U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 12, 2026

By ECF
The Honorable Andrew L. Carter, Jr.
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Alcantara De Erazo, et al. v. Trump, et al.*, No. 25 Civ. 10098 (ALC)

Dear Judge Carter:

This Office represents Respondents in the above-referenced case. Pursuant to the Court's Order dated January 7, 2026 (ECF No. 29), we write respectfully to provide additional letter briefing addressing the impact of *Diallo v. Joyce*, No. 25 Civ. 9909 (AS), 2025 WL 3718477 (S.D.N.Y. Dec. 23, 2025), on this case.

In *Diallo,* the petitioner was an alien subject to an order of removal that became final in 2012, but whose removal to her native country had been withheld by an immigration judge. *Id.* at *1. In November 2025, ICE arrested the petitioner at LaGuardia airport and detained her pursuant to 8 U.S.C. § 1231(a)(6), to effectuate her removal to a third country. *Id.* In granting Diallo's habeas petition, Judge Arun Subramanian decided that her detention had no statutory basis in section 1231(a)(6), *id.* at *1-4, and that her detention otherwise violated her due process rights, *id.* at *4-6.

As an initial matter, Petitioners in this case stand on a much different footing than the petitioner in *Diallo*. Petitioners were not suddenly detained without notice or warning. Alcantara De Erazo was instructed by an ICE Case Specialist on November 5, 2025, to purchase plane tickets for her and her children to depart the United States by December 12—*i.e.*, ICE provided them with the opportunity to effectuate their own orderly departure. At the next check-in on December 3, 2025, Alcantara De Erazo informed the ICE Case Specialist that she had not done so despite those explicit instructions. As a result, ICE made the decision to detain her and her minor children, pursuant to 8 U.S.C. § 1231(a)(6), to effectuate their removal to their native country. Accordingly, the decision in *Diallo* is readily distinguishable from the facts of the instant matter.

Furthermore, Respondents respectfully submit that *Diallo v. Joyce* was wrongly decided. In *Diallo*, Judge Subramanian held that section 1231(a)(6) applied only "for a period of *continued* detention for certain classes of people who have not been removed at the conclusion of the ninety-day removal period." *Id.* at *2 (emphasis in original). However, that reading of section 1231(a)(6) conflicts with the plain text of the statute. Section 1231(a)(6) provides that certain categories of

aliens—including inadmissible aliens such as Petitioners in the instant matter—"may be detained beyond the [90-day] removal period." 8 U.S.C. § 1231(a)(6). Section 1231(a)(6) does not refer to a "continued" period of detention; instead, its plain text allows for discretionary detention "beyond the removal period," without any limitation on *when* that post-removal-period detention must commence. The court's holding in *Diallo* thus improperly amends the statutory language to provide that aliens "may **continue to** be detained" rather than "may be detained." Indeed, when Congress wanted to directly address "continued" detention in section 1231, it knew how to do so. In contrast to section 1231(a)(6), the statute provides in section 1231(a)(1)(C) that "[t]he removal period shall be extended beyond a period of 90 days and the alien *may remain in detention* during such extended period," where the alien refuses to secure travel documents or otherwise acts to prevent removal. In contrast, section 1231(a)(6) says nothing about an alien "remaining in detention," or continued detention at all.

The court in *Diallo* further erred by asserting that the "and, if released" language in section 1231(a)(6) "reflects that section 1231(a)(6) applies to people who are already in detention." *Diallo*, 2025 WL 3718477, at *3. As Respondents noted in their opposition brief (ECF No. 23 at 12 & n.9), the logical reading of the "and, if released" language is that an alien who is initially detained beyond the 90-day removal period pursuant to section 1231(a)(6) will similarly benefit from the supervision requirements—including periodic custody reviews—found at 8 C.F.R. § 241.4, *after* they are detained.

