

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-03638-RMR

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 RESPONSE TO ORDER TO SHOW CAUSE

Petitioner Norberto Franco Sanchez ("Mr. Franco") respectfully submits this response to the Court's December 1, 2025 Order to show cause why this case should not be closed and his claims dismissed. ECF No. 17. Although Mr. Franco was released from the Denver Contract Detention Facility in Aurora, Colorado ("Aurora Detention Facility") on November 25, 2025, Respondents continue impose indefinite restrictions on Mr. Franco's liberty that render him effectively in their custody in violation of his Fifth Amendment procedural and substantive due process rights, the APA, and the Fourth

Amendment. As such, Mr. Franco's claims are not moot, and Mr. Franco is still pursuing habeas relief to enjoin Respondents from imposing these or any other restrictions on his liberty in violations of his constitutional rights, and to enjoin Respondents from re-detaining him absent process to which he is constitutionally due through his initial Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") and Motion for Temporary Restraining Order and Preliminary Injunction ("TRO"). ECF Nos. 1, 12.

FACTUAL BACKGROUND

In the face of Mr. Franco's claims in his Petition and TRO that Respondents were unconstitutionally detaining him without any basis to do so, Respondents released Mr. Franco from the Aurora Detention Facility on November 25, 2025, ending his over two months of detention there. However, despite never articulating a proper basis to detain Mr. Franco in the first place, Respondents have since continued to impose restrictions on Mr. Franco's liberty.

Immediately following his release, Respondents placed a GPS ankle monitor on Mr. Franco's ankle and provided him an Order of Release on Recognizance with no explanation as to why this was necessary. Ex. A ¶ 4, Affidavit of Attorney Catherine Kapples. The Order of Release on Recognizance prohibits Mr. Franco from changing his residence without first obtaining written permission from ICE. *Id.* ¶ 5. Further, the order states that Mr. Franco's release is contingent on his enrollment and participation in an "Alternatives to Detention program," subjecting him to electronic monitoring and regular check-ins. *Id.*

Just days after Mr. Franco was able to safely return home to New York, Mr. Franco was required to attend an appointment with ICE at 26 Federal Plaza in Manhattan on December 1, 2025 and a second appointment with the local Intensive Supervision Appearance Program (“ISAP”) office in Long Island on December 2, 2025. *Id.* ¶¶ 7-10. ISAP is ICE’s monitoring program. Although ICE agreed to remove his ankle monitor on December 2, *id.* ¶ 13, ICE imposed other conditions on Mr. Franco for an indefinite period, including: (1) requiring Mr. Franco to attend monthly appointments at the ISAP office in Long Island in person; (2) requiring Mr. Franco to allow ISAP officials into his home to perform a home visit, which may include photos being taken of his home, *id.* ¶ 11; (3) requiring Mr. Franco to check-in with ISAP on his phone via the SmartLINK app every Tuesday morning between 8 A.M. and 10 A.M to confirm his location, *id.* ¶ 10; and (4) requiring Mr. Franco to obtain ICE’s permission if he wants to travel outside of New York State, *id.* ¶ 11. ISAP has already scheduled a visit to Mr. Franco’s home on December 30, 2025 and in-person check-ins at the Long Island ISAP office in December, January, February, and March. *Id.* ¶ 11. Mr. Franco also had his fingerprints captured and photos taken of him because the application uses biometric technology to confirm his identity. *Id.* ¶ 12.

In addition, following his release, United States Citizenship and Immigration Services (“USCIS”) rejected Mr. Franco’s petition for U Nonimmigrant Status (“U Visa”) and application for a waiver of inadmissibility (“Inadmissibility Waiver”) on false grounds. Ex. B ¶ 6, Third Affidavit of Attorney Michelle Lee Doherty. USCIS indicated that his petition for U Visa and Inadmissibility Waiver were denied based on (1) Mr. Franco’s

failure to attend a biometrics appointment while he was detained and (2) Mr. Franco having a disqualifying criminal conviction. *Id.* ¶¶ 7-8. But Mr. Franco had his biometrics taken and sent to USCIS while detained, see Second Affidavit of Attorney Michelle Lee Doherty ¶¶ 44-45, ECF No. 12-1, and he has no disqualifying conviction, Ex. B ¶ 8. This sudden denial on incorrect grounds comes shortly after his release and despite a 2023 determination by USCIS that Mr. Franco's application was bona fide, see ECF No. 1-3. Mr. Franco intends to appeal the decision. *Id.* ¶¶ 16-17.

Mr. Franco fears that the indefinite requirements to regularly check in at the ISAP Office, at his home, and on his phone, combined with the baseless denial of his U Visa application dramatically increases the possibility he is baselessly re-detained by ICE. *Id.* ¶ 4.

