

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

Norberto Franco Sanchez,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as the Warden of the Denver Contract Detention Facility, Aurora, Colorado,

ROBERT GUADIAN, in his official capacity as the Director of the Denver Field Office for U.S. Immigration & Customs Enforcement,

TODD M. LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security, and

PAMELA BONDI, in her official capacity as Attorney General, U.S. Department of Justice,

Respondents.

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**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

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**INTRODUCTION**

1. Petitioner Norberto Franco Sanchez ("Mr. Franco") petitions this Court for a writ of habeas corpus to remedy his unlawful detention by Juan Baltazar, Robert Guadian, Todd M. Lyons, Kristi Noem, and Pamela Bondi ("Respondents"). Respondents arrested Mr. Franco without a warrant and have been detaining him in immigration custody for over two months without any basis. Respondents detained Mr. Franco despite the fact that he

was released on bond by an immigration judge in 2018; that the United States Citizenship and Immigration Services ("USCIS") granted him deferred action from removal through 2028 based on its determination that his petition for U Nonimmigrant Status ("U Visa") was bona fide; and that his removal proceedings have been administratively closed since 2021. In short, Respondents have no lawful basis to detain Mr. Franco and have not provided any explanation as to why they have re-detained him. Nor could they. There are no changed circumstances to justify Mr. Franco's re-detention, especially given that the immigration judge recently denied the Department of Homeland Security's ("DHS") motion to recalendar his removal proceedings and that DHS itself, through USCIS, determined in 2023 that Mr. Franco was not a danger to national security or public safety when it granted him deferred action in connection with his U Visa application.

2. Mr. Franco has no other remedy at law than to petition this Court and request the Court order Respondents to immediately release him from immigration custody or, in the alternative, to order an individualized bond hearing at which the government must bear the burden of proving by clear and convincing evidence that Mr. Franco's re-detention is justified by changed circumstances. In such a bond hearing, to satisfy due process, an adjudicator must also consider the ability to pay bond and the availability of alternatives to detention, including conditions of supervision, that would mitigate any concerns as to flight risk and danger.

3. Mr. Franco has lived in the United States for over two decades. He lives in Westbury, New York with his family and is a beloved member of his community. He has been out of immigration custody since 2018 on bond ordered by an immigration judge,

and he has a pending application for a U Visa before USCIS based on being a victim of a brutal assault in 2003. Based on this pending application, an immigration judge found good cause to administratively close Mr. Franco's removal proceedings in 2021, and the proceedings remain closed to this day. In 2023, USCIS determined that Mr. Franco's U Visa application was bona fide and that he warranted a favorable act of discretion, and granted him deferred action and employment authorization through 2028. Respondents have no lawful basis under which to detain Mr. Franco, and his detention violates the Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act. This Court should grant Mr. Franco's petition for a writ of habeas corpus and order his immediate release.

### JURISDICTION

4. This action arises under the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, and the Administrative Procedure Act, 5 U.S.C. § 706(2).

5. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the Constitution; and 28 U.S.C. § 1651 (All Writs Act). Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Mr. Franco’s current detention as enforced by Respondents constitutes a “severe restraint[]” on [Mr. Franco’s] individual liberty,” such that he is “in custody in violation of the . . . laws . . . of the United States.” *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

6. While the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by Immigration and Customs Enforcement (ICE). *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

### VENUE

7. Venue is proper in this Court under 28 U.S.C. § 2242 in that Mr. Franco is currently detained within this District at the Denver Contract Detention Facility (DCDF) located at 3130 North Oakland Street, Aurora, CO 80010, and so he is in custody within

the District. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) (“[T]he proper respondent to a habeas petition is ‘the person who has custody over [the petitioner].’” (citing 28 U.S.C. § 2242)). Venue is also proper under 28 U.S.C. § 1391(e) in that this is an action brought against officers and agencies of the United States in their official capacities, and at least one defendant officer resides in this District.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. See *L.G. v. Choate*, 744 F. Supp.3d 1172, 1181 (D. Colo. 2024). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and Board of Immigration Appeals (BIA) lack jurisdiction to entertain constitutional challenges. See *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1192 (D. Colo. 2024).

