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June 12, 2026

VIA EMAIL: kasubhai_crd@ord.uscourts.gov

The Honorable Mustafa T. Kasubhai
United States District Court Judge
Wayne L. Morse United States Courthouse
405 East Eighth Avenue, Room 5500
Eugene, Oregon 97401-2706

Re: Discovery Dispute Summary
MJMA v. Wamsley, et al. - Case No. 6:25-cv-02011-MTK

Your Honor:

In accordance with the Court's June 5, 2026, Order, Dkt. 98, Respondents submit this response to Plaintiff's discovery letter dated June 9, 2026.

BACKGROUND

On October 30, 2025, Petitioner filed a habeas petition. On October 31, 2025, the Court granted Petitioner's oral request for discovery. On November 1, 2025, Petitioner sent Respondents a set of requests for production ("RFPs"), which included three RFPs. Dkt. No. 36-1. Those RFPs are as follows:

REQUEST FOR PRODUCTION NO. 1: All documents relied on by Respondent or pertaining to Petitioner, that led to her stop and arrest on Thursday, October 30, 2025, including but not limited to any manifest, muster, or daily agenda issued by Respondent for the October 30, 2025 action by DHS.

REQUEST FOR PRODUCTION NO. 2: All documents involved in the detention and processing of Petitioner in the course of her detention on and since October 30, 2025, including but not limited to:

- Any Form I-213 determination;
- Any I-200 Warrant for Arrest;
- Any documents Petitioner signed, was requested to sign, or were presented to her;

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- Any transfer determination made;
- Any Notice to Appear issued;
- Any further booking records and/or processing documents.

REQUEST FOR PRODUCTION NO. 3: Petitioner's complete A-file.

Id. at 7.

By November 28, 2025, ICE and CBP provided Petitioner with 67 pages of discovery, including body camera footage. On December 2 and 3, 2025, the Court held an evidentiary hearing in which testimony was received from ten witnesses. After the final witness testified on December 3, 2025, and Petitioner indicated she had no rebuttal case, the Court closed the record. Tr. 446:8–13.

On December 29, 2025, Petitioner's counsel sent Respondents' counsel a letter entitled "Demand for Production of Documents," which included 11 categories with multiple subcategories, of documents Petitioner deemed responsive to her initial three requests for production. On January 22, 2026, the Court held a discovery hearing and ordered Respondents to produce documents as outlined during the hearing and in its subsequent minutes of proceedings. Dkt. 69. On February 23, 2026, Respondents produced all responsive documents in their custody and control with the exception of documents in subcategories 3.b.–d., 9.l., and 9.n. On March 9, 2026, Respondents produced additional documents. Dkt. 90. On March 12, 2026, all responsive documents related to the aforementioned subcategories were produced.

On March 30, 2026, Respondents' counsel reproduced documents in accordance with their understanding of Petitioner's counsel's disputes, which were raised during a March 4 conferral. The reproduction removed redactions for officers' information but maintained redactions for the PII of third parties unrelated to MJMA's individual habeas petition. The reproduction also included a chart categorizing each document with respect to Petitioner's 11 categories and explaining redactions. Pet'r's Discovery Letter, Ex. A.

On May 4, 2026, the parties conferred regarding Petitioner's continued discovery disputes, which included redaction of third parties' PII, the categorization of documents, and whether Respondents had produced all documents responsive to Petitioner's three RFPs. Respondents' counsel previously understood Petitioner's counsel to not take issue with the redaction of third parties' PII. Respondents' counsel also inquired why Respondents' previous categorization was insufficient, if it was insufficient. Petitioner's counsel said he needed to get clarification from his team and would later provide Respondents' counsel answers. Petitioner's counsel also indicated he would check with his team whether they agreed that production of category 6 was limited to emails involving Arrest Team 7.

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Without having answered Respondents' counsel's questions, Petitioner's counsel next contacted Respondents' counsel on May 29 requesting Respondents' position on asking for a status conference. Respondents' counsel indicated they did not oppose a status conference. Petitioner's counsel did not notify Respondents' counsel what issues they intended to raise with the Court.

Following the status conference on June 5, 2026, Respondents' counsel emailed Petitioner's counsel following up about the outstanding unanswered questions from the May 4, 2026, conferral regarding discovery. Later that day, Petitioner's counsel responded to Respondents' counsel's unanswered questions.

RESPONSE

Petitioner outlines three disputes with Respondents' production of discovery on the habeas claims. Respondents address each dispute below.

1. Law Enforcement Privilege

Petitioner states that Respondents cannot invoke law enforcement privilege and did not properly invoke the privilege.

Though neither the Supreme Court nor the Ninth Circuit has expressly recognized the law enforcement privilege, neither has rejected it. *See Shah v. Dep't of Justice*, 714 F. App'x 657, 659 n.1 (2017) ("Though several other circuits have adopted such a privilege—[collecting cases]—the U.S. Supreme Court and the Ninth Circuit have yet to recognize or reject a "law enforcement privilege."). Notably, this District has recognized the law enforcement privilege.¹ *See Denison v. Oregon*, 211 F.R.D. 408, 410 (D. Or. 2002).

"The federal law enforcement privilege is a qualified privilege designed to prevent disclosure of information that would be contrary to the public interest in the effective functioning of law enforcement." *Chinn v. Blankenship*, No. 09-5119 RJB, 2010 WL 11591399, at *6 (W.D. Wash. Feb. 26, 2010). "It is designed 'to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.'" *Hemstreet v. Duncan*, No. CV-07-732-ST, 2007 WL 4287602, at *2 (D. Or. Dec. 4, 2007) (citing *In re Dep't of Investigation of City of New York*, 856 F.2d 481, 484 (2d Cir. 1988)). Law enforcement privilege "bars disclosure of facts and is based primarily on the harm to law enforcement efforts which might arise from public disclosure of investigatory files." *Id.* (cleaned up).

¹ The law enforcement privilege is sometimes referred to as the official information privilege or the ongoing investigation privilege. *See Al Otro Lado, Inc. v. Wolf*, No. 3:17-CV-2366-BAS-KSC, 2020 WL 3487823, at *2 n.3 (S.D. Cal. June 26, 2020).

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In order to establish the law enforcement privilege, three requirements must be met: “(1) there must be a formal claim of privilege by the head of the department having control over the requested information; (2) assertion of the privilege must be based on actual personal consideration by that official; and (3) the information for which the privilege is claimed must be specified, with an explanation why it properly falls within the scope of the privilege.” *Wagafe v. Trump*, 334 F.R.D. 619, 623 (W.D. Wash. 2020). In assessing whether the party asserting the privilege has demonstrated that the information properly falls within the scope of the privilege, the Court must “weigh the public interest in nondisclosure against the [requesting party's] need for access to the privileged information.” *Id.* (quoting *Tuite v. Henry*, 98 F.3d 1411, 1417 (D.C. Cir. 1996)).

To the extent there is any defect in Respondents’ assertion of law enforcement privilege, that privilege has not been waived. The Ninth Circuit has been hesitant to deem a privilege waived where a litigant has not fully complied with the requisite FRCP. For example, the Ninth Circuit has rejected creating a “*per se* waiver rule that deems a privilege waived if a privilege log is not produced within Rule 34’s 30-day time limit.” *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Ct. for Dist. of Mont.*, 408 F.3d 1142, 1149 (9th Cir. 2005). Rather, the Ninth Circuit set out a holistic reasonableness analysis in determining whether the failure to produce a privilege log results in privilege being waived. *Id.*

Respondents will cure any defect in asserting the privilege or reproduce the documents without redactions by June 24, 2026, at 12 p.m.

2. Redactions for Third Parties’ PII

Petitioner takes issue with the redactions to third party PII, but despite Respondents’ conferral efforts, Petitioner never clarified that she sought third party PII in unredacted form. Third parties’ PII was in part redacted because Petitioner is not entitled to third parties’ information for resolution of her individual habeas claims. For example, Respondents provided Petitioner with the rosters for those transported to and detained at the NWIPC, which included PII—names, A-numbers, countries of origin, birth dates, housing locations, etc.—of noncitizens other than MJMA. *See* ICE_000768–826. Petitioner is not entitled to third parties’ information in her individual habeas petition, and Respondents object to Petitioner using discovery in her habeas proceedings as an end run for seeking discovery for her supplemental class claims.

