

UNITED STATES DISTRICT  
DISTRICT OF MASSACHUSETTS

JOHN DOE, )  
Plaintiff, )  
vs ) No. 1:25-CV-12094  
ANTONE MONIZ, ET AL, )  
Defendants. )

BEFORE THE HONORABLE INDIRA TALWANI  
UNITED STATES DISTRICT JUDGE  
MOTION HEARING

John Joseph Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210

WEDNESDAY, SEPTEMBER 3, 2025  
11:09 A.M.

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(Appearances Continued on the Following Page)

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**P R O C E E D I N G S**

THE CLERK: All rise.

(The Honorable Court Entered.)

THE CLERK: You may be seated.

THE COURT: We'll wait to call the case until the defendant arrives -- sorry, until the government arrives. Government counsel arrives and the petitioner arrives.

(Off the record.)

THE CLERK: United States District Court is now in session. The Honorable Judge Indira Talwani presiding. This is case No. 25-CV-12094, Doe versus Moniz, et al.

Will counsel please identify themselves for the record.

ATTORNEY HOLPER: Mary Holper for the petitioner.

ATTORNEY McFADDEN: Dan McFadden from the ACLU of Massachusetts for the petitioner. Your Honor, good morning.

THE COURT: Good morning.

ATTORNEY POMERLEAU: Good morning, your Honor. Todd Pomerleau on behalf of the petitioner as well.

THE COURT: Good morning.

ATTORNEY BAVA: Good morning, your Honor. Julian Bava ACLU of Massachusetts also for the petitioner.

THE COURT: Good morning.

ATTORNEY DILL: Good morning. Attorney Nicole Dill for the Petitioner as well.

1 THE COURT: Good morning.

2 ATTORNEY O'CONNOR: Good morning. Nicole O'Connor  
3 with the U.S. Attorney's office and respondents.

4 THE COURT: Good morning.

5 ATTORNEY FARQUHAR: Good morning, your Honor. Ray  
6 Farquhar for the Respondents.

7 THE COURT: Good morning.

8 Since we have an interpreter here, why don't you swear  
9 her in. Thank you.

10 LAURA NAKAZAWA, Interpreter Sworn.

11 THE CLERK: State your name for the record.

12 THE INTERPRETER: Good morning, your Honor. Laura  
13 Nakazawa.

14 THE COURT: And good morning.

15 And my first question here is for the ICE officers who  
16 transported the petitioner in. He was habed in for a ten  
17 o'clock hearing. We've been sitting here waiting. Is there  
18 any explanation or something we need to do next time to make  
19 sure we are not in this circumstance?

20 OFFICER HALL: My name is Officer Hall. I'm part of  
21 the transport team. So we were originally supposed to pick up  
22 two on our transport schedule. We got to the location and the  
23 discrepancy was the person, the second person wasn't there. We  
24 had to figure out where this person was at, because from my  
25 information I was supposed to pick up two bodies. So it was a

1 little discrepancy there. So then that got cleared up. He has  
2 the okay for me to release -- for me to take him and release.  
3 And there was an accident on the highway and a lot of traffic  
4 coming.

5 THE COURT: I mean for a lot of us, I understand  
6 that's an unanticipated event, but I hope in the future, you  
7 can accommodate and ensure a little better timeliness here.

8 OFFICER HALL: Yes, ma'am.

9 THE COURT: Okay. We're here on this petition. I  
10 reviewed the papers. I think there are three primary disputes.  
11 And maybe if I start with that, we can focus the argument on  
12 that.

13 A question of whether 1225 or 1226 applies here.

14 Question of whether there's a different rule under  
15 1226 for the special juvenile status.

16 And then the third I think are just sort of the  
17 specifics here of the fact that there was an arrest but there's  
18 no charges as we sit here.

19 And is that framing the issues in front of us?

20 ATTORNEY McFADDEN: Your Honor, I think so.

21 On that third issue, is your Honor referencing the  
22 lack of due process in terms of not receiving a bond hearing in  
23 the immigration court?

24 THE COURT: No. I'm referencing that, as I understand  
25 it, unless something has changed, the factual circumstances

1 here are that on July 4th the petitioner was arrested but not  
2 charged under -- as I understand it, under Massachusetts law he  
3 couldn't have been held by the local police office for 24 --  
4 more than 24 hours without a charge being -- a complaint being  
5 issued. And that in this case there was none until several  
6 weeks later. There's now -- there still is none. There is  
7 just an application for a criminal complaint issued by this  
8 officer.

9 Am I mistaken about that?

10 ATTORNEY McFADDEN: I think you are correct, your  
11 Honor, that there are no pending charges. The government  
12 submitted some information indicating they think there were  
13 charges that were dismissed, we have not been able to confirm  
14 that.

15 THE COURT: Right. And what they've submitted is that  
16 there is a computer printout where someone, we don't know who,  
17 has entered something that is not consistent with anything that  
18 you've told me or that anybody else has told me as to the state  
19 records. I mean, I don't know how you would dismiss a charge  
20 if no charge was filed. And I don't understand how a charge  
21 could have been filed when there was no clerk magistrate event.  
22 There was nothing. So I -- I understand that you have a piece  
23 of paper so that you thought there was this after the fact, but  
24 I just want to make sure I'm clear here that as we sit here  
25 today, to the extent we're under -- we're worrying about Riley

1     Laken the specific facts are that we have an individual who has  
2     been arrested but not charged with a crime as we sit here  
3     today.

4             Any disagreement?

5             ATTORNEY O'CONNOR: No, your Honor. The latest of the  
6     government's understanding is that there is a clerk's hearing  
7     scheduled for September 9th.

8             THE COURT: Well, there's a clerk's hearing on an  
9     application from a police officer for a complaint, but at this  
10    point we have no warrant and we have no probable cause hearing.  
11    We have nothing. And I don't think I have, as part of the  
12    record in front of me, even the application for the thing. So  
13    all we have is a hearing scheduled as to whether a charge  
14    should issue against him.

15            ATTORNEY O'CONNOR: That's correct.

16            THE COURT: Okay.

17            So let's start with the 1225 to 1226 debate. I  
18    believe there are a number of decisions in this district  
19    finding that the circumstances where someone has been here for  
20    a length of time having been originally processed under 1226,  
21    that the person continues to have a 1226 status and that the  
22    switch to using 1225 is improper. Any disagreement that -- I  
23    know the government disagrees with that, that's why we're here.  
24    But that is where all of my colleagues are, have come down on  
25    this issue and that there's a large number of decisions at this



1 point.

2 ATTORNEY O'CONNOR: That's exactly right, your Honor.  
3 There is one decision, Alvarenga Pena from Judge Gorton.

4 THE COURT: But no one was debating the issue there.  
5 In fact, it was -- it came down that way, but it wasn't that  
6 issue in front of him. It was just being proceeded under 1225  
7 and no one raised the question in that case.

8 ATTORNEY O'CONNOR: That's fair, your Honor.

9 THE COURT: Okay.

10 So I don't think there's any reason that I would --  
11 I've read those decisions of my colleagues. I think they seem  
12 correct with my understanding of how the immigration laws work.  
13 And I would note further that I think there's a rule of  
14 construction that would say the fact that there's been a long  
15 period of time that statutes have been interpreted a certain  
16 way also furthers that view.

17 So I think we're under 1226 -- or at least that's how  
18 I -- and thinking about it, if there's anything you want to add  
19 at this point, you're welcome to. But otherwise I think we  
20 should wrestle with the other issues.

21 ATTORNEY O'CONNOR: That's fair, your Honor.

22 THE COURT: Okay.

23 So let's talk about the petitioner's first argument  
24 which is that the fact that he has been adjudicated by  
25 immigration judges or an immigration judge or through an

1 immigration proceeding, to be a special immigrant juvenile  
2 should impact the 1226 analysis. And I will hear from the  
3 petitioner first on that.

4 ATTORNEY McFADDEN: Yes, your Honor.

5 So we have raised essentially two arguments regarding  
6 the Laken Riley Act. The first being the one your Honor  
7 references, that by the terms of the Laken Riley Act, it does  
8 not apply to Mr. Doe. And the reason we argue that is that the  
9 Laken Riley Act is only triggered for people who meet certain  
10 inadmissibility criteria, Section 1182(a), 6(a), 6(c) or 7.  
11 And here after the petition was filed, the government filed an  
12 NTA in the immigration court.

13 THE COURT: Can you go slow for one minute here. I'm  
14 just pulling up that section so I have it in front of me.

15 So Laken Riley unlike -- is amending Subsection (c) of  
16 1226 and unlike all of the other subsections which trigger  
17 mandatory detention based on a conviction for something or some  
18 adjudicated wrongdoing, this section has a different set of  
19 things that are going to trigger it, but you're saying it only  
20 applies to certain categories of people. So tell me again what  
21 those ones are and why he doesn't fall within that.

22 ATTORNEY McFADDEN: Yes, your Honor. So if you look  
23 at the Laken Riley Act, which is 1226(c)(1)(E), there are two  
24 components to it. The first is a trigger that it applies or  
25 it's triggered only for people who meet inadmissibility

1 criteria. They have to be inadmissible under paragraph 6(a),  
2 6(c) or 7 of Section 1182(a), which is what lays out various  
3 inadmissibility criteria.

4 So the first question under Laken Riley before you get  
5 to the question whether or not they've been charged with,  
6 arrested for, et cetera, the first question is whether or not  
7 they meet the triggering inadmissibility criteria. Congress  
8 targeted this law specifically for people who have certain  
9 specific inadmissibility issues. 6(a) is essentially people  
10 who cross the border without inspection.

11 6(c) is a fraud related provision.

12 And 7 is a person who doesn't have a valid entry  
13 document.

14 So those are the people who are impacted generally  
15 speaking by Laken Riley.

16 THE COURT: Didn't he cross the border without  
17 inspection?

18 ATTORNEY McFADDEN: So the government, when they filed  
19 the NTA, which was after the petition was filed, it alleges two  
20 grounds of inadmissibility for Mr. Doe.

21 So the first is 6(a)(1) which is present without  
22 admission or parole. And the second is 7(a)(1)(I) which is not  
23 having a valid entry document. So ordinarily those two  
24 inadmissibility criteria which were charged in the 2025 NTA  
25 ordinarily would meet the criteria to trigger Laken Riley. The

1 difference here is that Mr. Doe has been granted special  
2 immigrant juvenile status.

3 THE COURT: Okay. But let's work through this slowly.  
4 Their criteria for Laken Riley to apply. So now we're  
5 going to go to those criteria. And are you saying that because  
6 of the special immigrant juvenile immigrant status, therefore,  
7 those are no longer applicable?

8 ATTORNEY McFADDEN: For purposes of triggering Laken  
9 Riley under the language of the new statute, he does not meet  
10 those triggering inadmissibility criteria because there's a  
11 separate statute, which is 1255(h)(2), which says that as a  
12 person who's received special immigrant juvenile status, he is  
13 exempt from certain grounds of inadmissibility.

14 THE COURT: For purposes of that section.

15 ATTORNEY McFADDEN: So the 1255(h) has two  
16 subsections. Section 1 is a parole subsection, and that says  
17 for purposes of Subsection (a).

18 Subsection 2 says in determining the alien's  
19 admissibility as an immigrant, and then it goes into the  
20 exemptions from an inadmissibility ground.

21 So Section 2 does not have for inadmissibility  
22 exemptions, does not have the same limiting language as (h)(1).  
23 And I think it is a fair conclusion that when Congress drafted  
24 the Laken Riley Act and included the specific admissibility  
25 triggers, that Congress would not have intended to sweep up

1 people, who in another statute, they specifically gave an  
2 exemption from those inadmissibility grounds. And particularly  
3 people like recipients of special immigration juvenile status  
4 who are people who have been found to be the victims of abuse  
5 or neglect, and are people as to whom Congress has created a  
6 special regulatory process for them to receive lawful permanent  
7 resident status and remain in the United States. I don't think  
8 it follows that Congress was intending to sweep those people  
9 into the inadmissibility criteria of Laken Riley over the  
10 exemptions provided by (h) (2).

11 THE COURT: So (h) -- before you get to (h) (2), you  
12 have the starting clause of (h) which says in applying this  
13 section. So how do you stop that being the limiting factor on  
14 this exception?

15 ATTORNEY McFADDEN: Well, your Honor, I don't think  
16 that that language alone indicates that the inadmissibility  
17 exemptions would have no utility in any other context. And I  
18 think here what the Court would be interpreting is not (h) (2)  
19 or the scope of (h) (2). What the Court would be interpreting  
20 is the language of the Laken Riley Act and what was intended by  
21 Congress --

22 THE COURT: Well, the Laken Riley Act only references  
23 the general inadmissibility that you haven't been -- that  
24 you're not admissible. And it doesn't say as -- except as  
25 otherwise provided in the statute.

1           ATTORNEY McFADDEN: That is true, your Honor. There  
2 is not an expressed exemption in the Laken Riley Act. You  
3 know, incorporating 1255(h)(2).

4           THE COURT: But is there any argument here that you're  
5 making when you really come down to it, other than this  
6 probably isn't what they meant to do?

7           ATTORNEY McFADDEN: Well, your Honor, as far as we can  
8 determine, this is a question of first impression. There is no  
9 Congressional findings indicating why Congress enacted the  
10 Laken Riley Act or what was -- specifically was intended.

11          THE COURT: The newspaper.

12          ATTORNEY McFADDEN: Well, I understand, your Honor.  
13 There is not a Congressional record I can point to to tell you  
14 what Congress particularly meant here. So I don't have a lot  
15 of guideposts to offer here. But I think what I can say is  
16 that if you look at Osorio-Martinez, for example, the Third  
17 Circuit's case discussing what SAGE has intended to accomplish.  
18 You know, it's a program that's designed to provide a special  
19 benefit to children who have been victimized and to provide  
20 them with a pathway to stay here in a variety of procedural  
21 benefits.

22          THE COURT: But I can't use, I can't use the whatever  
23 interpretive devices about the language around special  
24 immigrant status to now say based on that, I'm going to  
25 interpret what Congress did with this choice of words here. I

1 mean, weren't they just doing a broad brush thing without much  
2 fine tuning?

3 ATTORNEY McFADDEN: Well, your Honor, I think the  
4 breadth of the Laken Riley Act suggests that it is appropriate  
5 to ask whether any limiting principles were incorporated. And  
6 here where there is a specific statute elsewhere in the same  
7 statutory scheme that provides this exemption, I do think that  
8 that is relevant to interpreting what the inadmissibility  
9 criteria referenced in Laken Riley, the Laken Riley Act are  
10 intending to address. But I understand your Honor's point.  
11 There is no expressed language in the Laken Riley Act that  
12 addresses this question. And as I said, there's not  
13 interpretive decisions available at this point. I think this  
14 is the first time this question's been presented.

15 THE COURT: And to the extent that the -- that  
16 provision has been -- the case law -- putting aside Laken  
17 Riley, but just the case law on that subsection, I think falls  
18 to -- the best that I know of, that it seems to suggest it's  
19 limited to that subsection. I mean, are there decisions that  
20 read it more broadly? If I recall, that's about adjustment of  
21 status, right? 1255.

22 ATTORNEY McFADDEN: Generally speaking that's what  
23 1255 is about, yes, your Honor.

24 THE COURT: Right. So other than with reference to  
25 adjustment of status, are there -- are there cases discussing

1 the use of the -- that the juvenile status carve out would  
2 apply in other circumstances?

3 ATTORNEY McFADDEN: I think, your Honor, the best case  
4 I can point to would be the Osorio-Martinez case which was  
5 about whether or not people with special immigrant juvenile  
6 status can be subjected to the expedited removal process. And  
7 there the Third Circuit did hold that people with SIJ are  
8 likely not on the same footing as all other people, and likely  
9 are exempt from expedited removal. So there are circumstances  
10 where they do get --

11 THE COURT: Was that dealing with someone who was here  
12 more or less than two years? Because it seems to me on the  
13 expedited removal, you have that second problem. It seems that  
14 there is this two-year cutoff that applies.

15 ATTORNEY McFADDEN: I would have to go back and look  
16 at the facts, your Honor. I believe that the reasoning was not  
17 based on the length of their presence at the time. I believe  
18 the reasoning was based in Osorio-Martinez on the fact that  
19 they had SIJ status and that meant that for some purposes they  
20 were not equally situated with all other noncitizens.

21 THE COURT: So I'll let you respond on that whether  
22 they did cite that case in their briefing and whether you think  
23 that is distinguishable here.

24 ATTORNEY O'CONNOR: I think the Court should look to  
25 the Third Circuit case that's referenced in the government's



1 brief, the Cortez-Amador case. And that case laid out pretty  
2 clearly, it analyzed the exact provision that we're looking at  
3 and said that this section language applies only in the context  
4 of changing to, changing status.

