

United States District Court
Southern District of Texas

ENTERED

December 11, 2015

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ROLANDO ROMERO MEZA,

Petitioner,

VS.

KEN PAXTON, *et al*,

Respondents.

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CIVIL ACTION NO. 2:15-CV-322

**OPINION AND ORDER DENYING PETITIONER'S
MOTION FOR ENTRY OF DEFAULT**

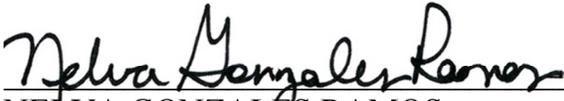
Pending is Petitioner's motion for entry of default in this habeas action (D.E. 22).

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend a lawsuit in federal court and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default. FED. R. CIV. P. 55(a). Although no Fifth Circuit precedent was located, several circuits have held that the entry of default in habeas corpus proceedings is inappropriate. *Allen v. Perini*, 424 F.2d 134 (6th Cir. 1970); *Stines v. Martin*, 849 F.2d 1323 (10th Cir. 1988); *Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir. 1987); *United States ex rel Mattox v. Scott*, 507 F.2d 919 (7th Cir. 1974); *Bermudez v. Reid*, 733 F.2d 18 (2d Cir. 1984). Generally, these circuit courts have required the district courts to review the merits, and to grant relief only if the court finds evidence to establish a claim of unlawful detention. *Stines*, 849 F.2d at 1324. An exception to the general rule would be where the Government's delay itself rises to the level of a due process violation. *Id.* at 1324 (citing *Ruiz v. Cady*, 660 F.2d 337, 341 n. 5

(7th Cir. 1981)). Minor delays do not give rise to a due process violation. *Stines*, 849 F.2d at 1324.

In any event, Respondent is not in default. Respondent requested and was given an extension of time, until December 13, 2015, to file a responsive pleading. Petitioner's Motion for entry of default (D.E. 22) is denied.

ORDERED this 11th day of December, 2015.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE