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

12 KUY SY,<sup>1</sup>

13 Petitioner,

14 v.

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

24 Respondents.

CIVIL CASE NO.: '26CV2538 TWR SBC

**Petition for Writ  
of  
Habeas Corpus**

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

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

**Table of Contents**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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25  
26  
27  
28

**I. Introduction ..... 1**

**II. Statement of Facts ..... 2**

**III. Legal Analysis..... 3**

    A. Claim One: ICE failed to comply with its own regulations when it re-detained Mr. Sy, violating his rights under applicable regulations and due process. .... 3

    B. Claim Two: Mr. Sy’s detention violates *Zadvydas* and 8 U.S.C. § 1231..... 5

**IV. This Court must hold an evidentiary hearing on any disputed facts. .... 8**

**V. Prayer for relief ..... 8**

1 **I. Introduction**

2 Mr. Sy and his family came from Cambodia to the United States in 1981. In  
3 2020, Mr. Sy was ordered removed. But Cambodia wouldn't accept him, and  
4 Mr. Sy was released on an order of supervision.

5 Mr. Sy remained on supervision for the next six years. He checked in with  
6 ICE without incident. But on March 31, 2026, when he went for a check in, ICE  
7 arrested him. Contrary to regulation, Mr. Sy does not believe that ICE gave him  
8 adequate notice of any changed circumstances that made his removal more likely.

9 Mr. Sy's detention violates his statutory and regulatory rights, *Zadvydas v.*  
10 *Davis*, 533 U.S. 678 (2001), and the Fifth Amendment. Courts in this district have  
11 agreed in similar circumstances as to both of Mr. Sy's claims. Specifically:

12 (1) *Regulatory and due process violations*: Mr. Sy must be released  
13 because ICE's failure to follow its own regulations about notice and an  
14 opportunity to be heard violate due process. *See, e.g., Constantinovici v. Bondi*,  
15 \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-2405-RBM (S.D. Cal. Oct. 10,  
16 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal.  
17 Sept. 15, 2025); *Sy v. Noem*, 2025 WL 2898977, No. 25-cv-2422-RBM-MSB, \*3-  
18 \*5 (S.D. Cal. Oct. 10, 2025); *Sun v. Noem*, 2025 WL 2800037, No. 25-cv-2433-  
19 CAB (S.D. Cal. Sept. 30, 2025); *Van Sy v. Noem*, 2025 WL 2770623, No. 25-cv-  
20 2334-JES, \*3 (S.D. Cal. Sept. 29, 2025); *Truong v. Noem*, No. 25-cv-02597-JES,  
21 ECF No. 10 (S.D. Cal. Oct. 10, 2025); *Khambounheuang v. Noem*, No. 25-cv-  
22 02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025) *Sphabmixay v. Noem*, 25-  
23 cv-2648-LL-VET (S.D. Cal. Oct. 30, 2025); *Sayvongsa v. Noem*, 25-cv-2867-  
24 AGS-DEB (S.D. Cal. Oct. 31, 2025); *Thammavongsa v. Noem*, 25-cv-2836-JO-  
25 AHG (S.D. Cal. Nov. 3, 2025); *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC  
26 (S.D. Cal. Nov. 7, 2025); *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D.  
27 Cal. Nov. 8, 2025) (all either granting temporary restraining orders releasing  
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1 noncitizens, or granting habeas petitions outright, due to ICE regulatory violations  
2 during recent re-detentions of released noncitizens previously ordered removed).

3 (2) *Zadvydas* violations: Mr. Sy must also be released under *Zadvydas*  
4 because—having proved unable to remove him for the last six years—the  
5 government cannot show that there is a “significant likelihood of removal in the  
6 reasonably foreseeable future.” *Id.* at 701. *See, e.g., Conchas-Valdez*, 2025 WL  
7 2884822, No. 25-cv-2469-DMS (S.D. Cal. Oct. 6, 2025); *Rebenok v. Noem*, No.  
8 25-cv-2171-TWR, ECF No. 13 (S.D. Cal. Sept. 25, 2025) (granting habeas  
9 petitions releasing noncitizens due to *Zadvydas* violations).

10 This Court should grant this habeas petition and issue appropriate  
11 injunctive relief on either ground.

## 12 **II. Statement of Facts**

13 Mr. Sy was born in Cambodia and came to the United States with his  
14 family in 1981 as a refugee. Declaration of Soulath Sy, Exhibit A (“Exh. A”) ¶ 1.  
15 They all became lawful permanent residents a year after they arrived. *Id.* at ¶ 1.

