The Honorable John H. Chun
The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOHIT KUMAR,

Petitioner,

v.

CAMILLA WAMSLEY, *et al.*,

Respondents.

Case No. 2:25-cv-01772-JHC-BAT

FEDERAL RESPONDENTS'[1] OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

Noted for consideration: September 15, 2025

Petitioner Mohit Kumar's motion for a temporary restraining order (TRO) is without merit and effectively a means by which he may circumvent his own habeas proceedings. He has requested that this Court grant him ultimate habeas relief—release from custody—while using the severely shortened briefing schedule for a TRO to functionally foreclose Respondents' ability to meaningfully investigate and respond to his claims. The Court should not endorse this tactic, particularly in light of Kumar's failure to demonstrate that he will (1) suffer irreparable harm beyond that which is common to all habeas petitioners, or (2) prevail on the merits. Instead, the Court should set a reasonable briefing schedule that allows for an expeditious resolution of the

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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petition, which would not only afford both parties the opportunity to effectively investigate and evaluate Kumar's claims, but also provide the Court with a reliable and complete record on which to adjudicate the merits of the petition. The motion for temporary restraining order should be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner Mohit Kumar

Petitioner Mohit Kumar is a native and citizen of India who entered the United States without inspection, admission, or parole on February 6, 2024. Declaration of Assistant Field Office Director Brenda McClain (McClain Declaration) ¶ 3; Declaration of Lyndsie Schmalz (Schmalz Declaration), Exhibit 1 (March 6, 2024 Form I-213). On that day, Border Patrol encountered Kumar in a car that had been seen coming into upstate New York from Canada. Schmalz Declaration, Ex. 1, p. 2. During the encounter, Kumar admitted that he lacked any valid immigration documents that would allow him to legally enter, pass through, or remain in the United States. *Id.* at p. 3. At the time, Kumar did not express "a credible fear of being returned to [his] country of citizenship." *Id.* at p. 3.

Kumar was released on recognizance on March 6, 2024, after being held for a month as a material witness. McClain Declaration ¶ 4; Schmalz Declaration, Ex. 1, p. 3. That day, Kumar was issued a Notice to Appear (NTA) alleging that he is subject to removal as "an alien present in the United States without being admitted or paroled." McClain Declaration ¶ 4; Schmalz Declaration, Exhibit 2 (Notice to Appear). In the NTA, Kumar was instructed to appear in immigration court in New York for a hearing on February 12, 2025. *Id.* Several months later, Kumar filed a motion for change of venue seeking to have his immigration proceedings transferred to the immigration court in San Francisco. McClain Declaration ¶ 7.

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On July 17, 2025, Kumar appeared at the Enforcement and Removal Operations (ERO) office in San Jose, California to complete enrollment in an Alternative to Detention program.[2] McClain Declaration ¶ 7. Kumar asserts that, on this day, he "told his ICE officer that he planned to move to Washington State," and "the San Jose ICE office told him his supervision would be transferred to the Yakima ICE office in Washington," Dkt. 4 ¶ 8, but Respondents have been unable to verify this claim in the short time allowed for this response.

On July 21, 2025—four days after his visit to the San Jose ERO office—Kumar appeared, unscheduled, at the Yakima ERO office. McClain Declaration ¶ 6. During this encounter, an ERO officer noticed that Kumar had initially failed to report an address where he could receive mail, *see* Schmalz Declaration, Ex. 2; had already filed one request to change venue for his immigration proceedings; and had failed to register or provide notice of his new address in Washington prior to his move. McClain Declaration ¶¶ 6–8. Based on these observations and his own experience, the ERO officer believed that Kumar may be attempting to delay his immigration proceedings. *Id.* The officer brought his concerns to the attention of the Assistant Field Office Director, who made the decision to revoke Kumar's release. *Id.* ¶ 9.

