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The Laken Riley Act's Assault on Immigrant Survivors

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I. Introduction

390. This article examines the Laken Riley Act and its potential application to applicants for humanitarian immigration relief, using real-life examples. By addressing the United States obligations to protect persons who flee persecution under the UN Refugee Convention and the Protocol, as well as the Congressional intent behind enacting the Refugee Act and the Violence Against Women Act, which created Special Immigrant Juvenile Status, this article challenges its glaring lack of humanity in failing to exempt immigrant survivors and children.

II. International Law Prohibits Detention of Asylum Seekers

391. International law prohibits restriction of one's movement on the basis of race, color, sex, language, religion, political opinion, social origin, property, and status, such as asylum-seeker or refugee status.[2] The 1951 UN Refugee Convention provides that

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2 *Convention and Protocol Relating to the Status of Refugees*, UNHCR (2010); *Universal Declaration of Human Rights*, UDHR (1948); *International Covenant on Civil and Political Rights*, OHCHR (1966); *International Covenant on Economic, Social and Cultural Rights,* OHCHR (1966); *Convention on the Rights of the Child* OHCHR (1989); *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,* OHCHR (1990); *Convention on the Rights of Persons*

asylum-seekers shall not be penalised for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their irregular entry or stay without authorization.[3] Although not a party to the 1951 UN Refugee Convention, the United States is a party to the 1967 Protocol Relating to the Status of Refugees, which removed geographical and time-based restrictions from the Convention.[4] By ratifying the Protocol in 1968, the U.S. agreed to most of the obligations outlined in the Convention and incorporated the definition of a refugee into its own laws through the Refugee Act of 1980.[5]

392. Seeking protection from persecution, asylum-seekers are often forced to arrive at, or enter, a territory without prior authorization. Under U.S. law, individuals may lawfully seek asylum whether they apply at the port of entry, after arriving without valid immigration documents, or after arriving without admission, as the law provides an exception to a normal admission requirement for asylum seekers by taking into consideration that asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be able to comply with the legal formalities for entry.[6] For example, they maybe unable to obtain the necessary documentation in advance of their flight due to their fear of persecution and/or the urgency of their departure.

393. The United Nations High Commissioner for Refugees (UNHCR)'s Detention Guidelines recognize that due to the experience of seeking asylum, and the often traumatic events precipitating flight, asylum-seekers may present with psychological illness, trauma, depression, anxiety, aggression, and other physical, psychological and emotional consequences. These factors need to be weighed in the assessment of the necessity to detain. The Guidelines also state that victims of torture and other serious physical, psychological or sexual violence also require special attention and should generally not be detained.[7]

394. The detention of asylum-seekers and refugees, including children, has become commonplace in a number of countries and has serious lasting effects on individuals and families. Detention has become increasingly a routine, rather than exceptional, response to the irregular entry or stay of asylum-seekers and migrants in a number of countries.[8]

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with Disabilities, OHCHR (2006).

3 United Nations Conference of Plenipotentiaries, *Convention Relating to the Status of Refugees*, OHCHR (1951).

4 *The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees*, UNHCR (1967).

5 Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

6 8 U.S.C. § 1158 (2025).

7 *Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention*, UNHCR (2012).

8 *Beyond Detention: A Global Strategy to Support Governments to End the Detention of Asylum-Seekers and Refugees*, UNHCR (2019).

395. Detention has many negative lasting effects on individuals, especially asylum seekers and children. It undermines their human dignity and can cause unnecessary suffering, resulting in serious consequences for their health and wellbeing, particularly when they are detained for long periods. Detention also increases anxiety, fear and frustrations, and can exacerbate past traumatic experiences. It frequently takes place in locations and under conditions that do not meet human rights standards. The detention of children is particularly problematic due to the devastating effect it may have on their physical, emotional, and psychological development, even if they are not separated from their families.[9]

III. History of Immigrant Detention under U.S. Immigration Law

396. Passed in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) expanded the groups of people subject to detention. Specifically, the IIRIRA mandated the mandatory detention of asylum seekers pending a final determination of credible fear or persecution in their native country.[10] Additionally, the IIRIRA allowed the Attorney General to release detained non-citizens on a bond of no less than $1,500.00 or conditional parole. However, the Attorney General could, at any time, revoke a bond or conditional parole. Further, the IIRIRA required the detention of inadmissible non-citizens who had committed certain enumerated crimes.[11] Lastly, the IIRIRA required the removal of non-citizens ordered for removal within 90 days. During the 90 day removal period, the Immigration and Nationality Act (Act) required that the non-citizen be detained with no possibility for release. The removal period could be extended beyond the 90 day period and the non-citizen could remain in detention if the non-citizen did not, in good faith, make the necessary applications for travel or obtain necessary documents, or if the non-citizen conspired to prevent their removal.[12]

397. Also passed in 1996, the Antiterrorism and Effective Death Penalty Act (AEDPA) aimed to enhance national security against foreign terrorists by allowing the U.S. government to deny visas to certain individuals linked to terrorist groups and expedite the removal of non-citizens linked to said groups.[13] Regarding non-citizen detention, the

9 *UNHCR Global Strategy Beyond Detention: Baseline Report,* UNHCR (2019).

10 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 302, 110 Stat. 3009-546, 3009–581 (1996) (codified at 8 U.S.C. § 1225(b)(1)(B)(iii)(iv)).

11 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 303(a), 110 Stat. 3009-546, 3009–585 (1996) (codified at 8 U.S.C. § 1226).

12 Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 305(a)(3), 110 Stat. 3009-546, 3009–598 (1996) (codified at 8 U.S.C. § 1231).

13 Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214-319 (1996).

