

District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAZARO FELIPE NAVARRO-MAURY,

Petitioner,

v.

JULIO HERNANDEZ,¹ *et al.*,

Respondents.

Case No. 2:26-cv-00333-TMC

FEDERAL RESPONDENTS'²
RESPONSE TO THE COURT'S
ORDER AT DKT. 13 AND
OPPOSITION TO MOTION FOR
LEAVE TO AMEND

Noted for Consideration:
March 31, 2026.

I. INTRODUCTION

Petitioner's traverse does not merely respond to Federal Respondents' return. It abandons the petition's sole theory and replaces it with new claims. The Court correctly recognized that Petitioner abandoned his original argument and instead raised new claims not included in the habeas petition. Dkt. 13, pgs. 2-3. The Court should decline to construe the reply as a motion to amend and, in any event, deny leave to amend.

¹ Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo.

² Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

II. LEGAL STANDARD

A party may amend its pleading once as a matter of course, and thereafter “only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.* A court “considers the following five factors to assess whether to grant leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment; and (5) whether plaintiff has previously amended his [pleading].” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 738 (9th Cir. 2013) (cleaned up), *aff’d sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015). “The opposing party bears the burden to show why leave to amend should not be granted.” *Robertson v. Bruckert*, 568 F. Supp. 3d 1044, 1047 (N.D. Cal. 2021).

III. ARGUMENT

A. The Court Should Not Sua Sponte Construe the Traverse as a Motion to Amend

Petitioner did not move to amend his petition. Instead, he filed a traverse to his writ for habeas corpus asserting new legal theories. As both the Court and Federal Respondents have recognized, that is improper.

The Ninth Circuit has made clear that arguments raised for the first time in reply need not be considered. *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007); Dkt. 9, pg. 12. The habeas context warrants stricter application. As the Court explained, a petitioner must present additional claims “by properly amending their petition” or through another authorized procedure—“[r]aising new claims in the traverse...is not proper.” Dkt. 13, pgs. 4-5 (quoting *Cummings v. Andrewjeski*, No. 2:23-CV-1314-JNW-GJL, 2025 WL 1932001, at *1 (W.D. Wash. June 20, 2025), and quoting *Williams v. Steggall*, No. 2:23-CV-10557-MEMF-BFM, 2025 WL 643620, at *1 (C.D. Cal. Jan. 14, 2025) (internal citations omitted)).

1 These principles control here. Petitioner did not seek leave to amend. He instead attempted
2 to inject new claims through a reply. The Court should not sua sponte convert that filing into a
3 proper motion to amend.

4 **B. The New Claims Should Be Rejected**

5 Even if considered, the new claims fail for the reasons set forth in the return and this
6 Court's Order at Dkt. 13. As explained in Federal Respondents' return, Petitioner is detained
7 pursuant to a final order of removal under 8 U.S.C. § 1231. Dkt. 9, pgs. 1-2. The Court has already
8 recognized that Petitioner's original theory, premised on pre-order detention, fails for that reason.
9 Dkt. 13, pgs. 3-4.

10 Under controlling precedent, post-order detention is lawful for a period reasonably
11 necessary to effectuate removal, with six months considered presumptively reasonable. *Zadvydas*
12 *v. Davis*, 533 U.S. 678, 701 (2001); Dkt. 9, pgs. 2-3. Petitioner has not shown that there is no
13 significant likelihood of removal in the reasonably foreseeable future, particularly where the
14 record reflects that Petitioner's removal was imminent absent Court order. Dkt. 2; Dkt. 9, pgs. 1-
15 2.

16 The Court concluded that Petitioner failed to demonstrate likelihood of success on the
17 merits. Dkt. 13, pgs. 3-4. The newly asserted theories do not cure those defects. They simply
18 reframe the same detention under the correct legal framework. Accordingly, the Court should
19 decline to consider the new claims or reject them on the merits. In either event, additional briefing
20 is not warranted.

21 **C. Leave to Amend Should Be Denied**

22 Even if the Court construes the traverse as a motion to amend, leave to amend the Petition
23 should be denied because any such request represents (1) undue delay, (2) would unduly prejudice
24 Federal Respondents, (3) would be futile, and (4) in the habeas context, these factors as applied

1 with particular attention to the need to avoid piecemeal litigation constitute unnecessary delay in
2 resolving challenges to custody.

3 *First*, this request constitutes undue delay. Petitioner is not pro se; he is represented by
4 counsel. The petition, TRO motion, and traverse were all prepared and filed by counsel. *See*
5 Dkts. 1, 2, 12. This is therefore not a case in which the Court is asked to liberally construe a pro
6 se filing. Petitioner, and his counsel, had every opportunity to present all available claims in his
7 initial petition. No new factual circumstances arose, and no new caselaw was decided. Indeed,
8 Petitioner had every legal and factual basis for constructing his pleadings available to him long
9 before his filings. Instead, he chose a single theory. After Federal Respondents identified the
10 dispositive defect, that he is detained under 8 U.S.C. § 1231, Petitioner abandoned that theory and
11 attempted to replace it with new ones.

12 Even if he was pro se, that is not liberal construction. It is a second bite at the apple with
13 no cognizable justification. Indeed, in this particular circumstance where the requisite information
14 was known for decades, the requested amendment constitutes undue delay. Petitioner's final
15 removal order is from 2006. The controlling legal framework articulated in *Zadvydas* was decided
16 in 2001. Despite decades-old, well-established facts and law, Petitioner waited until after Federal
17 Respondents' return to attempt to raise new arguments.

18 The new claims were available from the outset. Petitioner's new claims are based on the
19 same facts that existed when he filed his petition. The traverse itself confirms that Petitioner has
20 been subject to a final order of removal since 2006. Dkt. 12, pg. 1. That fact is central to all of his
21 new arguments. This was known and relied upon before the petition was filed. Likewise,
22 Petitioner's TRO sought to enjoin removal, confirming that he understood from the outset that
23 this case arises in the context of post-order detention. *See generally* Dkt. 2. Federal Respondents'

1 return then explained that Petitioner is detained under § 1231 and that his petition's premise was
2 incorrect. Dkt. 9, pgs. 1-5.

3 Thus, the new claims are not based on newly discovered facts. They are alternative legal
4 theories based on facts long known to Petitioner. His failure to raise them initially does not justify
5 amendment. The Court should not permit it.

6 **Second**, because the proposed claims would fail to state a viable habeas claim even if
7 accepted as true, amendment would be futile. Consistent with the Court's prior order, the
8 proposed claims would fail to show that Petitioner's detention is unlawful or that removal is not
9 significantly likely in the reasonably foreseeable future. Dkt. 13, pgs. 3-4; Dkt. 9, pgs. 1-7. There
10 is not only a significant likelihood of removal in the reasonably foreseeable future, but removal
11 appears imminent based on the current record. Dkt. 2; Dkt. 9. Indeed, absent Court order,
12 Petitioner would already have been removed. Dkts. 4, 9, 10. Because the new claims do not alter
13 that analysis, amendment would not change the outcome. It would only prolong litigation.

14 **Third**, permitting amendment would prejudice Respondents. Federal Respondents have
15 already fully briefed the petition under the correct legal framework, and amendment would
16 require duplicative briefing to address arguments that could have been raised in the initial petition.
17 Given the substantial volume of habeas actions in this district, allowing amendment under these
18 circumstances would impose unnecessary and unwarranted burdens on Federal Respondents. That
19 burden is particularly unjustified where Petitioner seeks to revise his claims based on facts and
20 law that were known and available at the time of the original filing. Amendment would also delay
21 resolution of this case and interfere with the orderly adjudication of Petitioner's detention.

22 **Fourth**, habeas principles preclude piecemeal litigation of claims. Habeas is not ordinary
23 civil litigation. As the return explains, "[t]he scope of habeas has been tightly regulated by
24 statute." Dkt. 9 at 10 (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20

1 (2020)). The burden remains on the petitioner to establish that custody violates federal law. *Id.*
2 (citing 28 U.S.C. § 2241(c)(3) and *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004)).

3 Although amendment is generally governed by Federal Rule of Civil Procedure 15, that
4 liberal standard does not apply in a vacuum in habeas proceedings, where courts must also
5 consider the structural limits on piecemeal litigation. In this context, permitting Petitioner to assert
6 new claims based on facts long known at the time of filing is functionally analogous to the
7 concerns underlying the abuse-of-the-writ doctrine. *See Alaimalo v. United States*, 645 F.3d 1042,
8 1049 (9th Cir. 2011). Thus, these principles additionally weigh against leave to amend. Abuse-
9 of-the-writ principles prevent petitioners from raising new claims in successive or serial fashion
10 when those claims could have been presented earlier. The doctrine “generally forbids the
11 reconsideration of claims that were or could have been raised in a prior habeas petition.” *Id.* at
12 1049 (quotations and citations omitted). Nor do his current arguments rely on a new rule of
13 constitutional law that was previously unavailable. *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir.
14 2018).

15 The same principles are instructive here and further weigh against leave to amend.
16 Petitioner filed a habeas petition challenging his current detention. Allowing him to amend his
17 petition to assert new claims based on the same detention, the same final order of removal, and
18 the same controlling caselaw would impermissibly permit precisely the type of piecemeal
19 litigation habeas doctrine is designed to prevent. A represented petitioner could file a petition,
20 test one theory, and then successively add new ones after seeing the government’s response. That
21 is inconsistent with established habeas principles.

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IV. CONCLUSION

The Court should decline to construe Petitioner's reply as a motion to amend. In the alternative, the Court should deny leave to amend, reject the new claims raised for the first time in reply, and resolve the petition as pleaded.

Dated this 24th day of March, 2026.

Respectfully submitted,

s/ Alixandria K. Morris

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I certify that this memorandum contains 1,653 words, in compliance with the Local Civil Rules.