The Honorable John H. Chun

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Mohit KUMAR,

Petitioner,

v.

Camilla WAMSLEY, et al.,

Respondents.

Case No. 2:25-cv-1772-JHC

PETITIONER'S TRAVERSE AND RESPONSE TO RESPONDENTS' MOTION TO DISMISS

Note on Motion Calendar:
October 14, 2025

ORAL ARGUMENT REQUESTED

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INTRODUCTION

In July of this year, Respondents re-detained Petitioner Mohit Kumar when he presented himself at an Immigration and Customs Enforcement (ICE) office in Yakima, Washington without first holding a hearing before a neutral decisionmaker to determine if he violated his conditions of release such that he now presents a flight risk or danger. In their return to Mr. Kumar's habeas petition, Respondents acknowledge that Mr. Kumar was re-detained not because of an assessment that he posed a flight risk or a danger to the community, but simply because of a perception that he was attempting to delay his removal proceedings. But this misses the point: due process demands that Respondents afford Mr. Kumar meaningful process before re-detention, rather than just relying on the word of the "government enforcement agent." *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). Respondents' allegations, moreover, are not a basis for subjecting an individual to civil immigration detention, nor is that justification supported by the record. Accordingly, because Mr. Kumar's re-detention violated his due process rights, this Court should grant his habeas petition.

RELEVANT FACTUAL BACKGROUND

The parties largely agree as to the facts of Mr. Kumar's entry into the United States, relocation, and compliance with the terms of his release from immigration detention. *Compare* Dkt. 1 ¶¶ 26–30, *with* Dkt. 12 at 2–3. They diverge, however, with respect to what Mr. Kumar was told when he checked in with ICE at the Yakima Enforcement and Removal Operations (ERO) office on July 21, 2025.

Mr. Kumar avers that after checking in, he was fingerprinted and taken to a room where officers asked him "some basic questions in English like [his] name, [his] nationality, whether [he] had a work permit, and whether [he] was working at that time." Kumar Decl. ¶ 8. Mr.

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Kumar attests that he was "never asked" "why [he] moved to Washington from California," or "to California from New York." *Id.* When the officers asked Mr. Kumar to sign some documents, he asked for an interpreter in Hindi, and he signed the documents after that interpretation was provided. *Id.* Even with the interpreter, the officers "never asked [him] any questions about why [he] moved." *Id.* When an officer subsequently took him to the restroom and Mr. Kumar asked why he was being arrested, the officer told him he "came to the wrong place at the wrong time" and he "would need to talk to the judge" about his detention. *Id.*

Respondents claim that Mr. Kumar was provided an explanation for his re-detention. Officer John Dahl states that, upon review of Mr. Kumar's record, "it was discovered" that he "had a pattern of relocating" that was "consistent with individuals attempting to delay adjudication of their immigration proceedings." Dkt. 13 ¶ 6. He then asserts that "standard practice was followed" in "attempt[ing] to elicit detail from" Mr. Kumar regarding the issues concerning the officer, *id.* ¶ 8, and, "following [Mr. Kumar's] inability to resolve concerns regarding his history of relocation, the matter was raised to the" attention of the Supervisory Deportation and Detention Officer and the Assistant Field Office Director, who determined re-detention was appropriate, *id.* ¶ 10. Officer Dahl then again asserts that "standard practice was followed" in notifying Mr. Kumar of the revocation of his release on his own recognizance (OREC), asserting "professional interpretation services were used to explain the decision to revoke OREC to the Petitioner, and the reasons behind that decision." *Id.* ¶ 12. Officer Dahl submits that Mr. Kumar "was informed that OREC was being revoked based on his pattern of relocating, filing forms for change of venue, and also having not always timely informing [sic] ERO of his relocations," *id.*, and that Mr. Kumar "provided no additional information in response to being notified that his OREC was being revoked that would allay ICE's concerns and

