IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CARLOS ALBERTO CHINCHILLA MARTINEZ,

Petitioner,

v.

ROBERT BROWN, in his official capacity as Warden of MDC Brooklyn,

JUDITH ALMODOVAR in her official capacity as Acting Field Office Director of the New York City Field Office, U.S. Immigration and Customs Enforcement,

MARKWAYNE MULLIN, in his official capacity as Secretary of the United States Department of Homeland Security, and

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States,

Respondents.

Case No.

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 OR ORDER TO SHOW CAUSE WITHIN THREE DAYS

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

INTRODUCTION

1. Petitioner Carlos Alberto Chinchilla Martinez is a 26-year-old native of Honduras who fled his home country at just 16 years old to escape persistent physical violence, sexual assault, and persecution based on his sexual orientation. He has lived in the New York City area for nearly a decade, filed an asylum application with U.S. Citizenship and Immigration Services ("USCIS") in 2018, and has been awaiting adjudication of that application ever since.

2. On June 9, 2026, Carlos attended his long-awaited USCIS asylum interview at the New York Asylum Office in Bethpage, New York. After approximately six hours of intense emotional questioning—during which Carlos recounted years of sexual physical, and emotional abuse—Carlos was led to a separate area of the office where Immigration and Customs Enforcement ("ICE") officers were waiting. ICE arrested Carlos on the spot, handcuffed him, and transported him to the Nassau County Correctional Center ("NCCC"). On June 11, 2026, Carlos was transferred to the Metropolitan Detention Center in Brooklyn ("MDC Brooklyn"), where he is currently detained. The government appears to have detained Carlos pursuant to the Laken Riley Act ("LRA" or the "Act"), 8 U.S.C. § 1226(c)(1)(E)(ii), based solely on a 2022 shoplifting charge that Carlos has never been convicted of or pled guilty to.

3. Carlos's detention is unlawful. His detention violates the Due Process Clause of the Fifth Amendment because it imposes indefinite mandatory confinement without any individualized determination of dangerousness or flight risk, based on nothing more than an unproven accusation. It is also impermissible under the LRA itself because the Act, by its plain text, applies only to individuals who are presently charged with or arrested for an enumerated offense—not those whose prior charges have been fully resolved. Carlos's detention is also

unsupported by the LRA because it was enacted in January 2025, years after Carlos's 2022 arrest and charge. This Court should grant the writ and order Carlos's immediate release.

JURISDICTION AND VENUE

4. Venue is proper under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because Carlos is currently in custody within this District.

5. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the U.S. Constitution (the Suspension Clause).

6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

REQUIREMENTS OF HABEAS UNDER 28 U.S.C. § 2243

7. The importance of the writ of habeas corpus as a means of protecting individuals, including noncitizens, from unlawful detention is well-established. *E.g.*, *Rasul v. Bush*, 542 U.S. 466, 473-74 (2004); *Velasco Lopez v. Decker*, 978 F.2d 842, 850 (2d Cir. 2020) (noncitizens are also entitled to challenge through habeas corpus the legality of their ongoing detention."). Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

8. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

THE PARTIES

9. Carlos is a Honduran citizen who entered the United States on or around November 23, 2016, and was designated an Unaccompanied Child upon entry. Carlos submitted an asylum application to USCIS on July 31, 2018. Carlos was detained at his June 9, 2026, USCIS asylum interview and is currently detained at MDC Brooklyn.

10. Upon information and belief, Respondent Robert Brown is the Warden of MDC Brooklyn. Respondent is an immediate physical custodian responsible for Carlos's detention. He is sued in his official capacity.

11. Upon information and belief, Respondent Judith Almodovar is the Acting Field Office Director of the New York Office of ICE, which is responsible for ICE activities in the New York Area of Responsibility. The New York Area of Responsibility encompasses MDC Brooklyn. Respondent Judith Almodovar is an immediate legal custodian responsible for the arrest and detention of Carlos. She is sued in her official capacity.

12. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security. He is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103 and is ultimately responsible for ICE operations. He is sued in his official capacity.

13. Respondent Todd Blanche is the Acting Attorney General of the United States and thus the acting head of the Department of Justice. He is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and directs agencies within the United States Department of Justice, including the Executive Office for Immigration Review which houses the immigration courts and Board of Immigration Appeals. He is sued in his official capacity.

FACTUAL AND LEGAL BACKGROUND

I. Factual Background

14. Carlos is a 26-year-old native and citizen of Honduras. Declaration of W. Quaranta ("Quaranta Decl") at ¶ 3.

15. Carlos entered the United States through Hidalgo, Texas, on or around November 23, 2016. *Id.* Upon entry, Carlos was designated as an Unaccompanied Alien Child ("UAC") and was transferred to the custody of the Office of Refugee Resettlement ("ORR"). *Id.* On March 17, 2017, Carlos was released by ORR to the custody of his uncle in New York. *Id.* Carlos has lived in the New York City area since his release from ORR custody. *Id.* at ¶ 5. He currently resides with his fiancé in Brooklyn. *Id.*

16. On July 31, 2018, Carlos filed an asylum application with USCIS. *Id.* at ¶ 4. Carlos seeks asylum based on past violence and fear of future persecution he would likely face in Honduras as a gay man. *Id.* at ¶ 7. While in Honduras, Carlos experienced persistent physical violence and verbal threats from family members and gangs, including [redacted], due to his sexual orientation. *Id.* Carlos was [redacted] and beaten by gangs because of his sexual orientation. *Id.* As reflected in his asylum application, Carlos fears that he would face future persecution based on his sexual orientation if he were to return to Honduras. *Id.*

17. Carlos attended his scheduled asylum interview on June 9, 2026, at the New York Asylum office located in Bethpage, New York. *Id.* Carlos arrived for his asylum interview over an hour before his scheduled time, and his interview lasted approximately six hours. *Id.* The interview consisted of intense emotional questioning, and Carlos painfully described the [redacted] in Honduras. *Id.* Carlos also described his tangible fear of future persecution based on his sexual orientation if he were to return to Honduras. *Id.*

18. At the conclusion of the asylum interview, Asylum Officer Justyna Tauferner demanded that Carlos and his attorneys move to a separate section of the Asylum Office, implying that it was the exit. *Id.* at ¶ 8. Instead, Immigration and Customs Enforcement ("ICE") were waiting, and immediately arrested Carlos, placing him in handcuffs and pressing him against the wall. *Id.*

19. The arresting officers showed Carlos and pro bono counsel a warrant, which invokes Section 236 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1226, as the basis for detention. *Id.* at ¶ 11; *id.*, Ex. A.

20. At the time of Carlos's arrest, his *pro bono* counsel, Will Quaranta, informed the officers that he believed the sole basis of the arrest was the purported application of the Laken Riley Act, 8 U.S.C. § 1226(c) ("LRA"). *Id.* at ¶ 13. Carlos was arrested and charged with shoplifting, an enumerated offense in the LRA, in 2022. *Id.*, Ex. B. Carlos did not admit or plead guilty to that charge, nor was he convicted of shoplifting. The charge was amended to Public Nuisance, and Carlos pled guilty to that amended charge on July 6, 2022. *Id.*

21. Neither officer indicated that the basis for detention was anything other than the LRA or provided any information to suggest that Carlos was detained based on the discretionary detention provision found in 28 U.S.C. § 1226(a). *Id.* at ¶ 13.

22. Despite multiple requests, the arresting officers refused to provide counsel information about where Carlos would be detained. *Id.* at ¶ 16. Carlos was originally detained at the NCCC. *Id.* ¶ 16. Then, on June 11, 2026, counsel located Carlos at the MDC Brooklyn via the ICE Detainee Locator tool. *Id.* ¶ 16; *id.*, Ex. C. Carlos remains in detention at MDC Brooklyn, where he has limited ability to speak with his family and attorneys.

II. Legal Background

23. Prior to January 2025, 8 USC § 1226(c) required the Attorney General to take into custody certain non-citizens who had committed or been convicted of specified offenses, including crimes of moral turpitude, controlled substances offenses, terrorism, and certain firearm offenses. *See Peralta-Malla v. Mullin*, No. 26-cv-2903, 2026 WL 1346325, at *3 (S.D.N.Y. May 14, 2026).

24. In January 2025, Congress passed the Laken Riley Act ("LRA"), amending § 1226(c) "to add an additional category of individuals subject to mandatory detention under § 1226(c)." *Id.*; *see* Laken Riley Act, Pub. L. No. 119-1, § 2(1)(C), 139 Stat. 3, 3 (2025). Under § 1226(c) as amended, the Attorney General "shall take into custody any alien who . . . is inadmissible [under certain provisions in 8 U.S.C. § 1182(a)][] and . . . *is charged with, is arrested for*, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person." 8 USC § 1226(c)(1)(E)(ii) (emphasis added). In other words, the amendment 'permits mandatory detention to turn not only on a conviction, but also, in some circumstances, on an arrest or charge alone.'" *Peralta-Malla*, 2026 WL 1346325, at *3 (quoting *Nosirov v. Rife*, No. 26-cv-1534, 2026 WL 916602, at *4 (E.D. Pa. Apr. 1, 2026)).

LEGAL ARGUMENT

I. Exhaustion of Remedies is Not a Bar to Relief.

25. Because no statutory exhaustion requirement applies to Carlos's case, exhaustion is a "prudential matter." *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025). Courts in this Circuit routinely excuse "exhaustion when '(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a

substantial constitutional question.'" *Id.* (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003), *as amended* (July 24, 2003)).

26. The government appears to have taken the position that Carlos is subject to mandatory, indefinite detention without eligibility for a bond hearing. *See* Quaranta Decl., ¶ 12–13; *id.*, Ex. B. Accordingly, any attempt to seek administrative remedies would be futile, as there is no genuine opportunity for adequate relief. *See, e.g., J.U.*, 805 F. Supp. 3d at 489-90 (excusing exhaustion for noncitizen challenging his detention where there were "no administrative remedies available that could provide Petitioner with the relief he seeks" and administrative appeal would be futile).

27. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to the present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144-45 (1992), *superseded by statute on other grounds as recognized in Woodford v. Ngo*, 548 U.S. 81 (2006).

28. Immigration judges and the Board of Immigration Appeals ("BIA") generally lack authority to rule on a petitioner's constitutional claims. *See United States v. Perez*, 330 F.3d 97, 101 (2d Cir. 2003) ("BIA does not have jurisdiction to adjudicate constitutional issues such as due process claims."); *J.U.*, 805 F. Supp. 3d at 490 ("[N]either an immigration judge nor the BIA is positioned to properly adjudicate" petitioner's due process claim.); *Villegas ex rel. Guzman Andujar v. Francis*, 815 F. Supp. 3d 248, 264 (S.D.N.Y. 2025) (same).

29. Because there are no administrative remedies that Carlos could exhaust before seeking habeas relief, no exhaustion requirement impedes his claims here. *See, e.g., J.U.*, 805 F. Supp. 3d. at 490; *Villegas*, 815 F. Supp. 3d at 263 ("Guzman Andujar is excused from

administrative exhaustion because he has no genuine opportunity for adequate relief . . . ."); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 680-81 (W.D. Tex. 2025) (finding petitioner's claim "properly before the court" where requiring petitioner to wait "indefinitely . . . would exacerbate his alleged constitutional injury").

II. Carlos's Detention Violates the Due Process Clause.

30. In 2022, years before passage of the LRA, Carlos was charged with shoplifting merchandise valued at less than $200. Quaranta Decl, Ex. B. But Carlos has never been *convicted* of that offense or any other covered by the LRA. *Id.* at ¶ 15. The crime to which Carlos pled guilty in 2022 was public nuisance, *Id.*, Ex. B, an offense that is absent from the LRA. For the reasons that follow, and as courts across the country have consistently held,[1] Carlos's mandatory detention on the basis of a years-old shoplifting arrest and charge violates his rights under the Due Process Clause of the Fifth Amendment.

31. Under the Due Process Clause, "[n]o person shall . . . be deprived of life, liberty, or property without due process of law." U.S. Const. amend. V (emphasis added). And it is axiomatic that the Clause protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

32. To determine whether a noncitizen in civil immigration confinement has been detained without due process, the Second Circuit applies the balancing framework from *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Black v. Decker*, 103 F.4th 133, 147–48 (2d Cir. 2024);

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[1] *See Peralta-Malla*, 2026 WL 1346325, at *6; *Alcantara Guerrero*, 2026 WL 931503, at *4; *Nosirov*, 2026 WL 916602, at *6–8; *Sandoval Rodriguez v. Warden of Cal. City Detention Facility*, No. 26-cv-2080, 2026 WL 970545, at *5 (E.D. Cal. Apr. 10, 2026), *R&R adopted*, 2026 WL 1068774 (E.D. Cal. Apr. 20, 2026); *S.E. v. Noem*, No. 26-cv-00356 , 2026 WL 206085, at *4 (E.D. Cal. Jan. 27, 2026); *E.C. v. Noem*, No. 25-cv-01789, 2025 WL 2916264, at *11 (D. Nev. Oct. 14, 2025).

Velasco Lopez v. Decker, 978 F.3d 842, 851 (2d Cir. 2020); *see also Peralta-Malla*, 2026 WL 1346325, at *3 ("Several district courts have applied the *Mathews* factors to habeas petitions brought by those detained under the Laken Riley Act.").

33. In determining whether Carlos is being held without due process, the Court must consider "(1) 'the private interest that [is] affected by the official action [Carlos's mandatory detention]'; (2) 'the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards'; and (3) 'the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'" *Black*, 103 F.4th at 147 (quoting *Mathews*, 424 U.S. at 353). Here, all three *Mathews* factors weigh heavily in Carlos's favor.

