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

KENNETH GENALO, in his official capacity as the Director of the New York Field Office of 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.

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

INTRODUCTION

1. Petitioner Norberto Franco Sanchez ("Mr. Franco") petitions this Court for a writ of habeas corpus to remedy his unlawful custody by Juan Baltazar, Robert Hagan, Kenneth Genalo, Todd M. Lyons, Kristi Noem, and Pamela Bondi ("Respondents"). Mr.

Franco has lived in the United States for over two decades. He lives in [redacted], New York with his family and is a beloved member of his community. On September 1, 2025, Mr. Franco was unlawfully arrested and detained by the Department of Homeland Security ("DHS"). For over two months, he was detained without any lawful basis at the Denver Contract Detention Facility in Aurora, Colorado ("Aurora Detention Facility"). Mr. Franco filed a petition for writ of habeas corpus challenging his unlawful detention on November 12, 2025. Although Mr. Franco was released on November 25, 2025, Respondents continue to impose indefinite restrictions on Mr. Franco's liberty that constitute government custody. These restrictions violate Mr. Franco's Fifth Amendment due process rights, the Fourth Amendment, the Administrative Procedure Act ("APA"), and the *Accardi* doctrine.

2. Respondents' legal violations began accumulating when they arrested Mr. Franco without a warrant and detained him at the Aurora Detention Facility. Respondents detained Mr. Franco without explanation despite the fact that he was released on bond by an immigration judge ("IJ") in 2018 (the "2018 Bond Order"); 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[1]; and that his removal proceedings have been

[1] Although Mr. Franco's U Visa application was denied on December 2, 2025, after his Petition and TRO Motion were filed, *see infra* ¶ 71, terminating his deferred action status, this fact does not have any bearing on Mr. Franco's argument that Respondents' initial arrest and current custody of him is in violation of the law. The denial was based on factually incorrect grounds, and Mr. Franco has filed an appeal.

administratively closed since 2021. In short, Respondents had no lawful basis to arrest and re-detain Mr. Franco.

3. Mr. Franco accordingly challenged his custody in a petition for a writ of habeas corpus and a motion for a temporary restraining order/preliminary injunction. ECF Nos. 1, 12. After those filings, 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 continued to impose restrictions on Mr. Franco's liberty that constitute government custody in violation of the law. "As ICE had no legal basis to detain [Mr. Franco], they have no legal basis to add restrictions to his release." *Garcia Sandoval v. Rokosky*, No. 2:25-cv-17229, Dkt. 13 (D.N.J. December 2, 2025) (ordering Respondents to "coordinate with Petitioner and remove him from the ISAP and any accompanying restrictions within 48 hours").

4. Before releasing him, Respondents placed a GPS ankle monitor on Mr. Franco and provided him an Order of Release on Recognizance with no explanation as to why this was necessary. This 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, and further prohibits him from changing his residence without first obtaining written permission from ICE. While Mr. Franco's ankle monitor was removed on December 2, 2025, ICE imposed a series of indefinite restrictions on Mr. Franco's liberty, including (1) requiring Mr. Franco to attend regular appointments at the Intensive Supervision Appearance Program ("ISAP") office in Long

Island in person; (2) requiring him to check-in with ISAP on his phone via the SmartLINK app every Tuesday morning between 8 A.M. and 10 AM. to confirm his location; and (3) requiring him to obtain ICE's permission if he wants to travel outside of New York State. On March 9, 2026, Mr. Franco was notified that his ISAP case is closed but that he would still have annual check-ins with ICE, with the first such check-in taking place on September 15, 2026 at 26 Federal Plaza in New York, NY pursuant to the Order of Release on Recognizance.

5. Critically, none of these restrictions were present when Mr. Franco was initially released on bond by an IJ in 2018, after a determination that he was neither a flight risk nor a danger to the community. Mr. Franco's custody appears to be the result, not of any individualized determination that such restrictions on his liberty are justified based on a change of circumstances, but rather a blanket policy by ICE in line with a June 9, 2025 internal memo from Acting Assistant Director Dawnisha Helland ("Helland Memo") instructing agents to implement sweeping surveillance measures to monitor noncitizens who are not in detention without any specific assessment about whether such conditions are necessary. *See* Exhibit K, Helland Memo.

6. 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. Respondents have no lawful basis under which to restrict Mr. Franco's liberty, and his continued custody violates the Fifth Amendment, the Fourth Amendment, the APA and the *Accardi* doctrine. This Court should grant Mr. Franco's petition for a writ of habeas corpus and order his immediate release from government custody, ending all

restrictions on his liberty and returning him to the status quo before his unlawful arrest and detention on September 1, 2025.

JURISDICTION

7. 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 APA, 5 U.S.C. §§ 702, 706(2).

8. 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 conditions of release 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.

9. 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, 687-88 (2001).

VENUE

10. Venue is proper in this Court under 28 U.S.C. § 2242 in that Mr. Franco was detained within this District at the Aurora Detention Facility in Aurora, CO when he filed the habeas petition and so he was 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)).