MR. FRANCO'S CLAIMS ARE NOT MOOT

Mr. Franco's release from the Aurora Detention Facility did not end Respondents' custody of Mr. Franco or the unconstitutional restrictions on Mr. Franco's liberty. Mr. Franco's indefinite restrictions on travel, obligations to regularly report to ICE, and obligations to allow ICE inside his home satisfy the "in custody" requirement for a habeas petition under of 28 U.S.C. § 2241. See *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 68 (D. Mass. 2025) (finding indefinite restrictions such as being "obligated to appear for check-in at the discretion of ICE" and to "allow[] ICE to enter his residence at home visits" satisfy the "in custody" requirement); *Khabazha v. U.S. Immigr. & Customs Enft*, No. 25-cv-5279, 2025 WL 3281514, at 2 (S.D.N.Y. Nov. 25, 2025) (finding custody because "[a]lthough Khabazha has been released from ICE detention, he is subject to restraints

on his liberty 'not shared by the public generally'" including the requirement that he "check in at regular intervals"); see also *Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (finding custody requirement for petitioner on parole).

The new restrictions continue to violate Mr. Franco's Fifth Amendment substantive and procedural due process rights. In 2017, Mr. Franco was detained under 8 U.S.C. § 1226(a) and was ordered released at a bond hearing by an immigration judge in 2018 because he was not a danger to the community or a flight risk ("2018 Bond Order"), see ECF No. 1-1. Due process under the Fifth Amendment prohibits ICE from imposing additional restrictions that were not imposed in the 2018 Bond Order without conducting a changed circumstances bond hearing. ECF No. 1 ¶ 31; *Orellana Juarez*, 788 F. Supp. 3d at 70 ("Petitioner may not be subjected to conditions of release that are not consistent with the terms as set by the Immigration Judge after the bond hearing"); *Khabazha*, 2025 WL 3281514 (granting writ of habeas corpus and ordering respondents to release individual from additional conditions imposed by ICE following re-detention in violation of due process). Not only are these new restrictions on Mr. Franco's liberty inconsistent with the liberty permitted by the 2018 Bond Order, but Mr. Franco received no process at all in the imposition of these restrictions. ICE's unilateral decision to impose greater conditions and restrictions violates Mr. Franco's procedural and substantive due process rights.

Similarly, Respondents' new restrictions violate the APA (5 U.S.C. § 706(2)) as arbitrary and capricious, contrary to constitutional rights, in excess of statutory authority, and are without observance of procedures required by law. Respondents are imposing

these restrictions without any lawful basis to do so. First, ICE is still putatively canceling the 2018 Bond Order without identifying any change in circumstances to justify these restrictions as BIA requires under *Matter of Sugay*, 171 I&N Dec. 637 (BIA 1981). See *N- N- v. McShane*, No. 25-cv-5495, 2025 WL 3143594, at 4* (E.D. Pa. Nov. 10, 2025) (finding ICE violated the APA by imposing post-release restrictions despite prior bond order imposing release with no conditions). Further, the baseless imposition of these restrictions violates § 1226(a)'s requirement that ICE make individualized custody determinations. ICE has not established that any new circumstances render Mr. Franco a danger to the community, nor could they. And critically, Mr. Franco's removal proceedings are still administratively closed; thus, there are no future court appearances for which Mr. Franco's appearance needs to be secured. Therefore, Respondents have no valid interest in imposing these restrictions.

Finally, ICE's imposition of these restrictions flows from the September 1, 2025 warrantless arrest without probable cause in violation of the Fourth Amendment. *Cronick v. Pryor*, 99 F.4th 1262, 1268 (10th Cir. 2024). 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). But for the unlawful September 1 arrest, Mr. Franco would never have been unlawfully re-detained and then released with new restrictions on his liberty that did not exist before the unlawful arrest. In other words, Mr. Franco continues to be harmed by the unconstitutional arrest because of these ensuing

restrictions on his liberty. ICE's continued custody over Mr. Franco stems from the unconstitutional arrest, and the proper remedy for the constitutional violation is to completely release Mr. Franco from unlawful ICE custody and return him to the status quo prior to the arrest, *i.e.*, release pursuant to the 2018 Bond Order.

Because Mr. Franco's claims are not moot, Mr. Franco maintains his claims and the relief requested in his initial Petition and TRO. While Mr. Franco no longer seeks an order granting his release from the Aurora Detention Facility, Mr. Franco still "request[s] the Court order Respondents to immediately release him from immigration custody or, in the alternative, to order an individualized bond hearing." Petition, ECF No. 1 ¶ 2. Additionally, Mr. Franco requests that this Court "[e]njoin 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." *Id.* (prayer for relief ¶ 5).

**REQUEST FOR SUPPLEMENTAL BRIEFING, STATUS CONFERENCE, OR TO
GRANT MR. FRANCO LEAVE TO AMEND HIS HABEAS PETITION**

In light of Mr. Franco's release from the Aurora Detention Facility, Respondents' continued custody of Mr. Franco in the form of these new restrictions on his liberty, and the continued risk that Respondents could re-detain Mr. Franco without constitutionally adequate process, Mr. Franco requests the Court to allow the parties to submit supplemental briefing on Mr. Franco's TRO to allow the parties to address the new factual circumstances.

In the alternative, Mr. Franco asks the Court to schedule a status conference to discuss the new circumstances in his case or to grant Mr. Franco leave to amend his habeas petition.

Dated: December 15, 2025
Denver, CO

Respectfully submitted,

/s/ Anna K. Jessurun

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on December 15, 2025, a true and correct copy of the foregoing was served on counsel of record through ECF filing.

/s/ Laura Sturges

Laura Sturges