9. Nor is further action with the agency necessary when pursuing administrative remedies would be futile. See, e.g., *id.*; *L.G.*, 744 F. Supp. 3d at 1182.

10. Mr. Franco has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action.

### **PARTIES**

11. Mr. Franco is a native of Mexico who has been living in the United States since 2002. Mr. Franco has been incorrectly listed as “Roberto Galindo Sanchez” in his removal proceedings. He lived in Westbury, New York prior to being arrested by ICE. Mr. Franco has been detained in ICE custody since September 1, 2025.

12. Respondent Juan Baltazar is employed as the Warden of Denver Contract Detention Facility ("DCDF"), where Mr. Franco is detained. As such, he is a legal custodian of Mr. Franco. Respondent Baltazar's office is located at Denver Contract Detention Facility, 3130 North Oakland Street, Aurora, CO 80010.

13. Respondent Robert Guadian is named in his official capacity as the Office Director of the Denver ICE Field Office. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations for individuals under the jurisdiction of the Denver Field Office. As such, he is a legal custodian of Mr. Franco. Respondent Guadian's office is located at 12445 East Caley Avenue, Centennial, CO 80111.

14. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is a legal custodian of Mr. Franco and is named in his official capacity. In this capacity, he is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), he routinely transacts business in the District of Colorado, he supervises Respondent Guadian, and he is legally responsible for Mr. Franco's detention and removal. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20536.

15. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. She is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the District of Colorado; she supervises Respondent Guadian; and she is legally responsible for the pursuit of Mr. Franco's detention and removal. As such,

she is a legal custodian of Mr. Franco. Additionally, she is responsible for USCIS. Respondent Noem's office is located at 2801 Nebraska Avenue, N.W., Washington, D.C. 20528.

16. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the District of Colorado and is legally responsible for administering Mr. Franco's removal proceedings and the standards used in those proceedings. As such, she is a legal custodian of Mr. Franco. Respondent Bondi's office is located at the Robert F. Kennedy Building, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia, 20530.

### **LEGAL FRAMEWORK**

#### **A. Civil Immigration Detention**

17. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018); *Demore*, 538 U.S. at 523; *Zadvydas*, 533 U.S. at 690. Detention is either discretionary and provides for a bond hearing pursuant to the statute, *see* 8 U.S.C. § 1226(a), or is "mandatory," in that the statute does not provide for a bond hearing, *see id.* §§ 1225(b), 1226(c), 1231(a). Two statutes govern the detention of noncitizens during removal proceedings (*i.e.*, before a final removal order is entered against them). Section 1225 governs "at the Nation's borders and ports of entry," *Jennings*, 583 U.S. at 287, and "authorizes the Government to detain certain [noncitizens] seeking admission into the

country,” *id.* at 289. Section 1225 provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals “seeking admission” referred to under § 1225(b)(2). Once noncitizens are “inside the United States,” *Jennings*, 583 U.S. at 288, 8 U.S.C. § 1226 “authorizes the Government to detain certain [non-citizens] already in the country pending the outcome of removal proceedings,” *id.* at 289. Under § 1226(a), the Attorney General makes an initial custody determination of whether the noncitizen should be detained or released on bond or conditional parole. See 8 U.S.C. § 1226(a). At any time, a noncitizen may request a bond hearing before an immigration judge to contest whether he is a danger or a flight risk and thus properly detained during the pendency of his removal proceedings. See 8 C.F.R. § 1236.1(d)(1).

18. Once a noncitizen is released on bond by an immigration judge, ICE may not re-detain the noncitizen unless there has been a change of circumstances, pursuant to the Board of Immigration Appeals’ decision *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981). See *Savaria for A.H. v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018). “DHS complies with *Sugay* by conducting a ‘changed circumstances’ bond hearing before an immigration judge within seven to fourteen days of an arrest.” *Id.*

19. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Detention pursuant to

immigration proceedings—which are civil, not criminal—is constitutionally permissible only in “certain special and ‘narrow’ nonpunitive circumstances.” *Id.* (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due process requires “adequate procedural protections” to ensure that the government’s asserted justification for physical confinement “outweighs the [detained] individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (internal citation omitted). This is especially apparent in civil detention settings. *See, e.g., Addington v. Texas*, 441 U.S. 418, 425 (1979) (“This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”).

