

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Case No. 1: 26-cv-00476-SKC-SBP

**JOSE MARRERO YERA,**

Plaintiff-Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora,  
Colorado, in his official capacity,

ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration  
and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her  
official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement,  
in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

Defendants-Respondents.

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**PETITIONER-PLAINTIFF'S REPLY TO RESPONDENT-DEFENDANTS'  
RESPONSE (ECF 15)**

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The dispositive question before this Court is not new. Defendants-Respondents' ("Defendants") erroneously claim that their authority to jail Plaintiff-Petitioner ("Mr. Marrero Yera") is pursuant to 8 U.S.C. § 1225(b)(2) because he entered the United States without inspection ("EWI") years ago. *See generally* ECF 15; ECF 15-1. In their response, Defendants concede that the issue here is "not materially different from the issues this Court has resolved [against Defendants] in prior rulings in other cases." ECF 15, at \*2 (citing *Hernandez v. Baltazar*, No. 1:25-cv-3688-SCK-SBP, 2025 WL 3718159 (D. Colo. Dec. 23, 2025); & *Perez Zepeda v. Hagan, et al.*, No. 1:25-cv-03789-SKC, ECF No. 18 (D. Colo.)). This Court should once again find Defendants' arguments regarding the appropriate statute of detention unavailing.

Respectfully, this Court should also go further. It should find that Defendants' reincarceration of Mr. Marrero Yera without notice or an opportunity to be heard violates procedural due process. Defendants do not respond to Mr. Marrero Yera's claim that Defendants' decision to reincarcerate him without process after previously releasing him was unlawful. *See generally* ECF 15; 15-1. "Where, as here, a party files a response to a motion but does not address all arguments which the motion raises, the party has effectively conceded the arguments which it does not address." *Alfaro Herrera v. Baltazar*, 1:25-cv-04014-CNS, 2026 WL 91470, at \*5 (D. Colo. Jan. 13, 2026); *See United States v. Hunter*, 739 F.3d 482, 495 (10th Cir. 2013) (concluding that cursory argument not meaningfully developed by any analysis or citation is deemed waived). The appropriate remedy under these circumstances is immediate

release from all forms of Immigration and Customs Enforcement (“ICE”) custody. That is especially true when Defendants do not present any evidence or argument in defense of its decision to rejail Mr. Marrero Yera without notice or an opportunity to be heard.

**I. This Court Should Order Immediate Release from All Forms of ICE Custody because that is the Only Remedy to Cure Defendants’ Significant Due Process Violations.**

ICE released Mr. Marrero Yera on his own recognizance four years ago. ECF 2-3. To do so, ICE found that Mr. Marrero Yera is neither a risk of flight nor a danger to the community. *See Saravia v. Sessions*, 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2025) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk”). Defendants “do not contend that those facts have changed or otherwise argue that [Mr. Marrero Yera] presents a flight risk or a danger to the community such that his continued detention is justified. Instead, [Defendants] simply argue that [Mr. Marrero Yera’s] detention is authorized by statute . . . .” *Alfaro Herrera*, 2026 WL 91470. This District has unanimously decided that Defendants’ statutory interpretation is incorrect, Exh. 2-1, and “more than 1,500 district courts” across the country have done the same, *Chavez Amrenta v. Noem*, No. 26-cv-00236-PAB, 2026 WL 274634, at \*2 (D. Colo. Feb. 3, 2026).

Under the circumstances, “Respondents’ ongoing detention of [Mr. Marrero Yera] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.” *J.U. v. Maldonado*, 805 F.Supp.3d 482, 498 (E.D.N.Y. 2025). Indeed, Defendants’ seemingly

“ignore[] that [Mr. Marrero Yera] was previously found not to be a flight risk or a danger to the community when he was released . . . .” *Alfaro Herrera*, 2026 WL 91470, at \*13. “Given the deprivation of [Mr. Marrero Yera’s] liberty, formerly granted and approved by Respondent, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated” this Court should order Respondents to “immediately release [Mr. Marrero Yera] from custody.” *J.U.*, 805 F.Supp.3d at 498; *See Valera v. Baltazar*, 1:25-cv-03744-CNS, 2025 WL 3496174, at \*3 (D. Colo. Dec. 5, 2025) (“In this situation, ordering [Defendants] to provide Petitioner with a bond hearing would not address Petitioner’s injury because, until then, he would remain in continued detention despite a determination from [ICE] that already ordered his release . . . .”); *Martinez-Orellana v. Hagan, et al.*, No. 1:26-cv-00355-WJM, ECF 14 (D. Colo. Feb. 13, 2026) (attached as Exh. 1) (holding that “immediate release is indeed the only form of relief it can grant that will meaningfully and effectively cure the Government’s flagrant deprivation of . . . constitutional rights”).

