UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Mohit KUMAR,

Petitioner,

v.

Camilla WAMSLEY, et al.,

Respondents.

Case No. 25-cv-1772

MOTION FOR A TEMPORARY RESTRAINING ORDER

Note on Motion Calendar:
September 15, 2025

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Petitioner Mohit Kumar (Mr. Kumar) is a citizen of India who is currently detained by Immigration and Customs Enforcement (ICE) at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. He entered the United States in the beginning of February 2024, and after being apprehended by Border Patrol, was processed for removal proceedings and released on an order of supervision. For the next year and a half, Mr. Kumar complied with all requirements, including applying for asylum and appearing at his scheduled check-ins, both in person and by electronic means. Nine months after he was released, in November of 2024, he was granted a work permit.

The next year, at an in-person ICE check-in in July 2025, Mr. Kumar asked ICE for permission to transfer his case to Eastern Washington, where he sought to relocate to seek employment. ICE granted him permission. However, days later, when he reported at the Yakima ICE office on July 21, 2025, ICE officers placed handcuffs and ankle shackles on him. When Mr. Kumar asked why he was being arrested, an ICE officer told him that he "came to the wrong place at the wrong time" and that he would need to talk to the judge. The arrest record confirms this account, stating Mr. Kumar was taken into custody simply based on a determination that "he was amenable to arrest." Indeed, the I-213 confirms he has no criminal history. Mr. Kumar was thereafter transferred to NWIPC, where he remained in custody.

At no time prior to his arrest did Respondents provide Mr. Kumar a hearing, let alone a hearing before a neutral decisionmaker at which ICE was required to justify his re-detention and show that he now poses a flight risk or danger to the community. Indeed, he was not provided any notice as to the reason for his re-detention, other than the statement made by the ICE officer in Yakima when he was placed in shackles. Nor has Mr. Kumar received any meaningful

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opportunity to respond to any allegations triggering his re-detention.

By denying him any notice and hearing, Respondents violated Mr. Kumar's right to due process. As this Court recently held in three separate cases in the past four weeks, his ongoing detention is therefore unlawful, and his immediate release is required. *See E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d --- 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at *5 (W.D. Wash. Sept. 5, 2025) (ordering immediate release to secure status quo of liberty prior to alleged unlawful re-detention); Order Granting Mot. for Temp. Restr. Order, *Ramirez Tesara v Wamsley*, 2:25-cv-01723-MJP-TLF (W.D. Wash. Sept. 11, 2025), Dkt. 19 (hereinafter *Ramirez Tesara*, Dkt. 19) (ordering immediate release to restore Petitioner to the status quo prior to his unlawful arrest without a hearing). Accordingly, Mr. Kumar respectfully seeks immediate relief from this Court to vindicate his right to liberty under the Fifth Amendment's Due Process Clause.

Because he is detained, Mr. Kumar's upcoming immigration court hearing has been advanced to September 18, 2025, and he currently remains unrepresented for that hearing. He was only able to retain the undersigned counsel on Friday of last week to represent him on this habeas petition, and accordingly, requests a ruling on the TRO prior to his new hearing on September 18, 2025.[1]

[1] Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice regarding this filing to the U.S. Attorney's Office for the Western District of Washington via email.

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STATEMENT OF FACTS

Mr. Kumar is a 26-year-old citizen and national of India who entered the United States in the beginning of February 2024 to seek asylum. Decl. of Chris Stanislowski ¶¶ 3–6. He was arrested and detained by Border Patrol on or about February 6, 2024. *Id.* ¶ 6; Decl. of Aaron Korthuis Ex. A (Form I-213). Border Patrol processed him for removal proceedings, issuing a Notice to Appear (NTA) and placing him in removal proceedings under 8 U.S.C. § 1229a. Korthuis Decl. Ex. A. After processing him for removal, the Border Patrol released Mr. Kumar his own recognizance. *Id.*; *see also* Stanislowski Decl. ¶ 6. Mr. Kumar has since filed an application for asylum. Stanislowski Decl. ¶ 7.

