

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANTONIO ANGEL CASTILLO, and
JUAN JOSE LEON LOZA, on behalf of
themselves as individuals and on behalf of
others similarly situated,

Petitioners,

v.

No. 2:25-cv-01074-JB-JFR

MARY DE ANDA-YBARRA, Field Office
Director, El Paso Field Office; DORA
CASTRO, Warden of Otero Processing
Center; KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
PAMELA BONDI, U.S. Attorney General;
SIRCE OWEN, Acting Director, EOIR;
OTERO IMMIGRATION COURT; and
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW (EOIR),

Respondents.

**RESPONDENTS' OBJECTIONS TO THE
PROPOSED FINDINGS & RECOMMENDED DISPOSITION**

Respondents, Immigration and Customs Enforcement (“ICE”), the Department of Homeland Security (“DHS”), the U.S. Attorney General, and the Executive Office for Immigration Review (“EOIR”) (collectively “Respondents”), hereby submit these objections¹ to the Honorable Judge Robbenhaar’s Proposed Findings and Recommended Disposition (“PFRD”), filed November 21, 2025. *See* Doc. 8. Respondents object to the recommended analysis of the appropriate governing statutes, recommendation for burden shifting at future U.S. Immigration

¹ Respondents appeared at the November 19, 2025, hearing pursuant to Court order (Doc. 6) on limited notice and without service being properly effectuated under Red. R. Civ. P. Rule 4(i). As such, this is Respondents first opportunity to respond in writing.

Court proceedings and to enjoin otherwise lawful removal from the United States during the pendency of the habeas litigation.

OBJECTIONS

I. Respondents object to the recommendation that § 1226 applies, and that Petitioner’s due process rights were violated because he was detained under § 1225.

The PFRD recommends a finding that Petitioner was erroneously detained without bond under 8 U.S.C. § 1225 and therefore a due process violation occurred. *See, e.g.*, Doc. 8 at 19-22. Respondents, for the reasons cited below, disagree and object to that recommendation.

A. The Pre-IIRIRA Framework Gave Preferential Treatment to Noncitizens Unlawfully Present in the United States.

Prior to 1996, the Immigration and Nationality Act (“INA”) treated noncitizens² differently based on whether they had physically “entered” the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see also Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010). “Entry” referred to “any coming of an alien into the United States,” 8 U.S.C. § 1101(a)(13) (1994), and whether a noncitizen had physically entered the United States (or not) “dictated what type of [removal] proceeding applied” and whether the noncitizen would be detained pending those proceedings. *Hing Sum v. Holder*, 602 F.3d at 1099.

At the time, the INA “provided for two types of removal proceedings: deportation hearing and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). Noncitizens who arrived at a port of entry would be placed in “exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole.” *Hurtado*, 29 I. & N. Dec.

² The applicable statutes and regulations often refer to these individuals as “aliens”. For the purposes of clarity, the use of the alternative term noncitizens is not intended to infer a legal distinction.

at 223; *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, noncitizens who physically entered the United States unlawfully would be placed in deportation proceedings. *Id.*; *Hing Sum*, 602 F.3d at 1100. Noncitizens in deportation proceedings, unlike those in exclusion proceedings, “were entitled to request release on bond.” *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)). Thus, the INA’s prior framework distinguishing based on physical “entry” had:

the ‘unintended and undesirable consequence’ of having created a statutory scheme where aliens who entered without inspection ‘could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,’ *including the right to request release on bond*, while aliens who had ‘actually presented themselves to authorities for inspection ... were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att’y General of U.S.*, 693 F.3d 408, 413 n.5 (2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) (“House Rep.”) (“illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection”).

B. IIRIRA Eliminated the Preferential Treatment of Noncitizens Unlawfully Present in the United States and Mandated Detention of “Applicants for Admission”.

Congress discarded that regime through enactment of the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996). Among other things, that law had the goal of “ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.” *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical “entry” and instead made lawful “admission” the governing touchstone. IIRIRA defined “admission” to mean “the *lawful* entry of

a noncitizen into the United States after inspection and authorization by an immigration officer.”
8 U.S.C. § 1101(a)(13)(A) (emphasis added).

In other words, the immigration laws would no longer distinguish based on whether the noncitizen had managed to evade detection and enter the country without permission. Instead, the “pivotal factor in determining an alien’s status” would be “whether or not the alien has been lawfully admitted.” See House Rep., at 226 (emphasis added); see also *Hing Sum v. Holder*, 602 F.3d at 1100. IIRIRA also eliminated the exclusion-deportation dichotomy and consolidated both sets of proceedings into “removal proceedings.” *Hurtado*, 29 I. & N. Dec. at 223.

