IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CLAUDIA YADIRA ALVARENGA ESPANA AKA BENITA CASTILLO-LOPEZ, *Petitioner*, v. TODD M. LYONS, *et al.* *Respondents.*	Case No. 1:25-cv-950 (MSN/IDD)

FEDERAL RESPONDENTS' RESPONSE IN OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS[1]

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[1] Although Petitioner's submission is styled as a "Complaint for Injunctive Relief," Dkt. 1, this Court has "construed Ms. Alvarenga's filing as a habeas petition" and "order[ed] the Government to show cause why it should not be granted." Dkt. 6 (June 9, 2025). For the same reason, Federal Respondents refer to the Petitioner and Respondents as the parties in this case.

Federal Respondents Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement, *et al.*, in their official capacities, respectfully submit their Response in Opposition to the Complaint for Injunctive Relief (hereinafter, the "Petition"), *see* Dkt. 1.

INTRODUCTION

Petitioner Claudia Yadira Alvarenga Espana aka Benita Castillo-Lopez is a national and citizen of Guatemala who was removed from the United States in December 2010 pursuant to Section 235 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1225(b), which provides to ICE an expedited means of removing certain inadmissible aliens who arrive in the United States. Declaration of Justin Richardson, REX 1 ¶¶ 6-7; 8 U.S.C. § 1225(b)(1). Subsequently, Petitioner re-entered the United States, and on January 6, 2011, pursuant to its authority under INA § 241(a)(5), 8 U.S.C. § 1231(a)(5) ("Section 1231(a)(5)"), ICE reinstated "the prior order of removal [issued in 2010] . . . from its original date." § 1231(a)(5); REX 1 ¶ 8-9, REX 2. Per the express terms of Section 1231(a)(5), this action "is not subject to being reopened or reviewed," and is thus administratively final.

Petitioner has been detained under 8 U.S.C. § 1231(a) because she is subject to an administratively final order of removal, which ICE reinstated and which cannot be reviewed. Petitioner's action in this Court challenges the execution of that final order of removal. In essence, Petitioner's claim is that ICE's decision to execute her reinstated removal order while she has a pending asylum application, and wishes to pursue other claims for relief from removal, violates her rights under the Due Process Clause of the Fifth Amendment For the reasons set forth below, this Court should deny the Petition.

First, Petitioner challenges the execution of her reinstated removal order, but such challenges are foreclosed by several provisions of the INA, which make clear that this Court lacks

jurisdiction over such a claim. Moreover, even if this Court were to have jurisdiction over the Petition, the execution of Petitioner's reinstated removal order does not violate Plaintiff's rights under the INA or the Due Process Clause.

For all these reasons, the Court should deny the Petition.

BACKGROUND

I. Reinstatement of Final Orders of Removal

A. Section 1231

When ICE determines that an alien has reentered the United States illegally after removal, Section 1231(a)(5) authorizes ICE to reinstate the prior removal order. Accordingly, the "prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8; *see also, e.g.*, *Martinez v Garland*, 86 F.4th 561, 564 (4th Cir. 2023) ("An immigration officer simply obtains the alien's prior order of removal, confirms the alien's identity, and determines whether the alien's reentry was authorized.") (citing 8 C.F.R. § 241.8(a)(1)–(3))); *Tomas-Ramos v Garland*, 24 F.4th 973, 976 (4th Cir. 2022) ("in the ordinary case, a noncitizen facing a reinstated removal order is removed from the country without further legal proceedings"); *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 491 (9th Cir. 2007) (noting that the "*only* question" in "a reinstatement inquiry ... is ... whether the alien has illegally reentered after having left the country while subject to a removal order ") (emphasis in original).

An alien subject to a reinstated removal order "is not eligible and may not apply for any relief under [the chapter of 8 U.S.C relating to Immigration and Nationality, sections 1101 to 1537], and the alien shall be removed under the prior order at any time after the reentry." 8 U.S C. § 1231(a)(5). Thus, Section 1231(a)(5) "generally forecloses discretionary relief from the

terms of the reinstated order." *Fernandez-Vargas v Gonzales*, 548 U.S. 30, 35 (2006). However, "[n]otwithstanding the absolute terms in which the bar on relief is stated, even an alien subject to [Section 1231(a)(5)] may seek withholding of removal" under 8 U.S.C. § 1231(b)(3) or the Convention against Torture (the "CAT"). *Id* at 35 n.4; *see also* 8 C.F.R. §§ 241.8(e), 208.31.

