IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

FRANCISCO FRANCO, Petitioner, v. Todd M. Lyons, Acting New York Field Office Director, Immigration Customs and Enforcement and Removal Operations, ("ICE/ERO, Todd M. Lyons, Director of Customs Enforcement ("ICE"); U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security {"DHS"); U.S. Department of Homeland Security) Pamela Bondi, Attorney General of the United States, and United States Department of Justice ("DOJ") Respondents	Case No. 2:26-cv-00508-SJB

AMENDED PETITION AND COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND HABEAS RELIEF

NATURE OF ACTION

1. Petitioner, Francisco Franco, an alien presently in the custody of Immigration Customs and Enforcement ("ICE") at the Metropolitan Detention Center in Brooklyn, New York seeks Habeas Corpus relief because ICE's detention of him is unlawful.

2. ICE arrested Petitioner in Westbury, New York without a warrant on January 13, 2026. *See ECF Document 15-1, ¶8.*

3. According to the Declaration by Acting Supervisory Detention and Deportation Officer Michael Damiano (the "Declaration") "On January 13, 2026, ICE and Customs and Border Protection officers encountered Petitioner on the street during a consensual encounter. Petitioner was asked for his identification, to which he provided a Mexican Consular Identification card

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a/k/a a 'cedula.' Record checks were conducted in the field, and it was determined that Petitioner was in the United States illegally. He was then taken into ICE custody pursuant to an I-205 Warrant of Removal/Deportation." *See Declaration, Exhibits D and E, ECF 15-2.* [Id.]

4. The documents, however, contradicts the sequence of events recited in the Declaration: the so-called consensual encounter, the apprehension, the detention and ICE's determination that Petitioner was in the United States illegally. Id.

5. Neither the Declaration, nor any of the records supplied by ICE, reveal whether ICE agents made an individualized assessment, such as a determination regarding flight risk and/or danger to the community before the arrest.

6. Since Respondents have failed to comply with their statutory duty to make some sort of individualized determination before detaining Petitioner, Petitioner should be given liberty.

7. Specifically, Petitioner contests his arrest and detention because Respondents following their own published criteria (a) did not have "reason to believe" that Petitioner had met the government's enunciated immigration arrest criteria. Prior to the arrest, ICE failed to determine that Petitioner had violated any immigration law or regulation **and** was likely to escape before a warrant could be obtained for his arrest. *See, January 28, 2026 Memorandum to All ICE Personnel from Todd M. Lyons*" ("Memorandum") reciting factors previously used by ICE to justify a warrantless arrest. So far, ICE has failed to document the specific justification for

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the arrest.

8. (b) More broadly under due process, Respondents have not produced evidence as to (i) who made the decision to detain him, (ii) when the decision occurred, (iii) on what basis the decision to detain him was made, (iv) whether the was any material change in circumstances with respect to Petitioner that triggered his detention, and (v) how any government policy would apply to Petitioner.

9. As a result of these deficiencies, Petitioner was entitled to more process than he received under §1226(a) and its implementing regulations, and thus Petitioner's liberty interest has been violated.

10. Although Todd Lyons, the Senior Official Performing the Duties of the Director, issued the Memorandum to all ICE Personnel after Petitioner's arrest, the Memorandum is noteworthy because the Memorandum redefines "likely to escape as being the equivalent of 'flight risk" i.e., whether an iden' fied and detained alien is likely to comply with future immigration obligations based on limited information. *See*, Exhibit A. The Memorandum now states that an officer "should consider the factors relevant to immediacy of obtaining and serving an arrest warrant on alien who may not yet have been subject to immigration enforcement, rather than factors relevant to whether an alien is likely to appear for immigration hearings and cooperate after having already been subject to immigration enforcement." *Id.*

11. The Memorandum also directs agents to document the factors which to an agent's warrantless arrest in the narrative section of the I-213. *Id.*

12. Since ICE admits that ICE and Customs and Border Protection officers stopped

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Petitioner without an individualized assessment, his arrest was unlawful, including, but not limited to, inconsistent with ICE's procedure at the time of his arrest and the January 28, 2026 procedure. The Memorandum outlines possible factors to justify a warrantless civil immigration arrest. *See,* Page 3 thereof, Exhibit A. Even under the new criteria, which may need meet Constitutional requirements, Respondents violated Petitioner's due process rights.

