

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-3638

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 Direct, 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.

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

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PRELIMINARY STATEMENT

Petitioner Norberto Franco Sanchez (“Mr. Franco”) respectfully moves this Court for a temporary restraining order (TRO) or a preliminary injunction ordering his immediate release from unlawful immigration detention. Respondents have detained Mr. Franco for over two months despite the facts that (1) he was released on bond by an immigration judge in 2018; (2) his removal proceedings have been administratively closed since 2021; and (3) he has deferred action status through 2028 based on U.S. Citizenship and Immigration Services’ (USCIS) determination that his petition for U Nonimmigrant Status (“U Visa”) is bona fide. Mr. Franco is likely to prevail on his claims that his arrest and detention violate the Constitution, the Immigration and Nationality Act, and the Administrative Procedure Act (APA). He will suffer irreparable harm if he remains subject to arbitrary and unlawful detention, and both the balance of the equities and the public interest weigh in his favor. This Court should issue an order pursuant to Federal Rule of Civil Procedure 65 directing Respondents to immediately release Mr. Franco.

FACTUAL BACKGROUND¹

Mr. Franco has been living in the United States since 2002 and in New York for over two decades. Ex. 1, Second Affidavit of Attorney Michelle Lee Doherty ¶ 4 (“2d Doherty Aff.”). On September 12, 2017, Mr. Franco was detained by the Department of Homeland Security (DHS) and placed in removal proceedings. *Id.* ¶ 9. The Notice to Appear (NTA) identified Mr. Franco as “an alien present in the United States who has not

¹ Mr. Franco incorporates the factual background included in his Petition for a Writ of Habeas Corpus, ECF No. 1, and includes a summary of the most relevant facts below.

been admitted or paroled” and incorrectly listed his name as “Roberto Galindo Sanchez.” *Id.* Mr. Franco’s counsel in the immigration proceedings provided Mr. Franco’s correct name on all immigration filings, including relief applications. *Id.* ¶ 10. On February 20, 2018, an immigration judge ordered Mr. Franco released from detention under a bond of \$5,000 (“2018 Bond Order”). ECF No. 1-1. The immigration judge found that Mr. Franco was not a danger to the community and that any flight risk could be mitigated by setting bond. *Id.* DHS ultimately withdrew its appeal of the order. 2d Doherty Aff. ¶ 11.

On August 19, 2018, Mr. Franco filed his form I-918, Petition for a U Visa, which is available to immigrants who are victims of certain crimes. *Id.* ¶ 13. Mr. Franco’s petition was based on being the victim of a brutal assault in  in New York. Due to the petition, the immigration court administratively closed Mr. Franco’s removal proceedings on September 21, 2021.² ECF No. 1-2. The court denied DHS’s recent motion to recalendar the proceedings on September 5, 2025. ECF No. 1-5.

On May 25, 2023, USCIS issued a bona fide determination (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 an employment authorization document (EAD) and deferred action from removal. ECF No. 1-3. USCIS then issued Mr. Franco a deferred action EAD on February 1, 2024 that is valid until January 31, 2028. ECF No. 1-4. Since then, he has remained employed at a restaurant and is loved by his boss, fellow employees, and customers for being hard-working, friendly, and responsible. 2d

² 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).

Doherty Aff. ¶ 19. Prior to his arrest, Mr. Franco had been working and meeting all immigration requirements while waiting for his U Visa to be adjudicated once visas are available, as the number of U Visas issued each year is subject to a statutory cap.

