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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 Honorable Judge Morrison:

This Office represents Petitioner in this matter.

I. Reply to Respondents' Letter

Petitioner submits that this action is legally indistinguishable from the Court's previous determination in *Hyppolite v. Noem*, --- F. Supp. 3d ---, 2025 WL 2829511 (NRM) (E.D.N.Y. Oct. 6, 2025) ("*Hyppolite*"), and Respondents offer no argument to the contrary. Therefore, as Respondents acknowledge, *Hyppolite* should "control the result in this case." *See* ECF 6.

II. Remedy

As in *Hyppolite*, Petitioner respectfully requests an Order of immediate release, and also respectfully requests an Order "that Respondents not re-detain [Petitioner] without providing him notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, at which the government will bear the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a), specifically that he poses a risk of non-appearance in court for his removal proceedings and/or that he poses a danger to the community." *See Hyppolite*, --- F. Supp. 3d ---, 2025 WL 2829511, at *16.

III. EAJA Fees

Respondents articulate a legal theory that, to date, has been rejected by every judge in the Eastern District of New York. Because Respondents' legal position is not "substantially justified," Petitioner will be seeking EAJA fees should the Court rule in Petitioner's favor. *See Cornejo Guanuquiza v. Francis*, 25-CV-10267 (RA), 2025 WL 3678121, at *2 (S.D.N.Y. Dec 18, 2025) (awarding EAJA fees in factually similar habeas proceeding; "[t]he Court finds that

the Government's position 'was not substantially justified,' since it does not 'and has never had a reasonable basis in statutory text, structure, or history.'"); *Yao v. Almodovar*, --- F. Supp. 3d ---, 2025 WL 3653433, at *12 (S.D.N.Y. Dec. 17, 2025) ("Here, Yao is the prevailing party, and ICE's position, rejected this year in some 97% of the cases in which it was litigated, was not substantially justified. Yao is thus entitled to reasonable fees and costs."); *Rivera Esperanza v. Francis*, No. 25-CV-8727 (RA), 2025 WL 3513983, at *9 (S.D.N.Y. Dec. 9, 2025) (awarding EAJA fees in factually similar habeas action); *Barco Mercado v. Francis*, --- F. Supp. 3d ---, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) ("[Respondents'] position has been rejected with near unanimity in the overwhelming majority of cases across the country. Mr. Barco is entitled to reasonable fees and costs.").

Respectfully submitted,

/s/ Michael Goldman
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