Kara Hartzler
Cal. Bar No. 293751
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
Kara_hartzler@fd.org

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AYBUKE BORA,

Petitioner,

v.

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

Respondents.

Case No.: 26-cv-3115-JES-DEB

Petitioner's Supplemental Brief

In her pro se habeas petition and traverse, Aybuke Bora coherently sets forth the reasons why this Court should grant her release. ECF No. 12. Undersigned counsel does not repeat those arguments here; instead, counsel provides additional authority showing why Respondents have failed to establish Petitioner's non-compliance within the statutory period.

Although *Zadyvdas v. Davis,* 533 U.S. 678, 701 (2001), generally requires release after the six-month period expires, there may be exceptions for noncitizens who continue to obstruct their removal. Under the statute:

> The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

8 U.S.C. § 1231(a)(1)(C).

In *Diouf v. Mukasey*, the Ninth Circuit held that the government bears the burden of demonstrating noncompliance under § 1231(a)(1)(C). 542 F.3d 1222, 1231 & n.4 (9th Cir. 2008). It made clear that mere assertions, unsupported by evidence, would not satisfy that burden—"it is the burden of the government to *document* the conduct that extends the removal period under § 1231(a)(1)(C)." *Id.* (emphasis added); *see also, e.g.*, *Martinez-Sanchez v. McAleenan*, No. 18-CV-2592-JGB-JC, 2019 WL 6703398, at *2 (C.D. Cal. Oct. 8, 2019) (rejecting § 1231(a)(1)(C) defense for lack of evidence); *Quintero v. Asher*, No. C14-958 MJP, 2015 WL 144298, at *4 (W.D. Wash. Jan. 12, 2015) (same).

Importantly, Respondents also bear the burden to show that the last act of noncompliance occurred in the previous 90 days. In *Diouf*, the Ninth Circuit confronted for the first time how § 1231(a)(1)(C) applies when a detainee fails to comply for some period of time but later starts complying with efforts to remove him. 542 F.3d at 1231. It held that in such circumstances, the removal period ends 90 days after "the latest evidence of [the detainee's] obstruction." *Id. Diouf*

clarified that the government must produce "positive evidence" of noncompliance in the last 90 days—though "an inference of subsequent obstruction" based on evidence of past obstruction "may not be unreasonable," it is "inappropriate to allow the Government to satisfy its burden on inferences alone" "[g]iven what is at stake for the alien." *Id.* at 1231 n.4.

Numerous district courts have rejected § 1231(a)(1)(C) defenses based on the clear logical implication of *Diouf*'s holding. [1] As these cases show, a noncitizen can be detained under § 1231(a)(1)(C) only for *demonstrated*, *continuing* obstruction occurring in the last 90 days.

Here, Respondents have not shown "positive evidence" that Ms. Bora has been noncompliant in the last 90 days, as *Diouf* requires. Respondents cite only Ms. Bora's alleged noncompliance at the airport on December 18, 2025, and her alleged statement on March 24, 2026, that she would "not go back to the Republic of Turkiye." ECF No. 10 at 2. But because both of those incidents occurred more than 90 days ago, they are insufficient to show *continued* noncompliance. And while Respondents may argue that Ms. Bora's past noncompliance provides "an inference of subsequent obstruction," *Diouf* made clear that it is "inappropriate to allow the Government to satisfy its burden on inferences alone." 542 F.3d at 1231

---

[1] *See, e.g.*, *Martinez-Sanchez v. McAleenan*, 2019 WL 6703398, at *2 (holding that government had not established noncompliance under § 1231(a)(1)(C), in part, because the last piece of evidence suggesting noncooperation was from several months before and the government had submitted no evidence of continued noncooperation); *Sokpa-Anku v. Paget*, 2018 WL 3130681, at *4 (holding that one episode of noncompliance did not justify continued detention two years later); *Quintero v. Asher*, 2015 WL 144298, at *5 (holding that a detainee's "repeated refusal to cooperate with the El Salvadoran authorities in July and August of 2013 as they sought to interview him to prepare his travel documents" did not justify his continued detention in 2015); *Lawrikow v. Kollus*, No. CV–08–1403–PHX–GMS (LOA), 2009 WL 2905549, at *11 (D. Ariz. July 27, 2009) (similar); *Singh v. Gonzales*, 448 F. Supp. 2d 1214, 1219 (W.D. Wash. 2006) ("[A]lthough petitioner initially refused to cooperate, the administrative record indicates that petitioner began cooperating in November 2005. Accordingly, ICE's claim that petitioner has failed to cooperate is now moot.").

n.4. Thus, this Court should order Ms. Bora's immediate release because Respondents have failed to submit "positive evidence" of her noncompliance in the past 90 days.

Respectfully submitted,

Dated: July 8, 2026

s/ Kara Hartzler

Kara Hartzler
Federal Defenders of San Diego, Inc.
Attorneys for Petitioner
Email: kara_hartzler@fd.org