

1 **Kara Hartzler**
2 Bar No. 293751
3 Federal Defenders of San Diego, Inc.
4 225 Broadway, Suite 900
5 San Diego, California 92101-5030
6 Telephone: (619) 234-8467
7 Facsimile: (619) 687-2666
8 Kara_hartzler@fd.org
9 Attorneys for Petitioners

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

10 ZAFER SEN
11 EBRU SEN,

12 Petitioner,

13 v.

14 CHRISTOPHER LAROSE, Warden at
15 Otay Mesa Detention Center, et al.,

16 Respondents.

Civil Case No.: 26-cv-3499-RBM-SBC

**Reply to Response to Petition for
Habeas Corpus**

INTRODUCTION

In their petition for a writ of habeas corpus, Zafer and Ebru Sen explained that they had been detained for over six months since their order of removal to Turkiye became final. ECF No. 1. Although Petitioners did not comply with Respondents' efforts to remove them on December 5, 2025, they explained that under Ninth Circuit precedent, a noncitizen who has previously been noncooperative 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. Thus, they maintained that unless Respondents could provide affirmative evidence of their continued noncompliance in the last 90 days, this Court should order their release.

Respondents disagree. *See* ECF No. 6. But Respondents' Return concedes three critical things. First, Respondents admit that they have repeatedly tried and failed to schedule a flight for Petitioners in the last six months and have "no new updates on any available commercial or charter flights." Second, Respondents admit that Ninth Circuit law holds that the "last recorded act of noncompliance" is the "benchmark for when the 90-day removal period should restart." ECF No. 6 at 5. Third, the "last recorded act of noncompliance" that Respondents point to is Petitioners' alleged statement on March 24, 2026, which was over 90 days ago. Because the removal period thus expired on June 22, 2026, and Respondents cannot show a significant likelihood of removal in the reasonably foreseeable future, this Court should order Petitioners' immediate release.

ARGUMENT

In their Return, Respondents agree that Petitioners' detention "exceeded six months after their removal orders became final on November 21, 2025." ECF No. 6 at 4. But Respondents cite Petitioners' unwillingness to cooperate with a removal on December 5, 2025, and a statement Petitioners made on March 24, 2026, as evidence that they have been "obstructing their own removal." ECF No. 6 at 5. Respondents' three admissions defeat their own arguments.

I. Respondents have shown *no* likelihood of removal in the reasonably foreseeable future.

Apart from any issues of noncompliance, Respondents' own evidence shows that there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). To see this, the Court need look no further than the following statements in the Declaration of Christian A. Castellanos:

- On December 11, 2025, ICE "prepared Petitioners for possible removal via charter flight" but was told there was "no possible nomination on next available mission," ECF No. 6-1 at ¶ 15;
- On March 17, 2026, ICE again "prepared Petitioners for possible removal via charter flight" but was again told there was "no possible nomination on next available mission," ECF No. 6-1 at ¶ 16;
- On May 20, 2026, ICE claimed that a "removal mission was on the works" but then admitted there were "no new updates on any available commercial or charter flights," ECF No. 6-1 at ¶ 18;
- On June 24, 2026, ICE claimed that "discussions were being held between the Turkiye Embassy, RIO/HQ, ERO Attaches and Turkish officials" but identified no agreements or upcoming flights that resulted from those "discussions," ECF No. 6-1 at ¶ 19.

In other words, in the last seven months, Respondents have tried four times to schedule a flight to effectuate Petitioners' removal and failed each time. Respondents identify no upcoming flights, no itineraries, and no potential dates of removal. Nor do they claim to even have *permission* from the government of Turkiye to carry out a removal. Thus, this Court need not even consider the issues surrounding any alleged noncompliance, since Petitioners' removal is not significantly likely in the reasonably foreseeable future.

1 **II. As Respondents admit, the removal period runs from the “last**
 2 **recorded act of noncompliance.”**

3 In their Petition, Zafer and Ebru Sen showed that the Ninth Circuit’s
 4 decision in *Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir. 2008), held that the
 5 government bears the burden of demonstrating that the noncitizen’s last act of
 6 noncompliance occurred in the last 90 days. ECF No. 1 at 3-4. In *Diouf*, the Ninth
 7 Circuit had to determine “the effect of Diouf’s obstructionism on the calculation
 8 of the removal period”—specifically, “whether to toll the original 90-day clock or
 9 start a new clock following a period of obstruction.” 542 F.3d at 1231 & n.5.
 10 Opting for the latter approach, *Diouf* held that “the 90-day clock [sh]ould restart
 11 following the latest date of documented obstruction,” which was July 20, 2005.
 12 *Id.* at 1231. Thus, “Diouf’s removal period and mandatory detention under §
 13 1231(a)(2) lasted until October 18, 2005”—90 days after the “latest date of
 14 documented obstruction” on July 20. *Id.* Moreover, after the 90 days expired,
 15 *Diouf* held that “it is the burden of the government to document the conduct that
 16 extends the removal period under §1231(a)(1)(C).” *Id.* at 1231 n.4.

