U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

December 9, 2025

By ECF
The Honorable Mary Kay Vyskocil
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Perez Quintero v. Francis, et al.*, No. 25 Civ. 10107 (MKV)

Dear Judge Vyskocil:

This Office represents the government in the above-referenced immigration habeas corpus action, brought by Migdalia Josefina Perez Quintero ("Petitioner"), an alien in removal proceedings who is challenging her detention by U.S. Immigration and Customs Enforcement ("ICE"). The primary legal issue presented in this case concerns the statutory authority for Petitioner's detention—whether it is 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2)(A)—and the attendant due process issues stemming from such authority. Petitioner seeks an order from this Court directing ICE to release her from detention, or in the alternative, provide her with a bond hearing in seven days. (ECF No. 1 ("Petition") at 17.)

Last week, this Court issued a decision on the principal legal issue in *Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), concluding that § 1225(b)(2)(A), not § 1226, was the correct detention authority for an applicant for admission. As discussed below, this case is not materially distinguishable from *Chen*, and so the Court should deny Petitioner's statutory and regulatory claims. Petitioner's other claims, which were not addressed in *Chen*, are also without merit and should be denied.

I. Factual Background

On September 10, 2022, Petitioner, a native and citizen of Venezuela, unlawfully entered the United States at or near El Paso, Texas, and was apprehended by U.S. Customs and Border Protection. On September 11, 2022, Petitioner was paroled into the United States and issued a Form I-94 pursuant to 8 U.S.C. § 1182(d)(5)(A) (humanitarian parole) due to lack of bed space. She did not possess any legal status at that time. Declaration of Assistant Field Office Director Matthew W. Reaves, dated Dec. 8, 2025 ("Reaves Decl."), ¶¶ 6–8; Return to Habeas Petition ("Return"), Ex. A.

On August 26, 2023, Petitioner filed an application for immigration benefits and work authorization with U.S. Citizenship and Immigration Services ("USCIS"). Reaves Decl. ¶ 9. Separately, on March 11, 2024, Petitioner filed a Form I-821, Application for Temporary Protected Status ("TPS") with USCIS, which was approved on March 30, 2024. *Id.* ¶ 10. Based on the TPS

approval, Petitioner filed for and was granted an employment authorization document. *Id.*

The Secretary for Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals from returning safely. 8 U.S.C. § 1254a. Individuals who are TPS beneficiaries are temporarily not removable from the United States and can obtain an employment authorization document. *Id.* § 1254a(a)(1). TPS allows recipients to remain temporarily in the United States, but TPS does not confer lawful permanent resident status or any other immigration status. *Id.* §§ 1254a(a)(1)–(2), 1254a(f). As relevant to Petitioner, in March 2021, then-DHS Secretary Alejandro Mayorkas initially designated Venezuela for TPS under 8 U.S.C. § 1254a, and later extended Venezuela's TPS designations twice, in September 2022 and October 2023. *See National TPS Alliance v. Noem*, Case No. 25-cv-01766-EMC, 2025 WL 2578045, at *6–7 (N.D. Cal. Sept. 5, 2025).

On February 5, 2025, DHS Secretary Kristi Noem terminated the October 2023 Venezuela TPS designation under which Petitioner had applied, after determining that Venezuela no longer met the conditions for its designation and that the designation was deemed contrary to the national interest. 90 Fed. Reg. 9040, 9042 (Feb. 5, 2025); Reaves Decl. ¶ 11. Following legal challenges to the Secretary's determination to terminate the 2023 TPS designation, and district and circuit court denials of the government's requests to allow the termination to go into effect pending appeal,[1] on October 3, 2025, the Supreme Court granted the government's stay application and allowed the Secretary's termination of the 2023 TPS designation to take immediate effect. *Noem v. National TPS Alliance*, 145 S. Ct. 2728 (Mem). Petitioner's TPS status was terminated on November 21, 2025. Reaves Decl. ¶ 12.

On December 4, 2025, Petitioner reported to 26 Federal Plaza, New York, New York, for a check-in with ICE Enforcement and Removal Operations. Reaves Decl. ¶ 13; Return Ex. C, at 2. She was arrested that day pursuant to Immigration and Nationality Act ("INA") § 235(b), 8 U.S.C. § 1225(b) as an alien subject to expedited removal. Reaves Decl. ¶ 13; Return Ex. B. ICE served Petitioner with a Notice to Appear, charging her with removability pursuant to 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. Reaves Decl. ¶ 14; Return, Ex. D. On the same day, ICE also served on Petitioner a Form I-200 arrest warrant. Return, Ex. B. Petitioner was processed at 26 Federal Plaza that day. Reaves Decl. ¶ 15. On the evening of December 5, 2025, Petitioner was moved to a facility in Elizabeth, New Jersey. *Id.* On the evening of December 7, 2025, Petitioner was again transferred to a facility in Richwood, Louisiana, where she is currently detained. *Id.*

