

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Lucy Cristina Hernandez Gutierrez,



Petitioner,

v.

JASON STREEVAL, Warden of Stewart
Detention Center,

KRISTEN SULLIVAN, Field Office Director of
Enforcement and Removal Operations,
Atlanta Field Office;

TODD LYONS, Acting Director of
Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security; and

TODD BLANCHE, Acting U.S. Attorney General

in their official capacities,

Respondents.

Case No. 4:26-cv-822-CDL-CHW

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE

INTRODUCTION

Respondent's filing confirms the central problem identified in the Petition: Respondent seeks to detain and remove Petitioner based upon opaque and disputed identity determinations while refusing to produce the underlying biometric evidence allegedly establishing identity. Although Respondent repeatedly asserts that biometrics "conclusively" establish that Petitioner and "Anabel Ayala Flores" are the "exact same individual," Respondent still has not produced: (a) the underlying fingerprint records; (b) the fingerprint comparison analyses; (c) IDENT/HART records; (d) biometric audit trails; (e) photographs; (f) chain-of-custody documentation; or (g) any

declaration from a biometric examiner explaining the methodology allegedly used. Instead, Respondent relies almost entirely upon conclusory administrative assertions.

Moreover, Respondent's own records contain facially impossible chronology, inconsistent locations, contradictory dates, and allegations directly contradicted by contemporaneous documentary evidence now before the Court.

This is not a case in which Petitioner merely disagrees with the government's conclusions. Rather, Petitioner has now presented substantial contemporaneous evidence demonstrating that material portions of the government's factual narrative are unreliable. Particularly at the pleading stage, the Court may not resolve disputed factual questions concerning identity, chronology, or the reliability of Respondent's records. Here, Respondent relies largely upon conclusory administrative assertions, while Petitioner has submitted contemporaneous third-party records directly contradicting material aspects of the government's narrative. Under these circumstances, these factual disputes preclude dismissal and, at minimum, warrant limited discovery and/or an evidentiary hearing.

ARGUMENT

I. PETITIONER DOES NOT SEEK REVIEW OF THE UNDERLYING REMOVAL ORDER

Respondent repeatedly attempts to characterize the Petition as an impermissible challenge to the underlying 1998 expedited removal order. That characterization misstates Petitioner's claims.

Petitioner does not seek reopening of the 1998 expedited removal order, review of discretionary immigration relief, or relitigation of removability. Rather, Petitioner challenges the constitutionality of the procedures used to identify her as the individual allegedly subject to that

order; the government's reliance upon undisclosed and unsupported biometric assertions; and the legality of her resulting detention.

The Petition specifically challenges whether Respondent may constitutionally deprive Petitioner of liberty based upon conclusory administrative summaries, disputed identity determinations, and internally inconsistent records, without providing meaningful process or disclosure of the underlying evidence allegedly establishing identity.

Those claims remain cognizable in habeas proceedings. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003). Nor does 8 U.S.C. § 1252(g) bar jurisdiction here. As Justice Kennedy explained in his concurring opinion in *Demore*, due process requires “adequate procedures to review their cases” and procedures ensuring “there is at least some merit to the INS charge” underlying detention. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring). Here, Petitioner specifically challenges the adequacy of the procedures employed to determine that she is the individual allegedly subject to the prior removal order and the sufficiency of the evidence underlying that determination.

Section 1252(g) applies narrowly to “three discrete actions.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Petitioner does not challenge the discretionary decision to execute a removal order in the abstract. Rather, she challenges whether constitutionally adequate procedures were employed before Respondent determined that Petitioner was the individual against whom that order could lawfully be executed.

II. RESPONDENT'S FILINGS REVEAL MATERIAL FACTUAL DISPUTES THAT PRECLUDE DISMISSAL

Respondent repeatedly asserts that biometric analysis “conclusively” establishes identity. However, Respondent still has not produced the underlying biometric evidence itself. The Court

has not been provided the actual fingerprints allegedly compared, the reports, or the chain-of-custody documentation. Instead, Respondent relies entirely upon conclusory administrative summaries and FDNS findings. At the same time, the government's own records contain substantial inconsistencies and factual impossibilities.

A. The Reinstatement Order Contains Impossible Chronology

Under the governing reinstatement regulation, DHS may reinstate a prior removal order only after an immigration officer determines: “(1) Whether the alien has been subject to a prior order of removal (2) the identity of the alien, *i.e.*, whether the alien is in fact an alien who was previously removed . . . ; and (3) whether the alien unlawfully reentered the United States.” 8 C.F.R. § 241.8(a). Here, Respondent's own reinstatement records contain facially impossible chronology, inconsistent locations, contradictory dates, and factual allegations directly contradicted by contemporaneous documentary evidence.

In the Notice of Intent/Decision to Reinstate Prior Order, dated April 30, 2026, Respondent alleges that Petitioner unlawfully reentered the United States “on or about 01/31/1998 at or near Jamaica, NY” after previously being removed on February 1, 1998. Respondent's Response, Exh. D. These allegations are facially irreconcilable because Petitioner could not have unlawfully reentered the United States before the prior removal allegedly occurred. This is not a minor clerical discrepancy. The chronology goes directly to one of the core determinations required for reinstatement under 8 C.F.R. § 241.8(a): whether Petitioner unlawfully reentered the United States after having been removed. The facial impossibility of the chronology materially undermines the reliability of the reinstatement determination itself and further demonstrates why the Court cannot simply accept Respondent's conclusory assertions regarding identity and reentry without meaningful factual review. Additionally, “Jamaica, NY” is not itself an international border

crossing or port of entry, further undermining the reliability and precision of the government's records.