IIRIRA effected these changes through several provisions codified in § 1225 and § 1226:

Section 1225(a): Section 1225(a) codifies Congress’s decision to make lawful “admission,” rather than physical entry, the touchstone. That provision states that noncitizens “present in the United States who has not been admitted or who arrives in the United States” “shall be deemed ... an applicant for admission”:

An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

8 U.S.C. § 1225(a)(1) (emphasis added).

Section 1225(b): IIRIRA also divided removal proceedings into two tracks—expedited removal and non-expedited “240” proceedings—and mandated that applicants for admission be detained pending those proceedings. 8 U.S.C. §§ 1225(b)(1)-(2).

Section 1225(b)(1) provides for “expedited removal” proceedings, *DHS v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020), which can potentially be applied to a subset of noncitizens—those who (1) are “arriving in the United States,” or who (2) have “not been admitted or paroled into the United States” and have “not affirmatively shown, to the satisfaction of an immigration officer,

that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility.” 8 U.S.C. § 1225(b)(1)(A)(i)-(iii).

Section 1225(b)(2) is a “catchall provision that applies to all applicants for admission not covered by [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). It requires that those aliens be detained pending Section 240 removal proceedings:

Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a of this title [Section 240].

8 U.S.C. § 1225(b)(2)(A) (emphasis added). *See* 8 C.F.R. § 253.3(b)(1)(ii) (mirroring Section 1225(b)(2) detention mandate); *Jennings*, 583 U.S. at 302 (holding that Section 1225(b)(2) “mandate[s] detention of aliens throughout the completion of applicable proceedings and not just at the moment those proceedings begin”).

While § 1225(b)(2) does not allow for release on bond, the INA grants DHS discretion to exercise its parole authority to temporarily release an applicant for admission, but “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole, however, “shall not be regarded as admission of the alien.” *Id.*; *Jennings*, 583 U.S. at 288 (discussing parole authority). Moreover, when the Secretary determines that “the purposes of such parole ... been served,” the “alien shall ... be returned to the custody from which he was paroled” and be “dealt with in the same manner as that of any other applicant for admission to the United States.” 8 U.S.C. § 1182(d)(5)(A).

Section 1226: IIRIRA also created a separate authority addressing the arrest, detention, and release of noncitizens generally (versus applicants for admission specifically). *See* 8 U.S.C. § 1226. This is the only provision that governs the detention of noncitizens who, for example,

lawfully enter the country but overstay or otherwise violate the terms of their visas or are later determined to have been improperly admitted. The statute provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” *Id.* § 1226(a). Detention under this provision is generally discretionary: The Attorney General “may” either “continue to detain the arrested alien” or release the noncitizen on bond or conditional parole. *Id.* § 1226(a)(1)-(2). That “default rule,” however, does not apply to certain criminal noncitizens who are being released from detention by another law enforcement agency. *Jennings*, 583 U.S. at 288; *see* 8 U.S.C. § 1226(c).

Congress recently amended Section 1226(c) through the Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3, (2025), which requires detention of (and prohibits parole for) aliens who (1) are inadmissible because they are physically present in the United States without admission or parole, have committed a material misrepresentation or fraud, or lack required documentation; and (2) are “charged with, arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of” certain listed offenses. 8 U.S.C. § 1226(c)(1)(E).

C. *Matter of Yajure Hurtado* clarified the correct interpretation of the mandatory detention statutes.

For many years after IIRIRA, DHS treated noncitizens who entered the United States without admission and were later detained away from the border as being subject to discretionary detention under 8 U.S.C. § 1226(a) rather than mandatory detention under 8 U.S.C. § 1225(b)(2). *See Hurtado*, 29 I. & N. Dec. at 225 n.6. On July 8, 2025, DHS revisited its legal position on detention and release authorities and issued interim guidance that brought practices in line with the statute’s plain text. Specifically, DHS concluded that all noncitizens who enter the country without being admitted (or who otherwise arrive in the United States without proper

documentation) are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.

On September 5, 2025, the Board of Immigration Appeals (“BIA”) adopted this interpretation through a precedential opinion, *Matter of Yajure Hurtado*, clarifying that aliens apprehended in the interior of the United States, even after prolonged presence in the United States, are also considered to be “arriving aliens” and are properly detained under 8 U.S.C. § 1225(b)(2). 29 I. & N. Dec. 216 (BIA 2025), Interim Decision 4125, 2025 WL 2674169. In *Matter of Yajure Hurtado*, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.

