UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN DOE, Petitioner, v. ANTONE MONIZ, et al. Respondents.	)	C.A. No. 25-12094-IT

MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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I. Introduction

Mr. Doe is 18 years old. He has never been convicted of any crime and has no pending criminal charges. When he first encountered immigration authorities in Texas in 2021, he was processed as an unaccompanied child. He is currently the beneficiary of Special Immigrant Juvenile status ("SIJS"), a congressionally authorized program that creates a pathway to Lawful Permanent Resident ("LPR") status for young people who are victims of abuse, abandonment, or neglect. He was arrested by local police on July 4th based on an accusation of shoplifting. Immigration authorities arrested him as he walked out of the police station.

Although Mr. Doe is clearly not a danger or a flight risk, he has now been in immigration detention for roughly a month at the Plymouth County Correctional Facility. He has not received a bond hearing or any other individualized process to determine if he should be detained. He did ask for a bond hearing, but the Immigration Judge ("IJ") ruled that his request is "[d]enied because [Mr. Doe] is statutorily ineligible for IJ custody redetermination per the Laken Riley Act [(the "LRA")]."

The LRA was enacted in 2025 and is codified at 8 U.S.C. § 1226(c)(1)(E). The LRA purports to add people merely "arrested for" or "charged with" certain crimes to the mandatory detention provisions of § 1226(c). Before the LRA, § 1226(c) addressed convictions for crimes, not mere arrests or accusations. Detaining Mr. Doe under § 1226(c) without a bond hearing, based solely on unproven accusations under the new provisions of the LRA, violates his Due Process rights. Moreover, it now appears that Mr. Doe does not even fall within the inadmissibility grounds that trigger the LRA in the first place. After this petition was filed, the government filed a Notice to Appear ("NTA") in the Immigration Court and alleged Mr. Doe is inadmissible on only two grounds that "shall not apply" to him as a matter of law by virtue of his SIJS. Mr. Doe is accordingly requesting that this Court remedy his unlawful detention.

The government argues that none of this matters. According to the government, because Mr. Doe allegedly entered the country without inspection years ago, he is actually subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and lacks due process rights as if he were someone on the threshold of entering the United States. That is untrue. Multiple courts have found that immigrants (like Mr. Doe) who are arrested while living in the United States and placed into standard removal proceedings are subject to detention under 8 U.S.C. § 1226, even if they allegedly entered the country without inspection at some earlier time. Even the IJ did not adopt the government's argument for § 1225 detention. The IJ denied a bond hearing based solely on the LRA, which is part of § 1226. The LRA is what is keeping Mr. Doe in jail. The questions in this case consequently all arise under § 1226.

II. Legal Background

The Immigration and Nationality Act ("INA") prescribes several forms of detention for noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a. Three are relevant to the arguments here.

First, at the border, individuals "seeking admission" who are placed into removal proceedings are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals seek release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

Second, individuals arrested within the United States and placed into removal proceedings are generally detained pursuant to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). They are generally subject to discretionary detention under § 1226(a). These detainees are entitled to a custody redetermination (colloquially called a "bond hearing") before an IJ to decide whether

they should be detained or released. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). A bond hearing with strong procedural protections is not mere regulatory grace; it is the baseline Due Process requirement for § 1226 detainees. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v. Tompkins*, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment).

The Supreme Court and First Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees. Under 8 U.S.C. § 1226(c), there is a narrow category of people who can be held in mandatory detention for a brief period of time, if the person has conceded removability and has been ***convicted*** of certain crimes following all of the due process afforded by a criminal adjudication.[1] *See Demore v. Kim*, 538 U.S. 510, 513 (2003). For § 1226 detainees, the Supreme Court has never recognized any other constitutionally permissible exception to the general bond hearing requirement of § 1226(a).

Third, the LRA, Pub. L. 119-1, 139 Stat. 3, is a new law enacted in 2025. It purports to expand mandatory detention under § 1226(c) to an entirely new category of people. Specifically, the LRA requires detention for undocumented individuals who have merely been "arrested for" or "charged with" certain offenses, including such offenses as misdemeanor shoplifting—rendering this group of people categorically ineligible for release on bond or conditions. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA contains no exception for mistaken arrests or other arrests not resulting in charges, nor for charges that are later dismissed or otherwise favorably disposed, nor even for charges resulting in an acquittal. *See id.* Under the LRA, an accusation of misdemeanor

[1] "Convictions" for immigration purposes includes both formal adjudications of guilt and certain factual admissions of guilt made during the judicial process, such as the Massachusetts procedure for admitting to sufficient facts in order to secure a continuance without a finding ("CWOF"). *See* 8 U.S.C. § 1101(a)(48)(A); *De Vega v. Gonzalez*, 503 F.3d 45, 48-49 (1st Cir. 2007).

shoplifting, without more, triggers compulsory detention with absolutely no due process. *See id.* That detention is likely to last for many months, and potentially for years. *See* Declaration of Irene C. Freidel, Esq. ("Freidel Decl.") ¶¶10-15.