34. ***Factor one.*** The first factor—the private interest affected by the government's official action—is Carlos's interest in being free from imprisonment. That factor could hardly weigh any more heavily in Carlos's favor, as freedom from detention is "the most significant liberty interest there is." *Velasco Lopez*, 978 F.3d at 851. Such freedom "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. After all, "liberty is the norm and detention 'is the carefully limited exception.'" *Black*, 103 F.4th at 133 (quoting *Velasco Lopez*, 978 F.3d at 851) (alteration added)). The interest in freedom from imprisonment is so strong that it attaches to a former UAC after even a short period of release from ORR custody. *See R.A.R.R. v. Almondovar*, --- F. Supp. 3d ---, No. 25-CV-6597 (PKC), 2026 WL 32340, at *4 (E.D.N.Y. Feb. 6, 2026) (holding that a former UAC had a cognizable liberty interest after release to an ORR sponsor and residency in the United States for only eighteen months).

35. When Carlos was summarily detained on June 9, 2026, he was afforded no opportunity to be heard whatsoever. Quaranta Decl., ¶ 8. And there is every indication that, in the current climate, Carlos will remain detained *indefinitely*. Under § 1226(c), including as amended, there is "no administrative mechanism by which [a noncitizen] [can] . . . challenge[] [their] detention on the ground that it [has] reached an unreasonable length." *Black*, 103 F.4th at 151; *see also Raymond et al.,* Courts Have Ruled 4,400 Times that ICE Jailed People Illegally. It Hasn't Stopped., Reuters (Feb. 14, 2026), https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/ (finding that ICE has "continued jailing people indefinitely" notwithstanding the thousands of granted habeas petitions just between October 2025 and February 2026). Additionally, if Carlos is deported while in detention, he will face the same consistent physical, sexual, and emotional violence based on his sexual orientation that he suffered in Honduras before he fled to the United States. In short, the first *Mathews* factor therefore weighs heavily in favor of Carlos.

36. ***Factor two***. The second *Mathews* factor—the risk of an erroneous deprivation of Carlos's liberty through his detention without process, and the probable value of additional procedural safeguards—also weighs in Carlos's favor. The risk that mandatory detention under the LRA will result in an erroneous deprivation of Carlos's rights is extremely high. He has been detained on the basis of a charge—shoplifting—of which no finder of fact has ever found him guilty. Quaranta Decl., Ex. B. As courts in the Second Circuit have found, "[t]he risk of erroneous deprivation is high" where a noncitizen "is being detained based solely on an arrest and charge for which he is presumed innocent." *Peralta-Malla*, 2026 WL 1346325, at *5 (quoting *Alcantara Guerrero v. Wesling*, No. 26-cv-10928, --- F. Supp. 3d ---, 2026 WL 931503, at *5 (D. Mass. Apr. 6, 2026)). Indeed, Carlos "has not received procedural protections to adjudicate his guilt or

innocence" of shoplifting, the only charge bringing him within the ambit of the LRA. *Id.* Applying the LRA to justify the mandatory detention of a noncitizen on the basis of a crime for which they were charged but never convicted (and with no charges then pending) would mean that "liberty [was] withdrawn at the accusation stage, automatically, and without any individualized determination that detention [was] necessary." *Id.* (quoting *Nosirov*, 2026 WL 916602, at *6 n.3). Due process does not allow such a result to stand; the risk that Carlos has been erroneously and unlawfully detained is far too high.

37. Moreover, courts in this district have consistently found that, where, as here, a petitioner has been previously released from the government's custody and is then subsequently re-detained, such re-detention without proof of changed circumstances impermissibly increases the risk of erroneous deprivation and violates the Fifth Amendment's Due Process Clause. *See J.U. v. Maldonado*, 805 F. Supp. 3d 482, 497–498 (E.D.N.Y. 2025) (holding that "the risk of erroneous derivation of Petitioner's liberty interest is high" where "there was no change in circumstances from the time" the government previously released the petitioner); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 491–492 (E.D.N.Y. 2025) (holding that both private interest and risk of erroneous deprivation weighed heavily in favor of the petitioner where the government could not point to "any material change in circumstances" from the petitioner's prior detention that could have "triggered [Petitioner's] sudden arrest and detention," thus giving rise to an inference that the Government would "have failed to meet their burden of proving that [Petitioner] constituted either a flight risk or a danger to the community"); *Minarcaja Concha v. Lyons*, 818 F. Supp. 3d 367, 390 (E.D.N.Y. 2026) (holding that, where the government provided "no showing of changed circumstances following [prior] release" from government custody, a petitioner's detention violates the Fifth Amendment under *Mathews*); *Lopez v. Sessions*, No. 18 Civ. 4189 (RWS), 2018

WL 2932726 at *12 (S.D.N.Y. June 12, 2018) (where the petitioner was a former UAC released by ORR to the care of a sponsor and subsequently re-detained as an adult, the court concluded that "Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.").