The BIA concluded that noncitizens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for number of years. *Id.*

In so concluding, the BIA rejected the argument that “because [petitioner] has been residing in the interior of the United States for almost 3 years...he cannot be considered as ‘seeking admission.’” *Id.* at 221. The BIA determined this argument “is not supported by the plain language of the INA” and creates a “legal conundrum.” *Id.* Specifically, if the alien “is not admitted to the United States (as he admits) but he is not ‘seeking admission’ (as he contends), then what is his legal status?” *Id.* (parentheticals in original). The BIA further rejected arguments that: (1) the

immigration judge’s interpretation of § 1225(b)(2)(A) would render superfluous § 1226(c)(1)(A); (2) the relevant legislative history of the INA supports an interpretation that would permit bond hearings for individuals present in the United States without admission; (3) DHS’s “longstanding practice” indicates that aliens present without admission are entitled to bond hearings; and (4) *Matter of Q. Li*, 29 I. & N. 66 (BIA 2025), supports a conclusion that aliens detained with a warrant of arrest are detained under § 1226(a). *Id.* at 221–27.

D. Section 1225 was appropriately applied to Petitioners.

Under the plain language of § 1225(b)(2), DHS is required to detain all noncitizens, like Petitioners, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the noncitizen has been in the United States or how far from the border they ventured. Section 1225(a) defines “applicant for admission” to encompass a noncitizen who either “arrives in the United States” or who is “present in the United States who has not been admitted.” 8 U.S.C. § 1225(a)(1). And “admission” under the INA means not physical entry, but lawful entry after inspection by immigration authorities. 8 U.S.C. § 1101(a)(13)(A); *Mejia Olalde*, 2025 WL 3131942, at *3. Thus, a noncitizen who enters the country without permission is and remains an applicant for admission, regardless of the duration of the noncitizen’s presence in the United States or distance from the border³. As the geographic and temporal limits

³ This reading is consistent with the everyday meaning of the statutory terms. One may “seek” something without “applying” for it—for example, one who is “seeking” happiness is not “applying” for it. But one *applying* for something is necessarily *seeking* it. Compare Webster’s New World College Dictionary 69 (4th ed.) (“apply” means “To make a formal request (*to* someone *for* something)”), *with id.* at 1299 (“seek” means “to request, ask for”). For example, a person who is “applying” for admission to a college or club is “seeking” admission to the college or club. See The American Heritage Dictionary of the English Language 63 (1980) (“American Heritage Dictionary”) (“apply” means “[t]o request or *seek* employment, acceptance, or *admission*”) (emphasis added). Likewise, a noncitizen who is “applying” for admission to the United States (*i.e.*, an “applicant for admission”) is “seeking admission” to the United States.

in the neighboring provision, § 1225(b)(1), demonstrate, “[i]f Congress meant to say that an alien no longer is ‘seeking admission’ after some amount of time in the United States, Congress knew how to do so.” *Id.* at *4.

It cannot be disputed that Respondents previously operated under a different understanding of § 1225(b)(2)(A), such that noncitizens present in the interior of the United States who had entered without admission have historically been detained under Section 1226(a). However, past practice does not justify disregard of clear statutory language. *See, e.g., Armstrong v. Exceptional Child Ctr. Inc.*, 575 U.S. 320, 329 (2015). For example, in the context of this very statute the Supreme Court has rejected longstanding government interpretations that were later deemed incompatible with statutory text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204-05, 208-09 (2018). A court must always interpret the statute “as written,” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 68 (2019). A “nontextual” practice, even longstanding ones, cannot upend plain statutory meaning upon review. *Mejia Olalde*, 2025 WL 3131942, at *5 (rejecting the Government’s prior understanding as “nontextual” and unsupported by any “thorough, reasoned analysis”).

A contrary view would make mandatory detention turn on the fortuity happenstance of when a noncitizen attempts to prove admissibility (or how successfully/unsuccessfully a noncitizen illegally enters the United States). *See, e.g., United States v. Wilson*, 503 U.S. 329, 334 (1992) (courts must not “presume lightly” that statute’s application will turn on “arbitrary” issue of timing). There is no reason why Congress would desire mandatory detention to depend on the timing of when a noncitizen attempts to show admissibility (or how successful/unsuccessful an illegal entry attempt was), particularly given how susceptible that rule is to manipulation by the noncitizen’s own actions.

Some district courts have rejected Respondents' argument based on language in *Jennings* where the Supreme Court described the detention authorities in § 1225(b) and § 1226, and in that context summarized § 1226 as applying to aliens "already in the country":

In sum, U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).