11. 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 a substantial part of the events or omissions giving rise to the claim occurred in this District. Mr. Franco was detained in Colorado for over two months, and the restrictions challenged herein, which were not part of the 2018 Bond Order, are a direct result of that detention.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. 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). Nor is further action with the agency necessary when pursuing administrative remedies would be futile. *See, e.g., id.*; *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024).

13. Further, there is no avenue to challenge the additional conditions before an IJ because Mr. Franco's removal proceedings remain administratively closed.

14. Mr. Franco, through counsel, has attempted and failed to convince the deportation officer to remove the conditions.

15. 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

16. 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 [redacted] New York until his arrest by ICE on September 1, 2025. Although Mr. Franco was released from ICE's physical detention on November 25, 2025, he remains subject to ongoing restraints on his liberty imposed by Respondents.

17. Respondent Juan Baltazar is employed as the Warden of the Aurora Detention Facility, where Mr. Franco was detained when the habeas petition was filed. As such, he is a legal custodian of Mr. Franco. Respondent Baltasar's office is located at Denver Contract Detention Facility, 3130 North Oakland Street, Aurora, CO 80010.

18. Respondent Robert Hagan is named in his official capacity as the Director of the Denver ICE Field Office.[2] 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

[2] The initial habeas petition named Robert Guadian in his official capacity as the Director for the Denver ICE Field Office. *See* ECF No. 1 ¶ 13. Respondents represented in counsel's entry of appearance that Robert Hagan has taken over from Robert Guadian as the Field Office Director. *See* ECF No. 15 n.1.

custodian of Mr. Franco. Respondent Hagan's office is located at 12445 East Caley Avenue, Centennial, CO 80111.

19. Respondent Kenneth Genalo is named in his official capacity as the Director of the New York ICE Field Office for ICE. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is 26 Federal Plaza, 9th Floor, New York, New York 10278.

20. 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 Hagan, 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.

21. 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 Hagan; 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.

22. 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 Custody Under 8 U.S.C. § 1226(a)

23. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *Zadvydas*, 533 U.S. at 690. Once noncitizens are "inside the United States," *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018), 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), 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8). 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). At a bond hearing, the immigration judge exercises the Attorney General's delegated authority under § 1226(a) to determine whether continued detention

is warranted and, if not, the terms and conditions of release. *Huanga v. Decker*, 599 F. Supp. 3d 131, 138 (S.D.N.Y. 2022) (citing 8 C.F.R. §§ 1003.19, 1236.1).

24. Upon a noncitizen's request, ICE's initial custody or bond determination under 8 U.S.C. § 1226(a) is reviewable by an IJ. *See* 8 C.F.R. § 1003.19(a) ("Custody and bond determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236."); *id.* § 1236.1(d)(1). The Supreme Court has explained that after the initial detention determination, a petitioner may request a bond hearing before an IJ, who has the authority to determine "the alien's detention conditions." *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527–28 (2021). If a noncitizen is released from custody, the noncitizen has seven days to file an application for amelioration of the conditions of release. *See* 8 C.F.R. § 1236.1(d)(1).

25. When an IJ's custody review is triggered by a noncitizen's request, the IJ exercises the authority granted to the Attorney General in 8 U.S.C. § 1226(a). *See* 8 C.F.R. § 1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released").

26. Both the noncitizen and DHS may appeal the IJ's decision on custody or bond to the Board of Immigration Appeals ("BIA"). *Id.* §§ 1003.1(d)(1), 1236.1(d)(3)(i). During removal proceedings, if ICE changes the location, releases, or re-detains a previously released noncitizen, it must immediately notify the IJ. *Id.* § 1003.19(g).

27. The custody regulations implementing 8 U.S.C. § 1226(a) establish a closed and sequential adjudicatory framework for modifying an immigration judge's bond order.

Orellana Juarez v. Moniz, 788 F. Supp. 3d 61, 69 (D. Mass. 2025). Once an immigration judge has issued a custody determination, under DHS regulations that order may be altered only in two circumstances: (1) either party may appeal the immigration judge's custody decision to the BIA, 8 C.F.R. § 1003.19(f); or (2) the noncitizen may seek a subsequent custody redetermination upon a showing of materially changed circumstances, *id.* § 1003.19(e). *Orellana Juarez*, 788 F. Supp. 3d at 69–70. The regulations do not permit DHS to unilaterally alter, supplement, or impose additional conditions of release after an immigration judge has ordered release. *Id.*; *see also N-N-v. McShane*, No. 25-5494, 2025 WL 3143594, at *3–4 (E.D. Pa. Nov. 10, 2025) (holding that ICE's regulations do not permit ICE to impose additional release conditions without utilizing the administrative appeal process).

