UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Civil Action No. 1:26-cv-1120-NYW

CARLOS OLIVERA-MARTINEZ,

Petitioner,

v.

GEORGE VALDEZ, Acting Field Office Director, Denver Field Office, Immigration and Customs Enforcement,
JUAN BALTAZAR, Warden of Denver Contract Detention Facility,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

On March 18, 2026, Petitioner Carlos Olivera-Martinez filed a petition for a writ of habeas corpus on the basis that his immigration detention violates the Immigration and Nationality Act as well as his substantive and procedural due process rights. *See* ECF No. 1. Pursuant to the Court's order to show cause, ECF No. 4, Respondents opposed to the petition on March 30, 2026. ECF No. 8. Respondents, however, have failed to establish that the Court should not grant the habeas petition. 28 U.S.C. § 2243. Accordingly, this Court should grant Mr. Olivera's habeas petition on each (or any) of the counts pled in the petition.

I. Mr. Olivera's Continued Detention Is Not Mandatory And Is Both Unconstitutional and Contrary to Statute. (Counts 1-2)

As a threshold point, Respondents are incorrect that 8 U.S.C. § 1231 is the applicable statute of detention. Mr. Olivera was ordered *deported* in 1993. *See* ECF No. 1 ¶ 51; ECF No. 8-1 ¶ 8. The applicable statute of detention for someone who was ordered deported in 1993 was 8

U.S.C. § 1252 (1993). *See Riley v. Greene*, 149 F. Supp. 2d 1256, 1261 (D. Colo. 2001) (recognizing that neither party disputed that the post-order detention was governed by the pre-IIRIRA statute because his proceedings were governed by pre-IIRIRA scheme); *Al Najjar v. Ashcroft*, 186 F. Supp. 2d 1235, 1240 (S.D. Fla. 2002) (noting that IIRIRA's detention provisions do not apply to pre-IIRIRA cases, thus the pre-IIRIRA statute governed the noncitizen's detention).[1] Indeed, 8 U.S.C. § 1231 (2026), which Respondents seek to apply, governs detention of noncitizens ordered *removed*. But Mr. Olivera was ordered *deported*. Section 1231 simply does not apply here.

Applying 8 U.S.C. § 1252 (1992), the Court should conclude that the plain language of the statute does not provide a basis for re-detention if a noncitizen was released after their deportation could not be effectuated. Mr. Olivera was detained in 1997 and released after seven months and six days. *See* ECF No. 8-1 ¶¶ 9-10. Section 1252(c) and (d) (1993) provided a permissive six-month period of detention, requiring release on an Order of Supervision after that time. There is no statutory basis for re-detention after that release. *See* 8 U.S.C. § 1252(d) (1993).

Respondents assert that there must be, as there would be no reason for Congress not to provide a basis for detention at the time removal becomes imminent. Resp. at 5-6. But Respondents provide no authority for this position, and the plain language reads otherwise. Indeed, Congress had assumed a noncitizen would be deported when detained after their deportation proceedings, *requiring* release on supervision if the deportation could not occur. 8 U.S.C. § 1252(d) (1993).

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[1] Respondents indicate that they have not "found a case holding that the INA's pre-IIRIRA deportation provision applies to any person whose deportation order became final before the statute was revised and who was re-detained well after the revised statute went into effect." ECF No. 8 at 5. But, if (as Respondents cite), the IIRIRA rules did not apply to individuals in proceedings at the time IIRIRA became effective, it would be nonsensical to apply the IIIRIRA rules to cases that were final at that time.

Even if the Court were to conclude that 8 U.S.C. § 1231(a) governs Mr. Olivera's detention, such detention is permissive and Respondents have provided no lawful basis. Notably, Mr. Olivera's deportation order is decades old; any mandatory detention period would be long expired and any continued detention beyond that point (if even authorized) is permissive. 8 U.S.C. § 1231(a)(2). Respondents' only explanation for detention is the likelihood of deportation. But, as discussed below, that assertion is insufficient in this case. And there is no other basis to detain Mr. Olivera, who has lived in the United States for decades without further criminal activity. He has also complied with decades of Orders of Supervision, demonstrating that he is not a flight risk. Accordingly, the Court should conclude that there is no statutory basis for Mr. Olivera's detention and order his release.

II. Respondents Have Not Established That There Is A Significant Likelihood of Deportation In The Reasonably Foreseeable Future (Count 3)

Even if the Court declines to order Mr. Olivera's release because there is no statutory basis for his continued detention, it should order his release because his continued detention violates his substantive due process rights.

In *Zadvydas v. Davis*, the Supreme Court evaluated the IIRIRA detention provision, 8 U.S.C. § 1231, and held that a noncitizen may only be detained post-order "for a period reasonably necessary to bring about that [individual's] removal from the United States." 533 U.S. 678, 689 (2001). And, critically, those detained for this purpose are nevertheless entitled to constitutional protections. *Hernandez-Carrera v. Carlson*, 547 F.3d 1237, 1252 (10th Cir. 2008). Addressing this issue, the Supreme Court in *Zadvydas* held that detention for up to six months after the issuance of a final order of removal is presumptively reasonable, but "[a]fter this 6-month period, once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut

that showing." 533 U.S. at 701 If this Court declines to order Mr. Olivera's release as unlawful under the pre-IIRIRA scheme, it should conclude that his continued detention is unlawful under the IIRIRA scheme as discussed in *Zadvydas*.

In that vein, Respondents argue that Mr. Olivera has not been detained long enough to raise a claim under *Zadvydas*. However, as several judges in this district have recognized, the time of detention should be considered in the aggregate. *Santacruz Macias v. Baltazar*, 2026 WL 865174, at *3 (D. Colo. Mar. 30, 2026) (discussing *Tran v. Baltazar*, 2026 WL 764002, at *3 (D. Colo. Mar. 18, 2026); *Aguilar v. Noem*, 2025 WL 3514282, at *3 (D. Colo. Dec. 8, 2025); *Pena-Gil v. Lyons*, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025)). Mr. Olivera was detained for more than seven months in the past, and, coupled with his current detention of nearly two months, he has been in immigration detention months longer than the presumptively reasonable six-month period. *See Santacruz Macias*, 2026 WL 865174, at *3; *Tran*, 2026 WL 764002, at *3.

In seeking reconsideration on the aggregation analysis, Respondents indicate that this case does not involve the risk of release and re-detention in order to start a new six-month clock. ECF No. 8 at 6. But, outside the length of time between Mr. Olivera's first detention and now, they present no information as to why that would be the case. Indeed, this is not a case where Respondents were ready for deportation at the time of detention; the best that can be ascertained from Respondents' declaration is that they are still looking for a country willing to accept Mr. Olivera. *See* ECF No. 8-1. There is no timeline for when Respondents may be able to deport Mr. Olivera, and it is not even clear that Respondents have sought travel documents. Thus it would be entirely reasonable to assume that Mr. Olivera could spend another four months in detention, be released, and then re-detained again in order to start a new six-month period of detention.

Moreover, even if the Court were to conclude that the six-month period restarts with each detention, the six-month period of presumptively reasonable detention is just that: a presumption. *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 374-75 (D. Md. 2025) (recognizing that "[a] presumption is just that: a default, a starting point" and the noncitizen need not wait until the six month period has passed to raise a claim, but that the petitioner bears the burden at that point). For the reasons discussed next, the presumption does not apply here because there is not a likelihood of deportation in the reasonably foreseeable future.

Specifically, Mr. Olivera has provided good reason to believe that his deportation is not significantly likely to occur in the reasonably foreseeable future. *See Ahrach v. Baltazar*, 2025 WL 3227529, at *4 (D. Colo. Nov. 19, 2025). ICE made no mention of deportation when he appeared at his December 2024 check in. When he was detained in February 2026, ICE gave him no paperwork. ICE provided no notice or information about the basis for his detention or why he could be deported now when he could not be for the past thirty years. *See* ECF No. 1 ¶¶ 56-58. Additionally, ICE has not asked Mr. Olivera to renew his Cuban passport or apply for travel documents to any third country. Nor has ICE asked Mr. Olivera whether he had any fear of returning to Cuba, after arriving in the U.S. as a refugee more than 45 year ago. To be sure, Mr. Olivera *did* express fear of going to Mexico when ICE indicated he would be deported there, but ICE never completed the reasonable fear process and there is no indication that such deportation could actually occur. Ultimately, Mr. Olivera has no basis to believe that his deportation is likely to occur to Cuba or to any other country and he has met any burden attributed to him.

