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

ZAFER SEN,
EBRU SEN¹

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.

CIVIL CASE NO. **26 CV 3499 RBM SBC**

**Petition for Writ
of
Habeas Corpus**

**[Civil Immigration Habeas,
28 U.S.C. § 2241]**

¹ Federal Defenders of San Diego, Inc., is filing the instant petition with provisional appointment under Chief Judge Order No. 134.

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I. Introduction

Zafer and Ebru Sen are a husband and wife from Turkiye. They are both Kurds, an ethnic group that has suffered serious discrimination and persecution in Turkiye. In October 2025, Zafer [REDACTED] He narrowly escaped, and they came immediately to the United States to apply for asylum.

However, ICE did not believe they had a credible fear of persecution and issued an order of removal. On December 5, 2026, ICE drove them to the airport to put them on a flight. But Zafer and Ebru refused to get out of the vehicle, believing that they would be killed if they were sent back to Turkiye. ICE then brought them back to Otay Mesa Detention Center, where they remain detained.

But in the six months since ICE tried to remove Zafer and Ebru, ICE has not attempted to remove them again. Under Ninth Circuit precedent, a noncitizen who has previously been noncooperative with their removal may only continue to be detained under 8 U.S.C. § 1231(a)(1)(C) for *demonstrated, continuing* obstruction occurring in the last 90 days. Unless Respondents provide affirmative evidence of Zafer and Ebru's continued noncompliance in the last 90 days, this Court should order their release.

II. Statement of Facts

Ebru and Zafer Sen were both born in Turkiye and are husband and wife. Declaration of Ebru and Zafer Sen, Exhibit A ("Exh. A") ¶ 1. They are also ethnic Kurds, a minority group that has suffered serious discrimination and persecution at the hands of the Turkish government. *Id.* at ¶ 1.

Zafer Sen was in the military but was discharged [REDACTED]

Id. at ¶ 2. In October 2025,

Id. at

¶ 2. Zafer and Sen managed to escape the country days later. *Id.* at ¶ 2.

1 Zafer and Sen entered the United States on October 21, 2025, and were
 2 immediately apprehended. *Id.* at ¶ 3. They were given a credible fear interview
 3 but received a negative result. *Id.* at ¶ 3. The immigration judge affirmed this
 4 negative credible fear finding on November 28, 2025. *Id.* at ¶ 3.

5 On December 5, 2025, ICE took Ebru and Zafer Sen to the airport and tried
 6 to put them on a flight back to Turkiye. *Id.* at ¶ 4. However, they did not get out
 7 of the car because they believed they would be killed if sent back to Turkiye. *Id.*
 8 at ¶ 4. ICE then brought them back to Otay Mesa detention center. *Id.* at ¶ 4.

9 In the six months since ICE took them to the airport, ICE has not attempted
 10 to remove Zafer and Ebru again. *Id.* at ¶ 5. ICE has told them that they are going
 11 to try to remove them again, but ICE has never actually attempted to do so. *Id.* at
 12 ¶ 5. The last time ICE talked to Zafer and Ebru was in March 2026. *Id.* at ¶ 5.

13 **III. Legal Analysis.**

14 **A. Petitioners have satisfied the six-month *Zadvydas* requirement.**

15 Title 8 U.S.C. § 1231 sets forth different rules for different “stages” of pre-
 16 removal detention. *See Diouf v. Mukasey*, 542 F.3d 1222, 1228 (9th Cir. 2008).
 17 Section 1231(a)(1) governs detention during the “removal period.” 8 U.S.C.
 18 § 1231(a)(1)(A), (B)(i). The removal period lasts 90 days and can be extended
 19 only if the noncitizen “fails or refuses to make timely application in good faith for
 20 travel or other documents necessary to the alien’s departure or conspires or acts to
 21 prevent the alien’s removal subject to an order of removal.” *Id.* § 1231(a)(1)(C).

22 When the removal period ends, the noncitizen must be released on
 23 supervision, *see id.* § 1231(a)(3), unless the government can justify detention
 24 under § 1231(a)(6). As explained in this petition, *Zadvydas v. Davis* established
 25 that a noncitizen should ordinarily be detained under § 1231(a)(6) for a maximum
 26 of 90 additional days. 533 U.S. 678, 701 (2001). Following the 90-day removal
 27 period and the 90-day grace period established in *Zadvydas* (a total of 180 days
 28

1 from the start of the removal period), a detainee is entitled to release if “there is
2 no significant likelihood of removal in the reasonably foreseeable future.” *Id.*

3 Here, Petitioners were ordered removed on November 28, 2025. Exh. A at
4 ¶ 3. But since December 5, 2026, Respondents have made no efforts to remove
5 them to Turkiye. *Id.* at ¶ 5. In fact, ICE has not spoken with Petitioners since
6 March 2026. *Id.* at ¶ 5. Thus, Petitioners have satisfied *Zadvydas* because the six
7 month-period has expired and is no significant likelihood of removal in the
8 reasonably foreseeable future.”

9 **B. Respondents have not established obstruction under**
10 **§ 1231(a)(1)(C).**

11 Although *Zadyvdas* generally requires release after the six-month period
12 expires, there may be exceptions for noncitizens who continue to obstruct their
13 removal. Under 8 U.S.C. § 1231(a)(1)(C):

14 The removal period shall be extended beyond a period of 90 days and
15 the alien may remain in detention during such extended period if
16 the alien fails or refuses to make timely application in good faith for travel
17 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.

18 In *Diouf v. Mukasey*, the Ninth Circuit held that the government bears the burden
19 of demonstrating noncompliance under § 1231(a)(1)(C). 542 F.3d 1222, 1231 &
20 n.4 (9th Cir. 2008). It made clear that mere assertions, unsupported by evidence,
21 would not satisfy that burden—“it is the burden of the government to *document*
22 the conduct that extends the removal period under § 1231(a)(1)(C).” *Id.* (emphasis
23 added); *see also, e.g., Martinez-Sanchez v. McAleenan*, No. 18CV2592-JGB-JC,
24 2019 WL 6703398, at *2 (C.D. Cal. Oct. 8, 2019) (rejecting § 1231(a)(1)(C)
25 defense for lack of evidence); *Quintero v. Asher*, No. C14-958 MJP, 2015 WL
26 144298, at *4 (W.D. Wash. Jan. 12, 2015) (same).

27 Importantly, Respondents also bear the burden to show that the last act of
28 noncompliance occurred in the last 90 days. In *Diouf*, the Ninth Circuit

1 confronted for the first time how § 1231(a)(1)(C) applies when a detainee fails to
 2 comply for some period of time but later starts complying with efforts to remove
 3 him. 542 F.3d at 1231. It held that in such circumstances, the removal period ends
 4 90 days after “the latest evidence of [the detainee’s] obstruction.” *Id. Diouf*
 5 clarified that the government must produce “positive evidence” of noncompliance
 6 in the last 90 days—though “an inference of subsequent obstruction” based on
 7 evidence of past obstruction “may not be unreasonable,” it is “inappropriate to
 8 allow the Government to satisfy its burden on inferences alone” “[g]iven what is
 9 at stake for the alien.” *Id.* at 1231 n.4.

10 Numerous district courts have rejected § 1231(a)(1)(C) defenses based on
 11 the clear logical implication of *Diouf*’s holding.² As these cases show, a
 12 noncitizen can be detained under § 1231(a)(1)(C) only for *demonstrated*,
 13 *continuing* obstruction occurring in the last 90 days.

14 Here, Respondents have not shown “positive evidence” that Petitioners
 15 have been noncompliant in the last 90 days, as *Diouf* requires. Although
 16 Petitioners’ unwillingness to cooperate on December 5, 2025, may provide “an
 17 inference of subsequent obstruction,” *Diouf* made clear that it is “inappropriate to

18
 19 ² See, e.g., *Martinez-Sanchez v. McAleenan*, 2019 WL 6703398, at *2 (holding
 20 that government had not established noncompliance under § 1231(a)(1)(C), in
 21 part, because the last piece of evidence suggesting noncooperation was from
 22 several months before and the government had submitted no evidence of
 23 continued noncooperation); *Sokpa-Anku v. Paget*, 2018 WL 3130681, at *4
 24 (holding that one episode of noncompliance did not justify continued detention
 25 two years later); *Quintero v. Asher*, 2015 WL 144298, at *5 (holding that a
 26 detainee’s “repeated refusal to cooperate with the El Salvadoran authorities in
 27 July and August of 2013 as they sought to interview him to prepare his travel
 28 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.”).

1 allow the Government to satisfy its burden on inferences alone.” 542 F.3d at 1231
2 n.4. Thus, this Court should order Petitioners’ immediate release unless
3 Respondents can submit “positive evidence” of noncompliance in the past 90
4 days.

5 **IV. This Court must hold an evidentiary hearing on any disputed facts.**

6 Resolution of a prolonged-detention habeas petition may require an
7 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).
8 Petitioners hereby requests such a hearing on any material, disputed facts.

9 **V. Prayer for relief**

10 For the foregoing reasons, Petitioners respectfully requests that this Court:

- 11 1. Order and enjoin Respondents to immediately release Petitioners from
12 custody;
- 13 2. Order all other relief that the Court deems just and proper.

14 Respectfully submitted,

15
16 Dated: June 11, 2026

s/ Kara Hartzler

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18 Attorneys for Petitioners
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Proof of Service

I, the undersigned, will cause the attached Petition for a Writ of Habeas Corpus to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: June 11, 2026

/s/ Kara Hartzler
Kara L. Hartzler