

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 EUGENE DIVISION

4
5 M-J-M-A, et al.,

)

)

6 Petitioners,

)

)

7 v.

)

No. 6:25-cv-02011-MTK

)

8 TODD LYONS, et al.,

)

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9 Respondents.

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13 Status Conference and Discovery Hearing

14 TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE MUSTAFA T. KASUBHAI

16 UNITED STATES DISTRICT COURT JUDGE

17 June 25, 2026
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(Thursday, June 25, 2026, 8:42 a.m.)

P R O C E E D I N G S

(Whereupon, the following proceedings were held in open court:)

THE COURTROOM DEPUTY CLERK: Please remain seated.

United States District Court for the District of Oregon is now in session, the Honorable Mustafa T. Kasubhai presiding.

THE COURT: Good morning.

Please call the case.

THE COURTROOM DEPUTY CLERK: Your Honor, we're here today for a status conference in the matter of M-J-M-A, et al., versus Wamsley, et al. It's Case Number 25-cv-2011.

Counsel, please state your appearance for the record, starting with the plaintiff.

MR. MANNING: Good morning, Your Honor. This is Stephen Manning for the plaintiff/petitioner.

MS. GARCIA ORJUELA: Good morning, Your Honor. Nelly Garcia Orjuela for plaintiff/petitioner.

THE COURT: Thank you.

MS. GAROUSI: Good morning, Your Honor. Ariana Garousi for respondents.

MS. LUSE: Susanne Luse for the respondents.

THE COURT: All right. Good morning, everybody. And thank you for making yourselves available.

1 I've had a chance to review the letters outlining the
2 issues. I want to make sure we have identified what the items
3 are that need to be addressed today. We have a short amount of
4 time and a lot to accomplish.

5 First, I issued my order with respect to
6 certification. I understand the Government has indicated
7 previously that they're planning on filing a notice of an
8 appeal and a motion for a stay.

9 Is that still the plan, Ms. Garousi?

10 MS. GAROUSI: Yes, Your Honor.

11 And, just to clarify, we have to consider whether an
12 appeal is forthcoming. We got the decision yesterday, so we're
13 still working that out. But we are planning on filing a motion
14 to stay. I'm happy to discuss that more, if you have questions
15 about that.

16 THE COURT: Well, let's actually stay focused on the
17 discovery issues. And then maybe, if we have time, we can
18 address the motion to stay. If we resolve the -- what I will
19 direct regarding discovery, then that would remain in place if
20 I deny the motion for a stay. And if I grant the motion, then
21 at least we have decisions made regarding discovery that can be
22 triggered once any appellate issues are resolved.

23 All right. Other than the discovery matters that
24 have been raised in the letters here, Innovation Law Lab's
25 June 9th correspondence and exhibit -- exhibit, with also the

1 Government's June 12th letter -- is everyone satisfied that
2 these are the correspondence that identify the issues that need
3 to be resolved today, Mr. Manning?

4 MR. MANNING: For the discovery issue, yes,
5 Your Honor.

6 THE COURT: Okay. In addition to the discovery
7 issue, what else is it that we need to address?

8 MR. MANNING: We'd also ask for a -- we filed a joint
9 status report asking the Court to issue a case management order
10 setting forth certain deadlines.

11 THE COURT: And I have both of your proposals.
12 Plaintiffs' proposal lays out several dates, and then I know
13 defendants' proposal provides sort of dates within certain time
14 frames if the motion to stay is denied.

15 All right. We can -- we'll take that up after
16 discovery; but, yes, we'll address that, too. Make sure that I
17 address it before we adjourn if I forget to bring it up on my
18 own.

19 MR. MANNING: Thank you, Your Honor.

20 THE COURT: Who will be leading discussion for
21 plaintiffs?

22 MR. MANNING: I will be, Your Honor.

23 THE COURT: All right. And who's leading discussion
24 for defendants?

25 MS. GAROUSI: Me, Your Honor.

1 THE COURT: All right. Mr. Manning, I'm going to
2 have you lead with the first issue you want me to address.
3 Shall we -- maybe I'll pose a question. Do we need to address
4 the law enforcement privilege and the discovery that's related
5 to the law enforcement privilege claims that have been made?

6 MR. MANNING: We do, Your Honor.

7 We understand there's three buckets -- we understand
8 that we're disputing over three different buckets, if that's
9 the right analogy.

10 THE COURT: Have I used that term with all of you
11 yet?

12 MR. MANNING: No, but --

13 THE COURT: No. There was a case in which we
14 discussed buckets incessantly. And I can't remember if this is
15 the case we did it in. But, in any event --

16 MR. MANNING: It was you and Mr. Ratcliffe, I
17 believe.

18 THE COURT: Okay. Very good then. All right.
19 Buckets. So you said three buckets?

20 MR. MANNING: So bucket one is the Government has
21 asserted law enforcement privilege over, we think, a vast
22 amount of responsive documents in a way that we think is not in
23 a manner according to law.

24 THE COURT: And the documents in that first bucket,
25 law enforcement privilege, are we talking about personnel

1 records of law enforcement officers? Or are we talking about
2 something else?

3 MR. MANNING: We're talking about something else,
4 Your Honor. In some of the instances, information is being
5 the -- like telephone numbers and e-mail addresses, which we
6 actually have no objection --

7 THE COURT: The PII, the person identifying
8 information, you're talking about?

9 MR. MANNING: Of the law enforcement personnel.

10 THE COURT: You're not seeking those?

11 MR. MANNING: In some -- we're not seeking their
12 phone numbers. In some instances their names are important,
13 but that information would come under a protective order.

14 THE COURT: Fair enough. I'm just trying to also
15 take things out of the bucket. And so you're not seeking
16 e-mail addresses?

17 MR. MANNING: Not within -- I don't think we need
18 their e-mail addresses. If they're claiming e-mail addresses
19 are under the law enforcement privilege, I'm not sure that
20 privilege would apply to their e-mail addresses. But that
21 information would come under a protective order.

22 THE COURT: Well, regardless of whether you get it or
23 not, I'm wanting to know whether you're asking for it.

24 MR. MANNING: We would -- yes, Your Honor. We would
25 like the --

1 THE COURT: So you're asking for e-mail addresses of
2 certain law enforcement officers?

3 MR. MANNING: That are contained within the documents
4 that they -- if I could, Your Honor, we have the -- some
5 examples of the documents.

6 THE COURT: Okay. Yeah. That'll probably help.
7 So what is it with your law firm and purple binders?

8 MS. GARCIA ORJUELA: Office choice. I don't --

9 THE COURT: I think the last time we were here, you
10 sent everything in a purple binder, too.

11 MS. GARCIA ORJUELA: It was just for consistency,
12 Your Honor.

13 THE COURT: It will now be confusing because I don't
14 know which purple binder to look to. In the future you might
15 want to consider color coding.

16 MS. GARCIA ORJUELA: Okay. I will take that into
17 consideration.

18 THE COURT: All right. Let's talk about -- give me
19 an example of what you're talking about, Mr. Manning.

20 MR. MANNING: So, Your Honor, the primary example of
21 the law enforcement privilege, if you were to look at the very
22 first document after our caption page --

23 THE COURT: Exhibit 101?

24 MR. MANNING: -- Exhibit 101 is -- this document
25 is -- this redaction is --

1 THE COURT: What is the document?

2 MR. MANNING: Well, all we know is what this document
3 is. This is exactly how the document was given to us.

4 THE COURT: But what was it in response to?

5 MR. MANNING: We're not exactly sure, Your Honor.
6 Again, the Government didn't classify the documents according
7 to the -- according to our requests. We understand that this
8 may be related to our RF -- subsection nine of our RFP.

9 THE COURT: And I'm looking at the title, and it says
10 "CBP Directive."

11 MR. MANNING: Yes.

12 THE COURT: Okay. Do you know what they mean when
13 they say "directive"?

14 MR. MANNING: That it's an instruction to the CBP
15 officers.

16 THE COURT: Okay. So it looks to me like it's set
17 up -- structured like a policy of some kind.

18 MR. MANNING: That's correct, Your Honor.

19 THE COURT: All right. So this example -- so we're
20 not talking about phone numbers and e-mails right now. And I
21 know you want to get to talking about the privilege. I'm also
22 just trying to exclude what kinds of information I even need to
23 consider either being privileged or not.

