IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

WUANERGE ALBERTO-ALVARENGA,	)	CASE NO.: 3:25-CV-02644
	)	
Petitioner,	)	JUDGE JAMES R. KNEPP, II
	)	
v.	)	
	)	
RICHARD A. AUMILLE, *et al.*,	)	RESPONDENTS' OBJECTIONS TO
	)	MAGISTRATE REPORT AND
Respondents.	)	RECOMMENDATION

Now come Respondents,[1] pursuant to Local Rule 72.3, Federal Rule of Civil Procedure 72(b)(2), and 28 U.S.C. § 636(b)(1)(C), by and through undersigned counsel, and hereby respectfully file their objections to the Magistrate's Report and Recommendation ("R&R"), finding subject-matter jurisdiction over the Petition, recommending the Petition be granted, and

[1] These objections are filed on behalf of Respondents Bondi, U.S. Attorney General, Noem, Secretary of the Department of Homeland Security ("DHS"), and Scott, Commissioner of U.S. Customs and Border Protection, who may be automatically substituted as parties, although the Petition did not correctly name their predecessors as Rule 25(d) requires. *See* Fed. R. Civ. P. 25(d); (Opp. to Mtn. to Sub., ECF No. 16, PageID# 218-22.) The Office of the U.S. Attorney may appear in court to attend to the United States' interests, pursuant to 28 U.S.C. § 517, therefore, this filing attends to those interests to the extent that the Petition names Aumille, the Seneca County Warden, as a Respondent.

ordering Respondents to provide Petitioner, Wuarnege Alberto-Alvarenga ("Petitioner"), a bond hearing under 8 U.S.C. § 1226(a) of the Immigration and Nationality Act ("INA"). (See R&R, ECF 18, PageID# 255.) Respondents incorporate by reference herein all facts and arguments stated in prior briefing on this matter and maintain the Petition should be denied and dismissed pursuant to Fed. R. Civ. P. 12(b)(1) and (6), for lack of subject-matter jurisdiction and failure to state a claim.[2] (See ECF Nos. 6 & 11.)

Respondents state their specific objections to the R&R as follows: first, Petitioner's removal order is now final, therefore detention is mandatory under 8 U.S.C. § 1231, thus, the request for a bond hearing is moot. *See Cruz Hernandez v. Sullivan, et al.*, Case No. 3:26-cv-246, slip op. at 2 (N.D. Ohio, March 13, 2026) (citing *Kumar v. D.H.S.*, Case No. 19-2404, 2020 WL 2904685 (6th Cir. 2020)). Next, this Court lacks subject-matter jurisdiction to order a bond hearing and/or apply a different section of the INA to Petitioner's immigration case; contrary to the R&R's finding, § 1225 applied pre-removal order and § 1231 now applies post-removal order. 8 U.S.C. § § 1225, 1231; (ECF No. 18, PageID# 253.) Also, Petitioner failed to exhaust his claims regarding bond, before the Immigration Court ("IC"), and regarding the final removal order, before the Board of Immigration Appeals ("BIA"), as required under the INA's administrative regime; exhaustion

[2] As Respondents argued in prior briefing before this Court, Petitioner failed to name the proper Respondent, Kevin Raycraft, Director of the Detroit Field Office, Immigration and Customs Enforcement ("ICE"). (See Pet., ECF No. 1 (filed against Aumille, Garland, Mayorkas, Miller, and Smith); Ret. of Writ/Opp., ECF No. 6; Reply to Trav., ECF No. 11; and Opp. Mtn. to Sub., ECF No. 16.) The Magistrate's R&R recommends granting Petitioner's Motion to Substitute (ECF No. 15), and substituting Director Raycraft "[i]n the interest of fairness, and in the absence of any undue prejudice …." (ECF No. 18, PageID# 243.) Under Sixth Circuit law, the only proper respondent in a habeas petition filed by a non-citizen is the Director of the field office of ICE for the district where the detention facility is located. *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003); (ECF 18, PageID # 242.) Therefore, Director Raycraft is the only proper Respondent and all others named by Petitioner should be dismissed.

should not be waived.[3] Finally, Petitioner fails to state a substantive and/or procedural due process violation because, contrary to the R&R's finding, his detention, post-removal order, has not exceeded six months and his removal is likely to occur in the "reasonably foreseeable future," pursuant to Supreme Court and Sixth Circuit law. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Martinez v. Larose*, 968 F.3d 555, 564-66, n. 7 (6th Cir. 2020).