5 THE COURT: And which of those two cases is earlier or  
6 later?

7 ATTORNEY O'CONNOR: The Cortez...one moment, your  
8 Honor. Cortez is 2023. The other cite I don't have handy.  
9 But in Cortez it says, it makes good sense as to why Congress  
10 would have included that language in that particular provision  
11 because Congress wanted to ensure that individuals with this  
12 special immigrant status were able to become lawful, permanent  
13 residents. But there's no indication, as the Court has said,  
14 and I won't belabor it, but that's the government's position,  
15 that there's nothing to suggest that that language would apply  
16 here to make the inadmissibility criteria under the Laken Riley  
17 Act not apply.

18 THE COURT: What's your response to that?

19 ATTORNEY McFADDEN: Your Honor, I would notice that  
20 Cortez-Amador did address this issue to an extent but it was  
21 looking at the question of ultimate removability, which is not  
22 before this court. This court is constrained with an extension  
23 statute.

24 And the other thing I would note for Cortez-Amador, is  
25 I believe the interpretation contained in that case is focussed

1 largely on the limiting language of the parole component of  
2 1255(h)(1) and is not construing in the same way the  
3 inadmissibility exemptions of (h)(2). So I don't think it's  
4 exactly on point, although it does to a degree address the  
5 rights of course of recipients.

6 THE COURT: Okay. I will go back and review that.  
7 But I think, then, that really is your best authority. And  
8 other than that, I just have the plain language which seems to  
9 say for the subsection. So I will figure that one out.

10 And now let's turn to the third, this further issue  
11 about the Laken Riley. If you want to take that up, the due  
12 process concerns.

13 ATTORNEY McFADDEN: Yes, your Honor. Thank you.

14 I mean, just by way of introduction, I mean Mr. Doe is  
15 an 18 year old. He's resided in Massachusetts for several  
16 years. He's never been convicted of any crime. As the Court's  
17 aware, he has SIJ status that was granted to him by the  
18 government in 2025, not long after it terminated his removal  
19 proceeding. Nobody contends he's dangerous. Nobody contends  
20 he's a flight risk. Yet he's now been in jail for almost two  
21 months. I believe it will be two months tomorrow, in civil  
22 immigration detention, and there's been no individualized  
23 hearing whatsoever to determine whether or not he should be  
24 there because he's a danger or flight risk.

25 He did not receive any process relating to his

1 detention in the immigration system. He did not receive any  
2 process relevant to his detention in the criminal system. He's  
3 not received any process relevant to his detention in any other  
4 system. He is quite literally being deprived of his liberty  
5 without any due process of law almost now for two months. And  
6 it looks like if nothing happens, it will go on for quite a  
7 while longer, because removal proceedings, especially now, take  
8 a long time, six months to a year just to get out of  
9 immigration court. And then up with the BIA can be quite a bit  
10 longer. The BIA's backlog is gigantic and is only growing as  
11 they taking on cases much faster than they're deciding them.

12 So it's a very significant deprivation of liberty  
13 without due process. And it's hard to imagine a scheme that's  
14 more corrosive to the principles of our Constitution than to  
15 deprive someone of liberty for a long period of time with no  
16 process whatsoever.

17 The LRA affected a change to Section 1226. Prior to  
18 the LRA, which passed in January of this year, 1226(a)  
19 established a baseline rule that noncitizens arrested inside  
20 the United States and accused of immigration violations were  
21 entitled to a bond hearing to determine whether their detention  
22 furthered one of the permissible goals of further detention  
23 which would be to either prevent flight or prevent danger  
24 during the pendency of their removal proceedings. That bond  
25 hearing is not merely optional. It's not a matter of

1 administrative grace. There's a long line of Supreme Court  
2 cases that we cited that established that a person cannot be  
3 held in civil detention without some type of due process  
4 protections. That's cases like Addington, Solerno, Foucha, the  
5 Hendricks case that we cited. And the First Circuit has very  
6 specifically held several years ago, that people who were under  
7 1226(a) at that time, which would have included Mr. Doe, are  
8 entitled to a bond hearing with strong procedural protections  
9 if they were going to be held in immigration detention. That's  
10 Hernandez-Lara, that's the Doe case, that's Pereira Brito. And  
11 there was only one recognized exception to this baseline due  
12 process requirement for a bond hearing with strong procedural  
13 protections. That was 1226(c) in Demore V Kim.

14 THE COURT: Which were all convictions.

15 ATTORNEY McFADDEN: That's right.

16 So Demore V Kim allowed mandatory detention without a  
17 bond hearing, but only in a very narrow circumstance. It was a  
18 person who was convicted of crimes after a full and complete  
19 criminal process with all of the due process protections that  
20 are available in the criminal process. The person that  
21 conceded removability. And they were only detained for a brief  
22 period of time. And the brief period of time discussed in  
23 Demore Mr. Doe has already surpassed. He's already almost at  
24 two months, and they were talking about less than two months  
25 generally speaking.

