UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BADAR KHAN SURI

Petitioner,

v.

DONALD TRUMP*, et al.,*

Respondents.

Case No. 1:25-cv-480

PETITIONER'S MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT AND MEMORANDUM IN SUPPORT

Petitioner Badar Khan Suri respectfully moves the Court under Federal Rule of Civil Procedure 15(a)(2) for leave to file the attached proposed Second Amended Petition for Writ of Habeas Corpus and Complaint to add additional information about Respondents' Policy[1] and subsequent actions to target and retaliate against him based on his protected speech and association, and to add an additional claim related to this new information.

Specifically, Dr. Khan Suri maintained active J-1 status, yet, within hours of his arrest, detention, and transfer, the government unilaterally and unlawfully terminated his J-1 exchange visitor status in the Student and Exchange Visitor Information System ("SEVIS"). It did so without notifying him or his qualifying program at Georgetown University. The termination of an

[1] The "Policy," as described in Petitioner's First Amended Petition for Writ of Habeas Corpus and Complaint, is the federal government policy to retaliate against and punish noncitizens who Respondents perceive to be supportive of Palestinian rights or critical of Israel because of their actual or imputed protected speech, viewpoint, religion, national origin, or associations—including associations with Palestinians. *See* ECF 34 at ¶¶ 3-4.

individual's SEVIS record prevents them from being employed and has significant consequences for their ability to engage fully in their academic program. Without reinstatement of his SEVIS record, Dr. Khan Suri can no longer participate in his post-doctoral program, pursue his research and writing, or teach his course at Georgetown University. Now that Dr. Khan Suri has been released from detention, he has the opportunity to return to his program, but for the unlawful termination of his status. His inability to work and participate in his program has placed him and his family in an extremely difficult financial position and threatens his future career prospects. His proposed Second Amended Petition and Complaint adds information about the unlawful termination of his SEVIS record as part of Respondents' Policy to retaliate against him for his constitutionally protected speech and association as well as a new claim under the Administrative Procedure Act related to the government's actions.

RELEVANT PROCEDURAL HISTORY

This action was initiated on March 18, 2025, as a Petition for Writ of Habeas Corpus and Complaint. ECF 1. On April 1, 2025, Federal Respondents moved to dismiss the Petition and Complaint, or in the alternative, to transfer venue. ECF 24. On April 8, 2025, Petitioner filed his first Amended Petition and Complaint, ECF 34, adding additional claims and facts. Petitioner now seeks leave to file the proposed Second Amended Petition and Complaint. Counsel for Petitioner conferred with counsel for Respondents to obtain their position on this motion, and Respondents' counsel indicated they wanted to review this motion and the proposed Second Amended Petition and Complaint before determining whether to oppose.

LEGAL STANDARD

Rule 15(a) of the Federal Rules of Civil Procedure provides that the "court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The "general policy

embodied in the Federal Rules favoring resolution of cases on their merits" also supports freely allowing amendments. *Davis v. Piper Aircraft Corp.*, 615 F.2d 606, 613 (4th Cir. 1980). As such, the Fourth Circuit has directed that "absence of prejudice, though not alone determinative, will normally warrant granting leave to amend." *Id*. Even an extended delay in seeking amendment standing alone, "without any specifically resulting prejudice, or any obvious design by dilatoriness to harass the opponent, should not suffice as reason for denial." *Id*.

In "exercising its discretion in the matter the Court should focus 'on prejudice or futility or bad faith as the only legitimate concerns in denying leave to amend, since only these truly relate to protection of the judicial system or other litigants." *Island Creek Coal Co. v. Lake Shore, Inc.*, 832 F.2d 274, 279 (4th Cir. 1987) (quoting *Davis*, 615 F.2d at 613). Even where amendment "would require the gathering and analysis of facts not already considered by the opposing party, [] that basis for a finding of prejudice essentially applies where the amendment is offered shortly before or during trial." *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see also U.S. for & on Behalf of Mar. Admin. V. Cont'l Illinois Nat. Bank & Tr. Co. of Chicago*, 889 F.2d 1248, 1255 (2d Cir. 1989) (holding that "the adverse party's burden of undertaking discovery, standing alone, does not suffice to warrant denial of a motion to amend a pleading").

ARGUMENT

Since Petitioner's release from detention, he has learned relevant information about the termination of his SEVIS record at Georgetown University. Petitioner's Second Amended Petition and Complaint seeks to add information about the unlawful termination of his SEVIS record as part of Respondents' Policy to retaliate against him for his constitutionally protected speech and association, as well as a new claim under the Administrative Procedure Act related to the government's actions. The Court should freely give leave to amend because Petitioner's Second

Amended Petition and Complaint is not futile, is not offered in bad faith, and does not prejudice Respondents.

