

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jianmei CAO,

Petitioner,

v.

Bruce SCOTT, Warden, Northwest ICE
Processing Center; Cammilla WAMSLEY,
Enforcement and Removal Operations,
Seattle Field Office Director, U.S.
Immigration and Customs Enforcement;
Kristi NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT
OF HOMELAND SECURITY; Todd
LYONS, Acting Director and Senior Official
Performing Duties of Director of ICE U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT

Respondents.

Civil Case No. 2:25-cv-02373-RSM-GJL

**PETITIONER'S REPLY IN SUPPORT
OF HER PETITION FOR WRIT OF
HABEAS CORPUS AND INJUNCTIVE
RELIEF**

I. INTRODUCTION

Immigration and Customs Enforcement ("ICE") has warehoused Petitioner Jianmei Cao for six and a half months at the Northwest ICE Processing Center in Tacoma without making any effort to remove her. Despite many months of Petitioner and her family scrambling to obtain a Chinese passport so that her Stay of Removal request could be adjudicated or she could be removed and freed from punishing incarceration, ICE has made no effort of its own to secure a

1 travel document for Petitioner. At the last hour, days before Petitioner's incarceration reached the
2 "presumptively reasonable" six-month mark, an ICE officer asked Petitioner to complete a travel
3 document request. Even though Petitioner did not understand what was being asked of her
4 because ICE provided no discernible Mandarin interpretation, Respondents now ask this Court to
5 permit its continued warehousing of Petitioner based on a manufactured last-hour encounter.

6 Record evidence, including from Respondent's own witness, demonstrates Petitioner's
7 efforts over the entire six-month incarceration to cooperate. The problem is not Petitioner. The
8 problem is that China has made clear it will not issue Petitioner a passport while she is in ICE
9 custody. This is consistent with the United States' historical challenges with removing individuals
10 to China. Respondents present no evidence to the contrary. Because it is not significantly likely
11 that Petitioner will be removed in the reasonably foreseeable future, this Court should order her
12 immediate release.

13 Petitioner Jianmei Cao is 64 years old and suffers from physical and mental disabilities.
14 She does not speak much English. Detention has exacerbated her disabilities and subjected her to
15 inordinate stress. Her husband, who is a U.S. citizen and Purple Heart Vietnam War veteran,
16 suffers from chronic, life-threatening illnesses, that have led to his admission at the VA Hospital
17 in Loma Linda, California on several occasions since her arrest and detention. She wants nothing
18 more than to return to his side in his last days of life and resume her care for him, which her 25-
19 year-old daughter has been saddled with in her absence.

20 II. RELEVANT FACTS

21 Petitioner Jianmei Cao last entered the United States in 1999—26 years ago—on a
22 visa. Dkt. 9 ¶4; Dot. 4-17 at 5 (Chinese passport with entry stamp).

23 In 2014, Petitioner's removal order became final—10 years after an immigration judge
24 ordered her removed. Dkt. 9 ¶6.

25 In 2015, Petitioner married Carl Bruce McCraven, a U.S. citizen and Purple Heart
26 Vietnam War veteran and retired Los Angeles County Sheriff's Deputy. Dkt. 4-9; Dkt. 4-12. The
27 couple had dated since 2009. *Id.*

1 Petitioner did not know or understand that she had been ordered removed, until she
2 consulted with a lawyer after her marriage to Mr. McCraven. Dkt. 4-23 ¶10. Without adequate
3 advice or assistance of counsel, Petitioner and her husband applied to adjust her status as a lawful
4 permanent resident in 2016 and 2024. Dkt. 9 ¶8; Dkt. 10-9. The couple apparently were not
5 informed or did not understand that Ms. Cao's removal order made her ineligible to adjust her
6 status before U.S. Citizenship and Immigration Services and instead would need to be done in
7 reopened removal proceedings. Dkt. 10-9 (denying her adjustment application because only the
8 immigration court has jurisdiction to adjudicate the adjustment application). Ms. Cao incorrectly
9 assumed that given the passage of time without the United States government contacting her to
10 tell her to leave, that she would be allowed to adjust her status given the length of time she has
11 lived in the United States, her marriage to a U.S. citizen, and the fact that all of her family
12 members are in the United States. Dkt. 4-23 ¶11.