24 And so, if I understand correctly, you are asking for
25 in your RFPs -- you have asked in your RFPs for identifying

1 information of law enforcement officers that have been
2 involved, at least with respect to M-J-M-A and the other named
3 individual plaintiff?

4 MR. MANNING: For -- so thank you for that
5 Your Honor.

6 For this particular -- this particular discovery
7 request, this comes under the petition for habeas corpus, so it
8 would only relate to M-J-M-A --

9 THE COURT: Okay.

10 MR. MANNING: -- and what the Court had already
11 ordered to be produced.

12 THE COURT: Okay.

13 MR. MANNING: And, with the Court's indulgence, if I
14 could -- and this might help -- hopefully this would help --
15 could I describe our two other buckets?

16 THE COURT: Yes.

17 MR. MANNING: And so the law enforcement privilege,
18 we think that it's been asserted incorrectly. One, we don't
19 think it exists.

20 THE COURT: First, you were going to identify the
21 buckets. You're not trying to tell me what's in them yet.

22 MR. MANNING: So the law enforcement privilege. The
23 second is that they've applied redactions.

24 THE COURT: So there's a law enforcement privilege
25 bucket. There's the applied redactions?

1 MR. MANNING: That's correct. Not based on any
2 privilege. So that's the PII.

3 And then the third bucket is they had witnesses
4 testify under oath to the existence of documents and
5 electronically stored information that, per the productions,
6 they have not -- and the letter that they sent to the Court, do
7 not exist.

8 So we think there is a gap --

9 THE COURT: So -- and you're talking about our
10 hearing earlier in the year? Or was it in December?

11 MR. MANNING: There were -- that's correct,
12 Your Honor. There were -- the December hearing is where most
13 of the focus is.

14 THE COURT: And in that testimony there were
15 references to several kinds of documents, and you're saying
16 bucket three are -- involve documents that were identified by
17 witnesses during their testimony that the defendants are now
18 saying don't exist?

19 MR. MANNING: They have not produced them, and then
20 they have said that they have -- and in the letter to the
21 Court, they have indicated that they -- that they do not exist.

22 And in one instance, in the letter to the Court, they
23 have indicated that their witness testified incorrectly about
24 documents and the use of a particular database.

25 THE COURT: Which one? Elite?

1 MR. MANNING: No. They have not yet identified
2 anything from Elite for us yet, Your Honor.

3 THE COURT: So which database are they saying?

4 MR. MANNING: Mobile Fortify.

5 THE COURT: Okay.

6 MR. MANNING: So those are the three buckets we
7 see --

8 THE COURT: And have you sought deposition testimony
9 to follow up on these matters?

10 MR. MANNING: We haven't, Your Honor, but that is
11 part of our request today. We did not because when we sought
12 discovery under the habeas, we sought leave only at the time
13 for production of documents. We thought it would be a simple
14 matter. And at this point in time, we now think the --

15 THE COURT: Okay. I'm anticipating or hoping that
16 the lower of the three hanging fruit would be this last bucket,
17 one, because I remember the testimony. I remember generally,
18 and I remember some of the specifics that were described. And
19 maybe we need to -- and maybe we can resolve that issue because
20 if it is a question of you need to dig deeper into what the --
21 you know, what these witnesses, in fact, said and if they are
22 correcting their testimony through some deposition and whether
23 a 30(b)(6) may be appropriate, maybe we can resolve those
24 issues.

25 MR. MANNING: Thank you, Your Honor.

1 THE COURT: All right. So how do you want to resolve
2 bucket three? Tell me what your remedies are.

3 MR. MANNING: So our remedies for bucket three, there
4 are two parts. So one would be to order them to conduct a new
5 search and, as part of that search, order them to confer with
6 us on the process to conduct that search. In essence, order
7 them to hold a Rule 26(f) conference with us.

8 And the second would be to permit us to depose
9 Agent J.B. and Agent M.K. and Agent R.F.

10 THE COURT: R.F.?

11 MR. MANNING: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. MANNING: It could be F.R. Actually --

14 MS. GAROUSI: R.F.

15 MR. MANNING: Thank you.

16 THE COURT: Depose -- all right. And are you asking
17 for a 30(b)(6)?

18 MR. MANNING: For -- on Operation Black Rose,
19 Your Honor, yes.

20 THE COURT: So you want a 30(b)(6) on Operation Black
21 Rose?

22 MR. MANNING: That's correct.

23 THE COURT: Just Black Rose? I remember there being
24 references to multiple names.

25 MR. MANNING: Thank you, Your Honor.

1 When we use "Black" -- so there were -- when I refer
2 to "Black Rose," that's my shorthand for saying Operation
3 Fortify the Border, Operation Black Rose -- and Agent J.B.
4 testified that there were many operations -- many at-large
5 operations being conducted. So it would be on any at-large
6 operation conducted during the time period.

7 THE COURT: In the larger -- well, in the District of
8 Oregon?

9 MR. MANNING: That's correct, Your Honor.

10 THE COURT: Because I think there were some matters
11 involving Woodburn --

12 MR. MANNING: That's correct.

13 THE COURT: -- and not just the Portland area.

14 MR. MANNING: That's correct.

15 THE COURT: Okay. What else? We're talking just
16 bucket three right now.

17 MR. MANNING: For bucket three, we would ask for
18 an -- to be able to forensically inspect the cell phone --
19 there's a critical piece of evidence that Agent J.B. testified
20 to having destroyed.

21 THE COURT: That was the target sheet?

22 MR. MANNING: That's correct, Your Honor.

23 THE COURT: All right. I think I remember him saying
24 something about kind of throwing it in the garbage.

25 MR. MANNING: That's correct, Your Honor.

1 And he had testified to having multiple photos and
2 documents on his phone. And so we would like -- we would ask
3 for a forensic inspection -- or to inspect his cell phone.

4 THE COURT: So just Agent J.B.'s phone?

5 MR. MANNING: That's correct, Your Honor.

6 THE COURT: Okay. What else?

7 MR. MANNING: He had -- if the -- we would ask that
8 the computer that he used to access this electronically stored
9 information, which we understand is a government database
10 requiring log-in information, entering search terms, that he
11 would then have produced a document that he then destroyed,
12 that that was done on some computer, that we would ask to be
13 able to inspect that computer for that information.

14 THE COURT: To reconstruct the information regarding
15 the target package?

16 MR. MANNING: Correct, Your Honor, that he destroyed.

17 THE COURT: Meaning the hard copy that he testified
18 he threw away?

19 MR. MANNING: That's correct.

20 THE COURT: Okay. Anything else in bucket three?

21 MR. MANNING: No, Your Honor.

22 THE COURT: All right. Ms. Garousi.

23 MS. GAROUSI: Yes.

24 THE COURT: So this is about testimony at the various
25 hearings, specifically the December hearing where we had --

1 well, I think over nine -- or maybe we had nine agents
2 testifying about the existence of documents or databases that
3 now don't exist or are unavailable in some way?

4 MS. GAROUSI: Yes, Your Honor.

5 THE COURT: All right. So, first, talk to me
6 generally about that issue. Is there -- is there a discrepancy
7 between what the witnesses testified and what you have
8 determined in the way of actually document categories existing
9 or not?

10 MS. GAROUSI: Sort of.

11 So let me just give you an example. I think that'll
12 be helpful. There's one instance in which petitioners ask --
13 or petitioner asked for documents related to, like, creating
14 protocols for target packages. And that wasn't testimony from
15 any of the witnesses.

16 It was actually a question from the Court using the
17 word "protocol." None of the witnesses ever testified to there
18 being written protocol for creating target packages. So, like,
19 in that example, that testimony isn't being contradicted by our
20 answers now. It just never did exist, and no one ever
21 testified it existed.