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or impact the decision to revoke," *id.* ¶ 13. Mr. Dahl notes he did not tell Mr. Kumar that he was in the wrong place at the wrong time, and that he is "not aware" of any other ERO officer having done so. *Id.* ¶ 14. He notes that he is "only aware of Petitioner having been informed of the reasons for OREC revocation as set forth" in his declaration. *Id.*

ARGUMENT

I. The *Mathews* test demonstrates Mr. Kumar's due process rights were violated.

Mr. Kumar's central claim in this case is that prior to his re-detention, due process required ICE to demonstrate by clear and convincing evidence that he violated his conditions of release and now poses a flight risk or danger to the community. *See, e.g.*, Dkt. 1 ¶¶ 6–8; *id.* at 11 (3)–(4). In recent weeks and months, this Court and courts around the country have repeatedly and resoundingly held that due process requires exactly this protection. *See*, *e.g.*, *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, --- F.Supp.3d ----, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025) (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re-detention); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *4 (W.D. Wash. Sept. 12, 2025) (granting temporary protective order and ordering immediate release due to lack of pre-deprivation hearing); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (same); *Garro Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (granting preliminary injunction and ordering that petitioner not be re-detained without a pre-deprivation hearing before a neutral immigration judge where the government must demonstrate by clear and convincing evidence that she is a

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flight risk or danger to the community); *Duong v. Kaiser*, No. 25-CV-07598-JST, --- F. Supp. 3d ---, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025) (same); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, --- F.Supp.3d ----, 2025 WL 1953796, at *16–18 (W.D.N.Y. July 16, 2025) (granting preliminary injunction, ordering release due to lack of pre-deprivation process, and ordering noncitizen not be re-detained without a "meaningful opportunity to be heard"); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *9–10, 11–13 (E.D. Cal. Aug. 21, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (similar); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (granting habeas petition and ordering immediate release due to lack of pre-deprivation hearing). This case is no different, and accordingly, the Court should grant the habeas petition.

Courts analyzing this question have employed the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Dkt. 11 at 5.[1] Accordingly, Mr. Kumar addresses each factor below.[2]

A. Mr. Kumar's private interest is weighty.

As this Court recognized in granting Mr. Kumar's request for a temporary restraining order (TRO), Mr. Kumar "has a strong private interest in not being re-detained." Dkt. 11 at 7. This interest is "the most elemental of liberty interests." *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner

[1] While "not conceding" the applicability of *Mathews*, Respondents "acknowledge" the Court's application of *Mathews* and use that as the analytical framework in their motion to dismiss. Dkt. 12 at 7 & n.5.

[2] Mr. Kumar notes that his motion for a temporary restraining order, Dkt. 2, supplements many of the factors below, and his response here focuses primarily on Respondents' specific arguments in seeking dismissal, Dkt. 12. Further, Mr. Kumar respectfully notifies the Court he is no longer pursuing relief pursuant to Count II of his petition.

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had "an exceptionally strong interest in freedom from physical confinement" (citation omitted)); *Ledesma Gonzalez*, 2025 WL 2841574, at *7 (declaring that petitioner's liberty interest "is a fundamental interest that must be accorded significant weight").

In their return, Respondents do not raise any arguments not previously dismissed by this Court in its TRO decision. *Compare* Dkt. 8 at 8, 9–10 (arguing Respondents had the authority to revoke Mr. Kumar's release and that noncitizens do not enjoy the same liberty interest as citizens), *and* Dkt. 12 at 7–8 (raising same arguments), *with* Dkt. 11 at 6–7 (listing cases where "courts throughout the Ninth Circuit have concluded that non-citizens who are released from ICE custody have a protected liberty interest under the Due Process Clause in remaining out of custody while their cases proceed" and recognizing Mr. Kumar's status as a noncitizen "does not negate [his] liberty interest in not being detained"). Despite Respondents' attempts to diminish that interest by pointing to the duration of Mr. Kumar's release, this Court properly recognized that Mr. Kumar's liberty interest "only continued to grow over the next 16 months as he continued to live in the United States and comply with all ICE requirements." Dkt. 11 at 7; *see also, e.g.*, *Ramirez Tesara*, 2025 WL 2637663, at *3 ("When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause."); *Hernandez*, 2025 WL 2420390, at *1–2, 4–5 (recognizing "protected liberty interest in his release" for petitioner who had been released from immigration custody for fourteen months); Dkt. 2 at 7–10 (listing additional caselaw support). This factor thus continues to weigh strongly in Mr. Kumar's favor.

