

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

ALBERTO SOLAR CARMONA,
Petitioner,

v.

Warden, STEWART DETENTION CENTER,
Respondent.

**Case No. 4:26-CV-19-CDL-CHW
28 U.S.C. § 2241**

**PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S
RECOMMENDATION OF DISMISSAL (DOC. 11)**

Petitioner: Alberto Solar Carmona

A Number: [REDACTED]

Filed By: Alberto Solar Carmona, Petitioner Pro Se

Mailing Address: [REDACTED]

Tel: [REDACTED]

Objection Deadline: May 8, 2026 (14 days from April 24, 2026)

TABLE OF CONTENTS

I. Introduction and Standard of Review	3
II. Objection 1: Jurisdiction Was Established at Filing and Cannot Be Destroyed by the Government's Own Subsequent Removal	4
III. Objection 2: The Appeal Was Not Untimely — The BIA's Own Administrative Failures Lost the Documents Three Times	6
IV. Objection 3: The BIA Appeal Is Now Officially Accepted and Active —	

The Case Is Not Moot	7
V. Objection 4: The Voluntary Cessation Doctrine Bars the Government from Claiming Mootness It Engineered	8
VI. Objection 5: This Court Retains Independent Contempt Jurisdiction	9
VII. Objection 6: The Constitutional Bond Hearing Violation Cannot Be Mooted by the Removal It Enabled	10
VIII. Objection 7: Meaningful Relief Remains Available — Return Is Possible ..	11
IX. Conclusion	12

I. INTRODUCTION AND STANDARD OF REVIEW

Petitioner Alberto Solar Carmona respectfully submits these Objections to the Magistrate Judge's Recommendation of Dismissal (Doc. 11, April 24, 2026) pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). Petitioner requests that District Judge Clay D. Land conduct **de novo** review of all issues raised herein. The District Judge is not bound by the Magistrate Judge's conclusions. *United States v. Raddatz*, 447 U.S. 667, 673 (1980).

The Magistrate Judge's Recommendation rests on two related conclusions: (1) that because Petitioner was removed from the United States, the case is moot; and (2) that because no timely appeal was filed with the BIA, the removal order became final, leaving no live controversy. Both conclusions are legally wrong. They fail to address the controlling doctrine on when habeas jurisdiction is established, the history of what actually happened to the BIA appeal documents, the BIA's official April 3, 2026 acceptance of the appeal, the voluntary cessation doctrine, the Court's independent contempt jurisdiction, the constitutional bond hearing violation, and the government's own documents confirming that return is available. Any one of these grounds independently requires rejection of the Recommendation. Together they compel it.

II. OBJECTION 1: THIS COURT'S HABEAS JURISDICTION WAS ESTABLISHED WHEN PETITIONER FILED — WHILE PHYSICALLY DETAINED — AND THE GOVERNMENT CANNOT DESTROY THAT JURISDICTION BY REMOVING HIM.

The most fundamental legal error in the Recommendation is its failure to address the controlling rule on when habeas jurisdiction is established. The answer is clear and dispositive: habeas jurisdiction attaches at the moment of filing, not at the moment of the court's ruling.

A. Custody Is Determined at the Time of Filing — Not at the Time of Decision

The habeas statute, 28 U.S.C. § 2241, applies to individuals who are "in custody." The Supreme Court has squarely held that whether an individual is "in custody" is determined **at the time the habeas petition is filed**, not at the time of the court's ruling. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). This rule is well-established and applies identically in the immigration detention context. *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733, 735 (5th Cir. 2005) ("a final deportation order subjects [a noncitizen] to a restraint on liberty sufficient to place the noncitizen 'in custody'").

When Alberto Solar Carmona filed this habeas petition in January 2026, he was physically detained at Stewart Detention Center in Lumpkin, Georgia. He was unquestionably "in custody" within the meaning of § 2241. This Court's jurisdiction was established at that moment. It does not matter — legally — that the government subsequently removed him. Jurisdiction had already attached. The government cannot retroactively destroy this Court's jurisdiction by taking the very action that Petitioner's habeas petition was seeking to challenge and prevent.

