UNITED STATES DISTRICT COURT
FOR THE 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, in his official capacity,
JUAN BALTAZAR, Warden of Denver Contract Detention Facility, in his official capacity,
TODD LYONS, Director, Immigration and Customs Enforcement, in his official capacity,

Respondents.

SUPPLEMENTAL SUBMISSION

Petitioner Carlos Olivera-Martinez files this additional supplemental submission to submit documents that Immigration and Customs Enforcement ("ICE") recently served on him that show a continued violation of his due process rights necessitating his immediate release

On March 2, 2026, ICE served Mr. Olivera with a *Notice to Alien of File Custody Review*, indicating that he could submit documentation to demonstrate that he is neither a danger to the community nor a flight risk. Exhibit 1. The document stated that Mr. Olivera's custody status would be reviewed "on or about **03/02/2026**" and that he could submit any documentation to support his release "prior to" that date (even though the document was served on Mr. Olivera on that date). *Id.* Respondents did not disclose this scheduled file custody review in their declaration to this Court. ECF No. 8-1.

On April 14, 2026, two deportation officers and the Assistant Field Office Director signed a memorandum for the Headquarters Removal Division. Exhibit 2. The memorandum is clearly a form document. *See id.* ("The purpose of this interview was to allow [alien's name] to submit to the review panel any information, in English, that he or she believes presents a basis for his or her release."). The memorandum indicated that "the panel" (presumably the three individuals who initialed the document) interviewed Mr. Olivera, without notifying counsel or allowing counsel to be present. *Id.* The memorandum stated that Mr. Olivera was asked seventeen questions, and that Mr. Olivera was "overall cooperative" but said that "he will not assist with any efforts to return him to Cuba or anywhere else other than his own home with his wife and children."[1] *Id.* The memorandum concluded that the regulatory "criteria for release . . . has not been met" but provided no explanation or justification for reaching that conclusion. *Id.*

The next day, an ICE deportation officer served Mr. Olivera with a *Notice of Failure to Comply Pursuant to 8 CFR 241.4(g)*. Exhibit 3. In this Notice, ICE describes its efforts to remove[2] Mr. Olivera to Mexico—not Cuba, as ICE indicated was its intention in the March 30, 2026 declaration submitted to this Court, ECF No. 8-1—and concluded that his verbal statements on April 15, 2026, that he would "never leave the United States"[3] constitute non-compliance that "allows for the extension of the removal period." Exhibit 3 (citing Immigration and Nationality Act § 241(a)(1)(C), 8 U.S.C. § 1231(a)(1)(C)). This notice was not signed, but was served on Mr. Olivera on April 15, 2026. *Id.*

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[1] Mr. Olivera contests ICE's characterization of his statements. If the Court finds this material, undersigned counsel can obtain a declaration from Mr. Olivera.

[2] Mr. Olivera uses the term "remove" in this pleading in reference Respondents' documents, but reminds the Court that Mr. Olivera does not have a removal order, he has a deportation order. *See* ECF No. 9 at 1-3.

[3] Mr. Olivera also believes this statement was taken out of context. If the Court finds this material, undersigned counsel can obtain a declaration from Mr. Olivera.

Finally, ICE has twice served Mr. Olivera with a document titled *Warning for Failure to Depart*, which instructs that the document should be served on a noncitizen within thirty days of their removal order. *See* Exhibit 4.