13 Petitioner's misapprehension is understandable. She is 64 years old. She does not speak or
14 understand English very well. For many years, she has suffered from diagnosed mental illness,
15 that has sharply impacted her cognitive abilities, including memory loss, confusion, and anxiety.
16 Dkt. 4-8 (Disability Determination). In 2000, she suffered a Traumatic Brain Injury while in
17 Bureau of Prisons (BOP) custody when a U.S. Marshall vehicle got in a roll-over accident that
18 resulted in significant head, neck, and leg injuries to Ms. Cao. Dkt. 4-1 at 6; Dkt. 4-23 ¶6.

19 On August 7, 2023, Petitioner obtained her Chinese passport, with an expiration date of
20 August 2033. Dkt. 4-17.

21 On May 20, 2025, Immigration and Customs Enforcement (ICE) detained Petitioner at her
22 adjustment of status interview. Dkt. 9 ¶9; Dkt. 4-23 ¶12.

23 At that time, Petitioner still had her passport.

24 Immediately following her arrest, Petitioner's family obtained immigration counsel (not
25 present counsel) who filed several I-246 Stay of Removal requests with ICE. Dkt. 9 ¶11.
26 Petitioner's 25-year-old daughter, Jady Xu, had Ms. Cao's passport and sent photocopies of it
27 together with the first I-246 Stay of Removal request, but subsequently lost the passport and has

1 been unable to find it. Dkt. 4-20 at 2 (Email from daughter to Chinese Consulate explaining that
2 she inadvertently lost her mother's passport). On June 16, 2025, ICE denied the I-246 Stay of
3 Removal requests because Petitioner did not have a passport. Dkt. 9 ¶11.

4 The family then worked to obtain a new passport from the Chinese Consulate, as
5 recounted in the declaration of Deportation Officer Yralees Melendez Diaz. Dkt. 9 ¶¶12-13.
6 Records reflect the efforts of Petitioner and her family to obtain a new passport from the Chinese
7 Consulate. In July, Petitioner obtained an appointment with the Consulate to renew her passport
8 and on August 7 had a video appointment. Dkt. 4-21 at 9-10. During that appointment, however,
9 the Consulate told Petitioner that it could not renew her passport virtually and that she had to
10 appear in person. Dkt. 4-23 ¶¶14-15; Dkt. 4-20 at 2 (daughter explaining by email to Chinese
11 official that "when my mother appeared through video call for the interview, she was denied due
12 to the fact that it was a video call despite the fact that it was not made clear that she had to be
13 there in person for the interview"). On August 20, 2025, Petitioner's paid \$250 "Renew China
14 Passport Fee" was refunded to her because she could not apply to renew her passport without
15 appearing in person. Dkt. 4-22 (Refund receipt).

16 On September 18, Petitioner's daughter corresponded by email with a consular official at
17 the Chinese Consulate. Dkt. 4-20. In those emails, her daughter explains her considerable efforts
18 to renew her mother's passport and the challenges presented by her mother being detained in
19 Washington, when they are in California. *Id.* at 2. The Chinese official replied immediately
20 stating "**as long as your mother is still in the ICE, we are not able to help her to apply**
21 **Chinese passport. Thank you.**" Dkt. 4-20 at 2 (emphasis added).

22 According to Deportation Officer Melendez Diaz, Petitioner's attorney communicated this
23 sequence of events and correspondence with Officer Melendez. Dkt. 9 ¶16 ("On September 22,
24 2025, Petitioner's attorney informed ERO that a passport could not be obtained for Petitioner
25 while she remained detained.").

26 Petitioner has provided ICE a copy of her lost passport and her Chinese birth certificate.
27 Dkt. 4-17; Dkt. 4-23 ¶14.