16 In 1997, Mr. Sy was convicted of a serious crime. *Id.* at ¶ 2. In January  
17 2020, an immigration judge ordered him removed on the basis of this conviction.  
18 *Id.* at ¶ 3.

19 After Mr. Sy was ordered removed, ICE tried to deport him to Cambodia.  
20 *Id.* at ¶ 4. However, Cambodia did not issue him travel documents. *Id.* at ¶ 4. ICE  
21 continued to detain him for about a month before releasing him on an order of  
22 supervision. *Id.* at ¶ 4. Since his release from ICE custody, Mr. Sy has not been  
23 convicted of any crimes. *Id.* at ¶ 5.

24 On March 15, 2026, Mr. Sy left his house to go to work. *Id.* at ¶ 6. But after  
25 he got in his car, ICE agents surrounded him and arrested him. *Id.* at ¶ 6. They  
26 took Mr. Sy into custody and then released him and told him to check in on  
27 March 31, 2026. *Id.* at ¶ 6. When he went to this check in appointment on March  
28 31, 2026, ICE arrested him and has held him in custody ever since. *Id.* at ¶ 6.

1 **III. Legal Analysis.**

2 This Court should grant this petition and order Mr. Sy’s immediate release.  
3 ICE failed to follow its own regulations requiring changed circumstances before  
4 re-detention, as well as a chance to promptly contest a re-detention decision. And  
5 *Zadvydas v. Davis* holds that immigration statutes do not authorize the  
6 government to detain immigrants like Mr. Sy, for whom there is “no significant  
7 likelihood of removal in the reasonably foreseeable future.” 533 U.S. 678, 701  
8 (2001).

9 **A. Claim One: ICE failed to comply with its own regulations when**  
10 **it re-detained Mr. Sy, violating his rights under applicable**  
11 **regulations and due process.**

12 Two regulations establish the process due to someone who is re-detained in  
13 immigration custody following a period of release. 8 C.F.R. § 241.4(l) applies to  
14 all re-detentions, generally. 8 C.F.R. § 241.13(i) applies as an added, overlapping  
15 framework to persons released upon good reason to believe that they will not be  
16 removed in the reasonably foreseeable future, as Mr. Sy was. *See Nguyen v.*  
17 *Noem*, 2025 WL 2898977, No. 25-CV-2422-RBM-MSB, \*3–\*5 (S.D. Cal. Oct.  
18 10, 2025) (explaining this regulatory framework and granting a habeas petition for  
19 ICE’s failure to follow these regulations for a refugee of Cambodia who entered  
20 the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025  
21 WL 2646165 at \*2 (same as to an Iranian national).

22 These regulations permit an official to “return [the person] to custody” only  
23 when the person “violate[d] any of the conditions of release,” 8 C.F.R.  
24 §§ 241.13(i)(1), 241.4(l)(1), or, in the alternative, if an appropriate official  
25 “determines that there is a significant likelihood that the alien may be removed in  
26 the reasonably foreseeable future,” and makes that finding “on account of  
27 changed circumstances,” 8 C.F.R. § 241.13(i)(2).

28 No matter the reason for re-detention, the re-detained person is entitled to  
certain procedural protections. For one, “[u]pon revocation,’ the noncitizen ‘will

1 be notified of the reasons for revocation of his or her release or parole.” *Sy*, 2025  
2 WL 2898977 at \*3, \*4 (quoting §§ 241.4(l)(1), 241.13(i)(3)). Further, the person  
3 “will be afforded an initial informal interview promptly after his or her return’ to  
4 be given ‘an opportunity to respond to the reasons for revocation stated in the  
5 notification.” *Id.*

6 In the case of someone released under § 241.13(i), the regulations also  
7 explicitly require the interviewer to allow the re-detained person to “submit any  
8 evidence or information that he or she believes shows there is no significant  
9 likelihood he or she be removed in the reasonably foreseeable future, or that he or  
10 she has not violated the order of supervision.” § 241.13(i)(3).

11 ICE is required to follow its own regulations. *United States ex rel. Accardi*  
12 *v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150,  
13 1162 (9th Cir. 2004) (“The legal proposition that agencies may be required to  
14 abide by certain internal policies is well-established.”). A court may review a re-  
15 detention decision for compliance with the regulations, and “where ICE fails to  
16 follow its own regulations in revoking release, the detention is unlawful and the  
17 petitioner’s release must be ordered.” *Rokhfirooz*, 2025 WL 2646165 at \*4  
18 (collecting cases); *accord Sy*, 2025 WL 2898977 at \*5. Here, ICE did not follow  
19 its regulatory prerequisites to re-detention.

