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DETAINED

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**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON**

LUIS CALDERON,

Petitioner,

v.

KRISTI NOEM, Secretary of U.S.
Department of Homeland Security;
PAMELA BONDI, United States Attorney
General;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
LAURA HERMOSILLO, Seattle Field Office
Director, Immigration and Customs
Enforcement;
BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

Respondents.

Case No.: 2:26-cv-352

SECOND PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT TO
28 U.S.C. § 2241

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful re-detention of Petitioner, Mr. Luis Calderon. Petitioner previously filed a habeas petition which was denied on December 29, 2025. In its denial, the Court indicated that Petitioner is “free to file a new habeas petition” challenging his current detention.

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1 *Calderon v. Noem*, No. 2:25-cv-02136-LK-TLF, 2025 U.S. Dist. LEXIS at *21 (W.D. Wash. Dec.
2 29, 2025). Petitioner now files this second habeas petition¹ challenging the constitutional
3 infirmities with the Laken Riley Act (LRA) as applied to the facts of his case and argues that those
4 infirmities prove that due process demands a hearing *prior* to the government's decision to
5 terminate a person's liberty. *See Doe v. Moniz*, 800 F. Supp. 3d 203 (D. Mass. Sept. 5, 2025)
6 (granting habeas petition for an individual citing due process concerns when the petitioner had
7 only been arrested for a crime under the LRA).

8
9 **PARTIES**

10 2. Petitioner Luis Calderon is presently detained at the Northwest ICE Processing Center in
11 Tacoma, Washington. He has been detained for over nine months.

12 3. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S.
13 Department of Homeland Security. She is the cabinet-level secretary responsible for all
14 immigration enforcement in the United States and has ultimate custodial authority over Petitioner.

15 4. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the
16 United States. The Immigration Judges who decide removal cases and applications for relief from
17 removal do so as her designees.

18 5. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S.
19 Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible
20 for all immigration enforcement in the United States.

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22
23 ¹ As this argument was not made in the first habeas petition, Petitioner believes a second habeas petition is the appropriate avenue. *See Calderon*, 2025 U.S. Dist. LEXIS, at *18 n.4 ("To the extent there are constitutional infirmities with the LRA, the Court cannot invent arguments for [Petitioner].").

6. Respondent Laura Hermosillo is sued in her official capacity as Field Office Director for the Seattle office of Immigration and Customs Enforcement, an agency of the Department of Homeland Security. She is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. She is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

7. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention center where the Petitioner is being detained. Mr. Scott has immediate physical custody of Petitioner.

JURISDICTION

8. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

9. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

10. A prior habeas petition was filed with this Court. No other petitions, appeals, or motions regarding habeas corpus have been filed with any other court.

VENUE

11. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1) because the Petitioner is currently detained in this judicial district.

12. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live, work, or operate within this judicial district and because the actions which gave rise to this Petition took place in Tacoma, Washington, which falls within this judicial district.

FACTUAL BACKGROUND

13. Petitioner is a 39-year-old citizen and national of Peru.

14. Petitioner entered that United States on or about March 5, 2002, when he was fifteen years old, near San Ysidro, California.

15. Petitioner was first apprehended by DHS on or about January 2, 2008, and was issued a Notice to Appear, initiating removal proceedings under section 240 of the INA.

16. He was released by the Department of Homeland Security (DHS) on a \$3,000 bond on the same day.

17. Petitioner was subsequently re-detained by the DHS on or about August 19, 2012. An immigration judge held a custody redetermination hearing and ordered his release upon payment of a \$10,000 bond on September 10, 2012.

18. In May 2013, Petitioner filed an application for Special Rule Cancellation of Removal as a noncitizen who has been battered or subjected to extreme cruelty by a United States citizen or permanent resident spouse or parent, pursuant to section 240A(b)(2) of the INA. An immigration judge found him ineligible for the requested relief, and he appealed that decision. Most recently, the U.S. Court of Appeals for the Ninth Circuit remanded his case to the Board of Immigration Appeals (Board) due to its misapplication of relevant state law and failure to follow its own precedent. The appeal remains pending with the Board and he is not subject to a final order of

1 removal. *See Abdisalan v. Holder*, 774 F.3d 517, 524 (9th Cir. 2014) (finding that an order of
2 removal does not become final until remanded proceedings are complete).

