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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ORLANDO CANCINO  
CASTELLAR, et al.,  
Plaintiff-Petitioners,  
v.  
KEVIN McALEENAN, et al.,  
Defendant-Respondents.

Case No.: 3:17-cv-491-BAS-AHG

**ORDER:**

- (1) GRANTING IN PART AND DENYING IN PART PLAINTIFF-PETITIONERS’ MOTION TO COMPEL,**
- (2) GRANTING IN PART AND DENYING IN PART DEFENDANT-RESPONDENTS’ MOTION FOR PROTECTIVE ORDER,**
- (3) GRANTING PLAINTIFF-PETITIONERS’ MOTION TO FILE DOCUMENTS UNDER SEAL, and**
- (4) ISSUING AMENDING SCHEDULING ORDER**

[ECF Nos. 83, 84, 86]

1 Before the Court are Plaintiff-Petitioners’ Motion to Compel (ECF No. 86),  
2 Defendant-Respondents’ Motion for Protective Order (ECF No. 83), and Plaintiff-  
3 Petitioners’ Motion to File Documents Under Seal (ECF No. 84). For the reasons set forth  
4 below, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** and **DENIED IN**  
5 **PART**, Defendant-Respondents’ motion for protective order is **GRANTED IN PART** and  
6 **DENIED IN PART**, and Plaintiff-Petitioners’ motion to file documents under seal is  
7 **GRANTED**.

## 8 I. BACKGROUND

9 This case arises from an alleged policy and practice to delay presentment of detained  
10 aliens to an immigration judge. Plaintiff-Petitioners Jose Orlando Cancino Castellar, Ana  
11 Maria Hernandez Aguas, and Michael Gonzalez (collectively, “Plaintiff-Petitioners”)  
12 allege that the Due Process clause requires prompt presentation of aliens in custody, and  
13 that the one to three month delay resulting from Defendant-Respondents’<sup>1</sup> policy and  
14 practice violates this requirement. Among other things, Plaintiff-Petitioners claim that this  
15 delay interferes with aliens’ access to a variety of rights, including the right to a hearing to  
16 determine whether they can post bond to be released from custody pending the outcome of  
17 the proceeding. *See* ECF No. 63 at 1–11 (describing, in depth, the factual and procedural  
18 background of the case); *see also* ECF No. 1 at ¶¶ 38–40, 75–78 (procedural due process);  
19 *id.* at ¶¶ 41–44, 75–77, 79 (substantive due process). Plaintiff-Petitioners also assert claims  
20 under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 706(2)(A)–(D). *Id.* at ¶¶ 85–  
21 90. Plaintiff-Petitioners challenge what they allege is “Defendant-Respondents’ policy and  
22 practice of detaining individuals for extended periods of time without promptly presenting  
23 them for an initial hearing before an immigration judge[.]” *Id.* at ¶¶ 1, 58. Implementation  
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27 <sup>1</sup> Defendant-Respondents are various federal immigration officials who oversee  
28 immigration enforcement nationally and locally in the Southern District of California.  
*See* ECF No. 63 at 1 n.1.

1 of this policy is allegedly shared by DHS and its components, ICE and CBP, and EOIR—  
2 entities over which the named Defendant-Respondents possess authority.

3 Plaintiff-Petitioners seek to represent a class of “[a]ll individuals in the Southern  
4 District of California, other than those with final orders of removal, who are or will be  
5 detained by DHS more than 48 hours without a hearing before an immigration judge[.]”  
6 *Id.* at ¶ 68. Plaintiff-Petitioners request “declaratory, injunctive, and habeas corpus relief  
7 that will prevent Defendant-Respondents from detaining individuals for an unreasonable  
8 period before presentment to a judge[.]” *Id.* at ¶¶ 8, 91.

9 Defendant-Respondents moved to dismiss Plaintiff-Petitioners’ Fifth Amendment  
10 and corresponding APA claims. ECF No. 60. The Court granted in part and denied in part  
11 the motion, dismissing Plaintiff-Petitioner Gonzalez’s procedural due process claim and  
12 Plaintiff-Petitioners’ Section 706(1) APA claims. ECF No. 63 at 41–42. The following  
13 claims survived Defendant-Respondent’s motion to dismiss:

- 14 1. Plaintiff-Petitioners Cancino’s, Hernandez’s, and Gonzalez’s substantive due  
15 process claims. ECF No. 63 at 25–27, 41 (holding that all Plaintiff-Petitioners,  
16 including Gonzalez, an alien, plausibly alleged substantive due process  
17 claims, because “circumstances of Plaintiff-Petitioners’ detention show that  
18 the Due Process Clause imposes a substantive constraint on the Government’s  
19 detention of Plaintiff-Petitioners without prompt presentment to an  
20 immigration judge” and “Plaintiff-Petitioners have plausibly alleged conduct  
21 that ‘shocks the conscience’ in their continued detention without a prompt  
22 first appearance before an immigration judge”).
- 23 2. Plaintiff-Petitioners Cancino’s and Hernandez’s procedural due process  
24 claims. ECF No. 63 at 31–38 (holding that Plaintiff-Petitioners Cancino and  
25 Hernandez plausibly alleged procedural due process claims, because “the risk  
26 of an erroneous deprivation of physical liberty[, ] compounded by language  
27 barriers, ‘lack of sophistication regarding complex immigration laws,’ and  
28 ‘ignorance of procedures for seeking a bond hearing’ ... plausibly show a

1 meaningful risk of erroneous deprivation” and the “probative value of the  
2 additional safeguard Plaintiff-Petitioners seek” does not seem to “impose a  
3 burden on Defendant-Respondents at the motion to dismiss stage.”).

- 4 3. Plaintiff-Petitioners’ Section 706(2)(A), (B), (C), and (D) APA claims. ECF  
5 No. 63 at 42–45 (holding that Plaintiff-Petitioners plausibly alleged Section  
6 706(2) claims because they invoke the APA “as means to seek review of  
7 agency action in the context of the claimed due process rights” and because  
8 the Court had already “concluded that all Plaintiff-Petitioners state  
9 constitutional due process claims.”).

## 10 **II. PROCEDURAL POSTURE**

11 On October 11, 2019, pursuant to the Court’s Chambers Rules, the parties jointly  
12 emailed the Court to request a telephonic conference regarding multiple ongoing discovery  
13 disputes. *See* Chmb.R. at 2. In an effort to resolve the disputes, the Court held telephonic  
14 discovery conferences on October 16, 2019, October 28, 2019, and November 13, 2019.  
15 ECF Nos. 76, 79, 87. The Court found it appropriate to issue a briefing schedule for  
16 Plaintiff-Petitioners’ motion to compel and Defendant-Respondents’ motion for protective  
17 order. ECF No. 77. Upon receipt of the responsive briefs, the Court ordered the parties to  
18 submit supplemental briefing, in the form of a joint statement. ECF No. 91. The Court then  
19 set a hearing on the motions for January 15, 2020, and heard oral argument from both sides.  
20 ECF Nos. 93, 95. This order follows.

## 21 **III. DISCOVERY REQUESTS AT ISSUE**

22 The present motions relate to the following 33 discovery requests:

- 23 1. Plaintiff Jose Cancino Castellar’s First Set of Interrogatories to Defendant  
24 William B. Barr, Attorney General (“DOJ Interrogatories”), Nos. 1, 2, 3,  
25 4, and 5, propounded on August 21, 2019. ECF No. 83-2 at 2–8.  
26 Defendant-Respondents timely returned their responses and objections on  
27 September 20, 2019. ECF No. 86-1 at 7.  
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- 1           2.     Plaintiff Jose Cancino Castellar’s First Set of Requests for Production of  
2           Documents to Defendant William P. Barr, Attorney General (“DOJ RFPs”),  
3           No. 2, propounded on August 21, 2019. ECF No. 83-2 at 11–18. Defendant-  
4           Respondents timely returned their responses and objections on September 20,  
5           2019. ECF No. 86-1 at 7.
- 6           3.     Plaintiff Jose Cancino Castellar’s Second Set of Requests for Production of  
7           Documents to Defendant William P. Barr, Attorney General (“DOJ RFPs”),  
8           Nos. 3 and 4, propounded on October 11, 2019. ECF No. 83-2 at 49–56.
- 9           4.     Plaintiff Jose Cancino Castellar’s First Set of Interrogatories to Defendant  
10          Kevin McAleenan, Acting Secretary of Homeland Security (“DHS  
11          Interrogatories”), Nos. 1, 2, 3, 4, 5, 6, 8,<sup>2</sup> and 9, propounded on  
12          August 21, 2019. ECF No. 83-2 at 20–28. Defendant-Respondents timely  
13          returned their responses and objections on September 20, 2019. ECF No.  
14          86-1 at 7.
- 15          5.     Plaintiff Jose Cancino Castellar’s Second Set of Requests for Production of  
16          Documents to Defendant Department of Homeland Security (“DHS RFPs”),  
17          Nos. 3, 4, 5, and 6, propounded on October 11, 2019. ECF No. 83-2 at 39–47.
- 18          6.     Plaintiff-Petitioners’ First Amended Notice of Deposition under Rule 30(b)(6)  
19          of Person Most Knowledgeable for Executive Office for Immigration Review,  
20          (“EOIR Deposition”), Topic Nos. 2 and 3, served on October 15, 2019. ECF  
21          No. 83-2 at 58–64. The “proper procedure to object to a Rule 30(b)(6)  
22          deposition notice is not to serve objections on the opposing party, but to move  
23          for a protective order[,]” which was done here. *Rembrandt Diagnostics, LP v.*  
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26 <sup>2</sup> On March 12, 2020, the parties jointly notified the Court that they had resolved their  
27 dispute as to DHS Interrogatory No. 8. ECF No. 96 at 1–2 (stating that “[t]he [p]arties now  
28 agree that Defendants have provided a full and complete response to Interrogatory No. 8.  
Accordingly, Plaintiffs have no further dispute regarding Interrogatory No. 8 to DHS”).  
Thus, the Court will not address this discovery request further within this Order.

1 *Innovacon, Inc.*, No. 16cv698-CAB-NLS, 2018 WL 692259, at \*3 (S.D. Cal.  
2 Feb. 2, 2018) (internal quotations omitted).

3 7. Plaintiff-Petitioners' First Amended Notice of Deposition under Rule 30(b)(6)  
4 of Person Most Knowledgeable for Immigration and Customs Enforcement  
5 ("ICE Deposition"), Topic Nos. 1, 2, 3, 4, 5, and 6, served on  
6 October 15, 2019. ECF No. 83-2 at 66–74. Defendant-Respondents timely  
7 objected by moving for a protective order. *See Rembrandt Diagnostics*, 2018  
8 WL 692259, at \*3.

9 8. Plaintiff-Petitioners' First Amended Notice of Deposition under Rule 30(b)(6)  
10 of Person Most Knowledgeable for U.S. Customs and Border Protection  
11 ("CBP Deposition"), Topic Nos. 1, 2, 3, 4, and 5, served on October 15, 2019.  
12 ECF No. 83-2 at 76–84. Defendant-Respondents timely objected by moving  
13 for a protective order. *See Rembrandt Diagnostics*, 2018 WL 692259, at \*3.

#### 14 **IV. LEGAL STANDARD**

15 Nonprivileged information is discoverable under Rule 26 if it is (1) relevant to any  
16 party's claim or defense, and (2) proportional to the needs of the case. FED. R. CIV. P. 26(b).  
17 Information need not be admissible to be discoverable. *Id.* The Court has broad discretion  
18 in determining relevancy for discovery purposes. *Survivor Media Inc. v. Survivor Prods.*,  
19 406 F.3d 625, 635 (9th Cir. 2005); *see U.S. Fidelity and Guar. Co. v. Lee Investments*  
20 *L.L.C.*, 641 F.3d 1126, 1136 (9th Cir. 2011) ("District courts have wide latitude in  
21 controlling discovery, and [their] rulings will not be overturned in the absence of a clear  
22 abuse of discretion.") (internal quotation and citations omitted); *Doherty v. Comenity*  
23 *Capital Bank*, No. 16cv1321-H-BGS, 2017 WL 1885677, at \*2 (S.D. Cal. May 9, 2017)  
24 (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)); *see also Youngevity Int'l,*  
25 *Inc. v. Smith*, No. 16cv704-BTM-JLB, 2017 WL 2692928, at \*10–\*11 (S.D. Cal. June 22,  
26 2017).

1           When analyzing relevance, Rule 26(b) no longer limits discovery to information  
2 “reasonably calculated to lead to the discovery of admissible evidence.” *In Re Bard IVC*  
3 *Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563–64, 564 n.1 (D. Ariz. 2016) (discussing  
4 the 2015 amendments to the Federal Rules of Civil Procedure and the advisory committee’s  
5 explicit removal of the phrase “reasonably calculated,” and listing cases that continue to  
6 use the outdated pre-2015 standard). The relevance standard is commonly recognized as  
7 one that is necessarily broad in scope in order “to encompass any matter that bears on, or  
8 that reasonably could lead to other matter that could bear on, any issue that is or may be in  
9 the case.” *Doherty*, 2017 WL 1885677, at \*2 (internal quotation omitted). Regardless of its  
10 broad nature, however, relevance is not without “ultimate and necessary boundaries.” *Id.*

11           Information must be “proportional to the needs of the case” to fall within the scope  
12 of permissible discovery. FED. R. CIV. P. 26(b)(1). When analyzing the proportionality of  
13 a party’s discovery requests, a court should consider the importance of the issues at stake  
14 in the action, the amount in controversy, the parties’ relative access to the information, the  
15 parties’ resources, the importance of the discovery in resolving the issues, and whether the  
16 burden or expense of the proposed discovery outweighs its likely benefit. *Id.* “The 2015  
17 amendments to Rule 26(b)(1) emphasize the need to impose ‘reasonable limits on  
18 discovery through increased reliance on the common-sense concept of proportionality.’”  
19 *Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594, 603 (D. Nev. 2016) (internal citation  
20 omitted). The fundamental principle of amended Rule 26(b)(1) is “that lawyers must size  
21 and shape their discovery requests to the requisites of a case.” *Id.* Both discovery and  
22 Rule 26 are intended to provide parties with “efficient access to what is needed to prove a  
23 claim or defense, but eliminate unnecessary or wasteful discovery.” *Id.*

24           Once the propounding party establishes that the request seeks relevant and  
25 proportional information, “[t]he party who resists discovery has the burden to show  
26 discovery should not be allowed, and has the burden of clarifying, explaining, and  
27 supporting its objections.” *Superior Commc’ns v. Earhugger, Inc.*, 257 F.R.D. 215, 217  
28 (C.D. Cal. 2009); *see Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975)

1 (requiring defendants “to carry a heavy burden of showing why discovery was denied”);  
2 *see also Bryant v. Ochoa*, No. 07cv200-JM-PCL, 2009 WL 1390794, at \*1 (S.D. Cal. May  
3 14, 2009) (“The party seeking to compel discovery has the burden of establishing that its  
4 request satisfies the relevancy requirements of Rule 26(b)(1). Thereafter, the party  
5 opposing discovery has the burden of showing that the discovery should be prohibited, and  
6 the burden of clarifying, explaining or supporting its objections.”). The party resisting  
7 discovery must specifically detail the reasons why each request is irrelevant or otherwise  
8 objectionable, and may not rely on boilerplate, generalized, conclusory, or speculative  
9 arguments. *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 553 (D. Nev. 2013). Arguments  
10 against discovery must be supported by “specific examples and articulated reasoning.” *U.S.*  
11 *E.E.O.C. v. Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006).

