IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01120-NYW

CARLOS OLIVERA-MARTINEZ,

Petitioner,

v.

GEORGE VALDEZ, Acting Field Director of the Denver Field Office,
JUAN BALTAZAR, Warden, Denver Contract Detention Facility, and
TODD LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 4)

Respondents submit this response to the Court's Order to Show Cause why the Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) should not be granted. *See* ECF No. 4 at 1.

The Petition should be denied because Petitioner has a final order of removal and has only been in custody for 46 days as of the date of this filing. Under *Zadvydas v. Davis*, 533 U.S. 678, 700-01 (2001), post-removal-order detention is presumptively permissible for six months, and it may continue for additional time if necessary to secure the noncitizen's removal in the reasonably foreseeable future. While Petitioner argues that his current period of detention should be aggregated with a prior period of detention that occurred nearly thirty years ago, that argument is unavailing. The "particular circumstances" of the "detention in question" do not suggest a danger of serial release and re-detention

that has motivated prior courts to aggregate post-removal-order detention. *Id.* at 699. And Petitioner's other arguments for release based on purported issues with how he was detained and how Respondents have determined to which country he will be removed also do not warrant release.

Petitioner should not be released.

BACKGROUND

Petitioner is a native and citizen of Cuba. ECF No. 1 ¶ 49. He arrived in the United States in 1980 as part of the Mariel Boatlift. *Id.* In 1992, Petitioner was convicted of burglary, kidnapping, and robbery and was sentenced to ten years' imprisonment. *See* Ex. 1, Decl. of Aaron Johnson ¶ 7; ECF No. 1 ¶ 50.

Petitioner was ordered deported in 1993, and he did not appeal that order. ECF No. 1 ¶ 51; Ex. 1 ¶ 8. When Petitioner was released from criminal custody he was taken into immigration detention, where he remained from October 20, 1997, to May 26, 1998. ECF No. 1 ¶ 52; Ex. 1 ¶¶ 9-10. Petitioner claims he was released from custody after Cuba refused to accept him. ECF No. 1 ¶ 52.

Petitioner spent the next approximately 29 years free in the United States. *See id.* ¶ 54. He periodically reported to immigration officials throughout this time. *Id.* On February 16, 2026, officials from U.S. Immigration and Customs Enforcement (ICE) took Petitioner into custody to effectuate his removal. *Id.* ¶¶ 56-57; Ex. 1 ¶ 11. ICE has explained to Petitioner that it is working to secure his removal to Mexico. *See* ECF No. 1 ¶ 59. Petitioner "is afraid to go to Mexico," but U.S. Citizenship and Immigration Services

(USCIS) has determined that Petitioner "has not proven that he would be persecuted or tortured" there. *Id.* ¶¶ 59-60; Ex. 1 ¶¶ 14-15.

While ICE now considers removal to Mexico unlikely in the reasonably foreseeable future, it believes that there is a significant likelihood of removal to Cuba in the reasonably foreseeable future because, among other things, Cuba "has been allowing the removals of more Cuban national[s] in recent months," and ICE is working with the Government of Cuba to effectuate those removals. Ex. 1 ¶¶ 16-18. ICE asserts it "is actively seeking Petitioner's removal at this time." *Id.* ¶ 19.

Petitioner filed this action on March 18, 2026, approximately one month after he was taken into ICE custody. *See generally* ECF No. 1. In the Petition, he claims that he should be immediately released because: (1) there is no statutory basis for his current detention because the version of the Immigration and Nationality Act (INA) in effect when he was ordered deported only permitted six months of post-deportation-order detention, *see* 8 U.S.C. § 1252(c) (1992) (ECF No. 1 ¶¶ 62-66); (2) Respondents have not properly designated a country for Petitioner's removal (ECF No. 1 ¶¶ 67-70); (3) his continued detention violates his right to due process under *Zadvydas* (*id.* ¶¶ 71-82); (4) the manner in which Petitioner was re-detained violated agency regulations and thus offends due process under *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (ECF No. 1 ¶¶ 83-93); (5) the same regulatory violation runs afoul of *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (ECF No. 1 ¶¶ 94-100); and (6) under *Mathews*, Petitioner should be given a reasonable fear review before an immigration judge (IJ) before he is removed to Mexico (*id.* ¶¶ 101-07).

