

United States District Court
Eastern District of Michigan

Mohan Karki,

Petitioner,

Civil No. 25-13186

v.

Honorable Stephen J. Murphy III
Mag. Judge Kimberly G. Altman

Kevin Raycraft, Field Office Director
of Enforcement and Removal
Operations, Detroit Field Office,
Immigration and Customs
Enforcement; et al.,

Respondents.

**Respondents' Response to Petitioner's Motion for Temporary
Restraining Order**

Four days ago, petitioner attempted to stay his upcoming removal in the only court with jurisdiction over his removal, the Eleventh Circuit, but the Eleventh Circuit denied his motion. Now, petitioner has filed a motion in this Court seeking a temporary restraining order preventing his removal. For the reasons described in the attached before, the Court should deny petitioner's motion because the Court lacks jurisdiction to enter an order staying petitioner's removal and, even if the Court had jurisdiction, a temporary restraining order would be unwarranted in this case.

Respectfully submitted,

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**Respondents' Brief in Support of Their Response to Petitioner's
Motion for a Temporary Restraining Order**

Issue Presented

- I. Should the Court deny petitioner's motion for a temporary restraining order seeking to stay his removal when the Court lacks jurisdiction to grant the relief petitioner requests?
- II. Should the Court deny petitioner's motion when he cannot show that he is likely to succeed on the merits, suffer irreparable harm, or that the public interest favors a temporary restraining order under these circumstances?

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Introduction

In this suit petitioner challenged his detention pursuant to a final order of removal primarily by arguing that his removal was not likely in the foreseeable future. Approximately a week ago, respondents scheduled petitioner's removal for December 2, 2025. As soon as petitioner learned of his upcoming removal, he filed an emergency motion to stay his removal in the Eleventh Circuit, but the Eleventh Circuit denied his motion. Now, petitioner has filed a motion for a temporary restraining order in this Court seeking to stay his removal. The Court should deny petitioner's motion because the Court lacks jurisdiction to enter an order staying a noncitizen's removal and, even if the Court had jurisdiction, a temporary restraining order is inappropriate under these circumstances because petitioner cannot show that he is likely to succeed on the merits, that he will face imminent irreparable injury, or that the public interest weighs in favor of a temporary restraining order.

Background

Petitioner Mohan Karki is a noncitizen who entered the United States in 2011. (Tiruchelvam Decl., ECF No. 6-2, PageID.77). In May 2014, Karki was convicted of burglary in Georgia. (*Id.*; IJ Order, ECF No. 6-2, PageID.81). After Karki's conviction, he was ordered removed to Bhutan or Nepal by an immigration judge. (Tiruchelvam Decl., ECF No. 6-2, PageID.77–78; Order of Removal, ECF No. 6-4, PageID.89).

In March 2025, immigration officials obtained a travel document to remove Karki to Bhutan, but before officials could execute Karki's removal, he filed a legal challenge which stayed his removal until the immigration court denied his challenge. (Tiruchelvam Decl., ECF No. 6-3, PageID.78–79; IJ Order, ECF No. 6-4, PageID.81–86). In April 2025, officials obtained a new travel document, but Karki once again stayed his removal by filing a legal challenge. (Tiruchelvam Decl., ECF No. 6-3, PageID.78–79).

While his removal was stayed due to Karki's challenge to his April travel document, Karki filed a habeas suit in the U.S. District Court for the Southern District of Ohio challenging his removal and his detention. (*See Karki v. Jones*, Civil No. 25-281 (S.D. Ohio). The Southern District of Ohio denied Karki's motion to stay his removal for lack of subject matter jurisdiction and denied his habeas petition because his detention did not violate the Fifth Amendment. *See Karki v. Jones*, No. 1:25-CV-281, 2025 WL 1638070, at *7–8 (S.D. Ohio June 9, 2025).

Shortly after the Southern District of Ohio dismissed Karki's habeas suit, he filed another motion with the Board of Immigration Appeals, which once again stayed his removal. (Tiruchelvam Decl., ECF No. 6-3, PageID.79). While that challenge was pending, Karki filed this habeas suit challenging his detention and argued that his removal was not likely in the foreseeable future and that the agency

did not follow its own procedures when revoking his order of supervision. (*See* Pet., ECF No. 1).

On October 27, 2025, after respondents filed their brief in this case, the BIA dismissed Karki's final appeal and lifted the stay on Karki's removal. (Exhibit 1 – BIA Decision).

On November 19, 2025, immigration officials obtained a travel document to remove Karki to Bhutan and scheduled his removal for December 2, 2025. (Exhibit 2 – Supp. Tiruchelvam Decl. ¶¶ 6–9).