12 District courts have broad discretion to manage discovery. *Laub v. United States*  
13 *DOI*, 342 F.3d 1080, 1093 (9th Cir. 2003); *Hallett*, 296 F.3d at 751. This discretion extends  
14 to crafting discovery orders that may expand, limit, or differ from the relief requested. *See*  
15 *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (trial court has “broad discretion to tailor  
16 discovery narrowly and to dictate the sequence of discovery”); *UMG Recordings, Inc. v.*  
17 *Doe*, No. C 08-1038 SBA, 2008 WL 2949427, at \*3 (N.D. Cal. Jul. 30, 2008) (“[T]he  
18 district courts wield broad discretion” in fashioning discovery orders).

## 19 **V. OVERVIEW OF DEFENDANT-RESPONDENTS’ OBJECTIONS AND** 20 **RELEVANT LAW**

21 Defendant-Respondents raise similar objections to Plaintiff-Petitioners’ discovery  
22 requests. The Court will address the most prevalent ones in turn.

### 23 **a. Geographic Scope**

24 Defendant-Respondents have objected to multiple discovery requests on the basis  
25 that documents and information regarding the Imperial Detention Center or Imperial  
26 Immigration Courts are outside the scope of the case, and thus are not relevant to Plaintiff-  
27 Petitioners’ claims, because “the scope of the lawsuit is limited to the circumstances of the  
28



1 three named Plaintiff-Petitioners whose initial hearings and/or bond hearings occurred  
2 exclusively at the Otay Mesa Immigration Court.” ECF No. 92 at 4; Email to Chambers,  
3 Oct. 11, 2019. However, Plaintiff-Petitioners define their putative class as “individuals in  
4 the Southern District of California . . .,” which includes Imperial County. ECF No. 1 at ¶¶  
5 58, 68. Further, Plaintiff-Petitioners alleged specific allegations regarding Imperial County  
6 in the complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore, Imperial County is  
7 clearly within the scope of Plaintiff-Petitioners’ claims, and the Court **ORDERS** that, to  
8 the extent the Plaintiff-Petitioners’ motion to compel is granted below, Defendant-  
9 Respondents must produce responsive information and documents that include Imperial  
10 County.

#### 11 **b. Relevance**

12 Defendant-Respondents have objected to multiple discovery requests on the basis  
13 that they seek irrelevant information. *See* ECF No. 92 (objecting to at least 18 of the 33  
14 discovery disputes based on relevance). To the extent Defendant-Respondents object based  
15 on relevance in a boilerplate, conclusory manner, those objections are overruled. *AMG*  
16 *Servs.*, 291 F.R.D. at 553 (stating that the objecting party must “specifically detail the  
17 reasons why each request is irrelevant and may not rely on boilerplate, generalized,  
18 conclusory” arguments); *A. Farber & Ptnrs., Inc. v. Garber*, 234 F.R.D. 186, 188 (C.D.  
19 Cal. 2006) (“boilerplate relevancy objections, without setting forth any explanation or  
20 argument why the requested documents are not relevant, are improper”); *see Bryant*, 2009  
21 WL 1390794, at \*1 (the party opposing the motion to compel has the “burden of showing  
22 that the discovery should be prohibited, and the burden of clarifying, explaining or  
23 supporting its objections.”).

24 Courts have broad discretion to determine relevance for discovery purposes.  
25 *Doherty*, 2017 WL 1885677, at \*2 (citing *Hallett*, 296 F.3d at 751); *see also Youngevity*  
26 *Int’l*, 2017 WL 2692928, at \*10–\*11. When analyzing relevance, Rule 26(b) no longer  
27 limits discovery to information “reasonably calculated to lead to the discovery of  
28 admissible evidence.” *In Re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. at 563–64,

1 564 n.1 (discussing the 2015 amendments to the Federal Rules of Civil Procedure and the  
2 advisory committee’s explicit removal of the phrase “reasonably calculated,” and listing  
3 cases that continue to use the outdated pre-2015 standard). The relevance standard is  
4 commonly recognized as one that is necessarily broad in scope in order “to encompass any  
5 matter that bears on, or that reasonably could lead to other matter that could bear on, any  
6 issue that is or may be in the case.” *Doherty*, 2017 WL 1885677, at \*2 (internal quotation  
7 omitted). Regardless of its broad nature, however, relevance is not without “ultimate and  
8 necessary boundaries.” *Id.* Thus, courts often link the elements of a cause of action with  
9 the discovery sought. Here, Plaintiff-Petitioners’ claims involve substantive and procedural  
10 due process.

11 Substantive due process “forbids the government [from] infring[ing] certain  
12 ‘fundamental’ liberty interests at all, no matter what process is provided, unless the  
13 infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507  
14 U.S. 292, 301–02 (1993); *see also Daniels v. Williams*, 474 U.S. 327, 331 (1986)  
15 (explaining that substantive due process will “bar certain government actions regardless of  
16 the fairness of the procedures used to implement them.”). Substantive due process analysis  
17 entails two elements. First, “[a]s a threshold matter, ‘to establish a substantive due process  
18 claim a plaintiff must show a government deprivation of life, liberty, or property.’” *Squaw*  
19 *Valley Dev. Co. v. Goldberg*, 375 F.3d 936, 948 (9th Cir. 2004) (quoting *Nunez v. City of*  
20 *Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998)); *see also Vargas v. City of Philadelphia*,  
21 783 F.3d 962, 973 (3d Cir. 2015). Second, whether substantive due process is violated turns  
22 on the nature of the challenged government conduct. “[P]laintiffs must allege conduct that  
23 ‘shock[s] the conscience and offend[s] the community’s sense of fair play and decency.’”  
24 *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 908 F.3d 476, 518 (9th Cir.  
25 2018) (quoting *Sylvia Landfield Tr. v. City of Los Angeles*, 729 F.3d 1189, 1195 (9th Cir.  
26 2013)). Any “shock the conscience” analysis necessarily requires consideration of the  
27 justification the government offers, if any, for the alleged infringement. *See Reno*, 507 U.S.  
28 at 301–02.

1 Procedural due process “imposes constraints on governmental decisions which  
2 deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due  
3 Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 322 (1976). Procedural due process  
4 does not forbid the government from depriving individuals of a protected interest, but  
5 rather requires the government to employ adequate procedures that ensure the fairness of  
6 any deprivation. *See McNabb v. United States*, 318 U.S. 332, 347 (1943). To assess  
7 procedural due process claims, courts employ the test set forth in *Mathews*. This test  
8 involves a balancing of three factors: (1) the nature of the private interest that will be  
9 affected, (2) the comparative risk of an erroneous deprivation of that interest with and  
10 without additional or substitute procedural safeguards, and (3) the nature and magnitude of  
11 any countervailing interest in not providing additional or substitute procedural  
12 requirements. *Turner v. Rogers*, 564 U.S. 431, 444–45 (2011) (alterations and internal  
13 quotation marks omitted). The second *Mathews* factor “has two components: the risk that  
14 the procedures used will erroneously deprive [the] plaintiff of his liberty interest, and the  
15 value of additional or alternate procedural safeguards.” *Oviatt v. Pearce*, 954 F.2d 1470,  
16 1476 (9th Cir. 1992). The final *Mathews* factor concerns “the government’s interest,  
17 including the additional costs and administrative burdens that additional procedures would  
18 entail.” *Buckingham v. Secretary of the U.S. Dep’t. of Agriculture*, 603 F.3d 1073, 1082  
19 (9th Cir. 2010).

20 Thus, information that Plaintiff-Petitioners seek that relates to any of the  
21 aforementioned elements of substantive or procedural due process claims will be deemed  
22 relevant by this Court.

### 23 **c. Undue Burden**

24 Defendant-Respondents have objected to multiple discovery requests on the basis  
25 that responding would impose an undue burden. *See* ECF No. 92 (objecting to at least 19  
26 of the 33 discovery disputes based on undue burden).

27 The party “claiming that a discovery request is unduly burdensome must allege  
28 specific facts which indicate the nature and extent of the burden, usually by affidavit or

1 other reliable evidence.” *Laryngeal Mask Co. v. Ambu A/S*, No. 07cv1988-DMS-NLS,  
2 2009 WL 10672487, at \*2 (S.D. Cal. Jan. 27, 2009) (quoting *Jackson v. Montgomery Ward*  
3 & *Co.*, 173 F.R.D. 524, 528–29 (D. Nev. 1997). Furthermore, “boiler plate objections that  
4 a request for discovery is overbroad and unduly burdensome . . . are improper unless based  
5 on particularized facts.” *Vietnam Veterans of Am. v. CIA*, No. C 09-37-CW-JL, 2010 U.S.  
6 Dist. LEXIS 143865, at \*32 (N.D. Cal. Nov. 12, 2010) (internal quotations omitted); *A.*  
7 *Farber & Ptnrs.*, 234 F.R.D. at 188 (stating that “general or boilerplate objections such as  
8 ‘overly burdensome ...’ are improper—especially when a party fails to submit any  
9 evidentiary declarations supporting such objections” and collecting cases with similar  
10 holdings); accord *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 358–59 (D.  
11 Md. 2008) (collecting cases from multiple circuits).

12 “Just because complying with a discovery request will involve expense or may be  
13 time consuming, does not make it unduly burdensome.” *Jackson*, 173 F.R.D. at 528–29.  
14 Further, “[c]onclusory or speculative statements of harm, inconvenience, or expense are  
15 plainly insufficient.” *Nationstar Mortg., LLC v. Flamingo Trails No. 7 Landscape Maint.*  
16 *Ass’n*, 316 F.R.D. 327, 334 (D. Nev. 2016).

17 Thus, in analyzing whether Defendant-Respondents’ undue burden objections  
18 should be sustained, the Court will closely scrutinize Defendant-Respondents’ description  
19 of the alleged burden and disregard conclusory speculation.

#### 20 **d. Subparts Exceed Limit of Interrogatories**

21 Defendant-Respondents have objected to multiple discovery requests on the basis  
22 that the subparts cause the number of interrogatories to exceed the limit imposed by the  
23 Federal Rules. See ECF No. 92 (objecting to at least 9 of the 13 interrogatories at issue for  
24 this reason); ECF No. 89 at 9–10.

25 “Unless otherwise stipulated or ordered by the court, a party may serve on any other  
26 party no more than 25 written interrogatories, including all discrete subparts.” FED. R. CIV.  
27 P. 33(a)(1). Although Rule 33(a) states that “discrete subparts” should be counted as  
28 separate interrogatories, it does not define that term. *Safeco Ins. Co. of Am. v. Rawstron*,

1 181 F.R.D. 441, 442–43 (C.D. Cal. 1998) (noting that the extensive use of subparts could  
2 defeat the purpose of the numerical limit contained in Rule 33(a) by rendering it  
3 meaningless, while also recognizing that if all subparts count as separate interrogatories,  
4 the use of interrogatories might be unduly restricted). However, “courts generally agree  
5 that ‘interrogatory subparts are to be counted as one interrogatory ... if they are logically or  
6 factually subsumed within and necessarily related to the primary question.’” *Trevino v.*  
7 *ACB Am., Inc.*, 232 F.R.D. 612, 614 (N.D. Cal. 2006) (quoting *Safeco*, 181 F.R.D. at 445);  
8 *Makaeff v. Trump Univ., LLC*, No. 10cv940-GPC-WVG, 2014 WL 3490356, at \*4 (S.D.  
9 Cal. July 11, 2014); *see, e.g., Erfindergemeinschaft UroPep GbR v. Eli Lilly & Co.*, 315  
10 F.R.D. 191, 196 (E.D. Tex. 2016) (collecting cases from numerous circuits to show a  
11 general consensus on the “related question” approach, i.e., “subparts that are logically or  
12 factually subsumed within and necessarily related to the primary question should not be  
13 treated as separate interrogatories”). “Subparts asking for facts, documents, and witnesses  
14 relating to a primary contention or allegation are logically or factually related, and [] should  
15 be construed as subsumed in the primary question” and therefore do not count as separate  
16 interrogatories. *Synopsys, Inc. v. Atoptech, Inc.*, 319 F.R.D. 293, 297 (N.D. Cal. 2016).  
17 Such an inquiry requires a case-specific and interrogatory-specific assessment. *Id.* at 295.

#### 18 **e. Rule 30(b)(6) Depositions**

19 Federal Rule of Civil Procedure 30(b)(6) allows a party to depose an entity by  
20 identifying a set of topics for the deposition. FED. R. CIV. P. 30(b)(6). The deponent-entity  
21 is responsible for selecting and presenting witnesses who are prepared to testify on those  
22 topics. *See Jones v. Hernandez*, No. 16cv1986-W-WVG, 2018 WL 539082, at \*1 (S.D.  
23 Cal. Jan. 23, 2018) (citing *Updike v. Clackamas County*, No. 15cv723-SI, 2016 WL  
24 111424, at \*2 (D. Or. Jan. 11, 2016)). Because the entity must “present witnesses who are  
25 capable of providing testimony on the noticed topics, regardless of whether the information  
26 was in the specific witness’s personal knowledge,” the party requesting the deposition  
27 “must describe with reasonable particularity [or as another court explained, “with  
28 painstaking specificity,”] the matters for examination.” *Updike*, 2016 WL 111424, at \*2–

1 \*3 (internal quotations omitted). On the other hand, “a party responding to discovery has  
2 ‘an obligation to construe ... discovery requests in a reasonable manner.’” *Westmoreland*  
3 *v. Regents of the Univ. of Cal.*, No. 17cv1922-TLN-AC, 2019 WL 932220, at \*3 (E.D. Cal.  
4 Feb. 26, 2019) (internal quotations omitted). The plain language of Federal Rule 30 permits  
5 such depositions in actions against a government agency. *See* FED. R. CIV. P. 30(b)(6) (“In  
6 its notice or subpoena, a party may name as the deponent . . . a governmental agency, or  
7 other entity and must describe with reasonable particularity the matters for examination.”)  
8 (emphasis added).

