

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

PEDRO VASQUEZ PERDOMO, ET AL,	)	CASE NO: 2:25-cv-05605-MEMF-SPx
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Riverside, California
	)	
KRISTI NOEM, ET AL,	)	Tuesday, May 26, 2026
	)	
<u>Defendants.</u>	)	(11:10 a.m. to 12:02 p.m.)

HEARING RE:

MOTION FOR ORDER TO SHOW CAUSE [DKT.NO.503]

BEFORE THE HONORABLE SHERI PYM,
UNITED STATES MAGISTRATE JUDGE, PRESIDING

APPEARANCES: See page 2

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1 Riverside, California; Tuesday, May 26, 2026; 11:10 a.m.

2 (Call to Order)

3 THE CLERK: Case 2:25-5605, Pedro Vasquez Perdomo
4 versus Kristi Noem.

5 Counsel, would you please state your appearances for
6 the record, start withing the plaintiff.

7 MS. WORTH: Good morning, Your Honor, Sara Worth from
8 Munger Tolles & Olson for the plaintiffs.

9 THE COURT: Good morning.

10 MS. HANSEN: And, Your Honor, Rebecca Hansen from
11 Munger Tolles & Olson for intervenors.

12 THE COURT: Good morning.

13 MR. ROBBINS: Good morning, Your Honor, Jonathan
14 Robbins here on behalf of defendants.

15 THE COURT: Good morning.

16 So we're here of course on the -- there's a motion
17 for an order to show cause re: contempt that plaintiffs have
18 filed, and so I'll just kind of give you my tentative thoughts
19 and some questions I have and then I'm happy to hear argument.

20 So the issues here really are whether defendants have
21 failed to comply with the -- my January 16th order to
22 forensically image the cell phones used by the agents in the 15
23 operations, and really more whether defendants were acting in
24 good faith and taking reasonable steps to comply with the
25 order.

1 There of course was kind of this partial stay on the
2 imaging order with respect to the personal phones until March
3 17th, but since then the imaging should have been going ahead.

4 And so far as I understand it, and I'm sure counsel
5 will update me if something has changed, there were 23
6 Government phones had been imaged, but no personal phones had
7 been imaged.

8 So it doesn't seem like there's much question that
9 there was a failure to comply with the January 16th order, the
10 real question is whether defendants have been acting in good
11 faith to try to compel, and I -- that seems to be in real doubt
12 here.

13 I know that there have been some negotiations with
14 the government about exactly what it would -- or with
15 plaintiffs -- between the government and plaintiffs about
16 exactly what -- you know, whether there could be some
17 compromise given the scope of what was required with the
18 imaging of the personal cell phones, but even appreciating
19 that, and I'm not sure that there was really any agreement that
20 was reached there, as I understand it, ICE never sent
21 declarations to its agents or the declarations or forms to
22 their agents in terms of whether they used their personal
23 phones until April 22nd.

24 And although I do believe, if I understand it
25 correctly, and I'd like clarification from counsel on this, the

1 agency responded all or virtually all of them said that they
2 didn't use their personal phones, so I'm not sure to what
3 extent an issue is there with respect to the ICE agents. But
4 with Border Parole or Customs and Border Protection that seems
5 to be a really different situation.

6 I don't think those -- as I understand it those forms
7 weren't sent until May 4th, and of -- I believe -- and again,
8 correct me if I'm wrong -- there were 828 who responded and
9 only 272 of those said they didn't use their phones, so as I
10 understand it that would mean over 500 personal phones would
11 even under -- well would potentially need to be imaged absent
12 some sort of agreement between the parties. And defendants
13 seem to offer a number of reasons why that can't happen, but I
14 haven't seen anything very convincing.

15 I know there's a lot of talk about the order, you
16 know, it was difficult to comply with in a timely fashion, but
17 certainly review of everything on those phones is time-
18 consuming, the imaging though typically isn't as time-
19 consuming, and again, I'm happy to be educated about why this
20 is different, but in pretty much every search warrant I sign in
21 a criminal case where there are cell phones or other electronic
22 devices involved, there's imaging that takes place on the spot
23 when the warrant is executed and then the review can take a
24 long time after that, but usually that happens pretty quickly.
25 And so I'm not sure why this is different here where you would

1 have agents who could potentially just bring this their phones,
2 allow them to be imaged, and then go on with their day.

3 And I know there's been arguments made that this has
4 been for some time here that in this case that the Government
5 may lack authority to require agents to turn over their
6 personal phones that they used in the course of work, but I
7 haven't seen any authority that actually says this, and the
8 Customs and Border Protection handbook really seems to support
9 the opposite, that these would be federal records.

