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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ROBERT BOULE,

9 Plaintiff,

10 v.

11 ERIK EGBERT, et. al.,

12 Defendants.

No. C-17-106-RSM

**STIPULATED PROTECTIVE ORDER  
BETWEEN PARTIES, U.S. CUSTOMS  
AND BORDER PROTECTION AND  
U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT**

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15 Discovery in this action is likely to involve production of confidential, proprietary, or  
16 private information for which special protection may be warranted. Specifically, Plaintiff and  
17 Defendant seek discovery of records pertaining to individuals in a “system of records,” as  
18 defined by the Privacy Act, 5 U.S.C. § 552a(a)(5) (the “Act”), disclosure of which would  
19 potentially constitute a violation of criminal and civil law under section 552a(b) of the Act,  
20 absent an Order from this Court pursuant to section 552(b)(11) of the Act. Furthermore, since  
21 disclosure of such records for purposes other than this litigation could reasonably be expected  
22 to constitute an unwarranted invasion of privacy, the parties and U.S. Customs and Border  
23 Protection (“CBP”) and U.S. Immigration and Customs Enforcement (“ICE”) hereby stipulate  
24 to and respectfully request that this Court enter the following Stipulated Protective Order  
restricting the use of such information for purposes of this litigation only.

25 1. PURPOSES AND LIMITATIONS

26 Discovery in this action is likely to involve production of confidential, proprietary, or  
27 private information for which special protection may be warranted. Accordingly, the parties  
28 and CBP and ICE hereby stipulate to and petition the court to enter the following Stipulated

1 Protective Order. The parties and CBP and ICE acknowledge that this agreement is consistent  
2 with LCR 26(c). It does not confer blanket protection on all disclosures or responses to  
3 discovery, the protection it affords from public disclosure and use extends only to the limited  
4 information or items that are entitled to confidential treatment under the applicable legal  
5 principles, and it does not presumptively entitle parties to file confidential information under  
6 seal.

7 2. "CONFIDENTIAL" MATERIAL

8 "Confidential" material shall include the following documents and tangible things  
9 produced or otherwise exchanged:

10 (a) internal CBP and ICE records including, but not limited to, personnel records,  
11 medical records, law enforcement records, investigative records, legal records, disciplinary  
12 records, and pay/benefits/leave records;

13 (b) records provided to CBP and ICE, or obtained by CBP and ICE, from other federal,  
14 state, or local agencies or organizations;

15 (c) any information that the producing party is obligated by contract or state or federal  
16 law to keep confidential;

17 (d) Plaintiff's medical records; Plaintiff's tax records;

18 (e) Agent Egbert's employment records, including job applications, performance  
19 reviews, materials created during any internal-affairs investigation, and any disciplinary  
20 records;

21 (f) Agent Egbert's insurance records, including insurance policies; communications  
22 between the parties and the federal government; and any other document a party designates as  
23 confidential.

24 Other than protection of Privacy Act protected information, nothing in this Order limits  
25 in any way any other restrictions on the release of information, including restrictions on release  
26 of classified or privileged information, required or permitted by law.

27 3. SCOPE

28 The protections conferred by this agreement cover not only confidential material (as  
defined above), but also (1) any information copied or extracted from confidential material; (2)  
all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,

1 conversations, or presentations by parties or their counsel that might reveal confidential  
2 material.

3 However, the protections conferred by this agreement do not cover information that is  
4 in the public domain or becomes part of the public domain through trial or otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is  
7 disclosed or produced by another party or by a non-party in connection with this case only for  
8 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
9 disclosed only to the categories of persons and under the conditions described in this  
10 agreement. Confidential material must be stored and maintained by a receiving party at a  
11 location and in a secure manner that ensures that access is limited to the persons authorized  
under this agreement.

12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
13 ordered by the court or permitted in writing by the designating party, a receiving party may  
14 disclose any confidential material only to:

- 15 (a) the receiving party's counsel of record in this action, as well as employees of  
16 counsel to whom it is reasonably necessary to disclose the information for this litigation;
- 17 (b) the officers, directors, and employees (including in house counsel) of the  
18 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
19 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
20 designated;
- 21 (c) the other party in the litigation;
- 22 (d) experts and consultants to whom disclosure is reasonably necessary for this  
23 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
24 A);
- 25 (e) the court, court personnel, and court reporters and their staff;
- 26 (f) copy or imaging services retained by counsel to assist in the duplication of  
27 confidential material, provided that counsel for the party retaining the copy or imaging service  
28 instructs the service not to disclose any confidential material to third parties and to immediately  
return all originals and copies of any confidential material;

1 (g) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
3 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.  
4 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential  
5 material must be separately bound by the court reporter and may not be disclosed to anyone  
6 except as permitted under this agreement;

7 (h) the author or recipient of a document containing the information or a custodian  
8 or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
10 referencing such material in court filings, the filing party shall confer with the designating party  
11 to determine whether the designating party will remove the confidential designation, whether  
12 the document can be redacted, or whether a motion to seal or stipulation and proposed order is  
13 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
14 standards that will be applied when a party seeks permission from the court to file material  
15 under seal.

## 16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
18 party or non-party that designates information or items for protection under this agreement  
19 must take care to limit any such designation to specific material that qualifies under the  
20 appropriate standards. The designating party must designate for protection only those parts of  
21 material, documents, items, or oral or written communications that qualify, so that other  
22 portions of the material, documents, items, or communications for which protection is not  
23 warranted are not swept unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
25 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
26 unnecessarily encumber or delay the case development process or to impose unnecessary  
27 expenses and burdens on other parties) expose the designating party to sanctions.

28 If it comes to a designating party’s attention that information or items that it designated  
for protection do not qualify for protection, the designating party must promptly notify all other  
parties that it is withdrawing the mistaken designation.

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
2 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
4 be clearly so designated before or when the material is disclosed or produced.

5           (a)    Information in documentary form: (e.g., paper or electronic documents and  
6 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
7 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page that  
8 contains confidential material. If only a portion or portions of the material on a page qualifies  
9 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
10 making appropriate markings in the margins).

11           (b)   Testimony given in deposition or in other pretrial proceedings: the parties and  
12 any participating non-parties must identify on the record, during the deposition or other pretrial  
13 proceeding, all protected testimony, without prejudice to their right to so designate other  
14 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
15 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
16 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
17 confidential information at trial, the issue should be addressed during the pre-trial conference.

18           (c)    Other tangible items: the producing party must affix in a prominent place on the  
19 exterior of the container or containers in which the information or item is stored the word  
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
21 the producing party, to the extent practicable, shall identify the protected portion(s).

22           5.3    Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the designating party’s  
24 right to secure protection under this agreement for such material. Upon timely correction of a  
25 designation, the receiving party must make reasonable efforts to ensure that the material is  
26 treated in accordance with the provisions of this agreement.

## 27           6.    CHALLENGING CONFIDENTIALITY DESIGNATIONS

28           6.1    Timing of Challenges. Any party or non-party may challenge a designation of  
confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
burdens, or a significant disruption or delay of the litigation, a party does not waive its right to

1 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
2 original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
4 regarding confidential designations without court involvement. Any motion regarding  
5 confidential designations or for a protective order must include a certification, in the motion or  
6 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
7 conference with other affected parties in an effort to resolve the dispute without court action.  
8 The certification must list the date, manner, and participants to the conference. A good faith  
9 effort to confer requires a face-to-face meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
11 intervention, the designating party may file and serve a motion to retain confidentiality under  
12 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
13 persuasion in any such motion shall be on the designating party. Frivolous challenges, and  
14 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
15 burdens on other parties) may expose the challenging party to sanctions. All parties shall  
16 continue to maintain the material in question as confidential until the court rules on the  
17 challenge.

18 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION

20 If a party is served with a subpoena or a court order issued in other litigation that  
21 compels disclosure of any information or items designated in this action as  
22 “CONFIDENTIAL,” that party must:

- 23 (a) promptly notify the designating party in writing and include a copy of the  
24 subpoena or court order;
- 25 (b) promptly notify in writing the party who caused the subpoena or order to issue  
26 in the other litigation that some or all of the material covered by the subpoena or order is  
27 subject to this agreement. Such notification shall include a copy of this agreement; and
- 28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
designating party whose confidential material may be affected.

1           8.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2           If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 confidential material to any person or in any circumstance not authorized under this agreement,  
4 the receiving party must immediately (a) notify in writing the designating party of the  
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
6 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
7 made of all the terms of this agreement, and (d) request that such person or persons execute the  
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9           9.       INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
10 PROTECTED MATERIAL

11           When a producing party gives notice to receiving parties that certain inadvertently  
12 produced material is subject to a claim of privilege or other protection, the obligations of the  
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
14 provision is not intended to modify whatever procedure may be established in an e-discovery  
15 order or agreement that provides for production without prior privilege review. The parties  
16 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

17           10.     NON TERMINATION AND RETURN OF DOCUMENTS

18           Within 60 days after the termination of this action, including all appeals, each receiving  
19 party must return all confidential material to the producing party, including all copies, extracts  
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
21 destruction.

22           Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
23 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
25 work product, even if such materials contain confidential material.

26           The confidentiality obligations imposed by this agreement shall remain in effect until a  
27 designating party agrees otherwise in writing or a court orders otherwise.  
28

1 SO STIPULATED.  
2 DATED this 5th day of March, 2018.

3 ANNETTE L. HAYES  
4 United States Attorney

5 /s Kristin B. Johnson  
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13 Attorney for U.S. Customs and Border Protection

14 SO STIPULATED.  
15 DATED this 5th day of March, 2018.

16 /s Breean Beggs  
17 BREEAN L. BEGGS, WSBA #20795  
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23 Attorney for Plaintiff Robert Boule

24 SO STIPULATED.  
25 DATED this 5th day of March, 2018.

26 MILLS MEYERS SWARTLING P.S.

27 /s Geoffrey M. Grindeland  
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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 6 day of March 2018.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE

1 **EXHIBIT A**

2  
3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty  
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
7 was issued by the United States District Court for the Western District of Washington in the  
8 case of *Boule v. Egbert*, Case No. 17-106-RSM. I agree to comply with and to be bound by all  
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to  
10 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
11 promise that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the  
13 provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_