STEPHEN W. MANNING, OSB # 013373
stephen@innovationlawlab.org, smanning@ilgrp.com
JORDAN CUNNINGS, OSB # 182928
jordan@innovationlawlab.org
NELLY GARCIA ORJUELA, OSB # 223308
nelly@innovationlawlab.org
KELSEY LYNN PROVO, OSB # 145107
kelsey@innovationlawlab.org
ROSA SAAVEDRA VANACORE* NY# 5625611
rosa@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

**Admitted Pro Hac Vice*

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-; VICTOR CRUZ GAMEZ, Plaintiffs, v. JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and TODD BLANCHE, Attorney General of the United States, Defendants.	Case No. 6:25-cv-02011-MTK **PETITIONER'S MOTION TO COMPEL DISCOVERY AND SUPPORTING MEMORANDUM**

LR 7-1 CERTIFICATION

Counsel for Petitioner certifies that after conferring on August 3, 2026, Respondents advise they oppose this motion.

MOTION AND MEMORANDUM

There are two court orders in this case directing Respondents to produce discovery with which Respondents have failed to comply. *See* ECF 13, ECF 69. The first order was issued upon a showing of good cause by Petitioner. *See* ECF 13. The second order was issued after an adversarial discovery conference. *See* ECF 69. In between the orders and since the last order, Petitioner has undertaken numerous good faith attempts to resolve disputes. *See, e.g.* ECF 54, 67, 69, 97, 98, 104; *see generally* Declaration of Counsel in Support of Motion to Compel ("Counsel Decl.") (detailing background). Respondents indicated to the Court that they had complied with all the requests for production. Counsel Decl. Ex. I, Respondents' Letter to the Court. However, in December 2025, numerous DHS agents testified to the existence of a whole range of responsive documents that, in fact, were never produced. *See e.g.* ECF 55 at 123-130, 134-136, 176, ECF 56 at 259-265; ECF 57 at 333, 337, 347-48. Respondents admitted to destroying responsive documents, ECF 55 at 232-233, after the court granted the first discovery order, inclusive of those documents. Respondents' pattern of delay, obstruction, destruction, and obfuscation warrants specific remedies under Rule 37 and under the Court's inherent power to enforce its own orders. Petitioner moves for an order to compel compliance.

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 court may order a party to provide further responses to an "evasive or incomplete disclosure, answer, or response." Fed. R. Civ. P. 37(a)(4). If a party "fails to obey an order to provide or permit discovery…the court where the action is pending may issue further just orders." Fed. R. Civ. P. 37(b)(2)(A).

ARGUMENT

I. RESPONDENTS FAILED TO COMPLY WITH THE COURT'S DISCOVERY ORDERS AND THE CIVIL RULES OF DISCOVERY.

A. Respondents' failure to comply with the Court's orders.

There is a large gap between sworn DHS agent testimony and the Respondents' production. DHS agents testified in court under oath about numerous documents that, as described in their testimony, were responsive to Petitioner's request. *See e.g.* ECF 55 at 123-130, 134-136, 176, ECF 56 at 259-265; ECF 57 at 333, 337, 347-48. Indeed, Petitioner supplemented her request for discovery to identify those documents and provided a table with eleven categories of production and sub-categories corresponding to specific information from the testimony. Counsel Decl. Ex. C, Petitioner's Letter Request December 29, 2025, and Ex. D, Petitioner's First Letter to the Court regarding Discovery. But, Respondents did not produce those documents.

For Request #2, agent D.R testified to receiving "some intelligence to go to various addresses throughout Woodburn that had an immigration nexus," ECF 55 at 124, however, Respondents produced ten redacted documents of what seem to be profiles of different people with addresses in the cities of Salem, Portland and Gresham, not just Woodburn. Similarly, the Request #3 category, referred to agents' testimony of "running" license plates or performing "tag runs", ECF 55 at 130, 236, determining that Woodburn was "target rich," ECF 57 at 412-413, target vehicle registration and "immigration nexus," ECF 55 at 236; Respondents indicated that the responsive documents were the same as Request #2 and did not indicate which sub-category the documents were responsive to, if any. Counsel Decl. Ex. G, Categorization Table.

For Request #4, the operations referenced by the agents such as "Operation Fortifying the Border," ECF 55 at 134-136, "Operation Black Rose," ECF 57 at 347, or other "at large operations," ECF 55 at 258-59; were not properly labeled or produced. Counsel Decl. at ¶ 10.

