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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KUY SY,

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCHE, Acting Attorney
17 General, TODD M. LYONS, Acting
18 Director, Immigration and Customs
19 Enforcement, JESUS ROCHA, Acting
20 Field Office Director, San Diego Field
21 Office, CHRISTOPHER LAROSE,
22 Warden at Otay Mesa Detention Center,

23 Respondents.

Civil Case No.: 26-cv-2538-TWR-SBC

**Supplemental Briefing in
Support of
Petition for Writ of
Habeas Corpus**

INTRODUCTION

On April 27, 2026, this Court ordered the parties to file supplemental briefing on the question of “why Petitioner should not be granted an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a).” Dkt. 4. In their supplemental briefing, Respondents never actually answer (or even discuss) this question—instead, they recycle boilerplate briefing to argue that this Court should simply “deny the habeas petition and injunctive relief.” Dkt. 6 at 2.

This Court should not order an individualized bond hearing because that is not the appropriate form of relief for a regulatory violation or a claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001). If it were, it could lead to indefinite detention with no opportunity for review—the exact violation *Zadvydas* found unconstitutional.

Instead, this Court should order Mr. Sy released on either regulatory or *Zadvydas* grounds. As to the regulatory argument, no immigration officer ever made the necessary determination of whether Mr. Sy actually violated the conditions of his supervision, as the regulations required. But even if they had, Mr. Sy’s six-month removal period has long since expired, and Respondents have not shown a significant likelihood of removal in the reasonably foreseeable future. For either reason, this Court should order Mr. Sy immediately released.

ARGUMENT

I. A bond hearing is not the appropriate relief for a person with a final order of removal because it could lead to indefinite detention—which is precisely what *Zavydas* deemed unconstitutional.

A bond hearing is not the appropriate remedy for an individual who has a final order of removal, as Mr. Sy does. Importantly, *Zadvydas* expressly *rejected* the government’s arguments that an immigrant may be detained indefinitely under § 1231(a)(6) if they pose a risk of community danger or flight. 533 U.S. at 690–

92. The Court appreciated the seriousness of the government’s concerns about persons likely to flee or pose a danger but found that the immigrant’s liberty interests were weightier. *See id.* It expressed grave doubts that due process would permit “potentially permanent” “civil confinement” of large and varied groups of immigrants—all to prevent possible future misconduct. *Id.* at 691–92. And in cases in which “detention is of potentially *indefinite* duration,” the Court explained that it has “demanded that the dangerousness rationale be accompanied by some other special circumstance, such as mental illness.” *Id.* at 691.

Nowhere did *Zadvydas* mention a bond hearing. In fact, after the Supreme Court remanded in the companion case of *Kim Ho Ma v. Ashcroft*, the Ninth Circuit did not order a bond hearing—instead, it noted that Ma would have to “comply with the stringent supervision requirements set out in 8 U.S.C. § 1231(a)(3)” by “appear[ing] before an immigration officer periodically.” 257 F.3d 1095, 1115 (9th Cir. 2001). Like the Supreme Court in *Zadvydas*, the Ninth Circuit mentioned nothing about a bond hearing; it only concluded that “the INS may not detain Ma any longer.” *Id.*

While a bond hearing may be the appropriate relief for a noncitizen whose immigration case is pending, the same is not true for individuals who have a final order of removal. When a noncitizen is before the immigration judge, the BIA, or even the Ninth Circuit, their detention is not “indefinite.” At some point, they will either be allowed to remain in the U.S. or ordered removed; thus, a bond hearing is appropriate to ensure their appearance at court dates and eventual removal. But when removal “seems a remote possibility at best,” preventing flight is a “weak or nonexistent” rationale that cannot justify detention. *Zadvydas*, 533 U.S. at 690. Thus, danger or flight risk cannot justify granting a bond hearing—rather than release—for a person whose removal is not significantly likely.¹

¹ In *Doan v. I.N.S.*, 311 F.3d 1160, 1161 (9th Cir. 2002), the Ninth Circuit held that the INS could impose bond “as a condition of supervised release” under the