Respondents have likewise not demonstrated that Mr. Olivera's deportation is likely in the reasonably foreseeable future. ICE re-detained Mr. Olivera in February 2026, and at that point said his deportation was likely because he would be deported to Mexico because Cuba would not accept

him. ECF No. 1 ¶ 59, ECF No. 8-1 ¶ 14. Now, without any explanation, "ICE does not believe that it will be able to effectuate Petitioner's removal to Mexico in the reasonably foreseeable future." ECF No. 81- ¶ 16. Instead, "ICE Enforcement and Removal Operations Headquarter Removal Management Division is working with the Government of Cuba to remove Cuban nationals." *Id.* ¶ 18. And "ICE is actively seeking Petitioner's removal at this time." *Id.* ¶ 19. Respondents provide no other details.

Respondents' response is a far cry from establishing a significant likelihood of deportation in the reasonably foreseeable future. "At the risk of stating the obvious, a chance of removal within an unspecified period of time is not the same as a significant likelihood of removal in the reasonably foreseeable future." *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) (holding that the government's assertion that they were "in the process of working" with potential countries for removal or deportation and that "there was a chance that Petitioner would be removed to one of these countries, but that they could not provide a specific timeframe for his removal" failed to establish a significant likelihood of removal in the reasonably foreseeable future) (internal quotations omitted). Without *any* evidence to show who has been removed to Cuba, when, and whether Mr. Olivera is remotely similarly situated, Respondents' simple statement that others have been removed to Cuba is insufficient. *See Pena-Gil v. Lyons*, 2025 WL 3268333, at *4 (D. Colo. Nov. 24, 2025) (concluding that "[u]nsubstantiated assertions that the government will pursue removal are insufficient to satisfy its burden."); *Yaya v. Baltazar*, 2026 WL 693128, at *4 (D. Colo. March 12, 2026). Efforts alone (which don't appear to have even begun in this case) are not enough; Respondents must show that "the government must actually make legitimate progress towards removal." *Fadwa v. Lyons*, 2025 WL 3525026, at *5 (D. Colo. Dec. 9, 2025) (citing *Hassoun v. Sessions*, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019)); *see*

also Rivero Busto v. Lyons, 1:25-cv-3143-TPO, ECF No. 32 (D. Colo. Jan. 20, 2026) (concluding that efforts to remove a noncitizen to Cuba, which did not even begin until some time after the petitioner's re-detention, did not show a likelihood of removal in the reasonably foreseeable future without more specificity as to how far along those efforts were). No such evidence exists in this case. Notably, Respondents have not explained whether and when they have contacted the Cuban government, whether the Cuban government has responded, and what steps need to occur in order to enforce Mr. Olivera's deportation order.[2] *See Kamyab v. Bondi*, 2025 WL 2917522, at *4 (W.D. Wash. Oct. 14, 2025) (concluding that vague statements that a country is processing interview requests and accepting return of its citizens to be insufficient to meet the Government's burden under *Zadvydas*). Nor have Respondents provided any explanation to support the position that Cuba would even receive Mr. Olivera, a Mariel Cuban, when it has declined in the past. *See Peña-Gil*, 2025 WL 3268333, at *4 (collecting cases); *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288, at *16-17 (W.D. Wash. Aug. 21, 2025) (concluding that generalized comments that removal is likely are insufficient). Therefore, the Court should conclude that Mr. Olivera's deportation is not significantly likely to occur in the reasonably foreseeable future and order his release.

III. Respondents Admit They Violated The Regulations In Revoking Mr. Olivera's Order of Supervision. (Counts 4-5)

Not only is Mr. Olivera's detention unlawful based on no likelihood of deportation in the near future, his re-detention was unlawful and release is warranted for that separate reason. Respondents present no defense against Mr. Olivera's claims that Respondents violated the regulations and his due process rights in revoking his Order of Supervision. Thus, the claim is

[2] Moreover, Respondents' failure to acknowledge that Mr. Olivera is subject to deportation, not removal, demonstrates the lack of individual consideration in this case.

waived. *Pierce v. Delta County Dep't of Social Services*, 119 F. Supp. 2d 1139, 1150 (D. Colo. 2000) (noting that a party "appeared to concede" factual allegations by not raising any challenge); *Dawn J. Bennett Holding, LLC v. FedEx TechConnect, Inc.*, 217 F. Supp. 3d 79, 82 (D.D.C. 2016).