20. In the immigration context, the Supreme Court has recognized only two valid purposes for detaining noncitizens: to mitigate the risk of danger to the community and to prevent flight. *Zadvydas*, 533 U.S. at 690-91; *see also Demore*, 538 U.S. at 515, 527-28.

#### **B. U Visa Petition Adjudication and Bona Fide Determination Process**

21. “Congress has authorized DHS to grant U-visas to noncitizen victims of serious crimes who cooperate with law enforcement[.]” *Barrios Garcia v. U.S. Dep’t of Homeland Sec.*, 25 F.4th 430, 436 (6th Cir. 2022); 8 U.S.C. § 1101(a)(15)(U). Congress established U Visas “to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes” and “facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status.” *Victims of Trafficking and*

Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2)(A)-(B), 114 Stat. 1464, 1533-34. A U Visa recipient receives work authorization incident to that status and is eligible to apply for a lawful permanent residence three years later. See 8 C.F.R. § 274a.12(a)(19)-(2); *id.* § 245.24(b).

22. However, Congress has limited the number of U Visas that may be issued each fiscal year to 10,000. See 8 U.S.C. § 1184(p)(2)(A). Because the number of U Visa applications submitted by eligible noncitizens significantly exceeds the statutory cap of visas that USCIS is allowed to issue each year, USCIS has created a framework to provide U Visa applicants with interim benefits while they wait for their petition to be granted. See *Barrios Garcia*, 25 F.4th at 436-37.

23. As relevant here, Congress has permitted DHS to grant work authorization to any noncitizen “who has a pending, bona fide application for” a U Visa. 8 U.S.C. § 1184(p)(6). In 2021, USCIS implemented the bona fide determination (“BFD”) process. See 3 USCIS Policy Manual, pt. C, ch. 5, Bona Fide Determination Process, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5> (“Policy Manual, BFD Ch.”). Under the BFD process, USCIS grants a BFD EAD and deferred action for the period of the BFD EAD to applicants whose petitions are determined to be bona fide and who merit a favorable exercise of discretion. *Id.*

24. “Deferred action” is described as an “exercise in administrative discretion” where “no action will thereafter be taken to proceed against an apparently deportable [noncitizen], even on grounds normally regarded as aggravated.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (quoting 6 C. Gordon, S. Mailman, & S.

Yale-Loehr, Immigration Law and Procedure § 72.03[2][h] (1998)); *Velasco-Gutierrez v. Crossland*, 732 F.2d 792, 794 (10th Cir. 1984) (“[Deferred action] is, in essence, a ‘reprieve’ from deportation—an administrative decision by the INS to take no action against an otherwise deportable [noncitizen].”). Deferred action also comes with other benefits, including that noncitizens with deferred action are considered “‘lawfully present’ for purposes of, and therefore eligible to receive, Social Security and Medicare benefits.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 10 (2020) (citing 8 C.F.R. § 1.3(a)(4)(vi); 42 C.F.R. § 417.422(h) (2012)).

25. The BFD process consists of three steps. First, USCIS determines whether a noncitizen’s U Visa application is bona fide, *i.e.*, “made in good faith; without fraud or deceit,” based on the initial evidence submitted by the applicant and the successful completion of background checks. Policy Manual, BFD Ch. 5. Second, once USCIS determines that the application is bona fide, USCIS decides whether to exercise its discretion to give the applicant an EAD and deferred action. *Id.* § B. USCIS considers whether the noncitizen “poses a risk to national security or public safety” and “other adverse discretionary factors.” *Id.* Third, if USCIS concludes that an applicant “merits a favorable exercise of discretion,” USCIS advises the applicant that they may receive a BFD EAD and deferred action. *Id.* § C.3.

26. USCIS may revoke a BFD EAD or terminate deferred action “if USCIS determines a national security or public safety concern is present, if USCIS determines the BFD EAD and deferred action is no longer warranted, the Form I-918 Supplement B law enforcement certification is withdrawn, or USCIS determines the prior BFD EAD was

issued in error.” *Id.* § C.6. The Policy Manual incorporates regulations governing the revocation of employment authorization, *see id.* n.32, which provide that if a USCIS district director determines that employment authorization should be revoked, “he or she shall serve written notice of intent to revoke the employment authorization” that “cite[s] the reasons indicating that revocation is warranted,” after which the noncitizen has fifteen days “to submit countervailing evidence.” 8 C.F.R. § 274a.14(b)(2).

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

27. Mr. Franco has been living in the United States since 2002 and in New York for over two decades. Before his September 2025 arrest and detention, he resided in Westbury, NY.

28. On , Mr. Franco was violently attacked by four men in Westbury, NY. The men struck Mr. Franco in the back of the head with a hard object and, after Mr. Franco fell to the ground, repeatedly hit him. Mr. Franco lost consciousness and was transported to Nassau University Medical Center, where doctors had to staple his head together to treat the lacerations in his occipital lobe.

29. After this assault, Mr. Franco was unable to work for almost a year. He had difficulty concentrating on various tasks due to painful headaches and periods of hopelessness and depression. Memories of the assault still cause Mr. Franco pain, agitation, and anxiety.

30. Mr. Franco was detained by ICE on September 12, 2017, and placed in removal proceedings under 8 U.S.C. § 1229a before the Varrick Street Immigration Court in New York. The Notice to Appear (“NTA”) identified Mr. Franco as “[a noncitizen]

present in the United States who has not been admitted or paroled.” The NTA also incorrectly listed his name as “Roberto Galindo Sanchez.” Mr. Franco’s counsel in the immigration proceedings provided Mr. Franco’s correct name on all immigration filings, including relief applications.

31. Mr. Franco was detained under ICE’s discretionary authority to detain noncitizens in removal proceedings, 8 U.S.C. § 1226(a), and he was eligible for a bond hearing under 8 C.F.R. § 236.1. On February 20, 2018, an immigration judge ordered that Mr. Franco be released from detention under a bond of \$5,000 (“2018 Bond Order”). Ex. A. The immigration judge found that Mr. Franco was not a danger to the community and that any flight risk stemming from the fact that, at the time, Mr. Franco did not have any active applications for relief, could be mitigated by the bond. After the payment of bond, Mr. Franco was released on March 2, 2018. DHS appealed the bond decision but later withdrew the appeal.

32. Following Mr. Franco’s release, his removal proceedings were transferred to 26 Federal Plaza Immigration Court in New York, NY.

33. On May 22, 2018, Mr. Franco filed an application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”) with the immigration court.

34. On August 19, 2018, Mr. Franco filed his Form I-918, Petition for U Nonimmigrant Status, commonly referred to as a U Visa, which is available to immigrants who are victims of serious crimes who cooperate with law enforcement. Mr. Franco’s petition was based on the  assault and included supporting evidence proving the

substantial physical and psychological harm he suffered following the assault. He concurrently filed Form I-192 to waive grounds of inadmissibility.

35. Mr. Franco received his first employment authorization document (“EAD”) in November 2018 in connection with this application for asylum and timely submitted applications for his renewal EADs. Since obtaining his EAD, Mr. Franco has worked in factories, landscaping, and restaurants to support himself.

36. In May 2019, Mr. Franco was evaluated by a clinical and forensic psychologist following a referral by his immigration counsel. The psychologist diagnosed Mr. Franco with post-traumatic stress disorder stemming from the  assault and found that he suffered from anxiety and impairment in his cognitive functions. The report further noted that Mr. Franco’s diagnoses are consistent with the profile of those who have suffered a traumatic brain injury. Given that the report revealed indicia of incompetency, Mr. Franco was scheduled for a *Matter of M-A-M*- hearing before the immigration court to determine whether procedural safeguards were necessary to ensure that Mr. Franco could meaningfully participate in his removal proceedings. That hearing was scheduled for May 4, 2020.

37. Due to the COVID-19 pandemic, the *M-A-M*- hearing was adjourned to August 14, 2020. The hearing was later canceled and did not ultimately go forward.

38. On September 17, 2021, Mr. Franco moved to administratively close his proceedings,<sup>1</sup> referencing his pending petition for a U Visa before USCIS. ICE did not

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<sup>1</sup> Administrative closure “is a docket management tool that is used to temporarily pause removal proceedings.” *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017).

oppose the motion, and the immigration court granted the motion and administratively closed the removal proceedings on September 20, 2021, citing Mr. Franco's pending U Visa application. Ex. B. Mr. Franco's removal proceedings have been administratively closed since that date.

39. On May 25, 2023, USCIS issued a BFD of Mr. Franco's pending U Visa petition, concluding that his petition is bona fide and that he warrants a favorable exercise of discretion to receive employment authorization and deferred action from removal. Ex. C. USCIS then issued Mr. Franco a deferred action EAD on February 1, 2024 that is valid until January 31, 2028. Ex. D. Mr. Franco is currently waiting for his U Visa to be adjudicated once there are visas available, as the number of U Visas issued each year is subject to a statutory cap.

40. Since then, Mr. Franco has stayed in contact with his immigration counsel and is anxiously awaiting further news about his U Visa. He has remained employed at a restaurant and is loved by his boss, fellow employees, and customers for being hard-working, friendly, and responsible.

41. On June 17, 2025, ICE moved to recalendar Mr. Franco's removal proceedings. Mr. Franco, through counsel, opposed, and the immigration court denied ICE's motion on September 5, 2025. Ex. E. His removal proceedings thus remain administratively closed.

42. On September 1, 2025, ICE arrested and detained Mr. Franco. Mr. Franco was waiting at a bus stop alone around 9:00 A.M. to go to work when he was approached by ICE officers. Mr. Franco appears Latino, speaks primarily Spanish, and has limited

English proficiency. The officers spoke to him in English and Spanish. The officers showed him a photo and asked him if he knew the particular individual in a photo. Mr. Franco indicated he did not know the person.

43. Mr. Franco provided his name and deferred action EAD to the officers. The officers checked the EAD and told Mr. Franco that the name "Rodrigo Galindo Sanchez" (the incorrect name on the Notice to Appear associated with Mr. Franco's removal proceedings) came up in their system as associated with that EAD. Mr. Franco tried to explain that name was incorrectly associated with his removal proceedings. The officers nonetheless told Mr. Franco that he had missed a court date in June, which Mr. Franco correctly told them was wrong, but to no avail. He was then arrested by the ICE officers.

44. On September 2, 2025, immigration counsel for Mr. Franco contacted ICE Enforcement and Removal Operations in New York City and requested that ICE release him immediately, noting the 2018 Bond Order, the 2021 administrative closure of Mr. Franco's removal proceedings, and the 2023 USCIS bona fide determination and deferred action grant and providing copies of each order and notice.

45. The next day, ICE Deportation Officer Mayra Pardo-Figueroa responded to Mr. Franco's immigration counsel via email. As to the 2018 bond order, ICE responded "BOND CANCELLED 9/1/2025." As to the administrative closure of Mr. Franco's removal proceedings, ICE responded, "MOTION TO RECALENDAR FILED 6/17/2025." And as to the 2023 USCIS bona fide determination, ICE responded, "A NOTICE OF THE CHANGE OF CUSTODY SENT TO THE U.S. Citizenship and Immigration Services Vermont

Service Center U Division.” Ex. F. ICE did not release Mr. Franco. Two days later, the immigration judge denied ICE’s motion to recalendar.

46. From September 1 to September 7, 2025, Mr. Franco was transferred multiple times across the country to different detention centers. Throughout his transfers, he was shackled in chains and was held in unacceptable conditions, including not being provided with a bed to sleep on and limited access to showers and restrooms.

47. After Mr. Franco did not appear on the ICE Detainee Locator for several days, counsel contacted ICE again on September 8, 2025, and ICE responded that Mr. Franco was being held in Aurora, CO at DCDF.

48. Due to his detention, Mr. Franco is no longer able to earn income and has lost his housing because he could not pay rent. Members of Mr. Franco’s community regularly communicate with his immigration counsel to inquire about Mr. Franco’s whereabouts and express concern about his detention. His employer and customers at the restaurant in which Mr. Franco works wrote numerous letters of support speaking to Mr. Franco’s good character and how he is beloved in their community. Ex. G.

49. Mr. Franco has been detained since September 1, 2025. All the while, his removal proceedings have been administratively closed, the 2018 Bond Order has not been properly revoked, his U Visa petition remains pending, and his deferred action is valid through 2028.

