

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 RETURN
MEMORANDUM AND MOTION TO
DISMISS

Noted for Consideration:
October 27, 2025

The Court should dismiss Petitioner Mohit Kumar's petition for writ of habeas corpus, which challenges Kumar's detention at the Northwest ICE Processing Center (NWIPC) as a violation of the Fifth Amendment Right to Due Process and 8 U.S.C. § 1357(a)(2), which governs the authority of immigration officials to arrest an alien without a warrant. Dkt. 1 ¶¶ 50–59. Kumar is a citizen of India who has been in removal proceedings since March of 2024. Kumar was released on recognizance and has moved to multiple states during the pendency of his immigration proceedings, leading immigration officials to conclude that he may be purposefully delaying those proceedings. After Kumar appeared, unscheduled, at the Yakima Enforcement and Removal

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

1 Operations (ERO) in July 2025, a senior official concluded that his release should be revoked,
2 consistent with 8 C.F.R. § 236.1(c)(9). A warrant was issued for Kumar’s arrest, and Kumar was
3 provided with notice of the custody determination and an explanation of the reason for the
4 detention. Kumar was then placed in immigration detention, where he remained until this Court
5 ordered his release on September 17, 2025. Dkt. 11.

6 Acknowledging the Court’s prior ruling, Kumar received all process to which he was
7 constitutionally entitled when immigration officials determined that his release should be revoked
8 under 8 C.F.R. 236.1(c)(9) and notified him of the revocation, including the reasons for it. Even
9 assuming that the factors laid out in *Mathews* apply, Kumar received the basic guarantees of due
10 process—an individualized determination, notice of the reason for the revocation, and an
11 opportunity to respond—which is all that should be required in this circumstance, weighing
12 Kumar’s liberty interest against the government’s interest in effective and timely resolution of
13 immigration proceedings.

14 **FACTUAL AND PROCEDURAL BACKGROUND**

15 **A. Petitioner Mohit Kumar**

16 Petitioner Mohit Kumar is a native and citizen of India who entered the United States
17 without inspection, admission, or parole on February 6, 2024. Dkt. 9 (Declaration of Assistant
18 Field Officer Director Brenda McClain) ¶ 3; Dkt. 10 (Declaration of Lyndsie Schmalz), Exhibit 1
19 (March 6, 2024 Form I-213). On that day, Border Patrol encountered Kumar in a car that had been
20 seen coming into upstate New York from Canada. Dkt. 10, Ex. 1, p. 2. During the encounter,
21 Kumar admitted that he lacked any valid immigration documents that would allow him to legally
22 enter, pass through, or remain in the United States. *Id.* at p. 3. At the time, Kumar did not express
23 “a credible fear of being returned to [his] country of citizenship.” *Id.* at p. 3.

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1 Kumar was released on recognizance on March 6, 2024, after being held for a month as a
2 material witness. Dkt. 9 ¶ 4; Dkt. 10, Ex. 1, p. 3. That day, Kumar was issued a Notice to Appear
3 (NTA) alleging that he is subject to removal as “an alien present in the United States without being
4 admitted or paroled.” Dkt. 9 ¶ 4; Dkt. 10, Exhibit 2 (Notice to Appear). In the NTA, Kumar was
5 instructed to appear in immigration court in New York for a hearing on February 12, 2025. *Id.*
6 Several months later, Kumar filed a motion for change of venue seeking to have his immigration
7 proceedings transferred to the immigration court in San Francisco. Dkt. 9 ¶ 7.

8 On July 17, 2025, Kumar appeared at the Enforcement and Removal Operations (ERO)
9 office in San Jose, California to complete enrollment in an Alternative to Detention program.
10 Dkt. 9 ¶ 7. Kumar asserts that, on this day, he “told his ICE officer that he planned to move to
11 Washington State,” and “the San Jose ICE office told him his supervision would be transferred to
12 the Yakima ICE office in Washington.” Dkt. 4 ¶ 8.²

13 On July 21, 2025—four days after his visit to the San Jose ERO office—Kumar appeared,
14 unscheduled, at the Yakima ERO office. Dkt. 9 ¶ 6. During this encounter, an ERO officer
15 conducted a review of relevant databases for information about Kumar, a standard practice.
16 Declaration of Deportation Officer John Dahl ¶ 5. During this review, the officer noticed that
17 Kumar had initially failed to report an address where he could receive mail, *see* Dkt. 10, Ex. 2;
18 had already filed one request to change venue for his immigration proceedings; and had failed to
19 timely provide ERO with his new addresses in the past, Dahl Declaration ¶ 6. Based on these
20 observations and his own experience, the ERO officer believed that Kumar may be attempting to
21 delay his immigration proceedings. *Id.* ¶ 6; Dkt. 9 ¶ 7. The officer questioned Kumar during the
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24 ² Federal Respondents do not have sufficient information to confirm or refute Kumar’s memory of his interactions
with officers at the San Jose office and, accordingly, do not dispute these points for purposes of these proceedings.

