke critically regarding Mr. Montrevil’s treatment by immigration officials. Janiah explained how hard Mr. Montrevil’s deportation would be on her and her siblings, in particular J.T. who had undergone surgery for his brain tumor.⁷⁰

74. Mr. Montrevil’s motion to reopen was still pending before the BIA on July 20, 2017, the date of his next check-in.⁷¹ The check-in went smoothly. ICE officers made representations to Mr. Montrevil that they were aware of his pending motions and had no plans to detain or deport him while they were pending. One officer told him, “You’re good, just stay out of trouble.” Mr. Montrevil received a new check-in date for January 16, 2018.⁷²

75. On January 3, 2018, nearly two weeks before his next scheduled check-in, ICE officers detained Mr. Montrevil. Mr. Montrevil was arrested by ICE agents outside his home in Far Rockaway, Queens during his lunch break from work. Mr. Montrevil was returning to his vehicle when he heard someone yell his name. Immediately, multiple men he did not recognize began running toward him with handcuffs. The men told Mr. Montrevil they were

⁶⁸ Exhibit A at ¶¶ 43-44; Exhibit D at ¶ 32; Exhibit E at ¶ 12.

⁶⁹ John Tartleton, *Haitian Immigrant Rights Leader Jean Montrevil Targeted by ICE*, *The Independent* (July 14, 2017), <https://independent.org/2017/07/silent-march-delivers-a-message/>; see also Amy Goodman, *Activist & Father of Four Faces Deportation to Devastated Haiti Because of Decades-Old Conviction*, *Democracy Now!* (July 19, 2017), https://www.democracynow.org/2017/7/19/activist_father_of_four_faces_deportation.

⁷⁰ Amy Goodman, *supra* note 69; Exhibit A at ¶ 43.

⁷¹ Tartleton, *supra* note 69.

⁷² Exhibit A at ¶ 44; Exhibit E at ¶ 13.

with ICE, although they were not wearing uniforms. Mr. Montrevil attempted to explain that he had a pending motion with the BIA, but the officers told him that everything pending had been revoked and that they were taking him into custody.

76. The manner of the arrest indicated that the officers had been surveilling Mr. Montrevil—they knew that Mr. Montrevil took a lunch break from 12 PM to 2 PM each day, as well as where Mr. Montrevil’s car was parked.⁷³ ICE officers later admitted that they had engaged in surveillance of New Sanctuary leaders including Mr. Montrevil. Deputy ICE Field Office Director Scott Mechkowski told Mr. Bardavid, “We war-gamed this over and over.”⁷⁴

77. The officers placed Mr. Montrevil in a vehicle and drove him to 26 Federal Plaza. Mr. Montrevil again told the agents that he was scheduled for a check-in soon and had a motion pending before the BIA. The agents responded that his pending motion had been revoked, even though it remained pending until January 12, 2018. Mr. Montrevil was still in possession of his cell phone, and he texted Ms. Cauthen to tell her that ICE had arrested him. Ms. Cauthen alerted Mr. Bardavid and the New Sanctuary Coalition.⁷⁵

78. The same day as Mr. Montrevil’s arrest in Queens, New Sanctuary members observed unmarked cars around Judson Memorial Church, which houses the organization’s office. Two individuals approached one of the vehicles and spotted a DHS license plate on the floor of the passenger seat.⁷⁶ ICE initially denied their presence at Judson Memorial Church, but eventually admitted that they were there.

⁷³ Exhibit A at ¶¶ 44, 46.

⁷⁴ Exhibit E at ¶ 21.

⁷⁵ Exhibit A at ¶ 45.

⁷⁶ Exhibit C at ¶ 16; Exhibit D at ¶ 36; *see also* Nick Pinto, *No Sanctuary*, *The Intercept* (Jan. 19, 2018), <https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/>.

79. Also that same day, ICE had unmarked cars at the home of Ravi Ragbir, the Executive Director of New Sanctuary Coalition. Like Mr. Montrevil, Mr. Ragbir was subject to a final order of removal and was a nationally-known immigrant rights advocate. Mr. Ragbir was not home, and ICE did not detain him that day. ICE initially denied that they were attempting to arrest Mr. Ragbir at that time, but eventually admitted that they had a coordinated plan to surveil and arrest both New Sanctuary activists on the same day.⁷⁷

80. On the day of Mr. Montrevil's arrest, ICE officials repeatedly misled Mr. Montrevil's attorney and supporters about his location and ICE's intentions to deport him. Several supporters immediately went to 26 Federal Plaza, where they were told Mr. Montrevil was not in ICE custody, despite the fact that Mr. Montrevil was en route to 26 Federal Plaza with ICE officers at the time of those statements.⁷⁸ Mr. Montrevil remained detained at 26 Federal Plaza for several hours, during which he repeatedly asked to speak with his attorney but was told that Mr. Bardavid was not present.⁷⁹ In fact, Mr. Bardavid was also at 26 Federal Plaza looking for Mr. Montrevil. When Mr. Bardavid inquired about Mr. Montrevil's location, immigration officials repeatedly told Mr. Bardavid that he could not speak with his client. Mr. Montrevil was later transferred to Essex County Jail in New Jersey without notification to Mr. Bardavid, who was told to remain waiting at 26 Federal Plaza until 4:30 PM, at which point he was told he should come back the next day to see Mr. Montrevil.⁸⁰

⁷⁷ Declaration of Field Office Director Thomas R. Decker at ¶ 34, *Ragbir et al. v. Homan*, No. 18-CV-1159 (S.D.N.Y. 2018), ECF No. 58 ("On and around January 3, 2018, as part of the operational plan to take Mr. Ragbir and Mr. Montrevil into custody for removal, ICE officers conducted routine surveillance of these individuals.").

⁷⁸ Exhibit D at ¶ 37.

⁷⁹ Exhibit A at ¶ 47.

⁸⁰ Exhibit E at ¶ 16.