9 “Federal district courts have been divided on whether a Rule 30(b)(6) deposition is  
10 an appropriate vehicle to obtain the factual basis for a party’s legal claims or defenses, or  
11 whether such information can be better and more fairly obtained through contention  
12 interrogatories.” *Bank of Am., N.A. v. SFR Invs. Pool 1 LLC*, No. 15cv1042-APG-GWF,  
13 2016 WL 2843802, at \*3 (D. Nev. May 12, 2016); *TV Interactive Data Corp. v. Sony Corp.*,  
14 No. C 10-475-PJH-MEJ, 2012 WL 1413368, at \*2 (N.D. Cal. Apr. 23, 2012) (collecting  
15 cases). Some courts contend that “[i]t is of no consequence that contention interrogatories  
16 may be the more appropriate route to obtain the information as nothing precludes a  
17 deposition either in lieu of or in conjunction with such interrogatories.” *Security Ins. Co.*  
18 *of Hartford v. Trustmark Ins.*, 218 F.R.D. 29, 34 (D. Conn. 2003); *but see Bank of Am.,*  
19 *N.A.*, 2016 WL 2843802, at \*3 (noting that line of thinking “no longer has substantial  
20 weight given the emphasis placed on proportionality and the tailoring of discovery under  
21 amended Rule 26(b)”). Other courts have required a party to serve contention  
22 interrogatories in lieu of a Rule 30(b)(6) deposition where the topic requires the responding  
23 party to provide its legal analysis on complex issues, such as in patent cases; those courts  
24 consider, “based on the facts of each case, [whether] contention interrogatories are a more  
25 appropriate discovery tool.” *TV Interactive Data Corp.*, 2012 WL 1413368, at \*2; *Gen-*  
26 *Probe Inc. v. Becton, Dickinson & Co.*, No. 09cv2319-BEN-NLS, 2012 WL 12845593, at  
27 \*1–\*2 (S.D. Cal. Mar. 28, 2012). “Courts have also recognized that properly timed  
28 contention interrogatories ‘may in certain cases be the most reliable and cost-effective

1 discovery device, which would be less burdensome than depositions . . . .” *Lexington Ins.*  
2 *Co. v. Commonwealth Ins. Co.*, No. C98-3477-CRB-JCS, 1999 WL 33292943, at \*7 (N.D.  
3 Cal. Sept. 17, 1999) (quoting *Cable & Computer Technology, Inc. v. Lockheed Sanders,*  
4 *Inc.*, 175 F.R.D. 646, 652 (C.D. Cal. 1997)).

5 “The court may, for good cause, issue an order to protect a party or person from  
6 annoyance, embarrassment, oppression, or undue burden or expense, including one or more  
7 of the following . . . .(C) prescribing a discovery method other than the one selected by the  
8 party seeking discovery.” FED. R. CIV. P. 26(c)(1). Thus, the Court will assess each Rule  
9 30(b)(6) deposition topic and will decide whether those “inquiries can clearly be provided  
10 more efficiently and fairly through answers to interrogatories prepared by [Defendant-  
11 Respondents’] counsel.” *See Bank of Am., N.A.*, 2016 WL 2843802, at \*3.

## 12 VI. DISCUSSION

13 In lieu of segregating by motion, the Court will rule on Defendant-Respondents’  
14 objections to Plaintiff-Petitioners’ discovery requests in the order presented in the parties’  
15 joint supplemental briefing. *See* ECF No. 92.

### 16 a. DHS RFP No. 3:

17 All DOCUMENTS, including electronic DATABASE information, sufficient  
18 to demonstrate, calculate, and/or break down the data and information  
19 requested in Plaintiff’s Interrogatories Nos. 1-6. To the extent this involves  
20 production of DOCUMENTS regarding individuals and physical files or  
21 DATABASE entries regarding such individuals across multiple agencies, the  
22 DOCUMENTS must contain a unique identifier, such as an “alien number,”  
that allows for calculation of the relevant data for that individual.

23 As to this discovery request, Defendant-Respondents object for two main reasons:  
24 (1) information relating to custody determinations or custody hearings is not relevant, and  
25 (2) that production is burdensome and not proportional to the needs of the case. ECF No.  
26 83-1 at 12–19; ECF No. 92 at 2–3.

27 The Court finds that information regarding custody hearings, other than the reasons  
28 for the custody determination, such as the fact of a hearing and the ultimate decision, is

1 relevant to Plaintiff-Petitioners’ substantive and procedural due process claims. *See* ECF  
2 No. 63 at 25, 32 (stating that “continued detention without a prompt first appearance before  
3 an immigration judge” relates to the substantive due process “shocks the conscience”  
4 factor, and that “determinations regarding initial custody and detention are made by  
5 officers of the arresting agency” relates to the recognized procedural due process value of  
6 presentment to a neutral adjudicator).

7 The Court finds that Defendant-Respondents have failed to make a sufficient  
8 showing to support their objections based on burden. *See Nationstar Mortg., LLC*, 316  
9 F.R.D. at 334; *Laryngeal Mask Co.*, 2009 WL 10672487, at \*2; *A. Farber & Ptnrs.*, 234  
10 F.R.D. at 188; *Jackson*, 173 F.R.D. at 528–29.

11 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED** as to this discovery  
12 request. Defendant-Respondents must produce the database information requested,  
13 including a unique identifier for each individual to whom information pertains. The Court  
14 does not require production of personal identification information at this time.

15 **b. DHS RFP No. 4:**

16 All DOCUMENTS CONCERNING YOUR policies and practices for the  
17 process of initiating and/or informing the immigration court of the initiation  
18 of removal proceedings against DETAINEES, including for issuing, serving,  
and filing NTAs.

19 As to this discovery request, Defendant-Respondents object for two main reasons:  
20 (1) CBP is not responsible for filing NTAs, and (2) Plaintiff-Petitioners’ use of vague and  
21 ambiguous language. ECF No. 92 at 3.

22 Based on the Defendant-Respondents’ representations, the Court sustains  
23 Defendant-Respondents’ objections to the extent that Plaintiff-Petitioners seek to compel  
24 production from CBP.

25 The Court agrees that the request is vague and ambiguous, because the phrase “the  
26 process of initiating and/or informing the immigration court of the initiation of removal  
27 proceedings” is undefined. Defendant-Respondents interpret that phrase to “encompass  
28



1 DHS's procedures for initiating an NTA and informing the immigration court of the  
2 initiation of removal proceedings, rather than DHS's substantive decision-making process  
3 for initiating removal proceedings[,]” and the Court hereby adopts Defendant-  
4 Respondents' proposed interpretation.

5 Notwithstanding the objections, Defendant-Respondents “have identified certain  
6 documents they believe are responsive to this request and are making arrangements to  
7 produce them to Plaintiffs.” ECF No. 92 at 3. Federal Rule of Civil Procedure 34 requires  
8 Defendant-Respondents to either produce documents by the date stated in the request, or  
9 provide a reasonable time for production. FED. R. CIV. P. 34(b)(2)(b).

10 Thus, the Defendant-Respondents' motion for protective order is **DENIED** and  
11 Plaintiff-Petitioners' motion to compel is **GRANTED IN PART** as to this discovery  
12 request. Defendant-Respondents shall produce responsive documents within the above-  
13 defined scope.

14 **c. DHS RFP No. 5:**

15 All DOCUMENTS CONCERNING YOUR policies and practices for making  
16 custody determinations of alleged non-citizens in YOUR custody and for  
17 initiating CUSTODY HEARINGS or informing the immigration court of  
18 DETAINEES' requests for CUSTODY HEARINGS, as well as any  
19 DOCUMENTS CONCERNING any changes in such policies and practices  
20 since March 2017.

21 As to this discovery request, Defendant-Respondents object for two main reasons:  
22 (1) that the information relating to custody determinations or custody hearings is not  
23 relevant, and (2) that production is burdensome and not proportional to the needs of the  
24 case. ECF No. 83-1 at 12–19; ECF No. 92 at 3.

25 The Court finds that information regarding custody hearings, other than the reasons  
26 for the custody determination, such as the fact of a hearing and the ultimate decision, are  
27 relevant to Plaintiff-Petitioners' substantive and procedural due process claims. *See* ECF  
28 No. 63 at 25, 32 (stating that “continued detention without a prompt first appearance before  
an immigration judge” relates to the substantive due process “shocks the conscience”

1 factor, and that “determinations regarding initial custody and detention are made by  
2 officers of the arresting agency” relates to the recognized procedural due process value of  
3 presentment to a neutral adjudicator). However, the Court finds that documents regarding  
4 the reasoning why a particular custody determination was made are not relevant. Thus, the  
5 Court overrules Defendant-Respondents’ objection, and grants Plaintiff’s motion to the  
6 compel to the extent that the request seeks information regarding the fact of, and the timing  
7 of, custody hearings.

8 The Court finds that Defendant-Respondents have failed to make a sufficient  
9 showing to support their objections based on burden. *See Nationstar Mortg., LLC*, 316  
10 F.R.D. at 334; *Laryngeal Mask Co.*, 2009 WL 10672487, at \*2; *A. Farber & Ptnrs.*, 234  
11 F.R.D. at 188; *Jackson*, 173 F.R.D. at 528–29.

12 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
13 **PART** and permits Defendant-Respondents to withhold information regarding the  
14 reasoning why a particular custody determination was made. Plaintiff-Petitioners’ motion  
15 to compel is **GRANTED IN PART** to the extent that the request seeks information  
16 regarding the fact of, and the timing of, custody hearings.

17 **d. DHS RFP No. 6:**

18 All DOCUMENTS demonstrating or sufficient to calculate all the primary  
19 languages spoken by DETAINEES who have appeared on the DETAINED  
20 DOCKET, as well as DOCUMENTS demonstrating or sufficient to calculate  
21 the number of DETAINEES who spoke each language, as reflected in YOUR  
records or DATABASES.

22 As to this discovery request, Defendant-Respondents object that production of these  
23 documents would impose an undue burden and is not proportional to the needs of the case.  
24 ECF No. 83-1 at 20 n.10; ECF No. 92 at 4. Plaintiff-Petitioners contend that any burden is  
25 outweighed by the fact that the responses are relevant to their claims that detainees do not  
26 have a meaningful opportunity to have their rights explained to them in their language  
27 before their first hearing, where an interpreter is present. ECF No. 86-1 at 12-15.

1 The Court finds that information regarding languages spoken is relevant to the  
2 Plaintiff-Petitioners' procedural due process claims. *See* ECF No. 63 at 31 (stating that  
3 language barriers could impact the discussion of “meaningful risk of erroneous  
4 deprivation” in procedural due process analysis). Since this information is plainly relevant,  
5 it is proportional to the needs of the case. The Court also finds that Defendant-Respondents  
6 have failed to make a sufficient showing to support their objections based on burden. ECF  
7 No. 92 at 4 (objecting with boilerplate, identical language to at least four interrogatories,  
8 contending that Plaintiff-Petitioners “seek[s] production of a vast number of documents  
9 relating to potentially thousands of individuals”); *see Nationstar Mortg., LLC*, 316 F.R.D.  
10 at 334; *Laryngeal Mask Co.*, 2009 WL 10672487, at \*2; *A. Farber & Ptnrs.*, 234 F.R.D. at  
11 188; *Jackson*, 173 F.R.D. at 528–29.

12 Thus, Plaintiff-Petitioners' motion to compel is **GRANTED** as to this discovery  
13 request.

14 **e. DHS Interrogatory No. 1:**

15 For each fiscal year SINCE 2016, please state the mean and median number  
16 of days that elapsed between when DETAINEES were taken into custody and  
17 when they had their INITIAL MCH on the DETAINED DOCKET, broken  
18 down to also show such mean and median number of days for subcategories  
19 of DETAINEES based on the statutory authority for their detention (*e.g.*, 8  
20 U.S.C. §§ 1225(b), 1226(a), 1226(c)) and the facility in which they were  
21 detained at the time of their INITIAL MCH, as well as the number of  
22 DETAINEES in each category or subcategory. Per Instruction Number 1, if  
23 YOU lack complete information based on the date DETAINEES were taken  
24 into custody, provide the mean and median number of days elapsed until the  
25 INITIAL MCH from the earliest date for which YOU have information and  
26 state any facts CONCERNING the time periods covered and the information  
27 YOU lack.

28 As to this discovery request, Defendant-Respondents object for three main reasons:  
(1) that the information sought is not relevant due to the date range, (2) that production is  
burdensome and not proportional to the needs of the case, and (3) that the subparts cause

1 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
2 83-1 at 20; ECF No. 92 at 4–5.

3 In this discovery request, Plaintiff-Petitioners request information beginning in  
4 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
5 represented to the Court that they had negotiated and jointly agreed to limit the date range  
6 to begin in March 2017, when the complaint was filed. Given this date range, the Court  
7 finds that the information is relevant to Plaintiff-Petitioners’ Fifth Amendment claims.

8 The Court overrules Defendant-Respondents’ undue burden objections and finds  
9 that Defendant-Respondents have failed to make a sufficient showing to support their  
10 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
11 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
12 “conducting a manual case-by-case review of thousands of physical case files and  
13 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
14 responsive information to the extent it is available in databases.

15 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
16 of the interrogatory do not count as separate interrogatories because they relate to the  
17 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
18 create discrete subparts that should be treated as separate interrogatories.

19 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this  
20 discovery request. The Court orders Defendant-Respondents to produce responsive  
21 information from March 9, 2017 to the present, to the extent it is available in databases.

22 **f. DHS Interrogatory No. 2:**

23 For each fiscal year SINCE 2016, please state the mean and median number  
24 of days that elapsed between when YOU issued an NTA to a DETAINEE and  
25 when the NTA for that DETAINEE was filed with the immigration court,  
26 broken down to also show such mean and median number of days for  
27 subcategories of DETAINEES based on the statutory authority for their  
28 detention (*e.g.*, 8 U.S.C. §§ 1225(b), 1226(a), 1226(c)) and the immigration  
court where the NTA was filed, as well as the number of DETAINEES in each  
subcategory.

1 As to this discovery request, Defendant-Respondents object for three main reasons:  
2 (1) that the information sought is not relevant due to the date range, (2) that production is  
3 burdensome and not proportional to the needs of the case, and (3) that the subparts cause  
4 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
5 92 at 5–6; ECF No. 83-1 at 20.

6 In this discovery request, Plaintiff-Petitioners request information beginning in  
7 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
8 represented to the Court that they had negotiated and jointly agreed to limit the date range  
9 to begin in March 2017, when the complaint was filed. Given this date range, the Court  
10 finds that the information is relevant to Plaintiff-Petitioners’ substantive due process  
11 claims. *See* ECF No. 63 at 16–17 (analyzing cases that examined different lengths of  
12 detention and whether they violated substantive due process, and stating that the “duration  
13 of the detention and the burden placed on state officials in providing procedural safeguards  
14 are highly relevant to a constitutional examination of post-arrest detentions”).

15 The Court overrules Defendant-Respondents’ undue burden objections and finds  
16 that Defendant-Respondents have failed to make a sufficient showing to support their  
17 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
18 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
19 “conducting a manual case-by-case review of thousands of physical case files and  
20 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
21 responsive information to the extent it is available in databases.

22 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
23 of the interrogatory do not count as separate interrogatories because they relate to the  
24 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
25 create discrete subparts that should be treated as separate interrogatories.

26 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this  
27 discovery request. The Court orders Defendant-Respondents to produce responsive  
28 information from March 9, 2017 to the present, to the extent it is available in databases.

1                   **g. DHS Interrogatory No. 3:**

2                   For each fiscal year SINCE 2016, please state the mean and median number  
3                   of days that elapsed for DETAINEES waiting for a Credible Fear Interview  
4                   (“CFI”) to first receive the CFI, broken down to also show such mean and  
5                   median number of days for subcategories of DETAINEES based on whether  
6                   they presented themselves at a Port of Entry or allegedly entered the United  
7                   States without inspection and on where they were detained at the time they  
8                   received the CFI, as well as the number of DETAINEES in each subcategory.