On September 1, 2025, DHS arrested and detained Mr. Franco. Mr. Franco, who appears Latino, speaks Spanish, and has limited English proficiency, was waiting at a bus stop around 9:00 a.m. to go to work when he was approached by Immigration and Customs Enforcement (ICE) officers. *Id.* ¶ 21. The unidentified officers asked him if he knew a particular individual in a photo, and Mr. Franco indicated he did not. *Id.* 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” came up in their system. *Id.* ¶ 22. Mr. Franco tried to explain that this name was incorrectly associated with his immigration proceedings, but the officers did not change course. *Id.* The officers told Mr. Franco that he had a court date in June, which Mr. Franco correctly explained was wrong, but to no avail. He was then arrested by the ICE officers. *Id.*

On September 2, 2025, counsel for Mr. Franco contacted DHS and insisted that they release him immediately, noting the 2018 Bond Order, the 2021 administrative closure, and the 2023 USCIS BFD and deferred action grant and providing copies of each order and notice. *Id.* ¶ 23. The next day, ICE Deportation Officer Mayra Pardo-Figueroa responded 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 BFD notice, ICE responded, “A NOTICE OF THE CHANGE OF CUSTODY SENT TO

THE U.S. Citizenship and Immigration Services Vermont Service Center U Division.” See ECF No. 1-6. DHS did not release Mr. Franco. 2d Doherty Aff. ¶ 23. Two days later, the immigration judge denied ICE’s motion to recalendar. After days of not appearing on the ICE Detainee Locator, DHS responded to Mr. Franco’s counsel that he was being held in Aurora, CO at the Denver Contract Detention Facility (DCDF). *Id.* ¶¶ 25-27.

Due to his detention, Mr. Franco cannot work, no longer has a source of income, and lost his housing. *Id.* ¶ 38. His employer and customers at the restaurant in which Mr. Franco works are deeply concerned about him and wrote numerous letters of support on Mr. Franco’s good character and how he is beloved in their community. ECF No. 1-7.

ARGUMENT

Mr. Franco is entitled to a TRO and/or preliminary injunction order directing his immediate release from Respondents’ arbitrary and unlawful detention. To warrant preliminary relief, a movant must establish four factors: “(1) a substantial likelihood of success on the merits of their suit; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3) this threatened harm outweighs the harm a preliminary injunction may pose to the opposing party; and (4) if issued, the injunction will not adversely affect the public interest.” *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024); *D.B.U. v. Trump*, 779 F. Supp. 3d 1264, 1273 (D. Colo. 2025) (“The legal standard governing TROs is the same standard governing preliminary injunctions.”). “[T]he third and fourth factors ‘merge’ when, like here, the government is the opposing party.” *Rocky Mountain*, 121 F.4th at 112 (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). All four factors weigh in favor of issuing a TRO or preliminary injunction.

I. Mr. Franco is likely to succeed on the merits of his habeas petition.

A. Mr. Franco's Detention Violates His Substantive Due Process Rights

Mr. Franco is likely to succeed on the merits of his claim that his detention violates the substantive component of the Due Process Clause. Civil detention, including immigration detention, must “bear[] a reasonable relation to the purpose[s] for which the individual [was] committed.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). 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)). Civil immigration detention is only justified to prevent flight risk (*i.e.*, ensure that the noncitizen appears at future immigration proceedings) or to protect the community. *See id.* Mr. Franco’s detention is not related to either interest.³

First, Mr. Franco’s detention cannot be related to securing his appearance at his removal proceedings because there are no active removal proceedings against him. The removal proceedings against Mr. Franco have been administratively closed since September 21, 2021, *see* ECF No. 1-2, and DHS’s recent efforts to recalendar the proceedings were denied on September 5, 2025, ECF No. 1-5. As such, there are no

³ To the extent that Respondents intend to rely on 8 U.S.C. § 1225(b)(2)(A) to justify Mr. Franco’s detention without bond, that provision does not apply to him because he is not “seeking admission” as required under the statute, as judges in this District and around the country have concluded. *See, e.g., Mendoza Guitierrez v. Baltazar*, No. 25-cv-2720, 2025 WL 2962908, at *4-9 (D. Colo. Oct. 17, 2025); *Loa Caballero v. Baltazar*, No. 25-cv-3120, 2025 WL 2977650, at *4-8 (D. Colo. Oct. 22, 2025); *Nava Hernandez v. Baltazar*, No. 25-cv-3094, 2025 WL 2996643, at *4-7 (D. Colo. Oct. 24, 2025).

future court dates scheduled for which Mr. Franco's appearance needs to be secured.

