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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-J-M-A-,

Petitioner,

v.

JULIO HERNANDEZ; TODD LYONS; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN; U.S. DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE,

Respondents.

Case No.: 6:25-cv-02011-MTK

UNOPPOSED MOTION TO EXTEND DEADLINE TO RESPOND TO MOTION TO COMPEL

Discovery is not and has never been necessary in deciding this case. And even if it was, Petitioner fails to demonstrate why the discovery she seeks is warranted. For the reasons described herein, Respondents request the Court deny Petitioner's motion to compel.

BACKGROUND

On October 30, 2025, Petitioner filed a habeas petition. On October 31, 2025, the Court held a status conference during which Petitioner's counsel made an oral motion for discovery. Tr. 21:21–23:12 (Oct. 31, 2025). The Court granted Petitioner's request. Dkt. 13 at 3. On November 1, 2025, Petitioner propounded three Requests for Production ("RFPs"). Dkt. No. 36-1.

On June 25, 2026, the Court held another status conference, during which, Respondents asked the Court to refrain from ordering further discovery before ruling on Respondents' dispositive motion to dismiss that rests on entirely jurisdictional arguments. Tr. 18:7–21. On July 21, 2026, after the motion to dismiss the habeas counts was fully briefed, the Court invited Petitioner to file a motion to compel on her habeas discovery dispute by August 14, 2026. Dkt. 115.

LEGAL STANDARD

Under Rule 37 of the Federal Rules of Civil Procedure, "a party seeking discovery may move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P. 37(a)(3)(B). "The party moving to compel bears the burden of informing the court (1) which discovery requests are the subject of the motion to compel, (2) which of the responses are disputed, (3) why the party believes the response is deficient, (4) why any objections are not justified, and (5) why the information sought through discovery is relevant to the prosecution of this action." *Stephenson v. Cnty. of Placer*, No. 2:20-CV-2227, 2023 WL 8261546, at *3 (E.D. Cal. Nov. 29, 2023) (citations omitted).

ARGUMENT

I. Discovery is unnecessary to resolve this case.

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). Only for good cause is discovery allowed in a habeas petition. *Rich v. Calderon*, 187 F.3d 1064, 1068 (9th Cir. 1999). "Good cause exists 'where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief . . . .'" *Smith v. Mahoney*, 611 F.3d 978, 996 (9th Cir. 2010) (quoting *Bracy*, 520 U.S. at 908–09).

In the instant case, development of the factual record will not help Petitioner demonstrate she is entitled to relief. Nor would it have ever helped Petitioner. That is because her claims—challenging her stop and arrest—are not appropriately raised in a habeas petition, and if they were, the petition became moot when she was released from immigration custody without collateral consequences. The Motion to Dismiss Counts 1–6 is dispositive because this Court lacks jurisdiction. Dkt. 100. Legal precedent necessitates dismissal, mooting Petitioner's continued discovery disputes. Granting the motion to dismiss obviates the need for more discovery.

But even if the Court disagrees with Respondents' jurisdictional arguments, Petitioner cannot demonstrate that further factual development will entitle her to relief. Before the Court is a robust record consisting of hundreds of pages of documentary discovery and nine witnesses' testimony. Each witness was subject to cross-examination as well as questioning and credibility evaluation by the Court. And at the end of the two-day evidentiary hearing, the Court indicated it had a sufficient record to decide the petition:

> As it relates to that one petitioner [M-J-M-A-] and -- you know, I agree that I have more than enough of a record to move forward on that matter.

Tr. 448:11–13 (Dec. 3, 2025, Vol. 2). Two days later, the Court affirmed its statement when it issued the following order:

> The Court has preliminarily considered the evidence presented on the Petition for Writ of Habeas Corpus and is inclined to grant the petition at least as it relates to Claims 5 and 6.

Dkt. 51. The relief Petitioner requests in her motion to compel will not lead to relevant discovery to help her prove her claims. What she seeks is unduly burdensome and beyond the scope of what is necessary for a single person's habeas petition. Because further discovery is not necessary to resolve this case, the Court deny the motion to compel.