B. Habeas Jurisdiction and the Meaning of "Custody" Under 28 U.S.C. § 2241

28. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to grant habeas relief to a person who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The Supreme Court has consistently held that the "custody" requirement is not limited to physical confinement, but includes restraints on liberty that significantly restrict freedom of movement and autonomy. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (finding custody requirement for petitioner on parole); *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

29. In the immigration context, courts have recognized that conditions such as electronic monitoring, mandatory reporting, home visits, curfews, and geographic travel

restrictions constitute custody for purposes of § 2241 because they impose restraints not shared by the public generally and are enforced through the threat of re-detention. *See Orellana Juarez*, 788 F. Supp. 3d at 68–69 (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. ICE*, No. 25-CV-5279 (JMF), 2025 WL 3281514, at *3–4 (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").

C. Fifth Amendment Due Process and Civil Immigration Custody

30. It is well established that the Fifth Amendment entitles noncitizens to due process of law in removal proceedings and with respect to immigration detention. *See Zadvydas*, 533 U.S. at 690. Indeed, "[f]reedom 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. *Id.* Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical restraint—including detention and other forms of government-imposed custody—"outweighs the [detained] individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal citation omitted).

31. Procedural due process further requires that the government provide notice and an opportunity to be heard before depriving an individual of a protected liberty interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 348 (1976). Where the government,

through an adversarial bond hearing, has determined that a noncitizen is neither a danger to the community nor a flight risk, the Due Process Clause prohibits the imposition of additional restraints on liberty unless the government makes an individualized determination, based on materially changed circumstances, that such restraints are justified. *See Orellana Juarez*, 788 F. Supp. 3d at 69–70 ("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"); *Eliseo A.A. v. Olson*, No. CV 25-3381 (JWB/DJF), 2025 WL 2886729, at *7 (D. Minn. Oct. 8, 2025) (holding that an ICE regulation automatically staying or nullifying an immigration judge's bond order, without an individualized showing or opportunity to be heard, violates due process); *Khabazha*, 2025 WL 3281514, at *22 (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); *Duong v. Kaiser*, 800 F. Supp. 3d 1030, 1042 (N.D. Cal. 2025) (holding that where an individualized assessment of flight risk and dangerousness has been made and bond granted, due process requires an administrative hearing to show a material change in circumstances before the individual may be re-detained).

D. Administrative Procedure Act and *Accardi* Doctrine

32. The APA directs courts to "hold unlawful and set aside agency action" that is arbitrary, capricious, contrary to constitutional right, in excess of statutory authority, or taken without observance of procedure required by law. 5 U.S.C. § 706(2).

33. If an "agency fails to comply with its own regulations," the relevant action "may be set aside as arbitrary and capricious." *Mercy Health-St. Vincent Med. Ctr. LLC*

v. Becerra, 717 F. Supp. 3d 33, 39 (D.D.C. 2024) (citation omitted). Additionally, agency policy that "fail[s] to consider important aspects of the problem" before the agency may be arbitrary and capricious. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (2020).

34. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). When an agency promulgates regulations governing the exercise of its authority, "even if those procedures provide greater rights than required by statute[,]" the agency's failure to adhere to them violates due process. *N-N- v. McShane,* No. CV 25-5494, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025) (citations omitted).

35. In the immigration custody context, DHS regulations governing bond determinations and custody redeterminations are binding on the agency. *Id.* at *4–5. Agency action that effectively nullifies an existing bond order without invoking the regulatory mechanisms for modification violates the *Accardi* doctrine. *Id.*

E. The Helland Memo and the Intensive Supervision Appearance Program

36. On June 9, 2025, Acting Assistant Director for ICE Enforcement and Removal Operations ("ERO") Non-Detained Management Division, Dawnisha Helland, published the internal Helland Memo, instructing all ICE personnel to "not release *any* [individuals] on Order of Release on Recognizance (OREC) or Order of Supervision (OSUP) without technology" regardless of their individual circumstances. Ex. K. (emphasis added.) Additionally, the Helland Memo requires "GPS ankle monitors whenever possible," an "increase [in] reporting requirements, regardless of case type,"

and "in-person check-ins" for post-order non-citizens who are part of the Alternatives to Detention program. *Id.*

37. The Helland Memo refers to ICE's Alternatives to Detention ("ATD") program, which is "a [noncitizen] compliance tool overseen by [Enforcement and Removal Operations]." U.S. Immigr. & Customs Enf't, Enforcement and Removal Operations Statistics, (updated May 30, 2025). The largest program within ICE's ATD programs is the Intensive Supervision Appearance Program ("ISAP"), in which individuals may be assigned to an array of monitoring techniques. Potential forms of monitoring include ankle monitors, telephonic reporting, or the smartphone application "SmartLink." Individuals are also sometimes required to comply with periodic home and/or office visits.[3] ICE ERO sets the intensity of the supervision and the monitoring technologies to be used.[4] *See also Mathon v. Searls*, 623 F. Supp. 3d 203, 217 (W.D.N.Y. 2022) (ISAP "relies on the use of electronic ankle monitors, biometric voice recognition and image recognition software, unannounced home visits, employer verification, and in-person reporting to supervise participants.").

STATEMENT OF FACTS AND PROCEDURAL HISTORY

38. Mr. Franco has been living in the United States since 2002 and in New York for over two decades. Exhibit H, Second Affidavit of [redacted] Before his September 2025 arrest and detention, he resided in [redacted] NY.

---

[3] ISAP Intensive Supervision Appearance Program Participant Handbook, ISAP, https://perma.cc/6VC5-EGTZ (last accessed Aug. 29, 2025).
[4] ICE, "Alternatives to Detention: ISAP Transition" (updated Feb. 27, 2024), https://perma.cc/NG9S-SQGA.

39. On November 23, 2003, Mr. Franco was violently attacked by four men in [redacted] 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.

40. 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.

41. 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.

42. 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. § 1236.1. On February 20, 2018, an immigration judge ordered that Mr. Franco be released from detention under a bond of $5,000. Exhibit A ("2018 Bond Order"). 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.

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

44. 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.

45. 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 2003 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.

46. 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.

47. 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 2003 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.

48. 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.

49. On September 17, 2021, Mr. Franco moved to administratively close his proceedings,[5] referencing his pending petition for a U Visa before USCIS. ICE did not 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. Exhibit B, Order Granting Administrative Closure, at 2. Mr. Franco's removal proceedings have been administratively closed since that date.

50. 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. Exhibit C, USCIS Bona Fide Letter, at 1. USCIS then issued Mr. Franco a deferred action EAD on February 1, 2024, then valid by its terms until January 31, 2028. Ex. B.

---

[5] 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).

51. Since then, Mr. Franco has stayed in contact with his immigration counsel. He has remained employed at a restaurant and is loved by his boss, fellow employees, and customers for being hard-working, friendly, and responsible.

52. 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. Exhibit E, Order Denying Motion to Recalendar, at 1. His removal proceedings thus remain administratively closed.

53. 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.

54. 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.

55. 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.

56. 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." Exhibit F at 2-3. ICE did not release Mr. Franco. Two days later, the immigration judge denied ICE's motion to recalendar.

57. From September 1 to September 7, 2025, Mr. Franco was transferred multiple times across to 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.

58. 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 the Aurora Detention Facility.

59. Due to his detention at Aurora Detention Facility, Mr. Franco lost his ability to earn income and lost his housing because he could not pay rent. Members of Mr. Franco's community regularly communicated with his immigration counsel to inquire about Mr. Franco's whereabouts and expressed 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. Exhibit G, Affidavit of [redacted]

60. Mr. Franco was detained on September 1, 2025, and currently remains subject to unlawful restraints on his liberty, despite the fact that his removal proceedings have been administratively closed, the 2018 Bond Order has not been properly revoked, and at the time of his arrest, his U Visa petition remained pending and his deferred action was valid through 2028.

61. On September 12, 2025, Mr. Franco's immigration counsel received a notice for a biometrics (fingerprinting) appointment with USCIS relating to the formerly 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.

62. On October 3, 2025, Mr. Franco informed his attorneys that an officer at the Aurora Detention Facility had shown him notices that looked like biometrics notices and took his photograph and fingerprints.

63. In November, Mr. Franco's immigration counsel received another biometrics notice requesting that Mr. Franco appear in Brooklyn on November 20, 2025. Mr. Franco's immigration counsel emailed DHS in Denver on November 12, 2025 to request that they facilitate the biometrics appointment. On November 19, 2025, DHS responded that the biometrics were completed and sent to USCIS on November 14, 2025.

64. Through counsel, Mr. Franco challenged his unlawful detention by filing a petition for a writ of habeas corpus on November 12, 2025, and a motion for a temporary restraining order/preliminary injunction on November 19, 2025. Before the deadline for Respondents to file an opposition to the motion, Respondents released Mr. Franco from the Aurora Detention Facility on November 25, 2025, ending his over two months of detention there.

65. Counsel for Respondents emailed Mr. Franco's counsel that day at around 4:29 PM MT to notify them about Mr. Franco's release. Mr. Franco's counsel spoke with counsel for Respondents on the phone that evening at around 4:44 PM MT, and he confirmed that Mr. Franco was being released. Mr. Franco's counsel then contacted a local community organization that is stationed outside of Aurora Detention Facility to support newly released noncitizens, and a staff member informed counsel that they were aware that noncitizens were being released that evening and were waiting for them to come out. At approximately 5:28 PM MT, Mr. Franco's counsel received a call from Casa de Paz, was informed that Mr. Franco was released, and spoke with Mr. Franco. Mr. Franco traveled back to New York that evening on a red-eye flight and arrived in New York on November 26, 2025.

66. Mr. Franco's counsel spoke with him on November 26, 2025. Mr. Franco informed counsel that before releasing him, Respondents placed a GPS ankle monitor on him and provided him an Order of Release on Recognizance. Exhibit I, Affidavit of Attorney Catherine Kapples, ("Kapples Aff."), ¶ 4; Ex. L, Order of Release on Recognizance ("Order of Release"). The Order of Release on Recognizance prohibits Mr.

