UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CARLOS OLIVERA-MARTINEZ,
([redacted])

Petitioner

v.

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

Respondents

Case No. 26-cv-1120

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

INTRODUCTION

1. Petitioner Carlos Olivera-Martinez ("Mr. Olivera") is a native and citizen of Cuba, who entered the United States in May 1980 as part of the Mariel Boatlift. He became a lawful permanent resident in the U.S. His wife and five children are U.S. citizens.
2. After pleading nolo contendere to state crimes, Mr. Olivera was placed in deportation proceedings and ordered deported on October 26, 1993. After serving his sentence, he was transferred to the custody of the former Immigration and Naturalization Service ("INS"), where he remained in immigration detention for approximately seven months in 1997.
3. He has been subject to continuous Orders of Supervision since that time, most recently he was ordered to report annually to Immigration and Customs Enforcement ("ICE"). No ICE officer has ever told him that he violated any terms of his Order of Supervision.

4. Despite checking in for his annual check-in on December 11, 2025 in Denver, Colorado and being told to return one year later, on February 12, 2026, ICE informed him that he needed to report to a different ICE office, in Florence, Colorado. When he appeared for that check-in, ICE detained him without any notice or explanation. He has not since been provided any documentation explaining a violation of his Order of Supervision.
5. Upon information and belief, ICE is seeking to remove Mr. Olivera to Mexico, not Cuba. Mr. Olivera has expressed a fear of going to Mexico, and was provided some sort of fear screening, but has not been given an opportunity for any review of the Department of Homeland Security ("DHS") determination that he does not have the requisite fear of harm in Mexico to support an application for protection from deportation.
6. Mr. Olivera therefore brings this petition for a writ of habeas corpus, as his detention was unlawful, there is no significant likelihood of his deportation in the reasonably foreseeable future, and he has not been provided the required screening and review for a third-country removal. Thus, his continued detention a violation of the Immigration and Nationality Act ("INA") and the Due Process Clause of the Fifth Amendment. He asks this Court to order his release.

JURISDICTION AND VENUE

7. This action arises under the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101, et seq.
8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal questions), 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. §§ 2201-02 (declaratory relief).

9. Venue is proper because Mr. Olivera's immediate custodian at Denver Contract Detention Facility is located in this District and a "substantial part of the events or omissions giving rise to the claim" occurred in this District. 28 U.S.C. § 1391(e)(1).

PARTIES

10. Petitioner Carlos Olivera-Martinez is a native and citizen of Cuba. As of the filing of this Petition, ICE is detaining him at the Denver Contract Detention Facility in Aurora, Colorado. Exh. 1.

11. Respondent George Valdez is the Acting Field Office Director of the ICE Denver Field Office and is responsible for ICE's operations in Colorado where Mr. Olivera is held. He is sued in his official capacity.

12. Respondent Juan Baltazar is the Warden of the Denver Contract Detention Facility and is the immediate custodian of Mr. Olivera. He is sued in his official capacity.

13. Respondent Todd M. Lyons is the Acting Director of ICE, responsible for ICE's detention and removal operations and all its other functions. He is sued in his official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it

and receives prompt action from him within the four corners of the application." *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

16. Because Mr. Olivera's continued detention is unlawful and in violation of his Constitutional rights, he requests the Court order Respondents to submit a return within three days or another period of time that is reasonable, but not to exceed twenty days.

TRANSFER OUTSIDE THE DISTRICT; ALL WRITS ACT

17. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

18. Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district. *See Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 946 (D. Colo. 2025) (listing cases); *see also Guevara Gomez v. Crawford*, No. 1:25-cv-1781-PTG-LRV (E.D. Va. Oct. 16, 2025).

19. Mr. Olivera requests that this Court invoke the All Writs Act to prevent any additional transfer out of the District of Colorado during the pendency of his habeas action. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025) (noting that presence in the judicial district where an action is pending "facilitate[s]" the petitioner's "ability to work with [his or] her attorneys, coordinate the appearance of witnesses," and generally present claims related to detention); *Suri v. Trump*, -- F. Supp. 3d --, 2025 WL 1310745, at *13 (E.D. Va. May 6, 2025).

