

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

Civil Action No. 26-cv-00289-RMR

LUIS GONZALEZ TOMATZIN,

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as Warden of the Aurora ICE Processing Center,

GEORGE VALDEZ, in his official capacity as Field Office Director of the Aurora Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement

TODD M. LYONS, in his official capacity as Acting Director, Immigration and Customs Enforcement,

KRISTI NOEM, in her official capacity as Secretary, U.S. Department of Homeland Security, and

PAMELA JO BONDI, in her official capacity as Attorney General of the United States,

Respondents.

**MOTION TO PARTIALLY VACATE
THE COURT'S MARCH 6, 2026 ORDER (ECF No. 11)**

Respondents respectfully submit the following Motion, requesting that the Court vacate, in part, its Order on the Petition for Writ of Habeas Corpus (ECF No. 11).

Pursuant to D.C.COLO.L.CivR 7.1(a), undersigned counsel certifies that she conferred with Petitioner, through counsel, about this motion and he opposes the relief sought because he believes the bond hearing requirement should be modified instead of vacated.

Pursuant to the Court's Order, Respondents released Petitioner from custody on March 6, 2026. See ECF No. 12. Petitioner's immigration proceedings will proceed in the non-detained docket,¹ and Respondents do not intend to re-detain Petitioner absent a change in circumstances. Respondents therefore request that the Court vacate the portion of its Order directing Respondents to provide Petitioner with a bond hearing, and in support, provide the following grounds:

In December 2025, Petitioner was detained by Immigration and Customs Enforcement (ICE). ECF No. 1 ¶ 63. On January 23, 2026, he filed this habeas proceeding, challenging his detention under 8 U.S.C. § 1225(b)(2) on legal grounds. See *generally* ECF No. 1. Following briefing on the Petition, on March 6, 2026, the Court entered an Order directing Respondents to: (1) immediately release Petitioner within 24 hours of the Order; (2) file a status report within two days of the Order to certify compliance; (3) provide Petitioner with a bond hearing under 8 U.S.C. § 1226(a) within five days of the date of the Order at which time the government will bear the burden of justifying Petitioner's continued detention by clear and convincing evidence of dangerousness or flight risk; and (4) file a status report confirming compliance within two days of that hearing. See ECF No. 11 at 4-5.

Pursuant to the Court's Order, Respondents released Petitioner on March 6, 2026. See ECF No. 12. Upon release, Petitioner's immigration proceedings will be transferred to the immigration court's non-detained docket. Respondents have no intent

¹ Upon conferral with Petitioner's counsel, undersigned counsel was informed that Petitioner's proceedings have not yet been moved to the non-detained docket as of the date of this filing.

to re-detain Petitioner absent new circumstances (for example, if Petitioner were to commit a crime warranting detention under 8 U.S.C. § 1226(c)). Accordingly, in light of the change in Petitioner's custody status, it is Respondents position that a bond hearing is not necessary and holding one would not serve any functional purpose. See *Navas Medina v. Baltazar*, 25-cv-03919-RMR, ECF No. 21 (granting Respondents' motion to partially vacate the portion of the Court's Order directing Respondents to hold a bond hearing after the petitioner was released).

The Court has discretion to vacate the portion of its prior order that directed Respondents to hold a bond hearing. See, e.g., *Elephant Butte Ir. Dist. of N.M. v. U.S. Dep't of Interior*, 538 F.3d 1299, 1306 (10th Cir. 2008) ("[E]very order short of a final decree is subject to reopening at the discretion of the district judge." (citation omitted)); *Friedman v. Dollar Thrifty Auto. Grp., Inc.*, No. 12-cv-02432-WYD-KMT, 2015 WL 8479746, at *2 (D. Colo. Dec. 10, 2015) (noting that the court has "plenary power to revisit and amend interlocutory orders as justice requires" (citation omitted)).

For the reasons stated herein, Respondents respectfully request that the Court exercise its discretion to vacate the portion of its order directing Respondents to hold a bond hearing.

Dated: March 9, 2026

PETER MCNEILLY
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s/ Erika A. Kelley
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2026, 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:

Scott Brian Petiya
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Counsel for Petitioner

s/ Erika A. Kelley
U.S. Attorney's Office