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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CLAUDIA JERUSELY RODRIGUEZ FUENTES, Petitioner, v. ITZHAK HENN, Interim Henderson Police Chief in charge of the Henderson Detention Center; MICHAEL BERNACKE, Immigration and Customs Enforcement Field Director for Salt Lake Cit; and KRISTI NOEM, Secretary of Homeland Security, Respondents.	Case No. 2:25-cv-00846-CDS-DJA **Federal Respondents' Motion to Dismiss First Amended § 2241 Petition for Writ of Habeas Corpus (ECF No. 11)**

I. INTRODUCTION

Petitioner Claudia Jerusely Rodriguez Fuentes ("Rodriguez Fuentes" or "Petitioner") is a Mexican national who currently is in ICE custody. Petitioner illegally reentered the United States after the Department of Homeland Security ("DHS) removed her pursuant to an Immigration Judge's order of removal. Although the United States Citizenship and Immigration Services ("USCIS") granted Petitioner's U visa application after her reentry, her U nonimmigrant status is no longer valid, and Petitioner currently is in reinstatement proceedings. She is thus subject to the detention provisions of 8 U.S.C. § 1231(a).

Petitioner filed her amended petition for writ of habeas corpus (ECF No. 11) ("First Amended Petition") requesting that the Court, *inter alia*, enjoin the Federal Respondents from transferring Petitioner outside the jurisdiction of the District of Nevada and order the Federal Respondents to release Petitioner. ECF No. 1, at 28. The First Amended Petition alleges that Federal Respondents are violating Petitioner's (a) due process rights under the Fifth Amendment of the United States Constitution and (b) rights conferred by virtue of her U nonimmigrant status. In support, Petitioner argues that Petitioner remains in U nonimmigrant status, her pending I-485 application—for adjustment of status—in turn automatically extended her U nonimmigrant status, and USCIS's grant of her U visa application waived her prior removal order and Petitioner is thus not subject to reinstatement proceedings.

The First Amended Petition cannot prevail because it is premised on factual and legal inaccuracies. Regarding DHS's power to transfer detainees, DHS has broad discretionary authority to transfer aliens from one detention center to another. Regarding Petitioner's rights under the due process clause and U visa, Petitioner's U nonimmigrant status is no longer valid because it expired on April 19, 2021, and the I-485 application that had extended Petitioner's U nonimmigrant status is no longer pending. Further, because an Immigration Judge issued her prior order of removal, Petitioner's prior removal order was not cancelled "by operation of law" as of the date USCIS granted the U visa application. Instead, Petitioner was required to seek cancellation by filing a motion with the Immigration Judge, which Petitioner never did. Consequently, Petitioner currently is subject to reinstatement of her prior removal order as well as detention.

II. BACKGROUND

On or around 1987, Petitioner entered the United States without being admitted or paroled. ECF No. 11, ¶ 44. On June 21, 2000, an Immigration Judge granted Petitioner's application for voluntary departure. Exhibit A – Removal Documents, at 2. The Immigration Judge gave Petitioner until October 19, 2000, to depart the United States. *Id.* Petitioner later filed a motion to reopen her removal proceedings, but the Immigration Judge denied her motion. *Id.* at 5.

Although Petitioner appealed the Immigration Judge's denial of her motion to reopen, the Board of Immigration Appeals (the "Board") affirmed the Immigration Judge's denial and dismissed the appeal. *Id.* Because Petitioner failed to comply with the terms of voluntary departure, failed to depart the United States during her voluntary departure period, and the Board affirmed the Immigration Judge's denial of Petitioner's motion, the Immigration Judge's order became a final order of removal.

Petitioner was removed to Mexico on or around July 2010. ECF No. 11, ¶ 49. But in December 2010, Petitioner illegally presented false documents at the border and reentered the United States. *Id.* ¶ 50.

Based upon information in the USCIS systems, Petitioner applied for a U Nonimmigrant Status, Form I-918, and USCIS approved her application, thus granting her U nonimmigrant status for a period of four years through April 19, 2021. Exhibit B – USCIS Decl., ¶ 4–5.