B. "Reasonable Fear" Determinations

Pursuant to 8 C.F.R. Sections 241.8(e) and 208.31, when an alien subject to a reinstated removal order expresses a fear of return to his country of origin (*i.e.*, the country to which he would ordinarily be removed), ICE refers the alien to United States Citizenship and Immigration Services ("USCIS") for an interview with an asylum officer who is charged with determining whether the alien possesses a "reasonable fear" of return. *See* 8 C.F R §§ 208.31(b), 241.8(e). This initiates the "reasonable fear determination process." *See* 8 C F.R. § 208.31(b), (c) USCIS has exclusive jurisdiction to make a reasonable fear determination. 8 C.F.R. § 208.31(a)

If the asylum officer determines that the alien has not established a reasonable fear, the alien may request review of that determination by an Immigration Judge ("IJ") 8 C.F.R. § 208.31(f) If the IJ concurs with the determination that no reasonable fear of persecution or torture exists, the case returns to ICE, which executes the reinstated order of removal. 8 C.F.R. § 208.31(g). No administrative appeal is available to the alien. *Id.* § 1208.31(g).

C. "Withholding-Only" Proceedings

If, on the other hand, the asylum officer determines that the alien has established a reasonable fear of persecution or torture, then the alien may apply for withholding of removal under 8 U.S.C.§ 1231(b)(3) or for withholding or deferral of removal under the regulations

promulgated under section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681, which implement the United States' obligations under the CAT. An immigration judge adjudicates the alien's application for withholding or deferral of removal. 8 C.F.R. §§ 208.31(e), 1208.16(c). The alien can appeal the IJ's order concerning withholding and/or deferral to the Board of Immigration Appeals ("BIA"). *Id.*

To qualify for withholding of removal under 8 U.S.C.§ 1231(b)(3), the alien bears the burden of proof to "establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b). To qualify for withholding of removal under CAT, the alien bears the burden to establish that it is "more likely than not that he or she would be tortured if removed to the proposed country of removal." *Id.* § 1208.16(c)(2). The alien must also show that the torture will occur with consent or acquiescence of the government in the country of removal to obtain relief under the CAT. 8 C.F.R. §§ 1208.17(a), 1208.18(a)(1); *see also Negusie v Holder*, 555 U.S. 511, 536 n.6 (2009) (Stevens, J., concurring in part and dissenting in part) (discussing differences among asylum, withholding of removal under 8 U.S.C. § 1231(b)(3), and CAT relief).

Regardless of the specific form of relief at issue or under consideration, in "withholding-only" proceedings, the *sole* issue is whether the alien is entitled to relief from removal to his home country; the alien's underlying removal order is not at stake. *See* 8 C.F.R. § 1208.2(c)(3)(i) ("The scope of review in [withholding-only] proceedings . . . shall be limited to a determination of whether the alien is eligible for asylum or withholding or deferral of removal. . . . [A]ll parties are prohibited from raising or considering any other issues, including but not

limited to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other form of relief.").

Further, both withholding of removal (under both Section 1231(b)(3) and CAT) and deferral of removal preclude only the alien's removal to *a particular country*—even where the alien obtains such relief, he could still be removed to a third country. 8 C.F.R. § 1208.16(f); *Lanza v. Ashcroft*, 389 F.3d 917, 933 (9th Cir. 2004) (a grant of withholding "only prohibits removal of the petitioner to the country of risk, but does not prohibit removal to a non-risk country") (internal quotation omitted); *see also* 8 U.S.C. § 1231(b).