As part of his release on his own recognizance, ICE required Mr. Kumar to attend regular check-ins with ICE, both in person and by email. *Id.* ¶¶ 7–8. He had his first in-person check-in in New York City in March of 2024. *Id.* ¶ 7. He then moved to California, where he was scheduled for and dutifully appeared in-person for an ICE check-in at the San Francisco office on June 10, 2024. *Id.*

Mr. Kumar was subsequently granted an employment authorization document in November of 2024, permitting him to lawfully work in the United States. Korthuis Decl. Ex. A. He was also scheduled for an April 14, 2026. Korthuis Decl. Ex. B (Intensive Supervision Appearance Program court appearance contract). In the meantime, he was required to check in again with ICE, first by email in June of 2025, and then for an in-person check-in on July 17, 2025. Stanislowski Decl. ¶¶ 7–8. At the July 17, 2025, check-in, he advised the ICE officer that he wanted to move to Washington State to seek employment. *Id.* ¶ 8. The ICE officer agreed, and also placed Mr. Kumar in the Intensive Supervision Assistance Program (ISAP), which required Mr. Kumar to install the BI Smart-LINK app on his phone. Korthuis Decl. Ex. C (ISAP Smark-

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LINK agreement) The officer then transferred supervision of the case to the Yakima ICE office in Washington.

The following week, on July 21, 2025, Mr. Kumar appeared for his first ICE check-in at the Yakima ICE office. Stanislowski Decl. ¶ 9; Korthuis Decl. Ex. A. Although he had just received permission from ICE to move to Washington, the officer in Yakima took Mr. Kumar to a room, fingerprinted him, and then handcuffed Mr. Kumar's wrists and ankles. Stanislowski Decl. ¶ 9; Korthuis Decl. Ex. A. When Mr. Kumar asked the ICE officer why the officer was arresting him, the officer replied that Mr. Kumar "came to the wrong place at the wrong time" and that he would need to talk to the judge. Stanislowski Decl. ¶ 9.

ICE arrested Mr. Kumar despite the fact that during the year and a half since he was released by Border Patrol, Mr. Kumar had faithfully complied with all court and supervision requirements. The arrest also occurred despite the fact that Mr. Kumar has no criminal history, as Mr. Kumar's arrest record states. Korthuis Decl. Ex. A. What is more, Mr. Kumar had qualified for and been granted a work permit, had been authorized to move to Eastern Washington to seek employment, and had enrolled in the ISAP monitoring program. Stanislowski Decl. ¶ 8; Korthuis Decl. Exs. A–C. Nonetheless, on July 21, 2025, ICE abruptly and arbitrarily re-detained him.

Notably, the ICE officer did not assert that any action demonstrated that Mr. Kumar was either a flight risk or a danger to the community. Instead, the officer's own arrest report simply states, "On July 21, 2025, Mohit Kumar was taken into ICE custody after he reported to the Yakima ICE office. Kumar's case was reviewed and determined that he was amenable to arrest." Korthuis Decl. Ex. A. At no point prior to Mr. Kumar's re-detention did Respondents provide him any notice regarding the basis for his re-detention. Nor did Respondents provide Mr. Kumar with any type of hearing, let alone a hearing before a neutral decisionmaker where the agency

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was required to justify re-detention or demonstrate that he now poses a flight risk or danger to the community.

Following his arrest, ICE transferred Mr. Kumar to NWIPC in Tacoma, Washington. Korthuis Decl. Ex. A. Lacking the resources to hire private counsel, he remained without any legal representation until meeting with an attorney from Northwest Immigrant Rights Project (NWIRP) on September 10, 2025. Stanislowski Decl. ¶ 1. At a second meeting on September 12, he provided to NWIRP a copy of his arrest record on DHS Form I-213, *see id.*; *see also* Korthuis Decl. Ex. A, demonstrating how he had been re-detained without any legal basis. Having obtained counsel to represent him before this Court, he now seeks immediate relief from his continued, unlawful detention. Mr. Kumar requests action on this motion prior to his ICH on September 18, 2025, as he remains unrepresented in those proceedings.

ARGUMENT

I. Requirements for a Temporary Restraining Order

On a motion for a TRO, the movant "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); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious question" test, Mr. Kumar must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

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II. Mr. Kumar is likely to succeed on the merits of his argument that his detention is unlawful because he was not afforded a pre-deprivation hearing.

Due process requires Respondents to afford Mr. Kumar a hearing before a neutral decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent weeks, as DHS has detained other noncitizens in similar situations, this Court has so held in multiple separate cases and ordered the immediate release of noncitizens who had been re-detained by DHS without a pre-deprivation hearing. *See E.A. T.-B.*, 2025 WL 2402130 (lack of pre-deprivation hearing); *Ramirez Tesara*, Dkt. 19 (same); *cf. Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569 (ordering release because DHS failed to follow procedures required by regulation).

Many other courts across the country have similarly ordered the immediate release of persons with ongoing proceedings who are re-detained without a hearing. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, --- F.Supp.3d ----, 2025 WL 1953796 (W.D.N.Y. July 16, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *13 (E.D. Cal. Aug. 21, 2025) (similar); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025).

As demonstrated by these many cases rejecting similar arrests, Mr. Kumar is likely to succeed on his claim and the Court should order his immediate release. Notably, if Respondents continue to assert that his detention is justified after Mr. Kumar's release, they may thereafter

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schedule a hearing where they bear the burden of presenting clear and convincing evidence that his re-detention is warranted.

As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process Mr. Kumar is due. *E.A. T.-B.*, 2025 WL 2402130, at *3. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also Ramirez Tesara*, Dkt. 19 at 5–9 (applying *Mathews* factors to assess right to pre-deprivation hearing); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (same); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to assess what process is due a parolee). Here, those factors strongly favor Mr. Kumar.

A. Mr. Kumar Has a Weighty Private Interest.

Mr. Kumar has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. Indeed, his "interest in not being detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez Tesara*, Dkt. 19 at 5 (stating that the petitioner "has an exceptionally strong interest in freedom from physical confinement"). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural

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protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g.*, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

This principle applies with significant force given Mr. Kumar's initial release from detention on his own recognizance. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). As the *Hurd* court explains, this includes cases of "pre-parole conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," *id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," *id.* (citing *Morrissey*, 408 U.S. at 482).

These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.

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2019). Parolees and probationers have a diminished liberty interest because of their underlying convictions. *See, e.g.*, *United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . . ." (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . . ." (citation modified)). Nonetheless, even in the criminal parole and supervised release context, courts have held that parolees cannot be re-arrested without a due process hearing affording them the opportunity to contest the legality of their re-incarceration. *See, e.g.*, *Hurd*, 864 F.3d at 684.

Critically, in recent months and years, courts—including this one—have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. As Judge Evanson explained in *E.A. T.-B.*, a person re-detained after a prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his liberty." 2025 WL 2402130, at *3. Other courts have reached the same conclusion. *See, e.g.*, *Ramirez Tesara*, Dkt. 19 at 6 ("When 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."). *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [the petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody, which would allow him to continue in these life activities, including supporting his family."); *Pinchi*, 2025 WL 2084921, at *4 ("[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her

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relationships in the community, and continuing to attend her church."); *Maklad*, 2025 WL 2299376, at *8 (similar).

As in these cases, Mr. Kumar has a strong interest in his liberty. Prior to his re-detention, Mr. Kumar had lived in this country for nearly a year and a half as he proceeded with his application for asylum in removal proceedings. He was granted a work permit in November of 2024, which provided him the means to support himself while he goes through the lengthy process of immigration proceedings. These facts demonstrate that Mr. Kumar had a significant due process interest in not being re-detained without notice and a hearing, and that he is in fact entitled to freedom from confinement, other than complying with his immigration proceedings and conditions of release.

B. The Risk of Erroneous Deprivation Is High.

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. "That the Government may believe it has a valid reason to detain Petitioner 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*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that Mr. Kumar poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a neutral decisionmaker that due process

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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 disengagement from activities of law enforcement."); *see also Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar). In fact, Mr. Kumar did not (and has not) even received notice of the basis for his re-detention, much less any opportunity to respond to any allegations purporting to justify his re-detention or a hearing before a neutral decisionmaker.

The arbitrary nature of Mr. Kumar's re-detention is illustrated by the ICE officer's own arrest report, which simply asserts that after reviewing Mr. Kumar's case, the officer concluded that Mr. Kmar was "amenable" to being re-detained. The report does not allege that Mr. Kumar is flight risk or a danger to the community, the only legal justifications for detaining Mr. Kumar during these civil proceedings. Nor does it even contain any facts that would support such a finding, even noting that Mr. Kumar has no criminal history. Mr. Kumar further reports that when he asked the ICE officer why he was being arrested, the officer responded that Mr. Kumar "came to the wrong place at the wrong time," underscoring the arbitrary nature of his detention.

As this Court explained in *Ramirez Tesara*, "[o]nce established, Petitioner's interest in liberty is a constitutional right which may only be revoked through methods that comport with due process, such as a hearing in front of a neutral party to determine whether Petitioner's re-detainment is warranted." *Ramirez Tesara*, Dkt. 19 at 7 (citing *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). Notably, at the time he was initially arrested, Mr. Kumar was *not* the subject of a statute requiring mandatory detention. *See* Pet. ¶ 37. But even if he was, the importance of a hearing before a neutral decisionmaker remains. This is because, as this Court explained in *E.A. T.-B.*, "Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause

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requires it." 2025 WL 2402130, at *4. And due process requires such a hearing because "Petitioner's circumstances have changed materially" since his release in January 2024. *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). Apart from his core interest in being free from imprisonment, Mr. Kumar's ties to this country have deepened over the year and a half he has resided here. "These facts show that a[] pre-deprivation] hearing provide[s] additional safeguards under these circumstances." *Id.*; *see also, e.g.*, *Jorge M.F.*, 534 F. Supp. 3d at 1055 ("In any pre-detention hearing, the IJ would be required to consider any additional evidence from the eight-plus months since Petitioner was released."); *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

C. The Government's Interest Is Minimal.

Finally, "the government's interest in detaining [Petitioner] or re-detaining [him] without a hearing is slight." *Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970 ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, 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. Notably, since his release, Mr. Kumar "has continued to demonstrate that []he poses neither a flight risk nor a danger to the community," as he has no criminal history, has timely filed for asylum, has obtained a work permit, and has faithfully complied with all conditions of release, including by attending several in-person check-ins.

The government may claim that its interest in enforcing immigration laws weighs heavily in its favor. But the government's interest in immigration enforcement "is not at stake here;

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instead, it is the much lower interest in detaining [Mr. Kumar] pending removal without a bond hearing." *Perera*, 598 F. Supp. 3d at 746. Many other courts have observed the same. *See, e.g.*, *Zagal-Alcaraz v. ICE Field Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government interest at stake here is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing."), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020). What is more, Mr. Kumar has complied with the immigration laws: he timely filed for asylum, as the Immigration and Nationality Act (INA) expressly permits. 8 U.S.C. § 1158. He was thereafter granted employment authorization. Any claimed "enforcement" amounts to punishing and deterring people like Mr. Kumar from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

In addition, the government's interest is not limited to enforcement of the law; instead, it also encompasses the interest of the "public," including the administrative or financial burdens additional process requires. *Mathews*, 424 U.S. at 348. Here, any cost in holding a hearing, should the government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of detaining Mr. Kumar during such proceedings. In addition, "[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*, 408 U.S. at 484 "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 because when "[w]hen the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, as in this case, it separates families and

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removes from the community breadwinners, caregivers, parents, siblings and employees." *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).

In sum, Mr. Kumar is able to demonstrate that he "has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner receive a hearing before an immigration judge before he can be re-detained." *E.A. T.-B.*, 2025 WL 2402130, at *5.

III. Mr. Kumar will suffer irreparable harm absent an injunction.

Mr. Kumar must also show he is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Mr. Kumar's unlawful detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Mr. Kumar's detention also violates the Constitution. Civil immigration detention violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). As detailed above, Mr. Kumar's detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids his detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Mr. Kumar has demonstrated irreparable harm, for he has shown that his detention violates due process. *See*

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Baird v. Bonta, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").

Detention also prevents Mr. Kumar from working to not just sustain himself but to earn savings for his future. This type of "potential economic hardship" supports a finding of irreparable harm. *Leiva-Perez*, 640 F.3d at 969–70; *see also Gonzalez Rosario v USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (recognizing a "negative impact on human welfare" when noncitizens "are unable to financially support themselves or their loved ones").