EXHAUSTION

20. The decision to continue Mr. Olivera's detention is subject to challenge through a petition for a writ of habeas corpus, and he need not exhaust any administrative remedies, such as requesting parole from Respondents, which might be available to him before seeking this

Court's review as Congress has not specifically mandated it. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required. But where Congress has not clearly required exhaustion, sound judicial discretion governs.").

21. Moreover, because detaining Mr. Olivera without a significant likelihood of deportation in the reasonably foreseeable future violates his right to due process, administrative exhaustion is excused. *See Guitard v. U.S. Sec'y of the Navy*, 967 F.2d 737, 741 (2d Cir. 1992) ("Exhaustion of administrative remedies may not be required when . . . a plaintiff has raised a 'substantial constitutional question.'").

LEGAL BACKGROUND

Statutory Basis for Detention

23. Because Mr. Olivera was ordered excluded prior to the 1996 Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), his potential deportation is governed by the prior statutes, including 8 U.S.C. § 1251 (1993) (providing for deportation of certain classes of noncitizens).

24. At the time of Mr. Olivera's deportation order, 8 U.S.C. § 1252(c) provided for permissive detention during the six months after the date of a final order of deportation. Section 1252(d) provided that any noncitizen subject to a deportation order that had been pending for more than six months was thereafter subject to supervision under the regulations. *See Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1389 (10th Cir. 1981) (recognizing that there were many unenforceable deportation orders based on the refusal of countries of origin to grant passports for returning nations, but former 8 U.S.C. § 1252(c) permitted "detention for no longer than six months in deportation cases").

25. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), which contained numerous detention provisions including a 90-day statutory removal period during which time detention was mandatory, but detention beyond that period became permissive. 8 U.S.C. § 1231(a)(2), (6); *see Arango Marquez v. INS*, 346 F.3d 892, 898 (9th Cir. 2003) (recognizing that IIRIRA "shortened the removal period previously found at former § 1252(c) to ninety days" and made detention mandatory during that period).

26. However, Mr. Olivera's detention is governed by the pre-IIRIRA statute, § 1252(c) (1993). *Riley v. Greene*, 149 F. Supp. 2d 1256, 1261 (D. Colo. 2001); *Al Najjar v. Ashcroft*, 186 F. Supp. 2d 1235, 1240 (S.D. Fla. 2002).

Identifying Countries of Deportation

27. Federal statute provides specific instruction as to how to identify a country of deportation. *See Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 337, 339-41 (2005); *D.V.D. v. U.S. Dep't of Homeland Security*, --- F. Supp. 3d ---, 2026 WL 521557, *24-25 (D. Mass. Feb. 25, 2026).

28. For noncitizens ordered deported prior to IIRIRA, 8 U.S.C. § 1253 (1993) outlined the process for designating a country for deportation. Deportation is authorized to a country designated by the noncitizen if that country is willing to accept the noncitizen, unless the noncitizen designates a contiguous territory and is not a native or citizen of that territory. 8 U.S.C. § 1253(a) (1993).

29. "If the government of the country designated by the [noncitizen] fails finally to advise [the U.S. government] within three months following original inquiry whether that government will

or will not accept such [noncitizen] into its territory, such designation may thereafter be disregarded." *Id.*

30. At that point, deportation "shall be directed to any country of which such alien is a subject, national, or citizen, if such country is willing to accept him into its territory." *Id.* If that country fails to advise the U.S. of its willingness to accept the noncitizen within three months or another reasonable period of time, "then such deportation shall be directed" to any of the following:

    1. The country from which the noncitizen last entered the United States;
    2. The country in which the noncitizen embarked for the United States;
    3. The country in which the noncitizen was born;
    4. The country in which the place of the noncitizen's birth is located at the time of the deportation order;
    5. Any country in which he resided prior to entering the United States; or
    6. The country that has sovereignty over the birthplace of the noncitizen at the time of birth.

    "[I]f deportation to any of the foregoing places or countries is impracticable, inadvisable, or impossible, then [deportation is authorized] to any country which is willing to accept such [noncitizen] into its territory. 8 U.S.C. § 1253(a) (1993).[1]

Constitutional Limitations on Detention

31. Post-order detention is limited by Constitutional principles to "a reasonable time period and does not permit indefinite detention." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1118 (10th Cir. 2005); *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 937 (D. Colo. 2025)

[1] The post-IIRIRA statute contains a similar process for designating a country of removal. *See* 8 U.S.C. § 1231(b)(2)(A)-(E); *Jama*, 543 U.S. at 337, 339-41.