D. Petitioner's Immigration History

1. Petitioner's First Arrival and Removal

Petitioner is native and citizen of Guatemala who came to the United States first in December 2010. REX 1 ¶ 5-7; *see* Pet.at 2. Plaintiff entered the United States on December 22, 2010, by unlawfully crossing the border between the United States and Mexico in Arizona. Plaintiff was not admitted or paroled by an immigration officer. Plaintiff was apprehended by Customs and Border Protection officers shortly after her unlawful entry to the United States. REX 1 ¶ 6; Dkt. 1-2 at 44. On the same day, December 22, 2010, Plaintiff was issued a Form I-860, Notice and Order of Expedited Removal, pursuant to 8 U.S.C. § 1225. Plaintiff stated that she did not fear persecution or torture if she were returned to her home country or country of last residence. Plaintiff was removed to Guatemala on the same day. REX 1 ¶ 7.

2. Petitioner's Second Arrival and Subsequent Immigration History

On January 6, 2011, Plaintiff again entered the United States by unlawfully crossing the border between the United States and Mexico in Arizona. Plaintiff was not admitted or paroled by an immigration officer. Plaintiff was apprehended by Customs and Border Protection officers shortly after her unlawful entry to the United States. REX 1 ¶ 8; Dkt. 1-2 at 44. The next day,

Plaintiff was issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order pursuant to 8 U.S.C. § 1231(a)(5). REX 1 ¶ 9; REX 2 (notice). Plaintiff stated that she did not fear persecution or torture if she were returned to her country of citizenship. REX 1 ¶ 9. The same day, Plaintiff was released from immigration custody and issued a Form I-220B, Order of Supervision, due to humanitarian reasons (Plaintiff was pregnant and in her third trimester). *Id* ¶ 10.

3. Petitioner's Asylum Applications

On June 8, 2011, Plaintiff filed a Form I-589, Application for Asylum and Withholding of Removal, with the United States Citizenship and Immigration Services ("USCIS"). *Id* ¶ 11. On September 21, 2011, USCIS administratively closed Plaintiff's asylum application without making a decision. USCIS did not have jurisdiction over Plaintiff's application because she was subject to an order of reinstatement of removal. *Id.*

In addition, on August 30, 2013, Plaintiff requested a reasonable fear review from USCIS pursuant to 8 C.F.R. § 208.31. REX 1 ¶ 12. USCIS administratively closed Plaintiff's case. *Id* Finally, on March 25, 2025, Plaintiff filed another I-589 Application for Asylum and for Withholding of Removal with USCIS. REX 1 ¶ 13.

4 Petitioner's Current Detention and Referral for Reasonable Fear Interview

On June 3, 2025, Plaintiff attended a scheduled check-in with ERO and was placed in immigration custody at the Caroline Detention Facility in Virginia pursuant to 8 U.S C § 1231, as an alien who is subject to a removal order. REX 1 ¶ 14. On June 5, 2025, Plaintiff was transferred to the South Louisiana ICE Processing Center. *Id.* ¶ 15. On June 10, 2025, Plaintiff was transferred to the Karnes County Immigration Processing Center in Texas. *Id.*

On June 11, 2025, ICE referred Plaintiff to USCIS for a reasonable fear interview pursuant to 8 C.F.R. §§ 208.31, 241.8(e). REX 1 ¶ 16. ICE will continue to communicate with USCIS regarding Plaintiff's upcoming reasonable fear review. *Id.* ¶ 17.

E. The Instant Petition

On June 5, 2025, Petitioner filed the instant Petition. *See* Dkt. 1. On June 9, 2025, this Court issued an Order to Show Cause enjoining Respondents from removing Petitioner from the United States. *See* Dkt. 6. This Court further ordered the Respondents to file their Response to the Petition on or before June 12, 2025, at 5:00 p.m. *See* Dkt. 6. This Court also ordered that a hearing on the Petition be held on Tuesday, June 17, 2025, at 11:00 a.m. *Id.*

ARGUMENT

The central claim presented in the Petition that the execution of Petitioner reinstated order of removal before she has the opportunity to "apply for relief, appear before an immigration judge, or challenge her removal" violates her rights to procedural due process under the Fifth Amendment to the United States Constitution *See* Pet. at 7. For the reasons stated below, this claim fails First, this Court lacks jurisdiction to review challenges to the execution of reinstated removal orders, under well-established Supreme Court and Fourth Circuit precedent. Moreover, even if this Court were to have jurisdiction over the Petition, the execution of Petitioner's reinstated removal order does not violate Plaintiff's rights under the INA or the Due Process Clause. In addition, it is worth noting that as of June 11, 2025, Petitioner has been referred to USCIS for a reasonable fear interview.

