

ERIC GRANT
United States Attorney
ELISA M. RODRIGUEZ
Assistant United States Attorney
2500 Tulare Street, Suite 4401
Fresno, CA 93721
Telephone: (559) 497-4000
Facsimile: (559) 497-4099

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ZAMIR FAIZI,

No. 1:26-CV-05112-DAD-SCR

Petitioner,

**OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS AND
ALL INJUNCTIVE RELIEF**

v.

SERGIO ALBARRAN, *et al.*

Respondents.

Petitioner is a violent criminal and subject to mandatory detention pursuant to 8 U.S.C. § 1226(c) by the Laken Riley Act, until his removal becomes final, because of his 2025 arrest for vehicle theft. Petitioner's criminal history reveals that he is a danger to the community. The facts and legal issues presented in this case are distinguishable from those cited in the Court's July 6, 2026, Order (Dkt. 7) because here, the detention authority necessarily requires an analysis of the criminal conduct predicated detention. Respondents do not oppose the Court converting the motion for temporary restraining order into one for a preliminary injunction and request that the Court resolve the underlying habeas petition on the current briefing and without a hearing.

I. BACKGROUND

Petitioner is a citizen and native of Afghanistan. Exhibit A (I-213). He entered the United States in 2023 without admission or parole. *Id.* At the time of Petitioner's entry, immigration authorities released him on an Order of Recognizance because he did not appear to be a threat to national security,

1 border security, or public safety. *Id.* Beginning in 2025, Petitioner engaged in repeated criminal
2 conduct, starting in April when he was arrested for resisting a public officer and disorderly conduct—he
3 was later found guilty of those charges. Exhibit B (rap sheet). Also in April 2025, Petitioner was
4 arrested for violating a court order to prevent domestic violence and assault with a deadly weapon that is
5 not a firearm. *Id.* In June 2025, Petitioner was arrested for vandalism: property damage, contempt of a
6 court order, vehicle theft, violating a protective order, and battery. *Id.*

7 Petitioner filed the instant habeas action on June 1, 2026, and argues that he is not subject to
8 mandatory detention under 8 U.S.C. § 1226(c) or the Laken Riley Act and that he was denied due
9 process when he was detained.

10 ARGUMENT

11 A. The Laken Riley Act

12 In January 2025, the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) was enacted. It
13 amends 8 U.S.C. § 1226(c) to require that aliens who are present in the country without having been
14 admitted must be detained by the federal government (the “Government”) immediately upon their
15 release from custody by state or local officials if they have committed certain state crimes. Laken Riley
16 Act, Pub. L. No. 119-1, 139 Stat. 3, 3 (2025). Additionally, it “expand[ed] the category of covered
17 crimes, and to require the detention not only of those who have been convicted of any of the newly
18 added crimes but also of anyone who has been accused of one.” *Black v. Almodovar*, 156 F.4th 171, 181
19 (2d Cir. 2025) (Nardini, J., Dissenting). “As the legislative history of the Laken Riley Act makes clear,
20 many members of Congress ‘thought it necessary’ to enact a new law mandating detention in more
21 circumstances because of their perception that the Executive Branch had failed to enforce the detention
22 options that were already available to it.” *Chen v. Almodovar*, No. 1:25-CV-8350-MKV, 2025 WL
23 3484855, at *6 (S.D.N.Y. Dec. 4, 2025).

24 The Laken Riley Act amendments to 8 U.S.C. § 1226(c) are not punitive, nor do they take away
25 any substantive or procedural constitutional right. The amendments merely mandate the detention of
26 illegally present aliens who are charged with, arrested for, convicted of, admit to having committed, or
27 admit to committing acts which constitute the essential elements of any burglary, theft, larceny,
28 shoplifting, assault of a law enforcement officer, or any crime that results in death or serious bodily

injury to another person, during the pendency of their removal proceedings. *See* 8 U.S.C. § 1226(c)(1)(E). It makes no difference if the crime occurred before the act was signed into law. *See* 171 Cong. Rec. S83-08, 171 Cong. Rec. S83-08, S85 (describing the critical components of the Laken Riley Act as (1) the unlawful entry of the alien and (2) the commission of a crime after illegally entering the country, even if released by immigration authorities).

B. Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E)

Here, Petitioner's detention is mandatory under 8 U.S.C. § 1226(c)(1)(E). This subsection states that "[t]he Attorney General shall take into custody any alien who... (i) is inadmissible under paragraph (6)(A)... of section 1182(a) of this title; and (ii) 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 U.S.C. § 1226(c)(1)(E)(i)–(ii) (emphasis added).