1 encounter regarding the information in the databases, and Kumar did not provide any information
2 that lessened the officer's concerns regarding his history of relocations and address changes. Dahl
3 Declaration ¶ 8.

4 Following standard practice, the officer brought his concerns to the attention of the
5 Supervisory Deportation and Detention Officer (SDDO), who in turn notified the Assistant Field
6 Office Director (AFOD). Dahl Declaration ¶¶ 9–10. In her discretion and based on the officer's
7 concerns, the AFOD determined that revocation of Kumar's release was appropriate. *Id.* ¶ 10;
8 Dkt. 9 ¶ 9. A warrant for Kumar's arrest was issued. Dkt. 9 ¶ 10; Dkt. 10, Exhibit 3.

9 After the decision was made to revoke Kumar's release, it was explained to Kumar using
10 professional interpretation services. Dahl Declaration ¶ 12. Kumar was informed that his release
11 was being revoked based on his pattern of relocation, requests for change of venue, and failing to
12 timely inform ERO of his relocations. *Id.* At the time, Kumar provided no additional information
13 that lessened concerns about the delay of his immigration proceedings, and he was taken into
14 custody. *Id.* at ¶ 13. In the petition, Kumar alleges that, at the time he was taken into custody, he
15 was told that he came to "the wrong place at the wrong time" and was not given any reason for his
16 detention. *See* Dkt. 4 ¶ 9. But the officer present at the time of his re-detention did not make these
17 statements to Kumar and is not aware of any other officer making such statements. Dahl
18 Declaration ¶ 14. The contents of the arrest warrant and notice of custody determination were read
19 to Kumar by a professional interpreter, and Kumar signed the notice acknowledging that he had
20 received it. Dkt. 10, Ex. 3.

21 Kumar was transferred to the Northwest ICE Processing Center in Tacoma, Washington.
22 Dkt. 9 ¶ 10. He requested a bond hearing before an Immigration Judge, which was heard on August
23 11, 2025. *Id.* ¶ 11. The Immigration Judge denied the request after finding that the immigration
24 court had no jurisdiction over the request, because Kumar was subject to mandatory detention. *Id.*

1 Kumar's case was set for a final hearing on his applications for relief on September 18, 2025. *Id.*
2 ¶ 12.

3 **B. The Petition**

4 Despite being in immigration detention since July, Kumar did not file a petition for writ of
5 habeas corpus until September 15, 2025. Dkt. 1. In the petition, Kumar claims that he was
6 constitutionally entitled to "written notice and a pre-deprivation hearing before a neutral
7 decisionmaker to determine whether re-detention is warranted" before being returned to
8 immigration detention. *Id.* ¶ 51. Specifically, Kumar alleges that he must be found to be a "flight
9 risk or danger to the community" before he may be returned to immigration detention, relying on
10 decisions recently issued in *E.A. T.-B. v. Wamsley, et al.*, -- F. Supp. 3d --, 2025 WL 2402130
11 (W.D. Wash. Aug. 19, 2025), and *Ramirez Tesara v. Wamsley, et al.*, C25-1723-KKE-TLF (W.D.
12 Wash. filed Sept. 8, 2025), Dkt. 19.

13 Kumar brings two claims against Respondents based on alleged violations of the Fifth
14 Amendment Right to Due Process and 8 U.S.C. § 1357(a)(2), which governs warrantless arrests
15 by immigration authorities. *Id.* ¶¶ 50–59. As relief, he requests that the Court enjoin his re-
16 detention "during the pendency of his removal proceeding" absent written notice and a hearing
17 "where Respondents must prove by clear and convincing evidence that he is a flight risk or danger
18 to the community and that no alternatives to detention would mitigate those risks." *Id.* at p. 12.

19 Concurrently, Kumar filed a motion for a temporary restraining order, which the Court
20 granted on September 17, 2025. Dkt. 11. In it, the Court found that Kumar was likely to prevail
21 on his habeas petition and was suffering an irreparable harm absent immediate injunctive
22 intervention. *Id.* The Court ordered Kumar's immediate release and prohibited immigration
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1 officials from re-arresting or re-detaining Kumar in connection with his immigration proceedings³
2 without prior approval from the Court, or until the order expires on October 1, 2025. *Id.* at p. 13.