(recognizing that detention beyond six months without evidence of a significant likelihood of removal in the reasonably foreseeable future supports release). This is because "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.").

32. The Supreme Court has thus interpreted post-order detention to contain an implicit temporal limitation, restricting the Government's post-removal-period detention authority to "a period reasonably necessary to bring about the [noncitizen's] removal from the United States." *See Zadvydas*, 533 U.S. at 689-90; *Arango Marquez*, 346 F.3d at 899 (applying the *Zadvydas* analysis to challenges to of detention after IIRIRA).

33. The Supreme Court held that detention during the six months following the entry of a final order of removal is presumptively reasonable. *Zadvydas* at 701. "After 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" to justify detention. *Id.*; *see Tran v. Baltazar, et al.*, 1:26-cv-940-CNS, ECF No. 17 at 5 (D. Colo. March 18, 2026).

34. Courts around the country have held that the six-month period of presumptive reasonableness from *Zadvydas* is cumulative; that is, it does not restart every time a noncitizen is detained. *See Pena-Gil v. Lyons*, 2025 WL 3268333, at *2 (D. Colo. Nov. 24, 2025); *Siguenza v. Moniz*, 2025 WL 2734704, at *3 (D. Mass. Sept. 25, 2025) ("Most courts to consider the issue have concluded that the *Zadvydas* period is cumulative, motivated, in part, by a concern that the

federal government could otherwise detain noncitizens indefinitely by continuously releasing and re-detaining them.") (listing cases); *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025); *Sied v. Nelson*, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (citing cases); *Chen v. Holder*, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015) ("Surely, under the reasoning of *Zadvydas*, a series of releases and re-detentions by the government . . . while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention . . . ."). This interpretation follows both the statutory calculation of the removal period to begin at the time of the order of removal (and not, for example, at the time DHS secures travel documents), and the reasoning in *Zadvydas* that was based on detention as an extension of the statutory removal period. *See Zadvydas*, 533 U.S. at 701; *but see Guerra-Castro v. Parra*, No. 1:25-cv-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025); *Thai v. Hyde*, No. 25-cv-11499, 2025 WL 1655489, at *3 (D. Mass. June 11, 2025); *Liu v. Carter*; No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025) (noting that the "removal-period clock restarts when an alien subject to a removal order is again detained by ICE"); *see also Ali v. Baltazar*, 2026 WL 322565, at *4 (D. Colo. Jan. 27, 2026) (declining to decide whether the presumptively reasonable six-month period restarts with every period of detention).

35. The six-month period discussed in *Zadvydas* is also not absolute. In considering the continued detention of an individual who is not removable to their country of nationality, this Court must recognize established Constitutional boundaries on immigration detention. *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1387 (10th Cir. 1981) (concluding that "an excluded alien in physical custody within the United States may not be 'punished' without being accorded the substantive and procedural due process guarantees of the Fifth Amendment.").

36. Thus, if a noncitizen "provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," the burden shifts to the government to rebut that showing. *Zadvydas*, 533 U.S. at 701; *Tran*, 1:26-cv-940-CNS, ECF No. 17 at 5. *Aramin v. Baltazar, et al.*, 1:26-cv-616-RBJ at 6-7 (D. Colo. March 18, 2026). If removal is not reasonably foreseeable, release is warranted. *Aramin*, 1:26-cv-616-RBJ ECF No. 14. at 7 (citing *Zadvydas*, 533 U.S. at 701).

Orders of Supervision

37. When ICE releases a noncitizen with a final order of removal (or deportation), their release is generally subject to an Order of Supervision.

38. Federal regulations set forth the conditions under which DHS may revoke an Order of Supervision and the procedures it must follow to do so. 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).

