District Judge Lauren King
Chief Magistrate Judge Theresa L. Fricke

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

LUIS CALDERON, Petitioner, v. KRISTI NOEM, *et al.*, Respondents.	Case No. 2:25-cv-2136-LK-TLF FEDERAL RESPONDENTS'[1] OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Noted for Consideration: December 5, 2025

I. INTRODUCTION

This Court should not adopt the Report and Recommendation ("R&R"). Dkt. No. 11. U.S. Immigration and Customs Enforcement ("ICE") redetained Petitioner Luis Calderon, a noncitizen with pending removal proceedings, because he had recently been arrested for a theft offense that triggers mandatory detention under the Laken Riley Act ("LRA"). Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025), *codified at* 8 U.S.C. § 1226(c)(1)(E). While he claims that he is no longer subject to LRA mandatory detention because his criminal charge has been dismissed, Petitioner does not dispute that he was subject to LRA mandatory detention at the time of his

[1] Respondent Bruce Scott is not a federal employee and is not represented by undersigned counsel.

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redetention. He asserts that his redetention violated procedural due process because he did not get notice or a pre-deprivation hearing.

The R&R erred in finding that ICE violated procedural due process by redetaining Petitioner without a pre-detention hearing. *See* R&R, at 5-9. As a precursor to this finding, the R&R incorrectly found that the LRA's mandatory detention provision no longer applies to Petitioner because his criminal charge was dismissed. But this conflicts with the plain language of the LRA that requires detention of an inadmissible alien due to *an arrest* for certain offenses. 8 U.S.C. § 1226(c)(1)(E). The subsequent due process analysis is flawed in that it (1) fails to consider the LRA's mandate in relation to what procedure is due to a noncitizen upon redetention (R&R, at 7-8) and (2) fails to recognize that the due process analysis for Petitioner's redetention should apply the circumstances as they were on the date of that redetention. R&R, at 8-9.

When appropriately considered, due process did not require a pre-deprivation hearing at the time of Petitioner's detention. Furthermore, even if this Court were to find that the LRA's mandatory detention no longer applies to Petitioner, this Court should not order his release as he would still be subject to detention under 8 U.S.C. § 1226(a). If Petitioner's current detention is governed by Section 1226(a), the result would that he is entitled to a bond redetermination hearing by the immigration court, not release. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022) (discussing the "substantial procedural protections" available under Section 1226(a)).

Accordingly, this Court should not adopt the R&R and deny the Petition.

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II. BACKGROUND[2]

Petitioner, a native and citizen of Peru, entered the United States without inspection or parole on or about March 2002. In 2008, the U.S. Department of Homeland Security ("DHS") commenced removal proceedings, charging him as inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). DHS released him on bond. In 2012, ICE took Petitioner back into custody after his arrest/conviction for public intoxication. In September 2012, an immigration judge released Petitioner from custody on bond. His removal proceedings remain pending and are currently before the Board of Immigration Appeals.

On or about March 25, 2025, Petitioner was arrested for Grand Theft under California Penal Code § 487. On April 17, 2025, ICE issued a warrant for his arrest leading to his redetention. His immigration detention was and remains mandatory pursuant to 8 U.S.C. § 1226(c)(1)(E). Petitioner's criminal case was dismissed due to a lack of a speedy trial on July 30, 2025.

III. LEGAL STANDARD

Properly lodged objections to an R&R are reviewed *de novo*. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. Pro. 72(b)(3).

IV. ARGUMENT

Petitioner's redetention in April 2025 did not violate procedural due process. "Due process is flexible and calls for such procedural protections as the particular situation demands."

[2] For a more complete recitation of the facts, the Court is respectfully referred to Federal Respondents' Return. Dkt. No. 7, at 2-3.

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Mathews v. Eldridge, 424 U.S. 319, 334 (1976). Petitioner's redetention was mandatory pursuant to the LRA and the relevant due process analysis should take the LRA into account. The R&R failed to do so. As a result, this Court should not adopt the R&R's findings and should deny the habeas petition.

