Roman V. Gambourg, Esq.
Attorney Bar Number 003002002
GAMBOURG & READ, P.C.
One Bridge Plaza North, Suite 675
Fort Lee, NJ 07024
Tel: (201) 242-0220
Fax: (212) 937-2117
Mobil: (212) 810-0880
Email: rg@glegalgroup.com
Attorneys for Petitioner

FILED
DEC 05 2025
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

Rec'd # 161494 $5.00 12/5/2025 cmt

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

JUDGE KNEPP

MAG. JUDGE GREENBERG

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

Petitioner, Wuanerge ALBERTO-ALVARENGA, ([redacted]), by and through undersigned counsel, respectfully submits this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner challenges the legality and constitutionality of his prolonged civil

immigration detention by the Department of Homeland Security ("DHS"), which now rests solely on uncorroborated, unadjudicated allegations tied to an incident from October 4, 2024, for which no arrest occurred at the time, and for which no prosecution or conviction has ever resulted.

This Petition is also submitted pursuant to 28 U.S.C. § 2242, which expressly authorizes counsel to seek habeas relief on behalf of a detained noncitizen. Oral argument is unnecessary. Venue is proper because Petitioner is detained at Seneca County Jail within this District.

JURISDICTION AND VENUE

This Court has jurisdiction over this Petition pursuant to 28 U.S.C. § 2241(c)(3) because Petitioner is presently "in custody" under the authority of the United States Department of Homeland Security and challenges the legality and constitutionality of that custody. Federal habeas review under § 2241 is the appropriate—and indeed exclusive—mechanism for individuals seeking relief from unlawful or unconstitutional immigration detention. Venue is proper in this District because Petitioner is confined within the territorial jurisdiction of this Court, and his immediate custodian is located here.

Moreover, only Article III federal district courts possess jurisdiction to adjudicate constitutional challenges to civil immigration detention. Article I immigration courts lack authority to decide constitutional questions, including due process challenges to prolonged or unlawful detention. See Jennings v. Rodriguez, 583 U.S. 281, 285 (2018); Demore v. Kim, 538 U.S. 510, 524 n.15 (2003). Accordingly, this Court not only has jurisdiction but bears the responsibility to review Petitioner's constitutional claims and to grant appropriate habeas relief.

FACTUAL BACKGROUND

A. The October 4, 2024 Preliminary Investigation Report Contains No Observed Injuries, No Corroboration, and Resulted in No Arrest

The only law-enforcement document relating to the alleged October 4, 2024 domestic-

violence incident is the Preliminary Investigation Report generated by the Columbus Division of Police (Exhibit B, Preliminary Investigation Report). That report reflects that officers interviewed the complainant using a Spanish interpreter, observed no visible injuries ("Officers were unable to observe any injuries on Victim #1"), conducted no medical evaluation, identified no corroborating witnesses, and made no arrest on the date of the reported incident.

Officers filed warrants based solely on uncorroborated hearsay statements. The document contains no sworn victim statement beyond the narrative and does not reflect any judicial probable-cause determination. (See Exhibit B).

B. The Arrest Occurred More Than One Year Later, on November 4, 2025; The Case Closed Without Prosecution or Conviction

The municipal court docket confirms that Petitioner was not arrested until November 4, 2025—more than one year after the alleged incident—demonstrating the absence of any contemporaneous law-enforcement concern or prosecutorial interest in the allegation (Exhibit C: Court Case Status – 2024 CRB 016667; Exhibit D: Online Case Summary). Both court records further establish that Petitioner was released on recognizance, was never indicted, never arraigned on any criminal complaint, and was never prosecuted. The case is marked CLOSED with a disposition of "ORDER IN," which is not a conviction.

This extraordinary one-year delay, combined with the State's complete decision not to prosecute and the non-adjudicative closure of the matter, severely undermines the reliability of the underlying allegations. These facts independently and collectively demonstrate the absence of any evidentiary basis for DHS to rely on the alleged incident as proof of dangerousness. (Exhibits C & D).