3 **LEGAL STANDARD**

4 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas
5 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that he is being
6 held in custody in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C.
7 § 2241(c)(3).

8 The apprehension, custody, and detention of individuals in removal proceedings are
9 generally governed by 8 C.F.R. § 236.1, among other regulations. Section 236.1(c)(8) provides
10 that “[a]ny officer authorized to issue a warrant of arrest may, in the officer’s discretion, release
11 an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such
12 release would not pose a danger to property or persons, and that the alien is likely to appear for
13 any future proceeding.” Section 236.1(c)(9) provides for the revocation of such release: “When
14 an alien who, having been arrested and taken into custody, has been released, such release may be
15 revoked at any time in the discretion of the district director, acting district director, deputy district
16 director, assistant district director for investigations, assistant district director for detention and
17 deportation, or officer in charge (except foreign), in which event the alien may be taken into
18 physical custody and detained.” As has long been recognized by the Board of Immigration
19 Appeals, a senior immigration official’s exercise of discretion to revoke an individual’s release
20 under 8 C.F.R. 236.1(c)(9) is limited to situations in which there has been a “change in
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23 ³ The Court’s order further provides that Kumar may not be re-arrested or detained in connection with his “existing
24 removal order,” which appears to be an oversight. Dkt. 11, p. 13. Kumar is currently in removal proceedings and
does not have a final order of removal.

1 circumstance” since the non-citizen was initially released. *See Matter of Sugay*, 17 I. & N. Dec.
2 637, 640 (B.I.A. 1981); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).⁴

3 **ARGUMENT**

4 **A. The revocation of Kumar’s release pursuant to 8 C.F.R. § 236.1(c)(9) comports with**
5 **due process**

6 “Due process is flexible and calls for such procedural protections as the particular situation
7 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). While not conceding that the *Mathews*
8 multi-factor “balancing test” is the appropriate legal framework for evaluating Kumar’s due
9 process claim, *see* Dkt. 8, p. 9,⁵ the *Mathews* test demonstrates that Kumar’s arrest and re-detention
10 based on an individualized determination made by a senior immigration official were consistent
11 with his due process rights. Under *Mathews*, “[t]he fundamental requirement of due process is the
12 opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at 333 (internal
13 quotation marks omitted). This calls for an analysis of (1) “the private interest that will be affected
14 by the official action,” (2) “the risk of an erroneous deprivation of such interest through the
15 procedures used, and probable value, if any, of additional or substitute procedural safeguards,” and
16 (3) the Government’s interest. *Id.* at 334–35.

17 ***I. Liberty Interest***

18 Respondents recognize the “weighty liberty interests implicated by the Government’s
19 detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y.

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22 ⁴ The petition’s arguments regarding due process were made “[r]egardless of the statutory basis for detention,” so
23 this response will not address that issue. *See* Dkt. 1 ¶¶ 37–38. Nevertheless, Respondents note that the application
24 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.

⁵ Respondents acknowledge that the Court has already concluded that *Mathews* is “the appropriate legal framework”
for evaluating Kumar’s due process rights. Dkt. 11, p. 5 n.1.

1 Aug. 20, 2021). But while many courts have recognized that non-citizens released from
2 immigration detention have a protected liberty interest in remaining out of custody, *see* Dkt. 11,
3 p. 6 (collecting cases), the weight of that liberty must be considered in the broader picture of the
4 immigration system, which has long acknowledged that an alien has a lesser liberty interest than a
5 citizen. After all, “[t]he recognized liberty interests of U.S. citizens and aliens are not coextensive:
6 the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress may make
7 rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz v. Garland*,
8 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)). As the
9 Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and
10 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”
11 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has repeatedly
12 “recognized detention during deportation proceedings as a constitutionally valid aspect of the
13 deportation process.” *Demore*, 538 U.S. at 523.

14 While Kumar has some liberty interest in his continued freedom from detention after being
15 released from custody, that interest is tempered by the relatively short period of time that he was
16 released (shortly over a year) and the fact that Kumar has always been subject to conditions of his
17 release. Accordingly, Kumar cannot claim that the government has promised him ongoing
18 freedom.

