



THE LAKEN RILEY ACT (LRA)

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What does the Laken Riley Act (LRA) Do?

- **Effective Date:** January 29, 2025
- **Codified At:** INA §236(c)(1)(E)
- **Major Provisions:**
 - **Expands State Power:**
 - Grants state attorneys general sweeping authority to **sue the federal government** for failures in immigration enforcement, even over **individual enforcement cases**.
 - **Note:** This provision is likely to be **dormant** under the current administration but is important to **monitor** for future litigation or political shifts.
 - **Drastically Expands Mandatory Detention:**
 - Now includes **noncitizens merely arrested for certain offenses**—not just convicted individuals.
 - Many included offenses are **low-level crimes**, upending the traditional **categorical approach** previously used in immigration adjudication.
 - This **does not alter** grounds for inadmissibility or deportability—only impacts **detention authority**.

What Does “Mandatory Detention” Mean Under LRA?

Definition:

Immigration judges have **no discretion** to set bond—**detention is automatic** if LRA applies.

Limited ICE Discretion Remains:

ICE may still release individuals on **ICE bond** or **humanitarian parole**, but in reality, **such releases are rare**.

LRA’s Unique Requirement:

ICE is **required to issue detainers** for individuals in **criminal custody** if covered by LRA.

- This is **unlike other provisions** of INA §236(c).

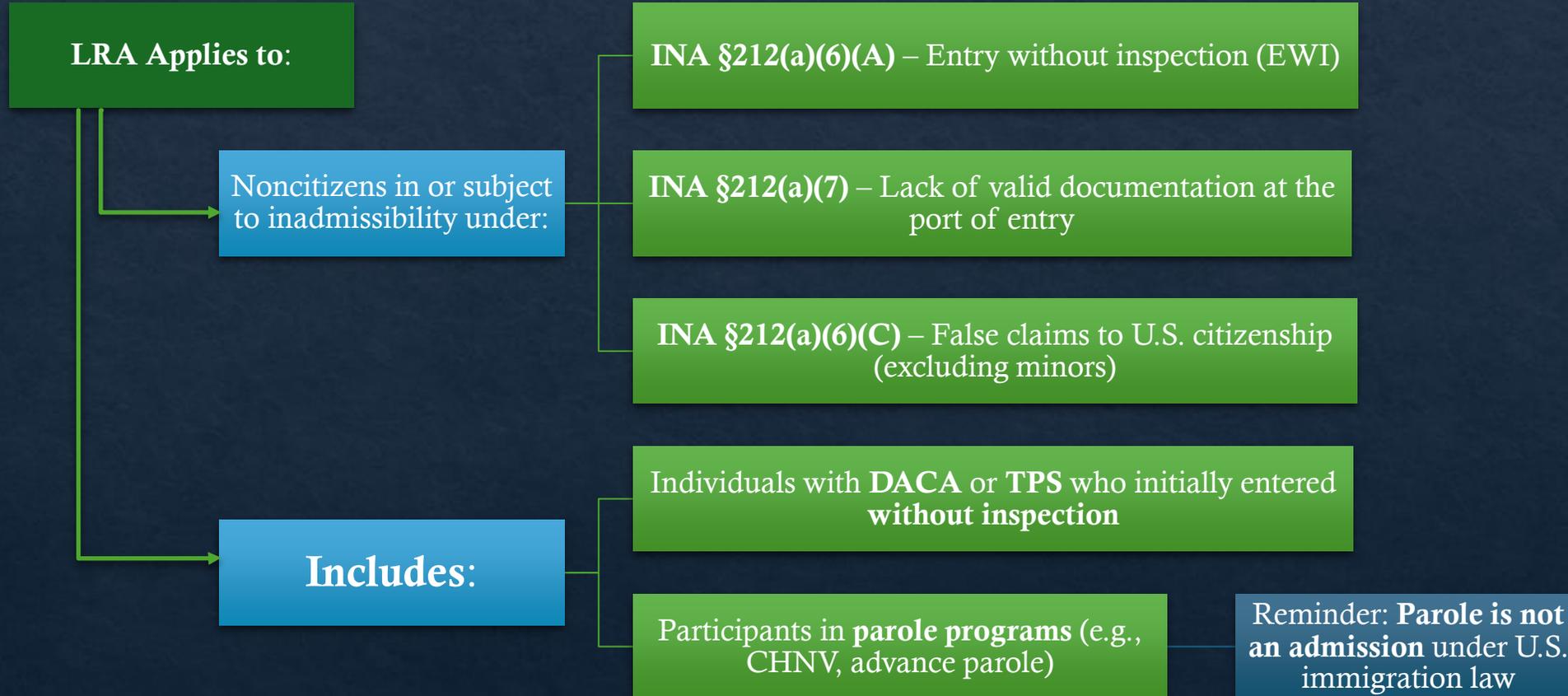
Important Limitation:

