

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MOHAN KARKI,

Petitioner,

v.

Kevin RAYCRAFT, Field Office Director of Enforcement and Removal Operations, Detroit Field Office, IMMIGRATION AND CUSTOMS ENFORCEMENT; Kristi NOEM, Secretary, U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. DEPARTMENT OF HOMELAND SECURITY

Respondents.

Case No. 2:25-cv-13186

Hon. Stephen J. Murphy III

**IMMEDIATE CONSIDERATION
REQUESTED**

**PLAINTIFFS' EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

Pursuant to Fed. R. Civ. P. 65 and for the reasons stated in the accompanying brief, and all pleadings filed to date, Petitioner respectfully moves this Court to issue a temporary restraining order or preliminary injunction prohibiting Respondents from transferring Petitioner Karki out of this Court's jurisdiction, prior to his December 3, 2025, hearing.

As set forth in the accompanying brief, immediate and irreparable injury, loss,

or damage will result to Petitioner before Respondents can be heard in opposition. Accordingly, Petitioner Karki requests that the Court immediately enter a temporary restraining order, or in the alternative, a preliminary injunction prohibiting Respondents from moving Petitioner outside of this Court's jurisdiction prior to his December 3, 2025, hearing and adjudication of his due process claims. Petitioner requests that this Court waive the requirement for bond or security. *See* Fed. R. Civ. P. 65(c).

Pursuant to Local Rule 7.1(2)(C), Respondents do not concur in the motion.

Dated: November 30, 2025,

Respectfully submitted,

/s/ Diana E. Marin

Diana E. Marin (P81514)
BLANCHARD & WALKER PLLC
Attorney for Petitioner
221 N. Main Street, Suite 300
Ann Arbor, MI 48104
(734) 929-4313
marin@bwlawonline.com

Attorney for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MOHAN KARKI,

Petitioner,

v.

Kevin RAYCRAFT, Field Office Director of
Enforcement and Removal Operations, Detroit
Field Office, IMMIGRATION AND CUSTOMS
ENFORCEMENT; Kristi NOEM,
Secretary, U.S. DEPARTMENT OF
HOMELAND SECURITY; U.S. DEPARTMENT
OF HOMELAND SECURITY,

Respondents.

Case No. 2:25-cv-13186

Hon. Stephen J. Murphy III

**BRIEF IN SUPPORT OF
PLAINTIFFS' EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION**

ISSUES PRESENTED

1. Should a temporary restraining order or preliminary injunction, issue to ensure this Court retains jurisdiction of Petitioner's due process violation claims?

Petitioner answers: Yes.

2. Should Petitioner be allowed to attend his December 3, 2025, hearing on his due process claims?

Petitioner answers: Yes.

3. Should the Court enjoin Respondents from removing Petitioner from this Court's jurisdiction prior to the full adjudication of Petitioner's due process claims?

Petitioner answers: Yes.

MOST CONTROLLING AUTHORITY

U.S. Constitution, Amendment V

28 U.S.C. § 2241

5 U.S.C. § 706(2)(A)

8 C.F.R. § 241.13

8 C.F.R. § 241.4

INS v. St. Cyr, 533 U.S. 289 (2001)

Kansas v. Hendricks, 521 U.S. 346 (1997)

Morton v. Ruiz, 415 U.S. 199 (1974)

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954)

Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137 (W.D.N.Y. May 2, 2025)

Rombot v. Souza, 296 F. Supp. 3d 383 (D. Mass. 2017)

INTRODUCTION

Petitioner Mohan Karki is a stateless refugee who Respondents have recently scheduled to remove from the U.S. on December 2, 2025, the day before this Court scheduled him to appear in-person at his hearing regarding his due process violation claims. This Court should maintain jurisdiction of Petitioner's due process violation claims and order that Respondents not remove Petitioner until after his December 3, 2025, hearing before this Court.

LEGAL STANDARD

Emergency injunctive relief, whether it is a temporary restraining order or a preliminary injunction, is warranted when a petitioner demonstrates: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the equities balance in the petitioner's favor; and (4) that preliminary injunctive relief would serve the public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012); Fed. R. Civ. P. 65(b). To obtain preliminary injunctive relief, a petitioner need show only a likelihood of success on the merits; they need not demonstrate actual success. *See Winter*, 555 U.S. at 32. As explained below, Petitioner Karki meets all the elements and this Court should enjoin Respondents from removing him until after his December 3, 2025, hearing.

ARGUMENT

I. Petitioner is Likely to Prevail on His Due Process Claims.

The writ of habeas corpus, codified at 28 U.S.C. § 2241, requires at a minimum that individuals deprived of liberty or facing removal have access to judicial review of substantial legal and constitutional claims. *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.”). Jurisdiction by this Court should remain so that Mr. Karki can obtain a decision on whether Respondents violated his due process rights when they detained him on April 8, 2025, and when Respondents continued to hold him for over six months without any custody determination as required under the INA and accompanying regulations.