39. 8 C.F.R. § 241.13(i) also constrains ICE's ability to re-detain noncitizens who were previously released on orders of supervision. ICE is permitted to re-detain such noncitizens if they violate the conditions of their release, or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1)-(2). That is, "it is [ICE]'s burden to show a significant likelihood that the [noncitizen] may be removed. Other cases have indicated the same upon revocation of release." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug.

2, 2025) (citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 WL 1725791 (D. Mass. June 20, 2025); *Tadros v. Noem*, No. 25-cv-4108, 2025 WL 1678501 (D.N.J. June 13, 2025)

40. Upon revocation, the noncitizen must be "notified of the reasons for revocation of his or her release or parole." 8 C.F.R. §§ 241.4(l)(1)-(3); 241.13(i)(3). Further, the noncitizen must be afforded "an initial informal interview promptly after his or her return to [DHS] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.* At the interview, the noncitizen "may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future." *Id.*

41. Moreover, only certain individuals within ICE may revoke such orders of supervision: "The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody a [noncitizen] previously approved for release," and "[a] district director may also revoke release of a [noncitizen] when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." 8 C.F.R. § 241.4(l)(2).

42. Finally, if the noncitizen is not released after the informal interview, the Headquarters Post-Order Detention Unit Director is required to schedule a review process. 8 C.F.R. § 241.4(l)(3). That review process includes an additional custody interview—expected to be held within three months of the revocation—during which a final evaluation takes place and a final determination is subsequently made as to whether revocation and further denial of release are warranted. *Id.*

43. A growing number of courts around the country have recently ruled that ICE violates these regulations when revoking orders of supervision without notice or explanation. *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*, No. CV-25-03191-PHX-SHD, 2025 WL 2937064

(D. Ariz. Sept. 24, 2025); *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 2025 WL 2452352, at *9 (S.D.N.Y. Aug. 26, 2025); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087 (D. Md. Aug. 25, 2025); *Roble*, 2025 WL 2443453; *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025).

Reasonable Fear Determinations

44. It is unlawful for DHS to remove a noncitizen to a country where the noncitizen's life or freedom would be threatened. 8 U.S.C. § 1231(b)(3); *see also* 8 C.F.R. §§ 208.31(b)-(c), (g), 1208.31(b)-(c), (g).

45. Noncitizens in the United States are protected by the Fifth Amendment's Due Process Clause, which requires notice of the designated deportation or removal country and an opportunity to apply for asylum and related relief. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999) ("Failing to notify individuals who are subject to deportation that they have a right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported violates both INS regulations and the constitutional right to due process."); *Kossov v. INS*, 132 F.3d 405, 408 (7th Cir. 1999) (Immigration judge's failure to inform noncitizens, who were *pro se*, that they had the right to seek asylum to country that was a possible deportation site was a "fundamental failure of due process"); *see also Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (internal quotation omitted).

46. If a noncitizen with a final order of removal (or deportation) expresses a fear of deportation to the designated country then the noncitizen is entitled to a fear screening prior to removal or deportation. *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).

47. For noncitizens subject to removal orders under 8 U.S.C. § 1228(b) and § 1231(b)(5), DHS must provide a reasonable fear interview with an asylum officer, which is subject to immigration judge review. 8 C.F.R. §§ 208.31(a), (e), 1208.31(a), (e). While there is no written provision for fear screenings for noncitizens ordered removed pursuant to proceedings under 8 U.S.C. § 1229a, or noncitizens who had been ordered deported under the pre-IIRIRA statutory scheme, courts have extended this procedural protection to noncitizens ordered removed by an immigration judge. *See Sagastizado*, 802 F. Supp. 3d at 1009; *Portela-Hernandez*, 2026 WL 74042, at *11; *Cruz Medina v. Noem*, 2025 WL 3157608, at *1 (D. Md. Nov. 12, 2025); *see also Gomez v. Mattos*, --- F. Supp. 3d ---, 2025 WL 3101994 (D. Nev. Nov. 6, 2025). Such reasoning should be further extended to noncitizens ordered deported under pre-IIRIRA laws by an immigration judge.

48. Failure to provide notice or an opportunity to assert claims challenging removal to an alternative country violates the Due Process Clause of the Fifth Amendment. *See D.V.D., et al., v. U.S. Dep't. Homeland Sec. et al.,* -- F.Supp.3d --, 2026 WL 521557 (D. Mass. Feb. 25, 2026).