AEDPA reformed habeas corpus procedures by mandating that non-citizens cannot appeal final orders to test the validity of their detention pending their removal unless a circuit judge issued a certificate of appealability.[14] Further, the Act required that non-citizen terrorists be removed to any country the non-citizen designated or an alternative country if they did not designate one, and allowed for the United States to continue the detention of the non-citizen if no country was willing to receive them.[15]

398. In *Zadvydas v. Davis*, the Supreme Court addressed the indefinite detention of non-citizens ordered to be removed. The Court held that the post-removal detention statute, 8 U.S.C. § 1231, did not permit indefinite detention and non-citizens could only be detained for a reasonably necessary period to bring about their removal. Further, the Court set a six-month threshold before non-citizens could question their detention and explained that the "reasonably necessary" period would be subject to review by the federal courts.[16]

399. Then, in *Demore v. Kim*, the Supreme Court upheld Congress's ability to detain deportable criminal non-citizens for a reasonably necessary period pending their removal without individualized bond hearings.[17]

400. In 2009, then President Barack Obama temporarily ended the practice of family detention by closing the T. Don Hutto jail in Texas and cutting the number of non-citizens in family detention to less than 100. However, a surge of Central American immigrants in 2014 led President Obama's administration to reinstitute and expand family detention to deter more immigrants from coming to the U.S. U.S. Immigration and Customs Enforcement estimated that Enforcement and Removal Operations would grow up to 2,760 family units in 2016. [18]

401. In recent years, states have passed, or attempted to pass, laws restricting for-profit detention facilities. In 2017, California became the first state to pass a law restricting the growth of for-profit detention facilities located within California.[19] However, the Ninth Circuit Court of Appeals blocked the law, finding that it violated the Supremacy Clause of the United States.[20] In 2021, Illinois passed the "Way Forward Act," which

14 Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 102(b), 110 Stat. 1214-319, 1217 (1996) (codified at 8 U.S.C. § 1537).

15 Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 507, 110 Stat. 1214-319, 1266 (1996) (codified at 28 U.S.C. § 2253).

16 *Zadvydas v. Davis*, 533 U.S. 678, 689, 701 (2001).

17 *Demore v. Kim*, 538 U.S. 510, 531 (2003).

18 Catalina Respetro, *Reports: Detention Doesn't Deter Migrants and Refugees from Coming to United States,* American Immigration Council(2015).

19 Cal. Civ. Code § 1670.9 (2017).

20 *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 763 (9th Cir. 2022); see also *CoreCivic, Inc. v. Governor of New Jersey,* 145 F.4th 315 (3d Cir. 2025).

prohibited state and local enforcement from participating in civil immigration law.[21]The Seventh Circuit Court of Appeals upheld the Illinois law, finding that the statute did not impose any direct regulations upon the U.S. government in violation of the principles of intergovernmental immunity, nor did the statute discriminate against the government in violation of intergovernmental immunity.[22]

402. During the current presidential term, President Trump has increased immigration detention efforts. In 2025, President Trump signed into law H.R. 1, also known as the "One Big Beautiful Bill", which provides $45 billion to immigration detention capacity.[23] Most recently this year, in *Matter of Q Li*, the Board of Immigration Appeals held that noncitizens arrested without a warrant upon arrival in the U.S. at or between ports of entry are considered "applicants for admission" and are subject to mandatory detention under INA § 235(b), rendering them ineligible for bond hearings under INA § 236(a), and if such an individual's parole is later revoked, they return to mandatory detention under § 235(b) and remain ineligible for bond.[24] Several months later, in *Matter of Yahuare Hurtado*, the Board held that Immigration Judges lack the authority to hear or grant bond requests of non-citizens who entered the country without admission or parole.[25]

IV. Statutes Governing Immigration Detention

403. Two immigration statutes mainly govern the detention of noncitizens pending removal proceedings: INA §§ 235 and 236 (codified at 8 USC §§ 1225 and 1226). INA § 235 provides inspection of "[a]ll aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States" 8 U.S.C. § 1225(a)(3), where an "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States.[26] Under INA § 235, detention is mandatory in the case of an alien "who is an 'applicant for admission,' if the examining immigration officer determines that an alien 'seeking admission' is 'not clearly and beyond a doubt entitled to be admitted,' the alien shall be detained for a proceeding under section 1229a of this title."[27] In *Jennings v. Rodriguez*, the Supreme Court has construed INA § 235 as governing a "process of decision [that]

21 *McHenry Cnty. v. Kwame Raoul*, 44 F.4th 581, 586 (7th Cir. 2022).

22 *McHenry Cnty. v. Kwame Raoul*, 44 F.4th 581, 593–594 (7th Cir. 2022).

23 One Big Beautiful Bill Act of 2025, Pub. L. No. 119-21, § 90003, 139 Stat. 72-401 (2025).

24 *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

25 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

26 INA §§ 235–236, § 235(a)(1), 8 U.S.C. §§ 1225–1226.

27 INA §§ 235–236, § 235(a)(1), 8 U.S.C. §§ 1225–1226.

generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible."[28]

404. On the other hand, "[o]n a warrant issued by the Attorney General," authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings, with certain conditions for release or conditional parole.[29] "[T]he Due Process clause of the Fifth Amendment entitles a noncitizen detained pursuant to INA § 236(a) to a bond hearing at which the government bears the burden of proving by clear and convincing evidence that the noncitizen is dangerous or a flight risk." [30] INA § 236(c) provides, however, that detention is mandatory for certain noncitizens.[31]

405. Prior to the LRA enactment, INA § 236(c) provided that DHS "shall take into custody" nonresidents who "hav[e] committed" certain enumerated offenses such as offenses involving terrorist activities or certain offenses with a one year imprisonment term.[32] In such cases, the Supreme Court has found that detention without a bond hearing is justified "for the brief period necessary for [the noncitizen's] removal proceedings." [33]

V. Laken Riley Act

406. On January 29, 2025, President Trump signed the Laken Riley Act ("LRA") into law, which expanded the number of people who may be subject to mandatory detention under INA § 236(c).[34] This new mandatory detention status under INA § 236(c)(1)(E) applies to noncitizens who (1) are charged as inadmissible under INA § 212(a)(6)(A) (present without being admitted or paroled), INA § 212(a)(6)(C) (fraud or misrepresentation), or INA § 212(a)(7) (lack of valid immigration documents); and (2) are charged with, arrested for, convicted of, or admit to committing burglary, theft, larceny, shoplifting, or assault on a law enforcement officer, or any crime resulting in death or serious bodily injury.[35]

407. The amended INA § 236(c) further provides that when the noncitizen is released, without regard to whether the noncitizen is released on parole, supervised release, or

28 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

29 INA §§ 235–236, § 235(a)(1), 8 U.S.C. §§ 1225–1226.

30 *Hernandez-Lara v. Lyons*, 10 F.4d 19, 27, 41 (1st Cir. 2021); 8 C.F.R. § 1003.19(a)(2006); 8 C.F.R. § 1236.1(d) (2000).

