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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

L.J.,

Petitioner,

vs.

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

Respondents.

Case No. 3:25-cv-01317-GPC-JLB

Hon. Judge Gonzalo P. Curiel

PETITIONER'S TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

Immigration and Customs Enforcement ("ICE") has held Ms. J, a thirty-eight-year-old woman from Mozambique, in custody for over eight months. In total, ICE has detained Ms. J for approximately 18 months: (1) 293 days from September 1, 2016, to June 21, 2017, while her Immigration Court proceedings were pending, and (2) 233 days (and counting) since October 30, 2024. In 2017, ICE released Ms. J after an Immigration Judge ("IJ") denied her asylum claim, ordering her to comply with the terms provided in her Order of Release on Recognizance ("OROR"). Ms. J complied with all the conditions of her release until she was re-detained in San Diego, California, on October 30, 2024. On that day, ICE arrested Ms. J seemingly based on a determination that her removal proceedings were "ongoing," despite the fact that her removal order became administratively final on February 1, 2019. ICE never provided Ms. J with an explanation as to why she was re-detained, nor an opportunity to contest those reasons, in violation of ICE's own procedures. Now, in response to Ms. J's habeas petition, Respondents allege that her re-detention was justified by ICE's having removed 13 individuals to Mozambique since 2019, and that travel documents are in progress for Ms. J. However, Respondents have not provided any concrete evidence that Ms. J's removal is reasonably foreseeable. Nor have Respondents alleged that Ms. J is a flight risk or danger to the community such that her continued detention furthers the government's interests under 8 U.S.C. § 1231. This Court should order Ms. J's immediate release or, alternatively, order an evidentiary hearing to determine whether Ms. J's continued detention is lawful.

FACTS

On December 20, 2024, Petitioner's immigration attorney, Andreana Sarkis, contacted ICE about Petitioner's Request for a Stay of Removal. Declaration of Andreana Sarkis ("Sarkis Decl. in Support of Traverse"), Pet'r's Ex. 13 ¶ 2. ICE responded on December 23, 2024, requesting Ms. Sarkis's assistance with Ms. J's travel document application. *Id.* Ms. J was detained at the time, and Ms. Sarkis did not have

access to any of Ms. J's identity documents. *Id.* The next day, Ms. Sarkis filed requests for a copy of Petitioner's Alien File under the Freedom of Information Act with the Executive Office for Immigration Review and United States Citizenship and Immigration Services. *Id.* She has not received a response to those requests. *Id.* On June 10, 2025, Ms. Sarkis filed a Motion to Reopen and Motion for Stay of Removal with the Board of Immigration Appeals on behalf of Ms. J, based on rising violence against Christians in Mozambique. *Id.* at ¶ 5. Both motions remain pending. *Id.* As of June 17, 2025, the government has not shown Ms. Sarkis or Ms. J a travel document. *Id.* at ¶ 6.

ARGUMENT

I. The Government Has Failed to Provide Sufficient Evidence That Ms. J Will Be Removed in the Reasonably Foreseeable Future.

Contrary to Respondents' characterization of the burden shifting framework set forth in *Zadvydas v. Davis*, 533 U.S. 678, 703 (2001), Ms. J is not required to show an "impossibility of repatriation" to establish that her removal is not reasonably foreseeable. Resp't's Return, ECF No. 8 at 5. Courts in this circuit have echoed the Supreme Court's conclusion that 8 U.S.C. § 1231 does not require a noncitizen seeking release "to show the absence of *any* prospect of removal." *Zadvydas*, 533 U.S. at 702 (emphasis in original); *see e.g., Hashi v. Chertoff*, 535 F. Supp. 2d 1125, 1127 (S.D. Cal. 2008) (finding the government's statements that it "ha[d] been 'actively and diligently pursuing possible repatriation' insufficient to justify continued detention when petitioner had already been detained nine months); *Salad v. Dep't of Corr.*, No. 3:25-CV-00029-TMB-KFR, 2025 WL 732305, at *15 n. 12 (D. Alaska Mar. 7, 2025) (finding the issuance of a temporary travel document insufficient to show removal "reasonably foreseeable"). Ms. J has established "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future," *see Zadvydas*, 533 U.S. at 701, and the statements in Officer Christopher L. Bergman's declaration ("Bergman Decl."), ECF No. 8-1—are insufficient to rebut this showing.

First, as Respondents concede, Ms. J's "removal period" commenced on February 1, 2019. Resp't's Return, ECF. No. 8 at 5; *see also* 8 U.S.C. § 1231(a)(1)(B), (defining the removal period as beginning the day the removal order becomes "administratively final"). ICE then re-detained her on October 30, 2024. *See* Resp't's Ex. 3, ECF No. 8-2. Both the post-removal order period (over five years) and the post-removal order period of confinement (over eight months), therefore, have exceeded what the Supreme Court held in *Zadvydas* is a "presumptively reasonable" amount of time for the government to effectuate a removal order. 533 U.S. at 701. Because the amount of time Ms. J has been detained is not "insignificant," this Court should find that this factor weighs in favor of her release. *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1014 (C.D. Cal. 2020) (finding petitioner's three week detention not "insignificant" when "every passing day is a deprivation of liberty"); *see also Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL 3058096, at *5 (S.D. Cal. June 9, 2020) (finding petitioner's detention exceeding six months "prolonged"). Furthermore, the longer that Ms. J is detained, what counts as the "'reasonably foreseeable future' . . . would have to shrink," and the sooner ICE must show she can be removed. *See Zadvydas*, 533 U.S. at 701.

Second, Ms. J presented evidence indicating that "institutional barriers" may exist to her repatriation, including ICE's own reports that only thirteen Mozambique nationals have been removed in the past five and a half years. *See* Pet'r's Ex. 10, ECF No. 1-11; *cf. Khan v. Fasano*, 194 F. Supp. 2d 1134, 1136 (S.D. Cal. 2001) (finding lack of institutional barriers where 476 Pakistani nationals were repatriated in fiscal year 2000 and first half of 2001). Respondents offer no explanation for why the number of removals to Mozambique remains low. Bergman Decl., ECF No. 8-1 ¶ 16 (stating that ICE has completed 10 removals to Mozambique between 2019 and 2024, and three removals in 2025); *see also* 8 C.F.R. § 241.4(g)(3) (contemplating that even where a travel document is available, removal may be not be "practicable"). Ms. J, therefore, has shown that there "is good reason to believe that there is no significant likelihood of her

removal in the reasonably foreseeable future" and she should be released. *Zadvydas*, 533 U.S. at 701.

Respondents have not rebutted Ms. J's showing. Respondents' only evidence that Ms. J's removal is reasonably foreseeable is Officer Bergman's testimony that the Embassy of Mozambique issued a travel document on May 28, 2025. *See* Bergman Decl., ECF No. 8-1 ¶ 15. But as of June 17, 2025, ICE has not produced a travel document. Sarkis Decl. in Support of Traverse ¶ 4. Respondents rely almost exclusively on this so-called "evidence of progress" to argue that there is a significant likelihood that Ms. J's removal is reasonably foreseeable. *See* Resp't's Return at 4–6. "At some point in time, [even where there is evidence of progress], lengthy detention demands almost immediate repatriation or release on bond." *Kim v. Ashcroft*, No. 02cv1524-J (LAB), 2003 U.S. Dist. LEXIS 30818, at *11 (S.D. Cal. June 2, 2003). Officer Bergman's testimony is insufficient, given Ms. J's eight months (and counting) in detention, to show that there is a significant likelihood that Ms. J's removal is reasonably foreseeable.