The Laken Riley Act further clarifies that, under the mandatory detention category at 8 U.S.C. § 1226(c)(1)(E), the terms "burglary," "*theft*," "larceny," "shoplifting," "assault of a law enforcement officer," and "serious bodily injury" "have the meanings given such terms in the jurisdiction in which the acts occurred." INA § 236(c)(2), 8 U.S.C. § 1226(c)(2). Petitioner was arrested for vehicle theft. A plain reading of the crime and the statute reflects he is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c)(1)(E)(i)–(ii). While Petitioner argues that because vehicle theft is not a crime of moral turpitude (citing to *Almanza-Arenas v. Lynch*, 815 F.3d 469 (9th Cir. 2016) (unlawful driving or taking of a vehicle was not categorically a crime of moral turpitude)), Petitioner concludes that vehicle theft must not be a generic theft and § 1226(c) cannot apply. The LRA does not require that an offense qualify as a crime of moral turpitude, nor does the LRA contain such qualifying or limiting language within its text. All that is needed to determine whether the state statute qualifies as a theft is if the state's statutory language has the basic elements of a generic theft offense. The U.S. Supreme Court held that it does. *Gonzales v. Duenas-Alvarez*, 549 U.S. 183 (2007). While *Gonzales* answered whether aiding and abetting a violation of California Vehicle Code § 10851(a) for vehicle theft qualified as a theft for immigration purposes, the Court said in its analysis:

“The Ninth Circuit, like other Circuits and the BIA, accepted as a generic definition of theft, the “taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent.” *Penuliar v. Gonzales*, 435 F.3d 961, 969 (2006) (internal quotation marks omitted). See *Abimbola*, 378 F.3d, at 176 (analyzing the BIA’s definition and citing cases from three other Circuits, including the Ninth Circuit, approving that definition).”

Gonzales v. Duenas-Alvarez, 549 U.S. 183, 189 (2007). In its conclusion, the Gonzales Court held that “...we cannot find that California’s statute, through the California courts’ application of a “natural and probable consequences” doctrine, creates a subspecies of the Vehicle Code section crime that falls outside the generic definition of “theft.”” *Id.*, at 193.

As such, Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1226(c) while his removal proceedings are pending. This is not a case where detention is indefinite. Rather, “detention under § 1226(c) has a definite termination point: the conclusion of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 304 (2018) (quotation marks omitted).

Noncitizens detained under § 1226(c) have no statutory right to bond hearings. If a noncitizen claims that he is not subject to detention under § 1226(c), he must first challenge that claim before the immigration authorities rather than with a Court. See *Demore v. Kim*, 538 U.S. 510, 514 n.3 (2003) (explaining that petitioners have the right, in administrative immigration proceedings, to request a “Joseph hearing” to challenge whether they are covered by § 1226(c)). Here, Petitioner challenged his detention at a *Joseph* hearing, and according to Petitioner, an Immigration Judge found him to be subject to detention under the LRA. Dkt. 1, ¶ 48. It does not appear that Petitioner appealed the finding. This Court should deny relief.

Petitioner challenges the Immigration Judge’s findings in his petition. Dkt. 1 at 18. For the reasons and LRA analysis set forth in this brief, the Court should find that the custody redetermination hearing was not deficient.

C. Petitioner’s detention is constitutional

Detention under Section 1226(c) is facially constitutional. *Demore v. Kim*, 538 U.S. at 531 (“Detention during removal proceedings is a constitutionally permissible part of that process.”) The Supreme Court held that “Congress, justifiably concerned that deportable criminal aliens who are not

1 detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may
2 require that persons such as [the lawful permanent resident at issue in *Demore*] be detained for the brief
3 period necessary for their removal proceedings.” *Id.* at 513.

4 Detention during removal proceedings is constitutional so long as it continues to “serve its
5 purported immigration purpose.” *Demore*, 538 U.S. at 527. Those purposes—ensuring a noncitizen’s
6 appearance for removal proceedings and preventing him from committing further offenses—are present
7 throughout removal proceedings and do not abate over time while those proceedings are still pending.
8 *Id.* The government’s interests, “are interests of the highest order that only increase with the passage of
9 time.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (quoting *Demore*, 538 U.S. at
10 515). “The longer detention lasts and the longer the challenges to an IJ’s order of removal take, the
11 more resources the government devotes to securing an alien’s ultimate removal” and, correspondingly,
12 “[t]he risk of a detainee absconding also inevitably escalates as the time for removal becomes more
13 imminent.” *Id.*

14 Petitioner is detained during his removal proceedings to protect the public and ensure he attends
15 his hearings. He has been detained for three months while he contests his removal. Considering the
16 individual facts in this case, Petitioner’s detention is constitutional.

17 **D. Habeas Relief is Barred for Failure to Exhaust Administrative Remedies.**

18 Although Petitioner is mandatorily detained pursuant to 8 USC § 1226(c), it does not appear that
19 Petitioner challenged the custody redetermination finding of the Immigration Judge.

