

**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.

**OPPOSITION TO PETITIONER'S MOTION TO PRODUCE PETITIONER
AND PETITIONER'S MOTION FOR ISSUANCE OF SUBPOENAS**

Charles Parra, Field Office Director, et al. ("Respondents"), through undersigned counsel, maintains that Jose Guerra-Castro's ("Petitioner") Motion to Produce Petitioner (ECF No. 44) and Petitioner's Motion for Issuance of Subpoenas (ECF No. 45) should be denied because the testimony requested is not relevant to the issue of Petitioner's removal to Mexico and will not further the resolution of the limited issue for which the Court set this evidentiary hearing: "to address whether Mexico or another third country has agreed to accept Petitioner." (ECF No. 42). Even if the testimony was relevant, as in the case of Supervisory Detention and Deportation Officer (SDDO) Jahmal Ervin, Respondents provided a supplemental declaration from SDDO Ervin elaborating on the process of removing Cuban nationals, such as Petitioner, to Mexico, and highlighted that removal is imminent upon this Court's lifting of the stay of removal, entered September 3, 2025. Further, Petitioner's presumed extensive questioning will not aid with resolution of the issue because its purpose is to elicit privileged information regarding Respondents' protocols in executing removals to Mexico.

I. BACKGROUND

On May 29, 2025, Petitioner was detained by ICE to enforce his removal order. *See* (ECF No. 1 at 1).

On May 30, 2025, the day after his detention, Petitioner filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (“Habeas Petition”), which the Court, agreeing with Respondents, denied as premature under *Zadvydas v. Davis*, 533 U.S. 678 (2011) because “Petitioner has not been detained for more than six months.” *See* (ECF No. 1 and No. 23 at 6).¹

On June 13, 2025, the Court entered a stay of removal until July 3, 2025. *See* (ECF No. 20). The stay of removal was subsequently extended until July 17, 2025. *See* (ECF No. 20).

On August 28, 2025, Respondents filed their second Return. *See* (ECF No. 34).

On September 1, 2025, Petitioner filed a second motion for temporary restraining order, which Respondents opposed. *See* (ECF No. 36 and 38).

On September 2, 2025, the Court entered an additional stay of removal, which remains in place. *See* (ECF No. 37).

On September 26, 2025, the Court set a hearing for October 3, 2025, stating the “parties should be prepared to address whether Mexico or another third country has agreed to accept Petitioner.” *See* (ECF No. 42).

Petitioner is still detained in Florence, Arizona, for the purpose of effecting removal if the stay of removal is lifted. *See* (Exhibit A, SDDO Ervin Supplemental Declaration, at ¶¶ 6, 8).

¹ The order states it is denying the “Amended Petition for Emergency Injunctive Relief” in the conclusion, but in the first page states only the “Motion for injunctive relief is denied.” *See* (ECF No. 23 at 1 and 8).

If the Habeas Petition was filed today, it would still be premature because Petitioner has been detained for fewer than 180 days.

II. ARGUMENT

A. Petitioner's writ of habeas corpus *ad testificandum* should be denied because his testimony does not further the issue of whether Mexico has agreed to accept Petitioner.

“The proper procedural vehicle for securing a prisoner's presence at trial is a writ of habeas corpus *ad testificandum* which may be issued at the discretion of the district court.” *See Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir.1981) (en banc). The discretionary grant of the writ of habeas corpus *ad testificandum* is predicated on several factors, including, ‘whether the prisoner's presence will substantially further the resolution of the case, the security risks presented by the prisoner's presence, [and] the expense of the prisoner's transportation and safekeeping...’”. *Ballard v. Spradley*, 557 F.2d 476, 480 (5th Cir.1977). *Pollard v. White*, 738 F.2d 1124, 1125 (11th. Cir. 1984) (citations in original).