1 In the more than six months of Petitioner's detention, ICE has not requested a Travel
2 Document for Ms. Cao. Instead, "the case was elevated internally to request a Travel Document."
3 Dkt. 9 ¶14.

4 On October 12, Petitioner sent a Detainee Request Form to Deportation Officer Du
5 Jiarong, apologizing that she was not prepared to speak with her on that day and expressing her
6 concern that she had not "responded clearly to what [they] were asking" and stating that she
7 "know[s] that our interviews are critically important and I hope you can give me another chance."
8 Dkt. 4-15 (Exh L, Images of Detainee Request Forms); Written translation for Exh. L filed
9 concurrently. Officer Du responded on October 29, "Ok." Dkt. 4-15.

10 On October 13, 2025, Petitioner again wrote to Officer Du, this time providing more
11 information about her passport and Chinese documents. Dkt. 4-15 (Exh. L); Written translation
12 for Exh. L filed concurrently. She wrote: "I already found the photocopy of the passport I had
13 used when I last entered the U.S. in Sept 1999. I hope that is helpful for my purposes." *Id.* Officer
14 Du responded on October 29, "Ok." Dkt. 4-15.

15 On October 31, five and a half months after ICE detained Petitioner, ICE for the first time
16 asked Petitioner to complete a passport application for China. Dkt. 9 ¶17; Dkt. 4-23 ¶15. The ICE
17 officer did not bring a qualified interpreter to that meeting. Instead, the officer used an Artificial
18 Intelligence interpretation app that Petitioner could not understand. Dkt. 4-23 ¶15; Dkt. 4-1 at 7.
19 Petitioner told the ICE officer that she could not understand the interpretation and what was being
20 asked of her. Dkt. 4-1 at 7. Petitioner told the officer again that she had already applied for a
21 passport, but the Chinese Consulate denied the request, requiring her to go in person. Dkt. 4-23
22 ¶15. Respondents claim Petitioner said she was ill but would try to complete the documents the
23 following week. Dkt. 9 ¶17.

24 On November 11, ICE Officer Du Jiarong met with Petitioner, this time with a human
25 interpreter over the phone that Petitioner could understand. Dkt. 4-23 ¶16. *See also* Dkt. 4-1 at 8.
26 Officer Jiarong served Petitioner with a Notice of Failure to Comply, but the copy served on
27 Petitioner is different than the copy provided to this Court. Dkt. 4-4 (Copy served on Petitioner);

1 Dkt. 10-10 (Copy filed by Respondents). The Notice states that Petitioner was given a passport
2 application on October 31 and failed to complete it by the end of the day. Dkt. 4-4.

3 4 **III. ARGUMENT**

5 ICE has detained Petitioner Cao for six and a half months without being able to effectuate
6 her removal. During the entirety of her detention, ICE has made no effort to secure a travel
7 document so that she may be deported. As a result, it has incarcerated her without any lawful
8 nonpunitive purpose. Respondents have no argument for why Petitioner's removal to China is
9 reasonably foreseeable and her detention should be prolonged. Indeed, their only argument for
10 why they should be permitted to continue her detention is that on October 31—five and a half
11 months into her detention—an ICE officer asked Petitioner in English and without intelligible
12 Mandarin interpretation, to complete a passport application and she did not. Dkt. 8 at 10.
13 Respondents' brief selectively ignores the testimony of their own witness, Deportation Officer
14 Melendez Diaz, Dkt. 9, and other record evidence of painstaking efforts by Petitioner and the
15 family over the past six months to obtain a new Chinese passport and to work with ICE to obtain
16 one. *See supra* Part II. Respondents' attempt to blame Petitioner for their own failure to take any
17 steps to request Petitioner's travel document should be rejected. Petitioner has plainly met her
18 burden to demonstrate that removal is not significantly likely in the reasonably foreseeable future.
19 The Court should order Ms. Cao's immediate release.