38. Further, additional procedural safeguards would add real value here. A bond hearing would show that Carlos is not a danger to the community or a flight risk. *See* Quaranta Decl. at ¶ 5 (Carlos has lived in the New York area for nearly a decade, where he has consistently been employment, and where he now lives with his fiancé); *see Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 317 (E.D.N.Y. 2025) ("Civil immigration detention must be 'nonpunitive in purpose' and bear a 'reasonable relation' to the authorized statutory purposes of preventing flight and danger to the community." (quoting *Zadvydas*, 533 U.S. at 690)). Nor is the LRA accompanied by the type of "specific legislative findings that those merely arrested or charged with certain crimes are, as a class dangerous or likely to flee" that have enabled courts to find in other circumstances that mandatory detention passes due process muster. *See Peralta-Malla*, 2026 WL 1346325, at *4; *Alcantara Guerrero*, 2026 WL 931503, at *4.

39. ***Factor three.*** Finally, the third *Mathews* factor weighs in Carlos's favor. Although the government has an interest in enforcing immigration laws and protecting the public, that interest bears no connection to Carlos's detention. Carlos is not a flight risk nor is he a danger to the community. Therefore, neither his release nor a bond hearing would "undermine [ICE's] effective enforcement of immigration laws." *Peralta-Malla*, 2026 WL 1346325, at *5 (quoting *Sajous v. Decker*, 18-cv-2447, 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2018)) ("[T]he Court fails to see how the government's interests [in preventing flight and danger to the community] are

impaired by affording Peralta-Malla a bond hearing, which would evaluate whether the deprivation of his liberty is justified by a risk of flight or danger to the community."). In fact, Carlos's detention *runs counter* to the government's interests. The Second Circuit has noted that "retaining and housing detainees imposes substantial costs as well." *Black*, 103 F.4th at 154; *see Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The costs to the public of immigration detention are 'staggering.'").

40. For the foregoing reasons, this Court should join district courts across the country in holding that Carlos's mandatory detention under the LRA constitutes a violation of his Due Process rights.

III. The LRA Does Not Authorize Mandatory Detention of Carlos because the LRA Requires a Current Charge or Arrest for an Enumerated Offense.

41. Text, structure, and precedent all confirm the same: the LRA authorizes mandatory detention based on a *current* charge or arrest for an enumerated offense—not a prior arrest and charge that did not result in conviction for the enumerated offense. While Carlos was previously charged with shoplifting, he is not presently under arrest for or charged with that offense. Rather, Carlos pleaded to a different charge—Public Nuisance—which is not an enumerated offense in the LRA. The LRA therefore provides no basis for his mandatory detention.

42. ***Text***. The statutory text is dispositive. The LRA applies only to an alien who, as relevant here, "is charged with" or "is arrested for" an enumerated offense. 8 U.S.C. § 1226(c)(1)(E)(ii). In drafting the LRA, Congress chose the present tense. It did not mandate detention for any alien who "was charged with," "has been charged with," "was arrested for," "has been arrested for," or "has ever been arrested for" an enumerated offense. That choice must be given effect. As the Supreme Court has explained time and again, courts should take account of verb tense when construing Congress' commands. *See United States v. Wilson*, 503 U.S. 329, 333

(1992) ("Congress' use of a verb tense is significant in construing statutes."); *Carr v. United States*, 560 U.S. 438, 448 (2010) (Dictionary Act "instructs that the present tense generally does not include the past"); *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 57 (1987) ("Congress could have phrased its requirement in language that looked to the past . . . but it did not choose this readily available option."); *Stanley v. City of Sanford*, 145 S. Ct. 2058, 2063 (2025) ("[T]o ascertain a statute's temporal reach, this Court has frequently looked to Congress' choice of verb tense." (internal quotation marks and citation omitted)).

43. In other words, the statute does not reach an individual who is no longer under arrest for or charged with an enumerated offense. A person whose shoplifting charge has been resolved by plea to a different offense no longer "**is** charged with" shoplifting. Nor is such a person presently "arrested for" shoplifting. The Government's contrary reading would convert "is charged with" into "was ever charged with" and "is arrested for" into "was ever arrested for." That is not statutory interpretation; it is revision.

44. Reading the statute to reach prior arrests and charges is particularly untenable because Congress knows how to draft historical arrest-and-charge triggers when it wants to. For example, Congress has required certain federal child-care employment applications to ask whether an applicant "has ever been arrested for or charged with a crime involving a child" and to require a description of "the disposition of the arrest or charge." 34 U.S.C. § 20351(d)(1). Congress likewise defined "child abuse crime information" to include facts concerning a person who "has been arrested for, or has been convicted of," a child-abuse crime, including "the disposition of the charge." 34 U.S.C. § 40104(4). And Congress has elsewhere used formulations such as "has been arrested" and "has had charges brought" when referring to completed procedural events. *See* 18 U.S.C. § 5001; 18 U.S.C. § 3262(b). The omission of any comparable past-tense formulation in

§ 1226(c)(1)(E)(ii) is a strong textual indication that the LRA's charge and arrest clauses refer to *only current* criminal-process status.

