UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BHARATBHAI PATEL, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No. 1:26-cv-211

PETITIONER'S MOTION FOR RECONSIDERATION

Petitioner Bharatbhai Patel, through his counsel, hereby seeks reconsideration of the Court's March 6, 2026 Order denying Petitioner's request for a temporary restraining order and/or preliminary injunction. As set forth below, Petitioner argues that the burden should have been on Respondents to justify that they followed the proper procedures to revoke Petitioner's order of supervision.

I. Standard of Review for Reconsideration

Although the Federal Rules of Civil Procedure do not recognize a general motion for reconsideration, courts address such motions under Rules 54(b) for interlocutory orders. *Dos Santos v. Bell Helicopter Textron, Inc. Dist*., 651 F.Supp.2d 550, 553 (N.D.Tex.2009) (citing *Teal v. Eagle Fleet, Inc*., 933 F.2d 341, 347 (5th Cir.1991). Rule 54(b) states that "any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and inabilities." The standard of review for reconsideration of interlocutory orders is "'as

justice requires.'" *Contango Operators, Inc. v. U.S.*, 965 F.Supp.2d 791, 800 (S.D. Tex.2013) (citing *Judicial Watch v. Dep't of the Army*, 466 F.Supp.2d 112, 123 (D.D.C.2006) ("requiring a determination of whether reconsideration is necessary under the relevant circumstances"); *Dos Santos*, 651 F.Supp.2d at 553 ("whether to grant such a motion rests within the discretion of the court")).

II. Petitioner's *Zadvydas* Challenge is Ripe

The Court should reconsider that Petitioner's *Zadvydas* claim is not yet ripe. Here, the 90-day removal period authorized by statute lapsed a decade ago. There is nothing in the relevant statutory language to suggest that the removal period restarts or resets automatically with another arrest or subsequent redetention, and neither *Zadvydas* nor other Fifth Circuit cases direct the Court to treat the six-month presumption of reasonableness in this manner. *Chen v. Holder*, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015) ("Surely, under the reasoning of *Zadvydas*, a series of releases and redetentions by the government ... while technically not in violation of the presumptively reasonable jurisprudential six month removal period, in essence results in an indefinite period of detention, albeit executed in successive six month intervals."). *See also Tadros v. Noem,* 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) ("To the contrary, Tadros argues his final order of removal triggered the six-month detention period under *Zadvydas*, and thus lapsed long ago....Tadros has the better argument under *Zadvydas*."). Even so, nothing in *Zadvydas* forecloses such a challenge to detention before the presumptively constitutional time period has elapsed. *Villanueva v. Tate*, 801 F. Supp. 3d 689, 702 (S.D. Tex. 2025).

Accordingly, Petitioner's challenge that his detention under section 1231 is unreasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001) is not premature. Respondents waived any challenge to this conclusion by arguing solely that the Court lacked jurisdiction to hear

Petitioner's claims.

Moreover, while *Zadvydas* provides for a rebuttable presumption of reasonableness for the first six months of detention, Petitioner has provided evidence that his removal is neither "reasonably foreseeable" nor "practically attainable." *Zadvydas*, 533 U.S. at 690. That is because Petitioner maintains deferred action. As the Fifth Circuit concluded in *Texas v. United States*, considering *Reno*, deferred action is a "nonprosecution decision." *Texas v. United States*, 809 F.3d 134, 167–68 (5th Cir. 2015), *as revised* (Nov. 25, 2015). That is, "[t]o ameliorate a harsh and unjust outcome, the [DHS] may *decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation.* This commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action.... *Approval of deferred action status means that ... no action will thereafter be taken to proceed against an apparently deportable alien,* even on grounds normally regarded as aggravated." *Id.* (quoting *Reno v. American–Arab Anti–Discrimination Committee*, 525 U.S. 471, 484, 119 S.Ct. 936 (1999)) (emphasis in original).

Because Petitioner's deferred action has not been revoked by the government, there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.[1]

[1] At the hearing, the government argued that Petitioner's deferred action was revoked by his arrest. But *Reno* is clear that no action will e taken "even on grounds normally regarded as aggravated." And here, the government has provided no evidence that Petitioner has done anything to merit arrest or revocation of his supervision or deferred action. Indeed, the revocation notice itself points to Petitioner's bribery conviction—the same conviction for which he was placed on supervision. Nothing has changed, yet the government argues that it can detain and remove Petitioner. Not so. And either way, the government has waived this argument by not raising it in its papers or providing evidence to support that it provided any notice to Petitioner that his deferred action would be revoked. *See Gomez v. Olsen*, 2026 WL 413371, at *2 (S.D. Ind. Feb. 13, 2026) (granting release from immigration custody because respondents waived challenge to parole status and lawfulness of detention by not raising it in their response) (citation omitted).

III. Respondents Have Not Met Their Burden

In the Order, the Court determined that Petitioner failed to demonstrate that "Respondents will be unable to terminate his deferred action status in the foreseeable future, to then proceed with his removal." Order at 5. Putting aside that Respondents are actively proceeding with removal *without* terminating Petitioner's deferred action status, Petitioner contends that the burden should have been placed on Respondents to justify revocation of release while Petitioner maintains deferred action. *See Escalante v. Noem*, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) ("These regulations clearly indicate, upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the alien may be removed."); *Nguyen v. Noem*, 2026 WL 237282, at *8 (S.D. Tex. Jan. 28, 2026). ("Finding this reasoning persuasive, the Court arrives at the same conclusion that the burden for demonstrating a significant likelihood of removal in the reasonably foreseeable future should be placed on the government because the government must demonstrate some changed circumstances that justify redetention.").

Here, Respondents have waived any argument that the revocation was properly authorized or that Petitioner received the process required under Immigration Nationality Act and associated regulations.[2] Because Respondents have not met their burden to demonstrate that they followed the regulations when revoking Petitioner's supervised release, and because removal is not foreseeable, the Court should order Petitioner's release from custody. *Trejo v.*

[2] The Court indicated that Petitioner had failed to demonstrate that the signator of the revocation notice was properly delegated. Petitioner cannot know this information without discovery. Accordingly, should the Court deny this motion, Petitioner requests that the Court permit limited discovery on the issue of whether Petitioner's supervised release was revoked in accordance with the applicable regulations.

Warden of ERO El Paso E. Montana, 807 F. Supp. 3d 697, 711 n.3 (W.D. Tex. 2025) ("Some courts have found such failures to be, in and of themselves, violations of due process mandating habeas relief," citing *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 158–170 (W.D.N.Y. 2025)); *Zhang v. Genalo*, 2025 WL 3733542, at *16 (E.D.N.Y. Dec. 28, 2025) ("This Court thus joins the many other courts in this circuit who have ordered a petitioner's immediate release from detention after finding that ICE violated procedures under § 241.4(*l*) in revoking the petitioner's OSUP, either by failing to provide a legally sufficient notice of revocation, an informal interview, or both."); *see also id.* at *14 (placing burden as to whether revocation was lawful on respondents).

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WHEREFORE, Petitioner Bharathbai Patel respectfully requests that the Court reconsider its Order denying Petitioner's request for injunctive relief.

Dated: March 10, 2026

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this motion will be served on all counsel of record via CM/ECF.

/s/ James M. Slater
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