81. On January 4, 2018, Mr. Bardavid filed a habeas petition in the Southern District of New York seeking Mr. Montrevil's release from custody, based on his understanding from ICE that Mr. Montrevil was being detained in New York.⁸¹ Mr. Bardavid also attempted to confirm Mr. Montrevil's location through the ICE Online Detainee Locator System. The system instructed Mr. Bardavid to contact the Varick Street ICE Office for more information about Mr. Montrevil, indicating to Mr. Bardavid that his client was in New York.⁸²

82. On January 5, 2018, Deputy ICE Field Office Director Scott Mechkowski emailed Mr. Bardavid informing him that Mr. Montrevil's Order of Supervision had been revoked and that he was being detained at Essex County Jail. Deputy Director Mechkowski represented that Mr. Montrevil was in New Jersey even though ICE planned to transport Mr. Montrevil to Krome Detention Center in Miami, Florida that same day. Deputy Director Mechkowski stated he would keep Mr. Bardavid informed of any changes.⁸³

83. The email from Deputy Director Mechkowski to Mr. Bardavid stated that ICE had notified the BIA of Mr. Montrevil's detention. Mr. Bardavid filed a motion to disclose ICE and the BIA's inappropriate *ex parte* communication with the BIA.⁸⁴

84. Also on January 5, 2018, Reverend Juan Carlos Ruiz and three other faith leaders attempted to meet with ICE Director Thomas Decker at 26 Federal Plaza to discuss Mr. Montrevil's situation. The clergy were told that Director Decker was not available and instead met with Deputy Director Mechkowski to discuss Mr. Montrevil's case.⁸⁵

⁸¹ *Id.* at ¶ 17.

⁸² *Id.*; *see also* Exhibit F, Screenshot of ICE Detainee Locator System website, <https://locator.ice.gov/odls/#/index> (Jan. 5, 2018).

⁸³ Exhibit G, Email from Scott Mechkowski, Deputy Field Office Director, to Joshua Bardavid (Jan. 5, 2018).

⁸⁴ Exhibit E at ¶¶ 18–19; Exhibit G.

⁸⁵ Exhibit C at ¶ 17.

85. On information and belief, during this meeting, Deputy Director Mechkowski told the clergy that Mr. Montrevil's case was one of the "two most high profile" cases in the New York field office, and that Mr. Montrevil's detention was orchestrated to avoid protests by New Sanctuary members. Deputy Director Mechkowski mentioned that he warned Jean to keep quiet, saying "Jean, you don't want to make matters worse by saying things," after Mr. Montrevil allegedly made "harsh statements" regarding ICE. He also stated that ICE arrested Mr. Montrevil in an abrupt, covert manner to avoid the "display of wailing kids and wailing clergy."⁸⁶ Deputy Director Mechkowski added, "We war-game this. We go over this step by step."⁸⁷

86. Deputy Director Mechkowski brought up the unmarked vehicles outside of Judson Memorial Church, but repeatedly denied that ICE engaged in surveillance of the church.⁸⁸ Mr. Decker subsequently conceded that ICE officials surveilled members of New Sanctuary, including Mr. Ragbir and Mr. Montrevil, in the lead up to Mr. Montrevil's arrest.⁸⁹

87. On information and belief, Deputy Director Mechkowski assured the clergy that Mr. Montrevil was not at risk of immediate deportation. He claimed that Mr. Montrevil had been detained in order to expedite the BIA's review of his motion, saying, "[Mr. Montrevil's case was] on the back burner. We need it to be on the front burner so we can get a resolution."⁹⁰ He stated that ICE had no plans to deport Mr. Montrevil at that time. This information stood in direct contrast with Director Decker's sworn declaration in March 2018,

⁸⁶ *Id.* at ¶ 18; *see also* Exhibit D at ¶ 39.

⁸⁷ Exhibit C at ¶ 18.

⁸⁸ *Id.* at ¶ 21.

⁸⁹ Declaration of Field Office Director Thomas R. Decker at ¶ 34, *Ragbir et al. v. Homan*, No. 18-CV-1159 (S.D.N.Y. 2018), ECF No. 58.

⁹⁰ Exhibit C at ¶ 19.

which stated that ICE made the decision to deport Mr. Montrevil back in October 2017 and that they determined that there was a charter plane scheduled for January 16, 2018.⁹¹ The BIA's amended decision from January 29 also contradicts Mr. Mechkowski's statement to the faith leaders: "on January 5, 2018, a deportation officer notified the Board that the respondent's removal was scheduled for January 16, 2018."⁹²

88. On January 5, 2018, Mr. Montrevil was transferred from Essex County Jail to Krome Detention Center in Florida.⁹³

89. Mr. Bardavid later called Deputy Director Mechkowski. During the call, Deputy Director Mechkowski repeatedly expressed frustration about being "hounded" and "vilified" by Mr. Montrevil's supporters and said that "people need to stop calling and emailing" to ask for Mr. Montrevil's release. He emphasized that this was a very thought out decision and stated that ICE had "war-gamed this over and over," echoing his statement to the faith leaders. Deputy Director Mechkowski stated that he wanted to force the BIA to "resolve" Mr. Montrevil's case by detaining him. He also told Mr. Bardavid that Mr. Montrevil was being moved to Krome as a cost-saving measure.⁹⁴

90. When Mr. Montrevil's family learned that he was in Krome, they were upset because they knew that many Haitians were sent to Krome for deportation. Mr. Montrevil's sister drove from Georgia to Krome to see him on Sunday, January 14, but was turned away. She tried to leave clothes for him, in case he was later deported, but Krome officials refused to accept the clothes she brought, stating that Mr. Montrevil had not been notified of a deportation date, and would have been if he were to be imminently deported, as that was

⁹¹ Declaration of Field Office Director Thomas R. Decker at ¶¶ 29–30, *Ragbir et al. v. Homan*, No. 18-CV-1159 (S.D.N.Y. 2018), ECF No. 58.

⁹² Exhibit H, Jean Montrevil, A040 135 784 (BIA Jan. 29, 2018) (Amended Order).

⁹³ Exhibit A at ¶ 48.