45. ***Structure***. The structure of § 1226(c)(1)(E)(ii) confirms that conclusion. The provision lists several separate triggers for mandatory detention: "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts" constituting the essential elements of an enumerated offense. That series is not redundant. The first two phrases—"is charged with" and "is arrested for"—refer to pre-adjudication statuses in the criminal process (i.e., someone who is currently under arrest or against whom charges are currently pending). The latter two phrases—"is convicted of" and "admits having committed"—address already-adjudicated criminal status or historical conduct.

46. This reading gives each clause independent work to do. *See, e.g.*, *United States v. Davis*, 961 F.3d 181, 188 (2d Cir. 2020) (courts should avoid interpretations that render statutory provisions superfluous). By contrast, if "is arrested for" means "has ever been arrested for" and "is charged with" means "has ever been charged with," then "is convicted of" would be largely (if not entirely) superfluous. Moreover, the anti-superfluity canon "is strongest when an interpretation would render superfluous another part of the same statutory scheme." *See Helbrum v. Williams Olson*, 2025 WL 2840273, at *6 (S.D. Iowa Sep. 30, 2025). Just so here. Thus, Congress' decision to include arrests, charges, *and convictions* as separate triggers for mandatory detention makes sense only if the former are limited to *current* charges or arrests.

47. ***Precedent***. District courts in this Circuit and across the country have broadly agreed: the LRA does not reach prior arrests and charges. *See Rueda Torres v. Francis*, 2025 WL 3168759, at *5 (S.D.N.Y. Nov. 13, 2025) ("[T]he text of § 1226(c)(1)(E)(ii) does not provide for mandatory detention where, as here, charges have been dropped."); *Sidqui v. Almodovar*, 2026

WL 251929, at *12 (S.D.N.Y. Jan. 30, 2026) (collecting cases); *Helbrum*, 2025 WL 2840273, at *5 ("Under common usage of the English language, if criminal charges against someone have been dropped, we would not continue to say the person 'is charged with' that crime, present tense."); *E.C. v. Noem*, 2025 WL 2916264, at *11 (D. Nev. Oct. 14, 2025) (finding that statute's "reference to a person who 'is charged with' or 'is arrested for' a theft-related offense, in the present tense, cannot be read to apply to a person who has previously been arrested for and charged with a crime where they have also been acquitted of the crime"); *Hermosillo-Barajas v. Mattos*, 2026 WL 1383263, at *3 (D. Nev. May 18, 2026) ("The use of present tense suggests Congress did not intend for the LRA to apply to prior arrests or convictions."); *Matute v. Jamison*, 2026 WL 461557, at *5 (E.D. Pa. Feb. 18, 2026) ("[P]resent-tense 'is arrested' in the LRA cannot apply to Petitioner's 2006 arrest."); *Singh v. Chestnut*, 2026 WL 266021, at *2 (E.D. Cal. Feb. 2, 2026) ("[C]ourts have construed the Laken Riley Act to apply only where an individual is currently charged with or arrested for the enumerated crimes"). There is no reason to depart from that widespread consensus.[2]

48. No clause in § 1226(c)(1)(E)(ii) triggers mandatory detention here. Carlos was arrested for and charged with shoplifting under New Jersey law in 2022. *See* Quaranta Decl., Ex. A. That arrest and charge have been fully resolved, resulting in Carlos pleading guilty to public

[2] The canon of constitutional avoidance reinforces the same conclusion. The avoidance canon instructs courts to avoid interpreting statutes in ways that would render them unconstitutional (or arguably so). *See, e.g.*, *Clark v. Martinez*, 543 U.S. 371, 381 (2005) (stating that the avoidance canon is "a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts"). So long as the constitutionally permissible interpretation of the statute is "fairly possible," courts should adopt it over one that "raise[s] serious constitutional problems." *INS v. St. Cyr*, 533 U.S. 289, 300 (2001) (citation omitted). As at least one court has noted, reading the LRA to trigger mandatory detention based on prior arrests or charges raises serious constitutional doubts. *See E.C.*, 2025 WL 2916264, at *10–11. If a previous arrest or charge is enough to trigger mandatory detention, then some individuals will surely be subject to "an erroneous deprivation" because an individual charged and arrested *but later acquitted* "would still be subject to mandatory detention." *Id.* at *10 (quoting *Mathews*, 424 U.S. at 335). On that theory, a spurious charge alone could *mandate* detention. That "would turn due process on its head." *Id.* All the more reason why this Court should construe § 1226(c)(1)(E)(ii) to authorize mandatory detention based only on a *current* charge or arrest.

