

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 RESPONSE TO
RESPONDENTS' OBJECTIONS TO THE
REPORT AND RECOMMENDATION**

Noted for Consideration:
December 26, 2025

I. INTRODUCTION

The Report and Recommendation (R&R) should be adopted, and this Court should grant Petitioner's habeas petition and order his immediate release from detention. Dkt. 11. Respondents argue that the R&R erred in "finding that ICE violated procedural due process by redetaining Petitioner without a pre-detention hearing" because the R&R's due process analysis was flawed

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1 as it “(1) fails to consider the [Laken Riley Act’s] LRA’s mandate in relation to what procedure
2 is due to a noncitizen upon redetention . . . and (2) fails to recognize that the due process analysis
3 for Petitioner’s redetention should apply the circumstances as they were on the date of that
4 redetention.” Dkt. 12 at 2. Further, Respondents continue to argue that the LRA mandates
5 Petitioners continued detention. *Id.* For the reasons that follow, Petitioner asserts that the *Mathews*
6 factors weigh heavily in favor of Petitioner and that he is not subject to mandatory detention under
7 the LRA. Accordingly, this Court should adopt the R&R and grant Petitioner’s petition.

8
9 **II. ARGUMENT**

10 **A. Even if Petitioner was subject to mandatory detention upon being re-detained, Due
11 Process required that he be afforded a pre-deprivation hearing.**

12 Respondents believe that because Petitioner was subjected to mandatory detention under
13 the LRA at the time of his re-detention, he should be afforded less due process than if he were
14 not. Dkt. 12, at 5–8. But the R&R correctly states that even if the “Government may believe it
15 has a valid reason to detain petitioner[,]” that does not “eliminate its obligation to effectuate the
16 detention in a manner that comports with due process.” Dkt. 11, at 7; *see also Guillermo M.R. v.*
17 *Kaiser*, 791 F. Supp. 3d 1021, 1033–34 (N.D. Cal. July 17, 2025) (finding “undeniably stark”
18 risk of erroneous deprivation where the Government contends that “notwithstanding a neutral
19 arbiter’s determination that Petitioner should be released, ICE is entitled to unilaterally terminate
20 the IJ’s order by re-detaining Petitioner without a hearing for at least six months, based on ICE’s
21 own determination in its sole discretion that additional conditions of release unilaterally set by

1 ICE had been violated”). Contrary to Respondents objections, the *Mathews* test clearly favors
2 Petitioner and demonstrates that his re-detention did not comport with procedural due process.
3 *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of due
4 process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.*
5 at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). In analyzing whether an
6 administrative procedure provides the process constitutionally due, courts consider (1) the
7 private interest that will be effected by the official action; (2) the risk of an erroneous deprivation
8 of that interest; and (3) the Government’s interest. *See id.* at 335.

9 Respondents do not object to the R&R’s finding that the first *Mathews* factor weighs in
10 favor of Petitioner. *See* Dkt. 11, at 6–7; Dkt. 12, at 6. It is well-established—under Supreme
11 Court precedent—that Petitioner has a protected liberty interest in his continued release from
12 detention. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (recognizing that individuals who
13 have been released from custody, even where such release is conditional, have a liberty interest
14 in their continue release).

15 Respondents object to the finding that the second and third *Mathews* factors weigh in favor
16 of Petitioner. Dkt. 12, at 6. Respondents argue that the second *Mathews* factor should not weigh
17 in favor of Petitioner because “the appropriate analysis should include the government’s
18 legitimate goals in respect to the mandatory detention requirement of the LRA.” *Id.* Respondents
19 argue that no pre-deprivation hearing was required because 8 U.S.C. § 1226(c) contemplates
20 whether or not Petitioner would be a danger or a flight risk. *Id.* at 5–6. Respondents rely on

1 *Denmore v Kim*, 538 U.S. 510 (2003), to support their argument. But *Denmore* did not address
2 the rights of someone in a similar position to Petitioner, who had previously been released from
3 immigration detention. In Petitioner’s unique case, the “period of release modifies the
4 requirements of due process because it increases the weight of the liberty interest.” *Duong v.*
5 *Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024, at *18–19 (N.D. Cal Sept. 19.
6 2025).

7 The risk of erroneous deprivation is extremely high when there is a complete lack of a
8 neutral review *prior* to Petitioner being re-detained after already having been free from custody
9 for years on a bond issued by an immigration judge. A pre-deprivation hearing before a neutral
10 decisionmaker is "one of the most basic due process protections." *See Castro-Cortez v. INS*, 239
11 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*,
12 548 U.S. 30 (2006). Allowing a neutral arbiter to review specific facts would “significantly
13 reduce the risk of erroneous deprivation.” *Guillermo M.R.*, 791 F. Supp. 3d at 1025. And the
14 Supreme Court has held that “the Constitution requires some kind of hearing *before* the State
15 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).
16 Respondents suggesting that Petitioner could have requested a *Joseph* hearing is an insufficient
17 protection. That hearing would have only given the Petitioner an opportunity to challenge his
18 already-effectuated re-detention—his protected liberty interest had already been deprived.

19 Multiple courts in this circuit have held that in the context of immigration detention, a pre-
20 deprivation hearing is required “to satisfy due process particularly where the individual has been

1 released on bond by an IJ.” *Guillermo M.R.*, 791 F. Supp. 3d at 1036; *see, e.g., Ortega v. Bonnar*,
2 415 F. Supp. 3d 963, 970 (N.D. Cal 2019); *Vargas v. Jennings*, No. 20-cv-5785-PJH, , 2020 WL
3 5074312, at *3-4 (N.D. Cal. Aug. 23, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1056
4 (N.D. Cal. 2021). This Court should find the same.

5 Lastly, any burden on Respondents does not outweigh Petitioner’s interests. Respondents
6 assert their interest is “enforcing the LRA and in keeping those arrested for theft in custody until
7 their immigration case is fully adjudicated.” Dkt. 11, at 8. However, Respondents’ interest in
8 placing Petitioner back in detention without a pre-deprivation hearing is low. The effort and costs
9 required to provide Petitioner with procedural safeguards is minimal and Respondents have not
10 shown or argued how they would be significantly impaired by the requirement of a pre-
11 deprivation hearing. Respondents argue that Petitioner could have sought a *Joseph* hearing after
12 being re-detained, Dkt. 11, at 7, but have not shown how waiting to hold a hearing post-detention
13 would be cost saving. Contrarily, “a pre-deprivation hearing could reduce administrative costs
14 by potentially avoiding an erroneous deprivation of liberty, which would save the costs of
15 unnecessary detention. *Guillermo M.R.*, 791 F. Supp. 3d at 1037; *see Meza v. Bonnar*, 18-cv-
16 02708-BLF, 2018 U.S. Dist. LEXIS 94664, 2018 WL 2554572, at *4 (N.D. Cal. June 4,
17 2018) (observing that “[t]he costs to the public of immigration detention are 'staggering'”
18 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017))).

1 Therefore, this Court should adopt the R&R and find that the *Mathews* factors
2 overwhelmingly weigh in favor of Petitioner and require that a hearing should have occurred
3 before Petitioner was re-detained, even if his detention was mandatory.

4
5 **B. Petitioner is not subject to mandatory detention under the Laken Riley Act.**

6 For the reasons described in the R&R, this Court should find that Petitioner is not
7 subject to mandatory detention because his charges have been dismissed. Dkt. 11, at 3–5.

8 Respondents incorrectly state that the plain language of the statute indicates that
9 the LRA “applies even to inadmissible noncitizens who have been arrested, charged, or
10 admit to one of the listed offenses, regardless of whether they were convicted of the
11 offense.” Dkt. 12, at 4. In fact, the plain language and the choice of the present tense in
12 the statute mandates a reading that cannot be applied to persons whose charges have been
13 dismissed or to persons who have been acquitted of the crime without any admission of
14 guilt. *See Santiago Helbrum v. Bondi*, No. 4:25-cv-00349-SHL-SBJ, 2025 U.S. Dist.
15 LEXIS 198795, ECF No. 30 at 1 (S.D. Iowa Sept. 30, 2025) (interpreting § 1226(c)(1)(E)
16 as mandating detention when an alien “is charged with” certain crimes does not apply after
17 charges are dismissed, because “it is no longer accurate to say that a person ‘is charged
18 with’ theft (present tense)” after those charges are dismissed); *Liliana Del Cisne Rueda*
19 *Torres v. Iaden Francis, et al.*, No. 25 CIV. 8408 (DEH), 2025 WL 3168759, at *5
20 (S.D.N.Y. Nov. 13, 2025) (“Respondents urge an interpretation that requires mandatory
21 detention following any arrest or charge no matter the ultimate disposition of those

1 charges. Such an interpretation would “make the words ‘is convicted of’ superfluous,” as
2 no Defendant could possibly proceed to a conviction without first being charged.”).
3 Therefore, Petitioner is not subject to mandatory detention.

4
5 **III. CONCLUSION**

6 For the foregoing reasons, this Court should adopt the R&R recommendation, grant
7 Petitioner’s petition, and order his immediate release from detention.

8
9 Dated this 17th day of December 2025,

10
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18
19 *I certify that this memorandum contains 1,492 words, in compliance with the Local Civil*
20 *Rules.*