

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SABRINA AYLEN CARMONA
SANCHEZ,

Petitioner,

v.

RAFAEL VERGARA, Warden of Adams
County Correctional Center, *et al.*,

Respondents.

No.: 5:26-cv-46-DCB-BWR

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF PETITIONER’S
MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioner Sabrina Aylene Carmona Sanchez (hereinafter “Ms. Carmona Sanchez”) respectfully submits this supplemental memorandum of law in support of her Motion for a Temporary Restraining Order, Doc. 6, to address the Fifth Circuit’s recent decision in *Buenrostro-Mendez v. Bondi* and other matters raised during the parties’ February 18 telephone conference with the Court.¹ As explained below, Ms. Carmona Sanchez has established a likelihood of success on the merits of her habeas petition notwithstanding the Fifth Circuit panel’s recent decision, the Immigration Judge is powerless to review her detention and order her release absent an order from this Court, and the irreparable harm of unconstitutional detention Ms. Carmona Sanchez is experiencing only grows with each day.

¹ As directed by the Court, on February 18, 2026, counsel for Petitioner emailed to Chambers a proposed order setting forth a supplemental briefing schedule.

I. The Fifth Circuit’s Recent Decision in *Buenrostro-Mendez* Does Not Impact Ms. Carmona Sanchez’s Likelihood of Success on the Merits of Her Due Process Claim

On February 6, 2026, a divided Fifth Circuit panel issued an expedited opinion in *Buenrostro-Mendez v. Bondi*, a consolidated appeal of two habeas petitions granted by the U.S. District Court for the Southern District of Texas. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026).² In its opinion, the Fifth Circuit panel rejected the district court’s holding that the Government’s interpretation and application of 8 U.S.C. § 1225(b)(2) to deprive noncitizens detained in the interior of the United States of bond hearings violates the Immigration and Nationality Act (“INA”). *Id.* at *1. The statutory claim at issue was similar to Ms. Carmona Sanchez’s, though notably there are factual differences: Ms. Carmona Sanchez was released on her own recognizance by Respondents—release explicitly categorized as falling under 8 U.S.C. § 1226(a) (Section 236 of the INA), *see* Doc. 1-1—and Respondents subsequently conferred on her the benefit of work authorization. Nevertheless, the Fifth Circuit panel *only* considered statutory, not constitutional, challenges to the petitioners’ detention.

As Ms. Carmona Sanchez noted in her Memorandum of Law in Support of a Motion for a Temporary Restraining Order, for the last several months, courts across the country and within the Fifth Circuit have granted habeas relief to petitioners in Ms. Carmona Sanchez’s circumstance on due process grounds, irrespective of the statute that authorizes detention. Doc. 7 at 14–18. And courts within the Fifth Circuit have continued doing so after the Fifth Circuit’s decision in *Buenrostro-Mendez* because that decision did not address due process. *E.g.*, *Bonilla Conforme v. Anda-Ybarra*, No. 3:26-cv-00263-KC, 2026 WL 381110, at *2 (W.D. Tex. Feb. 11, 2026) (concluding that the circuit’s decision “has no bearing on this Court’s determination of whether [the petitioner] is being detained in violation of his constitutional right to procedural due process”);

² A petition for en banc review of the Fifth Circuit panel’s opinion is anticipated.

Hassen v. Noem, No. 3:26-cv-00048-DB (W.D. Tex. Feb. 9, 2026), ECF No. 8 at 3 (“The Court reiterates its original holding that noncitizens who have ‘established connections’ in the United States by virtue of living in the country for a substantial period acquire a liberty interest in being free from government detention without due process of law.”). This is because petitioners like Ms. Carmona Sanchez have a strong liberty interest in being free from detention *and* they have liberty interests in maintaining the benefits Respondents have chosen to bestow on them—here, release on recognizance and work authorization. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (holding that “once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody” (quotation omitted) (collecting cases)); *Parada-Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, at *5 (N.D. Tex. Oct. 29, 2025), *report and recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025) (same); *Martinez v. Noem*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3 (W.D. Tex. Oct. 21, 2025) (holding that even if the Government’s new interpretation was correct, petitioner was entitled to due process and succeeded in his as-applied challenge); *Sarmiento v. Perry*, No. 1:25-CV-01644-AJT-WBP, 2026 WL 131917, at *8 (E.D. Va. Jan. 19, 2026) (same); *Aquino de la Cruz v. LaRose*, No. 25-CV-3770-LL-MSB, 2026 WL 74126, at *2 (S.D. Cal. Jan. 9, 2026) (finding a “protected liberty interest in remaining out of custody” for petitioner who “obtained a work authorization, developed community ties, and was undergoing extensive medical treatment for serious medical conditions”); *B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *6 (D. Or. Dec. 4, 2025) (recognizing a “substantial property interest” in petitioner’s work authorization which may not “be taken away without sufficient procedural due process”); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (holding that petitioner previously released by ICE had a protected liberty

interest in his continued release, and that due process required that he receive a hearing before an immigration judge before he could be re-detained).

