UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MOHAN KARKI,

Petitioner,

Case No. 25-cv-13186
Hon. Stephen J. Murphy III
Magistrate Judge Kimberly G. Altman

Kevin RAYCRAFT, et al.,

Respondents.

PETITIONER'S REPLY BRIEF

The government's sudden re-detention of Karki after fourteen (14) years of compliance with his order of supervision and failure to provide him the post-arrest notice and opportunity to respond, or an adequate post-detention custody review, as required in the INA regulations, violated his regulatory rights and procedural due process rights. Petitioner Mohan Karki is neither a flight risk or a danger, and the government plainly has not used these facts to effectuate his removal or justify his continued detention. As a result, Karki's detention is unconstitutionally punitive, and this Court should order Karki's immediate release.

A. Issue Preclusion Does Not Apply in the Habeas Corpus Context

The government's res judicata argument fails because habeas corpus proceedings are specifically excepted from traditional res judicata principles. *Schlup v. Delo*, 513 U.S. 298, 319, 130 L. Ed. 2d 808, 115 S. Ct. 851 (1995)("the

equitable nature of habeas corpus" precludes the "strict rules of res judicata"). *See also*, *Johnson v. Warden, Ross Corr. Inst.*, No. 2:21-cv-790, 2021 U.S. Dist. LEXIS 261028, at *4 (S.D. Ohio May 17, 2021).

The Court's analysis in *Johnson v. Warden* is instructive, there Petitioner Johnson filed a habeas petition contesting his underlying conviction. *Johnson*, 2021 U.S. Dist. LEXIS 261028, *2. Johnson's first habeas petition was denied and he did not appeal, making it a final judgment. *Id.* at *3. Five years later, Johnson filed a new habeas petition based on revocation of his parole without adequate notice, which he knew about at the time he filed his first habeas petition. *Id.* The *Johnson* court rejected the government's res judicata argument because Johnson had "never before tested the legality of his 2012 parole revocation in habeas corpus." *Id.* at *5. Similarly, Mr. Karki has not tested his parole revocation argument in his prior habeas petition, which focused on his removability and not the legality of Respondents' revocation of his parole.

Moreover, the circumstances underlying Karki's detention have materially changed since his first habeas petition. The Southern District of Ohio denied his habeas petition partly because he had only been detained for two months at that time. *See Karki v. Jones*, 2025 U.S. Dist. LEXIS 109168, at *24 (S.D. Ohio June 9, 2025). Now, Karki has been detained for significantly longer, and the travel document that initially justified his detention has expired. ECF No. 6-2, PageID.78

("travel document" valid until August 18, 2025). These changed circumstances distinguish the current petition from Karki's prior Ohio habeas case.

B. Petitioner's Prolonged Detention Violates His Due Process Rights

Petitioner's detention is not of his own making, and he should not be penalized for making meritorious efforts to remain in the U.S. with his U.S. citizen wife, U.S. citizen newborn child, and immediate relatives and extended community. Moreover, Mr. Karki's statelessness is a material fact and identifiable barrier to his removal that should not be overlooked by this Court.

Respondents claim that Mr. Karki is a citizen of Bhutan and national of Nepal is simply wrong. ECF No. 6-2, PageID.77. As Respondents concede, Karki was admitted into the U.S. as a refugee. *Id.* Karki was born in a refugee camp in Nepal, because his parents were forced out of Bhutan due to [redacted] ECF No. 1-1, PageID.24. He is stateless and came to the U.S. under a refugee resettlement program specifically for individuals like him. *Id.*

The government's reliance on *Martinez v. Larose*, 968 F.3d 555 is misplaced because the factual circumstances in *Martinez* are materially different from those present in Karki's case. In *Martinez*, the petitioner had entered the United States unlawfully, was deported, and then unlawfully re-entered the United States and was detained. *Martinez*, 968 F.3d 557-58. The Sixth Circuit found no constitutional violation to Martinez's prolonged detention because there was no evidence that

removal would be impossible since Martinez was a citizen of El Salvador and could easily be removed there once the appeals were decided. *Id.* at 565. Unlike Martinez who had a clear country of citizenship (El Salvador), Karki is stateless and not a citizen of Bhutan, Nepal, or any country. ECF No. 1, PageID.24. Therefore, Karki's stateless condition presents an identifiable barrier to his removal and makes *Martinez* distinguishable.

Karki's situation is also fundamentally different than the petitioner in *Martinez* who was detained after violating immigration laws by crossing the U.S. border after already having been removed. *Martinez*, 968 F.3d at 558. In contrast, Karki was admitted lawfully as a refugee into the U.S. under the Bhutanese Resettlement Program. ECF No. 1, PageID.2. When Respondents arrested Karki and placed him in immigration detention in April 2025, he had not violated any term of his supervision order or any other immigration law. ECF No. 1-1, PageID.25-26. In fact, Karki was complying with his order of supervision as he had been doing for over fourteen years. *Id.*

Respondents' reliance on *Mulla v. Adducci*, 178 F. Supp.3d 573, is similarly misplaced. In *Mulla*, the petitioner was a Pakistani citizen, not stateless, who had been contesting his order of removal for over fifteen years before the government took him into custody. *Mulla*, 178 F. Supp. 3d at 574-75. Here, Karki is stateless

and was forced to seek avenues to remain in this country only because of Respondents' sudden re-detention of him without due process.

