

# Exhibit 4

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

v.

JEFFREY SEARLS, in his official capacity  
as Acting Assistant Field Office Director and  
Administrator, Buffalo Federal Detention  
Center,

Respondent.

---

**RESPONDENT'S FIRST RESPONSE TO PETITIONER'S  
FIRST SET OF REQUESTS FOR PRODUCTION**

In accordance with the Court's scheduling order of December 20, 2019 (ECF No. 58), Respondent Jeffrey Searls provides these responses to Petitioner Adham Amin Hassoun's First Set of Requests for Production. By responding to Petitioner's first set of requests for production, Respondent does not waive his rights to rely on other facts or documents at the evidentiary hearing ordered by the Court. Additionally, by responding to Petitioner's requests, Respondent does not waive his right to assert any and all objections to the admissibility of such evidence at the evidentiary hearing.

**OBJECTION WHICH APPLIES TO ALL REQUESTS FOR PRODUCTION:**

Respondent maintains a standing objection to the convening of an evidentiary hearing, as all relevant factual information necessary for judicial review is contained within the administrative record. By providing responses to these Requests for Production, Respondent does not concede that an evidentiary hearing is appropriate.

**RESPONSES:**

**REQUEST NO. 1:**

All documents related to statements made by any witness/informant against and/or about Petitioner, including any written or recorded statements of said witness/informant, and any written statements or recordings and any notes or reports drafted by government officials about such statements or recordings.

**RESPONSE TO REQUEST NO. 1:**

*First*, Respondent objects to Request No. 1 to the extent the requested information is vastly overbroad and not proportional to the needs of the case and to the extent its use of term “the government” is vague, undefined, and has the potential to result in unduly burdensome discovery. Such a term arguably covers any level of government and any branch (e.g., the Court) and thereby seeks information that is not relevant to the claims and defenses in this case. Responding to Request No. 1 as written would require Respondent to search for responsive information in any number of databases or applications, maintained by any number of government officials—even those who would not testify or who have any involvement whatsoever with Petitioner’s claims. Request No. 1 seeks information that is not relevant to the claims and defenses in this case. For instance, transcribed statements by Judge Wolford at the November 22, 2019 oral argument in this case arguably qualify as responsive materials. Emails of government counsel or other government actors who have no influence or decision-making authority could also fall within this Request.

*Second*, Respondent objects to Request No. 1 to the extent it seeks information protected from disclosure under statutes, regulations, or directives regarding the protection of classified information and any information subject to a claim of the state secrets privilege, many of which

would subject Respondent to civil or criminal penalties or other sanctions in the event of unauthorized disclosure.

*Third*, Respondent objects to Request No. 1 to the extent the requested information requests personally identifiable information of confidential informants, which is protected under the confidential informant privilege. Respondent invokes that privilege here and incorporates by reference from his response to Petitioner's Interrogatory No. 1.

Respondent also objects to Request No. 1 to the extent the requested information is protected under the deliberative process privilege, the law-enforcement privilege, the attorney-client privilege, and/or other government privileges. However, as it would likely take months for Respondent to fully assess the universe of documents responsive to Request No. 1, Respondent is unable to identify which privileges, exactly, would apply at this time.

*Fourth*, Respondent also objects to Request No. 1 to the extent the requested information is not relevant to the claims or defenses in this case. For example, this Request could seek extremely sensitive and personal information that is not relevant to this action, and often with regard to individuals who are not Petitioner, or are related only incidentally to this case. Such material, which is open to inadvertent disclosure, should be shielded from disclosure. The requested material could also include visitor logs, emails, Microsoft Outlook invites setting up teleconferences, and so forth. Even if Respondent could produce such materials, they would likely not provide Petitioner any appreciable benefit in making his case.

If the Court finds this privilege inapplicable, then Respondent intends to ask the Court to permit responsive information to be introduced under seal and under an attorneys'-eyes-only provision. Respondent would also need at least 30 days to better understand where such

materials lie, how long it would take to find those documents, how long it would take to review those documents for privileges, and how long it would take to produce those documents.

**REQUEST NO. 2:**

All documents and other evidence that tend to contradict the government's asserted basis for detaining Petitioner, including, but not limited to, all documents and other evidence that would tend to undermine the credibility of all witnesses/informants against Petitioner or that would be considered exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), including prior inconsistent statements, requests for relief or special treatment, and any benefit offered or granted to such witnesses/informants before or after they provided the statements against Petitioner.

**RESPONSE TO REQUEST NO. 2:**

Respondent objects to Request No. 2 as overbroad and not relevant.

Respondent objects to Request No. 2 to the extent the requested information requests personally identifiable information of confidential informants, which is protected under the confidential informant privilege. Respondent invokes that privilege here and incorporates by reference from his response to Petitioner's Interrogatory No. 1. If the Court finds this privilege inapplicable, then Respondent intends to ask the Court to permit responsive information to be introduced under seal and under an attorneys'-eyes-only provision.

Respondent also objects to the extent Petitioner or Request No. 2 imply that the obligations of *Brady* or *Giglio* in fact apply to Respondent in this proceeding.

Without waiving the above objection, Respondent states that he is unaware of any prior inconsistent statements, requests for relief or special treatment, or any benefits offered or granted to a confidential informant before or after he or she provided a statement against Petitioner.

**REQUEST NO. 3:**

All documents related to disciplinary records, detention or incarceration histories, and prior statements in other immigration and/or criminal proceedings of all witnesses/informants.

**RESPONSE TO REQUEST NO. 3:**

*First*, Respondent objects to Request No. 3 to the extent the requested information requests personally identifiable information of confidential informants, which is protected under the confidential informant privilege. Respondent invokes that privilege here and incorporates by reference from his response to Petitioner’s Interrogatory No. 1.

*Second*, Respondent objects to Request No. 3 as the requested information is vastly overbroad and not proportional to the needs of the case. The Request asks for documents “related to” *all* prior statements made by informants or by other potential witnesses in prior immigration or criminal proceedings, or to their disciplinary, detention, or incarceration histories—without any restriction on time or subject matter of those statements. Production would pose an extreme burden on multiple agencies if they were to cull the informants’ or potential witnesses’ entire law enforcement history of all potentially-covered subjects for information not related to Petitioner or the threat he poses.

To the extent a response is required, then Respondent intends to ask the Court to permit any responsive information to be produced pursuant to a protective order to protect personally identifiable information.

**REQUEST NO. 4:**

All documents, including sound or video recordings, related to the religious sermons Petitioner has given at the Buffalo Federal Detention Facility (BFDF).

**RESPONSE TO REQUEST NO. 4:**

Respondent has no sound or video recordings of religious sermons that Petitioner has given at BFDF.

As for other documents related to such sermons, Respondent objects for all grounds and reasons stated in his response to Petitioner's Request No. 1.

**REQUEST NO. 5:**

All documents related to Petitioner's telephone calls to and from the BFDF, including all recordings and call logs.

**RESPONSE TO REQUEST NO. 5:**

Respondent objects for all grounds and reasons stated in his response to Petitioner's Request No. 1.

To the extent that Request No. 5 encompasses only ICE documents memorializing the existence of calls, recordings and payments, then such materials are being collected by Respondent now, and he anticipates being able to produce call logs and recordings for Petitioner's telephone calls while at BFDF within 30 days.

**REQUEST NO. 6:**

All documents related to Petitioner's mail correspondence to and from the BFDF, including all photocopies of such correspondence and notes by government officials about such correspondence.

**RESPONSE TO REQUEST NO. 6:**

Respondent objects for all grounds and reasons stated in his response to Petitioner's Request No. 1.

To the extent that Request No. 6 encompasses only photocopies of Petitioner's non-legal mail correspondence and the envelopes for any mail deemed as legal correspondence to and from

BFDF, and ICE documents pertaining to the existence of such mail, then such materials are being collected by Respondent now, and he anticipates being able to produce them within 14 days.

**REQUEST NO. 7:**

All documents contained in Petitioner's master file kept by the Department of Homeland Security (DHS), otherwise known as the "A File."

**RESPONSE TO REQUEST NO. 7:**

To the extent Request No. 7 seeks Petitioner's Alien Registration File ("A-File"), Respondent understands that Petitioner already has received at least a redacted copy of his A-file through his separate Freedom of Information Act litigation. Notwithstanding, Respondent has ordered a certified copy of that document from U.S. Citizenship and Immigration Services, the agency that officially maintains A-Files. Upon receipt, Respondent will review the A-file for privileged material, classified material, and third-party information not originally belonging to the Department of Homeland Security. Respondent is awaiting a response to its inquiry as to the estimated amount of time necessary to complete this A-file review and will provide Petitioner with this information when it receives a response.

**REQUEST NO. 8:**

All documents in DHS's possession, custody, or control that it used to determine that Petitioner should be certified under 8 C.F.R. § 241.14(d) or 8 U.S.C. § 1226a.

**RESPONSE TO REQUEST NO. 8:**

Request No. 8 describes the administrative record underlying the Acting Secretary's decision to certify Petitioner for detention under 8 U.S.C. § 1226a or 8 C.F.R. § 241.14(d). Such materials have already been produced to Petitioner. The Acting Secretary, acting on behalf of the



Department of Homeland Security, did not rely on any other documents to determine that Petitioner should be certified.

**REQUEST NO. 9:**

All documents in the Federal Bureau of Investigation's (FBI) possession, custody, or control that it relied upon to develop the recommendations in its letter dated February 21, 2019.

**RESPONSE TO REQUEST NO. 9:**

Respondent objects for all grounds and reasons stated in his response to Petitioner's Request No. 1.

**REQUEST NO. 10:**

All documents related to information provided to other detainees about Petitioner upon entering the BFDF or afterwards.

**RESPONSE TO REQUEST NO. 10:**

Respondent has no responsive documents.

**REQUEST NO. 11:**

All documents or other evidence Respondent intends to introduce at the evidentiary hearing to be set by the Court in this Matter.

**RESPONSE TO REQUEST NO. 11:**

Respondent may introduce the following evidence:

- A. The administrative record relied upon by the Acting Secretary of Homeland Security in certifying Petitioner's detention.
- B. The filings in Petitioner's criminal case, *United States v. Hassoun*, No. 04-cr-60001 (S.D. Fla.).

C. Testimony provided by witnesses.

Respondent reserves the right to introduce evidence identified by Petitioner. Respondent reserves the right to amend this list, for instance, depending on the Court's rulings on the parameters of the evidentiary hearing, or in order to rebut Petitioner's evidence. Respondent objects to Request No. 11 insofar as it requests rebuttal witnesses, whom Respondent is under no obligation to disclose.

Date: January 6, 2020

JAMES P. KENNEDY, JR  
United States Attorney  
Western District of New York

/s/ Daniel B. Moar  
DANIEL B. MOAR  
Assistant United States Attorney  
138 Delaware Avenue  
Buffalo, New York 14202  
Tel: (716) 843-5833  
Email: daniel.moar@usdoj.gov

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General  
Civil Division

WILLIAM C. PEACHEY  
Director, District Court Section  
Office of Immigration Litigation

TIMOTHY M. BELSAN  
Chief  
National Security & Affirmative Litigation Unit

/s/ Anthony D. Bianco  
ANTHONY D. BIANCO  
Senior Counsel for National Security  
National Security & Affirmative Litigation Unit  
District Court Section  
Office of Immigration Litigation  
Civil Division  
U.S. Department of Justice  
P.O. Box 868, Ben Franklin Station  
Washington, D.C. 20044-0868  
Tel: (202) 305-8014  
Email: anthony.d.bianco@usdoj.gov

/s/ Steven A. Platt  
STEVEN A. PLATT  
Counsel for National Security

*Attorneys for Respondent*