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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 JOSUE DANIEL CRUZ BANOS,
11 *Petitioner,*
12 vs.
13 CHRISTOPHER CHESTNUT, WARDEN,
14 *Respondent.*

No. 1:25-cv-01634-DC-CSK

**PETITIONER'S OBJECTIONS TO
MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATIONS**

15 **PETITIONER'S OBJECTIONS TO MAGISTRATE JUDGE'S FINDINGS AND**
16 **RECOMMENDATIONS**

17 Petitioner, Josue Daniel Cruz Banos, submitted his Petition for Writ of Habeas Corpus on
18 November 24, 2025. Respondent filed a response on December 22, 2025. Petitioner submitted his
19 Reply on January 2, 2026. On January 14, 2026, the Honorable Chi Soo Kim, United States Magistrate
20 Judge, issued a report recommending that the habeas petition be denied.

21 Petitioner respectfully submits the following objections to the Magistrate Judge's Report and
22 Recommendations.

23 **GROUND ONE.** Petitioner's current detention is lawful because petitioner is now detained
24 pursuant to a final order of removal pursuant to 8 U.S.C. § 1231.

25 **OBJECTION TO GROUND ONE:** Petitioner objects to ground one as Petitioner's
26 detention under 8 U.S.C. § 1231 is improper because the underlying removal order is invalid.

27 Petitioner was unlawfully ordered deported under the expedited removal statute because
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petitioner was unlawfully placed in expedited removal proceedings. Since Mr. Cruz had at least two years' continuous physical presence in the United States when DHS invoked expedited removal proceedings, DHS lacked jurisdiction to invoke expedited removal. Thus Mr. Cruz's deportation order under the expedited removal proceedings statute is invalid. See 8 U.S.C. § 1225(b)(1)(A)(iii) which states that expedited removal only applies to noncitizens who: "cannot establish...at least two years' continuous physical presence immediately prior to the date of the determination of inadmissibility" 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Such expedited removal placements violate 8 CFR § 235(b)(1) because there was never a "determination of inadmissibility" in the first two years that petitioner was in the United States. Although petitioner was initially detained at the border, neither an arrest nor a charge on an NTA constitute a "determination of inadmissibility" – the former is not an adjudication of inadmissibility at all, while the latter is akin to an allegation, not a conclusion. See Complaint, *Immigrant Advocates Response Collaborative v. DOJ*, (ECF No. 1), No. 1:25-cv-02279 (D.D.C. filed July 16, 2025), see also Complaint, *African Communities Together v. Lyons*, No. 1:25-cv-6366, (S.D.N.Y. Aug. 1, 2025)(challenging EOIR dismissal policy).

Such placements also violate the regulations, which impose specific procedural requirements on the "determination of inadmissibility" referenced in the statutes. See 8 CFR § 235.3(b)(2); INA § 235(b)(1)(A)(iii)(II).

Since the deportation order is invalid, the government cannot legally detain petitioner under 8 U.S.C. § 1231.

GROUND TWO. Petitioner's claims one and two alleging that his initial re-detention violated due process because he was wrongly detained as an applicant for admission pursuant to Section 1225(b)(1) are moot.

OBJECTION TO GROUND TWO: Petitioner objects that claims one and two are moot. For the reasons stated above, Petitioner's order of removal is invalid thus Petitioner is not lawfully detained under 8 U.S.C. § 1231 pursuant to a valid final order of removal. Since Petitioner is not

1 lawfully detained under 8 U.S.C. § 1231, Petitioner's claims one and two are not moot.

2 **GROUND THREE.** Petitioner's claim three alleging that his re-arrest on November 21, 2025
3 violated the Fourth Amendment is moot because petitioner's detention is lawful pursuant to 8 U.S.C.
4 § 1231.

5 **OBJECTION TO GROUND THREE:** Petitioner objects to ground three on the basis that
6 petitioner's detention is not lawful pursuant to 8 U.S.C. § 1231 as the underlying deportation order is
7 not lawful. Since petitioner is not lawfully detained pursuant to 8 U.S.C. § 1231, petitioner's claim
8 three is not moot.

9 **CONCLUSION**

10 For the reasons stated, Petitioner objects to the Magistrate Judge's findings and
11 recommendations and requests this Court to grant their Petition, or in the alternative, issue them a
12 certificate of appealability.

13 Dated: Saturday, January 17, 2026

Respectfully submitted,

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15 /s/ Robert J. Beles

16 Robert J. Beles
17 Attorney For Petitioner
18 Josue Daniel Cruz Banos
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