Mr. Karki is likely to prevail on his two independent due process violation claims: (1) prolonged detention in violation of the Fifth Amendment (Pet., Count I) (ECF No. 1, PageID.18) and (2) violations of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, including the regulatory regime at 8 C.F.R. § 241.13 and 8 C.F.R. § 241.4 (ECF No. 1, PageID.19).

Under substantive due process doctrine, a restraint on liberty like revocation of Mr. Karki’s order of supervision is only permissible if it serves a “legitimate

nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention). Respondents prolonged detention of Mr. Karki based on his revocation of supervision has not served either of those purposes and was done for punitive purposes. ECF No. 8, PageID.103.

As to the substantive APA violations, Respondents’ revocation of Mr. Karki’s order of supervision without any notice and hearing and lack of 90-day custody review was (1) not in accordance with law (INA and accompanying regulations), (2) arbitrary and capricious, and (3) contrary to Mr. Karki’s constitutional right. *See* 5 U.S.C. § 706(2). ECF No. 8, PageID.101.

The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704. ICE’s revocation of Mr. Karki’s order of supervision is a final agency action subject to this Court’s review. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights

of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”).

A non-citizen with a final order of removal “who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”). Upon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

Here it is undisputed that Respondents did not provide Mr. Karki with the required notice or interview in April 2025 (*Karki Decl.*, ¶¶24-26, ECF No. 1-1, PageID.26), or post-custody review in July 2025 (*Karki Decl.*, ¶¶32-34, ECF No. 1-1, PageID.27). Had Respondents complied with the notice and hearing requirements under the INA or the custody review requirements under the INA, Mr. Karki would have had an opportunity to prepare for an “orderly departure.” *See* Exhibit A, 2014 Release Notification (“Once a travel document is obtained, you will be required to surrender to ICE for removal. You will at that time, be given an opportunity to prepare for an orderly departure.”). Mr. Karki has not been provided with an opportunity to prepare for his orderly departure, which constitutes another due process and APA violation. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169

(W.D.N.Y. May 2, 2025) (failure to follow instructions for an orderly departure an *Accardi* violation); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure). Mr. Karki only learned of his scheduled removability on November 26, 2025, the day before Thanksgiving, because of this pending habeas petition. *See* Exhibit B, Declaration of Diana Marin, ¶ 1-2.

Respondents have not provided Mr. Karki with sufficient time to obtain his daughter's U.S. passport, which requires that he be physically present to do so. *Id.* ¶ 6. *See* U.S. Department of State, Instructions for Applying for a Child's Passport under 16, available at: <https://travel.state.gov/content/travel/en/passports/need-passport/under-16.html> (last accessed November 30, 2025). In addition, the conditions of his detention do not allow his wife to visit him in person and obtain the consent and signatures she needs to obtain their child's U.S. passport or get their legal affairs in order. Ex. B, *Marin Decl.*, ¶ 7. Lastly, the timing of Respondents scheduled removal of Mr. Karki, for the day before this Court was to hear his due process claims, raises concerns that Respondents are attempting to strip this Court of its jurisdiction to hear Mr. Karki's due process violation claims.

II. Petitioner Will Face Irreparable Harm and Will Continue to Do So Absent Emergency Injunctive Relief.

Mr. Karki currently faces the serious risk of deportation as Respondents have informed his attorney of record that they have purchased a commercial flight for Mr.

Karki to depart the U.S. on December 2, 2025, with a final destination to Bhutan. *See* Ex. B, Marin Decl., ¶ 2. “[D]eportation is a drastic measure and at times the equivalent of banishment or exile.” *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948). Mr. Karki will suffer irreparable harm if Respondents remove him prior to this Court adjudicating his habeas petition.

Detention and removal constituted “irreparable and immediate injury absent a TRO.” *Oruganti v. Noem*, 2025 WL 1144560 at *3 (S.D. Ohio, Apr. 18, 2025) (slip copy). *See also Joshua M. v. Barr*, 439 F.Supp.3d 632, 680 (E.D. Va. 2020) (holding that likely irreparable physical harm that could result from removal, in addition to legal consequences for pending appeals and future applications for admissibility and adjustment of status, justified extension of stay); *Kabenga v. Holder*, 76 F.Supp.3d 480, 487 (S.D.N.Y. 2015) (granting a motion to stay and noting that the facilitation of an alien’s return after removal is illusory, particularly for indigent individuals). *See also, ACLU of Ky. v. McCreary Cnty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003), *aff’d*, 545 U.S. 844 (2005) (when “a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated.”).

By removing Mr. Karki prior to the adjudicating of his due process claims, Respondents are further infringing on Mr. Karki’s constitutional due process rights, including his right for an orderly departure. Had Respondents not violated Mr. Karki’s due process rights in April 2025 (revoking his order of supervision without

the adequate notice or hearing as required under 8 C.F.R. § 241.4(l)(1) or 8 C.F.R. § 241.4(l)(3)) and then in July 2025 (not conducting a 90-day custody review as required under 8 U.S.C. § 1231(a)(3)), Mr. Karki would be free and allowed time to get his personal affairs in order prior to his removal.

