U.S. Department of Justice

United States Attorney
Eastern District of New York

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Brooklyn, New York 11201

March 16, 2026

BY ECF
Honorable Nina R. Morrison
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Soriano Torres v. Noem, et al.*, No. 26-cv-1475 (Morrison, J.)

Dear Judge Morrison:

This Office represents the Respondents in this habeas case, in which Petitioner Noe Joel Soriano Torres challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). *See* ECF No. 1. Respondents write respectfully in response to the Court's March 13, 2026 Order directing Respondents to file a letter by Monday, March 16, 2026 at 10:00 a.m. stating, *inter alia*, whether there is "any basis to distinguish the asserted grounds for detention in this case" from this Court's decision in *Hyppolite v. Noem*, 808 F. Supp. 3d 474 (E.D.N.Y. 2025) (Morrison, J.), and whether the conference scheduled for March 24, 2026 is necessary.

While reserving all rights, including the right to appeal, Respondents submit this letter in lieu of a formal 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 decision in *Hyppolite*, and respectfully submit that a conference is not necessary.

A. Relevant Facts

Petitioner, A# [redacted], is a national of El Salvador who illegally entered the United States at an unknown time, date, and place. On May 30, 2025, ICE encountered Petitioner in Riverhead, Long Island, and arrested and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A). He was later transferred to the Brooklyn Metropolitan Detention Center, where he is presently in custody. In accordance with the Court's order, Respondents report that ICE Officer Mayra A. Pardo-Figueroa (Mayra.A.Pardo-Figueroa@ice.dhs.gov) can facilitate counsel's access to Petitioner.

The Department of Homeland Security ("DHS") has commenced removal proceedings against Petitioner by serving him with a Notice to Appear. While Petitioner, in immigration court, has denied that he is a member of the MS-13 gang and further denied his involvement in criminal activity, Petitioner's counsel submitted filings to the immigration court acknowledging, *inter alia*, that [redacted]

[redacted] although again he was subsequently released. Ex. A (Petitioner's Pre-Hearing Statement) at 1-2.[1] Petitioner filed an application for asylum, withholding of removal, and relief under the Convention Against Torture with the immigration court. *See id.* On December 30, 2025, those applications were denied and Petitioner was ordered removed to El Salvador. Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") on January 12, 2026 and that appeal is pending.

Petitioner has never been admitted to the United States and remains detained under § 1225(b)(2)(A).

B. Habeas Petition

Petitioner commenced this action on Friday, March 13, 2026. *See* ECF No. 1 ("Pet."). He argues that his detention pursuant to § 1225(b)(2)(A) violates his procedural and substantive due process rights. *Id.* He asks the Court to, *inter alia*, declare his detention unlawful and issue a writ of habeas corpus that either orders his "immediate release from custody, or, in the alternative, order that Petitioner receive an individualized bond hearing before an Immigration Judge within fourteen days, at which the government must bear the burden of showing, by clear and convincing evidence, that Petitioner presents a flight risk or threat to the community that cannot be mitigated by reasonable conditions of supervision or monetary bond." Pet. at 17.

C. *Hyppolite*

The basis for Petitioner's detention is that, because he has not been admitted to the United States, he remains an applicant for admission and is thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Respondents acknowledge, however, that on October 7, 2025, Your Honor issued the *Hyppolite* decision that, *inter alia*, rejected the government's position as to the scope of 8 U.S.C. § 1225(b)(2)(A).Your Honor found that the *Hyppolite* petitioner was detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), because, among other things: (i) the Court interpreted Section 1225 to apply only to those "*presently* seeking to enter the United States, and not those, like Hyppolite, who have lived in the country for almost three years," 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*, 808 F. Supp. 3d at 484-90. Your Honor held that the Hyppolite's detention violated due process because, as an alien subject to § 1226, he should have received an individualized determination prior to his detention in accordance with § 1226(a). *Id.* at 491-94.[2]

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[1] These statements appear in a pre-hearing statement Petitioner submitted in immigration court, which Respondents are separately filing under seal in light of the fact that the statement discusses Petitioner's asylum and other relief applications.

[2] 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 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.*; *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. 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 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

D. Discussion

While Respondents respectfully disagree with the Court's decision in *Hyppolite*, Respondents acknowledge that the Court will grant the Petition in this case if it adheres to its reasoning in *Hyppolite*. Petitioner's detention is based on ICE's position as to the scope of 8 U.S.C. § 1225(b)(2)(A), which Your Honor rejected in *Hyppolite*. Therefore, to conserve party and judicial resources and to expedite the Court's consideration, Respondents rely upon, and incorporate by reference, the legal arguments the government presented in *Hyppolite* [3] and respectfully submit that the Court can decide this matter without further briefing or argument.

Respondents further respectfully note that the Petition states that, if the Court does not order immediate release, the Court should, "in the alternative, order that Petitioner receive an individualized bond hearing before an Immigration Judge within fourteen days, at which the government must bear the burden of showing, by clear and convincing evidence, that Petitioner presents a flight risk or threat to the community that cannot be mitigated by reasonable conditions of supervision or monetary bond." Pet. at 17 [redacted] Respondents respectfully submit that, if the Court is inclined to grant the Petition, ordering a bond hearing before an IJ would be a more appropriate remedy than immediate release.

In any event, and notwithstanding its submission of this letter in lieu of a formal brief, Respondents reserve all rights, including the right to appeal.[4]

E. Conclusion

Accordingly, for the reasons set forth in the Government's brief in *Hyppolite*, the Government respectfully requests that the Court deny this habeas petition. Further, given that the Court has previously addressed the central legal dispute in this case, Respondents respectfully

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aliens who are 'already here.'" *Id.* at *4; *accord Espinoza Lopez v. Noem*, No. 26 CIV. 00345 (JHR), 2026 WL 266597 (S.D.N.Y. Feb. 2, 2026) (Rearden, J.).

In addition, 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).

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

[4] 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. Freden*, No. 25-CV-6532-MAV, 2025 WL 3280575, at *1 (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 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.

submit that the hearing scheduled for March 24, 2026 is not necessary and respectfully request that the conference be adjourned *sine die*.

Respectfully submitted,

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