

Convention Against Torture (CAT). After a merits hearing, the Immigration Court denied his applications. A.L.L. appealed the decision to the Board of Immigration Appeals (BIA), and he is currently awaiting review. The BIA's review and resulting proceedings will likely take several more months, if not longer, further prolonging A.L.L.'s detention.

2. Since October 2023, the Department of Homeland Security (DHS) has detained A.L.L. without adequate procedural safeguards. A.L.L. is neither a flight risk nor a danger to the community. He also has a willing sponsor who has agreed to support him upon his release. Furthermore, A.L.L.'s 18-month detention has exacerbated his serious mental health and physical conditions. Throughout his detention, DHS has failed to provide him with an individualized bond hearing.
3. A.L.L.'s civil immigration detention is unjustified and has become unduly prolonged, violating the Due Process Clause of the Fifth Amendment of the U.S. Constitution. A.L.L. respectfully requests that this Court grant him a writ of habeas corpus, ordering his immediate release from T. Don Hutto Residential Center under reasonable conditions of supervision. Alternatively, he seeks an individualized bond hearing before an independent arbiter, where the government would bear the burden of proving by clear and convincing evidence that he poses a flight risk or danger to the community. Given that A.L.L.'s continued and prolonged detention violates due process and DHS's findings that he is a flight or danger risk are unsupported, the Court should grant this petition.

II. CUSTODY

4. A.L.L. is in the physical custody of Respondents. He is detained at the T. Don Hutto Residential Center in Taylor, Texas. He is under the direct control of Respondents and their agents.

III. JURISDICTION AND VENUE

5. Jurisdiction is proper under 28 U.S.C. § 2241 (habeas corpus), Art. I §9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331 (federal question). *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”).
6. Additionally, this Court may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
7. District courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law, pursuant to 28 U.S.C. § 2241. *Denmore v. Kim*, 538 U.S. 510, 516-517 (2003); *Zadvydas* at 687; *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (citing *Zadvydas* at 687).
8. Venue is proper in the United States District Court for the Western District of Texas because A.L.L. is detained at the Hutto Detention Center in Taylor, Texas, which is located in this district. 28 U.S. C. §1391; *See Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (“The plain language of the habeas statute . . . confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”).

IV. PARTIES

9. Petitioner A.L.L. is currently detained by Respondents at T. Don Hutto Detention Center in Taylor, Texas. He has been in Immigration and Customs Enforcement (ICE) custody since October 3, 2023. He has been detained for over 563 days.
10. Respondent Charlotte Collins is the Warden of the T. Don Hutto Residential Center. Respondent Collins is an employee of CoreCivic (formerly the Corrections Corporation of

America), the private contractor that operates the detention facility on behalf of ICE. ICE is a component of the United States Department of Homeland Security. She has immediate physical custody of Petitioner and is named in her official capacity.

11. Respondent Vincent Marmolejo is the Assistant Field Office Director responsible for the San Antonio Field Office of ICE with administrative jurisdiction over Petitioner's case. He is a legal custodian of Petitioner and is named in his official capacity.
12. Respondent Miguel Vergara is the Field Office Director responsible for the San Antonio Field Office of ICE with administrative jurisdiction over Petitioner's cases. He is a legal custodian of Petitioner and is named in his official capacity.
13. Respondent Todd M. Lyons is the Senior Official Performing the Duties of the Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.
14. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioner and is named in her official capacity.
15. Respondent Pamela Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioner and is named in her official capacity.

V. EXHAUSTION OF REMEDIES

16. There is no statutory obligation for A.L.L. to exhaust his administrative remedies prior to filing this habeas petition since he is not requesting review of a final order of removal. *Cf.* 8 U.S.C. § 1252(d)(1) (requiring exhaustion of administrative remedies prior to challenging removal order in circuit court). Additionally, district courts in the Fifth Circuit have concluded that when a petitioner "seeks to raise a pure constitutional challenge to the statute that permits his detention . . . the court should exercise jurisdiction without first requiring exhaustion of administrative remedies." *Maramba v. Mukasey*, No. 3:08-CV-0351-K, 2008 WL 1971378, at

*4 (N.D. Tex. Apr. 28, 2008); *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861, at *3 n.5 (W.D. Tex. Feb. 25, 2020) (determining that there was no requirement that a 1226(a) detainee must exhaust other remedies before pursuing a Fifth Amendment habeas claim); *Malm v. Holder*, No. CIV.A. H-11-2969, 2012 WL 2568172, at *4 (S.D. Tex. June 29, 2012) (same); *Kambo v. Poppell*, No. SA-07-CV-800-XR, 2007 WL 3051601, at *13 (W.D. Tex. Oct. 18, 2007) (citing *Fuller v. Gonzales*, No. Civ. A. 3:04CV2039SRU (D. Conn. April 8, 2005)) (explaining that the petitioner's constitutional challenges to his detention did not have to be exhausted through the Board of Immigration Appeals because the BIA cannot address constitutional issues).

17. A.L.L. is detained pursuant to 8 U.S.C. § 1231, which does not provide for an independent court review of custody status. Nevertheless, A.L.L. has submitted various requests for parole or release under an order of supervision. All have been denied with little to no explanation as to the decision to maintain A.L.L.'s detention.
18. Thus, this Court has jurisdiction over A.L.L.'s § 2241 action because administrative exhaustion is not required, and the petition raises constitutional issues that cannot be addressed administratively. Even if exhaustion were required, any administrative remedies have been exhausted.

