[UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BHARATBHAI PATEL,	§	
Petitioner,	§	
v.	§	
	§	CIVIL ACTION NO. 1:26-cv-00211
KRISTI NOEM, *et al*.	§	
Respondents.	§	

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S AMENDED MOTION FOR DISCOVERY (DKT. NO. 21), RESPONSE TO MOTION TO RECONSIDER (DKT NO. 16), AND MOTION FOR LEAVE TO AMEND (DKT. NO. 19)

Respondents ("the Government")[1] hereby respond to Petitioner's Amended Opposed Motion for Limited Discovery. (**Dkt. No. 21**). The Court ordered Respondents to file a response to this motion by April 24, 2026. (**Dkt. No. 22**). The Government opposes Petitioner's motion. Additionally, the Government responds to Petitioner's Motion for Reconsideration (**Dkt. No. 16**) and Motion for Leave to Amend (**Dkt. No. 19**).

APPLICABLE LAW

Rule 7 of the Rules Governing Section 2254 Cases authorizes a federal habeas court to expand the record to include additional material relevant to the petition in some situations. Specifically, Rule 7 provides:

> (a) In General. If the petition is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the petition. The judge may require that these materials be authenticated.
> (b) Types of Materials. The materials that may be required include letters predating the filing of the petition, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits may also be submitted and considered as part of the record.

[1] The proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

> (c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

Rule 7, Rules Governing Section 2254 Cases in the United States District Courts.

Although these rules are not specifically applicable to immigration habeas petitions, Rule 1(b) provides that a "district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."

The Supreme Court has made clear that "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Rather, pursuant to Rule (6)(a) of the Rules Governing § 2254 Cases in the United States District Courts, leave of court is required and a petitioner must show good cause before a party is authorized to conduct discovery. *Hill v. Johnson*, 210 F.3d 481, 487 (5th Cir. 2000). Relatedly, a request to expand the record must be "specific, as opposed to merely speculative or Conclusory." *Hill*, 210 F.3d at 487 The District Court has discretion in determining whether to expand the record, and good cause only exists "where specific allegations before the court show reasons to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief." *Bracy v. Gramley,* 520 U.S. 899, 908–09 (1997) (quoting *Harris v. Nelson,* 394 U.S. 286, 300 (1969)).

ARGUMENT

A. PETITIONER HAS NOT DEMONSTRATED GOOD CAUSE FOR DISCOVERY.

Petitioner has failed to demonstrate there is good cause for discovery or to expand the record in this case. Habeas only exists to "grant relief from unlawful imprisonment or custody and it cannot be used properly for any other purpose." *Pierre v. United States*, 525 F.2d 933, 935–36 (5th Cir. 1976). The current record is sufficient for the Court to answer this limited question.

Petitioner argues that "his order of supervision was revoked by a person other than the specific signatories permitted under the Code of Federal Regulations" and thus requests leave to issue written discovery "to explore whether the signatory on the Notice of Revocation acted without delegated authority." **Dkt. No. 21** at 2. As explained below, Petitioner's argument, even if true, does not make his detention unlawful or entitle him to release from custody.

Because Petitioner argues that the Government did not follow its own regulations, Petitioner is asserting what is commonly known as an *Accardi* doctrine claim, which is synonymous with a due process claim. *See Ayala Chapa v. Bondi*, 132 F.4th 796 (5th Cir. 2025) ("While it is a long-settled principle of administrative law that agencies must follow their own regulations . . . the proper vehicle for such claims is the Due Process Clause" (citations omitted)). The Fifth Circuit has held "[t]he failure of an agency to follow its own regulations is not a per se denial of due process unless the regulation is required by the constitution or a statute." *Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989). Moreover, violation of a regulation not required by the Constitution or a statute constitutes a denial of procedural due process only if the claimant shows "substantial prejudice" arising from the violation. *Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024) (quoting *Arzanipour*, 866 F.2d at 746).

Petitioner has not alleged or demonstrated (1) that the regulation is required by the Constitution or statute and (2) that he has suffered substantial prejudice stemming from the alleged regulatory violation. *Id.* at 465. In this case, the pertinent regulation, 8 C.F.R. § 241.4(l)(2) is not required by the Constitution or statute. As such, Petitioner must demonstrate substantial prejudice to prevail on his claim.

