UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

Angel Lemus Linares, **Petitioner,** **v.** **CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center; VINCENT MARMOLEJO, Assistant Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; MIGUEL VERGARA, Field Office Director, San Antonio Field Office, U.S. Immigration and Customs Enforcement; TODD LYONS, Acting Director; U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, United States Attorney General; in their official capacities,** **Respondents**	§ § § § § § § § § § § § § § § § §	**No. 1:25-CV-00584-RP-DH**

REPLY TO FEDERAL RESPONDENTS' RESPONSE TO SHOW CAUSE ORDER

Petitioner A.L.L. has been in immigration detention for over 20 months without an individualized determination or independent review of the deprivation of his liberty. On April 21, 2025, A.L.L. filed his petition for writ of habeas corpus. Doc. 1. On April 30, 2025, the Court ordered Respondents to file a response or answer to the petition within 30 days of service. Doc. 6. Pursuant to the Court's order, Respondents timely filed a response to the petition. Doc. 12. A.L.L. hereby replies to Respondents, and files this reply in further support of his Petition. Petitioner submitted extensive evidence and legal argument in support of his Petition for Writ of Habeas Corpus and incorporates by reference all of Petitioner's pleadings, evidence, and argument into this reply.

ARGUMENT

Petitioner has established that his detention violates Due Process because it is prolonged, unreviewed, and unjustified.

Petitioner brings his due process challenge to his detention on an as-applied basis. *Mathews v. Eldridge* sets out the balancing test required to assess a Due Process claim. *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).

The Supreme Court has clearly established that immigration detainees can bring Fifth Amendment due process constitutional claims. *Demore v. Kim*, 538 U.S. 510, 513 (2003), *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Courts have further consistently concluded the *Mathews* test applies in the immigration detention context. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); *Miranda v. Garland*, 34 F.4th 338, 358-59 (4th Cir. 2022); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27-28 (1st Cir. 2021); and *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). In using the *Mathews* factors to evaluate an immigration detainees' due process claim the Second Circuit held:

> Accordingly, the Due Process Clause covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent. Noncitizens are also entitled to challenge through habeas corpus the legality of their ongoing detention. Habeas review is not limited to evaluating the lawfulness of detention when it is first imposed (something that is not challenged here) but is also available to challenge whether, at some point, an ongoing detention has become unlawful.

Velasco Lopez v. Decker, 978 F.3d 842, 856. Courts have used the *Mathews* factors to analyze due process concerns and Petitioner re-urges the Court to use those factors here.

Mathews Factors Weigh in Favor of Petitioner

Notably, Respondents do not fully contend with the first and second *Mathews* factors in their response, and in fact, do not address the second factor at all. Instead, Respondents devote their response to arguing that the third *Mathews* factor weighs in favor of the government. *Mathews* is meant to be a balancing test weighing all factors. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). But even if the entire decision could be based solely on one factor, Respondents' third *Mathews* factor arguments nevertheless fail.

Respondents misinterpret the facts to portray Petitioner as a danger and flight risk, when in reality, those facts directly pertain to the core issues of his immigration case. There is strong and clear evidence in the record that the robbery conviction in El Salvador was a false conviction based on made up facts and this manufactured criminal record makes him more likely to be a subject of torture if he returns to El Salvador. Doc. 1 ¶ 23. His reentry to the United States underscores his fear of persecution in El Salvador. *Id* at ¶ 24. Respondent is wrong to suggest that his false conviction in El Salvador and reentry to the United States constitutes a compelling basis for continued detention. Doc. 12 at 5, 8. As the Supreme Court has observed, a noncitizen's "removable status itself ... bears no relation to a detainee's dangerousness." *See Zadvydas*, 533 U.S. at 691-92. Courts have found that criminal convictions and unlawful entry into the United States with a subsequent removal order "may not be sufficient to substantiate that Petitioner poses a risk of flight or danger to the community." *Cabrera Galdamez v. Mayorkas*, No. 22 CIV. 9847 (LGS), 2023 WL 1777310, at *6 (S.D.N.Y. Feb. 6, 2023). Even if Petitioner's criminal record was based on real events, that alone would not necessarily justify his continued detention. But this Court need not determine Petitioner's flight risk or danger as "assessing those considerations is the very purpose of a bond hearing." *Fajardo v. Decker*, No. 22 CIV. 3014 (PAE), 2022 WL

17414471, at *12 (S.D.N.Y. Dec. 5, 2022) (ordering a bond hearing even when detainee had multiple DUI convictions). Respondents cannot assert that the government's interests outweigh Petitioners given that they have presented no substantive assessment of his danger or flight risk.

In granting petitioner's request for a bond hearing and evaluating the third factor in favor of the petitioner, the court in *L.G. v. Choate* noted, "[t]he government does not explain what the fiscal or administrative burden would be if it was required to carry the burden at a bond hearing. *L.G. v. Choate,* 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024). So too here Respondents make no arguments regarding the administrative or financial burdens that might be placed on the government by affording Petitioner due process. For these reasons, the third *Mathews* factor weighs in favor of Petitioner.

Each case Respondents cite to support that Petitioner's 20-month detention is reasonable is distinguishable from the circumstances presented here. The petitioner in *Rodriguez Diaz* had already had a bond hearing and was requesting a *second* one. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1194. (emphasis added). Further, the petitioner in that case had developed a lengthy criminal record in the United States, including for burglary and drug possession. *Id.* In *Demore*, the Supreme Court upheld the constitutionality of the detention based on its brief duration and the fact that the detainee had already been convicted beyond a reasonable doubt of certain serious offenses. *See Demore*, 538 U.S., 123 S.Ct. 1708. None of those circumstances are present here so the upholding of detention from those cases is inapplicable to Petitioner's detention. Petitioner has never had a bond hearing and has not been convicted beyond a reasonable doubt of any serious crimes.