I. BACKGROUND

A. PETITIONER'S PROCEDURAL HISTORY BEFORE THE IC

Petitioner, a native and citizen of Honduras, entered the United States at or near Hidalgo, TX, on or about August 1, 2016. (ECF No. 1-8, PageID# 38.) At that time, he was issued a Notice to Appear ("NTA"), but that NTA did not set a place, time, and location for hearing before the IC. (*Id.*, PageID# 42.) On October 6, 2025, a new NTA was issued placing Petitioner in removal proceedings and ordering his appearance before an Immigration Judge ("IJ") in Cleveland, Ohio. (*Id.*, Page ID# 38-41.) The NTA listed allegations as follows:

1. You are not a citizen or national of the United States;
2. You are a native of HONDURAS and a citizen of HONDURAS;
3. You entered the United States at or near Hidalgo TX, on or about August 1, 2016;
4. You were not then admitted or paroled after inspection by an Immigration Officer.
5. You are an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the [INA]; and/or …
6. You are an immigrant not in possession of a valid unexpired passport or other suitable travel document, or document of identity and nationality.

[3] For additional information on the administrative regime and process for immigration appeals, see 8 CF.R. 1003, *et seq*.

(*Id.*, Page ID# 38, 41.) On October 14, 2025, with assistance of counsel, Petitioner filed an Application for Asylum and for Withholding Removal, or Form I-589. (ECF No. 1-8, PageID# 51-63.) Petitioner was arrested on November 4, 2025, related to an alleged domestic violence incident in Franklin County, Ohio, and later detained by ICE. (ECF No. 1, PageID# 3; ECF No. 1-10, PageID# 69.)[4]

B. PETITIONER'S ORDER OF REMOVAL

Petitioner's asylum application was pending as of the date of his arrest. (ECF Nos. 1-8, 1-10.) Relying on Petitioner's claims, the R&R finds Petitioner's asylum application was never adjudicated on the merits, however this is incorrect. (ECF No. 18, PageID#234.) An IJ granted an unopposed motion to pretermit the asylum application, without full hearing,[5] due to Petitioner's failure to establish prima facie eligibility for relief. (ECF No. 6-1, PageID# 122-27.) The IJ issued an order explaining their reasons for granting the motion to pretermit, including that due to the age of the alleged attack by the "'Maras' gang" Petitioner failed to demonstrate "a 'particularized threat to torture to receive protection under the Torture Convention.'" (*Id.*, PageID# 126 (quoting *Almuhtaseb v. Gonzales*, 453 F.3d 743 (6th Cir. 2006).)[6] As a result of that decision, the IJ Issued

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[4] Petitioner provided court records documenting the criminal proceedings in Franklin County at ECF Nos. 1-3, 1-4, 1-5, PageID# 16-28.)

[5] Similar to a motion for summary judgment, a motion to pretermit allows an IJ to make a determination as a matter of law, requiring a hearing only to resolve factual issues in dispute. *See* 8 C.F.R. § 1240.11(c)(3); (ECF No. 6-1, PageID# 123-27.) The INA regulations outline the authority of IJ's and the administrative proceedings to determine removability at 8 C.F.R. §1003, *et seq.*, and § 1240, *et seq.*

[6] Although the Sixth Circuit recognized that its decision in *Almuhtaseb v. Gonzales*, was "effectively overruled" by the Supreme Court's decision in *Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020), that case dealt with appellate court jurisdiction to review the timeliness of an asylum application. *See Almuhtaseb*, 453 F.3d at 748, (implied overruling recognized in *Osabas-Rivera v. Bondi*, 161 F.4th 446, 453 (6th Cir. 2025), *cert. granted*, Case No. 25-1080, (U.S. March 13, 2026)).

an Order of Removal on December 29, 2025, and again on January 2, 2026, reserving appeal rights for Petitioner to the BIA. (ECF No. 6-2, PageID# 128; 6-3, PageID# 130.) An appeal of the removal order was due to the BIA by February 2, 2026, or thirty days after the date of the order.[7] (ECF No. 6-3, PageID# 131.)