22 THE COURT: I'm not sure I follow. Remind me again.
23 I imagine -- well, one, yes, I probably used the word
24 "protocol," as I recall. But in what context was -- was my
25 question posed?

1 MS. GAROUSI: Let me find the exact witness it was
2 done with.

3 I believe the question from the Court was something
4 to the effect of inquiring into when they're making target
5 packages -- when respondents are making target packages, is
6 there a written protocol or something like that; and there
7 wasn't testimony saying that there was written protocol.

8 THE COURT: Okay.

9 MS. GAROUSI: So that's just an example in which
10 we're saying that document doesn't exist, but there was never
11 testimony that said it existed.

12 THE COURT: But there was testimony that acknowledged
13 that protocol?

14 MS. GAROUSI: I don't believe so.

15 THE COURT: So the issue is that I characterized
16 something that the witnesses didn't testify to?

17 MS. GAROUSI: Ah --

18 THE COURT: I mean, I might have used the word
19 "protocol," but I would also imagine that I was anchoring that
20 word to something that the witnesses had testified about. So I
21 don't want to get caught up in semantics. So if it's protocol,
22 a process, instruction, or direction that -- that the agents
23 received, I mean, I think that's -- that's what I'm -- that's
24 probably what we were all trying to get at.

25 MS. GAROUSI: Yes, Your Honor. And I understand

1 that. I think it's the fact that there's no written protocol.
2 There's no "Here are the directions of what you're supposed to
3 do." And that's what the agency's saying here.

4 THE COURT: Okay. Well, then it sounds to me like
5 this issue -- at least this particular example can be resolved
6 by way of authorizing depositions.

7 MS. GAROUSI: Your Honor, if we could just take a
8 step back for a second, this is -- when we had the discovery
9 conference in January, we presented the position that discovery
10 is supposed to be about documents that help the Court resolve
11 the issue in front of it.

12 And we're just talking about the habeas petition
13 here. I'm not sure how these documents help the Court resolve
14 that petition, especially when we have a pending motion to
15 dismiss with solely jurisdictional arguments that do not rely
16 on facts.

17 THE COURT: Okay. So, I mean, you're basically
18 suggesting that I just withhold any decision on discovery while
19 we resolve the motion to dismiss?

20 MS. GAROUSI: I think that's a good way to resolve
21 that.

22 THE COURT: Part of the challenge is that -- that the
23 Government waited months before filing this motion to dismiss.
24 Is there a reason for that?

25 MS. GAROUSI: Well, Your Honor, a lot of the

1 arguments that were presented in our motion to dismiss were
2 also presented in our initial habeas response.

3 THE COURT: As a formal motion to dismiss or as a --
4 as a motion to dismiss to this Court to consider?

5 MS. GAROUSI: It was the response to the habeas
6 petition -- the return to the habeas petition.

7 THE COURT: But did we take it up? Did you argue it?
8 Did you raise it for me to consider, and did I decline to
9 consider it at that -- and I'm not -- and this isn't a loaded
10 question. I'm trying to recall what it was that happened here
11 because I think my focus had been on habeas and developing
12 evidence to understand the nature of the habeas action.

13 MS. GAROUSI: Sure. Sure, Your Honor. So the way
14 that this case shook out, habeas petition was filed, and then
15 the Court ordered discovery and the evidentiary hearing the day
16 after the petition was filed. We filed our response a few days
17 later.

18 And in that response were jurisdictional arguments
19 about why habeas was inappropriate in this case. But we
20 continued to move forward with --

21 THE COURT: And the gist, if I recall, is -- the gist
22 of the motion to dismiss is because M-J-M-A has been released;
23 there is no habeas.

24 MS. GAROUSI: That, in addition to Fourth Amendment
25 claims, stop and arrest claims, not sounding in habeas, not

1 being cognizable in habeas, as well as jurisdictional arguments
2 under the INA.

3 THE COURT: All right. And prior to your filing of
4 the motion to dismiss earlier this month, did you ask this
5 Court to address the matters raised in your response regarding
6 jurisdiction and the dismissal?

7 MS. GAROUSHI: Your Honor, we also filed an objection
8 to the evidentiary hearing, in which we raised these concerns.

9 THE COURT: Okay. All right. Well, then if they
10 were raised and I refused to address them, then that's on me
11 for you waiting this long, although you could've actually still
12 filed the motion to dismiss sooner.

13 MS. GAROUSHI: Yes, Your Honor. I understand.

14 THE COURT: Okay. All right. So you would object to
15 all of these requested processes?

16 MS. GAROUSHI: Yes, Your Honor. I think we just need
17 to resolve the jurisdictional issue first.

18 THE COURT: Well, I know, but we'll address that in a
19 moment. But any other substantive objection to the five
20 measures Mr. Manning is asking this Court to order to address
21 bucket number three, the testimony about documents that either
22 don't exist -- that don't -- testimony about documents
23 witnesses understood existed in some way, shape, or form, but
24 that you now say don't?

25 MS. GAROUSHI: One second, Your Honor.

1 (Whispered discussion, off the record, 9:05 a.m.)

2 MS. GAROUSI: Your Honor, with the Mobile Fortify
3 issue, so if -- I don't know if you have our letter in front of
4 us, but it's on the second-to-last page in the box that says O
5 through P. In the respondents' column, it's L and M. With
6 respect to --

7 THE COURT: Let me make sure I get to it here. Hold
8 on.

9 MS. GAROUSI: Page nine of our discovery letter.

10 THE COURT: The June 12th discovery letter?

11 MS. GAROUSI: Yes.

12 THE COURT: All right. I'm there.

13 MS. GAROUSI: And then you see where it says L and M
14 on the right side of the column?

15 THE COURT: Yes.

16 MS. GAROUSI: Okay. So Mr. Manning pointed out
17 earlier that -- and Officer M.K. did testify that she used
18 Mobile Fortify. And then when CBP went in to retrieve those
19 results, they realized she didn't actually use Mobile Fortify.
20 She used this app Mobile Query. And we produced those results
21 for Mobile Query, which indicates that she did actually use the
22 Mobile Query app.

23 THE COURT: Okay. All right. So your position is
24 that M.K. just misstated which app she was using?

25 MS. GAROUSI: Right. And we produced the results

1 from the app she did use.

2 THE COURT: All right. On that issue, Mr. Manning, I
3 mean, how do we -- I mean, how do we need to correct any of
4 this?

5 MR. MANNING: So on that particular issue, I think
6 the correction would be to allow us to -- if Agent M.K. needs
7 to clarify her testimony, we're open to that. We would just
8 like Agent M.K. to clarify the testimony.

9 THE COURT: Okay.

10 MR. MANNING: We do not understand the response to
11 say that Mobile Fortify was not used, only that she did use
12 Mobile Query. And the body cam video that was submitted to the
13 Court has the officers -- there's an image where an officer is
14 using an app where the officer calls it Mobile Fortify.

15 THE COURT: Okay. All right. So this goes back to
16 the issue of whether I would order depositions. So is there
17 something else about the objections -- or the remedies that
18 Mr. Manning points out in bucket number three?

19 MS. GAROUSI: Yes, Your Honor.

20 So with respect to -- if a deposition is necessary to
21 clarify testimony, I think a declaration would serve the
22 purposes in this case. The Court has seen all of these
23 witnesses testify in person. You've been able to -- the
24 Court's been able to assess their credibility.

25 The Court also knows that none of these witnesses are

1 physically present in the State of Oregon. So I think a
2 declaration, if necessary, would be a more appropriate remedy
3 than --

4 THE COURT: A declaration or interrogatory or -- or a
5 written deposition? I mean, a declaration means you get to --
6 you get to put whatever you want in the declaration, or they
7 do. I mean, it's not necessarily responsive to any of the
8 plaintiffs' questions that they'd like to have answered.