For Request #5, the emails referenced by agent C.S.W. during her testimony regarding the narratives of the arrests, ECF 57 at 324; Respondents only provided the email narrative for Petitioner's arrest. Counsel Decl. Ex. G, Categorization Table. Emails referring to the six other people from the van, and the rest of the arrestees from October 29-31, 2026 are missing.

For Request #6, the emails sent or transmitted from the "Black Rose" email from October 29-31, 2026, as referenced by agent R.F., ECF 57 at 410, were not produced and Respondents only provided redacted narratives for 15 individuals. Counsel Decl. Ex. G, Categorization Table. But, just for "Team 7", there was an expectation of eight arrests a day, *see* ECF 55 at 260, so under that calculation there should be around 24 narratives for those three days. For Request #7, the category corresponded to documents related to the transport of Petitioner, ECF 57 at 384; Respondents provided two heavily redacted documents and the general contracts with the contractor in charge of the Northwest ICE processing Center with some redactions.

Likewise, for Request #9, the "target packet," ECF 55 at 124, targeting documents referred by agent J.B. in his testimony, ECF 55 at 226-234, Mobile Fortify results or facial recognition matches, ECF 55 at 158, 253-54, and ECF 57 at 432, and results from other databases as referenced by the agents were not produced and some of these were produced without proper labels. Counsel Decl. Ex. G, Categorization Table. The target packages described by agent J.B., the recreation of the target list destroyed by agent J.B., results from the "ELITE" application, protocols for developing target packages, the rap sheet and immigration history from the owner of the van, results from Mobile Fortify were not produced.

For Request #10, the instructions referenced by agent B.W. regarding the use of boilerplate language on the arrest narrative forms I-213, ECF 56 at 291-92. Respondents provided redacted emails with instructions on filling out information on an unknown platform and email with a narrative example. The actual instructions to generate the I-200 warrant post-arrest and the instructions provided on how to fill the I-213 were not produced.

B. Respondents' failure to comply with the civil rules for discovery.

First, the form of their production is improper because it is not labeled. Respondents "must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the [discovery] request[.]" Fed. R. Civ. P. 34(b)(2)(E)(i). Here, the Court ordered discovery by reference to the Petitioner's table. ECF 69. Respondents must label their production accordingly. The table that they untimely provided uses the broadest categorization of items in disregard of the discovery order and causing prejudice to Petitioner.

Second, the form of their production is improper because they have failed to produce responsive electronically stored information (ESI) in the manner in which it is ordinarily maintained. For ESI, Respondents "must produce it in a form or forms in which it is ordinarily maintained on in a reasonably useable form or forms[.]" Fed. R. Civ. P. 34(b)(2)(E)(ii). Here, Petitioner specified the form for producing electronically stored information but Respondents did not produce any, though there is a substantial body of responsive ESI. *See* Part I.A.

Third, Respondents have not created an adequate privilege log. The Ninth Circuit has stated that when a party withholds information "otherwise discoverable by claiming that the information is privileged or subject to protection must: (i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the claim." *Immigrant Defenders Law Center v. Noem*, 2025 WL 1381627 85 *5 (C.D.Cal., March 25, 2025) (citation modified). A privilege log must be "sufficiently detailed for the opposing party to assess whether the assertion of privilege is justified. The log must be produced as quickly as possible but no later than fourteen days after the party's disclosures or discovery responses are due unless the parties stipulate to, or the court sets, another date." *Prado v. Equifax Info. Servs. LLC*, No. 18-CV-02405-PJH (LB), 2019 WL 88140, at *3 (N.D. Cal. Jan. 3, 2019).

Respondents have provided no privilege log and have been on notice of this deficiency since March 4. The table they created was untimely and, substantively, it does not meet the standard. Respondents initially claimed that their redactions on the produced documents were based on law enforcement privilege through emails sent by their legal assistant which contained the link to download the discovery production. Counsel Decl. ¶ 10. Later, on March 30, 2026, upon request from Petitioner, Respondents produced the table referenced above, where they introduce explanations for the redactions on their production. Id. Ex. G, Categorization Table. This table does not comport with Rule 26(b)(5)'s privilege log requirements.

