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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELDIZAR AGUILAR-MARTIN,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Acting Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No.: 26-cv-3130-RBM-DDL

PETITIONER'S SUPPLEMENTAL BRIEFING

On June 30, 2026, this Court ordered the parties to file supplemental briefing 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. And because Respondents asserted that the victim was Petitioner's wife, the Court also ordered that "Respondents shall file as an exhibit to their supplemental brief any permissible record of conviction establishing that Petitioner was convicted of *spousal* abuse." ECF No. 12 at 2–3.

In their supplemental brief, Respondents concede that they are "unable to obtain Petitioner's conviction documents or documents showing a spousal relationship with the victim." ECF No. 13 at 1. However, Respondents argue that "[a]lternatively, Petitioner is subject to mandatory detention as his conviction is an Aggravated Felony." ECF No. 13 at 1.

I. Respondents have not submitted the necessary judicial documents to establish that Petitioner's conviction is a CIMT or an aggravated felony.

Respondents admit that that they are "unable to obtain Petitioner's conviction documents or documents showing a spousal relationship with the victim." ECF No. 13 at 1. But as this Court's Order explained, "Petitioner's record of conviction must conclusively establish that Petitioner was convicted of spousal abuse under § 273.5, as opposed to abuse of a cohabitant, for his conviction to qualify as a CIMT." ECF No. 12 at 2 (quotations omitted). Thus, Respondents have not met their burden to show Petitioner was convicted of a CIMT.[1]

[1] Petitioner does not concede that § 273.5 is divisible. *See People v. Vaca*, No. E057074, 2014 WL 118099, at *1 (Cal. Ct. App. Jan. 14, 2014); *People v. Leach*, No. C075284, 2015 WL 3896816, at *1 (Cal. Ct. App. Jun. 25, 2015). Although *Cervantes v. Holder*, 772 F.3d 583, 588 (9th Cir. 2014) (en banc), stated that it was, *Cervantes* preceded the Supreme Court's decision in *Mathis v. United States*, 579 U.S. 500, 519 (2016), which held that a criminal statute containing disjunctive alternatives did not satisfy "*Taylor*'s demand for certainty" unless jury unanimity was required as to those alternatives. But because Respondents

Instead, Respondents claim in the alternative that "Petitioner is subject to mandatory detention as his conviction is an Aggravated Felony." ECF No. 13 at 1. But as Respondents admit, a conviction for § 273.5 also requires a one-year sentence to be an aggravated felony. *Id.* at 2 (citing 18 U.S.C. § 16). And Respondents have not submitted a judicially-noticeable document establishing that Petitioner received a one-year sentence.

Even if they had, § 273.5 is not an aggravated felony after the Ninth Circuit's recent en banc decision in *United States v. Gomez*, 165 F.4th 1199, 1205 (9th Cir. 2026) (en banc). In *Gomez*, the Ninth Circuit held that California's assault statute fails to qualify as a crime of violence because it lacks a purposeful or knowing mens rea—the level needed to satisfy the elements clause under *Borden v. United States*, 593 U.S. 420 (2021). Section 273.5(a) shares the exact same mens rea as California's assault statute—the governing California statutory provisions, judicial opinions, and jury instructions all confirm that § 273.5(a) does not require a purposeful or knowing state of mind.[2] Because § 273.5(a) demands only a willful act without an intent to inflict corporal injury or cause bodily harm, it is not a "crime of violence" aggravated felony regardless of the length of sentence. Thus, § 273.5 is neither a CIMT nor an aggravated felony.

II. Respondents have never produced a warrant authorizing Petitioner's detention.

In his Second Amended Petition, Mr. Aguilar-Martin also argued that he was not arrested subject to an administrative warrant, as required by 8 U.S.C. § 1226(a), and that the remedy for this violation was immediate release. ECF No.

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have not provided conviction documents, this Court need not resolve the issue.

[2] *See, e.g., People v. Thurston*, 84 Cal. Rptr. 2d 221, 223–24 (Cal. Ct. App. 1999) (explaining that it is "immaterial whether or not the defendant intended to violate the law or knew that his conduct was unlawful" because "[t]he intent to cause any particular injury . . . , to severely injure another, or to injure in the sense of inflicting bodily harm is not necessary" for a § 273.5 conviction.

9 at 8–11. In response, Respondents have never produced an administrative warrant that would justify his detention. Instead, they merely argue that "a bond hearing under § 1226 is the appropriate relief." ECF No. 13 at 3. But absent proof of a warrant, Respondents have no authority to detain Petitioner under § 1226(a). *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained . . . ."). Accordingly, this Court should order Petitioner's immediate release.

Respectfully submitted,

Dated: July 8, 2026

s/ Kara Hartzler

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