⁹⁴ Exhibit E at ¶ 21.

ICE's practice.⁹⁵ Reverend Schaper flew to Krome to see him, and was able to visit him as a member of the clergy, after some difficulty.⁹⁶

91. On Friday, January 12, 2018, the BIA denied Mr. Montrevil's pending motion to reopen. The BIA did not communicate this denial to Mr. Montrevil's attorney, thwarting his ability to obtain an emergency stay of removal or judicial review prior to Mr. Montrevil's deportation. Mr. Montrevil's attorney was not formally notified of the denial until the following Tuesday, after Mr. Montrevil had been deported.⁹⁷ Ms. Cauthen, who had been calling the EOIR hotline daily to check for updates in Mr. Montrevil's case, discovered on January 12, 2018 that the hotline had been shut off. The hotline remained down over the weekend through Monday, January 15, which was Martin Luther King Day.⁹⁸

92. Ms. Cauthen learned that Mr. Montrevil would be deported on Monday, January 15 when Mr. Montrevil called her in anguish to say, "It's over." Mr. Montrevil had just been told by ICE officers that he would be deported. She notified Mr. Bardavid, who filed a petition for review and motion for emergency stay with the U.S. Court of Appeals for the Fourth Circuit, on Monday, January 15.⁹⁹ Reverend Schaper reached out that same day to Director Decker and Deputy Direct Mechkowski to request a meeting that day, and to bring to their attention that Mr. Montrevil's attorney believed the *ex parte* communication between ICE and the BIA was improper and unlawful, and asking them not to take action against Mr. Montrevil until they had investigated this communication.¹⁰⁰

⁹⁵ Exhibit B at ¶30.

⁹⁶ Exhibit A at ¶ 51; Exhibit D at ¶ 42

⁹⁷ Exhibit E at ¶ 22.

⁹⁸ Exhibit B at ¶¶ 28–29.

⁹⁹ *Id.* at ¶ 31; Exhibit E at ¶ 23.

¹⁰⁰ Exhibit D at ¶ 44.

93. On January 16, 2018, the first business day after the BIA's order denying Mr. Montrevil's motion, Mr. Bardavid called the Fourth Circuit before 8:00 AM. The Court ordered the government to respond to the emergency stay motion by 10:00 AM. The government filed a response arguing that Mr. Montrevil's request was moot, as Mr. Montrevil had been deported to Haiti on a flight at 7:38 AM.¹⁰¹

94. Mr. Bardavid's motion to disclose the *ex parte* communication was not acknowledged by the BIA until after Mr. Bardavid filed the petition for review with the Fourth Circuit. Even then, the BIA simply amended its decision to grant the motion, acknowledging that failing to decide the motion prior to its order was an error. The amended order stated that the BIA had received an *ex parte* communication from ICE on January 5 saying that Mr. Montrevil was scheduled for removal on January 16. The BIA received another *ex parte* communication from ICE on January 8 saying that Mr. Montrevil was detained at Essex County Correctional Facility.¹⁰² Disclosure of these communications to Mr. Bardavid on January 12 along with the original BIA decision would have provided Mr. Bardavid with notice of his client's imminent removal. The BIA provided no explanation of why it waited until after Mr. Montrevil's deportation to disclose ICE's *ex parte* communications.

C. Impact of ICE's Retaliation on Mr. Montrevil, His Family, and His Activism

95. The effects of ICE's retaliation on Mr. Montrevil and his family have been devastating. Mr. Montrevil currently lives in Haiti, a country the *New York Times* recently

¹⁰¹ Exhibit E at ¶ 24.

¹⁰² See Exhibit H. Although ICE told the BIA that Mr. Montrevil was detained in New Jersey as of January 8, 2018, he had already been transferred to Krome Detention Center in Florida.

described as on “the brink of collapse” due to political instability.¹⁰³ In September 2019, a Senator opened fire outside of Parliament, shooting an Associated Press photographer in the face.¹⁰⁴ Mr. Montrevil has been functionally on home arrest, unable to leave his village of houses due to the dangerous situation in the streets. At times his village has gone weeks without water deliveries.¹⁰⁵

96. The increasing levels of violence and instability in Haiti have prevented Mr. Montrevil’s family members from visiting him for more than a year. Ms. Cauthen and J.T. visited Mr. Montrevil twice in 2018, once accompanied by J.B., Janiah, and Antoine. These trips were very costly, especially given the loss of Mr. Montrevil’s income. J.T. planned to visit Mr. Montrevil in February 2019, but Ms. Cauthen cancelled the trip due to safety concerns.¹⁰⁶

97. The political instability and poor infrastructure in Haiti also have led to widespread blackouts, making it impossible for Mr. Montrevil to maintain relationships even through phone calls and video chats. He attempts to call whenever he can, but the connections are often disrupted if they can be made at all.¹⁰⁷

98. Banished from the U.S. and homebound in a country plagued by violence, poverty, and instability, Mr. Montrevil is no longer able to speak out politically against ICE and U.S. immigration policy. His activism in the U.S. was based in his religious community, a community he no longer has access to. By deporting Mr. Montrevil to Haiti, ICE has

¹⁰³ Kirk Semple, *‘There Is No Hope’: Crisis Pushes Haiti to Brink of Collapse*, N.Y. Times (Oct. 20, 2019), <https://www.nytimes.com/2019/10/20/world/americas/Haiti-crisis-violence.html>.

¹⁰⁴ Ruaridh Nicoll, *Haiti: photojournalist shot in face as senator opens fire outside parliament*, The Guardian (Sept. 23, 2019), <https://www.theguardian.com/world/2019/sep/23/haiti-shooting-senator-gun-parliament-photojournalist>.

¹⁰⁵ Exhibit A at ¶ 54.

¹⁰⁶ *Id.* at ¶ 56; Exhibit B at ¶¶ 36–37.