VI. FACTS

A. Persecution in El Salvador and Entry into United States

19. A.L.L. is a 32-year-old man from El Salvador. When he was born, his father refused to acknowledge him as his son and consequently, A.L.L.'s mother was unable to register him in the Civil Registry. As a result, he does not have government identification from El Salvador.

20. During A.L.L.'s childhood, he was subjected to severe physical and emotional abuse by his father and extended family because he was considered an illegitimate child. At the age of eleven, his father kicked him out of the house, forcing him to work and live in others' homes to survive.
21. Because A.L.L. lacked both family and government identification, he was targeted by police as a teenager. Police in El Salvador beat him and falsely accused him of crime, including theft. Due to these circumstances, he fled to the United States in 2014 and was subsequently deported.
22. After returning to El Salvador, police officers continued to target A.L.L. in part because he lacked government identification in an increasingly controlling regime. In 2015, the police brutally beat him after he was unable to provide government identification.
23. In 2016, two police officers falsely accused A.L.L. of robbery and provided fabricated testimony against him. He was sentenced to eight years in prison, of which he served six. During his time in prison, he was routinely tortured by prison guards. In 2022, after he was released from prison, the police officers who falsely accused him found him again and viciously beat him.
24. Fearing for his life, A.L.L. fled to the United States again in October 2023. He was detained and has been held at the T. Don Hutto Residential Center in Taylor, Texas since then.
25. A.L.L. fears that if he returns to El Salvador, he will face persecution, violence, and torture by government officials.

B. Immigration Court Proceedings

26. The Department of Homeland Security apprehended A.L.L. after he crossed into the United States through the southern border on October 3rd, 2023. DHS reinstated its prior order of

removal pursuant to 8 U.S.C. § 1231(a)(5), 8 C.F.R. § 241.8. A.L.L. was transferred to the T. Don Hutto Detention Center in Taylor, Texas, where he remains detained.

27. On November 29, 2023, an immigration judge found that A.L.L. established a reasonable possibility that he would be persecuted on the basis of a protected ground or tortured in El Salvador. Although A.L.L.'s preexisting order of removal has been reinstated, it cannot be effectuated while his Withholding of Removal and Convention Against Torture claims are under review.
28. On April 5, 2024, A.L.L. appeared before the Immigration Court in Pearsall, Texas, via video teleconference for his individual merits hearing. Due to its length, the case continued on to a second individual merits hearing on April 23, 2024.
29. The Immigration Court denied A.L.L.'s applications for Withholding of Removal and protection under the Convention Against Torture in a written opinion issued several months later on July 5, 2024.
30. A.L.L. timely appealed the Immigration Court's decision to the Board of Immigration Appeals (BIA) on October 21, 2024. His appeal is currently awaiting BIA review. If A.L.L.'s case is remanded for further proceedings before the Immigration Court, or if A.L.L. pursues a petition for review before the U.S. Court of Appeals for the Fifth Circuit, the final adjudication of his case will likely take several more months or even longer. This delay is likely to be worsened by recent staffing cuts at the BIA. *DOJ issues interim final rule reducing the size of the BIA to 15 members*, IMMIGR. POL'Y TRACKING PROJECT (Apr. 11, 2025), <https://immpolicytracking.org/policies/doj-issues-interim-final-rule-reducing-the-size-of-the-bia-to-15-members/> (describing the Department of Justice interim final rule reducing the size of the BIA from 28 to 15 members).

C. Prolonged detention without any individualized hearing

31. A.L.L. has remained in detention for over 563 days without procedural safeguards.
32. ICE has considered A.L.L.'s custody status three times through Post Order Custody Reviews (POCR), including on December 14, 2023; April 5, 2024; and July 8, 2024. After each POCR, ICE decided that A.L.L. would not be released from custody. ICE offered shifting reasons for its decisions, including that ICE is in receipt of or expects to receive the necessary travel documents to effectuate A.L.L.'s removal; removal is practicable, likely to occur in the reasonably foreseeable future, and in the public interest; A.L.L. poses a significant flight risk pending his removal from the United States; he poses a safety risk to the public; he has pending immigration proceedings; and he has failed to satisfy the criteria for release outlined in 8 C.F.R. § 241.4(e). ICE, however, did not specify which 8 C.F.R. § 241.4(e) factors were unmet. Similarly, ICE did not provide any reasoning, evidence, or facts to explain these determinations and simply stated they are based on A.L.L. being under a final order of removal.
33. Separate from the POCR process, A.L.L. has requested release from DHS through counsel on multiple occasions, including on March 8, 2024; June 26, 2024; and November 22, 2024. All of these requests have been denied.
34. On March 8, 2024, A.L.L. made a request for parole or release under an order of supervision because of A.L.L.'s low flight risk, the lack of danger he poses to the community, and the severity of his mental and physical medical conditions. A.L.L. included with this request a letter of support from Casa Marianella verifying that the organization is ready to receive A.L.L. upon his release and provide robust support. Casa Marianella provides comprehensive support services to immigrants and refugees in the Austin area. These services include housing, transportation, and access to medical and legal services. Additionally, A.L.L. documentation

of symptoms of depression, severe panic attacks, and anxiety. A.L.L. also provided documentation recording his physical symptoms related to his previous torture and abuse including frequent headaches, back and nose pain from past fractures, severe pain in his ears caused by trauma to the head, and urological issues requiring specialty visits. The request for release was denied without explanation.