nuisance under New Jersey law. *Id.* So, Carlos is not currently "charged with" or "arrested for" shoplifting. Nor is he "convicted of" that offense—or any other offense enumerated in § 1226(c)(1)(E)(ii). The offense for which he has been convicted, Public Nuisance, is not covered by § 1226(c)(1)(E)(ii). And neither has he admitted to committing any enumerated offense. In short, Carlos's 2022 shoplifting charge and arrest do not authorize mandatory detention under the LRA.

IV. The LRA Does Not Authorize Mandatory Detention of Carlos because it Does Not Apply Retroactively to Pre-Enactment Arrests or Charges.

49. Even if the LRA *does* authorize mandatory detention based on *some* prior arrests and charges, it does not authorize detention here. As courts have unanimously concluded, the LRA does not apply retroactively—meaning an arrest or charge before the LRA's effective date of January 29, 2025 cannot trigger mandatory detention.

50. Courts apply a strong presumption against retroactive application—one that is "deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265 (1994). To determine whether a statute applies retroactively, courts apply a two-step framework. *See United States v. Saab*, 164 F.4th 198, 210 (2d Cir. 2026). At step one, courts ask whether Congress has made clear that the statute applies retroactively. *Id.* If so, "the inquiry ends and the court enforces the statute as it is written, save for constitutional concerns." *Id.* (citation omitted). At step two (assuming no clear statement that the statute applies retroactively), courts ask "whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects." *Id.* (citation omitted). The step two inquiry has been categorized as "murky," *see Weingarten v. United States*, 865 F.3d 48, 56 (2d Cir. 2017), but a law generally flunks step two if it "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability,

in respect to transactions or considerations already past." *Id.* (quoting *Landgraf*, 511 U.S. at 290); *see also Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006).

51. The LRA does not apply retroactively. At step one, the statute contains no statement making its retroactive effect clear.[3] *See, e.g.*, *Matute*, 2026 WL 461557, at *6 ("There is no express command in the text of the LRA that it should apply to past conduct."). And at step two, the LRA plainly fails. The Supreme Court has previously held that attaching new adverse consequences in the immigration context based on prior conduct constitutes an impermissible retroactive application. *See Vartelas v. Holder*, 566 U.S. 257, 261 (2012) (holding that the presumption against retroactivity barred application of "a new disability" in form of "denial of reentry" based on "past events"); *Matute*, 2026 WL 461557, at *6 (making this point). Just so here: mandatory detention is undoubtedly a "new disability," *Matute*, 2026 WL 461557, at *6, and an arrest, charge, and plea from 2022 are all, of course, "events completed before [the statute's] enactment." *Landgraf*, 511 U.S. at 270. Thus, the LRA plainly flunks step two of the *Landgraf* inquiry—as court after court has found. *See Matute*, 2026 WL 461557, at *6 ("retroactive application of the LRA would … fail step two of the *Landgraf* test" and "the LRA is not a retroactive statute"); *Lopez Cruz v. Jamison*, 2026 WL 1257329, at *5 n.7 (E.D. Pa. May 7, 2026) (same); *Hermosillo-Barajas*, 2026 WL 1383263, at *3 ("LRA cannot be applied retroactively"); *Singh v. Noem*, 2026 WL 523216, at *2 (E.D. Cal. Feb. 24, 2026) (concluding same).[4]

[3] The statute's silence on this point is particularly instructive because Congress knows how to make past conduct retroactive in the immigration context. For instance, Congress has defined "aggravated felony" to apply to certain convictions "whether in violation of Federal or State law" and "regardless of whether the conviction was entered before, on, or after September 30, 1996." 8 U.S.C. § 1101(a)(43).

[4] In at least two cases, the government has conceded that the LRA does not apply retroactively. *See Colorado Cortes v. Noem*, 2026 WL 994291, at *1 (M.D. Fla. Apr. 14, 2026); *Araiza v. Hermosillo*, 2025 WL 3516103, at *2 (W.D. Wash. Dec. 8, 2025).

52. Because Congress did not clearly authorize the retroactive application of the LRA, Carlos's 2022 shoplifting arrest and charge cannot authorize mandatory detention.

* * *

For the foregoing reasons, the petition should be granted.