¹⁰⁷ Exhibit A at ¶ 56; Exhibit D at ¶ 47.

removed Mr. Montrevil's ability to speak out against them and organize churches and their congregations to resist unjust U.S. immigration policy.¹⁰⁸

99. Mr. Montrevil's children, especially J.T., have suffered tremendously as a result of ICE's retaliation against their father. None of his children were able to say goodbye to him before his deportation, as ICE abruptly transferred Mr. Montrevil to Florida without notice to his attorney or family.¹⁰⁹

100. J.T., who already struggled with a number of health problems, has experienced significant mental health issues as a result of his separation from his father. He has been diagnosed with depression and prescribed anti-depressants, and his ADD symptoms have worsened. Once an academic superstar who gained admission to Brooklyn Technical High School, J.T. is now struggling to pass his classes.¹¹⁰

101. J.B. has also struggled in school since Mr. Montrevil's deportation. She began seeing a therapist, who diagnosed her with separation disorder.¹¹¹

102. Without her father's financial support, Jannah was forced to drop out of Mercy College to save money to pay her way on her own. She began working as a traffic enforcement agent and graduated from the NYPD police academy, but the accomplishment was bittersweet—her father was not there to see her walk in graduation. She has now re-enrolled at Mercy College, but cannot afford to live on campus as she did prior to Mr. Montrevil's deportation.¹¹²

103. The retaliatory targeting of Mr. Montrevil is not unique. Rather, under the current Administration, ICE has engaged in a nationwide pattern and practice of targeting

¹⁰⁸ Exhibit A at ¶ 57.

¹⁰⁹ *Id.* at 55; Exhibit B at ¶ 27.

¹¹⁰ Exhibit B at ¶ 5; Exhibit A at ¶ 55.

¹¹¹ Exhibit B at ¶ 34; Exhibit A at ¶ 55.

¹¹² Exhibit B at ¶ 31.

immigrants who exercised their fundamental First Amendment rights to criticize immigration policy and immigration enforcement. On information and belief, ICE has targeted dozens of activists for detention and deportation in California, Colorado, Mississippi, Ohio, Tennessee, Texas, Vermont, and Washington, among other places.¹¹³ Some of these immigrants were able to seek redress from courts to prevent their unjust deportations. But because of how aggressively ICE moved to deport Mr. Montrevil, acting in secrecy and breaking its own rules, Mr. Montrevil never had a chance to preserve his rights.

CLAIMS FOR RELIEF

COUNT I

(RESPONDENTS' SURVEILLANCE, CIVIL ARREST, REVOCATION OF SUPERVISION, DETENTION, AND DEPORTATION OF MR. MONTREVIL CONSTITUTE RETALIATION AND CONTENT, VIEWPOINT, AND SPEAKER DISCRIMINATION IN VIOLATION OF THE FIRST AMENDMENT AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT)

¹¹³ See Phil Helsel, *'Dreamer' Applicant Arrested After Calling for Immigrant Protection*, NBC News (Mar. 2, 2017), <https://www.nbcnews.com/news/us-news/dreamer-applicant-arrested-after-calling-immigrant-protections-n727961>; *ICE Intimidates Latino Community With Arrest of DACA Recipient Practicing Free Speech*, HuffPost (Mar. 3, 2017), https://www.huffingtonpost.com/entry/ice-intimidates-latino-community-with-arrest-of-daca_us_58b9dd6de4b02b8b584dfb6d; Ray Sanchez, "DREAMer Daniela Vargas released, immigration group says," *CNN* (Mar. 10, 2017) <https://www.cnn.com/2017/03/10/us/dreamer-daniela-vargas-ordered-released/index.html>; Compl., *Migrant Justice v. U.S. Dep't of Homeland Sec.*, No. 17-cv-197 (D. Vt. Oct. 11, 2017); Milton J. Valencia, *Hundreds in Boston Will Protest Vermont ICE Arrests*, The Boston Globe (Mar. 26, 2017), <https://www.bostonglobe.com/metro/2017/03/26/hundreds-protest-vermont-ice-arrests-boston-monday/MdxOtWc9TP6sVhsgEjEAYP/story.html>; Elizabeth Murray, *Protesters decry farmworkers' arrest after Ben & Jerry's march* (June 19, 2017), <http://www.burlingtonfreepress.com/story/news/local/vermont/2017/06/19/border-patrol-arrests-2-immigrants-east-franklin/408333001/>; Maria Cicchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration Activists*, Washington Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.64d28708d652; Nina Shapiro, *ICE Tracks Down Immigrants Who Spoke to Media in SW Washington: "You Are the One from the Newspaper,"* Seattle Times (Dec. 3, 2017), <https://www.seattletimes.com/seattle-news/ice-tracks-down-immigrant-who-spoke-to-media-in-sw-washington-you-are-the-one-from-the-newspaper/>; John Bear & Jenn Fields, *Husband of Peruvian Woman Taking Sanctuary at Boulder Church Detained by ICE*, The Denver Post (Jan. 11, 2018), <https://www.denverpost.com/2018/01/11/ingrid-encalada-latorre-husband-detained-immigration-boulder-sanctuary>; ACLU-WA, "ACLU-WA Lawsuit Seeks to Uphold Free Speech Rights of Hunger Striker at Northwest Detention Center" (Feb. 23, 2018), <https://www.aclu-wa.org/news/aclu-wa-lawsuit-seeks-uphold-free-speech-rights-hunger-striker-northwest-detention-center>; Pl.'s Mot. for Leave to File Second Am. Compl., *Chavez Flores v. United States Immigration and Customs Enforcement*, No. 18-cv-05139 (W.D. Wash. May 21, 2018) (Dkt. No. 45); Ray Stern, "Latina Activist Alejandra Pablos Jailed by ICE; 'Retaliation' for Protest, Group Claims," *Phoenix New Times* (Mar. 7, 2018), <http://www.phoenixnewtimes.com/news/latina-activist-alejandra-pablos-jailed-in-tucson-by-ice-10210545>.