STATEMENT OF RELEVANT FACTS

49. Mr. Olivera is a native and citizen of Cuba who came to the United States in 1980 as part of the Mariel Boatlift. He became a Lawful Permanent Resident and is married to a U.S. citizen and has five U.S. citizen children. One of his children has bipolar disorder.

50. In 1992, Mr. Olivera pled nolo contendere to several state charges relating to an attempted burglary. He was sentenced to ten years' imprisonment.

51. An immigration judge ordered Mr. Olivera deported in 1993. Mr. Olivera did not appeal. He filed a motion to reopen in 2005, which the immigration judge denied.

52. Mr. Olivera was released from criminal custody in or around 1996 and was transferred to immigration detention, where he remained detained for approximately seven months. The former Immigration and Naturalization Service released him from custody after Cuba refused to accept him.

53. Since his release from immigration detention in 1997, he has diligently reported pursuant to various Orders of Supervision, which required monthly, bi-annual, and annual check-ins with immigration officers. He has never violated the terms of his Orders of Supervision.

54. Mr. Olivera spent the next nearly three decades diligently reporting pursuant to Orders of Supervision. Immigration officials told him at his check-ins that Cuba would not accept him and so he would remain on the Order of Supervision. At first he checked in with immigration officials monthly but then it became twice a year, and in recent years his Order of Supervision required annual check-ins.

55. In December 2025, Mr. Olivera went to his annual ICE check-in, at which he was told to return one year later.

56. Two months later, ICE called him and told him he needed to start reporting to ICE in Florence, Colorado, not Denver. At ICE's direction, he went to a check-in in Florence, Colorado on February 16, 2026.

57. When he arrived, Mr. Olivera was given a piece of paper to write his address. Another officer came into the room and said she was going to detain him due to his removal order. She gave no other explanation or paperwork.

58. Mr. Olivera was not given a warrant of arrest or any information or interview explaining the basis of the revocation of his Order of Supervision.

59. Since that time, ICE told him that Cuba would not accept him and that ICE was going to send him to Mexico. He did not sign the paper given to him asking if he agreed to go to Mexico because he is afraid to go to Mexico.

60. DHS officers have interviewed Mr. Olivera regarding his fear, and told him that he has not proven that he would be persecuted or tortured in Mexico. He has not been given an opportunity for an immigration judge to review that determination.

61. ICE continues to detain Mr. Olivera without any likelihood that he will be removed in the reasonably foreseeable future.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act, Statutory Basis for Detention

62. Mr. Olivera realleges and incorporates by reference the paragraphs above.

63. Mr. Olivera was ordered deported by an immigration judge in 1993, and no appeal was filed.

64. At that time, he was subject to a permissive six-month period of detention. 8 U.S.C. § 1252(c) (1992).

65. He was detained for more than six months in immigration custody in 1997. There is no longer a statutory basis for his detention. 8 U.S.C. § 1252(d) (1992).

66. Accordingly, this Court should order his release.

COUNT TWO

Violation of the Immigration and Nationality Act, Designation of Country for Deportation

67. Mr. Olivera realleges and incorporates by reference the paragraphs above.

68. 8 U.S.C. § 1253(a) (1993) provides the applicable framework through which Respondents may designate a country for Mr. Olivera's deportation.

69. Respondents have not designated and identified potential countries of deportation pursuant to the statutory requirements of 8 U.S.C. § 1253(a) (1993).

70. Respondents have also failed to identify or establish any other third country which is willing to accept Mr. Olivera.

COUNT THREE

Violation of Substantive Due Process

71. Mr. Olivera realleges and incorporates by reference the paragraphs above.

72. All individuals within the United States, including noncitizens, are entitled to due process. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

73. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). "No principle of international law is more fundamental than the concept that human beings should be free from arbitrary imprisonment." *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1288 (10th Cir. 1981).

74. Mr. Olivera was ordered deported in 1993. After released from criminal custody, DHS was unable to deport him while he spent approximately seven months in immigration detention in approximately 1997.