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1 Numerous courts have released re-detained immigrants after finding that  
2 ICE failed to comply with applicable regulations this summer and fall. These have  
3 included courts in this district,<sup>2</sup> as well as courts outside this district.<sup>3</sup>

4 “[B]ecause officials did not properly revoke petitioner’s release pursuant to  
5 the applicable regulations, that revocation has no effect, and [Mr. Sy] is entitled to  
6 his release (subject to the same Order of Supervision that governed his most  
7 recent release).” *Liu*, 2025 WL 1696526, at \*3.

8 **B. Claim Two: Mr. Sy’s detention violates *Zadvydas* and 8 U.S.C.**  
9 **§ 1231.**

10 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered  
11 a problem affecting people like Mr. Sy: Federal law requires ICE to detain an  
12 immigrant during the “removal period,” which typically spans the first 90 days  
13 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-

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14 <sup>2</sup> *Constantinovici v. Bondi*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 2898985, No. 25-cv-  
15 2405-RBM (S.D. Cal. Oct. 10, 2025); *Rokhfirooz v. Larose*, No. 25-cv-2053-  
16 RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025); *Sy v. Noem*, 2025 WL  
17 2898977, No. 25-cv-2422-RBM-MSB, \*3-\*5 (S.D. Cal. Oct. 10, 2025); *Sun v.*  
18 *Noem*, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); *Van*  
19 *Tran v. Noem*, 2025 WL 2770623, No. 25-cv-2334-JES, \*3 (S.D. Cal. Sept. 29,  
20 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10,  
21 2025); *Khambounheuang v. Noem*, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D.  
22 Cal. Oct. 9, 2025); *Truong v. Noem*, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal.  
23 Oct. 10, 2025); *Sphabmixay v. Noem*, 25-cv-2648-LL-VET (S.D. Cal. Oct. 30,  
24 2025); *Sayvongsa v. Noem*, 25-cv-2867-AGS-DEB (S.D. Cal. Oct. 31, 2025);  
25 *Thammavongsa v. Noem*, 25-cv-2836-JO-AHG (S.D. Ca. Nov. 3, 2025) (same);  
26 *Phakeokoth v. Noem*, 25-cv-2817-RBM-SBC (S.D. Cal. Nov. 7, 2025);  
27 *Soryadvongsa v. Noem*, 25-cv-2663-AGS-DDL (S.D. Cal. Nov. 8, 2025).

28 <sup>3</sup> *Grigorian*, 2025 WL 2604573; *Delkash v. Noem*, 2025 WL 2683988; *Cesay v.*  
*Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025); *You v. Nielsen*, 321 F.  
Supp. 3d 451, 463 (S.D.N.Y. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383, 387  
(D. Mass. 2017); *Zhu v. Genalo*, No. 1:25-CV-06523 (JLR), 2025 WL 2452352,  
at \*7-9 (S.D.N.Y. Aug. 26, 2025); *M.S.L. v. Bostock*, No. 6:25-CV-01204-AA,  
2025 WL 2430267, at \*10-12 (D. Or. Aug. 21, 2025); *Escalante v. Noem*, No.  
9:25-CV-00182-MJT, 2025 WL 2491782, at \*2-3 (E.D. Tex. July 18, 2025);  
*Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at \*4 (E.D.  
Cal. July 16, 2025); *Liu*, 2025 WL 1696526, at \*2; *M.Q. v. United States*, 2025  
WL 965810, at \*3, \*5 n.1 (S.D.N.Y. Mar. 31, 2025).

1 day removal period expires, detention becomes discretionary—ICE may detain  
2 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,  
3 this scheme would not lead to excessive detention, as removal happens within  
4 days or weeks. But some detainees cannot be removed quickly. Perhaps their  
5 removal “simply require[s] more time for processing,” or they are “ordered  
6 removed to countries with whom the United States does not have a repatriation  
7 agreement,” or their countries “refuse to take them,” or they are “effectively  
8 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,  
9 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained  
10 immigrants can find themselves trapped in detention for months, years, decades,  
11 or even the rest of their lives. If federal law were understood to allow for  
12 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional  
13 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the  
14 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.  
15 *Id.* at 689.

