

**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

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS
CORPUS**

PRELIMINARY STATEMENT

Petitioner Sabrina Aylen Carmona Sanchez is a survivor of gender-based persecution, human trafficking, and violent crime who is currently seeking asylum and other protection-based forms of relief from removal in the immigration court system; she is also in the process of applying for a T Visa (for victims of trafficking)¹ and U Visa (for victims of certain serious crimes who cooperate with law enforcement investigation). Prior to her arrest by Immigration and Customs Enforcement (ICE) on January 3, 2026 and subsequent transfer to Adams County Correctional Center (“Adams”), she had been living, working—with work authorization granted by the U.S. government—and receiving necessary medical and psychological gender-affirming care for years in New York City, making a home there along with her loving partner and close-knit community. When she was first encountered by immigration officials near the border in 2023, she was released on her own recognizance after a brief detention. This time, Respondents are refusing to release her or allow her the opportunity for a bond hearing before an Immigration Judge based on a nationwide policy of subjecting all noncitizens who entered the U.S. without inspection to mandatory detention without bond, upending decades of consistent practice and settled interpretation of the immigration laws.

Ms. Carmona Sanchez comes before this Court seeking habeas review of her unlawful detention—not of a removal order or of any decision or action taken in her pending removal proceedings. As detailed in her Petition, she is being detained in violation of the Immigration and Nationality Act (INA) and her Fifth Amendment right to procedural due process. Doc. 1 ¶¶ 58–

¹ U.S. Citizenship & Immigration Services received Ms. Carmona Sanchez’s T Visa application on February 23, 2020. She is currently scheduled for a biometrics appointment in connection with her application on March 26.

69. Contrary to Respondents’ assertions,² *see* Doc. 13 at 7–20, this Court clearly has jurisdiction over Ms. Carmona Sanchez’s habeas claims, she is not required to exhaust administrative remedies (nor could she), and her detention violates both the INA and core due process tenets—the Fifth Circuit’s recent decision in *Buenrostro-Mendez v. Bondi* (“*Buenrostro*”), 166 F.4th 494 (5th Cir. 2026), notwithstanding. Respondents barely engage with Ms. Carmona Sanchez’s due process claim, failing to acknowledge the liberty interest created by their own prior decision to release her on her own recognizance pending her removal proceedings or the complete lack of process that has attended her current deprivation. As several district courts in this circuit have recognized post-*Buenrostro*, Ms. Carmona Sanchez’s pre-removal order detention without bond violates due process. This Court should order her immediate release or, alternatively, order Respondents to provide her with a bond hearing before an Immigration Judge with adequate procedural protections to protect against further erroneous deprivation of her liberty.

ARGUMENT

I. The INA Does Not Strip This Court of Jurisdiction to Hear Ms. Carmona Sanchez’s Habeas Claims Challenging Her Unlawful Detention.

Respondents contend that three subsections of the INA—8 U.S.C. §§ 1252(a)(5), (b)(9), and (g)³—strip this Court of jurisdiction over Ms. Carmona Sanchez’s habeas claims. Doc. 13 at 7–11. Not so. Respondents’ distended interpretation of these provisions has been roundly rejected by the Supreme Court, the Fifth Circuit, and numerous district courts within this circuit, including

² Respondents do not even extend Ms. Carmona Sanchez the basic dignity of referring to her with female pronouns. *See* Doc. 13.

³ Sections 1252(a)(5) and (b)(9) work together to channel judicial review of removal orders and all legal and factual questions “arising from any action taken or proceeding brought to remove [a noncitizen] from the United States” under the INA through the petition for review process in the appropriate court of appeals. 8 U.S.C. §§ 1252(a)(5), (b)(9). Section 1252(g) bars judicial review of any claim “arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders” except as provided under Section 1252. *Id.* at § 1252(g).

in cases closely analogous to Ms. Carmona Sanchez’s. Tellingly, Respondents do not cite a single in-circuit case in support of their jurisdictional arguments. This Court has jurisdiction to hear Ms. Carmona Sanchez’s claims that she is being detained without bond in violation of the INA and the Due Process Clause. These types of claims lie at the core of the injustices the Great Writ is meant to surface and correct.