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3. Document Categorization and Sufficiency of Production

Respondents provide the below chart in response to Petitioner's contention with the document categorization and sufficiency of production:

Petitioner's Dispute	Respondents' Response
RFP 2 – Partially produced. The request referenced a specific part of the Evidentiary Hearing transcript describing the intelligence received on the specific apartment complex and the owner of the van where MJMA traveled. The specific profile/target package of the owner of the van or the apartment complex are missing.	ICE conducted a reasonable search of custodial officers' emails accounts for the period of 10/16/2025 through 10/31/2025; using targeted search terms: "Intelligence", "target", "package", "Woodburn", "Oregon" At the evidentiary hearing, Officer D.R. testified that "[a]s far as [he] remember[ed], [they] were given some intelligence to go to various addresses throughout Woodburn that had an immigration nexus." Tr. 124:12–13. Officer D.R. did not testify that he was provided a target package for the owner of the van or the apartment complex. The target packages that were distributed to all teams sent to Woodburn on October 30, 2025, have been produced. ICE_000216–233.
RFP 3 – None of the documents specify which sub-category they correspond to. • (a) and (e): No documents referring to why Woodburn was "target rich" or "immigration nexus"– ELITE App • (b) and (c): No results from the license plate run. • (d): No results connecting license plate with "immigration nexus"	Respondents produced the "target packages" that were distributed to the teams in Woodburn on October 30. ICE_000216–233. 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. CBP_000827.

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RFP 4 – None of the documents indicate which sub-category of the request they are responsive to and most contain heavy unsubstantiated redactions.	ICE conducted a reasonably diligent search of the custodial officers email accounts from October 16, 2025, through October 31, 2025, using targeted search terms related to this discovery request: “operation”, “fortifying the border”, “black rose”, “Portland safe”, “Portland sweep”, “at large operation”, “Portland”, “Oregon”, “Portland sweep”, “Portland details”, “guidance”). All responsive emails containing those terms were produced. CBP conducted a manual search of all emails, text, and Teams chats for its agents who were in Portland using the following terms: “Operation Fortifying the Border” and “Fortifying the Border;” “Operation Black Rose” and “Black Rose;” “Operation Portland Safe” and “Portland Safe;” “Operation Portland Sweep” and “Portland Sweep;” All other at large operation in Portland or Oregon (“Operation Oregon”). All documents containing those search terms were produced for CBPO M.K. from October 14, 2025, through October 31, 2025. All documents containing those search terms for BPAs CM and AW were produced from October 23, 2025, through October 31, 2025. CBP also manually searched the ACADIS training portal without a date range and using the following terms: “Operation Fortifying the Border” and “Fortifying the Border;” “Operation Black Rose” and “Black Rose;” “Operation Portland Safe” and “Portland Safe;” “Operation Portland Sweep” and “Portland Sweep;” All other at large operation in Portland or Oregon (“Operation Oregon”). All responsive documents from ACADIS containing those search terms were produced.
RFP 5 – Partially produced. Only the emails referring to Petitioner were produced.	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.

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Petitioner believes the emails referring to the 6 other people from the van, and the rest of the arrestees from Oct 29-31, 2026 are missing.	
RFP 6 – Petitioner understands that, just for Team 7, there was an expectation of 8 arrests a day -which they complied with- and that totals 24 people arrested over 3 days. Respondents only provided redacted information for 15 individuals.	ICE conducted a reasonably diligent search of the Black Rose mailbox for the period of 10/29/2025 through 10/31/2025, using targeted search terms, (“Team 7”, “MJMA”) and searched for all emails sent from officers in Team 7. ICE produced all responsive emails sent to or from the Black Rose mailbox, by Team 7. CBP manually searched the emails of the CBP officers involved in MJMA’s arrest using the Black Rose email as the search term. Any responsive documents from that search were produced.
RFP 7 – Produced information was heavily redacted.	ICE conducted a reasonable search of ICE records and produced responsive materials, including travel logs and relevant contracts. Petitioner is not entitled to the names, A-numbers, country of origin, etc. for all individuals transported to or housed at the NWIPC during the brief time MJMA was there. That information is beyond the scope of Petitioner’s habeas claim and has been appropriately redacted.
RFP 9 –None of the production was categorized, the only sub-category that Petitioner can ascertain was produced is (f), corresponding to the pictures from agent JB’s phone. Missing target packages referenced in testimony – produced the profiles from RFP 2, 3 and 4. Agent	(a., b., c.): These requests are duplicative of Request 2. The target packages that were distributed to all teams sent to Woodburn on October 30, 2025, have been produced. ICE_000216–233. (d.) Petitioner appears to rely on a reference to “protocol” in the transcript. But that reference

