

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

**AT CHANDEE AKA
("XAYASOUNETHONE"),**

Petitioner,

v.

KRISTI NOEM, in her capacity as Secretary
of the United States Department of Homeland
Security;

TODD M. LYONS, in his official capacity as
Acting Director of the United States
Immigration and Customs Enforcement;

PAMELA BONDI, in her official capacity as
Attorney General of the United States;

**WARDEN OF ERO EL PASO EAST
MONTANA FACILITY**; and **MARY DE
ANDA DE YBARRA**, in her capacity as El
Paso Field Office Director, US Immigration
and Customs Enforcement

Respondents.

Case No. 3:26-cv-00336-LS

**MOTION TO RECONSIDER
DENIAL TEMPORARY
RESTRAINING ORDER AND
EMERGENCY PRELIMINARY
INJUNCTION**

**EXPEDITED HANDLING
REQUESTED**

Petitioner At Chandee ("Mr. Chandee") moves this Court under Fed. R.Civ. P. 54(b) to reconsider the denial of his Motion for a Temporary Restraining Order. Docket 6. Under Rule 54(b) the Court's order that does not end the action "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." The court may grant reconsideration "as justice requires." Banks v. Booth, 518 F. Supp. 3d 57, 62 (D.D.C. 2021). The movant for reconsideration must demonstrate either, (1) an intervening change in the law, (2) the discovery of new evidence not previously available; or (3) a clear error in the first order." Id. (citing to Dunlop v. Presidential Advisory Commission on Election Integrity, 319

F.Supp.3d 70 D.D.C. 2018). An error of the first order is comparable to “manifest error” which the Fifth Circuit has described as “plain and indisputable, and that amounts to a complete disregard of the controlling law” Guy v. Crown Equip. Corp., 394 F.3d 320, 325 (5th Cir. 2004). Another example of a manifest error can come from the Court misapprehending the party’s position. IDS Prop. Cas. Ins. Co. v. Gov’t Emps. Ins. Co., 985 F.3d 41, 51 (1st Cir. 2021)(“if its [original] ruling “patently misunderstood a party” or misapprehended the question before it, we will not disturb the court's discretion to allow a motion for reconsideration.”) Petitioner seeks to correct any misunderstanding as to his position and provide a clear example of how and why reliance on 8 U.S.C. 1252(g)(“1252(g)”) in order to bar the relief sought in his Motion for a TRO (ECF 5) is manifestly incorrect.

Petitioner challenges the validity of the order of deportation not its effectuation

First, the Petitioner believes that the Court has misapprehended his cause of action as outlined in the Amended Petition for Habeas Corpus. (ECF 4). He is challenging the validity of the deportation order, and not its execution. ECF 4 at ¶1, 102. While the Petitioner has described the “effectuation” of an *invalid* order as a violation of due process, the Amended habeas petition seeks to challenge the *validity* of order of deportation itself. ECF 4 at 33-¶ 37. The reference to its effectuation refers to effectuating an *unlawful* or *invalid* order of deportation and is only to describe the harm involved and why it would be a “gross miscarriage of justice.” (ECF 4 at 102, ECF 5 at 4 “There is little doubt that his 1995 Order of Deportation is fundamentally *invalid* under clearly established Supreme Court precedent, and executing this *unlawful* order... violat[e] of due process.”) Petitioner’s challenge is to the underlying order of deportation, and not the execution, which is why the Amended Petition and Motion for TRO cite to and reference 8 U.S.C. § 1105a(a)(10)(1994 ed.) which is the provision that Petitioner argues

provides this Court with jurisdiction *in habeas* to review his deportation order. To the extent that a decision on the lawfulness of the order can prevent its execution, that is because there is no *discretion* to execute an unlawful order. Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018)(1252(g) does not apply to executing illegal or unlawful orders of removal).

I.N.S. v. St. Cyr Controls

Second, the Court in citing to 1252(g) appears to have ignored the most relevant and controlling Supreme Court precedent, namely I.N.S. v. St. Cyr, 533 U.S. 289 (2001). I.N.S. v. St. Cyr is the basis for Mr. Chandee's Amended Habeas (Docket ¶4) and thus the Motion for a Temporary Restraining Order. (Docket 5). Mr. Chandee's Amended Habeas argues that his case is a natural extension of the Supreme Court's decision in St. Cyr. (ECF 4 at ¶4, ¶44-45).

Given its importance to the Petitioner's claims, a summary of the procedural history and holding of the Court in St. Cyr is warranted. Enrico St. Cyr, a lawful permanent resident, pleaded guilty to selling controlled substances in 1996 in violation of Connecticut law. He was placed into removal proceedings on April 10, 1997 after AEDPA and IIRIRA became effective. St. Cyr at 293. AEDPA and IIRIRA repealed what was known as 212(c) relief, a provision of law that would have allowed someone like Mr. St. Cyr to apply for relief from deportation. However, given that he was placed in removal proceedings after the passage and effectiveness of those two statutes, the Attorney General argued that 212(c) was no longer available to him. Id. St. Cyr argued that the repeal of the relief could not be retroactively applied to a person who plead guilty to a crime prior to the Bill's enactment. Importantly for Mr. Chandee's case however was the fact that after St. Cyr had lost his appeal to the Board of Immigration Appeals; he sought judicial review over the Board's decision with a District Court with a habeas corpus petition

under 28 U.S.C. §2241. Id. The changes to judicial review from AEDPA and IIRAIRA included an entirely new 8 U.S.C. § 1252, which included several provisions that appeared to limit judicial review, such as §§ 1252(a)(1), (a)(2)(C) and 1252(b)(9). The Government argued to the Supreme Court that those provisions precluded habeas review of the underlying deportation order and the decision by the Board of Immigration Appeals to deny him access to 212(c) relief. Id. at 297. Notably, 8 U.S.C. § 1252(g) was in effect at the time St. Cyr faced removal. The Supreme Court roundly rejected the Government's position.

The Government's challenge to the District Court's jurisdiction is why the Supreme Court first needed to deal with whether or not the District court *in habeas* could review the decision by the Board of Immigration Appeals at all. St. Cyr, at 298. As explained in the Amended Habeas Petition, 44-45, the Supreme Court emphatically answered that Congress had NOT retroactively taken away jurisdiction from District Courts for habeas review. St. Cyr, 533 U.S. at 314. ("Accordingly, we conclude that habeas jurisdiction under § 2241 was not repealed by AEDPA and IIRIRA.") Petitioner makes the same claim here, but in reference to the changes wrought by REAL ID, namely the provision in 8 U.S.C. 1252(a)(5) otherwise known as the "zipper clause." (ECF 4 at ¶2).

For purposes of this Motion to Reconsider, Petitioner makes two points about St. Cyr. First, the Court's decision in St. Cyr, explicitly referred to 1252(g) in a footnote. The footnote states:

Title 8 U. S. C. § 1252(g) (1994 ed., Supp. V), entitled "Exclusive jurisdiction," is not relevant to our analysis of the jurisdictional issue. In Reno v. American-Arab Anti-Discrimination Comm., 525 U. S. 471 (1999) (AADC), we explained that that provision applied only to three types of discretionary decisions by the Attorney General-specifically, to commence proceedings, to adjudicate cases, or to execute removal orders none of which are at issue here.")

St. Cyr, at 311 n.34(emphasis added). AADC had applied 1252(g) retroactively and thus would have been available to strip jurisdiction from St. Cyr's habeas petition if applicable, but the Court found it unimportant and irrelevant. If 1252(g) was not relevant in St. Cyr, then it cannot be relevant in the Petitioner's case as he is making the same claim-namely that this Court has habeas jurisdiction to consider the validity of his deportation order.

Second, while the Government in St. Cyr relied upon other provisions of 8 U.S.C. § 1252 in its Supreme Court briefing and argument, it had earlier in the litigation cited to and attempted to rely on 1252(g). To get a better understanding of why the Government didn't use or cite to 1252(g) at the Supreme Court, (or at the circuit court), the District Court decision in St. Cyr is instructive. The Government at the District Court relied heavily on 1252(g) and on "AAADC". The District Court rejected these arguments.

The Court [AAADC] ruled that § 1252(g) narrowly applies to preclude judicial review of the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders." See *id.* The Court noted that many other actions exist that are part of the deportation process that are not covered by § 1252(g), and that § 1252(g) should not be read as an all-encompassing provision. See *id.* Indeed, the Court recognized that the reason this provision focuses on these discrete acts of the Attorney General is that they all represent points in a deportation proceeding at which the Attorney General could decide for humanitarian reasons to "defer action," i.e., to abandon deportation proceedings against an individual who is subject to deportation. See *id.* at 943–44. This provision, then, is designed merely to shelter the Attorney General's decision to continue or discontinue a deportation proceeding, see *id.* at 944, and has no direct relevance to questions regarding a federal court's habeas jurisdiction.

