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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Federico Reyes Vasquez,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

Michael Bernacke, in his official capacity as
ICE Field Officer Director and Warden in
current custody of Petitioner,

PAMELA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: **2:25-cv-01146-JNP**

**MOTION FOR LEAVE TO AMEND THE
PETITION**

1 **I. INTRODUCTION**

2 Petitioner respectfully moves the Court for leave to file an Amended Petition pursuant to
3 Federal Rule of Civil Procedure 15(a) to incorporate newly arisen facts and legal claims stemming
4 from Respondents’ execution of a prior removal order in violation of this Court’s non-removal
5 directive, Petitioner’s subsequent government-directed return to the United States, and Respondents’
6 continued detention and attempted re-reinstatement of removal without statutory authority. The
7 proposed amendment clarifies that Petitioner’s present custody arises from parole-authorized physical
8 presence rather than unlawful reentry, asserts additional constitutional and statutory challenges to ultra
9 vires reinstatement and detention outside the frameworks of 8 U.S.C. §§ 1225–1231, and incorporates
10 Petitioner’s eligibility for humanitarian protection as a qualifying victim of U-visa-related criminal
11 conduct arising from interference with federal judicial proceedings.
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14 The proposed amendments are based on agency actions and jurisdictionally significant events
15 that occurred during the pendency of this litigation, including the execution of the prior removal order,
16 Petitioner’s court-directed return and parole into the United States, and Respondents’ ongoing
17 detention notwithstanding the absence of lawful reinstatement or valid removal proceedings. These
18 amendments do not alter the fundamental nature of the case but instead ensure that the pleadings
19 accurately reflect the current factual and legal posture, preserve Petitioner’s constitutional and statutory
20 claims, and enable the Court to resolve the legality of Respondents’ conduct in a single, efficient
21 proceeding. Granting leave will therefore promote judicial economy, avoid piecemeal litigation, and
22 cause no undue prejudice to Respondents, who have been on continuous notice of the underlying legal
23 and factual issues since the initiation of this action.
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1 **II. PROCEDURAL BACKGROUND**

2 On December 19, 2025, Petitioner was arrested by the Department of Homeland Security
3 (“DHS”) and, on information and belief, Respondents asserted that a prior removal order had been
4 reinstated. Petitioner immediately filed a petition for writ of habeas corpus challenging his detention
5 and imminent removal. On December 22, 2025, this Court issued a clear non-removal directive
6 prohibiting Respondents from removing Petitioner while the habeas petition remained pending.
7 Notwithstanding that order, Respondents removed Petitioner from the United States on December 23,
8 2025, thereby executing the prior removal order in violation of this Court’s directive and preventing
9 Petitioner’s participation in ongoing federal judicial proceedings. Petitioner thereafter sought relief in
10 this action challenging the unlawful removal, the asserted reinstatement of his prior order, and the
11 resulting violations of statutory and constitutional protections.
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13 During the pendency of this litigation, additional jurisdictionally significant events occurred
14 that materially altered the factual and legal posture of the case. Pursuant to court-directed proceedings,
15 Respondents required Petitioner to present himself at a designated time and place for return to the
16 United States and thereafter permitted his physical entry through the Government’s exercise of parole
17 authority. Despite Petitioner’s parole-authorized presence—and the absence of unlawful reentry or
18 valid removal proceedings—Respondents continued to detain Petitioner and maintained reliance on the
19 previously executed removal order. These subsequent agency actions clarify that the challenged
20 conduct concerns not merely the historical removal, but Respondents’ ongoing assertion of detention
21 and reinstatement authority unsupported by statute.
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23 Based on these developments and the evolving record, Petitioner now seeks leave to amend the
24 operative pleading to incorporate the full scope of Respondents’ post-removal conduct, Petitioner’s
25 parole-authorized return, the absence of lawful reinstatement or detention authority, and Petitioner’s
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1 eligibility for humanitarian protection arising from interference with federal judicial process. The
2 proposed amendments ensure that the pleadings accurately reflect the current posture of the case,
3 clarify the legal claims presented, and permit efficient resolution of all related constitutional and
4 statutory issues in a single proceeding, without undue prejudice to Respondents or disruption of the
5 existing litigation.
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7 **III. LEGAL STANDARD**

