U.S. Department of Justice

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Eastern District of New York

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By ECF

March 12, 2026

Honorable Ramon E. Reyes, Jr.
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Ccoyllo Asto v. Larocco*, No. 26-cv-1338 (Reyes, J.)

Dear Judge Reyes:

This Office represents Respondents U.S. Attorney General Pamela Bondi, the U.S. Department of Homeland Security ("DHS") Secretary, Acting U.S. Immigration and Customs Enforcement ("ICE") Director Todd M. Lyons, Acting ICE New York Field Office Director William Joyce, and Warden of the Metropolitan Detention Center, Brooklyn Raul Maldonado, Jr. (collectively, "the Federal Respondents") in this habeas case in which Petitioner Boris Ccoyllo Asto, an alien in removal proceedings, filed a petition for a writ of habeas corpus on March 6, 2026 challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1. The Federal Respondents write respectfully in response to the Court's Order to Show Cause ("OTSC") directing Respondents to show cause in writing why a writ of habeas corpus should not issue and why Petitioner should not be immediately released. *See* ECF No. 4.

The legal issues raised by Petitioner have to do with whether his detention his due process protections as well as 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 brief to conserve judicial and party resources, and to expedite the Court's consideration of this case, in light of this Court's decision on the principal legal issues in *Chander v. Maldonado,* No. 26-cv-21, ECF Nos. 9-10, as discussed below.

Relevant Facts

Petitioner was apprehended by the U.S. Customs and Border Protection ("CBP") on December 30, 2022 near San Luis, Arizona, outside of a designate Port of Entry. *See* Declaration of Patrick Heerey ("Heerey Decl."), ¶ 3.[1] CBP found Petitioner inadmissible, Petitioner was arrested and transported to the Yuma Sector Centralized Processing Center ("Yuma Sector") for further processing. Heerey Decl., ¶ 3. On December 31, 2022, DHS paroled Petitioner into the United States until March 2, 2023 because of detention capacity limitations at Yuma Sector. Heerey Decl., ¶ 4. A condition of Petitioner's parole was that he report to an ICE office near his final destination within sixty days. Heerey Decl., ¶ 4. Petitioner failed to check in with an ICE office within that time, or at any time afterward. Heerey Decl., ¶ 5.

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

On March 6, 2026, ICE Long Island Fugitive Operations was conducting surveillance in Rosedale, New York when officers checked the license plate of a vehicle. Heerey Decl., ¶ 7. ICE conducted a vehicle stop and asked Petitioner for identification. Heerey Decl., ¶ 7 Petitioner provided a New York State driver license, and the officers positively identified Petitioner. Heerey Decl., ¶ 7. ICE also checked administrative records confirming that Petitioner was not lawfully present in the United States and did not have legal status to remain in the United States. Heerey Decl., ¶ 7.

ICE arrested Petitioner and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A). Heerey Decl., ¶¶ 7, 12. He was later transferred to the Delaney Hall Detention Facility in Newark, New Jersey, where he is presently in custody. Heerey Decl., ¶ 12. Petitioner has never been admitted to the United States and remains detained under § 1225(b)(2)(A). Heerey Decl., ¶ 14.

Habeas Petition

Petitioner commenced this action on March 6, 2026. ECF No. 1. Petitioner argues that his mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) violates his procedural due process rights. *See* ECF No. 1, ¶¶ 62-64. Petitioner also argues that he should be deemed detained pursuant to 8 U.S.C. § 1226, and that he is entitled to either immediate release or a bond hearing. *See* ECF No. 1, ¶ 59-61, Prayer for Relief.

Chander

The Respondents contend that the Petitioner is an applicant for admission subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) who has received all the process he is due and that he is not entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a). In *Chander*, when presented with somewhat analogous facts, Your Honor granted the petition for habeas corpus. *Chander*, No. 26-cv-0021, ECF Nos. 9-10. Respondents also acknowledge decisions in other cases within this district granting habeas relief based on determinations that the petitioners were not subject to mandatory detention pursuant § 1225(b)(2)(A). *See*, e.g., *Ye v. Maldonado*, No. 25-cv-6417, 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.) and *O.F.B. v. Maldonado*, No. 25-cv-6336, 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.).[2]

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

Petitioner alleges that his arrest and detention violate his due process rights because he is subject to 8 U.S.C. § 1226, not the mandatory detention provisions of 8 U.S.C. § 1225. As noted, this Court has already resolved similar claims in another case

While Respondents respectfully disagree with the Court's ruling in *Chander*, the Federal Respondents acknowledge that this case would be decided in Petitioner's favor if the Court adheres

[2] In *Chander*, ICE contended that the petitioner's detention was governed by 8 U.S.C. § 1225(b)(2)(A) because, as an alien who entered without inspection or parole, and who was initially detained after crossing the border, he was an applicant for admission who is treated, for constitutional purposes, as if stopped at the border. As such, he would not be entitled to release or a bond hearing that is a feature of detentions under 8 U.S.C. § 1226(a). *See Chander v. Maldonado*, No. 26-cv-21 (Reyes, J.), ECF No. 7, at 13–21 (Resp.'s Mem. Law Opp.).

to its conclusions in those cases.[3] Thus, to conserve judicial resources and to expedite the Court's

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[3] The Federal Respondents note that, at the time of this filing, one district court judge in this District, and five other district court judges in this Circuit, have endorsed the government's interpretation of the relevant statutory provisions. On February 11, 2026, the Honorable Brian M. Cogan issued a decision in in *Saamishvili v. Flanagan*, No. 25-cv-6178, 2026 WL 377574 (E.D.N.Y. Feb. 11, 2026), *notice of appeal filed* Feb. 12, 2026, concurring with the Respondents' statutory construction. *See id.* at *3 ("Since his unlawful entry, petitioner has been, and continues to be, subject to the mandatory detention requirement of Section 1225(b)(2)(A).").

