From: (b)(6),(b)(7)(C),(b)(7)(F)
To: OPLA Field Personnel; OPLA HQ Personnel
Subject: Broadcast Message: Implementing the Laken Riley Act
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Disseminated on behalf of Michael A. Falcone and Karen E. Lundgren . . .

On January 29, 2025, President Donald J. Trump signed the Laken Riley Act (LRA) into law. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified as amended at INA §§ 212, 235, 236, 241, 242, and 243). The LRA amends, among other things, the detention provisions of section 236(c) of the Immigration and Nationality Act (INA) to include certain inadmissible aliens who are "charged with, arrested for, convicted of, admit having committed, or admit committing acts which constitute the essential elements of" the enumerated criminal offenses described below. While this guidance focuses on the provisions of the LRA most relevant to OPLA day-to-day, all OPLA attorneys should review and familiarize themselves with all of the provisions of the LRA, this guidance, and the broadcast message dated February 12, 2025, from Homeland Security Investigations (HSI) and the broadcast message dated February 13, 2025, from Enforcement and Removal Operations (ERO), in order to provide legal advice to ERO officers and HSI agents in their implementation of the LRA.

Effective immediately, INA § 236(c)'s prohibition on release has been expanded to apply to:

- aliens inadmissible under INA §§ 212(a)(6)(A) (present without admission or parole), 212(a)(6)(C) (fraud or material misrepresentation), or 212(a)(7) (no valid documents), *see* INA § 236(c)(1)(E)(i), who are:
    - charged with, arrested for, convicted of, admit having committed, or admit committing acts which constitute the essential elements of any burglary, theft, larceny, or shoplifting offense; or
    - charged with, arrested for, convicted of, admit having committed, or admit committing acts which constitute the essential elements of any assault of a law enforcement officer offense; or
    - charged with, arrested for, convicted of, admit having committed, or admit committing acts which constitute the essential elements of any crime that results in death or serious bodily injury to another person.

See INA § 236(c)(1)(E)(ii) (hereinafter "enumerated offenses").

To be subject to INA § 236(c), an alien must potentially be subject to removal on a ground specified in INA § 236(c)(1)(A) to (1)(E). *See Matter of Kotliar*, 24 I&N Dec. 124, 126 (BIA 2007) (holding that INA § 236(c) "does not require that the alien be charged with or found [removable] on the particular ground on which detention is based"); (b)(5)

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(b)(5) An alien inadmissible under INA § 212(a)(6)(A), 212(a)(6)(C), or 212(a)(7) who also "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of" an enumerated offense is now subject to mandatory detention under INA § 236(c). INA § 236(c)(1)(E)(i)–(ii).

OPLA attorneys should consider the following practice pointers:

(b)(5)

(b)(5)

INA § 236(c)(2)-Definitions for new offenses triggering INA § 236(c) mandatory detention. The terms "burglary," "theft," "larceny," "shoplifting," "assault of a law enforcement officer," and "serious bodily injury," as used in INA § 236(c)(1)(E)(ii), are given the meaning that such terms have in the jurisdiction where the acts occurred. *See* INA § 236(c)(2). (b)(5)

(b)(5)

Retroactivity. The LRA does not include an expressed effective date. Congressional enactments are presumptively prospective only, *Vartelas v. Holder*, 566 U.S. 257, 273 (2012), and "will not be construed to have retroactive effect unless their language requires this result," *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Here, Congress has not "unambiguously instructed retroactivity." *Vartelas*, 566 U.S. at 266 (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 263 (1994)); *see* Laken Riley Act, 139 Stat. at 3. "[W]hen a statute has no effective date," as is true of the LRA, "'absent a clear direction by Congress to the contrary, [it] takes effect on the date of its enactment.'" *Johnson v. United States*, 529 U.S. 694, 702 (2000) (quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991)). Thus, the LRA applies prospectively, as of the date of enactment.

- INA § 236(c)(1)(E) applies to aliens inadmissible under INA § 212(a)(6)(A), 212(a)(6)(C), or 212(a)(7) who are "charged with," are "arrested for," are "convicted of," "admit[] having committed," or "admit[] committing acts which constitute the essential elements of" any of the enumerated offenses when the first of those events listed occurs *after* the enactment of the LRA—taking into account, chronologically, the specific events that occurred in the alien's individual case.

    - If one of those five events has already occurred as of the enactment of the LRA, and then another one of those events occurs for the same offense, application of the LRA would be impermissibly retroactive, as conduct sufficient to trigger the application of the LRA has already occurred. For example, (b)(5)

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      (b)(5) *Cf. Vartelas*, 566 U.S. at 268–69 (rejecting the Government's argument that a statute does not apply retroactively when a post-enactment event occasions the application of the statute to pre-enactment conduct); *Lopez Ventura v. Sessions*, 907 F.3d 306, 314 (5th Cir. 2018) (applying this reasoning from *Vartelas* where the alien committed the crime pre-enactment and was convicted post-enactment).

  - However, to clarify, INA § 236(c)(1)(E) does apply to aliens who are inadmissible under INA § 212(a)(6)(A), 212(a)(6)(C), or 212(a)(7) and in removal proceedings at the time of the LRA's enactment, and who are "arrested for" any of the enumerated offenses, if such arrest occurred after the enactment of the LRA.

- There will likely be scenarios raising questions about retroactivity not discussed above. Should your office encounter an unusual scenario, please contact ILPD.

The LRA additionally amends the following provisions:

- INA § 212(d)(5): Replacing "Attorney General" with "Secretary of Homeland Security," *see* INA § 212(d)(5)(A)–(B), and providing standing to state attorneys general and other authorized state officials to sue the Secretary of Homeland Security for injunctive relief based on the application of INA § 212(d)(5)(A), *see* INA § 212(d)(5)(C).
- INA § 235(b): Providing standing to state attorneys general and other authorized state officials to sue the Secretary of Homeland Security for injunctive relief based on the application of INA § 235(b)(1) (Inspection of Aliens Arriving in the United States and Certain Other Aliens Who Have Not Been Admitted or Paroled) or INA § 235(b)(2) (Inspection of Other Aliens), *see* INA § 235(b)(3).
- INA § 236(f): Providing standing to state attorneys general and other authorized state officials to sue the Secretary of Homeland Security or Attorney General for injunctive relief regarding any action or decision to release or grant bond or parole to any alien who harms such state or its residents, *see* INA § 236(f).
- INA § 241(a)(2): Providing standing to state attorneys general and other authorized state officials to sue the Secretary of Homeland Security for injunctive relief based on the application of INA § 241(a)(2)(A) (detention during the removal period), *see* INA § 241(a)(2)(B).
- INA § 242(f): Providing that INA § 242(f)(1) (Limit on Injunctive Relief) shall not apply to any action brought under INA § 235(b)(3), INA § 236(e)–(f), or INA § 241(a)(2)(B), *see* INA § 242(f)(3).
- INA § 243: Providing standing to state attorneys general and other authorized state officials to sue the Secretary of State for injunctive relief regarding a violation of the requirement to discontinue granting visas to citizens, subjects, nationals, and residents as described in INA § 243(d), *see* INA § 243(e).

Questions related to the applicability of this guidance may be directed to ILPD at (b)(6),(b)(7)(C),(b)(7)(F)@ice.dhs.gov.

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