IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

MUKESH KUMAR, PETITIONER, v. MARKWAYNE MULLIN, et al., RESPONDENTS.	Civil Case No. 1:26-cv-1264

PETITIONER'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

INTRODUCTION 7

STATEMENT OF FACTS 9

LEGAL STANDARD 10

I. The status quo is Mr. Kumar being released from ICE custody and on the OSUP he was on immediately before ICE suddenly re-detained him. 10

II. Mr. Kumar Is Likely to Succeed on the Merits of his Claims. 12

III. Mr. Kumar Faces Immediate and Irreparable Harm. 28

IV. The Balance of Equities and Public Interest Weighs in Mr. Kumar's Favor. 29

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

Aden v. Nielsen, 409 F. Supp. 3d 998 (W.D. Wash. 2019) 22, 23, 24

Alcaraz v. INS, 384 F.3d 1150 (9th Cir. 2004) 20

Alnajjar v. GEO Grp., Inc., No. 5:25-CV-0822-JKP, 2025 WL 3853217 (W.D. Tex. Dec. 23, 2025) 20

Am. Civ. Liberties Union of Nevada v. Masto, 670 F.3d 1046 (9th Cir. 2012) 26

Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999) 23

Aransas Project v. Shaw, 775 F.3d 641 (5th Cir. 2014) 29

Canal Auth. of State of Fla. v. Callaway, 489 F.2d 567 (5th Cir. 1974) 11

Ceesay v. Kurzdorfer, 781 F. Supp. 3d 137 (W.D.N.Y. 2025) 8

D.V.D. v. U.S. Dep't of Homeland Sec., No. 25-cv-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025) 23

Demore v. Kim, 538 U.S. 510 (2003) 13

Enrique Bernat F., S.A. v. Guadalajara, Inc., 210 F.3d 439 (5th Cir. 2000) 10

Fong Yue Ting v. U.S., 149 U.S. 698 (1893) 27

Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty., 415 U.S. 423 (1974) 10

Günaydin v. Trump, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154 (D. Minn. May 21, 2025) 13, 14

Gurung v. Warden, S. Texas Ice Processing Ctr., No. SA-25-CA-01614-XR, 2026 WL 93145 (W.D. Tex. Jan. 6, 2026) 20

Hamdi v. Rumsfeld, 542 U.S. 507 (2004) 13

Hernandez-Lara v. Lyons, 10 F.4th 19 (1st Cir. 2021) 13

Himri v. Ashcroft, 378 F.3d 932 (9th Cir. 2004) 22

Hoac v. Beccerra, et al., No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771 (E.D. Cal. July 16, 2025) 19, 21, 24

Hudson v. United States, 522 U.S. 93 (1997) 26

J.R. v. Bostock, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) 24

Jama v. Immigr. & Customs Enf't, 543 U.S. 335 (2005) 22

Kansas v. Crane, 534 U.S. 407 (2002) 28

Kansas v. Hendricks, 521 U.S. 346 (1997) 28

Liu v. Carter, No. 25-cv-03036-JWL, 2025 WL 1696526 (D. Kan. June 17, 2025) 19

Martinez v. Secretary of Noem, No. 5:25-cv-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025) 15, 26, 27, 30

Matthews v. Eldridge, 424 U.S. 319 (1976) 13, 14, 15

Morton v. Ruiz, 415 U.S. 199, 235 (1974) 21

Nguyen v. Bondi, No. EP-25-CV-323-KC, 2025 WL 3120516 (W.D. Tex. Nov. 7, 2025) 17, 19, 21, 31

Nguyen v. Hyde, No. 25-CV-11470-MJJ, 2025 WL 1725791 (D. Mass. June 20, 2025) ..17

Nken v. Holder, 556 U.S. 418 (2009) 29

Ortega v. Kaiser, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025) 24

Phan v. Beccerra, No. 2:25-CV-01757, 2025 WL 1993735 (E.D. Cal. July 16, 2025) 19, 21, 24, 31

Pinchi v. Noem, No. 25-cv-05632-RMI-RML, 2025 WL 1853763 (N.D. Cal. July 4, 2024) 31

Ragbir v. Sessions, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018 .....7, 8

RGI, Inc. v. Tucker & Assocs., Inc., 858 F.2d 227 (5th Cir. 1988) 12

Rombot v. Moniz, 299 F. Supp. 3d 215 (D. Mass. 2017) 7

Rosa v. McAleenan, 583 F. Supp. 3d 840 (S.D. Tex. 2019).....30

Sadychov v. Holder, 565 F. App'x 648 (9th Cir. 2014).....22

Smith v. Doe, 538 U.S. 84 (2003) 26

Tadros v. Noem, No. 25-cv-4108-EP, 2025 WL 1678501 (D.N.J. June 13, 2025).....20

Trejo v. Warden of ERO El Paso E. Montana, --- F. Supp. 3d ----, 2025 WL 2992187 (W.D. Tex. Oct. 24, 2025) 17