50. On September 12, 2025, Mr. Franco’s immigration counsel received a notice for a biometrics (fingerprinting) appointment with USCIS relating to the pending U Visa petition scheduled for later in September in New York City. Mr. Franco’s immigration

counsel contacted DHS in Denver and requested that DHS facilitate Mr. Franco's compliance with the biometrics appointment. DHS did not respond.

51. On October 3, 2025, Mr. Franco informed his attorneys that an officer at DCDF has shown him notices that looked like biometrics notices and took his photograph and fingerprints.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **Violation of Fifth Amendment Right to Substantive Due Process**

52. Mr. Franco realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

53. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; see generally *Reno v. Flores*, 507 U.S. 292 (1993). “[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a *criminal* proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quotation marks and citations omitted).

54. Here, Respondents have no lawful basis, let alone a special justification, to detain Mr. Franco.

55. Mr. Franco cannot be lawfully detained under 8 U.S.C. § 1226(a) because his removal proceedings are administratively closed and therefore are not currently

pending against him. In fact, an immigration judge *denied* ICE's June 17, 2025 motion to recalendar the proceedings on September 5, 2025. Ex. E. At minimum, ICE should have released Mr. Franco following the denial of the motion to recalendar, but it did not do so.

56. Mr. Franco cannot be lawfully detained under 8 U.S.C. § 1226(a) for another independent reason: Mr. Franco was granted deferred action tied to the BFD EAD in 2023 by USCIS. Mr. Franco's deferred action remains valid as USCIS has not undertaken the required procedures to terminate it or Mr. Franco's EAD, including identifying the basis for the termination and issuing Mr. Franco a notice with an opportunity to respond. See Policy Manual, BFD Ch., § C.6; 8 C.F.R. § 274a.14(b)(2). Only USCIS, not ICE, has the authority to terminate Mr. Franco's deferred action and revoke his BFD EAD. Mr. Franco is therefore protected from removal and cannot be placed in removal proceedings or detained.

57. Moreover, Mr. Franco cannot be lawfully detained under 8 U.S.C. § 1225(b)(2)(A). In addition to the fact that no removal proceedings are pending against him, Mr. Franco was arrested within the United States, not at the border, and Mr. Franco is not "seeking admission" as is required by the statute. See *Mendoza Guitierrez v. Baltasar*, No. 25-cv-2720, 2025 WL 2962908, at \*6 (D. Colo. Oct. 17, 2025) (calling the argument that the petitioner is "'seeking admission' because he has applied for a U-Visa" a "nonstarter"); *Loa Caballero v. Baltasar*, No. 25-cv-3120, 2025 WL 2977650, at \*7 (D. Colo. Oct. 22, 2025) ("Petitioner [who has been present in the United States since approximately 2006] was not seeking lawful entry into the United States at the time he

was detained—he was already here.”); *Nava Hernandez v. Baltazar*, No. 25-cv-3094, 2025 WL 2996643, at \*4-\*7 (D. Colo. Oct. 24, 2025).

58. Respondents thus have no valid interest to detain Mr. Franco pending removal proceedings.

59. Mr. Franco’s detention also does not serve the special justifications for immigration detention: mitigating flight risk and mitigating risk to the community. See *Zadvydas*, 533 U.S. at 690-91. As evidenced by the 2018 Bond Order, an immigration judge has already made an individualized determination that Mr. Franco met his burden to prove he was neither a danger to the community nor a sufficiently high flight risk. Ex. A.

60. Mr. Franco has a protected liberty interest to be free from detention under the 2018 Bond Order. Due process forbids Respondents from re-detaining Mr. Franco unless there is a change of circumstances. See *supra* ¶ 18. Respondents have not made such a determination.

61. Mr. Franco’s detention is not narrowly tailored to serve any other compelling state interest.

62. Mr. Franco’s detention therefore deprives him of his right to substantive due process, and he is entitled to immediate release.

**COUNT TWO**

**Violation of Fifth Amendment Right to Procedural Due Process  
(Detention Without Notice and an Opportunity to be Heard)**

63. Mr. Franco realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

64. The procedural component of the Due Process Clause prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

65. On September 1, 2025, Respondents detained Mr. Franco without providing him any notice of the basis of his arrest nor an opportunity to contest his detention. To date, Respondents have not given Mr. Franco a bond hearing or any procedure by which he could meaningfully challenge his detention. Moreover, even if Mr. Franco was eligible for detention under § 1226(a), *but see supra* ¶¶ 55-56, Respondents did not make an individualized determination as to why Mr. Franco should be detained under § 1226(a) as the statute and regulations require.

