

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LAZARO FELIPE NAVARRO-MAURY,
Petitioner,

v.

JULIO HERNANDEZ, *et al.*,
Respondents.

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

PETITIONER'S REPLY IN SUPPORT
OF MOTION FOR LEAVE TO AMEND
HABEAS PETITION

I. INTRODUCTION

Petitioner respectfully submits this reply in support of leave to amend his habeas petition pursuant to the Court's Order at Dkt. 13. The Court correctly construed Petitioner's traverse as a motion for leave to amend, and Petitioner now seeks leave to file an amended petition raising claims under *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Due Process Clause of the Fifth Amendment, and challenges to the government's attempted third-country removal without adequate process.

Federal Respondents' opposition rests on four arguments: undue delay, futility, prejudice, and abuse-of-the-writ principles. None withstands scrutiny. Rule 15(a)(2) directs courts to "freely

PETITIONER'S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO AMEND HABEAS PETITION
Case No. 2: 26-cv-00333

SHIBESHI LAW FIRM
200 W Thomas St., Suite 510
Seattle, WA 98119
P: (206) 209-9458
fekadu@faslawfirm.com

1 give leave when justice so requires.” The Ninth Circuit has consistently held that this standard is
 2 applied with “extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712
 3 (9th Cir. 2001). The opposing party bears the burden to show why leave should not be granted.
 4 *Robertson v. Bruckert*, 568 F. Supp. 3d 1044, 1047 (N.D. Cal. 2021). Respondents failed to
 5 overcome this burden; therefore, leave to amend should be granted.

6 II. ARGUMENTS

7 A. There Has Been No Undue Delay.

8 Respondents contend that Petitioner's proposed amendment constitutes "undue delay"
 9 because the factual and legal bases for the new claims existed at the time of filing. Dkt. 14 at 3–4.
 10 "[U]ndue delay by itself. . . is insufficient to justify denying a motion to amend." *Bowles v. Reade*,
 11 198 F.3d 752, 758 (9th Cir. 1999). Here, there was no delay at all. On January 28, 2026, USCIS
 12 determined that Petitioner did not have a credible fear of removal to Mexico. Dkt. 10, ¶ 20. That
 13 same day Petitioner learned he would be deported to Mexico the next morning, while his bond
 14 hearing was pending before the Immigration Court. His family reached counsel around 5:00 p.m.
 15 Counsel filed the habeas petition and TRO motion by 6:17 p.m. using the information available at
 16 the time. If not for the emergency TRO Petitioner would have been deported to Mexico without
 17 due process. It was only after Respondents filed their return that they disclosed that Petitioner is
 18 detained under 8 U.S.C. § 1231. Petitioner raised the correct legal framework five days later in his
 19 traverse. Even the immigration judge misidentified the detention authority at the February 2 bond
 20 hearing, finding § 1226(c) rather than § 1231. Dkt. 11-3. DHS's failure to provide notice of the
 21 removal plan—while actively scheduling a deportation flight—is the sole reason the original
 22 petition did not contain these claims. Respondents cannot benefit from their own opacity and then
 23 argue Petitioner should be barred from raising the correct theories. Courts construe habeas filings

liberally and in a manner that favors the petitioner. *Woods v. Carey*, 525 F.3d 886, 890 (9th Cir. 2008). This principle applies with special force where, as here, the filing was made under extraordinary time pressure created by the government's own conduct.

Respondents further argue that because Petitioner is represented by counsel, a stricter standard should apply. Dkt. 14 at 4. They cite no authority for this proposition, and none exists. To the contrary, courts routinely grant leave to amend habeas petitions when new legal theories become apparent in light of the government's return. *Ross v. Williams*, 950 F.3d 1160, 1167 (9th Cir. 2020) (en banc). Rule 15's liberal amendment standard applies equally to represented and pro se petitioners.

