

Petitioner, through undersigned counsel, respectfully submits this Advisory in response to the Court's September 16, 2025 Order directing Petitioner to indicate, by September 23, 2025, how he intends to proceed in light of Respondents' failure to respond.

1. Petitioner filed his Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 on August 7, 2025. (Dkt. No. 1). On August 12, 2025, this Court ordered Respondents to file and serve a response by September 11, 2025.
2. The Great Writ has a fundamental purpose: to "produce the body" so that the custodian must show cause as to the restriction on a person's liberty. *See* 28 U.S.C. § 2243. It is a bedrock right in our society, described by the Supreme Court as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). The Constitution itself commands that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended." U.S. Const. art. I, § 9, cl. 2. Congress has reinforced this urgency by directing that the writ "shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed." 28 U.S.C. § 2243. Here, Respondents were served on August 25, 2025, and were given until September 11, 2025, to respond—seventeen days, nearly the full statutory maximum. Yet, as of September 19, 2025, twenty-five days have elapsed since service and eight days have passed since the Court's deadline, with no response, no return of the writ, and no justification for Petitioner's continued detention.
3. This is not a mere technical lapse. Respondents' silence comes while they continue to deprive Petitioner of his liberty—now nearly four months—without a bond hearing and without any finding that he is dangerous or a flight risk. If Petitioner had ignored this Court's order, the result would be swift dismissal of his case. *See* Fed. R. Civ. P. 41(b);

Link v. Wabash R.R. Co., 370 U.S. 626, 630–31 (1962); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). Yet Respondents have failed to comply with the Court’s deadline while continuing to detain Petitioner, a posture that inflicts ongoing prejudice and underscores the urgent need for judicial intervention.

4. Normally, where a party fails to respond, courts may enter default judgment and grant relief. See, e.g., *Eversley v. MBank Dall.*, 843 F.2d 172, 174 (5th Cir. 1988) (accepting movant’s facts as undisputed where the opposing party failed to respond); Fed. R. Civ. P. 55. At the very least, the Court may accept the petitioner’s un rebutted allegations as true. Here, Respondents’ refusal to answer why Petitioner is detained is a continuing violation of his rights and a direct affront to this Court’s authority. Relief should issue.
5. This Court provides that “[f]ailure to respond will be taken as a representation of no opposition.” S.D. Tex. L.R. 7.4. While this rule expressly applies to motions, courts in this District apply the principle to treat silence as non-opposition and to adjudicate on the record. See *Bailey v. United States*, No. C-09-267, at 1 & n.1 (S.D. Tex. Feb. 16, 2010).
6. The Fifth Circuit has held that where an opposing party fails to respond, a district court may accept the movant’s facts as undisputed and grant relief if a prima facie case has been made. *Eversley v. MBank Dall.*, 843 F.2d 172, 174 (5th Cir. 1988); see also *Watson v. United States ex rel. Lerma*, 285 F. App’x 140, 143 (5th Cir. 2008) (per curiam).
7. In the habeas context, the Fifth Circuit has emphasized that “default judgments are not appropriate” and that courts must reach the merits even when the government fails to respond. *Wiggins v. Procunier*, 753 F.2d 1318, 1321 (5th Cir. 1985); *Broussard v. Lippman*, 643 F.2d 1131, 1134 (5th Cir. 1981). Courts in this District have applied this principle directly. See, e.g., *Northrup v. Thaler*, No. C-10-085, 2010 WL 2720655, at *1

(S.D. Tex. June 23, 2010), rec. adopted, 2010 WL 2720658 (S.D. Tex. July 8, 2010). See also *Gonzales v. Quarterman*, No. C-06-363, 2007 WL 737470, at *1 (S.D. Tex. Mar. 6, 2007) (Corpus Christi Div.) (noting petitioner’s failure to respond to a motion but proceeding to resolve the matter on the merits and substitute the proper respondent).

8. Respondents’ failure to comply with this Court’s order frustrates the statutory directive that habeas petitions be adjudicated “forthwith.” 28 U.S.C. § 2243. Their silence leaves Petitioner’s factual showing unrebutted. Meanwhile, Petitioner remains incarcerated without lawful cause, and each day of delay compounds the prejudice and injustice he suffers.
9. Consistent with the authorities cited above and the Court’s inherent power to manage its docket, see *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43–46 (1991), Petitioner respectfully requests that the Court deem the Petition submitted on the papers, accept Petitioner’s factual showing as undisputed to the extent supported by the record, and adjudicate the Petition on the merits without further delay. Petitioner incorporates by reference the full relief requested in his Petition (see Dkt. No. 1 at [Relief Sought section]).

Respectfully submitted this 19th day of September, 2025.

s/ Stephen O’Connor

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CERTIFICATE OF CONFERENCE

Pursuant to S.D. Tex. L.R. 7.1, undersigned counsel certifies that Petitioner made good-faith efforts to confer with Respondents regarding the relief requested. Because Respondents have not entered an appearance or filed any response, undersigned counsel was unable to obtain their position. Accordingly, this motion is presented without Respondents' consent.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

Nery ORTIZ ORTIZ,

Petitioner,

VS.

PAM BONDI, United States Attorney General; KRISTI LYNN NOEM, Secretary of the United States Department of Homeland Security; TODD M. LYONS, Director of United States Immigration and Customs Enforcement; MIGUEL VERGARA, ICE Harlingen Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement; NORVAL VAZQUEZ, Warden, the GEO Group, Rio Grande Processing Center

Respondents

§ Civ. No. 5:25-cv-25-00132

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DHS File Number: 205 503 066

ORDER

Before the Court is Petitioner's Advisory Regarding Respondents' Failure to respond and Request to Deem the Petition Submitted on the Papers. Having considered the record, the Court notes that Respondents were ordered to file a response by September 11, 2025, but no response has been filed.

Accordingly, it is ORDERED that:

1. The Petition for Writ of Habeas Corpus (Dkt. No. 1) shall be deemed submitted on the existing record.

2. The Court will proceed to adjudicate the Petition on the merits, treating Petitioner's factual showing as unrebutted to the extent it is supported by the record.

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2025.

United States District Judge