**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,

GEORGE VALDEZ, 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,

MARKWAYNE MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security, and

TODD BLANCHE, in his official capacity as Acting Attorney General, U.S. Department of Justice,

Respondents.

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**REPLY IN SUPPORT OF PETITIONER'S SUPPLEMENTAL AMENDED PETITION FOR WRIT OF HABEAS CORPUS (ECF No. 31)**

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In the eight months since Petitioner Norberto Franco Sanchez's ("Mr. Franco") initial arrest and in the four filings by Respondents in this proceeding (ECF No. 17, ECF. No. 21, ECF No. 24, ECF No. 32), Respondents have never attempted to argue that Mr. Franco's initial re-detention was constitutional. *Garcia Sandoval v. Rokosky*, No. 2:25-cv-

17229, ECF No. 13 (D.N.J. Dec. 2, 2025) ("As ICE had no legal basis to detain [petitioner], they have no legal basis to add restrictions to his release."). Nor could they. Instead, Respondents attempt to claim in their April 29, 2026 Response to Mr. Franco's Supplemental Amended Petition for Writ of Habas Corpus ("Response") that this Court lacks the authority to hear Mr. Franco's challenges to Respondents' continued custody of Mr. Franco. ECF No. 32 at 4–7. That is incorrect. Exhaustion is not required here, and regardless, Mr. Franco has exhausted his administrative remedies, and this Court has jurisdiction to hear habeas petitions challenging custody for legal and constitutional errors in agency procedure.

## ARGUMENT

### I. This Court has Jurisdiction to Review Mr. Franco's Amended Habeas Petition for Release from Respondents' Custody Under 28 U.S.C. § 2241

This Court's jurisdiction under 28 U.S.C. § 2241 to review Mr. Franco's habeas claims on legal and constitutional grounds is not barred by 8 U.S.C. § 1226(e).

Section 2241 "implements the constitutional command that the writ of habeas corpus be made available." *Jones v. Cunningham*, 371 U.S. 236, 238 (1963). Respondents argue that this Court lacks jurisdiction to review Mr. Franco's continued custody based on 8 U.S.C. § 1226(e) (ECF No. 32 at 4–5), which states:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

Mr. Franco, however, is not challenging Respondents' discretion to detain under Section 1226, but rather the legality and constitutionality of the procedures (or, more precisely,

lack thereof) that led to Respondents' continued custody of Mr. Franco and restraint on his liberty.

This Court has found that while it does not have jurisdiction to hear challenges to Respondents' discretion in applying Section 1226 under Section 1226(e), the Court has jurisdiction to hear challenges to errors of law in agency proceedings, including constitutional errors, under 28 U.S.C. § 2241:

> District courts lack jurisdiction to review an IJ's bond determination. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of [§ 1226] shall not be subject to review.")[.] But district courts do have "jurisdiction under 28 U.S.C. § 2241 to consider any error of law in [Petitioner's] agency proceedings, including any claimed due process violation." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022).

*L.G. v. Choate*, 744 F. Supp. 3d 1172, 1178 n.12 (D. Co. 2024); *see Sierra Immigr. & Naturalization Serv.*, 258 F.3d 1213, 1218 (10th Cir. 2001) ("We hold that § 1226(e) does not 'speak[ ] with sufficient clarity to bar jurisdiction pursuant to the general habeas statute.' . . . We therefore hold that we have jurisdiction to address [petitioner's] § 2241 habeas petition on the merits.") (citation omitted).

Mr. Franco's Supplemental Amended Petition does not argue that his 2025 re-detention and continued custody was a simple abuse of discretion under 8 U.S.C. § 1226, but rather that it was the result of an unlawful and unconstitutional process to re-detain him despite the 2018 Bond Order granting his liberty. Once an immigration judge has granted release on bond, Respondents do not have the unfettered discretion to re-detain; they must, at minimum, show a change of circumstances pursuant to *Matter of Sugay*, 171 I&N Dec. 637 (BIA 1981). Mr. Franco alleges in his Supplemental Amended Petition that Respondents have failed, and indeed made no effort, to follow this constitutionally

required process for re-detaining and maintaining custody over Mr. Franco. Instead, Respondents re-detained him without any showing of changed circumstances and have maintained custody following release from the detention facility. Moreover, due process further requires that Respondents provide a noncitizen with a pre-deprivation hearing before re-detaining him after an immigration judge granted his release on bond. *See* ECF No. 31 ¶ 82. This constitutional and legal challenge to Respondents' deficient process is sufficient for jurisdiction under 28 U.S.C. § 2241.

Other courts across the country have similarly held that Section 1226(e) does not preclude habeas review of constitutional and legal challenges to custody. *See, e.g.*, *Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) ("Section 1226(e) provides that the Secretary of Homeland Security's 'discretionary judgment' regarding, among other things, the decision to arrest and detain a noncitizen pending a decision on removal, 'shall not be subject to review.' But because § 1226(e) 'contains no explicit provision barring habeas review,' the Supreme Court has held that its 'clear text' does not bar jurisdiction over a constitutional challenge to detention under § 1226.'") (citation omitted); *Miranda v. Garland*, 34 F.4th 338, 351–53 (4th Cir. 2022) (holding that § 1226(e) does not preclude review of a constitutional challenge to § 1226(a) detention); *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (holding that §1226(e) "does not limit habeas jurisdiction over constitutional claims or questions of law."). Courts have similarly held § 1226(e) does not bar jurisdiction in the context of habeas challenges to constitutionality of procedures for continued custody following release from detention, as at issue here. *See Khabazha v.*

*United States Immigr. & Customs Enf't*, No. 25-CV-5279 (JMF), 2025 WL 3281514, at *4 (S.D.N.Y. Nov. 25, 2025).

To support their argument that § 1226(e) bars jurisdiction here, Respondents cite inapplicable and unpublished cases where the petitioners challenged discretionary decisions to detain them. *See Mwangi v. Terry*, 465 F. App'x 784 (10th Cir. 2012) (unpublished); *Pelletier v. United States*, 653 F. App'x 618 (10th Cir. 2016) (unpublished). In both cases, the Tenth Circuit underscored that § 1226(e) barred review "to the extent [the petitioner] challenges the agency's discretionary bond decision." *Mwangi*, 465 F. App'x at 787; *Pelletier*, 635 F. App'x at 622 (§ 1226(e) bars review to the extent petitioner "seeks modification of or release from the conditions of his bond"). Here, however, Mr. Franco is not seeking review of the 2018 Bond Order or of any lawful exercise of DHS's discretion to detain noncitizens under § 1226(a). Instead, he is challenging the legality and constitutionality of the procedures that led to his re-detention and continued custody. DHS does not have unfettered discretion under § 1226(a) to re-detain Mr. Franco after he was released on the 2018 Bond Order, and accordingly, Mr. Franco is challenging his re-detention and the subsequent restraints on his liberty without the requisite procedures, not DHS's decision to re-detain him and impose such restraints. Respondents argue that Mr. Franco is "attempting to challenge a discretionary decision not subject to judicial review" because he "admits that his February 2018 bond order was revoked" (ECF No. 32 at 5), but that is incorrect—Mr. Franco has consistently maintained that the bond was revoked improperly and unlawfully without any change in circumstances. ECF No. 31 ¶¶ 31, 60, 73.

Mr. Franco is not challenging a discretionary decision, but rather, the constitutionality and legality of Respondents' failure to provide him with the requisite procedures before re-detaining him. Thus, this Court has jurisdiction under 28 U.S.C. § 2241 and is not barred by 8 U.S.C. § 1226(e).[1]

## II. Exhaustion is Not Required, and in Any Event, Mr. Franco Has Exhausted the Administrative Remedies Available to Him

Exhaustion is not required here because Mr. Franco is challenging the constitutionality of his re-detention and continued restraint on his liberty. *See* ECF No. 31 ¶ 12.

While Respondents cite to *Soberanes v. Comfort*, 388 F.3d 1305 (10th Cir. 2004) to support their contention that exhaustion is required, *see* ECF No. 32 at 6, the Tenth Circuit there addressed exhaustion as it pertained to due process challenges to the noncitizen's removal proceedings, claims that the court found should be addressed with a motion to reopen to the agency and a petition for review rather than a habeas petition. 388 F.3d at 1309–10. Here, by contrast, Mr. Franco has no available administrative remedy to seek constitutional review of the continued restraints on his liberty and the lack of processes that led to those restraints because immigration courts do not have the authority to hear these constitutional challenges. *See Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1192 (D. Colo. 2024). Thus, even if Mr. Franco could ask for review before an

[1] In the merits section of the Response, Respondents argue that the Court lacks jurisdiction under the APA, saying "[i]f the Court were to have jurisdiction over Petitioner's challenge, it must be via a habeas claim…" ECF No. 32 at 11. To the contrary, Mr. Franco is seeking custodial review via a habeas corpus petition, not merely review under the APA.

immigration judge, *but see infra*, such review would be futile. *See, e.g.*, *id.*; *L.G.*, 744 F. Supp. 3d at 1182.

Respondents argue that Mr. Franco has not exhausted his administrative remedies because he can challenge the release condition by requesting that "the IJ" review the condition under 8 C.F.R. § 1236.1(d)(1). ECF No. 32 at 6–7. However, 8 C.F.R. § 1236.1(d)(1) only contemplates applications to an IJ to review conditions of release "before an order under 8 C.F.R. part 1240," which covers removal proceedings. Thus, this is not a possible avenue to challenge Mr. Franco's continued custody because Mr. Franco's removal proceedings have been administratively closed since September 20, 2021. ECF No. 31 ¶ 49. *See Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 66–67 (D. Mass. 2025) (explaining that a habeas petitioner challenging additional liberty restrictions imposed on him by ICE had no avenue to seek relief in immigration court where he was released on bond by an IJ and where his case had been closed by an IJ). In other words, Mr. Franco cannot ask for review before an immigration judge because there are currently no active proceedings before an immigration judge. Similarly, a request to a district director under 8 C.F.R. § 1236.1(d)(2) is only available "[a]fter expiration of the 7-day period in paragraph (d)(1)." Thus, Mr. Franco separately cannot utilize this avenue because there are no open removal proceedings by which to apply for relief under § 1236.1(d)(1).

Lastly, Mr. Franco, through counsel, has attempted and failed to convince the deportation officer and ISAP office to remove the conditions imposed on his release. ECF

No. 31-10 ¶ 14. Mr. Franco does not have any further administrative avenues to seek release from the continued restraint on his liberty.

## CONCLUSION

This Court has jurisdiction to review the claims in Mr. Franco's Supplemental Amended Petition for Writ of Habeas Corpus, and, to the extent exhaustion is required, Mr. Franco has exhausted his administrative remedies. Mr. Franco respectfully requests that the Court grant his Supplemental Amended Habeas Petition for Writ of Habeas Corpus.

Dated: May 8, 2026
Denver, CO

Respectfully Submitted,

*/s/ Laura Sturges*

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**CERTIFICATE OF SERVICE**

I, Laura Sturges, hereby certify that on May 8, 2026, 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***