

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LEODAN ALARCON-CHAVEZ,

Petitioner,

vs.

THE STATE OF NEBRASKA, and
SCOTT FRAKES, Director of the
Nebraska Department of Corrections;

Respondents.

8:17CV345

**MEMORANDUM
AND ORDER**

This matter is before the court on Petitioner's motion ([filing no. 20](#)) asking this court to issue an order requiring Respondents to correct the following statement in their Reply Brief ([filing no. 19](#)): "Respondent respectfully requests that this Court dismiss the instant petition for lack of jurisdiction because the United States Court of Appeals for the Eighth Circuit has not authorized the filing of the petition." (*Id.* at [CM/ECF p. 2](#).) Petitioner asserts that the statement is misleading because his petition is not a second or successive habeas petition.

Upon review of the statement at issue within the context of Respondents' arguments in both their Reply Brief and initial Brief in Support of Answer ([filing no. 13](#)), the court believes the statement is a typographical error rather than a deliberate attempt to mislead the court. Respondents have addressed the merits of Petitioner's habeas claims in their briefing and nowhere have they contended, apart from the lone statement at issue, that Petitioner's habeas petition is barred as a second or successive petition. However, the court will grant Petitioner's motion to the extent that the court recognizes that the "successiveness" of Petitioner's habeas petition is not at issue. Accordingly,

IT IS ORDERED that Petitioner's motion ([filing no. 20](#)) is granted to the extent that the court acknowledges that dismissal of Petitioner's habeas petition as a successive petition is not at issue in this proceeding.

Dated this 31st day of August, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge