IN THE UNITED STATES DISTRCT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

OSCAR ARIEL LARA NUNEZ, Petitioner, v. MCSHANE et al., Respondents.	Case No.: 2:26-CV-00040 HONORABLE JUDGE HARVEY BARTLE, III

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR TEMPORARY RESTRAINING ORDER

COMES NOW, Petitioner, Oscar Ariel Lara Nunez, through his undersigned attorney, hereby submits this Reply to Respondents' Opposition to his Writ of Habeas Corpus. Petitioner will not reply to every issue and argument made by the Respondent. The absence of any rebuttal is not, however, a waiver of abandonment of any claim or argument made previously. Petitioner stands on the arguments presented in his petition.

A federal district court is authorized to grant a writ of habeas corpus under 28 U.S.C. § 2241 where the petitioner is "in custody under or by color of the authority of the United States …in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §§ 2241(c)(1), (3). The burden is on the petitioner to show that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3); *Goins v. Brierley*, 464 F.2d 947, 949 (3d Cir. 1972).

Petitioner can oppose his detention through a habeas petition. The Third Circuit in *Mahmoud Khalil v. President United States of America*, No. 25-2162 & 25-2357 (3d Cir. Jan 15, 2026) recently stated that questions of unlawful detention can be heard in a habeas petition in the district court. "Letting petitioners raise now-or-never injuries through habeas based on claims that

can be litigated later would subvert that channeling scheme. If, for instance, a detained alien claims that the INA section that made him removable was unconstitutionally vague, he could bring that claim right away on habeas (because illegal detention cannot be remedied later)." *Khali v. President United States of America*, No. 25-2162 & 25-2357 at 24.

This is similar to the argument here. Section 235 does not apply to Petitioner because he was residing within the United States at the time he was detained and therefore his detention is unlawful. Petitioner is not trying to "plead around" his removal proceedings; he is challenging the legal authority of his detention. *Id*. at 28. Petitioner's legal questions challenge the basis for his detention/bond determination and are not linked to the basis of his removal proceedings or his relief (asylum).

Petitioner requests his immediate release because he was unlawfully detained without a bond hearing as required by Section 1226(a). Petition requests that this court immediately enjoin the Government from re-detaining Petitioner under Section 1225(b)(2)(A) or re-arresting him under Section 1226(a).

Respectfully Submitted,

Date: January 19, 2026

s/Mary Chicorelli

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CERTIFICATE OF SERVICE

I certify that on January 19, 2026, a true and correct copy of Petitioner's Reply to Respondents' Opposition to Writ of Habeas Corpus and Motion for Temporary Restraining Order was filed electronically via the Court's CM/ECF system and served via CM/ECF on all counsel of record.

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