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 REPLY IN SUPPORT OF MOTIONS FOR RECONSIDERATION, DISCOVERY, AND TO AMEND

Pursuant to the Court's April 10, 2026 Order (Doc. 22), Petitioner Bharatbhai Patel, through his counsel, files this reply in support of his pending motions for reconsideration, limited discovery, and to amend his petition. Each matter is addressed in turn.

I. Respondents Admit They Are Unlawfully Detaining Petitioner While He Maintains Deferred Action

At the hearing on Petitioner's motion for temporary restraining order and/or preliminary injunction, Respondents argued that Petitioner's deferred action was revoked by operation of his detention. *See also* Response at 7 ("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."). Petitioner argued, to the contrary, that he was entitled to due process prior to any such revocation, and that with such deferred action, he was not removable. Now Respondents concede that they never revoked Petitioner's deferred action and instead have decided "in this case, that Petitioner's deferred action must be terminated prior to his removal." *Id.* at 8. Respondents argue, however, that it is not prohibited from detaining

Petitioner—possibly indefinitely—"pending a determination of whether his deferred action should be terminated." *Id.* That cannot be correct. Either the government has revoked Mr. Petitioner's deferred action (sufficient with due process requirements) to effectuate his removal, or it has not and he is not presently removable.

Because Respondents concede that they have not revoked Petitioner's deferred action, he is not removable *and* there is certainly no significant likelihood of removal in the reasonably foreseeable future. *See Benitez-Umanzor v. Jackson Par. Corr. Ctr.*, 2026 WL 838006, at *2 (W.D. La. Mar. 26, 2026) ("Petitioner may still be subject to removal on some future date if his deferred action status is terminated or expires. But until then, Petitioner is not removable while his deferred action status remains in effect.").

The Court should order Petitioner's release from ICE custody. Certainly, if the government properly revokes Petitioner's deferred action in the future, the circumstances would be different.

II. It Was the Government's Burden to Show that Removal is Foreseeable Following Revocation of Petitioner's Order of Supervision

Once a noncitizen has been released from detention under an order of supervision ("OSUP"), it may be revoked (1) if the noncitizen violates his conditions of release, (2) in order to carry out deportation, (3) if the purpose of release has been served, or (4) if the noncitizen's conduct or another circumstance indicates that release is no longer appropriate. 8 C.F.R. §§ 241.13(i), 241.4(l)(2). Respondents make no representation that there are any changed circumstances. Indeed, the notice of revocation shows none. Thus, Petitioner was detained to effectuate deportation.

If an OSUP is revoked for the purpose of effectuating deportation, ICE must show that "on account of changed circumstances, ... there is a **significant likelihood** that the [noncitizen]

may be removed in the **reasonably foreseeable** future." 8 C.F.R. § 241.13(i)(2) (emphasis added). That is, to re-detain a formerly released noncitizen, it is Respondents' burden to show that the noncitizen's removal from the country is significantly likely to occur in the reasonably foreseeable future. *See Garcia-Aleman v. Thompson*, 2025 WL 3534806, at *4 (W.D. Tex. Nov. 24, 2025), *R&R adopted*, 2025 WL 3532179 (W.D. Tex. Dec. 9, 2025) (collecting cases); *J.L.R.P. v. Wofford*, 2025 WL 3190589, at *4 (E.D. Cal. Nov. 14, 2025) ("[W]hen ICE revokes the [OSUP] of a noncitizen who has been ordered removed to effectuate that noncitizen's removal, it is [ICE's] burden to show a significant likelihood that the alien may be removed.") (citation modified); *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.").

The government failed to meet its burden at the TRO hearing because it did not demonstrate that it was significantly likely that Petitioner would be removed. Its concessions now doom any such argument—ICE cannot show that it is significantly likely, because it concedes Petitioner maintains deferred action.

The Court held that it was Petitioner's burden to show that his deferred action would not be terminated in the near future to effectuate removal. But if Petitioner has deferred action, he is currently not removable and should not be held for some indefinite period while Respondents make efforts to revoke it. The burden is squarely on Respondents to show likelihood of removal.

They did not carry their burden, and they cannot while Petitioner maintains deferred action. The Court should reconsider its order denying the TRO and instead grant the petition and order Petitioner's release from ICE custody.

III. In the Alternative, Discovery is Appropriate and Amendment is Not Futile

Respondents argue that discovery is not appropriate because even if they failed to follow their regulations, Petitioner would not be entitled to release. They argue that the regulations are not "required by Constitution or statute" and that Petitioner has not demonstrated any prejudice from the government failing to comply with its rules and regulations. Each is addressed in turn.