Petitioner then filed a Motion to Reconsider the Order of Removal, which the IJ denied on January 9, 2026. (ECF No. 6-5, PageID# 143.) Since Respondents' last briefing on this matter, Petitioner's counsel attempted to file an appeal with the BIA, but it was rejected due to errors in eFiling. *See* Govt. Ex. 1, BIA Rejected Filing Notice.[8] On February 25, 2026, the BIA provided notice to Petitioner's counsel regarding the reasons the filing was rejected, where to find information on automatic and discretionary stays of removal, and what to do if filing a corrected appeal past the original appeal deadline.[9] *Id.* The notice also informed Petitioner's counsel that the BIA Practice Manual is available at www.justice.gov/eoir. *Id.* Petitioner's Order of Removal has since become final, and no corrected appeal was received by the BIA. *See* Govt. Ex. 2, Automated Case Information; *see also* 8 C.F.R. § 1003.38(b)(2)(setting appeal deadline of adjudication of asylum application as 30 days).

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[7] *See* 8 C.F.R. § 1003.38 ("Appeals").

[8] Respondents' exhibits are marked with numbers since Petitioner marked exhibits using letters. (ECF No. 1, PageID# 9.)

[9] The BIA rejection notice indicates they received Petitioner's appeal on February 19, 2026, seventeen days after the deadline to appeal the IJ's removal order. *See* Govt. Ex. 1.

II. LAW AND ARGUMENT

A. THE PETITION SHOULD BE DISMISSED FOR LACK OF SUBJECT-MATTER JURSIDICTION UNDER RULE 12(b)(1)

"When the defendant challenges subject-matter jurisdiction through a motion to dismiss, the plaintiff bears the burden of establishing jurisdiction." *Hedgepeth v. Tennessee*, 215 F.3d 608, 611 (6th Cir. 2000). A challenge to subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1) "involves either a facial attack or factual attack." *Glob. Tech., Inc. v. Yubei (Xinxiang) Power Steering Sys. Co.*, 807 F.3d 806, 810 (6th Cir. 2015). A facial attack "questions merely the sufficiency of the pleading," and "a district court takes the allegations in the complaint as true. . ." *Gentek Bldg. Prods. v. Sherwin-Williams Co.,* 491 F.3d 320, 330 (6th Cir. 2007).

In comparison, a factual attack challenges "the factual existence of subject-matter jurisdiction." *U.S. v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). "[N]o presumptive truthfulness attaches to [a] plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir. 1996) (citing *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3rd Cir. 1997)); *see also Kroll v. United States*, 58 F.3d 1087, 1090 (6th Cir.1995). When reviewing such a challenge, this Court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Ritchie*, 15 F.3d at 598. A district court has wide discretion to consider documents outside the complaint regarding its jurisdiction. *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990). The instant case involves both a facial and a factual attack on subject-matter jurisdiction.

1. No Subject-Matter Jurisdiction Due to Mootness

Article III of the Constitution limits federal courts' jurisdiction to certain "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "No principle is more fundamental to the

judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)). An actual controversy must exist at all stages of review, not just when the complaint is filed. *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016), as revised (Feb. 9, 2016). "[W]hen the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome," a case is rendered moot. *Wilson v. Gordon*, 822 F.3d 934, 942 (6th Cir. 2016) (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980)). The requirement for a live controversy

> limits the business of federal courts to 'questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process' and it defines the 'role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into areas committed to the other branches of government.'

U.S. Parole Comm'n, 445 U.S. at 396 (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)).

"[A]fter the issuance of a final order of removal, the authority to detain an alien is governed by 8 U.S.C. § 1231." *Alonso-Portillo v. Jones, et al.*, Case No. 25-3776, slip op. at 3 (6th Cir. March 12, 2026)(first quoting *Parlak v. U.S.I.C.E.*, Case No. 05-2003, 2006 WL 3634385, *1 (6th Cir. Apr. 27, 2006) then citing *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001)(per curiam)). The Sixth Circuit has found no active controversy exists regarding a petitioner's claims of unconstitutional detention once the petitioner is subject to a final order of removal. *Parlak*, 2006 WL 3634385, *1; *see also Kumar*, 2020 WL 2904685, *1. Petitioner is currently being held pursuant to § 1231, under a final order of removal, therefore the claims of unlawful detention are moot and claims of prolonged detention are not ripe for review because his detention has not yet exceeded six months. *Kumar*, 2020 WL 2904685, *1 (citing *Zadvydas*, 533 U.S. at 701).