On November 26, 2025, Karki filed an emergency motion to stay his removal in the Eleventh Circuit. (*See Karki v. U.S. Atty. Gen'l*, 25-14188 (11th Cir.), ECF No. 4). On November 28, 2024, a three-judge panel of the Eleventh Circuit found that Karki's upcoming removal was proper and denied Karki's motion to stay his removal. (Exhibit 3 – 11th Cir. Order).

On November 30, 2025, Karki filed a motion for a temporary restraining order seeking to stay his removal in this Court. (Mot. for TRO, ECF No. 11).

Standard of Review

Under Rule 65, a district court may issue a temporary restraining order or a preliminary injunction, however, an “injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the

circumstances clearly demand it.” *Overstreet v. Lexington–Fayette Urban County Gov’t*, 305 F.3d 566, 573 (6th Cir. 2002); Fed. R. Civ. P. 65.

Argument

The Court should deny plaintiff’s motion because the Court lacks jurisdiction to enter an order staying petitioner’s removal. Further, the Court should deny petitioner’s motion because he cannot demonstrate that he is entitled to the extraordinary remedy of a temporary restraining order or a preliminary injunction.

I. The Court Lacks Jurisdiction to Stay Petitioner’s Removal

In 2005, Congress enacted the Real ID Act and stripped federal district courts of jurisdiction to hear claims “arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under” the Immigration and Nationality Act. *See* 8 U.S.C. § 1252(g); Real ID Act of 2005, PL 109–13, 119 Stat 231 (May 11, 2005). Under well-settled Sixth Circuit case law, this provision precludes federal district courts from exercising jurisdiction over challenges to a noncitizen’s removal of any kind. *See Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018) (“The district court . . . lacked jurisdiction over the removal-based claims because § 1252(g) plainly reserves for the Attorney General the authority to execute removal orders.”); *Elgharib v. Napolitano*, 600 F.3d 597, 607 (6th Cir. 2010).

Here, petitioner's motion for a temporary restraining order seeks relief beyond this Court's jurisdiction. In petitioner's motion, he asks the Court to "enjoin Respondents from removing him until after his December 3, 2025, hearing." (Mot. for TRO, ECF No. 11, PageID.112). As the Southern District of Ohio held the first time Karki attempted to challenge his removal in a district court, this Court lacks jurisdiction to stay his removal. *See Karki*, 2025 WL 1638070, at *6–7 (rejecting Karki's first attempt to seek a preliminary injunction in a federal district court to challenge his removal). Accordingly, the Court should deny petitioner's motion because it cannot grant him the relief he seeks.

II. A Temporary Restraining Order is Not Appropriate in This Case

Under Rule 65, if notice is provided to the adverse party, the standard for issuing a preliminary injunction and a temporary restraining order are the same. *See Overstreet v. Lexington-Fayette Urb. Cnty. Gov't*, 305 F.3d 566, 572 (6th Cir. 2002); *News Herald, a Div. of Gannett Satellite Info. Network, Inc. v. Ruyle*, 949 F. Supp. 519, 521 (N.D. Ohio 1996). "A plaintiff seeking a preliminary injunction 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *McPherson v. Michigan High Sch. Athletic Ass'n, Inc.*, 119 F.3d 453, 459 (6th Cir. 1997).

A. Likelihood of Success on the Merits

In this suit, petitioner raised two challenges to his detention. First, he argued that his detention violated his constitutional rights because he was not likely to be removed in the foreseeable future, even though his own legal challenges were the only impediment to his removal. (*See* Pet., ECF No. 1, PageID.18–19). Second, he argued that the agency lacked jurisdiction to revoke his order of supervision to facilitate his removal, even though a valid regulation explicitly gives the agency the right to do so. (*Id.*).

Petitioner is unlikely to succeed on the merits of either of his claims. First, both of petitioner's claims will likely become moot before this Court rules on his petition. Petitioner is currently scheduled for removal within two days, unless this Court prohibits his removal. (*See* Supp. Tirschelvam Decl., ECF No. 12-3, PageID.156–57). And, even if the Court prevents his removal until the upcoming hearing, the record indicates that the agency will re-schedule petitioner's removal at the earliest opportunity. (*See id.*). Therefore, petitioner will likely be removed and released from custody before the Court issues its final order in this case, which will render both of petitioner's challenges to his detention moot and preclude a ruling on the merits. *See Enazeh v. Davis*, 107 F. App'x 489, 491 (6th Cir. 2004) (holding that removal rendered challenge to detention moot).

