

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

ADHAM AMIN HASSOUN,

*Petitioner,*

v.

JEFFREY SEARLS, in his official capacity  
Acting Assistant Field Office Director and  
Administrator of the Buffalo Federal  
Detention Facility,

*Respondent.*

Case No. 1:19-cv-00370-EAW

**PETITIONER'S STATUS REPORT ON DISCOVERY**

Pursuant to the Court's order on December 20, 2019, ECF No. 58, Petitioner submits this status report to advise the Court on the outstanding discovery disputes between the Parties. Petitioner served his First Set of Interrogatories, attached as Exhibit 1, and First Set of Requests for Production, attached as Exhibit 2, on Respondent's counsel on December 23, 2019. Respondent served Responses to the Interrogatories, attached as Exhibit 3, and Requests for Production, attached as Exhibit 4, on January 6, 2020. Respondent has interposed various objections to Petitioner's discovery requests, but has yet to disclose a single document responsive to Petitioner's requests and, in many cases, has failed to even provide an estimate of when such disclosures would occur.

In addition, Respondent served its First Set of Interrogatories, attached as Exhibit 5, and First Set of Requests for Production, attached as Exhibit 6, on December 27, 2019. Petitioner jointly served his Responses to Respondent's First Set of Interrogatories and Requests for Production, attached as Exhibit 7, on January 6, 2020. The Parties conferred by telephone on

January 8, 2020. The following disputes remain between the Parties:

**1. Identities of and Documents Concerning Witnesses/Informants**

Petitioner's position is that Respondent bears the burden of showing that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1226a and that his right to due process includes the right to confront the individuals whose statements against him served as the basis for the FBI's recommendation that he be detained indefinitely. *See* Pet. Mem. of Law Regarding Parameters of Evidentiary Hearing ("Pet. Mem."), ECF No. 60. Thus, Petitioner requested the identities of all such witnesses/informants, any written statements that they provided, and other evidence that would undermine the credibility of such witnesses/informants such as any benefit they may have received for providing information against Mr. Hassoun. *See* Petitioner's First Set of Interrogatories ("Pet. Int."), Ex. 1, at 3; Petitioner's First Set of Requests for Production ("Pet. Req."), Ex. 2, at 3.

Respondent has objected to providing any information or documents regarding the witnesses/informants and has invoked the confidential informant privilege. *See* Respondent's Responses to Petitioner's First Set of Interrogatories ("Resp. Responses to Inter."), Ex. 3, at 2; Respondent's Responses to Petitioner's First Set of Requests for Production ("Resp. Responses to Reqs."), Ex. 4, at 3. That privilege cannot be invoked in this context because the government: (a) must produce such witnesses at the evidentiary hearing, *see* Pet. Mem. at 14-21, and (b) because assuming the government does, Petitioner must be permitted to obtain information and documents regarding such witnesses, including their prior statements and evidence that would tend to undermine their credibility or that would be considered exculpatory evidence, prior to their testimony, in order to confront and cross-examine them, *id.* at 18; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

2. **Respondent's Invocation of Other Privileges for Withholding Responsive Documents**

In addition to the confidential informant privilege, Respondent invoked the “deliberative process privilege, the law-enforcement privilege, the attorney-client privilege, and/or other government privileges” in its Responses to Petitioner’s Requests for Production. *See* Resp. Responses to Reqs., Ex. 4, at 3. Respondent did not provide Petitioner with a privilege log or any other description of the documents supposedly exempt from disclosure pursuant to these privileges. During the telephone call on January 8, 2020, Respondent’s counsel stated that they were not yet able to determine whether and which of these privileges applied.

Petitioner requests that Respondent provide a privilege log that details each and every document that Respondent believes is subject to these privileges so that Petitioner can decide whether to challenge such determinations.

3. **Respondent's Invocation of Other Legal Authorities Prohibiting Disclosure of Responsive Documents**

Respondent also invoked “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” in its Responses. *See* Resp. Responses to Reqs., Ex. 4, at 2-3. During the telephone call on January 8, 2020, Respondent’s counsel stated that they were not aware of any documents responsive to Petitioner’s requests that were classified or subject to the states secret privilege, but wished to preserve an objection based in classified information and related privileges as they compiled responsive documents.

Petitioner requests that the Court order Respondent to provide a summary of each

document withheld and the legal basis for its argument that the document cannot be legally disclosed.

**4. Respondent's Request for Certain Documents to Be Disclosed Pursuant to an "Attorney's Eyes Only" Order**

Respondent requested, in the alternative, that if it is required to disclose documents that are responsive to Petitioner's requests that such documents be subject to an "attorney's eyes only" order. Petitioner does not necessarily object to certain documents being subject to a protective order and to certain evidence being offered under seal at an evidentiary hearing. However, Petitioner does object to any evidence being subject to an "attorney's eyes only" order. Petitioner cannot adequately defend himself against the very serious charges that Respondent has made against him without access to the underlying evidence, particularly evidence concerning the informants/witnesses that are the source of the allegations against him. Petitioner's attorneys will not be able to adequately represent Petitioner without the ability to discuss such evidence with Petitioner.

**5. Respondent's Vagueness and Overbreadth Objections**

Respondent made a variety of objections to the scope of Petitioner's requests and also objected that certain terms were vague. In the phone call on January 8, 2020, Petitioner attempted to narrow and define the requests so as to resolve Respondent's vagueness and overbreadth objections. Petitioner followed up on the evening of January 8, 2020 with an email, attached as Exhibit 8, memorializing the proposed limitations and definitions and asking Respondent to confirm that the proposals resolved Respondent's overbreadth and vagueness objections, or in the alternative, asking that Respondent make a counterproposal for Petitioner to consider. As of the time of this filing, Respondent has not responded to Petitioner's email.

**6. Timing of Discovery and the Evidentiary Hearing**

Petitioner has been unlawfully detained for over a year since Chief Judge Geraci's decision ordering his release, and suffers an unconstitutional deprivation of liberty for each additional day he remains in custody. *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984 (W.D.N.Y. Jan. 2, 2019). As stated above, Respondent has produced no documents responsive to Petitioner's requests. In response to some requests, Respondent stated that the documents could be produced within either 14 or 30 days. In other cases, Respondent was unable to provide an estimate of how long it would take to produce documents. Petitioner requests that the Court order Respondent to produce all documents as soon as possible but no later than **January 30, 2020**, which is over thirty days from when Respondent first received Petitioner's requests. Petitioner also requests that Respondent produce a privilege log and detailed summary of each document that Respondent fails to disclose on privilege grounds or pursuant to any other authority on that date.

Dated: January 13, 2020

Respectfully submitted,

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