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

L.J.,

Petitioner,

v.

CHRISTOPHER J. LAROSE,
Warden, Otay Mesa Detention Center;
et al.,

Respondents.

Case No.: 25-cv-1317-GPC-JLB

**RETURN IN OPPOSITION
TO PETITION FOR WRIT
OF HABEAS CORPUS**

INTRODUCTION

Petitioner requests that this Court release her from Immigration and Customs Enforcement (ICE) custody because her detention is unlawfully prolonged and unconstitutional. The Embassy of Mozambique in Washington, D.C., issued Petitioner's travel document on May 28, 2025. Petitioner's habeas petition should be denied to allow ICE additional time to effect her removal. Petitioner has not demonstrated that there isn't a significant likelihood of removal in the reasonably foreseeable future. Delay alone does not satisfy her burden. ICE anticipates that Petitioner will be removed as expeditiously as possible now that her travel document has been issued.

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FACTUAL BACKGROUND

Petitioner is a native and citizen of Mozambique. Am. Pet., ECF No. 2 ¶ 22. On or about September 1, 2016, Petitioner arrived at the San Ysidro Port of Entry in San Ysidro, California, seeking to apply for admission to the United States. Exhibit 1 (Notice to Appear).¹ Petitioner did not possess legal documentation to be in or enter the United States. The U.S. Department of Homeland Security (DHS) placed Petitioner in removal proceedings and charged her as inadmissible under 8 U.S.C. § 1182(a)(7), as an immigrant not in possession of a valid entry document. *Id.* On June 14, 2017, an immigration judge ordered Petitioner removed to Mozambique. Pet'r's Ex. 3 at 8, ECF No. 1-4. Petitioner appealed that order to the Board of Immigration Appeals (BIA). *See generally* Pet'r's Ex. 5, ECF No. 1-6. On June 21, 2017, Petitioner was released from ICE custody on her own recognizance. Exhibit 2 (Order of Release on Recognizance). As a condition for her release, Petitioner agreed to surrender for removal from the United States if so ordered. *Id.* The BIA dismissed Petitioner's appeal on February 1, 2019. Pet'r's Ex. 5 at 4, ECF No. 1-6. Thus, her removal order became final on February 1, 2019. *See* 8 C.F.R. § 1241.1(a) (a removal order becomes final "upon dismissal of an appeal by the Board of Immigration Appeals").

ICE and the DHS routinely work with the Embassy of Mozambique in Washington, D.C., to acquire the necessary travel documents to effectuate the removal and deportation of noncitizens to Mozambique. Declaration of Christopher L. Bergman (Bergman Decl.) ¶ 14. Between 2019 and 2024, ICE successfully removed ten noncitizens to Mozambique. Bergman Decl. ¶ 16. This year, ICE has successfully removed three noncitizens to Mozambique. Bergman Decl. ¶ 16.

On October 30, 2024, ICE issued a warrant to take Petitioner into custody and remove her from the United States based on the final removal order. Exhibit 3 (Warrant for Arrest).

¹ The attached exhibits are true copies, with minor redactions of private information, of documents obtained from ICE counsel.

1 Petitioner was served with the warrant and taken into ICE custody the same day.² Bergman
2 Decl. ¶ 7. On November 8, 2024, Petitioner requested a custody redetermination from an
3 immigration judge. Exhibit 4 (Order of IJ on In Custody Redetermination Proceedings). The
4 immigration judge denied Petitioner's request for bond because the court found it did not
5 have jurisdiction to issue a bond in Petitioner's case. *Id.* Petitioner did not appeal the
6 immigration judge's order. Bergman Decl. ¶ 8.