In *Xiaoquan Chen,* 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.*; *accord Arana v. Arteta,* No. 26-cv-240, 2026 WL 279786 (S.D.N.Y. Feb. 3, 2026) (Woods, J.) (adopting the reasoning of *Xiaoquan Chen*). 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 *Yinxiao 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 Yinxiao 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 *Yinxiao 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.*; *accord, Alvarado Quezada v. Francis*, No. 26 Civ. 387, 2026 WL 380711 (S.D.N.Y. Feb. 11, 2026) (Cronan, J.).

The Honorable Jennifer F. Rearden, in *Weng v. Genalo*, No. 25-cv-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

consideration of this case, the Federal Respondents hereby rely upon, and incorporate by reference, the legal arguments it presented in *Chander* and in *Chom v. Noem*, No. 26-cv-597 and respectfully submits that the Court can decide this matter without further briefing.[4] Notwithstanding its submission of this letter in lieu of a formal brief, Respondents reserve all rights, including the right to appeal.[5]

Discussion as to Other Issues Raised in the Petition

As noted above, the Federal Respondents acknowledge that the Court's ruling in *Chander*, if applied to this case, would result in the Court granting the Petition—regardless of the merits of the other issues raised in the Petition—because the sole basis for Petitioner's detention is ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A) and the Court rejected that position in *Chander*. Nonetheless, the Federal Respondents briefly write to provide their position on two other issues raised in the Petition.

Petitioner also claims that ICE detained Petitioner in violation of his Fourth Amendment rights. Pet., ¶¶ 64-70. Petitioner's claim arising from alleged constitutional violations of his Fourth Amendment rights fails, because his civil detention was a reasonable and lawful exercise of federal immigration authority. As the Supreme Court has recognized, administrative arrests for deportation have a long-standing statutory history and are distinct from arrests for criminal offenses. *Abel v. United States*, 362 U.S. 217, 230 (1960). "In the immigration context, in order to arrest a suspect, an officer is required to have 'reason to believe' that the suspect is an alien unlawfully in the United States." *See, e.g.*, *Polanco v. United States*, No. 10-cv-1705, 2014 WL 795659, at *4 (E.D.N.Y. Feb. 27, 2014) (Johnson, J.). Here, Petitioner had already been encountered by CBP officers on December 31, 2022, and had paroled into the United States only until March 2, 2023, pending a check-in with a local ICE officer (at which he never appeared). Heerey Decl. ¶¶ 3-5. ICE's subsequent encounter with Petitioner was based on a vehicular stop, which was based on a license plate check associating Petitioner with the vehicle in question. Heerey Decl. ¶ 7. Prior to arresting Petitioner, ICE officers verified his identity with an

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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; *accord Espinoza Lopez v. Noem*, No. 26 Civ. 00345, 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.).

In addition, the Federal Respondents note that the first court of appeals to issue a merits decision interpreting the relevant statutory provisions has agreed with the government's interpretation. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 501-08 (5th Cir. 2026).

[4] Specifically, the Federal Respondents incorporate by reference the arguments raised in its opposition brief in *Chander*, No. 26-cv-21, ECF No. 7.

[5] In addition to pending appeals by petitioners regarding the denials of habeas petitions, 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* Dec. 11, 2025, No. 25-3141 (2d Cir.). The Second Circuit granted the government's motion to expedite the appeal. *See Cunha v. Moniz*, No. 25-3141 (2d Cir.) Jan. 30, 2026 Order. Briefing was completed on March 3, 2026, and oral argument has been scheduled for April 6, 2026. *See id.* Mar. 6, 2026 Order.

identification document provided by Petitioner bearing his name and date of birth. Heerey Decl. ¶ 7. The officers conducted a records check on scene, which confirmed Petitioner was not lawfully present in the United States and does not have legal status to remain in the United States. *See* Heerey Decl. ¶ 7. Accordingly, ICE certainly had reason to believe that Petitioner was an alien unlawfully in the United States prior to arresting him.

The Federal Respondents additionally note that Your Honor's decision in *Chander* did not address another alternative basis for relief asserted in the Petition—namely, that Respondents violated the APA. Petitioner's attempt to obtain relief under the APA fails. The limited waiver of sovereign immunity in the APA is only for agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, Petitioner has availed himself of an adequate remedy, specifically, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Habeas is generally the only possible district court vehicle for challenges brought pursuant to immigration statutes. *See Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) ("[G]iven 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, and the APA, is the proper vehicle here.").

Accordingly, for the reasons set forth in the Government's brief in *Chander*, the Federal Respondents respectfully request 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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Encl.