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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OBDULIO NOE LOPEZ,

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-2746-JES-AHG

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

In his amended petition, Petitioner Obdulio Noe Lopez argued that his removal proceedings had been terminated because he was eligible for relief under the Nicaraguan Adjustment and Central American Relief Act (NACARA). ECF 6. However, in their petition, Respondents provide additional information and evidence showing that in 2013, Mr. Lopez was denied NACARA and received a final order of removal under a different "A-number," though he was not physically removed. *See* ECF 9. Then on November 17, 2025, when Respondents detained Mr. Lopez, they placed him in removal proceedings under a different "A-number," causing the immigration judge to terminate his recent removal proceedings and explain that "[a] Notice to Appear under a separate A number should not have been issued by DHS and should not have been accepted by EOIR." ECF 9, Exhibit 5, Order of Immigration Judge, April 13, 2026.

Petitioner acknowledges that Respondents' additional information and evidence change the posture of this case. However, Respondents' evidence establishes an alternative basis for relief. Although Mr. Lopez is not eligible for NACARA, he has had a final order of removal since 2013 and thus *is* eligible for relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Respondents will likely argue that Mr. Lopez lacks the necessary time in detention for a *Zadvydas* claim. That is incorrect for two reasons.

First, Mr. Lopez has been in detention since November 17, 2025, and thus has been detained for over six months. Importantly, Respondents' error in issuing Mr. Lopez a new "A-number" and placing him in removal proceedings did not result in a new removal order. Rather, the IJ *terminated* removal proceedings. ECF 6, Exh. 5. This means that the operative final order of removal has always been May 21, 2013, when the BIA dismissed his appeal. ECF 6, Exh. 3. Because it has been 13 years since his final order of removal, and Mr. Lopez has been detained for over six months *after* that final order of removal, he has the necessary time in detention for a *Zadvydas* claim.

Second, the plain language of the statute states that the six-month removal period begins on the date of the final order of removal regardless of the length of time the individual has spent in detention. That is precisely what Judge Sabraw recently held in held in *Baythavong v. Noem*, 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026).

The Immigration and Nationality Act states that the government "shall detain" a noncitizen ordered removed during the 90-day "removal period." 8 U.S.C. 1231(a)(2)(A). This removal period "begins on the latest of the following":

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. 1231(a)(1)(B). Here, neither (ii) nor (iii) apply because Mr. Lopez's removal order is not being "judicially reviewed" and he is being detained "under an immigration process." Because Mr. Lopez's order of removal became "administratively final" on May 21, 2013, the plain language of the statute mandates a finding that the six-month removal period elapsed over a decade ago, in November 2013. *See also* 8 C.F.R. § 235.3(b)(7) (stating that an expedited removal order that is "reviewed and approved by the appropriate supervisor" is "considered final").

That is precisely what Judge Sabraw recently held in *Baythavong v. Noem*, 26-cv-1138-DMS-MSB (S.D. Cal. Apr. 6, 2026). There, the noncitizen was ordered removed and then released on an order of supervision for approximately seven years. When ICE redetained him, Judge Sabraw noted that "Respondents failed to cite any authority to support their position that the presumptively reasonable period of detention only applies when the individual is actually in

detention, i.e., that the nearly seven-year period in which Petitioner was on supervision is not relevant to the *Zadyvdas* argument." *Id.* at *2. "On the contrary," Judge Sabraw explained, "courts have held the presumptively reasonable six-month period of detention does not stop and re-start if the individual is released and later re-detained." *Id.* at *2–3 (citing cases). Thus, the six-month period here has elapsed.

What's more, Respondents have not shown that Mr. Lopez's removal is significantly likely in the reasonably foreseeable future. In their return, Respondents do not claim that they have a travel document for Mr. Lopez—only that "ICE is seeking to execute Petitioner's removal order." ECF 9 at 3. Additionally, Mr. Lopez has not been to Guatemala in 36 years, and Respondents have not shown that Guatemala acknowledges he is a citizen. ECF 9.

For these reasons, this Court should grant Mr. Lopez's petition under *Zadvydas* and order his immediate release.

Respectfully submitted,

Dated: May 20, 2026

s/ Kara Hartzler

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