THE LAKEN RILEY ACT & JUVENILE DELINQUENCY

By Kathy Brady, Rachel Prandini, and Aruna Sury

The Laken Riley Act (LRA)[1] was signed into law by President Trump on January 29, 2025. It amends the Immigration and Nationality Act (INA) by expanding mandatory detention of certain inadmissible noncitizens who are merely arrested or charged with certain offenses, including shoplifting, theft, burglary, larceny, assault on a law enforcement officer, or any crime that results in death or serious bodily injury.[2] It also gives standing to state governments to sue the federal government if they prove harm due to the federal government's failure to enforce the INA's mandatory detention provisions or provisions relating to parole and admission of certain noncitizens.[3] The law does not specifically mention children or juvenile delinquency.

This practice advisory addresses the question of whether the provisions of the Laken Riley Act that seek to vastly increase the number of people subject to mandatory immigration detention would be triggered by children engaging in acts of juvenile delinquency (for example, a child stealing a bag of candy from a convenience store). For the reasons articulated below, the ILRC's position is that the answer is no, in alignment with longstanding precedent in immigration law that treats acts of juvenile delinquency as distinct from adult criminal acts. However, given that this is a new law with unclear drafting, in an abundance of caution, we also provide tips for juvenile defense attorneys to help clients avoid charges that could implicate the mandatory detention provision of the LRA.

I. What Changes Does the LRA Make to INA § 236(c)(1), the "Mandatory Detention" Provision?

Among other provisions, the LRA amends Section 236(c)(1) of the INA. Section 236(c)(1), referred to as the "mandatory detention" provision, requires certain noncitizens to remain detained during the pendency of their removal proceedings, with no possibility of release on bond.[4] Prior to the enactment of the LRA, there were four mandatory detention categories:

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[1] Pub. L. 119-1,139 Stat. 3 (2025).
[2] INA § 236(c)(1)(E). For additional information about the Laken Riley Act, see NIPNLG, *Practice Advisory: The Laken Riley Act's Mandatory Detention Provisions* (Feb. 5, 2025), https://nipnlg.org/work/resources/practice-advisory-laken-riley-acts-mandatory-detention-provisions.
[3] *See* INA §§ 212(d)(5)(C), 235(b)(3), 236(f), 243(d).
[4] INA § 236(c)(2) provides a very narrow exception to the mandatory detention provision for certain individuals needing witness protection. This provision is rarely applied, but advocates should keep the

1. The noncitizen is *inadmissible* under INA § 212(a)(2) as someone who is "convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of"[5] a crime involving moral turpitude or a controlled substance offense, or who comes within other grounds pertaining to drug trafficking, money laundering, human trafficking, prostitution, or two or more criminal offenses for which the total sentence imposed is at least five years.
2. The noncitizen is *deportable* under INA § 237(a)(2) based on conviction of an aggravated felony, two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, a controlled substance violation (other than a single offense involving possession of 30 grams or less of marijuana), or a firearm offense.
3. The noncitizen is *deportable* under INA § 237(a)(2)(A)(i) based on the conviction of a crime involving moral turpitude committed within five years of admission for which they were *sentenced* to at least one year of imprisonment.
4. The noncitizen is *inadmissible or deportable* for engaging in terrorist activity, being a representative or member of a terrorist organization, being associated with a terrorist organization, or espousing or inciting terrorist activity.

The LRA added a fifth category of people who are now subject to mandatory detention:[6]

1. The noncitizen is *inadmissible* for one of the following reasons:

   a. Being present without being admitted or paroled (INA § 212(a)(6)(A));
   b. Fraud, misrepresentation, or falsely claiming U.S. citizenship (INA § 212(a)(6)(C)); or
   c. Lack of proper documentation at time of admission (INA § 212(a)(7)(A)).[7]

   AND "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements" of any:

   a. Burglary,
   b. Theft,
   c. Larceny,
   d. Shoplifting,
   e. Assault of a law enforcement officer offense, or
   f. Any crime that results in death or serious bodily injury to another person.[8]

provision in mind where a detainee may be in need of protection due to their involvement in a major criminal investigation.

[5] INA § 212(a)(2)(A)(i).

[6] *See* INA § 236(c)(1)(E).

[7] Note that this means that this new basis for mandatory detention does NOT apply to all noncitizens. It only affects some noncitizens who are inadmissible under one of the enumerated grounds: INA §§ 212(a)(6)(A), (6)(C), or (7). Most commonly, it applies to individuals who entered the United States without inspection or without proper documentation.

[8] The LRA provides that the terms burglary, theft, larceny, shoplifting, assault of a law enforcement officer, and serious bodily injury have "the meanings given such terms in the jurisdiction in which the acts occurred." INA § 236(c)(2).

This sweeping new category of people subject to mandatory detention raises many questions. It remains to be seen how the Department of Homeland Security will interpret and attempt to implement these provisions. This practice advisory addresses the specific concern that the LRA could be applied to acts of juvenile delinquency,[9] and thus result in the mandatory detention of children and young adults.

II. Why Are People Concerned That the LRA Might Be Applied to Acts of Delinquency?

Unlike existing provisions of the grounds of inadmissibility and deportability, which penalize immigrants based on criminal convictions, formal admissions to criminal activity, and in narrow circumstances certain types of conduct supported by sufficient evidence,[10] the LRA *also* penalizes people based on being "charged with" or "arrested for" certain crimes.[11] Existing immigration law (as discussed below) clearly establishes that a delinquency adjudication is not a conviction of a crime for immigration purposes, and an admission to an act of delinquency is not an admission to a crime for immigration purposes. Existing law does not squarely address whether being arrested for or charged with an act of delinquency could have immigration consequences. This is because no provision of the INA previously penalized people based solely on an arrest or charge. Thus, the fact that existing law does not specifically establish that an arrest or charge for delinquency should not trigger an immigration penalty such as mandatory detention is not surprising. For the following reasons, the mandatory detention provisions of Section 236(c)(1)(E) should not be triggered by delinquent acts.

III. Why Should the LRA Not Apply to Arrests and Charges of Minors Handled in Delinquency Proceedings?

First, it is well established that a juvenile delinquency adjudication does not constitute a criminal conviction for immigration purposes, regardless of the nature of the offense. In *Matter of Devison*, the Board of Immigration Appeals (BIA) reaffirmed its longstanding rule "that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for

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[9] Juvenile delinquency refers to the process involving alleged violations of law by individuals under a certain age, often either eighteen or sixteen (state laws vary). Under federal law, juvenile delinquency is defined as the violation of a law committed by a person prior to their eighteenth birthday which would have been a crime if committed by an adult. *See* 18 U.S.C. § 5031.

[10] *See, e.g.*, INA § 212(a)(2)(C) (making certain people engaged in controlled substance trafficking inadmissible if the consular officer or Attorney General "knows or has reason to believe" they were involved in trafficking). Courts have held that the government must have "reasonable, substantial, and probative evidence" that the person engaged in drug trafficking. *In re Rico*, 16 I&N Dec. 181, 185-6 (BIA 1977); *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000); *see also In re Favela*,16 I&N Dec. 753 (BIA 1979); *Castano v. INS*, 956 F.2d 236, 238 (11th Cir. 1992) (government's knowledge or reasonable belief that an
individual has trafficked in drugs must be based on "credible evidence").

[11] *Compare* INA § 212(a)(2)(A) with INA § 236(c)(1)(E). Subjecting people to mandatory detention based on an arrest or charge flies in the face of the fundamental legal principle from the criminal context that people are presumed innocent until proven guilty. *See generally Taylor v. Kentucky*, 436 U.S. 478 (1978).

immigration purposes."[12] It relied on Congress' recognition that adjudications for juvenile delinquency are separate from criminal convictions.[13] The BIA likened delinquency proceedings to removal proceedings and found that delinquency is not criminal, but civil in nature. Delinquency does not result in punishment. The applicable due process standard for delinquency, like removal proceedings, is fundamental fairness.[14] This case law continues to be applied today to mean that a juvenile delinquency adjudication does not trigger any of the grounds of inadmissibility or deportability that require a criminal conviction.[15]