3 19. Petitioner was re-detained in April 2025 after being arrested for and questioned about a
4 theft that occurred that he was being accused of. He was charged with Grand Theft of Personal
5 Property in Violation of California Penal Code § 487(a), a misdemeanor, on May 7, 2025. That
6 charge was dismissed by the Superior Court of California, County of Los Angeles on July 30,
7 2025.

8 20. Prior to Petitioner's re-detention, he did not receive written notice of the reason for his re-
9 detention.

10 21. Prior to Petitioner's re-detention, ICE did not assess whether he presented a flight risk or
11 danger to the community. Nor was this individualized determination precluded by any existing
12 Supreme Court precedent or the LRA as it applies to Petitioner.

13 22. Prior to Petitioner's re-detention, he never received a hearing before a neutral and detached
14 decisionmaker to determine if his re-detention is justified.

15 23. Petitioner has been detained for over nine months.

16
17 **MEMORANDUM OF LAW**

18 **The LRA is unconstitutional as applied to Petitioner and runs afoul of the Constitution and**
19 **longstanding Supreme Court jurisprudence.**

20 24. Application of the LRA to require the mandatory detention of Petitioner without affording
21 him a pre-deprivation hearing prior to re-detention violates his due process rights, especially
22 considering he had not yet been afforded multiple protections guarantee by the Constitution and
23

1 Supreme Court precedent. “In our society liberty is the norm, and detention prior to trial or without
2 trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

3 25. First, and possibly most offensive, the LRA as applied to Petitioner effectively eliminates
4 the fundamental procedural safeguard of the presumption of innocence, a “basic component of a
5 fair trial under our system of criminal justice.” *See Taylor v. Kentucky*, 436 U.S. 478, 479 (1978).
6 Despite not being articulated in the Constitution, this is cornerstone of American criminal justice.
7 *In re Winship*, 397 U. S. 358, 363 (1970) (“The [reasonable-doubt] standard provides concrete
8 substance for the presumption of innocence—that bedrock ‘axiomatic and elementary’ principle
9 whose ‘enforcement lies at the foundation of the administration of our criminal law.’”) (citing
10 *Coffin v. United States*, 156 U.S. 432, 453 (1895)).

11 26. “This presumption of innocence is given concrete substance by the due process
12 requirement that imposes on the prosecution the burden of proving the guilt of the accused beyond
13 a reasonable doubt.” *Estelle v. Williams*, 425 U.S. 501, 517 (1976).

14 27. Even though Petitioner should have been presumed innocent of any charges that could have
15 resulted in a conviction, none of the procedural protections were afforded to him because the LRA
16 eliminated them. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA compels the unsuitable result that an
17 individual who is accused of a crime, determined not to present a risk of danger or flight, and
18 released on bail or personal recognizance in the criminal proceeding, would then nevertheless be
19 subject to mandatory detention under the LRA based on the very same arrest or charge. *See id.*
20 And “under the Due Process Clause, a detainee may not be punished prior to an adjudication of
21 guilt in accordance with due process of law.” *Bell v. Wolfish*, 441 U.S. 520, 536 (1979).

22 28. Next, the Fifth Amendment promises that the government may not deprive individuals of
23 their liberty without “due process of law.” *See Erlinger v. United States*, 602 U.S. 821, 830 (2024).

1 Due process protections apply to all persons detained in the United States, including noncitizens.
2 *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

3 29. The Sixth Amendment promises “that [i]n all criminal prosecutions the accused has the
4 right to a speedy and public trial by an impartial jury.” *Erlinger*, 602 U.S. at 830 (internal
5 quotation marks omitted). In that guarantee is the assurance that a guilty verdict “will issue only
6 from a unanimous jury.” *Id.* This protection can only be waived if the defendant knowingly,
7 voluntarily, and intelligently waives their rights after being advised of their right to a jury trial
8 and the requirement for proof beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466,
9 490 (2000); *United States v. Henderson*, 998 F.3d 1071, 1082 (9th Cir. 2021).

10 30. It is a “time-honored guarantee that a unanimous jury ordinarily must find beyond a
11 reasonable doubt any fact that increases a defendant’s exposure to punishment.” *Erlinger*, 602
12 U.S. at 836. Our Constitution “protects the accused against conviction except upon proof beyond
13 a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In*
14 *re Winship*, 397 U. S. at 364.

