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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ZHENG, XUE RONG,

12 Petitioner,

13 v.

14 XAVIER BECERRA, et al.,

15 Respondents.

Case No.: 18cv137-CAB-BGS

**ORDER STAYING PETITION
UNTIL JUNE 22, 2018 PENDING
REMOVAL DEVELOPMENTS**

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17 Petitioner Zheng, Xue Rong is a detainee in the custody of the United States
18 Immigration and Customs Enforcement (“ICE”). On January 19, 2018, Petitioner filed a
19 petition for writ of habeas corpus pursuant to 28 U.S.C. §2241. [Doc. No. 1.] Petitioner
20 contends that she is being indefinitely detained in violation of *Zadvydas v. Davis*, 533
21 U.S. 678 (2001). On February 21, 2018, Respondents filed a return to the petition. [Doc.
22 No. 3.] On March 5, 2018, Petitioner filed various documents in reply. [Doc. No. 5.]¹

23 **FACTUAL BACKGROUND**

24 Petitioner is a native and citizen of China who was apprehended upon her
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27 ¹ The documents consist primarily of a letter from Petitioner’s brother, who is a permanent resident, that
28 he is willing to be responsible for her custody. These documents, while perhaps relevant to whether
Petitioner is a flight risk, are not relevant to the immediate question before the Court, which is whether
the continued detention of Petitioner is reasonable.

1 attempted entry into the United States on January 25, 2016. [Doc. No. 1 at 3.] On
2 February 18, 2016, ICE filed a Notice to Appear with the Immigration Court, charging
3 Petitioner with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is
4 present without having been admitted or paroled. [Doc. No. 3-1 at 7-9.] On May 20,
5 2016, November 4, 2016, January 3, 2017, and May 11, 2017, immigration judges denied
6 Petitioner’s requests for a change in her custody status. [Doc. No. 3-1 at 10-14.] On June
7 21, 2017, an immigration judge denied Petitioner’s applications for relief from removal
8 and ordered her removed to China. [Doc. No. 3-1 at 15-17.] The order became final on
9 July 21, 2017, when Petitioner failed to file a notice of appeal with the Board of
10 Immigration Appeals. See 8 C.F.R. § 1003.39 (a removal order becomes final “upon
11 expiration of the time to appeal if no appeal is taken”).

12 On September 22, 2017, ICE sent an application for Petitioner’s travel documents
13 to the Chinese consulate in Los Angeles. [Doc. No. 3-1 at 3-6, Declaration of Patrick
14 Noble, at ¶ 5.] From September 2017 to February 2018, the status of the application for
15 Petitioner’s travel documents remained “verifying.” *Id.* at ¶ 6. On September 28, 2017,
16 ICE issued a Decision to Continue Detention after finding that Petitioner was a flight
17 risk. [Doc. No. 3-1 at 18-19.] On December 13, 2017, ICE issued a Decision to Continue
18 Detention after finding that a travel document for Petitioner’s return to China was
19 expected. [Doc. No. 3-1 at 20-21.] In April 2018, if the application for a travel document
20 is still pending, ICE in El Centro will request assistance from ICE’s Headquarters Travel
21 Document Unit (“HQTDU”). [Doc. No. 3-1 at 3-6, ¶ 7.]

22 The Chinese consulate, on average, takes longer than other consulates to issue
23 travel documents. [*Id.* at ¶ 8.] ICE in Calexico has been consistently successful in
24 obtaining travel documents from the Chinese consulate. *Id.* In 2017, the office obtained
25 travel documents from China for six aliens. [*Id.* at ¶ 9.] Of the six travel documents
26 issued, the applications were pending between three and nine months. [*Id.* at ¶ 10.] As of
27 the date of this order, Petitioner’s application for a travel document has been pending for
28 six months.