The longer the duration of incarceration, the greater the deprivation. When the Supreme Court has upheld detention while removal proceedings are ongoing, it has stressed that such

detention is typically brief. In *Demore*, the Court contemplated a much shorter detention, nothing that detention under § 1226(c) usually lasts about a month and a half in the majority of cases, and averages around five months in the cases where the noncitizen decides to appeal. *See Demore*, 538 U.S. at 529, 123 S.Ct. 1708. This is significantly less than the 20 months Petitioner has been detained.

Indefinite detention is not required for a cognizable due process claim

Petitioner has been held for over 20 months without an individualized determination or independent review of the deprivation of his liberty. Petitioner does not argue that his detention is indefinite. Although the detention of individuals subject to removal may be finite, its limited duration does not preclude the possibility of a due process claim. "[R]emoval proceedings have an end point and that the liberty interest of a noncitizen detained under section 1226(a) may therefore be slightly less weighty than that of individuals facing indefinite and prolonged detention. But *only slightly less*." *Hernandez-Lara v. Lyons*, 10 F.4th 19, 31 (1st Cir. 2021) (emphasis added). The fact that Petitioner's detention is not indefinite does not undermine due process concerns.

"[A]s 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." *Zadvydas*, 533 U.S. 678, 690. Detained individuals in Petitioner's circumstances must be afforded due process. *Velasco Lopez*, 978 F.3d at 854 ("individuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by the ordinary bail hearing."). Courts have recognized that detentions like the Petitioner's, which extend beyond typical length in withholding-only proceedings, may pose a risk of due process violations. "[If] this withholding-only proceeding takes an unusually long period of time, petitioner's continued detention may present a due process problem." *Crespin v. Evans*, 256 F. Supp. 3d 641, 653 (E.D. Va. 2017)

(denying withholding-only Petitioner's writ for habeas corpus after ten months in detention, but inviting him to file a subsequent writ for habeas if the proceedings take "an unusually long period time"). Here, Petitioner has been held for 20 months without procedural due process, extending well beyond the length of typical withholding-only proceedings.

Petitioner does not argue that the length of detention is the sole factor weighing in his favor. Petitioner fully lays out the *Mathews* balancing test in his Petition. *See* generally Doc. 1.

Post Order Custody Reviews Are Insufficient Guardrails

Immigration and Customs Enforcement ("ICE") has considered Petitioner's custody status three times through Post Order Custody Reviews (POCR). ICE offered shifting, cursory reasons for denying Petitioner's release from detention, without proving up or explaining its decision. To the extent Respondents argue that ICE fulfilled its regulatory duty to conduct a POCR and those reviews are sufficient to avoid due process concerns, the argument is unpersuasive. A POCR "presupposes what the *Mathews* test is intended to determine"— Cabrera, 2023 WL 1777310, at *7. The *Mathews* test cannot be satisfied by ICE's own internals and unreviewable procedures. *See Juarez v. Choate*, No. 1:24-CV-00419-CNS, 2024 WL 1012912, at *5 (D. Colo. Mar. 8, 2024). Further, Petitioner's last POCR was conducted in July 2024, almost one year ago. Doc. 1 ¶ 32. ICE has not reviewed Petitioner's detention in almost one year, during which Petitioner's liberty deprivation has only grown.

Petitioner's Efforts to Mitigate Delay Amid Deteriorating Conditions

Petitioner has made every effort to move his immigration proceedings forward, including through request for issuance of a decision, but has not been able to do so. That the Respondents purport the delay is not their fault is not a factor this Court need consider. Petitioner's immigration case has been fully briefed since November 2024 and Petitioner filed a motion for issuance of a

decision to the Board of Immigration Appeals on April 7, 2025. This attempt to expedite his case has not been successful. While Petitioner has exercised his right to appeal, he is not to blame for the delays in a decision that have arisen out of the appeal. Department of Homeland Security ("DHS") filed its own motion to issue a decision to the Immigration Court on July 5, 2024 at 1:21pm and was provided a decision later that same afternoon. The delays in this case have exacerbated Petitioner's serious mental health and physical conditions. Doc 1. ¶ 2. The detention center has been unable to protect Petitioner from threats and attacks from other detainees and has resorted to isolating Petitioner into solitary confinement as protection despite that he is the victim of these attacks. The conditions of confinement, including being placed in solitary confinement, have put him at an increasing risk of serious harm. Doc 1. ¶ 36. While detained, Petitioner 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. Doc 1. ¶ 59.

Petitioner reaffirms his request for his immediate release or in the alternative, an order for an individualized hearing before an Immigration Judge where DHS bears the burden of establishing by clear and convincing evidence that Petitioner presents a risk of danger or flight.[1]

For the foregoing reasons, Petitioner requets that the Court grant the relief sought by the Petition in all respects.

Dated: June 13, 2025

/s/ Lia Sifuentes Davis

Lia Sifuentes Davis
University of Texas School of Law

[1] Several courts have been confronted with immigration judges refusing to comply with federal court orders to conduct a bond hearing. *See N.Z.M. v. Wolf*, No. 5:20-CV-24, 2020 WL 2813557, at *3 (S.D. Tex. May 28, 2020). For this reason, Petitioner respectfully requests release. If this Court instead orders a bond hearing with the burden on the government, Petitioner respectfully requests that the Court order the Respondents to submit a status report to the Court regarding the bond hearing.

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[2] 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.

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I served counsel for Respondents by filing this Reply Petition for Writ of Habeas using the CM/ECF system.

Dated: June 13, 2025

Respectfully submitted,

/s/ Lia Sifuentes Davis

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