III. Factual and Procedural Background

Mr. Doe is 18 years old. *See* Declaration of Julian Bava, Esq. ("Bava Decl.") Ex. A (EARM printout). He resides in Massachusetts. Declaration of Isaac Dinallo ("Dinallo Decl.") ¶2. He has never been convicted of any crime and has no pending charges. Bava Decl. Ex. A (EARM printout); Declaration of Nicole Dill ("Dill Decl.") ¶8; Declaration of ADFOD John Charpentier (D.E. 22) ("Charpentier Decl.") ¶15.

In December 2021, when Mr. Doe was 15, the U.S. Border Patrol encountered him in the Rio Grande Valley, in Texas, and classified him as an unaccompanied alien child ("UAC"). Bava Decl. Exs. A (EARM) & B (ORR release verification). The Border Patrol issued an NTA documenting that Mr. Doe was "an alien present in the United States" (not "an arriving alien"). *Id.* Ex. C (Dec. 2021 NTA). The Border Patrol detained him pursuant to 8 U.S.C. § 1226, pursuant to an administrative warrant. *Id.* Exs. D (Notice of Custody Determination) & E (warrant).

Mr. Doe was then transferred to the Division of Unaccompanied Children Operations, which is part of the U.S. Department of Health and Human Services' Office of Refugee Resettlement ("ORR"). *Id.* Ex. B (ORR release verification). In February 2022, ORR released Mr. Doe to reside in Massachusetts, and the removal proceedings initiated by the Border Patrol were also transferred here. *Id.* Ex. B (ORR release verification) & F (Notice of New Court Location). Mr. Doe has since resided in Massachusetts, most recently in the custody of the Massachusetts Department of Children and Families ("DCF").[2] Dinallo Decl. ¶2.

[2] Mr. Doe resides in a group home operated by a DCF-affiliated organization. Although Mr. Doe turned 18 in December 2024, Massachusetts offers continuing care to young adults in DCF custody

In December 2024, an IJ terminated Mr. Doe's removal proceedings. *See* Charpentier Decl. ¶10. Mr. Doe applied to U.S. Citizenship and Immigration Services ("USCIS") for SIJS that same month. Bava Decl. Ex. G (Notice of Action). USCIS approved Mr. Doe's application for SIJS in April 2025. *Id.* He is accordingly eligible to become an LPR and is waiting in the so-called "backlog" for his turn to adjust to that status. *See* Declaration of Elizabeth Badger ("Badger Decl.") ¶10. In the meantime, he has not been in removal proceedings and has been living freely in Massachusetts.

On July 4, 2025, Mr. Doe was arrested by local police in Massachusetts and accused of shoplifting. Charpentier Decl. ¶12. The government asserts that this arrest resulted in a charge that was dismissed on July 7. *Id.* ¶15. Mr. Doe's counsel have not been able to locate any record that he was actually charged with a crime. Dill Decl. ¶¶8-11. Instead, it appears the police sent the accusation to a Clerk Magistrate's hearing to determine whether any charges should issue, and that hearing is scheduled for September 9, 2025.[3] Dinallo Decl. Attachment. In all events, everybody seems to agree that there are no pending charges from Mr. Doe's July 4 arrest.

Later on July 4, the police released Mr. Doe, apparently without any bail or conditions.[4] Dinallo Decl. ¶¶6-8. Immigration agents arrested him as he walked out of the police station. *Id.*;

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when they turn 18, which may continue until the age of 22. *See* G.L. ch. 119, §§ 21 (defining "young adult") & 23(f) (continuing care for young adults).

[3] A Clerk Magistrate's hearing's "legal function is to determine whether there is probable cause to issue criminal process against the accused." *See Eagle-Tribune Pub. Co. v. Clerk-Magistrate*, 448 Mass. 647, 650 (2007) (internal citation omitted). Additionally, an "implicit purpose" of the hearing is "to enable the clerk magistrate to screen a variety of minor criminal or potentially criminal matters out of the criminal justice system through a combination of counseling, discussion, or threat of prosecution—techniques which might be described as characteristic, in a general way, of the process of mediation." *Id.* (internal quotation marks and brackets omitted).

[4] The Declaration of ADFOD John Charpentier asserts that Mr. Doe was released after "post[ing] bond," D.E. 22 ¶13, but Mr. Doe's counsel have been unable to locate any evidence that a bond

Bava Decl. Ex. A (EARM). The arrest was made pursuant to an administrative warrant. *See* Charpentier Decl. (D.E. 22) ¶14. Mr. Doe has been in civil immigration detention ever since—almost a month, as of the date of this filing.

Mr. Doe requested a bond hearing by an IJ, which was scheduled for July 24. Dill Decl. ¶4. The government argued that Mr. Doe is a mandatory detainee under 8 U.S.C. § 1225, or alternatively is a mandatory detainee under 8 U.S.C. § 1226 due to the LRA. Charpentier Decl. (D.E. 22) ¶18. The IJ ruled that Mr. Doe "is statutorily ineligible for IJ custody redetermination per the Laken Riley Act" and refused to conduct a bond hearing. Dill Decl. Ex. A (IJ order). This habeas petition followed later that day.[5]

On July 28, 2025—more than three weeks after Mr. Doe was arrested, and several days after this Petition was filed—DHS filed a new NTA to initiate removal proceedings. *See* 8 C.F.R. § 1003.14(a); Dill Decl. Ex. B. The NTA alleges that Mr. Doe is "an alien present in the United States who has not been admitted or paroled" (not an "arriving alien") and charges him with only two grounds of inadmissibility: 8 U.S.C. § 1182(a)(6)(A)(i) (presence without admission or parole) and § 1182(a)(7)(a)(i)(I) (lacking valid documents at time of application for admission). Dill Decl. Ex. B.