A. Ms. Carmona Sanchez’s Detention Claims Do Not Fall Within the Narrow Scope of § 1252(g)

The Supreme Court has adopted a “narrow reading” of § 1252(g), noting that it “applies only to three discrete actions that the Attorney General [or the Secretary of DHS] may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 482, 487 (1999) (quoting § 1252(g)) (emphasis of the Court); accord *Cardoso v. Reno*, 216 F.3d 512, 514–16 (5th Cir. 2000). None of those “three discrete actions” are implicated here: Ms. Carmona Sanchez does not challenge the government’s decision to place her in removal proceedings; nor does she challenge any aspect of the agency’s adjudication of her removal case. She is not yet subject to a final order of removal, so could not conceivably be seeking review in this Court of the execution of a removal order.

Respondents attempt to stretch § 1252(g)’s “commence proceedings” category to effectively encompass all challenges to detention, arguing that “the decision to detain an alien pending such removal proceedings[] squarely falls within this jurisdictional bar.” Doc. 13 at 7–8. But the Fifth Circuit has already rejected this expansive interpretation, concluding that “section 1252(g) does not bar courts from reviewing [a noncitizen’s] detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to ‘execute removal orders’ and thus does not implicate section 1252(g).” *Cardoso*, 216 F.3d at 516–17 (cleaned up). Moreover,

the Fifth Circuit “has long recognized that [§ 1252(g)] is designed to protect the *discretionary* decisions of immigration authorities in matters related to removal and deportation.” *Duarte v. Mayorkas*, 27 F.4th 1044, 1055 (5th Cir. 2022) (emphasis added) (citing *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)); *see also Cardoso*, 216 F.3d at 517. Ms. Carmona Sanchez does not ask this Court to review any discretionary agency decision relating to her removal proceedings or deportation. Rather, she challenges her mandatory civil detention in violation of her statutory and constitutional rights; the only remedy she seeks is an order requiring her jailers to comply with the law. Thus, § 1252(g) does not apply to her claims.

Just last month, the Fifth Circuit reached the merits in a habeas case involving a challenge to the legality of the petitioners’ immigration detention. *See Buenrostro*, 166 F.4th at 500–02. Neither the majority nor the dissent in *Buenrostro* spilled a single drop of ink on the question of jurisdiction, apparently agreeing that the petitioners’ claims were not barred by the INA. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 501 (2006) (stressing courts’ independent obligation to determine their own subject-matter jurisdiction). Indeed, the district court in *Covarrubias v. Vergara*, which was consolidated on appeal with *Buenrostro*, expressly rejected the government’s arguments that §§ 1252(a)(5), (b)(9), or (g) barred the court’s jurisdiction over the petitioner’s habeas claims. No. 5:25-CV-112, 2025 WL 2950096, at *4–5 & n.2 (S.D. Tex. Oct. 3, 2025). Decades of consistent Fifth Circuit and Supreme Court precedent instructs that § 1252(g) does not bar Ms. Carmona Sanchez’s claims.

B. Section 1252(a)(5) and (b)(9) Do Not Apply to Habeas Claims That Do Not Challenge a Final Order of Removal

Respondents’ argument that §§ 1252(a)(5) and (b)(9) strip district courts of jurisdiction over even “indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings,” Doc. 13 at 10, fails for similar—and additional—reasons. Because

Ms. Carmona Sanchez’s petition “involves neither a determination as to the validity of [her] deportation order[] [n]or the review of any question of law or fact arising from [her] deportation proceedings, § 1252(a)(5) and (b)(9) should not operate as a bar to the district court’s review” of her claims. *Duarte*, 27 F.4th at 1056; *see also Sherpa v. Almodovar*, No. 3:25-cv-1718, 2026 WL 375139, at *4 (W.D. La. Jan. 20, 2026) (holding that because §§ 1252(a)(5) and (b)(9) “only appl[y] to reviews of orders of removal” and “Petitioner does not challenge an order of removal,” those subsections did not bar petitioner’s habeas claim challenging her pre-removal detention without bond), *R. & R. adopted in part*, 2026 WL 374914 (W.D. La. Feb. 10, 2026). Ms. Carmona Sanchez’s petition does not challenge a removal order; in fact, she is not yet (and may never be) subject to a final order of removal, as she intends to appeal the immigration judge’s (IJ) order to the Board of Immigration Appeals (BIA) and the time period for doing so has not yet lapsed. *See* 8 C.F.R. § 1241.1. Instead, she seeks judicial review of her unlawful *detention*. Thus, §§ 1252(a)(5) and (b)(9) do not bar her claims.

