UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Guillermo Landaverde Resendiz, Petitioner, v. Markwayne Mullin, *et al*, Respondents.	Civil Action No. 5:26-cv-4130-FB

RESPONSE TO PETITION

Federal Respondents provide the following response to Petitioner's habeas petition.[1] Any allegations that are not specifically admitted herein are denied.

Earlier this year, the Fifth Circuit confirmed that aliens who entered the United States illegally and are not "clearly and beyond a doubt entitled to be admitted"—like Petitioner in this case—"shall be detained" under 8 U.S.C. § 1225(b)(2)(A) until the conclusion of their removal proceedings. *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498 (5th Cir. 2026). Accordingly, any statutory argument that Petitioner's detention instead should be governed by 8 U.S.C. § 1226(a), which permits certain other categories aliens to be "release[d] on bond," is foreclosed by binding circuit precedent and must be rejected by this Court.

More recently, the Fifth Circuit also clarified that aliens "are not, by sheer dint of crossing a boundary line, cloaked in the full protection of the United States Constitution." *Sosnava Rodriguez v. Ortega*, No. 26-50183, 2026 WL 1906557, at *7 (5th Cir. July 2, 2026). Nevertheless, the Fifth Circuit further held that the Constitution does not "permit[] interminable detention of

[1] The Department of Justice represents only federal employees in this action.

aliens either awaiting a decision on removal or in being removed." *Id.* at *16. The Court stated that "detention without an individualized bond hearing can become constitutionally impermissible" if it continues beyond "the passage of a reasonable time in which the Government may accomplish the initial custody, determine the individual risk of the alien, and effect removal." *Id.* (citations omitted). The Court therefore concluded that "the Government **may detain aliens under Section 1225(b)(2)(A) for ninety days** but no longer without a bond hearing." *Id.* (emphasis added).

In the present case, Petitioner is a native and citizen of Mexico who entered the United States unlawfully and without inspection allegedly in 2009. ECF No. 1 at 2 ¶ 2. Petitioner has two voluntary returns from 2007. *See* Gov't Ex. A (Form I-213) at 3. On or about January 18, 2013, Petitioner was granted prosecutorial discretion and released on his own recognizance. *Id.* Upon information and belief, Petitioner was issued a Notice to Appear in 2019, and those proceedings were later dismissed without prejudice on or about December 2023, by an Immigration Judge. More recently, on **May 20, 2026**, Petitioner was detained by immigration officials and taken into ICE custody. *See* Gov't Ex. A (Form I-213) at 2. Petitioner was charged pursuant to Section 212(a)(6)(A)(i) of the Act[2]. *See* Gov't Ex. B (Notice to Appear). Petitioner is being detained under Section 1225(b)(2)(A) authority. Petitioner is scheduled to appear before an Immigration Judge on July 10, 2026. *See* Automated Case Information (last accessed on July 8, 2026). Petitioner claims to have a VAWA application pending based on his marriage to a U.S. citizen spouse from whom he suffered abuse. ECF No. 1 at ¶ 4. There are no other pending applications for relief. Under *Buenrostro-Mendez* and *Sosnava Rodriguez*, the Government may statutorily and constitutionally detain Petitioner for a period of ninety days without an individualized bond hearing. Because

[2] Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time and place other than as designated by the Attorney General.

ninety days have not yet passed since Petitioner's arrest, the habeas petition in this case is premature and must be denied.

Finally, regardless of the outcome of this proceeding, Petitioner is not entitled to attorney's fees under the Equal Access to Justice Act. *See Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

Respectfully submitted,

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