

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 OBJECTIONS TO REPORT AND RECOMMENDATION

Pursuant to Federal Rule of Civil Procedure 72(b)(2) and Local Rule 72(a), Petitioner Sabrina Aylene Carmona Sanchez (“Petitioner” or “Ms. Carmona Sanchez”) files the following objections to the Report and Recommendation entered in this matter on May 1, 2026. Doc. 18 (“R. & R.”). For the reasons stated below, this Court should not adopt the Report and Recommendation, and this case should not be dismissed. This Court should instead grant Ms. Carmona Sanchez’s petition for a writ of habeas corpus or grant her motion for a temporary restraining order pending a final decision on her petition.¹

LEGAL STANDARD

The District Court reviews every part of the Report and Recommendation that has been properly objected to *de novo*. Fed. R. Civ. P. 72(b)(3); 28 U.S.C. § 636(b)(1); *Calderon v. Waco Lighthouse for the Blind*, 630 F.2d 352, 355 (5th Cir. 1980). The Court may accept, reject, or modify the Report and Recommendation; receive further evidence; or return the matter to the Magistrate Judge with instructions. Fed. R. Civ. P. 72(b)(3).

¹ Ms. Carmona Sanchez also requests that the Report and Recommendation be made publicly available on the electronic docket of this case.

OBJECTIONS TO FACTUAL AND PROCEDURAL BACKGROUND

In addition to the facts set out in her Verified Petition, Doc. 1, and summarized in the Report and Recommendation, Ms. Carmona Sanchez directs the Court's attention to the following facts that bear on her pending petition and motion. On February 23, 2026, she filed her application for a T Visa (a type of visa available to victims of human trafficking who cooperate with law enforcement) with U.S. Citizenship and Immigration Services ("USCIS"), Doc. 17 at 2 n.1,² and she successfully completed her biometrics appointment on April 10, 2026. She intends to request expedited processing of her T Visa application. If USCIS makes an initial determination that her application is bona fide, it will grant her deferred action and a work permit, and she will be entitled to any automatic stay of removal.³ On February 24, 2026, the Immigration Judge ("IJ") granted the government's oral motion to pretermite Ms. Carmona Sanchez's applications for asylum, withholding of removal, and protection under the Convention Against Torture, and ordered her removal. Doc. 13-2 (IJ Order). The IJ did not address her eligibility for bond or release. *See id.* Ms. Carmona Sanchez appealed the IJ's order to the Board of Immigration Appeals ("BIA") on March 25, 2026. Her appeal is currently pending.⁴

Additionally, Ms. Carmona Sanchez offers the following facts, which are not noted in the Report and Recommendation, about recent developments in the Fifth Circuit and elsewhere related to her statutory and constitutional claims. On July 8, 2025, the Department of Homeland Security ("DHS") issued a policy rejecting the well-established understanding of the statutory immigration detention framework and reversing decades of agency practice. *See* Doc. 1 ¶ 52;

² In her Reply, Ms. Carmona Sanchez incorrectly stated that her T Visa application was received in 2020, instead of 2026. *See* Doc. 17 at 2 n.1.

³ *See* 8 C.F.R. §§ 214.204(b)(iii), 214.205(c) and (e); 3 USCIS Policy Manual B.6, *Bona Fide Determinations*, <https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-6>.

⁴ Case status information is available via EOIR's Automated Case Information System, <https://acis.eoir.justice.gov/en/>.

Doc. 7 at 4 & n.1; Doc. 11 at 4–5. Pursuant to this policy, DHS’s representatives in the immigration courts began to request that immigration judges nationwide reclassify individuals previously detained under § 1226(a) and eligible for bond as subject to mandatory detention under § 1225(b)(2), and refuse to conduct bond hearings on that basis. *See* Doc. 1 ¶ 52; *see also* Doc. 13 (Gov’t Resp.) at 16–18 (asserting that Ms. Carmona Sanchez is subject to mandatory detention under § 1225(b)). On September 5, 2025, the BIA adopted this same position in a published decision. Doc. 1 ¶ 53 (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)). There, the BIA held that all noncitizens who entered the United States without admission or parole were “seeking admission” and thus subject to § 1225(b)(2) and ineligible for bond. *Id.* Therefore, all immigration judges are directed to classify people in this manner, making them ineligible for bond throughout the course of proceedings that can take at least several months and, in many cases, years.