II. Even if discovery was appropriate, Petitioner has not met her burden to compel the discovery she seeks.

A. Petitioner has not demonstrated she is entitled to information covered by the law enforcement privilege.

As explained below, Respondents have properly invoked the law enforcement privilege for CBP_000666–83, 687–89, 691–712, and 744–756.

1. Respondents properly invoked the law enforcement privilege.

While the Ninth Circuit has not explicitly recognized the law enforcement privilege, it has opined on the district court's assessment of the privilege. *See Shah v. U.S. Dep't of Justice*, 714 F. App. 657, 659 n. 1 (9th Cir. 2017). The privilege is readily recognized by other courts. *See, e.g., In re City of New York*, 607 F.3d 923, 940–41 (2d Cir. 2010); *Commonwealth of Puerto Rico v. United States*, 490 F.3d 50, 64 (1st Cir. 2007); *In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir. 1988); *Hemstreet v. Duncan*, No. CV–07–732, 2007 WL 4287602, * 2 (D. Or. Dec. 4, 2007). The purpose of the law enforcement privilege is "to prevent disclosure of information that would be contrary to the public interest in the effective functioning of law enforcement." *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-2366, 2020 WL 3487823, at *2 (S.D. Cal. June 26, 2020) (cleaned up).

In order to invoke the law enforcement privilege, the following requirements must be met: (1) the party asserting the privilege must make a formal claim of privilege by the head of the department with control over the requested information; (2) the assertion of privilege must be based on personal consideration by that official; and (3) the information for which the privilege is claimed must be specified with an explanation as to why it falls within the scope of the privilege. *Roman v. Wolf*, 2020 WL 6588399, *2 (C.D. Cal. July 16, 2020) (subsequent history omitted).

i. The proper declarants attested to the law enforcement privileged information.

The law enforcement[1] may be invoked by "an appropriate agency official" instead of a department head. *See Landry v. F.D.I.C.*, 204 F.3d 1125, 1135-36 (D.C. Cir. 2000) ("For these privileges, it would be counterproductive to read 'head of the department' in the narrowest possible way. The procedural requirements are designed to "ensure that the privilege[s are] presented in a deliberate, considered, and reasonably specific manner." (citation omitted)). The assertion should be made by someone who has reviewed the redacted documents and can explain the need for the privilege and redactions. *See Lein v. City of San Diego*, No. 21-cv-224, 2022 WL 134896, at *3 (S.D. Cal. Jan. 1, 2022) (rejecting argument police captain's declaration was insufficient because he was not a head of the department).

In this case, each declarant has appropriately attested to the particular position he holds or held, explained how that role makes him familiar with the contents and purpose of the document, and the reasons for asserting law enforcement privilege over the material in the document. Petitioner's narrow reading on the proper declarant for invoking the law enforcement privilege is unsupported by law or logic.

ii. Respondents did not waive the privilege.

Submitting a declaration after asserting the document is privileged does not result in an "automatic waiver" of such privileges. *E.g., Noble v. City of Fresno*, No.

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[1] The law enforcement privilege is sometimes referred to as the ongoing investigation privilege or the official information privilege. *See Al Otro Lado, Inc.*, 2020 WL 3487823, at *2 n.3.

116-cv-01690, 2018 WL 1381945, at *6 (E.D. Cal. Mar. 19, 2018) (citing *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Ct. for the Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005) (declining to find the defendants waived the official information privilege for providing a declaration after asserting the privilege)); *see also Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 134 n.13 (D.D.C. 2005) ("[D]efendant is correct: the government had no obligation to formally invoke the privilege in advance of the motion to compel.")). Case law does not support Petitioner's request that this Court require a declaration to be served at the same time as objections asserting the privilege and find that the privilege has otherwise been waived.

2. The privilege covers the documents CBP intends to protect.

Law enforcement privilege applies to information well outside of a particular investigation or operation. It protects any information the disclosure of which would be contrary to the public interest in the effective functioning of law enforcement. In this case, the declarations articulate how the revelation of the redacted information would have a significant negative impact on the functioning of CBP's law enforcement mission, would compromise safety, undermine targeting techniques, and chill sharing of critical information needed to prevent crime.

