

District Judge Lauren King
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUIS CALDERON,

Petitioner,

v.

KRISTI NOEM, *et al.*,¹

Respondents.

Case No. 2:25-cv-2136-LK-TLF

FEDERAL RESPONDENTS'² RETURN

**Noted for consideration:
November 14, 2025**

I. INTRODUCTION

The Department of Homeland Security (“DHS”) re-detained Petitioner Luis Calderon shortly after he was charged with theft. Congress recently amended 8 U.S.C. § 1226(c) to require immigration detention for a noncitizen who is inadmissible and arrested or charged with a crime of theft. 8 U.S.C. § 1226(c)(1)(E). The amended statute does not require a pre-detention hearing and requires prompt detention of noncitizens that fall within its purview. Accordingly, U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Calderon.

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Federal Respondents substitute Acting Field Office Director Laura Hermosillo for Camilla Wamsley.

² Respondent Bruce Scott is not a federal employee and is not represented by undersigned counsel.

1 Accordingly, the Government respectfully requests that this Court deny Calderon's
2 Petition for Writ of Habeas Corpus. This return is supported by the pleadings and documents on
3 file in this case and the Declarations of Sheldon Benjamin ("Benjamin Decl.") and Michelle R.
4 Lambert ("Lambert Decl.") with exhibits attached thereto. The Government does not seek an
5 evidentiary hearing.

6 **II. FACTUAL BACKGROUND**

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8 Calderon is a native and citizen of Peru, who entered the United States without inspection
9 or parole on or about March 2002. Benjamin Decl., ¶ 4. Since his illegal entry, Calderon has had
10 multiple contacts with the criminal justice system. Benjamin Decl., ¶¶ 6, 7, 11, 12, 17, 18, 19, 22,
11 26; Lambert Decl., Ex. A, Respondent's (Calderon's) Updated Criminal Chart. In 2008, the
12 Department of Homeland Security ("DHS") commenced removal proceedings by issuing a notice
13 to appear charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i); he was taken into
14 ICE custody that same day. Benjamin Decl., ¶ 9; Lambert Decl., Ex. B, Notice to Appear. DHS
15 released Calderon on \$3,000 bond that same day. Lambert Decl., Ex. C, Notice of Custody
16 Determination.

17
18 After having encountered Calderon at a California correctional facility a few days
19 following his arrest/conviction for public intoxication, ICE took Calderon into custody in August
20 2012. Benjamin Decl., ¶ 13; Lambert Decl., Ex. A, at 297; Lambert Decl., Ex. D, Form I-213. In
21 September 2012, an immigration judge granted Calderon a release from custody on \$10,000 bond.
22 Lambert Decl., Ex. D, Order of the Immigration Judge.

23
24 During his removal proceedings, Calderon applied for Special Rule Cancellation of
25 Removal. Pet., ¶ 24. Although an immigration judge initially found Calderon to be ineligible for
26 the requested relief, this decision has been reviewed by the Board of Immigration Appeals ("BIA")
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1 and has most recently been remanded back to the BIA by the Ninth Circuit on July 1, 2025.
2 Benjamin Decl., ¶¶ 20, 21, 23, 24, 28; *Luis Alberto Calderon v. Bondi*, No. 24-2619, Dkt. No. 40.1
3 (9th Cir. Jul. 1, 2025). The matter is still pending before the BIA. Benjamin Decl., ¶ 29.

4 On or about March 25, 2025, Calderon was arrested for Grand Theft under California Penal
5 Code § 487. Benjamin Decl., ¶ 26. On April 17, 2025, ICE issued a warrant for arrest leading to
6 his redetention. Lambert Decl., Ex. F, Warrant for Arrest; Ex. G, Form I-213; Ex. H, Notice of
7 Custody Determination; *see also* 8 U.S.C. § 1226(c)(3) (stating that DHS “shall effectively and
8 expeditiously take custody of the alien”). His immigration detention was and remains mandatory
9 pursuant to 8 U.S.C. § 1226(c)(1)(E). Calderon’s criminal case was dismissed due to a lack of a
10 speedy trial on July 30, 2025. Lambert Decl., Ex. I, Criminal Record.

12 **III. LEGAL STANDARD**

13 It is axiomatic that “[t]he district courts of the United States . . . are courts of limited
14 jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil*
15 *Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he
16 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
17 day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28
18 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.
19

20 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her
21 custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. §
22 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

24 **IV. ARGUMENT**

25 Calderon’s detention is statutorily mandated and comports with due process. This Court
26 should deny this habeas petition.
27

1 **A. ICE lawfully detains Calderon pursuant to 8 U.S.C. § 1226(c).**

2 Calderon’s detention is constitutional and statutorily mandated pursuant to 8 U.S.C.
3 § 1226(c). *Demore v. Kim*, 538 U.S. 510, 530 (2003) (“Detention during removal proceedings is a
4 constitutionally permissible part of that process.”). Section 1226 provides the framework for the
5 arrest, detention, and release of noncitizens in removal proceedings. *See* 8 U.S.C. § 1226. Section
6 1226(a) grants DHS the discretionary authority to determine whether a noncitizen should be
7 detained, released on bond, or released on conditional parole pending the completion of removal
8 proceedings. In contrast, detention pursuant to Section 1226(c) is mandatory for noncitizens that
9 commit certain criminal offenses. This detention may end prior to the conclusion of removal
10 proceedings “only if the [noncitizen] is released for witness-protection purposes.” *Jennings v.*
11 *Rodriguez*, 583 U.S. 281, 306 (2018) (internal quotation marks and citations omitted).

13 President Trump signed the Laken Riley Act (“LRA”) into law on January 29, 2025,
14 amending 8 U.S.C. § 1226(c). *See* Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025). The LRA
15 expands mandatory detention under 8 U.S.C. § 1226(c) to include any noncitizen who (1) is
16 inadmissible under 8 U.S.C. § 1182(a)(6)(C), and (2) is charged with, arrested for, convicted of,
17 or admits to committing various offenses, including burglary, theft, or larceny. 8 U.S.C.
18 § 1226(c)(1)(E). If the individual is not otherwise in federal, state or local custody, DHS “shall
19 effectively and expeditiously assume custody.” 8 U.S.C. § 1226(c)(3).

20
21 Calderon falls within this expansion of Section 1226(c) because of his charge of
22 inadmissibility and his arrest and charge of violating California Penal Code § 487(a) Grand Theft
23 of Personal Property. Pet., ¶ 25. While Calderon’s criminal charge was dismissed after ICE
24 detained him, the LRA does not require that a person subject to its mandatory detention be
25 convicted of a criminal charge or that mandatory detention ceases upon the end of the criminal
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1 case. Thus, Calderon’s continuing mandatory detention under Section 1226(c)(1)(E) is lawful
2 until his removal proceedings have concluded.

3 **B. Calderon’s redetention without a pre-detention hearing comports with procedural
4 due process.**

5 Calderon’s mandatory detention is constitutional. The Supreme Court “has firmly and
6 repeatedly endorsed the proposition that Congress may make rules as to [noncitizens] that would
7 be unacceptable if applied to citizens.” *See Demore*, 538 U.S. at 522 (citations omitted). Detention
8 is a constitutionally permissible aspect of the Government’s enforcement of the immigration laws
9 and fulfills the legitimate purpose of ensuring that individuals appear for their removal
10 proceedings. *See Demore*, 538 U.S. at 523; *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001).
11 Consistent with the requirements of due process, Calderon’s confinement is thus “reasonably
12 related” to a legitimate government interest. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

13 DHS’s redetention of Calderon in April 2025 does not violate procedural due process.
14 “Due process is flexible and calls for such procedural protections as the particular situation
15 demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that
16 Calderon’s detention is consistent with his due process rights. Under *Mathews*, “[t]he fundamental
17 requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful
18 manner.” *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (1) “the
19 private interest that will be affected by the official action,” (2) “the risk of an erroneous deprivation
20 of such interest through the procedures used, and probable value, if any, of additional or substitute
21 procedural safeguards,” and (3) the Government’s interest. *Id.*, at 334-35.

22
23 **1. Calderon’s liberty interest**

24 Federal Respondents recognize the “weighty liberty interests implicated by the
25 Government’s detention of noncitizens.” *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at
26
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1 *11 (S.D.N.Y. Aug. 20, 2021). However, Calderon’s interest in his liberty *generally* does not
2 mean that he possesses a separate or heightened liberty interest in the continuation of his
3 conditional release. “The recognized liberty interests of U.S. citizens and aliens are not
4 coextensive: the Supreme Court has ‘firmly and repeatedly endorsed the proposition that Congress
5 may make rules as to aliens that would be unacceptable if applied to citizens.’” *Rodriguez Diaz*
6 *v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522
7 (2003)). As the Supreme Court has explained, “[i]n the exercise of its broad power over
8 naturalization and immigration, Congress regularly makes rules that would be unacceptable if
9 applied to citizens.” *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Indeed, the Supreme Court has
10 repeatedly “recognized detention during deportation proceedings as a constitutionally valid aspect
11 of the deportation process.” *Demore*, 538 U.S. at 523.
12

13 **2. The existing procedures are constitutionally sufficient.**

14 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation
15 of Calderon’s liberty here is minimal. Noncitizens have no right to a hearing before an
16 immigration judge under Section 1226(c). Likewise, there is no requirement for such a hearing
17 before redetention after the person is charged with a crime that triggers mandatory detention under
18 the LRA. Here, the amended statute mandated that DHS detain Calderon “effectively and
19 expeditiously” after his theft charge in April. 8 U.S.C. § 1226(c)(3). If Calderon believes that he
20 is not subject to mandatory detention, he may contest it through a *Joseph* hearing in immigration
21 court. *Demore*, 538 U.S. at 514 n.3 (explaining the *Joseph* hearing). Calderon does not assert that
22 he has sought to challenge his mandatory detention in his removal proceedings.
23
24

25 Calderon’s situation is unique in that his mandatory detention was triggered by his arrest
26 in April 2025. This is not like other cases where the noncitizens had been released for a “lengthy
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1 period of freedom after release from criminal custody” necessitating a pre-detention hearing.
2 *Duong v. Kaiser*, No. 25-cv-07598, 2025 WL 2689266, at *8 (N.D. Cal. Sept. 19, 2025). Under
3 the LRA, DHS was required to “expeditiously” detain Calderon under the expanded mandatory
4 detention provision of Section 1226(c), which DHS did only weeks after his arrest. 8 U.S.C.
5 § 1226(c)(3). While Calderon had been released prior to his April arrest, the law did not mandate
6 his detention as it does now and a pre-detention hearing would, at best, be futile, and at worst, a
7 chance for Calderon to evade future removal proceedings.
8

9 The Supreme Court has warned courts against reading additional procedural requirements
10 into the INA. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a
11 specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because “reviewing courts . . . are
12 generally not free to impose [additional procedural rights] if the agencies have not chosen to grant
13 them”) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,*
14 *Inc.*, 435 U.S. 519, 524 (1978) (cleaned up)). Accordingly, this Court should not require a pre-
15 detention hearing in this case.
16

17 **3. The Government has a strong interest in enforcing the LRA.**

18 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*
19 test “must account for the heightened government interest in the immigration detention context.”
20 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth
21 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in
22 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,
23 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). “This is especially true when it comes to
24 determining whether removable aliens must be released on bond during the pendency of removal
25 proceedings.” *Rodriguez Diaz*, 53 F.4th at 1208. The government likewise has an interest in
26 detaining inadmissible aliens who commit crimes that Congress has deemed to require mandatory
27

1 detention.

2 Calderon falls squarely within the mandatory detention provisions of the LRA. Congress
3 expanded the mandatory detention provision of Section 1226(c) through the LRA and explicitly
4 requires prompt detention even if the noncitizen is not in criminal detention. The passage of this
5 the LRA underscores the Government's strong interest in mandating detention for noncitizens who
6 are arrested for or charged with certain crimes, including Calderon.

7
8 In short, the three *Mathews* factors demonstrate that Calderon's detention comports with
9 procedural due process.

10 **C. Due process does not require that Calderon receive a post-detention bond hearing.**

11 The continuation of Calderon's approximate 7-month detention without a bond hearing
12 does not violate due process. In *Demore*, the Supreme Court rejected a due process challenge to
13 Section 1226(c) explaining that Congress drafted Section 1226(c) to respond to the high rates of
14 crime and flight by removable noncitizens convicted of certain crimes. The Court held that "the
15 Government may constitutionally detain deportable [noncitizens] during the limited period
16 necessary for their removal proceedings." 538 U.S. at 518-21, 526.

17
18 In addition, the Supreme Court did not embrace any bright-line rule for when a noncitizen
19 under Section 1226(c) may suffer a due process violation. In fact, the Court upheld the
20 constitutionality of the noncitizen's detention even though it had surpassed six months and was
21 likely to extend longer. *Id.*; see *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021) ("It requires no
22 reading of tea leaves to see that *Demore* is fatal to the claim here that every single person detained
23 for six months must be entitled to a bond hearing.").

24
25 Calderon's detention meets due process requirements under the multi-factor test previously
26 employed in this District (the "*Martinez* test") to determine whether Section 1226(c) detention has
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1 become unreasonable. *Martinez v. Clark*, 18-cv-1669, 2019 WL 5968089 (W.D. Wash. May 23,
2 2019) (Report and Recommendation) (applying multi-factor due process analysis), *adopted by*,
3 2019 WL 5962685 (W.D. Wash. Nov. 13, 2019).

4 In *Martinez*, the district court analyzed

5 (1) the total length of detention to date; (2) the likely duration of future detention;
6 (3) whether the detention will exceed the time petitioner spent in prison for the
7 crime that made him removable; (4) the nature of the crimes that petitioner
8 committed; (5) the conditions of detention; (6) delays in the removal proceedings
9 caused by petitioner; (7) delays in the removal proceedings caused by the
government; and (8) the likelihood that the removal proceedings will result in a
final order of removal.

10 2019 WL 5968089, at *9. These factors favor the Government's position that Calderon's
11 continued immigration detention without a bond hearing is not unreasonable.

12 The first *Martinez* factor, the length of detention to date, is considered the most important
13 factor. *Id.* The district court in *Martinez* stated that the longer mandatory detention continues
14 beyond the "brief" period authorized in *Demore*, the harder it is to justify. *Martinez*, 2019 WL
15 5968089, at *9 (petitioner detained for nearly thirteen months). Calderon's approximate 7-month
16 detention should not favor granting him a court-ordered bond hearing or release. Accordingly, the
17 first factor favors the Government.

18
19 The second factor analyzes how long the detention is likely to continue absent judicial
20 intervention. This factor should be neutral at this time as any projection would be speculative. In
21 July, the Ninth Circuit remanded his proceedings back to the BIA. Benjamin Decl., ¶ 28. This is
22 still pending before the BIA. It is unknown whether the BIA will issue a new decision or remand
23 the case back to the immigration judge for further fact finding.

24
25 While the third factor favors Calderon, the fourth factor clearly favors the Government.
26 The third factor reviews the length of immigration detention compared to the noncitizen's criminal
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1 sentence; the fourth factor reviews the nature of his crime. *Martinez*, 2019 WL 5968089, at *9.
2 Federal Respondents do not dispute that Calderon’s charges were dismissed. However, the nature
3 of the crime charged falls within the LRA. Section 1226(c) only applies to certain criminal
4 noncitizens that Congress has inherently deemed a danger to society or a flight risk. Congress
5 enacted mandatory detention for certain criminal noncitizens as the outcome of bond hearings
6 “were too risky in some instances.” *Nielsen v. Preap*, 586 U.S. 392, 396 (2019). As described
7 above, Congress recently saw fit to include theft charges to qualify noncitizens, including
8 Calderon, for mandatory detention.
9

10 The fifth factor analyzes the conditions of detention. Calderon is currently detained at the
11 NWIPC which is an immigration detention facility.

12 Under the sixth and seventh factors, the Court considers “the nature and extent of any
13 delays in the removal proceedings caused by the petitioner and the government, respectively.”
14 *Martinez*, 2019 WL 5968089, at *10. While Calderon may pursue his legal remedies as he so
15 chooses, his litigation choices alone are the reason for his delayed time in immigration detention.
16 *See Demore*, 538 U.S. at 531 (upholding a noncitizen’s “longer than the average” period of
17 detention while noting that it was the noncitizen who had asked for a continuance in furtherance
18 of his challenging his removability before the agency); *Rodriguez Diaz*, 53 F.4th at 1208. In
19 addition, the Government has not deliberately delayed his removal proceedings. Accordingly, this
20 Court should find that the sixth and seventh factors favor the Government.
21

22 The last factor – the likelihood that the removal proceedings will result in a final order of
23 removal – is speculative at this time.
24

25 The totality of the *Martinez* factors favors the Government. Therefore, Calderon’s
26 continued immigration detention without a bond hearing is not unreasonable.
27

CONCLUSION

For the foregoing reasons, this Court should deny Calderon's Petition.

DATED this 10th day of November, 2025.

Respectfully submitted,

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s/ Michelle R. Lambert

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I certify that this memorandum contains 2,876 words, in compliance with the Local Civil Rules.

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