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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ALTON JONES,

Plaintiff,

vs.

U.S. BORDER PATROL  
AGENT GERARDO  
HERNANDEZ *et al.*,

Defendants.

Case No.: 16-CV-1986-W(WVG)

**ORDER ON DISCOVERY DISPUTE  
(PLAINTIFF’S RFP (SET 4) NOS. 41-  
49 AND RFI NO. 1)**

AND RELATED COUNTERCLAIMS

This discovery dispute involves Plaintiff’s Requests for Production of Documents (Set 4) (“RFPs”) Nos. 41 through 49 and his Request for Inspection (“RFI”) No. 1. The parties have provided the Court detailed synopses of their positions,<sup>1</sup> which the Court finds are sufficient for resolution without argument or additional briefing. *See* S.D. Cal. L. Civ. R. 7.1(d)(1). Defendants’ objections to RFP Nos. 41, 42, and 44 through 49 are **OVERRULED** as moot. With respect to RFP No. 43 and RFI No. 1, Defendants’ lack-of-proportionality objections are **SUSTAINED**.

<sup>1</sup> Attached hereto as Attachment A.

1           The Court need not reach whether the subject matter of RFP Nos. 41, 42, and 44  
2 through 49 are discoverable because, as a threshold matter, any disputes over these  
3 RFPs are moot. In his declaration, Rodney S. Scott—the Chief Patrol Agent in charge  
4 of the U.S. Border Patrol’s San Diego Sector—declares under penalty of perjury that  
5 Border Patrol personnel have conducted a search and have not uncovered any  
6 documents responsive to RFP Nos. 41, 42, and 43 through 49. Agent Scott also  
7 declares that Defendants will supplement their responses to produce any responsive  
8 documents that are discovered in the future. Given Agent Scott’s representations, there  
9 simply is no dispute before the Court—Defendants have conducted a search, have found  
10 nothing, and have sufficiently responded to the RFPs in question. As a result, the  
11 objections are moot despite Plaintiff’s continued efforts to obtain documents that—  
12 accordingly to Agent Scott—do not exist to the best of his knowledge. It according  
13 makes no sense to entertain disputes over, issue a protective order for, or compel the  
14 production of discovery that does not exist. As a result, Defendants’ objections are  
15 **OVERRULED** as moot, and they need not further respond to RFP Nos. 41, 42, and 44  
16 through 49 unless responsive documents are discovered in the future.

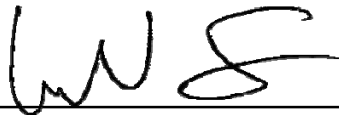
17           With respect to RFP No. 43, the Court need not reach Defendants’ invocation of  
18 the law enforcement privilege because, as a threshold matter, this RFP is not  
19 proportional to the needs of the case given the uncomplicated nature of the case, the  
20 discovery Defendants have produced to date, and Agent Scott’s representations about  
21 the sensitive nature of the responsive document. Defendants’ lack-of-proportionality  
22 objection to RFP No. 43 is **SUSTAINED**.

23           Finally, through RFI No. 1, Plaintiff seeks to enter, view, and inspect the “control  
24 center” where agents operate RVSS cameras. As with RFP No. 43, RFI No. 1 is not  
25 proportional to the needs of the case and is even less so given what Plaintiff seeks to  
26 discover from the inspection, the intrusive nature of the request, and the *much* greater  
27 prospect that irrelevant yet highly sensitive information will be gleaned from the  
28

1 inspection. This request goes beyond production of a cold document but seeks to  
2 physically enter the nerve center where agents run a highly-sensitive camera system that  
3 watches over the United States-Mexico border. This case does not justify such an  
4 intrusive, sensitive inspection. Defendants' lack-of-proportionality objection to RFI  
5 No. 1 is SUSTAINED.