Petitioner's transfer from Florence, Arizona, where Respondents are waiting for a final disposition by the Court, in light of the stay of removal, will impose a substantial burden on Respondents due to the distance, cost, and time required. The flight time from Florence to Miami is almost five hours, excluding local travel and security checks. The commute by automobile will take several days. This burden outweighs the need for Petitioner's testimony at the hearing where the focus is “whether Mexico or another third country has agreed to accept Petitioner.” (ECF No. 42). Petitioner does not have personal knowledge of the process of removing Cuban nationals to the third country of Mexico. Further, it is undisputed that he received the Notice of Removal to a Third Country, Mexico, and is aware of Respondents' intention of executing the removal if the stay of removal is lifted.

Thus, Respondents oppose Petitioner's Writ of habeas corpus *ad testificandum* (ECF No. 44) because his testimony will not aid the Court in the issue of third country removals, *see* (ECF

No. 43 at 1), and because of the increased burden and expense to transport him for the hearing. Although Respondents oppose Petitioner's testimony because it is not being offered to address the central issue of whether Mexico has accepted Petitioner, they do not oppose Petitioner attending the in-person hearing telephonically to listen to arguments and will accommodate Petitioner accordingly, if the Court requires.

B. Petitioner's motion for issuance of subpoenas

In addition to the writ of habeas corpus *ad testificandum*, Petitioner requests the Court issue subpoenas requiring the testimony of several ICE officials. *See* (ECF No. 45). Respondents oppose the issuance of the subpoenas for the following reasons:

1. **Deportation Officer González Alverio:** DO González Alverio's testimony is not relevant to Respondents intent to effectuate Petitioner's removal to Mexico and will not further the resolution of that issue.
2. **Deportation Officer Carballo:** DO Carballo's testimony is not relevant to Respondents intent to effectuate Petitioner's removal to Mexico and will not further the resolution of that issue. DO Carballo only declared that she served Petitioner with the Notice of Removal to a Third Country while the Petitioner was detained in Miami, Florida.
3. **Supervisory Deportation Officer Ervin:** SDDO Ervin submitted a declaration that the Government of Mexico has agreed to accept the repatriation of Cuban citizens with final orders of removal from the United States, and that ICE, Enforcement and Removal Operations ("ERO") intends to effectuate Petitioner's removal to Mexico if the stay of removal is lifted. Nonetheless, Respondents oppose his live testimony because it is duplicative of what has been provided to the Court with respect to removals of Cuban nationals to Mexico. In light of the Court's request for more information on whether Mexico has agreed to accept Petitioner, Respondents attach a supplemental declaration from SDDO Ervin elaborating on the process of these types of removals to Mexico. *See* Exhibit A.

Significantly, SDDO Ervin explains that ERO is precluded from executing Petitioner's removal because of the stay of removal issued by the Court on September 2, 2025. "ICE cannot provide a date certain by which removal will occur because the stay of removal issued by the district court on September 2, 2025, has prevented ERO from completing coordination of Petitioner's removal to Mexico." (*Id.* at ¶ 18). "Prior to removal to Mexico, ERO submits a list of non-Mexican foreign nationals to the Mexican authorities." (*Id.* at ¶ 13). "Upon vacatur of the court's stay in this case, ERO will

immediately submit Petitioner's name, along with others, for removal to Mexico." (*Id.* at ¶ 16).

Further, the purpose of Petitioner's presumed extensive questioning is to elicit information regarding privileged law enforcement protocols. Such questioning is irrelevant considering the additional information provided by Respondents regarding the Court's request for additional information on whether Mexico has agreed to accept Petitioner.

4. **Field Office Director John E. Cantu, Phoenix, Arizona, Enforcement and Removal Operations:** The transportation of FOD Cantu from Florence to Miami will substantially burden Respondents due to the length of travel. Further, "any communications with foreign government regarding third-country removal", (ECF No. 43 at 2), is privileged and will not aid the resolution of the removal issue. Lastly, FOD Cantu has not supplied any declarations in this matter and is not assigned to the Enforcement and Removal Operations in Miami, Florida, where ERO maintains docket control of the Petitioner's case.

Accordingly, Respondents respectfully request the Court deny Petitioner's Motion to Produce Petitioner (ECF No. 44) and Petitioner's Motion for Issuance of Subpoenas (ECF No. 45).

Respectfully submitted,

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