19 **2. *The existing procedures are constitutionally sufficient***

20 Turning to the second *Mathews* factor, the risk of a constitutionally significant and
21 erroneous deprivation of Kumar’s liberty here is low. Due process is a “flexible concept that varies
22 with the particular situation,” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), and—at a fundamental
23 level—requires only notice and an opportunity to respond to an individualized determination that
24 affects the liberty interest, *see Rodriguez Diaz*, 53 F.4th at 1205, 1209.

1 Given time to develop the record and obtain a declaration from a Deportation Officer
2 present at the time of Kumar’s revocation, Federal Respondents have now demonstrated that
3 Kumar’s re-detention was not arbitrary. *See* Dkt. 11, p. 7 (concluding that the revocation
4 “appear[ed] arbitrary” based on the limited record available at the time the Court ruled on the
5 temporary restraining order). Rather, the revocation of Kumar’s release was an individualized
6 determination made by a senior immigration official based on concerns that Kumar was delaying
7 his immigration proceedings, a “change in circumstance” since he was initially released. *See*
8 *Matter of Sugay*, 17 I. & N. Dec at 640; *Saravia*, 280 F. Supp. 3d at 1197. And Kumar was given
9 notice of the custody determination and the reasons for the revocation in Hindi, which he
10 acknowledged with a signature. *See* Dkt. 10, Ex. 3. Throughout his interaction with the
11 Deportation Officer, Kumar was given the opportunity to provide additional information that
12 would allay concerns about delay, but he did not do so. *See* Dahl Declaration ¶ 11–14. The
13 revocation of Kumar’s release thereby not only complied with the requirements of 8 C.F.R. §
14 236.1(c)(9), but also with the guarantees of due process.

15 As for Kumar’s claim that he is entitled to a full hearing before he may be re-detained, that
16 is simply more than due process requires in this case. Moreover, there is no statutory or regulatory
17 requirement for a hearing before an individual in removal proceedings is re-detained, and the
18 Supreme Court has warned courts against reading additional procedural requirements into the INA.
19 *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond
20 hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts . . . are generally not
21 free to impose [additional procedural rights] if the agencies have not chosen to grant them”)
22 (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435
23 U.S. 519, 524 (1978) (cleaned up)).

1 Kumar further argues that the Court should impose a requirement that he may only be re-
2 detained if immigration officials prove “by clear and convincing evidence that he is a flight risk or
3 danger to the community and that no alternatives to detention would mitigate those risks.” Dkt. 1,
4 p. 12. But there is no controlling law stating that, for an individual who faces re-detention pending
5 removal proceedings, due process requires a finding of flight risk or danger to the community and
6 would not also accommodate a finding that the individual has delayed the immigration
7 proceedings. And none of the higher-court decisions cited by Kumar demonstrate otherwise. *See*
8 Dkt. 2, p. 14 (citing *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (stating that
9 statutory mandatory detention under 8 U.S.C. §§ 1225(b), (c) is limited to a six-month period
10 absent a finding of flight risk or dangerousness)).

11 **3. *The Government has a strong interest in timely and effective resolution of***
12 ***immigration proceedings***

13 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
14 test and procedural safeguards “must account for the heightened government interest in the
15 immigration detention context.” *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s
16 2003 *Demore* decision, the Ninth Circuit in *Rodriguez Diaz* recognized that “the government
17 clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation
18 of our law.’” 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when
19 it comes to determining whether removable aliens must be released on bond during the pendency
20 of removal proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an
21 interest in protecting immigration proceedings from unnecessary delay.

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1 **B. Kumar was arrested pursuant to a warrant and his claim under 8 U.S.C.**
2 **§ 1357(a)(2) thereby fails**

3 Kumar has also alleged a violation of 8 U.S.C. § 1357(a)(2), which allows immigration
4 officers to effect a warrantless arrest only if there is “reason to believe” that the noncitizen is
5 “likely to escape before a warrant can be obtained for his arrest.” But Kumar has cited no authority
6 demonstrating that 8 U.S.C. § 1357(a)(2) applies to an arrest pursuant to an administrative warrant
7 of a non-citizen who is subject to removal proceedings and whose release is being revoked. *See*
8 *Dkt. 10, Ex. 3.* He has thereby failed to support his claim, and it must be dismissed.

9 **CONCLUSION**

10 For the foregoing reasons, Federal Respondents respectfully request that this Court deny
11 the Petition and dismiss this matter.

12 DATED this 29th day of September, 2025.

13 Respectfully submitted,

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I certify that this memorandum contains 3,175 words, in compliance with the Local Civil Rules.