20 **A. Respondents' Detention of Petitioner is Unconstitutionally Punitive Because They** 21 **Have Made No Effort to Actually Remove Her.**

22 Civil detention is constitutionally permissible only in "special and narrow nonpunitive
23 circumstances." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In the immigration
24 detention context, it is permitted by statute only to prevent flight or protect against a danger to
25 the community while the government seeks to execute a removal order. *Id.*

26 In 1893, the Supreme Court declared that deportation is not a punishment but rather "a
27 method of enforcing the return to his own country of an alien who has not complied [with the

1 immigration laws].” *Fong Yue Ting v. United States*, 149 U.S. 698, 730 (1893). *See Reno v.*
2 *AADC*, 525 U.S. 472, 491 (1999). Immigration detention has thus been upheld by the Courts as
3 constitutionally permitted for the narrow and limited purpose of effectuating the civil nonpunitive
4 sanction of deportation. *See Wong Wing v. United States*, 163 U.S. 228, 235 (1896) (“We think it
5 clear that detention, or temporary confinement, as part of the means necessary to give effect to the
6 provisions for the exclusion or expulsion of aliens would be valid.”); *see also Zadvydas*, 533 U.S.
7 at 697. (distinguishing constitutionally questionable post-order immigration detention from
8 “detention pending a determination of removability”).

9 Civil immigration detention, then, is prohibited when it is not used for its purported
10 purpose of facilitating removal. Here, for the past six months, the government has
11 imprisoned Petitioner Cao without making any effort to remove her. Indeed, all efforts made to
12 date to secure a travel document have been made by Petitioner and her family. *See supra* Part II.
13 Notably, six and a half months after her arrest, ICE has still not requested a travel document from
14 China. In August, Deportation Officer Melendez Diaz claims that Petitioner’s “case was elevated
15 *internally* to request a Travel Document,” but still there is no evidence that ICE has made any
16 request of China. Dkt. 9 ¶14 (emphasis added). ICE took no steps to request a travel document
17 until October 31, five and a half months into Petitioner’s detention, when it asked Petitioner to
18 complete the passport application.

19 The government’s use of immigration detention here is impermissibly punitive because it
20 has not been used to effectuate her removal to China. *See Zadvydas*, 533 U.S. at 690 (where
21 “detention’s goal is no longer practically attainable, detention no longer bears a reasonable
22 relation to the purpose for which the individual was committed.”) (cleaned up). It follows a
23 disturbing trend of ICE arresting and detaining individuals on old removal orders but making no
24 effort to request travel documents expeditiously or at all, leading to punitive incarceration without
25 charge or lawful purpose. *See, e.g., Lahamendu v. Bondi*, No. 2:25-CV-02155-LK-SKV, 2025
26 WL 3469868, at *3 (W.D. Wash. Dec. 3, 2025) (“there is no evidence that the Government has
27 taken any steps to plan or effectuate Lahamendu’s removal” over ten months of detention); *Tran*

1 v. *Scott*, 2025 WL 2898638, at *4 (W.D. Wash. Oct. 12, 2025) (“ICE took no further steps to
2 obtain a travel document for Petitioner or effectuate her removal until after she filed this habeas
3 action—which she has languished needlessly in detention for five months.”).

4
5 **B. Respondents’ Detention of Petitioner is Unconstitutionally Indefinite Because**
6 **Respondents Fail to Demonstrate that Removal is Reasonably Foreseeable.**

7 Respondents ask this Court to adopt a view of prolonged immigration detention that the
8 Supreme Court long ago rejected. In *Zadvydas v. Davis*, the government argued that continued
9 detention beyond the 6-month grace period should be permitted “as long as ‘good faith efforts to
10 effectuate. . . deportation continue’ and Zadvydas failed to show that deportation will prove
11 ‘impossible.’” 533 U.S. 678, 701 (2001). The Supreme Court rejected that view, holding “this
12 standard would seem to require an alien seeking release to show the absence of *any* prospect of
13 removal.” *Id.* Rather, the Court held that “for the sake of uniform administration in the federal
14 courts,” six months was the presumptively reasonable period within which the government could
15 seek to remove a person with a final order of removal. *Id.* “After this 6-month period, once the
16 alien provides good reason to believe that there is no significant likelihood of removal in the
17 reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that
18 showing.” *Id.* A habeas court must “ask whether the detention in question exceeds a period
19 reasonably necessary to secure removal.” *Id.* at 699.

