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5 **UNITED STATES DISTRICT COURT FOR**
6 **THE DISTRICT OF NEVADA**

7 CLAUDIA JERUSELY RODRIGUEZ
FUENTES,

8 Petitioner

9 vs.

10 REGGIE RADER, Henderson Police
11 Chief in charge of the Henderson
Detention Center; MICHAEL
12 BERNACKE, Immigration and Customs
Enforcement Field Director for Salt Lake
13 City, and KRISTI NOEM, Secretary of
Homeland Security,

14 Respondents

CASE NO.:

2:25-cv-000846-CDS-DJA

**Petitioners Response to
Federal Respondents'
Motion to Dismiss**

15
16 Comes now, Petitioner, and respectfully submits her Response to the Federal
17 Government Respondents' Motion to Dismiss (ECF No. 22).

18 **I. INTRODUCTION**

19 Claudia Jerusely Rodriguez Fuentes ("Ms. Rodriguez Fuentes" or
20 "Petitioner") is a survivor of domestic violence who has done all that the

1 government has asked of her in filing for U Nonimmigrant Status and Adjustment
2 of Status, and yet remains detained by the U.S. government, who by choosing to
3 pursue a facially invalid reinstatement of removal under 8 U.S.C. § 1231(a)(5)
4 rather than removal proceedings under 8 U.S.C. § 1227(a)(1)(C)(i) has incorrectly
5 subjected her to mandatory detention. Her continued detention under an invalid
6 order violates her constitutional and due process rights.¹

7 Federal Respondents have filed a Motion to Dismiss this action, arguing
8 that Ms. Rodriguez Fuentes was not subject to an administrative order of removal,
9 that the order which has been reinstated was a judicial order of removal, and that
10 she did not file a Motion to Reopen and Terminate those proceedings and therefore
11 her reinstatement is proper. *See* ECF No. 22 at pp. 10-13. Federal Respondents also
12 argue that there is jurisdiction to review Ms. Rodriguez Fuentes's illegal detention
13 because she has a judicial removal order. *See id.* at p. 14.

14 They have failed, however, to show that the First Amended Petition cannot
15 prevail. This Court has jurisdiction to grant a writ of habeas corpus. 28 U.S.C. §
16 2241; 28 U.S.C. § 1651. Ms. Rodriguez Fuentes alleges that she is being detained
17 contrary to law, which is the essence of habeas corpus:

19 ¹ Neither the U.S. Citizenship and Immigration Service ("USCIS") nor the office of the USCIS Ombudsman have
20 responded to Petitioner's written inquiries or confirmed that her I-485 application remains denied. Petitioner,
however, recognizes the declaration filed by Federal Respondents that the application remains denied. Petitioner has
filed Form I-290B, Motion to Reopen with USCIS in the event that the application has been denied, which remains
pending. *See* Exhibit A, Receipt Notice dated June 14, 2025. The arguments contained in this response will focus on
the arguments hinging from how her detention is unlawful even if her application is denied.

1 We do consider it uncontroversial, however, that the privilege of
2 habeas corpus entitles the prisoner to a meaningful opportunity to
3 demonstrate that he is being held pursuant to “the erroneous
4 application for interpretation” of relevant law.

5 *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (quoting *INS v. St. Cyr*, 533 U.S.
6 289, 301 (2001)). The writ of habeas corpus protects against arbitrary detention and
7 is a cornerstone of American freedom. *See generally*, *Boumediene*, 553 U.S. at
8 739-746.

9 Ms. Rodriguez contends that she is being held pursuant to an erroneous
10 interpretation of the legal posture that she is placed in. She does not request an
11 order to invalidate the reinstatement and has filed a petition for review with the
12 Ninth Circuit Court of Appeals. *See* Exhibit B, Petition for Review to Ninth
13 Circuit. Rather she is challenging her ongoing detention in light of the invalid
14 order, which this Court can review and this Court has the authority to order her
15 release during the pendency of the petition for review. Under a correct
16 interpretation of the law, Ms. Rodriguez Fuentes is not subject to mandatory
17 detention.

