

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02059-DDD-STV

HOSSEIN BATOIE,

Petitioner,

v.

JUAN BALTAZAR, Acting Warden, Aurora ICE Processing Center,  
ROBERT GUADIAN, Field Office Director, U.S. Immigration & Customs Enforcement, U.S.  
Department of Homeland Security,  
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and  
PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice, in their official  
capacities,

Respondents.

---

**UNOPPOSED MOTION TO VACATE DISCOVERY HEARING  
DUE TO LAPSE IN CONGRESSIONAL APPROPRIATIONS**

---

Respondents move, under Fed. R. Civ. P. 6(b), to vacate the discovery dispute hearing currently set for Thursday, October 2, 2025. Respondents seek this extension on the following grounds:

1. At the end of the day on September 30, 2025, the appropriations that had been funding the Department of Justice expired, and appropriations to the Department lapsed. The same is true for most Executive Branch agencies. It is uncertain when funding will be restored.
2. Absent an appropriation, Department of Justice attorneys who are not in an “excepted” position are prohibited by law from working, even on a voluntary basis, except in very limited circumstances, “including emergencies involving the safety of human life or the protection

of property.” 31 U.S.C. § 1342. Most Assistant United States Attorney positions in the Civil Division are not deemed to be “excepted” positions. Due to the lapse in appropriations, undersigned counsel are prohibited from working on this matter.<sup>1</sup>

3. Because it is unknown how long this funding lapse will continue, and because undersigned counsel is not permitted to work on this case during the lapse, Respondents move to vacate the discovery dispute hearing currently set for October 2, 2025. Respondents respectfully request that the Court reset the hearing for a time mutually convenient to the Court and the parties after appropriations have been restored to the Department of Justice. Respondents greatly regret any disruption caused to the Court and to Petitioner.

4. The motion is appropriate under the factors set forth in *United States v. West*, 828 F.2d 1468, 1470-71 (10th Cir. 1987); *see also* DDD Civ. P.S. I(F) (motions to vacate or reset will be determined by the standards set forth in *West*). Respondents have been diligent—they are prepared for the hearing but their counsel is prohibited from appearing for it. The continuance would also be useful because it would permit the hearing to be rescheduled for a time when counsel for Respondents may participate. Because there are no other pending deadlines in the case, the continuance would not inconvenience the parties or the Court. And the balance of need and prejudice similarly weighs in favor of a continuance.

5. If this motion is granted, undersigned counsel will notify the Court when Congress has appropriated funds for the Department by filing a status report within three business days after such appropriation.

---

<sup>1</sup> Government employees are permitted to perform four hours of orderly shutdown activities, including filing motions for extension of time such as this one.

6. Undersigned counsel certifies, under D.C.COLO.LCivR 6.1(b), that this is the first request to vacate the discovery dispute hearing. Respondents have filed two prior motions for extensions of time in this matter. There are no other pending deadlines in this matter, and so the request to vacate the hearing will not otherwise affect the timely and efficient administration of this case.

7. Undersigned counsel certifies, under D.C.COLO.LCivR 6.1(c), that a copy of this motion will be served on Petitioner and upon agency counsel, as a representative for Respondents.

8. Undersigned counsel certifies under D.C.COLO.L.CivR 7.1(a) that undersigned counsel conferred about this motion with Petitioner's's counsel and was informed that Petitioner does not oppose this motion.

9. Pursuant to D.C.COLO.LCivR 7.1(g), Respondents are filing a proposed order with this motion

10. For the reasons set forth above, Respondents respectfully request that the Court issue an order vacating the discovery hearing.

///

///

///

Dated: October 1, 2025.

Respectfully submitted,

PETER MCNEILLY  
United States Attorney

*s/ V. William Scarpato III*

---

V. William Scarpato III  
Nick Deuschle  
Assistant United States Attorneys  
1801 California Street, Suite 1600  
Denver, Colorado 80202  
Telephone: (303) 454-0100  
Fax: (303) 454-0407  
Victor.Scarpato@usdoj.gov

Counsel for Respondents

#### **CERTIFICATE OF COMPLIANCE**

Counsel for Respondents hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

**CERTIFICATE OF SERVICE**

I certify that on October 1, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

Laura L. Lichter  
Mark Robert Barr  
Lichter Immigration  
1601 Vine Street  
Denver, CO 80206-1117  
Llichter@lichterimmigration.com  
Mbarr@lichterimmigration.com

*Attorneys for Petitioner*

and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

Candice Kasperson (email)  
Assistant Chief Counsel  
Office of the Principal Legal Advisor, Denver  
U.S. Immigration and Customs Enforcement  
Candice.Kasperson@ice.dhs.gov

*s/ V. William Scarpato III*  
\_\_\_\_\_  
V. William Scarpato III