Moreover, Mr. Franco currently holds deferred action status tied to the BFD for his U Visa petition. "'Deferred action' refers to an 'exercise in administrative discretion' under which 'no action will thereafter be taken to proceed' with the applicant's removal from the United States." *De Sousa v. Dir. of USCIS*, 755 F. Supp. 3d 1266, 1270 (N.D. Cal. 2024) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999)); *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 alien."). As other district courts have recently held in similar cases, given Mr. Franco's deferred action status, DHS has no lawful basis to detain him. See, e.g., *Sepulveda Ayala v. Bondi*, No. 25-cv-1063, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025) ("[The petitioner's] deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain [the petitioner.]"); Order Re: *Ex Parte* Application for Temporary Restraining Order at 6, *Leon v. Noem*, No. 25-cv-2582, ECF No. 9 (C.D. Cal. Oct. 10, 2025) ("*Leon* Order")⁴ ("Because the government lacks any basis to continue detaining petitioner, any continued detention violates petitioner's due process rights under the Fifth Amendment.").

Second, even if there were active removal proceedings against Mr. Franco, Respondents have not and cannot show that Mr. Franco's detention is otherwise necessary to prevent flight risk or danger to the community. In 2018, an immigration

⁴ This Order is not available on Westlaw or Lexis but can be accessed through PACER. Since the court in *Leon* directed that the order not be published, Petitioner has attached a redacted copy of the order hereto as Exhibit 2.

judge held that Mr. Franco was neither a danger to his community nor a flight risk that could not be mitigated by bond. ECF No. 1-1. In 2023, DHS itself confirmed these findings when USCIS determined that Mr. Franco did not pose a risk to national security or public safety and granted him BFD EAD and deferred action. ECF No. 1-3.

Since 2018, Mr. Franco has had a protectable liberty interest in being out of immigration custody on bond. When Mr. Franco was arrested and detained, there were no change of circumstances that made Mr. Franco a danger or a flight risk to justify his re-detention and deprivation of that liberty interest, and to date, there continues to be nothing to justify his re-detention. Therefore, Mr. Franco's detention violates the substantive due process component of the Fifth Amendment, and he is entitled to immediate release. *See Sepulveda Ayala*, 2025 WL 2209708, at *5 (ordering release); *Leon Order* at 8 (same); *see also dos Santos v. Noem*, No. 25-cv-12052, 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025) (releasing the petitioner under a prior bond order because the government did not meet its burden to show changed circumstances).

B. Mr. Franco's Detention Violates His Procedural Due Process Rights

Mr. Franco is also likely to succeed on his claim that his re-detention despite the 2018 Bond Order and his deferred action status violates his procedural due process rights. Due process requires notice and an opportunity to be heard before an individual is deprived of a protected interest. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To assess these constitutional claims, courts consider the three *Mathews* factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any,

of additional or substitute procedural 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.” *Id.* at 335. Each factor weighs heavily in Mr. Franco’s favor.

On the first factor, Mr. Franco has a strong private interest in “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint.” *Zadvydas*, 533 U.S. at 678. Indeed, this interest “lies at the heart of the liberty that [the Due Process] Clause protects.” *Id.* Moreover, Mr. Franco has an additional liberty interest connected to his deferred action status and justified reliance on the fact that he will not be subject to removal proceedings—including any related detention—while his deferred action remains valid. *See, e.g., Gamez Lira v. Noem*, No. 25-cv-855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (a petitioner with DACA has “a protectable liberty or property interest . . . that he was unlikely to be subject to enforcement proceedings”); *Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *10 (W.D. Tex. Oct. 2, 2025).