I. This court lacks jurisdiction to review Petitioner's challenge to the execution of her reinstated removal order.

Congress has created a streamlined process for the judicial review of removal orders. Accordingly, the single issue before the Court is whether the Court has jurisdiction to consider

the Petition. Under 8 U.S.C. § 1252(a)(5), a "a petition for review filed with an appropriate court of appeals in accordance with this section shall be the *sole and exclusive means* for judicial review of an order of removal entered or issued under any provision of this chapter." (emphasis added). The statute goes on to state that the term "judicial review" includes "habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory)."

Thus, as 8 U.S.C. § 1252(a)(5) makes clear, even habeas challenges to a final order of removal must be presented to the appropriate federal court of appeals. Federal courts of appeals are the "sole and exclusive" forum for a review of an order of removal. *Id.*; *see Nasrallah v Barr*, 590 U.S. 573, 579 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.") (also citing 8 U.S.C. § 1252(b)(9)); *Jahed v Acri,* 468 F.3d 230, 233 (4th Cir. 2006) ("The REAL ID Act eliminated access to habeas corpus for purposes of challenging a removal order. 8 U.S.C.A. § 1252(a)(5). In doing so, it instructed that all such challenges should proceed directly to the Courts of Appeals as petitions for review.").

The INA further provides that, "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien* from the U.S under this subchapter *shall be available only* in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). "This section, known as the 'zipper' clause, consolidates review of matters arising from removal proceedings 'only in judicial review of a final order under this section,' and strips courts of habeas jurisdiction over such matters." *Afanwi v. Mukasey*, 526 F.3d

788, 796 (4th Cir. 2008), *vacated on other grounds*, 558 U.S. 801 (2009). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for-review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *Afanwi*, 526 F.3d at 796.

In addition, 8 U.S.C. § 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)." *Id* Though this section "does not sweep broadly," *Tazu v. Attorney General United States*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F L v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Arresting Petitioner to execute a removal order is an action within 1252(g)'s ambit that this Court lacks jurisdiction to review. *See Tazu*, 975 F.3d at 298–99 ("Tazu also challenges the Government's re-detaining him for prompt removal . . . [his] claim . . . does attack the action taken to execute [the removal] order. So under § 1252(g) and (b)(9), the District Court lacked jurisdiction to review it "). The fact Petitioner raises Fifth Amendment claims do not restore the jurisdiction of this Court. *See Tazu*, 975 F.3d at 296–98 (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602–04 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the court's interpretation from the remainder of the statute).

The removal order involved in this case is a reinstated order of removal. This type of removal order is designed for those situations where an alien unlawfully reenters the United States after having been removed or having departed voluntarily under an order of removal. Congress "has created an expedited process for aliens who reenter the United States without authorization after having already been removed." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). This process is set forth in 8 U.S.C. § 1231(a)(5):

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

Id

For this type of order to apply, "the agency obtains the alien's prior order of removal, confirms the alien's identity, determines whether the alien's reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order." *Johnson,* 594 U S. at 530 (citing 8 C.F R §§ 241 8(a)-(c), 1241.8(a)-(c)); *see also Martinez*, 86 F.4th at 564 ("An immigration officer simply obtains the alien's prior order of removal, confirms the alien's identity, and determines whether the alien's reentry was authorized.") (citing 8 C F.R. § 241.8(a)(1)–(3)) Congress specifically eliminated judicial review of the prior order of removal when it is reinstated under 8 U.S.C. § 1231(a)(5): "the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed…". *Id.* As the Supreme Court has stated, "8 U. S. C. § 1231(a)(5) applies to 'all illegal reentrants,' and it 'explicitly insulates the removal orders from review,' while also 'generally foreclos[ing] discretionary relief from the terms of the reinstated order.'" *Johnson*, 594 U.S. at 530 (quoting *Fernandez-Vargas v. Gonzales*, 540 U.S. 30, 35 (2006)); *Tomas-Ramos*,

24 F.4th at 976 ("in the ordinary case, a noncitizen facing a reinstated removal order is removed from the country without further legal proceedings").