B. Respondents' reason for re-detaining Mr. Kumar demonstrates he was erroneously deprived of his liberty.

Second, "the risk of erroneous deprivation of [Mr. Kumar's] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. Although, as

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here, "the Government may believe it has a valid reason to detain Petitioner," that belief "does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Id.* His re-detention must still "bear[] [a] reasonable relation" to a valid government purpose: here, preventing flight or protecting the community against dangerous individuals. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *see also, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) ("The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must bear a reasonable relation to its purpose." (citation modified)). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified because Mr. Kumar poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists.

First, and most importantly, Respondents never provided a hearing before a neutral decisionmaker where they were required to show that Mr. Kumar violated the conditions of release and is now a flight risk or danger. Instead, they argue that the procedures provided were sufficient because "the revocation of Kumar's release was an individualized determination made by a senior immigration official based on concerns that Kumar was delaying his immigration proceedings." Dkt. 12 at 9. But the Supreme Court has repeatedly explained that an individual is *not* afforded due process where it is simply the "government enforcement agent" who makes the decision about the propriety of detention. *Coolidge*, 403 U.S. at 450. That process—which is exactly what occurred here—is a far cry from the hearing before a neutral decisionmaker that due process requires. *See, e.g.*, *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and

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disengagement from activities of law enforcement."); *see also, e.g.*, *Gerstein v. Pugh*, 420 U.S. 103, 112–13 (1975) (explaining the need for the participation of "a neutral and detached magistrate instead of . . . by the officer engaged in the often competitive enterprise of ferreting out crime" (citation omitted)). Indeed, as another court analyzing the lawfulness of Respondents' re-detention of a noncitizen recently observed, "[t]he government's unilateral determination that re-detention is warranted is far less likely to be correct than the decision reached by a neutral adjudicator in a bond hearing." *Duong*, 2025 WL 2689266, at *7.

Respondents' claimed reason for re-detaining Mr. Kumar only further underscores that the procedure provided results in unlawful detention. It is well established that civil immigration detention is justified only to prevent flight or protect the community from dangerous individuals. *See, e.g.*, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (identifying government interest in "protecting the public from dangerous criminal [noncitizens]" and addressing "[t]the risk of a detainee absconding" when making continued detention determination for noncitizens in removal proceedings); *Garro Pinchi*, 2025 WL 2084921, at *5 ("Civil immigration detention is permissible only to prevent flight or protect against danger to the community. . ."); *Hernandez*, 2025 WL 2420390, at *5 ("Civil immigration detention, which is nonpunitive in purpose and effect, is justified when a noncitizen presents a risk of flight or danger to the community." (citation modified)); *Duong*, 2025 WL 2689266, at *7 ("Civil immigration detention serves two permissible purposes: to prevent flight or to protect against a danger to the community."); *E.A. T.-B.*, 2025 WL 2402130, at *5 ("reject[ing]," in a re-detention case, "any suggestion that government agents may sweep up any person they wish and hold that person without consideration of dangerousness or flight risk" as "offen[sive to] the ordered system of liberty that is the pillar of the Fifth Amendment" (citation modified)).