75. Mr. Olivera's continued detention is "properly analogized to incarceration pending trial or other disposition of a criminal charge, and is, thus, justifiable only as a necessary, temporary measure." *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1387 (10th Cir. 1981). "Logic compels" that "when imprisonment is for an indefinite period, continued beyond reasonable

efforts to expel the [noncitizen]," such imprisonment is "impermissible punishment rather than detention pending deportation." *Id.* Put differently, civil detention becomes constitutionally impermissible punishment if it is not "reasonably related to a legitimate nonpunitive governmental objective" such that "a court may permissibly infer that the purpose . . . is punishment." *Bell v. Wolfish*, 441 U.S. 520, 520-21 (1979); *Zadvydas*, 533 U.S. at 690 (holding that civil detention violates due process except in "narrow, non-punitive circumstances where a special justification, such as harm-threatening mental illness outweighs the individual's constitutionally protected interest in avoiding physical restraint.") (cleaned up). As such, Mr. Olivera's ongoing, indefinite detention is punitive and violates his right to due process. *See Zadvydas*, 533 U.S. at 690.

76. *Zadvydas* recognized two interests potentially served by civil immigration detention—ensuring the appearance of noncitizens at future immigration proceedings and preventing danger to the community. 533 U.S. at 690.

77. Mr. Olivera's detention serves neither interest. The Government's interest in preventing flight is "weak or nonexistent where removal seems a remote possibility." *Id.* The government has been unable to remove Mr. Olivera, and he has been given no indication that he will be removed in the reasonably foreseeable future. Moreover, he has reported to every ICE check in for nearly three decades and has not committed a crime since the early 1990s. He is neither a flight risk nor a danger to the community.

78. Indeed, as his criminal history is decades old and, until recently, ICE considered Mr. Olivera to be a low risk such that his OSUP reporting was only annually. Thus, Mr. Olivera's detention is not necessary to protect the community. Moreover, Respondents cannot justify his detention on those grounds absent "strong procedural protections." *Id.* at 690-91.

79. In *Zadvydas*, the Supreme Court discussed a period of presumptively reasonable detention that extended six months after the order of removal. 533 U.S. at 696-99. If deportation is not reasonably foreseeable at that point, detention is not authorized by the statute. *Id.* at 699; *see Rosales-Garcia v. Holland*, 322 F.3d 386, 415 (6th Cir. 2003) (applying the *Zadvydas* reasoning to cases involving excludable noncitizens).

80. Mr. Olivera's removal order was issued in 1993, and he was not subject to any mandatory period of detention at that point. 8 U.S.C. § 1252(c), (d). Nevertheless, he was detained for approximately seven months around 1997. He has also been detained for more than one month in 2026. Thus, his collective detention extends beyond the six-month presumptively reasonable period. *See Tran v. Baltazar*, 1:26-cv-940-CNS, ECF No. 17 at 6-7 (D. Colo. March 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). Indeed, if the Court were to require a new six-month period every time a noncitizen was detained, Respondents could release noncitizens just shy of the six-month mark and re-detain them in order to reset the six-month period. *Pena-Gil*, 2025 WL 3268333, at *2; *Tran*, 1:26-cv-940-CNS, ECF NO. 17 at 7 (collecting cases).

81. DHS has not identified a country to which it can remove Mr. Olivera. Although they have identified Mexico as a country of removal, there is no indication that Mexico is ready to accept him (with or without his willingness to go there, and he is unwilling to agree to go to Mexico due to his fear of harm in that country). His deportation is not foreseeable. *See Nanbounmy v. Cantu*, 2:25-cv-3294 (D. Az. Oct. 2, 2025) (recognizing that "the Government's previous inability to remove him is sufficient to establish a good reason to believe Petitioner's removal is unlikely"); *Pena-Gil*, 2025 WL 3268333, at *2.

82. Respondents' detention of Mr. Olivera exceeds ICE's authority to detain because there is no significant likelihood of deportation in the reasonably foreseeable future.

COUNT FOUR

Violation of Regulations, Revocation of Order of Supervision

83. Mr. Olivera realleges and incorporates by reference the paragraphs above.

84. The Supreme Court's decision in *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), established the well-settled principle that agency actions in violation of its own regulations and procedures offends due process. 347 U.S. 260, 267-68 (1954).