[1] *See, e.g., National TPS Alliance*, 2025 WL 2578045, at *42 (N.D. Cal. Sept. 5, 2025) (entering final judgment on plaintiffs' claims on APA claims relating to Venezuela TPS determinations, among others); *National TPS Alliance v. Noem*, Case No. 25-cv-01766-EMC, 2025 WL 2617231, at *4 (N.D. Cal. Sept. 10, 2025) (denying government motion to stay judgment pending appeal); *National TPS Alliance v. Noem*, No. 25-5724, 2025 WL 2661556, at *2 (9th Cir. Sept. 17, 2025) (denying emergency motion for immediate administrative stay and stay pending appeal of district court's order).

II. Habeas Petition

Petitioner, through next friend Eduardo Fabian Arias,[2] commenced this action on December 4, 2025. ECF No. 1. She argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to her because she had already entered and had been residing in the United States when she was arrested by ICE; she also asserts that she has never been a flight risk nor a danger to the community. Pet. ¶¶ 2, 4, 6, 27–30, 38–43. In Petitioner's first claim for relief, she argues that the application of § 1225(b)(2)(A) unlawfully mandates her continued detention and violates the INA, and that § 1226(a) instead applies to aliens like herself "who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings." *Id.* ¶¶ 61–63. In Petitioner's second claim for relief, she argues that the application of § 1225(b)(2) violates the bond regulations, 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. *Id.* ¶¶ 64–67. In her third claim for relief, Petitioner alleges that her detention without a bond hearing to determine whether she is a flight risk or danger violates her right to due process. *Id.* ¶¶ 68–71. Finally, in her fourth claim for relief, Petitioner alleges that any attempt to "subject [her] to expedited removal" violates the INA and the Administrative Procedure Act, 5 U.S.C. §§ 702, 706. *Id.* ¶¶ 72–74.

In her prayer for relief, Petitioner asks that the Court enjoin ICE from transferring her outside the Southern District of New York pending these proceedings, declare her detention unlawful, and issue a writ of habeas corpus ordering her immediate release, or in the alternative, provide Petitioner with a bond hearing pursuant to § 1226(a) within seven days. Pet. at 17 (Prayer for Relief).

III. *Chen v. Almodovar*

On December 4, 2025, this Court issued a decision on the principal legal question presented in this action in a similar habeas case challenging a Chinese national's apprehension by ICE at a scheduled appointment at 26 Federal Plaza, and his subsequent detention under 8 U.S.C. § 1225(b)(2)(A), where he remained pending resolution of his removal proceedings. *Chen v. Almodovar*, No. 25-cv-8350 (MKV), 2025 WL 3484855, at *1 (S.D.N.Y. Dec. 4, 2025). In *Chen*, the petitioner illegally entered the United States in December 2023 and filed an application for asylum in the interim, but was taken into custody by ICE in August 2025 and detained pending the resolution of his removal proceedings. *Id.* Petitioner filed a habeas petition seeking release from ICE custody or, in the alternative, an order declaring that he was entitled to a bond hearing. *Id.* at *2. Petitioner contended that in December 2023, he was released into the United States under 8 U.S.C. § 1226, but that ICE had now violated his statutory and constitutional rights by detaining him under 8 U.S.C. § 1225(b)(2)(A). *Id.*

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[2] The Government notes that this Court recently dismissed for lack of jurisdiction a habeas corpus petition filed under 28 U.S.C. § 2241 on the petitioner's behalf by a "friend." *See Garcia v. Almodovar*, No. 25 Civ. 9571 (MKV), Order of Dismissal dated Nov. 19, 2025 (ECF No. 7) (citing *Ross ex rel. Dunham v. Lantz*, 408 F.3d 121, 123 (2d Cir. 2005); *Wang v. City of New York*, No. 08-CV-4258, 2009 WL 705966, at *1 (E.D.N.Y. Mar. 16, 2009); *Weber v. Garcia*, 570 F.2d 511, 514 (5th Cir. 1978)).

This Court found that the undisputed facts showed "Petitioner is an alien, . . . who illegally entered the country, . . . is present in the United States without being admitted, . . . was determined not to be clearly entitled to be admitted, . . . and who is actively seeking admission (*i.e.*, through lawful status) through asylum . . . ." *Id.* at *6. Based on these facts, this Court determined that 8 U.S.C. § 1225(b)(2) "clearly applies to Petitioner," and therefore Petitioner was "subject to mandatory detention pending the resolution of his removal proceedings." *Id.* In so doing, this Court disagreed with numerous judges in this district and other jurisdictions who have held that "1225(b)(2) simply does not apply to any alien who is 'already in the country.'" *Id.* at *4 (citing *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025); *J.G.O. v. Francis*, No. 25 Civ. 7233 (AS), 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); *Tumba v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025)). This Court further held that, although other judges in this district have interpreted Section 1225 to apply to aliens who are "actively seek[ing] admission" in this country by demonstrating "some active desire or process toward admission," the statute specifically defined the term "applicant for admission" to "include an 'alien present in the United States who has not been admitted." *Id.* at *4 (quoting 8 U.S.C. § 1225(a)). In addition to the statutory text, this Court also considered Supreme Court rulings and legislative history, and concluded that other judges' interpretation of § 1225 lacked "support in statutory text, precedent, or legislative history for the conclusion that Section 1225(b)(2) does not apply to aliens who are 'already here' after having illegally entered the country." *Id.* at *5.