18 II. Background

19 As previously detailed in both the First Amended Petition and the Federal
20 Respondents’ Motion to Dismiss, Ms. Rodriguez Fuentes received an Order of
Voluntary Departure from an Immigration Judge as a child, which converted to a
removal order when her parents filed a Motion to Reopen. ECF No. 22, Exh. A. In

1 2010 Ms. Rodriguez Fuentes was removed on the judicial order and then reentered
2 with false documents. ECF No. 11, ¶ 49. On April 20, 2017, USCIS admitted Ms.
3 Rodriguez Fuentes as a U Nonimmigrant after granting her waivers of
4 inadmissibility relating to illegal reentry. ECF No. 22, Exh. B, ¶ 4-5. She timely
5 filed for adjustment of status and was issued a Request for Evidence. *Id.* at ¶ 8.

6 Ms. Rodriguez Fuentes timely responded to the Request for Evidence, and
7 her response was received by USCIS on June 12, 2023. *See* Exhibit C, USPS
8 Delivery Confirmation. The adjustment of status application was denied based on
9 USCIS's erroneous conclusion that the response was not submitted. ECF No. 22,
10 Exh. B, ¶ 10. Ms. Rodriguez Fuentes then requested that her case be reopened via
11 an email sent to the Nebraska Service Center, and she believed that it was reopened
12 based on the USCIS case status. ECF No. 11, ¶ 51. She subsequently submitted
13 inquiries to USCIS inquiring about the status of her case. *See* Exhibit D, Emails
14 Inquiring as to Case Status.

15 After she was arrested on April 19, 2025, Ms. Rodriguez Fuentes was
16 transferred to the custody of U.S. Immigration and Customs Enforcement ("ICE").
17 ECF No. 11, ¶¶ 20, 53-54. Legal counsel for ICE indicated on April 25, 2025, that
18 the reinstatement order would be rescinded and that they would instead issue a
19 Notice to Appear initiating proceedings under 8 U.S.C. § 1227(a)(1) as their
20 records reflected that the adjustment remained denied. ECF No. 11,

1 Exh. C.

2 Since filing the instant writ, Ms. Rodriguez Fuentes has filed a motion to
3 reopen her adjustment of status application with USCIS. *See* Exhibit A. She has
4 also filed a petition for review with the Ninth Circuit Court of Appeals. *See* Exhibit
5 B.

6 III. ARGUMENTS

7 A. This Court has jurisdiction over Ms. Rodriguez Fuentes's habeas petition
8 even though she has a removal order.

9 The government argues that this Court lacks jurisdiction over habeas
10 because Petitioner has a judicial removal order. ECF No. 22 at 14. If that were true,
11 8 U.S.C. § 1252(g) would strip the Court not only of jurisdiction to review a
12 removal order but also to review an illegal detention. To strip jurisdiction to this
13 extent, without violating the Suspension Clause, U.S. Const., art I., sec. 9, Ms.
14 Rodriguez Fuentes must have an "adequate and effective substitute for habeas
15 corpus." *Boumediene v. Bush*, 553 U.S. at 733. She does not.

16 In separate litigation, Ms. Rodriguez Fuentes has filed a petition for review,
17 challenging the validity of the removal order against her, before the Ninth Circuit
18 Court of Appeals; that matter is currently pending. She has also filed a motion to
19 reopen with the immigration court, to reopen and terminate her underlying removal
20 order. These filings are direct challenges to Ms. Rodriguez Fuentes's removal

1 order and are properly preserved before the Court of Appeals and Immigration
2 Court. It is not part of the litigation before this Court.

3 Instead, there are distinct matters before this Court that rather than
4 challenging the removal order issued against Petitioner in 2000, instead challenge
5 whether Respondents have unlawfully *detained* her in violation of the law. Ms.
6 Rodriguez Fuentes seeks to be released from detention while her claims are
7 reviewed.

8 The questions before the Court involve specific matters of detention. Federal
9 Respondents allege that Ms. Rodriguez Fuentes is properly detained under 8
10 U.S.C. 1231(a)(1)(A)-(B) because she has a final removal order and that she can be
11 detained during the removal period. ECF No. 22, p. 6. But Ms. Rodriguez Fuentes’
12 removal period” began in 2000 and has long since expired. Federal Respondents
13 also allege that Ms. Rodriguez Fuentes is properly detained under 8 U.S.C. §
14 1231(a)(5) because she has a reinstated order of removal, but because they have
15 misinterpreted the law her detention is not lawful.