C. The Sworn Recantation Affidavit Completely Withdraws the Allegations

On October 13, 2025, the alleged victim executed a Sworn Recantation Affidavit, fully withdrawing her prior statements and explaining that they were made under emotional distress and were misinterpreted due to language barriers. (Sworn Recantation Affidavit - Exhibit A). She affirmatively states that Petitioner did not intend to harm her and that she seeks his release.

D. Petitioner Has No Criminal History; DHS's Own Biometrics Confirm This

DHS conducted IDENT/NGI biometric screening on or about December 4, 2024, and subsequently issued Petitioner an Employment Authorization Document valid through December 3, 2029 (Exhibit F). By regulation, an EAD cannot be granted if an applicant has any disqualifying criminal history, any pending criminal charges, or any security-related bar.

Accordingly, DHS's own systems confirm that Petitioner has no criminal convictions, no pending charges, and no disqualifying security concerns. These verified findings fundamentally undercut DHS's justification for continued detention, which rests exclusively on uncorroborated allegations that were later recanted and never prosecuted.

E. Counsel's Declaration Confirms the Authenticity and Content of the Submitted Records

Counsel submits a sworn declaration authenticating the police records, municipal-court documents, recantation affidavit, biometrics proof, and ICE file extracts. (Exhibit E: Declaration of Counsel).

F. Petitioner's Detention Is Now Prolonged, Unreasonable, and Unconstitutional

Petitioner's detention exceeds the bounds contemplated by *Demore*, is unsupported by any reliable evidence, and violates substantive and procedural due process under *Zadvydas*, *Clark*, and *Jennings*.

LEGAL ARGUMENT

I. DHS's Reliance on a Bare, Uncorroborated Preliminary Investigation Report and Recanted Allegations Violates the Fifth Amendment

DHS's justification for Petitioner's detention rests entirely on a bare, uncorroborated Preliminary Investigation Report from October 4, 2024—one that contains no injuries, no medical evidence, no corroborating witnesses, no arrest, no charging instrument, and no resulting prosecution or conviction. (Preliminary Investigation Report at pp. 1–2; REDACTED – Narrative) Under longstanding immigration jurisprudence, such untested police narratives carry little to no evidentiary weight in assessing dangerousness or flight risk. See Matter of Arreguin, 21 I&N Dec. 38, 42 (BIA 1995) (arrest reports "inherently unreliable" absent corroboration).

The already-unsupported allegations have since been fully recanted under oath by the sole complaining witness, who affirmatively explained that her prior statements were made during emotional distress and were misunderstood by police due to language barriers. A Preliminary Investigation Report unsupported by evidence—and directly contradicted by a sworn recantation—cannot constitutionally justify continued civil confinement. Federal courts uniformly agree that uncorroborated or recanted allegations are legally insufficient to sustain immigration detention. See Singh v. Holder, 638 F.3d 1196, 1203–04 (9th Cir. 2011); Hernandez v. Garland, 28 F.4th 1059, 1068–69 (9th Cir. 2022). Because DHS relies on nothing more than a discredited, unadjudicated narrative, Petitioner's continued confinement violates the Due Process Clause of the Fifth Amendment.

DHS relies solely on a Preliminary Investigation Report (Exhibit B) and municipal court records that show no prosecution or conviction (Exhibits C & D). These documents, combined with the sworn recantation (Exhibit A), cannot constitutionally support prolonged detention.

II. Petitioner's Prolonged Civil Detention Violates Zadvydas, Jennings, and Supreme Court Limits on Indefinite Confinement

Petitioner's detention has now extended well beyond the "brief period" contemplated in Demore v. Kim, 538 U.S. 510 (2003), and no longer bears a reasonable relation to any legitimate governmental purpose. The Supreme Court has repeatedly held that prolonged civil detention without adequate justification, meaningful review, or foreseeable endpoint is unconstitutional. See Zadvydas v. Davis, 533 U.S. 678, 689 (2001); Clark v. Martinez, 543 U.S. 371, 381 (2005). Likewise, Jennings v. Rodriguez, 583 U.S. 281, 297–99 (2018), confirms that nonpunitive immigration detention must adhere to constitutional limitations and cannot continue indefinitely.

Here, DHS relies on allegations that:

(1) resulted in no arrest or prosecution,

(2) have been formally recanted, and

(3) lack any evidence of dangerousness whatsoever.

Under these circumstances, Petitioner's continued detention is excessive, arbitrary, and constitutionally impermissible. It violates both substantive and procedural due process, particularly where the Government cannot identify a valid statutory basis or any reliable evidence to justify ongoing confinement.

III. Petitioner Is Entitled to a Bond Hearing at Which DHS Must Prove Danger or Flight Risk by Clear and Convincing Evidence

Federal district courts exercising habeas jurisdiction may order a constitutionally adequate bond hearing where detention has become prolonged or unsupported by reliable evidence. See Ly v. Hansen, 351 F.3d 263, 270–72 (6th Cir. 2003). At such a hearing, the Government must carry the burden to justify continued confinement by clear and convincing evidence, the constitutional standard governing civil detention that implicates fundamental liberty interests. See Hernandez v.

Sessions, 872 F.3d 976, 991–92 (9th Cir. 2017); Velasco Lopez v. Decker, 978 F.3d 842, 855–56 (2d Cir. 2020).

DHS cannot meet this burden. Petitioner has no criminal history, the sole witness has recanted, the allegations remain wholly uncorroborated, and there is no pending or past criminal case arising from the incident. These facts make it impossible for DHS to establish dangerousness or flight risk by any standard—let alone the heightened clear-and-convincing standard required by due process. Consequently, Petitioner is entitled to immediate release or, at minimum, a bond hearing that satisfies constitutional requirements.

IV. DHS's Own FBI and Nationwide Biometrics Confirm Petitioner Has No Criminal Record

DHS's continued reliance on unsubstantiated allegations is especially indefensible because DHS's own biometrics and criminal-history systems confirm that Petitioner has no criminal conduct whatsoever. On or about December 4, 2024, DHS processed Petitioner's full biometric fingerprints through IDENT/NGI, which automatically queries the FBI criminal database, nationwide arrest repositories, state-submitted fingerprints, warrant databases, and terrorism-screening systems. Following these clearances, DHS approved an Employment Authorization Document valid through December 3, 2029. Federal law does not permit issuance of an EAD unless DHS and the FBI verify that the applicant has no disqualifying criminal history, pending charges, arrests, or security bars.

These official DHS and FBI determinations carry far greater evidentiary weight than a bare police narrative or uncorroborated allegations later recanted by the alleged victim. When DHS's own systems confirm that Petitioner has no criminal record, the Government cannot, consistent with due process, continue to detain him under speculative or disproven theories of dangerousness.

The record makes clear that Petitioner is not subject to mandatory detention under INA § 236(c), and DHS cannot meet its clear-and-convincing burden to justify continued detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner, through undersigned counsel, respectfully requests that this Court:

1. Issue a Writ of Habeas Corpus directing Petitioner's immediate release from immigration custody, as DHS has failed to establish any lawful or constitutionally adequate basis for continued detention; OR, in the alternative,

2. Order a constitutionally compliant bond hearing within seven (7) days, at which the Government must bear the burden of proving—by clear and convincing evidence—that Petitioner poses a danger to the community or a risk of flight;

3. Recognize and consider the October 13, 2025 Sworn Recantation Affidavit as material exculpatory evidence directly rebutting the uncorroborated allegations upon which DHS has relied; and

4. Grant such other and further relief as the Court deems just, equitable, and appropriate under the circumstances.

Dated: December 4, 2025

Respectfully submitted,

Roman V. Gambourg, Esq.
Attorney Bar Number 003002002
ROMAN V. GAMBOURG, P.C
One Bridge Plaza North, Suite 675
Fort Lee, NJ 07024
Tel: (201) 242-0220
Fax: (212) 937-2117
Mobil: (212) 810-0880
Email: rg@glegalgroup.com
Attorney for Petitioner