31 INA § 236(c) (2025).

32 INA § 236(c)(1)(A)-(D) (codified at 8 U.S.C. § 1226(c)(1)).

33 *Demore v. Kim*, 538 U.S. 510, 513 (2003).

34 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

35 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

probation, and without regard to whether the noncitizen may be arrested or imprisoned against for the same offense. The LRA also adds a new section, INA § 236(c)(3), which requires that (1) DHS "shall" issue a detainer on a person described under the new INA § 236(c)(1)(E) and (2), if the person is "not otherwise detained" in federal, state, or local custody, DHS "shall effectively and expeditiously" take custody of the person.[36]

VI. The LRA's Application to Loyola Law Clinic's Clients

A. Marisol and Brian

408. Loyola University New Orleans Law Clinic represents Marisol and her children in obtaining immigration relief: for Marisol, asylum, withholding of removal, and relief under the Convention Against Torture; and for her children, Special Immigrant Juvenile Status.

409. Marisol and her three children walked thousands of miles from their Central American home country, escaping years of physical violence and psychological torture by her domestic partner and the father of the children. Her middle child has Down Syndrome, and is nonverbal. At the border, they surrendered themselves to U.S. Customs and Border Protection (CBP) officials. Marisol was then separated from her children and sent to an adult Immigration and Customs Enforcement (ICE) detention center. Her children were designated as "unaccompanied minors," transferred to the custody of the U.S. Department of Health and Human Services' (HHS) Office of Refugee Resettlement, and sent to a shelter for children. They were reunited after several months. They were individually served with a Notice to Appear, a charging document, which charged them with entering the U.S. without inspection or parole under INA § 212(a)(1)(6)(A).[37] Marisol's asylum hearing is approximately a year away; her children have received Special Immigrant Juvenile Status and are waiting for their priority date to become current, at which point they can apply for lawful permanent residency.

410. Last year, Marisol was arrested for shoplifting while shopping with her friend at a local store's self-checkout counter for failure to scan the merchandise. She awaits her state criminal court hearing in a few weeks. In the same year, her oldest child and middle schooler, Brian, was also arrested for stealing a pencil. He was taken to a juvenile detention center and later placed in a diversion program. He is expected to complete the program in six months. Both Marisol and Brian are afraid that their family will be separated and deported before they can obtain immigration relief.

36 INA § 236(c)(3) (2025).

37 INA § 212(a)(1) (2025).

B. Does the LRA's Mandatory Detention Statute Apply to Marisol and Brian?

411. First, it is should be noted that the LRA's mandatory detention statute does not cover noncitizens who are subject to:

- INA § 236(a), general detention statute which allows the immigration judge to redetermine the DHS decision regarding custody;
- Noncitizens who are subject to INA § 235(b) "arriving aliens" and those who passed credible fear screening); and
- Noncitizens with a final removal order under INA § 241(a), and (4) INA § 237, noncitizens who have been admitted and charged with grounds of deportability.[38]

412. However, the LRA unambiguously applies to noncitizens who entered the United States without inspection, between a port of entry, who are subject to INA § 212(6)(A), present in the US without being admitted or paroled, INA § 212(a)(6)(C), seeking to procure admission by fraud or willful misrepresentation, or INA § 212(a)(7), not in possession of a valid unexpired immigration document, who are placed in removal proceedings under INA § 240.[39] Specifically, the LRA amended Section 236(c)(1)(E) to specifically target noncitizens who have not been admitted - "inadmissible" - to the United States *and* those against whom DHS decides to commence removal proceedings.[40]

413. The LRA also added a new section, INA § 236(c)(3), which concerns immigration detainers and custody. It requires that DHS "shall" issue a detainer for a person described under this new INA § 236(c)(1)(E) and that, if the person "is not otherwise detained" in federal, state, or local custody, DHS "shall effectively and expeditiously" take custody of the person.[41] The statute's language suggests that DHS has broad discretion regarding whether to initiate removal proceedings.

414. Upon arriving in the United States in 2016, Marisol and her children were detained separately but were released several months later. They were individually issued a Notice to Appear which classified them as noncitizens who had not been admitted or paroled and charged them with inadmissibility under INA § 212(a)(6)(A)(i) for being in the United States without being admitted or paroled.[42] At their first immigration hearing, they admitted the factual allegations and conceded the charge of removability.

38 INA § 235(b) (2025); INA § 236(a) (2025); INA § 237 (2008); INA § 241(a) (2025).

39 INA § 240 (2006);INA § 212(a) (2025).

40 Khaled Alrabe at al., *Practice Advisory: The Laken Riley Act's Mandatory Detention Provisions*, National Immigration Project at 6 (February 2025).

41 INA § 236(c) (2025).

42 INA § 212(a)(6) (2021).

415. As stated, under INA § 236(c)(1)(E), a noncitizen who (1) is charged with inadmissibility under INA § 212(a)(6)(A) and (2) is arrested or charged with shoplifting, is subject to mandatory detention. INA § 236(c)(3) requires that DHS "shall issue" a detainer for a person described under this new INA § 236(c)(1)(E) and that, if the person "is not otherwise detained" in federal, state, or local custody, DHS "shall effectively and expeditiously" take custody of the person.[43] The LRA thus seems to apply to Marisol and her children.