9 So let's bookmark that for a bit. I mean, I'm happy
10 to address some of these more substantively, but I also want to
11 make sure I understand what the other buckets now are because I
12 think much of this is going to turn on whether I'm going to
13 stay discovery pending the motion to dismiss. So --

14 MS. GAROUSI: Your Honor, I just -- there are other
15 things I want to say about the other remedies.

16 THE COURT: Oh, I understand. But you've decided to
17 take the thrust into the motion to dismiss, and so I want to
18 make sure I understand what the other two buckets are now
19 because it doesn't seem to me that -- unless -- unless I'm
20 implicitly denying your request to stay discovery and I'm just
21 going to continue to hear arguments about these discovery
22 remedies, I just want to -- I'd rather be more linear about
23 this.

24 I want to know what the scope of the discovery is
25 that's going to be in play. Then I can tell you whether I'm

1 going to order it or -- concurrent with my consideration of the
2 motion to dismiss or wait. But I want to make sure I
3 understand what the discovery scope matters are that need to be
4 resolved.

5 Applied redactions, regardless of privilege, this is
6 bucket number two, Mr. Manning?

7 MR. MANNING: That's correct, Your Honor.

8 They have applied redactions to names of other
9 individuals who were -- what I would -- essentially two -- as
10 far as we can tell, two groups of PII, personal identifiable
11 information, buckets within this bucket.

12 One is to law enforcement, so e-mails, phone numbers.
13 And the other is to third-party information, so other
14 individuals who could have -- were in that van, other
15 individuals whose names would appear in these, quote, target
16 packages and their -- their identifying information.

17 They've -- so these documents that are normally kept
18 in this format, they have redacted that information. So we
19 don't know who these individuals are. And that information --

20 THE COURT: And why do you need that information?

21 MR. MANNING: That information is important,
22 Your Honor, because part -- so it actually does go to the
23 motion to dismiss as well, but we think that information goes
24 towards the -- our Fourth Amendment claims and the viability of
25 the Fourth Amendment claims for the existence of the

1 reasonableness of the stop because it's based on that
2 information -- this target package information for the creation
3 of this -- like, our petition asserts that M-J-M-A and everyone
4 in that van was stopped because of their race.

5 The Government has a different theory. We have asked
6 for these documents to understand that theory and to test it
7 against ours. And they have now withheld this information that
8 the Court has ordered them to produce.

9 We're very sensitive to personal identifiable
10 information. M-J-M-A is proceeding with her initials; and we
11 respect that position, that the Government has not opposed
12 that. This information would come under the protective order,
13 so it would be only used for the purpose of this litigation.

14 We would not reshare this information. It is
15 protected. And we would have no need to reshare that
16 information outside of this litigation, for the use in the
17 litigation for her petition.

18 The Government has indicated in its letter that we
19 are seeking this information for class purposes. That is
20 actually not the case. The Court's already certified a class
21 at this point, so we -- we have separate discovery ability to
22 get that information.

23 This information goes to M-J-M-A's Fourth Amendment
24 claims, for us to understand them and to test our theory
25 against what they actually did.

1 THE COURT: Okay. Ms. Garousi.

2 MS. GAROUSI: Yes, Your Honor.

3 So, like Mr. Manning stated, we do have concerns
4 about releasing third-party information via the habeas
5 petition, knowing that there's a class action that's the other
6 half of this case. And then I'm trying not to get too ahead of
7 myself, but it does relate. The class action would only be a
8 records review case because it's brought under the APA. They
9 would have to make a showing that they're entitled to extra
10 record discovery.

11 So, to the extent that petitioner's using the habeas
12 petition to get discovery for the class action that they
13 wouldn't be entitled to right off the bat, that's a concern for
14 respondents.

15 In addition, I just -- I -- Mr. Manning mentioned
16 that somehow the third-party information is relevant for the
17 motion to dismiss. Again, it's a jurisdictional argument, so I
18 don't know that facts -- that that matters. But, setting that
19 aside, I don't understand how the third-party information is
20 relevant to resolving one single petitioner's habeas claim.

21 And, for example, some of the things that we've
22 redacted include like the roster for the NWIPC of everyone who
23 was housed there. That is way beyond the scope of one single
24 person's habeas claim in the District of Oregon.

25 We're supposed to be focused on one person and the

1 arrest team. I'm just -- I don't see how there's relevance
2 with everyone else's names and personal identifying
3 information, and I just have concerns given the class action.

4 THE COURT: Mr. Manning.

5 MR. MANNING: Your Honor, so we appreciate that
6 position from the Government. And we have searched through the
7 law; and the way that we have seen other courts address this
8 is, in the absence of a protective order, courts have allowed
9 PII to be redacted.

10 But when -- or courts have ordered -- granted --
11 we've seen the issue come up where people have made motions for
12 a protective order because of disputes over PII. Here we
13 agreed to the PII in advance to actually avoid this issue.

14 So the rule -- the discovery rule for production of
15 documents indicates that, unless it is privileged, it should be
16 produced in the normal state that it is. We think that rule
17 applies to these documents. These are not privileged, and it
18 is under the protective order.

19 THE COURT: All right. Bucket number one, law
20 enforcement privilege.

21 MR. MANNING: So the law enforcement privilege, we
22 understand that the Government is -- so I will say yesterday --
23 there's a substantive question on the law enforcement
24 privilege, and then there's a process question.

25 On the process question first, in order to invoke the

1 law enforcement -- so we dispute the law enforcement privilege
2 is a privilege.

3 THE COURT: So now you're talking about substance.

4 MR. MANNING: That's substance, but I'm just going to
5 pin that -- I'm just pinning it. I'm not -- we've argued it in
6 our letter, and I'm happy to talk more about it.

7 THE COURT: So there are two issues. So
8 substantively the law enforcement privilege is not a clearly
9 recognized privilege. It hasn't been either adopted or
10 rejected explicitly. The case law suggests as much.

11 And I know that here in the District of Oregon it
12 hasn't been recognized. In fact, it's specifically disapproved
13 in the context of civil rights cases involving law enforcement.
14 I get the substantive issue.

15 And then the process issue is that there's -- there's
16 some steps -- four or five different things that need to be
17 provided in a formal notice of exercising the privilege and --
18 and are you going to tell me that there has been no formal
19 invocation of that privilege?

20 MR. MANNING: In part. So --

21 THE COURT: Meaning it was an incomplete invocation?

22 MR. MANNING: Ah --

23 THE COURT: Go ahead. Sorry to --

24 MR. MANNING: So the Court ordered -- so we got
25 discovery in October 2025. So we have to -- in the habeas we

1 have to come to court before we can do discovery. So we came
2 to court, asked for discovery. The Court said yes. We served
3 discovery. We came back in January because the production was
4 insufficient.

5 And then the Court ordered the production of very
6 specific items within 30 days. The Court then extended that,
7 under the Government's motion, for an additional 30 days 'til
8 March 23rd, 2026. Now, during that period of time, we were
9 conferring with the Government. We had indicated to them,
10 "There is no privilege log. There's no privilege log."

11 Yesterday, three months after the Court's order
12 requiring production, at around noon, I got an e-mail from
13 Ms. Garousi, who had indicated, "In this e-mail attached are
14 two declarations attesting to the law enforcement privilege
15 claim for certain redacted documents. Please note that these
16 declarations are being provided to you as confidential under
17 the protective order."

18 And then those documents, they -- we haven't had a
19 chance to analyze whether those documents are sufficient under
20 the process -- the process rule. And those -- those
21 declarations -- those documents do not relate to all of the
22 items for which law enforcement privilege has been claimed.

23 The e-mail -- she indicates -- Ms. Garousi can
24 further explain -- "The agencies are diligently working to
25 review the last two documents" -- and then she cites them --

1 "for which LEP was asserted. And we anticipate providing a
2 declaration to support one of them by June 30th."

3 Now, we have those declarations. We don't think
4 those declarations are properly described as confidential under
5 the protective order, and we're happy to bring that dispute to
6 the Court at a different time.

7 But we have those declarations to show the Court what
8 they've asserted to thus far. We think with -- so procedurally
9 we think they have waived it because this was due March 23rd by
10 the Court's order.