6 **IT IS SO ORDERED.**

7 DATED: January 5, 2018

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10 **Hon. William V. Gallo**  
11 **United States Magistrate Judge**

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**ATTACHMENT A**



**RE: 16cv1986 Jones case**

**Hayes, Hunter** to: Bettwy, Samuel (USACAS),

12/28/2017 11:59 AM

Cc: "Wallace, Dave (USACAS)", "XT McKinney, Zoe"

Below is Plaintiff's synopsis of the pending dispute regarding camera evidence. As the Court is likely aware, the government produced a recording from a Border Patrol RVSS camera system that captured some, but not all, of the incident in this case. Much of the video is grainy and low resolution, making it difficult to determine what occurred, and most of the critical events in this case occur in a known blind spot of the RVSS system. Plaintiff has sought discovery about the camera system in order to understand the video and radio evidence produced in this case and test the government's factual assertions that the camera system was used "properly." Dkt. 68-3 (Decls. of Mike Apple and Jose Cruz I/S/O Mot. to Dismiss or for Summ. J.).

#### **Apple Deposition Instructions Not to Answer**

At the deposition of Mike Apple on December 20, the government's counsel instructed Mr. Apple not to answer basic questions regarding the RVSS system. The Court will recall that, in its written submission and at the hearing regarding the ongoing dispute over Plaintiff's right to conduct a Rule 30(b)(6) deposition of the party that sued him, the government stated that Plaintiff should not be entitled to a Rule 30(b)(6) deposition regarding the cameras in part because "Mike Apple will be able to testify about the RVSS camera or cameras that could see the area of the incident . . ." Gov't Brief at 2, Nov. 16, 2017.

The government has now entirely shifted its position, and now claims that *any* information regarding the capabilities of the RVSS system, and even the existence of documents about the system, is absolutely privileged. At the deposition, Plaintiff's counsel (some of whom had travelled out of town for the deposition) were prevented from asking entire lines of questioning related to the camera's basic functions. Mr. Apple was instructed not to answer questions seeking (a) "who manufactures the camera" (Apple Depo. Tr. 32:10-15); (b) "[w]hat documents" show "how to operate the RVSS" (id. 34:11-23); (c) "what actions or practices constitute proper use of the equipment" (id. 35:3-10); and (d) whether there are "written policies regarding the operation of the cameras" (id. 37:16-25). The government is seeking to block discovery that may confirm or deny its own factual claims regarding proper use of the system and the existence of documents regarding the system. (As to the identity of the manufacturer, Plaintiff's counsel later learned the government has not even kept that confidential, so it cannot be subject to any privilege. *Kelly v. City of San Jose*, 114 F.R.D. 653, 661 (N.D. Cal. 1987).)

After these objections, the deposition was paused while counsel met and conferred about the scope of the privilege the government claims. Plaintiff's counsel provided authorities demonstrating that the government's privilege claims were wrong, because the government has not made a threshold showing that the specific information requested will unduly hinder Border Patrol operations if provided subject to a protective order. Plaintiff's counsel agreed to provide the government additional time to consider these authorities and speak with the agency regarding the appropriate scope of the law enforcement investigatory privilege, and government counsel agreed that Mr. Apple would be available for a continued deposition. At a further meet and confer following another deposition on December 22, the government simply repeated the same overbroad objection it had already made. The government also made both relevance and proportionality objections that are both wrong (because the camera evidence is critical in this case) and improper (because these are not bases for an instruction not to answer).

**Plaintiff's RFPs Set No. 4**

The parties also met and conferred regarding the government's responses to Plaintiff's Requests for Production (Set 4). RFPs Set 4 comprise 9 tailored RFPs seeking policies, manuals, and other documents sufficient to show certain technical aspects of the camera and radio systems. The government's response identified just a single document and withheld it on the basis that it is "law enforcement sensitive." The privilege claim is wrong primarily because the government has never, despite being asked repeatedly, offered any explanation of why disclosure in this case, to this litigant, under a protective order, would compromise any government interest. *Kelly* , 114 F.R.D. at 670. The government has also not explained whether sensitive information may be redacted to protect any government interest. The government's proportionality objection rings false given that (a) the amount in controversy is more than \$1 million and (b) the government has offered no compromise position to alleviate any burden it faces.