Respondents cite to several decisions finding "evidence of progress" sufficient to overcome the presumption that removal was not reasonably foreseeable. In most of these cases, however, petitioners had in some way prevented their own removal. *See e.g., Gubanov v. Archambeault*, No. 320CV02508WQHKSC, 2021 WL 242959, at *2 (S.D. Cal. Jan. 25, 2021) (finding petitioner failed to meet his burden where he claimed to be a citizen of Russia, but Russia had no record of his citizenship); *Marquez v. Wolf,* No. 20-cv-1769-WQH-BLM, 2020 WL 6055080 (S.D. Cal. Oct. 13, 2020) (finding petitioner failed to meet his burden where ICE was in possession of travel documents and had arranged a flight that petitioner missed due to COVID-19); *Ming Hui Lu v. Lynch,* No. 15-cv-1100-GBL-MSN, 2016 WL 375053 (finding that removal was reasonably foreseeable where Petitioner had been issued travel documents and travel arrangements were made but petitioner refused to get on the plane). In the only case cited by Respondents where the petitioner was not at fault for the delay, the court ordered the

respondents to file a status report, rather than dismissing the petition. *Gebrelibanos v. Wolf*, No. 20-CV-1575-WQH-RBB, 2020 WL 5909487, at *4 (S.D. Cal. Oct. 6, 2020). Ms. J has fully cooperated when possible with ICE in obtaining travel documents. *See* Pet'r's Ex. 1 ¶ 14, ECF 1-2 (showing Ms. J's cooperation by taking a photo for her travel document application); Sarkis Decl. in Support of Traverse, Pet'r's Ex. 13 ¶ 1 (explaining that the government is in possession of all Ms. J's identity documents).

Respondents' argument that this Court need not order an evidentiary hearing because Respondents have purportedly provided sufficient evidence to deny Ms. J's habeas petition on the record also falls flat. *See* Resp't's Return, ECF. No. 8 at 8. This Court has not seen a travel document that could secure Ms. J's removal to Mozambique. *See, e.g.*, *Salad*, No. 3:25-CV-00029-TMB-KFR, 2025 WL 732305, at *14 (finding evidence that ICE had obtained a temporary travel document that would likely expire before petitioner could be removed insufficient to show petitioner's removal was reasonably foreseeable). Even if a travel document is en route, Respondents have not rebutted Ms. J's evidence, *supra*, that other barriers that will make Ms. J's removal "not practicable." 8 C.F.R. 241.4(g)(3). Nor have Respondents offered a timeline for Ms. J's removal. *See generally,* Resp't's Return, ECF No. 8; *see also* Resp't's Ex. 1 at 3, ECF. No. 8-1 (stating that ICE will arrange Ms. J's travel "expeditiously"). This Court, therefore, is unable to determine on the current record that there is a significant likelihood that Ms. J's removal is forthcoming. *West v. Ryan*, 608 F.3d 477, 485 (9th Cir. 2010) ("To obtain an evidentiary hearing in district court, a habeas petitioner must . . . allege a colorable claim for relief [alleging] . . . facts that, if true, would entitle him to habeas relief.)"

II. ICE's Violations of Ms. J's Due Process Rights Separately Warrant Her Release.

Separately, this Court may order Ms. J's release where ICE re-detained Ms. J for impermissible purposes and her continued detention is excessive in relation to 8 U.S.C. §

1231's "regulatory goals." *Zadvydas*, 533 U.S. at 693–695 (finding due process protects noncitizens "from detention that is arbitrary and capricious"); *see also Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J.) (conc.) (the Due Process Clause protects noncitizens against detention that "is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons").

A. ICE Violated Ms. J's Substantive Due Process Rights When It Re-detained Ms. J.

As Respondents concede, ICE's authority to re-detain Ms. J derived from 8 U.S.C. § 1231(a)(2), *see* Resp't's Return, ECF No. 8 at 7, and the regulations authorizing ICE to "revoke the release of a noncitizen who was not removed during the statutory removal period" are 8 C.F.R. §§ 241.4 and 241.13. These regulations provide that ICE may re-detain a noncitizen only if she "violates any of the conditions of release," or "if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1)-(2). Respondents do not allege that Ms. J violated the conditions of her release, *see generally,* Resp't's Return, EFC No. 8, and nothing in the record supports that ICE's re-detention of Ms. J was based on a determination that, due to changed circumstances, she could be removed to Mozambique in the reasonably foreseeable future.