16 While Federal Respondents wish this Court to find that the mere existence of
17 a removal order is sufficient to strip jurisdiction, this Court should decline this
18 invitation. Instead, this Court should, as instructed by the Supreme Court, narrowly
19 construe the jurisdiction stripping provisions of section 1252(g) to those three
20 discrete actions that are within the ambit of section 1252(g) and not in every

1 permutation of a case that just happens to have a removal order as part of it. *Reno*
2 *v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (stating, “It is
3 implausible that the mention of three discrete events along the road to deportation
4 was a shorthand way of referring to all claims arising from deportation
5 proceedings. . . . We are aware of no other instance in the United States Code in
6 which language such as this has been used to impose a general jurisdictional
7 limitation. . . .). To the extent Federal Respondents suggest such a position, this
8 Court should find such an expansion of section 1252 impermissible.

9 Several cases support Petitioner’s position. In *Mahdawi v. Trump*, 2:25-cv-
10 389, 2025 U.S. Dist. LEXIS 84287, at 18 (D. Vt. Apr. 30, 2025), the court ruled
11 that § 1252(g) does not apply in cases, like this one, that “do not seek to challenge
12 the removal proceedings but are directed instead at administrative detention.” In
13 *Mohammed H. v. Trump*, 25-cv-1576, 2025 U.S. Dist. LEXIS 88471 (D. Minn.
14 May 5, 2025) and *Aditya W.H. v. Trump*, 25-cv-1976, 2025 U.S. Dist. LEXIS
15 94430 (D. Minn. May 14, 2025), the petitioners were detained and placed in
16 removal proceedings after their student visas were revoked. Both courts rejected
17 the argument that § 1252(g) barred jurisdiction. The court in *Aditya W.H.* said,
18 “Mr. H has filed a habeas petition seeking his release from custody, and the Court,
19 at a minimum, has jurisdiction over that.” *Aditya W.H.*, at 23. In *E.D.Q.C. v.*
20 *Warden, Stewart Det. Ctr*, 4:25-cv-50, 2025 U.S. Dist. LEXIS 104781 (M.D. Ga.

1 June 3, 2025), a Venezuelan citizen with a removal order filed a habeas petition
2 before he was transported to a prison in El Salvador. The court found that §
3 1252(g) did not apply because the petitioner was challenging detention, not
4 removal. Finally, in *Karki v. Jones*, 1:25-cv-281, 2025 U.S. Dist. LEXIS 109168
5 (S.D. Ohio June 9, 2025), the petitioners were stateless members of an ethnic
6 group in Bhutan. They argued in habeas both for what the court called “removal-
7 based claims,” seeking notice of the country of removal, and for “detention-based
8 claims,” alleging the detention was prolonged because removal was not reasonably
9 foreseeable. The court found that § 1252(g) denied jurisdiction over the removal-
10 based claims but left it with jurisdiction over the detention-based claims.

11 In this case, the detention arises not from the removal order but from the
12 government’s misinterpretation of the legal posture created by Ms. Rodriguez
13 Fuentes’s admission as a U Nonimmigrant. To borrow the language of torts, the
14 removal order is a “but-for” cause of detention, because Ms. Rodriguez Fuentes
15 would not be detained without it. But the government’s new, and incorrect,
16 interpretation of the legal standing of someone who was admitted as a U
17 Nonimmigrant and the protection that it offers is an intervening cause of the
18 detention. If the government interpreted the statutory and regulatory scheme
19 correctly, Ms. Rodriguez Fuentes would not be in custody. The habeas petition
20 raises questions of agency action that is contrary to law, and the resulting unlawful

1 detention. This is the only means to make such a challenge.

2 B. The Federal Respondents have misinterpreted the law regarding
3 reinstatement of removal, applying the law in a manner that makes the
4 statute unconstitutional and resulting in her unlawful detention.

