

UPDATES FOR CRIMINAL DEFENSE COUNSEL REGARDING NEW LAW: LAKEN RILEY ACT

On January 22, 2025, Congress adopted and new President Trump is expected to sign the Laken Riley Act <https://www.congress.gov/congressional-record/volume-171/issue-13/house-section/article/H277-1> into law. The Act provides three main changes to existing law. Most importantly for criminal defense and immigration counsel, the Act mandates that Immigration and Customs Enforcement detain any undocumented non-citizen who is “charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person.” The Act also requires that DHS (ICE) issue a detainer if the person is in custody, or, for those not currently in custody “effectively and expeditiously take custody.” Finally, the Act establishes that State’s Attorneys General have standing to challenge DHS’s enforcement actions, including individualized custody determinations and policy decisions, where they allege that their residents are harmed by the action.

Clearly, the standing provisions invite litigation, and we expect that this Act will be challenged in the Courts from many angles. We will work to keep you up to date on the status of litigation and its impacts on your practice. Please reach out if you represent an impacted client.

For criminal defense counsel, it is important to make clients aware that this law is triggered by an *arrest* for a theft offense and does not depend only on the final disposition of a criminal charge. Clients should be informed of the increased risk of ICE detention as a result.

Nevertheless, it does not alter the due process rights of non-citizens facing removal, who continue to be entitled to notice and a fair hearing. Although the administration has expanded a process called “expedited removal,” about which more information is forthcoming, most non-citizens present in the United States are entitled to a removal hearing at which they will be able to apply for any immigration benefits or status for which they are eligible.

Criminal defense counsel should continue to make referrals to the Long Island Regional Immigration Assistance Center (“LIRIAC”) and to work towards an outcome that avoids conviction for an offense that will trigger inadmissibility or deportability or will end eligibility for asylum. That means negotiating to avoid a conviction for an Aggravated Felony, a Crime Involving Moral Turpitude, or a “Particularly Serious Crime,” which is determined by an immigration judge in a complex weighing of the circumstances. Generally, low level property offenses are not classified as “Particularly Serious Crimes.” The LIRIAC will continue to provide advice in specific cases about the immigration consequences and risk of detention your client faces.