

United States District Court
Western District of Texas
El Paso Division

Melika Mohammadi Gazvar Olya,
Petitioner,

v.

Angel Garite, *et al*,
Respondents.

No. 3:25-CV-00083-DCG

Response in Opposition to Petitioner's Motion to Strike

This habeas petition is pending under 28 U.S.C. § 2241. *See* ECF No. 1. On March 19, 2025, this Court ordered Respondents to file a response no later than April 2, 2025. ECF No. 7 at 4. The Court ordered Petitioner to file any reply to that response no later than ten days after the service of Respondents' response. *Id.* Both parties timely and fully complied with the Court's order, and the decision is ripe for review.¹ *See* ECF Nos. 9, 11.

Concurrently with her Reply, Petitioner filed an Opposed Motion to Strike, calling this Court to use its "inherent powers" to strike portions of the Sarellano Declaration, attached to Respondents' Response to the habeas petition as Exhibit A. ECF Nos. 9-A, 10 at 1. Petitioner argues that portions of the declaration are either inadmissible or violate the Best Evidence Rule. *Id.* As such, Petitioner urges the Court to strike those portions and "any parts of Respondents' Response that rely on it" when considering the pending petition. *Id.* In a footnote, Petitioner acknowledges that her counsel conferred with Respondents' counsel on the motion to strike and that Respondents represented "they were opposed to Petitioner challenging the declaration via a

¹ Respondents do not intend to file any additional reply and instead rest on the arguments contained within ECF No. 9, to include the Sarellano Declaration.

motion to strike under 28 U.S.C. § 2248.” *Id.* at 2, n.2.²

There is no legal basis to grant Petitioner’s motion. While the Rules of Evidence apply to habeas petitions, a declaration by an immigration officer is a standard response to a petition for writ of habeas corpus. *See Willis v. Ciccone*, 506 F.2d 1011, 1017 (8th Cir. 1974) (stating that an evidentiary hearing in a habeas case is only necessary in extreme cases and a declaration that details the procedures followed obviates the need for a hearing); *see also Gibbs v. King*, 779 F.2d 1040, 1045 n.4 (5th Cir. 1986) (citing *Willis*).

In her motion to strike, Petitioner relies almost exclusively on non-binding district court cases to argue that portions of the Sarellano Declaration should be stricken if they are not based on personal knowledge or are not representative of the best available evidence. *See* ECF No. 10 at 2–4, 7, *generally*. None of the cited decisions, however, involved a sworn declaration initially submitted in direct response to allegations lodged in a habeas petition. *Id.* Indeed, some of the decisions were not even made in the habeas context. *Id.*

To be clear, Respondents do not contest the importance of personal knowledge in

² While the parties did confer by email, Respondents do not consider Petitioner’s footnote sufficient to satisfy the spirit of Local Rule CV-7(G), as it does not sufficiently detail the basis for the opposition. The conference email, sent shortly before close of business on Petitioner’s filing date, did not include a copy of the draft motion to strike, identify the portions of the declaration that Petitioner intended to strike, or provide the legal bases for these arguments. To meaningfully consider the request and provide a response in good faith, Respondents timely requested more information. In response, Petitioner provided a bullet point list of statements with corresponding evidentiary objections, but without citation to authority. The undersigned AUSA timely reviewed, considered, and ultimately confirmed by email that Respondents oppose the motion, because a motion to strike is not proper where the movant is attacking only the weight of the evidence. The undersigned explained that this is especially true in habeas corpus proceedings. Under 28 U.S.C. § 2248, Congress requires the Court to take any allegations in response to an order to show cause as true, “if not traversed,” except to the extent that the judge finds from the evidence they are not true. Respondents suggested instead that Petitioner consider raising these challenges in the Reply itself, within a sworn declaration, or via other admissible evidence. Petitioner’s counsel confirmed understanding of Respondent’s opposition and indicated that Petitioner would include the position in the motion.

establishing the admissibility of a declaration or weighing its value, nor do Respondents contest this Court's wide discretion to strike inadmissible evidence. In contrast, Respondents take issue with Petitioner's request to wholly disregard portions of a sworn response to factual allegations, instead of asking the Court, for example, to assign less weight to certain statements. Not only would such a request be baseless under the broader rules of civil procedure, but the expedited nature of habeas corpus proceedings themselves allows for, and indeed mandates, these types of responsive allegations to be taken as true unless otherwise disproven. *See* 28 U.S.C. §§ 2243, 2248. *See also Carlson v. Landon*, 342 U.S. 524, 530 (1952).

As suggested in conference, Petitioner's remedy to challenge these statements is to submit her own evidence, which she has attached to her Reply. *See* ECF No. 11. There is no legal basis to strike any portions of this declaration. The declarant, a United States government official, swears under oath that his statements are based on personal knowledge and his review of government databases or related records. ECF No. 9–1 at ¶ 4. Respondents submitted this declaration in direct response to factual allegations in this habeas petition. *Id.* ¶¶ 31–35. The declaration establishes the declarant's competency to testify and sets out facts that would be admissible in evidence. *Id.* ¶¶ 1–4. There is no basis in law to strike this declaration.

Finally, Petitioner's arguments under the Best Evidence Rule are misplaced. *See* Fed. R. Evid. 1002. Respondents did not submit the declaration to prove the contents of any referenced documents. The Best Evidence Rule, therefore, does not apply. *See Richardson v. Kerry*, No. H–14–0742, 2014 WL 4385995 at *1 n.1 (S.D. Tex. Sept. 4, 2014) (government declaration seeks to show a chain of events that may otherwise be provable through certain records). Respondents submitted this declaration in response to the factual allegations Petitioner raised in her Petition for Writ of Habeas Corpus related to the legality of her continued detention.

For these reasons, this Court should deny Petitioner's Opposed Motion to Strike, assign the appropriate weight to the proffered evidence, and use that evidence to deny Petitioner's habeas petition.

Respectfully submitted,

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