The Fifth Circuit upheld the agency’s reading of the statute in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), *reh’g en banc denied* (Apr. 9, 2026).⁵ Nonetheless, district courts within the Fifth Circuit have continued granting habeas relief to similarly situated petitioners on due process grounds, regardless of the statutory authority for their detention, because of the fundamental liberty interest at stake. *See* Doc. 11 at 2–3 (citing *Bonilla Conforme v. De Anda-Ybarra*, No. 3:26-cv-263, 2026 WL 381110, at *2 (W.D. Tex. Feb. 11, 2026) (concluding that the Fifth Circuit’s decision in *Buenrostro-Mendez* “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”) and *Hassen v. Noem*, No. 3:26-cv-48, 2026 WL

⁵ There is a growing circuit split on the statutory claim challenging the no-bond policy, with the Fifth and Eighth Circuits rejecting the statutory claim, and the Second, Sixth, and Eleventh Circuit upholding the statutory claim. Kyle Cheney, *Third federal appeals court rejects ICE’s mandatory detention push*, POLITICO (May 11, 2026), <https://bit.ly/4nPTwU9>.

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.”) (citation omitted)). The Fifth Circuit has one such due process claim currently before it. *Sosnava Rodriguez v. Ortega*, No. 26-50183 (5th Cir. appeal filed Mar. 3, 2026). Some courts have also found that, irrespective of the statutory authority for detention, petitioners maintain independent and additional liberty and property interests in previously conferred benefits, such as 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” (internal quotation marks omitted)); Doc. 11 at 3 (collecting cases).

OBJECTIONS TO LEGAL CONCLUSIONS AND RECOMMENDATIONS

I. This Court Should Apply the *Mathews* Facts to Ms. Carmona Sanchez’s Procedural Due Process Challenge to Her Mandatory Civil Detention

The Report and Recommendation faults Ms. Carmona Sanchez for “not disclos[ing] that district courts are essentially split between those that accept the *Eldridge* factors as applicable in the immigration context and those that do not,” R. & R. at 9 (referencing *Mathews v. Eldridge*, 424 U.S. 319 (1976)), but fails to mention that the majority of courts in this country, including in this Circuit, have found that the *Mathews* factors do apply in the immigration detention context. *See, e.g., Rodriguez Romero v. Ladwig*, No. 3:25-cv-1106, 2026 WL 1146824, at *11 (M.D. La. Apr. 21, 2026); *De Leon Hernandez v. Bondi*, No. 1:25-cv-1384, 2025 WL 3217037, at *3 (W.D. La. Nov. 18, 2025); *Singh v. Bondi*, No. 5:26-cv-125, 2026 WL 690013, at *5 (W.D. Tex. Mar. 6, 2026); *Alvarez-Rico v. Noem*, No. 4:26-cv-729, 2026 WL 522322, at *4 (S.D. Tex. Feb. 25, 2026); *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024) (applying *Mathews* test to § 1226(c)

mandatory detention); *Miranda v. Garland*, 34 F.4th 338, 358–59 (4th Cir. 2022) (noting that petitioner and government “agree that the *Mathews* test governs” petitioner’s challenge to § 1226(a) permissive detention); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27–28 (1st Cir. 2021) (§ 1226(a) detention); *Gayle v. Warden Monmouth Cnty. Corr. Inst.*, 12 F.4th 321, 331 (3d Cir. 2021) (applying *Mathews* factors to determine government’s burden of proof in administrative hearing to contest whether § 1226(c) applies to petitioner); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (assuming, without deciding, that the *Mathews* factors apply in context of § 1226(a) detention); *cf. Lopez-Campos v. Raycraft*, — F.4th —, No. 25-1965, 2026 WL 1283891, at *11 (6th Cir. May 11, 2026) (citing *Mathews* in context of analyzing due process challenges to mandatory detention under no-bond policy; holding that petitioners were entitled to bond hearings). *But see Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024).