66. Respondents further failed to comply with constitutionally necessary procedures that protect Mr. Franco's due process right to notice and an opportunity to be heard, including a *Matter of Sugay* hearing. *See supra* ¶ 18. The government must at minimum comply with this requirement at the time it deprives Mr. Franco of a protected interest.

67. Respondents' violation of Mr. Franco's procedural due process rights relates back to the time Respondents unlawfully took Mr. Franco into custody. Mr. Franco may seek redress for this violation and for the ongoing harm it is causing him regardless

of any subsequent events that might provide a lawful basis for his detention. *See, e.g., Martinez v. McAleenan*, 385 F. Supp. 3d 349, 366 (S.D.N.Y. 2019) (citing *Carafas v. LaVallee*, 391 U.S. 234 (1968)); *see also Arias Gudino v. Lowe*, 785 F. Supp. 3d 27, 43-46 (M.D. Pa. 2025).

68. The appropriate remedy is immediate release. *See Martinez*, 385 F. Supp. 3d at 373.

### **COUNT THREE**

#### **Violation of Fifth Amendment Right to Procedural Due Process (Re-detention After 2018 Bond Order and Purported Cancellation of 2018 Bond Order Without Notice and an Opportunity to be Heard)**

69. Mr. Franco realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

70. The procedural component of the Due Process Clause prohibits the government from depriving an individual of a protected interest without notice and an opportunity to be heard. *Mathews*, 424 U.S. at 333.

71. Mr. Franco has a protected liberty interest in being free from detention under the 2018 Bond Order, an interest that he has enjoyed for over seven years up until his detention on September 1, 2025.

72. Respondents did not make an individualized determination—or any determination—as to why any change of circumstances justified Mr. Franco's re-detention despite the 2018 Bond Order. Respondents also did not give Mr. Franco any opportunity to challenge his re-detention pursuant to *Matter of Sugay*. *See supra* ¶ 18.

73. Due process requires Respondents to provide Mr. Franco with a pre-deprivation opportunity to contest his re-detention. *See Guillermo M. R. v. Kaiser*, No. 25-cv-05436, 2025 WL 1983677, at \*7 (N.D. Cal. July 17, 2025) (“This Court has been unable to identify any other context in which government agents could permissibly take someone who had been released by a judge, lock up that person, and have no hearing either beforehand or promptly thereafter.”); *id.* at \*7 n.4 (collecting cases identifying due process violations with this practice). Respondents have not provided Mr. Franco with any opportunity to contest his detention.

74. Respondents’ violation of Mr. Franco’s procedural due process rights relates back to the time Respondents unlawfully took Mr. Franco into custody. Mr. Franco may seek redress for this violation and for the ongoing harm it is causing him regardless of any subsequent events that might provide a lawful basis for his detention. *See, e.g., Martinez*, 385 F. Supp. 3d at 366 (citing *Carafas*, 391 U.S. 234); *see also Arias Gudino*, 785 F. Supp. 3d at 43-46.

75. The appropriate remedy is immediate release. *See Martinez*, 385 F. Supp. 3d at 373.

#### **COUNT FOUR**

#### **Violation of Administrative Procedure Act (5 U.S.C. § 706(2)) (Detention is Arbitrary and Capricious; Contrary to Constitutional Right; In Excess of Statutory Authority; and Without Observance of Procedure Required by Law)**

76. Mr. Franco realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

77. The Administrative Procedure Act (APA) enables courts to “hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” 5 U.S.C. § 706(2).

78. As explained *supra* ¶¶ 54-59, Respondents are detaining Mr. Franco without any lawful basis to do so.

79. Moreover, ICE putatively canceled the 2018 Bond Order without identifying any change of circumstances to justify Mr. Franco’s detention as BIA precedent requires. See *Matter of Sugay*, 171 I&N Dec. 637 (BIA 1981). The extent of Respondents’ purported cancellation of the 2018 Bond Order is an email to Mr. Franco’s immigration counsel stating, in full, “BOND CANCELLED 9/1/2025.” This unreasoned and unsupported explanation is unlawful under the APA and violates § 1226(a)’s requirement that ICE make individualized custody determinations. Respondents’ action is therefore arbitrary and capricious, in violation of the constitutional right to due process, in excess of statutory jurisdiction, without observance of procedure required by law, and violates the APA.

