U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
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December 23, 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 Petitioner's First Amended Habeas Petition 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. 16 ("Am. Pet.") at 27.). This Court has issued two decisions on the principal legal issue in *Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), 2025 WL 3484855 (S.D.N.Y. Dec. 4, 2025), and in *Liang v. Almodovar*, 25 Civ. 9322, 2025 WL 3641512 (S.D.N.Y. Dec. 15, 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 *Liang*, and so the Court should deny Petitioner's statutory and regulatory claims. Petitioner's remaining claims, which were not addressed in *Chen* or *Liang*, are also without merit and should be denied as well.

We acknowledge, however, that on November 25, 2025, a district court in the Central District of California granted a motion certifying a class (the "Bond Eligible Class") that is defined as follows: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Bautista v. Santacruz*, No. 25 Civ. 1873 (SSS) (BFM), 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Prior to class certification, the court partially granted the petitioners' motion for summary judgment, declaring the government's position that the petitioners were subject to detention under Section 1225 unlawful. *Bautista v. Santacruz*, 25 Civ. 1873 (SSS) (BFM), 2025 WL 3289861, at *9, *11 (Nov. 20, 2025). On December 18, 2025, the *Bautista* court entered a partial final judgment under Fed. R. Civ. P. 54(b) in favor of petitioners and members of the Bond Eligible Class, which declared, *inter alia*, that: "the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)"; and

pursuant to 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), are not subject to mandatory detention under § 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge." Final Judgment, *Bautista v. Noem*, 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 94). Petitioner asserts that she is a member of the Bond Eligible Class and is therefore "entitled to consideration for release on bond under 8 U.S.C. § 1226(a)." Am. Pet. ¶¶ 108–115.

However, Petitioner does not appear to be a member of the class certified in *Bautista*, 2025 WL 3288403, at *1. The certified class was defined to include only aliens who "were not . . . apprehended upon arrival." *Id.* Petitioner unlawfully entered the United States on September 10, 2022, and was immediately apprehended by U.S. Customs and Border Protection. Declaration of Assistant Field Office Director Matthew W. Reaves, dated Dec. 8, 2025 ("Reaves Decl.") (Dkt. No. 8), ¶¶ 6–7. Even assuming that Petitioner is a member of the class, the Government disagrees with the merits of the *Bautista* court's summary judgment ruling and contends that the district court lacked jurisdiction to enter class-wide declaratory relief in the habeas context because "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004); *see also Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam). Accordingly, on December 18, 2025, the Government immediately filed a notice of appeal from the judgment in the Ninth Circuit. *See* Notice of Appeal, *Bautista v. Noem*, 25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (ECF No. 95); *Bautista v. Department of Homeland Security*, No. 25-7958 (9th Cir.).

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. *See* Reaves Decl. ¶¶ 6–8; Return to First Amended 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. 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 does not confer lawful permanent resident status or any other immigration status. *Id.* § 1254a(a)(1)–(2), (f). As relevant to Petitioner, in March 2021, DHS initially designated Venezuela for TPS, and later extended this designation twice, in September 2022 and October 2023. *See generally 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 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 contrary to the national interest. 90 Fed. Reg. 9040, 9042 (Feb. 5, 2025); Reaves Decl. ¶ 11. Following legal challenges to the termination of the October 2023 Venezuela 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 DHS's termination of the 2023 TPS designation to take immediate effect. *See Noem v. Nat'l 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 ICE's office in 26 Federal Plaza, New York, New York, for a check-in with ICE Enforcement and Removal Operations. *Id.* ¶ 13; Return Ex. C, at 2. She was arrested that day pursuant to 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 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.* Petitioner presently has a remote master calendar hearing scheduled for January 21, 2026. Declaration of Supervisory Detention and Deportation Officer Derrick D. McClung ("McClung Decl."), dated December 23, 2025, ¶ 13.

II. Amended Habeas Petition

Petitioner, through next friend Eduardo Fabian Arias, initially commenced this action on December 4, 2025. (ECF No. 1). On December 16, 2025, Petitioner filed her an Amended Petition through pro bono counsel. (ECF No. 11). The Amended Petition argues that the mandatory detention provision of 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner 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. Am. Pet. ¶¶ 11–12, 30–46, 79–84.

Petitioner's first claim for relief asserts 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.* ¶¶ 79–84. Petitioner's second claim argues that the application of § 1225(b)(2) violates the bond regulations, 8 C.F.R. §§ 236.1,

[1] *See, e.g., National TPS Alliance v. Noem*, 798 F. Supp. 3d 1108, 1164 (N.D. Cal. 2025) (entering final judgment on plaintiffs' claims on APA claims relating to Venezuela TPS determinations, among others); *National TPS Alliance v. Noem*, 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).

1236.1, and 1003.19. *Id.* ¶¶ 85–88. In her third claim, 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.* ¶¶ 89–94. In her fourth claim, Petitioner asserts that her substantive due process rights have been violated because she has been "depriv[ed] of liberty and access to urgent medical care for a serious and ongoing medical condition." *Id.* ¶¶ 95–97. In her fifth claim, Petitioner challenges DHS's decision to vacate the Venezuela TPS designation because it allegedly infringed on her Fifth Amendment rights to equal protection. *Id.* ¶¶ 98–102. In her sixth claim, 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.* ¶¶ 103–07. Finally, Petitioner's seventh claim for relief alleges that she is a member of the class certified in *Bautista v. Santacruz*, Case No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), and that an order entered in the *Bautista* case warrants her release from detention. *Id.* ¶¶ 108–15.