Jennings, 583 U.S. at 289; *see also id.* at 288 (characterizing § 1226 as applying to aliens "once inside the United States"). However, Respondents' do not view this argument as inconsistent with that language: it allows that § 1226 is the exclusive source of detention authority for the substantial category of noncitizens who are were admitted into the United States (and so are "in the country") but are now removable. *Jennings* refers to noncitizens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The opinion's reference to noncitizens "present in the country" specifically cites § 1227(a), which covers only *admitted* noncitizens. *See Jennings*, 583 U.S. at 288. Moreover, nothing in the quoted language from *Jennings* suggests that § 1226 is the *sole* detention authority that applies to "aliens already in the country."

Petitioners, under the *Hurtado* view, fall squarely within the ambit of § 1225(b)(2)(A)'s mandatory detention requirement. Petitioners would be "applicant[s] for admission" to the United States, i.e., noncitizens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1). Congress's broad language here is intentional, an undocumented noncitizen is to be "deemed for purposes of this chapter an applicant for admission." *Id.* Petitioners are "deemed" an applicant for admission based upon 1) the undocumented status and 2) that Petitioners have not demonstrated to an examining immigration officer that they are "clearly and beyond a doubt entitled to be admitted," making detention mandatory under § 1225. *See* 8 U.S.C. § 1225(b)(2)(A).

In addition to *Mejia Olalde*, at least three other courts have adopted this general interpretation in recent months. *See Pena v. Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913 (D. Mass. July 28, 2025) (finding that an unlawfully present alien, who had been in the country for approximately twenty years, was nonetheless an “applicant for admission” upon the straightforward application of the statute); *Vargas Lopez v. Trump* No. 8:25CV526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025) (finding that § 1225(b) applied despite alien’s presence in the country for over ten years, noting “overlap” between §1225 and §1226 authorities); *Chavez v. Noem* No. 3:25-CV-02325-CAB-SBC, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025) (finding the *Hurtado* decision supported by the plain language of the statute, and that such an interpretation does not render § 1226, nor additions thereto by the Laken Riley Act, superfluous). Respondents acknowledge that a number of courts, including in this District, have made contrary findings on this emergent issue. *See, e.g.*, Doc. 8 at 20.

As Petitioners were properly classified under § 1225 per the BIA guidance in *Hurtado*, there can be no Fifth Amendment violation as Petitioner would have only those rights that Congress has specifically provided by statute, which have been provided. *See generally United States v. Verdugo-Urquidez*, 494 U.S. 259, 270–71 (1990); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 131, 140 (2020); *Jennings*, at 296–303; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *see also* 8 U.S.C. § 1182(d)(5).

II. Respondents object to the recommendation for burden shifting at future U.S. Immigration Court hearings.

The PFRD relies heavily on analysis in *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025), for the proposition that the government should bear the burden of clear and convincing evidence at a future bond review hearing. *See* Doc. 8 at 22.

Salazar applied two different legal tests to analyze the burden shifting question: (1) the three-factor test from *Matthews v. Eldridge*, 424 U.S. 319 (1976), applied in *L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024), and (2) the more general balancing test from *Diaz-Ceja v. McAleenan*, No. 19-cv-00824-NYW, 2019 WL 2774211, at *9 (D. Colo. 2019). Should the Court conclude that § 1226 applies, and a bond hearing is authorized—which Respondents dispute—Respondents disagree with the PFRD’s conclusions and believe that burden shifting is not justified under either legal test.

Applying the *Matthews* factors anew to this case reveals that burden shifting is not warranted. Under the first factor—balancing the private interest affected by the official action—Petitioners current detention is part of noncitizen removal proceedings, which is akin to civil confinement, not incarceration. *Compare with Choate*, 744 F. Supp. 3d at 1182 (“Petitioner has been detained for over 30 months under conditions another court in this District has recognized as more akin to incarceration than civil confinement.”). Under the second factor—risk of erroneous deprivation of the petitioner’s private interest through procedures used and the probable value of additional or different procedural safeguards—it is not clear why Petitioner needs additional procedural safeguards because he is represented by counsel with a fast-moving⁴ immigration case. Finally, under the third factor—the government’s interest in avoiding additional procedures—the interests are significant. The government should not be tasked with higher burdens of proof than those proscribed by statute in the absence of a prolonged detention, like the 30-month detention in *Choate*.

⁴ The removal proceedings are proceeding so quickly that Petitioners request this Court *stay those proceedings entirely* out of concern for the present habeas claims soon becoming moot. *See, e.g.*, Doc. 5 at 2

Burden shifting is also not warranted under the alternative dual balancing test used in *Diaz-Ceja*. Simply put, there is a statutory process for a bond hearing, and absent specific facts (for example those present in *Diaz-Ceja*, like the lengthy 27-month detention and circuitous procedural path) Petitioners should not be entitled to burden shifting. *See* 2019 WL 2774211, at *1 (D. Colo. 2019). This would also not be returning Petitioners to the status quo, as they would be in a better position than other noncitizens already classified under § 1226.