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Here, Respondents have not even attempted to argue, much less demonstrated, that their re-detention of Mr. Kumar "bear[s] a reasonable relation" to either an assessment of heightened flight risk or danger to the community. *Hernandez*, 872 F.3d at 990 (citation modified). Instead, Respondents acknowledge he was detained because a deportation officer concluded that he might be trying to delay his immigration court proceedings. Dkt. 12 at 9; *see also id.* at 10. It thus remains "undisputed" that Mr. Kumar was not re-detained for a "valid legal justification," confirming his re-detention was "arbitrary." Dkt. 11 at 7.[3] Rather than deal with that in the appropriate forum—the immigration court—the deportation officer decided this concern warranted an immediate and complete revocation of Mr. Kumar's liberty. Notably, as to the factor that actually matters when assessing the propriety of detention—flight risk—Respondents' own evidence reflects that Mr. Kumar has presented himself at ICE's office before and after both his moves, underscoring that he is not attempting to avoid his proceedings or the immigration authorities. *See* Dkt. 9 at 5–6 (documenting Mr. Kumar's appearance at ICE offices in California and Washington); Dkt. 13 ¶ 6 (conceding Mr. Kumar "provided timely" notification of his move to Washington); *see also* Kumar Decl. ¶¶ 6–8 (describing his check-in history). Indeed, Respondents' evidence demonstrates Mr. Kumar has affirmatively presented himself to ICE even

[3] Respondents assert that due process "accommodate[s] a finding that the individual has delayed the immigration proceedings" to justify re-detention. Dkt. 12 at 10. But they do not cite any authority that says this, because none does. This includes *Matter of Sugay*, 17 I. & N. Dec. 637, 639 (BIA 1981), and *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). In *Matter of Sugay*, the noncitizen's release was revoked and bond amount changed because of a finding that his changed circumstances increased his likelihood of abscondence. 17 I. & N. Dec. at 638. Meanwhile, *Saravia* also provides support for Mr. Kumar, as it holds that minors must receive a hearing when the government rearrests them on allegations of dangerousness. 280 F. Supp. 3d at 1177. Accordingly, even if the Court reaches the question of whether there was a basis for re-detention, the record demonstrates no such basis existed and the procedures used to re-detain Mr. Kumar resulted in his unlawful re-detention as a matter of law, as it was neither premised on a finding of increased risk of flight or dangerousness.

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without an appointment, in order to ensure ICE is aware of his whereabouts. *See* Dkt. 9 at 6 (remarking that Mr. Kumar "appeared, unscheduled to the Yakima ERO office"); Kumar Decl. ¶¶ 7–8.

Second, Respondents provided no meaningful, advanced notice that would have allowed Mr. Kumar to challenge the basis for re-detention. Respondents claim that the process for re-detaining Mr. Kumar comported with due process because he "was given notice of the custody determination and the reasons for the revocation in Hindi, which he acknowledged with a signature." Dkt. 12 at 9. As an initial matter, all Mr. Kumar's signature indicated was that "[t]he contents of [the custody determination notice] were read to" him. Dkt. 10-3 at 2. Nowhere on the notice were the reasons for the revocation specified. *See id.* Moreover, Mr. Kumar maintains that he was never asked about his relocation history or told of the reason for his re-detention, depriving him of any opportunity to provide any information that might allay the officers' concerns. *See* Kumar Decl. ¶ 8. In addition, as noted below, *infra* Sec. II, Officer Dahl's statements regarding the notice he provided are inadmissible and should be afforded no weight.

Finally, even if an attempt to delay immigration proceedings were a legitimate basis for re-detaining someone in the immigration context, the record here does not support that justification. To the contrary, it underscores exactly why a hearing before a neutral decisionmaker where ICE must justify re-detention is necessary. First, despite Respondents' attempts to cast Mr. Kumar as having a "pattern of relocation," Dkt. 12 at 4, the record establishes Mr. Kumar has only moved twice, *see* Kumar Decl. ¶¶ 6–7. As to Mr. Kumar filing for a change of venue, that was simply the proper procedure for someone who moves and has a pending immigration court case he wishes to move with him. *Cf. Matter of Rahman*, 20 I. & N. Dec. 480, 482 (BIA 1992) (immigration judge granted change of venue motion so that noncitizen

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can "defend himself/herself in the area in which he/she resides"). The immigration court, moreover, may deny a motion to change venue if it believes it is being sought for an improper motive. 8 C.F.R. § 1003.20(b) (change of venue decision is at the immigration judge's discretion for good cause); *see also, e.g.*, *Matter of Nafi*, 19 I. & N. Dec. 430, 432 (BIA 1987) (finding "no abuse of discretion in the immigration judge's denial of a change of venue" because he "was concerned that the applicant was simply trying to avoid a hearing"). Absent a grant of a motion for change of venue, the noncitizen must attend his hearing at the scheduled location or face the entry of an in absentia removal order. *See Matter of Nafi*, 19 I. & N. Dec. 430; *Hernandez-Vivas v. INS*, 23 F.3d 1557, 1560 (9th Cir. 1994) ("[A] [noncitizen's] obligation to attend a deportation hearing continues until the motion is granted."). Mr. Kumar could therefore not have unilaterally delayed his proceedings by moving.

In addition, the record also does not support the suggestion that Mr. Kumar did not "timely inform ERO of his relocations." Dkt. 12 at 4. The only "EOIR-33" notation on the record appears in Mr. Kumar's I-213, which was completed on March 6, 2024, on the date he was released from immigration custody. *Compare* Dkt. 10-1 at 1, *with* Dkt. 9 ¶ 6. It was reasonable for Mr. Kumar to not have an address upon his release from immigration custody—and ICE purportedly had no issue with that, given that it released him. Any suggestion that Mr. Kumar subsequently failed to update his address with the immigration court is not supported by the record evidence. Beyond that, there is no evidence of Mr. Kumar failing to provide timely information of his relocation. In fact, Respondents' record contradicts itself. Whereas Director McClain's declaration claims Mr. Kumar had not provided timely address change information upon moving to Washington (and despite having moved at most four days prior to going to check in with ICE in Yakima), *see* Dkt. 9 ¶ 8, Officer Dahl's declaration disagrees, noting "in this

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particular instance there was no indication that his address was not provided timely," Dkt. 13 ¶ 6. The agency's inconsistent, unsupported purported rationale for having re-detained Mr. Kumar "underscore[s] rather than undermine[s] the need for robust procedural safeguards before a deprivation of liberty occurs." *E.A. T.-B.*, 2025 WL 2402130, at *4; *Garro Pinchi*, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (finding that the risk of erroneous deprivation is "significant" where "the government has offered no evidence . . . that [the noncitizen's] detention would serve" to either "prevent flight or protect against danger to the community"); *cf. Ledesma Gonzalez*, 2025 WL 2841574, at *6 (agency rationale that "'runs counter to the evidence' before the agency" is "arbitrary and capricious" (citation omitted)).

Finally, Respondents' argument that "there is no statutory or regulatory requirement for a hearing before" re-detention in this context, and that the Supreme Court "has warned courts against reading additional procedural requirements into the" Immigration and Nationality Law, Dkt. 12 at 9, misses the point. Mr. Kumar is arguing that the Due Process Clause, not a statute or regulation, requires such a hearing. "This line of the Government's reasoning therefore does not address Petitioner's concern and cannot carry the day." *E.A. T.-B.*, 2025 WL 2402130, at *4.

For all these reasons, the record before the Court demonstrates that the second *Mathews* factor weighs in favor of Mr. Kumar's petition for a writ of habeas corpus. *See, e.g.*, *Garro Pinchi*, 2025 WL 2084921, at *5 (declaring, in the case of a detained noncitizen who was re-detained without pre-deprivation hearing, that "there is a significant risk that even the two-day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not justified by any valid interest" and concluding that "[p]roviding her with the procedural safeguard of a pre-detention hearing will have significant value in helping ensure that any future detention has a lawful basis").

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C. The government's interest also weighs in Mr. Kumar's favor.

Respondents' bare, generalized assertions as to the government's "heightened" interest in "preventing [noncitizens] from remaining in the United States in violation of our law," and in "protecting immigration proceedings from unnecessary delay," Dkt. 12 at 10 (citation modified), do not address the flaws in their argument identified by the Court in its TRO ruling, *see* Dkt. 11 at 8. Respondents have not addressed "how or why" their "heightened interest" in immigration detention is "implicated here." Dkt. 11 at 8. Nor have they explained how Mr. Kumar's pursuit of asylum—something he is lawfully entitled to seek, *see, e.g.*, *Campos v. Nail*, 43 F.3d 1285, 1288 (9th Cir. 1994)—is a "violation of our law." They have similarly not demonstrated that additional procedures would be a significant burden on them. Dkt. 11 at 8. Finally, they have not asserted Mr. Kumar is a "flight risk, poses a danger to the community, or otherwise needs to be detained pending the resolution of this litigation." *Id.* In so far as they suggest Mr. Kumar needs to be detained in order to avoid additional delay in his removal proceedings, that interest is not a valid reason to detain him; it is also an interest that can be adequately vindicated in immigration court.

As other courts assessing the legality of re-detention without a pre-deprivation hearing before a neutral decisionmaker have recently found, "the Government's interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time)" to provide a pre-deprivation hearing, "those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *E.A. T.-B.*, 2025 WL 2402130, at *5; *see also, e.g.*, *Ramirez Tesara*, 2025 WL 2637663, at *4 (concluding the government's interest to be "minimal" where it did not identify a "legitimate interest" for detaining the petitioner specifically and where they did not claim that a pre-

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detention hearing "would be an administrative or financial burden"); *Ledesma Gonzalez*, 2025 WL 2841574, at *8 (concluding government interest to be low even assuming "requiring pre-detention process would present *some* administrative burden"); *Garro Pinchi*, 2025 WL 2084921, at *6 ("[I]t is likely that the cost to the government of detaining [petitioner] pending any bond hearing would significantly exceed the cost of providing her with a pre-detention hearing.").

Finally, "[s]ociety's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Morrissey v. Brewer*, 408 U.S. 471, 484 (1972) "Society . . . has an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole, given the breach of parole conditions."). This consideration also "cuts strongly in favor" of Mr. Kumar. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). *See also* Dkt. 2 at 12–14.

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In sum, each *Mathews* factor favors Mr. Kumar. The Court should accordingly grant the petition for a writ of habeas corpus.

II. Officer Dahl's declaration should be afforded little weight.

As an additional matter, to the extent the Court considers Officer Dahl's declaration, it should accord it little probative value because it is vague, contains self-serving hearsay, and violates the best evidence rule.

First, Officer Dahl wrote the declaration primarily in the third person. *See, e.g.*, Dkt. 13 ¶ 6 ("it was discovered"); *id.* ¶ 10 ("standard practice was followed"); *id.* ¶ 12 ("Petitioner was informed"); *id.* ¶ 14 ("I am only aware of Petitioner having been informed of the reasons for

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OREC revocation..."). Critically, Officer Dahl does not admit to having told Mr. Kumar anything in particular—he merely notes that "standard practice was followed" in his case, *id.* ¶¶ 6, 12, and that he is "*aware* of [Mr. Kumar] *having been informed* of the reasons for OREC revocation," *id.* ¶ 14 (emphasis added). This language strongly suggests that his declaration is based on what standard practice is and not what actually transpired in Mr. Kumar's case.

The declaration also lacks specificity: while asserting that Mr. Kumar provided "no information" that "served to lessen concerns regarding his relocation and address change history," *id.* ¶ 8, or that "would allay ICE's concerns," *id.* ¶ 13, he does not actually testify as to what unsatisfactory information Mr. Kumar purportedly provided.[4] In contrast to Officer Dahl's vague declaration, Mr. Kumar is unequivocal that he was "never asked" about his relocation history, even when he asked about the reason for his re-detention. Kumar Decl. ¶ 8. Nor does Mr. Dahl's declaration refute Mr. Kumar's testimony that he was told he went "to the wrong place at the wrong time." *Compare id.*, *with* Dkt. 13 ¶ 14 (noting he did not make that statement to Mr. Kumar and is "not aware" of any officer having done so). Mr. Dahl's conclusory, vague statements should thus not be afforded much, if any, weight, especially compared to Mr. Kumar's clear, on-point testimony.

