

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 25-cv-22487-DPG**

**JOSE GUERRA CASTRO,**

**Petitioner**

**v.**

**CHARLES PARRA,** Field Office Director,  
et al.,

**Respondents.**

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**RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY  
MOTION FOR TEMPORARY RESTRAINING ORDER**

Charles Parra, Field Office Director, et al. (Respondents), through undersigned counsel, maintains that Jose Guerra-Castro's (Petitioner) Petitioner's Emergency Motion for Temporary Restraining Order (Motion) (ECF No. 36) should be denied because Petitioner cannot meet his burden that the grant of the extraordinary remedy of a temporary restraining order is warranted. Chiefly, he cannot prove a substantial likelihood of success on the merits of his claims because (1) Respondents properly revoked Petitioner's order of supervision (OSUP) under 8 C.F.R. § 241.4(l)(2), (2) Respondents can designate a third country for removal under 8 U.S.C. § 1231(b)(2)(E)(vii) and 8 C.F.R. § 1240.12(d), and (3) 8 U.S.C. § § 1252(g) bars direct and indirect attacks on the execution of a removal order.

**I. BACKGROUND**

On May 29, 2025, Petitioner was provided with an informal interview. *See* (ECF 34-2 at ¶ 10).

On June 17, 2025, and August 22, 2025, Respondents nominated Petitioner for the next available charter flights to Cuba. *See* (Exhibit A, Supervisory Detention and Deportation Officer Ervin Declaration, at ¶ 8).

Subsequently, Respondents were informed that the Government of Cuba did not accept Petitioner's repatriation to Cuba. *See (Id. at ¶ 9).*

On August 24, 2025, Respondents initiated the 90-day post-order custody review process. *See (Id. at ¶ 10).*

The Government of Mexico has agreed to accept the repatriation of Cuban citizens with final orders of removal from the United States. *See (Id. at ¶ 11).*

On August 27, 2025, Respondents served Petitioner with a Notice of Removal to a Third Country, which Petitioner refused to sign. *See (Id. at ¶ 12);* (ECF No. 34-4).

On August 31, 2025, Petitioner was transferred from Krome North Service Processing Center to the Florence Staging Facility to affect his removal to Mexico. *See (Id. at ¶ 13).*

Respondents maintain they intend to execute Petitioner's removal to Mexico if the Court vacates its stay of removal. *See (Id. at ¶ 15).*

## **II. ARGUMENT**

To obtain a temporary restraining order, the movant must demonstrate “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. Rel Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). Since it is “an extraordinary and drastic remedy,” it should not be granted unless the plaintiff “clearly carries the burden of

persuasion as to the four prerequisites.” *Zardui-Quintana v. Richard*, 768 F.2d 1213, 1216 (11th Cir. 1985) (citation and internal quotations marks omitted).

#### **A. Substantial Likelihood of Success on the Merits**

##### ***i. Respondents properly revoked Petitioner’s OSUP under § 241.4(l)(2).***

Petitioner alleges that his OSUP was improperly revoked because “[t]he regulations...permit re-detention only if (a) the individual violates OSUP conditions, or (b) ICE determines there is a significant likelihood of removal in the reasonably foreseeable future, after an interview and documented findings. 8 C.F.R. §§ 241.4, 241.13(i).” (ECF No. 36 at 4).

First, “the decision to revoke Petitioner’s OSUP, for the stated purpose of executing his removal order, clearly falls under the purview of § 1252(g).” *Barrios v. Ripa*, Case No. 25-cv-22644-GAYLES, 2025 WL 365006, 2025 U.S. Dist. LEXIS 153228, at \*11 (S.D. Fla. Aug. 8, 2025). § 1252(g) explicitly states that “no court shall have jurisdiction to hear *any* cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” (emphasis added). § 1252(g). *See Camarena v. Director, I.C.E.*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“the statute’s words make that clear. One word in particular stands out: ‘any.’ Section 1252(g) bars review over ‘any’ challenge to the execution of a removal order—and makes no exception for those claiming to challenge the government’s ‘authority’ to execute their removal orders.”).

Second, the Court also lacks jurisdiction under § 1252(a)(2)(B)(ii) to review Respondents’ discretionary decision to revoke the OSUP. § 1252(a)(2)(B) states that “no court shall have jurisdiction to review any action of the Attorney General the authority for which is specified under this subchapter to be in the discretion of the Attorney General.” § 1252(a)(2)(B)(ii). The decision

to revoke an OSUP is a discretionary one by Respondents. *See* 8 C.F.R. § 241.4(l)(2) (“The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section.”). This Court also found in *Barrios*, that “because the Attorney General has the discretion to revoke an OSUP, § 1252(a)(2)(B)(ii) also bars review.” *Barrios*, 2025 U.S. Dist. LEXIS 153228, at \*11.

Third, Respondents disagree with Petitioner that his OSUP can only be revoked if he violated his conditions of release or if there a significant likelihood of removal in the reasonably foreseeable future. *See* (ECF No. 36 at 4). § 241.4(l)(2) allows Respondents to terminate an order of supervision under § 241.4(l)(2) for other reasons, including to enforce a removal order. *See Grigorian v. Bondi*, Case N. 25-CV-22914-RAR, 2025 WL 1895479, 2025 U.S. Dist. LEXIS 129084, at \*15-16 (S.D. Fla Aug. 8, 2025) (Explaining that under to § 241.4(l)(2), “[i]t is therefore not the case that ICE may revoke an order of supervision *only* if an alien ‘violates conditions of release or if the conditions supporting release no longer exist.’” (emphasis in original).