5 Ms. Rodriguez Fuentes' detention is unlawful because Federal Respondents
6 have misinterpreted 8 U.S.C. § 1231(a)(5) to apply to individuals who were legally
7 admitted after triggering 8 U.S.C. § 1182(a)(9)(C). Petitioner argues that the
8 government cannot reinstate an order of removal after subsequently waiving
9 inadmissibility and *admitting* an individual to the United States. Federal
10 Respondents appear to believe that Ms. Rodriguez Fuentes has stated that her order
11 of removal was issued by the Secretary of Homeland Security and cancelled as a
12 matter of law. *See* ECF No. 22, p. 11. Ms. Rodriguez Fuentes does not allege those
13 facts and has consistently acknowledged that she has a judicial removal order. The
14 statements referenced sought only to demonstrate that the statutory and regulatory
15 schema that underpin U Nonimmigrant Status were intended to protect survivors
16 from future reinstatement after the grant of an inadmissibility waiver and
17 admission as a U Nonimmigrant. *See* ECF No. 11, ¶¶ 36-39.

18 1. *The regulations cited by Federal Defendants refer to final orders of*
19 *removal that have not been effectuated and therefore have not triggered*
20 *inadmissibility and do not require waiver.*

1 In the motion to dismiss, Federal Respondents allege that Ms. Rodriguez
2 Fuentes was required to reopen and terminate her previously executed order of
3 removal. ECF No. 22, p. 12. They fail, however, to address the fact that neither the
4 U.S. Department of Homeland Security (“DHS”) nor the U.S. Department of
5 Justice (“DOJ”) allow respondents to reopen and terminate orders of removal after
6 the respondent has been removed from the United States. *See Matter of*
7 *Armendarez-Mendez*, 24 I&N Dec. 646 (BIA 2008); *Matter of Bulnes-Nolasco*, 25
8 I&N Dec. 57 (BIA 2009). The regulations cannot require an individual to follow a
9 procedure that does not exist. It would follow, therefore, that the procedure
10 outlined under 8 C.F.R. § 214.14(c)(5)(i) is directed at those individuals with
11 unexecuted orders of removal, and not those who were already removed.

12 This interpretation is consistent with the fact that effectuated orders of
13 removal do not trigger 8 U.S.C. § 1182(a)(9)(A) and therefore there is no waiver
14 available to applicants for U Nonimmigrant Status that would waive an effectuated
15 removal order. Similarly, the regulatory language at 8 C.F.R. § 214.14(c)(1)(ii)
16 refers to uneffectuated orders of removal under 8 U.S.C. §§ 1228(a) and 1231(a)(5)
17 which may remain outstanding at the time of the grant of U Nonimmigrant Status.
18 None of the provisions cited by Federal Respondents refer to effectuated orders of
19 removal, which instead trigger inadmissibility and require waiver. Instead they
20 demonstrate an intent to not remove U Nonimmigrants on previously issued

1 administrative and judicial orders that were not yet effectuated at the time that U
2 Nonimmigrant status was issued and therefore not eligible for waiver.

3 Federal Respondents fail to address the fact that an interpretation of the
4 statute and regulations that finds that an executed order of removal was not waived
5 along the §§ 1182(a)((9)(A) and 1182(a)(9)(C), then only one group of individuals
6 those, who like Ms. Rodriguez Fuentes have an executed orders, would be left
7 vulnerable to removal after the grant of U Nonimmigrant Status. It flies in the face
8 of statutory and regulatory intent to find that Ms. Rodriguez Fuentes would be
9 subject to reinstatement while individuals with an unexecuted administrative
10 removal order, those who triggered 8 U.S.C § 1182(a)(9)(C) after an administrative
11 removal, and those with an unexecuted removal order were all protected.