Second, some of Officer Dahl's statements are inadmissible under the Federal Rules of Evidence. Many of the statements he claims to have made to Mr. Kumar, particularly as to the notice he alleges to have provided to him, are inadmissible hearsay: these statements are an out-

[4] This is, moreover, a far cry from Respondent's assertion that Mr. Dahl "*questioned* [Mr.] Kumar during the encounter regarding the information in the databases." *Compare* Dkt. 12 at 3–4 (emphasis added), *with* Dkt. 13 ¶¶ 7–8 (stating merely that "[s]tandard practice for ERO is to *attempt to elicit* detail from the individual" and that such practice "*was followed* in Petitioner's case, and no information was provided by Petitioner which served to lessen concerns regarding his relocation") (emphasis added)).

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of-court assertion submitted for the truth of matter asserted. Fed. R. Evid. 801(c).[5] *See, e.g.*, Dkt. 13 ¶ 8, 12, 14. Moreover, it is unclear which of the statements Mr. Dahl provides in his declaration are from his own personal knowledge as opposed to his review of "records and systems maintained by ICE." *Id.* ¶ 3. The rules of evidence reflect that a witness must have "personal knowledge of the matter" to which they are attesting. Fed. R. Evid. 602. In addition, to the extent Mr. Dahl's statements as to what transpired on July 21 are based on "records and systems maintained by ICE," the best evidence rule requires that those records, rather that Mr. Dahl's summary of them, be produced. *See* Fed. R. of Evid. 1002 ("An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.").[6] "The elementary wisdom of the best evidence rule rests on the fact that the document is a more reliable, complete and accurate source of information as to its contents and meaning than anyone's description." *Gordon v. United States*, 344 U.S. 414, 421 (1953) (finding lower court had erred in finding that admission of contradiction was sufficient and denying request for production of written statements where witness testified he had provided earlier written statements that contradicted his testimony).

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[5] The plain text of the Federal Rules of Evidence demonstrate they generally apply in proceedings under 28 U.S.C. § 2241. Rule 1101 states that the rules govern "civil cases and proceedings," and then lists several exceptions, none of which includes habeas proceedings. Fed. R. Evid. 1101(b), (d). The comment to Federal Rule of Evidence 1101 also clarifies that "[t]he rule does not exempt habeas corpus proceedings." Fed. R. Evid. 1101 advisory comm. note. Consistent with this reading, the Supreme Court has applied the Federal Rules of Evidence to determine admissibility in a habeas proceeding. *See Amadeo v. Zant*, 486 U.S. 214, 227 n. 5 (1988).

[6] A good example of this is the unsupported allegation that Mr. Kumar allegedly did not timely submit address change information. Dkt. 13 ¶ 6. If that is true, Respondents need to produce the records reflecting that fact, not Mr. Dahl's secondhand summary of what he claims the records say.

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In sum, even if the Court inquires as to whether the basis for re-detaining Mr. Kumar was valid (which it need not do), the Court should not credit Mr. Dahl's vague, conclusory statements over Mr. Kumar's specific and direct statements, and should rely only on the non-hearsay statements that result from his first-hand knowledge, rather than those that are a summary of records contained in an agency database.

CONCLUSION

The Court should therefore grant Mr. Kumar's habeas petition and order that Respondents not re-detain him "until after an immigration court hearing is held (with adequate notice) to determine whether detention is appropriate." *E.A. T.-B.*, 2025 WL 2402130, at *6.

Respectfully submitted this 9th of October, 2025.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 5,162 words and complies with the word limit requirements of Local Civil Rule 7(e).

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