104. Mr. Montrevil incorporates the preceding paragraphs as if fully set forth herein.

105. “To state a First Amendment retaliation claim, a plaintiff must show that: ‘(1) he has a right protected by the First Amendment; (2) the defendant's actions were motivated or substantially caused by [the plaintiff's] exercise of that right; and (3) the defendant's actions caused [the plaintiff] some injury.’” *Ragbir v. Homan*, 923 F.3d 53, 66 (2d Cir. 2019) (quoting *Smith v. Campbell*, 782 F.3d 93, 100 (2d Cir. 2015)) (quoting *Dorsett v. Cty. of Nassau*, 732 F.3d 157, 160 (2d Cir. 2013)).

106. Government action that targets private speech based on the viewpoint taken by the speaker is an egregious form of content discrimination and presumptively unconstitutional. *See Matal v. Tam*, 137 S. Ct. 1744 (2017); *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92 (1972); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

107. Similarly, government action that targets speech based on the identity of the speaker is presumptively unconstitutional. *See Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

108. Mr. Montrevil has engaged in political speech protected by the First Amendment. He has shared his story and publicly criticized U.S. immigration law and policy in the media, served as the public face of a faith-based immigrant rights movement, helped organize and spoken out at rallies, vigils, and church services about the U.S. immigration system, helped noncitizens navigate that system, and urged government officials to change it. Mr. Montrevil’s speech about U.S. immigration law and policy pertains to matters of public concern and seeks political change. It is therefore entitled to the highest level of protection

under the First Amendment. *See, e.g., Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion) (explaining that political speech is “at the core of what the First Amendment is designed to protect”); *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.”) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)); *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034 (1991) (“[S]peech critical of the exercise of the State's power lies at the very center of the First Amendment.”); *Meyer v. Grant*, 486 U.S. 414, 421-22, 425 (1988) (when speech concerns “political change,” it is also “core political speech” and thus “trenches upon an area in which the importance of First Amendment protections is at its zenith”) (internal citation omitted).

109. Respondents have taken adverse actions against Mr. Montrevil that were motivated by Mr. Montrevil’s exercise of First Amendment protected speech. Respondents have surveilled Mr. Montrevil’s home in Queens, NY, revoked his long-standing Order of Supervision, arrested him, detained him, withheld information from his attorney, transferred him away from his family and community, and deported him.

110. There is a substantial causal connection between Mr. Montrevil’s protected speech and Respondents’ adverse actions. Respondents have targeted and selectively enforced the immigration laws against Mr. Montrevil on the basis of his protected speech regarding U.S. immigration law and policy. Mr. Montrevil received a deportation order in 1994, and immigration officials chose not to deport him. In 2005, ICE provided Mr. Montrevil with an Order of Supervision, authorizing him to live and obtain work authorization in the U.S.¹¹⁴ More than two million people are authorized to live in the U.S.

¹¹⁴ Exhibit A at ¶14.

under ICE supervision, over 900,000 of whom have final deportation orders like Mr. Montrevil.¹¹⁵

111. Mr. Montrevil was singled out for adverse action by ICE after he began to exercise his core political speech to speak out against ICE. Following the proliferation of media attention given to Mr. Montrevil's speech in 2007 and 2008, ICE first retaliated by subjecting him to grueling supervision requirements in 2008 and, when that did not deter his speech, detaining him in 2009 and attempting to deport him.¹¹⁶ During that detention in 2009, Mr. Montrevil was referred to as the "one complaining to the *Village Voice*."¹¹⁷ Upon his release in 2010, Mr. Montrevil was told by then-Field Office Director Christopher Shanahan to keep a low profile, referencing his outspoken activism and media presence in the years leading up to his detention.¹¹⁸ When Mr. Montrevil subsequently withdrew from the public eye, ICE no longer targeted him for adverse action. Mr. Montrevil attended regular check-ins with ICE for seven years without further adverse action. When he spoke out again, amid the rise of anti-immigrant rhetoric and policies under the Trump Administration in 2017, he was once again targeted for his speech.¹¹⁹ In 2018, in a coordinated operation that ICE "war-gamed" to take out two prominent leaders of the New Sanctuary Coalition, Mr. Montrevil was surveilled at his home in Queens, arrested, and imprisoned.¹²⁰ Then-Deputy Field Office Director Scott Mechkowski admitted he had told Mr. Montrevil "Jean, you don't want to

¹¹⁵ Tiziana Rinaldi, *As immigration detention soars, 2.3 million people are also regularly checking in with immigration agents*, PUBLIC RADIO INTERNATIONAL, May 23, 2017, 11:30 AM, <https://www.pri.org/stories/2017-05-23/immigration-detention-soars-23-million-people-are-also-regularly-checking>.

¹¹⁶ See *supra* paragraphs 46-52, 57-58.

¹¹⁷ Exhibit A at ¶ 29.

¹¹⁸ Exhibit A at ¶ 36; Exhibit E at ¶ 8.

¹¹⁹ Exhibit A at ¶¶ 41-45, 53; Exhibit D at ¶¶ 30-37, 44-45.

¹²⁰ Exhibit C at ¶ 18; Exhibit E at ¶ 21.

make matters worse by saying things,” after Mr. Montrevil allegedly made “harsh statements” regarding ICE.¹²¹ Mr. Montrevil was deported less than two weeks later.

112. Further, the gross due process, statutory and regulatory violations that occurred in Mr. Montrevil’s sudden re-detention and deportation after many years of being permitted to live freely in the United States pursuant to an Order of Supervision provide additional evidence of a retaliatory motive. These irregularities include surveilling Mr. Montrevil and Judson Memorial Church as part of an operation to target leaders of the New Sanctuary Coalition; arresting Mr. Montrevil outside his home despite an upcoming check-in; revoking Mr. Montrevil’s Order of Supervision without changed conditions, notice, or an interview as required by law; misinforming and withholding key information about Mr. Montrevil’s case and location from his lawyer, family, and community during his detention; engaging in *ex parte* communication with the BIA to expedite the denial of Mr. Montrevil’s motion and frustrate his ability to obtain a stay of removal pending appeal; and speedily deporting Mr. Montrevil while his stay of removal was pending before the court.¹²²

113. Respondents’ treatment of Mr. Montrevil stands in stark contrast to their treatment of more than 900,000 people who are similarly permitted to live freely in the United States pursuant to an Order of Supervision.¹²³ Although the vast majority of these individuals continue their supervision without incident, Mr. Montrevil was targeted for enforcement, despite his compliance with his Order of Supervision since 2005. But-for Mr. Montrevil’s protected speech, he would still be here with his family, today.

