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

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 EXPEDITED TRAVERSE AND OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

INTRODUCTORY STATEMENT

This habeas action presents a narrow and urgent constitutional question: whether the federal government may continue to detain a person without a meaningful bond determination while judicial review is pending.

Petitioner does not ask this Court to review or disturb a removal order. The Petition

challenges only current physical custody and seeks release or, alternatively, a constitutionally adequate bond hearing.

On December 11, 2025, the Court ordered expedited briefing. Respondents filed a Return of Writ on January 12, 2026, asserting lack of jurisdiction and seeking dismissal. Those arguments misconstrue the nature of the Petition and overextend jurisdiction-stripping provisions that do not apply to detention-based constitutional claims.

Petitioner remains detained. Each additional day of confinement without judicial resolution constitutes a continuing deprivation of liberty. The matter is fully briefed, legal in nature, and suitable for prompt disposition on the papers.

I. THE PETITION CHALLENGES DETENTION, NOT A REMOVAL ORDER

Respondents' Motion to Dismiss rests on the incorrect premise that Petitioner seeks review of a removal order barred by 8 U.S.C. § 1252(g). He does not.

The Petition challenges continued detention without a meaningful bond hearing, in violation of the Due Process Clause. Relief sought is release or a bond hearing—not vacatur, stay, or review of a removal order.

Courts consistently distinguish detention challenges from removal challenges. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Ly v. Hansen*, 351 F.3d 263 (6th Cir. 2003).

Because Petitioner challenges custody itself, this Court retains jurisdiction under 28 U.S.C. § 2241.

II. THIS COURT HAS PERSONAL JURISDICTION — JURISDICTION ATTACHEDAT FILING

At the time the Petition was filed on December 5, 2025, Petitioner was detained at:

Seneca County Jail
3040 South State Route 100
Tiffin, Ohio 44883

Accordingly, this Court had personal jurisdiction over Petitioner's custodian at the time of filing.

It is well settled that jurisdiction attaches upon filing of a habeas petition and is not defeated by a subsequent transfer of custody. See *Ex parte Endo*, 323 U.S. 283, 304–07 (1944); *Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003).

On or about January 5, 2026, Petitioner was transferred without prior notice to:

Northeast Ohio Correctional Center
2240 Hubbard Road
Youngstown, Ohio 44505

That post-filing transfer does not divest this Court of jurisdiction.

To the extent substitution of the current ICE custodian is appropriate, Petitioner does not oppose substitution pursuant to Federal Rule of Civil Procedure 25(d). Dismissal is neither required nor appropriate.

III. EXHAUSTION DOES NOT BAR HABEAS REVIEW

Respondents contend that habeas review is barred because Petitioner withdrew a bond request and had not filed a BIA appeal at the time of the Return. This argument fails both legally and factually.

A. Exhaustion Is Prudential, Not Jurisdictional

In § 2241 immigration detention cases, exhaustion is a prudential doctrine, not a jurisdictional bar. *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013).

Courts may excuse exhaustion where constitutional claims are raised, further administrative review would be futile, or irreparable harm is ongoing. All apply here.

B. Bond Withdrawal Does Not Waive Constitutional Review

Withdrawal of a bond request does not waive the right to challenge continued detention on constitutional grounds. Habeas review concerns present custody, not procedural history in immigration court.

C. Intervening BIA Appeal Undercuts Respondents' Argument

On January 23, 2026, Petitioner filed a Notice of Intervening BIA Emergency Appeal and Status of Habeas Proceedings, advising this Court that administrative review was being pursued concurrently.

The Court thereafter denied a motion for status conference, noting that expedited briefing had already been ordered and that Respondents had filed their Return. The Court's order confirms its intent to resolve the matter on the papers, not to dismiss for failure to exhaust.

Moreover, the pendency of a BIA appeal does not strip this Court of jurisdiction to consider the constitutionality of ongoing detention.

IV. THE PETITION STATES A PLAUSIBLE DUE PROCESS CLAIM

Petitioner alleges continued detention without a meaningful bond hearing, without individualized assessment of flight risk or danger, and without adequate procedural safeguards.

These allegations state a plausible due process claim under *Zadvydas*, *Demore*, and *Ly*. At the pleading stage, dismissal under Rule 12(b)(6) is improper.

V. JURISDICTION-STRIPPING PROVISIONS DO NOT APPLY

Respondents' reliance on 8 U.S.C. § 1252(g) and *DHS v. Thuraissigiam* is misplaced. Petitioner does not seek review of a credible-fear determination, asylum denial, or removal order.

He seeks constitutional review of detention. Habeas jurisdiction remains available for such claims.

VI. THE COURT SHOULD REACH THE MERITS

The case presents a clean legal question, a developed record, and an ongoing liberty deprivation. No hearing is required. The Court should deny the Motion to Dismiss and reach the merits.

VII. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

1. Deny Respondents' Motion to Dismiss;
2. Exercise jurisdiction under 28 U.S.C. § 2241;
3. Order release or a prompt constitutionally adequate bond hearing; and
4. Grant such other relief as the Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

/S/ Roman V. Gambourg

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
Attorney for Petitioner

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(f)

I certify that this Expedited Traverse and Opposition to Respondents' Motion to Dismiss 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. This case is unassigned, and the foregoing memorandum is

within ten (10) pages, exclusive of the caption, signature block, and certificate.

Dated: January 28, 2026

Respectfully submitted,

/S/ Roman V. Gambourg

Roman V. Gambourg, Esq.
GAMBOURG & READ, P.C.
One Bridge Plaza North, Suite 675
Attorney for Petitioner

PROOF OF SERVICE

I hereby certify that on January 28, 2026, a true and correct copy of the foregoing Petitioner's Expedited Traverse and Opposition to Respondents' Motion to Dismiss was served via the Court's CM/ECF system upon all counsel of record for Respondents as indicated below:

U.S. Attorney's Office
Northern District of Ohio
[ECF Service]
Department of Homeland Security / ICE Office of the Principal Legal Advisor (OPLA)

U.S. Immigration and Customs Enforcement (ICE) – Enforcement and Removal Operations
[ECF Service]

Warden, Seneca County Jail
3040 S. State Route 100
Tiffin, Ohio 44883
[ECF Service]

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 28, 2026

/S/ Roman V. Gambourg

Roman V. Gambourg, Esq.
Attorney Bar Number 003002002
GAMBOURG & READ, P.C.
Attorney for Petitioner