35. On June 26, 2024, A.L.L. made another request for parole or release under an order of supervision because he faced repeated threats and attacks from other detainees that the authorities at the T. Don Hutto Residential Center were unable to prevent. Additionally, A.L.L. continued to be a low-flight risk, pose no danger to the community, and suffer from severe medical conditions. A.L.L. included with this request a health assessment detailing how the attacks and threats exacerbated his mental and physical ailments, which cannot be treated adequately in detention. A.L.L. also provided paperwork documenting how ICE referred him to several outside medical providers for treatment. The request for release was again denied without explanation.

36. On November 22, 2024, 447 days into his detention, A.L.L. made his third request for parole or release under an order of supervision because the detention authorities—unable to protect A.L.L. from threats and attacks from other detainees—resorted to isolating A.L.L. into solitary confinement despite being the victim of these attacks. In addition to the reasons outlined in his two previous release requests, A.L.L.’s updated health assessment demonstrated that he does not have access to adequate mental health treatment, placing him at increasing risk of serious harm. A.L.L. included with this request an updated letter of support from Casa Marianella, documentation of two more attacks against him, and his updated health assessment. ICE once again denied release without any explanation or citing any reason for doing so.

D. Post-release Support

37. A.L.L. fully intends to appear for all future proceedings, including removal hearings, should that be the outcome of his case. Since A.L.L. has been detained, he has made every effort to facilitate his immigration proceedings. He has consistently met with counsel, attended his merits hearings, and participated in the POCR process. This demonstrates his commitment to attending future court hearings or any other required appointments with ICE or USCIS following his release.
38. A.L.L. has a willing sponsor, Casa Marianella, which has agreed to assist him upon his release. With Casa Marianella's assistance, A.L.L. will be able to comply with the conditions of his release.
39. Additionally, upon his release, A.L.L. will continue to be represented by the University of Texas School of Law Immigration Clinic.
40. If released, A.L.L. would be able to comply with his conditions of release, attend future proceedings, and make meaningful contribution to his community.

VII. Legal Framework and Argument

A. Statutory scheme for immigration detention

41. A.L.L. had a prior order of removal reinstated against him upon entry under 8 U.S.C. § 1231(a)(5). He is now being detained under 8 U.S.C. § 1231(a)(6).
42. A.L.L. was initially held pursuant to § 1231(a)(5), which states that a noncitizen who reenters the United States illegally after having been removed will have that prior order of removal reinstated and cannot challenge that order. 8 U.S.C. § 1231(a)(5). A noncitizen in this position can apply for withholding of removal if he expresses a fear of returning to the country of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). A noncitizen with a reinstated

order of removal and pending withholding-only proceedings, such as A.L.L., is detained pursuant to § 1231(a). *Id.* at 526.

43. Section 1231(a) applies to noncitizens who have been ordered removed and § 1231(a)(1)(A) provides that the Attorney General shall remove a noncitizen within 90 days of being ordered removed. *Id.* § 1231(a)(1)(A). Detention during this period is mandatory. *Id.* § 1231(a)(2)(A). Section 1231(a)(6) outlines which noncitizens may be detained beyond this 90-day removal period, including those inadmissible under Section 1182 of this title. *Id.* § 1231(a)(6). Section 1182(a)(9) deems noncitizens who have already been ordered removed, like A.L.L., to be inadmissible. *Id.* § 1182(a)(9). Thus, noncitizens in A.L.L.'s position can be detained past the 90-day removal period at the discretion of U.S. immigration authorities. *Id.* § 1231(a)(6).
44. Sections 1231(a)(6) and 1226(a) both outline which noncitizens may be detained at the discretion of the immigration authorities, though § 1226(a) applies to pre-removal order detainees. *Id.* § 1226(a).

B. A.L.L. brings an as-applied Due Process claim to challenge his detention

45. These immigration statutes must be read in light of the Fifth Amendment's Due Process Clause. A statute permitting indefinite detention of a noncitizen would raise a serious constitutional problem as freedom from imprisonment, including government detention, lies at the heart of the liberty that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Accordingly, the Supreme Court limited § 1231(a)(6) to detaining noncitizens past the removal period only for a period reasonably necessary to bring about that alien's removal from the United States. *Id.* at 689. The Court held that six months is a presumptively reasonable period of detention. *Id.* at 701.

46. Petitioners can challenge their detention through a *Zadvydas* claim or a statutory claim. *Id.* at 699-700 (explaining that detention is unreasonable and unauthorized, under *Zadvydas*, when a noncitizen detained longer than six months can show there is no significant likelihood of removal in the reasonably foreseeable future); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-81 (2022) (deciding that Section 1231(a)(6), as a matter of statutory interpretation, does not require the government to provide bond hearings to noncitizens detained for more than six months). However, A.L.L. does not bring a *Zadvydas* or statutory challenge.
47. The Court in *Arteaga-Martinez* intentionally left it to the district courts to decide whether the Due Process Clause requires a bond hearing for individuals detained under § 1231(a)(6) who bring an *as-applied* constitutional challenge. *Arteaga-Martinez* 596 U.S. at 583. A.L.L. brings his due process challenge to his detention on an *as-applied* basis.