Shortly thereafter, a warrant for Kumar's arrest was issued and executed. McClain Declaration ¶ 10; Schmalz Declaration, Exhibit 3. Agency records show that, at the time he was taken back into immigration detention, Kumar was not employed. Dkt. 3, Exhibit A (July 21, 2025 Form I-213), p. 3. Kumar further claims that, at the time he was taken into custody, he was told that he came to "the wrong place at the wrong time" and was not given any reason for his detention.

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[2] At this point, Respondents have little information about events and circumstances between Kumar's request to have his proceedings transferred to San Francisco and his visit to the ERO office in Yakima on July 21, 2025. Investigating this time period requires Respondents to collect information from multiple different jurisdictions and offices, which could not be accomplished in the short amount of time allowed for briefing on a request for a TRO.

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See Dkt. 4 ¶ 9. Again, respondents are continuing to investigate Kumar's claims and have been unable to verify whether Kumar was informed of the reason for his re-detention on July 21, 2025.

Kumar was transferred to the Northwest ICE Processing Center in Tacoma, Washington. McClain Declaration ¶ 10. He requested a bond hearing before an Immigration Judge, which was heard on August 11, 2025. *Id.* ¶ 11. The Immigration Judge denied the request after finding that the immigration court had no jurisdiction over the request, because Kumar was subject to mandatory detention. *Id.* Kumar's case is set for a final hearing on his applications for relief on September 18, 2025. *Id.* ¶ 12.

B. The Petition and Motion for Temporary Restraining Order

Despite being in immigration detention since July, Kumar did not file a petition for writ of habeas corpus until September 15, 2025. Dkt. 1. In the petition, Kumar claims that he was constitutionally entitled to "written notice and a pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk" before being returned to immigration detention. *Id.* ¶ 51. He brings two claims against Respondents based on alleged violations of the Fifth Amendment Right to Due Process and 8 U.S.C. § 1357(a)(2), which governs warrantless arrests by immigration authorities. *Id.* ¶¶ 50–59. As relief, he requests that the Court enjoin his re-detention during his immigration proceedings absent written notice and a hearing and declare Respondents' actions were a violation of the Due Process Clause of the Fifth Amendment. *Id.* at p. 12. He further requests that the Court direct Respondents to file a return to his petition in "three days." *Id.*

Concurrently, Kumar filed a motion for a temporary restraining order. In addition to arguing that he is likely to succeed on the merits of his claim, Kumar argues that he will suffer irreparable harm absent a temporary restraining order. Dkt. 2, p. 15. According to Kumar, he is suffering irreparable harm because (1) his continued loss of liberty is unlawful, and (2) detention

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prevents him "from working to not just sustain himself but to earn savings for his future." Dkt. 2, p. 15–16. In conclusion, Kumar requests that this Court order his release and enjoin Respondents from re-detaining him "absent compliance with constitutional protections" that include written notice and a hearing. *Id.* at Ex. 1, p. 2 (proposed order).

II. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "It frequently is observed that a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The purpose of preliminary injunctive relief is to preserve the status quo pending final judgment, and not to obtain a preliminary adjudication on the merits. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

"A party can obtain a preliminary injunction by showing that (1) [he] is 'likely to succeed on the merits,' (2) [he] is 'likely to suffer irreparable harm in the absence of preliminary relief,' (3) 'the balance of equities tips in [his] favor,' and (4) 'an injunction is in the public interest.'" *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (quoting *Winter*, 555 U.S. at 20). Alternatively, a plaintiff can show that there are "serious questions going to the merits and the balance of hardships tips sharply towards [plaintiff], as long as the second and third *Winter* factors are satisfied." *Id.* (internal quotation omitted).

III. ARGUMENT

The Court should deny Petitioner's request for a TRO—which seeks the same ultimate relief as his habeas petition—because he has failed to demonstrate (1) that he will suffer imminent

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irreparable harm that may only be remedied with immediate injunctive relief or (2) that he will be successful on the merits of his either of his claims.