On April 12, 2021, Petitioner timely filed an Application to Register Permanent Residence or Adjust Status, Form I-485, as a U nonimmigrant under 8 U.S.C. § 1255(m). *Id.* ¶ 6. As part of the administrative proceedings to adjudicate her I-485 application, USCIS issued a request for evidence ("RFE"), seeking additional required documentary evidence. Exhibit C – Request for Evidence. Due to the COVID pandemic, USCIS gave Petitioner an additional grade period to submit her response to the RFE, and thus USCIS extended the due date until June 17, 2023. Exhibit B –USCIS Decl., ¶ 8.

On July 13, 2023, after receiving no response to the RFE, USCIS denied Petitioner's I-485 application due to abandonment under 8 C.F.R. § 103.2(b)(13). Exhibit D – USCIS Decision. According to the information contained the USCIS systems, USCIS received Petitioner's RFE response on August 3, 2023, after the deadline and after the denial for abandonment issued. Exhibit B –USCIS Decl., ¶ 10. After receiving the untimely RFE response, USCIS did not reopen the administrative proceedings to adjudicate Petitioner's I-485. *Id.* ¶ 11. Although Petitioner later filed a motion to reopen the denied I-485 application (Exhibit E – Receipt Notice of Motion to Reopen), the motion remains pending. Exhibit B – USCIS Decl., ¶ 12. Thus, Petitioner's Form I-485 remains denied and has remained so since the initial denial on July 13, 2023.

On April 19, 2025, Petitioner was arrested for traffic violations and on April 20, 2025, DHS arrested her and issued a Notice of Intent/Decision to Reinstate its prior (October 20, 2000) removal order. ECF No. 11, ¶¶ 20, 53–54. Petitioner subsequently filed her petition for writ of habeas corpus and complaint for declaratory and injunctive relief for an order to show cause (ECF No. 1) and a First Amended Petition (ECF No. 11). Upon information and belief, DHS's removal of Petitioner is currently stayed, pending resolution of court proceedings.

III. JURISDICTION AND LEGAL STANDARD

A. Jurisdiction and Burden of Proof in Federal Habeas Petitions

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020).

Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of writ of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treatises of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n. 16 (9th Cir. 2004); *Snook v. Wood*, 89 F.3d 605, 609 (9th Cir. 1996).

B. Fed. R. Civ. Pro. 12(b)(1)

Motions filed under Rule 12(b)(1) allow a party to challenge the subject matter jurisdiction of the district court to hear a case. Fed. R. Civ. P. 12(b)(1). Federal courts are courts of limited jurisdiction, only possessing the power authorized by the Constitution and statutes. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). As a starting point for this analysis, a district court should assume that it lacks subject matter jurisdiction, and the party asserting the claim bears the burden of establishing that subject matter jurisdiction exists. *See In re Dynamic Random Access Memory Antitrust Litig.*, 546 F.3d 981, 984 (9th Cir. 2008) (citing *Kokkonen*, 511 U.S. at 377).

A motion to dismiss for lack of subject matter jurisdiction may be either facial or factual. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial challenge to subject matter jurisdiction presumes that the complaint contains insufficient allegations to invoke federal jurisdiction. *Id.* A factual challenge is where "the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Id.* Under the latter theory, the district court must not accept the facts in the complaint as true and may consider extrinsic evidence. *See Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012); *Safe Air for Everyone*, 373 F.3d at 1039.

C. Fed. R. Civ. P. 12(b)(6)

Rule 12(b)(6) governs dismissal of a case for failure to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). However, a district court is not required to accept conclusory allegations or unwarranted factual deductions as true. *See Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004). "In determining whether a complaint fails to state a claim," a court "may consider only the facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which [courts] may take judicial notice." *Trudeau v. Fed. Trade Comm'n*, 456 F.3d 178, 183 (D.C. Cir. 2006) (quoting *E.E.O.C. v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624–25 (D.C. Cir. 1997)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

Although review on a motion pursuant to Fed. R. Civ. P. 21(b)(6) is normally limited to the complaint itself, if the district court relies on materials outside the pleadings in making its ruling, it must treat the motion to dismiss as one for summary judgment and give the non-moving party an opportunity to respond. Fed. R. Civ. P. 12(d); *see United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003).