1           And so the LRA is a problem because it moves --

2           THE COURT: I'm sorry, maybe I'm not keeping up with  
3 the different cases here. The due process, I'm thinking of the  
4 -- in those circumstances the Zadvydas six-month rule. You're  
5 suggesting he's already surpassed something. So you just lost  
6 me there.

7           ATTORNEY McFADDEN: Yes, your Honor.

8           In Demore V Kim where they were talking -- where the  
9 Court addressed the fact that the detention was permissible in  
10 part because it was brief for mandatory detention under  
11 1226(c), the briefness was about a month and a half.

12          THE COURT: In Demore V Kim.

13          ATTORNEY McFADDEN: Yes.

14          THE COURT: But --

15          ATTORNEY McFADDEN: Zadvydas, your Honor, is a  
16 different scenario where the person has already been ordered  
17 removed and has completed their post-final order detention.

18          THE COURT: But why are those distinguishable?

19          ATTORNEY McFADDEN: Because the people who are subject  
20 to mandatory detention under 1226(c), Demore V Kim are people  
21 as to whom they have a pending removal proceeding. There has  
22 not yet been an order of removal entered and therefore they are  
23 merely accused of being a removable noncitizen. And so for  
24 purposes of detention authority, they have rights to a bond  
25 hearing and due process rights that are very strong and that's

1     what the First Circuit --

2             THE COURT:  Oh, I see what you're saying.  So you're  
3     saying that as to those -- how much time was -- two months you  
4     said in Demore?

5             ATTORNEY McFADDEN:  Yes.  In Demore V Kim where  
6     mandatory detention was permissible for a 1226(c) detainee.

7             THE COURT:  I see.  Okay, I got it.

8             ATTORNEY McFADDEN:  The average time of detention they  
9     had contemplated was 47 days and the median was 30 days is what  
10    they used as a basis for decision.  So that exception for  
11    1226(c) Demore V Kim, requires the conviction, the concession  
12    of removability, and brief detention which again is, you know,  
13    our client does not meet any of those criteria.  And so he  
14    would not fall within that exception that was recognized in  
15    Demore.

16            The problem with the Laken Riley Act is it moved a  
17    large population of detainees from 1226(a) purportedly down to  
18    1226(c) where they would be mandatory detainees as in Demore.  
19    But the people that it moved are people who have not received  
20    the type of process at issue in Demore where there had already  
21    been a criminal process and conviction.  The people that were  
22    moved include people who were merely arrested for certain  
23    offenses, including misdemeanor property offenses like  
24    shoplifting which was the accusation against Mr. Doe.  Under  
25    the Laken Riley Act it doesn't matter if the arrest did not

1 result in charges. It doesn't matter if the charge got  
2 dismissed or was favorably disposed. The person could go to  
3 trial and be acquitted at trial, they would still be subject to  
4 mandatory detention under the Laken Riley Act. And so under  
5 this act it is an unproven accusation by law enforcement  
6 without more that triggers compulsory detention, and that is  
7 what we contend violates the due process clause and what is  
8 operating to keep our client in jail in violation of the due  
9 process clause currently.

10 He was arrested on an accusation of shoplifting. As  
11 the Court's aware, he was released -- it seems he was released  
12 by police with no bond. But on the way out of the police  
13 station, ICE picked him up and he was taken into custody. He  
14 asked for a bond hearing on -- and was given a hearing on that  
15 request on July 24th.

16 THE COURT: Was ICE there before or after he was  
17 brought into the police station?

18 ATTORNEY McFADDEN: I'm not sure, your Honor. I  
19 believe he was brought into the police station by the local  
20 police and that it was upon his exit from the police station  
21 that he encountered ICE.

22 THE COURT: Okay. Let me pose a few questions here,  
23 Ms. O'Connor.

24 I'm going to stop you here and ask her some of what is  
25 triggered by your argument.

1           So if you're arrested in this country by a police  
2 officer, you have a very short amount of time that you can be  
3 detained before there needs to be process, right? A clerk  
4 magistrate has to do something or a criminal complaint has to  
5 issue, but there has to be some process other than your being  
6 pulled into the police station within a day or so. Right? Am  
7 I -- is that consistent with your understanding of our system  
8 here?