Respondents rely on a series of inapposite, non-binding cases to support their argument that §§ 1252(a)(5) and (b)(9) operate to bar Ms. Carmona Sanchez’s habeas claims. Several cases cited by Respondents have nothing to do with habeas or challenges to detention. *See* Doc. 13 at 9–10 (citing, *inter alia*, *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523 (D. Minn. Jan. 20, 2021) (challenge to IJ’s denial of administrative closure in removal proceedings); *Ruiz v. Mukasey*, 552 F.3d 269 (2d Cir. 2009) (challenge to BIA’s denial of spousal visa petition); *Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (challenge to BIA’s denial of cancellation of removal)). None of these cases are binding on this Court, and even if they were, they do not undermine the Court’s jurisdiction over Ms. Carmona Sanchez’s petition.

Meanwhile, some of the out-of-circuit cases Respondents cite in fact directly *support* this Court’s jurisdiction over Ms. Carmona Sanchez’s habeas claims. *See* Doc. 13 at 9 (citing, *inter alia*, *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016) and *Aguilar v. ICE*, 510 F.3d 1 (1st Cir. 2007)). In *J.E.F.M.*, the Ninth Circuit made clear that “claims that are collateral to, or independent of, the removal process”—including, the court expressly noted, challenges to detention as well as habeas claims “that do not involve final orders of removal”—are not swept into (b)(9)’s channel. 837 F.3d at 1032 (citing and discussing *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006)). And in *Aguilar v. ICE*, the First Circuit emphasized that “when it passed the REAL ID Act, Congress stated unequivocally that the channeling provisions of section 1252(b)(9) should not be read to preclude ‘habeas review over challenges to detention.’” 510 F.3d at 11 (emphasis added) (quoting H.R. Rep. No. 109–72, at 175 (2005), *as reprinted in* 2005 U.S.C.C.A.N. 240, 300, 2005 WL 1848528); *see also id.* (“In line with this prescription, we have held that district courts retain jurisdiction over challenges to the legality of detention in the immigration context.”).

Finally, Respondents misconstrue *Jennings v. Rodriguez* in support of their argument that § 1252(b)(9) bars Ms. Carmona Sanchez’s claims. Doc. 13 at 10–11. *Jennings* stands for nothing of the sort. Six of the eight Justices who took part in the decision agreed that § 1252(b)(9) did not strip the district court of jurisdiction over the petitioners’ habeas claims, which challenged their prolonged pre-removal detention without bond. *See* 583 U.S. 281, 292–95 (Alito, J., writing for a three-justice plurality with respect to the jurisdictional holding), 355 (Breyer, J., dissenting) (agreeing, along with two other dissenting justices, that court had jurisdiction) (2018). In fact, the *Jennings* plurality rejected an “extreme” and “expansive interpretation” of the term “arising from” in § 1252(b)(9) that “would lead to staggering results,” including foreclosing conditions-of-confinement claims, state-law assault claims, or tort claims arising from injuries incurred in

detention or during removal, and “would also make claims of prolonged detention effectively unreviewable.” *Id.* at 293.⁴ This was not the result intended by Congress in enacting § 1252, and this Court should decline Respondents’ invitation to adopt such an untenably broad interpretation on the INA’s jurisdictional bars here. Section 1252(a)(5) and (b)(9) do not bar Ms. Carmona Sanchez’s habeas challenge to her pre-removal detention.

II. Ms. Carmona Sanchez Is Not Required to Exhaust Administrative Remedies Before Challenging the Legality of Her Detention; Even If She Were, Exhaustion is Futile.

Ms. Carmona Sanchez is not required to and cannot administratively exhaust her challenge to her detention. Neither the INA nor the applicable federal habeas corpus statute requires administrative exhaustion for immigration detention-based claims. *Compare* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies only prior to challenging a removal order in circuit court), *with* 28 U.S.C. § 2241 (including no requirement for administrative exhaustion). Thus, administrative exhaustion in immigration habeas is prudential, not jurisdictional. *See Suarez-Lugo v. Bondi*, No. 5:26-CV-00029, 2026 WL 332317, at *8 (S.D. Tex. Feb. 6, 2026); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2026 WL 81679, at *3 (N.D. Tex. Jan. 9, 2026). And “prudential exhaustion is not necessary where, as here, ‘the interests of the individual weigh heavily against requiring administrative exhaustion.’” *Suarez-Lugo*, 2026 WL 332317, at *8 (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992); citing *Gallegos-Hernandez v. United States*, 688 F.3d 190, 194 (5th Cir. 2012)).