These courts have applied the *Mathews* factors because doing so is consistent with Supreme Court’s instructions on how to weigh the competing interests involved in depriving a person of her liberty. Indeed, in *Hamdi v. Rumsfeld* the Supreme Court stated that the test articulated in *Mathews* provides the “ordinary mechanism” courts use to balance the “serious competing interests” between asserted governmental needs and the process that an individual is due in order to justify being deprived of a constitutional right. 542 U.S. 507, 528–29 (2004); *see also Zamudio Sanchez v. Noem*, No. 3:25-cv-403, 2026 WL 596133, at *11 (W.D. Tex. Mar. 2, 2026) (“Although *Mathews* involved a challenge to the deprivation of property, the Court later clarified that the three-part test can be applied in challenges to the deprivation of life and liberty.” (footnote and emphases omitted)); *Gomes v. Garite*, No. 3:25-cv-663, 2026 WL 1179617, at *7 (W.D. Tex. Apr. 21, 2026) (“Absent a clear alternative or further direction from a

higher court, this Court concludes that the *Mathews* factors offer an appropriate framework for evaluating Petitioner’s claim.” (footnotes omitted)).

In other words, because “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects,” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Court must balance Ms. Carmona Sanchez’s right to liberty with the government’s interests in detaining her without bond pending a final decision on her removal case. *See, e.g., Rodriguez v. Frink*, No. 4:26-cv-798, 2026 WL 709487, at *8 (S.D. Tex. Mar. 13, 2026) (finding the *Mathews* test appropriate to “consider the procedures (or lack thereof) used to make this determination, the Petitioner’s liberty interest, the risk of erroneous deprivation, and the Government’s interest in detention”); *Rodriguez Diaz*, 53 F.4th at 1206 (“Ultimately, *Mathews* remains a flexible test that can and must account for the heightened governmental interest in the immigration detention context.”).

Even if the Court does not apply the exact *Mathews* formulation to determine the constitutionality of Ms. Carmona Sanchez’s ongoing detention, the Court must *still* balance the competing interests. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (“[C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.”); *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (noting that “[d]ue process is flexible . . . and it calls for such procedural protections as the particular situation demands” (internal quotation marks omitted)). As such, courts have found due process violations in noncitizens’ detention by not only applying the *Mathews* factors but also by simply weighing the competing interests. *See, e.g., Zamudio*

Sanchez, 2026 WL 596133, at *12 (“[T]his Court consults the *Mathews* factors as a heuristic for balancing the countervailing interests at the heart of the Due Process Clause, but it does not base its ruling on these factors alone.”); *Rodriguez*, 2026 WL 709487, at *8 (noting that the court would reach the “same result” as the *Mathews* test if it weighed competing factors). Here, the competing interests plainly weigh in Ms. Carmona Sanchez’s favor given the fundamental liberty interest stake, the complete lack of procedures afforded to her to challenge the deprivation, and the government’s prior decision to release her on recognizance and grant her work authorization, which undermines its now-claimed interest in detaining her without bond during her removal proceedings.

II. *Demore* and its Predecessors Do Not Exempt Mandatory Civil Detention Regimes from Constitutional Scrutiny

The Report and Recommendation incorrectly reads the Supreme Court’s opinion in *Demore v. Kim* and the cases relied on therein to stand for the untenable proposition that no individualized judicial or administrative inquiry into Ms. Carmona Sanchez’s detention is required, or indeed permitted. This Court should reject the Report and Recommendation’s conclusion that the Court need not weigh the competing interests involved in Ms. Carmona Sanchez’s detention simply because “[d]etention during removal proceedings is a constitutionally permissible part” of the immigration process. R. & R. at 9 (quoting *Demore*, 538 U.S. 510, 530 (2003)); *see also id.* at 18–19 (concluding that Ms. Carmona Sanchez’s detention is constitutionally permissible based on “over a century of Supreme Court precedent” (citing *Demore*, 538 U.S. at 523 and *Wong Wing v. United States*, 163 U.S. 228, 235 (1896))). That reading is far too broad. Indeed, constitutional challenges to immigration detention were explicitly left open by *Jennings*, in which the Supreme Court also noted that “[d]ue process is flexible . . . and it calls for such procedural protections as the particular situation demands.” 583

U.S. at 314 (internal quotation marks omitted). And the precedential and historical support for a reading of *Demore* that greenlights a mass-scale mandatory pretrial immigration detention regime is nonexistent.