B. Amendment Would Not Be Futile.

The opposing party bears a "particularly heavy burden" on futility, identical to the 12(b)(6) standard; even claims with a "tenuous basis in the record" survive. *Robertson*, 568 F. Supp. 3d at 1048–49. Respondents argue futility because the Court found Petitioner unlikely to succeed at the TRO stage. Dkt. 14 at 5. But the TRO was denied because Petitioner had not properly raised the claims—not because they lacked merit. The Court expressly declined to "consider" the new claims and instead construed the traverse as a motion for leave to amend. Dkt. 13 at 5.

Petitioner's proposed claims are well-supported. The *Zadvydas* claim rests on a removal order from January 3, 2006—twenty years ago. ICE released Petitioner in 2006 because removal to Cuba could not be accomplished. Dkt. 10, ¶ 11. As of February 2026, DHS was "still awaiting a response from the Cuban government." *Id.* ¶ 22. In *Abubaka v. Bondi*, No. C25-1889RSL (W.D. Wash. Nov. 17, 2025), this Court granted habeas relief on virtually identical facts—a longstanding removal order, multiple OSUP cycles, re-detention based on criminal history, detention at the NWIPC, and a government unable to show removal was foreseeable. *See also Acosta-Ginori v.*

1 *Bondi*, 2026 WL 221509 (W.D. Wash. Jan. 28, 2026). That ICE placed Petitioner on a flight to
 2 Mexico does not establish that removal to Cuba—the designated country—is foreseeable.

3 The OSUP revocation claim is supported by *Jimenez v. Bondi*, 2025 WL 3466925 (W.D.
 4 Wash. Dec. 3, 2025), holding due process requires notice before OSUP revocation. ICE revoked
 5 Petitioner's OSUP based on a 2020 arrest where all charges were dismissed, waited five years to
 6 act, and produced no documentation of the process. The third-country removal claim is supported
 7 by *Nguyen v. Scott*, 796 F. Supp. 3d 703 (W.D. Wash. 2025), where this Court required notice and
 8 reopened proceedings before third-country removal. Amendment is futile only if "no set of facts
 9 can be proved" that would constitute a valid claim. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209,
 10 214 (9th Cir. 1988). Here, Petitioner's claims are not merely viable—they are compelling.

11 **C. Respondents Will Not Suffer Cognizable Prejudice.**

12 Respondents claim prejudice because amendment would require "duplicative briefing."
 13 Dkt. 14 at 5. But "neither delay resulting from the proposed amendment nor the prospect of
 14 additional discovery needed by the non-moving party in itself constitutes a sufficient showing of
 15 prejudice" when there is no unfair surprise. *Robertson*, 568 F. Supp. 3d at 1047–48. There is no
 16 unfair surprise here. Respondents have already substantively briefed the *Zadvydas* framework in
 17 their return at Dkt. 9, pages 1–4 and 11–13. Respondents themselves argued that Petitioner is
 18 detained under § 1231, addressed the six-month presumptive period, the foreseeability of removal,
 19 and the government's efforts to effectuate removal. *Id.* The proposed amendment would allow the
 20 Court to reach these issues on a properly pleaded petition.

21 To overcome Rule 15(a)'s liberal policy, the prejudice must be "substantial." *Robertson*,
 22 568 F. Supp. 3d at 1047. The "burden of having to prepare a defense" is not substantial prejudice.
 23 *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1161 (9th Cir. 1989). The factual record is

1 fully developed through Declarations and accompanying exhibits. No additional discovery is
 2 needed. That is not substantial prejudice; it is ordinary litigation. Moreover, it is Respondents' own
 3 conduct that created the procedural posture. Respondents cannot now claim prejudice from the
 4 natural consequences of their own opacity.