I. Petitioner's Amendment Is Not Futile.

The Court should grant Petitioner's motion for leave because Petitioner's proposed amendment is not futile. Leave to amend is futile "when the proposed amendment is clearly insufficient or frivolous on its face." *Anand v. Ocwen Loan Servicing, LLC*, 754 F.3d 195, 200 (4th Cir. 2014) (internal quotation marks omitted). Thus, a motion for leave to amend is denied as futile where the proposed amendments could not withstand a motion to dismiss. *CertusView Techs., LLC v. S & N Locating Servs.*, LLC, 107 F. Supp. 3d 500, 506-507 (E.D. Va. 2015) (citing *Perkins v. United States*, 55 F.3d 910, 917 (4th Cir. 1995)). Petitioner seeks to amend his complaint to add newly discovered information about Respondents' Policy of retaliating against him for his constitutionally protected speech and association by terminating his SEVIS record and to add one new claim under the Administrative Procedure Act ("APA") based on this new information. The proposed amendments are neither insufficient nor frivolous.

Further, Petitioner's proposed amendments adequately plead the facts necessary to sustain the new APA claim against a motion to dismiss. Under the APA, a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," or that is "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A)–(B). In his proposed Second Amended Petition and Complaint, Petitioner sufficiently alleges the facts necessary to demonstrate that Respondents unlawfully terminated his SEVIS record on March 18, 2025, as part of the government's Policy to target and retaliate against him for his protected speech and associations in violation of the APA. *See* Petitioner's Second Amended Complaint ¶¶ 101-117 (attached as Exhibit A). Respondents are only

authorized to terminate Petitioner's J-1 SEVIS status for certain grounds enumerated in federal regulations, none of which are present in Petitioner's case. As a result, Respondents' termination of Petitioner's SEVIS status violated the APA and has caused Petitioner to suffer harm, including being unable to return to his research and teaching, and the loss of income on which his family depends. Accordingly, his claim is not futile.

II. Petitioner's Amendment Is Not In Bad Faith.

Petitioner is acting in good faith by promptly amending his complaint after immediately identifying new facts about Respondents' termination of Petitioner's SEVIS record, following his release from detention. Bad faith amendments are those that may be abusive or made to secure an ulterior tactical advantage. *GSS Properties, Inc. v Kendale Shopping Center, Inc*., 119 F.R.D. 379, 381 (M.D.N.C. 1988) (citing Wright & A. Miller, *Federal Practice and Procedure*, § 1487 n.63 (1971 and 1987 Supp.)). When a plaintiff withholds his true position from his opponent, especially for an ulterior purpose, the Court may view the action as having a bad-faith motive unless a satisfactory explanation clearly shows otherwise. *Id*. Respondents have not and could not reasonably assert bad faith on the part of Petitioner because none of Petitioner's courses of action concerning amending his complaint have been abusive, nor is there any tactical advantage gained by amending the complaint.

III. Respondents Will Not Be Prejudiced by Petitioner's Amendment.

Granting leave to amend will not prejudice Respondents. In determining whether an amendment is prejudicial, the Court should consider the nature of the amendment and the timing of the filing. *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006). With regard to timing, there has been no undue delay in filing this motion, as Petitioner is filing it soon after his pretrial release from immigration detention on May 14, 2025, and a little over three months after Petitioner filed

his original Petition and Complaint. This motion is filed well in advance of any final determination on the merits of Petitioner's claims. Respondents have not yet answered the Petition and Complaint; no discovery has taken place, and no trial date has been set. *See Deutsche Nat. Bank Tr. Co. v. Batmanghelidj*, No. 1:07CV683 (JCC), 2007 WL 4125403, at *4 (E.D. Va. Nov. 19, 2007) ("Because the trial date is far off and no discovery has been taken, the Court finds that allowing leave to amend the complaint would not be unduly prejudicial to Defendants."); *Knisely v. Nat'l Better Living Ass'n*, No. 3:14-CV-15, 2015 WL 1868819, at *8 (N.D. W.Va. Apr. 23, 2015) (finding that prejudice was not a basis for denying plaintiff's leave to amend post-discovery because defendant had adequate time to prepare for trial the following year). Thus, amending the Complaint to add these additional facts and the new APA claim will not prejudice Respondents in any way.

CONCLUSION

Petitioner attaches to this motion the proposed pleading as amended. *See* Exhibit A. For the convenience of the Court and Respondents, Petitioner also attaches a "redline" version of the proposed pleading showing the changes between the Amended Complaint, ECF 34, and the proposed Second Amended Complaint. *See* Exhibit B. Because justice requires Petitioner to present all of his claims, and because the amendment is not futile or made in bad faith and there will be no unfair prejudice to Respondents, Petitioner respectfully asks the Court to grant him leave to file the attached Second Amended Petition and Complaint.

Dated: June 23, 2025

Respectfully submitted,

/s/*Eden B. Heilman*

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**Admitted pro hac vice*
*** Pro hac vice application forthcoming*

Counsel for Petitioner

CERTIFICATE OF SERVICE

I, Eden Heilman, hereby certify that on this date, I uploaded a copy of Petitioner's Motion for Leave to File Second Amended Petition for Writ of Habeas Corpus and Complaint and any attachments using the CM/ECF system, which will cause notice to be served electronically to all parties.

Date: June 23, 2025

Respectfully submitted,

/s/ *Eden B. Heilman*
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