8 Under Federal Rule of Civil Procedure 15(a)(2), courts “should freely give leave [to amend]
9 when justice so requires.” This standard is “liberally applied,” and refusal to grant leave is appropriate
10 only upon a showing of undue delay, undue prejudice, bad faith, dilatory motive, or futility of
11 amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Minter v. Prime Equip. Co.*, 451 F.3d 1196,
12 1204 (10th Cir. 2006). In the Tenth Circuit, an important factor in the Rule 15 analysis is whether the
13 amendment would prejudice the opposing party. *Bylin v. Billings*, 568 F.3d 1224, 1229 (10th Cir.
14 2009). The Tenth Circuit has made clear that amendment is particularly appropriate where new facts
15 or new theories arise after the filing of the operative petition. *Minter*, 451 F.3d at 1206–07. The Tenth
16 Circuit has repeatedly held that amendment is not prejudicial where it merely expands the legal theory
17 or clarifies the scope of the case, particularly where discovery remains ongoing and no trial date has
18 been set. *Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994); *Bylin*, 568 F.3d at 1230.
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21 **IV. PROPOSED AMENDMENTS**

22 Petitioner seeks leave to amend the operative petition to incorporate additional factual
23 allegations and legal claims arising from Respondents’ asserted reinstatement of a prior removal order,
24 Petitioner’s subsequent government-directed return and parole into the United States, and
25 Respondents’ continued detention of Petitioner without statutory authority. The proposed amendments
26 clarify that Respondents rely on a purported reinstatement that was already executed and that
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1 Petitioner's present presence in the United States is the result of government-authorized parole rather
2 than unlawful reentry. These allegations are necessary to present the full scope of Respondents'
3 ongoing conduct and to ensure that the Court may determine the legality of the asserted reinstatement
4 under the Immigration and Nationality Act and the Constitution.

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6 Petitioner further seeks to amend the petition to assert that Respondents' continued detention is
7 ultra vires because it falls outside the limited detention authorities authorized by Congress in 8 U.S.C.
8 §§ 1225, 1226, and 1231. As alleged in the proposed amended petition, Petitioner is not an arriving
9 alien subject to mandatory detention under § 1225, is not presently detained pursuant to a valid
10 reinstated removal order under § 1231, and is not subject to mandatory detention under § 1226(c). The
11 amendments therefore clarify that Respondents' custody lacks any lawful statutory predicate and
12 violates the Fifth Amendment's guarantee that civil detention remain tethered to congressionally
13 authorized purposes.

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15 In addition, Petitioner seeks to amend the petition to assert that, even if detention were
16 permissible under 8 U.S.C. § 1226(a), Respondents' failure to provide a prompt and meaningful bond
17 redetermination renders Petitioner's continued confinement unlawful. The proposed amendments
18 allege that prolonged civil detention without individualized custody review or an opportunity for
19 release on bond contravenes both the statutory framework governing discretionary detention and the
20 constitutional limitations recognized by the Supreme Court. Inclusion of these allegations ensures that
21 the Court may grant complete habeas relief, including immediate release or, at minimum, a
22 constitutionally adequate bond hearing before a neutral decisionmaker.

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25 The proposed amendments arise from events that occurred during the pendency of this action
26 and do not alter the fundamental nature of the case. Rather, they ensure that the pleadings accurately
27 reflect Respondents' current detention theory, the absence of lawful reinstatement authority, and the
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1 constitutional defects in Petitioner’s continued confinement. Granting leave to amend will therefore
2 promote judicial economy, permit resolution of all related statutory and constitutional questions in a
3 single proceeding, and cause no undue prejudice to Respondents, who have long been on notice of the
4 factual and legal bases underlying Petitioner’s claims.