C. The Court should apply the *Mathews* test to assess an *as-applied* due process challenge to detention

48. Under § 1226(a), which contains similar discretionary detention provisions as § 1231(a)(6)—the statute A.L.L. is being held under—the First and Second Circuits have held that the Due Process Clause entitles detainees to a bond hearing, in addition to the one provided by the ordinary bond hearing process, once their detention was prolonged. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020) (holding that detainee was entitled to an additional bond hearing once detention under § 1226(a) becomes prolonged); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) (detainee was entitled to a bond hearing).¹

¹ The Ninth Circuit, Fourth Circuit, and Third Circuit have held that a § 1226(a) detainee is not entitled to an additional bond hearing under the Due Process Clause. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022) (holding that due process did not require that detainee be provided a second bond hearing); *Miranda v. Garland*, 34 F.4th 338, 366 (4th Cir. 2022) (same); *Borbot v. Warden Hudson Cnty. Corr. Facility*, 906 F.3d 274, 279 (3d Cir. 2018) (same).

49. To determine whether § 1226(a) detainees are entitled to procedural protections through a bond hearing, Circuit Courts have applied the three-factor balancing test provided in *Mathews v. Eldridge*, 424 U.S. 319 (1976). See *Velasco Lopez*, 978 F.3d at 851 (applying the *Mathews* factors to decide whether the detainee needs additional procedural protections); *Hernandez-Lara*, 10 F.4th at 41 (applying the *Mathews* factors to determine whether the Due Process Clause entitled a noncitizen detained under Section 1226(a) to an additional bond hearing); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (assuming without deciding that *Mathews* applies); *Miranda v. Garland*, 34 F.4th 338, 358-59 (4th Cir. 2022) (applying the *Mathews* balancing test to the detainee’s due process claims).
50. Similarly, district courts in the Fifth Circuit Court of Appeals have applied the *Mathews* test in assessing challenges to detention under § 1226. *Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861, at *5 (W.D. Tex. Feb. 25, 2020) (“Petitioner contends that due process requires that he be provided a new bond hearing at which the government bears the burden of proof. Having reviewed the circumstances of Petitioner’s detention and the relevant *Mathews* factors, this Court agrees.”) (analyzing detention under § 1226(a)); *Alafyouny v. Chertoff*, No. 3:06 CV 0204 M, 2006 WL 1581959, at *21 (N.D. Tex. May 19, 2006) (applying the *Mathews* test to assess a challenge to unlawful detention under § 1226(c)).

However, these courts based their decisions, in large part, on the fact that the detainees already had a bond hearing—a due process protection that A.L.L. has not yet been afforded. *Borbot*, 906 F.3d at 279 (“Borbot’s habeas petition seeks to compel a second bond hearing despite alleging no constitutional defect in the one he received. This comes close to asking this Court to directly review the IJ’s bond decision, a task Congress has expressly forbidden us from undertaking.”); *Miranda*, 34 F.4th at 362 (“[A]liens already receive the fundamental features of due process—notice and an opportunity to be heard . . . The current procedures provide aliens detained by the government three separate opportunities to make their case concerning bond.”); *Rodriguez Diaz*, 53 F.4th at 1210 (“In short, the agency’s decision to detain Rodriguez Diaz was subject to numerous levels of review, each offering Rodriguez Diaz the opportunity to be heard by a neutral decisionmaker.”).

51. *Mathews* requires courts to factor: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976).
52. No circuit courts have analyzed a procedural due process challenge in a § 1231(a)(6) context since the court’s decision in *Arteaga-Martinez* left it up to district courts to do their own analysis. *Chavez-Gonzalez v. Ball*, No. 6:23-CV-06238 EAW, 2024 WL 1268282, at *4 (W.D.N.Y. Mar. 26, 2024) (“Lower federal courts, in this Circuit and others, have considered as-applied procedural due process challenges to prolonged detention under § 1231(a)(6) post-*Arteaga-Martinez*, and have reached disparate conclusions about the appropriate methodology for deciding such challenges.”); *Michelin v. Oddo*, No. 3:23-CV-22, 2023 WL 5044929, at *6 (W.D. Pa. Aug. 8, 2023) (“[S]ince the Supreme Court decided *Arteaga-Martinez* last year, there is ambiguity about the proper framework to analyze as-applied due process challenges for individuals like him, who are being detained under § 1231(a)(6).”).
53. District courts have followed the analysis of § 1226(a) by the First, Second, Fourth, and Ninth Circuit Courts and have chosen to apply the *Mathews* test to due process challenges brought by individuals detained under § 1231(a)(6). See e.g., *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *4 (S.D.N.Y. Feb. 6, 2023) (applying the *Mathews* test); *Chavez-Gonzalez*, 2024 WL 1268282, at *4 (same).