Respondents seem to confuse Ms. Carmona Sanchez’s statutory claims for *relief from removal*, which she has and will continue to pursue in immigration court and the BIA, with her

⁴ Respondents incorrectly characterize *Jennings* as holding that “section 1252(b)(9) includes challenges to the ‘decision to detain [an alien] in the first place or to seek removal,’” Doc. 13 at 10 (quoting *Jennings*, 583 U.S. at 294-95), but the portion of *Jennings* they rely on is dicta from a non-majority portion of the opinion that simply notes that *Jennings* is *not* about a “decision to detain.”

statutory and constitutional challenge to *detention*, which she is litigating through this habeas. *See* Doc. 13 at 11–12. No administrative remedies exist at this point for Ms. Carmona Sanchez to challenge her unlawful detention. Given the government’s unwavering, nationwide position that individuals like Ms. Carmona Sanchez are not entitled to a bond hearing, *see* Doc. 1 ¶¶ 52–53; *Buenrostro*, 166 F.4th at 500, seeking review of her detention before the immigration court would be utterly futile. *See, e.g., Garibay-Robledo*, 2026 WL 81679, at *3. Moreover, immigration court was never the proper forum to raise constitutional challenges to her detention. Indeed, in support of their argument, Respondents cite only one case, from the Western District of New York, which noted that exhaustion in cases like this one is prudential, and did *not* require exhaustion because the habeas petitioner “present[ed] a substantial constitutional question that would be futile to pursue through [immigration] administrative proceedings.” Doc. 13 at 11 (quoting *Gutierrez Cupido v. Barr*, No. 19-CV-6367-FPG, 2019 WL 4861018, at *1 (W.D.N.Y. Oct. 2, 2019)); *Gutierrez Cupido*, 2019 WL 4861018, at *2. Exhaustion is neither an option nor a requirement here.

III. Regardless of the Statute That Authorizes Ms. Carmona Sanchez’s Detention, Her Detention Violates Due Process.

A. The Fifth Circuit’s Decision in *Buenrostro* Does Not Impact Ms. Carmona Sanchez’s Constitutional Claim

Respondents incorrectly argue that the Fifth Circuit’s recent decision in *Buenrostro* forecloses Ms. Carmona Sanchez’s due process claim. *See* Doc. 13 at 19, 21 & n.12. *Buenrostro* considered only statutory, not constitutional, claims, 166 F.4th at 498, and therefore has no bearing on Ms. Carmona Sanchez’s claim in Count Two of her Petition regarding the deprivation of her liberty—after previously being released on her own recognizance and granted work authorization—without any process whatsoever. Doc. 1 ¶¶ 64–69. These separate and distinct

liberty interests differentiate Ms. Carmona Sanchez’s circumstances from subsequent applications of *Buenrostro* to petitions raising due process claims that mirror the statutory claim rejected by the Fifth Circuit.

For example, Respondents cite *Lopez Diaz v. Dickey*, No. 4:26-cv-00723, 2026 WL 539339 (S.D. Tex. Feb. 26, 2026) to suggest that Ms. Carmona Sanchez’s Fifth Amendment claim is “foreclosed by *Buenrostro-Mendez* and Due Process claims precluded by *Demore v. Kim* [*sic*].” Doc. 13 at 21 n.12 (citing *Demore v. Kim*, 538 U.S. 510, 531 (2003)). Unlike *Lopez Diaz*, Ms. Carmona Sanchez’s due process claim does not concern a challenge to the government’s statutory detention authority, *see* Doc. 13 at 11, but rather the deprivation of her independent liberty interests without due process. Nor does *Demore* control: *Demore* merely upheld the constitutionality of a statute not at issue here: 8 U.S.C. § 1226(c), requiring detention for individuals “removable from this country because [they have] been convicted of one of a specified set of crimes” given Congress’ “justifiabl[e] concern[.]” that they may “continue to engage in crime and fail to appear for their removal hearings.” *Demore*, 538 U.S. at 513; Doc. 1 ¶ 48. Section 1226(c) plainly does not apply to Ms. Carmona Sanchez. And Congress’ reasoning in *Demore* does not apply here, since the fact of Ms. Carmona Sanchez’s release demonstrates she is among those the Attorney General chose to “release . . . during their deportation proceedings” precisely *because* they “were found not to constitute a flight risk or threat to the community.” *Demore*, 538 U.S. at 521. Regardless, Ms. Carmona Sanchez’s due process claims are factually distinct: unlike in *Demore*, *see id.* at 513–14, she does not challenge the constitutionality of the statute authorizing her detention, but rather the deprivation of her liberty interests in her prior release and work authorization without any process.

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 (citing cases). And courts within the Fifth Circuit have continued doing so after *Buenrostro* because that decision did not address due process. *E.g.*, *Diallo v. Trump*, No. 1:25-cv-02012-JE-JPM (W.D. La. Mar. 5, 2026), ECF No. 73 at 4–7; *Bonilla Conforme v. De 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 her constitutional right to procedural due process” (quoting *Marceau v. Noem*, No. 3:26-cv-00237-KC, 2026 WL 368953, at *2 (W.D. Tex. Feb. 9, 2026))); *Hassen v. Noem*, No. 3:26-cv-00048-DB, 2026 WL 446506, at *2 (W.D. Tex. Feb. 9, 2026) (“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.” (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020))). 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-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, at *5 (N.D. Tex. Oct. 29, 2025), *R. & R. 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”); *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1203 (W.D. Wash. 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 IJ before he could be re-detained).

B. Ms. Carmona Sanchez Has Due Process Rights Related to Her Detention Independent of Any Procedural Rights Related to Her Removal.

Respondents claim that Ms. Carmona Sanchez is entitled to only the process Congress has provided by statute—equating here to no process at all, given that Respondents are asserting that Ms. Carmona Sanchez must be mandatorily detained without review. *See* Doc. 13 at 19. This is contradicted by the robust body of habeas corpus case law that has long recognized that “[f]reedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.” *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In fact, the founders themselves recognized this when they guaranteed a fundamental right to challenge the legality of executive detention through the Suspension Clause. U.S. Const. art. I, § 9, cl. 2; *Boumediene v. Bush*, 553 U.S. 723, 743–44 (2008). Respondents appear to confuse a separate area of case law concerning the nature of due process rights that apply with respect to removal procedures and the government’s power to expel or exclude noncitizens. *See* Doc. 13 at 19 (citing, *inter alia*, *Shaughnessy v. United States*, 345 U.S. 206, 210 (1953)). This case stems from Ms. Carmona Sanchez’s detention and, more specifically here, her re-detention—implicating an independent, fundamental liberty interest—

after the government had already decided that she did not present a flight or safety risk. *See* 8 C.F.R. § 1236.1(c)(8). The Due Process Clause unquestionably applies in the context of immigration detention.

Respondents enumerate cases to stand for the proposition that detention for the purpose of carrying out removal proceedings is not inherently in violation of due process. *See* Doc. 13 at 19–20. Respondents also rely on cases in which the court considered whether there was an “absolute constitutional barrier to detention of potentially dangerous resident [noncitizens] pending deportation proceedings.” *United States v. Salerno*, 481 U.S. 739, 748 (1987) (citing *Carlson v. Landon*, 342 U.S. 524, 537–542 (1952); *Wong Wing v. United States*, 163 U.S. 228 (1896)). But Ms. Carmona Sanchez does not claim that Respondents have no constitutional ability to detain noncitizens. Instead, she asserts that the decision to *re-detain* her with no individualized assessment or pre- (or even post-) deprivation process runs afoul of due process because Respondents had already determined that she posed neither a danger to the community nor a flight risk and merited release on her own recognizance and work authorization while her removal proceedings were carried out. *See Morrissey v. Brewer*, 408 U.S. 471 (1972); *Young v. Harper*, 520 U.S. 143 (1997); *Parada-Hernandez*, 2025 WL 3465958, at *5 (“Upon their release, Petitioners acquired a ‘cognizable interest in [their] freedom from detention that deserves great weight and gravity.’” (quoting *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 701 (W.D. Tex. 2025))); *Lopez-Arevalo*, 801 F. Supp. 3d at 685 (“Respondents fail to contend with the liberty interests created by the fact that the Petitioner[] in this case [was] released on recognizance *prior to the manifestation of this interpretation.*” (footnote omitted) (emphasis in original) (quoting *Espinoza v. Kaiser*, No. 1:25-cv-01101-JLT-SKO, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025))).