Finally, this Court held that § 1226 applies to "noncitizens who are lawfully admitted . . . and who then remain present unlawfully." *Id.* at *7 (citations omitted). However, this Court found that Petitioner was not subject to § 1226 because he "has been on notice since his arrival in this country that he does not have a right to remain here and is 'subject to removal' because . . . he is an 'alien present in the United States without being admitted or paroled." *Id.* Accordingly, this Court denied the petition in *Chen* and held that the petitioner was neither entitled to be released nor entitled to a bond hearing. *Id.* at *8.

IV. Discussion

In Counts One and Two of her Petition, Petitioner alleges that her detention violates the INA and 8 C.F.R. §§ 236.1, 1236.1, and 1003.19. Pet. ¶¶ 61–63, 64–67. As noted above, this Court has already resolved nearly identical claims in *Chen*, holding that "an alien present in the United States who has not been admitted," is "deemed . . . an applicant for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Chen*, 2025 WL 3484855, at *4. Accordingly, as to Counts One and Two of the Petition, this Court's decision in *Chen* would control the result in this case if the Court adheres to its prior decision, as the facts of this case are materially indistinguishable from *Chen.* Similar to *Chen*, Petitioner is an alien who illegally entered the United States without inspection or admission and with the termination of her TPS beneficiary status, is deemed an inadmissible applicant for admission. 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 *Chen*,[3] and the Court can

[3] Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Chen*. *See Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), ECF No. 10. A copy of that brief is also attached as an exhibit to this letter.

decide this matter without further briefing. However, should the Court prefer to receive a formal opposition brief in this matter, we will file such a brief upon the Court's request.

In Count Three of her Petition, Petitioner alleges that her detention violates her due process rights. Pet. ¶¶ 68–71. Because Petitioner is deemed an applicant for admission and thus is treated for constitutional purposes as if stopped at the border, she is lawfully detained pursuant to Section 1225(b)(2)(A), and neither her procedural nor substantive due process rights have been violated. As set forth in the government's arguments in opposition to a similar due process challenge in *Chen*, which is incorporated by reference herein, the Supreme Court has made clear that "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (citing *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)); *cf. Guzman v. Tippy*, 130 F.3d 64, 66 (2d Cir. 1997) (the rights of excluded aliens "are determined by the procedures established by Congress and not by the due process protections of the Fifth Amendment"). Here, the procedure authorized by Congress in Section 1225(b) and related provisions expressly excludes the possibility of a bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) ("[N]either § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Instead, for an applicant for admission, "if the examining immigration officer determines that [he] is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. §] 1229a." 8 U.S.C. § 1225(b)(2)(A). That is, Congress has provided that petitioner shall be detained for removal proceedings before an immigration judge, which afford the alien a host of procedural protections. *See* 8 U.S.C. § 1229a. Although the Court's decision in *Chen* did not address the due process claim raised in that petition, Petitioner's due process claim in this case should be denied for the reasons set forth above and in further detail in the government's brief in *Chen*.[4] *See also, e.g.*, *Poonjani v. Shanahan*, 319 F. Supp. 3d 644, 649 (S.D.N.Y. 2018) (Sullivan, J.) ("[B]ecause the immigration statutes at issue here do not authorize a bond hearing, *Mezei* dictates that due process does not require one here.").

This Court's decision in *Chen* also did not address Petitioner's claim in Count Four, which additionally repackages her habeas challenges as an APA claim. Pet. ¶¶ 72–74. That claim also fails on the merits. The APA permits judicial review of agency action only when, *inter alia*, "there is no other adequate remedy in a court." 5 U.S.C. § 704. The Supreme Court has made clear that where an alien's claims for relief "'necessarily imply the invalidity' of their confinement," those claims "must be brought in habeas" and not as APA claims. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam); *see also id.* at 674 (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,' . . . habeas corpus, not the APA, is the proper vehicle here."). For this reason, Petitioner's APA claim also fails.

Accordingly, for the reasons set forth above and in the government's brief in *Chen*, the government respectfully requests that the Court deny this habeas petition.

I thank the Court for its consideration of this submission.

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[4] *See Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), ECF No. 10, at 11–16.

Respectfully submitted,

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