ARGUMENT

I. Petitioner's continued detention is statutorily and constitutionally permissible.

Petitioner is currently detained under 8 U.S.C. § 1231(a). *See* 8 U.S.C. § 1231(a) (providing for the detention and removal of noncitizens ordered removed). In *Zadvydas*, the Supreme Court held that the detention of a noncitizen under § 1231 for up to six months is "presumptively reasonable." 533 U.S. at 700-01. The Court also determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, the Court held that after six months, "once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing." *Id.*; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) ("The onus is on the alien to 'provide good reason to believe that there is no such likelihood' before 'the Government must respond with evidence sufficient to rebut that showing.'") (citation modified) (quoting *Zadvydas*, 533 U.S. at 701).

Here, because Petitioner's detention has not yet exceeded six months, his detention under § 1231 remains constitutional. *Cf. Bokole v. McAleenan*, 1:18-cv-00583-JB-LF, 2019 WL 2024922, at *5 (D.N.M. May 8, 2019) (finding that the petitioner's claim challenging the constitutionality of his current detention was premature because the presumptively reasonable six month period had not yet expired).

Petitioner contends that his detention should be evaluated not under § 1231 but under the detention statute that was in effect when he was originally ordered deported, which only allowed permissive detention up to six months. *See* 8 U.S.C. § 1252(c) (1993);

ECF No. 1 ¶¶ 23-26. The cases Petitioner cites, however, do not support that argument. Nor do they hold that a noncitizen ordered removed may never be re-detained once the statutory period of detention has run. Instead, those cases simply hold, consistent with the statutory language, that the old statute applied to noncitizens who—unlike Petitioner—were in active immigration proceedings when the statute was revised in 1996. *See Riley v. Greene*, 149 F. Supp. 2d 1256, 1261 (D. Colo. 2001) (concluding that the prior version of the statute applied in a case where removal proceedings were still in progress when the statute was revised); *Al Najjar v. Ashcroft*, 186 F. Supp. 2d 1235, 1240 (S.D. Fla. 2002) (noting that the "general rule in transitional cases" where removal proceedings were in progress when the statute was revised "is that none of the [revised statute's] amendments applies unless a case meets one of [the revised statute's] enumerated exceptions"); *See also* Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) §§ 309(c)(1), Pub. L. No. 104-208, 110 Stat. 3009 (1996) (providing that new rules do not apply to a noncitizen who is "in exclusion or deportation proceedings" as of the effective date of the legislation).

The undersigned has not found a case holding that the INA's pre-IIRIRA deportation detention provision applies to any person whose deportation order became final before the statute was revised and who has been re-detained well after the revised statute went into effect. And Petitioner points to nothing in the INA itself to require that result, either. *Cf. I.N.S. v. St. Cyr*, 533 U.S. 289, 318 (2001), *superseded by statute as stated in Nasrallah v. Barr*, 590 U.S. 573 (2020) (explaining that IIRIRA's interim provision "is best read as merely setting out the *procedural* rules to be applied to removal proceedings

pending on the effective date of the statute.") (second emphasis added); *Lindh v. Murphy*, 521 U.S. 320, 326 (1997) ("[I]n determining a statute's temporal reach generally, our normal rules of [statutory] construction apply."). Petitioner's deportation proceedings concluded before the statute was revised, and his current detention began well after. The current provision for post-removal-order detention—8 U.S.C. § 1231(a)—therefore authorizes Petitioner's detention.

II. The Court should not aggregate Petitioner's current and prior detentions.

Petitioner also argues that the Court should aggregate his two periods of post-removal-order detention and count them both against the presumptive six-month time limit. *See* ECF No. 1 ¶¶ 34, 80. As Petitioner recognizes, while some district courts have considered the six-month *Zadvydas* period to be cumulative, other district courts have held the opposite, including district courts in the Tenth Circuit. *See, e.g.*, *Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *1 (D. Kan. Sept. 26, 2025) (noting that "the [c]ourt has previously rejected the argument that the Supreme Court's six-month presumptively-reasonable period of detention under *Zadvydas* does not restart upon detention of an alien previously released on an OSUP"); *Momennia v. Bondi*, No. CIV-25-1067-J, 2025 WL 3011896, at *9 n.9 (W.D. Okla. Oct. 15, 2025) ("Courts are mixed on whether . . . aggregation [of previous detention with current detention] is appropriate, but most appear to disfavor aggregation.").