B. Allowing Removal to Destroy Habeas Jurisdiction Would Nullify the Suspension Clause

The Magistrate Judge's reasoning leads to an unconstitutional result: the executive branch can permanently avoid habeas review of any detention simply by removing the detainee before the court can act. The Suspension Clause of Article I, Section 9 of the Constitution guarantees the

right to habeas corpus. *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) ("the political branches cannot switch the Constitution off when they find it inconvenient"). The Supreme Court has warned against interpretations that allow the government to circumvent habeas by controlling the petitioner's physical location. *Id.* at 745. If removing a detainee destroys habeas jurisdiction, then the writ is meaningless — because the government can always remove first and argue mootness second. This Court should decline to adopt a rule that renders the Great Writ a nullity.

C. Over 300 Federal Judges Have Found That Mandatory Detention Without Bond Hearings Is Unconstitutional

This Court should be aware of the extraordinary national context in which this case arises. As reported by Politico in October 2025, more than 100 federal judges had ruled over 200 times against the government's mandatory detention policy — with judges appointed by every president since Ronald Reagan, including Trump appointees, finding the policy unlawful or violative of due process. By 2026, that number has grown substantially, with over 300 district court judges across the country rejecting the same theory of mandatory detention that was applied to Alberto Solar Carmona. Habeas corpus is the mechanism by which these courts have provided relief. Dismissing this petition as moot because the government removed Petitioner before this Court could rule would shield this case from joining that overwhelming national consensus.

III. OBJECTION 2: THE BIA APPEAL WAS NOT SIMPLY "UNTIMELY" — THE BIA LOST PETITIONER'S DOCUMENTS TWICE THROUGH ITS OWN INTERNAL ADMINISTRATIVE FAILURES.

The Magistrate Judge's mootness conclusion appears to rest in part on the premise that no timely BIA appeal was filed, allowing the removal order to become final. This premise is factually and legally incomplete. The full record of what actually happened to Petitioner's appeal documents

reveals an extraordinary series of administrative failures — entirely on the government's side — that prevented the appeal from being properly processed.

A. The Complete History of Three Filings and Two Internal BIA Losses

First Submission — January 27-28, 2026 (Before the Deadline): Petitioner's Notice of Appeal (Form EOIR-26) and Emergency Motion to Stay Removal were mailed on January 27-28, 2026 — **two days before the January 29, 2026 deadline**. The documents were physically delivered to the BIA on January 31, 2026, per USPS tracking records. Petitioner was then removed to Mexico on February 2, 2026 — before the BIA had ruled on the Emergency Motion to Stay. These documents were subsequently **lost within the BIA's own internal system**. Petitioner was not notified that the documents were lost.

Second Submission — February 1-2, 2026: A second precautionary Notice of Appeal was mailed on or about February 1-2, 2026 and delivered to the BIA on February 4, 2026, per USPS records. This submission was also **lost within the BIA's own system**. Again, Petitioner received no notification of the loss.

Third Submission — March 2026 (Per BIA Staff Request): After making numerous calls to the BIA from Mexico — calls which BIA staff confirmed were logged as case notes in the system — a BIA staff member finally confirmed to Petitioner that **both prior submissions had been lost internally**. The BIA staff member personally requested that Petitioner resubmit all documents by email. Petitioner did so immediately and also sent the originals by USPS mail. The BIA's own staff member made this request — demonstrating that the Board itself recognized its responsibility to process the appeal.

B. The BIA's Internal Document Loss Constitutes Extraordinary Circumstances Supporting Equitable Tolling

Equitable tolling applies where a party has diligently pursued his rights and extraordinary circumstances prevented timely filing. *Holland v. Florida*, 560 U.S. 631, 645 (2010). The loss of properly submitted, timely-mailed documents within a government agency's own internal system is a textbook extraordinary circumstance entirely beyond Petitioner's control. Petitioner mailed documents before the deadline. The BIA received them. The BIA lost them — twice. Petitioner could not know the documents were lost because nobody told him. He was simultaneously detained in a U.S. facility without counsel and then removed to Mexico. The only party responsible for the loss of these documents is the BIA itself. Petitioner cannot be penalized for the government's own administrative failures.

