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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

Respondents' Motion to Dismiss First Amended § 2241 Petition for Writ of Habeas Corpus (ECF No. 11)

OUTLINE

I. INTRODUCTION

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 voluntary departure. Exhibit A—Removal Documents, at 2. Giving Petitioner until October 19, 2000, to depart the United States. *Id.* Petitioner filed a motion to reopen with the Immigration Judge, and the Immigration Judge denied her motion to reopen. *Id.* at 5.

On October 20, 2000, 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 during her voluntary departure period. Although Petitioner appealed to the Board of Immigration Appeals (the "Board") the Immigration Judge's denial of her motion to reopen, the Board affirmed the immigration judge's denial of the motion to reopen and dismissed Petitioner's appeal on February 14, 2001. *Id.*

Petitioner was removed to Mexico on or around July 2010. ECF No. 11, ¶ 49. 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-1 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. 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. *Id.* ¶ 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). According to the information contained the USCIS's systems, USCIS received Petitioner's RFE response on August 3, 2023, after the deadline and after the denial for abandonment issued. *Id.* ¶ 10. After receiving the RFE response, USCIS did not reopen the administrative proceedings to adjudicate Petitioner's I-485. *Id.* ¶ 11. Petitioner's Form I-485 thus remains denied.

Although Petitioner filed a motion to reopen the denier I-485 application, the motion remains pending. *Id.* ¶ 12. Thus, Petitioner's I-485 application remains denied. *Id.*

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 filed a petition for writ of habeas corpus and complaint for declaratory and injunctive relief for an order to show cause (ECF No. 1) on May 14, 2025, and a First Amended Petition (ECF No. 11) on July 8, 2025. 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. The Department of Homeland Security ("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 §1226(a) may generally apply for release on bond or conditional parole. §1226(a)(2). If an alien is ordered removed and the order becomes "administratively final," detention becomes mandatory. §§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 those detainees are not entitled to an initial bond hearing. *Johnson*, 594 U.S. at 526.

1. Due process

Petitioner argues that her detention violates the Fifth Amendment of the United States Constitution because she complied with each and every requirement that USCIS and the Federal Respondents have imposed on her. ECF No. 11, ¶ 60. She argues that reinstating her prior removal order despite the waiver of inadmissibility and subsequent admission as a nonimmigrant violates Petitioner's due process rights. *Id.* ¶ 61.

[distinguish *See Matter of Rainford, supra; Matter of Rafipour, supra.; Fernandez-Vargas* and *Morales-Izquierdo*]

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[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.

[Defendants cannot effectuate de facto revocation of Petitioner's U Nonimmigrant status, with the admission and protections it afforded, without proper procedures consistent with the Due Process clause. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 n.8 (1954).] [reply is that the i-485 is no longer pending, and her u-visa nonimmigrant status was coextensive with the i-485. So now that the i-485 is no longer pending neither is her u nonimmigrant status]

[*Mathews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 901-902]

Address this (from FAP): 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 Nonimmigrant status had vacated any DHS orders of removal. Yes, exactly! Cite to 8 C.F.R. § 214.14(c)(5)(i); "cancellation by operation of law" does not apply to Immigration Court removal order.

2. 8 U.S.C. § 1101(a)(15)(U) and Implementing Regulations

B. Jurisdictional Issues:

Given that the noncitizen 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.49

C. USCIS Denied Petitioner's I-485 Application and It Thus Is No Longer Pending.

U nonimmigrant status is granted for four years, and may be extended for exceptional circumstances270 or when law enforcement certifies that additional time is necessary for the U holder to assist it.271

By operation of law, the timely filing of Ms. Rodriguez Fuentes's Form I-485 extended her U-1 nonimmigrant status during the pendency of Form I-485. See 8 U.S.C. § 1184(p)(6).

D. "Cancellation By Operation of Law" Does Not Apply to Petitioner's Prior Removal Order Because It was Issued by An Immigration Court, Not DHS

E. Validity of Removal Order Is Not for This Court.

F. DHS Has Plenary Authority To Transfer Detainees; Authority to choose location of detention and transfer has been recognized

G. Rodriguez Fuentes Is Subject to Mandatory Detention because She is Subject to Reinstatement of her Prior Removal

a. I-485 no longer pending

b. Prior removal order was never canceled

[explain that although the "canceled by operation of law" language applies to DHS removal orders, that is not what we have here. We have an order issued by an immigration

IV. Conclusion

The First Amended Petition should be dismissed.

Respectfully submitted this 11th day of August 2025.

SIGAL CHATTAH
United States Attorney

/s/ Christian R. Ruiz
CHRISTIAN R. RUIZ
Assistant United States Attorney

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE / UNITED STATES MAGISTRATE JUDGE

DATED: ______________________________