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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ELDIZAR AGUILAR-MARTIN, Petitioner, v. MARKWAYNE MULLIN, et al., Respondents.	Case No.: 26-cv-3130-RBM-DDL **SUPPLEMENTAL BRIEFING**

Pursuant to the Court's June 30, 2026 order for supplemental briefing, Respondents hereby file this supplemental response addressing: "(1) the divisibility of § 273.5, and (2) "whether Petitioner's conviction for violating that section qualifies as a CIMT." ECF No. 12, at 2. Respondents submit this supplemental briefing in response to the Court's order.

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I. ARGUMENT

A. It is Respondent's Position that Petitioner's Conviction is a CIMT.

It is the government's position that Petitioner is subject to mandatory detention under 28 U.S.C. § 1226(c) pursuant to his conviction under California Penal Code (CPC) § 273.5(a) constituting a CIMT. However, at this time, Respondents are unable to obtain Petitioner's conviction documents or documents showing a spousal relationship with the victim.

B. Alternatively, Petitioner is subject to mandatory detention as his conviction is an Aggravated Felony.

Respondent's acknowledge that this basis was not raised in their original return, however, upon further research, Respondents alternative position is that Petitioner is subject to mandatory detention under 28 U.S.C. § 1226(c) pursuant to his November 9, 2018, conviction for § 273.5(a) being an aggravated felony.

Section 1226(c) provides that the Secretary "shall take into custody any alien who . . . is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title" and "is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." 8 U.S.C. § 1226(c)(1)(A)-(B). The Supreme Court has explained that this section properly "governs detention of deportable criminal aliens pending their removal proceedings," *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). In addition, §1227(a)(2)(A)(iii) provides that any alien who is convicted of an aggravated felony at any time after admission is deportable. Pursuant to 8 U.S.C. § 1101(a)(43)(F) a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year, is an aggravated felony. 18 U.S.C. 16 § defines a "crime of violence" as (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature,

involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. In *Marquez-Carrillo v. Holder*, 781 F.3d 1155 (9th Cir. 2015), the Ninth Circuit held that that a conviction under CPC § 273.5 is a categorical crime of domestic violence under INA § 237(a)(2)(E)(i); *see also U.S. v. Ayala-Nicanor*, 659 F.3d 744 (9th Cir. 2011) (holding that a conviction for willful corporal injury on a spouse under California Penal Code § 273.5 constitutes a categorical "crime of violence"); *Banuelos-Ayon v. Holder* , 611 F.3d 1080 (9th Cir. 2010) (holding that a conviction under CPC § 273.5 is a categorical crime of violence under 18 U.S.C. § 16(a)); *U.S. v. Laurico-Yeno* , 590 F.3d 818 (9th Cir. 2010); *Matter of Perez Ramirez*, 25 I&N Dec. 203 (BIA 2010).

Here, Petitioner was sentenced to seven years imprisonment for his conviction under California Penal Code § 273.5. This conviction is categorically a crime of violence, and therefore an aggravated felony. As a consequence of being convicted of an aggravated felony, petitioner is subject to mandatory detention.

C. <u>If the Court is Inclined To Grant this Petition, a Bond Hearing Under § 1226 is the Appropriate Relief.</u>

Respondents' position is that if the Court grants Petitioner relief, then the appropriate remedy should be a bond hearing held under § 1226(a). The Ninth Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a preponderance of the evidence that he is not a flight risk or danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201 (S.D. Cal. Mar. 23, 2026).

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II. CONCLUSION

For the reasons stated herein, for the reasons stated herein, Respondents respectfully request that the Court deny Petitioner's request for immediate release.

DATED: July 7, 2026

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s/ Antonio Estrada
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