20 A noncitizen challenging his detention must ordinarily exhaust his administrative remedies
21 before filing a habeas petition. To do this he must file an appeal with the BIA and then when he receives
22 that decision he may file a new habeas petition in District Court. *See Leonardo v. Crawford*, 646 F.3d
23 1157, 1160 (9th Cir. 2011). When administrative remedies are not exhausted “a district court ordinarily
24 should either dismiss the petition without prejudice or stay the proceedings until the petitioner has
25 exhausted remedies, unless exhaustion is excused.” *Id.* The factors courts evaluate when deciding
26 whether to require administrative exhaustion are whether:

- 27 (1) agency expertise makes agency consideration necessary to generate a
28 proper record and reach a proper decision; (2) relaxation of the
requirement would encourage the deliberate bypass of the administrative

1 scheme; and (3) administrative review is likely to allow the agency to
2 correct its own mistakes and to preclude the need for judicial review.

3 *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Here these factors weigh in favor of requiring
4 exhaustion. The custody determination issues are factual claims that should be properly addressed and
5 developed by the agency before returning the case to this Court. If the Court relaxes the administrative
6 exhaustion requirement it would encourage other noncitizens dissatisfied with the outcome of their bond
7 hearings to circumvent the Immigration Courts and file directly with District Courts.

8 In *Leonardo, supra*, in the context of a *Casas-Castrillon* bond hearing, an alien sought habeas
9 review of an IJ's adverse bond determination before appealing to the BIA. The Ninth Circuit held that
10 the alien's shortcut pursuit of habeas review was improper, and the alien should have exhausted
11 administrative remedies by appealing to the BIA before asking the federal district court to review the
12 IJ's decision. *Leonardo, supra*, citing *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (a
13 petitioner "must exhaust administrative remedies before raising...constitutional claims in a habeas
14 petition when those claims are reviewable by the BIA on appeal."). *See also Nicole Jemna v. Warden*
15 *of Olay Mesa Detention Center*, 3:26-cv-00725-RBM-VET, 2026 WL 788172, *3 (S.D. Cal. March
16 20, 2026)(court denied alien's habeas petition and dismissed his claims without prejudice, finding the
17 alien failed to exhaust his administrative remedies when he appealed the IJ's bond denial with the BIA
18 but sought habeas review ahead of his pending appeal.)

19 Respondents should not be faulted for Petitioner not exercising a right. *See generally e.g.*
20 *Pruden v. Amador County Jail*, No. 2:24-cv-0402-KJN P, 2024 WL 583702 (E.D. Cal. Feb. 13, 2024)
21 (context of civil rights action) (inmate acknowledged administrative grievance procedures but did not
22 submit a request for administrative relief, court recommend dismissal for failure to exhaust
23 administrative remedies).

24 **E. Petitioner has not Proven Prolonged Detention**

25 Petitioner's alternative request as habeas relief in the form of a bond hearing based on three
26 months' detention does not prove that his detention is unconstitutionally prolonged. In *Doe v. Chestnut*,
27 the District Court favorably cited a five-factor test from the Northern District. *Doe v. Chestnut*, 810 F.
28 Supp. 3d 1169, 1183 (E.D. Cal. 2025). That test examined:

(1) the length of detention and whether it is excessive in relation to its regulatory purpose; (2) the government's contribution to any delay; (3) the evidence supporting the determination that detention is warranted to prevent flight risk or community danger; (4) whether the government interests in ensuring appearance at future proceedings and protecting the community could be protected through alternatives to detention that are less harsh; and (5) the conditions of detention and how they compare to conditions under which pretrial criminal detainees or people convicted of crimes are held.

Doe v. Chestnut, 810 F. Supp. 3d 1169, 1179 (E.D. Cal. 2025). Petitioner has been detained since June 2025. This is barely one-tenth of the time that the Ninth Circuit has found to be “approaching the limits of what due process can tolerate” in the criminal pretrial detention context. *Doe*, 810 F. Supp. 3d at 1184. The evidence warrants detention first as a matter of law and then, to prevent flight and protect the community against danger. Petitioner’s violent criminal history paired with his theft crimes suggests that no one and nowhere is safe were Petitioner to be released. Petitioner provided no evidence that the government’s interests in ensuring his appearance and protecting the community could be protected through alternatives to detention. In failing to show how these alternatives would protect the government’s and public’s interest, Petitioner fails to meet the burden of factor four. Petitioner failed to prove that the conditions at the detention facility are more severe than those where individuals in criminal cases are detained.

Even if this Court adopts the standard from *Doe*, Petitioner has not shown his detention has caused him to suffer a substantive due process violation and fails to show he is likely to succeed on the merits of his claim.

CONCLUSION

Because Petitioner was detained based on his arrest for vehicle theft under the LRA, he is subject to mandatory detention. He failed to challenge this finding before an Immigration Judge and so he is not entitled to seek release from this Court. If the Court addresses his claim, it should find that he has not proven that his detention is unlawful. The Court should deny all relief.

Dated: July 8, 2026

ERIC GRANT
United States Attorney

By: /s/ Elisa M. Rodriguez
ELISA M. RODRIGUEZ
Assistant United States Attorney
Attorneys for Respondents