Challenges to reinstatement orders under 8 U.S.C. §1231(a)(5) can only be reviewed in federal courts of appeals pursuant to 8 U.S.C. §1252(a)(5). *See Nolberto Gonzalez-Pablo v Mason*, et al., 2:25-cv-00368, 2025 WL 1648366, at *3 (S.D.W. Va. June 10, 2025) (holding the district court lacked jurisdiction over habeas corpus claim challenging execution of a reinstated removal order); *Lara-Nieto v. Barr*, 945 F.3d 1054, 1059 (8th Cir. 2019) ("Lara-Nieto argues that, because the circumstances surrounding the entry of the Removal Order constitute a "gross miscarriage of justice," the district court had jurisdiction to review DHS's order reinstating the Removal Order pursuant to § 1231(a)(5). We find his argument unpersuasive. Indeed, the relevant statute says that "[n]otwithstanding any other provision of law (statutory or nonstatutory) ... a petition for review filed with an appropriate court of appeals ... shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter." 8 U.S.C. § 1252(a)(5). *We have interpreted this to mean that the federal courts of appeals have exclusive jurisdiction to consider the propriety of orders reinstating prior orders of removal* ") (emphasis added); *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1162 (10th Cir. 2004) ("We begin by observing that Berrum–Garcia's resort to a habeas corpus petition in the district court was incorrect. In 8 U.S.C. § 1252 Congress has provided an avenue for direct judicial review of INS removal orders in the courts of appeals. Although the text of § 1252(a)(1) speaks of judicial review for "order[s] of removal," we have previously held that this provision gives us jurisdiction to hear direct appeals from reinstatement orders entered pursuant to § 1231(a)(5) "); *cf. Martinez*, 86 F.4th at 568 ("Our Court has previously exercised jurisdiction over petitions filed by aliens subject to reinstated removal orders, accepting the

Government's position that a reinstatement decision is an 'order of removal.'") (citing *Velasquez-Gabriel v. Crocetti,* 263 F.3d 102, 105 (4th Cir. 2001)).

In summary, Congress has vested exclusive jurisdiction over the judicial review of removal orders, including reinstated removal orders, in federal courts of appeals, not district courts, pursuant to 8 U.S.C. § 1252(a)(5). Accordingly, this Court should dismiss the Petition for lack of jurisdiction.[2]

II. The execution of Petitioner's reinstated removal order does not violate Petitioner's statutory or Constitutional rights.

Even if this Court were to have jurisdiction over the Petition, the execution of Petitioner's reinstated removal order does not violate Plaintiff's rights under the INA or the Due Process Clause.

First, Petitioner claims her removal is unlawful because she has been deprived of a "credible fear interview." Pet. at 5. As a threshold matter, as of June 11, 2025, Petitioner has been referred to USCIS for a "reasonable fear interview" pursuant to 8 C.F.R. §§ 208.31, 241.8(e). *See* REX 1 ¶ 16. As explained *supra*, pursuant to 8 C.F.R Sections 241.8(e) and 208.31, when an alien subject to a reinstated removal order expresses a fear of return to his country of origin (*i.e.*, the country to which he would ordinarily be removed), ICE refers the alien to United States Citizenship and Immigration Services ("USCIS") for an interview with an asylum officer who is charged with determining whether the alien possesses a "reasonable fear"

[2] It is also worth noting that the Supreme Court has reiterated that for "'core habeas petitions,' 'jurisdiction lies in only one district: the district of confinement.'" *Trump v. J.G.G* , 604 U.S. ___ (2025) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). When a petitioner "seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement." *Rumsfeld*, 542 U.S. at 447. As noted in the Petition, filed on June 5, 2025, ICE informed Plaintiff's immigration attorney on June 5, 2025, that Petitioner had been moved from this District to Louisiana. Pet. at 4; *see also* Dkt. 1-2 at 6.

of return. *See* 8 C.F.R. §§ 208.31(b), 241.8(e). This initiates the "reasonable fear determination process." *See* 8 C.F.R. § 208.31(b), (c). USCIS has exclusive jurisdiction to make a reasonable fear determination. 8 C.F.R. § 208.31(a).

