

Petitioner near Roma, Texas, determined she was inadmissible, and allowed her voluntary return to Mexico. *Id.* ¶ 6 & Ex. A. Petitioner sought entry into the United States again on June 3, 2006, at the San Ysidro, California, Port of Entry using a United States citizen's passport that did not belong to her. *Id.* ¶ 7. CBP allowed her voluntary return to Mexico. *Id.* ¶ 7 & Ex. A.

On June 29, 2023, a Form I-130, Petition for Alien Relative, and a concurrent Form I-485, Application to Register Permanent Resident or Adjust Status, were filed on Petitioner's behalf under the name Lucy Cristina Hernandez Gutierrez. *Id.* ¶ 8. Petitioner submitted fingerprints and other biometric data during the application process. *Id.* ¶ 9. On or about September 29, 2023, analysis of that biometric information revealed that Anabel Ayala Flores (A [REDACTED]) and Lucy Cristina Hernandez Gutierrez (A [REDACTED]) were the exact same individual. *Id.* ¶ 9 & Ex. C.

On April 29, 2026, ICE/ERO encountered Petitioner at the USCIS office in Durham, North Carolina. *Id.* ¶ 10. ICE/ERO took her into ICE custody at that time pending the reinstatement of her prior removal order. *Id.* ¶ 10 & Ex. D. Petitioner has been detained at the Stewart Detention Center since April 30, 2026. *Id.* ¶ 4. On May 5, 2026, USCIS denied Petitioner's Form I-485. *Id.* ¶ 11 & Ex. E. Petitioner is currently subject to a reinstated final order of removal, her removal to Mexico is imminent, and she is detained under the authority of 8 U.S.C. § 1231(a). *Id.* ¶ 4, 10, 12.

LEGAL FRAMEWORK

8 U.S.C. § 1231(a)(5) provides for the reinstatement of a prior order of removal "from its original date" if DHS "finds that an [non-citizen] has reentered the United States illegally after having been removed . . . under an order of removal[.]" *See also* 8 C.F.R. § 1241.8(a). A reinstated removal order "is not subject to being reopened or reviewed[.]" 8 U.S.C. § 1231(a)(5). Further, a non-citizen subject to a reinstated removal order "has no right to a hearing before an immigration

judge,” 8 C.F.R. § 1241.8(a), and “is not eligible and may not apply for any relief” from removal, 8 U.S.C. § 1231(a)(5). *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006) (recognizing that 8 U.S.C. § 1231(a)(5) “applies to all illegal reentrants, explicitly insulates the removal orders from review, and generally forecloses discretionary relief from the terms of the reinstated order”).

Once a removal order is reinstated, the non-citizen’s detention is governed by 8 U.S.C. § 1231. 8 C.F.R. § 1241.8(c); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 533-47 (2021).

ARGUMENT

Petitioner raises five types of claims: (1) that her detention is arbitrary and unconstitutional under the Fifth Amendment Due Process Clause because the government relies on unverified identity information (Pet. ¶¶ 32–35); (2) that the government cannot lawfully execute the 1998 removal order without establishing biometric or fingerprint matching to prove she is the individual subject to that order (*Id.* ¶¶ 37–39); (3) that her procedural due process rights were violated because she was never informed that she had been issued a removal order in 1998 (*Id.* ¶¶ 41–43); (4) that enforcing the order despite negative FBI and OBIM database results is arbitrary and capricious under 5 U.S.C. § 706(2)(A) (*Id.* ¶¶ 45–47); and (5) that she is entitled to a declaratory judgment under 28 U.S.C. § 2201 stating that the government’s reliance on the unverified 1998 removal order is unlawful as applied to her (*Id.* ¶¶ 49–53).

The Petition should be dismissed for two compelling reasons. First, this Court lacks subject-matter jurisdiction because 8 U.S.C. § 1252(a)(5) vests the exclusive means for judicial review of a reinstated removal order in the federal courts of appeals, completely precluding district court review via a 28 U.S.C. § 2241 habeas petition. Second, Petitioner’s claims fail on the merits because her detention is legally authorized and mandatory under 8 U.S.C. § 1231 following the biometric verification confirming that her fingerprints match the 1998 expedited removal order.

I. The Court Lacks Subject-Matter Jurisdiction Over Petitioner's Claims Challenging Her Detention and Reinstated Removal Order, and the Claims Otherwise Lack Merit.

Petitioner claims seek judicial review of her detention and imminent removal, arguing that ICE's reliance on her 1998 expedited removal order is arbitrary, unconstitutional, and lacks a biometric basis. Pet. ¶¶ 30–53. These claims must be dismissed because, under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(a)(2)(B)(ii), this Court lacks subject-matter jurisdiction to judicially review ICE's decisions to detain Petitioner and execute her reinstated final order of removal.

A. The Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252(g).

Because ICE detained Petitioner and is moving forward to enforce her reinstated prior order of removal, 8 U.S.C. § 1252(g) deprives the Court of subject-matter jurisdiction over her claims.

“Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.” *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). “The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).

The Court lacks jurisdiction over Petitioner's claims because they directly seek judicial review of actions taken to execute a removal order. 8 U.S.C. § 1252(g) is a jurisdiction-stripping provision in the immigration statutes, which provides that:

[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

“When asking if a claim is barred by 8 U.S.C. § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). 8 U.S.C. § 1252(g) applies “to three discrete actions that the Attorney General may take: [the] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm. (“AADAC”)*, 525 U.S. 471, 482 (1999) (emphasis in original).

ICE’s decision to detain a non-citizen pending the execution of a final order of removal is an action taken to “execute [a] removal order” within the explicit meaning of the 8 U.S.C. § 1252(g) jurisdictional bar. In the context of detention, the Eleventh Circuit has held that “securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings” within the purview of 8 U.S.C. § 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *accord. Camarena v. Dir., Immigr. & Customs Enf’t*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government’s authority to execute a removal order rather than its execution of a removal order.” (emphasis in original)).

This Court has reached the same conclusion. *Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) (“Plaintiff’s claims that she was falsely arrested when she was transferred into ICE custody . . . ‘challenge[] the actions the agents took to commence removal proceedings—exactly the claims that 8 U.S.C. § 1252(g) bars from the subject-matter jurisdiction of federal courts.’” (quoting *Gupta*, 709 F.3d at 1065)).

Here, ICE’s detention of Petitioner on April 29, 2026, was an action taken directly to execute her final removal order. Petitioner’s prior 1998 expedited removal order was reinstated

under 8 U.S.C. § 1231(a)(5), and her detention is required to facilitate her imminent removal to Mexico. Aguilar Decl. ¶¶ 4, 10, 12. Because each of Petitioner’s five claims—whether styled as a due process violation, an identity challenge, or an APA claim—directly attacks the government’s operational decision to detain her and execute that reinstated order, they arise entirely from actions to execute a removal order.

The Court should follow established precedent holding that 8 U.S.C. § 1252(g) bars claims arising from ICE’s decision to detain a non-citizen pending execution of a final order of removal. *See Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025); *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *5-6 (E.D. La. Feb. 24, 2025); *Kareva v. United States*, 9 F. Supp. 3d 838, 844 (S.D. Ohio 2014); *Khorrami v. Rolince*, 493 F. Supp. 2d 1061, 1067-68 (N.D. Ill. 2007). Accordingly, this Court lacks subject-matter jurisdiction to hear Petitioner’s claims.

B. The Court Lacks Jurisdiction Pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii).

Under 8 U.S.C. § 1231(a), ICE has the statutory authority to detain Petitioner following the reinstatement of her prior removal order. Because the execution of a reinstated order and post-final order detention are vested within the statutory authority of the Executive branch, 8 U.S.C. § 1252(a)(2)(B)(ii) deprives the Court of subject-matter jurisdiction over Petitioner’s claims challenging ICE’s operational decision to execute her prior removal order and maintain her custody.

