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April 6, 2020

Honorable Elizabeth A. Wolford  
United States District Judge  
Kenneth B. Keating Federal Building  
100 State Street  
Rochester, New York 14614

Re: Hassoun v. Searls, 1:19-cv-00370-EAW – *In Camera* Review of Documents with Invocation of IV Privilege

Dear Judge Wolford:

Petitioner writes pursuant to the Court’s Order of March 17, 2020, ECF No. 108, regarding certain documents over which the government has invoked the law enforcement investigatory files privilege (“IV privilege”). The government has since made further disclosures, waived the IV privilege in some instances, and provided additional explanation in others. There now remains a relatively short list of documents over which the government claims the IV privilege and about which Petitioner still does not have sufficient information to challenge the invocation.

As Petitioner previously argued, a privilege log must contain sufficient information for a party to challenge the privilege designation. *United States v. Constr. Prod. Research, Inc.*, 73 F.3d 464, 473 (2d Cir. 1996) (concluding that a privilege log containing “a cursory description of each document” was insufficient under the Federal Rules); *Citizens Against Casino Gambling in Erie Cty. v. Stevens*, No. 09-CV-0291S, 2012 WL 2405195, at \*9 (W.D.N.Y. June 23, 2012) (ordering in camera review of documents because privilege log described documents in a “general manner”); *Sulaymu-Bey v. City of New York*, 372 F. Supp. 3d 90, 93 (E.D.N.Y. 2019) (“vague, non-specific description[s]” and “generic assertions” do not meet the requirements of Rule 26(b)(5)). If additional information is impossible to provide without compromising the assertion of the privilege, *in camera* review is appropriate. *See In re Subpoena Duces Tecum Issued*

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to *Commodity Futures Trading Comm'n*, 439 F.3d 740, 751 (D.C. Cir. 2006) (“Where detailed description of the contested documents would undermine the claimed privilege, the proponent’s burden to describe with particularity can be met in other ways, such as in camera review by the court.”); *Black Love Resists In the Rust by & through Soto v. City of Buffalo, N.Y.*, No. 1:18-CV-719, 2019 WL 6907294, at \*8 (W.D.N.Y. Dec. 19, 2019) (“The court cannot evaluate the applicability of the law enforcement privilege without a privilege log and an in camera inspection of the [documents].”); see also *Arroyo v. City of Buffalo*, No. 15-CV-753A(F), 2018 WL 4376798, at \*7 (W.D.N.Y. Sept. 13, 2018).

Petitioner has identified the following documents for which the current descriptions in the privilege log are insufficient. Given the time constraints, Petitioner respectfully requests that the Court review these documents *in camera* and determine whether the government’s invocation of the privilege may stand. See *In re Sealed Case*, 856 F.2d 268, 271–72 (D.C. Cir. 1988); *In re City of New York*, 607 F.3d 923, 940 (2d Cir. 2010).

DEF-00000393: The subject line of this email is “11/22 Surveillance,” which does not give Petitioner enough information to challenge the invocation.

DEF-00000394: The subject line of this email is redacted; the sender and recipient do not give Petitioner enough information to challenge the invocation.

DEF-00000395: The subject line of this email is redacted; the sender and recipient do not give Petitioner enough information to challenge the invocation.

DEF-00005355: The subject line of this email is “RE: Detention Assistance - A074 079 096 HASSOUN – Lebanon,” which does not give Petitioner enough information to challenge the invocation.

The government also continues to invoke the IV privilege with respect to DEF-00009371-DEF-00009398 and DEF-00009437-DEF-00009441. The government has stated that Mr. Hassoun is not a target of the investigation that is the subject of the documents and that the documents are unrelated to the *Hassoun v. Searls* litigation. Given those representations, Petitioner is not pressing his claim to these documents at this time. It appears, however, based on the description in the privilege log for entry for DEF-00009437-41 and what is visible in the redacted document at DEF-00009370, that these documents may relate to one or more investigations into alleged associates of Mr. Hassoun, rather than Mr. Hassoun himself. If the government decides to press allegations against Petitioner that relate to such individuals or investigations—or that otherwise implicate these documents—Petitioner expects the government to revise its representations in the privilege log so that Petitioner may renew his request for *in camera* review at that time.

Petitioner has attached the government’s most recent privilege logs to this letter to aid in the adjudication of these remaining privilege claims.

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Respectfully,

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