Even assuming that the Assistant Field Office Director ("AFOD")[2] did not possess the authority to revoke his OSUP, which is not the case, Petitioner cannot demonstrate substantial prejudice. Proving substantial prejudice requires the alien to show that the outcome would have been different but for the regulatory violation. *Francois*, 120 F.4th at 465. Petitioner cannot make this showing because the outcome would not have been different. Rather, DHS retains authority under 8 C.F.R. § 241.4(l) to correct any alleged regulatory violations. Therefore, even if the AFOD did not have the delegated authority to revoke Petitioner's OSUP, DHS can still have the FOD or another authorized official sign off on Petitioner's OSUP revocation paperwork. Accordingly, discovery is not necessary in this case as the outcome would not change.

Furthermore, Petitioner has not shown that his release from custody would be the appropriate remedy for any alleged regulatory violation. When an agency violates its own regulations, the typical remedy is setting aside the action and remanding the action back to the agency to correct the violation. *See, i.e., Chike v. I.N.S.*, 948 F.2d 961, 962 (5th Cir. 1991). This would be the appropriate remedy in this case, as placing in any impediment on DHS's ability to re-issue a notice of revocation of Petitioner's OSUP would be tantamount to a prohibition on the execution of Petitioner's final order of removal. This is because the authority to detain is elemental to the authority to deport, as "[d]etention is necessarily a part of th[e] deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for

[2] Importantly, a Field Office Director ("FOD") is authorized to revoke an OSUP under 8 C.F.R. § 241.4(l), as a FOD is considered a "district director" under 8 C.F.R. § 1.2. An AFOD is an ICE official who works directly under the FOD and is delegated authority to act on behalf of the FOD. Under agency law, the AFOD would be an agent of the FOD, who would be the principal. In this principal-agent relationship, an AFOD would have implied authority to revoke an OSUP, even if the authority wasn't delegated expressly.

their deportation."). The Court, however, lacks jurisdiction to impede DHS's ability to execute final orders of removal. *See* 8 U.S.C. § 1252(g). Therefore, the appropriate remedy must be to allow DHS to correct any alleged regulatory violation.

Finally, this Court has already held that an order directing immigration officials to a correct regulatory violation pursuant to 8 C.F.R. § 241.4(l) is the appropriate remedy. *See Doe v. Lyons, et al.*, No. 1:25-cv-350, ECF. No. 19 (S.D. Tex. Mar. 26, 2026) (Olvera, J.) (Order and Opinion). As the appropriate remedy is to remand the issue to DHS to correct the regulatory violation, and the appropriate remedy is not release from custody, discovery would have little meaningful impact on the ultimate resolution of this case. As such, Petitioner's motion should be denied because Petitioner has not demonstrated that the request for discovery would ultimately lead to his requested relief of release from custody. **Dkt. No. 1** at 9.

Respondents respectfully contend that no additional records are required for the Court to rule on this issue, and there is no good cause to order discovery or expand the record. For the same reasons, Petitioner's request for leave to amend his petition (**Dkt. No. 19**) is futile, as Petitioner's regulatory violation argument fails to state a claim upon which relief can be granted. *See Legate v. Livingston*, 822 F.3d 207, 211 (5th Cir. 2016).

B. PETITIONER'S MOTION FOR RECONSIDERATION DOES NOT DEMONSTRATE AN ERROR OF LAW

Petitioner's Motion for Reconsideration (Dkt. No. 16) should be denied because it fails to correct a clear error of law. Under Federal Rule of Civil Procedure 59(e), courts may reconsider prior rulings based upon "(a) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice." *In re Benjamin Moore & Co.*, 318 F.3d 626, 629 (5th Cir. 2002). Rule 54(b) provides that "any order ... that adjudicates fewer than all the claims or the rights and liabilities of fewer

than all the parties ... may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." A district court in this context is permitted "to reconsider and reverse its decision for any reason it deems sufficient." *McClendon v United States*, 892 F3d 775, 781 (5th Cir 2018), citing *Austin v Kroger Texas LP*, 864 F3d 326, 336 (5th Cir 2017).

