

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 13 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KASIE MABEL TORRES-NAVARRO,
a/k/a Casey Mabel Torres-Navarro,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 16-73040

Agency No. A206-683-887

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted February 7, 2019
San Francisco, California

Before: PAEZ and BERZON, Circuit Judges, and FEINERMAN,** District Judge.

Kasie Mabel Torres-Navarro, a native and citizen of Honduras, petitions for review of a Board of Immigration Appeals (“BIA”) decision. The BIA dismissed her appeal of an immigration judge (“IJ”) decision denying her motion to suppress her identity documents (a Honduran passport and a Honduran identification card)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

and the Form I-213 on which border patrol agents recorded their observations and her post-arrest admissions. Our jurisdiction is governed by 8 U.S.C. § 1252. The BIA conducted its own analysis without adopting or incorporating the IJ's decision, so "our review is limited to the BIA's decision." *Maldonado v. Lynch*, 786 F.3d 1155, 1160 (9th Cir. 2015) (en banc) (citation omitted). We deny in part and dismiss in part the petition for review.

Absent an egregious Fourth Amendment violation, "the exclusionary rule generally does not apply to civil deportation proceedings." *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018). Applying *de novo* review, we find that Torres-Navarro has failed to carry her burden to show an egregious Fourth Amendment violation. *See id.* at 649, 653. Her declaration does not deny the border patrol agent's submission, reflected on the Form I-213, that the agent apprehended her within 25 minutes of her crossing the U.S.-Mexico border by rafting across the Rio Grande River. *See* 8 U.S.C. § 1357(a)(2) (permitting immigration officers to arrest anyone whom they have "reason to believe" is entering the country illegally). Despite the agent's failure to ascertain Torres-Navarro's name, place of birth, or country of citizenship before arresting her, Torres-Navarro's arrest was lawful under those circumstances—or, at a minimum, not an egregious violation of the Fourth Amendment. *See Martinez-Medina v. Holder*, 673 F.3d 1029, 1034 (9th Cir. 2011) (noting that a Fourth Amendment violation is "egregious" if it is

“deliberate” or contravenes “clearly established” Fourth Amendment doctrine “in the particular context at issue”) (citation omitted). Accordingly, there is no basis to suppress the evidence, including the Honduran passport and ID card, taken from her upon her arrest.

We next conclude on *de novo* review that Torres-Navarro has failed to show that the conditions of her two-day confinement or the conduct of her post-arrest interview so deprived her of her rational intellect and free will as to violate the Fifth Amendment. *See Gonzaga-Ortega v. Holder*, 736 F.3d 795, 800, 804 (9th Cir. 2013). Moreover, Torres-Navarro has not identified a material contradiction between the averments in her declaration, on the one hand, and the Form I-213’s account of her arrest and interview, on the other, that would undermine the Form I-213’s reliability or otherwise make its admission fundamentally unfair. *See Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (per curiam). Her related argument—that the credibility of the Form I-213’s preparer should be assessed under 8 U.S.C. § 1229a(c)(4)—is misplaced because that provision would apply only if she were seeking asylum or some other relief from removal. And Torres-Navarro has not shown that the IJ or the BIA abused their discretion in ruling against her despite the government’s failure to oppose her motion to suppress or her appeal. *See Zetino v. Holder*, 622 F.3d 1007, 1012 (9th Cir. 2010).

We are without jurisdiction to reach Torres-Navarro’s final contention—that

her identity documents were unauthenticated, uncertified, and untranslated, and thus inadmissible—because the BIA correctly held that she failed to raise that issue before the IJ. *See Abebe v. Gonzales*, 432 F.3d 1037, 1041 (9th Cir. 2005) (en banc). Accordingly, that unexhausted part of her petition is dismissed. *See Alvarado v. Holder*, 759 F.3d 1121, 1127 & n.5 (9th Cir. 2014).

DENIED IN PART, DISMISSED IN PART.