United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954).....20

Vaskanyan v. Janecka, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025).....24

Velasco Lopez v. Decker, 978 F.3d 842 (2d Cir. 2020)).....13

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) 10

Wong Win v. United States, 163 U.S. 228 (1896) 25

Zadvydas v. Davis, 533 U.S. 678 (2001) ..... passim

Statutes

8 U.S.C. § 1231(a)(3) ..... passim

8 U.S.C. § 1231(b)(E)(vii).....22

Regulations

8 C.F.R. § 1240.10(f) 22

8 C.F.R. § 200.1 23

8 C.F.R. § 241.13(i)(1).....18

8 C.F.R. § 241.13(i)(2).....21

8 C.F.R. §§ 208.17-18.....23

Other Authorities

Peter L. Markowitz, Deportation is Different, 13 U. Pa. J. Const. L. 1299 (2011) 28

INTRODUCTION

Petitioner, Mukesh Kumar, by and through undersigned counsel, files this emergency motion for a Temporary Restraining Order ("TRO") and/or a Preliminary Injunction.

On January 11, 2024, Mr. Kumar was ordered removed by an IJ. That removal order became final no later than April 10, 2024. Mr. Kumar was released by ICE on an order of supervision in February 2024. He has since been compliantly following all the orders and conditions of his OSUP for the past two years. On February 24, 2026, however, Respondents abruptly and without justification detained Mr. Kumar when he was stopping during a weigh-in station in Cheyenne, Wyoming, while driving a semi-truck for work. And they did so despite Mr. Kumar having zero criminal history and no OSUP violations since his release.

Under nearly identical facts and the same legal principles at least three district courts have found that when a promise of "an opportunity for an orderly departure" was made, due process is violated when ICE re-detains without warning and without actually providing the promised opportunity for an orderly departure.[1] In *Ragbir v. Sessions*, United

[1] *Rombot v. Moniz*, 299 F. Supp. 3d 215, 217 (D. Mass. 2017) (finding that petitioner "was not given 'an opportunity to prepare for an orderly departure' as promised by ICE"); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018), *vacated and remanded on other grounds sub nom. Ragbir v. Barr*, 2019 WL 6826008 (2d Cir. July 30, 2019)(holding "[c]onstitutional principles of due process and the avoidance of unnecessary cruelty here allow and provide for an orderly departure" and under those principles, Ragbir was "entitled to the freedom to say goodbye"); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166–70 (W.D.N.Y. 2025) ("the government, having made a promise to Ceesay to provide him with an "opportunity to prepare for an orderly departure," cannot now renege on the promise such that its words meant nothing")

States District Judge Katherine B. Forrest found release was warranted under these circumstances and wrote:

> There is, and ought to be in this great country, the freedom to say goodbye. That is, the freedom to hug one's spouse and children, the freedom to organize the myriad of human affairs that collect over time. It ought not to be—and it has never before been—that those who have lived without incident in this country for years are subjected to treatment we associate with regimes we revile as unjust, regimes where those who have long lived in a country may be taken without notice from streets, home, and work[a]nd sent away. We are not that country; and woe be the day that we become that country under a fiction that laws allow it. We have a law higher than any that may be so interpreted—and that is our Constitution.[2]

Mr. Kumar is not now and never has sought to prevent his removal to India. The instant proceedings are brought solely for the purpose of holding ICE to its promise and preventing Mr. Kumar from being unnecessarily and unconstitutionally detained in ICE custody for an unknown (aka indefinite) amount of time while ICE attempts to obtain travel documents. Rest assured that if and when travel documents to India are obtained, Mr. Kumar will be present and ready to board a flight to India. In the meantime, however, Mr. Kumar respectfully requests the Court order a return to the status quo by ordering Respondents to release him from ICE custody back on to the same OSUP he had dutifully complied with for two years before suddenly being re-detained without explanation. Further, Mr. Kumar respectfully requests this Court order Respondents to show cause within three days and set this matter for an evidentiary hearing.

---

[2] *Ragbir v. Barr*, 2018 WL 623557 *1 (S.D.N.Y. Jan. 29, 2018).

STATEMENT OF FACTS

Mr. Kumar is a native and citizen of India, who came to the United States on or about October 31, 2018, after fleeing his country due to persecution. Petitioner was arrested by ICE in Calexico, California, near the U.S. border and issued a Notice of Appear on November 21, 2018, after a positive credible fear determination by an Asylum Officer. He was issued a $23,000 bond after an IJ determined that he is not a flight risk nor a danger to the community. He was then released from ICE custody on December 26, 2018, upon posting the $23,000 bond.