First, Petitioner argues that the Court should revisit its conclusion that Petitioner's Zadvydas claim is not yet ripe. **Dkt. No. 16** at 2. According to Petitioner, "the 90-day removal period authorized by statute lapsed a decade ago." *Id.* Petitioner, however, conflates the "removal period" in § 1231(a)(1) with the detention authority in § 1231(a)(6). They are not synonymous. The statute clearly distinguishes the detention authority in § 1231(a)(6) from the removal period in § 1231(a)(1) by authorizing an alien's detention "beyond the removal period." 8 U.S.C. § 1231(a)(6). In other words, just because the § 1231(a)(1) removal period has reached 180 days does not mean that a petitioner can invoke *Zadvydas* if he has not actually been detained for 180 days. The Supreme Court's concern in *Zadvydas* was the "prospect of lengthy, even unending, detention" under § 1231(a)(6). 533 U.S. at 706 (Scalia, J., dissenting). In this case, Petitioner has been detained for 148 days under § 1231(a)(6) since he was detained on November 28, 2025. At this juncture, Petitioner cannot invoke *Zadvydas* because he has not been detained longer than the Constitutionally permissible period in which an alien may be detained under 8 U.S.C. § 1231(a)(6). *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (explaining that *Zadvydas* "created a '6-month presumption' of the validity of detention under § 1231, *after which* an alien could attack the reasonableness of his continued detention." (emphasis added)); *see also Chance v. Napolitano*, 453 F. App'x 535 (5th Cir. 2011); *Cruz v. Lumpkin*, No. CV H-23-2224, 2023 WL 4566252 (S.D. Tex. July 17, 2023).

Petitioner further argues that he may challenge the reasonableness of his detention within the six-month period. **Dkt. No. 16** at 3. On the contrary, the Supreme Court recognized in *Zadvydas* that a reasonableness standard, standing alone, would cause too much judicial interference with the Executive's ability to execute removal orders. *Zadvydas v. Davis*, 533 U.S. 678 (2001). As such, the Court found it necessary to "limit" its reasonableness standard by recognizing a "presumptively reasonable period of detention" of "six months." *Id.* at 701. This Court has recognized the lawfulness of the presumptively reasonable six-month period of post-removal-period detention in § 1231(a)(6) and rejected the argument proposed by Petitioner that the reasonableness of his detention may be rebutted within the six-month period. *See Arilson P. C. v. Warden, Port Isabel Serv. Processing Ctr., et al.*, No. 1:26-cv-00084, slip op. (S.D. Tex. Apr. 9, 2026); *Seergevna v. ICE*, No. 1:25-cv-00234, slip op. (S.D. Tex. Mar. 12, 2025).

Additionally, Petitioner argues that the Government "waived any argument that the revocation [of his OSUP] was properly authorized or that Petitioner received the process required." **Dkt. No. 16** at 4. The Government's motion for summary judgment (**Dkt. No. 11**) was responding to the claims in the initial Petition. Petitioner, however, did not raise the issue of his OSUP revocation in the initial Petition. *See* **Dkt. No. 1**. The Government could not have waived any arguments relating to Petitioner's OSUP revocation because the Government could not have responded to a claim that was not raised in the initial Petition. For these reasons, Petitioner has not demonstrated a clear error of law that warrants granting his motion for reconsideration.

Finally, the Government responds to Petitioner's claim that his removal is being actively pursued without termination of his deferred action. **Dkt. No. 16** at 4. The Government did previously argue that it can remove aliens notwithstanding deferred action, as deferred action is merely a form of prosecutorial discretion that can be revoked at any time. *See* **Dkt. No. 11**.

However, DHS has decided, in this case, that Petitioner's deferred action must be terminated prior to his removal. DHS is not prohibited from detaining Petitioner pending a determination of whether his deferred action should be terminated.

CONCLUSION

For the foregoing reasons, the Court should deny Petitioner's Amended Opposed Motion for Limited Discovery. (**Dkt. No. 21**), Motion for Leave to Amend (**Dkt. No. 19**), and Motion for Reconsideration (**Dkt. No. 16**).

Dated: April 25, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 25, 2026, the foregoing was filed and served through the Court's CM/ECF system.

s/ Alexander McDonough
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