54. Considering the “largely parallel due process concerns at issue in § 1226(a) and § 1231(a)(6), and that both provisions concern immigration detention as a matter of discretion, the *Mathews* test is appropriate to apply here.” *Cabrera Galdamez*, 2023 WL 1777310, at *4.
55. To evaluate an as-applied due process challenge to an individual’s detention under § 1231(a)(6), this Court should apply a balancing test using the three *Mathews* factors.

i. A.L.L. has a significant liberty interest

56. Regarding the first factor of the *Mathews* test, the private interest involved here is “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). This interest “lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Given the importance of the liberty interest, “detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
57. A.L.L. has been detained for 563 days, during which the government has failed to safeguard his health and safety. On at least two separate occasions other detainees threatened and attacked him. Rather than providing protection, detention officers responded by placing A.L.L. in solitary confinement. These events have only exacerbated his mental health struggles, as he is in constant fear for his safety. *See L.G. v. Choate*, 744 F. Supp. 3d 1172, 1182 (D. Colo. 2024) (considering the detainee’s deteriorated mental health in weighing the detainee’s liberty interest) (analyzing detention under § 1226). A.L.L. suffers from Post Traumatic Stress Disorder, depression, and severe anxiety, and has received inadequate medical care for these conditions while in detention.
58. A.L.L. also experiences significant physical ailments. Previous torture and abuse have left A.L.L. with lasting injuries, including non-healing fractures and head trauma, which continue

to cause him severe pain and discomfort. Additionally, he suffers from urological conditions, which require consultations with medical specialists outside of the detention facility. Due to his detention, A.L.L. is unable to receive the necessary medical care to address his serious health conditions.

59. The conditions of his detention are more comparable to incarceration than civil confinement. *See Chavez-Gonzalez*, 2024 WL 1268282, at *5 (finding an immigration detention facility to be “not, for many individuals, meaningfully different from at least a low-security penal institution for criminal detention” (internal quotation marks omitted)). T. Don Hutto Detention Center, where A.L.L. is detained, is operated by a prison company, CoreCivic, and is managed as a carceral program. John Burnett, *Immigrant Detention For Profit Faces Resistance After Big Expansion Under Trump*, NAT. PUB. RADIO (Apr. 20, 2021, 5:00 AM), <https://www.npr.org/2021/04/20/987808302/immigrant-detention-for-profit-faces-growing-resistance-after-big-expansion-unde>. Despite troubling allegations of sexual abuse and an unregulated detainee work program, the detention center operates with no local oversight. Mercedes Hernandez, *Little to no local oversight at ICE facility in Taylor*, KXAN (Jan. 31, 2025, 7:59 AM), <https://www.kxan.com/investigations/little-to-no-local-oversight-at-ice-facility-in-taylor/>. The Center has gone unseen by local officials in the past five years. *Id.* As such, A.L.L. is being held in unmonitored carceral conditions, is restricted from free movement in the facility and outdoors, and has restrictions on visitations. These conditions significantly enhance A.L.L.’s liberty interest.
60. Moreover, the prolonged length of his detention merits additional procedural protections. *L.G.*, 744 F. Supp. 3d at 1183 (holding that, in assessing petitioner’s private interest, prolonged detention warrants additional procedural safeguards). In the 563 days A.L.L. has been detained,

he has not received a single bond hearing. So, he has yet to have a chance to challenge his detention before an impartial adjudicator.

61. Given A.L.L.'s significant liberty interest, the first factor of *Mathews* weighs in his favor.

ii. A.L.L. is at substantial risk of erroneous deprivation

62. The lack of procedures behind A.L.L.'s lengthy incarceration significantly increases the risk of erroneous deprivation of his liberty interest and a bond hearing is therefore required as an additional procedural safeguard. Thus, the second *Mathews* factor, "the risk of an erroneous deprivation of [detainee's private interest] through the procedures used, and probable value, if any, of additional procedural safeguards," favors A.L.L. *Mathews*, 424 U.S. at 321.

63. In assessing the risk of erroneous deprivation of liberty interest, courts look at the length of time an individual is detained. Individuals detained for shorter amounts of time than A.L.L. have been found to be subjected to a heightened risk of erroneous deprivation. *Velasco Lopez*, 978 F.3d at 853-54 (highlighting, in the analysis of the second *Mathews* factor, that petitioner was detained for 15 months with no end in sight); *Cabrera Galdamez*, 2023 WL 1777310, at *6 (emphasizing how petitioner has been detained for 16 months without an individualized hearing). A.L.L. has been detained for over 18 months with no end in sight. See *Fajardo v. Decker*, No. 22 CIV. 3014 (PAE), 2022 WL 17414471, at *11 (S.D.N.Y. Dec. 5, 2022) ("And with his petition for review pending with no indication of when it will be resolved, Fajardo's detention continues 'without an end in sight.'") (quoting *Velasco Lopez*, 978 F.3d at 855) (analyzing detention under § 1226(a)).