Detainers apply only to those in **criminal custody**—not to those appearing for ICE check-ins or administrative enforcement.

Local Jurisdictional Autonomy:

Localities may **decline ICE detainers** depending on their **state laws**.

Who Is Impacted by the LRA?



Who Is NOT Impacted by the LRA?

LRA Does Not Apply to:

Individuals who have been **formally admitted** into the U.S.

- **Examples:** Visa overstays, lawful permanent residents (LPRs)

Persons in **expedited removal** proceedings or those with a **final order of removal**

- Already subject to **mandatory detention** under other provisions

Minors in Office of Refugee Resettlement (ORR) custody

- Not subject to INA §236(c) and therefore **exempt from LRA detention provisions**

What Crimes Are Covered by the LRA?

Covered Offenses Include:

- Burglary
- Theft, larceny, shoplifting
- Assault on law enforcement
- Any crime resulting in death or serious bodily injury

Crucial Legal Shift:

- Crimes are assessed **under state law definitions**
 - No longer using the **categorical approach**

Triggering Events:

- Covered if a person:
 - **Is arrested for**
 - **Is charged with**
 - **Is convicted of**
 - **Admits to committing, or having committed, acts constituting the offense**

Concerns:

- Use of “arrested for” or “charged with” **raises vagueness issues**
- Suggests drafters may not have expected the bill to pass **so quickly or without changes**

Strategies for Defending LRA-Affected Clients

Sometimes It Doesn't Come Up:

- In practice, some cases may **avoid LRA implications** if ICE does not act on the detainer.

Retroactivity Issues:

- **Statutory Silence:** LRA does not clarify whether it applies retroactively
- **Legal Doctrine:** General presumption **against retroactivity** under:
 - *Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994)
 - *INS v. St. Cyr*, 533 U.S. 289 (2001)
 - *Vartelas v. Holder*, 566 U.S. 257 (2012)

Dismissed Charges Argument:

- A person with charges **dismissed** is arguably no longer “arrested for” or “charged with” the offense
 - Emphasize this ambiguity to **argue against detention** under LRA

Additional Legal Strategies – “Mini” State-Level Categorical Approach

Adapted Legal Strategy:

- Argue that the **state offense must match the enumerated LRA offense**
 - If not, LRA should not apply

Example from NIP Practice Advisory:

- **Joyriding**: Often classified as “temporary” theft
 - State statutes may **not require intent to permanently deprive**, and thus do **not align** with “theft” as envisioned under LRA

Serious Bodily Injury:

- Demand that this be a **formal element** of the conviction—not inferred from police reports or arrest narratives
 - Helps prevent **overreach by ICE** based on vague records

Clients in Criminal Custody – Best Practices

Family Engagement is Critical:

Families may be inclined to post **criminal bail**, not understanding immigration consequences

Strategic Criminal Defense:

Often better to remain in **criminal custody**:

- Seek **dismissal** or **plea to a non-LRA-qualifying charge**
- Examples: **Disorderly conduct, joyriding**

Why It Matters:

Once released, ICE may claim the individual is still “arrested for” or “charged with” an LRA offense

- A successful defense or reduced charge helps **disqualify** LRA application in immigration custody



Questions?
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