1 Importantly, *Zadvydas* held that the normal “dangerous” determination of a
 2 typical bond hearing could not justify indefinite detention. The Supreme Court
 3 explained that “we have upheld preventive detention based on dangerousness only
 4 when limited to specially dangerous individuals and subject to strong procedural
 5 protections.” 533 U.S. at 690–91. So “[i]n cases in which preventive detention is
 6 of potentially *indefinite* duration, we have also demanded that the dangerousness
 7 rationale be accompanied by some other special circumstance, such as mental
 8 illness, that helps to create the danger.” *Id.* at 691.

9 Here, Respondents have never alleged that Mr. Sy is dangerous—let alone
 10 that any dangerousness is “accompanied by some other special circumstance, such
 11 as mental illness.” *Id.* Although Mr. Sy was convicted of attempted murder almost
 12 thirty years ago when he was in his early 20s, he has no recent convictions and no
 13 incidents of any violent behavior. Absent any evidence to the contrary, the
 14 government has fallen short of meeting *Zadvydas*’ heightened standard of
 15 dangerousness. Accordingly, *Zadvydas* requires that Mr. Sy be ordered released—
 16 not granted a bond hearing.

17 **II. The government’s arguments fail on the merits.**

18 In his petition, Mr. Sy argued that he should be immediately released due to
 19 violations under the regulations and *Zadvydas*. *See* Dkt. 1. Respondents fail to
 20 rebut either argument.

21 First, Respondents argue that they complied with the regulations because
 22 they “informed Petitioner of the violations justifying his re-detention” and
 23 “provided Petitioner with an opportunity for an informal interview.” Dkt. 3 at 2.

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 25 regulations. But the regulations only permit “[a]n officer authorized to issue an
 26 order of supervision” to set bond—not an immigration judge. 8 C.F.R. § 241.5(b).
 27 And the Ninth Circuit cautioned that any decision that had “the effect of
 28 preventing an alien’s release” indefinitely would raise “serious questions.” *Doan*,
 311 F.3d at 1162. Here, since Respondents never imposed a bond as a condition
 of supervised release, § 241.5(b) and *Doan* are inapplicable. And if a bond
 hearing had the “effect of preventing [Mr. Sy’s] release” indefinitely, it would
 similarly raise “serious questions.” *Id.*

1 Specifically, the Notice of Revocation alleged that Mr. Sy violated the conditions
2 of his release because he “failed to report as directed,” had “not reported to ICE
3 since July 10, 2020,” and had “failed to provide any notice to changes in
4 residence.” *Id.*; Dkt. 3-1, Exh. 1.

5 But Respondents conspicuously fail to mention Mr. Sy’s rebuttal of these
6 allegations contained in their own documents—that when Mr. Sy moved to San
7 Diego in early 2020, he “attempted to call the office to check-in but there was no
8 response and was sent to voicemail.” Dkt. 3-1, Exh. 2. Mr. Sy reported that he
9 continued trying to call the supervision officers, that he “kept a record of the
10 phone calls made,” and that he “has them at home.” *Id.* Additionally, he
11 “attempted to come to the office but was told he needed to call them first.” *Id.* In
12 other words, Mr. Sy made repeated attempts to comply with his supervision but
13 was caught in a bureaucratic Catch-22 where he could not call to check in and
14 could not check in without first calling.

15 Under 8 C.F.R. § 241.13(i)(3), a noncitizen accused of violating an order of
16 supervision “may submit any evidence or information that he or she believes
17 shows” that “he or she has not violated the order of supervision.” But although
18 Mr. Sy “kept a record of the phone calls made” and “has them at home,” he could
19 not present them at his interview. Dkt. 3-1, Exh. 2. What’s more, the regulation
20 also requires that any revocation “include an evaluation of any contested facts
21 relevant to the revocation and a determination whether the facts as determined
22 warrant revocation and further denial of release.” 8 C.F.R. § 241.13(i)(3). But
23 here, there is no evidence that Respondents ever evaluated “whether the facts as
24 determined warrant revocation and further denial of release”—i.e., whether Mr.
25 Sy’s good-faith efforts to comply with his supervision actually “warrant[ed]
26 revocation and further denial of release.” In other words, Respondents’ notice and
27 interview were meaningless given that they had already made up their minds to

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1 revoke Mr. Sy's release. These regulatory violations alone justify granting the
2 habeas petition.

3 But even if no regulatory violations had occurred, Respondents have failed
4 to show a significant likelihood of removal in the reasonably foreseeable future
5 under *Zadvydas*. It is undisputed that Mr. Sy was ordered removed on January 30,
6 2020. And as Judge Sabraw recently held in *Baythavong v. Noem*, 26-cv-
7 1138-DMS-MSB (S.D. Cal. Apr. 6, 2026), the plain language of the statute states
8 that the six-month removal period began on that date, regardless of the length of
9 time Mr. Sy was detained.

10 The Immigration and Nationality Act states that the government "shall
11 detain" a noncitizen ordered removed during the 90-day "removal period." 8
12 U.S.C. 1231(a)(2)(A). This removal period "begins on the latest of the
13 following":

- 14 (i) The date the order of removal becomes administratively final.
- 15 (ii) If the removal order is judicially reviewed and if a court orders a stay
16 of the removal of the alien, the date of the court's final order.
- 17 (iii) If the alien is detained or confined (except under an immigration
18 process), the date the alien is released from detention or confinement.

19 8 U.S.C. 1231(a)(1)(B). Here, neither (ii) nor (iii) apply because Mr. Sy's removal
20 order is not being "judicially reviewed" and he is being detained "under an
21 immigration process." Because Mr. Sy's order of removal became
22 "administratively final" on January 30, 2020, the plain language of the statute
23 mandates a finding that the six-month removal period elapsed over five years ago,
24 in July 2020. *See also* 8 C.F.R. § 235.3(b)(7) (stating that an expedited removal
25 order that is "reviewed and approved by the appropriate supervisor" is
26 "considered final").

27 That is precisely what Judge Sabraw recently held in *Baythavong v. Noem*,
28 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026). There, the noncitizen was

1 ordered removed and then released on an order of supervision for approximately
 2 seven years. When ICE redetained him, Judge Sabraw noted that “Respondents
 3 failed to cite any authority to support their position that the presumptively
 4 reasonable period of detention only applies when the individual is actually in
 5 detention, i.e., that the nearly seven-year period in which Petitioner was on
 6 supervision is not relevant to the *Zadyvdas* argument.” *Id.* at *2. “On the
 7 contrary,” Judge Sabraw explained, “courts have held the presumptively
 8 reasonable six-month period of detention does not stop and re-start if the
 9 individual is released and later re-detained.” *Id.* at *2–3 (citing cases). Thus, the
 10 six-month period here has elapsed.

11 Moreover, Respondents have failed to show a significant likelihood of
 12 removal in the reasonably foreseeable future under *Zadvydas*. Although
 13 Respondents’ supplemental briefing relies heavily on a purported “Declaration of
 14 Deportation Officer Jason Cole,” Respondents have filed no such declaration.
 15 Dkt. 6 at 2, 4. Even if they had, Respondents claim only that “ICE has requested a
 16 travel document” but do not say whether this request was made to Cambodia or
 17 merely ICE’s own internal agency. Dkt. 6 at 2. Accordingly, the six-month
 18 presumptively-reasonable period has passed, and Respondents have not shown a
 19 significant likelihood of removal in the reasonably foreseeable future.

20 Conclusion

21 Because Mr. Sy’s detention violates the regulations and *Zadvydas*, and
 22 because a bond hearing is not the appropriate remedy for these violations, this
 23 Court should order his immediate release.

24 Respectfully submitted,

25 Dated: May 4, 2026

26 *s/ Kara Hartzler*

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