IV. Argument

Respondents initially contend that Mr. Doe is a mandatory detainee as a noncitizen "seeking admission" under 8 U.S.C. § 1225(b)(2). The IJ rejected this argument, however, and it

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was required or paid prior to his release. It appears nobody had any opportunity to pay a bond prior to his release by the local police. Dinallo Decl. ¶¶6-8.

[5] The next day, the government inexplicably transferred Mr. Doe to a federal prison in New Hampshire, notwithstanding the Court's Order that he remain in Massachusetts. *Compare* Emergency Order (D.E. 2), *with* Notice of Temporary Transfer (D.E. 14). He was returned to Massachusetts only after his counsel attempted to meet with him at the Plymouth County Correctional Facility ("PCCF") and discovered his absence. He is currently detained at PCCF.

is not why Mr. Doe is presently detained without a bond hearing. And in any event, Respondents' contention is wrong because as a matter of law § 1226—not § 1225—applies to people arrested while living inside the United States, as multiple courts in this District and elsewhere have recently held in response to the government's newly invented arguments to the contrary. *See Martinez v. Hyde*, No. 25-11613, — F. Supp. 3d —, 2025 WL 2084238, *8 (D. Mass. July 24, 2025) (Murphy, J.); Order, *Garcia v. Hyde*, No. 25-11513 (D. Mass., July 24, 2025), ECF No. 21 (Sorokin, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (Kobick, J.); *see also Rodriguez Vazquez v. Bostock*, No. 25-5240, — F. Supp. 3d —, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025).[6]

Respondents alternatively contend that Petitioner has no right to an individualized custody determination based on the newly-enacted LRA, which purports to dramatically expand the government's mandatory detention authority under 8 U.S.C. § 1226(c). This is what the IJ ruled, and is the present basis for Mr. Doe's detention without a bond hearing. Under the LRA, the government contends that it may categorically detain noncitizens who are merely "arrested for" or "charged with" certain offenses. The government is wrong. Mandatory civil detention without an individualized custody determination, based solely on an unproven accusation, violates the Due Process Clause. And it now appears that Mr. Doe is not even subject to the LRA in the first place. Mr. Doe respectfully requests that the Court remedy this injustice.

A. Mr. Doe is not subject to mandatory detention under Section 1225(b)(2).

The government primarily argues that Mr. Doe is detained under 8 U.S.C. § 1225(b)(2)(A), which mandates detention of arrivals "seeking admission." ECF No. 21 ("Opp."), 5. As noted, the

[6] Counsel understand that a court in the Southern District of New York recently reached a similar decision orally, and counsel will provide the written decision if one becomes available. *See* Minute Entry, *Lopez Benitez v. Francis*, No. 1:25-cv-5937 (S.D.N.Y. July 28, 2025); Bava Decl. Ex. H (hearing transcript from *Lopez Benitez* reflecting oral order granting habeas petition and release).

IJ already rejected this and denied Mr. Doe bond on a different basis. But regardless, the government's position is refuted by the plain language of the statutes, traditional canons of statutory construction, the regulations issued after the adoption of these detention provisions, and the government's own decades-long understanding and practice of applying § 1226(a), not § 1225(b), to noncitizens who entered without inspection. *See Gomes*, 2025 WL 1869299, at *5-8; *Martinez*, 2025 WL 2084238, at *2-8; *Rodriguez Vazquez*, 2025 WL 1193850, at *12-16; *see also* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").[7] The adoption of the LRA itself—through which Congress made people who are unlawfully present in the United States subject to expanded mandatory detention under § 1226(c)(1)(E)—undermines the government's position because the LRA's amendments to § 1226 reflect Congress's understanding that § 1226(a)'s discretionary detention framework applies to individuals who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E)(i) (LRA provisions specifying that § 1226 applies to people who are present without admission or parole, entered between ports of entry, and/or lack valid entry documents); *Gomes*, 2025 WL 1869299, at *6; *see also Rodriguez*, 2025 WL 1193850, at *14 (government's interpretation "would render superfluous provisions of Section 1226 that apply to certain categories of inadmissible noncitizens").

[7] The government relies on a recent BIA decision, *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). But as other courts have recognized, "that case is factually distinct" because it involved "a noncitizen who was arrested without a warrant and detained under Section 1225(b) shortly after crossing into the United States." *Gomes*, 2025 WL 1869299, at *7; *see Martinez*, 2025 WL 2084238, at *3.