20 Here, Petitioner has met her burden to demonstrate that removal is not reasonably
21 foreseeable for several reasons, which the government has not rebutted.

22 First, Petitioner has made substantial effort to replace her lost passport and been told by
23 the Chinese government in no uncertain terms in a video call and by email that she may not do so
24 without appearing in person at the Consulate. In other words, China will not issue a passport for
25 Petitioner so long as she remains detained. *See supra* Part II.

26 The government has provided no evidence to the contrary. Nor can it. ICE has not made
27 any request of China for a travel document, to issue a passport, or even to obtain information
28 about whether China will accept her for repatriation. It has no particularized knowledge of how

1 China will respond if it requests a travel document for Petitioner. It makes only a generalized
2 assertion, without providing any basis for its conclusions, that “once a completed passport
3 application for Chinese citizens is submitted, China will issue a passport, usually within a month
4 or two.” Dkt. 9. This is insufficient. Indeed, “Courts in this circuit have regularly refused to find
5 Respondents’ burden met where Respondents have offered little more than generalizations
6 regarding the likelihood that removal will occur.” *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
7 2419288, at *16 (W.D. Wash. Aug. 21, 2025) (citing cases); *see also Do v. Scott*, No. C25-
8 2187RSL, 2025 WL 3496909, at *5 (W.D. Wash. Dec. 5, 2025) (same); *Baltodano v. Bondi*, No.
9 C25-1958RSL, 2025 WL 3484769, at *5 (W.D. Wash. Dec. 4, 2025) (same).

10 More importantly, ICE’s intent to apply for a travel document for Ms. Cao in the future—
11 particularly when it has failed to do so in the past six months—does not make her removal
12 significantly likely in the reasonably foreseeable future. *See Hoac v. Becerra*, No. 25-cv-01740-
13 DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (“The fact that Respondents intend
14 to complete a travel document request for Petitioner does not make it significantly likely he will
15 be removed in the foreseeable future.”); *Tran v. Bondi*, No. C25-01897-JLR, 2025 WL 3140462,
16 at *3 (W.D. Wash. Nov. 10, 2025) (“ICE is not permitted to hold Mr. Tran indefinitely while it
17 waits for travel documents from Vietnam.”). Indeed, “[f]ailure by the Government to make
18 reasonable efforts to secure travel documents can indicate that removal is unlikely.” *Chun Yat Ma*
19 *v. Asher*, No. 11-cv-01797-MJP, 2012 WL 1432229, at *4 (W.D. Wash. Apr. 25, 2012).

20 Second, Respondents have not rebutted Petitioner’s evidence that China often refuses to
21 issue travel documents or significantly delays doing so. *See* Dkt. 4-1 at 8-9. It presents no
22 evidence on the rate of repatriation or issuance of travel documents. The United States reportedly
23 considers China one of the several “recalcitrant countries” that are uncooperative with U.S.
24 deportation efforts. Dkt. 4-1 at 8; Aline Barros, *US deportations to China continue amid shifts in*
25 *immigration crackdown*, VOA News (Jan. 31, 2025), [https://www.voanews.com/a/us-](https://www.voanews.com/a/us-deportations-to-china-continue-amid-shifts-in-immigration-crackdown/7958862.html)
26 [deportations-to-china-continue-amid-shifts-in-immigration-crackdown/7958862.html](https://www.voanews.com/a/us-deportations-to-china-continue-amid-shifts-in-immigration-crackdown/7958862.html).