2. No Subject-Matter Jurisdiction Over Mandatory Detention Pursuant to § 1231

Section 1231 of the INA states: "[d]uring the removal period the Attorney General *shall* detain the alien." 8 U.S.C. § 1231(a)(2)(A). That section goes on to state that "under no circumstances shall the Attorney General release an alien who has been found inadmissible … ." *Id.* Section 1252 specifically denies this Court jurisdiction over review of an order of removal; subsection (a)(5) provides the courts of appeals exclusive jurisdiction over petitions reviewing an order of removal. *See* 8 U.S.C. § 1252(a)(5). Subsection (b)(9), limits that review further, stating: "[j]udicial review of all questions of law . . . including interpretation and application of statutory provisions, arising from any action taken . . . to remove an alien from the United States" is only proper before the appropriate court of appeals and *no other court has jurisdiction, by habeas or otherwise*, "to review such an order or such questions of law or fact." *See* 8 U.S.C. § 1252(b)(9); *see also Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999). Therefore, Petitioner's detention is mandatory under INA § 1231, and the Court should not adopt the R&R's application of § 1226(a) to Petitioner's detention. (ECF No. 18, PageID# 253.) Further, this Court lacks subject-matter jurisdiction to order a bond hearing in relation to Petitioner's mandatory detention and the Petition should be denied and this case dismissed.

3. No Subject-Matter Jurisdiction to Review Decision to Detain nor the Application of § 1225 to Petitioner's Immigration Case

Even considering Petitioner's detention pre-removal order, the INA limits jurisdiction as it relates to claims arising from the execution of removal orders, which includes detention during removal proceedings, even if federal question jurisdiction would otherwise be proper. 8 U.S.C. § 1252(g); *see Elgharib v. Napolitano,* 600 F.3d 597, 607 (6th Cir. 2010). "[D]elineating the

jurisdiction of Article III Courts is soundly within the powers of Congress." *Hamama v. Adducci*, 912 F.3d 869, 879 (6th Cir. 2018)("*Hamama I*").[10]

Although the R&R finds subject-matter jurisdiction over the Petition, applies § 1226(a) to Petitioner's detention, and recommends ordering a bond hearing, the INA forecloses district court jurisdiction over the interpretation and application of immigration law, including § § 1225, 1226, and 1231. Section § 1252(g) of the INA categorically bars jurisdiction over "*any* cause or claim by or on behalf of any alien *arising from* the decision or action by the [Secretary of Homeland Security] to *commence proceedings, adjudicate cases, or execute removal orders* against any alien." 8 U.S.C. § 1252(g) (emphasis added). The decision to commence removal proceedings includes the decision to detain pending such removal proceedings. *See, e.g., Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and also to review "ICE's decision to take [plaintiff] into custody and to detain him during removal proceedings"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020).

The Supreme Court in *Jennings v. Rodriguez*, found that district courts lack subject-matter jurisdiction over all questions of law and fact arising from the threshold detention decision, because those are discretionary and reviewable only through a petition to the court of appeals. § 1252(b)(9); *see also Munoz Nataren v. Raycraft*, Case No. 4:26-cv-212, 2026 WL 214368 at *2

[10] The Sixth Circuit twice reviewed district court decisions in *Hamama v. Adducci*, first in 2018: 912 F.3d 869 (6th Cir. 2018), and again in 2020: 946 F.3d 875 (6th Cir. 2020)("*Hamama II*"). For clarity, this brief shall refer to the 2018 opinion as "*Hamama I*" and the 2020 opinion as "*Hamama II*." Although both opinions found that jurisdiction over removal-based claims is an independent consideration and not tied to jurisdiction over detention-based claims, neither opinion held that a district court has jurisdiction to create "a requirement for bond hearings that does not exist in the statute." *Hamama I*, 912 F.3d at 879-80.

(N.D. Ohio Jan. 28, 2026)("Congress specifically divested courts of jurisdiction to review bond determinations and other discretionary determinations pending removal.")(citing § 1252(a)(2)(B)(ii)). Claims challenging detention pending removal, even when styled as constitutional or habeas claims, "quickly implicate and often become entwined with interpretation and implementation of the statutory framework," including whether detention is authorized under 8 U.S.C. §§ 1225 or 1226. *See Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, *3 (N.D. Ohio Jan. 14, 2026); *Munoz Nataren*, 2026 WL 214368 at *3.

As argued by Respondents in prior briefing before this Court, the INA granted authority for Petitioner's mandatory detention pre-removal order during removal proceedings, under § 1225(b)(2)(A), upon his arrest for domestic violence, and under § 1225(b)(1), while his asylum application was pending. *See* 8 U.S.C. § § 1225(b)(1)(B), and (b)(2)(A); (ECF No. 6, PageID#117; ECF No. 11, PageID# 180.) Now that Petitioner's removal order is final, he is subject to mandatory detention pursuant to § 1231, post-removal order. 8 U.S.C. § 1231. Congress has not conferred jurisdiction on federal district courts to interpret or apply those provisions, therefore, this Court lacks subject-matter jurisdiction to do so here.