In the immigration context, 8 U.S.C. § 1252(a)(2)(B)(ii)—promulgated as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”)—limits federal courts’ jurisdiction to review determinations made by immigration authorities as follows:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision . . . no court shall

have jurisdiction to review . . . any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security[.]

“[M]any provisions of IIRIRA are aimed at protecting the Executive’s discretion from the courts—indeed, that can fairly be said to be the theme of the legislation.” *AADC*, 525 U.S. at 486 (emphasis in original). In promulgating 8 U.S.C. § 1252(a)(2)(B)(ii) specifically, “Congress barred court review of discretionary decisions only when Congress itself set out [the Executive’s] discretionary authority in the statute.” *Kucana v. Holder*, 558 U.S. 233, 247 (2010). The Eleventh Circuit made clear that 8 U.S.C. § 1252(a)(2)(B)(ii) bars “not only the ultimate decision to approve or deny [relief], but also actions taken in the course of the decision-making process[.]” *Kanapuram v. Dir., U.S. Citizenship & Immigr. Servs.*, 131 F.4th 1302, 1307 (11th Cir. 2025) (emphasis added).

Here, Petitioner’s prior 1998 expedited removal order was reinstated under 8 U.S.C. § 1231(a)(5) after biometric analysis conclusively demonstrated that her fingerprints match those of the individual removed under the identity of Anabel Ayala Flores. Aguilar Decl. ¶ 5, 9. Under 8 U.S.C. § 1231(a), ICE retains the explicit authority to detain non-citizens subject to final and reinstated orders of removal. The statutory text provides that when a prior order is reinstated, it is enforceable from its original date, and the non-citizen shall be detained. 8 U.S.C. § 1231(a)(5). To the extent that any post-removal period rules apply under 8 U.S.C. § 1231(a)(6), that subsection provides, in relevant part, that an individual ordered removed “may be detained beyond the removal period[.]” 8 U.S.C. § 1231(a)(6). The Supreme Court “has repeatedly observed that the word ‘may’ clearly connotes discretion.” *Biden v. Texas*, 597 U.S. 785, 802 (2022). And the Court has specifically recognized that 8 U.S.C. § 1231(a)(6) “gives the Federal Government discretionary authority in specified circumstances to detain aliens who have been ordered removed

from the United States.” *Garland v. Aleman Gonzalez*, 596 U.S. 543, 546 (2022). Thus, by statute—specifically, 8 U.S.C. § 1231(a)—Congress has vested ICE with the discretionary authority to manage Petitioner’s detention and the execution of her order.

Petitioner directly challenges ICE’s decision to maintain her detention and execute her removal under 8 U.S.C. § 1231, framing the government’s reliance on her prior identity records as arbitrary and capricious. Pet. ¶¶ 44–47. Any challenge to that operational decision is barred by 8 U.S.C. § 1252(a)(2)(B)(ii). Further, to the extent Petitioner challenges the agency’s internal evaluation and weighing of the biometric evidence or fingerprint records in reaching the decision to detain her pending reinstatement, such a claim is similarly barred by 8 U.S.C. § 1252(a)(2)(B)(ii) because that statute applies to “actions taken in the course of [the] decision-making process.” *Kanapuram*, 131 F.4th at 1307.

In the immigration habeas context, this Court has held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives it of jurisdiction over APA claims seeking judicial review of the Executive’s detention decisions. *A.M.Y. v. Warden, Irwin Cnty. Det. Ctr.*, No. 7:20-cv-61-CDL-MSH, Order & R. 39-40 (M.D. Ga. Oct. 13, 2020), ECF No. 47 (denying APA claims seeking judicial review of discretionary custody determinations for lack of subject-matter jurisdiction), *recommendation adopted*, Order (M.D. Ga. Nov. 4, 2020), ECF No. 49. Faced with similar challenges to custody enforcement decisions, other courts in the Eleventh Circuit have held that 8 U.S.C. § 1252(a)(2)(B)(ii) deprives district courts of jurisdiction to review ICE’s custodial decisions for individuals subject to a final order of removal. *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, at *4 (S.D. Fla. Aug. 8, 2025). This Court should reach this same conclusion and dismiss Petitioner’s arbitrary and capricious claim under Count IV—as well as the remaining counts—for lack of subject-matter jurisdiction.

