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

KEVIN RAFAEL ESCOBAR TEJADA Petitioner, v. **Brian MCSHANE, ET AL.,** Respondents.	**Case No. 26-1757**

PETITIONER'S REPLY TO GOVERNMENT'S RESPONSE REGARDING APPLICABILITY OF 8 U.S.C. § 1231(a)(6)

I. INTRODUCTION

Pursuant to this Court's March 26, 2026 Order (ECF No. 5) directing Petitioner to address the applicability of 8 U.S.C. § 1231(a)(6), Petitioner respectfully submits that Respondents' reliance on § 1231 is misplaced.

Respondents' opposition rests entirely on the assertion that Petitioner is detained under § 1231 as a noncitizen subject to a final order of removal. That premise is incorrect. Petitioner's current detention arises from his interior arrest in March 2026, not from the execution of a prior removal order, and therefore falls within the statutory framework governing pre-removal detention, 8 U.S.C. § 1226(a).

II. RESPONDENTS FAIL TO ESTABLISH THAT §1231 GOVERNS PETITIONER'S DETENTION

Section 1231 governs detention after a removal order becomes final and during the "removal period," when the government is actively executing that order. See 8 U.S.C. § 1231(a)(1)(A). Respondents assert that Petitioner is detained under § 1231 because of a prior in absentia removal order issued on November 12, 2019.

§1231 applies only once the "removal period" has begun. See 8 U.S.C. § 1231(a)(1)(B). The removal period begins on the latest of several events, including when the removal order becomes administratively final or when the noncitizen is taken into custody under that order. Id. Here, Respondents have not established that Petitioner's current detention is pursuant to the execution of a removal order triggering the removal period. Instead, Petitioner was arrested in the interior

of the United States and placed into custody without reinstatement of any prior removal order. Accordingly, § 1231 does not govern.

However, the existence of a prior removal order does not, by itself, establish that current detention is governed by § 1231. The statute applies only where DHS is detaining the individual for the purpose of effectuating that order within the removal framework prescribed by § 1231. DHS cannot reinstate the prior removal orders, then it is not proceeding in a posture where removal is being effectuated under those orders in the manner contemplated by § 1231. The Government concedes that ICE could not reinstate Petitioner's prior removal orders because it lacked verification of departure, undermining its claim that detention is proceeding under the § 1231 removal framework. Instead, Petitioner was living in the United States, arrested in the interior in March 2026, then placed into custody. This aligns with pre-removal detention authority, not post-removal detention under § 1231.

Respondent's theory would improperly expand §1231 beyond statutory limits. Respondents' position effectively collapses the distinction between pre-removal and post-removal detention by asserting that any prior removal order automatically triggers § 1231, regardless of the procedural posture of the case.

Even assuming arguendo that § 1231 governs, Respondents' argument still does not resolve Petitioner's claims. Under *Zadvydas v. Davis*, 533 U.S. 678 (2001), post-removal detention must be limited to a period reasonably necessary to effectuate removal. Respondents rely heavily on the short duration of Petitioner's detention (approximately nine days). However, the Court's

inquiry is not limited to duration alone. The relevant question is whether detention is tied to a realistic prospect of removal in the reasonably foreseeable future.

Given Respondents' acknowledgment that they cannot reinstate prior removal orders, serious questions exist as to whether removal is being effectuated in the manner contemplated by § 1231.

III. CONCLUSION

Respondents' opposition rests entirely on the incorrect premise that Petitioner is detained under 8 U.S.C. § 1231(a)(6). The record demonstrates otherwise: DHS arrested Petitioner in the interior; DHS cannot reinstate prior removal orders; and Petitioner's detention therefore arises under § 1226(a), not § 1231. Because Respondents' legal framework is inapplicable, their opposition fails to address the merits of Petitioner's claims.

For these reasons, the Court should reject Respondents' reliance on § 1231 and proceed to evaluate Petitioner's detention under the proper statutory framework.

DATED: March 26, 2026

/s/ Ana Ferreira

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CERTIFICATE OF SERVICE

I certify that on this date, I filed the foregoing Response via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

DATED: March 26, 2026

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