IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No:

KEILA DANIELA BRACHO CORTEZ,

Petitioner,

v.

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,
KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,
TODD LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement,
GEORGE VALDEZ, in his official capacity as the Acting Field Office Director of the Denver Field Office, Enforcement and Removal Operations, Immigration and Customs Enforcement,

Respondents.

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner, Keila Daniela Bracho Cortez, by and through undersigned counsel, hereby submits this Reply to Respondents' Consolidated Response (Dkt. 9). The Government's opposition relies on a rigid interpretation of procedural defaults and a mischaracterization of the Petitioner's current legal status under the Immigration and Nationality Act ("INA"). As demonstrated below, the named Respondents are legally sufficient to provide the requested relief, and Petitioner's two-year period of liberty in the interior of the United States entitles her to the due process protections of a bond hearing at a minimum, and immediate release under recent, controlling precedent.

The Government first moves to dismiss this action on the technical ground that Petitioner failed to name Juan Baltazar, the Warden of the Denver Contract Detention Facility, as the "immediate custodian." This argument is a tactical distraction designed to avoid a ruling on the

merits of Petitioner's liberty and rests on a fundamental misapplication of *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). While *Padilla* established a "default" rule for the immediate custodian in the context of military or criminal detention, it did not create an absolute jurisdictional straitjacket for immigration habeas petitions, particularly those involving private, contract-run facilities. In the unique case of the Denver Contract Detention Facility, Warden Baltazar is a private employee of a contractor. He possesses no independent statutory authority under the Immigration and Nationality Act ("INA") to determine the legality of a noncitizen's detention or to effectuate a release on bond. This situation is easily distinguishable from *Padilla* where the detainee was detained in a U.S. government facility, a U.S. Navy brig, commanded by a U.S. military officer. *Id.* at 432. In that case, the Navy officer commanding the brig had governmental authority to physically confine the detainee. *See id.* at 436. In this case, Warden Baltazar has no governmental authority but instead works for a private company under contract with the U.S. government. The U.S. government may outsource detention facilities, but it cannot outsource its responsibility to comply with the Constitutional protections for personal liberty.

As recently affirmed in *Shahadhat v. Warden*, 2026 U.S. Dist. LEXIS 60312 (D.N.M. Mar. 23, 2026), it has become "standard practice" in these habeas cases for the court to proceed to a decision even where the applicable warden elects not to appear or participate. In *Shahadhat*, the court proceeded to a final judgment against the federal respondents despite the warden's total absence, recognizing that the federal government, not the contract warden, holds the "keys" to the facility and the legal authority over the detainee. This case is indistinguishable from *Shahadhat* on this point. The Assistant U.S. Attorney, Andrew Soler, already represents the interests of the executive branch, and insisting on the formal naming of a contractor is a hollow procedural hurdle that this Court should reject.

Furthermore, as noted in *Ozturk v. Trump*, 779 F. Supp. 3d 462, 475 (D. Vt. 2025), the "immediate custodian" rule is a rule of practice that must yield to the legal realities of detention. Respondents George Valdez and Todd Lyons exercise total "legal control" over the Petitioner, meaning they alone have the power to "produce the body" and order her release, making them the only proper and sufficient respondents under 28 U.S.C. § 2241. To dismiss this petition because the Petitioner named the actual decision-makers rather than the contractor would be to prefer corporate hierarchy over the actual rule of law..

The core of the Government's merits argument, that Petitioner is an "arriving alien" subject to mandatory detention, is a legal fiction that collapses under the weight of the undisputed facts and recent case law. The Government asks this Court to believe that a woman who was inspected, released on her own recognizance on December 1, 2023, and lived as an integrated member of the Colorado community for over 800 days remains an "applicant for admission" frozen at the border's threshold. This position is not just factually untethered; it is a direct assault on the Fifth Amendment's Due Process Clause. The Government's theory would create a permanent underclass of residents who, despite living in the interior for years, could be snatched from their families and scholarship-backed studies and held indefinitely without a shred of judicial review.

