U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

February 9, 2026

By ECF
Honorable Ramon E. Reyes
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Guarchaj v. Genalo, et al.*
Civil Action No. 26-cv-0598 (Reyes, J.)

Dear Judge Reyes:

This Office respectfully submits this letter brief on behalf of the Respondents in accordance with the Court's February 4, 2026 Order and in response to the petition for issuance of a habeas writ filed by Diego Mas Guarchaj ("Petition"). Attached to this response are a Notice to Appear dated December 9, 2014 (Exhibit A); a Warrant for Arrest dated December 9, 2014 (Exhibit B); an Order of Removal in Absentia dated March 31, 2015 (Exhibit C); a Warrant for Removal dated February 2, 2026 (Exhibit D); a Warning for Failure to Depart dated February 2, 2026 (Exhibit E); and a Form I-213 Record of Deportable/Inadmissible Alien (Exhibit F).[1]

The Petitioner is subject to a final order of removal, has a history of disregarding lawful immigration process, and should continue to be detained pending removal.

Facts

The Petitioner, a native of Guatemala, entered the United States unlawfully on or about December 3, 2014. *See* Exhibits A and B. He was served with a Warrant for Arrest and a Notice to Appear after being encountered by a U.S. Border Patrol Agent on December 9, 2014. *See* Exhibits A, B and F. He was 16 at the time and placed in custody of his brother on January 22, 2015. *See* Exhibit F. The Notice of Appearance charged that Petitioner was inadmissible pursuant to § 212 (a)(6)(A)(i) of the Immigration and Naturalization Act ("INA").

On March 31, 2015, an immigration judge ordered that Petitioner be removed to Guatemala. The order was issued in absentia after Petitioner did not appear for removal proceedings after receiving notice of the proceedings. *See* Exhibit C.

[1] Information has been redacted from some documents for privacy reasons.

On February 2, 2026, the Petitioner was arrested during an ICE field operation. *See* Exhibit F. At the time of his arrest, he was served with a Warrant for Removal, which notified him that he was subject to removal. *See* Exhibit D. He was also served with a Warning for Failure to Depart. *See* Exhibit E.

Petitioner's Claims

In brief, Petitioner asserts claims based on alleged violations of the Constitution, the INA and regulations promulgated thereunder (Claims One, Two and Three). The Petition also asserts that Petitioner need not exhaust administrative remedies (Claim Four) and makes a demand for production of certain documents (Claim Five). Petitioner also asks for EAJA fees (Claim Six) and seeks release from detention and other relief. Petition at 16-26

Discussion

Petitioner has been detained pursuant to 8 U.S.C. § 1231(a), not 8 U.S.C. § 1225(b)(2)(A).

The Petitioner assumes that he has been detained pursuant to 8 U.S.C. § 1225(b)(2)(A). This assumption is incorrect. There is an administratively final order of removal, and Petitioner has been detained to execute that final order of removal. For this reason, he has been detained pursuant to 8 U.S.C. § 1231(a). And, for this reason, the entire foundation of the Petition is misplaced, as are its legal arguments.

Pursuant to 8 U.S.C. § 1231(a), ICE has authority to detain an alien subject to a final removal order. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"); *accord Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("8 U.S.C. § 1231, governs the detention of aliens subject to final orders of removal."). An order of removal by an immigration judge, issued *in absentia*, becomes administratively final upon entry that day. *See* 8 C.F.R. § 1241.1(e); *Lin v. Francis*, 2025 WL 3751855, at *1 (S.D.N.Y. Dec. 29, 2025). Section 1231 establishes a 90-day "removal period" within which the Government generally must secure removal after a removal order becomes final, and during which the Government "shall" detain the alien until such removal. *See* 8 U.S.C. §§ 1231(a)(1)(A), (B)(i), (a)(2) ("During the removal period, the Attorney General shall detain the alien.").

The Supreme Court addressed the Government's authority to detain aliens after this 90-day removal period in *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Court held that 8 U.S.C. § 1231(a)(6) authorizes immigration detention for a period reasonably necessary to effectuate the alien' removal from the United States, beyond 90 days, and that six months is a presumptively reasonable period of time for the Government to effectuate the alien's removal. *Zadvydas*, 533 U.S. at 699-701. The Court also made it clear that this "presumption . . . does not mean that every alien not removed must be released after six months." *Id.* at 701; *see also Arteaga-Martinez*, 596 U.S. at 581 ("there is no plausible construction of the text of § 1231(a)(6) that requires the Government to provide bond hearings after six months of detention"). Critically, the six-month period runs from the date an alien is *actually*

detained, not from the date the alien's removal order became final, and the alien *could* have been detained. *See Callender v. Shanahan*, 281 F. Supp. 3d 428, 435 (S.D.N.Y. 2017) (habeas petitioner "is confusing the 90-day 'removal period' under [Section 1231(a)(1)(A)], which began when his order became final in 2006[,] with the six month 'presumptively reasonable period of detention' under *Zadvydas*, which could not have begun until he was detained by ICE in 2015") (citations omitted); *see also Jiang v. Bondi*, 2025 WL 3281819, at *2 (D.N.M. Nov. 25, 2025) (finding detention proper where removal period had begun to run 20 years earlier, because petitioner "confuses the 90-day removal period" with the "six-month "presumptively reasonable period of detention" under *Zadvydas*, which could not have begun until he was detained by ICE"); *Piao v. Lyons*, 2025 WL 3046783, at *2 (E.D. Va. Oct. 31, 2025) (concluding "as has other courts, that the government's failure to detain the Petitioner during the removal period or immediately thereafter does not eliminate the government's ability to detain Petitioner for the purpose of enforcing that removal order at this time"); *Rodriguez–Guardado v. Smith*, 271 F.Supp.3d 331, 335 n.8 (D. Mass. 2017) ("Petitioner's contention that the *Zadvydas* clock runs while he is not in custody defies common sense.") (internal quotation marks and citation omitted); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012) (noting that "detention is the core issue in *Zadvydas*" and holding that "the time between Petitioner's removal order becoming final and his detention does not impact the due process analysis established by *Zadvydas*"); *but see Diallo v. Joyce*, 2025 WL 3718477, at *4 (S.D.N.Y. Dec. 23, 2025) (acknowledging, even while rejecting proposition that the six-month period of detention may begin over a decade after a removal order has become final, that "nothing in the Court's holding says that the government may not remove Diallo or that, if removal were *imminent*, the government could not briefly detain Diallo for purposes of effecting that removal).[2]

Here, the Petitioner has been detained pursuant to 8 U.S.C. § 1231(a) since February 2, 2026 -- well within the presumptively reasonable six-month period under *Zadvydas*. In any event, Petitioner cannot credibly make any showing that "there is no significant likelihood of removal is the reasonably foreseeable future," *Zadvydas*, 533 U.S. at 701.

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[2] Even after the presumptively reasonable six-month period expires, the initial burden is on the alien to show "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701; *Callender*, 281 F. Supp. 3d at 434 (citing *Pineda v. Shanahan*, 258 F. Supp. 3d 372, 379 (S.D.N.Y. 2017)). It is not sufficient for the alien to show after that six-month period that the Government has been unable to obtain a travel document to date. *Callender*, 281 F.Supp.3d at 43. If the alien makes such a showing, the burden then shifts to the Government to provide "evidence sufficient to rebut that showing." *Id.* The "alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*; *Callender*, 281 F. Supp. 3d at 433-35 (S.D.NY. 2017) (citing *Clark v. Martinez*, 543 U.S. 371, 378 (2005)). Thus, in sum, the Supreme Court concluded, that if the alien fails to meet the burden, or if the Government rebuts the alien's showing by establishing "significant likelihood of removal in the reasonably foreseeable future," then continued detention is permissible. *Zadvydas*, 533 U.S. at 701; *Callender*, 281 F.Supp.3d at 434 (citing *Beckford v. Lynch*, 168 F.Supp.3d 533, 539 (W.D.N.Y. 2016) (quoting *Zadvydas*, 533 U.S. at 701)). "[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Zadvydas*, at 699. Thus, the Supreme Court avoided the "serious constitutional threat" presented by a "literal" interpretation of 8 U.S.C. § 1231(a)(6), which could authorize "indefinite, perhaps permanent, detention" in some circumstances, *id.* at 688, 699.

Petitioner has not been detained without a warrant.

Petitioner contends that he was unlawfully arrested without a warrant. Petition, Claim One. In fact, Petitioner was served with a Warrant for Removal. *See* Exhibit D. Under these circumstances, where Petitioner was subject to a final order of removal, no other warrant was required. *See* 8 C.F.R. § 241.2(a)(1).

Any argument that this Court should reopen Petitioner's final order of removal should be rejected.

To the extent that the Petitioner challenges his final order of removal, this Court lacks jurisdiction to do so. *See Huang v. Bondi, et al,* 2026 WL 318195 *1 (E.D.N.Y Feb. 5, 2026) (Komitee, J.) ("This Court cannot review the removal order or the due process challenge to its validity," citing 8 U.S.C. §1252(b)(9))

The Respondents thank the Court for its consideration of their arguments.

Respectfully submitted,
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Exhibits to Respondents' Letter Brief

Exhibit A