Consistent with this, admitting to juvenile delinquency also does not constitute an "admission" under the INA because the person has to admit *to a crime* in order to trigger certain inadmissibility grounds requiring an admission, and delinquency is not considered a crime under immigration law. (Recall that a person is inadmissible who is convicted of *or* "who admits having committed, or who admits committing acts which constitute the essential elements of" certain crimes: a crime involving moral turpitude or controlled substance offense.[16]) However, the admission must be to conduct that constitutes an adult crime, not delinquency. In *Matter of M-U-*, the BIA held that an adult cannot admit the essential elements of a moral turpitude offense if the conduct required mandatory delinquency treatment.[17] In that case, an admission by an adult of theft while a minor that resulted in a delinquency adjudication was held not to be an admission of commission of a crime involving moral turpitude.[18] Further, a person who has committed conduct which did not result in arrest or charges, may also not make an admission if it would have been mandatorily treated as delinquency. In *Matter of F-*, 4 I& N Dec. 726 (BIA 1952), the BIA held that an adult was not inadmissible for admitting a crime involving moral turpitude, in this case perjury, where the admission would have been treated as juvenile

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[12] *Matter of Devison*, 22 I&N Dec. 1362, 1365 (BIA 2000), *citing*, *e.g., Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981), *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981), *Matter of C. M.*, 5 I&N Dec. 27 (BIA 1953).

[13] The BIA cited to the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. §§ 5031-5032, stating "The FJDA makes it clear that a juvenile delinquency proceeding results in the adjudication of a status rather than conviction for a crime." *Devison*, 22 I&N Dec. at 1366.

[14] *Id.* at 1366.

[15] *See, e.g.*, 7 USCIS-PM F.7(C)(4) ("Findings of juvenile delinquency are not considered criminal convictions for purposes of immigration law.")

[16] INA § 212(a)(2)(A)(i).

[17] 2 I&N Dec. 92 (BIA 1944). But see *U.S. v. Gutierrez-Alba*, 128 F.3d 1324 (9th Cir. 1997) (without discussion of issue of juvenile delinquency, finding that juvenile's guilty plea in adult criminal proceedings constituted an admission, regardless of whether adult criminal court prosecution was ineffective due to defendant's minority status). This case can be distinguished on the basis that the youth's case was handled in adult criminal proceedings and neither the parties nor the court raised cases holding that if the conduct required mandatory delinquency treatment, at most the admission should be construed to be one of delinquency and not a crime.

[18] The BIA has also held that when a plea of guilty results in something less than a conviction, the plea, on its own, is not tantamount to admission of commission of a crime. *Matter of Seda*, 17 I&N Dec. 550, 554 (BIA 1980). Although *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988), modified *Matter of Seda*'s holding as to what constitutes a conviction for purposes of immigration law, the *Seda* holding regarding the significance of a plea that results in less than a conviction remains good law. Because juvenile delinquency adjudications are considered less than a conviction for immigration purposes, even when a youth pleads guilty to an offense, any admissions of conduct underlying that guilty plea cannot, without more, be considered to constitute an admission triggering immigration consequences.

delinquency conduct, not criminal conduct. If a person cannot admit to a crime when they are admitting to acts that were or would have been treated as delinquency, an arrest or charge handled in a delinquency system must be treated by immigration law as distinct from a criminal arrest or charge.

Second, although the drafting of the LRA is vague, the terms "charged with" and "arrested for" modify the terms "offense" and "crime." These two terms appear in the current grounds of inadmissibility and have long been interpreted to refer only to adult crimes.[19] Also, the inadmissibility ground language describing what constitutes an admission of a crime—"who admits having committed, or who admits committing acts which constitute the essential elements of" moral turpitude or drug offenses—appears word for word in the LRA. If Congress meant to upend decades of immigration law precedent with the LRA, it could have been explicit. The only times that the INA has imposed a mandatory bar or punishment based on delinquency, this was specifically stated in the statute or regulation.[20] In the absence of any explicit indication in the text of the LRA, this provision of the LRA should be interpreted to be only about crimes, not acts of delinquency addressed in a civil system. Thus, an arrest or charge for one of the enumerated offenses that is or would be handled in a juvenile delinquency system must not trigger the mandatory detention provision in INA § 236(c)(1)(E).[21]

