

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

MARTINE MCDOWELL ROGERS,
Petitioner,

v.

INS,
Respondent.

CIVIL ACTION NO.
3:05cv919 (SRU)

RULING ON PETITION FOR WRIT OF HABEAS CORPUS

In June 2005, Martine McDowell Rogers filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2241, challenging her detention at York Correctional Institution by United States Immigration and Customs Enforcement (“ICE”)¹ authorities. Rogers claims that ICE has mistakenly identified her as woman known as Mwenda-Msiri Kikasa, who is subject to removal. Rogers essentially argues that ICE has the wrong person in custody, and that she should therefore be released.

I. Background

On December 29, 1983, Mwenda-Msiri Kikasa entered the United States in Baltimore, Maryland as a visitor for pleasure, and was authorized to remain in the United States until June 29, 1984. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit A. She remained in the United States longer than she was authorized to remain. *Id.* Additionally, she was convicted of possession with intent to distribute marijuana on April 18, 1984 in the United States District Court for the District of Columbia. *Id.*

¹ Following various organizational changes, ICE, a branch of the Department of Homeland Security, is presently charged with the enforcement functions of the former Immigration and Naturalization Service. *See generally* Homeland Security Act of 2002, Pub.L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002); 6 U.S.C. §§ 251(2), 252(a)(3), and 542.

As a result, on March 20, 1987, an Immigration Judge ordered that Mwenda-Msiri Kikasa be deported to Zaire,² and when she waived her appeal, the order of deportation became final. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit B. On June 10, 1987, after requesting and obtaining necessary travel documents from the Zairean government, the immigration authorities deported Mwenda-Msiri Kikasa to Zaire. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit D. Apparently, Mwenda-Msiri Kikasa subsequently re-entered the United States using falsified travel documents and a new identity. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit E.

ICE obtained Rogers’ fingerprints on June 30, 2005. In October 2005, ICE compared Rogers’ fingerprints with Mwenda-Msiri Kikasa’s fingerprints on her warrant of removal dated June 18, 1987. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit G. ICE analyzed the two sets of fingerprints, and determined that they matched, thereby demonstrating that Rogers is the same person who was removed in 1987 under the name Mwenda-Msiri Kikasa. *Id.* The Federal Bureau of Investigation also analyzed Rogers’ fingerprints and concluded that they matched the fingerprints on Mwenda-Msiri Kikasa’s rap sheet, which includes the 1984 drug conviction that led to the 1987 deportation order. *See* Respondent’s Supplemental Opposition to Petition for a Writ of Habeas Corpus, Exhibit H.

II. Discussion

When a person has been deported and illegally re-enters the United States, “the prior order of removal is reinstated from its original date and is not subject to being reopened or

² Zaire is now the Democratic Republic of Congo.

reviewed, the alien is not eligible and may not apply for relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.” 8 U.S.C. § 1231(a)(5).

In this case, two different government agencies have analyzed Rogers’ fingerprints and determined that they match those of Mwenda-Msiri Kikasa, who was deported in 1987. On April 7, 2005, ICE determined that Rogers is deportable, because she unlawfully re-entered the United States after previously being deported in 1987 under the name of Mwenda-Msiri Kikasa. Because Rogers was previously deported and illegally re-entered the United States, the prior order of removal is reinstated, and she is removable.

Rogers contends that her detention violates principles of estoppel, procedural and substantive due process, and the right to be free from cruel and unusual punishment. Her argument is based primarily on her assertion that she is not a citizen of Zaire, but is a citizen of either France or Cuba, and therefore she cannot be Mwenda-Msiri Kikasa as the government claims, because Mwenda-Msiri Kikasa was deported to Zaire. The documentation submitted by both Rogers and the government contains conflicting information about Rogers’ citizenship, linking her to Belgium, France, Cuba, and Zaire. Ultimately, however, Rogers’ citizenship is not relevant to the issue before this court – whether she is being unlawfully detained.³ The fingerprint analysis in the record shows that Rogers, whatever her country of citizenship, is subject to removal, because she is the same person who was removed in 1987 under the name of Mwenda-Msiri Kikasa and later unlawfully re-entered the United States. Therefore, ICE is not unlawfully detaining Rogers, and as a result, Rogers’ estoppel, due process, and cruel and

³ Rogers’ citizenship may be relevant if she challenges her final order of removal or to determine where Rogers should be sent when she is deported, but those issues are not before this court.

unusual punishment arguments are without merit.

Additionally, Rogers has requested that I reopen immigration proceedings based on Article 3 of the Convention Against Torture and that I release her pending a determination of her applications. This court lacks jurisdiction to reopen immigration proceedings; if Rogers decides to challenge her final order of removal, she must file a petition for review with the Second Circuit Court of Appeals. Because I have denied Rogers' petition for a writ of habeas corpus, her request for release is denied as moot.

III. Conclusion

Rogers' Petition for a Writ of Habeas Corpus (**doc. # 1**) and Motion to Reopen Proceedings (**doc. #13**) are **DENIED**. All other pending motions are denied as moot. The clerk shall close this file.

It is so ordered.

Dated at Bridgeport, Connecticut, this 25th day of April 2006.

/s/ Stefan R. Underhill _____
Stefan R. Underhill
United States District Judge