10 And more I'm just troubled that there's been it seems
11 that defendants have just decided not to comply with the court
12 order rather than if there's a problem raising it in an
13 appropriate fashion by way of motion. And really even in
14 opposition to this motion the response seems to be, well, you
15 know, we're -- we can't do this, but without really supporting
16 that.

17 So I mean these are all a lot of questions that, you
18 know, and concerns I have swirling around, and in some of it I
19 should say going back to plaintiffs here is trying to -- I
20 understand that plaintiffs are looking for a certification of
21 facts to Judge Frimpong who would then, you know, decide the
22 contempt issue, but I want to make sure that I'm not missing
23 something else that plaintiffs are looking for in terms of --
24 the whole goal here I think is to get actual compliance with
25 the order, and so I want to make sure I understand from

1 plaintiffs' standpoint what their -- what compliance would look
2 like from your perspective.

3 So these are some of the questions I have, and of
4 course I want to hear from the defense as well.

5 So it is plaintiffs' motion, so if -- I assume
6 Ms. Worth, if you'd like to be heard first.

7 **MS. WORTH:** Yes, Your Honor.

8 First of all I think Your Honor has this exactly
9 right, I completely agree with all of your remarks and all of
10 the questions that you are putting to defendants.

11 It's undisputed that they haven't complied, they
12 haven't complied for months, they haven't tried to comply.

13 The order came down in January, it's now almost June,
14 they haven't imaged a single phone, Your Honor is right that we
15 got about 20 Government phone productions from ICE, that's not
16 -- we don't have them from CBP.

17 So I think that Your Honor is right, that there have
18 not been good faith steps towards compliance and we've been
19 told expressly that they will not be imaging personal phones.

20 We did try to reach a compromise, but then -- I've
21 spent many hours on the phone with the Government trying to
22 figure out how we could narrow the scope of imaging, prioritize
23 custodians, and relieve some of the burden of reviewing the ESI
24 for production, and they rejected that proposal, and that's in
25 my declaration and the email is attached to my declaration,

1 they said, no, because our proposal would still require
2 imaging. But of course it was Your Honor's order that required
3 imaging and that still requires imaging and that they've taken
4 no steps to comply with.

5 And that just shows why coercive sanctions are
6 necessary, you know, we're not seeing any action unless we come
7 and seek court intervention at every turn, and that's causing
8 these enormous delays, which are prejudicing our ability to
9 make the record that we need to make within the time permitted.

10 And what Your Honor said was that, you know, you
11 haven't seen any evidence for this argument that they can't
12 comply, that they can't do the imaging, and that's exactly
13 right, and it's their burden of production and their burden of
14 persuasion to show categorically and in detail that they cannot
15 comply, and they've just absolutely not done anything to meet
16 that burden, Your Honor.

17 There's no competent evidence that compliance is
18 impossible, and as Your Honor pointed out, the evidence that
19 they did put in actually suggests the opposite, and you know,
20 that's the suggestions in the handbook that of course these are
21 federal records and that ESI, wherever it may be stored, may be
22 the property of the federal government.

23 And Your Honor, I just wanted to say a couple of
24 things about the specific representations that were made from
25 ICE and CBP that you touched on.

1 So ICE submitted a copy of a declaration that they
2 said had been sent out on April 22nd and that officers came
3 back and said that they hadn't used the personal phones. I'd
4 like to say two things about that declaration.

5 One, the declaration asked if they used their
6 personal phones during the course of a specific operation, but
7 what the order requires, and we talked about this at the last
8 status conference, is imaging of the phones used by the agents
9 present at those operations, but the phone may contain data
10 that is responsive to any of the RFPs in expedited discovery.
11 And so the order is to image the phone and then specifically
12 search the phone for documents responsive to the RFPs, that's
13 order in ECF 70 that they're not complying with.

14 So that declaration doesn't actually go to on issue
15 that's relevant here for purposes of compliance.

16 And the second thing about that declaration is that
17 it seems to be prefabricated to say that the officer did not
18 use the personal phone during those operations. So the
19 declaration types out, I did not use my personal phone and then
20 the person is to sign it.

21 And so that seems to me, Your Honor, not to be
22 calculated towards getting at the sort of truth of what is
23 going on with agents' phone use, but sort of trying to get
24 immediately to a result that's most expedition for the agency.

25 And we also, Your Honor, pointed out that the

1 declaration was not authenticated, so it's not actually
2 admissible evidence here that the Government has put before you
3 even though they have that burden of production, and we were
4 unable to authenticate it at a deposition.

5 So that's two things on the ICE declaration.

6 And as to CBP, you're right, Your Honor, again, that
7 questionnaire was not sent out until after we sent our letter
8 saying we're going to move for contempt. So nothing was done
9 until we said, all right, it's been months, we're finally going
10 to go seek for sanctions because there's no other way we're
11 going to get compliance here.

