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

11 AWET KIBROM MICHAEL,¹

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
 15 the Department of Homeland Security,
 16 TODD BLANCHE, Acting Attorney
 17 General, TODD M. LYONS, Acting
 18 Director, Immigration and Customs
 19 Enforcement, JESUS ROCHA, Acting
 20 Field Office Director, San Diego Field
 21 Office, JEREMY CASEY, Warden at
 22 Imperial Regional Detention Facility,

23 Respondents.

CIVIL CASE NO.: '26CV2867 JLS JLB

**Petition for Writ
 of
 Habeas Corpus**

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

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 28 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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 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. **Error! Bookmark not defined.**

 B. Claim Two: Mr. Sy’s detention violates *Zadvydas* and 8 U.S.C. § 1231..... **Error! Bookmark not defined.**

IV. This Court must hold an evidentiary hearing on any disputed facts. 4

V. Prayer for relief 4

1 **I. Introduction**

2 Awet Kibrom Michael was born in Eritrea and entered the United States in
3 2024 to seek asylum on the basis of his Pentecostal religious beliefs. An
4 immigration judge disagreed and ordered him removed on December 15, 2025.
5 Mr. Michael did not appeal. In the nearly five months since his removal order,
6 Respondents have not been able to remove him to Eritrea. Because his continued
7 detention is unlawful under *Zadvydas v. Davis*, 533 U.S. 678 (2001), this Court
8 should order his release.

9 **II. Statement of Facts**

10 Mr. Michael was born in what is now Eritrea. Declaration of Awet Kibrom
11 Michael, Exhibit A (“Exh. A”) at ¶ 1. He faced persecution there as a member of
12 the Pentecostal religion and fled to seek safety. *Id.* at ¶ 1.

13 Mr. Michael entered the United States on December 29, 2024, through the
14 southern border to seek asylum. *Id.* at ¶ 2. He was taken into custody and has been
15 detained ever since. *Id.* at ¶ 2.

16 Mr. Michael passed his credible fear interview and was placed in removal
17 proceedings. *Id.* at ¶ 3. However, an immigration judge ordered him removed on
18 December 15, 2026. *Id.* at ¶ 3. He did not appeal this decision. *Id.* at ¶ 3.

19 In the five months since he was ordered removed, Mr. Michael has
20 cooperated with ICE and signed all the forms they asked him to. *Id.* at ¶ 4.
21 However, ICE has not been able to deport him. *Id.* at ¶ 4. They have never told
22 him they have a travel document or when he will be leaving. *Id.* at ¶ 4.

23 **III. Legal Analysis**

24 This Court should grant this petition and order Mr. Michael’s immediate
25 release. *Zadvydas v. Davis* holds that immigration statutes do not authorize the
26 government to detain immigrants like Mr. Michael, for whom there is “no
27 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
28 678, 701 (2001).

1 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court considered
2 a problem affecting people like Mr. Sy: Federal law requires ICE to detain an
3 immigrant during the “removal period,” which typically spans the first 90 days
4 after the immigrant is ordered removed. 8 U.S.C. § 1231(a)(1)-(2). After that 90-
5 day removal period expires, detention becomes discretionary—ICE may detain
6 the migrant while continuing to try to remove them. *Id.* § 1231(a)(6). Ordinarily,
7 this scheme would not lead to excessive detention, as removal happens within
8 days or weeks. But some detainees cannot be removed quickly. Perhaps their
9 removal “simply require[s] more time for processing,” or they are “ordered
10 removed to countries with whom the United States does not have a repatriation
11 agreement,” or their countries “refuse to take them,” or they are “effectively
12 ‘stateless’ because of their race and/or place of birth.” *Kim Ho Ma v. Ashcroft*,
13 257 F.3d 1095, 1104 (9th Cir. 2001). In these and other circumstances, detained
14 immigrants can find themselves trapped in detention for months, years, decades,
15 or even the rest of their lives. If federal law were understood to allow for
16 “indefinite, perhaps permanent, detention,” it would pose “a serious constitutional
17 threat.” *Zadvydas*, 533 U.S. at 699. In *Zadvydas*, the Supreme Court avoided the
18 constitutional concern by interpreting § 1231(a)(6) to incorporate implicit limits.
19 *Id.* at 689.