416. There is an argument that Brian, as Special Immigrant Juvenile Status (SIJS), should not be mandatorily detained. The SIJS is available for immigrant children who received a finding by the state juvenile court that (1) they were abused, neglected or abandoned by one or both natural parents in their home country; (2) reunification with that parent or parents is not viable due to such abuse, neglect or abandonment; and (3) it is not in their best interest to be returned to their country of nationality due to such abuse, neglect or abandonment.[44] The SIJS is a nonimmigrant status Congress created through the Immigration Act of 1990 to protect immigrant children who were declared dependent on a court or placed in state custody due to abuse, neglect, or abandonment.[45] Congress added this nonimmigrant status in response to growing concerns over foreign children in the United States who were homeless, orphans, or victims of abusive family situations, and to provide humanitarian protection for immigrant children who were abused, neglected, or abandoned by their parents in their home country.[46] In 2008, Congress passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) which significantly expanded the legal protection to immigrant children by expanding the group of aliens eligible for SIJS. The TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. Moreover, the TVPRA 2008 provided age-out protection to SIJ petitioners, specifically if an SIJS petitioner was a "child" - under the age of 21 and unmarried - on the date on which an SIJS petition was properly filed, U.S. Citizenship and Immigration Services (USCIS) cannot deny SIJS to anyone, regardless of the petitioner's age at the time of adjudication.[47]

417. The grant of SIJS entitles these children to a status adjustment to lawful permanent residents.[48]. The Act also grants generous exemptions from inadmissibility grounds, including unauthorized employment, unlawful entry, and public charge, for SIJS. Please

43 INA § 236(c)(1)(E) (2025).

44 INA § 101(a)(27)(J) (2025).

45 Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978(1990).

46 William A. Kandel, *Special Immigrant Juveniles: In Brief*, CRS Report R43703 (August 2014).

47 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

48 INA § 245(h)(1) (2022)

note exceptions for paragraphs (4), (5)(A), (6)(A),(6)(C), (6)(D), (7)(A) and (9)(B).[49] The Act also allows waivers for other inadmissibility grounds under INA § 212(a), other than (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E), in the case of individual noncitizens for humanitarian purposes, family unity, or when it is otherwise in the public interest.[50] In light of the Congressional intent and legislative history, there is an argument that the LRA's mandatory detention statute should not be applied to those who are in SIJS, such as Brian.

C. Are Marisol and Brian Subject to the LRA's Mandatory Detention Provisions under INA § 236(E)(ii)?

418. The LRA provides that "[f]or purposes of paragraph (1)(E), the terms "burglary", "theft", "larceny", "shoplifting", "assault of a law enforcement officer", and "serious bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.[51] Therefore, whether a noncitizen falls under the LRA depends on how each state defines each enumerated crime.

419. INA § 212(a)(2)(A)(i) provides that any noncitizen convicted of, or who admits having committed, or who admits committing acts which constitute the essential element of (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime is inadmissible.[52] These immigration consequences attach if Marisol and Brian are charged with a crime involving moral turpitude. If a state in which their criminal charges arose defines the criminal conduct as not involving moral turpitude, the LRA does not apply to them.

420. Marisol was arrested for shoplifting with her friend at a local store's self-checkout counter for not scanning merchandise. She awaits her state court hearing in a few weeks. Her oldest child and middle schooler, Brian, was also arrested for stealing a pencil last year. He was taken to a juvenile detention center and placed in a diversion program. He is expected to complete the program in six months. Both Marisol and Brian are afraid that their family will be separated and deported before they can obtain immigration relief.

421. Shoplifting is a form of theft. Theft offenses were found to involve moral turpitude only if the criminal statute describes a permanent taking or intent to deprive perma-

49 INA § 245(h)(2)(A) (2022).

50 INA § 245(h)(2)(B) (2022).

51 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

52 INA § 212(a)(2)(A)(i) (2025).

nently.[53] The federal circuit courts of appeals and the BIA have held that theft crimes involve moral turpitude where a permanent taking is intended.[54]

422. Louisiana defines a crime of theft as follows:

> Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential.[55]

423. Since Louisiana defines theft as involving the taking of anything of value that belongs to another with the intent to permanently deprive the owner, a person who is convicted of theft in Louisiana is inadmissible under immigration law. But what if Marisol and Brian live in Florida?

424. Florida defines a crime of theft as follows:

> (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
>
> (a) Deprive the other person of a right to the property or a benefit from the property.
>
> (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[56]

425. As shown above, a person can be convicted of theft in Florida even if his or her intention to obtain or to use, the property of another is temporary. Thus, if Marisol and Brian were arrested for theft in Florida, they would not be covered by the LRA mandatory detention provision because the term "theft" has "the meanings given in the jurisdiction in which the acts occurred."[57] This illustrates the inconsistent application of law created by the LRA, as each state defines crimes differently.

53 *Matter of De La Nues*, 18 I&N Dec. 140, 145 (BIA 1981); *Matter of Westman*, 17 I&N Dec. 50, 51 (BIA 1979).

54 *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018); *Alvarez-Reynaga v. Holder*, 596 F.3d 534, 537 (9th Cir. 2010); *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1161 (9th Cir. 2009); *Matter of V–Z–S–*, 22 I&N Dec. 1338 n.12 (BIA 2000).

55 La. Rev. Stat. § 14:67(A) (2024).

56 Fla. Stat. § 812.014 (2025).

57 INA § 236(c)(2) (2025).

D. What if Marisol and Brian are arrested by an ICE agent?

426. Marisol's asylum case is pending before the immigration court, and she is scheduled to appear at an asylum hearing in a year. She is expected to appear at a state court in a few weeks to face her shoplifting charge. Brian, who is in Special Immigrant Juvenile Status, is going through a diversion program at a juvenile court due to his arrest for stealing a pencil.

427. DHS officers often arrest noncitizens for minor infractions and make collateral detention of those whom they were not targeting. Moreover, the LRA now mandates their detention by providing that DHS "shall issue a detainer for a [noncitizen] described in paragraph (1)(E)" and shall "effectively and expeditiously" take them into custody if they are "not otherwise detained by Federal, State, or local officials."[58] The plain language of this provision presumes that the LRA mandates DHS's duty to take custody of only those noncitizens while in non-DHS custody.

428. In addition to the LRA, the Trump administration has recently instituted a policy whereby immigrants who appear at the USCIS, ICE, and Immigration Court are detained regardless of their manner of entry or case status. The Board of Immigration Appeals also issued decisions justifying mandatory detention of immigrants.[59] The government's policy and the BIA decisions make substantial portions of the Laken Riley Act meaningless; however, they are outside the scope of this article.