C. Those Due Process Rights Were Violated When Ms. Carmona Sanchez Was Re-Detained.

“To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Under *Mathews*, courts weigh the following three factors: 1) “the private interest that will be affected by the official action;” 2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and 3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. at 335. Applying this framework here, Ms. Carmona Sanchez’s detention violates due process.

First, as discussed *supra*, Ms. Carmona Sanchez’s detention implicates a protected liberty interest, especially in light of her prior release and work authorization. *See also* Doc. 7 at 15–16 (further discussing liberty interest). As to the second factor, the risk of erroneous deprivation of liberty is exceedingly high here given that Respondents have not afforded Ms. Carmona Sanchez any process whatsoever to challenge her detention, before or after the fact. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 495 (S.D.N.Y. 2025) (concluding that failure to provide individualized custody determination violated due process requirements). Finally, the government’s interest in subjecting Ms. Carmona Sanchez to mandatory detention is weak at best, and decidedly insufficient to justify the deprivation of her liberty for over two months and counting. It is important to stress that the relevant government interest here is not, as Respondents would have this Court believe, the general government interest in detaining some individuals pending removal proceedings, *see* Doc. 13 at 19–20, but rather their interest in detaining her

without bond or any form of neutral, individualized review after previously determining she posed neither a danger nor a flight risk and merited release on her own recognizance.

Respondents’ decision to release Ms. Carmona Sanchez on her own recognizance nearly two and half years ago, Doc. 1 ¶ 19, “in and of itself ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” *Lopez-Arevelo*, 801 F. Supp. 3d at 687 (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d*, 905 F.3d 1137 (9th Cir. 2018)). She is neither a flight risk nor a danger to the community, but rather has dutifully attended all immigration court hearings, is applying for various forms of immigration relief, and has significant community ties. *See* Doc. 1 ¶¶ 23–24, 43. Further, any potential government interest in continued detention can be adequately served by an individualized custody determination where flight risk and dangerousness are taken into consideration.

IV. *Buenrostro* Does Not Necessarily Foreclose Ms. Carmona Sanchez’s Statutory Claim Under § 1226(a).

The Fifth Circuit panel’s opinion in *Buenrostro* does not necessarily foreclose Ms. Carmona Sanchez’s statutory claim in Count One of her Petition. Doc. 1 ¶¶ 58–63. Ms. Carmona Sanchez’s circumstances differ from those of the petitioners in *Buenrostro* in a key respect: unlike the petitioners there, *see* 166 F.4th at 500, she was released on her own recognizance by U.S. immigration officials several years ago. Doc 1 ¶ 19. At that time, immigration officials explicitly chose to categorize release—and thus the government’s authority to re-detain her—as falling under 8 U.S.C. § 1226(a) (Section 236 of the INA), *see* Doc. 1-1 at 2 (Order of Release on Recognizance) (“In accordance with section 236 of the Immigration and Nationality Act . . . you are being released on your own recognizance . . .”). While Respondents make abundantly clear they believe Ms. Carmona Sanchez is detained pursuant to 8 U.S.C. § 1225, Doc. 13 at 16, they also admit that Ms. Carmona Sanchez was “released on [her] own recognizance,” *id.* at 2—a form of release that is

not available to individuals detained pursuant to § 1225. *See Buenrostro*, 166 F.4th at 502 (“[Section 1225] unambiguously provides for mandatory detention”); *compare* 8 U.S.C. § 1225(b)(2) *with id.* § 1226(a). As Respondents acknowledge, § 1226(a) “creates a default rule” for those “already present in the United States” “by permitting—but not requiring—the [Secretary] to issue warrants for their arrest and detention pending removal proceedings.” Doc. 13 at 14 (citing *Jennings*, 583 U.S. at 303); *see also* 8 C.F.R. §§ 1236.1(c) and (d). “Generally, such [individuals] may be released on bond or their own recognizance,” Doc. 13 at 14, just like Ms. Carmona Sanchez was. Respondents have submitted no evidence to contradict this conclusion—if anything, their evidence further underscores that Ms. Carmona Sanchez was released under § 1226(a). *See generally* Doc. 13-1 (Notice to Appear, demonstrating that Ms. Carmona Sanchez was released pending removal proceedings on the non-detained docket in New York Immigration Court); Doc. 14-1 (ICE Assistant Field Office Director declaration, saying nothing about detention authority).

Thus, based on the undisputed evidence in this case, this Court can find that Ms. Carmona Sanchez’s circumstances are distinct from those of the petitioners in *Buenrostro* and her detention is governed by § 1226(a), entitling her to an immediate bond hearing before an Immigration Judge.⁵

⁵ The question of whether Ms. Carmona Sanchez’s detention is authorized under § 1225(b)(2) or § 1226(a) is not mooted by the IJ’s February 24, 2026 removal order. Ms. Carmona Sanchez’s order of removal will not, as Respondents allege, “become final after 30-days.” Doc. 13 at 3. Ms. Carmona Sanchez has reserved her right to appeal the order to the BIA, and intends to do so within the 30-day deadline. Therefore, her removal order will not become administratively final unless and until the BIA affirms it (and if her removal is not stayed pursuant to any subsequent petition for review to the circuit court), thereby shifting Respondents’ detention authority to § 1231. *See* 8 U.S.C. § 1231(a)(1)(B); 8 C.F.R. § 1241.1(a).

V. Ms. Carmona Sanchez’s Unlawful Re-detention Entitles Her to Immediate Release, or, at a Minimum, a Bond Hearing in Which the Government Bears the Burden of Proof to Justify Her Ongoing Detention by Clear and Convincing Evidence.

“[T]he traditional function of the writ [of habeas corpus] is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). It is the “usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it.” *Id.* at 485 (quotation omitted); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) (explaining release to be the presumed remedy); *Fay v. Noia*, 372 U.S. 391, 402 (1963) (“[i]f the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.”).

Release is the only appropriate remedy for the constitutional violations and particularized ongoing irreparable harm in this case, including the lack of pre-deprivation notice or individualized review before Ms. Carmona Sanchez was re-detained after previously being released, which cannot be remedied by a post-deprivation hearing. *See Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014-CNS, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released by ICE and holding a bond hearing would prolong his unlawful detention, “[r]espondents’ violations of Petitioner’s rights are best remedied by ordering Petitioner’s immediate release from immigration detention.”); *Ortega-Aguirre v. Noem*, No. 4:25-CV-04332, 2025 WL 3684697 (S.D. Tex. Oct. 10, 2025) (finding release proper for someone who was re-detained after ICE had released him with no individualized assessment of flight risk or danger); *Diallo*, No. 1:25-cv-02012-JE-JPM, ECF No. 73 (granting immediate release as the appropriate remedy for illegal re-detention, and in light of medical hardship petitioner was suffering in detention); *Noyola v. Bondi*, --- F. Supp. 3d ---, No. 1:26-CV-405-RP, 2026 WL 607266, at *5 (W.D. Tex. Mar. 4, 2026) (a bond hearing would not be an adequate remedy for the due process violations in petitioner’s sudden arrest and detention); *Betancourth v. Tate*, --- F. Supp. 3d ---, No.

4:26-cv-01169, 2026 WL 638482, at *5 (S.D. Tex. Mar. 6, 2026) (same, where the government alleged no circumstances justifying re-detention).

If this Court is not inclined to grant immediate release, Ms. Carmona Sanchez is entitled to a bond hearing in which the government bears the burden of proof to justify her ongoing detention by clear and convincing evidence. *See United States v. Comstock*, 560 U.S. 126, 129–31 (2010) (requiring government to prove necessity of civil detention by clear and convincing evidence); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (same); *Amelia C.P. v. Noem*, No. 3:25-CV-2872-K-BK, 2025 WL 3653872, at *3 (N.D. Tex. Dec. 17, 2025) (same in context of mandatory immigration detention); *Bonilla Conforme*, 2026 WL 381110, at *3.

CONCLUSION

For the foregoing reasons, this Court should order Mr. Carmona Sanchez’s immediate release, or in the alternative, order Respondents to release her unless they provide her a bond hearing before an immigration judge within seven (7) days.

Dated: March 16, 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.

/s/ Jessica Myers Vosburgh

Counsel for Petitioner