11 THE COURT: "This" being what? The privilege log?

12 MR. MANNING: Exactly. When they served the
13 production, they were required to serve their privilege log at
14 that time. And now we're three months later. The day before
15 this hearing, they then assert -- they formally assert the law
16 enforcement privilege.

17 THE COURT: Well, has a privilege log been provided
18 then?

19 MR. MANNING: No, Your Honor.

20 THE COURT: I mean, the privilege log, as I
21 understand it, is the method by which one communicates which
22 documents -- or what privileges, if any, are going to be
23 invoked as it relates to certain documents. It'd have to be
24 identified in some meaningful way. And you're saying that log
25 has not been provided to you?

1 MR. MANNING: That's correct, Your Honor. They
2 provided to us a -- which we attached to our letter, a chart
3 that says LEP, LEP, and it's just a spreadsheet.

4 THE COURT: And what does LEP stand for?

5 MR. MANNING: We assume it means the law enforcement
6 privilege.

7 THE COURT: Okay.

8 MR. MANNING: So we understood that that -- they
9 wanted to do -- they were, like -- we understood, like, that --
10 we had said, "That's not a privilege log. That doesn't conform
11 with what a privilege log is. A privilege log requires us to
12 understand what the document is" --

13 THE COURT: So that exhibit -- I think -- you
14 attached that, didn't you, to --

15 MR. MANNING: We did, Your Honor.

16 THE COURT: I'll take a look here.

17 So it refers to a Bates stamp, but not a title or
18 reference to a name of a document.

19 MR. MANNING: That's correct, Your Honor.

20 So, for example --

21 THE COURT: Are these Bates stamped -- were these
22 documents provided to you?

23 MR. MANNING: They were, Your Honor.

24 THE COURT: Okay. But they were redacted?

25 MR. MANNING: That's correct.

1 THE COURT: And where does it refer to LEP in --

2 MR. MANNING: I believe it begins on page five of
3 their chart.

4 THE COURT: Okay. Here we go.

5 And are they -- were they provided but completely
6 redacted?

7 MR. MANNING: That's correct, Your Honor.

8 THE COURT: Okay. And when I see this LEP in the
9 explanation for redactions, it suggests what the document is,
10 but -- so wouldn't that -- wouldn't that be sufficient to
11 describe the document, you know, with enough detail to
12 understand what it is that the privilege is being invoked for?

13 MR. MANNING: We don't -- so the -- not under the law
14 enforcement privilege. Like, the very particular requirements
15 for the law enforcement privilege require that, to be invoked,
16 it has to be invoked by very particular individuals, so the
17 heads of agencies who've reviewed those documents, who then
18 described those documents in a declaration.

19 THE COURT: With particularity.

20 MR. MANNING: With particularity.

21 THE COURT: All right. So even if this privilege log
22 complied with the general understanding of how to provide one,
23 which is to describe the document itself, rather than a Bates
24 stamp number and then provide an explanation for -- for
25 redactions, when dealing with a law enforcement privileged

1 document, there must be more than even the privilege log?

2 MR. MANNING: That's correct, Your Honor.

3 THE COURT: All right. Okay. And these are all the
4 procedural deficiencies that you are describing?

5 MR. MANNING: That's correct, Your Honor.

6 And whether this is procedural or substantive, it's a
7 line I -- the -- the description in -- where it says LEP, the
8 description there, of what they're invoking LEP on, is far more
9 expansive than even what the Ninth Circuit has described and as
10 other courts have adopted, that that would not -- that -- we
11 understand the LEP, as it exists, goes to ongoing
12 investigations.

13 Here the Government has asserted that they are not --
14 that -- I mean, that's their whole point of their motion to
15 dismiss: "We're not looking at M-J-M-A anymore. It's over.
16 It's done for her." So there is no ongoing investigation of
17 her right now.

18 So -- and then these documents also extend to
19 guidelines for prosecutions, guidelines for -- policy documents
20 that would not be investigatory techniques.

21 THE COURT: Okay. Ms. Garousi.

22 MS. GAROUSI: Yes, Your Honor.

23 So I just want to point, first, out to the Court that
24 Ninth Circuit case law doesn't create a per se waiver rule if a
25 privilege log isn't provided within the 30 days. The

1 Ninth Circuit has been loath to do that and allows
2 deficiencies, if any, to be remedied. So --

3 THE COURT: Generally speaking with respect to waiver
4 or specifically with respect to waiver of LEP?

5 MS. GAROUSI: I think --

6 THE COURT: And the reason is because there seems to
7 be some case law that provides some very discrete requirements
8 for invoking LEP. So I want to make -- I want to give you an
9 opportunity to help me understand what the scope of what you've
10 just described as the Ninth Circuit's instruction on this.

11 MS. GAROUSI: Right. Yes, Your Honor. Yeah, there
12 are specific requirements under -- to invoke a law enforcement
13 privilege. But the Ninth Circuit's general consensus, when it
14 comes to invoking privilege, is not to be -- to elevate form
15 over substance.

16 The Government has provided two declarations at this
17 point that outline most of the --

18 THE COURT: Do I have those declarations?

19 MS. GAROUSI: We both have copies for you,
20 Your Honor.

21 (Whispered discussion, off the record, 9:26 a.m.)

22 THE COURT: Thank you.

23 All right. And, Mr. Manning, you're indicating that
24 these -- forget about process -- the procedure for a moment --
25 but that the substance of these declarations don't satisfy the

1 requirement -- the requirements for invoking the LEP?

2 MR. MANNING: Ah --

3 THE COURT: Setting aside timing.

4 MR. MANNING: Based on my review of them, in the time
5 that I had -- or we had, we think they -- they could satisfy
6 the -- I actually don't know these agents. I only know what --
7 I got the declarations yesterday.

8 So, assuming those agents are at the top of the chain
9 and they actually reviewed those documents specifically, on
10 their face, they could plausibly satisfy the procedural --

11 THE COURT: Turning to the substance for a moment,
12 how is it that, in one -- you know, on one hand, you know, the
13 Ninth Circuit and, you know, the Supreme Court hasn't
14 recognized law enforcement privilege; but then, on another,
15 we're talking about how one can be invoked. What am I missing
16 in that sort of, you know, "two different sides of the coin"
17 situation?

18 MR. MANNING: Your Honor, so we -- the Ninth Circuit
19 in Shaw specifically noted -- a case called Shaw said, "Look,
20 we've never recognized that the Supreme Court hasn't. But
21 the -- the individual in that case did not actually raise that
22 it doesn't exist, so we won't decide that question."

23 And so the Ninth Circuit has not yet ruled on it, and
24 so -- because it hasn't been raised to them. So we think that
25 has now allowed for this -- perhaps a muddled state of affairs.

1 THE COURT: If I affirm or conclude that it has not
2 been recognized, the law enforcement privilege in the
3 Ninth Circuit, and I decline to recognize it here, then I don't
4 need to worry about how to invoke it, do I?

5 MR. MANNING: That's correct, Your Honor.

6 THE COURT: There may be other -- I mean, are there
7 other kinds of documents, like personnel documents or other,
8 maybe, information within law enforcement agencies, with
9 respect to individual officers, that -- that might have other
10 considerations about whether to disclose or not, but that's not
11 part of the law enforcement privilege that we're talking about?

12 MR. MANNING: That's correct, Your Honor.

13 THE COURT: Anything else, Ms. Garousi, on law
14 enforcement privilege?

15 MS. GAROUSI: Just to say, Your Honor, that Shaw
16 maybe didn't recognize law enforcement privilege, but it also
17 hasn't expressly rejected it.

18 THE COURT: So I'll cite to this argument when -- the
19 next time you tell me I shouldn't be more expansive in my -- in
20 my decision-making or application or consideration of whether
21 there is certain law that exists or not.

22 MS. GAROUSI: Depending on whether someone has
23 expressly rejected or denied it, Your Honor. Understood.

24 Let me just --

25 THE COURT: I mean, there's nothing to understand. I

1 think I'm just -- I'm just parrying with you. I mean, if
2 you're going to make an argument that it's been silent, so I
3 should go ahead and do it, then I just want to make sure you
4 understand that argument might cut both ways at some point, in
5 not this case necessarily, but certainly in your career.

