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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Wuanerge ALBERTO-ALVARENGA, [redacted] Petitioner, v. **RICHARD A. AUMILLE,** in his official capacity as Warden of Seneca County Jail; **MERRICK GARLAND**, Attorney General of the United States; **ALEJANDRO MAYORKAS**, Secretary of the Department of Homeland Security; **TROY MILLER**, Acting Commissioner, U.S. Customs and Border Protection; **SEAN G. SMITH**, Ohio Field Office Director, U.S. Immigration and Customs Enforcement, Respondents.	Civil Action No.: 3:25-cv-02644-JRK JUDGE JAMES R. KNEPP II MAG. JUDGE GREENBERG **PETITIONER'S RESPONSE TO RESPONDENTS' OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

I. INTRODUCTION

Respondents' objections rest on the assertion that Petitioner is subject to a final order of removal and therefore detained under 8 U.S.C. § 1231.

That assertion is now demonstrably incorrect.

On March 18, 2026, Petitioner filed a corrected Notice of Appeal with the Board of Immigration Appeals ("BIA"), together with all supporting filings. The BIA has now formally accepted and docketed the appeal, and issued a filing receipt dated March 19, 2026 confirming that the appeal is pending. See **Exhibit A**.

Accordingly, administrative proceedings are ongoing, and detention remains governed by 8 U.S.C. § 1226.

II. THE GOVERNMENT'S "FINAL ORDER" ARGUMENT IS NOW FORECLOSED

Respondents' objection rests entirely on the premise that no appeal was pending before the Board of Immigration Appeals ("BIA"). That premise is no longer viable. The record now conclusively establishes that the appeal has been accepted by the BIA, is actively pending, and that the prior rejection was based solely on a technical ECAS filing deficiency that has since been fully cured. In light of the reinstated and pending appellate proceedings, the underlying removal order cannot be deemed administratively final for purposes of detention. Accordingly, Respondents' "final order" argument is foreclosed and provides no basis to disturb the Magistrate Judge's Report and Recommendation.

III. DETENTION IS GOVERNED BY § 1226

It is well established that detention under 8 U.S.C. § 1231 applies only after the completion of administrative review, whereas cases in which a petition for review or appeal remains pending before the Board of Immigration Appeals ("BIA") are governed by 8 U.S.C. § 1226. Here, because Petitioner's appeal has been accepted and is actively pending before the BIA, administrative review is ongoing. Accordingly, the removal order is not yet administratively final, and detention

falls squarely within the scope of § 1226. Respondents' reliance on § 1231 is therefore legally erroneous and provides no basis to reject the Magistrate Judge's Report and Recommendation.

IV. THE COURT'S BOND HEARING ORDER REMAINS CORRECT AND ENFORCEABLE

The Magistrate Judge correctly determined that Petitioner's detention is governed by 8 U.S.C. § 1226 and that, as a matter of law, prolonged detention under that provision requires an individualized bond hearing. In light of the now-accepted and actively pending appeal before the Board of Immigration Appeals, Respondents' objections—premised on the assertion of a final order and reliance on 8 U.S.C. § 1231—are moot. Because administrative review remains ongoing, the legal basis underlying the Magistrate Judge's determination is not only intact but further reinforced, and the Court's bond hearing order remains correct and fully enforceable.

V. DUE PROCESS AND FUNDAMENTAL FAIRNESS REQUIRE REJECTION OF DHS POSITION

Respondents' argument rests on a temporary procedural defect that has now been fully cured and, critically, accepted by the Board of Immigration Appeals. Permitting Respondents to continue relying on that now-resolved technical deficiency would impermissibly elevate form over substance, deprive Petitioner of meaningful appellate review, and undermine fundamental principles of due process. Where, as here, the appellate process is properly underway, due process and basic notions of fairness compel rejection of Respondents' position and support enforcement of the Magistrate Judge's findings and recommendations.

VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court overrule Respondents' objections in their entirety, adopt the Magistrate Judge's Report and Recommendation, confirm that Petitioner's detention is governed by 8 U.S.C. § 1226, and enforce

the previously ordered individualized bond hearing.

Dated: March 19, 2026

Respectfully submitted,

/S/ Roman V. Gambourg

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I certify that this Petitioner's Response to Respondents' Objections to the Magistrate Judge's Report and Recommendation complies with the page limitations set forth in Local Rule 7.1(f) of the United States District Court for the Northern District of Ohio.

Dated: March 19, 2026

Respectfully submitted,

/S/ Roman V. Gambourg

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PROOF OF SERVICE

I hereby certify that on March 19, 2026, a true and correct copy of the foregoing **Petitioner's Response to Respondents' Objections to the Magistrate Judge's Report and Recommendation** was served via the Court's CM/ECF system upon all counsel of record.

Date: March 19, 2026

/S/ Roman V. Gambourg

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