85. The *Accardi* doctrine applies with particular force "[w]here the rights of individuals are affected." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine's purpose is "to prevent the arbitrariness which is inherently characteristic of an agency's violation of its own procedures." *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969).

86. Because Mr. Olivera did not receive a notice of revocation of his Order of Supervision, it is unclear whether ICE intended to revoke his release under 8 C.F.R. § 241.4(l) or § 241.13(i). *See Virachak*, 2026 WL 746285, at *3.

87. But Respondents have not complied with either 8 C.F.R. § 214.4(l) or § 241.13(i).

88. Regarding § 241.4(l), Respondents did not provide notice that either the purpose of his release had been served, that he violated any conditions of his release, that it would be appropriate to enforce the deportation order, or that his conduct indicated that release would not be appropriate. 8 C.F.R. § 241.4(l)(2)(i)-(iv). Nor is there evidence that the revocation was signed by someone with requisite authority. 8 C.F.R. § 214.4(l)(2).

89. Regarding § 241.13(i), ICE did not conduct an informal interview to afford Mr. Olivera an opportunity to respond to the reasons for revocation, and ICE did not provide such reasons in a notification. 8 C.F.R. § 241.13(i)(3).

90. Either way, Respondents violated the regulations.

91. This violation was prejudicial. "'Respondents' failure to comply with the governing regulation is prejudicial in that, if the regulation had been followed, Petitioner would have had a meaningful timely opportunity to no longer be detained.'" *Virachak*, 2026 WL 746285 at *3 (quoting *Nguyen v. Archambeault*, 2025 WL 3250922, at *1 (D. Ariz. Nov. 21, 2025)).

92. Respondents' failure to provide notice and conduct an interview warrant Mr. Olivera's immediate release. *Virachak*, 2026 WL 746285, at *4.

93. Because Respondents have failed to follow the deportation procedures in 8 U.S.C. § 1253(a), Mr. Olivera's continued detention and any attempts to remove him to an unidentified third country are unlawful.

COUNT FIVE

Violation of Procedural Due Process, Revocation of Order of Supervision

94. Mr. Olivera realleges and incorporates by reference the paragraphs above.

95. It is well established that noncitizens like Mr. Olivera who "once passed through our gates, even illegally" are entitled to constitutional protections. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *see also Zadvydas*, 553 U.S. at 693 ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to [noncitizens] outside of our geographic borders."). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)

96. As he has been afforded no opportunity to respond and address the basis for the revocation of his Order of Supervision, Mr. Olivera's re-detention does not comply with due process, thus implicating the factors listed in *Mathews*: (1) the private interest affected, (2) the risk of an erroneous deprivation of such interest and the probable value of additional procedural safeguards, and (3) the government's interest, including fiscal and administrative burdens. *Mathews*, 424 U.S. at 321; *see also Nguyen v. Bondi*, 2025 WL 3120516, at *4-7 (W.D. Tex. Nov. 7, 2025).

97. Mr. Olivera has a strong private interest in remaining free from detention. The Supreme Court has affirmed that for noncitizens, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held "that detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (cleaned up).

98. There is a large risk of erroneous deprivation of Mr. Olivera's liberty interest. Mr. Olivera has complied with the terms of his Orders of Supervision and thus has not demonstrated that he is a flight risk or is a danger to the community, revocation of that freedom without opportunity or notice to challenge deprives him of that right. Mover, there is no risk of deprivation of any government interest. An administrative burden claim from the government does not apply where the government is violating its own regulations. *See Niz-Chavez v. Garland*, 593 U.S. 155, 157 (2021) (stating that "ultimately, pleas of administrative inconvenience never justify departing from the statute's clear text" (internal citations omitted)). Mr. Olivera's continued detention therefore bears

no reasonable relation to a legitimate government purpose. Furthermore, this case precisely demonstrates the high risk of erroneous deprivation that would result from allowing ICE to revoke Orders of Supervision and re-detain noncitizens like Mr. Olivera without any opportunity to challenge their re-detention before the administrative agency.

99. Finally, while the government may have a current interest in enforcing immigration laws, without a likelihood of deportation, there is no need for detention at this time. Moreover, the government has no interest in violating its own regulations. On the other hand, there is an enormous cost in detaining individuals like Mr. Olivera without any indication they will be released (absent court order) or deported in the near future.