Demore and its predecessors do not stand for the blanket assertion that the government has unlimited power to detain noncitizens while their proceedings are pending and—given the significant liberty interest involved—must be read in context. In *Demore*, the Supreme Court held that the government may detain noncitizens with certain criminal convictions for “the brief period necessary for their removal proceedings.” 538 U.S. at 513. One of the central cases *Demore* relied on, *Carlson v. Landon*, 324 U.S. 524 (1952), as the Report and Recommendation notes, involved noncitizens who “did not deny they were members of the Communist Party or that they were therefore deportable.” R. & R. at 11. Not only are *Demore* and *Carlson* factually distinguishable from this case, but they also involved different statutes⁶ and, crucially, “[t]he scope of the Government’s detention authority [under those statutes] is circumscribed ‘by reference to the legislative scheme.’” *Gomes*, 2026 WL 1179617, at *9 (quoting *Demore*, 538 U.S. at 524 (in turn quoting *Carlson*, 324 U.S. at 543)). *See also Carlson*, 324 U.S. at 543 (explaining that the government “must justify [its] refusal of bail by reference to the legislative scheme to eradicate the evils of Communist activity.”). In other words, these cases cannot mean that the Court may not weigh the competing interests in Ms. Carmona Sanchez’s detention, but rather that in certain narrow circumstances, “Congress and the Executive Branch can use categorical presumptions as proxies for the traditional bond factors,” such as noncitizens with certain criminal convictions—and then, only for a “brief period”—or “Communist aliens.” *Zamudio Sanchez*, 2026 WL 596133, at *10 & nn. 101–03. Those categorical proxies do not

⁶ In what was likely an inadvertent clerical error, the Report and Recommendation incorrectly states that *Demore* “addressed the constitutionality of 8 U.S.C. § 1225(c).” R. & R. at 9. *Demore* concerned detention under § 1226(c). 538 U.S. at 513.

apply here (and, as noted *infra*, *Carlson* did not actually involve a mandatory detention scheme). While the Due Process Clause might “not require [the Government] to employ the least burdensome means to accomplish its goal” when it comes to pretrial immigration detention, *Rodriguez*, 2026 WL 709487, at *10 (quoting *Demore*, 538 U.S. at 528), the Constitution does not “permit the Government to detain a noncitizen like Petitioner . . . for an indefinite and potentially years-long period in prison-like conditions without any individualized assessment of her actual risk of flight or dangerousness, merely because she is an ‘applicant for admission’ under the INA.” *Id.*

Moreover, the earlier cases relied on by *Demore* (and in the Report and Recommendation) either did not involve *mandatory* pretrial detention regimes or were decided in a context where judicial review of detention was unquestionably available. In both *Carlson* and *Reno v. Flores*, 507 U.S. 292 (1993), “the agency retained some discretion to release,” and “when *Wong Wing* was decided, federal courts handling deportation cases *did* release noncitizens on bail.” Lindsay Nash, *Resurrecting Immigration Releases*, 135 Yale L.J. 1533, 1559–60 (2026) (footnotes omitted); *see also Demore*, 538 U.S. at 569 (Souter, J., dissenting) (“*Carlson* did not involve mandatory detention. It involved a system similar to the one Kim contends for here.”). Indeed, we now know that the *Demore* Court was incorrect when it noted that “prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings.” 538 U.S. at 523 n.7. In fact, the immigration agency’s pretrial release power has existed since the earliest days of the administrative deportation system, dating back to the late 19th century, before Congress passed the first statute permitting money bail in the immigration context in 1907. *See Nash, Resurrecting Immigration Releases*, 135 Yale L.J. at 1540–41 (concluding, based on extensive review of administrative records from 1882-1920, that “pretrial

detention and release emerged virtually simultaneously, and the agency’s release authority was recognized as an important, inherent, and constitutionally necessary cognate of the administrative pretrial-detention power”). Indeed, “the nineteenth-century administrative deportation system did not authorize pretrial detention at all,” and while the early judicial deportation scheme permitted detention, it also allowed for release; mandatory “no-bail pretrial detention was not permitted under either deportation scheme.” *Id.* at 1541.