II. RESPONDENTS' LAW ENFORCEMENT PRIVILEGE IS IMPROPER.

A. The "law enforcement privilege" is not a recognized privilege under the law.

Neither the U.S. Supreme Court nor the Ninth Circuit have expressly recognized the law enforcement privilege. *See Shah v. U.S. Dep't of Justice*, 714 F.Appx 657, 659 n.1 (9th Cir. 2017). Nevertheless, district courts have assumed without deciding that the privilege exists and have applied it to protect the integrity of law enforcement techniques, sources and investigations, and to prevent interference to pending investigations. *See Lien v. City Of San Diego*, No. 21-CV-224-MMA (WVG), 2022 WL 134896, at *2 (S.D. Cal. Jan. 14, 2022).

B. Respondents waived the privilege.

A party may forfeit and waive a privilege when they fail to act timely. *See Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1147-49 (9th Cir. 2005). District courts have held that law enforcement privilege may only be properly invoked after a specific procedure. *Perdomo v. Noem*, 2026 WL 166570, *5 (C.D. Cal. Jan. 16, 2026) (burden is on party invoking law enforcement privilege to properly do so). Respondents must make "(1) a formal claim of privilege by the head of the department having control over the requested information; (2) assertion of the privilege based on actual personal consideration by the official; and (3) a detailed specification of the information for which the privilege is claimed, with an explanation why it properly falls within the scope of the privilege." *Id.*

1. Respondents failed to timely invoke the privilege.

On June 25, 2026, more than four months *after* the court's order requiring production and three months after they missed the deadline for their only extension, Respondents transmitted two declarations purporting to invoke the privilege. Declaration of Counsel Under Seal("Sealed Decl.") ¶2. On June 30, 2026, Respondents transmitted another declaration. *Id.* Ex. DD, Email from Keith Ramsey.[1]

Burlington Northern instructs that Respondents waived the privilege. In *Burlington Northern*, the court found that "not only was [the privilege log] not filed during the Rule 34 time limit, but was filed *five months* later." *Burlington Northern*, 408 F.3d at 1149 (emphasis in

[1] The Respondents labeled the declarations asserting the privilege as "confidential" under the protective order and Petitioner has filed them under seal.

original). The court reasoned that Burlington Northern was a "sophisticated" litigant and a "repeat player" in lawsuits. *Id*. Here, the Respondents are sophisticated litigants and repeat players in lawsuits who employ thousands of lawyers. Not only that, but they are represented by one of the world's largest and most sophisticated law firms, the United States Department of Justice. Yet, the privilege was not initially invoked until three months *after* the second court order compelling discovery. Unlike *Burlington Northern* who failed to respond within the standard rule time limit after service by the opposing party a request for discovery, here Respondents failed to respond to a *court order* imposing a deadline. ECF 69.

2. Respondents inadequately invoked the privilege.

[redacted] is not the "head of the department who controls the requested information". Sealed Decl. Ex. AA, Declaration of [redacted] ("[redacted] Decl.") at 1. [redacted] attests that [redacted] Decl. at 3. But that strikes false because the [redacted] without any security protocols or protections undermining the [redacted] claim; there is a protective order in place which contains more substantive and procedural protections than those which [redacted] actually used in [redacted] and the description of the privilege, particularly as it applies to a completed operation and investigation, is wrong. The declarant's individual assertions of the privilege as applied to the other enumerated documents in the declaration fails for similar reasons. Take for example, [redacted] Decl at 5. It fails for all the reasons above but one more: [redacted]

The declarant cannot invoke the privilege for information that is not [redacted] information. The declarant's description of [redacted] is facially wrong and the invocation as applied to [redacted] is legally incorrect because the purpose of the privilege is not to enable [redacted] to operate like a state secret police force.

The [redacted] and [redacted] declarations fail for all the same reasons as the [redacted] declaration. *See* Sealed Decl. Ex. BB, Declaration of [redacted]; and Ex. CC, Declaration of [redacted].

C. The "law enforcement privilege" simply does not apply.

The law enforcement privilege does not apply to this matter at all because the investigation and operation have concluded. *See Youngblood v. Gates*, 112 F.R.D. 342, 345 (C.D. Cal. 1985) (holding that "since the investigation is no longer ongoing, the consensus is that a litigant should be allowed access to law enforcement files as needed to develop his civil action.").