III. Respondents object to the recommendation for relief not sought by Petitioners’ Motion for Temporary Restraining Order (“TRO”).

The PFRD recommends relief not sought by Petitioners *in their TRO filings*. Petitioners requested the Court order a complete stay in the U.S. Immigration Court proceedings and enjoin transfer out of the Otero facility, and nothing else. *See* Doc. 5 at 3 (“Plaintiffs respectfully request that this Court issue a Temporary Restraining Order enjoining the Defendants from proceedings on removal cases for Mr. Castillo and Mr. Loza and from transferring them out of the Otero Processing Center in Chaparral, New Mexico.”); at 16-17 (Petitioner’s proposed order granting TRO, ordering stay of removal proceedings and enjoining transfer out of Otero).

The PFRD seems to anticipate this objection “However, [Doc. 4] implies that Petitioners seek injunctive relief requiring compliances with the applicable due process requirements to prevent continuing the constitutional due process deprivations.” Doc. 8 at 10. Respondents disagree, and object to this characterization of the requests *presently* before the Court. The Court need not infer what Petitioners may be seeking, as they have made their requests to the Court specifically and in writing, including a proposed order articulating the same. Respondents object to the recommendation for relief not presently before the Court, that may or may not be appropriately granted upon consideration of the underlying habeas petition (Doc. 1).

IV. Respondents object to the recommendation to enjoin removal from the United States.

The PFRD declines to recommend Petitioner's requested stay of all U.S. Immigration Court proceedings⁵. However, the PFRD also recommends that enjoining removal from the United States "is not a go-around of the undersigned's declination to recommend enjoining removal proceedings." Doc. 8 at 25. Respondents disagree.

Even should Petitioners prevail on the underlying habeas (challenging their access to bond pending removal proceedings) that success would in no way implicate the substantive merits of their respective removal proceedings. Nor would this Court have any available remedy that would negate an otherwise valid final order of removal from the U.S. Immigration Court. Petitioners appear to concede that upon a final order of removal, the pending habeas petition (Doc. 1) would become moot. *See, e.g.*, Doc. 4 at 11 ("If ordered removed, he will be detained under a different statute of the INA"); Doc. 5 at 2 ("At that point, his physical liberty will [have been] deprived without proper adjudications of his claims in this lawsuit"). It would therefore be nonsensical to enjoin otherwise lawful *removal* on the basis of this underlying habeas petition (Doc. 1).

Should the Court nonetheless agree with the PFRD recommendation to enjoin removal, Respondents request the Court make the order clear that this restriction is narrowly tailored to the duration of the active litigation on the underlying petition (Doc. 1) and extends no further.

V. Respondents object to the characterization of its discretionary stay request.

The PFRD indicates that "[t]his lack of immediate urgency was further demonstrated by AUSA Posey's request at the November 19th hearing for DHS to have an opportunity to issue a

⁵ Petitioners filed multiple briefs with the Court including the underlying habeas petition (Doc. 1), a Motion for TRO (Doc. 3), a Brief in Support of Motion for TRO (Doc. 4) and an Amended Motion for TRO (Doc. 5). None of these briefs have provided a statute, regulation, case or other authority, to support the argument that the Court may totally enjoin proceedings at the U.S. Immigration Court.

discretionary stay of removal proceedings.” Doc. 8 at 12. This characterization is not *entirely* accurate and requires clarification.

Part of the underlying habeas petition (Doc. 1) and discussion at the November 19th hearing dealt with the automatic stay provision (which stays an Immigration Judge’s order upon appeal), and Petitioner Castillo’s claims related thereto. Respondents’ position is that should this Court find the automatic stay provision invalid; DHS would request sufficient time to request a *discretionary stay*⁶ from the BIA before any TRO would go into effect. This would not be a stay on the removal proceedings generally as the PFRD seems to suggest. However, as the PFRD makes no final recommendations pertaining to the automatic stay provision, Respondents do not make further objections on that subject, at this time, other than to clarify the record.

CONCLUSION

WHEREFORE, Respondents submit the foregoing objections to the Honorable Judge Robbenhaar’s Proposed Findings and Recommended Disposition, filed November 21, 2025, and request the District Court sustain said objections in reaching a decision in this matter.

Respectfully submitted,

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⁶ Discretionary stays of Immigration Judge orders may be requested from the BIA pursuant to 8 C.F.R. § 1003.19(i)(1).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney