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REPLY TO WHITE PLAINS OFFICE

BY ECF

June 11, 2026

The Honorable Natasha C. Merle, U.S.D.J. United
States District Court
Southern District of New York
2235 Cadman Plaza
Brooklyn, New York

Re: *Lopez Menjivar v. Genalo*, et al., No. 26 Civ. 2506 (NCM) *Melgar v Munoz* Decision

Dear Judge Merle:

In furtherance of today's habeas hearing, we submit to the Court the *Melgar-Melgar v. Munoz* decision issued yesterday in the District of Massachusetts, where I wrote the brief working in conjunction with pro bono attorneys. That case is identical in its immigration procedural and factual history (in absentia removal order, presence in the US for over twenty years, law-abiding history, no post-removal immigration contact until recent apprehension by ICE), and applicable federal law as *Lopez Menjivar.*

Judge Julia E. Kobick ruled that:

> Because Melgar-Melgar was not detained during his 90-day removal period from October 6, 2005 to January 4, 2006, he cannot be subject to continued detention under 8 U.S.C. § 1231(a)(6). And the government has not yet imposed on him an order of supervision under 8 U.S.C. § 1231(a)(3), nor has it revoked such an order in compliance with 8 C.F.R. §§ 241.4(l) and 241.13(i)(2). The respondents therefore cannot point to any lawful basis for detaining Melgar-Melgar now. Further, detaining Melgar-Melgar in violation of the procedural protections set forth in 8 C.F.R. §§ 241.4(l) and 241.13(i)(2)—without any notice or the opportunity to be heard prior to detention, and without the opportunity to contest whether his removal was reasonably foreseeable—plainly infringed Melgar-Melgar's procedural due process rights, for all of the reasons explained in *Diallo,* 817 F. Supp. 3d at 208-10, and ECF 19, at 9-10, *Da Silva Limav. Wesling*, No. 26-cv-12266-IT (D. Mass. May 27, 2026). See also *Kong v. United States*, 62 F.4th 608, 619-20 & nn.12-13 (1st Cir. 2023) (describing the procedural protections set forth in 8 C.F.R. §§ 241.4 and 241.13); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017) ("[W]here an immigration 'regulation is promulgated to protect a fundamental right derived from

> the Constitution or a federal statute,' like the opportunity to be heard, 'and [ICE] fails to adhere to it, the challenged [action] is invalid.'" (quoting *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993)).

Melgar-Melgar is highly persuasive authority for the exact issue this Court identified at the hearing and requested further briefing on in its May 8 Order. "The parties' post-hearing supplemental briefing shall address: (1) the statutory interpretation of 8 U.S.C. § 1231(a)(6) with citations to caselaw; (2) the due process owed here based on the circumstances of petitioner's case; (3) what procedures are available to the government when detention is not possible during the 90-day removal period because the noncitizen is not accessible but becomes accessible later; and (4) what is necessary and sufficient to demonstrate removal is both imminent and certain." Text Order.

Melgar-Melgar targets this Court's exact issue:

> This Court recently concluded that 8 U.S.C. § 1231(a)(6) does not, as the respondents argue here, give ICE the power to detain a noncitizen subject to a final order of removal where that noncitizen was not previously detained during the 90-day removal period. *See* ECF 16, 17, 19, *Al Varenga Lima v. Wesling*, No. 26-cv-12267-JEK (D. Mass.). Rather, 8 U.S.C. § 1231(a)(6) authorizes only the *continued* detention of those noncitizens detained during the removal period under 8 U.S.C. § 1231(a)(2). In light of the respondents' notice of their intent to remove Melgar-Melgar from Massachusetts imminently, the Court relies for this conclusion on, and adopts the analyses set forth in, *Diallo v. Joyce*, 817 F. Supp. 3d 202, 205-08 (S.D.N.Y. 2025), and ECF 19, *Da Silva Limav. Wesling*, No. 26-cv-12266-IT (D. Mass. May 27, 2026). As those cases describe, "'[t]he plain language of Section 1231(a)(6) . . . vests the Attorney General with the authority to *continue an alien in detention* beyond the removal period.'" *Diallo*, 817 F. Supp. 3d at 205 (quoting Br. for Petitioners at 21, *Ashcroft v. Ma*, 533 U.S. 678 (2001) (No. 00-38), 2000 WL 1784982, at *21). It does not confer on the government "a free-roaming right to arrest and detain people any time it sees fit, even a decade after" an order of removal became final. *Id.*
>
> That conclusion accords with First Circuit precedent. Citing 8 U.S.C. § 1231(a)(6), the First Circuit explained in *G.P. v. Garland* that "[d]etention is mandatory during the removal period, see § 1231(a)(2), and may be extended into a 'post-remova[l] period' in certain circumstances." 103 F.4th 898, 900 (1st Cir. 2024) (emphasis added) (citing 8 U.S.C. §§ 1231(a)(1)(C), (c)(2)(A), and (a)(6)). "If none of those circumstances apply," the First Circuit continued, "a noncitizen 'who is not removed within the 90-day removal period will be released subject to supervision'" under 8 U.S.C. § 1231(a)(3). Id. (quoting *Johnson v. Guzman-Chavez*, 594 U.S. 523, 529 (2021)). Thus, Section 1231(a)(6) authorizes only continued or extended detention of someone already detained under 8 U.S.C. § 1231(a)(2) during the removal period; it does not empower the government to detain a noncitizen subject to a final order of removal who was not detained during the removal period. The latter category of noncitizens must instead be subject to an order of supervision under 8 U.S.C. § 1231(a)(3) and may be taken into custody to effectuate removal only if the government complies with the regulations set forth in 8 C.F.R. §§ 241.4 and 241.13. See ECF 19, at 7-9, *Da Silva Limav. Wesling*, No. 26-cv-12266-IT (D. Mass. May 27, 2026).

Although the decision is not binding on this Court, it is highly persuasive authority because of the procedural posture and bears squarely on the law and the facts of this case. We wanted to bring it to the Court's attention immediately.

We submit the Order and the petitioner's brief and the government's response in opposition on *Melgar*

v. Munoz.

Respectfully submitted,

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