Mr. Kumar timely filed his Asylum application with the Immigration Court and his case was pending in Sacramento Immigration Court in California. He later obtained work authorization. He has been an active member of the community, paying taxes for more than five years and has never been involved with any criminal activity. He is a hardworking person who worked as a truck driver prior to his arrest.

Mr. Kumar was ordered removed by an IJ in Sacramento, CA on January 11, 2024. He was then released on an order of supervision on February 24, 2024. More than two years have passed since this order, and he has complied with ICE's supervision and conditions without any violations. On or about February 24, 2026, Mr. Kumar was stopped at the bypass weighing station near Cheyenne, WY while driving a semi-truck, and upon showing his Identification documents, he was arrested and placed in ICE custody for not having a US citizenship proof.

Since his unlawful seizure, Mr. Kumar has been held in deplorable and dangerous conditions at ICE's Denver Contract Detention Facility in Aurora, Colorado, a temporary

tent-based site not designed for prolonged civil detention which lacks adequate medical care, sanitation, and basic conditions necessary to ensure detainee safety.

His removal to India is not reasonably foreseeable at this time. There has been no evidence that travel documents have been obtained on his behalf. His continued, indefinite detention is unlawful and must be remedied through immediate relief.

LEGAL STANDARD

The purpose of a TRO is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief.[3] To obtain a TRO, an applicant must establish four elements: (1) substantial likelihood of success on the merits; (2) substantial threat of irreparable harm; (3) the threatened injury outweighs any harm the order might cause the defendant; and (4) the injunction will not disserve the public interest.[4] Mr. Kumar will address each of these in turn. First, however, it is important to quickly address the "status quo" in this case.

I. The status quo is Mr. Kumar being released from ICE custody and on the OSUP he was on immediately before ICE suddenly re-detained him.

The status quo for purposes of injunctive relief is defined as "the last actual, peaceable, non-contested status which preceded the pending controversy."[5] As the Fifth Circuit explained more than 50 years ago:

It is often loosely stated that the purpose of a preliminary injunction is to

---

[3] *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

[4] *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000).

[5] *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974).

> preserve the status quo. Indeed, some such notion may have influenced the district judge in this case, since he wrote of a 'status quo that would normally be entitled to temporary protection.' It must not be thought, however, that there is any particular magic in the phrase 'status quo.' The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury, either by returning to the last uncontested status quo between the parties, by the issuance of a mandatory injunction, or by allowing the parties to take proposed action that the court finds will minimize the irreparable injury. The focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.[6]

Here, the "pending controversy" is the re-detention of Mr. Kumar on February 24, 2026. The status *preceding* that controversy was his two years of liberty under the OSUP. That status was "peaceable" (issued a compliance letter annually including a few months before being detained) and "non-contested" (ICE renewed it annually). The government disrupted the status quo by arresting him without the requisite finding of changed circumstances. An injunction ordering release, therefore, does not *change* the status quo; it *restores* it. It returns the parties to the position they occupied before the government's allegedly unlawful act.

The Fifth Circuit has recognized that injunctive relief is appropriate to preserve the status quo contemplated by the parties' relationship.[7] *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988)

---

[6] *Id.* at 576.

[7] *RGI, Inc. v. Tucker & Assocs., Inc.*, 858 F.2d 227, 229 (5th Cir. 1988) (holding that the Federal Arbitration Act did not divest disctrict courts of jurisdiction to maintain the status quo pending arbitration).

Here, the "relationship" was one of supervision, not incarceration. By treating detention as the status quo, the FCR rewards the government for its swift and unilateral deprivation of liberty. It effectively says because ICE has successfully thrown him in jail before he could seek a TRO, that ICE detention is now the baseline. This creates a perverse incentive for executive agencies to act precipitously and without process when arresting and subjecting individuals to civil detention despite the absence of any justification (i.e. flight or danger) for such detention.

In sum, Mr. Kumar's request for release is simply a request for the Court to restore the status quo while the merits of his legal arguments and habeas petition are litigated.

II. Mr. Kumar Is Likely to Succeed on the Merits of his Claims.

A. Mr. Kumar Is Likely to Succeed on the Merits of His Claim that His Re-Detention is Unconstitutional and Unlawful.

Mr. Kumar is likely to succeed on the merits of his claim that his re-detention violates the Due Process Clause, 8 U.S.C. § 1231(a) and governing regulations.

i. His Detention Violates Due Process.

Noncitizens are entitled to due process of the law under the Fifth Amendment.[8] To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Matthews v. Eldridge*, 424 U.S. 319 (1976). Pursuant to *Matthews*, courts weight the following factors:

(1) the private interest that will be affected by the official action;

[8] *Demore v. Kim*, 538 U.S. 510, 523 (2003).

> (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 safeguards; 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.[9]

Mr. Kumar addresses the *Matthews* factors in turn.