First, the "[f]ailure to adhere to regulations can constitute a denial of due process of law." *Arzanipour v. I.N.S.*, 866 F.2d 743, 746 (5th Cir. 1989) (first citing *Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954)); *see also Gov't of Canal Zone v. Brooks*, 427 F.2d 346, 347 (5th Cir. 1970) ("It is equally well established that it is a denial of due process for any government agency to fail to follow its own regulations providing for procedural safeguards to persons involved in adjudicative processes before it." (citing cases)).

Contrary to Respondents' position, courts in this Circuit have held that revocation of supervision by someone without the authority to do so and for a reason not lawfully permitted fails to satisfy due process. *Rodriguez Romero v. Ladwig*, 2026 WL 321437, at *10 (M.D. La. Feb. 6, 2026) ("And so, courts have overwhelmingly ruled that the revocation regulations provide important procedural safeguards and are intended to protect a fundamental right derived from the constitution—liberty."); *see also Villanueva v. Tate,* 801 F. Supp. 3d 689, 699–700 (S.D. Tex. 2025) ("In the absence of some evidence showing that [the] Order of Supervision was lawfully revoked by someone with the authority to do so and for a reason lawfully permitted, the government has failed to show that it afforded Villanueva with due process in connection with the purported revocation of his Order of Supervision."); *Bonitto v. Bureau of Immigr. & Customs*

Enf't, 547 F. Supp. 2d 747, 755–56 (S.D. Tex. 2008) ("Where individual interests are implicated, the Due Process clause requires that an executive agency adhere to the standards by which it professes its action to be judged. The regulations involved here [(8 C.F.R. §§ 241.4, 241.13)] do not merely facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees. This Court must insist on DHS's compliance with the post-order custody regulations" for detention to be considered constitutional.).

Courts in this District have also held that the agency's failure to adhere to these regulations necessitates release from detention. *See, e.g.*, *Misirbekov v. Venegas*, 796 F. Supp. 3d 436, 439–40 (S.D. Tex. 2025) ("The review process contemplated by the regulations [(8 C.F.R. § 241.4)] is a meaningful individualized review, as the interest involved is the most elemental of liberty interests—the interest in being free from physical detention. The record shows that Petitioner has not been afforded this process." For that reason, the court ordered the non-citizens' release from detention.). Thus, Respondents' argument that the regulations are "not required" or that there is no remedy even if Respondents' ignored those regulations, are nonstarters.

Second, the prejudice to Petitioner in the government failing to adhere to its rules and regulations is presumed. *Delgado-Corea v. Immigr. & Naturalization Serv.*, 804 F.2d 261, 263 (4th Cir. 1986) (prejudice may be presumed when "compliance with the regulation is mandated by the Constitution" and "where an entire procedural framework, designed to ensure the fair processing of an action affecting an individual is created but then not followed by an agency."); *see also Villanueva*, 801 F. Supp. 3d at 698–99 ("The statutes and regulations governing immigration and removal proceedings afford important procedural safeguards to detainees.").

The regulations are intended to ensure that noncitizens like Petitioner who have been released to supervision do not face the exact circumstances here: that their supervision be

arbitrarily revoked. *Gurung v. Warden, S. Tex. ICE Processing Ctr.*, No. 25-1614, 2026 WL 93145, at *8 (W.D. Tex. Jan. 6, 2026) ("Again, the government can have no legitimate interest in ignoring its own regulations, which are intended to ensure that the discretion afforded to the government's agents is not exercised arbitrarily.").

Because Petitioner has satisfied his burden in demonstrating that limited discovery is appropriate—particularly considering the Court's ruling that "Petitioner has not carried his burden to demonstrate that the signator on the Notice of Revocation acted without delegated authority." Order Denying TRO at 5. If Respondents failed to follow the rules, there is decisional authority in this District where the remedy is release.

Finally, should the Court not reconsider its order denying the TRO, then Petitioner should be permitted to amend his petition to raise *Accardi* and for violations of the Immigration and Nationality Act and Administrative Procedure Act. Respondents simply argue that such amendment would be futile for the same reasons why they believe discovery is inappropriate. But these claims are viable and the Court should permit Petitioner to challenge the agency's apparent arbitrary revocation of his OSUP and associated claims.

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WHEREFORE, Petitioner Bharathbai Patel respectfully requests that the Court reconsider its Order denying Petitioner's request for injunctive relief, or in the alternative, permit him to amend his petition and conduct limited discovery.

Dated: May 1, 2026

/s/ James M. Slater

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CERTIFICATE OF SERVICE

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

Dated: May 1, 2026

/s/ James M. Slater
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