At base, the Report and Recommendation’s incorrect reliance on *Demore* leads it to the wrong conclusion: that Petitioner’s mandatory detention is constitutionally permissible. But detention during removal proceedings is only a part of this Nation’s history and tradition insofar as it is accompanied by its constitutionally-required companion: the power to release.

III. Ms. Carmona Sanchez Has Not Received Any Due Process in Connection with Her Current Detention and Her Ongoing Detention Is Not Attributable to Her Decision to Appeal Her Immigration Case

According to the Report and Recommendation, “Petitioner’s claim that she received no individualized process prior to detention is inaccurate.” R. & R. at 18. Not so. The undisputed record before this Court demonstrates that Ms. Carmona Sanchez received no pre-deprivation process whatsoever to challenge her current detention, which began on January 3, 2026. *See* Doc. 1 ¶¶ 28, 36, 69; Doc. 13 at 12–18 (arguing that Ms. Carmona Sanchez is subject to mandatory detention). Nor has she received any individualized process since then with respect to *custody*. The Report and Recommendation references the process she has received in connection with her initial apprehension and examination near the border and her ongoing removal proceedings, *see* R. & R. at 18 (citing 8 U.S.C. §§ 1225(b)(2)(A) and 1229a and discussing their application in Ms. Carmona Sanchez’s removal case), but those are distinct from any procedures afforded to her regarding her current *detention*. Here, she has received none—neither before nor at any time after her arrest over four months ago. Similarly, the Report and Recommendation incorrectly

concludes that “Petitioner’s continued detention under 8 U.S.C. § 1225(b)(2)(A) is attributable to her appealing the immigration judge’s ruling to BIA.” *Id.* This is incorrect. Ms. Carmona Sanchez’s detention is attributable to the government’s policy to categorically deny her (and thousands of others like her) the opportunity for release on bond or recognizance. But for this no-bond policy, she would be eligible for bond during the pendency of her BIA appeal.

IV. Ms. Carmona Sanchez’s Release on Recognizance and Work Authorization Are Additional Liberty and Property Interests that Bolster Her Procedural Due Process Claim

Ms. Carmona Sanchez not only has a fundamental liberty interest in being free from detention, but also in maintaining the benefits Respondents have chosen to bestow on her—here, release on recognizance and work authorization. Doc. 1 ¶ 19; Doc. 1-1 at 2. There is well-settled Supreme Court and Fifth Circuit precedent holding that those deprived of a previously granted benefit are entitled to pre-deprivation due process. *See Mathews*, 424 U.S. at 332 (holding that an individual receiving Social Security disability benefits has a statutorily created property interest in the continued receipt of those benefits); *Young v. Harper*, 520 U.S. 143, 146–47 (1997) (holding that due process is required before pre-parole conditional release can be revoked); *Morrissey*, 408 U.S. at 488–89 (holding that due process is required before parole from prison can be revoked); *Eguia v. Tompkins*, 756 F.2d 1130, 1138–41 (5th Cir. 1985) (holding that a public employee deprived of a single paycheck was entitled to pre-deprivation due process). And courts throughout this Circuit and the country have held in recent months—consistent with that binding precedent—that noncitizens cannot be deprived of their work authorization or release on recognizance without any process whatsoever. *See, e.g., Lopez-Arevelo*, 801 F. Supp. 3d at 686 (holding that “once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody” (quotation omitted)); *Ribero-Ardilla v. Rodriguez*, No.