64. In addition to the length of detention, courts look at what, if any, process has already been afforded. *Black v. Decker*, 103 F.4th 133, 152 (2d Cir. 2024) ("Here, the almost nonexistent procedural protections in place for . . . detainees markedly increased the risk of an erroneous

deprivation of Petitioners' private liberty interests.") (analyzing detention under § 1226). A.L.L. has been long-detained without an individualized hearing before an impartial adjudicator. *See Cabrera Galdamez*, 2023 WL 1777310, at *6. The only process afforded to him has been through the three post-order custody reviews (POCRs) that ICE is obligated to conduct under 8 C.F.R. § 241.4 and the three release requests that A.L.L. submitted to ICE through counsel. But these post-order custody reviews and release request decisions are "non-appealable, internal reviews" that suffer from three significant flaws: 1) the regulations place the burden on A.L.L. rather than the government, 2) ICE, which is not an outside arbiter, makes the decision, and 3) the regulations do not provide for an in-person hearing where A.L.L. can present his argument, call witnesses, and confront the government's evidence. *Id.*

65. District courts in the Fifth Circuit have expressed concern about the lack of due process protections that the POCR process offers. *Alafyouny*, 2006 WL 1581959, at *23 ("Although petitioner has received an individualized custody review based upon the government's review of his file and submitted information, he has not received a hearing or personal interview regarding his continued detention."); *Bonitto v. Bureau of Immigr. & Customs Enft*, 547 F. Supp. 2d 747, 758 (S.D. Tex. 2008) (noting that it "would raise due process concerns and run afoul of DHS's own regulations" if the POCR decisions deny detainee's release without any reasoned basis) (analyzing detention under § 1231(a)(6)).

66. ICE's denials of A.L.L.'s release requests and POCRs illustrate the need for this concern. When denying all three of A.L.L.'s release requests, ICE never offered a basis for its decision and simply asserted that it was "based upon the documentation and evidence reviewed" or "the totality of the circumstances." Even when ICE did offer a basis to continue A.L.L.'s detention in his POCR decisions, it failed to provide any reasoning underlying this determination. The

conclusory statements that A.L.L.'s removal is expected in the reasonably foreseeable future or that he poses a danger or flight risk without a factual explanation "teeters dangerously close to a perfunctory and superficial pretense instead of a meaningful review sufficient to comport with due process standards." *Bonitto*, 547 F. Supp. 2d at 758.

67. Whether ICE's post-order custody reviews satisfy the Due Process Clause is already doubtful. *Zadvydas*, 533 U.S. at 692 ("[T]he Constitution may well preclude granting an administrative body the unreviewable authority to make determinations implicating fundamental rights.") (citation omitted).

68. Considering A.L.L.'s lengthy detention, ICE's unreviewable custody decisions, and the lack of any individualized hearing before an impartial adjudicator, the risk of an erroneous deprivation of A.L.L.'s rights is heightened and the second *Mathews* factor thus favors him.

A bond hearing with the burden shifted to the government is necessary to address the risk of erroneous deprivation

69. A bond hearing with the burden shifted to the government is necessary to address the risk of erroneous deprivation of A.L.L.'s private interest.

70. The Supreme Court recognizes that a higher burden of proof exposes a party to a greater risk of erroneous deprivation. *Cooper v. Oklahoma*, 517 U.S. 348, 362 (1996). The Court has also understood that civil detention must be carefully limited to avoid due process violations, particularly through a bond hearing with a heightened burden of proof on the government to justify detention. *Id.* at 362 ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake . . . are both 'particularly important' and 'more substantial than mere loss of money.'") (quoting *Santosky v. Kramer*, 455 U.S. 745, 756, 102 S. Ct. 1388, 1396, 71 L. Ed. 2d 599 (1982)); *Foucha v. Louisiana*, 504 U.S.

71, 86, 112 S. Ct. 1780, 1788, 118 L. Ed. 2d 437 (1992) (holding unconstitutional a civil commitment statute placing the burden of proof on detainee and instead determining that “the State must establish the grounds of insanity and dangerousness permitting confinement by clear and convincing evidence.”).

71. The risk of the erroneous deprivation of A.L.L.’s rights is lessened through a bond hearing with the burden of proof on the government to justify his continued detention. *See Ayobi v. Castro*, No. SA-19-CV-01311-OLG, 2020 WL 13411861, at *6 (W.D. Tex. Feb. 25, 2020) (“[I]t is self-evident that allocating the burden of proof to the government to affirmatively justify Petitioner’s continued detention . . . is a reasonable approach to mitigate the risk of erroneous deprivation of his due process rights.”); *Hernandez-Lara*, 10 F.4th at 31 (finding that the allocation of the burden of proof can decrease the risk of erroneous deprivation in a bond hearing); *L.G.*, 744 F. Supp. 3d at 1184 (determining the second *Mathews* factor weighs in noncitizen’s favor because a bond hearing with a shifted burden would reduce the risk of erroneous deprivation). The balance between the interests of the government and A.L.L. (who faces years of detention before the resolution of his immigration proceedings) by itself supports allocating the burden of proof in a bond hearing to the government. *Ayobi*, 2020 WL 13411861, at *6 (“[C]ourts that have addressed this exact issue have concluded that the balance of these two interests [the governments’ interest and the individual interest of § 1226(a) detainees], ‘by itself, supports imposing the greater risk of error on the government—specifically, by allocating to it the burden of proof.’”) (quoting *Linares Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL 5023946, at *3 (S.D.N.Y. Oct. 17, 2018)).
72. Furthermore, a bond hearing with the burden shifted to the government would mitigate the risk of erroneous deprivation because it would remove procedural obstacles that detainees like