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

As the R&R correctly notes, "Petitioner does not dispute that at the time he was detained, he had been charged with a theft crime, thereby mandating his detention." R&R, at 3. But the R&R then incorrectly finds that the LRA's mandatory detention requirement no longer applies to Petitioner because his charges had been dismissed. From the plain language of the statute, the LRA applies even to inadmissible noncitizens who have been arrested, charged, or admit to one of the listed offenses, regardless of whether they were convicted of the offense.

Respectfully, the R&R incorrectly concludes that because the LRA is phrased in the present tense "it cannot be read to apply to a person has previously been arrested for and charged with a crime but the charges were dismissed." R&R, at 4. If Congress intended the LRA to only mandate detention for those convicted of or actively being prosecuted for an offense, it would have said so. It did not. Instead, Congress included aliens in any stage of the criminal justice system: arrested, charged, or convicted. 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). This comprehensive language encompasses aliens arrested for but never charged with an offense, as well as those

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charged with but never convicted of offenses. Thus, the fact that Congress included "charged with," "arrested for," and "convicted of" in the statute makes clear that it did not want to limit mandatory detention only to those who are convicted of or actively being prosecuted for a crime. By the plain language of the statue, an arrest for one of the specified crimes is enough.

Moreover, the legislative history of the LRA shows that at least one proposed amendment virtually identical to the R&R's reading of the statute was not included in the final statutory language. The proposed amendment read:

> Release. - Any alien being held in custody pursuant to an arrest or charge described in paragraph (1)(E) who is acquitted or not otherwise convicted of such charge within 90 days after the alien's first day of detention shall be entitled to a hearing to challenge the basis for the alien's custody under paragraph (1)(E) or to request to be released under subsection (a)(2).

Congressional Record, 171 Cong. Rec. S232-03, S232 (Jan. 16, 2025).

While Federal Respondents disagree with the R&R's finding that Petitioner is no longer subject to mandatory detention, this finding is not relevant as to whether Petitioner's April 2025 redetention violated procedural due process (when he was admittedly subject to mandatory detention under the LRA). This is an important distinction because the claims here are premised on the alleged unlawful redetention of Petitioner. Thus, the relevant question is whether the procedure used at the time of Petitioner's redetention satisfied due process. To address this question, this Court should consider the facts that were present in April 2025 – prior to the dismissal of Petitioner's criminal charge in July 2025. The question of whether Petitioner's ongoing detention remains mandatory now is a separate issue and does not implicate pre-detention requirements as Petitioner was already detained when his charges were dismissed.

The *Mathews* test demonstrates that Petitioner's redetention satisfied procedural due process. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews*, 424 U.S. at 333 (internal

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quotation marks omitted). This calls for an analysis of (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 probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

The R&R's *Mathews* analysis incorrectly found that the second and third *Mathews* factors weighed in favor of Petitioner. R&R, at 7-9. In respect to the second *Mathews* factor, the R&R erroneously made a blanket finding that Petitioner's redetention "without first making an assessment of whether [he] poses a danger to the community, and the likelihood that he would appear for future hearings, poses a significant risk of an erroneous deprivation of [his] liberty interest in continued release." R&R, at 8. In support, the R&R cites to *Padilla v. ICE*, 704 F. Supp. 3d 1163 (W.D. Wash 2023). R&R, at 8. The R&R relies on the substantive due process analysis in *Padilla*, not the procedural due process analysis that is the basis of Petitioner's habeas claim. Pet., ¶¶ 45-48.

Relevant to procedural due process, *Padilla* held that "non-punitive detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure the detention serves the government's legitimate goals." *Padilla*, 704 F. Supp. 3d at 1174. *Padilla* says nothing about pre-detention hearing requirements. Because due process is flexible, the appropriate analysis should include the government's legitimate goals in respect to the mandatory detention requirement of the LRA.