100. Thus, the Court should conclude that the revocation of Mr. Olivera's Order of Supervision violated his due process rights.

COUNT SIX

Violation of Procedural Due Process, Failure to Provide for Fear Review

101. Mr. Olivera realleges and incorporates by reference the paragraphs above.

102. The failure to provide review of a no-fear determination does not comply with due process, thus implicating the factors listed in *Mathews*: (1) the private interest affected, (2) the risk of an erroneous deprivation of such interest and the probable value of additional procedural safeguards, and (3) the government's interest, including fiscal and administrative burdens. *Mathews*, 424 U.S. at 321; *Sagastizado*, 802 F. Supp. 3d at 1011.

103. Had Mr. Olivera been informed during his deportation proceedings in 1993 that Mexico was designated as a country of removal, he could have been provided the opportunity to apply for relief from Mexico before the immigration judge. *Sagastizado*, 802 F. Supp. 3d at 1011. Noncitizens who do not have that same due process before an immigration judge—namely

noncitizens who receive removal orders pursuant to 8 U.S.C. § 1228(b) or § 1231(a)(5)—still get immigration judge review of a no-fear determination. 8 C.F.R. § 1208.31(g). Mr. Olivera is due that same process. *Sagastizado*, 802 F. Supp. 3d at 1012.

104. In addressing the *Mathews* factors, first, Mr. Olivera has a private interest in being free from detention, but also to have a right to obtain protection from a country where he is more likely than not to be persecuted. *Id.* Such interest "weighs heavily in favor of a robust due process requirement." *Id.*

105. Second, there is a high risk of erroneous deprivation if there is no review available whatsoever of a determination that was made after an unrecorded interview onto a form that provides no analysis or reasons. *Sagastizado*, 802 F. Supp. 3d at 1011; *Abrego Garcia v. Noem*, -- F. Supp. 3d --, 2025 WL 3545447, at *16 (D. Md. Dec. 11, 2025).

106. Third, Respondents have been unable to remove Mr. Olivera and thus any interest in prompt removal is minimal. And if the reasonable fear regulations are followed, immigration judge review occurs within ten days, providing a very short—if any—delay in any removal plans. 8 C.F.R. § 1208.31(g); *Sagastizado*, 802 F. Supp. 3d at 1011; *Morales Vazquez v. Bondi, et al.*, 2026 WL 752455, at *2 (W.D. Tex. March 11, 2026).

107. Accordingly, Respondents must give Mr. Olivera an opportunity to pursue a claim for withholding of deportation prior to any removal. *See Arenado-Borges v. Bondi*, 2025 WL 3687518, at *6 (W.D. Wash. Dec. 19, 2025) (collecting cases). Failure to do so violates his due process rights and warrants his immediate release.

PRAYER FOR RELIEF

Based on the foregoing, Mr. Olivera requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Order under the All Writs Act that Petitioner not be removed from this District while this petition is pending;

(3) Declare that Mr. Olivera's detention violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;

(4) Declare that Mr. Olivera's detention violates the Immigration and Nationality Act;

(5) Preclude Respondents from removing Mr. Olivera to a third country without following proper procedures;

(6) Order Mr. Olivera's release from immigration custody, with all of his belongings including his identification documents, and that he cannot be re-detained absent a significant likelihood of deportation in the reasonably foreseeable future, and that any future detention complies with the applicable regulations;

(7) Grant any further relief this Court deems just and proper.

Dated: March 18, 2026

Respectfully submitted,

/s/Jessica A. Dawgert

JESSICA A. DAWGERT
Ariela Lake Law & Consulting PLLC
3355 Hudson St. #7098
Denver, CO 80207
(303) 535-2203
jess@allc.law

Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with Petitioner and his family the events described in this Petition. Based on those discussions and documents Petitioner's family has provided to me, I hereby verify that the statements made in this Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 18, 2026

Respectfully submitted,

/s/ Jessica A. Dawgert
JESSICA A. DAWGERT
Ariela Lake Law & Consulting PLLC
3355 Hudson St. #7098
Denver, CO 80207
(303) 535-2203
jess@allc.law