**Other Discovery Relating to the Camera System**

Finally, the government suggested during a meet and confer that it wishes to raise the issue of Plaintiff's Request for Inspection of the RVSS camera system, which was served on December 13 and to which the government has not yet responded. The dispute is, of course, not ripe for resolution as Plaintiff has not had a chance to evaluate the government's claims as to why an inspection would violate any privilege. Plaintiff served the Request for Inspection as part of a diligent effort to seek a limited set of information regarding the camera system through various avenues, in the hope that the government would attempt in good faith to determine which of these avenues would serve the needs of this case while intruding as minimally as possible on Border Patrol operations. The government's overbroad privilege claim has precluded that effort.

Plaintiff respectfully requests the opportunity to submit a brief regarding the appropriate scope of law enforcement privilege. Please let me know if there is any way we can further aid Judge Gallo's consideration of the dispute.

Hunter Hayes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**16cv1986 Jones case: USA request for protective order re P's requests for sensitive law enforcement information**

**Bettwy, Samuel (USACAS)** to: [REDACTED] rts.gov

12/28/2017 12:00 PM

Cc: "Wallace, Dave (USACAS)", "Hayes, Hunter" , "XT McKinney, Zoe"

TO: The Honorable William V. Gallo

THRU: [REDACTED]

DATE: December 28, 2017

RE: *Jones v. Hernandez* , No. 16cv1986 W (WVG)

United States' request for protective order re Plaintiff's requests for sensitive law enforcement information

*Summary* . The United States seeks protection from Plaintiff's persistent attempts, over the last three months, to obtain irrelevant and disproportional information about sensitive law enforcement techniques, namely information about the capabilities and vulnerabilities of Border Patrol's surveillance operations at the international border, including but not limited to video surveillance (RVSS) and radio communications systems. We have produced to Plaintiff's counsel the declaration of San Diego Sector Chief Border Patrol Agent Rodney Scott in which he states that disclosure of the information sought would compromise Border Patrol's mission to defend against trafficking and smuggling of aliens, drugs, other contraband, and terrorist weapons (see attached Scott Declaration, paras. 11.a. & 11.b.).

*Lack of relevance* . Plaintiff's counsel's explanation to us of the relevance of the information sought is incomprehensible, so we are unable to re-state it here. Given their statement in the pending dispute over their Rule 30(b)(6) Notice, it seems that they're hoping to build some far-fetched cover-up conspiracy theory, but after extensive discovery, it is clear that there was nothing to cover up. The United States has already disclosed ample information that is sensitive, because it is relevant to claims and defenses in this case, including:

- name and approximate location of the sensor near the all-weather road that Jones activated
- names and locations of operational areas where the incident occurred
- name, title and duty assignment of all agents on duty at the Imperial Beach Border Patrol station on the relevant days [Response to Interrogatory No. 1]
- location of cameras that could potentially see the general area at issue (for which, we have disclosed to Plaintiff, there are no recordings)
- location of the camera that was pointed at and recording the incident of Jones' running on the all-weather road
- videotape that was retained, which reveals blind spots in the RVSS camera
- procedure used to record, download and burn to DVD the RVSS videotape
- all radio calls that were recorded during the time of the incident
- identities of agents who can be heard on the radio
- radio procedures that were used in the calls relevant to this incident such as what was being done to overcome poor radio signal (e.g., switching to "direct" to reach a high point)

*Disproportional* . Preserving/asserting the law enforcement privilege has required that Border Patrol personnel expend, to date, over 150 hours to research and review responsive documents, and that process remains ongoing. Border Patrol personnel search for and retrieve responsive documents and then Chief Scott reviews them to determine whether their disclosure would compromise the Border Patrol's mission. The process remains ongoing because Plaintiff's counsel are seeking material that goes beyond what is in Border Patrol's possession.

