U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, NY 11201

January 27, 2026

By ECF
Honorable Nina R. Morrison
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Merlo Puerto v. Leeper*, No. 26-cv-405 (Morrison, J.)

Dear Judge Morrison:

This Office represents Respondents in the above-captioned case in which Petitioner Renato Merlo Puerto, an alien in removal proceedings, filed a petition for a writ of habeas corpus on January 22, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1. The legal issues presented concern, *inter alia*, whether Petitioner's detention violates his due process protections and the statutory authority for ICE's detention of Petitioner. Petitioner principally seeks an order from this Court directing ICE to immediately release him from detention. While reserving all rights, including the right to appeal, the government submits this letter in lieu of a formal responsive memorandum of law to conserve judicial and party resources, and to expedite the Court's consideration of this case, in light of Your Honor's Court's decision on the principal legal issues in *Hyppolite v. Noem*, --- F. Supp. 3d ---, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.), as discussed below.

Relevant Facts

Petitioner represents that he unlawfully entered the United States in 2004. See Decl. of Patrick Heerey, ¶ 3 & Ex. A.[1] On September 26, 2019, Petitioner was served with a Form I-862, Notice to Appear ("NTA"), charging him with removability pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Heerey Decl., ¶ 4 & Ex. B. The NTA was filed with the Executive Office for Immigration Review that same day, which commenced removal proceedings against Petitioner. Heerey Decl., ¶ 5.

On January 22, 2026, ICE officers encountered Petitioner in Jamaica, New York. Heerey Decl., ¶ 10 & Ex. D. Petitioner agreed to speak with the officers, and during that encounter, Petitioner provided identification. Heerey Decl., ¶ 10. A record check revealed that Petitioner was a citizen and national of Honduras without lawful status in the United States, and that Petitioner was in removal proceedings. Heerey Decl., ¶ 10 & Ex. D. That same day, ICE served Petitioner with a Form I-200, Warrant for Arrest of Alien, reflecting that he would be detained. Heerey Decl., ¶ 11 & Ex. E. ICE also prepared an INA § 236(a) Initial Custody Determination, and determined

[1] Information has been redacted from the exhibits attached to the Heerey Declaration for privacy or law enforcement sensitivity concerns.

that Petitioner is not subject to INA § 236(a) and should be detained. Heerey Decl., ¶ 12 & Ex. F.

Petitioner is currently detained at the Delaney Hall Detention Facility in Newark, New Jersey. Heerey Decl., ¶ 14. Petitioner has never been admitted to the United States. Heerey Decl., ¶ 15. He is detained by ICE under 8 U.S.C. § 1225(b)(2)(A). Heerey Decl., ¶¶ 13-15.

Habeas Petition

Petitioner commenced this action on January 20, 2026. ECF No. 1. Petitioner argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to him because he had already entered and had been residing in the United States at the time he was arrested by ICE, Pet., at 5-7 (Count One); (2) his detention violates the Due Process Clause of the Fifth Amendment of the United States Constitution, Pet., at 7 (Count Two); and (3) his detention violates the Administrative Procedure Act, Pet. At 8 (Count Three).

In his prayer for relief, Petitioner, in relevant part, asks that the Court enjoin ICE from transferring him outside of the Eastern District of New York[2] while this habeas petition is pending and issue a writ of habeas corpus ordering his unconditional release from custody of Respondents. Pet., at 8-9 (Prayer for Relief).

Hyppolite

The basis for ICE's detention of Petitioner is its position that Petitioner, who was never lawfully admitted to the United States, remains an applicant for admission and is thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). However, Respondents acknowledge that, on October 7, 2025, Your Honor issued the *Hyppolite* decision that, *inter alia*, rejected ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A).