These documents raise several concerns. It is increasingly clear that Respondents are not complying with principles of due process. First, ICE purported to provide Mr. Olivera notice and an opportunity to provide evidence to support his release, but the notice gave him no notice or opportunity to provide that evidence before the identified deadline. *See* Exhibit 1; *Virachak v. Baltazar*, 2026 WL 746285, at *3 (D. Colo. March 17, 2026). Second, ICE's memorandum regarding a panel recommendation to keep Mr. Olivera detained is clearly a form document with no analysis or reasoning to support the detention determination. *See* Exhibit 2; *cf. Vladimirov v. Lynch*, 805 F.3d 955, 964 (10th Cir. 2015) (noting that "[w]here there is evidence of unreliability," such as the document being "carelessly or maliciously drafted," an immigration form "cannot be presumed true."). Third, the *Notice of Failure to Comply Pursuant to 8 CFR 241.4(g)* was not signed by an authorizing official and, as discussed above, references removal to a country that Respondents have told this Court is not likely to occur in the reasonably foreseeable future. *See* Exhibit 3. That document falls short of complying with required due process. *Virachak*, 2026 WL 746285, at *4 (collecting cases). Fourth, Respondents' assertion that the "removal period is . . . suspended" finds no basis in law. The removal period referenced is the 90-day period that commences on the date a removal order becomes final. 8 U.S.C. § 1231(a)(1). As discussed in Mr. Olivera's reply brief, that removal period is not applicable in this case. *See* ECF No. 9 at 1-3. Moreover, assuming arguendo that it was applicable, it would have expired years ago and therefore can no longer be "suspended." Indeed, the *Warning for Failure to Depart* form indicates that any extension of the removal period can only happen "if the alien refuses, *during the removal period*,

to make application in good faith, for a travel or other document necessary . . ." Exhibit 4 (emphasis added). Again, the removal period is long expired and thus this form is inapplicable. In fact, Respondents made no attempt to argue before this Court that Mr. Olivera is subject to mandatory detention based on somehow still being considered to be held during the "removal period" described in 8 U.S.C. § 1231(a)(1)(C). Respondents' contrary assertion to Mr. Olivera is at best inconsistent and harassing and at worst unlawful and violates his due process rights.

Additionally, Respondents are providing inconsistent information to Mr. Olivera and this Court. Respondents have informed Mr. Olivera that he is not complying with his removal to Mexico, *see* Exhibit 3, but they have also informed this Court that removal (or deportation) to Mexico is "unlikely in the reasonably foreseeable future." ECF No. 8 at 3. These contradictory positions are not easily reconciled. If Respondents are no longer seeking to remove (or deport) Mr. Olivera to Mexico, then the notice of his removal and claimed fear of removal to that country are irrelevant and Mr. Olivera's refusal to willingly go to Mexico is of no consequence. If Respondents are no longer seeking to remove Mr. Olivera to Cuba and wish to again seek to deport (or remove) Mr. Olivera to Mexico, this Court should require Respondents to explain their position that removal to Mexico is "unlikely in the reasonably foreseeable future," ECF No. 8 at 3, and address the third-country removal issues raised in the petition, including that Mr. Olivera was not provided an opportunity to seek immigration judge review of the no-reasonable-fear determination. *See Virachak v. Baltazar*, 2026 WL 746285, at *3 (D. Colo. March 17, 2026); *Sagastizado v. Noem*, 802 F. Supp. 3d 992, 1009-10 (S.D. Tex. 2025); *Portela-Hernandez v. Trump*, 2026 WL 74042 (D. Md. Jan. 9, 2026).

Collectively, these additional documents underscore Respondents' continued attempts to detain Mr. Olivera without following applicable laws, regulations, and Constitutional protections.

Mr. Olivera requests this Court order his immediate release. *Virachak*, 2026 WL 746285, at *4. Indeed, based on Respondents' continued failure to follow the regulations and due process in its notices and actions with respect to Mr. Olivera's detention, the Court should order his release without *any* conditions until and unless Respondents can demonstrate that his removal is significantly likely to occur in the reasonably foreseeable future, that he is a danger to the community, or that he would pose a flight risk. *Alfaro Herrera v. Baltazar*, 2026 WL 91470, at *6, 14 (D. Colo. Jan. 13, 2026) (ordering release "with no conditions of supervised release"); *Molina Quijano v. Baltasar*, 2026 WL 709753, at *1 (D. Colo. March 13, 2026) (same) (collecting cases).

April 21, 2026

Respectfully submitted,

/s/ Jessica A. Dawgert
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