*The law enforcement privilege* . If this Court were to reach consideration of the law enforcement privilege, it would weigh and compare the interests of the Department of Homeland Security (which interests coincide with the security interests of the entire nation) in protecting its border surveillance methods against the interests of Plaintiff to support what appears to be an outlandish conspiracy theory for which no basis has been developed through discovery. Courts in the Ninth Circuit have recognized the privilege, and courts nationwide consistently refuse to compel disclosure. See *Shah v. Department of Justice* , No. 14-cv-624, 2015 WL 427916, at \*5 (D. Nev. Feb. 2, 2015) ("courts have recognized that the [law enforcement investigatory] privilege may be applied in order to ensure the efficacy of investigative techniques in future cases.") (APA case); *Benhoff v. DOJ* , No. 16cv1095 GPC (JLB), 2017 WL 840879, at \*4-5 (S.D. Cal. Mar. 03, 2017) (APA case); *Perez v. Blue Mountain Farms* , No. 13-CV-5081-RMP, 2015 WL 11112414, at \*3 (E.D. Wash. Aug. 10, 2015) (motion to compel). See also *Commonwealth of Puerto Rico v. United States* , 490 F.3d 50, 62 (1st Cir. 2007) (APA-type action); *Azmy v. U.S. Department of Defense* , 562 F. Supp. 2d 590, 601-02 (S.D.N.Y. 2008) (FOIA case), *Tri-State Hosp. Supply Corp. v. United States* , 2005 WL 3447890 at \*9 (S.D. Fla. 2005) (motion to compel); *Tuite v. Henry* , 181 F.R.D. 175, 180 (D.D.C. 1998) (motion to compel).

*Procedural history* . The United States first asserted the law enforcement privilege at the September 28, 2017 deposition of Border Patrol Agent McFarlin. We instructed Agent McFarlin not to answer, and we proposed to Plaintiff's counsel to call Your Honor at that time to reach an early resolution, but Plaintiff's counsel declined . [McFarlin Tr. 46-49 (attached to our Nov. 16, 2017 position statement (.pdf at 101)).]

About two weeks later, on October 10, 2017, the issue arose again at the deposition of Agent Kulakowski. We once again instructed Agent Kulakowski not to answer, and we again proposed to call Your Honor to resolve the issue: Plaintiff's counsel at first agreed and then *decided to withdraw the question* . [Kulakowski Tr. 205-07 (attached to our Nov. 16, 2017 position statement (.pdf at 319-20)).]

On October 23, 2017, the issue arose again with respect to Plaintiff's Rule 30(b)(6) Notice, which dispute is pending before Your Honor.

On November 15, 2017, Plaintiff served RFP #4, seeking extensive information about the capabilities and vulnerabilities of Border Patrol's surveillance systems. In our November 16, 2017 position statement (at 5 n.3), we attached RFP #4 to flag the issue. On December 15, 2017, we responded to Plaintiff's RFP #4, invoking the privilege and presenting Chief Scott's declaration, which will likely be supplemented, but which contains a general explanation that information about the capabilities and vulnerabilities of the RVSS and radio communication systems would compromise the law enforcement mission of the Border Patrol to surveil and protect our border (see attached Scott Declaration, paras. 11.a. & 11.b.).



On December 13, 2017, Plaintiff's counsel served us with a request to inspect Border Patrol's operations center where video surveillance is conducted (see attached Request to Inspect). We have informed Plaintiff's counsel that we will be objecting to their request.

On December 20, 2017, at the deposition of Mike Apple, Plaintiff's counsel continued to seek sensitive law enforcement information, so we agreed that, given all of the different, unresolved manifestations of this dispute, his deposition would remain open until its resolution. [Apple Tr. 32, 34, 37, 69.]

On December 22, 2017 (at the conclusion of Plaintiff's deposition of Agent Herrera), counsel met and conferred and then called Your Honor's chambers and left a voicemail message.