Private interest. It is undisputed Mr. Kumar has a significant private interest in being free from detention. "The interest in being free from physical detention" is "the most elemental of liberty interests."[10] Moreover, when assessing the private interest, courts consider the detainee's conditions of confinement, namely, "whether a detainee is held in conditions indistinguishable from criminal incarceration."[11]

Mr. Kumar has been held in ICE detention post-removal order for a total of approximately 60 days. While his current re-detention has exceeded 30 days, this re-detention comes after being held in ICE custody for approximately four months since his arrival in the United States in 2018 and again in 2024. As in *Günaydin*, "he is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning, . . . lack of privacy, and, most fundamentally, the lack of freedom of

---

[9] *Matthews*, 424 U.S. at 335.

[10] *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

[11] *Günaydin v. Trump*, No. 25-cv-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025) (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

movement."[12] The first *Matthews* factor supports Mr. Kumar's claim of a Fifth Amendment violation.

Risk of erroneous deprivation. Under this factor, courts must "assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks."[13] ICE's re-detention of Mr. Kumar is the only reason that he is currently being detained. If Mr. Kumar is released from custody, ICE has alternatives, too. ICE officials can continue to pursue obtaining travel documents from India in an effort to formally remove him from the country—Mr. Kumar does not need to be in custody for this to happen. This *Matthews* factor weighs in favor of Mr. Kumar, too.

Respondents' competing interests. Under this factor, the court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests.[14] Mr. Kumar does not dispute that the government and the public have a strong interest in the enforcement of the immigration laws. But he does not need to be detained while ICE works out whether he can be removed. Mr. Kumar does not present a danger to society as evidenced by his decades on OSUP with no issues.

Equally if not more importantly, surely the government would not dispute it has an implicit duty to act honestly and in a manner that instills faith in the constitutional

---

[12] *Id.*

[13] *Id.* at *8.

[14] *Matthews*, 424 U.S. at 335.

principles on which this country was founded. Here, the government cannot dispute that it promised Mr. Kumar an opportunity for an orderly departure. Likewise, surely the government would not dispute that this promise has been and will continue to be broken if Mr. Kumar is not released and afforded the promised opportunity. Said differently, if one assumes the government has a duty to act with integrity and in a manner that ensures the public's faith is not violated, then the government's interest is only served by Mr. Kumar's immediate release.

Because all three *Matthews* factors favor Mr. Kumar's position, this Court should determine that Mr. Kumar is likely to succeed in demonstrating that his re-detention contravenes his due process rights under the Fifth Amendment.[15]

ii. His Detention Violates Governing Regulations.

The INA provides that after a removal order becomes final, the government "shall remove the alien from the [U.S.] within a period of 90 days."[16] This 90-day period is often referred to as the initial removal period and during it, the government "shall detain the alien."[17] In some circumstances, federal immigration authorities can continue to detain an alien beyond the initial removal period. Specifically, section 1231(a)(6) allows the

[15] *See Martinez v. Secretary of Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025).

[16] 8 U.S.C. § 1231(a)(1)(A).

[17] *Id.* at § 1231(a)(2).

government to detain certain enumerated classes of immigrants—including those ordered removed due to criminal convictions—for more than 90 days.[18]

The Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), rejected the government's position that § 1231(a)(6) permitted indefinite detention following the initial removal period. It held that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" because it would become punitive.[19] "[G]overnment detention violates [the Fifth Amendment's Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections."[20] The Court held that § 1231(a)(6) "implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal."[21] Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by [§ 1231(a)(6)]."[22] "[F]or the sake of uniform administration in the federal courts," the Court found that post-removal detention was "presumptively reasonable" for the first six months.[23] After that "presumptively reasonable" six-month period ends, once the noncitizen "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that

---

[18] *Id.* at § 1231(a)(6).

[19] *Zadvydas*, 533 U.S. at 690.

[20] *Id.*

[21] *Id.* at 679.

[22] *Id.* at 699.

[23] *Id.* at 700-01.

showing. And for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink."[24]

To be clear, it is Mr. Kumar's position that once released pursuant to *Zadvydas'* general holding concerning the initial statutory removal period and its expiration, re-detention should only happen when such detention is necessary to ensure the noncitizen's presence at the moment of removal. Furthermore, as at least one court in the Western District of Texas has found, a noncitizen "detainee subject to re-detention after their release pursuant to an OSUP is not limited to a *Zadvydas* claim."[25] Rather, "[b]y virtue of the liberty interest obtained through their release. . . a § 1231(a) re-detainee could also bring a distinct procedural due process claim."[26] Here, Mr. Kumar has done precisely that: brought a distinct procedural due process claim separate from *Zadyvdas* and/or the likelihood of his removal. Indeed, Mr. Kumar's due process claims are factually similar in relevant respects to those found to require release from ICE custody in both *Nguyen v. Bondi* and *Trejo v. Warden of ERO El Paso E. Montana.*[27]

---

[24] *Id.* at 701.