Dunbar v. I.N.S., 64 F. Supp. 2d 47, 50 (D. Conn. 1999), *aff'd sub nom. St. Cyr v. I.N.S.*, 229 F.3d 406 (2d Cir. 2000), *aff'd*, 533 U.S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001), and *rev'd sub nom. Domond v. U.S. I.N.S.*, 244 F.3d 81 (2d Cir. 2001). 1252(g) was not discussed in the appellate litigation afterwards. See St. Cyr v. I.N.S., 229 F.3d 406(2nd Cir. 2000). 1252(g) is limited in scope to prevent challenges to *discretionary* decisions. While it does discuss

“effectuating” orders of removal, this presumes that the order being effectuated is lawful, as there is no *discretion* to enforce an unlawful order. Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018)(finding that there is no discretion to effectuate an unlawful order). While district courts after REAL ID were stripped of the ability to decide if an order of removal is invalid, it was the result of 8 U.S.C. § 1252(a)(5) and not of 1252(g). Beyond a doubt, St. Cyr established that 8 U.S.C. § 1252(g) is not a barrier to habeas review of an order of deportation. While Petitioner still must establish a source of subject matter jurisdiction, (he cites to former 8 U.S.C. 1105a(a)(10) (1994 ed)), 1252(g) cannot be the source that strips that jurisdiction.

This Court’s order states “ a district court does not have jurisdiction to issue a stay of removal from the United States under 8 U.S.C. § 1252(g), which strips a court of jurisdiction to hear claims “arising from the decision or action by the Attorney General to . . . execute removal orders.” (ECF 6 at 2). Respectfully, this sentence in the Order is an incorrect statement of law. 8 U.S.C. 1252(g) is a *subject matter* jurisdictional bar. It prevents litigants from challenging certain discretionary decisions in federal court. But it simply doesn’t apply here, as the Petitioner is not challenging *any* decision to effectuate a removal order. The validity of the order of deportation is what is being challenged, and that is because the Respondents do not have any discretion to effectuate an *invalid* order of deportation. Arce v. United States, 899 F.3d 796, 800 (9th Cir. 2018). Petitioner’s challenge and the basis for the Motion for Temporary Restraining Order is based on his challenge to the validity and lawfulness of his deportation order, not to whether or not Respondents are now choosing to enforce it or not. What prevents District Courts such as the one in Imran v. Harper, No. 25-30370, 2026 WL 93131, at *1 (5th Cir. Jan. 13, 2026) to issue a stay of removal comes from the lack of subject matter jurisdiction in 8 U.S.C. §

1252(a)(5) (which is why the Imran court refashions the stay request as a direct challenge of the removal order).

Stays of Removal are not Governed by 8 U.S.C. 1252 when challenging the validity of the Order

According to the Supreme Court the ability of courts to stay a deportation while considering the lawfulness of its validity is not governed by the standards of 8 U.S.C. § 1252(f) or 1252(g), but rather are “inherent” and “preserve in the grant of authority to federal courts to “issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”” Nken v. Holder, 556 U.S. 418, 426 (2009). *See also*, Motion for TRO, (ECF 5 at 13-14). Nken uses traditional injunctive factors, and explicitly rejected the burden established in 1252(f) when deciding whether or not to issue a stay of removal while providing judicial review over the order of removal.

For the foregoing reasons, the Petitioner respectfully requests that this Court reconsider its decision to deny the TRO under Fed. R.Civ. P. 54(b) or in the alternative set a hearing for a preliminary injunction on the matter. In accordance with Local Rule CV 7(i), Petitioner emailed Respondents with a draft of this Motion at 1:15am CST on February 14, 2026. Ms. McAndrew’s email provided an automatic response indicating that she would not be available until Tuesday February 17, 2026. Given the emergent nature and potential removal of the Petitioner over the next several days, Petitioner does not believe any resolution could be reached with Respondent in a timely manner.

Respectfully submitted,

/s/ R. Linus Chan

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