

Venue is proper under 28 U.S.C. § 1391(e) and 28 U.S.C. § 2241(d), as Petitioner is detained within this judicial district.

LEGAL STANDARD

To obtain a TRO, the plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *East Bay Sanctuary Covenant v. Trump (“East Bay I”)*, 349 F. Supp. 3d 838, 855 (N.D. Cal. 2018) (quoting *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)). Provided that the Court fully considers this familiar four-factor test, the Court may supplement its inquiry by considering whether “the likelihood of success is such that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in [the requesting party’s] favor.’” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (quoting *Clear Channel Outdoor, Inc. v. City of L.A.*, 340 F.3d 810, 813 (9th Cir. 2003)). Under the Ninth Circuit’s “sliding scale” approach, as “more relative hardship is shown, the less likelihood of success must be shown and vice versa”; the factors are “extremes of a single continuum.” See *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999); *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017). The purpose of a TRO is to preserve the status quo until a hearing on the merits can take place. *Univ. Camenisch*, 451 U.S. at 395 (1981); *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016).

GROUND FOR RELIEF

Courts recently faced with habeas petitions by individuals detained by ICE have ordered that a Petitioner not be removed from the United States unless and until the Court issues a contrary

order, and sometimes that a Petitioner not be moved outside the District in which the petition is filed until the Court issues a contrary order. See, e.g., *Ozturk v. Trump*, ___ F. Supp.3d ___, Case No. 25-cv-10695-DJC, 2025 WL 1009445, at *2 (D. Mass. April 4, 2025); *Suri v. Trump*, Case No. 1:25-cv-480, 2025 WL 914757, at *1 (E.D. Va. March 20, 2025). In at least one prior such case, the Government appears to have responded in effect that the order could not be followed because they had already moved the Petitioner outside of the District prior to the order being issued. See *Ozturk*, 2025 WL 1009445, at *2.

Accordingly, Petitioner moves that this Court, to preserve its jurisdiction over the petition pursuant to the All Writs Act, 28 U.S.C. § 1651 (see *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603 (1966)), and immediately order that Mr. Touray **not** be removed from the United States, or moved outside of the territory of the Southern District of Ohio, pending further order of this Court.

Imminent and Irreparable Harm

Absent immediate intervention by this Court, Petitioner faces imminent and irreparable harm. Petitioner is currently in the custody of U.S. Immigration and Customs Enforcement (ICE), and government agents have expressly indicated their intent to deport him at any moment—despite the fact that a habeas corpus petition challenging the legality of his detention and/or removal is currently pending before this Court.

Deporting Petitioner while his habeas petition remains unresolved would effectively moot the case and deprive this Court of its jurisdiction to adjudicate the matter. This would constitute a violation of Petitioner's right to due process under the Fifth Amendment and his statutory right to judicial review under 28 U.S.C. § 2241. The Supreme Court has recognized that “[t]he writ of habeas corpus plays a vital role in protecting constitutional rights” and that “[t]he writ is a bulwark against convictions that violate fundamental fairness.” See *Boumediene v. Bush*, 553 U.S. 723, 745

(2008). If Petitioner is removed from the United States before the Court can decide his habeas petition, he may be rendered unable to return—even if his removal is later found to have been unlawful.

Moreover, deportation would cause Petitioner immediate and irreparable personal harm. He faces the risk of persecution, serious physical harm, or other forms of danger in the country, Gambia, to which the government intends to remove him. Even aside from physical safety concerns, courts have routinely held that removal prior to the adjudication of pending legal claims constitutes irreparable harm. This harm is not speculative. It is both immediate and certain if the Court does not intervene. ICE has already taken concrete steps toward effectuating Petitioner's removal, by making arrangements to obtain travel documentation for Petitioner. Once removed, Petitioner's ability to access legal counsel, communicate with the Court, or even participate in further proceedings would be significantly impaired or altogether foreclosed.

Because no adequate remedy exists to reverse or redress the harm of an unlawful removal after the fact, a Temporary Restraining Order is necessary to preserve the Court's jurisdiction and protect Petitioner's constitutional and statutory rights.

Likelihood of Success on the Merits

Petitioner raises substantial and urgent legal claims that strike at the core of the government's authority to detain and remove individuals. Through his pending habeas petition, Petitioner challenges the lawfulness of his continued detention and the execution of his removal order in violation of his due process rights under the Fifth Amendment, based on the government's failure to timely execute the removal order, in violation of statutory and constitutional limitations on prolonged custody and detention.

This is not a frivolous or speculative claims. It present serious constitutional and statutory questions that fall squarely within this Court's jurisdiction under 28 U.S.C. § 2241. Courts have long recognized that habeas corpus plays a critical role in safeguarding individual liberty from unlawful executive action. Given the irreversible consequences of removal, including the substantial risk of persecution Petitioner faces in Gambia, these legal claims must be adjudicated before any removal occurs. Review of his habeas petition is not only appropriate, but essential to ensuring compliance with the Constitution and the rule of law, which can only serve to uphold the rights of Petitioner if he remains in the United States.

Balance of Equities and Public Interest

The balance of equities overwhelmingly favors Petitioner. Enjoining removal for the brief period necessary to allow for meaningful judicial review imposes only a minimal and temporary burden on Respondents, particularly given the gravity of what is at stake. In contrast, removal would inflict severe, irreversible harm on Petitioner, effectively extinguishing their ability to pursue legal relief and potentially subjecting them to persecution or other life-threatening consequences. Removal would foreclose review of his petition for habeas corpus.

There is a profound public interest in ensuring that individuals are not removed from the United States before their claims for protection and due process have been meaningfully adjudicated. Habeas corpus serves as a vital check on unlawful executive detention and removal actions. Permitting removal before the Court has had an opportunity to decide the merits of Petitioner's claims would undermine the integrity of the judicial process and risk violating the constitutional guarantee of due process. Enjoining removal in these circumstances protects both the rights of Petitioner and the foundational principle that no person should be deprived of liberty or subjected to persecution without full and fair legal process.


PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Issue an immediate Temporary Restraining Order enjoining Respondent from removing or deporting Petitioner from the United States until further order of this Court;
2. Issue an immediate Temporary Restraining Order enjoining Respondent from moving or relocating Petitioner to a different detention facility until further order of this Court;
3. Order Respondents to provide at least 14 days' notice to the Court and Petitioner before any future removal is carried out;
4. Schedule an expedited hearing on a preliminary injunction; and
5. Grant any such other relief as the Court deems just and proper.

DATED: September 19, 2025

Respectfully submitted,



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