The LRA amended 8 U.S.C. § 1226(c). Section 1226(c) ensures that criminal and terrorist noncitizens that Congress deemed most dangerous and most likely to abscond complete their removal proceedings. *Demore v. Kim*, 538 U.S. 510, 520 (2003). Congress reviewed evidence and concluded that, "even with individualized screening, releasing deportable criminal [noncitizens] on bond would lead to an unacceptable risk of flight." *Id.* Thus, "[t]hese factors

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are indicative of whether the detainee would be a danger to the community or a risk of flight such that a bond hearing would be futile." *Anyanwu v. United States Immigr. & Customs Enf't Field Off. Dir.*, No. 2:24-CV-00964-LK-GJL, 2024 WL 4627343, at *5 (W.D. Wash. Sept. 17, 2024), *report and recommendation adopted sub nom.*, 2024 WL 4626381 (W.D. Wash. Oct. 30, 2024). And while the LRA expanded Section 1226(c), this expansion is supported by the legitimate reason for Congress's decision to ensure that noncitizens arrested or charged with specific crimes complete their removal proceedings. *Demore*, 538 U.S. at 520.

Furthermore, Petitioner had the opportunity to seek "a prompt individualized hearing before a neutral decisionmaker" upon his redetention. *Padilla*, 704 F. Supp. 3d at 1174. If Petitioner believed that he had been mistakenly detained and was not subject to the LRA either upon redetention or anytime thereafter, he had the ability to request that the immigration court hold a *Joseph* hearing to challenge whether he was subject to mandatory detention. *See* 8 C.F.R. § 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). Such a hearing would be directly relevant to the issue of the LRA's applicability to Petitioner, whereas a pre-deprivation hearing concerning his danger to the community and flight risk would completely disregard the mandate of the LRA and the purpose of Section 1226(c) detention. Also, the availability of a *Joseph* hearing is an adequate procedural safeguard to address the risk of an erroneous deprivation of Petitioner's liberty interest in his continued release as it specifically relates the reason for his redetention.

The third *Mathews* factor considers the government's interest in the official action. The R&R defined this as "the Government's interest in arresting and detaining petitioner without a hearing." R&R, at 8. The R&R's analysis of the third *Mathews* factor wrongly applies the procedural posture of Petitioner's criminal case now instead of at the time of his redetention in April 2025. R&R, at 8-9. As discussed above, the Government has a significant interest in

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enforcing the LRA and in keeping those arrested for theft in custody until their immigration case is fully adjudicated. But based on the R&R's finding that the LRA no longer applied to Petitioner after his criminal charges were dismissed, the R&R states that Federal Respondents "identified no legitimate interest that would support the specific detention of Petitioner without a pre-deprivation hearing." R&R, at 8 (citation and internal quotation marks omitted). But a pre-deprivation hearing would only have been possible in relation to the time of his redetention in April 2025. There is no dispute that the LRA applied to Petitioner at that time. Thus, the enforcement of the LRA is a relevant, legitimate, governmental interest concerning his redetention.

Whether the LRA applies to Petitioner now – which Federal Respondents believe it does – is not relevant to whether a pre-deprivation hearing was required here. The dismissal of Petitioner's criminal charges occurred months after his redetention. And to the extent that Petitioner argues that the LRA no longer applies, he should raise that before the immigration court at a *Joseph* hearing. Even if this Court were to find that the LRA no longer applies to Petitioner now, the appropriate relief would not be his immediate release. At minimum, his detention would then still be authorized under 8 U.S.C. § 1226(a), as his removal proceedings are ongoing, and the appropriate relief would be a bond redetermination hearing in the immigration court.

Accordingly, this Court should find that the *Mathews* factors weigh in favor of Federal Respondents and that Petitioner's redetention comported with procedural due process.

V. CONCLUSION

For the foregoing reasons, the Court should not adopt the R&R's recommendation and, instead, this Court should deny the Petition.

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DATED this 4th day of December, 2025.

Respectfully submitted,

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I certify that this memorandum contains 2,286 words, in compliance with the Local Civil Rules.