By effectuating his removal on December 2, 2025, a day before his hearing for his habeas petition, Mr. Karki has not had time to make proper arrangements for the care of his U.S. Citizen daughter, ensure his U.S. Citizen wife has Mr. Karki's consent and necessary documents to handle their legal affairs without his physical presence, including obtaining a U.S. passport that will allow Mr. Karki's U.S. Citizen wife to travel with their U.S. Citizen child¹ to visit him abroad after he is removed from the United States. *See Ex. B, Marin Decl.* ¶¶ 6-7.

Petitioner should be allowed to get his affairs in order as he was promised in the release of notification issued by Respondents in 2014. Ex. A, 2014 Release Notification. *See also, Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 170 (W.D.N.Y. 2025) (ordering petitioner's release and opportunity to prepare for an orderly departure as promised under his release notification); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of petitioners to give an opportunity to prepare for orderly departure). Not doing so, only adds to Mr. Karki's

¹ Respondents' actions also contravene ICE's own policies for detained parents. *See* <https://www.ice.gov/detain/parental-interest> (last accessed November 30, 2025).

constitutional injuries which have been caused by Respondents. It will also cause Mr. Karki irreparable harm in that he will not be able to reunite with his U.S. citizen daughter if he is removed prior to being able to obtain her U.S. passport.

III. The Balance of Equities and Public Interest Strongly Favors Petitioner.

The government will suffer no cognizable harm from the temporary relief² Mr. Karki seeks. Mr. Karki does not request final relief or release on the merits but only asks this Court to maintain the status quo while the legality of Respondents' actions is adjudicated. A temporary restraining order or preliminary injunction will not prejudice the government; it will merely ensure compliance with statutory and constitutional requirements.

This is precisely the kind of circumstance where equitable relief is warranted to preserve the status quo. *See Reid v. Hood*, No. 1:10-CV-2842, 2011 WL 251437, at *2 (N.D. Ohio Jan. 26, 2011); *Procter & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 226 (6th Cir. 1996) (“[T]he purpose of a TRO under Rule 65 is to preserve the status quo so that a reasoned resolution of a dispute may be had.”). Temporary relief ensures that Mr. Karki is not subjected to further unlawful actions while this Court considers the merits of his underlying constitutional claims. By contrast,

² Mr. Karki continues to have legal avenues for immigration relief as he has a pending Petition for Review of BIA Denial with the Eleventh Circuit Court of Appeals contesting his removability. If released through the pending habeas petition, Mr. Karki will comply and appear at the date provided by Respondents for his removal, just as he has complied with every ICE check-in since 2014.

Respondents cannot have a legitimate interest in enforcing an unconstitutional and unlawful action such as those they effectuated against Mr. Karki in April 2025 and July 2025. “When a constitutional violation is likely, . . . the public interest militates in favor of injunctive relief because it is always in the public interest to prevent violation of a party’s constitutional rights.” *Miller v. City of Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010).

IV. The Public Interest Strongly Supports Temporary Relief

The public interest is served when government actions are carried out in a manner consistent with statutory and constitutional protections. Courts have long recognized that ensuring lawful process in matters involving detention, removal, and individual liberty is itself a compelling public interest. See *Devitri v. Cronen*, 290 F. Supp. 3d 86, 91 (D. Mass. 2017) (“The public interest is served by assuring that persons subject to removal are not deported in violation of their statutory or constitutional rights.”). See also, *Mbonga v. Raycraft*, No. 4:25-cv-02315-DAP, 2025 U.S. Dist. LEXIS 219578, at *5 (N.D. Ohio Nov. 7, 2025) (“...Rule of Law is paramount, and it is the province of the federal judiciary to ensure that the government obeys the law, particularly when it chooses to deprive someone of their liberty.”).

Temporary relief promotes adherence to the rule of law and prevents irreversible harm while the Court considers the legality of Respondents’ actions. The

public has a strong interest in ensuring that executive agencies act within the bounds of their statutory authority, that individuals have meaningful access to judicial review, and that constitutional safeguards are observed even in urgent enforcement settings.

Finally, the public interest is advanced when government resources are used efficiently and lawfully. Preventing unlawful or premature removals, unnecessary detentions, or procedural violations avoids both the waste of public funds and the erosion of public trust. In short, the public interest favors judicial oversight to ensure that individual rights are protected, statutory limits are respected, and executive power is exercised in accordance with law. Temporary relief here serves not only Mr. Karki's interests but also the broader public interest in lawful, transparent, and accountable government action.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, the balance of equities and the public interest strongly favor a temporary restraining order or preliminary injunction to allow Mr. Karki to appear at this hearing on December 3, 2025, allow this Court to adjudicate his due process claims, and allow Mr. Karki to prepare for an orderly departure.

Dated: November 30, 2025,

Respectfully submitted,

/s/ Diana E. Marin

Diana E. Marin (P81514)

BLANCHARD & WALKER PLLC

Attorney for Petitioner

221 N. Main Street, Suite 300

Ann Arbor, MI 48104

(734) 929-4313

marin@bwlawonline.com

Attorney for Petitioner