6 MS. GAROUSI: Yes, I do understand, Your Honor. But
7 let me -- if I could just check my notes briefly.

8 Nothing else, Your Honor.

9 THE COURT: All right. So I think we've identified
10 the three buckets. And I know you wanted to talk a little bit
11 more, Ms. Garousi, about some of the other items to remedy the
12 bucket number three.

13 I take it -- I mean, you would object to everything,
14 but you're particularly -- do you want to address the forensic
15 inspection of J.B.'s cell phone and laptop? I figured that's
16 probably where you were going to have the most heartburn over.

17 MS. GAROUSI: That is correct, Your Honor.

18 Okay. So the remedies that are being asked for here
19 almost seem like sanctions under FRCP 37(e) to me. I think
20 we're jumping a little bit far ahead to go to these measures.

21 I also -- petitioner hasn't --

22 THE COURT: I never even really considered that. Why
23 would you think of that, Ms. Garousi?

24 MS. GAROUSI: Because, Your Honor, I'm hoping that
25 you sanction us. No, I'm just kidding. Petitioners' counsel

1 cited, I think, FRCP 37 in their letter, so that's where I was
2 going with it.

3 But, to bring it back for a second, petitioners'
4 counsel hasn't cited any case law that requires the Government
5 to re-create destroyed documents, to produce documents that
6 never existed. I --

7 THE COURT: Let's say I think it's fair to say that
8 there's -- I mean, there's no -- we're not going to entertain
9 this space in which there's some unfeasible order to produce
10 documents that don't exist. But the question is, do they
11 exist?

12 And given the witnesses' testimony, it raises a
13 question that -- that for the moment -- I know we're not
14 addressing the motion to dismiss right now -- but for the
15 moment, you know, it begs additional inquiry.

16 MS. GAROUSI: I understand that, Your Honor. And
17 there are some instances in which we've said simply documents
18 do not exist. And my concern is that -- and that they never
19 existed.

20 So if I can give you an example, with the searches, I
21 think -- do you still have the discovery letter in front of
22 you, Your Honor?

23 THE COURT: I have the letters. What page do you
24 want to --

25 MS. GAROUSI: Page five of respondents' letter.

1 THE COURT: All right. I'm there.

2 MS. GAROUSI: All right. So, in response to RFP 3,
3 we said that no record of the search results were created from
4 the search related to the registered owner. We provided the
5 record of the searches conducted by Officer J.A., but there's
6 no record of the results from those searches. So in that
7 instance we would be creating something that doesn't exist, if
8 that's what petitioner's asking for here.

9 THE COURT: Let's see. So -- and you say that
10 respondents did produce the target packages that were
11 distributed to the teams in Woodburn on October 30th?

12 MS. GAROUSI: Right. So from -- if you recall from
13 the testimony, there was, like, sort of a centralized group of
14 target packages. We produced all of those. We don't know --

15 THE COURT: Unredacted or redacted?

16 MS. GAROUSI: They were redacted, I believe, for
17 third parties' PII.

18 THE COURT: Okay.

19 MS. GAROUSI: So we produced those. We don't know
20 which target packages went to every team -- or each team, so we
21 just produced all of them.

22 And then there's, like, this sort of different
23 bucket, more or less, of Officer J.B.'s target package, which
24 is something, it sounds like, he created on his own and
25 wouldn't have been distributed. So we produced that first

1 thing; but that second thing, as Officer J.B. testified, no
2 longer exists.

3 THE COURT: Officer J.B.'s own target package --

4 MS. GAROUSI: That one no longer exists. And he
5 testified --

6 THE COURT: Well, no longer exists is different than
7 never existing. So no longer existing just means it was in
8 some way purged, whether by throwing into a garbage can or
9 clearing it from the history on a computer or phone. So which
10 one would it be, no longer or never did?

11 MS. GAROUSI: That one no longer exists. But part of
12 what I was also saying, too, is that petitioner hasn't pointed
13 to any case law that we're required to re-create documents.

14 THE COURT: Well, maybe not re-create, but preserve
15 documents is -- and preserve discovery would be an important
16 expectation if there was a reasonable understanding that this
17 material would be relevant for litigation purposes.

18 MS. GAROUSI: Yes, I agree, Your Honor.

19 THE COURT: All right. So that would be appropriate
20 then to address under a spoliation claim.

21 MS. GAROUSI: Right. And spoliation, I think, is a
22 little bit different than it sounds like what petitioner has in
23 mind. Spoliation, I -- has its own set of requirements, too.
24 And if that's a claim that's being made, we'll address that --

25 THE COURT: And we'd do that in a formal motion

1 process, so I'm not addressing sanctions on spoliation today.
2 But I just want to make sure I understand that if -- if the
3 issue is that the records weren't kept, they no longer exist,
4 then that is -- that is a spoliation issue that Mr. Manning can
5 then file a motion to address.

6 MS. GAROUSI: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. MANNING: Your Honor, may I clarify something?

9 THE COURT: Go ahead.

10 MR. MANNING: So we actually -- our letter to the
11 Court had a typographical error. We are not seeking sanctions.
12 It references (e)(1) in the very end for what we're asking for
13 inspection; and, that is, under the actual -- when we -- under
14 a request for production, we can ask for the copying and the
15 reproducing of documents, including electronically stored
16 information in its electronically stored state, and we can also
17 ask for inspection.

18 And that is what the reference there was to. We're
19 not -- we haven't raised a spoliation claim here. We're noting
20 that the -- this paper document that he had indicated,
21 Agent J.B., "I matched these faces. I had these faces," that
22 "The driver looked like this, so I followed him," like, that
23 testimony, that document is gone. He threw that away.

24 But that was based on electronically stored
25 information in a government database that we understand is

1 called Elite, which is also -- there's a -- it's -- without the
2 inspection, it's hard for us to understand that --

3 THE COURT: And when you say "inspection," you're
4 talking about the forensic examination --

5 MR. MANNING: That's correct.

6 THE COURT: -- of the phone and --

7 MR. MANNING: The laptop.

8 THE COURT: -- and the laptop?

9 MR. MANNING: Or the -- exactly. And the --

10 THE COURT: But what if there's nothing on the phone
11 or laptop itself, but it's all part of a cloud database?

12 MR. MANNING: Then that would be a document that
13 exists that we're not asking for re-creation of, that that
14 exists and that's electronically stored information that should
15 have been produced.

16 THE COURT: My limited technological familiarity
17 keeps me from being able to fully understand how it all works
18 up in the cloud. But if I'm thinking about this as sort of
19 a -- in an Internet search, then the use of search terms that
20 produce a document, that -- and, you know, getting to know what
21 those search terms are with this database or understanding what
22 those search terms are that perhaps J.B. -- Agent --
23 Officer J.B. used might help provide some information, but it
24 may not re-create the -- it may not reform the document if that
25 information is -- if that same data set from which these search

1 terms were being pulled that -- I mean, it might create a
2 different document, right?

3 MR. MANNING: That is possible, Your Honor, based on
4 the nature of the -- like, how that -- how Elite is structured,
5 right? What we understand about Elite comes from -- that it's
6 like a Google map --

7 THE COURT: So maybe you're also looking for what
8 the -- you know, how the document was constructed.

9 MR. MANNING: That's correct, Your Honor.

10 THE COURT: Okay. So what's the insult to the
11 discovery process for -- I mean, if -- I mean, there's some big
12 what-ifs here. I don't know what Officer J.B. did to create
13 the physical printout that he threw away; but that begs the
14 question, is, well, how did he -- I mean, I think he testified
15 a little bit how he produced it, if I recall, but it was a
16 bit -- a bit grainy.

17 I'm not sure what database he used. I can't recall.
18 Perhaps the transcript says as much -- describes as much, but
19 I'm not sure if he -- you know, how he constructed the document
20 and if it was based on an internal database versus Google
21 search.