7 On December 11, 2024, ICE Enforcement and Removal Operations (ERO) provided
8 Petitioner with an application for a travel document for her to complete. Bergman Decl. ¶ 9.
9 Petitioner told ERO officers that she gave the application to her attorney on December 18,
10 2024. Bergman Decl. ¶ 9. ERO contacted Petitioner's attorney on December 23, 2024, and
11 January 9, 2025, regarding the status of the travel document application. Bergman Decl.
12 ¶ 10. Petitioner's attorney did not provide any of the requested information for Petitioner's
13 travel document application. Bergman Decl. ¶ 10. On February 27, 2025, ERO requested
14 Petitioner's A-File from the National Record Center. Bergman Decl. ¶ 12. On April 8, 2025,
15 ERO obtained Petitioner's A-File, which included her expired passport. Bergman Decl.
16 ¶ 12. ERO used Petitioner's expired passport to complete Petitioner's travel document
17 request. Bergman Decl. ¶ 12. On April 24, 2025, ERO San Diego field office submitted a
18 travel document request for Petitioner to the Embassy of Mozambique in Washington, D.C.
19 Bergman Decl. ¶ 13. The Embassy of Mozambique issued Petitioner's travel document on
20 May 28, 2025, and it is being mailed to the ERO San Diego field office. Bergman Decl.
21 ¶ 15.

22 Now that the Embassy of Mozambique has issued a travel document for Petitioner,
23 ICE will expeditiously finalize travel arrangements and effectuate Petitioner's removal.
24 Bergman Decl. ¶ 17.

25
26 ² The undersigned counsel for Respondents has obtained and reviewed Petitioner's medical
27 records from ICE counsel, which reflect Petitioner has had multiple visits with the medical
28 team and received treatment while in custody. If such records would aid the Court in
adjudicating the Petition, Respondent can file Petitioner's medical records under seal.

1 **ARGUMENT**

2 **A. There is a significant likelihood of Petitioner's removal to Mozambique in**
3 **the reasonably foreseeable future.**

4 The Immigration and Nationality Act (INA) governs the detention and release of
5 noncitizens during and following their removal proceedings. *See Johnson v. Guzman*
6 *Chavez*, 594 U.S. 523, 527 (2021); 8 U.S.C. ch. 12. The general detention periods are
7 referred to as “pre-order” (meaning before the entry of a final order of removal) and “post-
8 order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226
9 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

10 A noncitizen ordered removed must be detained for 90 days pending the
11 government's efforts to secure the noncitizen's removal. *See* 8 U.S.C. § 1231(a)(2) (the
12 Attorney General “shall detain” the noncitizen during the 90-day removal period); *see also*
13 *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). The statute “limits an alien's post-removal
14 detention to a period reasonably necessary to bring about the alien's removal from the
15 United States” and does not permit “indefinite detention.” *Zadvydas*, 533 U.S. at 689. The
16 Supreme Court has held that a six-month period of post-removal detention constitutes a
17 “presumptively reasonable period of detention.” *Id.* at 683; *see also Clark v. Martinez*,
18 543 U.S. 371, 377 (2005) (“[T]he presumptive period during which the detention of an alien
19 is reasonably necessary to effectuate his removal is six months”); *Lema v. I.N.S.*,
20 341 F.3d 853, 856 (9th Cir. 2003).

21 Release is not mandated after the expiration of the six-month period unless “there is
22 no significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*,
23 533 U.S. at 701; *see also Clark*, 543 U.S. at 377. “[O]nce removal is no longer foreseeable,
24 continued detention is no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.
25 Ultimately, “an alien can be held in confinement until it has been determined that there is
26 no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The Ninth
27 Circuit has emphasized, “*Zadvydas* places the burden on the alien to show, after a detention
28 period of six months, that there is ‘good reason to believe that there is no significant

1 likelihood of removal in the reasonably foreseeable future.” *Pelich v. I.N.S.*, 329 F. 3d
2 1057, 1059 (9th Cir. 2003) (quoting *Zadvydas*, 533 U.S. at 701); *see also Xi v. INS*, 298
3 F.3d 832, 840 (9th Cir. 2003). The alien must make such a showing to shift the burden to
4 the government.

5 [O]nce the alien provides good reason to believe that there is no significant
6 likelihood of removal in the reasonably foreseeable future, the Government
7 must respond with evidence sufficient to rebut the showing. And for the
8 detention to remain reasonable, as the period of prior post-removal
9 confinement grows, what counts as the “reasonably foreseeable future”
conversely would have to shrink.

10 *Zadvydas*, 533 U.S. at 701.

11 Petitioner’s case does not implicate the impossibility of repatriation in *Zadvydas*.
12 *Zadvydas* was stateless and both countries to which he potentially could have been deported
13 (the country where he was born and the country of which his parents were citizens) refused
14 to accept him because he was not a citizen. *See id.* at 684. The deportation of the other
15 petitioner in *Zadvydas*, Ma, was prevented because there was no repatriation agreement at
16 that time between the United States and Cambodia. *Id.* at 685. In contrast, ICE has
17 successfully executed removals to Mozambique, Petitioner’s country of citizenship,
18 throughout the past six years. Bergman Decl. ¶ 16; ICE Annual Report Fiscal Year 2024,
19 at 100 (Dec. 19, 2024), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2024.pdf>.

20 Petitioner’s removal period commenced on February 1, 2019, while Petitioner was
21 released from custody. *See* 8 C.F.R. § 1241.1(a) (a removal order becomes final “upon
22 dismissal of an appeal by the Board of Immigration Appeals”). Once Petitioner was taken
23 into ICE custody on October 30, 2024, ICE worked to acquire the necessary information to
24 request a travel document from the Embassy of Mozambique and execute Petitioner’s
25 removal. *See* Bergman Decl. ¶¶ 7, 9–10, 12–13. Most recently, on May 28, 2025, the
26 Embassy of Mozambique in Washington, D.C., issued a travel document for Petitioner and
27 now all that remains is to secure travel arrangements to Mozambique for Petitioner’s
28 removal. Bergman Decl. ¶ 15.

Petitioner cannot show that there isn't a significant likelihood of removal in the reasonably foreseeable future. Thus, she has not sustained her burden, and it would be premature to reach that conclusion before permitting ICE an opportunity to complete its efforts to effect Petitioner's removal. "[E]vidence of progress, albeit slow progress, in negotiating a petitioner's repatriation will satisfy *Zadvydas* until the petitioner's detention grows unreasonably lengthy." *Kim v. Ashcroft*, No. 02cv1524-J (LAB), 2003 U.S. Dist. LEXIS 30818, at *11-12 (S.D. Cal. June 2, 2003) (finding that petitioner's one-year and four-month detention does not violate *Zadvydas* given respondent's production of evidence showing governments' negotiations are in progress and there is reason to believe that removal is likely in the foreseeable future); see also *Ming Hui Lu v. Lynch*, No. 15-cv-1100-GBL-MSN, 2016 WL 375053, at *7 (E.D. Va. Jan. 29, 2016) ("[A] mere delay does not trigger the inference that an alien will not be removed in the foreseeable future."). Moreover, "the government may rebut the detainee's showing with 'evidence of progress . . . in negotiating a petitioner's repatriation.'" *Marquez v. Wolf*, No. 20-cv-1769-WQH-BLM, 2020 WL 6044080, at *2 (S.D. Cal. Oct. 13, 2020) (citation omitted); *Gubanov v. Archambeault*, No. 3:20-cv-02508-WQH-KSC, 2021 WL 242959, at *4 (S.D. Cal. Jan. 25, 2021) (denying petition where respondents "set forth evidence that demonstrates progress and the reasons for the delay"); *Gebrelibanos v. Wolf*, No. 20-cv-1575-WQH-RBB, 2020 WL 5909487, at *4 (S.D. Cal. Oct. 6, 2020) (same).