[25] *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516, at *4 (W.D. Tex. Nov. 7, 2025) (citing *Trejo v. Warden of ERO El Paso E. Montana*, --- F. Supp. 3d ----, 2025 WL 2992187, at *3 (W.D. Tex. Oct. 24, 2025)).

[26] *Id.*

[27] *Id.*

Upon release from custody, a noncitizen subject to a final order of removal must comply with certain conditions of release.[28] The revocation of that release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE to revoke a noncitizen's release for purposes of removal. ICE may revoke a noncitizen's release and return them to ICE custody due to failure to comply with any of the conditions of release,[29] or if, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future."[30]

A determination by ICE to re-detain requires,

> [T]he alien will be notified of the reasons for revocation of his or her release. [ICE] will conduct an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release."[31]

ICE's decision to re-detain is governed by the factors laid out in 8 C.F.R. § 241.13(f), including:

> The history of the [noncitizen's] efforts to comply with the order of removal, the history of [ICE's] efforts to remove [noncitizens] to the country in question or to third countries, including the ongoing nature of [ICE's] efforts to remove [the noncitizen] and the [noncitizen's] assistance with those efforts, the reasonably foreseeable results of those efforts, and the views of the Department

[28] 8 U.S.C. § 1231(a)(3), (6).

[29] 8 C.F.R. § 241.13(i)(1).

[30] *Id.* at § 241.13(i)(2).

[31] *Id.* at § 241.13(i)(3).

> of State regarding the prospects for removal of [noncitizens] to the country or countries in question.[32]

Mr. Kumar's re-detention violates these regulations for a litany of reasons.

First, Mr. Kumar's removal to India is not reasonably foreseeable. Respondents had not requested a travel document from India before they detained Petitioner. "Respondents intent to complete a travel document request for Petitioner does not make it significantly likely he will be removed in the foreseeable future" or constitute a changed circumstance.[33]

Moreover, the government's unsuccessful efforts in the past to remove Petitioner, which deprived him of months of his liberty in immigration detention, make Respondents re-detention of him now, without any likely prospect of removal to India, even more unreasonable.[34] Moreover, over two years have gone by since Petitioner was ordered removed, diminishing the prospect of removal even further.[35]

Second, Mr. Kumar's re-detention without notice, an opportunity to respond, the promise of being given the chance for "an orderly departure," or any semblance of adherence to the process set forth by the regulations, constitutes a violation of his right to

---

[32] *See Phan v. Beccerra*, No. 2:25-CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025); *see also Hoac v. Beccerra, et al.*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025); *Nguyen v. Hyde*, No. 25-CV-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025).

[33] *Phan*, 2025 WL 1993735, *5; *see Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025).

[34] *See Zadvydas*, 533 U.S. at 701 ("as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink").

[35] *See, e.g., Tadros v. Noem*, No. 25-cv-4108-EP, 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) ("Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing. . . his removal.").

procedural due process—as numerous courts within this district have held.[36] Indeed, Petitioner can show that Respondents did not comply with the procedural requirements of 8 C.F.R. § 241.13(i) in revoking his release. ICE is required to follow its own regulations.[37] "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required."[38]

As discussed, no "changed circumstances" make it significantly likely that Petitioner will be removed in the foreseeable future.[39] ICE did not notify Petitioner of the "reasons for revocation of his [] release," conduct "an initial informal interview promptly after his. . . return to [ICE] custody to afford [him] an opportunity to respond to the reasons for revocation stated in the notification," allow Petitioner to "submit any evidence or information that he or she believes shows there is no significant likelihood he or she [will] be removed in the reasonably foreseeable future," or provide a written "revocation custody

---

[36] *See e.g. Alnajjar v. GEO Grp., Inc.*, No. 5:25-CV-0822-JKP, 2025 WL 3853217, at *5 (W.D. Tex. Dec. 23, 2025) ("The Court finds the failure to comply with 8 C.F.R. § 241.13 provides an alternative basis for granting relief in this case.").*Gurung v. Warden, S. Texas Ice Processing Ctr.*, No. SA-25-CA-01614-XR, 2026 WL 93145, at *9 (W.D. Tex. Jan. 6, 2026) ("[T]he government violated Petitioner's due process rights by re-detaining him without complying with its own regulations and the law.");

[37] *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *see Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain internal policies is well-established.").

[38] *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

[39] 8 C.F.R. § 241.13(i)(2).

review."[40] Moreover, ICE did not consider the factors in § 241.13(f) that govern the decision to re-detain.

Accordingly, Petitioner is likely to succeed on his claim that his re-detention was unlawful.