Franco from changing his residence without first obtaining written permission from ICE. Kapples Aff. ¶ 5. Further, the order states that his release is contingent on his enrollment and participation in an "Alternatives to Detention program," subjecting him to electronic monitoring and regular check-ins. *Id.* The order also warns that "[a]ny violation of these conditions may result in you being taken into ICE custody." Ex. L, Order of Release. Mr. Franco was also told that he had to report to the ICE office in New York City at 26 Federal Plaza within five business days. Ex. L, Order of Release. He was scheduled for an appointment with ICE in Manhattan at 26 Federal Plaza for December 1, 2025. Kapples Aff. ¶ 6–7. The unilateral imposition of the GPS ankle monitor and additional conditions appears to be in accordance with the ICE policy described in the Helland Memo.

67. Mr. Franco, accompanied by his immigration counsel, attended the appointment with ICE on December 1, 2025, and a second appointment with the local ISAP office in Long Island on December 2, 2025. *Id.* ¶ 10. ISAP is ICE's monitoring program. Although ICE agreed to remove his ankle monitor on December 2, 2025, *Id.* ¶ 13, ICE imposed other conditions on Mr. Franco 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; (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; and (4) requiring Mr. Franco to obtain ICE's permission if he wants to travel outside of New York State. ISAP scheduled a visit to Mr. Franco's home on December 30, 2025 and in-person check-ins at the Long Island ISAP office for December

2025, January 2026, February 2026, and March 2026. Mr. Franco also had his fingerprints captured and photos taken of him because the application uses biometric technology to confirm his identity. *Id.* ¶¶ 10–13.

68. About a month after Mr. Franco's release, ICE adjusted some of these requirements in response to requests from Mr. Franco's immigration counsel. ICE eliminated the in-home visits and reduced the frequency of the in-office visits to every twelve weeks. Exhibit M, Fourth Affidavit of Attorney Michelle Lee Doherty ¶ 6 ("4th Doherty Aff."). The other onerous restrictions on his liberty remained the same (including the prohibition against leaving New York State without permission). At Mr. Franco's check-in in March 2026, ISAP informed Mr. Franco that they were closing his ISAP case and that his next check-in with ICE was scheduled for September 15, 2026 at 26 Federal Plaza pursuant to the Order of Release. Exhibit N, Fifth Affidavit of Attorney Michelle Lee Doherty ("5th Doherty Aff."); Exhibit O, March 9, 2026 Entry on Order of Release. In addition, Mr. Franco's ICE check-ins going forward would take place on an annual basis. Nevertheless, Mr. Franco remains fearful of the re-detention that might result from a misstep despite his best efforts to comply with this requirement. Further, without relief from this Court, *ICE may reimpose additional conditions beyond his 2018 Bond Order at any time*, including re-enrolling him in ISAP.

69. When Mr. Franco was required to appear in person for ISAP check-ins, he took a bus, a train, and then a taxi from the train station to the ISAP office, costing him approximately $30-40 per trip. When leaving from home, he left about two hours in advance of the appointment to ensure he arrived on time. 4th Doherty Aff. ¶ 8; *see also*

Exhibit J, Third Affidavit of Michelle Lee Doherty ("3rd Doherty Aff.") ¶ 11 ("Mr. Franco has expressed fear of being detained if he misunder[stands] any requirements or [is] accused of not complying."). For future ICE check-ins in New York City, Mr. Franco will need to take time off work, spend money on transportation, and take a bus and trains from his home in [redacted] NY to arrive in New York City. 5th Doherty Aff. ¶ 11. These restrictions regularly interfere with Mr. Franco's daily life, including his ability to work. For example, Mr. Franco must ask his employer for permission to take the day off or arrive late to work when he is required to appear in-person for ICE check-ins. 4th Doherty Aff. ¶ 8; 5th Doherty Aff ¶ 11.

70. In addition to this restriction on his liberty, just three days after he was released, Respondents denied Mr. Franco's U Visa application and as a result, terminated his deferred action status. His inadmissibility waiver application was also denied. 3rd Doherty Aff. ¶ 6. The denials were based on grounds that are factually incorrect and misleading, including that he did not appear for a biometrics appointment and that he has a disqualifying criminal conviction. *Id.* ¶¶ 6–8. Mr. Franco was unable to appear in New York City for his biometrics appointment because he was in detention. As discussed above, Mr. Franco's counsel worked to facilitate Mr. Franco's compliance with his biometrics appointment, and officials at the Aurora Detention Facility confirmed that the biometrics were taken and sent to USCIS. *Supra* ¶¶ 62–64. On December 24, 2025, Mr. Franco filed appeals challenging, both legally and factually, the denials of Mr. Franco's U Visa petition and Inadmissibility Waiver. 4th Doherty Aff. ¶ 9.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

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

72. 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). Under the substantive due process doctrine, restraints on liberty associated with civil detention are only permissible if they serve a "legitimate nonpunitive objective." *See Kansas v. Hendricks*, 521 U.S. 346, 363 (1997); *see also Zadvydas*, 533 U.S. at 690 ("[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.") (quotation marks and citations omitted).

73. On September 1, 2025, 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 cancelation 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 does not constitute a legitimate government interest in detaining Mr. Franco and canceling the 2018 bond order.

74. Since he has been released from Respondents' physical custody, Mr. Franco's liberty has been significantly restricted, including through prior requirements of weekly photo check-ins, check-ins at the ISAP office every twelve weeks, and a prohibition on Mr. Franco leaving the state of New York without being granted permission. *Supra* ¶ 68–69. Upon Mr. Franco's release, Respondents also placed a GPS monitor on Mr. Franco's ankle, although that has since been removed. The GPS ankle monitor and other liberty restrictions were likely imposed in accordance with the Helland Memo rather than any individualized determination that Mr. Franco's circumstances warranted the imposition of the ankle monitor. Although some of these restrictions have been lifted, Mr. Franco is still subject to annual check-ins with ICE pursuant to the Order of Release.

75. Respondents' imposition of annual check-ins and other conditions in the Order of Release serve no legitimate nonpunitive objective. Neither public safety nor flight risk are at issue here. *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. That judge released Mr. Franco without imposing any restrictions on his release.

76. Mr. Franco has a protected liberty interest to be free from detention under the terms of the 2018 Bond Order. Due process forbids Respondents from re-detaining Mr. Franco or imposing additional conditions on his detention that are not included in the

2018 Bond Order unless the government establishes that there is a change of circumstances that warrant a change in Mr. Franco's custody status. *See supra* ¶ 32. Respondents have not made such a determination. Nor is Mr. Franco's narrowly tailored to serve any other compelling state interest.

77. Further, for the reasons explained in Mr. Franco's original habeas petition, Respondents had no authority to detain Mr. Franco in the first place. "As ICE had no legal basis to detain Petitioner, they have no legal basis to add restrictions to his release." *Garcia Sandoval*, Dkt. 13 (ordering Respondents to "coordinate with Petitioner and remove him from the ISAP and any accompanying restrictions within 48 hours").

78. Because Respondents have no legitimate non-punitive objective in imposing restrictions on Mr. Franco's liberty in defiance of the IJ's 2018 Bond Order, they violate the substantive due process clause of the Fifth Amendment.

COUNT TWO

Violation of Fifth Amendment Right to Procedural Due Process

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

80. "Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty." *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified).

81. Under *Mathews v. Eldridge*, courts balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk

of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the Government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail. *Id.* at 335.

82. Mr. Franco's initial arrest and detention violated his procedural due process rights. He was detained without a pre-deprivation hearing or any notice or an opportunity to be heard despite being at liberty under the 2018 Bond Order, having no active removal proceedings against him, and, at the time, having a valid grant of deferred action status. Respondents never gave Mr. Franco any process relating to their decision to arrest and detain him. Now, "[a]s a direct result of ICE's decision to re-detain [Mr. Franco in September] 2025, [Mr. Franco] is now subject to new conditions of release that restrict his liberty." *Khabazha*, 2025 WL 3281514, at *6. Because the existing conditions of his release directly stem from Respondents' initial unlawful arrest and detention of Mr. Franco and Mr. Franco seeks to be released from these conditions, Mr. Franco's claims relating to his unlawful arrest and detention are not moot. *See id.* at *4. Because Respondents did not lawfully arrest and detain Mr. Franco on September 1, 2025, they have no lawful basis to impose additional restrictions on his liberty now.

83. Additionally, the unilateral imposition of additional restraints on Mr. Franco's liberty that are not included in the 2018 Bond Order violates Mr. Franco's procedural due process rights.

84. The first *Mathews* factor, the private interest at issue, heavily favors Mr. Franco. "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 [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690 (emphasis added). These other forms of physical restraint include "conditions of release." *Khabazha*, 2025 WL 3281514, at *5 (concluding that the first *Matthews* factor favored individual released from ICE custody and subjected to an ankle monitor and reporting requirements); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3–4 (N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released on bond have a strong liberty interests); *see also Morrisey v. Brewer*, 408 U.S. 471, 482 (1972) ("[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the parolee and often on others.").

85. The private interest at stake here is Mr. Franco's freedom from the government's ongoing surveillance and restrictions of Mr. Franco's liberty resulting from the requirement of annual check-ins with ICE pursuant to the Order of Release. This restriction will continue to significantly interfere with Mr. Franco's quality of life.Mr. Franco fears that the indefinite annual check-ins, ICE's position that it can unilaterally impose new conditions on his release in the future, combined with the baseless denial of his U Visa application dramatically increases the possibility he is baselessly re-detained by ICE. *Id.* He has been confused at the instructions provided, as they were not tailored to his circumstances of the posture of his immigration case. *Id.* ¶ 11. Also, the "reporting requirements have affected his ongoing ability to work." *Khabazha*, 2025 WL 3281514, at *6. When Mr. Franco goes out on the street today, he continues to fear that he will be arrested and detained again like he was on September 1, 2025. 4th Doherty Aff. ¶ 11.