5 **D. Abuse-of-the-Writ Principles Do Not Apply.**

6 Respondents' invocation of abuse-of-the-writ principles is misplaced. That doctrine applies
 7 to *successive* habeas petitions—not to amendments within a single, pending action. *McCleskey v.*
 8 *Zant*, 499 U.S. 467, 489 (1991). Petitioner has filed one habeas petition and seeks to amend it
 9 within the same proceeding. This is precisely the scenario contemplated by Rule 15's liberal
 10 amendment standard.

11 Respondents cite *Alaimalo v. United States*, 645 F.3d 1042 (9th Cir. 2011), but that case
 12 involved a second §2255 motion—not an amendment to a pending petition. The procedural posture
 13 is fundamentally different. Indeed, the Court itself invited briefing on leave to amend, recognizing
 14 that the proper course is to adjudicate Petitioner's claims on a properly pleaded petition rather than
 15 dismiss them on procedural technicalities.

16 The Ninth Circuit has repeatedly affirmed that habeas petitioners may amend their petitions
 17 under Rule 15. See *Ross v. Williams*, 950 F.3d 1160, 1167 (9th Cir. 2020) (en banc) (holding that
 18 Rules 15(c) and 10(c) apply in habeas proceedings and that even when a "new legal theory is
 19 proposed in an amended petition, but the facts are the same, there is a common core of facts to
 20 meet the relate-back doctrine"). Here, Petitioner's proposed amended claims arise from the same
 21 operative facts—the same detention, the same 2006 removal order, the same OSUP, and the same
 22 attempted third-country removal—as the original petition. The circumstances here—an emergency
 23

1 filing under extreme time pressure followed by amendment to address the correct legal
2 framework—are precisely the kind of situation where leave to amend should be freely given.

3 **E. Respondents Have Failed to Carry Their Burden Under Rule 15.**

4 Under the governing framework, it is Respondents who bear the burden of showing why
5 leave to amend should not be granted. *Robertson*, 568 F. Supp. 3d at 1047. The Court should
6 “freely” grant leave unless Respondents demonstrate that one of the recognized grounds for denial
7 applies. *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).
8 Respondents have not met that burden on any ground.

9 **F. Justice Requires Leave to Amend.**

10 Respondents argue that the Court should not have construed the traverse as a motion to
11 amend and that the new claims should simply be rejected. Dkt. 14 at 2–3. Both arguments ask this
12 Court to elevate procedural formalism over the merits of a detained person's constitutional claims.
13 Habeas corpus is “perhaps the most important writ known to the constitutional law. . . affording as
14 it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
15 372 U.S. 391, 400 (1963). The Court's decision to construe the traverse as a motion for leave to
16 amend was not error—it was the appropriate exercise of judicial discretion to ensure that
17 Petitioner's claims receive adjudication on the merits rather than dismissal on a procedural
18 technicality. *See Woods v. Carey*, 525 F.3d 886, 890 (9th Cir. 2008) (courts should construe habeas
19 filings in a manner that favors adjudication on the merits).

20 Denying leave would require Petitioner to file a new habeas petition raising the same
21 claims on the same facts—wasting judicial resources while a person remains in custody in potential
22 violation of his constitutional rights. Petitioner has been detained for approximately five months
23 during the current period, and his total post-order detention well exceeds the six-month

1 presumptive period recognized in *Zadvydas*. Every day of continued detention without judicial
2 review implicates his liberty interest. The interest of justice plainly favors permitting Petitioner to
3 present his claims for adjudication.

4 **III. CONCLUSION**

5 For the foregoing reasons, Petitioner respectfully requests that the Court grant leave to
6 amend his habeas petition and set a deadline for filing the amended petition.

7 Respectfully Submitted on this 31st day of March 2026.

8 I certify that this reply contains 1,750 words, in compliance with the Local Rules.

9 /s/ Fekadu Shibeshi

10 Fekadu Shibeshi, WSBA No. 49612

11 Shibeshi Law Firm

12 200 W Thomas St., Suite 510

13 Seattle, WA 98119

14 P: (206) 209-9458

15 fekadu@faslawfirm.com

16 Attorney for Petitioner