12 *2. Federal Respondents fail to address the fact that Petitioner was admitted*
13 *after approval of her application for U Nonimmigrant Status and that*
14 *any new attempts to reinstate her after admission trigger both the*
15 *doctrine of futility and violate her constitutional rights.*

16 Precedent from the Board of Immigration Appeals (“BIA”) holds that
17 individuals who were deported (or ordered deported) on a ground under 8 U.S.C. §
18 1227 and are either admissible (or qualify for a waiver of inadmissibility) cannot
19 be denied admission and they cannot later be found deportable for the conduct that
20 occurred before their admission. (*See Matter of Rainford*, 20 I&N Dec 598 (BIA

1 1992) (finding that a noncitizen who was ordered deported on a criminal ground
2 was admissible to adjust his status to that of a lawful permanent resident and that
3 the violation may not serve as a ground of deportability if the applicant becomes a
4 lawful permanent resident); *Matter of Rafipour*, 16 I&N Dec 470 (BIA 1978)
5 (finding that adjustment of status cannot be denied based on a previous ground of
6 deportability unless there is an equivalent ground of exclusion, and that the acts
7 giving rise to deportability must occur after the admission).

8 Imposing reinstatement of removal on Ms. Rodriguez Fuentes after she was
9 admitted as a U Nonimmigrant conflicts with this precedent and reactivates the
10 “futility clause.” Although Ms. Rodriguez Fuentes’s prior deportation and
11 subsequent reentry made her vulnerable to reinstatement prior to the grant of U
12 Nonimmigrant Status, the approval of her waiver resulted in her admission. While
13 no waiver of reinstatement is required because, as stated *supra*, the existence of an
14 unexecuted reinstatement order is not itself a ground of inadmissibility, the U
15 Nonimmigrant statute and implementing regulations specifically allow for
16 admission of individuals who have prior executed orders, whether judicial or
17 administrative in nature, even if they had illegally reentered after removal. *See e.g.*
18 8 U.S.C. § 1101(a)(15)(U); 8 U.S.C § 1182(d)(14). To find that acts occurring
19 before Ms. Rodriguez Fuentes’s admission (her removal and reentry) would form
20 the basis for reinstatement after admission would put her in the same position as

1 the respondents who the government sought to deport based on acts that occurred
2 before they were admitted. *See Matter of Rainford*, 20 I&N Dec 598 (BIA 1992;
3 *Matter of Rafipour*, 16 I&N Dec 470 (BIA 1978).

4 Federal Respondents have also failed to address Petitioner's arguments that
5 the reinstatement of Ms. Rodriguez Fuentes's prior removal order must be
6 unlawful, or otherwise the reinstatement statute itself is no longer constitutional.
7 The Supreme Court of the United States held in *Fernandez-Vargas v. Gonzales*,
8 548 U.S. 30, 44 (2006), that reinstatement is not unconstitutional. This is because
9 reinstatement is not intended to be a penalty but rather is intended to stop an
10 "indefinite and continuing" violation. *Id.* The Ninth Circuit Court of Appeals has
11 further stated that the purpose of reinstatement of removal is to stop the
12 ongoing violation and prevent a windfall. *Morales-Izquierdo vs. Gonzales*, 486
13 F.3d 484 (9th Cir. 2007). They held that the Due Process Clause could not be used
14 to put a noncitizen inside the United States to in a better position or afford them
15 more rights than those who have followed the process and waited for a lawful
16 admission to the United States. *Id.*

17 Federal Respondents must be incorrect in their interpretation that the
18 reinstatement of Ms. Rodriguez Fuentes's judicial order is, in fact, lawful, because
19 any interpretation in line with that reasoning would revert the statute in question to
20 that of a penalty. This would make the entire statute unconstitutional. The approval

1 of Ms. Rodriguez Fuentes's waiver application and her admission as a U
2 Nonimmigrant was a lawful admission that stopped any ongoing violation. *See*
3 *Alejandro Garnica Silva*, A098 269 615 (BIA June 29, 2017). A noncitizen who
4 has been admitted to the United States is entitled to different jurisdiction for
5 removal than those who are applicants for admission. In addition, Petitioner has a
6 legal path to residency, whereas the respondent in *Morales-Izquierdo* did not. 486
7 F.3d 484 (9th Cir. 2007). Any interpretation where reinstatement of removal is
8 lawful after lawful admission clearly turns the statute into a penalty, thereby
9 raising constitutional due process concerns.

10 For the foregoing reasons and all the others discussed in Petitioner's First
11 Amended Petition, the present Motion to Dismiss should be denied.

12
13 Respectfully submitted this 19th day of August, 2025.

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