9           ATTORNEY O'CONNOR: Yes, your Honor. Yes.

10          THE COURT: And so what we're faced with here is a  
11 statute that on its face seems to eliminate due process. That  
12 a person can be picked up by a police officer saying, "I'm  
13 arresting you." You can't not be arrested because then you're  
14 resisting arrest and committing a crime. So a police officer  
15 comes up to you and arrests you. And based on that you can be  
16 subject to mandatory detention without any due process.

17          Do I have the system right?

18          ATTORNEY O'CONNOR: Under the statute that is what it  
19 says, if you are arrested, you are subject to mandatory  
20 detention.

21          THE COURT: Why doesn't that violate the due process  
22 clause?

23          ATTORNEY O'CONNOR: So I appreciate the Court's  
24 questions on this issue. I know it has become an issue  
25 nationwide. I'm not in a position to describe the government's



1 position on the constitutionality in this broader instance  
2 other than the specific facts of this case.

3 THE COURT: These facts are perfect. He's arrested by  
4 a police officer, no charges are entered that we can find, that  
5 they have found, that you have found. We have no -- nothing  
6 happened at the police station other than he was brought in and  
7 then he went -- he was presumably fingerprinted, but I don't  
8 know. We don't even know that. He was brought in the police  
9 station and went out the other door where the ICE officers were  
10 waiting where they arrested him. And we have a report from the  
11 ICE agent that he was released on bond, which we know is not  
12 correct because no one has posted a bond and there's no record  
13 of a criminal proceeding for which the bond could have been  
14 done. So we have an ICE officer who has arrested the  
15 petitioner, and if it had been a police officer arresting him,  
16 you'd get in front of the clerk magistrate the next day. But  
17 here he's been in detention for two months and denied any  
18 hearing at all.

19 Correct?

20 ATTORNEY O'CONNOR: Correct, your Honor. And I  
21 appreciate of course this is an issue of first impression as my  
22 brother has pointed out. We have the case law from the Supreme  
23 Court on the limited exception for convictions. I don't know  
24 how the Supreme Court would come out on that today. The  
25 government essentially rests on its brief, your Honor, in terms

1 of this issue.

2 THE COURT: Okay.

3 So I don't, I don't see any constitutional basis to  
4 have a mandatory detention and no process at all. I don't -- I  
5 think it's a very different circumstance if Congress had said  
6 we don't -- we used to say you had to have been convicted of a  
7 serious crime. Now we're saying you can be convicted of any  
8 crime. You would have at least had the process of that  
9 criminal proceeding, but the notion that someone can be picked  
10 up off the street and there's no process, there's no hearing,  
11 and maybe I would ask this question. What if the person is a  
12 U.S. citizen? They don't get in front of anyone to say I'm a  
13 U.S. citizen.

14 ATTORNEY O'CONNOR: That's correct, your Honor. There  
15 is no opportunity for a hearing at that point in time once  
16 you've been detained under the Laken Riley Act.

17 THE COURT: Okay.

18 So I am going to grant the petition in that I am going  
19 to order a bond hearing within, within a week. I will have  
20 a -- I'll write a decision in case there's something the  
21 government wants to appeal something in here. I am ordering  
22 now from the bench that a bond hearing needs to happen within a  
23 week. That this is proceeding under 1226, not under 1225 per  
24 my understanding of these schemes, and that that needs to take  
25 place within the week.

1                   Anything else we need to do today?

2                   ATTORNEY McFADDEN: No, your Honor. Thank you.

3                   ATTORNEY O'CONNOR: No, your Honor. Thank you.

4                   THE COURT: Okay. Thank you, everyone.

5                   And thank you to the ICE agents for bringing the  
6                   petitioner here. Hopefully everything is going to work out and  
7                   we don't have to have him back here. But at any rate, we are  
8                   in recess.

9                   THE CLERK: All rise.

10                  (The Honorable Court Exited.)

11                  (Whereupon, at 11:53 a.m., Court Stood in Recess.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS )

I, Catherine L. Zelinski, certify that the foregoing  
is a true and accurate transcription of my stenographic notes  
from the record of proceedings taken Wednesday, September 3,  
2025, in the above-entitled matter to the best of my skill and  
ability.

/s/ Catherine L. Zelinski

Catherine L. Zelinski, RPR, CRC  
Official Court Reporter

09/05/2025  
Date