86. The second factor, the risk of erroneous deprivation of liberty, also favors Mr. Franco. Here, Mr. Franco was provided no process before he was detained on September 1, 2025, and was also provided no process when DHS unilaterally decided to impose restrictions on his liberty following his November 25, 2025, release that are inconsistent with the 2018 Bond Order. There has been neither a determination by an impartial adjudicator nor an individualized determination by DHS that additional restrictions on Mr. Franco's liberty that were not imposed in the 2018 Bond Order are warranted. *See supra* ¶ 32; *see also Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4–5 (S.D.N.Y. Oct. 29, 2023) (finding that plaintiff's claim that ICE violated due process where ICE failed to follow regulations for revocation of an order of supervision was likely to succeed on the merits). The risk of erroneous deprivation is further heightened by the fact that when Mr. Franco was given process in 2018 to determine whether he should be released and upon what conditions, the IJ decided to release him on minimal bond without any conditions attached. Respondents' putative cancelation of the 2018 Bond Order and imposition of additional restrictions on Mr. Franco's liberty without identifying any change of circumstances or any reasoned explanation is contrary to statute and violates the Fifth Amendment.

87. The third factor, the government's interest, also favors Mr. Franco. The government has no interest in restricting the liberty of a noncitizen who is neither a danger nor a flight risk and who an immigration judge has determined may be released on bond without any conditions. At the 2018 bond hearing, the government was represented by counsel and voiced its opposition to Mr. Franco's release. The IJ decided to release Mr.

Franco on bond. Following the IJ's determination, the government filed an appeal but later dismissed it. The government has no interest in defying the 2018 Bond Order that found that Mr. Franco warranted release on bond with no conditions. Further, the government has an interest in requiring ICE to follow an IJ's reasoned order because it ensures that any restrictions on liberty were justified by findings obtained at a hearing before a neutral decisionmaker at which both parties were able to present evidence and argument. *See Khabazha,* 2025 WL 3281514, at *8 (finding in favor of individual on third *Mathews* factor because the "re-detention and the imposition of release conditions absent any showing of flight risk or danger does not serve these statutory purposes [of Section 1226]").

88. For at least these reasons, ICE's' imposition of restrictions on Mr. Franco's liberty in defiance of the 2018 Bond Order and without any process violates the procedural due process clause of the Fifth Amendment.

COUNT THREE

Violation of Administrative Procedure Act (5 U.S.C. § 706(2)(A), (B)) Contrary to Law and Constitutional Right

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

90. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

91. IJs have authority to set conditions of release deriving from 8 U.S.C. § 1226(a). *See* 8 C.F.R. § 1236.1(d)(1) ("[T]he immigration judge is authorized to exercise

the authority in section 236 of the Act"). Respondent's failure to comply with that authority is therefore a violation of the INA.

92. Respondents' putative cancelation of the 2018 Bond Order without identifying any change of circumstances or any reasoned explanation violates § 1226(a)'s requirement that ICE make individualized custody determinations. *See supra* ¶¶ 24-28; *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (holding that Section 1226(a) statutorily requires an "initial detention decision by DHS" and that "[i]f all noncitizens subject to § 1226(a) could simply be detained on a categorical (or arbitrary) basis without any kind of individualized assessment, it would make little sense to permit such individuals an opportunity to challenge their detention by an appeal before an immigration judge on the basis of specific factors such as dangerousness or flight risk").

93. Respondents' refusal to follow the IJ's order also violates 8 C.F.R. § 1003.19(a), under which "[c]ustody and bond determinations made by [ICE] pursuant to 8 CFR part 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR part 1236."

94. Finally, Respondents' refusal to follow the IJ's order also violates substantive and procedural due process under the Fifth Amendment's Due Process Clause, as described in Counts One and Two.

95. For at least these reasons, ICE's imposition of additional check-in requirements on Mr. Franco is not in accordance with law because it is contrary to the INA, its implementing regulations, and the Due Process Clause of the Constitution's Fifth Amendment.

COUNT FOUR

Violation of Administrative Procedure Act (5 U.S.C. § 706(2)(A))
Arbitrary and Capricious

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

97. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

98. Respondents' putative cancelation of the 2018 Bond Order without identifying any chance of circumstances or any reasoned explanation is arbitrary and capricious because it violates statute and the Constitution, as described above in Counts One, Two, and Three.

99. That Respondents have ignored an IJ's order and unilaterally imposed additional restraints on liberty not contained in the order is likewise arbitrary and capricious because it violates statute, regulation, and the Constitution, as described above in Counts One, Two, and Three. The imposition of additional restraints on Mr. Franco's liberty is also arbitrary and capricious because Respondents have not provided any reasoned explanation or justification as to why such restraints are necessary for Mr. Franco specifically; instead, Respondents unilaterally imposed the restraint without any individualized determination.

101. For at least these reasons, ICE's imposition of additional check-in requirements under the Order of Release on Mr. Franco is arbitrary and capricious.

COUNT FIVE

Violation of Administrative Procedure Act (5 U.S.C. § 706(2)(C) In Excess of Statutory Authority

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

103. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

104. "An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).