Additionally, the Emergency Motion to Stay Removal was filed before the deadline and was pending before the BIA when ICE removed Petitioner on February 2, 2026. That removal violated the spirit — and arguably the letter — of the pending stay motion. The government cannot argue that no timely appeal was filed when its own agency lost the documents that constituted the appeal, and when its own enforcement arm removed Petitioner before the BIA could rule on the pending stay motion.

IV. OBJECTION 3: THE BIA OFFICIALLY ACCEPTED PETITIONER'S APPEAL ON APRIL 3, 2026 — THREE WEEKS BEFORE THIS RECOMMENDATION — CONCLUSIVELY DEMONSTRATING THE CASE IS NOT MOOT.

The Magistrate Judge's Recommendation was issued on April 24, 2026. Three weeks earlier — on April 3, 2026 — the Board of Immigration Appeals issued an official **Filing Receipt for Appeal** in Petitioner's case, A# , confirming that Petitioner's appeal was accepted with an official filing date of **February 9, 2026**. The BIA's Filing Receipt states: "The Board of

Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request on 2/9/2026." The BIA classified the appeal as a "Case Appeal," filed by "Alien," in a "Removal" proceeding. The appeal is now officially docketed. A briefing schedule has been ordered. The BIA considers the appeal timely.

The Magistrate Judge's Recommendation does not address this development — because it was issued before the Magistrate was aware of it. On de novo review, this Court must consider it. The BIA's official acceptance of Alberto's appeal as of February 9, 2026 directly refutes the premise that no timely appeal was filed. The BIA — the very agency administering the appeal — has determined that the appeal is properly before it. This Court should not reach a contrary conclusion on the timeliness of the same appeal that the BIA has officially accepted.

The existence of an officially accepted, active BIA appeal also means there is a live, ongoing controversy over Petitioner's immigration status that is far from resolved. *A final removal order does not automatically moot a pending federal habeas corpus petition, particularly when the habeas action challenges the lawfulness of detention rather than the underlying removal decision itself.* The outcome of this habeas case directly affects the BIA proceedings. A return order from this Court would allow Petitioner to meaningfully participate in the BIA appeal. A declaration that his detention was unlawful would strengthen the BIA's consideration of his case. These proceedings are inextricably linked, and the live BIA appeal demonstrates that the controversy is far from moot.

V. OBJECTION 4: THE VOLUNTARY CESSATION DOCTRINE INDEPENDENTLY BARS THE GOVERNMENT FROM CLAIMING MOOTNESS IT CREATED.

The Magistrate Judge's Recommendation does not address the voluntary cessation doctrine — a well-established, directly applicable exception to mootness that Petitioner raised in his Opposition Brief (Doc. 9). This failure constitutes reversible error on de novo review.

Under the voluntary cessation doctrine, "a defendant cannot automatically moot a case simply by ending its allegedly unlawful conduct once sued." *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 75 (2013). The government must show it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000). This is a "formidable burden" that applies equally to government defendants. *FBI v. Fikre*, 601 U.S. 234, 241 (2024).

In *A.A.R.P. v. Trump*, 605 U.S. ___, 145 S. Ct. 1364, 1369-70 (2025), the Supreme Court applied the voluntary cessation doctrine in the immigration habeas context and rejected a mootness argument based on the government's own conduct. This is the controlling and most recent Supreme Court authority. The Magistrate Judge does not cite it.

The chronology here is decisive. This Court entered an active case management order on January 23, 2026, requiring the government to respond within 21 days (ECF No. 4). The government's response was due February 13, 2026. On February 2, 2026 — eleven days before its own deadline — ICE removed Petitioner while this Court's order was in effect. The government then filed its Motion to Dismiss on February 13 arguing mootness based on the removal it had just engineered. This is the paradigmatic case for the voluntary cessation doctrine. ICE created the mootness. ICE now seeks to benefit from it. That is precisely what the doctrine forbids. *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 288-89 (1982).