Lastly, this Court has previously held that pendency of an immigration appeal alone cannot "allow the government to sidestep its obligation to demonstrate that removal can be accomplished in the reasonably foreseeable future once the appeal concludes." *Toma v. Adducci*, 535 F. Supp. 3d 651, 659 (E.D. Mich. 2021). *See also, Al-Sadoon v. Lynch*, 586 F. Supp. 3d 713, 725 (E.D. Mich. 2022). Here, Respondents have conceded that they have not requested a new travel document for Petitioner, undermining any claim that removal is reasonably foreseeable. The government claims to be able to obtain a new travel document but does not specify exactly how it will obtain such a document. ECF No. 6-2, PageID.79. Courts around the country have been skeptical of the government's unsubstantiated claims of being able to obtain travel documents easily for individuals who are stateless, such as Mr. Karki. *See Salad v. Dep't of Corr.*, 2025 WL 732305, at *14 (D. Alaska 2025); *Mong Tuyen Thi Tran v. Scott*, 2025 U.S. Dist. LEXIS 201561, at *15 (W.D. Wash. Oct. 12, 2025); *Phong Phan v. Beccerra*, 2025 U.S. Dist. LEXIS 136000, at *12 (E.D. Cal. July 16, 2025). Respondents claim that all they would need for a travel document is Karki's passport (ECF No. 6, PageID.73) makes the point that they cannot effectuate Karki's removal since

Mr. Karki does not have a passport because he is stateless and not a citizen of any country and cannot obtain a passport.

C. Procedural Due Process Violations Support Relief

The government's revocation of Karki's order of supervision and continual detention without the proper custody review violates Karki's procedural due process rights. Respondents failed to provide Karki with any notice prior to or at the time of his revocation of order of supervision. Notably Respondents did not include with their filings a copy of the notice that was purportedly provided to Karki on April 2025 and that is because no such notice exists. Respondents also failed to provide Karki with an opportunity for Mr. Karki to be heard at the time of his arrest in April 2025. That Karki was able to file petitions with immigration court have no bearing on Respondents failure to provide him with notice and opportunity as required by the INA. To add to Respondents list of failures, Respondents failed to provide Karki with an adequate custody determination as required under the INA regulations in July 2025.

Karki was arrested while complying with his supervision requirements, without any allegation that he had become a flight risk or danger to the community. The regulations (whether under 8 C.F.R. 241.4(l) or 241.13(i)) require individualized assessment and proper notice before revocation, which did not occur here. Respondents spend pages trying to confuse this Court with its recitation of

the various INA regulations. Yet, Respondents claim that the agency conducted a review of Karki's custody determination as required under the INA regulations is categorically false. *See* ECF No. 1-1, PageID.27; ECF No. 1-3, PageID.32. In July 2025, Karki was not given an individual assessment and instead was shown a document in English that an ICE official wanted him to sign. *Id.* Karki was not interviewed to determine his flight risk or other changed circumstance. Even if the July 2025 meeting with an ICE official could be considered an interview, which it was not, he was not provided an interpreter and was not given the opportunity to consult with his attorney. ECF No. 1-1, PageID.27.

ICE's own document "Decision to Continue Detention" (ECF No. 1-3) shows that any alleged custody review was done perfunctorily and not with any individualized assessment. The form has two checks marks "pose a significant risk of flight pending your removal from the United States" and ICE is in receipt or expect to receive the necessary travel documents. ECF No. 1-3, PageID.32. Yet the explanation for these determinations is only that ICE is in possession of a valid travel document and removal is imminent. No individual assessment was done to determine why Karki poses a significant flight risk and if one had been done, it would demonstrate that he is not given his extensive ties to his community in Ohio, including his U.S. citizen wife and newborn child, and gainful employment, and that he remains statelessness.

Courts across the country have consistently granted habeas relief where ICE provided deficient notice that merely recited regulatory language without providing the individualized assessment required under its own regulations. *See K.E.O. v. Woosley*, Civil Action No. 4:25-cv-74-RGJ, 2025 U.S. Dist. LEXIS 172361, at *20 (W.D. Ky. Sep. 4, 2025) (ICE's failure to follow their own regulations violate the *Accardi* doctrine and procedural due process rights under the Fifth Amendment); *Roble v. Bondi*, No. 25-cv-3196 (LMP/LIB), 2025 U.S. Dist. LEXIS 164108, at *9 (D. Minn. Aug. 25, 2025) (granting habeas relief based on due process violations when government's notice was mere recitation of regulations and not an individualized assessment required under the regulations); *Phetsadakone v. Scott*, No. 2:25-cv-01678-JNW, 2025 U.S. Dist. LEXIS 173785, at *8 (W.D. Wash. Sep. 5, 2025) (same).

The government's conclusory explanations do not satisfy constitutional due process requirements and demonstrate that Karki's continued detention is punitive in nature. Respondents claim that their actions did not prejudice him in a meaningful way is incredulous. Karki has been in immigration detention for over six months, unable to attend his child's birth or to meet his first-born child. He has been deprived of his liberty interest and every day that he remains detained is a day lost that compounds his constitutional injury. The remedy for Respondents' constitutional violations is to order Karki's release.

Dated: October 28, 2025

Respectfully submitted,

/s/ Diana E. Marin

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