"A court may, however, consider certain materials — documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice — without converting the motion to dismiss into a motion for summary judgment." *Ritchie*, 342 F.3d at 908. If documents are physically attached to the complaint, then a court may consider them if their "authenticity is not contested" and "the plaintiff's complaint necessarily relies on them." *Lee*, 250 F.3d at 688. The Court may also consider matters that are subject to judicial notice. *Mullis v. U.S. Bank*, 828 F.2d 1385, 1388 (9th Cir. 1987). The Court may take judicial notice "of the records of state agencies and other undisputed matters of public record" without transforming the motion to dismiss into a motion for summary judgment." *Disabled Rights Action Comm. V. Las Vegas Events, Inc.*, 375 F.3d 861, 866 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner Is Lawfully Detained Under 8 U.S.C. § 1231(a).

Petitioner is subject to a reinstated order of removal by virtue of her prior final order of removal by an Immigration Judge and her subsequent unlawful reentry into the United States. Federal immigration law establishes procedures for removing aliens living unlawfully in the United States as well as for determining whether such persons are detained during removal proceedings. DHS may arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). An alien detained under Section 1226(a) may generally apply for release on bond or conditional parole. *Id.* If an alien is ordered removed and the order becomes "administratively final," the alien's detention becomes mandatory. 8 U.S.C. §§1231(a)(1)(A)–(B), (a)(2).

Section 1231(a) governs detention once an alien has been "ordered removed." 8 U.S.C. § 1231(a). Section 1231 directs the government to secure the alien's removal within the "removal period"—a period that begins when the removal order becomes "administratively final" or when certain other criteria are satisfied, and that usually lasts for 90 days. 8 U.S.C. 1231(a)(1). Section 1231(a)(2) provides: "During the removal period, [the Secretary of Homeland Security] shall detain the alien." 8 U.S.C. § 1231(a)(2).

Congress has also established a streamlined process for removing aliens who have previously been removed from the United States under a final order of removal and subsequently reentered the country unlawfully. If DHS "finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date." 8 U.S.C. 1231(a)(5). That order "is not subject to being reopened or reviewed," and the alien "shall be removed under the prior order at any time after reentry." *Id.*; *see Johnson v. Guzman Chavez*, 594 U.S. 523, 523, 141 S. Ct. 2271, 2277, 210 L. Ed. 2d 656 (2021). Further the alien "is not eligible and may not apply for any relief" from the reinstated order of removal.[1]

In 2021, the Supreme Court held that reinstated orders of removal are "administratively final" and thus, individuals subject to reinstated orders of removal are subject to the mandatory detention provisions of 8 U.S.C. § 1231, and the pertinent detainees are not entitled to an initial bond hearing. *Johnson*, 594 U.S. at 526.

Here, the First Amended Petition concedes the Immigration Court's order, granting Petitioner's application for voluntary departure, became a removal order when the Immigration Judge denied, which the Boad affirmed, Petitioner's motion to reopen her removal proceedings. ECF No. 11, ¶ 44; *see also* Exhibit A. Further, DHS removed Petitioner to Mexico in 2010, and Petitioner later illegally and under false pretenses reentered the United States. ECF No. 11, ¶ 49–50. Petitioner thus falls squarely under the provisions of 8 U.S.C. § 1231(a)(5), which applies to aliens that have reentered the United States illegally after having been removed under an order of removal. Consequently, after

[1] Many of the provisions at issue in this case refer to the Attorney General, but Congress has separately transferred the enforcement of those provisions to the Secretary of Homeland Security. *Nielsen v. Preap*, 139 S. Ct. 954, 959 n.2 (2019); *see* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note.

Petitioner's reentry, DHS gained the statutory authority to reinstate Petitioner's prior order of removal and remove her at any time after her reentry. *See* 8 U.S.C. § 1231(a)(5).

Under the Supreme Court precedent in *Johnson v. Guzman Chavez*, because Petitioner is subject to a reinstated order of removal, she is also subject to the mandatory detention provisions of 8 U.S.C. § 1231. *Johnson*, 594 U.S. at 526 ("We conclude that § 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal, meaning those aliens are not entitled to a bond hearing . . . .").