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6 **V. AMENDMENTS ARE NECESSARY IN THE INTEREST OF JUSTICE**

7 Federal Rule of Civil Procedure 15(a) provides that courts “should freely give leave [to amend]
8 when justice so requires.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). The Rule embodies a strong
9 federal policy favoring resolution of disputes on their merits rather than on technical pleading
10 deficiencies. Leave to amend is therefore routinely granted absent undue delay, bad faith, repeated
11 failure to cure deficiencies, undue prejudice to the opposing party, or futility of amendment. *Id.*

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13 The proposed amendments satisfy Rule 15’s liberal standard. They arise directly from
14 jurisdictionally significant events that occurred during the pendency of this action, including the
15 execution of Petitioner’s prior removal order, his subsequent government-directed return and parole
16 into the United States, and Respondents’ continued detention based on an asserted reinstatement and
17 custody authority not supported by statute. These developments materially alter the factual and legal
18 posture of the case and make amendment necessary to ensure that the pleadings accurately reflect the
19 present basis of Petitioner’s detention and Respondents’ asserted authority.

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21 Amendment is also required to permit full adjudication of Petitioner’s statutory and
22 constitutional claims in a single proceeding. The additional allegations concerning ultra vires
23 reinstatement, detention outside the frameworks of 8 U.S.C. §§ 1225–1231, and the absence of a
24 constitutionally adequate bond determination are closely intertwined with the claims already before the
25 Court. Resolving these issues together promotes judicial economy, avoids duplicative litigation, and
26 ensures that any habeas relief granted is complete and effective.
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1 Nor will the proposed amendments prejudice Respondents. The underlying facts—Petitioner’s
2 removal, return, parole, and continued detention—are known to Respondents and form the basis of the
3 existing litigation. The amendments do not introduce unrelated claims or parties, but instead clarify the
4 legal consequences of Respondents’ own actions and the statutory limits governing detention and
5 reinstatement. Where, as here, amendment merely refines the legal theories arising from the same
6 operative facts, prejudice is absent and leave should be granted. *See Foman*, 371 U.S. at 182.

8 Finally, the interests of justice strongly favor amendment in the habeas context. Petitioner
9 challenges ongoing civil detention and removal authority alleged to be unsupported by statute and
10 contrary to the Constitution. Ensuring that the Court may consider the full factual record and all related
11 legal theories is essential to meaningful judicial review of executive custody. Denying leave would risk
12 piecemeal litigation and delay resolution of claims affecting Petitioner’s liberty—precisely the
13 circumstance Rule 15 is intended to prevent.

15 For these reasons, amendment is necessary in the interest of justice, and the Court should grant
16 Petitioner leave to file the proposed amended petition.

17 **VI. THIS AMENDMENT INCLUDES NEW FACTS NOT PRESENT WHEN THE**
18 **INITIAL PLEADINGS WERE FILED**

19 Leave to amend is particularly appropriate where, as here, the proposed amendment is grounded
20 in new facts and agency actions that arose after the filing of the operative petition. The Tenth Circuit
21 has made clear that Rule 15 permits amendment when a party seeks to incorporate claims based on
22 subsequently occurring events rather than information that was available at the outset of the litigation.
23 *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1206 (10th Cir. 2006).