III. *Chen v. Almodovar* and *Liang v. Almodovar*

A. *Chen*

On December 4, 2025, this Court issued a decision on the principal 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*, 2025 WL 3484855, at *1. 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.* The 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. He contended that in December 2023, he was released into the United States under 8 U.S.C. § 1226, but that ICE had violated his statutory and constitutional rights by detaining him under 8 U.S.C. § 1225(b)(2)(A). *Id.*

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 he 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.

B. *Liang*

On December 15, 2025, this Court issued a second decision on the same principal question presented in this action in another habeas case challenging ICE's apprehension of a Chinese national at a scheduled appointment at 26 Federal Plaza, and his detention under 8 U.S.C. § 1225(b)(2)(A). *Liang*, 2025 WL 3641512, at *1–2. This Court again held that the "Petitioner—who entered the country unlawfully . . . has never been admitted . . . and, though he is seeking lawful status . . . was 'determined' by an 'examining immigration officer' to be 'not clearly and beyond a doubt entitled to be admitted.'" *Id.* at *5 (quoting 8 U.S.C. § 1225(b)(2)(A)). Accordingly, this Court held that the petitioner was "properly in custody under Section 1225(b)(2)(A)." *Id.* (citing *Chen*, 2025 WL 3484855, at *6).

This Court also considered whether the petitioner's detention under Section 1225(b) comports with due process, and held that it did. Because Petitioner had not effectuated a "lawful entry" within the meaning of the INA and thus was properly detained under § 1225(b)(2)(A), he had had "received all the process he is due." *Id.* (citations omitted).

IV. Discussion

A. Petitioner's Challenges to Her Detention Under Section 1225(b) Fail

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, 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, this Court's decision in *Chen* and *Liang* should control the result in this case if the Court adheres to its prior decisions, as the facts of this case are materially indistinguishable. 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* and *Liang*,[2] and the

[2] Specifically, the government incorporates by reference all arguments raised in its opposition briefs in *Chen* and *Liang*. *See Chen v. Almodovar*, No. 25 Civ. 8350 (MKV), ECF No. 10; *Liang*

Court can 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.

B. Petitioner's Detention Under Section 1225(b) Comports With Due Process

In Count Three of her Petition, Petitioner alleges that her detention violates her due process rights. Am. 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 *Liang*, 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); *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"). Again, 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* and *Liang*.

C. Petitioner Has Received Proper Medical Care in Detention

In Count Four of her Amended Petition, Petitioner claims that the Government has deprived her of "access to urgent medical care for a serious and ongoing medical condition" in violation of the Fifth Amendment. *See* Am. Pet. ¶ 97. This assertion lacks any factual basis in the record. To state a Fifth Amendment due process claim for deliberate indifference to the medical needs of civil detainees, the conduct at issue must be "egregious enough to state a substantive due process claim." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849–50 (1998). That requires two showings: first, that petitioner has serious, unmet medical needs; second, that the government acted with deliberate indifference to those needs. *See Charles v. Orange Cnty.*, 925 F.3d 73, 85–86 (2d Cir. 2019).

Petitioner has failed to show that the Government has been deliberately indifferent to her medical needs. A petitioner establishes a claim for deliberate indifference by "prov[ing] that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety." *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017). "It is well-established that mere disagreement over the proper treatment does not create a constitutional claim. So long as the treatment given is adequate, the fact that a prisoner might prefer a different treatment does not give rise to [a constitutional] violation. Moreover, negligence, even if it constitutes medical malpractice, does not, without more, engender a constitutional violation." *Chance v. Armstrong*, 143 F.3d 698, 703 (2d Cir. 1998) (citations omitted).

As a threshold matter, Petitioner has not established that she has a medical need that is

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v. Almodovar, No. 25 Civ. 9322 (MKV), ECF No. 10. Both briefs are annexed as attachments to this letter.

"sufficiently serious" to give rise to a constitutional claim. *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994). A medical need is serious for constitutional purposes if it presents "a condition of urgency that may result in degeneration or extreme pain." *Chance*, 143 F.3d at 702. Factors that are "highly relevant to the inquiry into whether a given medical condition is a serious one" include whether "a reasonable doctor or patient would find [the condition] important and worthy of comment or treatment"; the condition "significantly affects an individual's daily activities"; and "the existence of chronic and substantial pain." *Id.* at 702–03.

The agency's medical records establish that Petitioner has not suffered from a sufficiently serious medical need. Although Petitioner asserts that she "suffers from multiple medical conditions,

[redacted]

But even if Petitioner had a severe medical condition, her claim would still fail because Petitioner cannot establish deliberate indifference. Simply put, ICE has provided her with adequate care. Petitioner's medical records show that her complaints of pain have been promptly evaluated. *See generally* Return, Ex. E; McClung Decl. ¶¶ 5–12.

[redacted]

id. at 3–5. There is no evidence that Petitioner's medical complaints have been ignored, let alone deliberately or recklessly so. To the contrary, the Government has taken Petitioner's medical complaints seriously and has provided adequate care during her detention.

D. Petitioner Cannot Challenge her Detention Under the Administrative Procedure Act

Counts Five and Six of the Amended Habeas Petition essentially repackage Petitioner's habeas challenges as claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. Am. Pet. ¶¶ 98–107. In Count Five, Petitioner asserts that DHS's decision to vacate the Venezuela TPS designation—which is currently the subject of APA litigation in another jurisdiction (*see supra* at 3 n.1)—is unconstitutional. *Id.* ¶¶ 98–102. In Count Six, she alleges that her detention under 8 U.S.C. § 1225 "exceeds the government's statutory authority in violation of the [INA] and the [APA]." *Id.* ¶¶ 103–07. But 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 J.G.G.*, 604 U.S. at 672; *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 claims should be denied as well.

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

I thank the Court for its consideration of this submission.

Respectfully submitted,

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Attachments