27 Respondents present no evidence indicating any change in China’s historical lack of cooperation.

Indeed, district court cases confirm that significant challenges persist. *See Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (Chinese consulate refused to provide travel documents despite existence of a valid physical Chinese passport but no Chinese birth certificate); *Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *4 (D. Kan. Sept. 26, 2025) (Chinese consulate failed to respond despite proper documentation existing). *See also Chun Yat Ma v. Asher*, 2012 WL 1432229, at *5 (W.D. Wash. Apr. 25, 2012) (“ICE officer stated [in one district court case] that it typically takes six to eight months to secure travel documents to China.”) (citing *Cheng Ke Chen v. Holder*, 783 F.Supp.2d 1183, 1192 (N.D. Ala. 2011)). Moreover, despite reports that there are 38,000 removable Chinese nationals within the United States, there is only evidence of one deportation flight to China occurring in 2025. Dkt. 4-1 at 8-9; U.S. Embassy & Consulates in China, *ICE Dallas Leads DHS Effort Removing 122 Illegal Aliens Aboard Special High Risk Charter Flight* (June 13, 2025), <https://china.usembassy-china.org.cn/ice-dallas-leads-dhs-effort-removing-122-illegal-aliens-aboard-special-high-risk-charter-flight/>.

Accordingly, Respondents have failed to rebut Petitioner’s showing that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.

Respondents’ attempt to shift blame on Petitioner for her continued detention should be rejected. Dkt. 8 at 10. Petitioner has made every effort to obtain her passport and to communicate and cooperate with ICE, as evidenced by the records of her efforts and communication. It is patently unreasonable for Respondents to wait until days before she is held six months to initiate a travel document request, then insist that it should be permitted to continue to detain her because she did not complete the passport application that very same day she was asked, despite the fact that she was asked in English, did not understand the AI translation, and already suffers from cognitive impairments. Since she was first detained in May, Petitioner has provided ICE with copies of her birth certificate, copies of her two prior Chinese passports, and communicated with ICE both before and after the October 31 encounter to cooperate and facilitate the issuance of a travel document. Notably, Respondents argue in their brief that Petitioner refuses to cooperate,

1 Dkt. 8 at 10, but Deportation Officer Melendez Diaz does not say that. Officer Melendez Diaz
2 simply states that Ms. Cao told her that she was feeling ill on several occasions. Dkt. 9 ¶¶17-19.

3 It is telling that ICE has made no further effort to talk with Petitioner or have her complete
4 a travel document request since the parties jointly stipulated that she would complete all travel
5 document requests and assist with removal efforts to China on November 26, 2025. Dkt. 6. The
6 issue was never Petitioner's cooperation. Petitioner's removal is not foreseeable because China
7 will not issue Petitioner a travel document and ICE is making no effort to request one.

8
9 **C. Petitioner's Third Country Removal Claims are Ripe if this Court Denies Petitioner**
10 **Release from Custody.**

11 Respondents expend considerable energy arguing that Petitioner's claims against removal
12 to a third country are premature. Dkt. 8 at 11-15. Respondents forget that by stipulation of the
13 parties, Respondents have agreed not to remove Petitioner to a third country so long as this
14 habeas petition remains pending. Dkt. 6. Given that protection, these claims need not be
15 addressed at this time. If this Court denies relief to Petitioner, her claims against third country
16 removal could become ripe because she would be subject to the federal government's current
17 third country removal policy. *See* Dkt. 4-1 at 9-11; Dkt. 4-14 (DHS current third country removal
18 policy). That policy subjects individuals to third country removal without any or very little
19 advance notice. There would be no way for Petitioner to know in advance, until she is literally
20 being removed, that she is being sent to a third country. Courts in this district have held that
21 "ICE's current policy on third-country removals contravenes Ninth Circuit law." *Baltodano*, 2025
22 WL 3484769, at *6 (cleaned up) (quoting *Nguyen*, 2025 WL 2419288, at *18-19). As a result,
23 Petitioner requests an opportunity to address this claim, should this Court deny the requested
24 relief of release.

For the foregoing reasons, this Court should order Petitioner's immediate release from custody and restore her to the status quo prior to her detention—i.e. release from custody on the prior Order of Recognizance, *see* Dkt. 9 ¶5.

Respectfully submitted,

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PETITIONER'S REPLY
Case No. 2:25-cv-02373-RSM-GJL