16 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to  
17 detain an immigrant for 180 days after his or her removal order becomes final.  
18 After those 180 days have passed, the immigrant must be released unless his or  
19 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six  
20 months have passed, the petitioner must only make a prima facie case for relief—  
21 there is “good reason to believe that there is no significant likelihood of removal  
22 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the  
23 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*

24 Further, even before the 180 days have passed, the immigrant must still be  
25 released if he *rebut*s the presumption that his detention is reasonable. *See, e.g.*,  
26 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases  
27 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*  
28 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, \*6 (D. Md. Sept. 8, 2025)

1 (finding the presumption rebutted for a person who was immediately released  
2 after being ordered removed and, years later, re-detained for less than six months).

3 Mr. Sy can make all the threshold showings needed to prove his *Zadvydas*  
4 claim and shift the burden to the government.

5 First, the six-month grace period has long since ended. The *Zadvydas* grace  
6 period is linked to the date the final order of removal is issued. It lasts for “*six*  
7 *months* after a final order of removal—that is, *three months* after the statutory  
8 removal period has ended.” *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th  
9 Cir. 2001); *see also* 8 U.S.C. § 1231(a)(1)(B) (linking the statutory removal  
10 period to issuance of the final order and other proceedings associated with the  
11 original removal order).

12 Here, Mr. Sy’s order of removal was entered in January 2020. Exh. A at  
13 ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.  
14 § 1231(a)(1)(B). The *Zadvydas* grace period thus expired in July 2020, three  
15 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL  
16 1678501, No. 25-cv-4108(EP), \*2–\*3.<sup>4</sup> Accordingly, there is good reason to

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18 <sup>4</sup> The government has sometimes argued that release and rearrest resets the six-  
19 month grace period completely, taking the clock back to zero. “Courts . . . broadly  
20 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at \*7 n.6  
21 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL  
22 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-  
23 LB, 2018 WL 1876907, at \*6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

24 It has also sometimes argued that rearrest creates a new three-month grace  
25 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with  
26 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV  
27 16-2600 (JLL), 2016 WL 5791407, at \*2 (D.N.J. Oct. 3, 2016). “Pursuant to the  
28 statute, the removal period, and in turn the [six-month] presumptively reasonable  
period, begins from the latest of ‘the date the order of removal becomes  
administratively final,’ the date of a reviewing court’s final order where the  
removal order is judicially removed and that court orders a stay of removal, or the  
alien’s release from detention or confinement where he was detained for reasons  
other than immigration purposes at the time of his final order of removal.” *Id.*  
None of these statutory starting points have anything to do with whether or when  
an immigrant is detained. *See id.* Because the statutorily-defined removal period

1 believe that his removal is not significantly likely in the reasonably foreseeable  
2 future.

3 That is precisely what Judge Sabraw concluded in a recent similar case. In  
4 *Baythavong v. Noem*, 26-cv-1138-DMS-MSB, Dkt. 7 at 2–3 (S.D. Cal. Apr. 6,  
5 2026), Judge Sabraw explained that “Respondents failed to cite any authority to  
6 support their position that the presumptively reasonable period of detention only  
7 applies when the individual is actually in detention, i.e., that the nearly seven-year  
8 period in which Petitioner was on supervision is not relevant to the *Zadyvdas*  
9 argument.” *Id.* “On the contrary,” Judge Sabraw explained, “courts have held the  
10 presumptively reasonable six-month period of detention does not stop and re-start  
11 if the individual is released and later re-detained.” *Id.* (collecting cases). Finding  
12 that “the presumptively reasonable period for Petitioner’s detention expired 6  
13 months after his removal order was issued, or on July 15, 2019,” and Respondents  
14 had shown only that they submitted a travel document request, Judge Sabraw  
15 granted the petition and ordered release. *Id.* at 3.

16 Here, as in *Baythavong*, “the presumptively reasonable period for [Mr.  
17 Sy’s] detention expired 6 months after his removal order was issued, or on July  
18 [2020].” Thus, this Court should grant the petition and order Mr. Sy released.

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

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

23 **V. Prayer for relief**

24 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 25 1. Order and enjoin Respondents to immediately release Petitioner from  
26 custody;

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28 has nothing to do with release and rearrest, releasing and rearresting the  
immigrant cannot reset the removal period.

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2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C. § 1231(a)(6) unless and until Respondents obtain a travel document for his removal;
3. Enjoin Respondents from re-detaining Petitioner without first following all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures;
4. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 21, 2026

s/ Kara Hartzler  
Federal Defenders of San Diego, Inc.  
Attorneys for Mr. Sy  
Email: kara\_hartzler@fd.org

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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](mailto:USACAS.Habeas2241@usdoj.gov) when I receive the court-stamped copy.

Dated: April 21, 2026

/s/ Kara Hartzler  
Kara L. Hartzler