The Fifth Circuit’s ruling in *Buenrostro-Mendez* has no impact on Ms. Carmona Sanchez’s likelihood of success on the merits of her due process claim. As set forth in her habeas petition and memorandum of law, she has established the requirements for a temporary restraining order and is entitled to a writ of habeas corpus granting her release from custody. *See* Docs. 1, 7.

II. The Immigration Court Will Not Review Ms. Carmona Sanchez’s Detention

During the February 18, 2026 telephone conference with the Court, counsel for Respondents stated that Ms. Carmona Sanchez can request review of her detention and seek release on bond from the Immigration Judge (“IJ”) presiding over her removal proceedings. That representation is inaccurate.³ It runs counter to a blanket nationwide government policy denying unadmitted noncitizens like Ms. Carmona Sanchez the opportunity to seek release on bond from ICE detention. It is also directly contradicted by Respondents’ counsel’s own representation during the conference that it is the government’s position that Ms. Carmona Sanchez “is subject to mandatory detention under INA Section 235 [8 U.S.C. § 1225].” Absent an order from this Court, no IJ—nor any other government official—will review Ms. Carmona Sanchez’s detention.

As detailed in Ms. Carmona Sanchez’s Petition, Respondents have adopted a nationwide policy since at least July of last year reinterpreting the INA to subject all individuals who entered the United States without inspection and were apprehended by ICE within the United States at a

³ On February 24, 2026, Ms. Carmona Sanchez had an individual hearing before the IJ. The purpose of the hearing was to receive evidence and argument related to Ms. Carmona Sanchez’s claims for relief from deportation. The IJ denied Ms. Carmona Sanchez’s asylum claim and ordered her removed. Ms. Carmona Sanchez has thirty days to appeal the removal order, and, in the meantime, her removal order is not considered administratively final. 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1003.38(b). Ms. Carmona Sanchez’s eligibility for bond or a bond hearing was not addressed at the hearing.

later date—often years after their initial entry—to mandatory detention without bond. Doc. 1 ¶¶ 52–53. The policy, implemented through a July 8, 2025 ICE Memo and later through a Board of Immigration Appeals (“BIA”) published opinion in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which is binding on all immigration judges, requires the government to treat unadmitted noncitizens like Ms. Carmona Sanchez as “seeking admission” and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2) for the pendency of their removal proceedings, rendering them ineligible for bond. *Id.* For decades prior to this abrupt policy reversal, the government’s position was that these individuals fell under the INA’s permissive pre-removal order detention statute, 8 U.S.C. § 1226, and thus—unless they had criminal history that subjected them to mandatory detention under subsection (c)—they were eligible for release on bond or their own recognizance by ICE in the first instance, and for IJ review of ICE’s initial custody determination (commonly referred to as a bond hearing). Doc. 1 ¶¶ 47, 56; *see* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(c) & (d), 1236.1(c) & (d). Under the current policy, that is no longer the case.⁴

All three members of the Fifth Circuit panel in *Buenrostro-Mendez* agree that this nationwide no-bond policy exists and that it applies to individuals like Ms. Carmona Sanchez. *See* 2026 WL 323330, at *3 (“[U]nadmitted aliens apprehended anywhere in the United States are ineligible for release on bond, regardless of how long they have resided inside the United States.” (citing *Yajure-Hurtado*, 29 I&N Dec. at 225)); *see also id.* at 11 & n.3 (Douglas, J., dissenting)

⁴ On February 18, 2026, the U.S. District Court for the Central District of California issued an order vacating the BIA’s decision in *Matter of Yajure Hurtado* as contrary to law under the Administrative Procedure Act. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), ECF No. 116 at 19. The court acknowledged the Fifth Circuit’s opinion in *Buenrostro-Mendez* and noted that it was not bound by the Fifth Circuit’s decision. *Id.* at 10 n.6. Notwithstanding the *Maldonado Bautista* decision, undersigned counsel anticipates that, in light of *Buenrostro-Mendez*, ICE officials and IJs in the Fifth Circuit will, for now, continue to follow *Matter of Yajure Hurtado*, which means that no IJ will grant Ms. Carmona Sanchez a bond hearing unless ordered to do so by this Court. Indeed, to date, Ms. Carmona Sanchez has not received the required *Maldonado Bautista* class member notice.