429. Marisol was arrested by the police but released a day later, and she has not been in non-DHS custody since the enactment of the LRA. But if she were still in state custody, the LRA provision would indeed be enforced.

430. Due to her detention, Marisol's case will be transferred to an immigration court near the detention center and placed on an expedited docket for detained individuals. In most states, immigration detention centers are often located in remote areas, where immigration attorneys are scarce. Due to the distance and restrictive detention center policy, Marisol's access to her attorney, corroborating evidence, and witnesses will be severely limited. As for Brian, because Louisiana does not have a detention center for minors, if detained, he is likely to be sent to an out-of-state youth facility, separated from his mother. Then, what happens to Marisol's other children?

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58 INA § 236(c)(1)(E) (2025).

59 *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

VII. Post-LRA Habeas Cases

431. In *Doe v. Moniz*, the U.S. District Court for the District of Massachusetts examined the application of LRA to a petitioner who filed a writ of habeas corpus.[60]

432. Petitioner, a citizen of Guatemala, entered the United States without admission or parole and presented himself to immigration officers as an unaccompanied minor. His removal proceedings began following his arrival; however, an Immigration Judge terminated removal proceedings without prejudice.[61] Following the termination of his removal proceedings, the petitioner was granted Special Immigrant Juvenile Status ("SIJS") by USCIS.[62] A special immigrant juvenile is deemed to have been paroled into the United States solely for purposes of adjustment of status under INA § 245(a), notwithstanding the manner of entry.[63] The Act also grants generous exemptions to those who are in SIJS from inadmissibility grounds, including unauthorized employment, unlawful entry, and public charge, for SIJS. Please note exceptions for paragraphs (4), (5)(A), (6)(A),(6)(C), (6)(D), (7)(A) and (9)(B)).[64] The Act also allows waivers for other inadmissibility grounds under INA § 212(a), other than (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E), in the case of individual noncitizens for humanitarian purposes, family unity, or when it is otherwise in the public interest. [65]

433. A year after he was granted SIJS, the petitioner was arrested for shoplifting but criminal charges were never filed against him. Following his arrest, the petitioner was detained by ICE without bond under the LRA. The immigration judge determined that the petitioner was ineligible for a custody redetermination hearing under the LRA. The petitioner then filed a petition for a writ of habeas corpus with the U.S. District Court for the District of Massachusetts. The court addressed two issues: (1) whether the LRA applies to individuals who have been granted SIJS status, and (2) whether mandatory detention under the LRA violates Due Process.[66]

60 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

61 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

62 INA § 101(a)(27)(J) (2025).

63 INA § 245(h)(1) (2022).

64 INA § 245(h)(2)(A) (2022).

65 INA § 245(h)(2)(B) (2022).

66 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

A. Doe's Statutory Challenge to Mandatory Detention Under the LRA

434. The petitioner argued that 8 U.S.C. § 1225(h)(2) (INA § 245(h)(2)), which makes SIJS recipients exempt from paragraphs (6)(A) and (7) of 8 U.S.C. § 1182(a) (INA § 212(a)) also makes them exempt from the first LRA requirement. The court relied on *Cortez-Amador v. Att'y Gen*, in which the Third Circuit addressed the scope of INA § 245(h)(2)) and found that the plain language of the statute demonstrated that petitioners are removable despite their SIJS status. [67]

435. In *Cortez-Amadorv. Att'y Gen.*, the 16-year-old petitioner fled Guatemala in 2016 after gang members murdered his father. The petitioner entered the United States without admission or parole, and Immigration Authorities placed him in his sister's custody. Before turning 18, the petitioner applied for SIJS, which was later granted in 2020. However, a year before his SIJS was granted, the petitioner was charged with sexual assault on a child under 13 and child endangerment, and pled guilty to non-sexual child endangerment and admitted to giving the alleged victim a cigarette and was sentenced to 364 days of incarceration and 3 years of probation. In 2021, DHS issued the petitioner a Notice to Appear for removal under INA § 212(a)(6)(A)(i); 8 U.S.C. § 1182(a)(6)(A)(i), as being inadmissible for being in the US without admission or parole.[68]

436. Cortez-Amador made three arguments against removal: (1) his SIJS exempted him from removal; (2) he should be granted adjustment of status; and (3) he should be granted asylum, withholding without removal, or UN Convention Against Torture (CAT) protection because the same gang that killed his father would kill him if he were returned to Guatemala. The Immigration Judge (IJ) held that: (1) SIJS is not an exemption for removal as an inadmissible non-citizen; (2) exercised his discretion and denied adjustment of status; (3) denied asylum and withholding without removal; and (4) denied CAT protection. The BIA affirmed the IJ's ruling, reasoning that: (1) pursuant to the plain language of the special immigrant parole statute, 8 C.F.R. § 1245.1(a), SIJS parole applies only to adjustment of status; (2) the IJ properly exercised its discretion denying Petitioner's application for adjustment of status because his negative equities (his criminal history) outweighed his positive equities (his high school graduation and church involvement); (3) the IJ properly denied asylum and withholding of removal applications because the level of harm did not rise to the level past persecution and he had no objectively reasonable fear of harm if he were returned to Guatemala; and (4) the IJ properly denied CAT protection because he was no more likely to be tortured if

67 *Cortez-Amador v. Att'y Gen.*, 6 F.4th 429 (3d Cir. 2023); *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

68 *Cortez-Amador v. Att'y Gen.*, 6 F.4th 429, 431 (3d Cir. 2023).

removed and he had not adequately demonstrated government acquiescence. [69]

437. In his petition for review, the Third Circuit Court of Appeals considered three issues: (1) whether the SIJS statute exempted an SIJS recipient from removal under 8 U.S.C. § 1182(a)(6)(A)(1), as an inadmissible non-citizen in the US without admission or parole; (2) whether the BIA erred in denying the petitioner's application for adjustment of status; and (3) whether the BIA erred in denying the petitioner's asylum and withholding of removal applications. The court held that SIJS statute does not exempt a SIJS recipient from removal under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), reasoning that the plain language of the SIJS parole statute, INA § 245(h), 8 U.S.C. § 1255(h), applied the parole provision to adjustment of status, but not to removal because the statute specified that SIJS recipients are deemed paroled only "for the purpose" of adjustment of status.Further, the court reasoned that it reached its decision through the normal canons of statutory construction, reading the statute to render no other part of the special immigrant parole statute superfluous. Lastly, the court stated that if Congress had intended to exempt SIJS recipients from removal as inadmissible non-citizens, then it would have specified so within the special immigrant statute.[70]

438. As for Cortez-Amador's claim that the BIA had failed to consider certain arguments and evidence supporting the granting of his adjustment of status, the court held that it did not have jurisdiction to address them because they were a discretionary decision by the agency, not a question of law. The court similarly denied Cortez-Amador asylum because he had failed to meet the lower burden necessary to prove a prima facie case for asylum; therefore, he was disqualified from withholding of removal, which had a higher burden.[71]

439. The court in *Doe v. Moniz* found *Cortez-Amador*'s analysis was on point to answer yes to the question whether a SIJS recipient is subject to removal simply for presence in the United States "without being admitted or paroled."[72]

B. Doe's Constitutional Challenge to Mandatory Detention Under the LRA

440. The court next addressed Doe's constitutional challenge to detention. DHS argued that the petition "is not entitled to a bond hearing because his detention is mandatory . . . [Section] 1226(c)(1)(E)(ii), and his period of detention is presumptively reasonable

69 *Cortez-Amador v. Att'y Gen.*, 6 F.4th 429, 431-432 (3d Cir. 2023).

70 *Cortez-Amador v. Att'y Gen.*, 6 F.4th 429, 433 (3d Cir. 2023).

71 *Cortez-Amador v. Att'y Gen.*, 6 F.4th 429, 434-435 (3d Cir. 2023).

72 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

under the Constitution."[73] In support, DHS quoted various cases holding that "an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative[,]"[74] and that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry in concerned."[75]

441. The court found these cases not applicable here because such doctrines apply to those "seeking initial admission to the United States. The court also found that *Shaughnessy* stood in a position that "[i]s true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law . . . "

442. DHS cited due process cases in defending its position that Cortez-Amador was not entitled to a bond hearing because he is considered an "applicant for admission" under INA§ 235(b), 8 U.S.C. §1225(b).[76] The court found these cases inapposite because Doe is not "literally standing at the border seeking admission . . . " but "has been residing in the United States since his release from immigration custody in February 2022, has not been subject to an Order of Release on Recognizance since December 2024, and has had SIJ status since April 2025."[77]

443. Regarding the two due process cases cited by DHS that pertain to noncitizens already in the United States, in both cases, the petitioners were mandatorily detained after being convicted of certain crimes.[78] The court found that neither case justifies detaining an individual, such as Doe, without due process, who has not been convicted of a crime, because both Kim and Zadvydas were challenging the length of detention, which was "obtained following the full procedural protections our criminal justice system offers." The court also distinguished *Zadvydas* case because it concerned indefinite detention "beyond the removal period" and after a determination that the detainee is "a risk to the community or unlikely to comply with the order of removal, where the countries to which petitioners would be deported refused to refuse them." Again, the court found these cases unavailing because "DHS does not dispute that Doe has received no due process as to his arrest or his detention." The court also took note of Doe's argument that Congress enacting the LRA "made no finding that 'merely being arrested for . . . shoplifting . . . correlated with flight risk or dangerousness in any way.'"[79]

73 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

74 *Landon v. Placensia*, 459 U.S. 21, 32 (1982)

75 *Shaughnessy v. United States, ex rel. Mezei*, 345 U.S. 206, 212 (1953).

76 *DHS v. Thuraissigiam*, 591 U.S. 103 (2020); *Amanullah v. Nelson*, 811 F.2d 1 (1st Cir. 1987)*; Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025).

77 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

78 *Kim v. Demore*, 538 U.S. 510 (2003); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

79 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

C. Matthews Factors

444. Finally, the court in *Doe* considered the three-prong test established by the Supreme Court in *Matthews v. Eldridge*, which courts have used to assess due process challenges by individuals detained under INA § 236, 8 U.S.C. § 1226, and seeking a bond hearing. Under *Matthews*, identification of the specific dictates of due process generally requires consideration of three distinct factors:

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.[80]

445. The *Doe* court found that the private interest at stake in this case "is the most elemental of liberty interests - the interest in being free from physical detention[.]" as Doe had been detained for more than 60 days at that point. The court also found that the risk of erroneous deprivation of Doe's liberty is high where his detention was based on an arrest for which no charges had been filed, and the underlying conduct beared no relationship to dangerousness or flight risk; "once the flight risk justification evaporates, the only special circumstance present is the alien's removable status itself, which bears no relation to the detainee's dangerousness."[81]

446. The court next examined the last factor, which "ultimately entails an assessment of the 'public interest.'" In *Hernandez-Lara*, the government failed to explain why its proffered interest in securing appearance at removal proceedings and for deportation holds sway where a noncitizen is not a flight risk." The *Doe* court went on to state that "limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention," and "such unnecessary detention imposes substantial societal costs" such as reduced economic contributions and tax payments by detained immigrants.[82] The court concluded that the public has no interest in the detention without bond of someone against whom no criminal charges are pending and who is an active member of his community. Therefore, the court concluded that Doe's detention without a bond hearing violated his Due Process rights and ordered a bond hearing.

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80 *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

81 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025).

82 *Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. 2025); *Hernendez-Lara v. Lyons*, 10 F.4th 19, 32-33 (1st Cir. 2021).

VIII. Problems with the LRA

A. No Exception for the Vulnerable Population

447. The LRA provisions do not provide any exceptions to minors; therefore, DHS is still obligated to take minors into custody as long as they meet the conditions under INA § 236(c)(1)(E).[83] However, the TVPRA requires DHS to transfer custody of minors to the U.S. Department of Health and Human Services (HHS).[84] So, if DHS detains Brian, his custody must be transferred to HHS within 72 hours. Moreover, the LRA provisions bind DHS with respect to mandatory detention but not HHS because nothing in the LRA prohibits HHS from releasing Brian to a guardian.

448. With the purported intent of protecting public safety, the LRA's purpose is not to punish those who commit serious crimes and pose dangers to our community. Instead, the law explicitly targets noncitizens who are neither a flight risk nor a threat to the community and immigrant survivors who need protection and safeguards from deportation. The fact that LRA offers no exception to vulnerable populations, including minor children and victims of domestic violence, human trafficking, and crimes, shows its inhumane intent and purpose. Combined with a recent directive rescinding the sensitive location policy, the LRA has given unfettered enforcement power to DHS officers. In the months and years to come, the courts will engage in the interpretation of the LRA; meanwhile, tragedies, such as the detention of children with adult populations and retraumatizing the victims of trafficking, domestic violence, and serious crimes, will occur.

B. The LRA may be Applied to Children in Juvenile Delinquency Proceedings

449. Brian was designated as an unaccompanied child (UC) by the government upon arrival in the United States. Since Brian was under 18 when he was arrested for shoplifting and is still under 18, he can argue that the LRA should not apply to him. First and foremost, it is well settled that a juvenile delinquency adjudication is not a "conviction" for immigration purposes. Moreover, Brian was not convicted of a crime as he did not have to admit guilt before being placed in the diversion program. Further, BIA precedent has established that "an act of juvenile delinquency is not a crime in the United States."[85] He can argue that since LRA provisions are only triggered by criminal conduct, not acts of juvenile delinquency, which are adjudicated in juvenile (civil) proceedings.

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83 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

84 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

85 *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981).

450. If Brian is detained by ICE, his custody should be transferred to the U.S. Department of Health's Office of Refugee Resettlement per the TVPRA, which gives HHS exclusive authority over the detention of UCs and requires that DHS transfer any UCs in its custody to HHS within 72 hours.[86] The TVPRA mandates that after taking over the custody of the unaccompanied children (UC) from DHS, the HHS must promptly place the UC "in the least restrictive setting that is in the best interest of the child," which could be with "a suitable family member." 8 U.S.C.§ 1232(c)(2)(A). Although the amended INA § 236(c) mandates that DHS maintain certain noncitizens in its custody; it does not preclude HHS from taking custody of unaccompanied minors. Moreover, suppose DHS argues that the minor, Brian, is "accompanied" by a parent, Marisol. In that case, Brian should argue for bond eligibility based on the *Flores* Settlement Agreement which held that a minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.[87] Importantly, the Flores Agreement requires that children in immigration detention be placed "in the least restrictive setting appropriate to [their] age and special needs," and children who are charged with isolated non-violent offenses or petty offenses such as shoplifting may not be placed in secure detention on that basis alone.[88]

C. The LRA may be Applied to Asylum Seekers, Refugees, and Survivors

451. Although the LRA does not contain an explicit language excluding its application to asylum seekers, refugees, and survivors of domestic violence, trafficking, and serious crimes, Marisol can argue that such an exception should be implied from the legislative intent. The LRA was enacted in response to the public outcry after an undocumented immigrant murdered a Georgia nursing student. The 8-page bill is named after Laken Riley, a 22-year-old nursing student who was murdered last year in Athens, Georgia, by Jose Ibarra, a Venezuelan immigrant unlawfully present in the country who had been previously apprehended by Border Patrol and released.[89] In November, Ibarra was sentenced to life in prison without parole for Riley's killing.[90] The apparent legislative purpose of the LRA is to protect the public from dangerous criminals. Marisol can argue that the apparent purpose of the LRA's enactment is to protect the public from dangerous

86 8 U.S.C. § 1232(b)(1)-(3) (2018).

87 *Flores v. Rosen*, 984 F.3d 720, 744 (9th Cir. 2020).

88 *Stipulated Settlement Agreement, Flores v. Reno*, No. CV 85-4544-RJK(Px) 11, 21.A(C.D. Cal. Jan. 17, 1997).

89 Sam Cabral, *Migrant Accused of Killing Nursing Student Stands Trial in US*, BBC News (November 15, 2024).

90 Nicole Chavez, *Laken Riley's Killer Sentenced to Life in Prison After Heart-Wrenching Pleas From Her Family*, CNN (November 20, 2024).

criminals, not to punish asylum seekers, refugees, and survivors who do not pose a danger to the community and are deserving of humanitarian protection.

452. The Act offers exceptions and waivers to certain noncitizens subject to the crime-based grounds of inadmissibility (and deportability). For example, INA sec. 212(a)(A)(ii) makes inadmissible a noncitizen convicted of, or who admits having committed, or who admits to committing acts which constitute the essential elements of a crime involving moral turpitude or who violated any law or regulation of a state, the United States, or a foreign country relating to a controlled substance. The section provides an exception for a noncitizen (1) whose commission of the crime occurred when he was under 18 years old and the crime was committed (and the noncitizen released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation or the date of application for admission the United States ("juvenile exception"), or (2) the maximum penalty possible for the crime of which the noncitizen was convicted (or which the noncitizen admits having committed or of which the acts that the noncitizen admits having committed constituted the essential elements) did not exceed imprisonment for one year, and, if the noncitizen was convicted of such crime, the noncitizen was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed) ("petty crime exception").[91]

453. Also, INA § 212(h) provides waivers for noncitizens who are inadmissible based on criminal grounds, INA § 212(a)(2)(A)(i)(I) crime involving moral turpitude,(II) controlled substance, (B) multiple convictions with sentence less than 5 years, (D) prostitution and commercialized vice, and (E) noncitizen departed US after immunity for serious criminal activity was exercised).[92]

454. The Refugee Act protects asylum seekers from being returned to their country of origin if they suffered persecution or have a well-founded fear of persecution on account of race, nationality, religion, political opinion, or membership in a particular social group.[93] Marisol fled her home country due to persecution, and, if she is granted asylum, the United States government is prohibited from returning her to her country of citizenship. The LRA should not be interpreted to disregard the U.S.'s duty under the Refugee Act to offer refuge, not punish, a person who is seeking protection in this country.

91 INA § 212(a)(2)(a)(iii) (2025).

92 INA § 212(h) (2025).

93 Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

D. The LRA Amended INA §236(c) Strains the Government's Ability to Execute Immigration Law Faithfully

455. The LRA amended the mandatory provisions of INA §236(c) to apply to undocumented noncitizens who are charged with, arrested for, or convicted of any theft-related and other enumerated offense. However, the DHS already has the authority to detain all noncitizens facing removal proceedings, including those charged with a criminal offense.[94] The LRA amendment applies *mandatory* detention, requiring detention without any opportunity to request release on bond for the duration of removal proceedings. The LRA amendment will put a severe burden on the DHS ability to enforce immigration law as amended by law. Before the law's passing, the DHS warned lawmakers in Congress that a proposed immigration enforcement bill would cost $26.9 billion to implement in its first year and "would be impossible for [Immigration and Customs Enforcement] to execute within existing resources" and ICE, the agency in charge of carrying out the potential new law warns that it may physically not be able to.

456. New estimates from an internal ICE document show that the agency would need 110,000 more detention beds and over 10,000 enforcement and removal operations personnel to increase apprehensions, detentions, and removals. According to the estimates, more than 7,000 additional attorneys and support personnel would also be needed to handle immigration proceedings. The document also notes that a figure of $3.2 billion "has been shared widely as a cost estimate," but calls that number incorrect because it "does not represent the full cost of implementation."[95]

E. The LRA will Overburden the Immigration Court System

457. Noncitizens placed in removal proceedings are not entitled to appointed counsel, unlike criminal defendants, who enjoy such rights. As the DHS has no limitations on its ability to detain noncitizens in removal proceedings, the caseload at the Immigration Court, which handles detained cases, will increase exponentially. For the 2024 fiscal year, the Immigration Court system has 3.6 million pending cases, an increase of more than 350 percent from 2019.[96] The Immigration Judges are required to protect the respondent's due process rights by conducting a fundamentally fair hearing, in which most hearings require interpreters, which usually doubles the length of the hearing. The Respondent has a right to present her evidence and object to the evidence produced by the government.[97] The LRA's impact will be felt immediately, as a majority of the

94 INA § 236(a) - (c) (2025).

95 Ximena Bustillo, *ICE Estimates It Would Need $26.9 Billion to Enforce the GOP Deportation Bill*, NPR (January 16, 2025).

96 Holly Stuart-Eppsteiner, *Immigration Courts: Decline in New Cases at the End of FY2024* CRS IN12463 at 1 (November 26, 2024).

97 INA § 240 (2006).

respondents will appear before the court without counsel since detention centers are often located far from the cities with a sufficient number of immigration attorneys; representing a detained client from hundreds of miles away from their offices is often untenable and the cost prohibitive for the detained respondents. For example, there are 10 detention centers located in Louisiana, and the closest center to the New Orleans metropolitan area is three hours away.

458. The Roundtable of Immigration Former Immigration Judges, which consists of former Immigration Judges and former Appellate Immigration Judges of the Board of Immigration Appeals, expressed serious concerns about the negative impact of the LRA.The Roundtable advocates for preserving the benefits of allowing judges to assess on a case-by-case basis the danger posed to society and the likelihood that the individual will appear for future hearings.[98]

IX. Challenging The LRA

459. Both Marisol's and Brian's arrests happened before the LRA became law. There is also a strong argument that the retroactive application of the LRA violates Marisol and Brian's Fifth Amendment Due Process rights and the long-established presumption against retroactive legislation in U.S. law. The fundamental rule is that a person, including a noncitizen, cannot be deprived of liberty without adequate procedural safeguards to ensure that civil detention, including immigration detention, serves a valid governmental purpose.

460. To challenge the LRA, several arguments stem from its questionable constitutionality. While the LRA aims for national security and public safety, significant concerns exist regarding detainee's Fifth Amendment right to due process and presumptions against retroactive application. First, one could argue that the LRA violates the right to a speedy trial by depriving individuals of the right to bond hearings. The right to a speedy trial is an enumerated right found in the Bill of Rights; because the right to bond hearings can be classified as a right to a speedy trial, the government would need to provide an adequate justification for depriving individuals of this right.[99] The government has used the backstop of national security as a response to the tragic death of Laken Riley. However, national security cannot serve as an adequate justification because the LRA arose on the basis that the individual responsible for Laken Riley's death had a prior criminal history with two previous convictions and was released on bond.

98 *Letter to United States Senators Regarding the Laken Riley Act*, Round Table of Former Immigration Judges (January 15, 2025).

99 *U.S. Const. amend. VI.*

461. In reality, only a small percentage of undocumented individuals face criminal charges or convictions. Thus, this raises a critical question: What is a legitimate reason for the government to deny an individual a bond hearing? The LRA conveniently uses Laken Riley's death to punish individuals who have been arrested, convicted of, and charged with committing a crime, *but not convicted*. The passage of the Laken Riley Act reflects a national sentiment in favor of stricter enforcement of immigration policies for both undocumented and legal immigrants in the United States under the guise of national security and public safety. The LRA's stringent measures are redundant, overbroad, and harmful to all noncitizens in the United States.

X. Conclusion

462. The LRA has taken an extreme approach that requires the mandatory detention of noncitizens without the possibility of a bond hearing before an immigration judge. This drastic measure is a direct response to the widespread public concern over undocumented individuals and their commission of crimes. Due to the current political climate in the United States, the drafters of the LRA faced minimal opposition from either the House of Representatives or the Senate. Before the final version of the LRA was signed, the drafters modified it to include past crimes and unconvicted (alleged) crimes. Unfortunately, this has led to the creation of the LRA, which unconstitutionally deprives individuals of due process. Under the LRA, mandatory arrest and detention are required for individuals who have been charged, not just convicted, of specific crimes without the possibility of a bond hearing. In the coming months, the LRA will face more legal challenges because it tramples on the statutory and constitutional rights of noncitizens based on the faulty premise that the law protects the U.S. communities from dangerous criminals and national security. However, the law's demise may come too late for Marisol and Brian, and those similarly situated, who may be detained and removed, without the legal safeguards they so deserve, to the country where they may be persecuted or harmed.