B. Petitioner Is Likely to Succeed on the Merits of His Claim That He Is Entitled to Legally Required Procedures Prior to Any Nonpunitive Third Country Removal.

Mr. Kumar is likely to succeed on the merits of his claim that he may not be removed to a third country absent Respondents following the legally required multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process.

In Petitioner's case, no country other than India meets the criteria for removal under 8 U.S.C. § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third country, the statute requires that the Attorney General—here, an immigration judge—first determine that it is "impracticable, inadvisable, or impossible" to remove Petitioner to India and that the designated third country "will accept [Petitioner] into that country."[41] It is the immigration judge, not DHS, that the statute authorizes to designate a third country for removal.[42] Here, to remove Petitioner to a third country would require Respondents to move to reopen

---

[40] *Id.* at § 241.13(i)(3); *see also Phan*, 2025 WL 1993735, at *3.

[41] 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) "indisputably requires the Attorney General to prove that the proposed country of removal is willing to accept the alien"); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 344 (2005).

[42] 8 U.S.C. § 1231(b)(2)(E)(vii) ("the Attorney General shall remove the alien to. . ."); see also 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge "shall. . .identify for the record a country, or countries in the alternative, to which the alien's removal may be made").

Petitioner's removal proceedings to ask an IJ to designate a third country under the statutory process.[43]

Adherence to that process also ensures Petitioner's statutory right to claim protection in immigration court against removal to a third country where he may be persecuted or tortured, a form of protection known as withholding of removal,[44] as well as his right to claim deferral of removal under the Convention Against Torture ("CAT").[45]

Of course, the statutory framework is entirely meaningless without meaningful notice of a third country removal and an opportunity to respond that comports with Fifth Amendment due process.[46] Notice cannot be "last minute" because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal.[47] Individuals must have time to prepare and present relevant arguments and evidence and to seek reopening of their removal case. "[W]ritten notice of the country being designated" is

---

[43] *See, e.g., Sadychov v. Holder*, 565 F. App'x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, "the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from" the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings "shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal" as to a country not designated in prior proceedings).

[44] 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16.

[45] *See* 8 C.F.R. § 200.1 ("A removal order . . . shall not be executed in circumstances that would violate [the CAT]"); 8 C.F.R. §§ 208.17-18; 1208.17-18.

[46] *See D.V.D.*, 145 S. Ct. at 2163 (Sotomayor, J., dissenting) ("[t]he Fifth Amendment unambiguously guarantees that right" to notice of a third country removal so that a noncitizen "learn[s] about it in time to seek an immigration judge's review").

[47] Andriasian v. INS, 180 F.3d 1033, 1041 (9th Cir. 1999).

required and "the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)" must be specified.[48]

Due process also demands that the government "ask the noncitizen whether he or she fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]."[49]

Respondents' third country removal program skips over these statutory and constitutional procedural protections. According to ICE's July 7 guidance, individuals can be removed to third countries "without the need for further procedures," so long as "the [U.S.] has received diplomatic assurances." Petitioner is likely to succeed on the merits of his claim on this fact alone, because the policy instructs officers to violate the statutory and constitutional requirements. The same is true of the minimal procedures ICE offers when no diplomatic assurances are present. The policy provides no meaningful notice (6-24 hours), instructs officers not to ask about fear, and provides no actual opportunity to see counsel and prepare a fear-based claim (6-24 hours), let alone reopen removal

---

[48] *Aden*, 409 F. Supp. 3d at 1019; *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) ("All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand." (internal citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed).

[49] *Aden*, 409 F. Supp. 3d at 1019.

proceedings. In sum, it directs ICE officers to violate the rights of those whom they seek to subject to the third country removal program.

Several courts have recently granted individual TROs against removal to third countries under similar circumstances.[50]

C. Petitioner Is Likely to Succeed on the Merits of His Claim That the Constitution Prohibits Punitive Third Country Removals.

Mr. Kumar is likely to succeed on the merits of his claim that the Constitution prohibits him from being subjected to Respondents' punitive third country removal program. The prohibition against imposing punitive measures on an individual subject to a final order of removal is as old as immigration law.[51] In *Wong Wing*, the Supreme Court struck down a provision of the Chinese Exclusion Act that imposed one year of imprisonment at hard labor as an immigration sanction before their deportation.[52] The Court drew a distinction between "deportation," which it described as a sanction for failure to comply with the legal requirements of residency in the U.S. that may be imposed by executive authorities, and "punishment," which may not.[53] The Court held that the government could not attach a punishment to deportation—here, imprisonment—without

---

[50] *See generally J.R. v. Bostock*, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to "Cuba, Libya, or any third country in the world absent prior approval from this Court"); *Phan*, 2025 WL 1993735, at *7 (enjoining Respondents from "re-detaining or removing Petitioner to a third country without notice and an opportunity to be heard"); *Hoac*, 2025 WL 1993771, at *7 (same); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

[51] *Wong Win v. United States*, 163 U.S. 228 (1896).