This "permanent arriving alien" fiction was explicitly rejected in *Taya v. De Anda-Ybarra*, 2026 U.S. Dist. LEXIS 45325 (D.N.M. Mar. 5, 2026). In *Taya*, the petitioner was apprehended at a port of entry, processed as an "arriving alien," and subsequently released into the interior for a period of several months before being re-detained during a routine check-in. The *Taya* Court held that once the government exercises its discretion to release a noncitizen into the community, the mandatory detention provisions of 8 U.S.C. § 1225(b) no longer apply. Instead, the Court found that 8 U.S.C. § 1226(a), the discretionary detention statute, governs the custody of noncitizens

already present in the United States. The *Taya* Court was clear: the government cannot "snap back" a person into mandatory detention once they have established a presence in the interior.

Ms. Bracho Cortez's case is factually indistinguishable from *Taya* on this legal point, but the duration and depth of her presence in the interior provide an even more compelling argument for the application of § 1226(a). While the petitioner in *Taya* had established a presence over a matter of months, Ms. Bracho Cortez has lived in Colorado for over 800 days. Her presence is not merely physical; it is deeply rooted in the community. Since her release in 2023, she has not only raised her five-year-old daughter but has actively pursued a career in healthcare, securing a prestigious nursing scholarship from [redacted] and serving as a Teacher Assistant.

These are not merely personal achievements – they are objective markers of community integration that demonstrate she is exactly the type of resident for whom the discretionary detention of § 1226(a) was intended. Her track record of compliance with all reporting requirements proves that she poses no risk of flight or danger. To allow the Government to ignore these 800 days of community ties and re-classify her as a "newly arriving" alien would grant executive agencies the unconstitutional power to "pause" the Fifth Amendment and ignore the reality of a resident's life at will.

Finally, the Government's argument that a Temporary Restraining Order would "alter the status quo" is a brazen attempt to gaslight this Court. For over two years, the undisputed status quo was Ms. Bracho Cortez's liberty, her nursing studies, and her role as a mother. It is the Government's sudden, arbitrary decision to re-detain her during a routine administrative check-in on February 12, 2026, that has disrupted the long-standing status quo.

The balance of equities clearly weighs in Petitioner's favor. As demonstrated in *Taya* and *Shahadhat*, when the Government fails to articulate a "legitimate interest" in continued detention for a resident noncitizen, immediate release is the *only* appropriate remedy. Ms. Bracho Cortez's case is even more compelling; she has a proven 26-month track record of compliance while released on her own recognizance. The Government managed her case for more than 800 days while she was at liberty, proving her release poses no threat to the public interest. This Court should exercise its equitable powers to restore the true status quo and ensure that the Government is not permitted to substitute administrative convenience for constitutional compliance.

The Government seeks to win this case on technicalities because it cannot win on the merits. Petitioner respectfully requests that this Court: (1) Decline to dismiss for failure to name the Warden; (2) Declare that Petitioner is held under 8 U.S.C. § 1226(a); and (3) Order Respondents to immediately release Petitioner, and order that she shall not be re-detained without a pre-deprivation bond hearing where the Government must prove dangerousness or flight risk by clear and convincing evidence.

Respectfully submitted this 7th day of April, 2026.

s/ Michael G. Congiu
Michael G. Congiu
LITTLER MENDELSON, P.C.
1300 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402-2136
Telephone: 612.313.7656
Facsimile: 612.630.9626
Email: mcongiu@littler.com

Pro bono attorneys for Petitioner Keila Daniela Bracho Cortez

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2026, a true and correct copy of the foregoing PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER was served via ECF and Certified Mail to the following parties:

Andrew M. Soler

U.S. Attorney's Office

District of Colorado

1801 California Street

Suite 1600

Denver, CO 80202

Attorney for Respondents

s/ Elsa Lundin

Elsa Lundin, Legal Assistant