12 And as Your Honor pointed out, the response was that
13 the overwhelming number of respondents were using their
14 personal phones during field operations in this district.

15 And so far from showing impossibility, what they've
16 actually done is to the extent it's admissible evidence they
17 have just, you know, proven that they do in fact have the
18 ability to image those phones and that those phones do contain
19 responsive and relevant ESI that plaintiffs need in order to
20 make their record here.

21 And so, Your Honor, I will stop there because I think
22 that you have this exactly right and your final word I guess is
23 right, we're trying to get to compliance, and we think that the
24 only way to do that is to move for this sanction of contempt,
25 it's the only thing left.

1 We moved to compel, we got a clear court order,
2 there's been no compliance, we tried to compromise, we sent I
3 think a very reasonable compromise to try to narrow the scope
4 to address these burden arguments, and nothing happened for
5 months, and so we're left trying to seek contempt sanctions.

6 And we sought them only against the litigants because
7 our assessment from the meet and confer process is that the
8 litigants are sort of obstructing here and that they need a
9 court order in order to start doing this, but this is, you
10 know, the best and the only way that we can see to get some
11 semblance of compliance.

12 **THE COURT:** All right, thank you.

13 Mr. Robbins, do you wish to be heard?

14 **MR. ROBBINS:** Yes, Your Honor, thank you.

15 So the Government's position here is that sanctions
16 and contempt are not warranted because the Government is taking
17 all reasonable steps to try and comply with the Court's order.

18 I think it's probably helpful to break this down into
19 ICE and CBP because they're two different agencies here
20 complying in different ways.

21 So ICE is the easiest to deal with first. So after
22 our status conference in March where the Court lifted the stay
23 DOJ immediately had a meeting with the agencies to figure out
24 how we were going to comply with this order, and it's a
25 difficult order to comply with because these phones are not in

1 the custody and control of the agency, and so the -- we tried
2 to figure out what is the best way to comply with this order,
3 and so it was determined that well we would least ask to
4 forensically image these personal phones.

5 So ICE was a little bit easier because they have much
6 more of a minority of agents involved, there are only 23
7 agents, and ICE interviewed its agents and had them sign
8 declarations, and 22 of the 23 responded, the 23rd is overseas
9 in a military operation, they haven't been able to hear back
10 yet, but the 22 who were able to respond all indicated that
11 they did not use their personal phone at any operation listed
12 in the order, and so they signed declarations to that effect
13 and there was no reason to forensically image any personal
14 phones there because none of them were used at any of the
15 operations in question.

16 So that brings us to CBP. CBP is obviously much more
17 complicated, we're dealing with hundreds of -- potentially more
18 than a thousand agents, and we know from the depositions and
19 from just our general collection of ESI that many of these
20 agents did use their personal phones.

21 And so the agency did set forth a process to go about
22 asking people to forensically image their phones, but they had
23 to be careful because a lot of these individuals are
24 represented by unions.

25 The plaintiffs eluded to the policy about records

1 keeping and indicated -- and they are correct that there is a
2 policy for CBP to submit information or communications or work
3 product on -- that's conducted on a personal phone to a
4 Government repository, and that initial collection did take
5 place before the forensic imaging, but we know that it wasn't
6 perfect, there were some things that fell through the cracks
7 and it wasn't a perfect process.

8 And so one of the things the agency wanted to do, in
9 addition to asking for consent to forensically image a personal
10 phone, was to make sure that that process was more robust, that
11 people were submitting the proper information from personal
12 phones into a Government repository.

13 So the agency developed this lengthy questionnaire
14 that we attached to our filing, it's a lengthy questionnaire,
15 it's designed to do several things.

16 It's designed to make sure that there was a more
17 robust and more formalized process for individuals to submit
18 the relevant documentation to the Government repositories, and
19 that has worked.

20 And I think it might be helpful to give you sort of a
21 status as to where we're at.

22 So the agency ended up sending out 1,462 of these
23 questionnaires to the agents that it believes were associated
24 with Operation At Large Los Angeles. That's not an exact
25 number because there's no one place where they can figure out

1 every single individual who was at this, they've had to piece
2 it together, and they think -- they ended up sending
3 questionnaires to be on the safe side to 1,462 individuals.

4 They have since received responses back for 1,253 of
5 those individuals. Of those responses 368 individuals have
6 indicated that they did not use their personal phone during any
7 of the operations, and 885 individuals have indicated that they
8 did use that you are personal phones. So we're looking at many
9 hundreds of custodians.

10 We also know that in response to that questionnaire
11 703 people submitted Government records from their personal
12 phone to a CBP email to submit to a Government repository, so
13 we know that the agency's attempt to try and make the
14 collection process more robust has been working as we've seen a
15 lot more submitted into that repository.