Here, the immigration agencies' investigation regarding M-J-M-A- has ended. *See* ECF 26 at 2 ("Petitioner was released from ICE custody without imposition of any conditions on her release. No Notice to Appear was filed or will be filed as a result of her October 30, 2025, arrest."); *see also* Conrad Wilson, *Portland immigration operation spanned months, included 100 ICE agents*, OPB, https://perma.cc/2AT5-TYLW (April 16, 2026), (citing letter from Todd Lyons that detailed the operation "ran between Sept. 27 and March 1, [2026]."). There is no present investigation or ongoing operation therefore any claim of need is baseless.

D. The protective order renders the privilege inoperative.

None of the materials that have been produced by Respondents would be subject to public disclosure that would "risk circumvention of the law" because there is a protective order already and they have designated the documents as confidential. The law enforcement privilege is not absolute but is a qualified privilege that requires "a need to balance the public interest in nondisclosure against the need of the particular litigant for access to the privileged information." *Hemstreet v. Duncan*, 2007 WL 4287602, at *2 (D. Or. Dec. 4, 2007) (internal citations omitted).

III. RESPONDENTS' IMPROPERLY REDACTED RESPONSIVE DOCUMENTS

Respondents have withheld in full or in part by means of redaction numerous responsive documents by withholding "personally identifiable information." PII is not a privilege and must generally be produced if it is in a responsive document. Fed. R. Civ. P. 26(b). Respondents have not defined or explained the scope of what they have redacted as PII have only indicated that it includes phone numbers, funding strings, and "Noncitizen's PII". Counsel Decl. a t¶ 11, Ex. G, Categorization Table. Petitioner recognizes the sensitive nature of immigration proceedings and disclosure of information that can identify individuals which is why she was allowed to proceed under her initials and why there is a protective order in this case. *Chavez-Deremer v. Coway USA, Inc.*, No. 2:24-CV-08156-JLS-AJR, 2025 WL 2633178, at *6 (C.D. Cal. July 18, 2025).

In the present case, a protective order has been already entered, and it covers discovery production. *See* ECF 42. Paragraph 17 specifically authorizes Respondents to produce PII that might otherwise be covered by the Privacy Act. *Id.* at 8-9.

REMEDY

Petitioner requests the following in light of the delays, obstruction, destruction, and obfuscation by Respondents:

Within 7 days of an order, (a) Respondents shall produce each document redacted or withheld under the law enforcement privilege in an unredacted form; (b) Respondents shall produce each document redacted in whole or in part for any other asserted reason, in an unredacted form; and, (c) Respondents must participate in good faith in a discovery planning conference under Rule 26(f) wherein a person or persons with the ability to facilitate the preservation, retrieval and production of Petitioner's ESI requests participates in the Rule 26(f) conference and subsequent conferrals on the production of documents, when requested by Petitioner;

Within 3 days of the conference, Petitioner may submit a request for production of documents.

Within 14 days of the conference, (a) Respondents shall conduct new searches for and produce responsive documents; the production must include an affidavit signed under penalty of perjury by the Respondents' discovery liaison describing the searches; (b) Petitioner may serve Notices for a Rule 30(b)(6) deposition on the topic of at-large operations that were performed in October and November 2025 in Oregon; and, Respondents shall provide such witness within 14 days of notice; (c) Petitioner may serve interrogatories; (d) Petitioner may serve notices for deposition on Agents D-R-, C-M-, J-B-, M-K-, R-F-, B-W-, and K-K- and Respondents shall act in good faith to schedule such depositions promptly; (e) Petitioner may serve a notice of inspection on Respondents to inspect the computer and mobile devices used by Agent J-B- for the planning, preparation, or execution of the October 30, 2025 enforcement action resulting in the Petitioner's detention.

No later than 30 days after the issuance of an order, Respondents shall file an affidavit describing the status of their efforts to comply.

Dated: August 4, 2026. Respectfully submitted,

/s/ Nelly Garcia Orjuela

NELLY GARCIA ORJUELA, OSB No. 223308
nelly@innovationlawlab.org
STEPHEN W MANNING, OSB No. 013373
stephen@innovationlawlab.org, smanning@ilgrp.com
JORDAN CUNNINGS, OSB No. 182928
jordan@innovationlawlab.org
KELSEY PROVO, OSB No. 145107
kelsey@innovationlawlab.org
ROSA SAAVEDRA VANACORE* NY# 5625611
rosa@innovationlawlab.org
INNOVATION LAW LAB
333 SW 5th Ave., Suite 200
Portland, OR 97204-1748
Telephone: +1 503-922-3042

Attorneys for Petitioner