B. THE PETITION SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)

1. The Failure to Exhaust Should Not Be Waived

The R&R found that although Petitioner has not exhausted his administrative remedies, because he withdrew his bond request before the IC, exhaustion should be waived. (ECF No. 18, PageID #248). This Court should decline to adopt that finding, particularly since Petitioner failed to exhaust his administrative remedies regarding the bond and detention, pre-removal order, and now regarding his final order of removal and detention, post-removal order. As the Sixth Circuit has observed, exhaustion "protects administrative agency authority, promotes judicial efficiency,

and may produce a useful record for judicial review." *Wheeler v. Williams*, No. 20-4037, 2021 WL 6071501, at *3 (6th Cir. Dec. 20, 2021) (internal quotations and citations omitted).

Responding to questions of statutory interpretation, such as whether to apply 8 U.S.C. § 1225(b) or § 1226(a) to a habeas petition, benefits from agency review. As Judges in this district have observed, determinations "regarding detention here turn on interpretation and application of the governing removal regime." *Villalta v. Greene*, 794 F. Supp. 3d 528, 531 (N.D. Ohio 2025); *see also Amaya-Velis*, 2026 WL 100596, at *4; *Hernandez Torrealba*, No. 1:25-cv-01621, 2025 WL 2444114, at *11 (N.D. Ohio Aug. 25, 2025). Accordingly, "such review should proceed before the [BIA] to 'apply its experience and expertise without judicial interference.'" *Villalta*, 794 F. Supp. 3d at 531(first quoting *Khalil v. Holder*, 557 F.3d 429, 435 (6th Cir. 2009)(abrogated on other grounds), then quoting in parenthetical *Rojas-Garca v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003)("acknowledging that a 'petitioner must exhaust administrative remedies before raising the constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal.'")) Even where there is a "high probability of denial" of a petitioner's appeal of an IJ's bond decision, that probability "does not weigh in favor of waiving exhaustion." *Amaya-Velis*, 2026 WL 100596, at *4 (citing *Hernandez Torrealba*, 2025 WL 2444114, at *11).

The fact that the BIA has a clear position does not transform an incomplete administrative record into a futile one; it simply means that review ultimately rests with the Sixth Circuit through a petition for review, which is precisely how Congress intended the system to work. *See Munoz Nataren*, 2026 WL 214368 at *1-2 (finding judicial review available in two instances: first, under § 1252(b)(2) and (9), a final order of removal is reviewable by a court of appeals *not* district court; and second, § 1252(a)(2)(D) "preserves the ability to petition for a writ of habeas corpus to raise a constitutional issue" in limited cases.)

As the Sixth Circuit explained in *Hamama I*:

> When Congress stripped the courts of jurisdiction to grant habeas relief in § 1252(g), it provided aliens with an alternative method to challenge the legality of removal orders: a motion to reopen followed by a petition for review filed in a court of appeals. *See* 8 U.S.C. § 1252(a)(5), 2(D). Because this process provides an alien with the same scope of relief as habeas, the REAL ID Act does not violate the Suspension Clause.

Hamama I, 912 F.3d at 876. (citations omitted). Petitioner could have pursued an appeal of his final order of removal order first with the BIA and then before the Sixth Circuit Court of Appeals, as Congress intended. 8 U.S.C. 1252(b)(2). However, he failed to file an appeal with the BIA by the required deadline, and his removal order is now final.[11] *See* Govt. Exs. 1, 2. This Court lacks subject-matter jurisdiction to review that order here.

2. Petitioner Fails to State a Due Process Violation

Relying on the Supreme Court's decision in *Zadvydas v. Davis*, the R&R finds Petitioner is entitled to "a bond hearing under the Fifth Amendment Due Process Clause;" stating: "[t]he Fifth Amendment right to due process applies to all persons including noncitizens, who are present in the United States." (ECF No. 18, PageID# 254 (citing *Zadvydas*, 533 U.S. at 693 (2001).) However, even relying on *Zadvydas*, Petitioner's procedural and substantive due process claims fail, because he has not been detained for over six months, as contemplated by the *Zadvydas* Court. *Zadvydas*, 533 U.S. at 701.