In particular, the Court found that the petitioner in *Hyppolite* was detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), because, among other things: (i) Hyppolite's' arrest warrant and custody determination referred to § 1226(a), not § 1225(b)(2)(A); and (ii) the mandatory detention provisions of the Laken Riley Act ("LRA"), Pub. L. 119-1, 139 Stat. 3 (2025) would be superfluous under the government's reading of § 1225(b)(2)(A) *Hyppolite*, 2025 WL 2829511, at *7-10.[3] The Court thus held that the petitioner's re-detention violated due process because, as an alien subject to § 1226, petitioner should have received an individualized determination prior to his detention in accordance with § 1226(a) . *Hyppolite*, 2025 WL 2829511, at *16.[4]

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[2] On January 23, 2026, this Court "enjoined [Respondents] from moving Petitioner to a location outside this District, the Southern District of New York, or the District of New Jersey absent further order of this Court." *See* Jan. 23, 2026 Minute Entry.

[3] ICE contended that the petitioners' detentions were governed by 8 U.S.C. § 1225(b)(2)(A) because, as aliens who entered without inspection or parole, and who were initially detained after crossing the border, they were applicants for admission who were treated, for constitutional purposes, as if stopped at the border. As such, they would not be entitled to release or a bond hearing that is a feature of detentions under 8 U.S.C. § 1226(a). *See* Mem. In Opp., *Hyppolite v. Noem*, No. 25-cv-4304, ECF No. 17.

[4] Following the Court's decision in *Hyppolite*, four district court judges in this Circuit have endorsed the Government's interpretation of the relevant statutory provisions. In *Xiaoquan Chen v. Almodovar*, No. 25-cv-8350, 2025 WL

3484855, at *7 (S.D.N.Y. Dec. 4, 2025), *notice of appeal filed* Dec. 16, 2025, the petitioner had entered the United States without having been admitted, was detained, and was released on his own recognizance due to lack of bed space; he was recently re-detained pursuant to 8 U.S.C. § 1225(b)(2)(A). The Honorable Mary Kay Vyskocil dismissed the habeas petition, holding that "under the plain language" of § 1225(b)(2)(A), which by its terms requires mandatory detention for "applicant[s] for admission," the petitioner—an applicant for admission—was subject to mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855 at *4. In particular, the court cited the statutory definition of "applicant for admission" in Section 1225(a), which "is specifically defined to include an 'alien *present in* the United States who has not been admitted.'" *Id.* (emphasis in *Xiaoquan Chen*) (citing Section 1255(a)). Moreover, the court noted that the terms "'admitted' and 'admission' are specifically defined in terms of '*lawful*' entry," not mere physical entry. *Id.* (emphasis in *Xiaoquan Chen*) (citing 8 U.S.C. § 1101(a)(13)(A)); *accord Candido v. Bondi*, No. 25-cv-867, 2025 WL 3484932, at *1-2 (W.D.N.Y. Dec. 4, 2025) (holding detention under 8 U.S.C. § 1225(b)(2)(A) was proper for alien present in United States unlawfully without having been admitted based on a "a straightforward and fair reading of the governing statute," noting that "[t]he fact that more district courts . . . have decided this issue differently from this [c]ourt is neither binding nor persuasive"), *notice of appeal filed* Dec. 16, 2025. *Xiaoquan Chen* also rejected the proposition that Congress would not have needed to pass the LRA – which provides for mandatory detention for "inadmissible" aliens charged with, arrested for, convicted of, or who admit to, certain crimes – if Section 1225 already provided for mandatory detention. *Xiaoquan Chen*, 2025 WL 3484855, at *6-7. The court explained, *inter alia*, that the LRA mandates detention in additional circumstances – for example, for aliens who fraudulently procure visas – not covered by Section 1225. *Id.* On December 15, 2025, Judge Vyskocil issued another decision concluding that the Government's interpretation is correct. *See Wenxin Liang v. Almodovar*, No. 25-cv-9322, 2025 WL 9322, at *4-11 (S.D.N.Y. Dec. 15, 2025) (holding that petitioner who entered the United States without being admitted was properly subject to detention under the plain language of Section 1225, notwithstanding prior release on his own recognizance under Section 1226, and further concluding that petitioner was not entitled to any process beyond that set forth in the statute).

In *Yinxiao Chen v. Almodovar*, No. 25-cv-9670, 2026 WL 100761 (S.D.N.Y. Jan. 14, 2026), the Honorable John P. Cronan issued a decision endorsing the Government's interpretation. In *Chen*, the petitioner entered the United States without inspection or legal documents, was arrested and later released on his own recognizance under 8 U.S.C. § 1226, served with a Notice to Appear for removal proceedings, and recently detained under 8 U.S.C. § 1225(b)(2)(A). *See Chen*, 2026 WL 100761 at *5-*6. Judge Cronan denied the habeas petition, concluding that the text, structure, and context of § 1225(b)(2)(A) confirm that statute covers aliens like that petitioner. *Id.* at *8-*14.

With respect to the text of § 1225(b)(2)(A), Judge Cronan held that § 1225(a)(1) "'deem[s]'" an "applicant for admission" "'[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival ...).' " *See id.* at *8 (emphasis supplied in *Chen*). Given that the detention authority in § 1225(b)(2)(A) covers "an alien who is an applicant for admission," Judge Cronan held, it follows that "[p]ut together, Section 1225(b)(2)(A) initially reaches situations concerning noncitizens . . . present in the United States who have not gained lawful entry into the country after inspection and authorization by an immigration officer." *Id.*

Most recently, the Honorable Jennifer F. Rearden, in *Weng v. Genalo*, No. 25 Civ. 9595, 2025 WL 194248 (S.D.N.Y. Jan. 25, 2026) concluded that the petitioner in that case was subject to § 1225(b)(2)(A) mandatory detention even though ICE had previously released him from detention on a § 1226(a)(2)(B) order of release on recognizance. Judge Rearden noted that Congress in 1996 enacted § 1225(a)(1) and 8 U.S.C. § 1101(a)(13)(A), which together limited the category of those "admitted" to persons who lawfully entered the United States. *Id.* at *3. Thus, persons who entered the United States unlawfully have not been "admitted", and are subject to § 1225(b)(2)(A) mandatory detention. *Id.* Judge Rearden also, *inter alia,* declined to follow the courts that have held § 1226 (a) mandatory detention applies only to persons who are "seeking admission" and thus cannot apply to persons who are already in the United States. She perceptively noted that "the term 'applicant for admission' in Section 1225 is defined to include an 'alien *present* in the United States who has not been admitted," 8 U.S.C. § 1101(a)(13)(A) (emphasis added) and thus explicitly encompasses aliens who are 'already here.' " *Id.* at *4.

Discussion as to 8 U.S.C. § 1225(b)(2)(A)

While the Government respectfully disagrees with the Court's decision in *Hyppolite*, the Government acknowledges that this decision would control the result in this case if the Court adheres to them, because, as in that case, ICE's detention of the Petitioner in this case is based on ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A), and the Court rejected that position in *Hyppolite*. Thus, to conserve judicial resources and to expedite the Court's consideration of this case, the Government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Hyppolite*[5] and respectfully submits that the Court can decide this matter without further briefing. Notwithstanding its submission of this letter in lieu of a formal brief, the Government reserves all rights, including the right to appeal.[6]

Accordingly, for the reasons set forth in the Government's brief in *Hyppolite*, the Government respectfully requests that the Court deny this habeas petition.

Thank you for the Court's time and attention to this matter.

Respectfully submitted,

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[5] Specifically, the Government incorporates by reference the arguments raised in its opposition brief in *Hyppolite*, ECF No. 17.

[6] In addition to the pending appeals by petitioners regarding the denials of habeas petitions as noted above, the Government has appealed the grant of a habeas petition in *Da Cunha v. Moniz*, No. 25-cv-6532 (W.D.N.Y. Nov. 25, 2025) (concluding, *inter alia*, that Section 1226(a), not Section 1225(b)(2)(A), applied), *notice of appeal filed*, No. 25-3141 (2d Cir. Dec. 11, 2025). The Government filed its opening appellate brief in *Da Cunha* on January 16, 2026.