A. The motion must be denied because it improperly seeks final relief and his interest may be protected by a reasonably expedited schedule for the habeas petition

As a threshold matter, the request for a TRO should be denied because it does not seek to merely maintain the status quo pending a determination on the merits. Rather, it improperly seeks the ultimate relief Kumar demands in this case: a ruling on the constitutionality of his re-detention and release from custody. *Compare* Dkt. 1, p 12, *with* Dkt. 2, Ex. 1, p. 2. The purpose of a preliminary injunction "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software*, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984).

Nothing is more indicative of Kumar's use of a TRO to obtain premature adjudication on the merits than the fact that Kumar's motion for a TRO and habeas petition seek the same relief using the same language: namely, "immediate" release from custody and an injunction preventing his re-detention absent written notice and a hearing before a neutral decisionmaker where Respondents must prove "by clear and convincing evidence" that Kumar is a flight risk or danger to the community.[3] By seeking the same relief in both his habeas petition and his motion for a temporary restraining order, Kumar is effectively circumventing the habeas proceeding and, with it, Respondents' ability to meaningfully evaluate and respond to his claims. The Ninth Circuit has

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[3] The proposed TRO further asks the Court to require that Kumar be allowed to have counsel present at this "pre-deprivation" hearing. Dkt. 2, Ex. 1, p. 2. But neither the habeas petition nor the motion for the temporary restraining order mention this request or argue that the presence of counsel is necessary to protect his due process rights, and such language should thereby not be included in any order in this proceeding.

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firmly rejected this approach, concluding that "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *see also Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024). Kumar's request for a TRO should be denied for the same reason.

Moreover, Kumar has failed to demonstrate that he faces any harm other than the fact of his continued detention, which is a harm that *all* habeas petitioners face. *See* 28 U.S.C. § 2241(c)(4) (prohibiting courts from extending the writ of habeas corpus to any person not in custody). Kumar attempts to remedy this deficiency by claiming in his motion that his detention subjects him to "potential economic hardship" because it prevents him from working. Dkt. 2, p. 16. But this assertion is contradicted by his own statements at the time of his re-detention, when he admitted that he was not working. Dkt. 3, Ex. 1, p. 3 ("Kumar stated he is not employed currently."). Kumar has thereby failed to demonstrate that he is suffering from any imminent, tangible harm that is separate and beyond the mere fact of his detention.

The appropriate remedy to address any harm from Kumar's continued detention during litigation would be for the Court to set a reasonable but expedited schedule that would allow both parties to obtain and present the necessary documents and information for this Court to make its decision. Kumar has requested only three days for the Respondents to file a return, relying on 28 U.S.C. § 2243, which states that the return shall be provided "within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. But "[i]t is long-established law that Habeas Rule 4 supersedes and overrides the prior enactment in § 2243 with regard to the time allowed for a response in § 2254 and § 2241 habeas proceedings." *Peters v. Wofford*, No. 1:25-cv-00497, 2025 WL 1307796, at *1 (E.D. Cal. May 6, 2025) (collecting cases). "[T]he Ninth Circuit has held there is no fixed time requirement for responding to a habeas petition, and district courts have discretion to set appropriate deadlines for responses to habeas petitions."

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Hernandez Velasquez v. McAleenan, No. 19-cv-1887, 2019 WL 8017813, at *1 (C.D. Cal. Oct. 31, 2019) (collecting cases). Three days is not sufficient for Respondents to investigate Kumar's various claims and evaluate potential defenses. Rather, Respondents respectfully request that the Court utilize its discretion and order a return no earlier than 14 days from the date of its order (far less than the typical practice of 30 days). *See Wofford*, 2025 WL 1307796, at *1 (requiring return to be filed within 45 days).

B. Petitioner is unlikely to succeed on the merits

As Kumar correctly notes, likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). To succeed on a habeas petition, a petitioner must show that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241. Petitioner contends that his re-detention without written notice and a hearing violates the Due Process Clause and 8 U.S.C. § 1357(a)(2). Dkt. 1 ¶¶ 50–59. But his unlawful re-detention claim lacks merit.