(describing the government’s decision to subject petitioners and others like them to mandatory detention under § 1225 as a “change in policy” that is being applied across the country).

Ms. Carmona Sanchez is currently in removal proceedings in immigration court. In the past, she would have been eligible for a bond hearing before the IJ prior to entry of a final order of removal—*i.e.*, while her removal case remains pending before the IJ and, in the event of an appeal, the BIA. *See* 8 C.F.R. §§ 1231.6(d), 1241.1. Due to the government’s policy change, that option is no longer available to Ms. Carmona Sanchez and many others like her. The IJ will still review and decide Ms. Carmona Sanchez’s claims for relief from removal—including her request for asylum and other protection-based forms of relief based on her fear of persecution as a transgender person—but will not review her detention. Instead, Ms. Carmona Sanchez’s only recourse is to seek habeas review in this Court, which is empowered to order her release (or, alternatively, order Respondents to provide her a bond hearing before the IJ) to vindicate her due process rights. *See, e.g., Cumbe Lema*, No. 3:26-cv-00249-KC (W.D. Tex. Feb. 9, 2026), ECF No. 7 (granting habeas relief on due process grounds post-*Buenrostro-Mendez* to petitioner detained without bond during removal proceedings). This Court need not and should not wait on the immigration court to issue a custody determination that it no longer has the power to make.

III. The Safety Risks and Denial of Necessary Medical Care Ms. Carmona Sanchez is Experiencing at Adams, an All-Male Detention Facility, Go To the Irreparable Harm Prong of the TRO Standard

Ms. Carmona Sanchez has moved for a temporary restraining order because she is already facing irreparable harm—confinement without due process—and is likely to suffer further irreparable harm because she is at risk of harassment and assault as a transgender woman in a men’s detention center and because she is not being provided necessary healthcare. Doc. 7 at 18–21. Indeed, she is increasingly experiencing harassment from detained men in her dorm and as

recently as this week, reports that she is no longer permitted to shower privately in the healthcare unit and must instead shower in the public bathroom in her dorm. Ms. Carmona Sanchez *does not* challenge the conditions of her confinement directly in this habeas action, nor is she requesting transfer to a women’s detention facility.⁵ *See* Doc. 1. She *is* requesting her release from detention or, in the alternative a bond hearing, because she is unlawfully detained, and her conditions of confinement are relevant to whether the Court should order that relief on an emergency basis through a temporary restraining order. *See Peregrino Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814 (W.D. La. Nov. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-01200, 2020 WL 6929700, at *8–9 (W.D. La. Nov. 24, 2020) (granting habeas relief in case challenging detention of medically vulnerable petitioner during COVID-19 pandemic); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036–37 (N.D. Cal. 2025) (granting TRO and noting petitioner’s serious medical conditions were likely to be exacerbated by detention).

CONCLUSION

As explained above, the Fifth Circuit’s recent decision in *Buenrostro-Mendez* does not change the fact that Ms. Carmona Sanchez has established the requirements for a temporary restraining order as to her due process claim. Next, this Court need not wait for an IJ to review Ms. Carmona Sanchez’s custody because an IJ cannot and will not do so, according to federal policy.

⁵ There is no detention center where Ms. Carmona Sanchez can be safely housed given the federal government’s and ICE’s current blanket policy of requiring that transgender individuals be detained according to their sex assigned at birth. *See* *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, Exec. Order 14,168, 90 Fed. Reg. 8615, 8616 (Jan. 30, 2025), <https://www.federalregister.gov/documents/2025/01/30/2025-02090/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal> (requiring the Department of Homeland Security to “ensure that [transgender women] are not detained in women’s prisons or housed in women’s detention centers”); *see also* Christopher Wiggins, *Trump administration stops abuse protection for transgender detainees in ICE custody*, *The Advocate* (July 15, 2025), <https://www.advocate.com/news/transgender-detainees-danger-ice-custody>.

Lastly, to be clear: Ms. Carmona Sanchez does not directly challenge her conditions of confinement through this habeas action, but the risk of irreparable harm she faces in detention is appropriately considered in relation to her pending TRO motion. For those reasons and the reasons set forth in Ms. Carmona Sanchez’s Petition and Motion for a Temporary Restraining Order, the Court should order her release, or, in the alternative, a bond hearing.

Dated: February 24, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on today's date, I filed a copy of the foregoing document along with any attachments using the court's CM/ECF system, which will cause notice to be served electronically to all parties whose counsel has entered an appearance. I also sent a copy of this document by electronic mail to counsel for Respondents, who appeared in a telephone conference in this matter on February 18, 2026.

/s/ C.J. Sandley_____

Counsel for Petitioner