Despite the plain text, the court in *Diallo* based its interpretation of section 1231(a)(6) on the purported "longstanding view of the Supreme Court, the United States, and immigration authorities themselves about how section 1231(a)(6) works." *Diallo*, 2025 WL 3718477, at *2 (citing *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001), and the brief filed by the government in that case). With respect to *Zadvydas*, the court in *Diallo* posited that "in terms of when section 1231(a)(6) kicks in, the [Supreme] Court took as a given that it follows immediately after the ninety-day removal period." *Diallo*, 2025 WL 3718477, at *3. However, in *Zadvydas*, both aliens had already been detained during the 90-day mandatory removal period, and their detention was continued after that period pursuant to 1231(a)(6). Thus, "*Zadvydas* dealt with a different question," *id.*—the reasonable length of such continuous detention under section 1231. Indeed, the Supreme Court was not faced with the issue, and assuredly never held in contravention of the plain text of the statute, that detention pursuant to 1231(a)(6) is only permissible immediately after the 90-day removal period.[1]

The court in *Diallo* rejected the numerous decisions holding that section 1231(a)(6) provides ICE with authority to initially detain petitioners after expiration of the removal period, as "unpersuasive," claiming that the issue is not one of "mere timing." *Diallo*, 2025 WL 3718477, at *3-4. However, the *Diallo* decision is at odds with itself. While first holding that section 1231

[1] Similarly, the interim rule cited in *Diallo* expressly addressed regulatory changes to 8 C.F.R. § 241.4, and the addition of new § 241.13, as a result of the decision in *Zadvydas*. *See* 2025 WL 3718477, at *3 (citing Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, 2001 WL 1408247 (Nov. 14, 2001)). Those regulatory changes did not implicitly cabin ICE's discretionary authority to detain applicable aliens "beyond the removal period" only in instances when such aliens were already in custody.

"provides no basis for [petitioner]'s detention," *Diallo*, 2025 WL 3718477, at *2, the court noted that "implicit" detention authority—divorced from any statutory text—could exist to "briefly detain [petitioner] for purposes of effecting that removal." *Id.* at *4. But the authority is not implicit—section 1231(a)(6) by its clear text provides ICE with the authority to detain Petitioners for purposes of effectuating their removal, "beyond the [90-day] removal period."

Finally, the court in *Diallo* determined that, even if section 1231 provided authority to arrest and detain petitioner, "the government nevertheless violated her procedural due process rights by detaining her without any notice or the opportunity to be heard." *Id.* at *4. That too is incorrect. As Judge Engelmayer recently decided in a similar habeas matter, "there is nothing in § 1231(a)(6) that textually required ICE to give advance notice before detaining a noncitizen pursuant to this provision." *Lin v. Francis*, No. 25 Civ. 10001 (PAE), 2025 WL 3751855, at *4 (S.D.N.Y. Dec. 29, 2025). Similarly here, the regulations at 8 C.F.R. §§ 241.4 and 241.13, which provide notice and a hearing to aliens who were previously released on supervision, do not apply to aliens such as Petitioners "whom ICE had not previously detained and who therefore [were] not released on supervision." *Id.* Petitioners were not released on an order of supervision "under regulations prescribed by the Attorney General," 8 U.S.C. § 1231(a)(3); instead, they were conditionally released in November 2023 on an order of release on recognizance, pursuant to 8 U.S.C § 1226(a)(2)(B). Such release on recognizance may be revoked "at any time," pursuant to 8 U.S.C § 1226(b). In this case, Petitioners were on notice that their order of release on recognizance could be revoked at any time (including surrendering for removal), and they were told to purchase plane tickets to effectuate their orderly departure, but they refused to do so. In these circumstances, ICE was well within its authority to detain Petitioners to effectuate their removal.

We thank the Court for its consideration of this matter.

Respectfully submitted,

JAY CLAYTON
United States Attorney for the
Southern District of New York

By: /s/ *David Farber*
DAVID E. FARBER
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2772

CC: Petitioners' counsel (by ECF)