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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ZAFER SEN and EBRU SEN,
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13 Petitioners,

14 v.

15 MARKWAYNE MULLIN; *et al.*,
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17 Respondents.
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Case No. 26-cv-3499-CAB-VET

**RETURN IN OPPOSITION TO
PETITIONER'S HABEAS
PETITION**

1 I. INTRODUCTION

2 Petitioners Zafer and Ebru Sen have filed a petition for a writ of habeas corpus.
3 ECF No. 1. For the reasons set forth below, the Court should deny Petitioners' request
4 for relief and dismiss the petition.

5 II. FACTUAL AND PROCEDURAL BACKGROUND

6 Petitioners are a citizens and nationals of Turkiye. Declaration of Deportation
7 Officer Christian A. Castellanos ("Decl.") at ¶ 5. Petitioners originally illegally entered
8 the United States on or about October 21, 2025, without inspection. *Id.* at ¶¶ 6-7. They
9 were placed in expedited removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and
10 taken into Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C.
11 § 1225(b)(1)(B). *See* Exhibit 1 (Notice and Order of Expedited Removal). Petitioners
12 were subsequently interviewed by an asylum officer and determined not to have a
13 credible fear. *See* Decl. at ¶10. On November 21, 2025, an immigration judge affirmed
14 the negative credible fear finding. *Id.* at ¶ 11; Exhibit 2 (Order of the Immigration
15 Judge). Petitioners' expedited removal orders therefore became final on that date.

16 On November 25, 2026, ICE Enforcement and Removal Operations (ERO) began
17 the process of removing Petitioners to Turkiye. *Id.* at ¶ 12. On November 27, 2025,
18 ERO prepared an itinerary for Petitioners' removal. *Id.* at ¶ 13. Petitioners' removal to
19 Turkiye was scheduled on December 5, 2025, however, Petitioners refused to exit the
20 vehicle at LAX International Airport to get on the flight. *Id.* at ¶ 14; ECF No. 1 at 4. A
21 few days later, ERO attempted to secure another (charter) flight for Petitioners' removal
22 but there were no available flights at that time. *Id.* at ¶ 15. From March to May 2026,
23 ERO continued its efforts to remove Petitioners either via charter flight or via
24 commercial airline. *Id.* at ¶¶ 16-18. On June 24, 2026, ERO contacted its agency
25 counterparts and Turkish officials in Turkiye and believes there is a significant
26 likelihood of Petitioners' removal in the reasonably foreseeable future. *Id.* at ¶¶ 19-20.
27 However, Petitioners are still not willing to return to Turkiye. *Id.* at ¶ 17. Petitioners
28 remain mandatorily detained pursuant to 8 U.S.C. § 1231(a).

III. ARGUMENT

A. Petitioners' detention is lawful, and they have not established that there is no significant likelihood of removal in the reasonably foreseeable future.

ICE's authority to detain noncitizens who are subject to a final order of removal is governed by 8 U.S.C. § 1231(a). When an alien has been found to be unlawfully present in the United States and a final order of removal has been entered, the government ordinarily secures the alien's removal during a subsequent 90-day statutory "removal period." 8 U.S.C. § 1231(a)(1). The statute provides that the Attorney General "shall detain" the alien during this removal period. 8 U.S.C. § 1231(a)(2).

The Supreme Court held in *Zadvydas* that when removal is not accomplished during the 90-day removal period, the statute "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and does not permit "indefinite detention." *Zadvydas*, 533 U.S. at 689. The Supreme Court has held that six months constitutes a "presumptively reasonable period of detention." *Id.* at 701. Courts have repeatedly declined to grant habeas relief where the presumptively reasonable six-month period has not yet elapsed. *See Ghamelian v. Baker*, No. SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue."); *Guerra-Castro v. Parra*, No. 1:25-cv-22487-GAYLES, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) ("The Court finds that the Petition is premature because Petitioner has not been detained for more than six months. Petitioner has been in detention since May 29, 2025; therefore, his two-month detention is lawful under *Zadvydas*.") (citations omitted); *Farah v. INS*, No. Civ. 02-4725(DSD/RLE, 2003 WL 221809, at *5 (D. Minn. Jan. 29, 2013) (holding that when the government releases a noncitizen and then revokes the release based on changed circumstances, "the revocation would merely restart the 90-day removal period, not necessarily the presumptively reasonable six-month detention period under *Zadvydas*").

1 Even after the period of presumptive reasonableness has run, release is not
2 required under *Zadvydas* unless “there is *no* significant likelihood of removal in the
3 reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701 (emphasis added). As the
4 Supreme Court instructed, “the habeas court must ask whether the detention in question
5 exceeds a period reasonably necessary to secure removal. It should measure
6 reasonableness primarily in terms of the statute’s basic purpose, namely, *assuring the*
7 *alien’s presence at the moment of removal.*” *Id.* at 699 (emphasis added). In so holding,
8 the Supreme Court recognized that detention is presumptively reasonable pending
9 efforts to obtain travel documents, because the noncitizen’s assistance is often needed
10 to obtain the travel documents, and because a noncitizen who is subject to an imminent,
11 executable warrant of removal becomes a significant flight risk, especially if he or she
12 is aware that it is imminent.