105. No statute authorizes Respondents to unilaterally overrule an IJ's order at a bond hearing.

106. For at least these reasons, , ICE's imposition of additional check-in requirements under the Order of Release on Mr. Franco is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

COUNT SIX

Violation of the *Accardi* Doctrine

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

108. Respondents violated the *Accardi* doctrine in failing to follow its regulations, 8 C.F.R. § 1003.19(a), requiring compliance with an IJ's bond order. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (holding that the Board of

Immigration Appeals must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required."). The Tenth Circuit has made clear that the "*Accardi* holding applies to regulations that exist to protect the rights of those regulated by [] agen[cies]." *Barrie v. F.A.A.*, 16 F. App'x 930, 934 (10th Cir. 2001). There is no doubt that the purpose at the heart of 8 C.F.R. § 1003.19(a) is to protect detained, noncitizens' procedural due process rights.

109. The remedy for an *Accardi* violation is to set aside the agency action and enjoin the agency to follow its rules. *Accardi*, 347 U.S. at 268 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

110. Here, Respondents have promulgated agency rules that require ICE to obey an IJ's order following a custody determination at a bond hearing. *See* 8 C.F.R. § 1003.19(a) ("Custody and bond determinations made by [ICE] pursuant to 8 C.F.R. part 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. part 1236."); *Id.* § 1236.1(d)(1). ("[T]he immigration judge is authorized to exercise the authority in section 236 of the Act . . . to detain the [individual] in custody, release the [individual], and determine the amount of bond, if any, under which the respondent may be released"). These rules protect the fundamental right to liberty of a noncitizen in removal proceedings. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects."

Zadvydas, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992)). Allowing ICE to bypass (indeed, to unilaterally cancel) the bond order of an IJ and apply conditions outside those ordered after a full custody hearing "undermines the structure of the hearing and necessarily prejudices the outcome." *Aquino v. Att'y Gen.*, 53 F.4th 761, 766 (3d Cir. 2022).

111. For at least these reasons, ICE's imposition of additional check-in requirements under the Order of Release on Mr. Franco violates the *Accardi* doctrine.

COUNT SEVEN

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

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

113. "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.").

114. ICE officers arrested Mr. Franco without a warrant or probable cause on September 1, 2025. Ex. H ¶ 21-22. Mr. Franco was alone at a bus stop waiting to go to work. *Id.* 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. *Id.*

115. 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.

116. 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).

117. The current restriction on Mr. Franco's liberty, which pursuant to the 2018 Bond Order would not have been imposed had Mr. Franco not been detained in the first place, is directly tied from this unlawful arrest. Therefore, Respondents' actions violated the Fourth Amendment.

PRAYER FOR RELIEF

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

1. 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).");

2. Issue a writ of habeas corpus ordering Respondents to immediately release Mr. Franco from custody by removing the requirement of annual check-ins and any accompanying restrictions in the Order of Release that were not included in the 2018 Bond Order;

3. Enjoin Respondents from re-detaining Mr. Franco or imposing additional restraints on his liberty that were not included in the 2018 Bond Order 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 or additional restrictions on his liberty are justified by changed circumstances by clear and convincing evidence, with ability to pay and alternatives to detention considered;

4. Declare that Respondents' continued custody of Mr. Franco through release conditions violate Mr. Franco's substantive due process and procedural due process rights under the Due Process Clause of the Fifth Amendment;

5. Declare that Respondents' purported cancellation of the 2018 Bond Order and imposition of additional restraints on his liberty that are not included in the 2018 Bond Order without a pre-deprivation hearing violates the Due Process Clause of the Fifth Amendment;

6. Declare that Mr. Franco's initial arrest and detention, leading to the current release conditions, violate the Fourth Amendment and the Due Process Clause of the Fifth Amendment;

7. Declare that Respondent's continued imposition of release conditions on Mr. Franco violates the Administrative Procedure Act;

8. Declare that Respondent's continued imposition of release conditions on Mr. Franco violate the *Accardi* doctrine;

9. 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

10. Grant any other and further relief that this Court deems just and proper.

Dated: April 15, 2026
Denver, CO

Respectfully Submitted,

/s/ Laura Sturges

Christine Ranney
CRanney@gibsondunn.com
Laura Sturges
LSturges@gibsondunn.com
David Reck
DReck@gibsondunn.com
Alana Horwitz
AHorwitz@gibsondunn.com
Gibson, Dunn & Crutcher LLP
1900 Lawrence Street, Suite 3000
Denver, CO 80202
Telephone: (303) 298-5700

Anna K. Jessurun
Brooklyn Defender Services
177 Livingston Street, 7th Floor
Brooklyn, NY 11201
Telephone: (718) 254-0700
Email: ajessurun@bds.org

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: April 15, 2026
Brooklyn, New York

Respectfully Submitted,

/s/ Anna K. Jessurun

Anna K. Jessurun
Brooklyn Defender Services
177 Livingston Street, 7th Floor
Brooklyn, NY 11201
Tel: (718) 254-0700
Email: ajessurun@bds.org

CERTIFICATE OF SERVICE

I, Laura Sturges, hereby certify that on April 15, 2025, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by email:

logan.brown@usoj.gov

/s/ Laura Sturges
Laura Sturges