

DETAINED

District Judge Lauren King
Chief Magistrate Judge Theresa L. Fricke

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

LUIS CALDERON,
Petitioner,

v.

KRISTI NOEM, *et al.*;
Respondents.

CASE NO.: 2:25-cv-02136-LK-TLF

**PETITIONER'S REPLY TO RETURN
MEMORANDUM**

Noted for Consideration:
November 14, 2025

I. ARGUMENT

A. Petitioner is not subject to mandatory detention under the Laken Riley Act.

In its Return Memorandum, Respondents argue that Petitioner's detention is "constitutional and statutorily mandated pursuant to 8 U.S.C. § 1226(c)." Dkt. 7, at 4.

Relevant here, the Laken Riley Act (LRA) was signed into law on January 29, 2025, and

PETITIONER'S REPLY TO
RETURN MEMORANUM

Page 1

Gibbs Houston Pauw
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(206) 682-1080

CASE NO.: 2:25-CV-02136-LF-
TLF

1 expanded mandatory detention under 8 U.S.C. § 1226(c). Pub. L. No. 119-1, 139 Stat. 3
2 (Jan. 29, 2025). The LRA expanded the statute to include any noncitizen who (1) is
3 inadmissible under 8 U.S.C. § 1182(a)(6)(C), and (2) is charged with, arrested for,
4 convicted of, or admits to committing various offenses, including burglary, theft, or
5 larceny. 8 U.S.C. § 1226(c)(1)(E). If the individual is not otherwise in federal, state or
6 local custody, DHS “shall effectively and expeditiously assume custody.” 8 U.S.C. §
7 1226(c)(3). Respondents argue that Petitioner falls into the recent expansion of the
8 mandatory detention statute because he was charged under California Penal Code § 487(a)
9 Grand Theft of Personal Property. Dkt. 7, at 4. Respondents do not dispute that this charge
10 was later dismissed. *Id.* at 10.

11 The plain language of § 1226(c)(1)(E)(ii) supports Petitioner’s position that he was
12 no longer subject to mandatory detention once the charges were dismissed. Congress
13 phrased the language of the LRA in the present tense and that is important here. *See*
14 *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2063, (2025) (“‘[T]o ascertain a statute’s
15 temporal reach,’ this Court has ‘frequently looked to Congress’ choice of verb tense.”
16 (quoting *Carr v. United States*, 560 U.S. 438, 448, (2010))). It is no longer accurate to state
17 that Petitioner “is charge with” a theft crime because the charges have been dropped. The
18 use of the present tense establishes that detention is mandatory *so long as* the charges
19 remain pending or are resolved in another way that implicates the statute, neither of which
20 are present here.

21
PETITIONER’S REPLY TO
RETURN MEMORANUM

Page 2

Gibbs Houston Pauw
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Seattle, WA 98104
(206) 682-1080

CASE NO.: 2:25-CV-02136-LF-
TLF

1 Further, Respondents' suggested interpretation would render other parts of the
2 statute superfluous. One cannot be convicted of a crime if they are not first charged with
3 it. "[I]t would not make sense to interpret the statute as treating the mere fact of a charge
4 as triggering mandatory detention for the remainder of the removal proceeding regardless
5 of whether the person is ultimately convicted." *Helbrum v. Williams*, No. 4:25-cv-00349-
6 SHL-SBJ, 2025 WL 2840273, at *15 (S.D. Iowa Sept. 30, 2025). It would render the
7 language "is convicted of" superfluous and violate one of the "most basic interpretive
8 canons" of statutory interpretation. *Id.*; see also *Marx v. Gen. Rev. Corp.*, 568 U.S. 371,
9 386 (2013) ("[T]he cannon against surplusage is strongest when an interpretation would
10 render superfluous another part of the same statutory scheme.").

11 The statute is structured in such a way that it "track[s] the progression of a criminal
12 case." *Helbrum*, 2025 WL 2840273, at *16. All charges become resolved, often through
13 a conviction, and the LRA ensures that detention remains mandatory following a
14 conviction. *Id.* Charges can also be resolved through other means, such as through
15 deferred judgment or plea negotiations. Congress ensured that detention remained
16 mandatory in those instances through language included in the statute. 8 U.S.C. §
17 1226(c)(1)(E)(ii) ("The Attorney General shall take into custody any alien who . . . admits
18 having committed, or admits committing acts which constitute the essential elements of
19 any [applicable crime.]). However, "the statute no longer requires mandatory detention
20
21

1 when charges are resolved via acquittal or dismissal.” *Helbrum*, 2025 WL 2840273, at
2 *17-18.

3 Once his charges were dismissed, Petitioner was no longer subject to mandatory
4 detention under the LRA because Congress explicitly chose to use recurring present tense
5 and a person no longer “is charged with” a crime if the charges were resolved via dismissal
6 prior to any admission of guilt. The LRA does not mandate detention for Petitioner, who
7 “was charged with” a theft offense—“[h]ad this been Congress’s intent, it surely knew
8 how to find the right words.” *Id.* at 19.

9
10 **B. Petitioner’s due process rights were violated.**

11 The *Mathews* test clearly demonstrates that Petitioner’s due process rights were violated.
12 Due process required ICE to demonstrate by clear and convincing evidence that he violated his
13 conditions of release on bond and now poses a flight risk or danger to the community. This Court
14 and courts around the country have repeatedly held that due process requires exactly this
15 protection. *See, e.g., E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, --- F.Supp.3d ----, 2025 WL
16 2402130 (W.D. Wash. Aug. 19, 2025) (granting habeas petition, ordering immediate release due
17 to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing
18 prior to any future redetention); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL,
19 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Ramirez Tesara v. Wamsley*, No.
20 2:25-CV-01723-MJPTLF, 2025 WL 2637663, at *4 (W.D. Wash. Sept. 12, 2025) (granting

21
PETITIONER’S REPLY TO
RETURN MEMORANUM

Page 4

Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
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(206) 682-1080

CASE NO.: 2:25-CV-02136-LF-
TLF

1 temporary protective order and ordering immediate release due to lack of pre-deprivation
2 hearing); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8
3 (E.D. Cal. Aug. 21, 2025) (same); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, ---
4 F.Supp.3d ----, 2025 WL 1953796, at *16–18 (W.D.N.Y. July 16, 2025) (granting preliminary
5 injunction, ordering release due to lack of pre-deprivation process, and ordering noncitizen not
6 be re-detained without a “meaningful opportunity to be heard”); *Garcia v. Andrews*, No. 1:25-
7 CV-01006 JLT SAB, 2025 WL 2420068, at *9–10, 11–13 (E.D. Cal. Aug. 21, 2025) (similar);
8 *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8,
9 2025) (similar); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June
10 18, 2025) (granting habeas petition and ordering immediate release due to lack of pre-deprivation
11 hearing). This case is no different, and accordingly, the Court should grant the habeas petition.

12 Courts analyzing this question have employed the three-factor test established in *Mathews*
13 *v. Eldridge*, 424 U.S. 319 (1976). Accordingly, Petitioner addresses each factor below.

14
15 ***1. Petitioner’s private interest is weighty.***

16 Respondents make no individualized argument regarding Petitioner’s private interest.
17 Respondents state that the Supreme Court has supported Congress’ decision to create rules for
18 noncitizens that would be unacceptable if applied to citizens. *See* Dkt. 7, at 6.

19 Petitioner gained a liberty interest in his continued freedom when he was last released
20 from ICE custody on bond. He has an exceptionally strong interest in freedom from physical

21
PETITIONER’S REPLY TO
RETURN MEMORANUM

Page 5

Gibbs Houston Pauw
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(206) 682-1080

CASE NO.: 2:25-CV-02136-LF-
TLF

1 confinement and in a hearing prior to any revocation of his liberty. His “interest in not being
2 detained is ‘the most elemental of liberty interests[.]’” *E.A. T.-B.*, 2025 WL 2402130, at *3
3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez*
4 *Tesara*, Dkt. 19 at 5 (stating that the petitioner “has an exceptionally strong interest in freedom
5 from physical confinement”). “Freedom from imprisonment . . . lies at the heart of the liberty that
6 [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Ninth
7 Circuit has held that “[i]n the context of immigration detention, it is well-settled that ‘due process
8 requires adequate procedural protections to ensure that the government’s asserted justification for
9 physical confinement outweighs the individual’s constitutionally protected interest in avoiding
10 physical restraint.’” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v.*
11 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).

12 This principle applies with significant force to Petitioner given that he was previously
13 released from ICE custody after being granted bond. A noncitizen released from custody pending
14 removal proceedings has a protected liberty interest in remaining out of custody. *See e.g., Ortega*
15 *v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on preparole, parole, and
16 probation status have a liberty interest, so too does [a noncitizen released from immigration
17 detention] have a liberty interest in remaining out of custody on bond.”); *Romero v. Kaiser*, No.
18 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Domingo v. Kaiser*, No. 25-CV-
19 05893-RFL, 2025 U.S. Dist. LEXIS 133824 (N.D. Cal. July 14, 2025) (ordering the immediate
20 release of the noncitizen who was convicted of a crime subsequent to his release on bond);

21
PETITIONER’S REPLY TO
RETURN MEMORANUM

Page 6

Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104
(206) 682-1080

CASE NO.: 2:25-CV-02136-LF-
TLF

1 *Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 U.S. Dist. LEXIS 138205 (N.D. Cal.
2 July 17, 2025) (enjoining the DHS from re-detaining the noncitizen without adequate notice and
3 a pre-deprivation hearing after he was arrested for robbery and vandalism while released on
4 bond).

5 Petitioner has a heightened liberty interest due to his thirteen-year period of freedom,
6 while pursuing an application based on abuse he experienced in a prior marriage. Petitioner had
7 a significant due process interest in not being re-detained without notice and hearing, and that he
8 is entitled to freedom from confinement.

9
10 ***2. Respondents' reasons for re-detaining Petitioner demonstrates he was erroneously***
11 ***deprived of his liberty.***

12 “[T]he risk of erroneous deprivation of [Petitioner’s] liberty interest in the absence of a
13 pre-detention hearing is high.” *E.A. T.-B.*, 2025 WL 2402130, at *4. Respondents argue that
14 when they detained Petitioner, he was subject to mandatory detention and Respondents were
15 mandated to detain Petitioner and that the “Supreme Court has warned courts against reading
16 additional procedural requirements into the INA”. Dkt. 7, at 6, 7. Even if Petitioner was subject
17 to the LRA at the time of his re-detention, nothing in the text of the LRA or the surrounding
18 subsections governing mandatory detention circumvent the Due Process Clause. *See Demore v.*
19 *Kim*, 538 U.S. 510, 517, (2003) (holding, in a case involving a noncitizen's challenge to
20 mandatory pre-removal detention, that § 1226(e) "contains no explicit provision barring habeas
21

1 review, and . . . that its clear text does not bar respondent's constitutional challenge to the
2 legislation authorizing his detention without bail").

3 Petitioner reasserts that the Due Process Clause requires a pre-deprivation hearing.
4 Where the petitioner does not receive a hearing, "the risk of an erroneous deprivation [of liberty]
5 is high" because neither party "has had an opportunity to determine whether there is any valid
6 basis for [the petitioner's] detention." *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
7 2084921, at *5 (N.D. Cal. July 24, 2025). "The government's unilateral determination that re-
8 detention is warranted is far less likely to be correct than the decision reached by a neutral
9 adjudicator in a bond hearing." *Duong v. Kaiser*, 2025 WL 2689266, at *18 (N.D. Cal. Sept.
10 19, 2025). Only a hearing before a neutral decisionmaker—where ICE must prove that re-
11 detention is justified because Petitioner poses a flight risk or danger—can ensure re-detention
12 is effectuated in a manner that does not run afoul of due process.

13
14 ***3. The government has failed to show a countervailing interest against providing a***
15 ***pre-deprivation hearing.***

16 Respondents do not have an interest in enforcing the LRA in Petitioner's case because it
17 is inapplicable. *See supra* Section I.A. Aside from his dismissed criminal charge, Respondents
18 have not asserted that Petitioner is otherwise subject to mandatory detention.

19 Respondents have not demonstrated or explained why additional procedures—such as a
20 pre-deprivation hearing—would pose a significant burden on them. "In immigration court,
21 custody hearings are routine and impose a minimal' cost." *See Doe v. Becerra*, No. 2:25-cv-

1 00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025). Other courts have found
2 that “the Government’s interest in re-detaining non-citizens previously released without a hearing
3 is low: although it would have required the expenditure of finite resources (money and time)” to
4 provide a pre-deprivation hearing, “those costs are far outweighed by the risk of erroneous
5 deprivation of the liberty interest at issue.” *E.A. T.-B.*, 2025 WL 2402130, at *5; *see also Ledesma*
6 *Gonzalez*, 2025 WL 2841574, at *8 (concluding government interest to be low even assuming
7 “requiring predetention process would present some administrative burden”).

8 Finally, “[s]ociety’s interest lies on the side of affording fair procedures to all persons,
9 even though the expenditure of governmental funds is required.” *Lopez v. Heckler*, 713 F.2d 1432,
10 1437 (9th Cir. 1983). This factor also weighs strongly in favor of Petitioner.

11 ***

12 In sum, Petitioner is not subject to mandatory detention and the LRA does not govern
13 his detention. Each *Mathews* factor favors Petitioner and demonstrates that his procedural due
14 process rights were violated when ICE re-detained him.

15
16 **II. CONCLUSION**

17 The Court should therefore grant Petitioner’s habeas petition and order that Respondents
18 not re-detain him “until after an immigration court hearing is held (with adequate notice) to
19 determine whether detention is appropriate.” *E.A. T.-B.*, 2025 WL 2402130, at *6.
20

21 PETITIONER’S REPLY TO
RETURN MEMORANUM

Page 9

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CASE NO.: 2:25-CV-02136-LF-
TLF

1 I certify that this memorandum contains 2,059 words, in compliance with the Local Civil
2 Rules.

3
4 Dated this 13th day of November,

5 /s/ Hilary Smith

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21

PETITIONER'S REPLY TO
RETURN MEMORANUM

Page 10

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Seattle, WA 98104
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CASE NO.: 2:25-CV-02136-LF-
TLF