UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

YEISON EDUARDO MOLINA TREJO, Petitioner, v. PATRICIA H. HYDE, *ET AL.* Respondents.	Case No. 2:25-cv-842

OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Patricial H. Hyde, in her official capacity as Acting Boston Field Office Director, Immigration and Customs Enforcement ("ICE"); Todd M. Lyons, in his official capacity as Acting Director of ICE; Pete R. Flores, in his official capacity as Acting Commission for U.S. Customs and Border Protection; Kristi Noem in her official capacity as Secretary of the United States Department of Homeland Security; Marco Rubio, in his official capacity as Secretary of State; Pamela Bondi, in her official capacity as United States Attorney General; and David W. Johnston, in his official capacity as Vermont Sub-office Director of Immigration and Customs Enforcement (collectively, "Federal Respondents"), respectfully submit this memorandum of law in opposition to Petitioner Yeison Eduardo Molina Trejo's Motion to File an Amended Petition for a Writ of Habeas Corpus, ECF No. 18.

ARGUMENT

Petitioner, who has been subject to a final order of removal since 2022, filed a habeas petition seeking immediate release or access to a bond hearing on the grounds of being improperly held under Section 1225 of the Immigration and Nationality Act (INA) and being subject to

unconstitutional conditions of confinement at Northwest State Correctional Facility. ECF No. 1. The Court's initial temporary restraining order indicated that additional support was needed for Petitioner's medical claims and assertions related to physical safety. ECF No. 6. Petitioner then filed an additional memorandum in support of the Petition, medical records from Northwest, a declaration from Petitioner, and several documents relating to generalized concerns about the detention by ICE of people who are transgender and nonbinary. ECF No. 13. Federal Respondents opposed the Petition ("Opposition"), ECF No. 14, which Petitioner responded to in a reply brief filed on November 7, 2025. ECF No. 20.

Notwithstanding this complete briefing, Petitioner seeks to amend the Petition on the ground that because Petitioner's motion to reopen removal proceedings was denied by the immigration judge on November 3, 2025, Petitioner's "legal circumstances have materially changed, resulting in crucial changes to relief sought." ECF No. 18 ¶ 7. This premise is fundamentally flawed, and thus, Petitioner's motion to amend the Petition relies on legal error and arguments already considered by the Court that fail to demonstrate a right to relief. Because the proposed amendment of the Petition would be futile, the motion to amend should be denied. *See, e.g.*, *Ellis v. Chao*, 336 F.3d 114, 127 (2d Cir. 2003) ("[I]t is well established that leave to amend a complaint need not be granted when amendment would be futile.").

I. Petitioner incorrectly claims the detention authority has changed.

As set forth in Federal Respondents' Opposition, Section 1231 of the INA is and always has been the detention authority under which Petitioner is held, given the final order of removal in place since 2022. *See* ECF No. 14, pp 4-5; *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("8 U.S.C. § 1231(a), governs the detention, release, and removal of individuals 'ordered removed.'"). In arguing that the issue before the Court was instead the applicability of Section

1226 versus 1225—and thus the availability of a bond hearing—Petitioner addressed Section 1231(a) in a single paragraph of the Petition. *See* ECF No. 1 ¶ 33. Petitioner claimed that the removal period "only lasts for 90 days after a removal order becomes administratively final," *id.*, implying that the applicability of Section 1231(a) also only lasts for 90 days, which is plainly erroneous for the reasons set forth in the Opposition and in this Court's opinion in *Portillo Vasquez v. Turek*, No. 2:25-CV-741, 2025 WL 2733631, at *4 (D. Vt. Sept. 25, 2025).

The Petition also noted that Petitioner "has filed a motion to reopen their removal proceedings due to never having had the opportunity to apply for asylum." ECF No. 1 ¶ 33. Yet at no point does Petitioner provide support for the proposition that the mere filing of a motion to reopen—and not the granting of the motion—places a person back into removal proceedings and vitiates a final order of removal. *See generally* ECF Nos. 1, 18, 20. Section 1229a(b)(5)(C), which addresses recission of orders of removal, offers no such support. Instead it states, "Such an order may be rescinded only (i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances . . . or (ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice . . . . *Id.* While filing a motion to reopen that falls within one of the two categories identified (which Petitioner's did not) automatically stays removal, the statute establishes that the order is rescinded *only* if the showing required is made. Moreover, the statute's use of the word "rescinded" makes clear that the section speaks to cancelling an order in place rather than making an order administratively final. Thus, a person remains subject to a final order of removal while motions to reopen are considered by the immigration court and appellate bodies. *See, e.g., Diouf v. Napolitano*, 634 F.3d 1081, 1085 (9th Cir. 2011) ("Section 1231(a)(6) encompasses aliens such as Diouf, whose collateral challenge to his removal order (a motion to

reopen) is pending in the court of appeals . . . .). Accordingly, Petitioner's belated recognition that Section 1231 governs their detention does not qualify as a material change in legal circumstances that warrants an amendment of the Petition.

II. Petitioner's claims related to confinement already are before the Court and do not establish a constitutional violation.

Even if Petitioner's legal status had shifted, which it has not, Petitioner's underlying claims remain the same. The original Petition presented claims related to the conditions of confinement at Northwest and anticipated concerns about future confinement, and Petitioner therefore cannot claim a need to amend the Petition to present such claims. The Petition discussed Petitioner's medical needs, both physical and mental, and safety concerns, with the supplemental filing emphasizing anticipated issues if Petitioner were moved to an ICE detention facility. *See* ECF Nos. 1, 13. As discussed in the Opposition, Petitioner's allegations concerning Northwest do not establish a constitutional violation, and the allegatios regarding future confinement at a different facility are improperly speculative. *See Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 332 (2d Cir. 1995) (irreparable harm standard requires "injury that is neither remote nor speculative, but actual and imminent). Further, in extending the temporary restraining order, the Court stated that "the court cannot find a likelihood of success on the merits of Petitioner's claims regarding conditions of confinement." ECF No. 15. The additions in the proposed amended petition cover the same ground previously considered and rejected and do not entitle Petitioner to relief, making amendment futile.

III. The Court lacks authority to order Petitioner to remain at Northwest.

While the proposed amended petition still seeks Petitioner's release, *see* ECF No. 18-1, p. 10, Petitioner's reply brief frames the revised request as, "given their removal order we are merely asking that Petitioner not be transferred to ICE detention." ECF No. 20, p. 4. Yet, to be entitled

to relief, "[a] petitioner bears the burden of proving that his custody violates the Constitution, laws, or treatises of the United States such that a writ of habeas corpus should be granted. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011). Petitioner cannot show a likelihood of success on the merits, and thus, the Court cannot grant injunctive relief that bars Petitioner's transfer. *See, e.g., D'Ambrosio v. Scott*, No. 2:25-CV-468, 2025 WL 1502936, at *4 (D. Vt. May 23, 2025). Moreover, as set forth in the Opposition, restriction on the movement of Petitioner impermissibly constrains the government's removal authority under 8 U.S.C. § 1231(g). *See* ECF No. 14, p 14. Petitioner's revised request for relief is thus improper, and amendment of the Petition would be futile.

CONCLUSION

For the reasons stated above, this Court should dismiss the motion to amend the Petition.

Dated: November 9, 2025

Respectfully submitted,

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