*Conclusion* . The United States is seeking protection from all further requests for information about the capabilities and vulnerabilities of Border Patrol's surveillance operations at the international border, including but not limited to video surveillance and radio communications systems. We contend that Plaintiff's counsel's Rule 30(b)(6) Notice, their RFP #4, their request to inspect the control center where video surveillance occurs, and their questions at multiple depositions, all seek sensitive law enforcement information about investigative techniques that is not relevant to any claim or defense in this case. Their requests are also disproportional to the needs of this case, especially considering the time that has been spent and has yet to be spent on this process. The United States also asserts the law enforcement privilege, because disclosure of the information sought would compromise the Border Patrol's mission to detect and prevent the illegal trafficking of people and contraband and the entry of terrorists and terrorist weapons into the United States.

Respectfully,

*s/ David B. Wallace*

David. B. Wallace, AUSA

*s/ Samuel W. Bettwy*

Samuel W. Bettwy, AUSA

Assistant U.S. Attorneys

880 Front St., Rm. 6293

San Diego, CA 92101-8893



Counsel for all Defendants

cc: Plaintiff's counsel Mr. C. Hunter Hayes and Ms. Zoë McKinney

[REDACTED]

[REDACTED]



[REDACTED] EX-12-15-17 Scott declaration.pdf EX-Jones 12-13-17 request for Inspection.pdf

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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16 ALTON JONES,

Case No. 16cv1986 W (WVG)

17 Plaintiff,

18 vs.

**DECLARATION OF  
RODNEY S. SCOTT**

19 U.S. BORDER PATROL AGENT  
GERARDO HERNANDEZ, et al.,

20 Defendants.

21

22 UNITED STATES OF AMERICA,

23 Counter-Claimant,

24 vs.

25 ALTON JONES,

26 Counter-Defendant.

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1 I, Rodney S. Scott, do hereby declare:

2 1. I am employed by the U.S. Border Patrol as Chief Patrol Agent, San Diego  
3 Sector. I have held this position since November 2017.

4 2. I make this declaration based upon my own personal knowledge and review of  
5 materials collected thus far in response to Plaintiff's Fourth Set of Requests for Production  
6 of Documents dated November 15, 2017.

7 3. I was asked to review the collected documents and determine whether disclosure  
8 of the documents would compromise the ability of the U.S. Border Patrol to perform its  
9 mission.

10 4. In general, the mission of the U.S. Border Patrol is to detect, apprehend and/or  
11 prevent illegal aliens, terrorists and terrorist weapons from entering the United States and  
12 to prevent the illegal trafficking of people and contraband.

13 5. It is paramount that the U.S. Border Patrol's surveillance capabilities, tactics, and  
14 related technology use and deployment, as well as the related limitations and  
15 vulnerabilities of such, not be disclosed outside the agency. Disclosure would compromise  
16 and degrade agents' abilities in accomplishment of U.S. Border Patrol's mission by  
17 personnel who are responsible for surveilling and patrolling 6,000 miles of Mexican and  
18 Canadian international land borders, and coastal waters, including the island of Puerto  
19 Rico.

20 6. If transnational criminal organizations, terrorists, and others who seek to  
21 penetrate our borders can anticipate and counter our patrol and surveillance infrastructure,  
22 it will compromise the mission of the U.S. Border Patrol and, in turn, our public safety  
23 and national security.

24 7. In this matter, Plaintiff has made the following requests for production of  
25 documents:

26 **Request for Production No. 41:**

27 The operating manual for the Remote Video Surveillance System ("RVSS").

28 ///

1 **Request for Production No. 42:**

2 DOCUMENTS sufficient to show the technical capabilities, product names,  
3 storage capacity, resolution, and transmission channels of any hardware and  
4 software that is part of the RVSS.

5 **Request for Production No. 43:**

6 DOCUMENTS sufficient to show Border Patrol policies relating to the  
7 operation of RVSS cameras by Border Patrol agents.

8 **Request for Production No. 44:**

9 DOCUMENTS sufficient to show Border Patrol policies relating to RVSS  
10 data storage.

11 **Request for Production No. 45:**

12 DOCUMENTS and COMMUNICATIONS relating to blind spots in the  
13 coverage of RVSS Camera 2 located near Border Field State Park,  
14 specifically including a blind spot near the area known as South Park.  
15 37109112.2 -5- 16-cv-1986-W (WVG)

16 **Request for Production No. 46:**

17 DOCUMENTS sufficient to show Border Patrol policies relating to Border  
18 Patrol radio communication systems.

19 **Request for Production No. 47:**

20 DOCUMENTS sufficient to show Border Patrol policies relating to the  
21 recording of radio communications.

22 **Request for Production No. 48:**

23 DOCUMENTS sufficient to show the operation of any hardware or software  
24 system used by the Border Patrol related to record radio communications.

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1           **Request for Production No. 49:**

2           DOCUMENTS describing, referring to, or constituting Border Patrol  
3           policies regarding when an agent may or must switch his or her radio to any  
4           setting, such as “direct communications,” under which radio  
5           communications are unrecorded.

6           8. A thorough search of U.S. Border Patrol national and local level documents has  
7           been conducted, and a search for any other responsive documents is ongoing. If additional  
8           responsive documents are located after I sign this declaration, I will review them and  
9           amend this declaration if necessary.

10          9. I have reviewed documents submitted to me.

11          10. The U.S. Border Patrol has maintained the confidentiality of the collected  
12          responsive documents. While the existence of some of the specified technology is public  
13          knowledge, the type of information and level of detail requested is not publicly available  
14          due to the operationally sensitive nature and harm to U.S. Border Patrol operations a  
15          disclosure would cause.

16          11. Accomplishment of the mission of the U.S. Border Patrol would be threatened  
17          by disclosure of the documents and similar documents as explained below:

18           a. *RVSS*. Documents related to our *RVSS* system must not be disclosed as a  
19           matter of agent safety, as well as to protect the integrity of our law enforcement tactics,  
20           techniques, and procedures. Any such disclosure outside of U.S. Border Patrol can  
21           potentially expose technology limitations, capability gaps, and vulnerabilities as well as  
22           allow for reverse engineering and counter operations and tactics that can then be used by  
23           criminal organizations to gain entry into, and commit other crimes against the United  
24           States. My highest priority as Chief Patrol Agent is to ensure the safety of our agents,  
25           while carrying out the mission of the U.S. Border Patrol; disclosing information related to  
26           our *RVSS* would create an unnecessary risk for the agents and to our mission.

26          ///

27          ///

1           **Request No. 41.** The operating manual for the Remote Video Surveillance System  
2 (“RVSS”).

3           U.S. Border Patrol does not have an Operating Manual for the RVSS. If such a  
4 manual is located after I sign this declaration, I will review it and amend this declaration if  
5 necessary.

6           **Request No. 42.** DOCUMENTS sufficient to show the technical capabilities,  
7 product names, storage capacity, resolution, and transmission channels of any hardware  
8 and software that is part of the RVSS.

9           U.S. Border Patrol does not have any such documents. If any such documents are  
10 located after I sign this declaration, I will review them and amend this declaration if  
11 necessary.

12           **Request No. 43.** DOCUMENTS sufficient to show Border Patrol policies relating  
13 to the operation of RVSS cameras by Border Patrol agents.

14           The U.S. Border Patrol has a standard operating procedure for San Diego Sector  
15 Border Patrol. It is law enforcement sensitive and should not be disclosed because it  
16 reveals law enforcement tactics, techniques, and procedures and exposes technology  
17 limitations, capability gaps, and vulnerabilities and allows for reverse engineering and  
18 counter operations and tactics.

19           **Request No. 44.** DOCUMENTS sufficient to show Border Patrol policies relating  
20 to RVSS data storage.

21           U.S. Border Patrol does not have any such policies. If any such documents are  
22 located after I sign this declaration, I will review them and amend this declaration if  
23 necessary.

24           **Request No. 45.** DOCUMENTS and COMMUNICATIONS relating to blind spots  
25 in the coverage of RVSS Camera 2 located near Border Field State Park, specifically  
26 including a blind spot near the area known as South Park.  
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1 The U.S. Border Patrol does not have such documents and communications. If any  
2 such documents/communications are located after I sign this declaration, I will review  
3 them and amend this declaration if necessary.

