IMMIGRATION **JUSTICE** CAMPAIGN

Practice Advisory to IJC Attorneys regarding Laken-Riley Act

The Laken-Riley Act was signed into law on January 29, 2025. This Act has two major components: (1) the law amends INA Section 236(c) to expand the category of people who are subject to mandatory immigration detention and ineligible for bond, pending the outcome of their immigration case; and (2) provides standing for states Attorneys General to bring challenges in federal court to the implementation of federal immigration law, including regarding individual grants of parole, violations of detention and removal requirements, and visa issuance decisions of immigration officers at Department of State consular posts.

This advisory focuses on changes to INA § 236(c) and the expansion of mandatory detention.[1] People who are subject to mandatory detention are not eligible for release on bond, and therefore, must remain in immigration detention until the conclusion of the immigration court case, which can take many months to even years.

Who was subject to the INA's criminal-related grounds for mandatory detention[2] prior to the Laken Riley Act?

Prior to the passage of the Laken-Riley Act, INA § 236(c) had already set out provisions for which noncitizens were subject to mandatory detention for criminal legal system contacts pending the outcome of their immigration cases. These include noncitizens:

- who are considered ***inadmissible*** under INA §212 for having committed a crime involving moral turpitude (CIMT)[3], certain drug offenses, or having two or more criminal convictions for which the aggregate sentences to confinement were 5 years or more;

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[1] This advisory is not meant to constitute legal advice, and is not a replacement for reviewing the statutes and regulations themselves and their current validity.

[2] Additional provisions for mandatory detention are also explicated at INA Sections 235 and 241, though these are not the focus of this practice advisory as the Laken-Riley Act amends Section 236. However, practitioners should be sure to review other mandatory detention provisions under Sections 235 and 241 as a separate matter.

[3] Crime Involving Moral Turpitude is not defined by statute or regulation, and requires an analysis under case law. There is an exception, called the Petty Offense Exception, if the individual committed only one CIMT, for which they were not sentenced to more than 6 months in prison, and for which the maximum possible penalty for the crime does not exceed one year. *See* INA § 212(a)(2)(A)(II). If the noncitizen qualifies for the Petty Offense Exception, they would not be subject to mandatory detention.

- who are ***deportable*** under INA §237 for having committed: multiple CIMTs, an aggravated felony as defined by immigration law under INA § 101(a)(43); certain drug and firearms offenses; crimes related to espionage; or who has been convicted of a CIMT that was committed within five years of admission, and has been sentenced to a term of imprisonment of at least one year; or
- who are ***inadmissible*** or ***deportable*** for terrorist activities

Additional Individuals Subject to Mandatory Detention Under Laken-Riley Act

The Laken-Riley Act expanded mandatory detention to include noncitizens who are:

- inadmissible for having entered without inspection or parole under INA 212(a)(6) or without a valid entry document at the time of seeking admission under INA 212(a)(7), ***and***
- who have been arrested for, charged with, convicted of, or admit that they committed any of the following crimes or elements thereof as defined under the relevant jurisdiction where the acts occurred:
    - burglary
    - theft
    - larceny
    - shoplifting
    - assault of a law enforcement officer offense
    - or any crime that results in death or serious bodily injury to another person.

Of importance is the fact that a noncitizen can now be subject to mandatory detention merely for being accused of committing one of the above crimes, even if the allegations are false. Additionally, the law's breadth also subjects to mandatory detention, those who admit to the essential elements of one of the above crimes, which can occur in police interrogations in the midst of other criminal investigations, or even in a civil protective order hearing. We remain concerned about the expansive nature of this law and how it will be applied, and encourage attorneys and clients not to concede that a particular client's action amounts to an element one of the enumerated crimes above, especially as it is not the job of the immigration attorney to take on the role of a prosecutor.

Is my client subject to the mandatory detention provisions of the Laken-Riley Act?

While the full scope of applicability of the Laken-Riley Act is yet to be seen with time, it's possible that the following noncitizens may be subject to the provisions of this Act:

- Undocumented individuals who did not enter on a visa or with inspection or a valid entry document, if arrested or charged with one of the delineated offenses above
- Individuals with discretionary or temporary statuses such as DACA recipients, or people with temporary parole (such as those on Humanitarian parole or programs such as CHNV[4] parole), if they are arrested or charged with one of the delineated offenses above
- Recipients of Temporary Protected Status (TPS), whose TPS expires or is terminated, and who did not previously have a valid entry, and who are arrested or charged on one of the delineated offenses above
- Undocumented children under the age of 18 who entered without inspection, parole or a visa, if arrested or charged on one of the delineated offenses (regardless of whether the arrest was under a juvenile delinquency statute)

Can my client seek judicial review of their mandatory detention?

The Department of Homeland Security (DHS) initially determines whether a noncitizen is subject to mandatory detention under INA § 236(c), and Immigration Judges cannot redetermine the conditions of custody imposed by DHS with respect to those in removal proceedings subject to mandatory detention.[5] However, a noncitizen subject to mandatory detention may seek a determination from an Immigration Judge regarding whether the person is "properly included" in a mandatory detention category.[6] This is called a *Joseph* hearing. ***These hearings are complex; if you believe your client has been incorrectly categorized as subject to mandatory detention, please connect with your IJC mentor for further guidance and consult our Get Trained materials as appropriate.***

Additional Recommendations for IJC Volunteer Attorneys and their Clients

Given the expansive nature of the Laken-Riley Act's amendments on who is subject to mandatory detention and ineligible for bond, IJC recommends that volunteer attorneys:

- **Remind their clients of the importance of complying with all state and federal US laws, and especially of notifying their attorney of any previous criminal history or new encounters with law enforcement.**

[4] Cuban, Haitian, Nicaraguan, Venezuelan parole program, among others.
[5] 8 C.F.R. § 1003.19(h)(2)(i)(D).
[6] 8 C.F.R. § 1003.19(h)(2)(ii); *Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999).

- **Remind clients of their right to remain silent and not affirmatively volunteer information without first speaking with their attorney.**
- **For currently detained clients, discuss the option to seek humanitarian parole (release) from DHS as an alternative to bond, and identify if client would be eligible. The Laken-Riley Act does not currently impact a client's ability to ask for parole from detention from DHS.**