114. Mr. Montrevil suffers severe and ongoing harm as a result of his unlawful detention and deportation, including the unjustified silencing of his protected speech through

¹²¹ Exhibit C at ¶ 18.

¹²² See *supra* paragraphs 75-94.

¹²³ Rinaldi, *supra* note 115.

his detention and deportation, and the severe infringement on his liberty, which results from his unlawful deportation. Respondents' detention and deportation has in practical effect silenced him by thwarting his ability to communicate his views and insights with the public, as he had regularly done prior to his arrest and as he planned to continue to do at upcoming public events, meetings with elected officials, and media interviews.¹²⁴

115. Left undisturbed, ICE's action in this case would have a devastating effect on vital political speech, chilling other would-be immigrant critics of the agency. Indeed, to permit Mr. Montrevil's retaliatory arrest and detention to stand "would be a particularly effective deterrent to other aliens who would also challenge the agency and its immigration policies." *Ragbir*, 923 F.3d at 71. Further, ICE's targeting of numerous other immigrant activists across the country for their protected speech demonstrates ICE's ongoing violations of First Amendment and Due Process rights that will continue without action by the Court.¹²⁵

116. Respondents' detention and deportation of Mr. Montrevil on the basis of his protected core political speech criticizing the U.S. immigration enforcement and detention system targets speech based on its viewpoint, content, and the activist and immigrant identity of the speaker, does not serve a compelling state interest, and is not narrowly tailored to any legitimate government interest. He has been deprived of his liberty with no notice and opportunity to be heard on his First Amendment claim prior to his deportation.

117. As a result, this Court should declare that Respondents' retaliatory actions, including the revocation of his Order of Supervision and his deportation because of his protected core political speech, violate the First Amendment and the Due Process Clause of the Fifth Amendment; order the return of Mr. Montrevil to his status prior to the unlawful

¹²⁴ Exhibit A at ¶57; Exhibit D at ¶48.

¹²⁵ See *supra* note 113.

acts (his return to the United States and the reinstatement of his Order of Supervision); and enter an injunction restraining Respondents from taking any action to surveil, detain, remove, or otherwise take adverse action against Mr. Montrevil unless Respondents demonstrate that such action is untainted by unlawful retaliation.

**COUNT II
(RESPONDENTS' INTERFERENCE WITH MR. MONTREVIL'S ACCESS TO
JUSTICE VIOLATES THE FIRST AMENDMENT RIGHT TO PETITION AND DUE
PROCESS CLAUSE OF THE FIFTH AMENDMENT)**

118. Mr. Montrevil incorporates the preceding paragraphs as if fully set forth herein.

119. In its attempt to silence Mr. Montrevil through his abrupt arrest, supervision revocation, detention, and deportation, Respondents bypassed numerous laws and procedures designed to protect immigrants' access to justice, including access to counsel and courts. Had Respondents not violated these laws and procedures, Mr. Montrevil would have been able to challenge his removal and Respondents' retaliatory actions prior to his deportation, through legal challenges including the full and fair adjudication of a stay of removal. By foreclosing his access to counsel and courts, and violating their own procedures, Respondents have violated Mr. Montrevil's rights under the Due Process Clause of the Fifth Amendment, as well as the right to petition under the First Amendment.

120. The Constitution protects immigrants' rights to access of counsel and access to courts. *See, e.g., BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 525 (2002) (The "right of access to the courts is . . . [an] aspect of the [First Amendment] right to petition.") (internal citation omitted); *Procunier v. Martinez*, 416 U.S. 396, 419 (1974) (observing that access to the courts is a corollary to the "constitutional guarantee of due process of law"), *overruled on other grounds, Thornburgh v. Abbott*, 490 U.S. 401 (1989); *Johnson v. Avery*, 393 U.S. 483,

498 n.24 (1969) (“Reasonable access to the courts . . . is a right . . . secured by the Constitution”) (internal citation omitted); *Montilla v. INS*, 926 F.2d 162, 166 (2d. Cir. 1991) (“[T]he Due Process clause and the Immigration and Nationality Act affords an alien the right to counsel of his own choice at his own expense.”).

121. Respondents prevented Mr. Montrevil from seeking judicial intervention and exercising his right to counsel in order to ensure his swift deportation. They did so by failing to provide a basis for, notice of, or an opportunity to contest the revocation of Mr. Montrevil’s Order of Supervision; withholding information from Mr. Montrevil’s attorney about his whereabouts throughout his detention; deliberately misinforming Mr. Montrevil’s attorney and supporters as to his imminent deportation; communicating *ex parte* about Mr. Montrevil’s detention in order to expedite his removal, and failing to disclose the *ex parte* communication to Mr. Montrevil in a timely manner, despite a motion to disclose. Respondent EOIR then denied Mr. Montrevil’s motion to reopen the business day before his scheduled deportation, when the EOIR hotline was down, and failed to notify Mr. Montrevil’s attorney of record, thus ensuring he would be unable to seek redress in court. Further, respondent EOIR failed to respond to Mr. Montrevil’s motion to disclose their *ex parte* communication with ICE in a timely manner, which they admitted was an error,¹²⁶ thus ensuring Mr. Montrevil’s attorney did not receive information about Mr. Montrevil’s long-scheduled deportation prior to its execution.