[52] *Id.* at 237.

[53] *Id.* at 236-37.

criminal charges, a judicial trial, and the concomitant protections of the Fifth, Sixth and Eighth Amendments.[54]

The government's third country removal program defies 130 years of constitutional immigration law between civil penalty and infamous punishment.[55] Respondents' third country removal program is designed to punish those it deports by subjecting them to imprisonment upon their arrival in the receiving countries. Respondents' program is not simply about removing individuals to third countries. It is about removing them to be imprisoned upon arrival and paying countries to carry out said imprisonment; selecting countries and overseas prisons (like CECOT and Guantanamo) notorious for cruelty, torture, lawlessness, and other human rights abuses; and broadcasting these third country removals across public media platforms to demonize the deportees and strike extreme fear in the immigrant community that people self-deport. This program is about punitive banishment.

To determine whether a given sanction constitutes punishment, courts look to intent. If the government's intent is to punish, "that is the end of the inquiry."[56] Here, the government's own statements show intent to deport individuals, particularly those with criminal convictions, into situations of forever confinement or substantial harm.

---

[54] *Id.*

[55] See, e.g., Zadvydas, 533 U.S. at 694.

[56] *Am. Civ. Liberties Union of Nevada v. Masto*, 670 F.3d 1046, 1053 (9th Cir. 2012) (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)).

When the government's intent to punish is unclear, courts move to the second step of the inquiry to determine whether the practices are "so punitive either in purpose or effect as to negate the [government's] intention to deem it civil."[57] To determine punitive purpose or effect, courts often turn to the factors laid out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963).[58] Those factors are: "[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as a punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment—retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned."[59]

Under these factors, the government's third country removal program undeniably constitutes punishment, as each factor is met. For example, under the first factor, the government's practices of deporting people only to have them imprisoned or subjected to other forms of physical harm, is an "affirmative disability or restraint." The "paradigmatic affirmative disability" is the "punishment of imprisonment."[60] Moreover, under this factor, "we inquire how the effects of the [sanction] are felt by those subject to it. If the disability

---

[57] *Id.* (quoting *Smith*, 538 U.S. at 92).

[58] *See also Hudson v. United States*, 522 U.S. 93, 99 (1997) ("the factors listed in *Kennedy v. Mendoza-Martinez* [] provide useful guideposts.").

[59] *Mendoza-Martinez*, 372 U.S. at 168-69 (footnotes omitted).

[60] *Smith*, 538 U.S. at 100.

or restraint is minor and indirect, its effects are unlikely to be punitive."[61] There can be no question that being deported to a country to be imprisoned or experience other extreme harm will be felt as a significant and direct disability or restraint.

The second factor is also satisfied. "[D]evices of banishment and exile have throughout history been used as punishment."[62] In 1791, the year the Bill of Rights was ratified, deportation was exclusively used and understood as punishment.[63] Banishment as a form of punishment dates to ancient times and was used on citizens and noncitizens alike.[64]

The fourth factor, whether it promotes the traditional aims of punishment—retribution and deterrence, is also satisfied. The government's own statements make clear that its goals are retribution and deterrence to encourage people to leave the country on their own. As DHS Secretary Kristi Noem stated, "President Trump and I have a clear message to criminal illegal aliens: LEAVE NOW. If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison." The Supreme Court

---

[61] *Id.* at 99-100.

[62] *Mendoza-Martinez*, 372 U.S. at 168 n.23.

[63] *Fong Yue Ting v. U.S.*, 149 U.S. 698, 740-41 (1893) (Brewer, J. dissenting) (citing President James Madison); *see id.* at 740 ("[I]t needs no citation of authorities to support the proposition that deportation is punishment. Every one knows that to be forcibly taken away from home and family and friends and business and property, and sent across the ocean to a distant land, is punishment, and that oftentimes most severe and cruel.").

[64] Peter L. Markowitz, Deportation is Different, 13 U. Pa. J. Const. L. 1299, 1308-09 (2011) (tracing the use of banishment from medieval England through colonial America).

has made clear that such "general deterrence" justifications are impermissible absent criminal process.[65]

The program satisfies the third, fifth, sixth and seventh factors too because Respondents have designed this program specifically for those being deported for criminal convictions, there is no logical nonpunitive rationale for deporting people into dangerous conditions of imprisonment or other harm, and the program is designed to be patently excessive in relation to the purpose of simply removing people from the country.

III. Mr. Kumar Faces Immediate and Irreparable Harm.

A movant "must show a real and immediate threat of future or continuing injury apart from any past injury."[66] Continued unlawful detention is, by its very nature, an irreparable injury. The Supreme Court has affirmed that "[f]reedom from imprisonment . . . lies at the heart of the liberty" protected by the Due Process Clause.[67] Each day Mr. Kumar remains in custody, he is irreparably harmed by the loss of his fundamental liberty, his separation and inability to financially provide for his family.