Respondents recognize that this Court has ruled in a different case that periods of post-removal order detention should be aggregated. *See Aguilar v. Noem*, No. 25-cv-03463-NYW, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025). After surveying district-

court opinions on the issue, the Court concluded that "a uniform rule that counts and sums prior time" is appropriate to avoid permitting the government "to detain noncitizens indefinitely by continuously releasing and re-detaining them." *Id.* (citation modified). Respondents respectfully request that the Court reconsider its conclusion as it applies to the facts of the present case.

The Supreme Court has emphasized that the *Zadvydas* analysis is fact specific. In *Zadvydas*, the Court framed its discussion of whether detention is "within, or beyond, a period reasonably necessary to secure removal" by reference to "a set of particular circumstances." *Zadvydas*, 533 U.S. at 699. The Supreme Court instructed courts to "ask whether the detention *in question* exceeds a period reasonably necessary," and that they "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Id.* (emphasis added). Thus, whether continued post-removal-order detention is reasonable depends on circumstances particular to the noncitizen and the government's efforts to remove that noncitizen at that point in time.

In light of this guidance, reconsideration is appropriate. The facts of this case are different from those in *Aguilar*. In *Aguilar*, the petitioner was held in custody in two stints totaling over eight months of detention in four years. *Aguilar*, 2025 WL 3514282, at *1. In other words, the petitioner was subject to serial detention making up nearly a fifth of the time after his removal order was reinstated.

Here, however, the facts do not suggest a scheme of serial re-detention. Petitioner has been free in the United States for all but seven months of the last nearly 30 years—

some 98% of the time since he was released from criminal custody. *See* ECF No. 1 ¶¶ 53-54, 56-57. It was only after Respondents renewed their efforts to remove Petitioner that he was re-detained. *See* Ex. 1 ¶ 11 ("Petitioner was taken into custody to effectuate his removal from the United States."). These circumstances do not suggest serial re-detention. Instead, they simply suggest a renewed—and statutorily authorized—executive-branch focus on the execution of removal orders. Respondents should therefore be entitled to the presumption set forth in *Zadvydas* that Petitioner's continued detention is reasonably necessary to effectuate his removal until six months have passed.

And even if the Court were to aggregate Petitioner's two periods of post-removal-order detention that occurred nearly three decades apart, ICE submits that it continues to believe that there is a significant likelihood of removal in the reasonably foreseeable future. *See* Ex. 1 ¶ 17. While ICE does not now believe that removal to Mexico is likely, it asserts that it is continuing to work with the Government of Cuba on removals of Cuban nationals and that those removals have become more frequent in recent months. *Id.* ¶¶ 16-18. ICE contends it is actively seeking Petitioner's removal at this time, *id.* ¶ 19, and it has had less than two months to do so since Petitioner has been taken into custody to effectuate that removal.

Under these circumstances, Respondents should be permitted to continue Petitioner's detention to effectuate his removal in the reasonably foreseeable future.

III. The Court should not order release to remedy challenges to the procedures through which Respondents seek to effectuate a third-country removal.

Petitioner also appears to challenge the way that Respondents selected Mexico as a potential country of removal and made their determination on Petitioner's claim of

fear if he is removed to that country. ECF No. 1 ¶¶ 68-70, 102-07. The Court should not order release based on those challenges.

The INA sets forth a list of countries to which a noncitizen may be removed, including, where other options are unavailable, any country willing and able to accept them. *See* 8 U.S.C. § 1231(b)(2)(E)(vii) (permitting removal to a "country whose government will accept the [noncitizen] into that country" when other options are "impracticable, inadvisable, or impossible"); *see also* 8 U.S.C. § 1253(a)(7) (1993) (providing substantially similar language). And although the INA authorizes third-country removal, it does not specify any additional pre-removal process that noncitizens must receive after they receive a final removal order. Congress has delegated the formulation of that process entirely to the Executive Branch. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681–822 (1998) (8 U.S.C. § 1231 note).