15 31. Ultimately, the Fifth and Sixth Amendments require any fact that increases the penalty for
16 a crime to be submitted to a jury and proven beyond a reasonable doubt, absent a knowing and
17 voluntary waiver of those rights.

18 32. As it existed prior to the LRA, the decades-old mandatory detention statute under 8 U.S.C.
19 § 1226(c)(1) mandated detention only when a noncitizen had been *convicted* of a specified set of
20 crimes. Because mandatory detention under 1226(c)(1) prior to January 2025 had to be preceded
21 by a conviction, it was presumed that a noncitizen subject to mandatory detention was afforded
22 the full and fair protections guaranteed to them under the Fifth and Sixth Amendments and
23

1 received the procedural protections of the “presumption of innocence” prior to being detained in
2 immigration custody.

3 33. Never before has mandatory detention been applicable to individuals who are merely
4 arrested for or charged with a crime, without some sort of admission or finding of guilt, until the
5 enactment of the LRA in January 2025. *See* Pub. L. No. 119-1, 139 Stat. 3 (Jan. 29, 2025).

6 34. The LRA expands mandatory detention under 8 U.S.C. § 1226(c) to include any noncitizen
7 who (1) is inadmissible under 8 U.S.C. § 1182(a)(6)(C), and (2) is charged with, arrested for,
8 convicted of, or admits to committing various offenses, including burglary, theft, or larceny. 8
9 U.S.C. § 1226(c)(1)(E). If the individual is not otherwise in federal, state or local custody, DHS
10 “shall effectively and expeditiously assume custody.” *Id.* § 1226(c)(3).

11 35. The mandatory detention provision now applies in cases where discretionary detention
12 might have previously been an option. The LRA undoubtedly increases a noncitizen’s exposure
13 to penalty in the form of mandatory detention by expanding the list of triggering crimes that did
14 not even have to result in a conviction. *Id.* § 1226(c)(1)(E).

15 36. The LRA represents a fundamental departure from established constitutional principles that
16 have long protected an erroneous deprivation of liberty, and it unconstitutionally deprives
17 Petitioner of his due process rights mandated by the Constitution.

18 37. In subjecting Petitioner to re-detention under the LRA based merely on a charge that had
19 not been proven beyond a reasonable doubt, no probative evidence ever had to be produced—
20 either by the criminal prosecutors or ICE—to prove that Petitioner was a flight risk or danger.

21 38. The LRA allows for increased penalty based on facts not submitted to a jury or proven
22 beyond a reasonable doubt, directly contravening the constitutional mandate that any fact that
23

1 increases the penalty for a crime must be submitted to a jury, and proven beyond a reasonable
2 doubt. *Apprendi*, 530 U.S. at 490.

3 39. By removing all essential safeguards, the LRA as applied to Petitioner creates the very
4 conditions that Supreme Court precedent has identified as constitutionally impermissible—
5 circumstances where individuals face adverse determinations without the benefit of fundamental
6 fairness protections.

7 40. The LRA as applied to Petitioner subjected him to an increased exposure to penalty that
8 cannot stand under the time-honored and tested protections of the United States Constitution and
9 jurisprudence.

10
11 ***Demore* does not apply to Petitioner and did not strip his right to a pre-deprivation hearing
12 prior to being re-detained.**

13 41. In 2003—over twenty years before the LRA was added to § 1226—the Supreme Court
14 held in *Demore* that mandatory detention under § 1226(c) did not violate due process for the “brief
15 period” while removal proceedings are pending for noncitizens whose removability is based on
16 their criminal convictions. *Demore v. Kim*, 538 U.S. 510, 513-14, 522 n.6. (2003).

17 42. The Supreme Court has not addressed the constitutionality of mandatory detention under
18 § 1226(c) in the absence of a conviction.² The Court underscored how mandatory detention was
19 based on criminal guilt established through “the full procedural protections our criminal justice
20 system offers.” *Id.* at 513 (petitioner did “not dispute the validity of his prior convictions, which
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22
23 ² The pre-LRA triggers for mandatory detention under Section 1226(c) are subsections (c)(1)(A) through (D).
Subsections (c)(1)(A) through (C) all refer to the commission of criminal offenses. Subsection (c)(1)(D) refers to
detention based on certain terrorism-related conduct (which is not at issue in this case).

1 were obtained following the full procedural protections our criminal justice system offers”). This
2 was a core premise underscoring *Demore*’s reasoning.

3 43. *Demore* never suggested that 1226(c) would pass constitutional muster for mandatory civil
4 detention based on a mere charge or arrest, as opposed to established criminal guilt through a
5 conviction.

6 44. The Court in *Demore* also relied on the extensive legislative findings regarding the
7 purported need to detain noncitizens convicted of serious crimes. *Id.* at 518-21. Mandatory
8 detention was authorized in *Demore* because the Court relied on the record Congress had made
9 purporting to show that the “criminal alien” population targeted by the mandatory detention
10 statute—as it existed in 2003—“often committed more crimes” before removal or “failed to
11 appear for their removal proceedings.” *See id.* at 518-19 (citing studies and congressional
12 findings). Congress never issued committee reports concerning the LRA,³ and never made
13 findings suggesting the same need to detain people based solely on charges that have not and did
14 not result in a conviction—it made no findings that merely being charged with a crime like
15 shoplifting, larceny, or theft correlated with flight risk or dangerousness in any way.

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20 ³ It appears that the only report produced by Congress in relation to the LRA was an interim staff report by staff of the
21 House Judiciary Committee, which contained no empirical data at all. *See* Staff of H. Comm. on the Judiciary &
22 Subcomm. on Immigration Integrity, Security, & Enf’t, *The Consequences of the Biden-Harris Administration’s*
23 *Open-Borders Policies: The Case of the Illegal Alien Who Killed Laken Riley* (Comm. Print Aug. 16, 2024) (interim
staff report), available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/08-16-2024-The-Case-of-the-Illegal-Alien-Who-Murdered-Laken-Riley.pdf>. The report asserts,
without citing any empirical data or studies, that “illegal aliens commit[] crimes against Americans at an alarming
rate,” and then highlights facts from the file of Jose Ibarra, the assailant in Laken Riley’s case. *Id.* at 4-8. It also
references requests for files related to “dozens of illegal aliens who have committed violent and serious crimes during
the Biden-Harris Administration,” *id.* at 5, but those files do not appear in the congressional record.

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1 45. The LRA disregards the important constitutional protections and limitations applicable to
2 immigration detention.⁴ Specifically, the LRA mandates detention for noncitizens who meet
3 certain inadmissibility criteria solely based on the fact that an individual “is charged with” or “is
4 arrested for” certain crimes, including theft, larceny, and misdemeanor shoplifting. *See* 8 U.S.C.
5 § 1226(c)(1)(E).

6 46. There is no requirement that the charge actually have been adjudicated in any court, or
7 actually have resulted in a conviction. *See id.* There is no exception for charges that were
8 dismissed or otherwise favorably disposed, or even for charges that were tried and resulted in a
9 finding of not guilty. *See id.*

10 47. Individuals, like Petitioner, who were mandatorily detained or re-detained under the new
11 “charged with” provision of the LRA are stripped of any due process prior to their re-detention—
12 no criminal proceeding to adjudicate guilt and no pre-deprivation hearing to determine if the
13 individual actually presents a danger or a flight risk, especially when they have previously been
14 released on bond. Instead, re-detention is based purely on the existence of an unproven accusation.

15 48. The *Demore* exception to the bond hearing requirement—or in Petitioner’s case, the pre-
16 deprivation hearing due process requirement—does not include people like Petitioner, who was
17 charged with a crime, but never went through a criminal process that resulted in a conviction.

18 49. Without any process prior to re-detention, there is no reason to believe that Petitioner’s
19 continuing detention bears any “reasonable relation” to the purposes of the removal proceedings.

20
21 ⁴ “[T]he Supreme Court has characterized its own pretrial criminal cases as a baseline from which to determine the
22 scope of protections afforded to immigrant detainees under the Due Process Clause.” *Rodriguez Vasquez v. Bostock*,
23 3:25-cv-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *44 (W.D. Wash. Sept. 30, 2025) (citing *Zadvydas*, 533 U.S.
at 678); *see also Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (“[I]t stands to reason that an individual detained
awaiting civil commitment proceedings is entitled to protections at least as great as those afforded to a civilly
committed individual and at least as great as those afforded to an individual accused but not convicted of a crime.”).

1 *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 531-32 (Kennedy, J., concurring). The LRA
2 unconstitutionally deprives Petitioner of the due process rights mandated by the Fifth Amendment
3 and recognized as essential by our courts for years.

4 50. Applying *Demore* to an individual like Petitioner—who was, at the time, detained because
5 of a pending charge—would impermissibly guarantee that they will not receive due process at
6 any point.

7
8 **Petitioner was entitled to a pre-deprivation hearing under due process.**

9 51. Based on the aforementioned arguments, it is clear that due process requires that if DHS
10 seeks to re-arrest and re-detain a person like Petitioner—who has previously been granted bond
11 by an immigration judge—the government must afford a hearing before a neutral decisionmaker
12 to determine whether any re-detention is justified, and whether the person is a flight risk or danger
13 to the community.

14 52. In enacting the LRA, Congress made no findings that that merely being charged with a
15 crime like shoplifting, larceny, or theft correlated with either flight risk or dangerousness. *See*
16 *supra*, ¶ 42.

17 53. “Freedom from imprisonment—from government custody, detention, or other forms of
18 physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas*,
19 533 U.S. at 690. As this Court recently recognized, this is the “the most elemental of liberty
20 interests.” *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321 (W.D. Wash. 2025) (citation
21 modified).

1 54. Consistent with this principle, individuals released on parole or other forms of conditional
2 release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482
3 (1972).

4 55. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it]
5 includes many of the core values of unqualified liberty,” such as the ability to be gainfully
6 employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released
7 individual] and often on others.” *Id.*

8 56. To protect against arbitrary re-detention and to ensure the right to liberty, due process
9 requires “adequate procedural protections” that test whether the government’s asserted
10 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
11 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

12 57. Due process thus guarantees notice and an individualized hearing before a neutral and
13 detached decisionmaker to assess danger or flight risk before the revocation of an individual’s
14 release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process
15 of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner.” (citation
16 modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine
17 whether there is probable cause or reasonable ground to believe that the arrested parolee has
18 committed . . . a violation of parole conditions” and that such determination be made “by someone
19 not directly involved in the case” (citation modified)).

20 58. This Court has recognized that the three-part *Mathews* test applies when analyzing whether
21 an individual’s re-detention comported with due process. *See E.A. T.-B.*, 795 F. Supp. 3d at 1321.
22 Under that test, court must consider three factors:
23

1 First the private interest that will be affected by the official action; second, the risk
2 of an erroneous deprivation of such interest through the procedures used, and the
3 probable value, if any, of additional or substitute procedural safeguards; and finally,
4 the Government's interest, including the function involved and the fiscal and
5 administrative burdens that the additional or substitute procedural requirement
6 would entail.

7 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The *Mathews* test clearly demonstrates that
8 Petitioner's due process rights were violated, especially considering the constitutional infirmities
9 present in the LRA and as applied to Petitioner. His re-detention without a individualized process
10 prior to such re-detention was unlawful. Accordingly, Petitioner addresses each factor below.

11 ***The LRA deprived Petitioner of the most fundamental private interest—his***
12 ***liberty.***

13 59. Petitioner gained a liberty interest in his continued freedom when he was last released from
14 ICE custody upon payment of a bond that was granted by an Immigration Judge. He has an
15 exceptionally strong interest in freedom from physical confinement and in a hearing prior to any
16 revocation of his liberty. His "interest in not being detained is 'the most elemental of liberty
17 interests[.]'" *E.A. T.-B.*, 795 F. Supp. 3d at 1321 (alteration in original) (quoting *Hamdi v.*
18 *Rumsfeld*, 542 U.S. 507, 529 (2004)).

19 60. This principle applies with significant force to Petitioner. A noncitizen released from
20 custody pending removal proceedings has a protected liberty interest in remaining out of custody.
21 See e.g., *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on
22 preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released
23 from immigration detention] have a liberty interest in remaining out of custody on bond.");
Romero v. Kaiser, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Domingo*
v. Kaiser, No. 25-CV-05893-RFL, 2025 U.S. Dist. LEXIS 133824 (N.D. Cal. July 14, 2025)

(ordering the immediate release of the noncitizen who was convicted of a crime subsequent to his release on bond); *Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 U.S. Dist. LEXIS 138205 (N.D. Cal. July 17, 2025) (enjoining the DHS from re-detaining the noncitizen without adequate notice and a pre-deprivation hearing after he was arrested for robbery and vandalism while released on bond).

61. The impact of his detention is severe. He has been transferred out of his home state of California to Tacoma, Washington, far from his family, his community, and his legal team. He has built a life for himself while actively pursuing relief in the lengthy thirteen-year period of release on bond.

62. For these reasons, the first *Mathews* factor weighs heavily in favor of Petitioner.

There is a high risk of erroneous deprivation because Petitioner's re-detention under the LRA was mandated solely because of an unproven accusation.

63. “[T]he risk of erroneous deprivation of [Petitioner’s] liberty interest in the absence of a pre-detention hearing is high.” *E.A. T.-B.*, 795 F. Supp. 3d at 1322. Under *Demore* and prior to the LRA, the government could detain (or re-detain) individuals without providing them with a hearing. *See Demore*, 538 U.S. at 513, 518. The determination of flight risk and danger had already been considered based on certain convictions that had already been *fully adjudicated* in the criminal courts and considered by Congress. *See id.* at 513. However, under the new detention authority created by the LRA, an individual can be subject to mandatory detention based on charges in which no determination has yet been made regarding either dangerousness or flight risk. Erroneous deprivation appears to be more than an unconstitutional byproduct of the LRA—it is its whole purpose.

1 64. For Petitioner, the risk of erroneous deprivation is high because his re-detention was based
2 solely on a charge, a charge that had not yet been adjudicated or proven beyond a reasonable
3 doubt in criminal court. And ultimately, the charge was dismissed, further evidencing the risk of
4 erroneous deprivation to Petitioner.

5 65. Unlike the convictions in *Demore*, a mere charge provides no basis for proving that
6 Petitioner was either a danger or a flight risk. By eliminating any individualized determination of
7 danger or flight risk, the LRA deprived Petitioner of any procedural safeguards. That is why the
8 need for a pre-deprivation hearing prior to his re-detention is so high.

9 66. The LRA also wipes out any presumption of innocence that is afforded to those accused of
10 a crime. Even though Petitioner is presumed innocent of any charges until an adjudication of guilt,
11 the procedural protections under the “presumption of innocence” were not afforded to him
12 because the LRA effectively eliminates them. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA, as applied
13 to Petitioner, compels the unacceptable result that an individual merely accused of a crime, not
14 yet determined to present a danger or risk of flight, and released on bail or personal recognizance
15 in the criminal proceeding, would then nevertheless be subject to mandatory detention under the
16 LRA based on the very same arrest or charge. *See id.*

17 67. Mandatory detention and re-detention based on unproven charges carries an extremely high
18 risk of erroneous deprivation. Therefore, the second *Mathews* factor also weighs in favor of
19 Petitioner.

20
21 ***The LRA as applied harms the public interest.***

22 68. The final *Mathews* factor, while considering the government’s interest, ultimately entails
23 an assessment of the public interest as well. *Mathews*, 414 U.S. at 335, 347.

69. There is no articulable, governmental interest in imposing mandatory detention over Petitioner without first establishing whether his is a danger or a flight risk. In fact, limiting mandatory detention and re-detention only to those noncitizens who are dangerous or pose a flight risk through recognized procedures, like a pre-deprivation hearing, serves both the government's interest and the public's interest by reducing the fiscal and administrative burdens attendant to immigration detention. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (noting in 2017 that "the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.").

70. "Accordingly, a society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." *In re Winship*, 397 U.S. at 363-364.

71. The public has no interest in re-detaining an individual like Petitioner without due process who was not afforded first, with the full procedural protections our criminal justice system offers and second, with a pre-deprivation hearing to determine whether he actually posed a danger or a flight risk.

72. Therefore, the third and final *Mathews* factor also weighs in favor of Petitioner.

73. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process

74. Petitioner restates and realleges all paragraphs as if fully set forth here.

1 75. Due process does not permit the government to strip Petitioner of his liberty without written
2 notice and a hearing before a neutral and detached decisionmaker to determine whether re-
3 detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such
4 written notice and a hearing must occur *prior* to any re-detention, especially when an individual
5 has already been released on bond.

6 76. The elimination of the presumption of innocence under the LRA violates the due process
7 protections guaranteed by long-standing Supreme Court precedent. The Supreme Court has
8 repeatedly made clear that the presumption of innocence is inextricably linked to the fundamental
9 right to a fair proceeding, and its enforcement lies at the very foundation of criminal law
10 administration, *Estelle v. Williams*, 425 U.S. 501, 517 (1976), administration that needs to occur
11 before subjecting a noncitizen to mandatory detention or re-detention.

12 77. Respondents revoked Petitioner's release on bond and deprived him of liberty without
13 affording him any written notice or meaningful opportunity to be heard by a neutral and detached
14 decisionmaker prior to his re-detention.

15 78. Petitioner was re-detained under the LRA, before any finding of guilt was made, depriving
16 him of any and all meaningful due process protections.

17 79. Accordingly, Petitioner's re-detention violates the Due Process Clause of the Fifth
18 Amendment.

19
20 **SECOND CLAIM FOR RELIEF**
21 **Violation of Sixth Amendment**

22 80. Petitioner restates and realleges all paragraphs as if fully set forth here.
23

1 81. By permitting increased penalty without requiring jury determination of penalty-enhancing
2 facts beyond a reasonable doubt, the LRA directly contravenes established Supreme Court
3 precedent and constitutional requirements. *See, e.g., Erlinger*, 602 U.S. at 830; *Apprendi*, 530
4 U.S. at 490; *In re Winship*, 397 U. S. at 364; *see also supra*, ¶ 45, n.4

5 82. By re-detaining Petitioner under the LRA, ICE necessarily contravened Supreme Court
6 precedent and constitutional requirements.

7
8 **IRREPARABLE INJURY**

9 83. Petitioner has suffered irreparable injury as a result of his detention. He has been in custody
10 for over nine months, despite living in the United States for over twenty years and despite his
11 release on bond over ten years ago. His physical liberty continues to be restrained, and no just
12 cause for doing so can be specified. “It is well established that the deprivation of constitutional
13 rights’ unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002
14 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And “[d]eprivation of physical
15 liberty by detention constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th
16 Cir. 2018).

17 84. Petitioner understands that he could seek a bond hearing now that he is no longer subject
18 to mandatory detention under the LRA.⁵ But his re-detention was initiated by an unconstitutional
19 deprivation of due process. Therefore, because the LRA is rife with constitutional infirmities and
20

21 ⁵ *See Calderon*, 2025 U.S. Dist. LEXIS, at *20-21 (agreeing with the report and recommendation in that “the LRA
22 ceased to require the mandatory detention of [Petitioner] once his criminal charges were dismissed); *see also Helbrum*
23 *v. Williams*, No. 4:25-cv-00349-SHL-SBJ, 2025 U.S. Dist. LEXIS 198795, at *1 (S.D. Iowa Sept. 30, 2025); *Rueda*
Torres v. Francis, No. 25 CIV. 8408 (DEH), 2025 WL 3168759, at *5 (S.D.N.Y. Nov. 13, 2025) (“[D]etention remains
mandatory if charges are filed, but it is no longer required if charges are dropped or if a person is acquitted. Any other
interpretation would render superfluous the language in the statute requiring detention under circumstances other than
when a person ‘is arrested for’ or ‘is charged with’ certain crimes.”).

1 stripped Petitioner of any due process prior his re-detention, this Court should order his immediate
2 release as he was not provided a pre-deprivation hearing prior to being re-detained.
3

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner
8 from custody and permanently enjoin his re-detention during the pendency of his
9 proceedings absent written notice and a hearing prior to re-detention where Respondent
10 must prove by clear and convincing evidence that he is a flight risk or a danger to the
11 community and that no alternatives to detention would mitigate those risks;
- 12 (3) Declare that Petitioner's re-detention while removal proceedings are ongoing without
13 first proving an individualized determination before a neutral decisionmaker violates
14 the Due Process Clause of the Fifth Amendment;
- 15 (4) Declare the Laken Riley Act unconstitutional as applied to Petitioner;
- 16 (5) Issue an order providing for an award of attorney's fees and costs; and
- 17 (6) Grant such other relief as may be just and reasonable.

18 Dated: January 30, 2026.

19 /s/ Hilary Smith

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