5:26-cv-689, 2026 WL 990025, at *6 (W.D. Tex. Apr. 13, 2026) (“In this case, Petitioner lived in the United States following her release in October 2022. For more than three years she established a life here in the United States. That timeframe suffices to establish a significant presence that requires due process protection.”); *de la Mont Diaz v. Tate*, No. 4:26-cv-2638, 2026 WL 980247, at *1–2 (S.D. Tex. Apr. 9, 2026); *Diallo v. Trump*, No. 1:25-cv-2012, 2026 WL 1230389, at *2–3 (W.D. La. Mar. 5, 2026) (“Accordingly, we find that [petitioner] acquired a protected liberty interest in [his] continued liberty, having spent more than a year released on his own recognizance in the United States, such that the Government cannot revoke him at their whim, without any allegation that he failed to live up to the parole conditions.”) (quotations and citations omitted); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729, 2025 WL 3465958, at *5 (N.D. Tex. Oct. 29, 2025), *R. & R. adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Sarmiento v. Perry*, No. 1:25-cv-1644, 2026 WL 131917, at *8 (E.D. Va. Jan. 19, 2026); *Aquino de la Cruz v. LaRose*, No. 3:25-cv-3770, 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” (citations omitted)); *B.D.A.A. v. Bostock*, No. 6:25-cv-2062, 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*, 808 F. Supp. 3d 1189, 1203 (W.D. Wash. 2025). Notably, neither the Report and Recommendation nor Respondents cited any cases holding otherwise. *See R. & R.*; Doc. 13.

While the Report and Recommendation acknowledged Ms. Carmona Sanchez’s argument that she gained independent liberty or property interests in her release on recognizance and work

authorization, R. & R. at 5, it failed to consider the implications of these interests in its due process analysis, other than to take issue with Ms. Carmona Sanchez's failure to cite binding precedent. *Id.* at 8–9. Respondents likewise did not respond to this argument. *See generally* Docs. 13 & 14. Ms. Carmona Sanchez cannot be faulted for the fact that the Fifth Circuit⁷ and the Supreme Court have not yet considered the due process required when someone is redetained after being released for years on recognizance, especially when that deprivation is caused by a federal policy that is not even one year old. This Court can rely on the decades of binding procedural due process precedent that time and again has held that pre-deprivation process is required before a previously bestowed benefit can be revoked.

Moreover, as explained *supra* in Section III, Ms. Carmona Sanchez did not have, as the Report and Recommendation claims, *any* individualized process as to the deprivation of her liberty and property interests. While the Report and Recommendation asserts that “Petitioner’s claim that she received no individualized process prior to detention is inaccurate,” R. & R. at 18, it goes on to cite only proceedings related exclusively to Ms. Carmona Sanchez’s *removability*—a question not before this Court—and not to her custody, the rescission of DHS’s decision to release her on recognizance, or the rescission of her work authorization. Yes, Ms. Carmona Sanchez was determined by an immigration officer to fall under 8 U.S.C. § 1225(b)(2)(A), *see* R. & R. at 18, which mandates her detention. But this determination was made solely because of the government’s policy change, not because of any changed circumstances relating to flight risk or danger to the community. Ms. Carmona Sanchez does not

⁷ Notably, the question of what due process is required before a previously granted benefit can be rescinded was not before the Fifth Circuit in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and is not presently before the Fifth Circuit in *Sosnava Rodriguez*, No. 26-50183 (5th Cir.), as none of those petitioners were released on their own recognizance. *See also* Doc. 17 at 14–15 (arguing that *Buenrostro-Mendez* also does not foreclose Ms. Carmona Sanchez’s *statutory* claim because she was released on recognizance explicitly under 8 U.S.C. § 1226(a), unlike the *Buenrostro-Mendez* petitioners).

claim that Respondents have no constitutional ability to detain noncitizens. Instead, she asserts that the decision to redetain 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 flight risk nor a danger to the community and merited release on recognizance and work authorization while her removal proceedings were carried out. *See 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-Arevelo*, 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-1101, 2025 WL 2581185, at *10 (E.D. Cal. Sept. 5, 2025))).

Since Ms. Carmona Sanchez gained independent liberty and property interests when the government granted her release on recognizance and work authorization, the Fifth Amendment entitles her to individualized due process prior to the deprivation of those interests. The Report and Recommendation fails to recognize this.