In sum, this Court should order Mr. Marrero Yera’s immediate release. As discussed in Mr. Marrero Yera’s Petition (ECF 1) and Motion for Temporary Restraining Order (ECF 2), Mr. Marrero Yera is entitled to procedural due process. ECF 1, at ¶¶ 40–44; ECF 2, at \*\*14–17. Defendants concede as much. *See Alfaro Herrera*, 2026 WL 91470, at \*5. They did not argue otherwise or present any evidence or argument explaining why ICE reincarcerated Mr. Marrero Yera without notice, an opportunity to be heard, or any material changed circumstances. *See generally* ECF

15; ECF 15-1. Immediate release from all forms of ICE custody is therefore the appropriate remedy. *See J.U.*, 805 F.Supp.3d at 498.

**II. Jailing Mr. Marrero Yera Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful.**

Instead of distinguishing this Court’s prior rulings, Defendants present a strained reading of *Jennings*. This Court already found Defendants’ use of *Jennings* unpersuasive. *Hernandez*, 2025 WL 3718159, at \*5. *Jennings* begins with a discussion of our “*Nation’s borders and ports of entry*, where the Government must determine whether a [noncitizen] *seeking to enter* the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added). The Court notes that §§ 1225(a) and 1225(b) are relevant for this determination, *id.* 287–88, and concludes that the latter is for noncitizens who “shall be detained for a removal proceeding if an immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted *into the country*,” *id.* at 288 (emphasis added) (citing § 1225(b)(2)). The Court then transitions to discuss that “*once inside the United States*, [noncitizens] do not have an absolute right to remain here[.]” *id.* (emphasis added), concluding that “U.S. immigration law authorizes the Government to detain certain [noncitizens] *already in the country* . . . under § 1226(a) and (c).” *Id.* at 289 (emphasis added). This Court agrees. *Hernandez*, 2025 WL 3718159, at \*5.

Beyond its selective reading of *Jennings*, Defendants cite without analysis the Fifth Circuit’s decision in *Buenrostro-Mendez v. Bondi*, ---F.4th---, 2026 WL 323330, at \*5–10 (5th Cir. Feb. 5, 2025) and a single decision that falls in the significant minority of district courts adopting their erroneous position, *Montoya v. Holt*, No.

CVI-25-01231-JD, 2025 WL 3733303 (W.D. Okla. Dec. 26, 2025). ECF 15, at \*3. The unanimous consensus in this District disagreeing with Defendants is more persuasive. Indeed, even district courts in the Fifth Circuit continue to find that people Defendants claim are subject to mandatory detention under § 1225(b) are entitled procedural due process and merit bond hearings. *E.g., Hassen v. Noem, et al.*, EP-26-CV0048-DB (W.D. Tex. Feb. 9, 2026) (attached as Exh. 2); *Duran Aguila v. Warden, et al.*, EP-26-CV-241-KC (W.D. Tex. Feb. 9, 2026) (attached as Exh. 3). Those cases are particularly persuasive where, as here, DHS reincarcerates someone without process after they have already released them on their own recognizance.

Defendants remaining arguments are without merit; this Court already correctly rejected them. *See generally Hernandez*, 2025 WL 3718159.

### **III. Conclusion**

Based on the foregoing, this Court should grant Mr. Marrero Yera's Petition (ECF 1) and end Defendant's illegal incarceration of Mr. Marrero Yera expeditiously by ordering his immediate release from all forms of ICE custody.

Dated: February 18, 2026

Respectfully submitted,

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### **AI CERTIFICATION**

Pursuant to the Court's Standing Order regarding the use of Generative Artificial Intelligence ("AI") in court filings, undersigned counsel certifies that AI was not used to draft this filing.

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notifications of such filing to all counsel of record.

/s/ Conor T. Gleason  
Conor T. Gleason