22 Then that would be helpful to know, so that way we
23 can determine whether this material would be discoverable, or
24 at least the search terms. And then what the search terms
25 produce today might also be relevant, while maybe not producing

1 the exact document that J.B. used.

2 MS. GAROUSI: Right, Your Honor.

3 So a couple of things, just to note. I -- and I'll
4 go back and look at the transcript, but I don't know that at
5 the time -- I do believe that there was a line of inquiry about
6 how he created the target package. I don't know how helpful
7 that line of inquiry was.

8 I think another concern also is that if we're to
9 re-create based off of what Officer J.B. did, there's a concern
10 about whether that information -- pulling that information
11 today is different than the way in which it existed on
12 October 30th. And I --

13 THE COURT: Sure.

14 MS. GAROUSI: That's a concern.

15 THE COURT: But the search terms themselves may be
16 insightful and relevant for the purposes of discovery in this
17 case, if I -- if we move forward with discovery. So, I mean,
18 we can take it one step at a time.

19 I mean, you're offering a possibility that it
20 produces a different document. If you're telling me that it
21 would, with absolute certainty, produce a different document,
22 then that'd be a different conversation.

23 (Whispered discussion, off the record, 9:41 a.m.)

24 MS. GAROUSI: Your Honor, just to clarify, we're
25 talking about, like, the production of documents that we --

1 were potentially destroyed. We're not talking about the
2 forensic examination. Or are you --

3 THE COURT: I mean, I think they're probably
4 combined. I mean, there are a couple of things. One is I
5 think Mr. Manning wants a forensic examination if you can't
6 provide the document that Officer J.B. used or -- I'm going to
7 call it a target package, just for ease of communication
8 sake -- the target package that Officer J.B. testified to back
9 in December.

10 I mean, either -- if that document can be
11 identified -- found -- identified, found, and produced, then
12 end of story. I don't think there's a need for inspection of
13 the computer or phone or whatever digital device he used to
14 produce that document.

15 But if that document doesn't exist, I mean, I -- I
16 think I would be insulting the bigger minds than mine that have
17 thought deeply about ESI and the way in which digital documents
18 are stored in many different -- different formats and packets
19 and parts; and part of that is certainly the way in which
20 search terms can reconstruct the very document that was used,
21 which is relevant.

22 But -- and I'm not suggesting I'm ordering some
23 inspection of the computers if this document can be re-created
24 in a reliable way. And it's something very different in kind
25 when -- for example, you know, I think there's -- I think

1 there's an allure to using analog analogies, like asking -- you
2 know, asking your accountant to reconstruct the balance sheets
3 and ledgers of a -- of a business entity from -- you know,
4 within a certain time period.

5 You know, I think that's not the analogy that I would
6 use here when it comes to electronically constructed documents,
7 like this target package, as it was described. An
8 electronically constructed document should be able to be
9 reproduced by using the electronic and technological means once
10 again by which it was first constructed. The fact that we have
11 a written printed page that got destroyed should not confuse
12 the problem here.

13 MS. GAROUSI: Right, Your Honor. I just -- I think
14 our position is just, one, we need to -- J.B. is the one who
15 created the document. So, to the extent that -- the accuracy
16 of the document inherently relies on what he can recall of what
17 he did.

18 THE COURT: Sure. And that certainly then suggests
19 that it would be best then to depose Officer J.B. to find out
20 more detail.

21 Let's also keep in mind this evidentiary hearing was
22 not full depositions of witnesses. And, frankly, I found
23 myself being much more heavily involved in asking questions
24 because, frankly, I don't think the Government had an interest
25 in getting any of this disclosed as much as, I think, the

1 public interest was in ensuring we had a full record of what
2 was going on.

3 So I think -- I don't think the testimony was
4 complete. And I say "complete" objectively. I'm not
5 suggesting the witnesses were trying to do something
6 differently than just simply answer the questions. I just
7 don't think counsel had as much of an incentive to really
8 develop a record beyond that which I was engaged in asking.

9 MS. GAROUSI: Understood, Your Honor.

10 THE COURT: So the fact that -- even though we took
11 two days to take up testimony for all those witnesses,
12 depositions would be a much more full opportunity to make sure
13 that we have an accurate and complete record of what they
14 understood and what they know. And with the ability to now be
15 primed with understanding what the scope of the questions and
16 topics might be, I think they'll be even better prepared to be
17 able to answer them.

18 Now, let's turn to the issue of the motion to dismiss
19 because I have gone beyond the time that I was able to allot
20 for this -- for this hearing. You're asking that I wait until
21 I resolve the motion to dismiss to determine whether to allow
22 discovery to go forward?

23 MS. GAROUSI: Yes, Your Honor.

24 THE COURT: All right. I think you're also going to
25 be moving -- or at least you've suggested you're going to move

1 for a stay with this Court; and if not with this Court, with
2 the Ninth Circuit if you appeal?

3 MS. GAROUSHI: Yes, Your Honor.

4 THE COURT: But you haven't made that determination
5 yet?

6 MS. GAROUSHI: No, Your Honor. But we --

7 THE COURT: With certainty?

8 MS. GAROUSHI: We just wanted to front-load the issue
9 for you so that there weren't any surprises.

10 THE COURT: Well, I appreciate that.

11 I'm going to operate under the idea that you're going
12 to file the motion to stay; and if I were to deny it, that
13 you're going to file the motion for a stay before the
14 Ninth Circuit because I think that'll be, worst-case scenario,
15 what the circumstances might be. I don't know what the answer
16 is to either one of them, but I think I do need to -- and I
17 appreciate I do need to look at the substance of your motion to
18 dismiss.

19 When are you filing your response, Mr. Manning?

20 MR. MANNING: Your Honor, our response is due
21 tomorrow under the rules. Our proposal to you is to allow us
22 to file a response on July 6th.

23 THE COURT: And so you're asking for an extension?

24 MR. MANNING: We are.

25 THE COURT: Okay. All right. And do you have an

1 objection to that extension?

2 MS. GAROUSI: No objection, Your Honor.

3 THE COURT: Okay. Well, what I'd like to do is take
4 a look at both your motion and your response. And then I'll
5 decide whether there's enough -- enough merit to the motion to
6 dismiss to pause discovery because I agree.

7 I mean, I'm going to order much of what the plaintiff
8 is asking for if we move forward with discovery. And I don't
9 want the Government to have to bear that additional burden if
10 I'm going to end up granting a motion to dismiss.

11 So I will consider the briefing, at least on a
12 first -- sort of a first-level review, to see how much traction
13 it has. And if I find that, well, I'm -- if I'm fairly certain
14 I'm not going to grant the motion, then I'll issue an opinion
15 advising what the discovery requirements are going to be or
16 allowing it to go forward.

17 Now, that doesn't mean that I've made my decision on
18 the motion to dismiss with absolute certainty, but I'm trying
19 to strike a balance here and walk a tightrope between keeping
20 this case moving forward and also making sure that I give full
21 weight and consideration to the motions that are before me.

22 MR. MANNING: Your Honor, may I?

23 THE COURT: In just a moment. It looks like
24 Ms. Garousi or Ms. --

25 MS. GAROUSI: Sorry. One second.

1 THE COURT: How about, Ms. Luse, why don't you just
2 go ahead. I mean, we can't let Ms. Garousi end up taking the
3 heat all the time.

4 MS. LUSE: Absolutely. Thank you, Your Honor.

5 I think -- I understand your plan is to take a look
6 at motion to dismiss, determine whether it has merits, decide
7 whether or not you are more likely to grant it or deny it; and
8 if your plan is to deny it, eventually that you would then
9 enter some type of order regarding discovery. Is that
10 accurate?

11 THE COURT: Well, I would be more nuanced about the
12 prospect of denying or granting the motion. And I suppose --
13 well, I mean, what I'm trying to do is sort of wait and balance
14 what I think may be the likelihood of granting or denying in
15 order to determine whether to proceed with discovery at this
16 stage or not.

17 And so I don't want anyone to read into the fact
18 that, if I were to -- to order discovery next week, that you
19 know, going into this, that I'm denying the motion. So it's
20 just that I'm going to do my best to try to keep things moving,
21 without causing some unusual delay, before I make a final
22 decision on the motion to dismiss.