NOTE FOR YOUTH DEFENSE ATTORNEYS: Notwithstanding strong arguments that the LRA should not be triggered by juvenile arrests or charges, because it is unclear how immigration judges will interpret this new provision of law, youth defense attorneys should exercise caution and try to avoid a specific plea in delinquency proceedings to the offenses listed in Section 236(c)(1)(E) of the LRA (burglary, theft, larceny, shoplifting, assault of a law enforcement officer, or any crime that results in death or serious bodily injury). Where possible, for a minor charge, youth defense attorneys should try instead for trespass, disturbing the peace, public nuisance, or similar offenses. If needed, noncitizen clients may accept a misdemeanor or felony plea to vandalism (with no gang-related admissions). In California, there is also a technical argument that Cal. Penal Code Section 496 does not come within the offenses listed in the LRA. The argument goes that the LRA states that the offenses listed are defined under the state's law. While "larceny" is listed, California "larceny" does not include receipt of stolen property because larceny is defined the same as Cal. Pen. Code Section 484 "theft."[22] So if nothing else, a plea in juvenile delinquency proceedings to Cal. Pen. Code Section 496 might be safe. Please contact a specialist in the immigration consequences of crimes if you are representing a noncitizen youth who you fear could face mandatory detention under the LRA.

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[19] *See, e.g.*, INA § 212(a)(2)(A) (referring to convictions and admissions of certain crimes), INA § 212(a)(2)(B) (referring to people convicted of 2 or more offenses).

[20] Congress has explicitly penalized people for acts of delinquency in two contexts in immigration law: the Adam Walsh Act, and Family Unity. See the Adam Walsh Act provisions at INA § 204(a)(1)(A)(viii), which includes certain delinquency dispositions as defined at 34 USC § 20911(8). See the Family Unity inclusion of delinquency dispositions at 8 CFR § 236.13(d).

[21] For additional information about determining whether an arrest or charge is or would be handled in a juvenile delinquency system, see ILRC, *What are the Immigration Consequences of Delinquency?* (Mar. 2020), https://www.ilrc.org/resources/what-are-immigration-consequences-delinquency.

[22] *See* Cal. Pen. Code § 490a.

Third, even if the LRA were interpreted to require mandatory detention of certain people arrested or charged with violations of the law that are handled in juvenile delinquency proceedings, many states have confidentiality laws that govern juvenile proceedings and limit the information that Immigration and Customs Enforcement (ICE) can access about children. For example, in California, state confidentiality laws severely limit the information from juvenile proceedings that can be shared with the public, including ICE.[23] Thus, it is generally unlawful in California for juvenile probation departments to report children in the delinquency system to ICE.[24] If ICE tries to subject someone to mandatory detention under Section 236(c)(1)(E) based on an arrest or charge that is handled in a juvenile delinquency system, be sure to investigate whether any state confidentiality laws were violated in the process of ICE learning about the arrest or charge. This could be grounds to file a motion to suppress in immigration court.

San Francisco
t: 415.255.9499
f: 415.255.9792

Washington D.C.
t: 202.777.8999
f: 202.293.2849

Houston

San Antonio

ilrc@ilrc.org
www.ilrc.org

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[23] *See* Cal. Welf. & Inst. Code §§ 827, 831. For more information about confidentiality of juvenile records in California and the implications for immigration practitioners, see ILRC, *Confidentiality of Juvenile Records in California: Guidance for Immigration Practitioners* (Sept. 2022), https://www.ilrc.org/resources/confidentiality-juvenile-records-california-guidance-immigration-practitioners. For more information about how California confidentiality laws interact with California's SB 54 (The California Values Act), see ILRC, *Protections for Noncitizen Youth: How California Laws Protect Youth Involved in the Youth Justice System Against Immigration Enforcement* (Sept. 2019), https://www.ilrc.org/resources/protections-noncitizen-youth-how-california-laws-protect-youth-involved-youth-justice.

[24] The exception would be if a probation department petitioned the juvenile court for permission to share information about a child with ICE, and the juvenile court granted the request. For a juvenile court to grant such a request, "the court must find that the need for access outweighs the policy considerations favoring confidentiality of juvenile case files. The confidentiality of juvenile case files is intended to protect the privacy rights of the child." Cal. R. Ct., rule 5.552(d)(5).