Moreover, any future objection Petitioner may have to the procedures relating to his removal to a particular country would not be a habeas challenge to the legality of his custody, and the appropriate relief would not be release. Habeas claims challenge whether a petitioner is in custody in violation of law. *See* 28 U.S.C. § 2241(c)(3). A proper § 2241 petition challenges "the fact or duration of a prisoner's confinement and seeks the remedy of immediate release or a shortened period of confinement." *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir. 1997) (quoting *Rhodes v. Hannigan*, 12 F.3d 989, 991 (10th Cir. 1993)). Even assuming that Petitioner were due additional procedures with respect to removal, that procedural failure would not result in Petitioner's release from custody.

Thus, even if the Court had jurisdiction to review such a claim, the remedy would be to require ICE to comply with § 1231(b)(2) before removing Petitioner to a country other than Cuba. *See Baltodano v. Bondi*, No. 25-cv-1958-RSL, 2025 WL 3484769, at *6-7 (W.D. Wash. Dec. 4, 2025) (ordering that ICE must provide the petitioner with notice and a meaningful opportunity to respond in third-country removal proceedings). The remedy for lack of process, to the extent Petitioner's claim is cognizable, is to require the proper process.[1]

IV. For similar reasons, Petitioner is not entitled to release based on other claimed procedural deficiencies.

Petitioner is not entitled to habeas relief based on any of the other grounds identified in the Petition. He has not shown any substantive or procedural due-process violation and, even if established, that would not warrant immediate release. Substantively, Petitioner's detention relates to "the statute's basic purpose, namely, assuring [his] presence at the moment of removal." *See Zadvydas*, 533 U.S. at 699. And a procedural due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process would be additional process, not immediate release.

Petitioner points to *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954), for the "well-settled principle that agency actions in violation of its own

[1] Petitioner's assertions concerning notice and processes associated with third-country removal also implicate issues that are currently being addressed through a certified, non-opt-out class action pending in the District of Massachusetts, of which Petitioner is a class member. *See D.V.D. v. DHS,* 778 F. Supp. 3d 355, 2025 WL 1142968 (D. Mass. 2025); *D.V.D. v. DHS*, --- F. Supp. 3d ----, 2026 WL 521557 (D. Mass. Feb. 25, 2026) (final order, stayed pending appeal), *appeal docketed*, No. 26-1212 (1st Cir. Feb. 28, 2026).

regulations and procedures offend[] due process." ECF No. 1 ¶¶ 83-93. But the Supreme Court in *Accardi* did not announce a sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciate[d] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935), *aff'd*, 38 F. App'x 4 (D.C. Cir. 2002)) (explaining limits on the *Accardi* doctrine). Moreover, in *Accardi*, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. *See* 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given what the text of the relevant regulations—here, 8 C.F.R. §§ 241.4 and 241.13—requires.

Consistent with this reasoning, various district courts have declined to grant release as a remedy for a procedural violation of immigration regulations. *See, e.g.*, *Olmedo v. ICE*, No. 25-3159-JWL, 2025 WL 2821860, at *3 (D. Kan. Oct. 3, 2025) (concluding that where a 90-day post-order custody review was not performed, "the appropriate remedy is to ensure that petitioner is afforded the process denied by the violation"); *Bahadorani v. Bondi*, No. CIV-25-1091-PRW, 2025 WL 3048932, at *3 (W.D. Okla. Oct. 31, 2025) ("Even if the government failed to comply with 8 C.F.R. § 241.13(i)(2)-(3), and such

noncompliance were prejudicial, the [c]ourt would not be able to issue a writ of habeas corpus as an appropriate remedy."); *see also Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

Accordingly, the Court should decline to grant Petitioner's request for immediate release based on alleged deficiencies in the process by which his supervised release was revoked or his fear-based claim was adjudicated.[2]

CONCLUSION

For the reasons set forth above, the Petition should be denied, and Petitioner should not be released from custody.

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[2] Should the Court order Petitioner released on an order of supervision, this release would likely be subject to conditions of supervised release. *See Zadvydas*, 533 U.S. at 699-700 ("Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute. In that case, of course, the alien's release *may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances*, and the alien may no doubt be returned to custody upon a violation of those conditions.") (emphasis added).

Dated: March 30, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 30, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ V. William Scarpato III
V. William Scarpato III