23 MS. LUSE: Would another consideration also be, with
24 regard to the motion to dismiss and the discovery, whether or
25 not discovery would be necessary for the Court to make a

1 decision regarding the motion to dismiss?

2 THE COURT: So that's an invitation to allow some
3 discovery?

4 MS. LUSE: Well, the point that I think Ms. Garousi
5 has made, and is set forth in the motion to dismiss, is that
6 it's completely 100 percent a legal argument and discovery
7 isn't necessary. So then the question is, is -- it would make
8 more sense if the Government could have a decision regarding
9 the motion to dismiss without having to go through expensive
10 potentially, as this Court is aware, if we're talking forensic
11 examinations and depositions, without having a decision on the
12 motion to dismiss.

13 THE COURT: Well, maybe you can -- can you rephrase
14 that in a shorter, simpler sentence?

15 MS. LUSE: I'll try. I'm long-winded. Sorry.

16 THE COURT: But not as much as Mr. Ratcliffe, so
17 you're in much better shape.

18 MS. LUSE: I'm going to tell him you said that.

19 THE COURT: Where is he? I want to make sure --

20 MS. LUSE: Mr. Ratcliffe has abandoned the Civil
21 Division and returned to his home in the Criminal Division.

22 THE COURT: So he found reason.

23 MS. LUSE: Right. I guess. I think we have more fun
24 in the Civil Division, personally; but, hey, maybe I'm a little
25 biased.

1 The Government would prefer, Your Honor, that we have
2 a decision on the motion to dismiss before we get sucked
3 into --

4 THE COURT: Oh, I would agree that that's how -- what
5 you would prefer. And I think what I'm trying to indicate is I
6 want to take a look at the briefs before I go ahead and order
7 or not order discovery to go forward. And if -- I mean, if I
8 feel -- I mean, it's a shade of gray at the moment because I
9 haven't looked at them -- well, I haven't looked at yours, and
10 I don't have the plaintiffs' yet.

11 I just want to take a look at them and get an idea.
12 I think -- I appreciate that you would like to have an actual
13 opinion and order granting or denying out of the gate before
14 going forward with discovery or not going forward with
15 discovery.

16 You know, I live in the shadows, Ms. Luse. I mean,
17 nothing is as clear as night and day. I wish it were, but I'm
18 trying to move this in a way that gives justice to process and
19 for the case to be heard, but also recognize that I don't want
20 the Government to have to engage in expensive and lengthy
21 discovery if I'm going to grant the motion. So I'm going to do
22 the best I can to try to balance those interests, rather than
23 just try to approach this very strictly linearly.

24 MS. LUSE: Understood.

25 And we also understand that we're dealing with the

1 habeas, and the discovery is going to be under the habeas
2 petition. Is that my understanding?

3 THE COURT: Mr. Manning, do you want to take the
4 last -- last question first? And then I'll give you your
5 opportunity to conclude -- make any concluding statements.

6 MR. MANNING: Thank you, Your Honor.

7 We -- so we considered this request to the -- to
8 the -- specific answer is yes, that this is discovery under the
9 habeas petition, which could lead into my next point on the --
10 we think there is discovery available to us, and we're asking
11 the Court to enter a case management order to allow the class
12 side of this case to move forward.

13 We think discovery exists -- we've brought
14 freestanding claims from the APA, so we have statutory claims.
15 We have three counts --

16 THE COURT: But I -- let me ask a clarifying
17 question. Is the Government's position that if I were to grant
18 the motion to dismiss on jurisdiction grounds on the habeas
19 case, that somehow the class action claim disappears as well?

20 MS. GAROUSI: No, Your Honor. So we're viewing these
21 as, like, essentially two distinct cases, but within the same
22 pleading document sort of. So we view counts one through six
23 of the complaint -- or it's the habeas petition -- as the
24 habeas petition and then counts seven through nine as the class
25 claims.

1 THE COURT: All right. So -- all right. So the
2 motion to stay the class action case is why you're asking --
3 the class action claims is why you're asking for the -- for
4 your schedule, as opposed to --

5 MS. GAROUSI: (Counsel nods head.)

6 THE COURT: Okay. So here's what I'm -- the
7 deadlines that plaintiff proposes are allowed. If you file
8 your motion for a stay of the -- my opinion authorizing the --
9 certifying the class and I grant it, then I'll abate the
10 discovery schedule until -- until the appeal is resolved.

11 MS. GAROUSI: Just to clarify, Your Honor, the motion
12 that we're contemplating filing is a motion to stay of the
13 district court proceedings with respect to the class claims, so
14 it's not just the class certification. It's -- I think we're
15 probably saying the same thing, but I just want to be clear
16 that we're just talking about -- the motion to stay is for the
17 class claims not moving forward at this point.

18 THE COURT: Motion to stay -- yeah, motion to stay
19 the class claims. If I were to grant that, then there's no
20 need for discovery on a stay of the class claims -- there's no
21 need to go forward with discovery if I've stayed the class
22 claims.

23 MS. GAROUSI: Right. And I also -- 'cause I have to
24 say this on the record, we still believe that, even if this
25 case does move forward, if the motion to stay is denied by you,

1 Your Honor, we -- this is an APA case. And APA cases are
2 records review cases, unless petitioner shows otherwise, that
3 there's some deficiency with --

4 THE COURT: Okay. Well, I mean, that's not an issue
5 for me to decide today --

6 MS. GAROUSI: Okay.

7 THE COURT: -- because I -- I'm reading Mr. Manning
8 as wanting to argue why that's not the case, and I'm not going
9 to invite any more of that discussion.

10 So, just simply, that I'm -- I'm granting the
11 plaintiffs' schedule. You haven't filed a motion, so there's
12 no motion for me to consider to stay those claims. And so this
13 schedule is appropriate.

14 And if I were to grant your stay, then that schedule
15 will -- will be held in abeyance, and then we'll figure that
16 out from there. In the meantime, I'm going to take a look at
17 both the motion to dismiss the habeas claims and the response.
18 And then I will move -- and then I will try to get information
19 to all of you about what, if anything, will be required on
20 discovery.

21 All right. Did that end up answering all of the
22 questions we were supposed to answer today, Mr. Manning?

23 MR. MANNING: It did, Your Honor. I appreciate it.
24 I appreciate the Court's time.

25 THE COURT: You're very welcome.

1 Actually, the interesting thing is I don't think I
2 gave you any answers. Amazing. An hour and a half and no
3 answers. But at least there's some clarity about what the road
4 looks like going forward.

5 But I hope to get some information out to you by the
6 week of June 8th -- or excuse me -- July. That's this coming
7 week, isn't it?

8 MR. MANNING: It's the Monday after the holiday
9 weekend.

10 THE COURT: Yes. It'll be after the holiday.
11 That'll give me an opportunity to review -- wait, wait.

12 Now, are you -- you're going to get me the response
13 on July 6th, right?

14 MR. MANNING: That's correct, Your Honor.

15 THE COURT: So it'll be after I get your response
16 that I will be able to give you any instruction about the
17 discovery on the habeas claims.

18 All right. And were there any other questions that I
19 needed to explore with you, Ms. Garousi?

20 MS. GAROUSI: No, Your Honor. We're all good.

21 THE COURT: All right. Thank you all very much. Be
22 well.

23 * * *

24 (Court adjourned, 6-25-26 at 9:58 a.m.)

25

C E R T I F I C A T E

M-J-M-A, et al., v. Todd Lyons, et al.

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

Status Conference and Discovery Hearing

June 25, 2026

I certify, by signing below, that the foregoing is
a true and correct transcript of the record, taken by
stenographic means, of the proceedings in the above-entitled
cause. A transcript without an original signature,
conformed signature, or digitally signed signature is not
certified.

/s/Lindsey A. Weresch, RMR, CRR, CSR

Official Court Reporter
Oregon CSR No. 14-0427

Signature Date: 7/1/2026
CSR Expiration Date: 6/30/2029

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