Respondents produced documents showing that Petitioner was re-detained on October 30, 2024, after ICE issued a Form I-200, Warrant for Arrest of Alien. *See* Resp't's Ex. at 10, ECF No. 8-2. The regulations, however, only provide ICE the authority to "arrest[] and take[] into custody under the authority of Form I-200" noncitizens "[a]t the time of issuance of the notice to appear, or at any time thereafter and *up to the time removal proceedings are completed.*" 8 C.F.R. § 1236.1 (emphasis added). As noted above, Respondents concede that Ms. J's removal proceedings ended on February 1, 2019, when her administrative removal order became final. Resp't's Return,

ECF. No. 8 at 5. ICE's use of Form I-200 to re-detain Ms. J was, therefore, improper and calls into question whether ICE was even aware of Ms. J's removal order when an officer re-detained her. *See* Resp't's Ex. 3 at 10, ECF No. 8-2 (listing ICE's reasons for believing Ms. J removable as based on "the execution of a charging document to initiate removal proceedings"; the "pendency of ongoing removal proceedings"; and the "failure to establish admissibility").[1]

The absence of any documents supporting Respondents' argument that ICE re-detained Ms. J based on an evaluation of changed circumstances is also telling. Respondents have not produced any documents explaining why Petitioner's ORORwas revoked, *see* Resp't's Ex. 2 at 3, ECF No. 8-2 (Petitioner's uncancelled 2017 ORORwas), nor any evidence that ICE evaluated its ability to remove Ms. J prior to re-detaining her, *see generally* Resp't's Exs, ECF No. 8-2. Courts have long held that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns." *Arizona v. United States*, 567 U.S. 387, 413 (2012); *see also Miranda-Olivares v. Clackamas Cnty.*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014) (finding detention based on an ICE detainer unlawful where the stated purpose of the detainer was to "investigate" whether the noncitizen was subject to removal) (citing *Arizona*, 567 U.S. at 413). Yet that appears to be exactly what happened here.[2] Ms. J's re-detention is especially "shock[ing] to the conscience" where she has lived freely in the United States for nearly eight years, developed significant community ties, and is married to a U.S. citizen. *United States v. Salerno*, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L.Ed.2d 697 (1987) (internal citations omitted). Bedrock due process principles require her release.

[1] The regulations provide a mechanism to detain a noncitizen with a final order of removal, Form I–205, Warrant of Removal. 8 C.F.R. § 241.2. ICE simply did not follow this regulation.

[2] Even if ICE was aware of Ms. J's removal order when she was re-detained and sought to "renew repatriation efforts," Resp't's Return, ECF. No 8 at 7, this "investigation" violated due process where ICE had no evidence that Ms. J specifically could be repatriated, *Arizona*, 567 U.S. at 413.

B. Ms. J's Detention Violates Her Substantive Due Process Rights Because Respondents Do Not Allege That Ms. J Is Either a Danger to the Community or a Flight Risk.

Respondents have not shown that Ms. J's continued detention is justifiably connected to either of 8 U.S.C. § 1231's two "regulatory goals"—i.e., "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community" because they fail to allege that Ms. J is either a flight risk or danger to the community. *Zadvydas*, 533 U.S. at 690; *see generally* Resp't's Return, ECF No.8. Indeed, all record evidence shows that Ms. J's continued detention is excessive because she has no criminal history and has complied with all conditions of her previous OROR. *See* Pet'r's Ex. 1 at ¶ 6, 15, ECF. No. 1-2.[3] Because Ms. J has been detained more than six months and Respondents do not contend that she is a danger or a flight risk, this Court should order her release on bond. *See Diouf v. Napolitano (Diouf II)*, 634 F.3d 1081,1091–92 (9th Cir. 2011) (holding that immigration "detention becomes prolonged" after six months), *abrogated on other grounds by Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); *see also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1023 (W.D. Wash. 2019) (same).