1 DISCUSSION

2 A. Legal Standard.

3 A district court may issue habeas corpus relief where a petitioner demonstrates that
4 he or she is in custody in violation of the Constitution, laws, or treaties of the United
5 States. 28 U.S.C. § 2241(c)(3). Section 2241 confers jurisdiction upon federal courts to
6 consider challenges to the detention of aliens in removal proceedings. *See Demore v.*
7 *Kim*, 538 U.S. 510, 517–18 (2003); *Zadvydas*, 533 U.S. at 637. Although the READ ID
8 Act of 2005, Pub.L.No. 109–13, Div. B., 119 Stat. 231 (May 11, 2005) eliminated district
9 court jurisdiction over habeas corpus petitions challenging final orders of removal,
10 district courts retain jurisdiction over section 2241 petitions challenging the legality of an
11 alien's detention. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006).

12 “When a final order of removal has been entered against an alien, the Government
13 must facilitate that alien's removal within a 90–day ‘removal period.’ ” *Thai v. Ashcroft*,
14 366 F.3d 790, 793 (9th Cir. 2004) (citation omitted); 8 U.S.C. § 1231(a)(1)(A). The
15 removal period begins on the latest of the following:

- 16 (i) The date the order of removal becomes administratively final;
- 17 (ii) If the removal order is judicially reviewed and if the court orders a stay
of the removal of the alien, the date of the court's final order.
- 18 (iii) If the alien is detained or confined (except under an immigration
19 process), the date the alien is released from detention or confinement.

20 8 U.S.C. § 1231(a)(1)(B); *see also Khotessouvan v. Morones*, 386 F.3d 1298, 1300 n.3
21 (9th Cir. 2004). During the 90–day removal period, continued detention is required until
22 the alien is actually removed. 8 U.S.C. § 1231(a)(2). Where removal cannot be
23 accomplished within the 90–day removal period, continued detention is authorized by 8
24 U.S.C. § 1231(a)(6).

25 In *Zadvydas*, the Supreme Court held that 8 U.S.C. § 1231(a)(6) did not authorize
26 the Immigration and Naturalization Service (“INS”) to detain an alien awaiting removal
27 “indefinitely” beyond the statutory 90–day removal period. 533 U.S. at 689. Rather, the
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1 Supreme Court construed the statute to contain an implicit “reasonable time” limitation.
2 *Id.* at 682. The Court held that “the statute, read in light of the Constitution's demands,
3 limits an alien's post-removal-period detention to a period reasonably necessary to bring
4 about that alien's removal from the United States.” *Id.* at 682, 689. The Court determined
5 that six months was a presumptively reasonable period of detention. *Id.* at 701. “After
6 this 6-month period, once the alien provides good reason to believe that there is no
7 significant likelihood of removal in the reasonably foreseeable future, the Government
8 must respond with evidence sufficient to rebut that showing.” *Id.* If the Government fails
9 to rebut the alien's showing, then the alien is entitled to relief. *See e.g., Chun Yat Ma v.*
10 *Asher*, 2012 WL 1432229, at *5 (W.D. Wash. Apr. 25, 2012) (granting habeas relief and
11 ordering petitioner released from custody after eleven month delay in removing petitioner
12 to China). “For detention to remain reasonable, as the period or prior postremoval
13 confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would
14 have to shrink.” *Zadvydas*, 533 U.S. at 701.

15 B. Analysis.

16 Petitioner’s removal order became final on July 21, 2017. ICE has been diligent in
17 seeking travel documents from the Chinese consulate since September, 2017. ICE has
18 also provided evidence that the process of obtaining travel documents from the Chinese
19 consulate normally takes three to nine months. As of the date of this order, the
20 application for Petitioner’s travel documents has been pending for six months. While
21 Petitioner has been held approximately three months beyond the presumptively
22 reasonable period established in *Zadvydas*, it is too early to conclude that removal efforts
23 will not be successful within the next few months. Therefore habeas relief is not
24 warranted at this time. *See Zhao v. Kelly*, No. CV 17-777-BRO(KES), 2017 WL
25 1591818, at *4 (April 27, 2017)(habeas relief not warranted where application for travel
26 documents from Chinese consulate was pending and petitioner had been detained for nine
27 months).