Petitioner asserts that the Federal Respondents may not reinstate her prior order of removal because (1) Petitioner remains in U nonimmigrant status, (2) Petitioner's allegedly pending I-485 application, for adjustment of status, automatically extended Petitioner's U nonimmigrant status, and (3) USCIS's grant of her U visa application waived her prior removal order. The Federal Respondents address each of these points below.

1. Petitioner's U nonimmigrant Status Has Expired Because Her Application for Adjustment of Status Is No Longer Pending.

U nonimmigrant status is available to victims of certain qualifying crimes who provide certifications from law enforcement agencies that they (a) are victims of a qualifying crime, (b) "have been, or are being or are likely to be helpful" in investigating or prosecuting such crimes, and (c) possess information concerning the qualifying crime. 8 U.S.C. § 1101(a)(15)(U)(i)(II). After three years of continuous presence in the United States in U nonimmigrant status, during which they receive work authorization, U recipients may apply for adjustment of status—*i.e.*, changing their immigration status from U nonimmigrant to that of a lawful permanent resident while in the United States. 8 U.S.C. § 1255(m).

U nonimmigrant status is granted for four years, and the period of status may be extended for exceptional circumstances or when law enforcement certifies that additional time is necessary for the U holder to assist it. 8 U.S.C. § 1184(p)(6).[2] Title 8 of the United

[2] *see also* USCIS, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator's Field Manual (AFM Update AD10-38)* (July 21,

States Code provides that U nonimmigrant status "shall be extended beyond the 4-year period . . . if the alien is eligible for [adjustment of status] and is unable to obtain such relief because regulations have not been issued to implement such section and *shall be extended during the pendency of an application for adjustment of status under section 1255(m).*" 8 U.S.C. § 1184(p)(6) (emphasis added). Additionally, USCIS has recognized that "USCIS *must* extend U nonimmigrant status" "[w]hen an application for adjustment of status under INA § 245(m) is pending."[3]

A central argument of the First Amended Petition is that Petitioner is not lawfully in Federal Respondents' custody because she "is currently in[] U Nonimmigrant status." ECF No. 11, ¶ 1. Petitioner argues that because she submitted her Form I-485—Application to Register Permanent Residence or Adjust Status—after USCIS granted her U visa application, her U nonimmigrant status was automatically. *Id.* ¶ 2-4, 28. Petitioner further argues that her current U nonimmigrant status prevents Federal Respondents from reinstating Petitioner's prior removal order. *Id.* ¶ 1.

However, while USCIS granted Petitioner U nonimmigrant status for a period of four years, her U nonimmigrant status was initially set to expire on April 19, 2021. Exhibit B – USCIS Decl., ¶ 5; ECF No. 1-3 (stating that USCIS's approval of Petitioner's U nonimmigrant status was "[v]alid from 04/20/2017 to 04/19/2021"). And although Petitioner's U nonimmigrant status was automatically extended beyond the initial period when she filed her I-485 application, her U nonimmigrant status was extended only for the pendency of the administrative proceedings, which are no longer pending.[4]

2010), http://www.uscis.gov/USCIS/Laws/Memoranda/2010/William%20Wilberforce%20TVPRAct%20of%202008%20July%20212010.pdf (last visited August 5, 2025); U USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (Oct. 4, 2016), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/2016-1004-T-U-Extension-PM-602-0032-2.pdf (last visited August 5, 2025).

[3] USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (Oct. 4, 2016), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/2016-1004-T-U-Extension-PM-602-0032-2.pdf (last visited August 5, 2025); *see also* 8 U.S.C. § 1184(p)(6); 8 C.F.R. § 214.14(g).

[4] *See* 8 U.S.C. § 1184(p)(6); *see also* USCIS, *Extension of Status for T and U Nonimmigrants (Corrected and Reissued)* (Oct. 4, 2016),

USCIS denied Petitioner's Form I-485 due to abandonment under 8 C.F.R. § 103.2(b)(13). Exhibit B –USCIS Decl., ¶ 9–12; Exhibit D – USCIS Decision. As further shown in Exhibit D, USCIS issued its denial of Petitioner's I-485 application on July 13, 2023. *Id.* They sent the decision to "Angel Marie Graf, Immigration Ctr for Women Children, 732 S 6th ST STE 101, Las Vegas, NV, 89101." *Id.* The decision notice states that USCIS had requested additional evidence in support of Petitioner's application but they did not receive a response. *Id.* As a result, Petitioner's application for adjustment of status was considered abandoned and denied under 8 C.F.R. § 103.2(b)(13).

As a result of USCIS's decision, Petitioner's I-485 application is no longer pending. By consequence, Petitioner's U nonimmigrant status is also no longer valid since her status was extended "during the pendency of an application for adjustment of status." *See* U.S.C. § 1184(p)(6).

The First Amended Petition thus fails by virtue of factual inaccuracies when it argues that the Federal Respondents may not reinstate her prior order of removal because (1) Petitioner currently remains in U nonimmigrant status, and (2) Petitioner's allegedly pending I-485 application for adjustment of status automatically extended Petitioner's U nonimmigrant status. Petitioner's U nonimmigrant status is expired and her I-485 application is no longer pending. Federal Respondents are unaware of, and Petitioner has not alleged, any other grounds for extending Petitioner's U nonimmigrant status, and she therefore is subject to reinstatement of her prior order of removal.

2. Petitioner Is Subject to Reinstatement Because Her Prior Removal Order Was Not "Canceled By Operation of Law" and Petitioner Did Not File a Motion to Reopen and Terminate Removal Proceedings.

Under 8 C.F.R. § 214.14, petitioners who are the subject of a final order of removal are not precluded from filing a petition for U nonimmigrant status directly with USCIS. 8 C.F.R. § 214.14(c)(1)(ii). If USCIS grants the petition for U nonimmigrant status, an order of removal *issued by DHS* will be canceled by operation of law as of the date of the grant. 8

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https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2016/2016-1004-T-U-Extension-PM-602-0032-2.pdf (last visited August 5, 2025).

C.F.R. § 214.14(c)(5)(i). And if USCIS subsequently revokes approval of the petition, DHS may place the petitioner in removal proceedings. However, in cases where an order of removal was *issued by an Immigration Judge* or the Board, the alien may seek cancellation of such order by filing, with the Immigration Judge or the Board, a motion to reopen and terminate removal proceedings. *Id.* ICE counsel may agree to join the motion at their discretion. *Id.*

A central argument in the First Amended Petition is that Petitioner is not subject to reinstatement proceedings because her prior removal order was "canceled by operation of law as of the date of USCIS's approval" of her U visa application. ECF No. 11, ¶ 8, 36–37, 39. She further argues that when USCIS approved her U visa application, USCIS also approved Petitioner's inadmissibility waivers. *Id.* ¶ 2. According to Petitioner, a U Nonimmigrant is entitled to certain protections, including, *inter alia*, waivers of inadmissibility, cancellation of administrative orders of removal, and protections from removal. *Id.* ¶ 7.

As the Federal Respondents explained in Section A.2., *supra*, Petitioner can no longer reap the benefits of her expired U nonimmigrant status. Further, Petitioner's argument that her prior removal order was canceled as of the date of USCIS's approval of her U visa is based on a factual inaccuracy. The First Amended Petition suggests that Petitioner's prior removal order "by the *Secretary of Homeland Security* is 'deemed canceled by operation of law.'" ECF No. 11, ¶ 36 (emphasis added). Petitioner argues that "although an individual who has previously been removed from the United States and subsequently illegally reenters cannot generally seek relief under 8 U.S.C. § 1231(a)(5) due to the reinstatement provisions, if a U petitioner is subject to an order of . . . removal, 'the order will be deemed canceled by operation of law.'" *Id.* ¶ 37 (citing 8 C.F.R. § 214.14(c)(5)(i)).

Here, however, *an Immigration Judge*, not DHS, issued Petitioner's prior removal order. Exhibit A. As explained in Section II, *supra*, an Immigration Judge granted Petitioner's application for voluntary departure. Exhibit A – Removal Documents, at 2.

Because Petitioner failed to comply with the terms of voluntary departure, the Immigration Judge's order became final when she failed to depart the United States. *Id.* Further, the Immigration Judge denied, and the Board affirmed, Petitioner's motion to reopen her removal proceedings. *Id.*

Under the controlling regulation, because the removal order originated from an Immigration Judge, if Petitioner wished to cancel her prior order of removal, Petitioner was required to "seek cancellation of such order by filing, with the immigration judge or the Board, a motion to reopen and terminate removal proceedings." 8 C.F.R. § 214.14(c)(5)(i). A cancellation was thus neither automatic nor by operation of law. Had the removal order been issued by DHS, however, then that order would have been canceled by operation of law, under 8 C.F.R. § 214.14(c)(5)(i), as Petitioner avers. But that was not the case here.

Petitioner never filed the requisite motion under 8 C.F.R. § 214.14(c)(5)(i). The First Amended Petition concedes that "Petitioner did not file a motion to reopen her previous deportation case after being admitted as a U Nonimmigrant." ECF No. 11, ¶ 51. Petitioner's prior order of removal was thus never canceled.

3. Petitioner's Arguments Do Not Overcome the Requirement to Seek Cancellation Through a Motion to Reopen and Terminate Removal Proceedings.

The First Amended Petition argues that "Petitioner did not file a motion to reopen her previous deportation case after being admitted as a U Nonimmigrant because her prior removal order had already been executed, the resulting inadmissibility and underlying order had been waived, and the grant of [U] Nonimmigrant status had vacated any DHS orders of removal." *Id.* ¶ 51. But Petitioner's arguments are misplaced and not supported by the law and underlying facts.

First, as discussed above, when granting Petitioner's U visa application, USCIS did not vacate Petitioner's prior order of removal because the order was issued by an Immigration Judge, not DHS. *See* 8 C.F.R. § 214.14(c)(5)(i).

Second, although her prior removal order had already been executed, DHS is not precluded from reinstating the prior order of removal. As discussed in Section A, *supra*, if DHS "finds that an alien has reentered the United States illegally after having been removed . . . under an order of removal, the prior order of removal is reinstated from its original date." 8 U.S.C. 1231(a)(5). Here, because Petitioner illegally reentered the United States after DHS removed her to Mexico upon executing her prior removal order, Petitioner us subject to reinstatement of her prior removal order and the mandatory detention provisions of 8 U.S.C. § 1231. *Johnson*, 594 U.S. at 526

Third, while USCIS, may waive grounds of inadmissibility when granting a U visa application, as they did in the case at bar, the waiver does not negate the legal effects of a final order of removal issued by the Immigration Judge. To the extent Petitioner wishes to attack the underlying facts that support the final order of removal and its reinstatement, a petition for writ of habeas corpus to the U.S. District Court of the District of Nevada is not the proper vehicle for such a review. A petition for review of a reinstatement order "shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. § 1252(b)(2); *see also e.g.*, *Gallo-Alvarez v. Ashcroft*, 266 F.3d 1123, 1127–28 (9th Cir. 2001); *Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292 (5th Cir. 2002); *Velasquez-Gabriel v. Crocetti*, 263 F.3d 102, 105 (4th Cir. 2001) (all ruling that a circuit court may review a reinstatement order by means of a petition for review); Am. Immigr. Council, Practice Advisory, Reinstatement of Removal, at 11-13 (May 23, 2019), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/reinstatement_of_removal.pdf (last visited August 5, 2025).

Given that an alien has a judicial remedy in the form of a petition for review, the Ninth Circuit has ruled that a habeas corpus petition is not an appropriate means of gaining judicial review of a reinstatement order. *Morales-Izquierdo v. DHS*, 600 F.3d 1076 (9th Cir. 2010) *overruled in part on other grounds by Garfias-Rodriguez v. Holder*, 702 F.3d 504, 516 (9th Cir. 2012) ("[W]e conclude that where an alien is subject to reinstatement of a prior removal order, the REAL ID Act requires that the alien challenge the [underlying] denial of his or her adjustment-of-status application in a petition for review of the reinstatement order." "The district court did not have § 2241 habeas corpus jurisdiction to hear [the] challenge"). The Real ID Act of 2005 allows judicial review of a final order of removal by the courts of appeals, but deprives courts of habeas corpus jurisdiction to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to … execute removal orders against any alien." 8 U.S.C. § 1252(a)(5), (g). The Immigration Judge's prior order of removal in this case is one such decision by the Attorney General.

B. DHS Has Plenary Power to Transfer Detainees and This Court Lacks Jurisdiction to Review the Decision Regarding the Location of Detention

Petitioner asks for an order enjoining the Federal "Respondents from transferring Petitioner from the jurisdiction of the Las Vegas sub-Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District." ECF No. 11, ¶ 19. This request lacks merit and is nothing more than a subterfuge for challenging the Attorney General's discretionary authority to "arrange for appropriate places of detention for aliens detained pending ... a decision on removal." 8 U.S.C. § 1231(g)(1).

The Attorney General's power to determine the place of detention for aliens pending removal proceedings is discretionary. *See e.g., Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (explaining that the Attorney General's power to transfer immigrant detainees arises from 8 U.S.C. § 1231(g)(1)); *GandarillasZambrana v. Bd. Of Immigr. Appeals*, 44 F.3d 1251, 1256 (4th Cir. 1995) ("The INS necessarily has the authority to determine the location of detention of an alien in deportation proceedings . . . and therefore, to transfer aliens from one detention center to another."); *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1440 (9th Cir.), *amended by* 807 F.2d 769 (9th Cir. 1986) ("CCAR") (recognizing "the Attorney General's broad discretion in exercising his authority to choose the place of detention for deportable aliens"); *Rios-Berrios v. Immigr. & Naturalization Serv.*, 776 F.2d 859, 863 (9th Cir. 1985) (stating that the Court was not opining on whether the detainee should have been transferred to a different state, as that is a decision for the Attorney General); *Sasso v. Milhollan*, 735 F. Supp. 1045, 1048 (S.D. Fla. 1990) ("Congress . . . has squarely placed the responsibility of determining where aliens are to be detained within the sound discretion of the Attorney General.").

The Court lacks jurisdiction under 8 U.S.C. § 1252(a)(2)(B)(ii) to review the Attorney General's discretionary power to choose the place of detention for aliens. That section provides that "no court has jurisdiction to review any decision or action the Attorney General has discretion to make 'under this subchapter,'" including decisions made under 8 U.S.C. § 1231(g)(1). *Van Dinh*, 197 F.3d at 433-34; *see also CCAR*, 795 F.2d at 1441 (affirming district court's decision that "prudential considerations precluded it from exercising its jurisdiction to avoid involving itself in the supervision of the Attorney General's daily exercise of his discretion to select the place of detention of aliens in his custody").

Petitioner may not circumvent this jurisdictional bar to review of the Attorney General's discretionary decisions regarding the location of detention by recasting his claim as a due process or equal protection challenge. Because Petitioner's claim is ultimately a challenge to the Attorney General's discretionary authority under 8 U.S.C. §§ 1229 and 1231(g)(1), it should be denied for lack of jurisdiction. 8 U.S.C. § 1252(a)(2)(B)(ii) and (g); *Latu v. Ashcroft*, 375 F.3d 1012, 1019 (10th Cir. 2004); *Van Dinh*, 197 F.3d at 433-34; *cf. Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001) ("Although we retain jurisdiction to review due process challenges, a petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking an abuse of discretion argument in constitutional garb.").

C. Petitioner Failed to Show Violations of Due Process and the Regulations Implementing the U Nonimmigrant Visa Classification

In its claims for relief, the First Amended Petition alleges that the Federal Respondents are violating the due process clause of the Fifth Amendment as well as the rights set forth in the statutes defining the U nonimmigrant visa classification (*i.e.*, 8 U.S.C.

§ 101(a)(15)(u)). ECF No. 11, ¶¶ 57–80 (Claims for Relief). Both of these claims for relief are premised on the incorrect facts and legal arguments that (1) Petitioner remains in U nonimmigrant status, (2) Petitioner's allegedly pending I-485 application, for adjustment of status, automatically extended Petitioner's U nonimmigrant status, and (3) USCIS's grant of her U visa application waived her prior removal order and Petitioner is thus not subject to reinstatement proceedings. The Federal Respondents have already addressed each of these arguments in the preceding sections. For the same reasons articulated above, the Federal Respondents respectfully submit that Petitioner's claims for relief be dismissed in their entirety.

V. Conclusion

Based on the foregoing, the Federal Respondents respectfully submit that the First Amended Petition should be dismissed in its entirety.

Respectfully submitted this 11th day of August 2025.

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/s/ Christian R. Ruiz
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