The *Zadvydas* Court recognized a six-month period of detention, post-removal order, as reasonable and further created a rebuttable presumption when presented with evidence supporting a "good reason to believe that there is *no significant likelihood of removal in the reasonably*

[11] For additional information on the administrative regime and process for immigration appeals, see 8 CF.R. 1003, *et seq*.

foreseeable future." *Id.* (emphasis added.) However, the Supreme Court cautioned as follows: "[t]his 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Petitioner cannot meet this burden because not even three months have passed since the beginning of his detention, post-removal order. (ECF Nos., 6-2, 6-3.) Therefore, Petitioner's substantive due process claims fail.

Even pre-removal order, the Supreme Court has held that detention pursuant to the INA during removal proceedings without access to a bond hearing is constitutional. In *Demore v. Kim*, the Supreme Court upheld the constitutionality of § 1226(c), which mandates detention during removal proceedings without access to bond hearings. *Demore v. Kim*, 538 U.S. 510, 522 (2003). Contrary to the R&R's findings, *Demore* "recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process," and reaffirmed its "longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings." *Id.* at 523, 526. The *Demore* Court further explained that "when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal." *Id.* at 528. With respect to due process concerns, the *Demore* Court recognized that it "has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Id.* at 522.

Further, contrary to the R&R's findings, although Petitioner has a fundamental liberty interest, "[i]n immigration cases . . . federal courts apply a much more deferential standard of review to substantive due process challenges even where the immigration law interferes with a

plaintiff's fundamental rights." *Bangura v. Hansen*, 434 F.3d 487, 494-95 (6th Cir. 2006) (citing *Fiallo v. Bell*, 430 U.S. 787, 798-99 (1977)); (ECF No. 18, PageID# 255 ("Respondents have not shown that they have any significant interest in Alberto-Alvarenga's continued detention.").) The Sixth Circuit "upholds immigration statutes so long as they are 'conceivably related to the achievement of a federal interest.'" *Bangura*, 434 F.3d at 495 (internal citation omitted). The Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control," therefore detention during removal proceedings, as provided for under the INA, is related to achieving that federal interest and does not violate substantive due process. *Id.*

Furthermore, the Supreme Court and Sixth Circuit have rejected a set time frame limiting mandatory detention during removal proceedings under the INA. For example, the Court in *Jennings* rejected the Ninth Circuit's six-month limit on detention, concluding that during removal proceedings a person subject to deportation may be detained and such detention does not violate the Due Process Clause. *Jennings*, 583 U.S. at 301-05. In *Hamama I*, the Sixth Circuit recognized that *Jennings* created a distinction on pre-removal and post-removal detention time limits and rejected the notion that periodic bond hearings should be required. *Hamama I*, 912 F.3d at 879-80 (citing *Jennings*, 583 U.S. at 284, 310). In *Hamama II*, the Sixth Circuit found that § 1225(b) mandates pre-removal detention, which is a specific period of time (not indefinite), therefore, detention during removal proceedings does not violate due process. *Hamama II*, 946 F.3d at 880, (quoting *Jennings*, 583 U.S. at 299 ("Section 1225(b)(1) mandates detention 'for further consideration of the application for asylum,' § 1225(b)(1)(B)(ii), and § 1225(b)(2) requires detention 'for a [removal] proceeding.'") quoting § 1225(b)(2)(A).)

Finally, as is the case here, the Sixth Circuit has found no procedural due process requirement for a bond hearing if removal is reasonably foreseeable. *Martinez,* 968 F.3d at 564-66, and n. 7 (finding no due process violation for detention exceeding the 90-day removal period under § 1231 and no requirement for a bond hearing.) Accordingly, Petitioner's procedural and substantive due process claims fail because Congress has not created any procedural rights to a bond hearing for those who, like Petitioner, are subject to mandatory detention under § 1231. *See Jennings*, 583 U.S. at 297. Further, Petitioner's order of removal just became final and less than three months have passed; therefore, his detention is not prolonged nor unreasonable under *Zadvydas*. *Zadvydas*, 533 U.S. at 701. Since Petitioner is likely to be removed within the "reasonably foreseeable future," he fails to state both procedural and substantive due process claims; therefore, the Petition should be denied and this case dismissed. *Id.*

III. CONCLUSION

For the aforementioned reasons, Respondents respectfully object to the Magistrate's R&R and request the Court deny the Petition and dismiss this action.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I certify that the above filing comports with the page limitations identified in Local Rule 7.1(f) and does not exceed fifteen (15) pages in length.

/s/ Angelita Cruz Bridges
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