9                   As to this discovery request, Defendant-Respondents object for three main reasons:

10                   (1) that the information sought is not relevant due to the date range, (2) that production is  
11                   burdensome and not proportional to the needs of the case, and (3) that the subparts cause  
12                   the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
13                   92 at 6–7; ECF No. 83-1 at 20.

14                   In this discovery request, Plaintiff-Petitioners request information beginning in  
15                   2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
16                   represented to the Court that they had negotiated and jointly agreed to limit the date range  
17                   to begin in March 2017, when the complaint was filed. Given this date range, the Court  
18                   finds that the information is relevant to Plaintiff-Petitioners’ substantive due process  
19                   claims. *See* ECF No. 63 at 16–17 (analyzing cases that examined different lengths of  
20                   detention and whether they violated substantive due process, and stating that the “duration  
21                   of the detention and the burden placed on state officials in providing procedural safeguards  
22                   are highly relevant to a constitutional examination of post-arrest detentions”). The Court  
23                   agrees with Plaintiff-Petitioners that “[i]nformation regarding the duration of each step in  
24                   the process from apprehension to first appearance is also crucial because the Court must  
25                   determine whether the overall delay in presentment is reasonable and has “sufficient  
26                   justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

27                   The Court overrules Defendant-Respondents’ undue burden objections and finds  
28                   that Defendant-Respondents have failed to make a sufficient showing to support their  
                    objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*

1 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
2 “conducting a manual case-by-case review of thousands of physical case files and  
3 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
4 responsive information to the extent it is available in databases.

5 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
6 of the interrogatory do not count as separate interrogatories because they relate to the  
7 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
8 create discrete subparts that should be treated as separate interrogatories.

9 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this  
10 discovery request. The Court orders Defendant-Respondents to produce responsive  
11 information from March 9, 2017 to the present, to the extent it is available in databases.

12 **h. DHS Interrogatory No. 4:**

13 For each fiscal year SINCE 2016, please state the mean and median number  
14 of days DETAINEES spent in CBP custody in the Southern District of  
15 California, broken down to also show such mean and median number of days  
16 for subcategories of DETAINEES at each CBP facility in the Southern  
17 District of California, as well as the number of DETAINEES in each  
18 subcategory.

18 As to this discovery request, Defendant-Respondents object for three main reasons:  
19 (1) that the information sought is not relevant due to the date range, (2) that production is  
20 burdensome and not proportional to the needs of the case, and (3) that the subparts cause  
21 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
22 92 at 8–9; ECF No. 83-1 at 20.

23 In this discovery request, Plaintiff-Petitioners request information beginning in  
24 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
25 represented to the Court that they had negotiated and jointly agreed to limit the date range  
26 to begin in March 2017, when the complaint was filed. Given this date range, the Court  
27 finds that the information is relevant to Plaintiff-Petitioners’ substantive due process  
28 claims. *See* ECF No. 63 at 16–17 (analyzing cases that examined different lengths of

1 detention and whether they violated substantive due process, and stating that the “duration  
2 of the detention and the burden placed on state officials in providing procedural safeguards  
3 are highly relevant to a constitutional examination of post-arrest detentions”).

4 The Court overrules Defendant-Respondents’ undue burden objections and finds  
5 that Defendant-Respondents have failed to make a sufficient showing to support their  
6 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
7 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
8 “conducting a manual case-by-case review of thousands of physical case files and  
9 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
10 responsive information to the extent it is available in databases, subject to further meet and  
11 confer as ordered below.

12 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
13 of the interrogatory do not count as separate interrogatories because they relate to the  
14 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
15 create discrete subparts that should be treated as separate interrogatories.

16 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this  
17 discovery request. The Court orders Defendant-Respondents to produce responsive  
18 information from March 9, 2017 to the present, to the extent it is available in databases.  
19 The parties are ordered to meet and confer further regarding whether a sampling of records  
20 should be produced if Defendant-Respondents, in particular CBP, cannot access or match  
21 up the records in its databases without manually pulling apprehension dates. *See* ECF No.  
22 89-1, Ex. 2, at ¶ 5.

23 **i. DHS Interrogatory No. 5:**

24 For each fiscal year SINCE 2016, please state the number of DETAINEES  
25 released from YOUR custody after passing a Credible Fear Interview pursuant  
26 to YOUR parole authority under the ICE Parole Directive, ICE Directive  
27 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of  
28 Persecution or Torture (Dec. 2009), as well as the total number of  
DETAINEES who passed their Credible Fear Interviews, broken down based



1 on the DHS facility where the DETAINEE was in custody at the time of the  
2 Credible Fear Interview.

3 As to this discovery request, Defendant-Respondents object for three main reasons:  
4 (1) that the information sought is not relevant due to the date range, (2) that production is  
5 burdensome and not proportional to the needs of the case, and (3) that the subparts cause  
6 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
7 92 at 9–10; ECF No. 83-1 at 20.

8 In this discovery request, Plaintiff-Petitioners request information beginning in  
9 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
10 represented to the Court that they had negotiated and jointly agreed to limit the date range  
11 to begin in March 2017, when the complaint was filed. Given this date range, the Court  
12 finds that the information is relevant to Plaintiff-Petitioners’ Fifth Amendment claims. The  
13 Court agrees with Plaintiff-Petitioners that “[i]nformation regarding the duration of each  
14 step in the process from apprehension to first appearance is also crucial because the Court  
15 must determine whether the overall delay in presentment is reasonable and has “sufficient  
16 justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

17 The Court overrules Defendant-Respondents’ undue burden objections and finds  
18 that Defendant-Respondents have failed to make a sufficient showing to support their  
19 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
20 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
21 “conducting a manual case-by-case review of thousands of physical case files and  
22 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
23 responsive information to the extent it is available in databases.

24 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
25 of the interrogatory do not count as separate interrogatories because they relate to the  
26 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
27 create discrete subparts that should be treated as separate interrogatories.  
28

1 Thus, Plaintiff-Petitioners' motion to compel is **GRANTED IN PART** as to this  
2 discovery request. The Court orders Defendant-Respondents to produce responsive  
3 information from March 9, 2017 to the present, to the extent it is available in databases.

4 **j. DHS Interrogatory No. 6:**

5 For each fiscal year SINCE 2016, please state the number of DETAINEES in  
6 YOUR custody pursuant to 8 U.S.C. § 1226(a), broken down to show the  
7 number of DETAINEES who, prior to any custody determination by an  
8 immigration judge, (a) YOU determined could be released without payment  
9 of bond, (b) YOU determined could be released with payment of bond, as well  
as the mean and median amount of that bond, and (c) YOU determined should  
remain in custody and that no bond could secure their release.

10 As to this discovery request, Defendant-Respondents object for three main reasons:  
11 (1) that the information sought is not relevant due to the date range, (2) that production is  
12 burdensome and not proportional to the needs of the case, and (3) that the subparts cause  
13 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
14 92 at 10–11; ECF No. 83-1 at 20. Plaintiff-Petitioners contend that “[i]f in practice these  
15 alleged safeguards do not commonly result in eligible detainees securing their release, that  
16 is highly relevant to both Plaintiff-Petitioners’ substantive due process argument that  
17 Defendant-Respondents’ practices “shock the conscience” and procedural due process  
18 claims about the risk of erroneous deprivation of liberty and the insufficiency of existing  
19 procedural safeguards.” ECF No. 86-1 at 12

20 In this discovery request, Plaintiff-Petitioners request information beginning in  
21 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
22 represented to the Court that they had negotiated and jointly agreed to limit the date range  
23 to begin in March 2017, when the complaint was filed. Given this date range, the Court  
24 finds that the information is relevant to Plaintiff-Petitioners’ Fifth Amendment claims. The  
25 Court agrees with Plaintiff-Petitioners that “[i]nformation regarding the duration of each  
26 step in the process from apprehension to first appearance is also crucial because the Court  
27  
28

1 must determine whether the overall delay in presentment is reasonable and has “sufficient  
2 justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

3 The Court overrules Defendant-Respondents’ undue burden objections and finds  
4 that Defendant-Respondents have failed to make a sufficient showing to support their  
5 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
6 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
7 “conducting a manual case-by-case review of thousands of physical case files and  
8 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
9 responsive information to the extent it is available in databases.

10 The Court overrules Defendant-Respondents’ objection and finds that the subparts  
11 of the interrogatory do not count as separate interrogatories because they relate to the  
12 overall subject matter of the interrogatory. Asking for a breakdown of categories does not  
13 create discrete subparts that should be treated as separate interrogatories.

14 Thus, Defendant-Respondents’ motion for protective order is **DENIED IN PART**  
15 and Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this discovery  
16 request. The Court orders Defendant-Respondents to produce responsive information from  
17 March 9, 2017 to the present, to the extent it is available in databases.

18 **k. ICE Deposition Topic No. 1:**

19 Policies, practices and procedures for ICE within the geographical region of  
20 the United States District Court for the Southern District of California,  
21 CONCERNING the process of initiating and/or informing the immigration  
22 court of the initiation of REMOVAL PROCEEDINGS against DETAINEES,  
23 including for issuing, serving, and filing NTAs or other charging documents,  
24 as well as any differences in those policies, practices, and procedures based  
25 on charges of removability, bases for detention or arrest, or location of  
26 confinement.

25 As to this deposition topic, Defendant-Respondents object to the extent it includes  
26 matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 13;  
27 ECF No. 12–19. Defendant-Respondents argue that “to the extent that Plaintiffs seek  
28 discovery, through this deposition topic, into how immigration judges interpret and

1 implement the statutes and regulations governing an alien’s statutory and regulatory right  
2 for an ‘opportunity to be heard’ such discovery is impermissible.” ECF No. 83-1 at 23.  
3 Plaintiff-Petitioners argue that this information “will shed light on the comparative value  
4 of a prompt first appearance in securing the release of qualified detainees” and “is  
5 necessary to probe any differences between policy and practice.” ECF No. 88 at 8–9.  
6 Plaintiff-Petitioners also argue that they “do not seek judicial review of any ‘discretionary  
7 judgment’ in individual custody determinations [], but only discovery into the  
8 government’s policies and practice in exercising that judgment, which is central to  
9 establishing their claims.” *Id.* at 4–5. Plaintiff-Petitioners further explain that “[t]his does  
10 not require ‘probing into the mental process’ of the immigration judge in any ‘case-  
11 specific’ matter.” *Id.* at 9.

12 The Court finds that information regarding custody hearings, custody  
13 determinations, and parole decisions, other than the reasons for the determination, such as  
14 the fact or timing of a hearing and the ultimate decision, is relevant to Plaintiff-Petitioners’  
15 substantive and procedural due process claims. *See* ECF No. 63 at 25, 32 (stating that  
16 “continued detention without a prompt first appearance before an immigration judge”  
17 relates to the substantive due process “shocks the conscience” factor, and that  
18 “determinations regarding initial custody and detention are made by officers of the  
19 arresting agency” relates to the recognized procedural due process value of presentment to  
20 a neutral adjudicator). However, the Court finds that testimony regarding the reasoning  
21 why a particular custody determination was made is not relevant.

22 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
23 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
24 the reasoning why a particular custody determination was made. To the extent the policies,  
25 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
26 shall identify the document(s) they seek to question the witness about.

27 //

28 //

1                   **I. ICE Deposition Topic No. 2:**

2                   Policies, practices, and procedures for ICE within the geographical region of  
3                   the United States District Court for the Southern District of California  
4                   CONCERNING apprehension, confinement, or detention of suspected  
5                   noncitizens, excluding those with existing FINAL ORDERS OF REMOVAL,  
6                   from the moment of apprehension until the initial MASTER CALENDAR  
7                   HEARING—as well as any differences in those policies, practices, and  
8                   procedures based on charges of removability, bases for detention or arrest, or  
9                   location of confinement—including policies, practices, and procedures for:  
10                  a. CUSTODY DETERMINATIONS for individuals in DHS custody,  
11                  including determinations made under 8 C.F.R. § 287.3(d) and 8 U.S.C. §§  
12                  1225, and 1226; b. initiating CUSTODY HEARINGS or informing the  
13                  immigration court of DETAINEES’ requests for CUSTODY HEARINGS; c.  
14                  parole determinations involving individuals in DHS custody pursuant to 8  
15                  U.S.C. § 1182(d)(5); d. implementing or acting pursuant to 8 C.F.R. §  
16                  287.3(d) or 8 U.S.C. § 1357(a)(2); e. transfers of DETAINEES; and f.  
17                  conditions under which DETAINEES are held.

18                  As to this deposition topic, Defendant-Respondents object to the extent it includes  
19                  matters relating to apprehension, confinement, or detention of suspected non-citizens. ECF  
20                  No. 83-1 at 23–25; ECF No. 92 at 13–16. They also argue that Plaintiff-Petitioners have  
21                  not raised challenges to detainees’ conditions of confinement, and thus the topic is  
22                  irrelevant. ECF No. 83-1 at 23–24. Plaintiff-Petitioners counter that, “simply because  
23                  Plaintiffs do not specifically challenge the harsh conditions of their confinement, those  
24                  conditions are [] discoverable... [because t]he severity of the deprivation of detainees’  
25                  liberty is central to due process analysis—at minimum for the first *Mathews* factor—  
26                  making the conditions in ICE detention and CBP and Border Patrol stations discoverable.”  
27                  ECF No. 88 at 5–7. Additionally, Defendant-Respondents argue that the burden to produce  
28                  a witness for such an overbroad topic of “conditions of confinement” is not proportional to  
29                  the needs of the case. ECF No. 83-1 at 24–25. In response, Plaintiff-Respondents contend  
30                  that “‘conditions’ of confinement is a reasonably specific topic, [and] the government has  
31                  not met its obligation to construe the term reasonably.” ECF No. 88 at 5–7.

1           The Court finds that information regarding confinement is relevant to Plaintiff-  
2 Petitioners’ due process claims, to the extent alleged in paragraphs 50–57 of the complaint.  
3 *See* ECF No. 63 at 28–29 (explaining that, when assessing procedural due process claims,  
4 the *Mathews* test balances “the nature of the private interest that will be affected” against  
5 two other factors, finding that the “due process clause protects a liberty interest in freedom  
6 from bodily restraint”); *see id.* at 24–25, 32 (stating that continued detention relates to the  
7 substantive due process “shocks the conscience” factor, and courts focus on the totality of  
8 the circumstances). However, the Court finds that apprehension of suspected noncitizens  
9 is not relevant to Plaintiff-Petitioners’ due process claims. Additionally, the Court finds  
10 that information regarding custody hearings, other than the reasons for the custody  
11 determination, such as the fact of a hearing and the ultimate decision, is relevant to  
12 Plaintiff-Petitioners’ substantive and procedural due process claims. *See id.* at 25, 32  
13 (stating that “continued detention without a prompt first appearance before an immigration  
14 judge” relates to the substantive due process “shocks the conscience” factor, and that  
15 “determinations regarding initial custody and detention are made by officers of the  
16 arresting agency” relates to the recognized procedural due process value of presentment to  
17 a neutral adjudicator). However, the Court finds that testimony regarding the reasoning  
18 why a particular custody determination was made is not relevant.

19           Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
20 **PART**. This deposition topic can be reasonably construed and should be limited as follows:

- 21           (a) Testimony is not required regarding apprehension of suspected noncitizens;
- 22           (b) Testimony is not required regarding the reasoning behind custody  
23 determinations;
- 24           (c) Testimony regarding conditions of confinement is limited to the conditions  
25 alleged in paragraphs 50–57 of the complaint; and
- 26           (d) To the extent the policies, practices, or procedures have been produced in  
27 document discovery, Plaintiff-Petitioners shall identify the document(s) they seek to  
28 question the witness about.

1 **m. ICE Deposition Topic No. 3:**

2 Policies, practices, and procedures for ICE within the geographical region of  
3 the United States District Court for the Southern District of California for  
4 transporting and producing individuals (whether in-person, telephonically,  
5 and/or by video conference) who are in DHS custody for immigration court  
6 hearings, including initial MASTER CALENDAR HEARINGS and  
7 CUSTODY HEARINGS and any burdens to ICE in doing so, as well as any  
8 differences in those policies, practices, and procedures based on the different  
9 charges of removability and different bases or locations of detention.

10 As to this deposition topic, Defendant-Respondents object to the extent it includes  
11 matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 16;  
12 ECF No. 83-1 at 12–19. Plaintiff-Petitioners argue that this information “will reveal the  
13 extent to which any alleged burdens are of Defendants’ own making” and “is necessary to  
14 probe any differences between policy and practice.” ECF No. 86-1 at 15; ECF No. 88 at  
15 8–9. Plaintiff-Petitioners also argue that they “do not seek judicial review of any  
16 ‘discretionary judgment’ in individual custody determinations [], but only discovery into  
17 the government’s policies and practice in exercising that judgment, which is central to  
18 establishing their claims.” ECF No. 88 at 4–5. Plaintiff-Petitioners further explain that  
19 “[t]his does not require ‘probing into the mental process’ of the immigration judge in any  
20 ‘case-specific’ matter.” *Id.* at 9.

21 The Court finds that information regarding custody hearings and custody  
22 determinations, other than the reasons for the determination, such as the fact or timing of a  
23 hearing and the ultimate decision, is relevant to Plaintiff-Petitioners’ substantive and  
24 procedural due process claims. *See* ECF No. 63 at 25, 32 (stating that “continued detention  
25 without a prompt first appearance before an immigration judge” relates to the substantive  
26 due process “shocks the conscience” factor, and that “determinations regarding initial  
27 custody and detention are made by officers of the arresting agency” relates to the  
28 recognized procedural due process value of presentment to a neutral adjudicator).  
However, the Court finds that testimony regarding the reasoning why a particular custody  
determination was made is not relevant.

1 Thus, the Defendant-Respondents' motion for protective order is **GRANTED IN**  
2 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
3 the reasoning why a particular custody determination was made. To the extent the policies,  
4 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
5 shall identify the document(s) they seek to question the witness about.

6 **n. ICE Deposition Topic No. 4:**

7 Economic costs or expense to ICE within the geographical region of the  
8 United States District Court for the Southern District of California of  
9 confining alleged non-citizens in ICE detention centers, as well as such costs  
or expense to ICE of ALTERNATIVES TO DETENTION.

10 Defendant-Respondents object to this topic on the grounds that it is vague and overly  
11 broad, and would be overly burdensome to prepare a witness to address such a broad range.  
12 ECF No. 83-1 at 25–26; ECF No. 92 at 17–18. Plaintiff-Petitioners respond that this topic  
13 is clearly relevant because it directly relates to their claim of procedural due process, and  
14 thus purported burden does not outweigh the Plaintiff-Petitioners' need for the information.  
15 The Court agrees that this topic is clearly relevant. *See Buckingham*, 603 F.3d at 1082  
16 (explaining that the third *Mathews* factor concerns “the government’s interest, including  
17 the additional costs and administrative burdens that additional procedures would entail”).  
18 However, the Court finds that the topic is not sufficiently specific, and as a result, no  
19 agency witnesses could likely testify to the requested information.

20 During oral argument, the Court pressed the parties regarding the appropriateness of  
21 a deposition on this topic. Upon review of the record and considering the arguments of  
22 counsel, the Court finds a 30(b)(6) deposition would be unduly burdensome and the  
23 discovery would be more efficiently conducted through traditional interrogatories or  
24 contention interrogatories. *See, e.g., Gen-Probe Inc.*, 2012 WL 12845593, at \*1–\*2; *TV*  
25 *Interactive Data Corp.*, 2012 WL 1413368, at \*2. The Court finds that responses to these  
26 inquiries can clearly be provided more efficiently and fairly through answers to  
27  
28



1 interrogatories prepared by Defendant-Respondents’ counsel. *See Bank of Am., N.A.*, 2016  
2 WL 2843802, at \*3.

3 Thus, Defendant-Respondents’ motion for protective order is **GRANTED**.

4 **o. ICE Deposition Topic No. 5:**

5 Resources and support available to DETAINEES in ICE custody within the  
6 geographical region of the United States District Court for the Southern  
7 District of California to assist them in their REMOVAL PROCEEDINGS,  
8 CUSTODY DETERMINATIONS, or CUSTODY HEARINGS, including  
9 legal and translation resources.

10 As to this deposition topic, Defendant-Respondents object to the extent it includes  
11 matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 18;  
12 ECF No. 83-1 at 12–19. Plaintiff-Petitioners argue that this information “is necessary to  
13 probe any differences between policy and practice.” ECF No. 88 at 8–9. Plaintiff-  
14 Petitioners also argue that they “do not seek judicial review of any ‘discretionary judgment’  
15 in individual custody determinations [], but only discovery into the government’s policies  
16 and practice in exercising that judgment, which is central to establishing their claims.” *Id.*  
17 at 4–5. Plaintiff-Petitioners further explain that “[t]his does not require ‘probing into the  
18 mental process’ of the immigration judge in any ‘case-specific’ matter.” ECF No. 88 at 9.

19 The Court finds that information regarding custody hearings and custody  
20 determinations, other than the reasons for the determination, such as availability of legal  
21 and translation resources, is relevant to Plaintiff-Petitioners’ substantive and procedural  
22 due process claims. *See* ECF No. 63 at 25 (noting that plaintiff-petitioners’ unrepresented  
23 status, i.e., lack of counsel, impacts the substantive due process “shocks the conscience”  
24 analysis); *id.* at 31 (stating that language barriers could impact the discussion of  
25 “meaningful risk of erroneous deprivation” in procedural due process analysis). However,  
26 the Court finds that testimony regarding the reasoning why a particular custody  
27 determination was made is not relevant.

28 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN  
PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding

1 the reasoning why a particular custody determination was made. To the extent information  
2 regarding the resources and support described in this topic have been produced in document  
3 discovery, Plaintiff-Petitioners shall identify the document(s) they seek to question the  
4 witness about.

5 **p. ICE Deposition Topic No. 6:**

6 Policies, practices, and procedures – including knowledge of databases with  
7 relevant information – for monitoring, tracking, and/or limiting the duration  
8 of detention of DETAINEES prior to initial MASTER CALENDAR  
9 HEARINGS on the DETAINED DOCKET, as well for identifying any  
10 differences in those detention times based on the different charges of  
removability, bases for detention, or location of detention.

11 As to this deposition topic, Defendant-Respondents object to the extent it includes  
12 matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 18;  
13 ECF No. 83-1 at 12–19. Defendant-Respondents argue that “to the extent that Plaintiffs  
14 seek discovery, through this deposition topic, into how immigration judges interpret and  
15 implement the statutes and regulations governing an alien’s statutory and regulatory right  
16 for an ‘opportunity to be heard’ such discovery is impermissible.” ECF No. 83-1 at 23.  
17 Plaintiff-Petitioners argue that this information “will shed light on the comparative value  
18 of a prompt first appearance in securing the release of qualified detainees” and “is  
19 necessary to probe any differences between policy and practice.” ECF No. 88 at 8–9.  
20 Plaintiff-Petitioners contend that this topic probes “the extent to which any alleged burdens  
21 are of Defendants’ own making. If the information reveals a large number of individuals  
22 eligible and suitable for release whom Defendant-Respondents nevertheless refuse to  
23 release, it would be relevant to whether any such self-imposed burden based on the number  
24 of detainees could permissibly trump detainees’ constitutional rights to prompt  
25 presentment.” ECF No. 86-1 at 15. Plaintiff-Petitioners also argue that they “do not seek  
26 judicial review of any ‘discretionary judgment’ in individual custody determinations [], but  
27 only discovery into the government’s policies and practice in exercising that judgment,  
28 which is central to establishing their claims.” ECF No. 88 at 4–5. Plaintiff-Petitioners

1 further explain that “[t]his does not require ‘probing into the mental process’ of the  
2 immigration judge in any ‘case-specific’ matter.” *Id.* at 9.

3 The Court finds that information regarding custody hearings and custody  
4 determinations, other than the reasons for the determination, such as the fact or timing of a  
5 hearing and the ultimate decision, is relevant to Plaintiff-Petitioners’ substantive and  
6 procedural due process claims. *See* ECF No. 63 at 25, 32 (stating that “continued detention  
7 without a prompt first appearance before an immigration judge” relates to the substantive  
8 due process “shocks the conscience” factor, and that “determinations regarding initial  
9 custody and detention are made by officers of the arresting agency” relates to the  
10 recognized procedural due process value of presentment to a neutral adjudicator).  
11 However, the Court finds that testimony regarding the reasoning why a particular custody  
12 determination was made is not relevant.

13 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
14 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
15 the reasoning why a particular custody determination was made. To the extent the policies,  
16 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
17 shall identify the document(s) they seek to question the witness about.

18 **q. CBP Deposition Topic No. 1:**

19 Policies, practices and procedures – or the extent to which CBP lacks any such  
20 policies, practices and procedures – for CBP within the geographical region  
21 of the United States District Court for the Southern District of California,  
22 CONCERNING the process of initiating and/or informing the immigration  
23 court of the initiation of REMOVAL PROCEEDINGS against DETAINEES,  
24 including for issuing, serving, and filing NTAs or other charging documents  
25 with the immigration court or for sending NTAs or other charging documents  
26 to ICE.

25 As to this deposition topic, Defendant-Respondents object to the extent it includes  
26 matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 19;  
27 ECF No. 83-1 at 12–19. Defendant-Respondents argue that “to the extent that Plaintiffs  
28 seek discovery, through this deposition topic, into how immigration judges interpret and

1 implement the statutes and regulations governing an alien’s statutory and regulatory right  
2 for an ‘opportunity to be heard’ such discovery is impermissible.” ECF No. 83-1 at 23.  
3 Plaintiff-Petitioners argue that this information “will shed light on the comparative value  
4 of a prompt first appearance in securing the release of qualified detainees” and “is  
5 necessary to probe any differences between policy and practice.” ECF No. 88 at 8–9.  
6 Plaintiff-Petitioners also argue that they “do not seek judicial review of any ‘discretionary  
7 judgment’ in individual custody determinations [], but only discovery into the  
8 government’s policies and practice in exercising that judgment, which is central to  
9 establishing their claims.” *Id.* at 4–5. Plaintiff-Petitioners further explain that “[t]his does  
10 not require ‘probing into the mental process’ of the immigration judge in any ‘case-  
11 specific’ matter.” *Id.* at 9.

12         The Court finds that information regarding custody hearings, custody  
13 determinations, and parole decisions, other than the reasons for the determination, such as  
14 the fact or timing of a hearing and the ultimate decision, is relevant to Plaintiff-Petitioners’  
15 substantive and procedural due process claims. *See* ECF No. 63 at 25, 32 (stating that  
16 “continued detention without a prompt first appearance before an immigration judge”  
17 relates to the substantive due process “shocks the conscience” factor, and that  
18 “determinations regarding initial custody and detention are made by officers of the  
19 arresting agency” relates to the recognized procedural due process value of presentment to  
20 a neutral adjudicator). However, the Court finds that testimony regarding the reasoning  
21 why a particular custody determination was made is not relevant.

22         Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
23 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
24 the reasoning why a particular custody determination was made. To the extent the policies,  
25 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
26 shall identify the document(s) they seek to question the witness about.

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1                   **r. CBP Deposition Topic No. 2:**

2                   Policies, practices and procedures for CBP within the geographical region of  
3                   the United States District Court for the Southern District of California  
4                   CONCERNING apprehension, confinement, or detention of suspected  
5                   noncitizens, excluding those with existing FINAL ORDERS OF REMOVAL,  
6                   from the moment of apprehension until the initial MASTER CALENDAR  
7                   HEARING—as well as any differences in those policies, practices, and  
8                   procedures based on charges of removability, bases for detention or arrest, or  
9                   location of confinement—including policies, practices, and procedures for: a.  
10                  CUSTODY DETERMINATIONS involving DETAINEES, including  
11                  determinations made under 8 C.F.R. § 287(d) and 8 U.S.C. §§1225, 1226,  
12                  1231; b. initiating CUSTODY HEARINGS or informing the immigration  
13                  court or ICE of DETAINEES’ requests for CUSTODY HEARINGS; c. parole  
14                  determinations involving DETAINEES pursuant to 8 U.S.C § 1182(d)(5); d.  
15                  implementing or acting pursuant to 8 C.F.R. § 287(d) or 8 U.S.C. §  
16                  1357(a)(2); e. transfers of DETAINEES to other CBP facilities or ICE  
17                  custody; and f. duration of confinement and conditions under which  
18                  DETAINEES are held.

19                  As to this deposition topic, Defendant-Respondents object to the extent it includes  
20                  matters relating to apprehension, confinement, or detention of suspected non-citizens. ECF  
21                  No. 83-1 at 23–25; ECF No. 92 at 19–22. They also argue that Plaintiff-Petitioners have  
22                  not raised challenges to detainees’ conditions of confinement, and thus the topic is  
23                  irrelevant. ECF No. 83-1 at 23–24. Plaintiff-Petitioners counter that, “simply because  
24                  Plaintiffs do not specifically challenge the harsh conditions of their confinement, those  
25                  conditions are [] discoverable... [because t]he severity of the deprivation of detainees’  
26                  liberty is central to due process analysis—at minimum for the first *Mathews* factor—  
27                  making the conditions in ICE detention and CBP and Border Patrol stations discoverable.”  
28                  ECF No. 88 at 5–7. Additionally, Defendant-Respondents argue that the burden to produce  
29                  a witness for such an overbroad topic of “conditions of confinement” is not proportional to  
30                  the needs of the case. ECF No. 83-1 at 24–25. In response, Plaintiff-Respondents contend  
31                  that “‘conditions’ of confinement is a reasonably specific topic, [and] the government has  
32                  not met its obligation to construe the term reasonably.” ECF No. 88 at 5–7.

1           The Court finds that information regarding confinement is relevant to Plaintiff-  
2 Petitioners’ due process claims, to the extent alleged in paragraphs 50–57 of the complaint.  
3 *See* ECF No. 63 at 28–29 (explaining that, when assessing procedural due process claims,  
4 the *Mathews* test balances “the nature of the private interest that will be affected” against  
5 two other factors, finding that the “due process clause protects a liberty interest in freedom  
6 from bodily restraint”); *see id.* at 24–25, 32 (stating that continued detention relates to the  
7 substantive due process “shocks the conscience” factor, and courts focus on the totality of  
8 the circumstances). However, the Court finds that apprehension of suspected noncitizens  
9 is not relevant to Plaintiff-Petitioners’ due process claims. Additionally, the Court finds  
10 that information regarding custody hearings, other than the reasons for the custody  
11 determination, such as the fact of a hearing and the ultimate decision, is relevant to  
12 Plaintiff-Petitioners’ substantive and procedural due process claims. *See* ECF No. 63 at 25,  
13 32 (stating that “continued detention without a prompt first appearance before an  
14 immigration judge” relates to the substantive due process “shocks the conscience” factor,  
15 and that “determinations regarding initial custody and detention are made by officers of the  
16 arresting agency” relates to the recognized procedural due process value of presentment to  
17 a neutral adjudicator). However, the Court finds that testimony regarding the reasoning  
18 why a particular custody determination was made is not relevant.

19           Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
20 **PART**. This deposition topic can be reasonably construed and should be limited as follows:

- 21           (a) Testimony is not required regarding apprehension of suspected noncitizens;
- 22           (b) Testimony is not required regarding the reasoning behind custody  
23 determinations;
- 24           (c) Testimony regarding conditions of confinement is limited to the conditions  
25 alleged in paragraphs 50–57 of the complaint; and
- 26           (d) To the extent the policies, practices, or procedures have been produced in  
27 document discovery, Plaintiff-Petitioners shall identify the document(s) they seek to  
28 question the witness about.

1                   **s. CBP Deposition Topic No. 3:**

2                   Policies, practices, and procedures – or the extent to which CBP lacks any such  
3                   policies – for CBP within the geographical region of the United States District  
4                   Court for the Southern District of California for transporting and producing  
5                   individuals (whether in-person, telephonically, and/or by video conference)  
6                   who are in DHS custody for immigration court hearings, including initial  
7                   MASTER CALENDAR HEARINGS and CUSTODY HEARINGS and any  
8                   burdens to ICE in doing so, as well as any differences in those policies,  
9                   practices, and procedures based on the different charges of removability and  
10                  different bases or locations of detention.

11                  As to this deposition topic, Defendant-Respondents object to the extent it includes  
12                  matters relating to DHS custody determinations and custody hearings. ECF No. 92 at 22;  
13                  ECF No. 83-1 at 12–19. Plaintiff-Petitioners argue that this information “will reveal the  
14                  extent to which any alleged burdens are of Defendants’ own making” and “is necessary to  
15                  probe any differences between policy and practice.” ECF No. 86-1 at 15; ECF No. 88 at  
16                  8–9. Plaintiff-Petitioners also argue that they “do not seek judicial review of any  
17                  ‘discretionary judgment’ in individual custody determinations [], but only discovery into  
18                  the government’s policies and practice in exercising that judgment, which is central to  
19                  establishing their claims.” ECF No. 88 at 4–5. Plaintiff-Petitioners further explain that  
20                  “[t]his does not require ‘probing into the mental process’ of the immigration judge in any  
21                  ‘case-specific’ matter.” *Id.* at 9.

22                  The Court finds that information regarding custody hearings and custody  
23                  determinations, other than the reasons for the determination, such as the fact or timing of a  
24                  hearing and the ultimate decision, is relevant to Plaintiff-Petitioners’ substantive and  
25                  procedural due process claims. *See* ECF No. 63 at 25, 32 (stating that “continued detention  
26                  without a prompt first appearance before an immigration judge” relates to the substantive  
27                  due process “shocks the conscience” factor, and that “determinations regarding initial  
28                  custody and detention are made by officers of the arresting agency” relates to the  
                    recognized procedural due process value of presentment to a neutral adjudicator).

1 However, the Court finds that testimony regarding the reasoning why a particular custody  
2 determination was made is not relevant.

3 Thus, the Defendant-Respondents' motion for protective order is **GRANTED IN**  
4 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
5 the reasoning why a particular custody determination was made. To the extent the policies,  
6 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
7 shall identify the document(s) they seek to question the witness about.

8 **t. CBP Deposition Topic No. 4:**

9 Economic costs or expense to CBP within the geographical region of the  
10 United States District Court for the Southern District of California of  
11 confining alleged non-citizens in CBP or Border Patrol facilities, as well as  
12 such costs or expense to CBP of ALTERNATIVES TO DETENTION.

13 Defendant-Respondents object to this topic on the grounds that it is vague and overly  
14 broad, and would be overly burdensome to prepare a witness to address such a broad range.  
15 ECF No. 83-1 at 25–26; ECF No. 92 at 23–24. Plaintiff-Petitioners respond that this topic  
16 is clearly relevant because it directly relates to their claim of procedural due process, and  
17 thus purported burden does not outweigh the Plaintiff-Petitioners' need for the information.  
18 The Court agrees that this topic is relevant. *See Buckingham*, 603 F.3d at 1082 (explaining  
19 that the third *Mathews* factor concerns “the government’s interest, including the additional  
20 costs and administrative burdens that additional procedures would entail”). However, the  
21 Court finds that the topic is not sufficiently specific, and as a result, no agency witnesses  
22 could likely testify to the requested information.

23 During oral argument, the Court pressed the parties regarding the appropriateness of  
24 a deposition on this topic. Upon review of the record and considering the arguments of  
25 counsel, the Court finds a 30(b)(6) deposition would be unduly burdensome and the  
26 discovery would be more efficiently conducted through traditional interrogatories or  
27 contention interrogatories. *See, e.g., Gen-Probe Inc.*, 2012 WL 12845593, at \*1–\*2; *TV*  
28 *Interactive Data Corp.*, 2012 WL 1413368, at \*2. The Court finds that responses to these



1 inquiries can clearly be provided more efficiently and fairly through answers to  
2 interrogatories prepared by Defendant-Respondents' counsel. *See Bank of Am., N.A.*, 2016  
3 WL 2843802, at \*3.

4 Thus, Defendant-Respondents' motion for protective order is **GRANTED**.

5 **u. CBP Deposition Topic No. 5:**

6 Resources and support available to DETAINEES in CBP custody within the  
7 geographical region of the United States District Court for the Southern  
8 District of California to assist them in their REMOVAL PROCEEDINGS,  
9 CUSTODY DETERMINATIONS, or CUSTODY HEARINGS, including  
legal and translation resources.

10 As to this deposition topic, Defendant-Respondents object to the extent it includes  
11 matters relating to DHS custody determinations and custody hearings. ECF No. 83-1 at 26  
12 n.13; ECF No. 92 at 24. Plaintiff-Petitioners argue that this information "is necessary to  
13 probe any differences between policy and practice." ECF No. 88 at 8–9. Plaintiff-  
14 Petitioners also argue that they "do not seek judicial review of any 'discretionary judgment'  
15 in individual custody determinations [], but only discovery into the government's policies  
16 and practice in exercising that judgment, which is central to establishing their claims." *Id.*  
17 at 4–5. Plaintiff-Petitioners further explain that "[t]his does not require 'probing into the  
18 mental process' of the immigration judge in any 'case-specific' matter." *Id.* at 9.

19 The Court finds that information regarding custody hearings and custody  
20 determinations, other than the reasons for the determination, such as availability of legal  
21 and translation resources, is relevant to Plaintiff-Petitioners' substantive and procedural  
22 due process claims. *See* ECF No. 63 at 25 (noting that plaintiff-petitioners' unrepresented  
23 status, i.e., lack of counsel, impacts the substantive due process "shocks the conscience"  
24 analysis); *id.* at 31 (stating that language barriers could impact the discussion of  
25 "meaningful risk of erroneous deprivation" in procedural due process analysis). However,  
26 the Court finds that testimony regarding the reasoning why a particular custody  
27 determination was made is not relevant.

1 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
2 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
3 the *reasoning* why a particular custody determination was made. To the extent the policies,  
4 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
5 shall identify the document(s) they seek to question the witness about.

6 **v. DOJ RFP No. 2:**

7 All DOCUMENTS CONCERNING policies and practices for scheduling and  
8 conducting an INITIAL MCH, and for scheduling and conducting CUSTODY  
9 HEARINGS, as well as any DOCUMENTS CONCERNING any changes in  
10 such policies and practices SINCE fiscal year 2016.

11 As to this discovery request, Defendant-Respondents object for three main reasons:  
12 (1) that the information sought is not relevant, (2) that the request is overbroad because it  
13 seeks every document *concerning* policies and practices, (3) that production is burdensome  
14 and not proportional to the needs of the case because it is not limited in geographic scope,  
15 and (4) that the EOIR is not presently aware of any non-privileged, responsive documents.  
16 ECF No. 83-1 at 12–20; ECF No. 92 at 25–26. Plaintiff-Petitioners contend that “[c]ustody  
17 data and policies are also critical for analysis into the value of existing safeguards, which  
18 Defendants have put at issue, such as whether existing procedures provide detainees with  
19 a meaningful opportunity to seek release and the extent to which DHS exercises its  
20 discretion to release eligible detainees.[] If in practice these alleged safeguards do not  
21 commonly result in eligible detainees securing their release, that is highly relevant to both  
22 Plaintiff-Petitioners’ substantive due process argument that Defendant-Respondents’  
23 practices ‘shock the conscience’ and procedural due process claims about the risk of  
24 erroneous deprivation of liberty and the insufficiency of existing procedural safeguards.”  
25 ECF No. 86-1 at 12.

26 The Court finds that information regarding custody hearings, other than the reasons  
27 for the custody determination, such as the fact of a hearing and the ultimate decision, is  
28 relevant to Plaintiff-Petitioners’ substantive and procedural due process claims. *See* ECF

1 No. 63 at 25, 32 (stating that “continued detention without a prompt first appearance before  
2 an immigration judge” relates to the substantive due process “shocks the conscience”  
3 factor, and that “determinations regarding initial custody and detention are made by  
4 officers of the arresting agency” relates to the recognized procedural due process value of  
5 presentment to a neutral adjudicator).

6 The Court sustains in part and overrules in part Defendant-Respondents’ undue  
7 burden objections and overbreadth objections. The Court will compel production of any  
8 written policies, practices, but not “any documents that concern them.” It is unreasonable  
9 to ask to search emails that may discuss them without providing detail for that request.  
10 Further, the Court limits production to policies implemented in the Southern District of  
11 California.

12 The Court notes that if Defendant-Respondents do not have responsive documents,  
13 they should simply say so.

14 Thus, Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** and  
15 **DENIED IN PART** as to this discovery request. Court limits production to policies in the  
16 Southern District of California, and Defendant-Respondents must produce any written  
17 policies or practices, but not “any documents that concern them.”

18 **w. DOJ RFP No. 3:**

19 All DOCUMENTS, including electronic DATABASE information, sufficient  
20 to demonstrate, calculate, and/or break down the data and information  
21 requested in Plaintiffs’ Interrogatories Nos. 1-4. To the extent this involves  
22 production of DOCUMENTS regarding individuals and physical files or  
23 DATABASE entries regarding such individuals across multiple agencies, the  
24 DOCUMENTS must contain a unique identifier, such as an “alien number,”  
25 that allows for calculation of the relevant data for that individual.

26 As to this discovery request, Defendant-Respondents object for two main reasons:  
27 (1) information relating to custody determinations or custody hearings is not relevant, and  
28 (2) that production is burdensome and not proportional to the needs of the case. ECF No.  
83-1 at 12–16; ECF No. 92 at 26.

1 The Court finds that information regarding custody hearings, other than the reasons  
2 for the custody determination, such as the fact of a hearing and the ultimate decision, is  
3 relevant to Plaintiff-Petitioners’ substantive and procedural due process claims. *See* ECF  
4 No. 63 at 25, 32 (stating that “continued detention without a prompt first appearance before  
5 an immigration judge” relates to the substantive due process “shocks the conscience”  
6 factor, and that “determinations regarding initial custody and detention are made by  
7 officers of the arresting agency” relates to the recognized procedural due process value of  
8 presentment to a neutral adjudicator).

9 The Court finds that Defendant-Respondents have failed to make a sufficient  
10 showing to support their objections based on burden. ECF No. 92 at 26 (objecting with  
11 boilerplate, identical language to at least four interrogatories, contending that Plaintiff-  
12 Petitioners “seek[s] production of a vast number of documents relating to potentially  
13 thousands of individuals”); *see Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
14 *Mask Co.*, 2009 WL 10672487, at \*2; *A. Farber & Ptnrs.*, 234 F.R.D. at 188; *Jackson*, 173  
15 F.R.D. at 528–29.

16 Thus, Defendant-Respondents’ motion for protective order is **DENIED** and  
17 Plaintiff-Petitioners’ motion to compel is **GRANTED** as to this discovery request.  
18 Defendants-Respondents must produce the database information requested, including a  
19 unique identifier for each individual to whom information pertains. The Court does not  
20 require production of personal identification information at this time.

21 **x. DOJ RFP No. 4:**

22 All DOCUMENTS demonstrating or sufficient to calculate all the primary  
23 languages spoken by DETAINEES who have appeared on the DETAINED  
24 DOCKET, as well as DOCUMENTS demonstrating or sufficient to calculate  
25 the number of DETAINEES who spoke each language, as reflected in YOUR  
26 records or DATABASES. To the extent this involves production of  
27 DOCUMENTS regarding individuals and physical files or DATABASE  
28 entries regarding such individuals across multiple agencies, the  
DOCUMENTS must contain a unique identifier, such as an “alien number,”  
that allows for calculation of the relevant data for that individual.

1 As to this discovery request, Defendant-Respondents object for two main reasons:  
2 (1) production is burdensome and not proportional to the needs of the case, and (2) the  
3 burden is increased because Defendant-Respondents are providing the same data in  
4 aggregated form in response to Plaintiff-Petitioners' interrogatories. ECF No. 83-1 at 20;  
5 ECF No. 92 at 26–27.

6 The Court finds that Plaintiff-Petitioners are not entitled to identification at the  
7 individual level. However, the remainder of Plaintiff-Petitioners' request seems to be data  
8 that Defendant is likely to have, and thus overrules Defendant-Respondents' burden  
9 objection.

10 Thus, Defendant-Respondents' motion for protective order is **GRANTED IN**  
11 **PART** and Plaintiff-Petitioners' motion to compel is **GRANTED IN PART** as to this  
12 discovery request. Defendant-Respondents are compelled to produce “all documents  
13 demonstrating or sufficient to calculate all the primary languages spoken by detainees who  
14 have appeared on the detained docket, as well as documents demonstrating or sufficient to  
15 calculate the number of detainees who spoke each language, as reflected in your records or  
16 databases.”

17 **y. DOJ Interrogatory No. 1:**

18 For each fiscal year SINCE 2016, please state the mean and median number  
19 of days that elapsed between when an NTA for the DETAINED DOCKET  
20 was filed with the immigration court and when the corresponding INITIAL  
21 MCH on the DETAINED DOCKET was held, broken down to also show the  
22 mean and median number of days for subcategories based on whether the  
23 INITIAL MCH occurred on the DETAINED DOCKET for the Otay Mesa  
24 Detention facility or the DETAINED DOCKET for the Imperial Regional  
25 Detention Facility, as well as the number of INITIAL MCHs in each category  
26 or subcategory.

25 As to this discovery request, Defendant-Respondents object for two main reasons:  
26 (1) that the information sought is premature and beyond the scope of the lawsuit, and (2)  
27 that production is potentially unduly burdensome. ECF No. 83-1 at 19–20; ECF No. 92 at  
28 27–28.

1 In this discovery request, Plaintiff-Petitioners request information beginning in  
2 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
3 represented to the Court that they had negotiated and jointly agreed to limit the date range  
4 to begin in March 2017, when the complaint was filed. Given this stipulated date range,  
5 the Court finds that information is relevant to Plaintiff-Petitioners’ substantive due process  
6 claims. *See* ECF No. 63 at 16–17 (analyzing cases that examined different lengths of  
7 detention and whether they violated substantive due process, and stating that the “duration  
8 of the detention and the burden placed on state officials in providing procedural safeguards  
9 are highly relevant to a constitutional examination of post-arrest detentions”). The Court  
10 agrees with Plaintiff-Petitioners that “[i]nformation regarding the duration of each step in  
11 the process from apprehension to first appearance is also crucial because the Court must  
12 determine whether the overall delay in presentment is reasonable and has “sufficient  
13 justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

14 The Court also finds that information regarding Imperial Immigration Courts is  
15 clearly within the scope of the lawsuit. Plaintiff-Petitioners define their putative class as  
16 “individuals in the Southern District of California . . .,” which includes Imperial County.  
17 ECF No. 1 at ¶¶ 58, 68. Further, Plaintiff-Petitioners alleged specific allegations regarding  
18 Imperial County in the complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore,  
19 Imperial County is clearly within the scope of Plaintiff-Petitioners’ claims.

20 The Court overrules Defendant-Respondents’ undue burden objections and finds  
21 that Defendant-Respondents have failed to make a sufficient showing to support their  
22 objections based on burden. *See Nationstar Mortg., LLC*, 316 F.R.D. at 334; *Laryngeal*  
23 *Mask Co.*, 2009 WL 10672487, at \*2. However, to avoid Defendant-Respondents  
24 “conducting a manual case-by-case review of thousands of physical case files and  
25 electronic records” (ECF No. 92 at 5), the Court orders Defendant-Respondents to produce  
26 responsive information to the extent it is available in databases.

27 Thus, Defendant-Respondents’ motion for protective order is **GRANTED IN**  
28 **PART** and Plaintiff-Petitioners’ motion to compel is **GRANTED IN PART** as to this

1 discovery request. The Court orders Defendant-Respondents to produce responsive  
2 information from March 9, 2017 to the present, to the extent it is available in databases.

3 **z. DOJ Interrogatory No. 2:**

4 For each fiscal year SINCE 2016, please state the number of individuals who  
5 had a CUSTODY HEARING prior to their INITIAL MCH on the  
6 DETAINED DOCKET and the number of individuals who had a CUSTODY  
7 HEARING on the same day as or after their INITIAL MCH on the  
8 DETAINED DOCKET, both broken down based on whether the CUSTODY  
9 HEARING occurred on the DETAINED DOCKET for the Otay Mesa  
10 Detention facility or the DETAINED DOCKET for the Imperial Regional  
11 Detention Facility.

12 As to this discovery request, Defendant-Respondents object that the information  
13 sought is premature and overbroad as to the scope of the lawsuit. ECF No. 83-1 at 20; ECF  
14 No. 92 at 28.

15 In this discovery request, Plaintiff-Petitioners request information beginning in  
16 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral argument, the parties  
17 represented to the Court that they had negotiated and jointly agreed to limit the date range  
18 to begin in March 2017, when the complaint was filed. Given this stipulated date range,  
19 the Court finds that information is relevant to Plaintiff-Petitioners' substantive due process  
20 claims. *See* ECF No. 63 at 16–17 (analyzing cases that examined different lengths of  
21 detention and whether they violated substantive due process, and stating that the “duration  
22 of the detention and the burden placed on state officials in providing procedural safeguards  
23 are highly relevant to a constitutional examination of post-arrest detentions”). The Court  
24 agrees with Plaintiff-Petitioners that “[i]nformation regarding the duration of each step in  
25 the process from apprehension to first appearance is also crucial because the Court must  
26 determine whether the overall delay in presentment is reasonable and has “sufficient  
27 justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

28 The Court also finds that information regarding Imperial Immigration Courts is  
clearly within the scope of the lawsuit. Plaintiff-Petitioners define their putative class as  
“individuals in the Southern District of California . . .,” which includes Imperial County.

1 ECF No. 1 at ¶¶ 58, 68. Further, Plaintiff-Petitioners alleged specific allegations regarding  
2 Imperial County in the complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore,  
3 Imperial County is clearly within the scope of Plaintiff-Petitioners’ claims.

4 Thus, Defendant-Respondents’ motion for protective order is **DENIED** and  
5 Plaintiff-Petitioners’ motion to compel is **GRANTED** as to this discovery request. The  
6 Court orders Defendant-Respondents to produce responsive information from  
7 March 9, 2017 to the present, to the extent it is available in databases.

8 **aa.DOJ Interrogatory No. 3:**

9 For each fiscal year SINCE 2016, please state the number of individuals who  
10 were unrepresented by counsel at their INITIAL MCH on the DETAINED  
11 DOCKET but who were represented by counsel at their SECOND MCH,  
12 whether or not on the DETAINED DOCKET, both based on whether the  
13 INITIAL MCH occurred on the DETAINED DOCKET for the Otay Mesa  
14 Detention facility or the DETAINED DOCKET for the Imperial Regional  
15 Detention Facility.

16 As to this discovery request, Defendant-Respondents object for four main reasons:  
17 (1) that the information sought is overbroad to the scope of the lawsuit because it seeks  
18 information from Otay Mesa and Imperial Immigration Courts since 2016, (2) that the  
19 information sought is irrelevant to the issues in this lawsuit, (3) that production is unduly  
20 burdensome and not proportional to the needs of the case, and (4) that the subparts cause  
21 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
22 83-1 at 19–20; ECF No. 92 at 29–30. Plaintiff-Petitioners argue that the requested  
23 “information is relevant to determine whether a prompt first appearance is a meaningful  
24 safeguard in assisting detainees to obtain counsel.” ECF No. 86-1 at 14-15.

25 As to overbreadth and relevance, in this discovery request, Plaintiff-Petitioners  
26 request information beginning in 2016, the year that Plaintiff-Petitioner Gonzalez was  
27 detained. At oral argument, the parties represented to the Court that they had negotiated  
28 and jointly agreed to limit the date range to begin in March 2017, when the complaint was  
filed. Given this stipulated date range, the Court finds that information is relevant to



1 Plaintiff-Petitioners’ substantive due process claims. *See* ECF No. 63 at 25 (noting that  
2 plaintiff-petitioners’ unrepresented status impacts the substantive due process “shocks the  
3 conscience” analysis). The Court agrees with Plaintiff-Petitioners that “[i]nformation  
4 regarding the duration of each step in the process from apprehension to first appearance is  
5 also crucial because the Court must determine whether the overall delay in presentment is  
6 reasonable and has “sufficient justification.” ECF No. 86-1 at 12 (citing ECF No. 63 at 27).

7 The Court also finds that information regarding Imperial Immigration Courts is  
8 clearly within the scope of the lawsuit. Plaintiff-Petitioners define their putative class as  
9 “individuals in the Southern District of California . . .,” which includes Imperial County.  
10 ECF No. 1 at ¶¶ 58, 68. Further, Plaintiff-Petitioners alleged specific allegations regarding  
11 Imperial County in the complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore,  
12 Imperial County is clearly within the scope of Plaintiff-Petitioners’ claims. Thus, the Court  
13 overrules Defendant-Respondents’ overbreadth objections as well.

14 The Court finds that the subparts of the interrogatory do not count as separate  
15 interrogatories because they relate to the overall subject matter of the interrogatory. Asking  
16 for a breakdown of categories does not create discrete subparts that should be treated as  
17 separate interrogatories.

18 As to burden, Defendant-Respondents argue that “this information is not captured  
19 or organized in EOIR’s electronic database in a manner that would readily allow EOIR to  
20 completely and accurately provide this information without conducting a manual case-by-  
21 case review of thousands of ROPs and electronic records to definitively determine each  
22 individual’s representation status at an initial or subsequent master calendar hearing.” ECF  
23 No. 92 at 29; ECF No. 89 at 8–10. At oral argument, the Court sought clarification as to  
24 whether the information is readily available within the EOIR databases. Based on counsel’s  
25 representations, the Court agrees that Defendant-Respondents have made a sufficient  
26 showing that it would be unduly burdensome for Defendant-Respondents to produce this  
27 information.

1 Thus, Defendant-Respondents' motion for protective order is **GRANTED** and  
2 Plaintiff-Petitioners' motion to compel is **DENIED** as to this discovery request.

3 **bb. DOJ Interrogatory No. 4:**

4 For each fiscal year SINCE 2016, please state the number of CUSTODY  
5 HEARINGS at which an immigration judge rendered a determination  
6 regarding custody, broken down to show the number of such hearings at which  
7 an immigration judge (a) ordered a DETAINEE released without payment of  
8 bond, (b) ordered a reduction in the bond amount set by the Department of  
9 Homeland Security ("DHS") or set a bond if DHS did not set one, and (c) did  
10 not alter the custody and bond determination made by DHS, further broken  
11 down by whether the CUSTODY HEARING occurred on the DETAINED  
12 DOCKET for the Otay Mesa Detention facility or the DETAINED DOCKET  
13 for the Imperial Regional Detention Facility.

14 As to this discovery request, Defendant-Respondents object for four main reasons:  
15 (1) that the information sought is overbroad to the scope of the lawsuit because it seeks  
16 information from Otay Mesa and Imperial Immigration Courts since 2016, (2) that the  
17 information sought is irrelevant to the issues in this lawsuit, (3) that production is unduly  
18 burdensome and not proportional to the needs of the case, and (4) that the subparts cause  
19 the number of interrogatories to exceed the limit imposed by the Federal Rules. ECF No.  
20 83-1 at 19–20; ECF No. 92 at 30–31. Plaintiff-Petitioners argue that "Custody data and  
21 policies are also critical for analysis into the value of existing safeguards, which  
22 Defendants have put at issue, such as whether existing procedures provide detainees with  
23 a meaningful opportunity to seek release and the extent to which DHS exercises its  
24 discretion to release eligible detainees. If in practice these alleged safeguards do not  
25 commonly result in eligible detainees securing their release, that is highly relevant to both  
26 Plaintiff-Petitioners' substantive due process argument that Defendant-Respondents'  
27 practices 'shock the conscience' and procedural due process claims about the risk of  
28 erroneous deprivation of liberty and the insufficiency of existing procedural safeguards."  
ECF No. 86-1 at 12.

1 As to overbreadth and relevance, in this discovery request, Plaintiff-Petitioners  
2 request information beginning in 2016, the year that Plaintiff-Petitioner Gonzalez was  
3 detained. At oral argument, the parties represented to the Court that they had negotiated  
4 and jointly agreed to limit the date range to begin in March 2017, when the complaint was  
5 filed. Given this stipulated date range, the Court finds that information regarding the  
6 number of hearings in which the Immigration Judge confirmed, modified, or vacated bond  
7 or custody determinations made by DHS is relevant to Plaintiff-Petitioners' substantive  
8 due process claims. As Plaintiff-Petitioners explained in oral argument, this information is  
9 probative as to whether DHS custody determinations are so ineffective that people were  
10 detained who should not have been detained in the first place, which impacts the  
11 substantive due process "shocks the conscience" analysis.

12 The Court also finds that information regarding Imperial Immigration Courts is  
13 clearly within the scope of the lawsuit. Plaintiff-Petitioners define their putative class as  
14 "individuals in the Southern District of California . . .," which includes Imperial County.  
15 ECF No. 1 at ¶¶ 58, 68. Further, Plaintiff-Petitioners alleged specific allegations regarding  
16 Imperial County in the complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore,  
17 both Otay Mesa and Imperial County is clearly within the scope of Plaintiff-Petitioners'  
18 claims. Thus, the Court overrules Defendant-Respondents' overbreadth objections as well.

19 The Court finds that the subparts of the interrogatory do not count as separate  
20 interrogatories because they relate to the overall subject matter of the interrogatory. Asking  
21 for a breakdown of categories does not create discrete subparts that should be treated as  
22 separate interrogatories.

23 As to burden, Defendant-Respondents argue that "EOIR would be required to  
24 conduct a manual case-by-case review of thousands of ROPs and electronic records to  
25 definitively determine whether DHS set an initial bond, the initial bond set (if any), and  
26 whether the immigration judge altered that bond amount." ECF No. 92 at 30–31; ECF No.  
27 89 at 8–10. The Court finds that the purported burden does not outweigh the Plaintiff-  
28 Petitioners' need for the information. Thus, the Court grants Plaintiff-Petitioners' motion

1 to compel as to this interrogatory, but only to the extent that the information is available in  
2 Defendant-Respondents' databases.

3 Thus, Defendant-Respondents' motion for protective order is **DENIED IN PART**  
4 and Plaintiff-Petitioners' motion to compel is **GRANTED IN PART** as to this discovery  
5 request. The Court orders Defendant-Respondents to produce responsive information from  
6 March 9, 2017 to the present, to the extent it is available in databases.

7 **cc. DOJ Interrogatory No. 5:**

8 State all facts CONCERNING any burdens to YOU CONCERNING the  
9 provision of an initial hearing before an immigration judge more promptly  
10 than the INITIAL MCH YOU provided to PLAINTIFFS, including all facts  
11 CONCERNING any differences between those burdens and the burdens of  
12 providing an initial hearing before an immigration judge more promptly than  
the INITIAL MCH provided to other DETAINEES.

13 This interrogatory appears nowhere in the text of Plaintiff-Petitioners' motion to  
14 compel or Defendant-Respondents' motion for protective order, yet it was included in the  
15 parties' supplemental briefing as still at issue. *See* ECF No. 92. For completeness, the Court  
16 will address it.

17 As to this discovery request, Defendant-Respondents object for four main reasons:  
18 (1) that the information sought is overbroad to the scope of the lawsuit because it seeks  
19 information from Otay Mesa and Imperial Immigration Courts since 2016, (2) that the  
20 information is not relevant, (3) that production is unduly burdensome and not proportional  
21 to the needs of the case, and (4) that the subparts cause the number of interrogatories to  
22 exceed the limit imposed by the Federal Rules. ECF No. 92 at 31–32.

23 As to relevance, the Court finds that the burdens Defendant-Respondents cite for  
24 providing an initial hearing more promptly are clearly relevant to the Plaintiff-Petitioners'  
25 procedural due process claims. To prevail in a procedural due process analysis, Plaintiff-  
26 Petitioners must show that the burdens do not outweigh the third factor of the *Mathews*  
27 test, i.e., the nature and magnitude of any countervailing interest in not providing additional  
28 or substitute procedural requirements. *See Buckingham*, 603 F.3d at 1082 (explaining that

1 the third *Mathews* factor concerned “the government’s interest, including the additional  
2 costs and administrative burdens that additional procedures would entail”). Thus, Plaintiff-  
3 Petitioners’ request is squarely relevant.

4 As to overbreadth, in this discovery request, Plaintiff-Petitioners request information  
5 beginning in 2016, the year that Plaintiff-Petitioner Gonzalez was detained. At oral  
6 argument, the parties represented to the Court that they had negotiated and jointly agreed  
7 to limit the date range to begin in March 2017, when the complaint was filed. Given this  
8 stipulated date range, the Court finds that information is relevant to Plaintiff-Petitioners’  
9 Fifth Amendment claims. The Court also finds that information regarding Imperial  
10 Immigration Courts is clearly within the scope of the lawsuit. Plaintiff-Petitioners define  
11 their putative class as “individuals in the Southern District of California . . .,” which  
12 includes Imperial County. ECF No. 1 at ¶¶ 58, 68. Further, Plaintiff-Petitioners alleged  
13 specific allegations regarding Imperial County in the complaint. *See, e.g., id.* at ¶¶ 5, 15,  
14 40, 50–56, 59, 66. Therefore, both Otay Mesa and Imperial County is clearly within the  
15 scope of Plaintiff-Petitioners’ claims. Thus, the Court overrules Defendant-Respondents’  
16 overbreadth objections as well.

17 The Court finds that the subparts of the interrogatory do not count as separate  
18 interrogatories because they relate to the overall subject matter of the interrogatory. Asking  
19 for a breakdown of categories does not create discrete subparts that should be treated as  
20 separate interrogatories.

21 As to burden, Defendant-Respondents argue that a manual case-by-case review “is  
22 completely unnecessary to the resolution of Plaintiffs’ claims.” ECF No. 92 at 31. The  
23 Court finds that Plaintiff-Petitioners’ interrogatory is essentially a “contention  
24 interrogatory,” and that Defendant-Respondents need to address its contents in their  
25 defense of this case. *See* FED. R. CIV. P. 33(a)(2); *Largan Precision Co. v. Samsung Elecs.*  
26 *Co.*, No. 13cv2740-DMS-NLS, 2015 WL 11251730, at \*9 (S.D. Cal. May 5, 2015)  
27 (explaining that contention interrogatories are “not to obtain facts, but rather to narrow the  
28 issues that will be addressed at trial and to enable the propounding party to determine the

1 proof required to rebut the respondent’s position”). Furthermore, in light of the  
2 interrogatory’s clear relevance, as explained above, Defendant-Respondents’ burden in  
3 answering does not outweigh the benefit.

4 Thus, Defendant-Respondents’ motion for protective order is **DENIED** as to this  
5 discovery request.

6 **dd. EOIR Deposition Topic No. 2:**

7 EOIR policies, practices, and procedures – or the extent to which EOIR lacks  
8 any such policies, practices, or procedures – for advising individuals with  
9 cases on the DETAINED DOCKETS of their rights and providing them an  
10 opportunity to be heard at their immigration court hearings, including at their  
11 MASTER CALENDAR HEARINGS and CUSTODY HEARINGS.

12 Defendant-Respondents object to this deposition topic because “any such ‘policies,  
13 practices, and procedures’ are simply those provided for by statute and regulation, as well  
14 as those set forth in the publicly available Immigration Court Practice Manual,” and  
15 therefore testimony on the topic would be unnecessarily duplicative. ECF No. 83-1 at 22–  
16 23; ECF No. 92 at 32–34 Plaintiff-Petitioners counter that production of documents on a  
17 topic does not render a deposition duplicative, because “Among other things, testimony  
18 could confirm the extent to which Defendants actually comply with the Manual’s policies,  
19 fill gaps not addressed in the Manual, or put application of the Manual into meaningful  
20 context for the factfinder. In short, testimony is necessary to probe any differences between  
21 policy and practice.” ECF No. 88 at 8. Defendant-Respondents additionally argue that “to  
22 the extent that Plaintiffs seek discovery, through this deposition topic, into how  
23 immigration judges interpret and implement the statutes and regulations governing an  
24 alien’s statutory and regulatory right for an ‘opportunity to be heard’ such discovery is  
25 impermissible.” ECF No. 83-1 at 23. Plaintiff-Petitioners respond that their inquiry “does  
26 not require ‘probing into the mental process’ of the immigration judge in any ‘case-  
27 specific’ matter.” ECF No. 88 at 9.

28 First, the Court agrees with Plaintiff-Petitioners that “[t]he fact that the [Defendant-  
Respondents] have produced documents on a topic is irrelevant to their obligation to

1 provide testimony at a 30(b)(6) deposition.” *Westmoreland*, 2019 WL 932220, at \*7.  
2 Plaintiff-Petitioners should not be foreclosed from asking for explanation of policies in the  
3 manual and whether the rules are generally followed, for example.

4 Second, the Court finds that information regarding custody hearings and custody  
5 determinations, other than the reasons for the determination, such as the fact or timing of a  
6 hearing, when detainees were advised of their rights, and the ultimate decision, is relevant  
7 to Plaintiff-Petitioners’ substantive and procedural due process claims. *See* ECF No. 63 at  
8 25, 32 (stating that “continued detention without a prompt first appearance before an  
9 immigration judge” relates to the substantive due process “shocks the conscience” factor,  
10 and that “determinations regarding initial custody and detention are made by officers of the  
11 arresting agency” relates to the recognized procedural due process value of presentment to  
12 a neutral adjudicator); *see also id.* at 25 (noting that plaintiff-petitioners’ unrepresented  
13 status impacts the substantive due process “shocks the conscience” analysis). However, the  
14 Court finds that testimony regarding the reasoning why a particular custody determination  
15 was made is not relevant.

16 Thus, the Defendant-Respondents’ motion for protective order is **GRANTED IN**  
17 **PART** insofar as Defendant-Respondents need not prepare a witness to testify regarding  
18 the *reasoning* why a particular custody determination was made. To the extent the policies,  
19 practices, or procedures have been produced in document discovery, Plaintiff-Petitioners  
20 shall identify the document(s) they seek to question the witness about.

21 **ee. EOIR Deposition Topic No. 3:**

22 Staffing levels, available resources, and administrative burdens for  
23 immigration courts within the geographical region of the United States  
24 District Court for the Southern District of California.

25 Defendant-Respondents object to the extent this topic seeks information relating to  
26 Imperial Detention Center and Immigration Court. ECF No. 92 at 34. However, the Court  
27 finds that information regarding Imperial Immigration Courts is clearly within the scope of  
28 the lawsuit. Plaintiff-Petitioners define their putative class as “individuals in the Southern

1 District of California . . .,” which includes Imperial County. ECF No. 1 at ¶¶ 58, 68.  
2 Further, Plaintiff-Petitioners alleged specific allegations regarding Imperial County in the  
3 complaint. *See, e.g., id.* at ¶¶ 5, 15, 40, 50–56, 59, 66. Therefore, Imperial County is clearly  
4 within the scope of Plaintiff-Petitioners’ claims. The Court also finds that this topic is  
5 clearly relevant. *See Buckingham*, 603 F.3d at 1082 (explaining that the third *Mathews*  
6 factor concerns “the government’s interest, including the additional costs and  
7 administrative burdens that additional procedures would entail”). However, the Court finds  
8 that the topic is not sufficiently specific, and as a result, no agency witnesses could likely  
9 testify to the requested information.

10 During oral argument, the Court pressed the parties regarding the appropriateness of  
11 a deposition on this topic. Upon review of the record and considering the arguments of  
12 counsel, the Court finds a 30(b)(6) deposition would be unduly burdensome and the  
13 discovery would be more efficiently conducted through traditional interrogatories or  
14 contention interrogatories. *See, e.g., Gen-Probe Inc.*, 2012 WL 12845593, at \*1–\*2; *TV*  
15 *Interactive Data Corp.*, 2012 WL 1413368, at \*2. The Court finds that responses to these  
16 inquiries can clearly be provided more efficiently and fairly through answers to  
17 interrogatories prepared by Defendant-Respondents’ counsel. *See Bank of Am., N.A.*, 2016  
18 WL 2843802, at \*3.

19 Thus, Defendant-Respondents’ motion for protective order is **GRANTED**.

20 **ff. DHS Interrogatory No. 9:**

21 State all facts CONCERNING what constitutes “an emergency or other  
22 extraordinary circumstance,” as contemplated by 8 C.F.R. § 287.3(d),  
23 including whether any such circumstances existed in PLAINTIFFS’ cases.

24 ECF No. 83-2 at 26.

25 There is an exception to the 48-hour requirement in 8 C.F.R. § 287.3(d) for “an  
26 emergency or other extraordinary circumstance,” the parameters of which are the subject  
27 of a discovery request. ECF No. 86-1 at 9 n.2. In an email dated October 30, 2019, counsel  
28 for Defendant-Respondents “disavowed any intention to use this emergency exception in



1 defending this action.” *Id.* Thus, as to this discovery request, Plaintiff-Petitioners request  
2 that the period for resolving disputes be tolled until a formal stipulation can be negotiated  
3 and submitted to the Court for approval.

4 This interrogatory is mentioned within Plaintiff’s motion to compel, however, it does  
5 not appear in the parties’ supplemental briefing table of applicable requests at issue.  
6 *Compare* ECF No. 86-1 at 9 n.2 *with* ECF No. 92. Thus, at the hearing, the Court inquired  
7 as to whether the request was still at issue. Plaintiff-Petitioners responded that they still  
8 request an order from the Court tolling the time to bring a discovery dispute regarding this  
9 discovery request to the Court’s attention. Defendant-Respondents did not oppose. Thus,  
10 the Court **GRANTS** Plaintiff-Petitioners’ request and orders that any dispute regarding  
11 DHS Interrogatory No. 9 be brought to the Court’s attention no later than **May 1, 2020**.

## 12 **VII. MOTION TO FILE DOCUMENTS UNDER SEAL**

13 On November 4, 2019, Plaintiff-Petitioners filed a motion for an order to file  
14 portions of certain documents related to Plaintiff-Petitioners’ Response in Opposition to  
15 Defendant-Respondents’ Motion for Protective Order under seal. ECF No. 84. Defendant-  
16 Respondents do not oppose the motion. *Id.* at 2. Specifically, Plaintiff-Petitioners seek to  
17 file under seal the following documents:

- 18 1. Ex. A to the Declaration of Bardis Vakili: an email dated October 11,  
19 2019 between counsel for the parties referencing designated materials.
- 20 2. Ex. B to the Declaration of Bardis Vakili: excerpts of production  
21 documents produced and designated under the Protective Order by  
22 Defendants in this action.

23 *Id.* These exhibits “reference and contain documents from Defendants’ databases  
24 pertaining to Plaintiffs.” *Id.*

25 Courts have historically recognized a “general right to inspect and copy public  
26 records and documents, including judicial records and documents.” *Nixon v. Warner*  
27 *Comm’ns, Inc.*, 435 U.S. 589, 597 (1978). “Unless a particular court record is one  
28 ‘traditionally kept secret,’ a ‘strong presumption in favor of access’ is the starting point.”

1 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting  
2 *Foltz v. State Farm. Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). In order to  
3 overcome this strong presumption, a party seeking to seal a judicial record must articulate  
4 justifications for sealing that outweigh the public policies favoring disclosure. *See*  
5 *Kamakana*, 447 F.3d at 1178; *see also Mezzadri v. Medical Depot, Inc.*, No. 14cv2330-  
6 AJB-DHB, 2015 WL 12564223, at \*3 (S.D. Cal. Dec. 18, 2015).

7 A party requesting that the court seal materials attached to a non-dispositive motion  
8 must make a particularized showing of good cause. *Kamakana*, 447 F.3d at 1180. Here,  
9 Plaintiff-Petitioners contend that the exhibits should be sealed because “Defendants  
10 produced these documents in discovery and designated them as confidential and subject to  
11 the Protective Order in this case.” ECF No. 84 at 2. This reason is itself not sufficient to  
12 constitute good cause. *See San Diego Comic Convention v. Dan Farr Prods.*, No.  
13 14cv1865-AJB-JMA, 2018 WL 1744536, at \*3 (S.D. Cal. Apr. 10, 2018) (“Indeed, some  
14 district courts have declined to seal documents when the sole basis for the request is a  
15 protective order that covers them”); *Cortina v. Wal-Mart Stores, Inc.*, No. 13cv02054-  
16 BAS-DHB, 2016 WL 4556455, at \*1 (S.D. Cal. Sept. 1, 2016) (“[P]arty’s designation of  
17 documents as ‘confidential’ pursuant to such [protective] order, is not itself sufficient to  
18 show good cause”); *Durham v. Halibrand Performance Corp.*, No. 14cv1151-DMS-JLB,  
19 2014 WL 12520130, at \*1 (S.D. Cal. Dec. 12, 2014) (“That a document is designated  
20 confidential pursuant to a protective order is of little weight when it comes to sealing  
21 documents which are filed with the Court”).

22 Plaintiff-Petitioners also articulated, however, specific reasons why these documents  
23 should be sealed. *See Kamakana*, 447 F.3d at 1178 (explaining a party seeking to seal a  
24 judicial record must articulate justifications for sealing that outweigh the public policies  
25 favoring disclosure). Exhibits A and B “are printouts from various law enforcement  
26 databases, and include information that does not belong in the public domain.” ECF No.  
27 84 at 2. These printouts contain law enforcement notes at the time of detention, timing of  
28 welfare checks in the cells, and database codes. *See* ECF No. 85 at 11–14, 19. The exhibits

1 also contain non-public information regarding the individual Plaintiff-Petitioners, such as  
2 height, weight, hair color, eye color, birthdate, birthplace, and marital status. ECF No. 84  
3 at 2; ECF No. 85 at 9–10, 23. The Court agrees that public disclosure of this information  
4 could be detrimental to both Plaintiff-Petitioners and Defendant-Respondents. Good cause  
5 appearing, the Court **GRANTS** Plaintiff-Petitioners’ motion, insofar as it seeks to seal: (1)  
6 portions of Exhibit A to the Declaration of Bardis Vakili, and (2) Exhibit B to the  
7 Declaration of Bardis Vakili.

8 Plaintiff-Petitioners have already publicly filed on the docket the necessary redacted  
9 version of the papers (ECF No. 86-2), and electronically lodged the unredacted version of  
10 the papers under seal (ECF No. 85). Thus, the Clerk’s Office is directed to file the lodged  
11 documents at ECF No. 85 under seal.

## 12 **VIII. SCHEDULING ORDER**

13 In light of the procedural history of this case and the deadlines ordered herein, the  
14 Court **VACATES** the deadlines set forth in the Court’s September 25, 2019 Scheduling  
15 Order (ECF No. 73), and issues the following Amended Scheduling Order:

16 1. Fact and class discovery are not bifurcated, but class discovery must be  
17 completed by **June 26, 2020**.

18 2. Plaintiff-Petitioners must file a motion for class certification by **July 17, 2020**.  
19 Defendant-Respondents’ opposition shall be filed no later than **August 14, 2020**. Plaintiff-  
20 Petitioners’ reply shall be filed no later than **August 28, 2020**. A hearing on the motion for  
21 class certification is scheduled for **Monday, September 14, 2020 at 11:00 a.m.** before the  
22 Honorable Cynthia Bashant. Counsel shall refer to the Standing Order for Civil Cases for  
23 the Honorable Cynthia Bashant for the Court’s requirements.

24 3. The parties shall continue pursuing fact discovery while Plaintiff-Petitioners’  
25 motion for class certification is pending before the Court.  
26  
27  
28