13 The Supreme Court also instructed that detention could exceed six months: “This
14 6-month presumption, of course, does not mean that every alien not removed must be
15 released after six months. To the contrary, an alien may be held in confinement until it
16 has been determined that there is no significant likelihood of removal in the reasonably
17 foreseeable future.” *Id.* at 701. “After this 6-month period, once the alien provides good
18 reason to believe that there is no significant likelihood of removal in the reasonably
19 foreseeable future, the Government must respond with evidence sufficient to rebut that
20 showing.” *Id.* The Ninth Circuit has emphasized, “*Zadvydas* places the burden on the
21 alien to show, after a detention period of six months, that there is ‘good reason to believe
22 that there is no significant likelihood of removal in the reasonably foreseeable future.’”
23 *Pelich v. INS*, 329 F. 3d 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at
24 701); *see also Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2003).

25 Petitioners’ detention recently exceeded six months after their removal orders
26 became final on November 21, 2025. Nonetheless, there is still a significant likelihood
27 of their removal in the reasonably foreseeable future. ERO secured a flight for
28 Petitioners’ removal less than a month after their removal orders became final. Decl. at

¶¶ 13-14. It was only Petitioners' non-compliance with removal efforts which prevented their removal. Since then, ERO has continued its efforts to effectuate Petitioners' removal. *See* Decl. at ¶¶ 15-16, 18. During that time, Petitioners have told ERO they are still not willing to return to Turkiye. *See* Decl. at ¶ 17. In sum, Petitioners have been obstructing their own removal.

Petitioners rely on a footnote in *Diouf v. Mukasy* 542 F.3d 1222, 1231 n. 4 (9th Cir. 2008) for the proposition that the government bears the burden of showing the alien's "last act of noncompliance occurred in the last 90 days." *See* ECF No. 1 at 5-6. However, this is a misreading of the Court's decision. The footnote in *Diouf* states:

We decline to find in the absence of positive evidence that Diouf continued to refuse to cooperate after July 20. Though an inference of subsequent obstruction may not be unreasonable, it is the burden of the government to document the conduct that extends the removal period under §1231(a)(1)(C). Given what is at stake for the alien, we believe it inappropriate to allow the Government to satisfy its burden on inferences alone.

Diouf, 542 F.3d at 1231 n. 4 (citation omitted). There is simply no part of the Court's decision in *Diouf* that states the government must show a noncitizen has been uncompliant with their removal *in the last 90 days*. Nor did the Court in *Diouf* indicate there was evidence *Diouf* "later start[ed] complying with efforts to remove him" as Petitioners' state in their petition. ECF No. 1 at 6. Instead, the Court concluded the date of *Diouf's* last recorded act of noncompliance should be used as the benchmark for when the 90-day removal period should restart. *See Diouf*, 542 F.3d at 1230-31. Here, Petitioners' noncompliance with removal is ongoing so there is no benchmark for which the 90-day removal period should restart. Petitioners admit in their petition that they refused to get out of the vehicle on December 5, 2025 because "they believe[ed] that they would be killed if they were sent back to Turkiye." ECF No. 1 at 3. As of March 26, 2026, Petitioners informed ERO they are still not willing to return to Turkiye. Decl. at ¶ 17. Moreover, Petitioners have not indicated in their petition or to ERO that they are now willing to comply with removal efforts.

1 Petitioner's conduct in refusing to leave the United States is akin to an individual
2 who seeks to undermine and frustrate the removal process by failing to cooperate with
3 ICE. In addition, 8 U.S.C. §1231(a)(1)(C) provides that "the removal period shall be
4 extended beyond a period of 90 days and the alien may remain in detention during such
5 extended period if the alien ... conspires or acts to prevent the alien's removal subject
6 to an order of removal." In *Pelich v. I.N.S.*, 329 F.3d 1057 (9th Cir. 2003), the Ninth
7 Circuit analyzed section 1231(a)(1)(C) in the context of the government's detention of
8 a noncitizen past the presumptively reasonable six months recognized by *Zadvydas*
9 where the noncitizen refused to cooperate with the Immigration and Naturalization
10 Service's (INS) efforts to remove him:

11 There is significant evidence in the record that, unlike the detainees in
12 *Zadvydas*, Pelich himself is responsible for his plight. Pelich has
13 steadfastly refused to fill out a Polish passport application, which directly
14 impedes Poland's ability to determine whether Pelich qualifies for Polish
15 travel documents. In the January letter, the Polish consulate explicitly
16 reserved its determination of Pelich's citizenship status pending review of
17 the information requested in the letter, including the passport application.
18 Compounding the dilemma is the fact that Pelich has provided the INS
19 with conflicting information regarding his name, his parents' names, his
20 parents' birthplaces and residences, his birthplace and his nationality.

21 ... The risk of indefinite detention that motivated the Supreme Court's
22 statutory interpretation in *Zadvydas* does not exist when an alien is the
23 cause of his own detention. Unlike the aliens in *Zadvydas*, Pelich has the
24 "keys[to his freedom] in his pocket" and could likely effectuate his
25 removal by providing the information requested by the INS. ...

26 ...

27 Since Pelich falls within the category of non-cooperative detainee, he
28 cannot legitimately object to his continued detention when that very
detention is caused by his own conduct. Pelich could likely effectuate his
own removal (and free himself from detention) by providing the Polish
government with the requested information. It naturally follows that his
detention is not destined to be indefinite. To the contrary, Pelich's behavior
places him within that class of aliens properly detained pursuant to 8
U.S.C. § 1231(a)(1)(C).

1 *Pelich*, 329 F.3d at 1059–60.

2 The Ninth Circuit later held:

3 [C]onsistent with *Zadvydas* and *Pelich*, that when an alien refuses to
 4 cooperate fully and honestly with officials to secure travel documents from
 5 a foreign government, the alien cannot meet his or her burden to show there
 6 is no significant likelihood of removal in the reasonably foreseeable future.
 7 We cannot know whether an alien’s removal is a “remote possibility,” until
 8 the alien makes a full and honest effort to secure travel documents. A
 9 particular alien may have a very good chance of being removed, but if that
 10 alien is refusing to cooperate fully with officials to secure travel
 11 documents, neither the INS nor a court can sensibly ascertain the alien’s
 12 chance of removal. . . . We conclude that 8 U.S.C. § 1231(a)(1)(C),
 interpreted mindful of the concerns underlying *Zadvydas* and *Pelich*,
 authorizes the INS’s continued detention of a removable alien so long as
 the alien fails to cooperate fully and honestly with officials to obtain travel
 documents.

13 *Lema v. I.N.S.*, 341 F.3d 853, 856–57 (9th Cir. 2003); *see also Parra v. Perryman*,
 14 172 F.3d 954, 958 (9th Cir. 1999) (“A criminal alien who insists on postponing the
 15 inevitable has no constitutional right to remain at large during the ensuing delay, and
 16 the United States has a powerful interest in maintaining the detention in order to ensure
 17 that removal actually occurs”); *Ford v. Quarantillo*, 142 F. Supp. 2d 585, 588 (D.N.J.
 18 2001) (in deciding propriety of continued detention, the court determined whether the
 19 alien’s “continued detainment [was] the result of his conspiring or acting to prevent his
 20 removal”); *Moro v. I.N.S.*, 58 F. Supp. 2d 854, 859 (N.D. Ill. 1999) (8 U.S.C.
 21 § 1231(a)(1)(C) “places a burden of good-faith cooperation on aliens in securing their
 22 removal”); *Castillo-Gradis v. Turnage*, 752 F. Supp. 937, 941 (S.D. Cal. 1990)
 23 (requiring release “absent a showing of . . . delay caused by the alien’s own actions”)
 24 (citing *Dor v. District Director*, 891 F.2d 997, 1003 (2d Cir. 1989) (refusing to order
 25 release when petitioner was “largely responsible for the very delay of deportation of
 26 which he complain[ed]”)); *See Matevosyan v. Warden, Desert View Annex Detention*
 27 *Facility*, No. CV-24-01570-PA (DFM), 2025 WL 978153, at *7 (C.D. Cal. Feb. 24,
 28 2025), *adopted by* 2025 WL 975009 (C.D. Cal. March 31, 2025) (“Given Petitioner’s

1 lack of cooperation, he cannot satisfy his burden under Zadvydas to show that there is
2 no significant likelihood of removal in the reasonably foreseeable future.”). Petitioners
3 should not receive a windfall in the form of release simply because they refuse to
4 remove themselves from the United States.

5 To the extent Petitioners are challenging ICE’s decision to detain them for the
6 purpose of removal, such a challenge is precluded by statute. *See* 8 U.S.C. § 1252(g)
7 (“Except as provided in this section and *notwithstanding any other provision of law*
8 (statutory or nonstatutory), *including section 2241 of Title 28, or any other habeas*
9 *corpus provision*, and sections 1361 and 1651 of such title, no court shall have
10 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
11 decision or action by the Attorney General to commence proceedings, adjudicate cases,
12 or *execute removal orders* against any alien under this chapter.”) (emphasis added); *see*
13 *also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“There
14 was good reason for Congress to focus special attention upon, and make special
15 provision for, judicial review of the Attorney General’s discrete acts of “commenc[ing]
16 proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders”—which represent
17 the initiation or prosecution of various stages in the deportation process.”); *Limpin v.*
18 *United States*, 828 Fed. App’x 429 (9th Cir. 2020) (holding district court properly
19 dismissed under 8 U.S.C. § 1252(g) “because claims stemming from the decision to
20 arrest and detain an alien at the commencement of removal proceedings are not within
21 any court’s jurisdiction”).

22 Because Petitioners cannot meet their burden showing there is no good reason to
23 believe they will be removed in the reasonably foreseeable future and Petitioners are
24 primarily responsible for the delay to this point in their removal, this Court should deny
25 this petition.

26 ///

1 IV. CONCLUSION

2 For the foregoing reasons, Respondents respectfully request that the Court deny
3 the Petitioners' petition.

4 DATED: July 10, 2026

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