§ 241.4(l)(2) states:

Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

- (i) The purposes of release have been served;
- (ii) The alien violates any condition of release;
- (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
- (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.

*Id.* Respondents followed their regulatory procedures and have been actively attempting to remove Petitioner since he was detained consistent with § 241.4(l)(2)(iii).

On May 29, 2025, Petitioner was provided with an informal interview. On August 24, 2025, Respondents initiated the 90-day post-order custody review process.

Also, Respondents nominated Petitioner to removal for Cuba on June 17, 2025, and August 22, 2025. Currently, Respondents intend to remove Petitioner to Mexico, instead of Cuba, because Cuba did not accept his repatriation, and advised him of such through the Notice of Removal.

Thus, Petitioner is unlikely to succeed on the merits of his claim that Respondents did not follow their procedures because the OSUP was properly revoked under § 241.4(l)(2).

*ii. Respondents can designate a third country for removal under § 1240.12(d) and § 1231(b)(2)(E)(vii).*

Next, Petitioner claims that there “is no evidence Mexico has agreed to accept him, nor has an Immigration Judge designated Mexico as his removal country under 8 U.S.C. § 1231(b)(2).” (ECF No. 36 at 2).

§ 1240.12(d) specifies that “[i]n the event that the Department of Homeland Security is unable to remove the alien to the specified or alternative country or countries, the order of the immigration judge does not limit the authority of the Department of Homeland Security to remove the alien to any other country as permitted by section 241(b) [8 U.S.C. § 1231(b)] of the Act.” § 1240.12(d).

§ 1231(b) instructs what countries “other aliens”, besides arriving aliens, such as Petitioner, may be removed to.<sup>1</sup> See § 1231(b)(2)(A)-(E). Importantly, if the Department of Homeland Security cannot remove the alien to the country listed in the removal order, the Department of Homeland Security can remove the alien to “another country whose government will accept

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<sup>1</sup> Petitioner, a lawful permanent resident, was issued a Notice to Appear (NTA), charging him with two counts of removability under 8 U.S.C. § 1227(a)(2)(A)(iii), as an alien convicted of an aggravated felony relating to alien smuggling and conspiracy to commit an offense related to alien smuggling. See (ECF No. 17-1 at ¶¶ 10, 14).

the alien into that country.” § 1231(b)(2)(E)(vii) (“If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.”); *see Jama v. Immigr. & Customs Enft*, 543 U.S. 335, 341 (2005). Under 8 C.F.R. § 241.15(a), DHS “retains discretion to remove an alien to any country described in [8 U.S.C. § 1241(b)], without regard to the nature or existence of a government.”

At this time, Cuba is not willing to accept repatriation of Petitioner. Under § 1231(b)(2)(E)(vii), Respondents are permitted to remove Petitioner to Mexico because Mexico agreed to accept the repatriation of Cuban citizens with final orders of removal from the United States. Further, Petitioner was transferred from Krome to the Florence Staging Facility to affect his removal to Mexico, and Respondents intend to execute Petitioner’s removal to Mexico if the Court vacates its stay of removal.

Thus, Petitioner is unlikely to succeed on the merits of his claim that Respondents cannot lawfully remove Petitioner to Mexico.

***iii. § 1252(g) plainly bars direct and indirect attacks on the execution of a removal order.***

Lastly, Respondents maintain that § 1252(g) bars the Court from hearing any claim arising from Respondents’ decision to execute Petitioner’s removal order. Petitioner claims he is not challenging the underlying removal order but instead the alleged unlawful detention. (*Id.* at 5). However, the relief he has requested is that the Court block the execution of the removal order. *See* Petitioner’s “Relief Requested” wherein he requests the Court: “Order Petitioner’s immediate release from custody and back on to supervision” and “Enjoin Respondents from removing him to Mexico or any third country during the pendency of this habeas action. (ECF No. 36 at 9). Such

direct attacks are barred under § 1252(g). *See Camarena*, 988 F.3d 1268 at 1274 (“Section 1252(g) bars review over ‘any’ challenge to the execution of a removal order.”).

Accordingly, the Court lacks jurisdiction under § 1252(g) to stay the execution of his removal order.

***B. Irreparable injury will be suffered unless the injunction issues.***

Petitioner cannot prove an irreparable injury because Respondents have complied with § 241.4(l)(2) and have notified Petitioner of their intent to remove him to Mexico.

***C. The threatened injury outweighs whatever damage the proposed injunction may cause the opposing party.***

An injunction will interfere with Respondents’ statutory ability to execute Petitioner’s removal order.

***D. If issued, the injunction would be adverse to the public interest.***

An issuance of an injunction preventing Respondents from executing the removal order would be averse to the public interest because enforcing federal immigration law furthers the public’s interest. *See Garcia v. Martin*, 18-62724-CIV-ALTONAGA, 379 F. Supp. 3d 1301, 1308 (S.D. Fla. Nov. 18, 2018) (denying a preliminary injunction requesting a stay of removal because an execution of a removal order “is commensurate with the public’s interest in enforcing federal law.”).

**Respectfully submitted,**

**JASON A. REDING-QUIÑONES  
UNITED STATES ATTORNEY**

Natalie Diaz  
NATALIE DIAZ  
ASSISTANT U.S. ATTORNEY  
Florida Bar No. 85834  
E-mail: Natalie.Diaz@usdoj.gov  
99 N.E. 4<sup>th</sup> Street, Suite 300

Miami, Florida 33132  
Telephone: (305) 961-9306