20 *Zadvydas* held that § 1231(a)(6) presumptively permits the government to
21 detain an immigrant for 180 days after his or her removal order becomes final.
22 After those 180 days have passed, the immigrant must be released unless his or
23 her removal is reasonably foreseeable. *Zadvydas*, 533 U.S. at 701. After six
24 months have passed, the petitioner must only make a prima facie case for relief—
25 there is “good reason to believe that there is no significant likelihood of removal
26 in the reasonably foreseeable future.” *Id.* Then the burden shifts to “the
27 Government [to] respond with evidence sufficient to rebut that showing.” *Id.*
28

1 Further, even before the 180 days have passed, the immigrant must still be
 2 released if he *rebutts* the presumption that his detention is reasonable. *See, e.g.,*
 3 *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1092 (C.D. Cal. 2020) (collecting cases
 4 on rebutting the *Zadvydas* presumption before six months have passed); *Zavvar v.*
 5 *Scott*, Civil No. 25-2104-TDC, 2025 WL 2592543, *6 (D. Md. Sept. 8, 2025)
 6 (finding the presumption rebutted for a person who was immediately released
 7 after being ordered removed and, years later, re-detained for less than six months).

8 Mr. Michael can make all the threshold showings needed to prove his
 9 *Zadvydas* claim and shift the burden to the government.

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

17 Here, Mr. Michael’s order of removal was entered on December 15, 2025.
 18 Exh. A at ¶ 3. Accordingly, his 90-day removal period began then. 8 U.S.C.
 19 § 1231(a)(1)(B). The *Zadvydas* grace period thus expires on June 15 2026, three
 20 months after the removal period ended. *See, e.g., Tadros v. Noem*, 2025 WL
 21 1678501, No. 25-cv-4108(EP), *2–*3.² Accordingly, there is good reason to
 22

23 ² The government has sometimes argued that release and rearrest resets the six-
 24 month grace period completely, taking the clock back to zero. “Courts . . . broadly
 25 agree” that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6
 26 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL
 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen*, No. 17-CV-06785-
 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases).

27 It has also sometimes argued that rearrest creates a new three-month grace
 28 period. As a court explained in *Bailey v. Lynch*, that view cannot be squared with
 the statutory definition of the removal period in 8 U.S.C. § 1231(a)(1)(B). No. CV
 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016). “Pursuant to the

1 believe that his removal is not significantly likely in the reasonably foreseeable
2 future. Thus, this Court should grant the petition and order Mr. Michael released.

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

4 Resolution of a prolonged-detention habeas petition may require an
5 evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009).

6 Mr. Sy hereby requests such a hearing on any material, disputed facts.

7 **V. Prayer for relief**

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

- 9 1. Order and enjoin Respondents to immediately release Petitioner from
10 custody;
- 11 2. Enjoin Respondents from re-detaining Petitioner under 8 U.S.C.
12 § 1231(a)(6) unless and until Respondents obtain a travel document for
13 his removal;
- 14 3. Order all other relief that the Court deems just and proper.

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16 Respectfully submitted,

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18 Dated: May 6, 2026

s/ Kara Hartzler

Federal Defenders of San Diego, Inc.

Attorneys for Mr. Michael

Email: kara_hartzler@fd.org

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23 statute, the removal period, and in turn the [six-month] presumptively reasonable
24 period, begins from the latest of ‘the date the order of removal becomes
25 administratively final,’ the date of a reviewing court's final order where the
26 removal order is judicially removed and that court orders a stay of removal, or the
27 alien's release from detention or confinement where he was detained for reasons
28 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
has nothing to do with release and rearrest, releasing and rearresting the
immigrant cannot reset the removal period.

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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: May 6, 2026

/s/ Kara Hartzler
Kara L. Hartzler