Notwithstanding waiver, Respondents violated both the regulations and Mr. Olivera's due process rights. Under 8 C.F.R. § 241.4(l), DHS may revoke an Order of Supervision if "(i) The purposes of release have been served; (ii) The [noncitizen] violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a[noncitizen]; or (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also* 8 C.F.R. § 241.4(l)(1) (allowing noncitizens who violate the conditions of their Order of Supervision to be returned to custody). 8 C.F.R. § 241.13(i) similarly requires ICE to establish changed circumstances and a significant likelihood of removal in the reasonably foreseeable future in order to revoke an Order of Supervision.[3] *See Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (recognizing that it is ICE's burden to show the likelihood of removal).

Beyond these substantive guardrails, there are procedural requirements for revoking an Order of Supervision, including a notice of the reasons for the revocation. 8 C.F.R. §§ 241.4(l)(1)-(3), 241.13(i)(3). The noncitizen is also entitled to an informal interview to allow the opportunity to respond to the reasons for revocation. *Id.* Moreover, only certain individuals within ICE may revoke Orders of Supervision. 8 C.F.R. § 241.4(l)(2).

There is no evidence that *any* of the regulatory requirements were followed. Procedurally, Mr. Olivera received no notice, no informal interview, and no paperwork indicating that someone with the appropriate authority revoked his Order of Supervision. And Respondents have provided

[3] Because Mr. Olivera received no notice of the revocation of his Order of Supervision, it is unclear which regulation they purportedly relied upon or think governs this case.

no evidence that any of these procedures were followed. *See* ECF No. 8-1 ¶ 11 (simply stating that Mr. Olivera's release on an Order of Supervision "was revoked"). Furthermore, Respondents provide no substantive justification for the revocation. There is no indication that the purpose of the release has been served or that Mr. Olivera has violated any terms of his Order of Supervision. Nor is there any indication as to why or how it would be appropriate to enforce the deportation order at this time. Respondents have clearly violated these regulations by wholesale failing to comply, rendering Mr. Olivera's detention without proper authorization. *See, e.g.*, *Virachak v. Baltazar, et al.*, 2026 WL 746285, *3 (D. Colo. March 17, 2026); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025); *Sikeo v. Cantu*, 2025 WL 2937064 (D. Ariz. Sept. 24, 2025); *Zhu v. Genalo*, 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Roble v. Bondi*, 2025 WL 2443453 (D. Minn. Aug. 25, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025).

Respondents' actions also violated Mr. Olivera's due process rights. *Virachak v. Baltazar*, 2026 WL 746285, at *3 (D. Colo. March 17, 2026); *Ceesay*, 781 F. Supp. 3d at 144 ("Noncitizens, even those subject to a final removal order, have constitutional rights just like everyone else in the United States" and "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process."); *Perez-Escobar*, 792 F. Supp. 3d at 226 ("ICE's conclusory explanation for revoking Petitioner's release did not offer him adequate notice of the basis of the revocation decision such that he could meaningfully respond at the post-detention 'information interview.'"). Respondents' failure to provide any process, notice, or opportunity to contest Mr. Olivera's re-detention have deprived him of a meaningful opportunity to challenge the reasons for his detention for nearly two months. *Virachak*, 2026 WL

746285, at *3. Based on this regulatory and Constitutional violation, this Court should conclude that release is the proper remedy. *Id.*, at *5; *Escalante*, 2025 WL 2206113 at *4.

IV. Respondents Have Not Complied With Requirements Regarding Third Country Removals. (Count 6)

Despite informing Mr. Olivera that he would be deported to Mexico (not Cuba), Respondents now insist that Cuba is the designated country of removal, not Mexico. ECF No. 8 at 8; ECF No. 8-1 at ¶ 16. Mr. Olivera takes Respondents at their word that they are not pursuing a third country for deportation. Should Respondents otherwise designate a third country, Mr. Olivera requests sufficient notice and opportunity to challenge such statutory designation, as well as raise any potential claim of fear of deportation to that country. *D.V.D. v. U.S. Dep't of Homeland Sec.*, --- F. Supp. 3d ---, 2026 WL 521557, at *25q (D. Mass. Feb. 25, 2026). This includes any claim that Respondents must provide Mr. Olivera the opportunity to have any reasonable fear determination reviewed by an immigration judge, as required by regulation. Mr. Olivera therefore requests any order from this Court direct that any third country removal can only take place after notice and a full opportunity to raise any fear-based claims from that identified country.

CONCLUSION

The Court should order that Mr. Olivera be released from custody on his prior Order of Supervision and not re-detained absent compliance with both the statute and due process.

Dated: April 3, 2026

Respectfully submitted,

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