Even if there is a question of the need to disclose the information, the equities weigh heavily in favor of not disclosing. Petitioner provides no explanation of why revelation of this information is necessary to make her habeas claim. *See* Fed. R. Civ. P. 26(b)(1). Because Petitioner has not articulated a reason that would necessitate disclosure of the information and CBP has met its burden to invoke the law enforcement privilege, the Court should deny Petitioner's request to compel the production of privileged materials.

3. Disclosure under the protective order does not sufficiently protect the privileged information.

Relatedly, disclosure of the privileged information pursuant to the protective order does not adequately remedy CBP's concerns. The protective order does not even have an Attorney's Eyes Only provision. But a protective order, no matter how robust, does not suffice to protect this material from public or unauthorized disclosure. There are numerous mechanisms to make documents produced as confidential under a protective order public due to various state public disclosure laws, court disclosure requirements, and possible third-party subpoenas. Once LEP information is shared unredacted, it becomes challenging, if not impossible, to protect it from becoming accessible to individuals who intend to exploit the information. This impact outweighs Petitioner's need for this information.

B. Respondents' productions were sufficient.

Petitioner yet again argues, without explanation or support, that Respondents' production is deficient. Respondents reiterate their responses to Petitioner's disputes from their June 12, 2025, discovery letter. *See* Dkt. 122-9.

i. "Request #2"[2]

Petitioner requested "documents related to 'some intelligence to go to various

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[2] For the Court's ease of reference, Respondents refer to Petitioner's labeling of their document categorizations as "Requests." Respondents disagree with these categories of documents being characterized as RFPs.

addresses throughout Woodburn that has an immigration nexus.'" Dkt. 122-3 at 4. Respondents produced the "target packages" that were distributed to the teams in Woodburn on October 30. ICE_000216–233; *see also* Dkt. 122-9 at 5. The target packages are the only responsive documentation.

ii. "Request #3"

Respondents produced the target packages that were distributed to the teams sent to Woodburn, Oregon, on October 30, 2025. Respondents also informed Petitioner that "no record of the search results was created from the search related to the registered owner. Respondents provided a record of Officer J.A.'s searches regarding the registered owner of the vehicle." Dkt. 122-9 at 5; CBP_000827 (listing license plate and name of registered owner).

iii. "Request #4"

Respondents used Petitioner's discovery subcategories as search terms and provided all responsive documentation. Dkt. 122-9 at 6.

iv. "Request #5"

"ICE conducted a reasonably diligent search of custodial officers' emails accounts for the period of 10/29/2025 through 10/31/2025. All responsive emails located have been produced." Dkt. 122-9 at 6.

v. "Request #6"

ICE and CBP conducted searches regarding the Black Rose email inbox as outlined in their June 12 discovery letter. Dkt. 122-9 at 7. All responsive documentation was produced. *Id.*

vi. "Request #7"

As discussed below, Petitioner's contention about redactions are without merit because she is not entitled to third parties' PII in her individual habeas petition.

vii. "Request #9"

With respect to the "target packages" Officer J.B. created, none of them related to Petitioner because she was a collateral. He also testified that he threw out his papers after leaving Portland and did not save them. Tr. 231:24–233:15. Respondents are not obligated to create evidence that does not exist or recreate destroyed documents. *See McDonald v. BP Exploration & Production Inc.*, No. 17-4432, 2023 WL 6389767, at *3 (E.D. La. Oct. 2, 2023) ("The duty to preserve evidence does not include the duty to create evidence." (citations omitted)); *cf. Lamon v. Adams*, No. 1:09–cv–00205, 2015 WL 1879606, at *3 (E.D. Cal. Apr. 22, 2015) (holding the court cannot issue sanctions based on a party's failure to create evidence because Rule 34 contemplates the production of existing items). Additionally, Officer J.B. was directed to search his phone and produce all pictures for the period of 10/29/2025 through 10/31/2025. All pictures Officer J.B. took on his phone from 10/29/2025 through 10/31/2025 have been produced. Dkt. 122-9 at 7–8. Therefore, no examination of his phone is necessary.