4 b. *Radio communications systems.* Documents related to our radio communications  
5 system must not be disclosed as a matter of agent safety, as well as to protect our law  
6 enforcement tactics, techniques, and procedures. Any such disclosure outside of U.S.  
7 Border Patrol can potentially expose technology limitations, capability gaps, and  
8 vulnerabilities as well as allow for reverse engineering and counter operations and tactics  
9 that can then be used by criminal organizations to gain entry into, and commit crimes  
10 against the United States. Any broadcast through our radio communications system is  
11 secure encrypted communication because it is law enforcement sensitive information. My  
12 highest priority as Chief Patrol Agent is to ensure the safety of our agents while carrying  
13 out the mission of the U.S. Border Patrol, and disclosing information related to our radio  
14 communications system would create an unnecessary risk for them and our related  
15 operations.

16 **Request No. 46.** DOCUMENTS sufficient to show Border Patrol policies relating  
17 to Border Patrol radio communication systems.

18 No such U.S. Border Patrol documents exist. If any such documents are located  
19 after I sign this declaration, I will review them and amend this declaration if necessary.

20 **Request No. 47.** DOCUMENTS sufficient to show Border Patrol policies relating  
21 to the recording of radio communications.

22 No U.S. Border Patrol policies exist. If any such documents are located after I sign  
23 this declaration, I will review them and amend this declaration if necessary.

24 **Request No. 48.** DOCUMENTS sufficient to show the operation of any hardware  
25 or software system used by the Border Patrol related to record radio communications.

26 No U.S. Border Patrol documents exist. If any such documents are located after I  
27 sign this declaration, I will review them and amend this declaration if necessary.  
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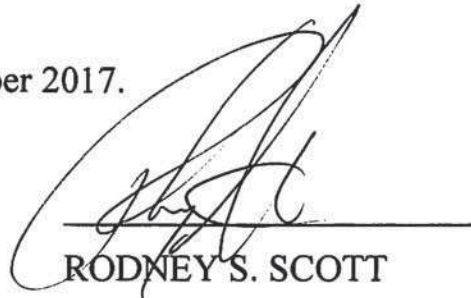


1       **Request No. 49.** DOCUMENTS describing, referring to, or constituting Border  
2 Patrol policies regarding when an agent may or must switch his or her radio to any setting,  
3 such as “direct communications,” under which radio communications are unrecorded.

4       No U.S. Border Patrol documents exist. If any such documents are located after I  
5 sign this declaration, I will review them and amend this declaration if necessary.

6       I declare under penalty of perjury of the laws of the United States of America that  
7 the foregoing is true and correct.

8       Executed this 15th day of December 2017.

9  
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11       

RODNEY S. SCOTT

12       Chief Patrol Agent, San Diego Sector  
13       U.S. Border Patrol

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ALTON JONES  
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11 UNITED STATES DISTRICT COURT  
12 SOUTHERN DISTRICT OF CALIFORNIA

13 ALTON JONES,  
14 Plaintiff,  
15 vs.

16 U.S. BORDER PATROL AGENTS  
GERARDO HERNANDEZ, JODAN  
17 JOHNSON, DAVID FAATOALIA,  
JOSEPH BOWEN, and JOHN  
18 KULAKOWSKI, each sued in their  
individual capacities; UNITED  
19 STATES OF AMERICA; UNITED  
STATES DEPARTMENT OF  
20 HOMELAND SECURITY; and  
UNITED STATES CUSTOMS AND  
21 BORDER PROTECTION,

22 Defendants.

23 UNITED STATES OF AMERICA,  
24 Counter-Claimant,

25 vs.