First, ICE acted within its lawful authority under 8 C.F.R. § 236.1(c)(9), which provides that, "when an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion" of certain senior immigration officers.[4] Here, an Assistant Field Office Director (AFOD) made the determination to revoke Kumar's release. And while a listed officer's discretion to revoke a bond has been limited to situations in which

[4] The petition's arguments regarding due process were made "[r]egardless of the statutory basis for detention," so this response will not address that issue. *See* Dkt. 1 ¶¶ 37–38. Nevertheless, Respondents note that the application of Section 1225(b) (mandatory detention) to certain persons in removal proceedings at the Tacoma Immigration Court is pending in a class action before a court in this District. *Rodriguez Vasquez v. Bostock*, No. 3:25-cv-05240-TMC.

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there has been a "change in circumstances" since the non-citizen was initially released, *Matter of Sugay*, 17 I. & N. 637, 640 (B.I.A. 1981), the record indicates that Kumar's revocation was based on the AFOD's consideration of developments since his March 2024 release that could reasonably be construed as attempts to delay his immigration proceedings. Thus, immigration authorities acted within their lawful authority when revoking Petitioner's release at the discretion of an appropriate official.

Kumar's argument hinges on his assertion that the "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), requires that he receive notice and a hearing before being placed back into immigration detention. But the Supreme Court has never utilized *Mathews*' multi-factor "balancing test" to evaluate due process claims raised by noncitizens held in civil immigration detention, despite multiple opportunities to do so since *Mathews* was decided in 1976. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("[T]he Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*.") (citations omitted); *id.* at 1214 ("In resolving familiar immigration-detention challenges, the Supreme Court has not relied on the *Mathews* framework.") (Bumatay, J., concurring). Nor has the Ninth Circuit embraced the *Mathews* test in this context. While leaving open the question of whether the *Mathews* test applies to a constitutional challenge to immigration detention, *see Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit has emphasized that "*Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context." *Id.* at 1206.

And even if the Court were to apply the *Mathews* test, as Kumar advocates, it is not certain that it would find Kumar is entitled to any process protections beyond those provided by 8 C.F.R. § 236(c)(9). First, while Kumar undoubtedly has an interest in his liberty generally, it is not the same as that enjoyed by a citizen, and "[i]n the exercise of its broad power over naturalization and

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immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976). Second, the existing procedures are sufficient to protect the interest in continued liberty, as they require a sufficiently senior immigration official to make a determination that circumstances have changed, such that an alien's detention is now appropriate. *See* 8 C.F.R. § 236(c)(9); *Matter of Sugay*, 17 I. & N. Dec. at 640. Finally, courts have long recognized the "heightened government interest in the immigration detention context," particularly in the context of determining "whether removable aliens must be released on bond during the pendency of removal proceedings." *Rodriguez Diaz*, 53 F.4th at 1206–08. And while several decisions in this district have applied the *Mathews* test and found that due process requires more protections than a detainee received, *see, e.g.*, *E.A. T.-B. v. Wamsley, et al.*, C25-1192-KKE, Dkt. 37 (filed Aug. 19, 2025), those decisions do not require this Court to come to the same conclusion.

Finally, Kumar is unlikely to prevail on his claim alleging a violation of 8 U.S.C. § 1357(a)(2), which allows immigration officers to effect a warrantless arrest only if there is "reason to believe" that the noncitizen is "likely to escape before a warrant can be obtained for his arrest." Kumar has cited no authority demonstrating that 8 U.S.C. § 1357(a)(2) applies to an arrest pursuant to an administrative warrant of a non-citizen who is subject to removal proceedings and whose release is being revoked. *See* Schmalz Declaration, Ex. 3. He has thereby failed to demonstrate any likelihood of success on this claim, and it cannot provide a basis for any of his requested relief.

C. CONCLUSION

For the foregoing reasons, Petitioner has not satisfied his high burden of establishing entitlement to injunctive relief at this time, and his Motion should be denied.

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DATED this 17th day of September, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,247 words, in compliance with the Local Civil Rules.