Mr. Franco also has a separate liberty interest in being out of immigration custody under the 2018 Bond Order. “[I]ndividuals conditionally released from detention have a protected interest in their ‘continued liberty.’” *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025). This is because “the government’s decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions [of release].’” *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1030 (N.D. Cal. 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “Thus, even when ICE has the initial

discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody." *Id.*; see *Guillermo M. R.*, 791 F. Supp. 3d at 1030; *Rojas Acevedo v. Almodovar*, No. 25-cv-7189, 2025 WL 3034183, at *7 (S.D.N.Y. Oct. 30, 2025). Since being released on bond, Mr. Franco has applied for immigration relief, obtained work authorization and deferred action status, gained stable employment and housing, and become a valued member of his community, which all "underscore the high stakes of [his] liberty." *Pinchi*, 792 F.Supp.3d at 1033; *Guillermo M. R.*, 791 F. Supp. 3d at 1030. This factor thus weighs heavily in Mr. Franco's favor.

On the second factor, "there is a substantial risk that [Mr. Franco was] erroneously deprived of his liberty interest [without] a pre-detention hearing before a neutral arbiter." *Guillermo M. R.*, 791 F. Supp. 3d at 1033. As in *Guillermo M. R.*, "an [immigration judge], who is a neutral third party, reviewed the evidence and made a factual determination after a hearing that [Mr. Franco] was not a flight risk, did not pose a danger to society, and was entitled to be released on bond." *Id.* Respondents can only re-detain Mr. Franco after the bond order if there has been a change of circumstances to justify the re-detention under the Board of Immigration Appeals precedent *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). Here, Respondents have not pointed to any changed circumstances or provided Mr. Franco with *any* procedure to challenge the erroneous deprivation of his liberty. Significantly, the risk of *erroneous* deprivation is exceptionally high given the fact that DHS, through USCIS, determined in 2023 that Mr. Franco was not a danger to public

safety when it granted him a BFD EAD and deferred action. ECF No. 1-3.

“The Supreme Court has consistently held that ‘the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.’” *Guillermo M.R.*, 791 F. Supp. 3d at 1035 (quoting *Zinerman v. Burch*, 494 U.S. 113, 127 (1990)). Absent any urgency, “a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an [immigration judge].” *Id.* at 1036; *id.* at 1026 (“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.”).

At the very minimum, noncitizens out on bond are entitled to “at least a notice” of the cancellation of bond, “including an individualized reason for its termination.” *Rojas Acevedo*, 2025 WL 3034183, at *8. Here, there is no evidence that Respondents made any sort of individualized determination to justify Mr. Franco’s re-detention, especially in light of Mr. Franco’s deferred action status. See *F.R.P. v. Wamsley*, No. 25-cv-1917, 2025 WL 3037858, at *4-5 (D. Or. Oct. 30, 2025) (noting a “serious risk” where “there are serious questions as to whether petitioner is removable at all” due to the petitioner’s deferred action). DHS’s September 3 email stating “BOND CANCELLED 9/1/2025,” see ECF No. 1-6, is woefully insufficient to give Mr. Franco notice of the basis of the bond cancellation. Because Mr. Franco has received neither a *pre*-deprivation hearing nor notice with an individualized reason, this factor weighs heavily in his favor.

Finally, the third factor—the government’s interest—also weighs heavily in favor of Mr. Franco. The government has no interest in detaining a noncitizen who has previously

been granted bond without changed circumstances to justify his re-detention. See *Guillermo M. R.*, 791 F. Supp. 3d at 1036-37. This is especially true here, where all circumstances have only been in favor of Mr. Franco. Since 2018, USCIS has issued a bona fide determination on Mr. Franco's U Visa application and granted him deferred action, Mr. Franco's removal proceedings have been administratively closed and DHS's motion to re-open them has been denied, and Mr. Franco has created a successful and rewarding life for himself in New York. There is absolutely no basis to conclude that, since 2018, Mr. Franco has become a danger to his community or a flight risk that cannot be mitigated by bond. See *F.R.P.*, 2025 WL 3037858, at *5 ("[T]he government's interest in holding petitioner without a hearing is low since petitioner is a deferred action recipient and there is no evidence in the record suggesting a change to petitioner's qualifications.").

Mr. Franco's re-detention without a pre-deprivation hearing or adequate notice or an opportunity to be heard despite the 2018 Bond Order and deferred action violates the Due Process Clause. See *Guillermo M. R.*, 791 F. Supp. 3d at 1037; *Rojas Acevedo*, 2025 WL 3034183, at *8; *Pinchi*, 792 F. Supp. 3d at 1033; *Gamez Lira*, 2025 WL 2581710, at *3; *Santiago*, 2025 WL 2792588, at *13; *F.R.P.*, 2025 WL 3037858, at *3.

C. Respondents' Re-Detention of Mr. Franco Violates the APA

To the extent that DHS's September 3 email constitutes a cancellation of the 2018 Bond Order or otherwise attempts to justify Mr. Franco's arrest and detention, Respondents have violated the APA, 5 U.S.C. § 706(2). Under the APA, an "agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicles*

Mfrs. Ass'n of United States Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (quotation marks and citation omitted); see also *Ctr. for Bio. Diversity v. U.S. Env't Protection Agency*, 149 F.4th 1142, 1148 (10th Cir. 2025) (“the decision is unlawful if the [agency] acted arbitrarily and capriciously by failing to consider an important aspect of the problem or to provide a rational explanation for the decision”). Here, Respondents’ justification for Mr. Franco’s arrest and detention does not satisfy the APA’s requirements because it is devoid of any reasoning or explanation. Respondents’ actions also violate the *Accardi* doctrine, under which an agency’s failure to provide procedural safeguards as required by its own policies—here, a *Matter of Sugay* hearing—undermines the legality of the agency action. See *Damus v. Nielsen*, 313 F. Supp. 3d 317, 335-36 (D.D.C. 2018) (“agencies cannot relax or modify regulations that provide the only safeguard individuals have against unlimited agency discretion”) (quoting *Lopez v. FAA*, 318 F.3d 242, 247 D.C. Cir. 2003); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); 5 U.S.C. § 702(2)(A). Thus, Mr. Franco’s detention violates the APA.

D. Mr. Franco’s Warrantless Arrest Violates the Fourth Amendment

Lastly, Mr. Franco is likely to succeed on his claim that his arrest—executed without a warrant and without probable cause—violated the Fourth Amendment. “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). Moreover, under the governing statute and regulations, ICE officers are only permitted to arrest a noncitizen without a warrant if the officer “has reason to believe that the alien so arrested is in the United States in violation of any [law regulating the admission, exclusion, expulsion or

removal of aliens] *and* is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2) (emphasis added); *see also* 8 C.F.R. § 287.8(c)(2)(ii).

Here, the ICE officers had no basis to believe that Mr. Franco was removable or likely to escape before a warrant could be executed. Mr. Franco was alone at a bus stop around 9:00 a.m. waiting to go to work when he was approached by ICE officers and gave them his EAD per their request. 2d Doherty Aff. ¶¶ 21-22. Mr. Franco’s EAD (valid through 2028) includes the code “C14” on it, which means that the EAD was issued in connection with a grant of deferred action. ECF No. 1-4. This should have alerted the officers that Mr. Franco was not eligible for removal or, at the very least, that he had been determined by USCIS to merit deferred action related to ongoing immigration proceedings. To the extent that the officers relied on Mr. Franco’s race and Spanish language to arrest him, such factors alone are plainly insufficient to support the probable cause necessary for a warrantless arrest. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 885-87 (1973). Respondents thus violated Mr. Franco’s Fourth Amendment rights. *See Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at *17 (S.D.N.Y. Sept. 12, 2025); *Gamez Lira*, 2025 WL 2581710, at *4.