Both the regulations and case law weigh in favor of this Court granting Ms. J's conditional release. First, the regulations contemplate and provide guidance for a noncitizen's release while ICE makes travel arrangements. Specifically, 8 C.F.R. § 241.5 includes examples of conditions of supervision that may be imposed upon release, such as periodic reporting, efforts by the noncitizen to obtain travel documents, advance approval for travel beyond specified times and distances, and the posting of a bond. These conditions are not unlike those ICE previously imposed on Ms. J, and to which she complied for two years. Resp't's Ex. 2 at 3–7, ECF No. 8-2 (listing Ms. J's conditions of

[3] Here, no determination has been made as to whether Ms. J is a flight risk or danger to the community, including by ICE. An IJ previously denied Ms. J's custody redetermination request for lack of jurisdiction where Ms. J was detained according to an incorrect warrant and her proceedings were complete. *See* Resp't's Ex. 4, ECF. No. 8-2.

release under her OROR). Where supervised release remains a regulatory option, therefore, "the choice . . . is not between imprisonment and the [noncitizen] 'living at large.' It is between imprisonment and supervision under release conditions that may not be violated." *Id.* at 696.

Second, habeas courts like this one are well-equipped to make the determination that a noncitizen's detention is unwarranted and to order release with appropriate supervision. *See Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973) ("[T]he federal habeas statute provides for a swift, flexible, and summary determination of [a petitioner's] claim."). Doing so would not categorically harm Respondents' interests. *See Vo v. Greene*, 63 F. Supp. 2d 1278, 1285 (D. Colo. 1999) (finding that the government's interest in ensuring a noncitizen's presence at removal can be served by ordering release on bond); *see also Devi v. Mukasey,* No. 2:08CV2671JFM(HC), 2008 WL 5412011, at *7 (E.D. Cal. Dec. 22, 2008) ("While respondents have an interest in ensuring petitioners are available for deportation," "that interest is protected by virtue of a neutral decision-maker holding a bond hearing to determine whether, in fact, petitioners pose a flight risk or a danger to the community."). This Court need not decide which conditions of supervision to impose but may order ICE to make this determination. *See e.g., Ekeh v. Gonzales,* 197 F. App'x 637, 638 (9th Cir. 2006) ("We therefore grant Ekeh's petition and order his release subject to supervision as mandated by 8 U.S.C. § 1231(a)(3)."); *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1190 (W.D. Wash. 2006) (finding letters of support weighed in favor of petitioner not posing a flight risk because of significant community ties and ordering ICE to impose supervised release pursuant to 8 C.F.R. § 241.5). Thus, this Court can and should order Ms. J's conditional release where there is no dispute that she is neither a flight risk nor a danger to the community.[4]

[4] In the alternative, Ms. J requests that this Court order a bond hearing where the government has the burden of proving her continued detention is justified based on her being either a flight risk or a danger to the community. *Lopez-Cacerez v. McAleenan*, No. 19-CV-1952-AJB-AGS, 2020 WL 3058096, at *6 (collecting cases ordering the same).

III. Respondents Have Not Shown That ICE Followed Its Own Procedures in Re-detaining Ms. J.

Respondents have not meaningfully contested Petitioner's arguments that ICE's failure to follow its own procedures, as outlined in 8 C.F.R. §§ 241.4 and 241.13, when re-detaining Ms. J was unlawful. *Compare* Pet'r's Pet. at 18–20, 22–23, *with* Resp't's Return at 6–8. Respondents only argue that ICE had *authority* to re-detain Ms. J based on changed circumstances, not that she was afforded any of the *procedures* guaranteed to her under the regulations. *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) ("While ICE does have significant discretion to detain, release, or revoke aliens, the agency still must follow its own regulations, procedures, and prior written commitments in the Release Notification."). Respondents have offered no evidence that ICE ever interviewed Ms. J to determine the likelihood of her removal, nor provided her with notice of the reasons for her re-detention or an opportunity to contest those reasons. *See* 8 C.F.R. §§ 241.4(l)(3), 241.13(i); *see generally* Resp't's Exs. It is, therefore, undisputed that ICE failed to provide Ms. J with any of the processes she was entitled to under the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) ("[A]n administrative agency is required to adhere to its own internal operating procedures.").

CONCLUSION

For the foregoing reasons, the Court should find that Ms. J's removal is not reasonably foreseeable and order her release from physical custody, or alternatively, this Court should find Ms. J's re-detention and continued detention have violated her due process rights and order her release.

Respectfully submitted on June 20, 2025.

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