Respondents produced CBPO MK's Mobile Query search results. CBP_000725–732. No results populated for the Mobile Fortify search, indicating Mobile Fortify was not used, indicating there are no Mobile Fortify results to produce.

Officer D.R. never testified there were protocols for creating target packages.

Rather, the Court supplied the word "protocol" in an exchange with Respondents' counsel. Tr. 135:23–138:19.

Lastly, Respondents produced the results from ELITE. *See* ICE-000654a.

viii. "Request 10"

Respondents conducted the search outlined in their June 12 discovery letter. *See* Dkt. 122-9 at 9. All responsive documentation was produced.

C. Petitioner is not entitled to third parties' PII in her individual habeas petition.

Redactions for third parties' PII is appropriate to protect their privacy. *E.g.*, *Doe v. U.S. Immigr. & Customs Enf't*, No. 19-CV-8892 (AJN), 2021 WL 3862708, at *3 (S.D.N.Y. Aug. 30, 2021) (granting the plaintiffs' motion to redact third party PII from public docket); *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (finding that "the privacy interests of innocent third parties ... should weigh heavily in a court's balancing equation"). Petitioner has not demonstrated she is entitled to third parties' personally identifying information for her individual habeas petition. Respondents are especially wary of providing third parties' PII given Petitioner's simultaneous class action.

D. Respondents complied with Rule 34.

Without any support, Petitioner argues that Respondents must organize their production to correspond with Petitioner's preferred categorization. Petitioner misreads the requirements under Rule 34(b)(2)(E)(i). That Rule requires a party to "produce documents as they are kept in the usual course of business or [ ] organize and label them to correspond to the categories in the request." Fed. R. Civ. P.

34(b)(2)(E)(i). "While Rule 34 does not obligate a producing party to per se organize and label usable documents for the requesting party's convenience, a party exercising Rule 34's option to produce records as they are kept in the usual course of business should organize the documents in such a manner that [the requesting party] may obtain, with reasonable effort, the documents responsive to their requests." *Armor Screen Corp. v. Storm Catcher, Inc.*, No. 07-81091-CIV, 2009 WL 291160, at *2 (S.D. Fla. Feb. 5, 2009) (citations omitted).

Where the producing party organizes and labels its production, the organization should correspond to the request for production. *See, e.g., FDIC v. Baldini*, No. 1:12-cv-7050, 2014 WL 1302479, at *8 (S.D. W. Va. Mar. 28, 2014) (requiring producing party to organize and label production with respect to the defendant's 36 RFPs); *FDIC v. Appleton*, Case 2:11-cv-00476-JAK-PLA, Dkt. 188 (C.D. Cal. Nov. 29, 2012) (requiring the plaintiff to create folders in Relativity or index that corresponded to RFPs); *QuinStreet, Inc. v. Ferguson*, 2009 WL 1789433 (W.D. Wash. 2009) (ordering defendant to indicate which emails respond to which RFPs). Petitioner asks this Court to order Respondents to "organize and label usable documents for [her] convenience." *Armor Screen Corp.*, 2009 WL 291160, at *2. Petitioner has only propounded three RFPs. Respondents are not obligated to again categorize their production to correspond to Petitioner's preferred categorizations.[3]

[3] The Court should not construe Respondents' organizing their 700+ page production in accordance with Petitioner's categories as affirming Petitioner's position. Respondents labeled those documents to correspond to the December 29 letter's categories as a showing of good faith.

E. The remedies Petitioner seeks are inappropriate.

If the Court intends to grant this motion, Respondents preserve their objections to the remedies Petitioner seeks as she has not articulated why those remedies are appropriate for Respondents' alleged shortcomings in discovery. Notably, Respondents object to an examination of Officer J.B.'s phone or computer because of the potentially sensitive and law enforcement privileged information they contain. There are many concerns with providing a non-federal employee access to a federal law enforcement officer's phone and computer.

CONCLUSION

Given the foregoing, Respondents respectfully request the Court deny Petitioner's motion to compel.

Respectfully submitted this 21st day of August, 2026.

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 2,858 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

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