VI. OBJECTION 5: THIS COURT RETAINS INDEPENDENT CONTEMPT JURISDICTION THAT CANNOT BE MOOTED BY REMOVAL.

Federal courts possess inherent authority, entirely independent of habeas jurisdiction, to enforce their own orders and sanction parties who violate them. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991); *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947). This authority derives directly from Article III and is not extinguishable by a party's subsequent conduct.

On January 23, 2026, this Court entered an order requiring the government to respond to the habeas petition (ECF No. 4). ICE removed Petitioner on February 2, 2026 — before the government had filed its response and while that order was in effect. On February 10, 2026 — eight days after the removal — this Court entered a second order directing the government to address the Emergency Motion (ECF No. 6). The fact that this Court issued an order eight days after the removal confirms that this Court itself recognized live issues remained. The Emergency Motion's contempt claim asks whether the government violated this Court's orders — a question with a concrete yes or no answer that is not mooted by Petitioner's physical location. The Magistrate Judge dismissed this claim without addressing this independent jurisdictional basis.

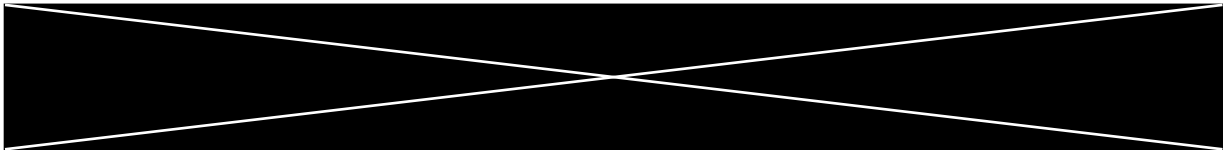
VII. OBJECTION 6: THE CONSTITUTIONAL BOND HEARING VIOLATION CANNOT BE MOOTED BY THE REMOVAL IT ENABLED.

Petitioner was arrested on September 24, 2025, and denied a bond hearing from that day through his removal on February 2, 2026 — over four months. On December 18, 2025 — eleven days before the Immigration Judge's removal order — U.S. District Judge Sunshine Sykes entered a final nationwide class judgment in *Maldonado Bautista v. DHS (Santacruz)*, Case No. 5:25-cv-01873 (C.D. Cal.), declaring that persons in Petitioner's exact situation were entitled to bond

hearings under INA § 1226(a). The Immigration Court was obligated to comply with that federal judgment. It did not. The removal order issued from constitutionally defective proceedings.

The constitutional violation — denial of a bond hearing — occurred on September 24, 2025. It was complete and ongoing before this petition was filed. A constitutional injury that has already occurred does not disappear because the person harmed was subsequently removed. The Supreme Court held in *INS v. St. Cyr*, 533 U.S. 289, 301-05 (2001), that habeas corpus jurisdiction under § 2241 survives for constitutional claims arising from immigration detention regardless of § 1252 jurisdiction-stripping provisions. Petitioner's bond hearing claim challenges the lawfulness of his detention — not the removal order itself — and is fully cognizable in habeas under *St. Cyr*.

The collateral consequences of the unlawful detention also prevent mootness. *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998). The bond denial prevented Petitioner from retaining counsel, gathering evidence, and presenting a complete defense — directly enabling the removal that the government now uses to claim mootness. 



 These are the ongoing, concrete, irreversible consequences of an unconstitutional detention.

They do not disappear upon removal — they are caused by it.

VIII. OBJECTION 7: MEANINGFUL RELIEF REMAINS AVAILABLE — THIS COURT CAN ORDER PETITIONER'S RETURN AND THE GOVERNMENT HAS ACKNOWLEDGED IT WILL COMPLY.