V. The Clear and Convincing Standard of Proof Should Apply if This Court Orders a Bond Hearing; It Is Not the Legal Standard that Applies to Ms. Carmona Sanchez’s Due Process Claim Before This Court

The Report and Recommendation confuses the burden and standard of proof that Ms. Carmona Sanchez argues should apply *to the government* if she is granted one of the forms of habeas relief she is requesting—a bond hearing before an Immigration Judge—with the level of scrutiny that *this Court* should apply to her as-applied procedural due process claim. *See R. & R.* at 5, 16 (“Petitioner then fails to apply a reasonableness test and instead argues that ‘[d]ue

process requires Respondents to justify [her] detention by clear and convincing evidence that she is a flight risk or danger to others at an individualized hearing before a neutral decisionmaker.” (quoting Doc. 1 at ¶ 68)). Ms. Carmona Sanchez does not ask this Court to apply the “clear and convincing evidence” standard when analyzing her due process claim challenging her mandatory detention during removal proceedings. Rather, as explained *supra* in Sections I, II, and IV, that claim should be subjected to the rigorous inquiry and balancing test that applies to deprivations of fundamental liberty interests without any opportunity for review. But, if this Court orders Respondents to provide Ms. Carmona Sanchez with a bond hearing before an Immigration Judge, the agency should be required to prove by clear and convincing evidence that her detention is necessary to prevent flight and danger.

The Supreme Court has repeatedly held that due process requires placing this heightened standard of proof on the government to justify civil detention. *See* Doc. 17 at 17 (citing, *inter alia*, *United States v. Comstock*, 560 U.S. 126, 129–31 (2010); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). And “as of 2020, the vast majority—an overwhelming consensus—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.” *Lopez-Arevelo*, 801 F. Supp. 3d at 688 (cleaned up); *see also, e.g.*, Doc. 7 at 24 (citing pre-*Buenrostro-Mendez* cases from district courts within the Fifth Circuit granting habeas relief on statutory grounds to petitioners challenging ICE’s no-bond policy and ordering respondents to provide them with IJ bond hearings where governments bears the burden by clear and convincing evidence); *Bonilla Conforme*, 2026 WL 381110, at *3 (in due process challenge to no-bond detention decided post-*Buenrostro-Mendez*, ordering government to either release petitioner or provide him “with a bond hearing before an IJ, at which the Government shall bear the burden of justifying, by clear

and convincing evidence of dangerousness or flight risk, [his] continued detention”); *Hassen*, 2026 WL 446506, at *2 (same).

Notwithstanding these questions of the burden of proof, this Court is also empowered to grant Ms. Carmona Sanchez’s immediate release. *See, e.g., Sarmiento*, 2026 WL 131917, at *10 & n.23 (granting TRO, concluding that “immediate release is the appropriate remedy to cure the due process violation and restore the status quo”; collecting cases); *Peregrino Guevara v. Witte*, No. 6:20-cv-01200, 2020 WL 6940814, at *1–2 (W.D. La. Nov. 17, 2020) (recommending immediate release of petitioner based on serious health concerns exacerbated by conditions of detention), *R. & R. adopted*, 2020 WL 6929700 (W.D. La. Nov. 24, 2020).

CONCLUSION

For the reasons set forth herein, Petitioner respectfully objects to the Magistrate Judge’s Report and Recommendation. The Court should grant a Writ of Habeas Corpus or issue a Temporary Restraining Order requiring Respondents to either immediately release Ms. Carmona Sanchez from their custody or promptly provide her with a bond hearing before an Immigration Judge with adequate procedural protections to safeguard her due process rights. Ms. Carmona Sanchez also respectfully requests that the Report and Recommendation be made publicly available on the electronic docket in this case.

Dated: May 15, 2026

Respectfully submitted,

s/ Jessica Myers Vosburgh

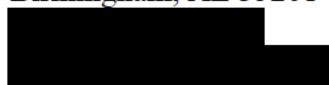
Jessica Myers Vosburgh*

C.J. Sandley*

CENTER FOR CONSTITUTIONAL RIGHTS

P.O. Box 486

Birmingham, AL 35201



[REDACTED]

D. Korbin Felder, MS Bar No. 106643
CENTER FOR CONSTITUTIONAL RIGHTS
P.O. Box 12046
Jackson, MS 39236

[REDACTED]

Celine Zhu*
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012

[REDACTED]

Gerardo Romo*
NATIONAL IMMIGRANT JUSTICE CENTER
111 W. Jackson Blvd, Suite 800
Chicago, IL 60604

[REDACTED]

* *Admitted pro hac vice*

Pro Bono Counsel for Petitioner