B. Petitioner's detention is lawful.

Petitioner also argues her detention while she awaits removal from the United States is unconstitutional and unlawful because she is not removable in the reasonably foreseeable future and, as she was previously released from custody on an order of supervision, ICE has failed to follow its own procedures or show a change of circumstances to justify re-detention. Petitioner, a noncitizen subject to a final order of removal, is lawfully detained pursuant to 8 U.S.C. § 1231. ICE's success in repatriating noncitizens to Mozambique shows changed circumstances exist, and the issuance of Petitioner's travel document

1 indicates that there is a significant likelihood of her removal to Mozambique in the
2 reasonably foreseeable future.

3 The complex statutory framework of detention authority provided by §§ 236 and 241
4 of the INA are codified at 8 U.S.C. §§ 1226 and 1231. Section 1226(a) provided the
5 statutory authority for the initial detention of Petitioner after she entered the United States
6 in September 2016. Now that Petitioner's order of removal is final, detention authority is
7 provided under § 1231(a)(2). Under 8 U.S.C. § 1231, Petitioner is not statutorily entitled to
8 release from custody while awaiting her removal. *See Rodriguez Diaz v. Garland*, 53 F.4th
9 1189, 1198 (9th Cir. 2022) (“[N]either § 1225(b) nor § 1231(a) on their face provides for
10 bond hearings.”). Under 8 C.F.R. §§ 241.4 and 241.13, ICE is authorized revoke the release
11 of a noncitizen who was not removed during the statutory removal period, and return them
12 into custody when: (1) “on account of changed circumstances, [ICE] determines that there
13 is a significant likelihood that the alien may be removed in the reasonably foreseeable
14 future”; and (2) “in the opinion of the [Executive Associate Commissioner for Field
15 Operations or the district director,] . . . [it] is appropriate to enforce a removal order or to
16 commence removal proceedings against an alien.” 8 C.F.R. §§ 241.4(l)(2), 241.13(h)(2).
17 The Ninth Circuit has held that “[p]ursuant to the *Accardi* doctrine, an administrative
18 agency is required to adhere to its own internal operating procedures.” *Church of*
19 *Scientology of California v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990); *see also*
20 *United States v. Nixon*, 418 U.S. 683, 696 (1974).

21 Changed circumstances exist here such that returning Petitioner to custody was
22 authorized under the regulations, and it was appropriate to seek to effectuate Petitioner's
23 removal order. DHS successfully removed thirteen noncitizens to Mozambique in the last
24 six years. Bergman Decl. ¶ 16. Petitioner was taken into custody on October 30, 2024, to
25 renew repatriation efforts. *See* Bergman Decl. ¶¶ 6, 7. She challenged her custody in front
26 of an immigration judge on November 8, 2024, and the immigration judge denied
27 Petitioner's request for bond. Exhibit 4. She has not appealed that order. Bergman Decl. ¶ 8.
28 Since Petitioner was taken into custody, the Embassy of Mozambique in Washington, D.C.,

1 has issued a travel document for Petitioner. Bergman Decl. ¶ 15. The previous success
2 repatriating noncitizens to Mozambique and Petitioner's own issuance of a travel document
3 indicates a significant likelihood of removal in the reasonably foreseeable future.

4 The increased likelihood of removal based on numerous successful repatriations to
5 Mozambique constitutes a lawfully valid basis to revoke Petitioner's order of supervision.
6 ICE's decision to detain Petitioner was well reasoned and justified under the circumstances.

7 **C. There is no need for an evidentiary hearing.**

8 Because the record shows that Petitioner is not entitled to habeas relief, there is no
9 need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474
10 (2007) ("[I]f the record refutes the applicant's factual allegations or otherwise precludes
11 habeas relief, a district court is not required to hold an evidentiary hearing.").

12 **CONCLUSION**

13 For the reasons stated above, the Court should deny the petition.

14
15 DATED: June 6, 2025

Respectfully submitted,

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19 KELLY A. REIS
Assistant United States Attorney

20 Attorneys for Respondents
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