122. Respondents therefore violated Mr. Montrevil’s constitutional right to counsel and access to the courts. *Montilla*, 926 F.2d at 163 (“[T]he Due Process clause and the Immigration and Nationality Act affords an alien the right to counsel of his own choice at his own expense.”); *RZS Holdings AVV*, 506 F.3d 350, 357 (4th Cir. 2007) (“*Ex parte*

¹²⁶ Exhibit H.

communications by an adversary party to a decision-maker in an adjudicatory proceeding are prohibited as fundamentally at variance with our conceptions of due process.”) (internal quotation marks omitted); *Mei Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004) (“Regardless whether her arrest and placement into custody was lawful . . . she was entitled to due process in her right to challenge [the removal]. . . The government, by quickly removing her from the United States, effectively [impeded her effort at obtaining habeas relief].”); *see also Mendez v. INS*, 563 F.2d 956, 959 (9th Cir. 1977) (“Failure to notify appellant’s counsel of an order to report for deportation amounts not only to a violation of 8 C.F.R. 292.5(a), but also to the alien’s right to counsel as provided in 8 U.S.C.S. § 1252(b)”).

123. Respondents also violated statutory and regulatory provisions designed to protect access to counsel and courts, and to prohibit *ex parte* communication. *See* 8 U.S.C. § 1362 (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose”); 5 U.S.C. § 557 (d)(1) (stating that an administrative law judge or other agency employee reasonably expected to be involved in the decisional process of the proceeding may not engage in *ex parte* communication relevant to the merits of the proceeding, and that if an agent receives such communication, they shall disclose on the proceeding’s public record all such written communications, or a summary of the communications if oral); 28 C.F.R. § 68.36 (“[T]he Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate.”). Where immigration officials violate such constitutional, statutory, and regulatory requirements and bypass the

process guaranteed by law, such actions violate due process and must be voided by courts. *See Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *Montilla*, 926 F.2d 162 (2d. Cir. 1991).

124. Respondents' actions prejudiced Mr. Montrevil severely. Respondents not only failed to provide him or his attorney with notice and an opportunity to be heard on the revocation of Mr. Montrevil's longstanding Order of Supervision, which precipitated his detention, they actively misinformed Mr. Montrevil and his lawyer and supporters about Mr. Montrevil's whereabouts and their intention to deport Mr. Montrevil imminently, while engaging in *ex parte* communication on those matters to expedite his deportation. This impeded Mr. Montrevil from being able to communicate with his attorney and contest Respondents' actions in court prior to his deportation. Instead, he was deported to Haiti before a court could even rule on his motion for an emergency stay of removal.

125. Because Respondents violated the laws and procedures governing its enforcement actions and the rights afforded to individuals facing deportation in their efforts to silence Mr. Montrevil, Respondents' actions violate Mr. Montrevil's right to petition the courts and right to due process of law. As a result, this Court should declare that Respondents' actions, to expedite Mr. Montrevil's deportation and cut off his access to counsel and courts in order to suppress his speech, violate the First Amendment right to petition and the Due Process Clause of the Fifth Amendment, and order the return of Mr. Montrevil to his status prior to the unlawful acts (his return to the U.S and the reinstatement of his Order of Supervision).

COUNT III
(RESPONDENTS' WRONGFUL DEPORTATION OF MR. MONTREVIL, IN VIOLATION OF HIS CONSTITUTIONAL, STATUTORY, AND REGULATORY RIGHTS, DEPRIVES HIM OF DUE PROCESS UNDER THE FIFTH AMENDMENT)

126. Mr. Montrevil incorporates the preceding paragraphs as if fully set forth herein.

127. Independent of their retaliatory motives, Respondents' numerous constitutional, statutory and regulatory violations contravene Mr. Montrevil's right to due process and render his deportation unlawful.

128. "[T]he Due Process Clause protects an alien subject to a final order of deportation." *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001) (citing *Wong Wing v. United States*, 163 U.S. 228 (1896)). Immigrants maintain a fundamental interest in liberty, *id.* at 690, and family unity, *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (observing that "perhaps the oldest of the fundamental liberty interests recognized by" the Supreme Court is "the interest of parents in the care, custody, and control of their children"). *See also Matthew v. Diaz*, 426 U.S. 67, 77 (1976) ("There are literally millions of aliens within the jurisdiction of the United States. The Fifth Amendment, as well as the Fourteenth Amendment, protects every one of these persons from deprivation of life, liberty, or property without due process of law.") Immigrants are also entitled to procedural due process, namely, "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

129. Moreover, where immigration officials violate constitutional, statutory, and regulatory requirements and bypass the process guaranteed by law, they violate due process and courts must void such government action. *See Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *Montilla*, 926 F.2d 162 (2d. Cir. 1991); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017); *Mei Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398 (S.D.N.Y. 2004).

130. The proper remedy for such violations of law is to restore the individual to the position they were in prior to the unlawful act. *See United States v. Handa*, 122 F.3d 690, 690 (9th Cir. 1997) (“This broad and flexible power is derived from the equitable nature of habeas corpus relief”); *Nunes v. Mueller*, 350 F.3d 1045, 1057 (9th Cir. 2003) (“[A]ny habeas remedy ‘should put the defendant back in the position he would have been in if the [constitutional] violation never occurred.’”) (quoting *U.S. v. Blaylock*, 20 F.3d 1458, 1468 (9th Cir. 1994)). Where violations result in wrongful deportation, the appropriate remedy is the return of the individual to the United States. *See, e.g., Gutierrez v. Gonzales*, 125 Fed. App'x 406 (3d Cir. 2005) (concluding the deportation of petitioner violated due process, and granting habeas relief by ordering petitioner returned to the U.S. for further proceedings); *Mendez v. INS*, 563 F.2d 956 (9th Cir. 1977) (concluding that the deportation of petitioner violated due process and thus was void, and granting relief by ordering petitioner be admitted to the U.S. and restoring the immigration status held prior to deportation); *Singh v. Waters*, 87 F.3d 346 (9th Cir. 1996) (concluding that petitioner’s deportation was unlawful and granting habeas relief by ordering petitioner returned post-deportation); *Mei Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398 (S.D.N.Y. 2004) (granting petitioner habeas relief and ordering return to the U.S. post deportation, where deported in violation of DHS regulations, violating due process).