B. The Government's Alleged 2004 Encounter Is Contradicted by Contemporaneous Medical Records

In the Record of Deportable/Inadmissible Alien, dated April 30, 2026, Respondent alleges that Petitioner, or rather someone named "Anabel Ayala-Flores," was encountered near Roma, Texas on March 2, 2004 and was granted voluntary return to Mexico. Respondent's Response, Exh. A. The document further lists "Lucy Christina Hernandez Gutierrez" as an alias associated with Ms. Ayala-Flores, although the middle name is spelled differently from Petitioner's actual name. *Id.*

Deportation Officer Yishmael Aguilar submitted a declaration stating that the alleged encounter occurred on March 3, 2004 rather than March 2, 2004. Declaration of Yishmael Aguilar at 2. However, the declaration provides no independent factual foundation for that assertion apart from the Record of Deportable/Inadmissible Alien itself, which identifies the encounter date as March 2, 2004. Thus, even Respondent's own submissions contain internally inconsistent chronology concerning the alleged encounter.

Contemporaneous medical records establish that Petitioner was physically present in Raleigh, North Carolina on March 2, 2004. Exh. A. Specifically, Petitioner underwent a cervical biopsy procedure on that date at Raleigh Pathology Laboratory Associates, P.A. *Id.* The records further include pathology processing documentation, billing records, discharge instructions, and follow-up treatment information generated in connection with that procedure. *Id.*

These records were created contemporaneously for medical treatment purposes and directly contradict Respondent's assertion that Petitioner was apprehended near Roma, Texas

during the same period. This contradiction materially undermines the reliability of Respondent's asserted identity determination and further demonstrates the existence of substantial factual disputes inappropriate for resolution on the pleadings.

C. The Government's 2006 Narrative Is Contradicted by Contemporaneous North Carolina Records

Respondent further alleges that Petitioner (or rather Anabel Ayala-Flores) departed the United States and attempted entry at San Ysidro, California on June 3, 2006. Respondent's Response, Exh. A. The implication appears to be that Petitioner was in Mexico from March 2, 2004 (when she was allegedly returned to Mexico) and June 3, 2006. However, contemporaneous records establish that Petitioner was residing continuously in North Carolina throughout this period.

Specifically: Wake County traffic and court records identifying Petitioner as residing in North Carolina; Petitioner's traffic citations on November 3, 2005 and April 20, 2006; contemporaneous dental and medical records establish ongoing treatment in Raleigh throughout 2005 and 2006; and contemporaneous photographs dated throughout 2005 and 2006 further document Petitioner's continuous presence in the United States during the periods Respondent alleges she was outside the country. Exh. A–D. These contemporaneous records materially undermine Respondent's assertion that Petitioner departed the United States and attempted reentry through San Ysidro, California in June 2006.

Taken together, the substantial inconsistencies within Respondent's records, combined with contemporaneous documentary evidence contradicting key portions of the government's chronology, materially undermine the reliability of Respondent's asserted identity determination and preclude dismissal on the pleadings.

III. RESPONDENT'S CONCLUSORY ASSERTIONS DO NOT SATISFY DUE PROCESS

Respondent repeatedly characterizes the alleged biometric evidence as “conclusive.” But due process requires more than conclusory assertions where an individual faces detention and imminent removal. Here, the alleged expedited removal occurred nearly three decades ago; the records involve another identity; Respondent now alleges multiple previously undisclosed encounters; the administrative chronology contains facial inconsistencies; and substantial contemporaneous documentary evidence contradicts key portions of Respondent’s narrative.

Despite these circumstances, Respondent has refused to disclose the underlying evidence allegedly establishing identity. Petitioner was therefore deprived of any meaningful opportunity to review the alleged biometric evidence, challenge the government’s methodology, test the reliability of the alleged match, or contest the factual basis underlying reinstatement and detention.

These due process concerns are especially significant because Petitioner previously submitted to two separate biometric searches that produced no responsive results. Habeas Petition, Exhs. 1–2. Respondent now asks the Court to accept conclusory assertions of a “conclusive” biometric match while withholding the underlying biometric evidence itself and while substantial documentary evidence contradicts material portions of Respondent’s factual narrative. Under these circumstances, Petitioner has adequately alleged violations of due process, and dismissal on the pleadings is inappropriate.

IV. AT MINIMUM, THE COURT SHOULD PERMIT LIMITED DISCOVERY AND/OR AN EVIDENTIARY HEARING

At minimum, the disputed factual issues presented here cannot properly be resolved on the pleadings. Petitioner respectfully requests limited discovery and/or an evidentiary hearing

concerning the alleged biometric match; the identity determination underlying reinstatement; the alleged 2004 and 2006 encounters; and the substantial factual inconsistencies contained within Respondent's records.

Specifically, Petitioner requests production of: (a) the 1998 fingerprint records; (b) USCIS ASC biometrics; (c) IDENT/HART records; (d) FDNS source materials; (e) biometric comparison reports; (f) photographs; (g) audit trails; and (h) records relating to the alleged 2004 and 2006 encounters.

Such discovery is necessary to permit meaningful judicial review and to ensure that Petitioner is not unlawfully detained or removed based upon unreliable or incomplete identity determinations.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondent's request for dismissal and permit this matter to proceed. Alternatively, Petitioner respectfully requests limited discovery and/or an evidentiary hearing concerning the disputed identity determination underlying Respondent's detention and reinstatement actions.

Respectfully submitted,

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Dated: May 22, 2026