Against the weight this authority, the government can marshal only one outlier decision in which the petitioner apparently challenged his detention under § 1225(b)(2)(A) by arguing that "he is entitled to remain in the country because the I-130 petition [for adjustment through a relative] . . . has been approved." *Alvarenga Pena* v. *Hyde*, No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025) (Gorton, J.). The petitioner did not seem to argue, and the court did not consider, what detention authority applied to him but rather, whether an individual with an approved I-130 petition could be considered an "applicant for admission." *Id*. at *1-2. Here, however, Mr. Doe maintains (and the IJ agreed) that § 1225(b)(2) does not apply to him. DHS's own documents confirm this: Mr. Doe's original NTA and the new NTA both charged him as "an alien present in the United States" (not "an arriving alien"), and when he was first arrested in Texas, he was detained under § 1226. *See Martinez*, 2025 WL 2084238, at *2-3 (describing how immigration procedural history contradicted the government's position that petitioner had been "seeking admission"). The government's arguments to the contrary are unavailing—the actual question in this case is whether Mr. Doe is lawfully detained under § 1226(c), specifically the LRA. As demonstrated below, he is not.

B. Mr. Doe is not subject to the LRA because the inadmissibility criteria being asserted to trigger the LRA do not apply to SIJS recipients.

As a threshold matter, individuals subject to the LRA must match one of three grounds of inadmissibility: 8 U.S.C. §§ 1182(a)(6)(A), (a)(6)(C) or (a)(7). *See* 8 U.S.C. § 1226(c)(1)(E)(i). Several days after this habeas petition was filed, DHS filed an NTA to initiate proceedings in the Immigration Court on July 28, 2025. Dill Decl. Ex. B. The NTA alleges only two grounds of inadmissibility: § 1182(a)(6)(A)(i) (presence without admission or parole) and § 1182(a)(7)(A)(i)(I) (lacking valid documents at time of application for admission). *Id.* Ordinarily, these grounds would match the triggering grounds for the LRA. *See* § 1226(c)(1)(E)(i).

However, for SIJS recipients like Mr. Doe, these grounds do not apply as a matter of law. *See* 8 U.S.C. § 1255(h) (for those with SIJS, referencing 8 U.S.C. § 1101(a)(27)(J), "paragraphs . . . (6)(A), . . . (7)(A) . . . of section 1182(a) of this title shall not apply"). Thus, where the government only alleges the existence of two grounds of inadmissibility that could trigger the LRA, and where neither of those grounds could actually apply to Mr. Doe as a matter of law due to his SIJS status, the LRA could not possibly have been properly triggered in his case, and his detention must fall under § 1226(a).

C. The LRA is unconstitutional as applied to Mr. Doe.

1. The Constitution's baseline Due Process rule is that civil immigration detention requires an individualized hearing, with a limited exception carved in *Demore* for those with certain criminal convictions.

Even if the terms of LRA were properly triggered (it appears they are not), application of the statute to require Mr. Doe's detention without a bond hearing violates his due process rights. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. CONST. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Consequently, the Supreme Court has "repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana,* 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks,*

521 U.S. 346, 357 (1997) (same for commitment of sex offenders). Due process protections apply to all persons detained within the United States, including noncitizens. *See Zadvydas*, 533 U.S. at 690-93 (applying *Foucha* and *Salerno* to hold that due process applies to all "persons" within the United States "whether their presence here is lawful, unlawful, temporary, or permanent"); *Hernandez-Lara*, 10 F.4th at 29 (rejecting government's argument that the noncitizen had diminished liberty interest because "she has never held lawful status").

Controlling First Circuit precedent establishes the Constitution's baseline due process rule for civil immigration detainees arrested inside the United States: an individualized bond hearing with strong procedural protections to determine if their detention is appropriate because they are dangerous or a flight risk. *See Hernandez-Lara*, 10 F.4th at 41; *Doe*, 11 F.4th at 2; *Brito*, 22 F.4th at 256-57. These due process protections safeguard procedural fairness, and they also effectuate the government's substantive obligation to ensure that immigration detention bears a "reasonable relation" to the purposes of removal proceedings and is not simply, and impermissibly, punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

There is only one narrow exception to this baseline requirement for an individualized custody hearing. In 2003, the Supreme Court held in *Demore* that so-called "mandatory" immigration detention under the 8 U.S.C. § 1226(c) did not violate due process for the "brief period" while removal proceedings are pending for noncitizens whose removability is based on their criminal convictions.[8] *See* 538 U.S. at 513-14, 522 n.6. In rejecting a facial challenge to the

[8] The pre-LRA triggers for mandatory detention under Section 1226(c) are subsections (c)(1)(A) through (D). Subsections (c)(1)(A) through (C) all refer to the commission of criminal offenses. Subsection (c)(1)(D) refers to detention based on certain terrorism-related conduct (which is not at issue in this case). The Supreme Court has never addressed the constitutionality of mandatory detention under that provision in the absence of a conviction.

statute, the Court underscored how detention under Section 1226(c) was based on criminal guilt established through "the full procedural protections our criminal justice system offers," *id*. at 513, and relied on the extensive legislative findings regarding the purported need to detain noncitizens convicted of serious crimes, *id*. at 518-21.