A.L.L. face. For one, proving a negative can be more difficult than proving a cause for concern that warrants detention. *Hernandez-Lara*, 10 F.4th at 31; L.G., 744 F. Supp. 3d at 1183; *Velasco Lopez*, 978 F.3d at 853 (“*Velasco Lopez* was neither a flight risk nor a danger to the community but was unable to prove that was the case.”) This disparity is worsened by the fact that individuals like A.L.L. lack the substantial resources that the government has to make a determination of an individual’s dangerousness or flight risk. *Velasco Lopez*, 978 F.3d at 853. In particular, the government may make use of computerized access to numerous databases, information collected by other federal law enforcement agencies, and information in the hands of state and local authorities. *Id.* As the length of a noncitizen’s detention increases so should the government’s capacity to make a showing of the noncitizen’s dangerousness or flight risk. *Id.* (“[T]he longer detention lasts, the less persuasive this ‘lack of information’ rationale becomes.”) Having detained A.L.L. for over 563 days and being able to access these robust resources, ICE should now have the ability to gather evidence that it could present at a bond hearing.

73. Ultimately, “‘as the period of ... confinement grows,’ so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention.” *Velasco Lopez*, 978 F.3d at 853 (quoting *Zadvydas*, 533 U.S. at 701). Indeed, the fact that A.L.L. has had a merits hearing and may appeal his case up to the Fifth Circuit is of little help as the burden is always on A.L.L. and “loaded dice rolled three times are still loaded dice.” *Hernandez-Lara*, 10 F.4th at 32. A bond hearing with the burden shifted to the government is a procedural safeguard necessary to lessen the risk of the erroneous deprivation of A.L.L.’s liberty interest. Thus, the second *Mathews* factor favors A.L.L. securing a bond hearing with the burden shifted to the government.

iii. Government interests do not outweigh A.L.L.'s interest in a bond hearing

74. In analyzing factor three of the *Mathews* test, the government interest favors providing A.L.L. with a bond hearing, where it carries the burden of proof.
75. With respect to considerations of a bond hearing, A.L.L. is not a flight risk or a danger to the community. The mere fact that he unlawfully entered the U.S. and had a single criminal case in El Salvador may not be sufficient to establish that the petitioner poses a flight risk or danger. *Cabrera Galdamez*, 2023 WL 1777310, at *6 (finding that the petitioner's unlawful entry with a subsequent removal order and single criminal case may not be enough to substantiate flight risk or danger). Additionally, A.L.L. has a sponsor who has agreed to support him and does not have a criminal record in the United States. A.L.L. would be able to comply with his conditions of release and attend future proceedings.
76. While the government has legitimate regulatory interests in ensuring the detainee's presence at immigration proceedings and safeguarding the community, *Zadvydas*, 533 U.S. at 690, these interests are not undermined by simply providing A.L.L. with a bond hearing. *Cabrera Galdamez*, 2023 WL 1777310, at *7; *Black*, 103 F.4th at 153. A bond hearing merely requires the government to justify prolonged detention. *Cabrera Galdamez*, 2023 WL 1777310, at *7. While the government's interest may have initially outweighed A.L.L.'s liberty interest, the balance shifts after the detention becomes unduly prolonged. *Black*, 103 F.4th at 154. A.L.L. has been detained for over 18 months, far surpassing the six-month presumptively reasonable detention period. *Zadvydas*, 533 U.S. at 701. Therefore, the prolonged duration of A.L.L.'s detention increases the need for a bond hearing.
77. The government interest also includes conserving fiscal and administrative resources, which are expended when additional procedural safeguards are imposed. *Mathews*, 424 U.S. at 335.

In this instance, however, the fiscal and administrative costs of a bond hearing are minimal in comparison to the costs of detaining A.L.L. unnecessarily. *Black*, 103 F.4th at 154–55. The government spends \$152 per day on A.L.L.’s detention, amounting to a total of \$85,576 since his initial detention. *Alternatives to Detention*, IMMIGR. & CUSTOMS ENF’T, <https://www.ice.gov/features/atd> (Feb. 27, 2025). Therefore, the government’s fiscal and administrative interests are actually served by providing A.L.L. with a bond hearing.

78. Additionally, the government interest includes the public interest, which requires consideration of societal costs. *Mathews*, 424 U.S. at 347. The societal cost of detaining individuals who the government has not proven to be a bail risk is significant, as such detention “separates families and removes from the community breadwinners, caregivers, parents, siblings and employees.” *Velasco Lopez*, 978 F.3d at 855. A.L.L.’s detention limits his ability to form meaningful community ties and denies him the opportunity to contribute to society.

A bond hearing with the burden shifted to the government does not undermine the government interest

79. Due process requires the government to bear the burden of proof at the bond hearing. The government’s fiscal and administrative burden would not be undue as the government is in a better position to provide relevant evidence. *Fajardo*, 2022 WL 17414471, at *12. A.L.L.’s numerous immigration proceedings provide ample information for a bond hearing. *Ayobi*, 2020 WL 13411861, at *6. Also, his prolonged detention has given the government sufficient opportunity to collect pertinent information. *L.G.*, 744 F. Supp. 3d at 1185. Such information is readily accessible to ICE officers. *Black*, 103 F.4th at 154. In sum, the government has sufficient access to evidence relevant to a bond hearing. Moreover, placing the burden of proof

on the government furthers its interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 854.