CLAIMS FOR RELIEF

COUNT I
Violation of Due Process
(Mandatory Detention/Re-Detention Based on Unproven Accusation)

53. Carlos realleges and incorporates by reference all paragraphs above as if fully set forth herein.

54. The Due Process Clause protects noncitizens from unlawful detention. *See Zadyvas*, 533 U.S. at 693.

55. Carlos's mandatory detention based on a past, unproven shoplifting charge alone, in the absence of a conviction and attendant procedural safeguards, violates the Due Process Clause of the Fifth Amendment because each of the three *Mathews* factors weighs heavily in Carlos's favor.

56. The private interest implicated by Carlos's unlawful detention, his interest in freedom from imprisonment, is exceptionally strong. He has been summarily and indefinitely detained without any opportunity to be heard, and if deported, also faces grievous physical and emotional harm.

57. The risk that Carlos will be erroneously deprived of his liberty interest absent additional safeguards is very high; Carlos has been afforded no procedural safeguards at all. No finder of fact has ever found Carlos guilty of shoplifting, the only offense enumerated by the LRA

with which he has ever been charged. A bond hearing would show, just as Carlos's initial 2017 release from ORR custody did, that Carlos is not a flight risk or a danger to the community, and that circumstances leading to his earlier release have not changed.

58. Carlos's mandatory detention does not further any government interest in enforcing the immigration laws or protecting the community from harm—Carlos is neither a flight risk, nor a danger to the community. In fact, Carlos's mandatory detention, which is extremely costly, runs counter to government interests.

59. For these reasons, Carlos's detention violates the Due Process Clause of the Fifth Amendment, and he should be released.

COUNT II
Detention Unsupported by the LRA
(Detention for Past Charge)

60. Carlos realleges and incorporates by reference all paragraphs above as if fully set forth herein.

61. The LRA authorizes mandatory detention of a noncitizen who, among other things, "is charged with, is arrested for, [or] is convicted of" an enumerated offense. 8 U.S.C. § 1226(c)(1)(E)(ii). As courts across the country have found, the LRA's present-tense language limits its application to *current* arrests and charges. *See, e.g.*, *Helbrum*, 2025 WL 2840273, at *5. But the only conduct possibly relevant to the LRA is a 2022 charge and arrest for shoplifting, which resulted in no shoplifting conviction (an enumerated offense under the LRA). Rather, Carlos pleaded guilty to Public Nuisance—not an enumerated offense under the LRA. Because Carlos is not *currently* under arrest, charged with, or convicted of an enumerated offense, the LRA does not justify Carlos's detention.

62. Even if the LRA reaches *some* prior arrests and charges, the LRA cannot justify mandatory detention *here* because the LRA does not apply retroactively. An arrest, charge, or

conviction prior to the LRA's 2025 effective date cannot trigger mandatory detention. The LRA contains no clear statement indicative of retroactive effect, and mandating detention based on previous conduct would constitute an impermissible retroactive application, as doing so would impose a new disability based on completed events. *See, e.g.*, *Vartelas*, 566 U.S. at 261. That is why court after court has found that the LRA has no retroactive effect. *See, e.g.*, *Hermosillo-Barajas*, 2026 WL 1383263, at *3.

63. For these reasons, Carlos's detention is unlawful under the LRA, and he should be released.

PRAYER FOR RELIEF

WHEREFORE, Carlos respectfully requests that this Court:

(a) Assume jurisdiction over this matter;

a. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

b. Enjoin Respondents and individuals acting in concert with them from transferring Carlos out of this judicial district;

c. If Carlos has already been transferred out of this judicial district, issue an Order requiring his return to this judicial district;

d. Declare that Carlos's continued detention violates the Due Process Clause of the Fifth Amendment;

e. Declare that Carlos is not subject to mandatory detention pursuant to the LRA;

f. Order Respondents and individuals acting in concert with them to immediately release Carlos;

g. Enjoin Respondents and individuals acting in concert with them from re-detaining Carlos without a pre-deprivation hearing before this Court where the government

bears the burden of justifying re-detention by clear and convincing evidence; and

h. Grant such further relief as the Court deems just and proper.

Dated: June 11, 2026

s/ Meredith Christian

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Pro Bono Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I, or others working with me, have discussed with Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 11, 2026

s/ Meredith Christian

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Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on the 11th day of June, 2026, I electronically filed the foregoing Petition for Writ of Habeas Corpus with the Clerk of the Court using the CM/ECF system, and served a copy of such filing via electronic mail upon:

- Richard Hayes, Chief of the Civil Division of the U.S. Attorney's Office for the Eastern District of New York, at 'richard.hayes@usdoj.gov
- Layaliza Soloveichik, Deputy Chief of the Civil Division of the U.S. Attorney's Office for the Eastern District of New York, at layaliza.soloveichik@usdoj.gov
- Sarah Jolly, Associate Regional Counsel for ICE, at sarah.jolly@ice.dhs.gov

Dated: June 11, 2026

/s/ Meredith Christian

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