26 ALTON JONES,  
27 Counter-Defendant.  
28

Case No. 16-cv-1986-W (WVG)

**PLAINTIFF AND COUNTER-  
DEFENDANT ALTON JONES'S  
REQUESTS FOR INSPECTION  
FROM DEFENDANT AND  
COUNTER-CLAIMANT UNITED  
STATES OF AMERICA**

Judge: Hon. Thomas J. Whelan

1 PROPOUNDING PARTY: PLAINTIFF & COUNTER-DEFENDANT ALTON  
2 JONES

3 RESPONDING PARTY: DEFENDANT & COUNTER-CLAIMANT UNITED  
4 STATES OF AMERICA

5

6 Pursuant to Federal Rule of Civil Procedure 34, Plaintiff Alton Jones hereby  
7 requests that Defendant and Counter-Claimant United States of America (“USA”)  
8 permit Plaintiff to inspect the places and tangible things listed below within thirty  
9 (30) days of service of these Requests.

10 **GENERAL INSTRUCTIONS**

11 1. PLAINTIFF incorporates by reference as if fully set forth herein Rules  
12 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United  
13 States District Court for the Southern District of California. This Request seeks  
14 responses and DOCUMENTS and things to the full extent permitted by the Federal  
15 Rules of Civil Procedure and Local Rules.

16 2. If YOU object to an inspection on grounds of privilege, specify with  
17 particularity the nature of the claimed privilege so as to enable the claim of privilege  
18 to be evaluated and, if necessary, adjudicated.

19 3. The singular form of a word should be interpreted as plural wherever  
20 necessary to bring within the scope of the request any information that might  
21 otherwise be construed to be outside its scope.

22 4. The present tense includes the past and future tenses. The singular  
23 includes the plural, and the plural includes the singular. “All” means “any and all”;  
24 “any” means “any and all.” “Including” means “including but not limited to.” “And”  
25 and “or” encompasses both “and” and “or.” Words in the masculine, feminine, or  
26 neutral form shall include each of the other genders.

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**DEFINITIONS**

1. “CAMERA 2” is a camera located near Border Field State Park, pointing eastward, from which video footage was produced in this case.

**REQUESTS FOR INSPECTION**

**Request for Inspection No. 1:**

The control center from which CAMERA 2 is operated, and from which CAMERA 2 footage may be viewed. This control center is located, on information and belief, in the Chula Vista Border Patrol Station.

DATED: December 13, 2017

ACLU FOUNDATION OF SAN DIEGO &  
IMPERIAL COUNTIES

MITRA EBADOLAH  
DAVID LOY  
ZOE MCKINNEY

MUNGER, TOLLES & OLSON LLP

LUIS LI  
TAMERLIN J. GODLEY  
LAUREN C. BARNETT  
C. HUNTER HAYES

By:           /s/ C. Hunter Hayes            
C. HUNTER HAYES  
Attorneys for Plaintiff ALTON JONES

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

3 At the time of service, I was over 18 years of age and **not a party to this**  
4 **action**. I am employed in the County of San Francisco, State of California. My  
5 business address is 560 Mission Street, 27th Floor, San Francisco, CA 94105.

6 On December 13, 2017, I served true copies of the following document(s)  
7 described as:

8 **PLAINTIFF AND COUNTER-DEFENDANT ALTON JONES'S REQUESTS**  
9 **FOR INSPECTION FROM DEFENDANT AND COUNTER-CLAIMANT**  
10 **UNITED STATES OF AMERICA**

11 on the interested parties in this action as follows:

12 David B. Wallace  
13 Dave.Wallace@usdoj.gov  
14 Samuel William Bettwy  
15 samuel.bettwy@usdoj.gov  
16 United States Attorney's Office  
17 880 Front Street  
18 Room 6293  
19 San Diego, CA 92101  
20 (619) 546-7669  
21 Fax: (619) 546-7751  
22 Attorneys for Defendants/Counter-Claimant

23 **BY E-MAIL:** I served the document electronically by e-mailing the  
24 document to the individuals on the attached service list.

25 I declare under penalty of perjury under the laws of the United States of  
26 America that the foregoing is true and correct and that I am employed in the office  
27 of a member of the bar of this Court at whose direction the service was made.

28 Executed on December 13, 2017, at San Francisco, California.

\_\_\_\_\_  
*/s/ Crystal Wu*  
Crystal Wu