The harm is not merely abstract. Mr. Kumar has already been held for 30 days in prolonged immigration detention following the issuance of his removal order. Now Mr.

---

[65] *See Kansas v. Crane*, 534 U.S. 407, 412 (2002) (warning that civil detention may not "become a 'mechanism for retribution or general deterrence'—functions properly those of criminal law, not civil commitment" (quoting *Kansas v. Hendricks*, 521 U.S. 346, 373 (1997) (Kennedy, J., concurring) (emphasis added)); *see Hendricks*, 521 U.S. at 373 (Kennedy, J. concurring) ("[W]hile Secretary Kristi Noem (@sec_noem), Instagram (Mar. 27, 2025), https://www.instagram.com/p/DHtVvbgsHhh/ incapacitation is a goal common to both the criminal and civil systems of confinement, retribution and general deterrence are reserved for the criminal system alone.").

[66] *Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014).

[67] *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Kumar is being indefinitely held again. Absent relief, Mr. Kumar will remain detained in an indefinite and prolonged state, denied his liberty, removed from his livelihood, and removed from his community where he belongs.

IV. The Balance of Equities and Public Interest Weighs 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."[68] Here, the balance of hardships weighs overwhelmingly in Mr. Kumar's favor. The injury to Mr. Kumar—unconstitutional detention, family separation, and risk to his well-being—is severe and immediate. Moreover, it is always in the public interest to prevent violations of the U.S. Constitution and ensure the rule of law.[69]

Conversely, the harm to Respondents is nonexistent. Mr. Kumar is not a danger to the community; he has lived peacefully and productively for over the past five years. He is not a flight risk; he has complied with his OSUP for two years and has always reported das require. As the Supreme Court noted in *Zadvydas*, the flight risk justification is "weak or nonexistent where removal seems a remote possibility."[70] Releasing Mr. Kumar to his OSUP, a status ICE itself deemed appropriate two years ago, poses no conceivable harm to the government. Any administrative burden imposed of Respondents by halting re-

---

[68] *Nken v. Holder*, 556 U.S. 418, 435 (2009).

[69] *Id.* at 436 (describing public interest in preventing noncitizens "from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *see also Rosa v. McAleenan*, 583 F. Supp. 3d 840 (S.D. Tex. 2019).

[70] *Zadvydas*, 533 U.S. at 691.

detention is minimal and far outweighed by the substantial harm Mr. Kumar continues to face.[71] Furthermore, the public interest is served by preserving family unit and by preventing the waste of taxpayer resources on unlawful and indefinite detention.

IV. Granting Injunctive Relief Would Maintain the Status Quo.

Mr. Kumar seeks injunctive relief to maintain the status quo by barring ICE from removing him to a third country. Several district courts have recently concluded that releasing a re-detained noncitizen who had been on supervised release preserves rather than alters the status quo.[72] The status quo ante litem is "the last uncontested status which preceding the pending controversy." For Mr. Kumar, this would be back out on OSUP where he has been compliant for decades. There is no reason to think he would not comply now. Injunctive relief is therefore appropriate.

CONCLUSION

For the foregoing reasons, Petitioner Mukesh Kumar respectfully requests that the Court immediately grant this motion and issue a Temporary Restraining Order and/or Preliminary Injunction ordering his immediate release from ICE custody under his previous Order of Supervision, pending a final resolution of his Petition for a Writ of Habeas Corpus

1. GRANT this Emergency Motion;

---

[71] *See Martinez*, 2025 WL 2598379, at *5.

[72] *Nguyen v. Scott*, 2025 WL 2419288, at *10 (W.D. Wa. Aug. 21, 2025) (citing *Phong Phan v. Moises Beccerra*, No. 2:25-cv-01757-DC-JDP, 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RML, 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2024) (finding the "moment prior to the Petitioner's likely illegal detention" was the status quo).

2. ISSUE a Temporary Restraining Order immediately ENJOINING and RESTRAINING Respondents, their officers, agents, servants, employees, and all persons in active concert or participation with them, from continuing to detain Mr. Kumar and from removing to any third country (i.e. any country that is not India) without providing Mr. Kumar, his counsel, and the Court with at least 72-hours' notice of its intent to do so;
3. ORDER Respondents to appear and show cause immediately as to why a Preliminary Injunction should not issue;
4. Set an Emergency Hearing at the Court's Convenience; and
5. GRANT Petitioner such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED,
/s/ Dan Givіden

Dan Givіden
Texas State Bar No. 24075434
18208 Preston Rd., Ste. D9-284
Dallas, TX 75252
972-256-8641
Dan@GividenLaw.com