13. Third, Petitioner seeks redress for the government's violating his due process as a result of ICE's asynchronous issuance of and delivery of the I-205 Warrant to Petitioner (*Exhibit D, ECF 15-2)* approximately 9 hours after the 11:30 am arrest. This timing coincides with the completion of the rap sheet contained in *Exhibit C, ECF 15-2.*

14. Respondents' *Exhibit C* indicates that the government requested "The Interstate Identification Index Response" at 12:29 on January 29, 2026, *after* the arrest, and the last record request was at 19:29 on January 29, 2026. *See, ECF Document 15-2, page 11.* Petitioner claims he was arrested at approximately 11:30 am in Westbury, NY, within blocks from his home.

15. Fourth, ICE violated Petitioner's due process by utilizing a defective I-205 Warrant dated January 13, 2026. The form omits Petitioner's place of entry and date of entry even though the form contemplates such information.

16. Fifth, ICE further deprived Petitioner of due process by issuing a "Notice of Intent to Reinstate a Prior Order" (Form I-871) alleging a prior immigration violation without providing the prior order (which would have been documented on form I-860) and referring to the prior order intended to be

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restated as an "order of Exclusion."

17. However, since the enactment of The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), "Exclusion," a form of deportation enforcement, has not existed. "Exclusion" was defined at 8 U.S.C. 1126 (INA §236) which IIRIRA amended in its entirety and disposed of. Pub. L. No. 104-208, §303(b), set forth at "Section 236, Note 2." The prior order could not have been an "Exclusion" order in 2009, post IIRAIRA 1996, and this error should be determined fatal to ICE's contention that Petition should be held in mandatory detention.

18. Finally, Petitioner asserts he did not sign the I-871 as ICE instructed because he did not understand what he was signing. *See, Exhibit E ECF Document 15-2.*

19. For all these reasons, Petitioner urges the Court to grant this Petition.

20. Petitioner has continuously resided in New York since on or about August 15, 2009.

21. The Executive Office for Immigration Review ("EOIR")'s Immigration Court, a component agency of the DOJ, is expected to put Petitioner on the detained docket, and subject him to removal proceedings. At that time, he will file relief applications, including an application for cancellation of removal under 8 U.S.C. 1229b [INA §240A(b)].

JURISDICTION

22. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. §§ 1101 et. seq. This Court has habeas corpus

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jurisdiction pursuant to 28 U.S.C. § 2241 and Art. I & 9, Clause 2 of the United States Constitution (Suspension Clause).

VENUE

23. Venue lies with this Court because Petitioner is detained under the jurisdiction of the New York City office of ICE.

PARTIES

24. Petitioner is a 33-year-old male, native and citizen of Mexico, who has been detained under the jurisdiction of the New York office of ICE since yesterday, January 13, 2026. He seeks issuance of a writ of habeas corpus.
25. Respondent Todd M. Lyons is the Director of ICE. He is named in his official capacity. He is responsible for the enforcement of the immigration laws, including against Petitioner. He is also the Acting New York Field Office Director. His address is U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC, 20536, and at the New York Field Office, ICE, .26 Federal Plaza, 9th Floor, New York, New York, 10278.
26. Respondent Department of Homeland Security ("DHS") is an executive department of the United States Government. DHS is headquartered in Washington, D.C.
27. Defendant ICE is a component of DHS headquartered in Washington, DC.
28. Defendant Kirsti Noem is the Secretary of DHS. She is named in her official capacity. She is responsible for the administration and enforcement of the immigration laws, including against Petitioner. She supervises the DHS and ICE Respondents. Her address is U.S. Department of Homeland Security, 800 K Street, NW #1000, Washington, DC, 20528.
29. Respondent Pamela Bondi is the Attorney General of the United States. She is named in her official capacity. She is responsible for the administration of the

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immigration laws as exercised by the EOIR. 8 U.S.C. § 1103(g). EOIR administers Petitioner's removal proceedings, and supervises immigration judges and the Board of Immigration Appeals. Her address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC, 20530.

30. Respondent Department of Justice ("DOJ") is an executive department of the United States Government. DOJ is headquartered in Washington, DC.

OTHER FACTUAL ALLEGATIONS

31. Petitioner resides with his wife and helps support their 3 U.S. citizen children.

32. Petitioner is statutorily eligible for 2 immigration removal relief applications which, if approved, would grant him legal permanent residence: First, he should be permitted to benefit from the approved immediate relative petition filed by his wife on form I-130, the I212 Waiver (Permission to Reapply for Admission to the United States), the I601A Unlawful Presence Waiver and Consular Immigrant Visa Processing, and second, Cancellation of Removal for Nonpermanent Residents.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court enter judgment in his favor and: Order Respondents immediately to release Petitioner from custody, and stay removal of Petitioner.

February 4, 2026

Respectfully submitted,
/s/ Leonard H. Hecht
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