2. The LRA violates Petitioner's Due Process rights by requiring mandatory detention based solely on an arrest.

The LRA disregards these important constitutional limitations applicable to immigration detention. Specifically, the LRA purports to move noncitizens who meet certain inadmissibility criteria (essentially, undocumented people) from Section 1226(a) to the mandatory detention category of Section 1226(c) based solely on the fact that the person "is charged with" or "is arrested for" certain crimes, including theft, larceny, and misdemeanor shoplifting.[9] *See* 8 U.S.C. § 1226(c)(1)(E) (new LRA mandatory detention grounds). There is no requirement that the charge actually have been adjudicated in any court, or actually have resulted in a conviction. *See id.* Nor is there any express exception for arrests that did not result in charges, or for charges that were dismissed or otherwise favorably disposed, or even for charges that were tried and resulted in a finding of not guilty. *See id.* Unlike those subjected to mandatory detention under the preexisting 1226(c), people in mandatory detention under the new "arrested" or "charged" provisions of the LRA will never receive any due process *anywhere*—no criminal proceeding to adjudicate guilt, and no immigration bond hearing to find flight risk or dangerousness. *See id.* Instead, their detention is based purely on the existence of an unproven accusation. *See id.* And, as further explained below, the result is that without ever having been found guilty of anything or determined to be dangerous or a flight risk, they will likely spend many months, or even years, in jail.

[9] A redline of the statute showing the additions made by the LRA language is available at https://immigrationlitigation.org/wp-content/uploads/2025/01/25.01.29-Redlined-INA-with-Laken-Riley-Amendments.pdf.

The LRA's purported expansion of mandatory detention is unconstitutional and foreclosed by precedent. Mr. Doe, a detained SIJS recipient who has never been convicted of a Section 1226(c) offense, falls directly within *Hernandez-Lara*'s holding that a bond hearing with strong procedural protections is constitutionally required to justify continued detention. *See* 10 F.4th at 41; *see also Doe*, 11 F.4th at 2. Indeed, in *Brito*, the First Circuit affirmed a declaration that all people within the pre-LRA scope of § 1226(a) (which, under the criteria then in effect, includes Mr. Doe) are entitled to bond hearings with certain procedural protections. *See* 22 F.4th at 256-57 (affirming class-wide declaration of requirement to prove flight risk or dangerousness). The *Demore* exception to the bond hearing requirement does not include people like Mr. Doe, who were accused, but never went through a criminal process that resulted in a conviction. *Cf.* 538 U.S. at 513.

Further, without any process, there is no reason to believe that Mr. Doe's continuing detention bears any "reasonable relation" to the purposes of the removal proceedings. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 531-32 (Kennedy, J., concurring). The LRA unconstitutionally deprives Mr. Doe of the Due Process rights mandated by the Fifth Amendment and recognized as essential by our courts for years. *See Brito*, 22 F.4th at 252 ("Detention is the quintessential liberty deprivation.").

3. Cases cited by the government did not extend to mandatory civil detention of noncitizens merely accused of a crime.

The government purports to rely on *Demore*, and *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020) to defend mandatory detention here. But neither case supports mandatory detention of people arrested in the United States based solely on unproven accusations.

First, prior criminal process resulting in a finding or admission of guilt was a core premise of *Demore*'s reasoning. *See* 538 U.S. at 513 (petitioner did "not dispute the validity of his prior

convictions, which were obtained following the full procedural protections our criminal justice system offers"). Those convictions reflected "personal activity" that Congress considered relevant to future dangerousness based on studies in the record. *See id.* at 525 n.9. But *Demore* never suggested that Section 1226(c) would pass constitutional muster for mandatory civil detention based on a mere charge or arrest, as opposed to established criminal guilt through a conviction. *See Hernandez-Lara*, 10 F.4th at 35 (explaining *Demore* addressed "a class of noncitizens who had already been convicted (beyond a reasonable doubt) of committing certain serious crimes").

Second, as noted above, the Supreme Court authorized mandatory detention in *Demore* in significant part because Congress had made a record purporting to show that the "criminal alien" population ultimately targeted by pre-LRA mandatory detention—noncitizens subject to removal based on criminal convictions—"often committed more crimes" before removal or "failed to appear for their removal hearings." *See* 538 U.S. at 518-19 (citing studies and congressional findings). By contrast, in enacting the LRA, Congress made no findings that merely being *arrested for* or *charged* with crimes like shoplifting, larceny, or theft correlated with flight risk or dangerousness in any way. It appears that Congress never issued any committee reports concerning LRA,[10] and never made any findings at all suggesting a need to detain people based solely on

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

arrests or charges that *did not* result in a conviction. In fact, when opponents to the LRA provided statistical data regarding the *lower* rate of crime among undocumented immigrants compared to U.S.-born citizens, proponents of the bill did not dispute that evidence. *See Restoring Immigration Enforcement in America*, Subcomm. on Immigr. Integrity, Sec., and Enf't, Hearing before the H. Comm. on the Judiciary, 118th Cong. (Jan 22, 2025), *available at* https://www.youtube.com/watch?v=CqRTOlcrBbg timestamp 2:02:20-2:03:13.

