UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25506-GAYLES

VICTOR RUBIO-ORTEGA

Petitioner,

v.

PAM BONDI[1], in her official capacity as the Attorney General of the United States, *et. al.*

Respondents.
_____/

RESPONDENT'S RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO GRANT HABEAS PETITION UNOPPOSED, OR IN THE ALTERNATIVE, FOR DEFAULT JUDGMENT

Respondents, by and through the undersigned counsel, hereby files its response in opposition to Petitioner's Motion to Grant Habeas Petition Unopposed, or in the alternative, for Default Judgment ("Motion") [ECF No. 10], and as grounds thereof states as follows:

1. On November 24, 2025, Petitioner filed a Verified Petition for Writ of Habeas Corpus ("Petition") challenging the lawfulness of his detention. [ECF No. 1].

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." *See* 28 U.S.C. § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Id.* at 439. As Petitioner is currently detained at Krome Service Processing Center ("Krome"), a detention facility in Miami, Florida, the immediate custodian in charge of Krome is Assistant Field Director ("AFOD") Charles Parra. Accordingly, the only proper Respondent in this case is AFOD Parra, in his official capacity.

2. On November 25, 2025, this Court issued an Order to Show Cause ("Order") directing Respondents to file a response to the Petition **within three (3) business days of service.** [ECF No. 8].

3. On December 2, 2025, Petitioner filed the instant Motion requesting this Court to grant his Petition as unopposed, or in the alternative, enter default judgment against Respondent, [ECF No. 10, p. 2]. Petitioner alleged therein that Respondents have failed to respond to the Petition within three days of this Court's Order. *Id.*

4. On December 3, 2025, Petitioner's Counsel filed proof of service with this Court indicating service of the summons and Petition upon the Respondents by certified mail. [ECF No. 11]. Specifically, the certified mail receipt for the U.S. Attorney's Office shows that the summons and Petition were delivered to the "Front Desk/Reception/Mailroom" on November 28, 2025, at 5:48 p.m., and signed "USA USA Atty."[2] *Id.* at 18.

5. Although the Petition was delivered to the U.S. Attorney's Office mailroom on November 28, 2025, the civil process clerk did not receive the Petition until December 3, 2025. *See* Fed. R. Civ. P. 4(i)(1)(A)(ii); *see also* Exhibit "A."

6. Here, even if the U.S. Attorney had been properly served on November 28, 2025, which Respondents maintain he was not, a default judgment is not warranted in this case. As a preliminary matter, the Eleventh Circuit has long disfavored defaults because of the strong policy of determining cases on their merits. *Florida Physician's Ins. Co., Inc. v. Ehlers*, 8 F.3d 780, 783 (11th Cir. 1993) (citations omitted). Indeed, default judgments against the United States are especially disfavored. *See e.g. Harvey v. United States*, 685 F.3d 939, 946 (10th Cir. 2012).

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[2] The undersigned notes that delivery was made after business hours on the day after Thanksgiving when the U.S. Attorney's Office was understaffed.

7. Accordingly, Rule 55(d) provides that "no judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court." Moreover, Rule 55(d) provides that "[a] default judgment may be entered against the United States, its officers, or its agencies *only if* the claimant establishes a claim or right to relief by evidence that satisfies the Court." Fed. R. Civ. P. 55(d) (emphasis added).

8. Moreover, because the language of Rule 55(d) is more restrictive than the typical standard for default, courts have held that entry of a default judgment against the Government shall not be based simply on a failure to respond, which did not occur here. *See Sun v. U.S.*, 342 F. Supp. 2d 1120, 1124 (N.D. Ga. 2004); *see also Lamar v. Lahood*, 2011 WL 13129756, at *4 (N.D. Ga. Nov. 7, 2011) (Report and Recommendation) (finding that pursuant to Rule 55(d), a default judgment should not be entered because the merits of the case must be considered), adopted by, 2011 WL 13141401 (N.D. Ga. Dec. 6, 2011).

9. Therefore, for the reasons set forth herein, the Court should deny Petitioner's Motion to Grant Habeas Petition Unopposed, or in the alternative, for Default Judgment.

10. Respondents will file a timely response in accordance with this Court's Order. [ECF No. 8].

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 4, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Chantel Doakes Shelton
Chantel Doakes Shelton
Assistant United States Attorney