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JB mentioned a list containing more people than the 10 profiles provided. • (b) Missing how Woodburn was a target – referencing ELITE app. • (c) Same as subcategory (a). • (d) Missing protocols to develop target packages - None were provided. • (e) Failed to recreate the target list from agent JB that was destroyed or efforts to recover. • (g) Missing the results from ELITE app for the Oct 29-31 period. Produce or allow inspection. • (h)-(j) Failed to produce. Produce at least the results on the rap sheet and which platform was it obtained from and the immigration history of the owner of the van. • (l) Missing the results from Mobile Fortify app for the Oct 29-31 period. Produce or allow inspection. • (m) Specific matches for MJMA not produced, only different pictures of MJMA. Not the results from the app. Produce or allow inspection. • (n) Failed to produce – there are some spreadsheets produced after AUSAs stated they were having issues with this request in particular, the production seems like search results but unable to tell content as they are completely redacted. Reproduce or allow inspection.	appears to have been made by the Court, not the officer. The officer did not testify that there was any particular written protocol used to develop target packages. (e., h.) With respect to the “target packages” Officer J.B. created, he testified that he threw out his papers after leaving Portland and did not save them. Tr. 231:24–233:15. Petitioner fails to cite any legal authority that obligates Respondents to create evidence that does not exist or recreate destroyed evidence. <i>See Miller v. Experian Info. Solutions, Inc.</i>, No. 3:13-cv-90, 2014 WL 5513477, at *2 (S.D. Ohio Oct. 31, 2014) (citing cases establishing that “[p]arties have no duty to create documents simply to comply with another party’s discovery request”); <i>McDonald v. BP Exploration & Production Inc.</i>, 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)); <i>see also Lamon v. Adams</i>, 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). (f.) 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 have been produced. (g., o., p.) Respondents’ counsel needs to clarify with ICE which documents in the production are from ELITE. (i., j., k.) 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
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• (o)–(p) Failed to produce. Produce or allow inspection.	searches regarding the registered owner of the vehicle. CBP_000827. (l., m.) Although testimony at the evidentiary hearing referred to “Mobile Fortify” as an app used for biometrics on the arrest day, CBPO MK used Mobile Query, not Mobile Fortify. A manual app record search and audit was performed on CBPO MK’s use of both Mobile Fortify and Mobile Query for October 30, 2025. The results of CBPO MK’s Mobile Query search were produced. CBP_000725–732.
RFP 10 - the information provided does not match the request regarding issuing post-hoc warrants but Respondents provided redacted emails with instructions on filling out information on a platform (unknown) and email with narrative example. Petitioner is missing the actual instructions to generate the I-200 warrant post-arrest and the instructions provided on how to fill out forms.	ICE conducted a reasonable search of custodial Black Rose email account for the period of 10/29/2025 through 10/31/2025, using targeted search terms: Portland, Oregon, instructions, guidance, rules. The search located limited instruction- related communications, which have been produced. No additional responsive documents were identified from the search.

4. Remedy Requested

As a remedy for the disputes Petitioner raises, Petitioner requests “the court compel Respondents to produce all missing identified categories, reproduce any destroyed documents, and if this last is not possible, allow Petitioner inspection of the information to cure the prejudice. Fed. R. Civ. P. (e)(1).” Pet’r’s Discovery Letter at 6 (June 10, 2026). Petitioner is seemingly requesting the Court issue sanctions against Respondents for perceived deficiencies in the production. Petitioner presumably cites Fed. R. Civ. P. 37(e)(1) in support of her preferred remedy but does not explain how Rule 37(e)(1) was violated or why her proposed sanctions are appropriate. Petitioner has not demonstrated that she has been prejudiced. She also fails to point to legal authority that requires Respondents to create documents that do not exist or recreate destroyed evidence. If Petitioner intends to seek sanctions against Respondents, Petitioner must confer with Respondents and file a motion to which Respondents can respond.

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Sincerely,

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