17 Respondents contend that “[t]here is simply no part of the Court’s decision
 18 in *Diouf* that states the government must show a noncitizen has been uncompliant
 19 with their removal in the last 90 days.” ECF No. 6 at 5. Rather, Respondents
 20 argue that *Diouf* held that “the date of Diouf’s last recorded act of noncompliance
 21 should be used as the benchmark for when the 90-day removal period should
 22 restart.” ECF No. 6 at 5.

23 But that is precisely what Petitioners argued—that the touchstone is
 24 whether “the last act of noncompliance occurred in the last 90 days” and that
 25 Respondents “bear the burden” to show this. ECF No. 1 at 3. Respondents do not
 26 appear to contest that this burden rests on them—nor can they, since “it is the
 27 burden of the government to document the conduct” that extends the removal
 28 period. *Diouf*, 542 F.3d at 1231 n.4. Instead, Respondents appear to argue that

1 “Petitioners’ noncompliance with removal is *ongoing* so there is no benchmark
2 for which the 90-day removal period should restart.” ECF No. 6 at 5 (emphasis
3 added). And Respondents claim that Petitioners’ noncompliance is “ongoing”
4 because “Petitioners have not indicated in their petition or to ERO that they are
5 now willing to comply with removal efforts.” ECF No. 6 at 5.

6 But requiring Petitioners to “indicate[]” in their petition that they are “now
7 willing to comply” is precisely what *Diouf* rejected. Rather, *Diouf* expressly
8 “decline[d] to find in the absence of positive evidence” that a “noncitizen’s past
9 noncooperation” could satisfy the government’s burden “on inferences alone.”
10 *Diouf*, 542 F.3d at 1231 n.4. Rather, *Diouf* held that “it is the burden of the
11 government to document the conduct that extends the removal period under §
12 1231(a)(1)(C).” *Id.*

13 Here, Respondents argue that “Petitioners have not indicated in their
14 petition or to ERO that they are now willing to comply with removal efforts.”
15 ECF No. 6 at 5. But that is precisely the “absence of positive evidence” of
16 compliance that *Diouf* held would *not* satisfy the government’s burden. *Diouf*,
17 542 F.3d at 1231 n.4. Put simply, Respondents cannot meet their burden to
18 document noncompliance by shifting the burden to Petitioners to affirmatively
19 claim that they are “willing to comply.” ECF No. 6 at 5.

20 **III. The “last recorded act of noncompliance” was on March 24, 2026—**
21 **over 90 days ago.**

22 Finally, Respondents document only two incidents of noncompliance—
23 Petitioners’ failure to board a flight on December 5, 2025, and their alleged
24 statement on March 24, 2026, that “they were still not willing to return to
25 Turkiye.” ECF No. 6-1 at ¶ 14, 17. Because both incidents occurred more than 90
26 days ago, the removal period has expired.

27 Respondents nevertheless argue that Petitioners’ noncompliance is
28 “ongoing,” presumably because Petitioners said on March 24, 2026, that they

1 were not willing to return to Turkiye. ECF No. 6 at 5. But as explained, this is
 2 precisely the “inference of subsequent obstruction” that would not satisfy
 3 Respondents’ burden to “document the conduct that extends the removal period”
 4 under *Diouf*. 542 F.3d at 1231 n.4. Under Respondents’ theory, for instance, the
 5 government could hold noncitizens indefinitely merely because there was a single
 6 incident of noncompliance months, years, or even decades ago. Not only would
 7 this be illogical, it would squarely violate *Zadvydas*, *Diouf*, and due process.

8 Because Respondents have provided no evidence of noncompliance within
 9 the last 90 days, the removal period has expired. And because the removal period
 10 has expired, and Respondents have provided no evidence that Petitioners’
 11 removal is significantly likely in the reasonably foreseeable future, *see* ECF No.
 12 6-1 at ¶ 15-19, this Court should grant the petition.

13 CONCLUSION

14 For these reasons, this Court should grant the petition and order that
 15 Respondents immediately release Zafer and Ebru Sen from custody.

16 Respectfully submitted,

17 Dated: July 13, 2026

18 s/ Kara Hartzler

19 Kara Hartzler
 20 Federal Defenders of San Diego, Inc.
 21 Attorneys for Mr. Sotolongo-Avila
 22 Email: kara_hartzler@fd.org
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