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

KEVIN ESCOBAR TEJADA	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 2:26-cv-1757
	:	
BRIAN MCSHANE, ET AL.,	:	
	:	
Respondents.	:	

RESPONDENTS' SUR-REPLY TO PETITIONER'S REPLY

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Dated: April 14, 2026

Respondents submit this sur-reply to Petitioner's Reply (ECF No. 6) in accordance with the Court's Order (ECF No. 7) dated April 8, 2026, requesting Respondents address the following question: whether Respondents inability to reinstate the prior removal orders prevent it from detaining Petitioner under 8 U.S.C. § 1231. Respondents now clarify that their inability to reinstate Petitioner's two prior removal orders does not preclude them from detaining Petitioner under 8 U.S.C. § 1231 for the purpose of facilitating Petitioner's removal from the United States under the second November 12, 2019 unexecuted removal order.

The Immigration and Nationality Act (INA) distinguishes between two categories of aliens with final orders of removal, with each of those categories offering a separate path for removal. The first category relates to aliens with a final, but unexecuted, order of removal. 8 U.S.C. § 1231(a). Aliens within this first category may be removed pursuant to a final order of removal at any point after that order becomes administratively final, subject to the temporal limitations set forth in 8 U.S.C. § 1231 and the Supreme Court's holding in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

The second category relates to aliens with a final, and previously executed, order of removal. *Id.* § 1231(a)(5). Aliens within the second category may be removed pursuant to an executed final order of removal through an expedited process where ICE reinstates that prior order of removal. 8 U.S.C. § 1231(a)(5). The process, however, is subject to important limitations. In order for ICE to be able to reinstate a prior order of removal and remove an alien under the reinstatement process in 8 U.S.C. § 1231(a)(5), ICE must be able to verify that a prior removal or departure actually occurred. *Id.*; *see also* 8 C.F.R. § 241.8(a)(1)-(2) (requiring the immigration official to verify the identity of the alien to determine whether the alien is in fact an alien who was previously removed or departed voluntarily). Without such verification, ICE

cannot reinstate a prior order of removal that is dependent in the first instance on that removal or departure occurring.

Here, ICE is seeking to proceed on the first path—to execute a final order of removal in the first instance, not to reinstate an already-executed order of removal. The second order of removal entered in November 2019 after Petitioner failed to appear for his hearing remains unexecuted. Exs. C; E. ICE did not execute that removal order through the formal removal process because Petitioner's whereabouts were unknown after he failed to appear for his immigration hearing. Ex. C. Petitioner's removal order also did not execute by operation of law through a departure because it is not clear that he ever departed the United States under an order of removal. *See* 8 U.S.C. § 1101(g) (explaining that an alien ordered deported or removed who has left the United States shall be considered to have been deported or removed by operation of law); *see also Mrvica v. Esperdy,* 376 U.S. 560, 563 (1964) (finding that an alien's departure from the United States "no doubt" executes an order of deportation). Rather, Petitioner remained in Mexico under the former Migrant Protection Protocols (MPP) program and entered the United States unlawfully at some unknown date either before or after entry of the removal order in November 2019. *See A.M.P.V. v. Barr,* No. 20-cv-913, 2020 WL 2079433, at *5 (D.D.C. Apr. 30, 2020) (finding that an order of removal issued for an alien under the MPP program does not execute upon return to Mexico). Thus, the facts of Petitioner's case demonstrate that he never departed the United States under an order of removal, making his case the same as any other alien residing in the United States with a final, unexecuted order of removal.

Without either a verified removal or departure from the United States, the November 2019 order of removal remains unexecuted, and ICE may now seek to carry out that order of removal. Should Petitioner wish to challenge this removal order, he may seek to rescind that

order and reopen his proceedings with the immigration court in accordance with the procedures set forth in 8 U.S.C. 1229(a)(5)(C). This has not yet happened and thus, as it stands today, ICE is seeking to effectuate Petitioner's removal from the United States pursuant to his November 2019 unexecuted order of removal and may detain Petitioner during the pendency of this process. *See* 8 U.S.C. § 1231(a).

Respectfully submitted,

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Dated: April 14, 2026

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CERTIFICATE OF SERVICE

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

Dated: April 14, 2026

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