A case is moot only when "it is **impossible** for a court to grant any effectual relief whatever." *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992) (emphasis added). Courts must look for "some form of meaningful relief." *Chafin v. Chafin*, 568 U.S. 165, 172

(2013). This Court can: (1) order Petitioner's return to the United States; (2) declare his detention unconstitutional; (3) order a bond hearing upon his return; (4) hold the government in contempt; and (5) order correction of the inaccurate administrative record. Each of these is meaningful relief. None is impossible.

Most critically, ICE Form 71-041 — the *Notice to Removed Aliens Who May Be Seeking Judicial Review* served on Petitioner at the moment of his removal — explicitly states that ICE will facilitate Petitioner's return if a court orders it or if proceedings are remanded. The Magistrate Judge's Recommendation does not address ICE Form 71-041 at all. The government cannot represent to Petitioner in writing that it will comply with a return order and then tell this Court that no return order is possible. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel bars inconsistent positions). This omission alone requires de novo reconsideration.

IX. CONCLUSION

The complete picture that District Judge Land must consider on de novo review is this: Alberto Solar Carmona was arrested on September 24, 2025 and denied a bond hearing that a federal court had already declared he was entitled to. He was removed from the United States on February 2, 2026 — while this Court's active orders were in effect, eleven days before the government's own response deadline, and while a pending Emergency Motion to Stay was before the BIA. His BIA appeal documents were mailed before the deadline and were lost twice — not by Petitioner, but by the BIA itself. He called the BIA repeatedly from Mexico. The BIA's own staff member eventually confirmed the losses and personally requested he resubmit. He did. On April 3, 2026 — three weeks before this Recommendation — the BIA officially accepted his appeal with a filing date of February 9, 2026.



[REDACTED] He has pursued his rights at every available level, simultaneously, with persistence and good faith, under circumstances that would have defeated most people.

This case is not moot. This Court's jurisdiction was established at filing when Petitioner was physically in this Court's custody. The government created the alleged mootness through its own conduct during active court proceedings. The BIA accepted the appeal the Recommendation says was untimely. The constitutional violation that underlies this petition predates removal and cannot be undone by it. And the government's own documents say it will bring Petitioner back if this Court orders it.

Petitioner respectfully requests that District Judge Land REJECT the Recommendation of Dismissal in its entirety and:

1. **DENY** Respondent's Motion to Dismiss (Doc. 7) on all grounds argued herein;
2. **ORDER** the government to facilitate Petitioner's immediate return to the United States;
3. **ORDER** the government to show cause why it should not be held in contempt for removing Petitioner while active court orders were in effect;
4. **DECLARE** that Petitioner was unconstitutionally denied a bond hearing as a member of the Maldonado Bautista Bond Eligible Class;
5. **ORDER** that upon return, Petitioner be afforded the bond hearing he was unlawfully denied before any further removal proceedings may resume; and
6. **GRANT** such other and further relief as this Court deems just and proper.

If the government's position is accepted — that it can permanently escape habeas review by removing any inconvenient petitioner before a court can rule, and then losing the appeal documents twice to ensure no parallel track survives — then the Suspension Clause is a dead letter. Alberto Solar Carmona is a father of three U.S. citizen children [REDACTED] [REDACTED] removed during active proceedings that challenged the very detention that made his removal possible. He asks this Court to exercise the authority Article III gives it, and to say that the rule of law means something.

Respectfully submitted,

SIGNATURE OF PETITIONER (via DocuSign):

Signed by:


Alberto Solar Carmona, Petitioner Pro Se

A# [REDACTED]

Mailing Address: [REDACTED]
[REDACTED]

5/1/2026

Date Signed (via DocuSign): _____

CERTIFICATE OF SERVICE

I, Alberto Solar Carmona, hereby certify that on 5/1/2026, 2026, I caused a true and correct copy of the foregoing Objections to the Magistrate Judge's Recommendation to be served upon the following party by United States Postal Service, certified mail, first class, and by overnight courier:

Travis D. Lynes, AUSA
United States Attorney's Office, Middle District of Georgia
P.O. Box 1702, Macon, Georgia 31202

Signed by:



Alberto Solar Carmona

Alberto Solar Carmona, Petitioner Pro Se

A# 

Mailing Address: 

Tel: 