II. Mr. Franco will suffer irreparable harm absent preliminary relief.

Absent a preliminary injunction directing his immediate release, Mr. Franco will continue to suffer irreparable harm from Respondents’ flagrant violation of his constitutional rights. Respondents’ deprivation of Mr. Franco’s liberty constitutes irreparable harm. *Rocky Mountain*, 121 F.4th at 128 (“Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable

injury.” (quoting *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019))). No right is more fundamental than the right to freedom from unlawful government detention. See *Zadvydas*, 533 U.S. at 690. Unlawful immigration detention is itself irreparable harm. See *Mendoza Gutierrez*, 2025 WL 2962908, at *9; *Arostegui-Maldonado v. Baltazar*, No. 25-cv-2205, 2025 WL 2280357, at *9 (D. Colo. Aug. 8, 2025). Mr. Franco’s continued detention has resulted in his inability to earn an income and led to the loss of his home. 2d Doherty Aff. ¶ 38. This factor thus weighs heavily in his favor.

III. The remaining factors weigh in favor of a TRO and/or preliminary injunction.

The remaining factors—the possibility of harm to other interested parties and the public interest—also weigh in favor of granting a TRO and preliminary injunction directing Mr. Franco’s immediate release. Respondents will not be harmed by releasing Mr. Franco. An immigration judge already determined that Mr. Franco is neither a danger nor a flight risk that cannot be mitigated by bond and released him accordingly in 2018, and DHS itself granted Mr. Franco deferred action through 2028. More critically, Respondents do not “enjoy an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens’ Fifth Amendment rights.” *Mendoza Gutierrez*, 2025 WL 2962908, at *10. “To the contrary, where a constitutional right hangs in the balance, that right usually trumps any harm to the defendant.” *Arostegui-Maldonado*, 2025 WL 2280357, at *10 (quotation marks omitted). Mr. Franco’s release from unlawful detention therefore does not harm Respondents and favors the public interest.

IV. The proper remedy is immediate release.

The proper remedy for Respondents’ unlawful detention of Mr. Franco is to order

his immediate release. “It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Mr. Franco’s claims strike at the heart of the freedom that habeas corpus has historically been used to vindicate. Importantly here, Respondents’ unlawful actions relate back to the time that he was taken into custody and cannot be cured by any *post hoc* rationalization Respondents may provide. Due process requires, at a minimum, notice and an opportunity to be heard *at the time* of detention, not weeks or months later. *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 365 (S.D.N.Y. 2019). Because Respondents failed to provide Mr. Franco with due process when he was detained, they “cannot enjoy the poisonous fruits of their unlawful acts” and must release Mr. Franco. *Id.* at 369; *Huamani v. Francis*, No. 25-cv-8110, 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025) (ordering release when the petitioner’s detention was “illegal from the start because of the lack of any due process”). *Post hoc* rationalizations also will not cure the APA violations. *See Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 599 U.S. 1, 24 (2020). Thus, the proper remedy is release.

CONCLUSION

For the foregoing reasons, Mr. Franco merits a temporary restraining order and/or preliminary injunction. Mr. Franco therefore respectfully requests that the Court issue an order pursuant to Federal Rule of Civil Procedure 65 directing Respondents to immediately release Mr. Franco and facilitate his return to New York.

Dated: November 19, 2025
Denver, CO

Respectfully submitted,

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CERTIFICATE OF CONFERRAL

I confirm that I have conferred with the opposing counsel in good faith regarding this motion, as required under local rule D.C.COLO.LCivR 7.1(a).

November 19, 2025

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CERTIFICATE OF SERVICE

Pursuant to D.C.COLO.LCivR 65.1(a), I hereby certify that on November 19, 2025 I sent copies of the Petitioner's Motion For A Temporary Restraining Order And/Or Preliminary Injunction, and its accompanying exhibits by **CERTIFIED MAIL** to Respondents and the United States Attorney's Office for the District of Colorado:

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