Third, *Demore* was premised on removal proceedings being "brief." *See* 538 U.S. at 513. *Demore* based its holding on its understanding that "the detention at stake under [pre-LRA] § 1226(c) lasts roughly a month and a half in the vast majority of cases" and about "five months in the minority of cases in which the alien chooses to appeal." *See id.* at 530. In the years since *Demore*, the "brief" detention premise has been established as false.[11] Moreover, recent data underscores how long removal proceedings can take, especially for those subject to pre-LRA mandatory detention but pursuing substantive claims against removal. *See Jennings*, 583 U.S. at 328-29 (Breyer, J., dissenting) (describing how those held without bail are detained the longest "because their claims will take longer to adjudicate"). And there is no doubt that people who *lack* criminal convictions (and therefore may have more complex immigration cases with a higher likelihood of success) experience detention that is "frequently prolonged." *See Hernandez-Lara*, 10 F.4th at 30 (relying on finding in *Pereira-Brito* that "one in four [Section 1226(a) detainees] was incarcerated for two years or longer"); Freidel Decl. ¶¶10-15. *Demore* did not suggest that

[11] In fact, that false premise was based on erroneous information from the government. *See* Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court 3 (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), *available at* https://tracreports.org/immigration/reports/580/include/01-1491%20-%20Demore%20Letter%20-%20Signed%20Complete.pdf.

prolonged mandatory detention would pass constitutional muster even for people with serious convictions,[12] much less for the people targeted by the LRA who are merely "arrested" or "charged." *See* 538 U.S. at 513, 526-27, 529-30.

Lastly, *Thuraissigiam* is utterly irrelevant to the Due Process analysis at issue here. *Thuraissigiam* discusses the limited Due Process rights of a noncitizen arrested 25 yards into U.S. territory, apparently moments after he crossed the border while he was still "on the threshold." *See* 591 U.S. at 139-40. In contrast, Mr. Doe was arrested inside the United States, after residing here for several years, having been granted SIJS and a pathway to LPR status, and while living freely following the termination of his prior removal proceeding months earlier. The government's other cited cases, Opp. 9-12, are also distinguishable on this basis because they addressed noncitizens stopped at the border. But because Mr. Doe was detained in the United States, Due Process applies to him. *See, e.g.*, *Zadvydas*, 533 U.S. at 693 ("[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States[.]"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"); *see also Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) (granting habeas and ordering bail hearing to SIJS recipient based on due process challenge).

[12] Courts across the country generally agree that mandatory detention even under the pre-LRA § 1226(c) violates due process when detention grows unreasonably prolonged, thereby requiring a bond hearing with the burden on the government to justify continued detention. *See, e.g.*, *Black v. Decker*, 103 F.4th 133, 138 (2d Cir. 2024); *German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 206, 212-13 (3d Cir. 2020); *see also Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021); *but see Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024). Courts have also held that due process requires a hearing at the outset of detention for individuals who are detained multiple years after an old conviction that triggers mandatory detention. *See, e.g.*, *Perera v. Jennings*, 598 F. Supp. 3d 736, 739, 745 (N.D. Cal. 2022); *Pham v. Becerra*, 717 F. Supp. 3d 877, 884, 887 (N.D. Cal. 2024).

D. The *Mathews v. Eldridge* analysis further confirms that Mr. Doe must receive a bond hearing.

The three-part balancing test under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), further confirms that Mr. Doe's detention without a bond hearing violates due process. *See Hernandez-Lara*, 10 F.4th at 27 (applying *Mathews* in a due process challenge by a § 1226(a) detainee); *Black v. Decker*, 103 F.4th 133, 145-51 (2d Cir. 2024) (holding that *Mathews* "provides the proper framework to assess" a due process challenge to prolonged mandatory detention under § 1226(c) and rejecting the government's contrary arguments as unpersuasive); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 528-29 (2004) ("The ordinary mechanism that we use . . . for determining the procedures that are necessary to ensure that a citizen is not 'deprived of life, liberty, or property, without due process of law,' . . . is the test that we articulated in *Mathews*[.]" (internal quotation marks and citations omitted)).

All three factors favor the conclusion that Mr. Doe's current detention without individualized process is unlawful.

1. The LRA deprives Mr. Doe of the most fundamental private interest—his liberty.

Here, the private interest affected by mandatory detention under the LRA is the most significant liberty interest that exists: freedom from imprisonment. *See Hamdi*, 542 U.S. at 529; *Zadvydas*, 533 U.S. at 690; *Hernandez-Lara*, 10 F.4th at 28. Imprisonment, detention, or commitment for any purpose "constitutes a significant deprivation of liberty that requires due process protection." *See Jones v. United States*, 463 U.S. 354, 361 (1983).

Here, the impact of the detention is severe. Mr. Doe was detained on July 4. He has now been in jail for roughly a month. He is an 18-year-old incarcerated in a Massachusetts House of Correction, stripped of all freedoms, and separated from his friends and the support network at his group home. *See* Bava Decl. Ex. I (Mr. Doe's bond hearing package support letters).

The private interest at stake is particularly weighty because if Mr. Doe's detention is permitted to continue, it is likely to last for a very long time. Even before the LRA and the current surge in immigration enforcement, people like Mr. Doe who were denied bond were likely to be detained for many months, and one out of four for nearly a year. Declaration of David Hausman ("Hausman Decl.") ¶¶5-9 (analysis of 2022-24 detention nationwide). Since that time, the current administration has terminated more than half the Immigration Judges at the Chelmsford Immigration Court and terminated almost half of the members of the Board of Immigration Appeals (the "BIA"), just as the number of cases before these courts has simultaneously skyrocketed. *See* Freidel Decl. ¶15. The current experiences of detained people in the Chelmsford Immigration Court, where Mr. Doe's case is pending, are emblematic of the lengthy amount of time in detention he is facing. The government did not even lodge a charging document to initiate Mr. Doe's removal proceedings until several weeks after he was detained and several days after he filed this habeas petition. Dill Decl. Ex. B. And once these cases begin, the vast majority of them are heard and resolved by a single IJ. Freidel Decl. ¶9. People often have to wait eight weeks just to receive an initial "Master Calendar" hearing. *Id.* Decl. ¶11. Even after that is accomplished, the court and the government have adopted practices that all but ensure cases will require multiple evidentiary hearings spaced out over a period of months. *Id.* ¶12. A detained noncitizen's case thus typically could take between *six months to a year* from initial detention to resolution before the IJ, which is then often followed by a lengthy appeals process to the BIA during which the noncitizen generally remains detained. *Id.* ¶¶10-15. According to the government's own figures, the BIA's backlog of appeals is *currently in excess of 160,000 cases*, and new appeals are being filed at more than *twice* the rate at which appeals are being resolved. *See id.* ¶14 & Fig. 1. Thus,

there is strong evidence that, if Mr. Doe, is not released, his liberty will be entirely restricted, and he will be jailed for a very long time, possibly years.

Under the LRA, even if Mr. Doe is never charged, or is charged but ultimately acquitted, he must nevertheless be detained based merely on an arrest. *See* 8 U.S.C. § 1226(c)(1)(E). For all these reasons, the first *Mathews* factor "weighs heavily" in Mr. Doe's favor. *See Hernandez-Lara*, 10 F.4th at 28-29.

2. There is a high risk of erroneous deprivation because detention under the LRA is mandated based solely on unproven accusations.

The second *Mathews* factor—the risk of erroneous deprivation and probable value of safeguards—also weighs heavily in Mr. Doe's favor. *See Hernanez-Lara*, 10 F.4th at 30-31. Prior to the LRA, the government could already detain people during the pendency of their removal proceedings where it could show evidence of flight risk or dangerousness. *See id.* at 41. Thus, in practical terms, the only new detention authority created by the LRA is for people as to whom the government *cannot produce such evidence*. *Cf. id.* Erroneous deprivation appears not to be a mere byproduct of the LRA, but rather its entire purpose.

Civil immigration detention must be "nonpunitive in purpose and effect," and is justified by only two government purposes: to ensure the noncitizen's appearance during removal proceedings and for removal, and to prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *see also Hernandez-Lara*, 10 F.4th at 32 n.5 ("[A]ny detention must bear[] [a] reasonable relation to [its] purpose[.]"). Here, the risk of erroneous deprivation is high because Mr. Doe's mandatory detention without any individualized determination of risk of danger or flight is based solely on an unproven accusation of shoplifting. *See* Dill Decl. Ex. A (IJ Order). Unlike the convictions in *Demore*, this mere accusation provides no basis for presuming that he poses either. By eliminating

any individualized determination of danger or flight risk, the LRA deprives Petitioner of any procedural safeguards against erroneous detention.

In *Hernandez-Lara*, the First Circuit concluded that, where a noncitizen had a bond hearing, requiring that detained noncitizen to bear the burden of proving lack of flight risk or danger amounted to rolling "loaded dice," and created a high risk of erroneous deprivation of liberty. *See* 10 F.4th at 32. That reasoning is amplified here. As in *Hernandez-Lara*, Mr. Doe has not received criminal process resulting in a criminal conviction that might arguably be considered a proxy for flight risk or dangerousness. *See id.* at 35-36. Further, while in *Hernandez-Lara*, the petitioner at least received a "loaded dice" bond hearing, here Mr. Doe does not even receive that. *Cf. id.* at 31-32. Indeed, as explained above, the risk of erroneously detaining a person who is not a danger or flight risk looms far larger here than in *Hernandez-Lara* because the LRA is specifically drafted to mandate the erroneous detention of exactly the people whom the government can show no reason to detain. *Cf. id.* at 41.

Worse, the LRA effectively eliminates fundamental procedural safeguards like the presumption of innocence, a "basic component of a fair trial under our system of criminal justice." *See Taylor v. Kentucky*, 436 U.S. 478, 479 (1978). A noncitizen's "removable status itself . . . bears no relation to a detainee's dangerousness." *Zadvydas*, 533 U.S. at 691-92. Even people accused of serious federal crimes are presumed innocent, and that presumption of innocence allows for—and indeed requires—a prompt bail hearing before a judicial officer. *See Salerno*, 481 U.S. at 750. Here, even though Mr. Doe is presumed innocent of any charges that might ultimately issue, none of these procedural protections has been afforded to him because the LRA eliminates them. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA thus compels the incongruous result that a person who is accused of a crime, determined not to present a risk of danger or flight, and released on bail

or personal recognizance in the criminal proceeding, would then nevertheless be subject to mandatory detention under the LRA based on the very same arrest or charge. *See id.* Indeed, that is precisely what happened to Mr. Doe, who the arresting police officers apparently released without bond, without conditions, and without any currently pending charges. Dinallo Decl. ¶¶5-8; Dill Decl. ¶¶8-11; Charpentier Decl. ¶15. Yet he has been sitting in jail for almost a month at the PCCF with no other process at all.

Mandatory detention, based on unproven allegations, thus carries a substantial risk of erroneous deprivation. Accordingly, the second *Mathews* factor weighs heavily in favor of Mr. Doe. *See Hernandez-Lara*, 10 F.4th at 32.

3. The LRA harms the public interest

The third *Mathews* factor considers the government's interest, which includes the public interest. The government has no interest in the blanket detention of large swaths of noncitizens without establishing dangerousness or a risk of flight. *See Hernandez-Lara*, 10 F.4th at 32-33. Indeed, an individualized hearing promotes a paramount government interest: "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Black*, 103 F.4th at 154 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)). As the First Circuit observed, the only people released after such a hearing are those, like Mr. Doe, the government has no reason to detain because they are not a flight risk or danger. *See Hernandez-Lara*, 10 F.4th at 33 ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention"); *Velasco Lopez*, 978 F.3d at 854, n.11 (explaining that the government's interest is in "minimizing" incarceration that "serves no purpose").

Mandatory detention of noncitizens without criminal convictions also harms the public interest by imposing "substantial societal costs" and financial costs.[13] *See Hernandez-Lara*, 10 F.4th at 33. Detainees, like Mr. Doe, who are now subject to mandatory detention without bond under the LRA, do not have a criminal conviction, but they do have families, jobs, and communities who often depend on them yet from whom they are being separated. Mr. Doe, for example, although only 18, is a valued volunteer at a local food pantry. *See* Bava Decl. Ex. I (Mr. Doe's bond hearing package support letters). The impact of removing Mr. Doe and others like him from the community is real and widespread.

Further, LRA impairs state criminal process. Because it mandates detention in situations where underlying criminal proceedings are pending, the ability of state prosecutors to proceed with criminal charges will be negatively affected. Once a person is in immigration detention, any state-level criminal prosecution may stall. *See, e.g.*, *Velasco Lopez*, 978 F.3d at 847 (ICE refused to produce detained individual at state criminal court appearances four times, then when he was finally produced, the charges were dismissed). ICE does not necessarily keep detainees in Massachusetts, often transferring them to other states for detention, after which securing their return to Massachusetts state court is either impossible or requires the expenditure of vast litigation resources that most noncitizens (who do not receive appointed counsel) could not possibly marshal. *See, e.g.*, *Melo v. Lechleitner*, C.A. No. 24-10974 (D. Mass.) (noncitizen returned to Massachusetts for state criminal trial only after four months of complex federal litigation comprising 41 separate docket entries; noncitizen was acquitted upon return). Indeed, ICE's practice of removing detainees from the state is so ingrained that even after this Court entered an

[13] Under ICE's contract with the facility where Petitioner is being detained, detention costs taxpayers $215 per day per detainee. Bava Decl. Ex. J (PCCF/ICE contract).

Order prohibiting Mr. Doe's transfer out of Massachusetts, ICE sent him to a federal prison in New Hampshire, *see* Charpentier Decl. ¶21, and only returned him after Mr. Doe's counsel learned of his absence and objected.

Accordingly, all three *Mathews* factors weigh in favor of Mr. Doe, and his detention without a bond hearing violates the Constitution.

E. Mr. Doe should be released on bail or other conditions pending adjudication of the Petition.

Lastly, to the extent the Court desires time to consider Mr. Doe's petition, it has the power to order his release while this matter is pending. Habeas corpus "is, at its core, an equitable remedy." *See Schlup v. Delo*, 513 U.S. 298, 319 (1995); *see also* 28 U.S.C. § 1651; 28 U.S.C. § 2243. "[A] court considering a habeas petitioner's fitness for bail must inquire into whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective." *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (cleaned up); *see Savino v. Souza*, 453 F. Supp. 3d 441, 453-54 & n.11 (D. Mass. 2020). Here, the circumstances certainly justify release on bail pending resolution of the petition, on conditions the Court deems just and proper. The government cannot agree even with itself about why Mr. Doe is in jail. The IJ ordered mandatory detention based solely on an arrest that did not result in a conviction or even pending charges. The government does not contend that Mr. Doe presents any flight risk or danger. *See D'Alessandro v. Mukasey*, No. 08-CV-914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009) (lack of flight risk and danger indicative of extraordinary circumstances). There is ample evidence he is not. Every day that Mr. Doe is unlawfully jailed without a bond hearing inflicts a permanent loss of the freedoms guaranteed by the laws of the United States. *See Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D.

Mass. 2010) ("A loss of liberty may be an irreparable harm."). Mr. Doe therefore respectfully requests that the Court release him on bail and/or conditions during the pendency of this petition.

V. Conclusion

For the reasons explained above, Mr. Doe respectfully requests that the Court enter a writ of habeas corpus requiring his release from custody unless he is provided a bond hearing within seven days.

Dated: August 1, 2025

Respectfully submitted,

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Certificate of Service

I hereby certify that the foregoing document is being electronically served on counsel for all parties via the Court's CM/ECF system.

Date: August 1, 2025

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