131. Respondents violated numerous constitutional, statutory, and regulatory requirements in deporting Mr. Montrevil. First, Respondents violated Mr. Montrevil’s due process right to notice and an opportunity to be heard prior to his Order of Supervision being revoked. *See Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017). Moreover, even assuming Mr. Montrevil’s Order of Supervision was properly revoked, he was not a flight

risk or danger to the community and therefore maintained a due process right to an “orderly departure,” i.e., a non-carceral process by which a person is provided with a notice and a deportation date instead of being arrested and forcibly removed from the country. *Id.* Due process protects individuals with final orders of removal from arbitrary deprivations of liberty, since civil detention cannot be authorized for someone who is neither a flight risk nor a danger to the community. *Zadvydas*, 533 U.S. at 691-692.

132. Second, Respondents violated several provisions within the Immigration and Nationality Act and federal regulations that are designed with due process protections in mind, which require immigration officials to follow certain procedures when enforcing orders of removal. *See, e.g.*, 8 U.S.C. § 1231(a)(1), (3), (6) (limiting the period of time in which a person ordered deported must be removed and mandating the release of those not deported during that period with certain exceptions); 8 C.F.R. § 241.2(a) (requiring issuance of a warrant of removal by certain authorized officers before acting on a final order of removal and limiting execution of such a warrant to designated authorized officers); 8 C.F.R. § 241.3(c) (requiring agency compliance where a court orders a stay of removal); 8 C.F.R. § 241.4 (specifying four bases upon which an order of supervision may be revoked; requiring revocation decisions to be made by the Executive Associate Commissioner unless specific circumstances require the Field Office Director to revoke the order; and requiring immigration officials to provide immigrants with notice of, and an interview to contest the basis for, such revocation); 8 C.F.R. § 241.13(i) (where revocation is based on availability of travel documents, requiring ICE to provide notice of and an interview to contest basis for revocation). By bypassing any of these requirements, Respondents violate the INA and their own regulations.

133. Third, the Administrative Procedures Act, 5 U.S.C. §§ 701 *et seq.*, also governs agency action. By deporting Mr. Montrevil in violation of the laws and procedures outlined by the INA and Respondents' own regulations, Respondents have acted arbitrarily and capriciously, and otherwise contrary to law in violation of 5 U.S.C. § 706. These violations are underscored by Respondents' reliance on misinformation and *ex-parte* communications to obscure their actions. *See Portland Audubon Soc. v. Endangered Species Committee*, 984 F.2d 1534, 1540-41 (9th Cir. 1993) (noting "the ex parte communications ban of the APA...is a broad provision that prohibits any ex parte communications relevant to the merits of an agency The purpose of the ex parte communications prohibition is to ensure that 'agency decisions required to be made on a public record are not influenced by private, off-the-record communications from those personally interested in the outcome.'") (quoting *Raz Inland Navigation Co. v. Interstate Commerce Comm'n*, 625 F.2d 258, 260 (9th Cir. 1980)).

134. Contrary to their own rules, the Government has provided no permissible basis for the revocation of Mr. Montrevil's supervised release and his forcible deportation. They have not alleged any violation of his Order of Supervision, nor any change in his status as neither a danger to the community, nor a flight risk. The decision was made by a deputy director within the Field Office, rather than the Executive Associate Director, with no showing of necessity to bypass this process designed to ensure the propriety of these decisions. Mr. Montrevil's attorney of record was not provided with notice of the decision, nor was Mr. Montrevil provided an interview to contest the basis of the revocation. Finally, Mr. Montrevil, having been deemed to lack flight risk and dangerousness, was never provided with the opportunity for an orderly departure.

135. Mr. Montrevil was prejudiced by these violations. As a result of Respondents' actions, he was deported to Haiti, separated from his four U.S. citizen children and community, and whisked away without notice or the opportunity to get his affairs in order. Had Respondents followed the various constitutional, statutory, and regulatory requirements governing the deportation process, Mr. Montrevil would have had the opportunity to remain in the U.S. on his Order of Supervision or, at minimum, been provided with an orderly departure.

136. Because ICE unlawfully revoked Mr. Montrevil's Order of Supervision and violated numerous constitutional, statutory and regulatory rights in forcibly deporting Mr. Montrevil, Respondents violated Mr. Montrevil's substantive and procedural due process rights. The appropriate remedy is the return of Mr. Montrevil to the United States and reinstatement of his Order of Supervision.

PRAYER FOR RELIEF

WHEREFORE, Mr. Montrevil requests that this Court enter judgment in his favor and:

- a. Assume jurisdiction over this matter;
- b. Declare that Respondents' surveillance, arrest, revocation of supervision, detention, and deportation of Mr. Montrevil constitute discrimination and/or retaliatory enforcement of the immigration laws against Mr. Montrevil on the basis of his political speech and thus violates the First Amendment and the Due Process Clause of the Fifth Amendment;
- c. Declare that Respondents' deprivation of Mr. Montrevil's rights to access counsel and courts and their expedited deportation of Mr. Montrevil violate the First Amendment right to petition and Due Process Clause of the Fifth Amendment;

- d. Declare that Respondent's violations of Mr. Montrevil's constitutional, statutory, and regulatory rights render the revocation of his Order of Supervision and subsequent deportation unlawful under the Due Process Clause of the Fifth Amendment;
- e. Issue a Writ of Habeas Corpus remedying the unlawful deportation of Mr. Montrevil, and restoring Mr. Montrevil to his status prior to illegal revocation of his Order of Supervision and unlawful execution of his removal order by ordering his return to the United States and reinstatement of his Order of Supervision;
- f. Enter an injunction restraining Respondents from taking any further action to surveil, arrest, detain, deport, or otherwise take adverse action against Mr. Montrevil unless Respondents demonstrate that such action is untainted by unlawful retaliation or discrimination against protected speech;
- g. Award Mr. Montrevil's costs and reasonable attorneys' fees; and
- h. Order such other relief as this Court may deem just and proper.

January 16, 2020

Respectfully submitted,

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