#### **COUNT FIVE**

#### **Violation of Fourth Amendment (Arrest and Detention Without a Warrant or Probable Cause)**

80. Mr. Franco realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as if set forth herein.

81. “A warrantless arrest violates the Fourth Amendment unless it was supported by probable cause.” *Cronick v. Pryor*, 99 F.4th 1262, 1268 (10th Cir. 2024) (quoting *United States v. Johnson*, 43 F.4th 1100, 1107 (10th Cir. 2022)). Notably, ICE officers are only permitted to arrest a noncitizen without a warrant if the officer “has reason to believe that the [noncitizen] so arrested is in the United States in violation of any [law regulating the admission, exclusion, expulsion, or removal of [noncitizens] and is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2); see also 8 C.F.R. § 287.8(c)(2)(ii) (“A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.”); *id.* § 287.8(c)(2)(iii)(B) (“At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so . . . [s]tate that the person is under arrest and the reason for the arrest.”).

82. ICE officers arrested Mr. Franco without a warrant or probable cause on September 1, 2025. Mr. Franco was alone at a bus stop waiting to go to work. ICE officers had no basis to arrest Mr. Franco other than the fact that he had an EAD (which provides no basis to conclude that a noncitizen is removable or that he was likely to escape before a warrant could be issued), speaks Spanish, and appears Latino. These bases are insufficient to support probable cause that Mr. Franco is removable and a flight risk. The ICE officers also erroneously told Mr. Franco that he had a court date in June, which was not possible because his removal proceedings were administratively closed on September 20, 2021.

83. Moreover, at the time of the arrest, Respondents had no basis—let alone probable cause—to find that circumstances had changed such that the 2018 Bond Order should be canceled and that Mr. Franco should therefore be re-detained.

84. In short, the “government lacked reliable information of changed or exigent circumstances that would justify [Mr. Franco’s] arrest after federal immigration authorities had already decided [he] could pursue his claims for immigration relief at liberty.” *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at \*17 (S.D.N.Y. Sept. 12, 2025). Therefore, Respondents’ actions violated the Fourth Amendment.

#### **PRAYER FOR RELIEF**

WHEREFORE, Mr. Franco prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from removing Mr. Franco from the United States or transferring Mr. Franco outside of the jurisdiction of the District of Colorado pending the resolution of this case;
3. Order Respondents to show cause why the writ should not be granted within three days and set a hearing on this Petition within five days of the return as required by 28 U.S.C. § 2243. *See also* Rules Governing Section 2254 Cases In The United States District Courts 1(b) (“The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a).”);
4. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Franco and facilitate his return to New York, or, in the alternative, ordering a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing by clear and convincing evidence that Mr. Franco’s re-detention is justified by changed circumstances, with ability to pay and alternatives to detention considered;
5. Enjoin Respondents from further detaining Mr. Franco absent a constitutionally adequate pre-deprivation hearing in which Respondents bear the burden of establishing before an impartial adjudicator that Mr. Franco’s re-detention is justified by changed circumstances by clear and convincing evidence, with ability to pay and alternatives to detention considered;

6. Declare that Mr. Franco's detention violates Mr. Franco's substantive due process and procedural due process rights under the Due Process Clause of the Fifth Amendment;
7. Declare that Respondents' purported cancellation of the 2018 Bond Order without a pre-deprivation hearing violates the Due Process Clause of the Fifth Amendment;
8. Declare that Mr. Franco's arrest and detention violate the Fourth Amendment;
9. Declare that Mr. Franco's detention violates the Administrative Procedure Act;
10. Award Mr. Franco attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
11. Grant any other and further relief that this Court deems just and proper.

Dated: November 12, 2025  
Denver, CO

Respectfully Submitted,

/s/ Laura Sturges

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Attorneys for Petitioner

**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: November 12, 2025  
Brooklyn, New York

Respectfully Submitted,

/s/ Anna K. Jessurun

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