Second, petitioner was unlikely to succeed on either of his arguments. Petitioner's argument that his detention was unlawful because he was unlikely to be removed in the foreseeable future was plainly meritless when he filed this suit. (*See* Tiruchelvam Decl., ECF No. 6-2, PageID.78–80; Supp. Tiruchelvam Decl., ECF No. 12-3, PageID.156–57); *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). And, petitioner is not likely to succeed on his revocation of supervision claim because the Court lacks jurisdiction to hear petitioner's challenge to the agency's discretionary decision to revoke his order of supervision, *see* 8 U.S.C. § 1252(a)(2)(B)(ii), he waived that argument by failing to raise it in his first habeas suit in the Southern District of Ohio, *see Bragg v. Flint Bd. of Educ.*, 570 F.3d 775, 776 (6th Cir. 2009), and the agency's actions were proper to facilitate his removal under the governing regulations, *see* 8 C.F.R. § 241.4(l)(2)(iii). And, even if petitioner could overcome all of these obstacles and still somehow show that the agency failed to follow its own regulations, it would not entitle him to the relief he seeks in this case because he cannot show how it would have made any difference because the law plainly allows the agency to detain and remove a noncitizen subject to a final order of removal and petitioner unequivocally falls within the scope of the statute. *See* 5 U.S.C. § 706 (requiring a showing of "prejudicial error" in order for APA to provide a cause of action); 8 U.S.C. § 1231; *Villegas de la Paz v. Holder*, 640 F.3d 650, 656 (6th Cir. 2010) (rejecting challenge to immigration enforcement because ICE's alleged

violation of its own regulations would not have changed the outcome and therefore did not prejudice the plaintiff).

In addition, petitioner's argument that his upcoming removal does not permit an "orderly departure" is inapposite. There is neither a claim in this case regarding petitioner's entitlement to an "orderly departure," (*see* Pet., ECF No. 1), nor any facts indicating that his upcoming lawful removal pursuant to a final order of removal would not constitute an "orderly departure" under any relevant statute, regulation, or any other authority that could plausibly grant petitioner an enforceable right to such a procedure. (*See* Mot. for TRO, ECF No. 11).

B. Irreparable Injury

A showing of imminent irreparable injury "is indispensable: If the plaintiff isn't facing imminent and irreparable injury, there's no need to grant relief *now* as opposed to at the end of the lawsuit." *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326–27 (6th Cir. 2019) (emphasis in original). Thus, while the Court must weigh the other preliminary injunction factors, "even the strongest showing on the other three factors cannot eliminate the irreparable harm requirement." *Id.* (quotation omitted).

Here, the Eleventh Circuit has already determined that petitioner's upcoming removal will not cause him irreparable harm based on the same arguments he raises in his motion for a temporary restraining order. (*See* 11th Cir. Order, ECF No. 12-4, PageID.159; *Karki v. U.S. Atty Gen'l*, 25-14188 (11th Cir.), ECF No. 4-1)). Under

principles of res judicata, this Court should not revisit that determination. *See Bragg*, 570 F.3d at 776.

Even if the Court reconsiders whether petitioner's upcoming removal will cause him irreparable harm, the Court should reach the same conclusion as the Eleventh Circuit. It is well settled that removal alone is not sufficient to establish irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury."). Therefore, petitioner's lawful removal does not entitle him to a temporary restraining order.

In addition, petitioner's argument that he will suffer irreparable harm if he cannot attend his upcoming hearing is unpersuasive. Whether or not Karki is removed on Tuesday, this case will likely become moot before this Court issues an opinion on the merits and petitioner's attendance at the upcoming hearing is unlikely to change that result. Further, petitioner is represented by competent counsel in this case, (*see, e.g.*, Pet., ECF No. 1), and the issues in dispute at the hearing will be technical legal issues that will have little meaning to petitioner. Therefore, petitioner's inability to attend the upcoming hearing will not harm petitioner in any meaningful way.

C. Public Interest

The third and fourth preliminary injunction factors “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. The Supreme Court has acknowledged that the public has a valid interest in the efficient functioning of the immigration system and held that courts cannot presume that plaintiffs establish the third and fourth preliminary injunction factors simply by alleging that they are being wrongfully denied immigration rights. *See id.* at 435–36.

Here, the public interest weighs in favor of allowing petitioner’s removal. Petitioner has no lawful basis for remaining in this country and the public has an interest in the efficient execution of final orders of removal. *See Nken*, 556 U.S. at 435–36. Further, his prompt and lawful removal will render this suit moot and preserve this Court’s resources for other cases and controversies pending before it.

Conclusion

Respondents respectfully request that the Court deny petitioner’s motion for a temporary restraining order.

Respectfully submitted,

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Dated: November 30, 2025

Certificate of Service

I hereby certify that on November 30, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey _____

Zak Toomey
Assistant U.S. Attorney