80. Furthermore, in accordance with due process, the Court should consider A.L.L.’s ability to pay bond. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017). The assessment of the petitioner’s ability to pay bond in immigration bond hearings is “necessary to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring their appearance at future hearings.” *Id.* The bond amount should be not be in excess of what is sufficient to provide incentive for the petitioner to appear at future proceedings. *Id.* at 991. This amount is necessarily less for indigent petitioners than for wealthy ones. *Id.* The Court should, therefore, consider A.L.L.’s ability to pay bond when setting an appropriate bond amount.

81. On balance, A.L.L.’s liberty interest and the risk of erroneously depriving him of that interest significantly outweigh any government interest. Therefore, the *Mathews* factors are in favor of additional legal process to rectify this violation of due process. A.L.L. should be granted a bond hearing where the government bears the burden of proof.

D. Due process requires the evidentiary standard to be clear and convincing evidence.

82. In addition to the government bearing the burden, the evidentiary standard at the bond hearing must be a clear and convincing evidence standard. If this Court does not find release appropriate, due process requires an individualized bond hearing where the government bears the burden of justifying detention by clear and convincing evidence.

83. The purpose of additional process is to “minimize the risk of erroneous decisions,” *Addington v. Texas*, 441 U.S. 418, 425 (1979), and the attendant standard of proof “serves to allocate the risk of error between the litigants.” *Id.* at 423.

84. Civil commitment proceedings require more than a mere preponderance of the evidence standard. *Id.* at 427. To determine the appropriate evidentiary standard, the individual interest against involuntarily confinement is weighed against state interest. *Id.* at 425. Regarding the individual interest, the Supreme Court has recognized civil commitment to be a significant deprivation of liberty. *Id.* Therefore, the potential injury to the individual interest is more significant than the potential injury to the government, making it improper to equally allocate the risk of error. *Id.* at 427. Unlike the preponderance standard, the clear and convincing standard at an immigration detention bond hearing “strikes a fair balance between the rights of the individual and the legitimate concerns of the state.” *Velasco Lopez*, 978 F.3d at 857 (citing *Addington*, 441 U.S. at 431).
85. The clear and convincing standard increases the burden of proof on the government and, as a result, decreases the risk of erroneous commitments. *Addington*, 441 U.S. at 427. This standard has been applied in several civil commitment contexts. *See, e.g., Addington*, 441 U.S. at 433 (applying clear and convincing standard to civil commitment of individuals with severe mental illness); *Foucha*, 504 U.S. at 86 (applying clear and convincing standard to civil commitment of acquittees with severe mental illness).
86. The clear and convincing standard is, therefore, applicable to a bond hearing for A.L.L. because he has a significant individual interest in being free from detention. To satisfy due process requirements, the government must justify A.L.L.’s detention by clear and convincing evidence.

VIII. CLAIM FOR RELIEF

Count 1

87. A.L.L. repeats and realleges each allegation of this petition here.

88. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.
89. Civil immigration detention violates due process if it is not reasonably related to its purpose. *See Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *Denmore*, 538 U.S. at 513. As mandatory detention becomes increasingly prolonged, a “sufficiently strong special justification” is required to outweigh the significant deprivation of liberty. *Zadvydas*, 533 U.S. at 690-91.
90. A.L.L.’s detention without a bond hearing, which has lasted for nearly 18 months and could last for many more months as the BIA has provided no timeline, is not reasonably related to the statutory purpose of ensuring his appearance for removal proceedings or preventing danger to the community.
91. ICE has not provided A.L.L. with adequate procedural protections to guard against a wrongful deprivation of his liberty.
92. Under these circumstances, A.L.L.’s detention violates his rights under the Due Process Clause.

Prayer for Relief

WHEREFORE, A.L.L. respectfully requests that the Court grant the following relief:

- a) Assume jurisdiction over this matter;
- b) Issue an order to show cause to be returned within ten days;
- c) Declare that A.L.L.’s continued and prolonged detention without a constitutionally adequate bond hearing violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- d) Order the immediate release of Petitioner;

- e) In the alternative, order an individualized bond hearing before an Immigration Judge where DHS bears the burden of establishing by clear and convincing evidence that A.L.L. presents a risk of danger or flight;
- f) Award Petitioner reasonable costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- g) Grant any other relief that this Court may deem just and proper.

Dated: April 21, 2025

/s/ Lia Sifuentes Davis

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Verification Pursuant to 28 U.S.C. § 2242

The undersigned counsel submit this verification on behalf of the Petitioner. Undersigned counsel have discussed with Petitioner the events described in this Petition for Writ of Habeas Corpus and Complaint and, on the basis of those discussions, verify that the statements in the Petition and Complaint are true and correct to the best of our knowledge.

Dated: April 21, 2025

² University of Texas School of Law students Angelina Ramirez and Anita Basavaraju participated in drafting this pleading.

³ Petitioner is represented by a clinic operated by University of Texas School of Law, but this document does not purport to present the school's institutional views, if any.

/s/ Lia Sifuentes Davis
Lia Sifuentes Davis
Attorney for A.L.L.

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore send true copies, with corresponding summonses, by USPS Certified Priority Mail to the following individuals:

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Dated: April 21, 2025

Respectfully submitted,

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