If the asylum officer determines that the alien has not established a reasonable fear, the alien may request review of that determination by an Immigration Judge ("IJ"). 8 C.F.R. § 208.31(f). If the IJ concurs with the determination that no reasonable fear of persecution or torture exists, the case returns to ICE, which executes the reinstated order of removal. 8 C.F.R. § 208.31(g)(1). No administrative appeal is available to the alien. *Id.* If, on the other hand, the asylum officer determines that the alien has established a reasonable fear of persecution or torture, then the alien may apply for withholding of removal under 8 U.S.C.§ 1231(b)(3) or for withholding or deferral of removal under the regulations promulgated under section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681, which implement the United States' obligations under the CAT. An immigration judge adjudicates the alien's application for withholding or deferral of removal 8 C.F.R. §§ 208.31(e), 1208.16(c). The alien can appeal the IJ's order concerning withholding and/or deferral to the Board of Immigration Appeals ("BIA")).

Accordingly, to the extent Petitioner claims that she has been denied an interview regarding her fear of returning to Guatemala, that claim is incorrect

Second, despite Petitioner's argument to the contrary, she is not entitled to a hearing before an immigration judge before her removal. *See* Pet. at 2 (arguing that Petitioner is "statutorily eligible for cancellation of removal under INA 240A(b), yet ICE seeks to remove her before she can present this relief before an immigrant judge"). As the Fourth Circuit has stated, "Congress has established a streamlined process for removal of noncitizens who return illegally

to this country after a previous removal order has been entered against them." *Tomas-Ramos*, 24 F.4th at 976. Under 8 U.S.C. § 1231(a)(5), the prior order of removal that is reinstated is "not subject to being reopened or reviewed." Thus, "in the ordinary case, a noncitizen facing a reinstated removal order is removed from the country without further legal proceedings." *Tomas-Ramos*, 24 F.4th at 976; *see also Martinez*, 86 F.4th at 564-65 ("An immigration officer simply obtains the alien's prior order of removal, confirms the alien's identity, and determines whether the alien's reentry was unauthorized... *The alien has no right to a hearing before an immigration judge.*") (emphasis added) (citing 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8)). Therefore, Petitioner's claim that she is entitled to a hearing before an immigration judge should be denied.

Third, although Petitioner argues that her removal should be stayed on humanitarian grounds so that she may seek other relief from removal, *see* Pet. at 3-5 (identifying asylum, a T-visa, and cancellation of removal), Congress did not provide for such relief for those subject to reinstated removal orders. Under 8 U.S.C. § 1231(a)(5), an alien "is not eligible and may not apply for any relief under this chapter . . . " This provision bars relief for adjustment of status, asylum, and other types of relief afforded under the INA, whether the applications were presented before or after the order reinstating the prior removal order. *See Martinez*, 86 F 4th at 565 ("an illegal reentrant may not challenge a reinstated removal order and may not pursue discretionary relief like asylum"); *see also Johnson*, 594 U.S. at 530 (§ 1231(a)(5) applies to "all illegal reentrants," and it "explicitly insulates the removal orders from review," while also "generally foreclos[ing] discretionary relief from the terms of the reinstated order"); *Berrum-Garcia*, 390 F.3d at 1163, 1164-65 ("Section 1231(a)(5) states not only that an illegal reentrant 'may not apply' for relief, but also that he is 'not eligible' for relief. Once Petitioner's prior removal order has been reinstated, he no longer qualifies for any relief under the INA, regardless

of whether his applications for relief were filed before or after the reinstatement decision is made."); *Lino v Gonzalez*, 467 F.3d 1077, 1080 (7th Cir. 2006) ("Finally, six circuits have held that § 241(a)(5) precludes aliens subject to reinstatement orders from obtaining adjustment of status pursuant to § 245(i).").

As these cases and 8 U.S.C. § 1231(a)(5) point out, Petitioner is not eligible for the types of relief identified in her Petition because she is subject to a reinstated removal order. Thus, Petitioner's argument fails because the execution of Petitioner's reinstated removal order does not violate Plaintiff's rights under the INA or the Due Process Clause.