II. Petitioner's Claims Fail on the Merits Because Her Detention and Imminent Removal Are Legally Authorized Under 8 U.S.C. § 1231.

To the extent this Court finds that it retains subject-matter jurisdiction over any portion of the Petition, the claims must be denied on the merits. Under the governing statutory scheme, once DHS determines that a non-citizen has reentered the United States illegally after having been removed under a prior order, the reinstatement of that order triggers mandatory detention. 8 U.S.C. § 1231(a)(5); *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 533–47 (2021).

Petitioner's entire case rests on the factual premise that her detention is arbitrary because the government lacks a biometric link connecting her to the 1998 expedited removal order issued under the name "Anabel Ayala Flores." Pet. ¶¶ 32–34, 37–38. This premise is conclusively disproved by the administrative record. Petitioner underwent fingerprinting and biometric data collection at an Application Support Center on August 23, 2023, during her concurrent Form I-130 and Form I-485 application process. Aguilar Decl. ¶ 8–9; Ex. C.

The resulting USCIS Fraud Detection and National Security ("FDNS") Statement of Findings ("SOF") conclusively details that Petitioner's fingerprints were a direct biometric match to a prior immigration encounter under Identity 2: Anabel Ayala-Flores (A [REDACTED]). Ex. C. System and file reviews confirm that Identity 1 (Lucy Hernandez Gutierrez, A [REDACTED]) and Identity 2 belong to the exact same individual. *Id.*

The record reveals that on January 31, 1998, Petitioner arrived at JFK Airport and presented a fraudulent United States birth certificate belonging to another individual (imposter) to make a false claim to United States citizenship. Aguilar Decl. ¶ 5; Ex. C. She was apprehended, issued an Expedited Removal Order on January 31, 1998, and expeditiously removed from the United States on February 1, 1998, with a five-year bar from re-entry. *Id.* Petitioner failed to disclose this expedited removal or her use of multiple identities on her pending Form I-485

application. Ex. C. Instead, she claimed she last entered the United States without inspection around March 1998. *Id.* This material omission resulted in a “Fraud Found” determination under 8 U.S.C. § 1182(a)(6)(C)(i). *Id.*

Because an undeniable biometric match exists, DHS properly made the requisite factual findings required by 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 1241.8(a): (1) Petitioner is the identical individual who was previously subject to a prior expedited removal order on February 1, 1998; and (2) she subsequently reentered the United States illegally without inspection. Aguilar Decl. ¶¶ 5, 10. Consequently, her prior removal order was legally reinstated, and her detention at the Stewart Detention Center pending imminent removal is required by law. *Id.* ¶¶ 4, 10, 12.

Petitioner’s claims that her detention is unconstitutional or arbitrary under Counts I, II, and IV are directly neutralized by this conclusive biometric documentation, which leaves no factual ambiguity regarding her identity. Furthermore, Petitioner’s remaining claims regarding a lack of notice or procedural defects in the underlying 1998 expedited removal proceedings also fail on the merits. Pet. ¶¶ 41–43. By enacting 8 U.S.C. § 1231(a)(5), Congress explicitly insulated reinstated removal orders from being reopened or reviewed by any court and foreclosed any right to a new hearing before an Immigration Judge. *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35 (2006). Petitioner cannot use a 28 U.S.C. § 2241 habeas petition to escape the statutory consequences of her illegal reentry. Because the undisputed biometric evidence proves Petitioner is the individual subject to the 1998 removal order, her detention is lawful, and her claims must be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss the Petition for Writ of Habeas Corpus for lack of subject-matter jurisdiction under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(a)(2)(B)(ii). Alternatively, to the extent the Court finds it retains jurisdiction

over any portion of the Petition, Respondents request that the Court deny all claims on the merits because Petitioner's detention is legally authorized and mandatory under 8 U.S.C. § 1231.

Respectfully submitted this 18th day of May, 2026.

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