Respondents may argue that Mr. Kumar cannot demonstrate irreparable harm because the harm he is suffering assumes his detention is unlawful. But this contention is misplaced. On a motion for a TRO, the merits question "is a threshold inquiry and is the most important factor" when assessing a TRO motion. *Baird*, 81 F.4th at 1040; *see also Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020) (same); *California by and through Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc) (similar). Accordingly, the Court must address the merits question, as the preliminary injunction standard requires the Court to assess the likelihood of success on the merits—an inquiry that weighs strongly in Mr. Kumar's favor.

In sum, the unlawful deprivation of liberty causes Mr. Kumar direct and immediate irreparable harms that warrant a TRO.

IV. The balance of hardships and public interest weigh heavily in Mr. Kumar's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Mr. Kumar faces weighty hardships: loss of liberty and deprivation of the right to earn a living. *See supra* Sec. III. The government, by contrast, faces no hardship, as all it must do is release a person it previously released and who has since lawfully resided in this country and has no criminal history. Avoiding such "preventable human suffering" strongly tips the

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balance in favor of Mr. Kumar. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." *Hernandez*, 872 F.3d at 996. Indeed, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents release Mr. Kumar and to require a hearing before a neutral decisionmaker where the government must demonstrate he poses a flight risk or danger before any re-detention.

V. Immediate release is warranted.

As in *Ramirez Tesara, Phetsadakone,* and *E.A. T.-B.*, this Court should order Mr. Kumar's immediate release. "[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B.*, 2025 WL 2402130, at *6. In other words, Mr. Kumar's unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release remedies that issue.

Moreover, as this Court explained in *Ramirez Tesara*, Mr. Kumar's "immediate release is necessary to restore the status quo ante litem. This 'refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.'" *Ramirez Teresa*, Dkt. 19 at 10 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000); *see also Phetsadakone*, 2025 WL 2579569, at *5 ("The last uncontested status here was Phetsadakone's release on supervision, which he maintained without

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incident for decades. The Government's July 2025 re-detention—allegedly without following required procedures—created the current controversy. Restoring Phetsadakone to his prior supervised release status maintains the status quo ante litem and prevents irreparable harm while allowing full adjudication of his claims for injunctive relief and on the merits."). As in these cases, here the pending controversy stems from Petitioner's re-detention on July 21, 2025, when Petitioner presented to the Yakima ICE office.

In similarly situated cases, Respondents have asserted that granting immediate release via a TRO inappropriately grants "ultimate relief." Not only is this incorrect because Mr. Kumar seeks only to restore the status quo, but this principle is also at odds with Supreme Court and Ninth Circuit precedent. In fact, the Supreme Court long ago explained that for temporary relief to be proper, it *should* be akin in nature as to the final relief sought: "[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally." *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). This principle remains the law. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) ("A preliminary injunction is appropriate when it grants relief of the same nature as that to be finally granted.").

Moreover, the principles that govern this case are now well-established. In the past four weeks, this Court has repeatedly affirmed that it is unlawful for Respondents to re-detain persons like Mr. Kumar without first providing a hearing where the detained person can demonstrate that they present a flight risk or a danger to the community if not taken back into custody. This is consistent with many other district court decisions across the country.

Accordingly, particularly given that Respondent's own arrest record demonstrates there was no allegation of flight risk or a threat to the community, Petitioner respectfully seeks a TRO

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requiring his immediate release. The Court should then direct Respondents to respond to an order to show cause with any arguments or additional information they believe is necessary so that this Court can issue the writ of habeas securing Mr. Kumar's continue right to liberty and a final judgment providing that Mr. Kumar may only be re-detained if ICE justifies re-detention by clear and convincing evidence at a pre-deprivation hearing where ICE is required to demonstrate Mr. Kumar violated his conditions of release and is a flight risk or danger to the community. *See, e.g.*, *Pinchi*, 2025 WL 2084921, at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.

CONCLUSION

For the foregoing reasons, Mr. Kumar respectfully requests the Court grant his motion for a temporary restraining order.

Respectfully submitted this 15th of September, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,633 words, in compliance with the Local Civil Rules.

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