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,

My colleague and I represent Petitioners in the above-referenced case. This supplemental brief addresses the impact of *Diallo v. Joyce*, No. 25-CV-9909 (AS), 2025 WL 3718477, at *1 (S.D.N.Y. Dec. 23, 2025) on Petitioners' case. In *Diallo*, the petitioner was ordered removed based on her inadmissibility under 8 U.S.C. § 1182. *Id.* at *2. Her removal order became final in 2012. *Id.* at *2. Ms. Diallo "was *never* detained during the removal period, and she was *never* given an order of supervision at the end of it." *Id.* at *2. Under these circumstances, the Court held that 8 U.S.C. § 1231 did not provide a basis for Ms. Diallo's detention long after her removal order became final. *See id.* at *2.

Given Ms. Diallo's inadmissibility, the government pointed to section 1231(a)(6) for its authority "to detain a person subject to a final removal order 'regardless of when ICE detains the individual' and 'regardless of whether she was previously detained during the 90-day removal period.'" *Id.* at *2. The Court disagreed. *Id.* at *2. The Court explained that section 1231(a)(6) "isn't a free-roaming right to arrest and detain people any time it sees fit, even a decade after the fact." *Id.* at *2. Instead, its detention authority is limited to "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).

The Court looked to the statutory text to support its holding that section 1231 did not provide a basis for Ms. Diallo's detention. *Id.* at *2-3. The Court looked to the text of section 1231(a)(6), which provides that individuals in Ms. Diallo's situation "'may be detained *beyond* the removal period,' indicating that a detention during the removal period may be extended 'beyond' that period." *Id.* at *2 (quoting 8 U.S.C. § 1231(a)(6)). In addition, the Court explained that "[t]he 'and, if released' language reflects that section 1231(a)(6) applies to people who are already in detention, as they would be during the 90-day removal period." *Id.* at *3. It does not indicate "the arrest and detention of people anew, long after the removal period has concluded." *Id.* at *3. The Court explained that such a reading "would override section 1231(a)(3) for vast numbers of people within that provision's scope." *Id.* at *3. This is because subsection (a)(3) governs the conditions of supervision, including re-detention, of people released under section 1231, *see id.* at *3, and subsection (a)(6) provides that the noncitizen, "if released, shall be subject to the terms of supervision in paragraph (3)." 8 U.S.C. § 1231(a)(6).

The Court found that the relevant regulations, 8 C.F.R. § 241.4, support Diallo's reading of section 1231(a)(6). *Id.* at *3. First, the regulation, "which by its text purports to operationalize

section 1231(a)(6) – is titled '*Continued* detention of inadmissible, criminal or other aliens beyond the removal period.'" *Id.* at *3 (ellipsis and emphasis in original). Second, the regulation's text repeatedly refers to the decision to "continue an alien in custody." *Id.* at *3 (quoting 8 C.F.R. §241.4(a)). Finally, "the regulations are replete with evidence that the period for detention under section 1231(a)(6) runs from the end of the ninety-day removal period[.]" *Id.* at *3.

Next, the Court explained that *Zadvydas* does not hold that section 1231(a)(6) authorizes detention whenever it is reasonably necessary to effectuate a person's removal from the United States. *See id.* at *3. Instead, "*Zadvydas* dealt with a different question: how long following the ninety-day mandatory detention period can a person be detained under section 1231(a)(6); in that context the Court made clear that indefinite detention isn't authorized, but rather that it's limited to the period reasonably necessary to effectuate the person's removal." *Id.* at *3 (citing *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001)). The Court explained that *Zadvydas* took it as a given that section 1231(a)(6) "follows immediately after the ninety-day removal period." *Id.* at *3.

*Diallo*'s reading of section 1231(a)(6) and *Zadvydas* is supported by *Johnson v. Guzman Chavez*, 594 U.S. 523, 528 (2021), which held that "[u]nder § 1231, the removal period may be extended in at least three circumstances, such that an alien *remains detained* after 90 days have passed." *Id.* at 528 (emphasis added). Section 1231(a)(6) is one of those circumstances. *Id.* at 528-29. Like *Diallo*, the Supreme Court in *Johnson* described a noncitizen's detention "beyond the removal period" pursuant to section 1231(a)(6) as "continued detention." *Id.* at 529. Similarly, the *Johnson* Court looked to 8 C.F.R. 241.4 to support its holding that section 1231(a)(6) imposes continued detention. *See id.* at 529.

The Court also found the government's remaining authorities unpersuasive. *Diallo* at *3. These are the same authorities the government cites in Petitioners' case. *See* ECF No. 23 at 13. The Court disagreed with their assumption "that section 1231(a)(6) permitted the detention of people at any time and regardless of whether they had been initially detained during the removal period." *Diallo* at *3. The Court held that "[s]ection 1231 provides for a limited, ninety-day period of mandatory detention authority" with a clear beginning and end date. *Id.* at *4. "Section 1231 then provides for a period of discretionary continued detention following that period for certain classes of people, to the extent necessary to facilitate their removal." *Id.* at *4. Beyond that, section 1231 only "provides that those subject to final orders of removal, but who aren't removed, will be released on supervision, and that the terms of their supervision and re-detention will be governed by regulation." *Id.* at *4. The Court made clear that section 1231 does not "authorize a right to arrest and detain people at any time, for any or no reason." *Id.* at *4.

Here, Ms. Alcantara's and her children's 90-day removal period began on January 26, 2024, and ended on April 25, 2024. Like in *Diallo*, Ms. Alcantara and her children were ordered removed based on their inadmissibility under 8 U.S.C. § 1182, were never detained during the removal period, and were never given orders of supervision at the end of it. Therefore, section 1231 does not authorize their detention over nineteen months later. *See id.* at * 2.

Moreover, the reasoning in *Diallo* supports a finding that section 1231(a)(1)(C) does not apply where the alleged triggering conduct – Ms. Alcantara's failure to purchase plane tickets – occurred long after the removal period ended. *See id.* at *2-4; *see also Johnson*, 594 U.S. at 528-

29. Therefore, *Diallo* supports a finding that section 1231(a)(1)(C) is only triggered where the noncitizen is detained during the removal period and the relevant conduct occurs during the removal period. *See id.* at *4.

The Court also held that even if section 1231 provided a statutory basis to arrest and detain Ms. Diallo, her detention nonetheless violated her procedural due process rights because the government detained her without any notice or the opportunity to be heard. *Id.* at *4. The Court found that Ms. Diallo was entitled to the procedural safeguards of 8 C.F.R. § 241.4(*l*), which address the situation where an order of supervision was imposed and is being revoked. *Id.* at *5. Under that regulation, "the person is 'entitled to notice of the reasons for the revocation of her release and an informal interview promptly after her return to custody that afforded her an opportunity to respond to the reasons for revocation stated in the notification.'" *Id.* at *5 (quoting *Funes v. Francis*, 2025 WL 3263896, at *17 (S.D.N.Y. Nov. 24, 2025)). In *Diallo*, the government argued that the procedural protections governing supervised release did not directly apply to Ms. Diallo because she was not subject to an order of supervised release. *Id.* at *5. The Court disagreed, holding that "it defies common sense to broadly read section 1231 to authorize Diallo's detention even though she was never previously detained nor given any order of supervision, but to deprive her of the procedural safeguards that someone like Diallo would have if the government had only followed its own legal mandates." *Id.* at *5.

The Court also held that "even if the regulatory requirements don't apply to Diallo by their own terms, those protections would still be required by the Due Process Clause." *Id.* at *5. Applying the *Matthews* test, the Court found that Ms. Diallo "has an interest in being free from imprisonment," and that "she was afforded no procedural protections before the government detained her, increasing the risk of an erroneous deprivation of her liberty." *Id.* at *6. On the third factor, the Court found that it wouldn't undercut the government's interests to require it to provide Ms. Diallo with the procedural protections at 8 C.F.R. § 241.4(*l*). *See id.* at *6.

Ms. Alcantara and her children have an interest in being free from imprisonment, Ms. Alcantara has an interest in not having her DNA taken without her consent, and her children have an interest in an education. The government did not afford them with 8 C.F.R. § 241.4(*l*)'s procedural protections before detaining them. If the Court finds that Ms. Alcantara violated her conditions of release at the end of November 2025 by failing to purchase plane tickets, ICE nonetheless violated their due process rights by failing to provide them "with the same minimal procedural safeguards that it must provide before re-detaining people who . . . violate their conditions of release." *Id.* at *5.

Respectfully submitted,

/s/ Michael Shannon
Michael Shannon
Catholic Migration Services
191 Joralemon Street, 4th Floor
Brooklyn, New York 11201
mshannon@catholicmigration.org
Tel: (718) 236-3000 x2032
*Attorney for Petitioners*