III. Petitioner's reinstated removal order is lawful and Petitioner's Constitutional claims regarding that order fail.

Under 8 U.S.C. §1231(a)(5), an alien can be lawfully removed when (1) the identity of the alien of the alien; (2) the alien had a prior order of removal; and (3) the alien unlawfully reentered the United States. *Id.* In this case, the January 7, 2011, removal order barred Petitioner from reentering the United States for twenty years due to her prior illegal entry into the United States *See* REX 2. Petitioner does not address these aspects of her immigration history in her Petition. Accordingly, she does not contest that she was under a prior order of removal, that she was the alien identified in that removal order, or that she unlawfully reentered the United States after the entry of that removal order. Instead, she asserts alleged constitutional violations of the Fifth Amendment. *See* Pet. As stated earlier, the proper forum for reviewing the validity of these claims is the federal court of appeals and not this Court. 8 U.S.C. § 1252(a)(5)

Nevertheless, Petitioner cannot succeed on these claims because she has not experienced any prejudice and there is no statutory or constitutional violation which prohibits her removal. She does not contest the essential fact that she was the subject of the prior removal order and that she subsequently reentered the United States in violation of that order. Since Petitioner has not

contested these facts, she has not experienced any constitutional prejudice that would have altered the entry of the order reinstating the prior removal order. As a result, she cannot succeed on her constitutional claim. *See Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292, 302 (5th Cir. 2002) ("Finally, Ojeda–Terrazas argues that the INS regulations implementing § 241(a)(5) violate his due process rights because the reinstatement procedure denies him the opportunity to develop a record, have an attorney present, and have an immigration judge decide his case....In this case, Ojeda–Terrazas has conceded his identity, that he was subject to a prior deportation order, and that he illegally reentered the United States. In so doing, Ojeda–Terrazas has conceded that all the predicate findings that the immigration officer made to reinstate Ojeda–Terrazas' 1984 deportation order were true. Ojeda–Terrazas does not assert that, if given the procedural safeguards he seeks, the result in this case would be any different. Therefore, we hold that Ojeda–Terrazas has not alleged that he suffered any actual prejudice as a result of the new reinstatement procedures, and therefore, we do not reach the merits of Ojeda–Terrazas' due process claim.") (footnotes omitted).

Moreover, any attack on the December 22, 2010, removal order which was reinstated would be invalid. Section 1231(a)(5) prohibits review and reopening the prior removal order. *Id.* Furthermore, any such attack would be time-barred. A challenge to a removal order must be filed with the appropriate federal court of appeals within 30 days after the date of the order of removal. *See* 8 U.S C. § 1252(b)(1). The 30-day period begins to run not from the date of the order reinstating the removal order but from the date of the original removal order. *See Meja v Sessions*, 866 F.3d 573, (4th Cir. 2017) ("In light of the plain text and purpose of § 1251(b)(1), we reject Calla Mejia's reading and hold that the 30-day deadline runs from the date an *original* order of removal becomes final. And, as we've recognized, the 30-day time limit of § 1252(b)(1)

constrains our review of an underlying order of removal, even where an alien raises constitutional or legal challenges.") (emphasis in the original); *see also Martinez*, 86 F.4th at 567-68 (time under Section 1252(b)(1) runs date of original underlying order). In this case, the Petition purportedly challenging the 2010 or 2011 removal orders was not filed until June 5, 2025, more than 14 thirteen years later the date of that removal order. *See* Pet. Thus, the Petitioner's challenge to that order has not only been brought in the wrong forum, but it also untimely as a matter of law.

In summary, the order reinstating the prior removal order is not only valid, but the underlying order is also valid, and there were no constitutional violations which prejudiced the outcome for the Petitioner. While this court lacks jurisdiction to review the order reinstating the prior removal order and the underlying removal order based on 8 U.S.C. §§ 1231(a)(5), 1251(b)(1), and 1252(a)(5), it is also clear that Petitioner's constitutional claim lacks merit.

CONCLUSION

For all these reasons, Federal Respondents respectfully request that the Court dismiss the Petition.

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Respectfully submitted,

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