25 When Petitioner filed the operative habeas petition, several jurisdictionally significant events
26 had not yet occurred. At that time, Respondents had not yet executed the prior removal order in
27 violation of this Court’s non-removal directive, had not required Petitioner to present himself for a
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1 government-directed return to the United States, and had not permitted Petitioner's physical reentry
2 through the exercise of parole authority. Nor had Respondents continued Petitioner's detention
3 following that parole-authorized return while simultaneously relying on an asserted reinstatement and
4 custody authority not supported by statute. These developments occurred only after the initiation of
5 this action and materially transformed both the factual posture of the case and the legal basis for
6 Petitioner's continued confinement.
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8 The proposed amendment is also prompted by subsequent governmental conduct that clarified
9 the scope and nature of the challenged detention. Respondents' post-removal actions—executing the
10 prior order, directing Petitioner's return, permitting parole into the United States, and nonetheless
11 maintaining detention without lawful reinstatement or bond—demonstrate that the controversy now
12 centers on ongoing ultra vires detention and removal authority rather than solely on the historical
13 legality of Petitioner's original custody. These facts were not available, and could not reasonably have
14 been pleaded, at the time the initial petition was filed.
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16 The Tenth Circuit has expressly recognized that amendments based on newly arising facts do
17 not constitute undue delay and instead weigh in favor of granting leave to amend. *Minter*, 451 F.3d at
18 1207. Petitioner does not seek to revise prior allegations or cure pleading deficiencies; rather, he seeks
19 to supplement the petition to address new governmental actions that materially expand the scope of the
20 controversy and bear directly on Respondents' present statutory authority to detain and remove him.
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22 Because the proposed amendment is rooted in facts that did not exist at the time of the original
23 filing—and because those facts are central to determining the legality of Petitioner's ongoing detention
24 and asserted reinstatement—Rule 15 strongly favors allowing amendment. Denying leave under these
25 circumstances would improperly penalize Petitioner for failing to anticipate future agency conduct and
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1 would contravene the Supreme Court’s directive that cases be resolved on a complete and accurate
2 factual record. See *Foman v. Davis*, 371 U.S. 178, 182 (1962).

3 **VII. NO PREJUDICE TO RESPONDENTS**

4 The proposed amendment will not prejudice Respondents. Petitioner does not seek to introduce
5 unrelated claims or fundamentally alter the nature of this habeas proceeding. Instead, the amendment
6 incorporates additional allegations arising from the same course of conduct already at issue—
7 Respondents’ execution of a prior removal order, Petitioner’s subsequent government-directed return
8 and parole into the United States, and Respondents’ continued detention based on asserted
9 reinstatement and custody authority. The operative facts underlying Petitioner’s claims therefore
10 remain rooted in Respondents’ interpretation and application of federal immigration law to Petitioner’s
11 detention and removal.
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14 In the Tenth Circuit, a central consideration in determining whether leave to amend should be
15 granted is whether the amendment would prejudice the opposing party. *Bylin v. Billings*, 568 F.3d 1224,
16 1229 (10th Cir. 2009). Prejudice generally exists only where amendment would require the opposing
17 party to expend significant additional resources to conduct discovery, prepare wholly new defenses
18 unrelated to the original claims, or otherwise transform the litigation into a fundamentally different
19 dispute. None of those circumstances are present here.
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21 The proposed amendment does not reopen completed proceedings or inject new factual theories
22 unrelated to the existing claims. Respondents are already defending the legality of Petitioner’s
23 detention, the asserted reinstatement of a prior removal order, and the statutory authority underlying
24 their custody. The additional allegations merely clarify the legal consequences of Respondents’ own
25 post-filing conduct—namely, execution of the prior removal order, Petitioner’s parole-authorized
26 return, and continued detention without lawful reinstatement or bond. Courts within this circuit
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1 routinely hold that amendment is not prejudicial where it expands upon previously alleged facts or
2 refines the legal theories arising from the same operative events. See *Gillette v. Tansy*, 17 F.3d 308,
3 313 (10th Cir. 1994).

4 Moreover, permitting amendment at this stage avoids prejudice rather than creating it. Denying
5 leave would compel Petitioner to initiate a separate action challenging the same detention and
6 reinstatement conduct now before the Court, resulting in duplicative litigation and unnecessary
7 expenditure of judicial and governmental resources. Rule 15 is designed to prevent precisely that
8 inefficiency and to ensure that related claims are resolved in a single proceeding whenever possible.
9 See *Foman v. Davis*, 371 U.S. 178, 182 (1962).
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11 Because the proposed amendment neither alters the core legal issues nor imposes any unfair
12 litigation burden on Respondents, the absence of prejudice weighs strongly in favor of granting leave
13 to amend.
14

15 **VIII. CONCLUSION**

16 For the foregoing reasons, Petitioner respectfully request that the Court:

- 17 1. Grant leave to file the Second Amended Petition;
- 18 2. Accept the proposed Second Amended Petition, attached hereto as Exhibit 1; and
- 19 3. Grant such other relief as the Court deems just and proper.
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1 DATED: February 6, 2026

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Respectfully submitted,

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