16 And of the responses that we've received so far we've
17 received 88 consent individuals who indicated they would
18 consent to forensically imaging their personal phone.

19 Now, that's only the first step in the process.
20 CBP's lab can't forensically image a phone unless they have
21 written consent, and so those people are being followed up with
22 to get written consent for the forensic imaging of those
23 phones, but this is a difficult process because the unions are
24 involved.

25 As I mentioned before, there is a policy where

1 individuals have to submit their records used on a phone to a
2 Government repository, but it's against agency policy to be
3 using personal phones, and so these people can be subject to
4 disciplinary proceedings, and that obviously involves the
5 unions.

6 And the agency has tried to do this in a reasonable
7 way where the unions have been notified of this and where
8 they're trying to collect the information ask for consent to do
9 the personal phones and while at the same time not creating
10 problems with the unions.

11 Unfortunately that doesn't appear to be working. CBP
12 advised me today that one local chapter has already filed a
13 grievance and another local chapter has asked for a briefing,
14 which might lead to something more. But they're trying to do
15 this in a way that is legal. Remember these aren't -- these
16 phones are not in the custody and control of the Government.

17 With the Government phones they collected all those,
18 they confiscated those, but what we're talking about here with
19 a Government employer and peoples' personal devices implicates
20 the Fourth Amendment, it could potentially implicate the Fifth
21 Amendment, and the agency has to be careful about how they do
22 this to make sure that they don't turn this into sprawling
23 litigation, and so they took what was a reasonable approach.

24 They developed this questionnaire, and yes, it look
25 some time to develop that questionnaire, they had to figure out

1 what the collective bargain agreement said, they had to figure
2 out what the law said about Fourth Amendment and Fifth
3 Amendment, and yes, they think they can ask and they have been
4 asking people if they'll consent to forensically image their
5 phones, but this isn't something that can be done easily and
6 it's something that has to be done carefully in a way that
7 doesn't create sprawling litigation.

8 But one thing you can't say about this is that is it
9 agency is just disregarding the court order. It's not doing
10 that. It's taking the order very seriously and it's doing what
11 it can to try and comply with the order, but it's not an easy
12 order to comply with.

13 I mean we're looking now at 885 custodians with --
14 who have used their personal phones at some point during
15 Operation At Large, that's an enormous amount of forensic
16 imaging, and the forensic imaging takes time, it can take days
17 for a single phone to ingest in our system just to be able to
18 get ready to review it.

19 I mean it's true, we did work out a deal with the
20 plaintiffs on the Government phones because of the time that it
21 takes not -- the forensic imaging has been -- is being done,
22 but the conversion into different formats, the injection of the
23 converted formats into our systems takes a long time. And so
24 the Government isn't disregarding the order, but it's trying to
25 comply to the order to the best of its ability, and I don't see

1 how a reasonable person could say that the agency isn't taking
2 this order seriously or isn't trying to comply with the order
3 to the best of its ability.

4 **THE COURT:** Can I -- I want to ask you just to get
5 the number, what was the number again on how many said they
6 would consent imaging of the --

7 **MR. ROBBINS:** We had 88, but I say that with this
8 caveat, since the questionnaire has been submitted we have
9 received requests from individuals to amend the answers in some
10 of their questionnaires, and so we don't know exactly what it
11 is the they want to amend. It may be possible that some people
12 have -- may have remembered something that they want to add or
13 it may be that some people may have initially consented to
14 forensic imaging of phones but maybe aren't keen on having
15 their personal device picked apart by court, and they may -- or
16 maybe they've talked to their union representatives and have
17 changed their mind.

18 So I don't know exactly how it is that people intend
19 to amend their responses to the questionnaire, but so far to
20 date we have 88 who have indicated that they would consent, and
21 the agency is going to follow up with those individuals to get
22 written consent, because CBP's lab won't forensically image a
23 phone without that written consent, because right now what
24 we're talking about is a Fourth Amendment search. So that's --

25 **THE COURT:** Well here's the part that I'm a little

1 confused about. I mean I appreciate that it makes sense to try
2 to get consent where you can, but there's been a court order in
3 place for months now saying that those phones need to be
4 imaged. I haven't seen that the unions have filed anything
5 saying, no, you can't do this.

6 I mean again it may be that, you know, there's -- I
7 understand that it may be a delicate situation because the
8 majority of agents were using their personal phones contrary to
9 policy, but you know, that starts to raise a question of
10 whether there's really a policy against it or whether it's an
11 understood, you know, practice that people would do that.

12 But I am sort of -- I appreciate the process you're
13 trying to go through, but at the same time I don't really see
14 this as something that needs consent, I haven't seen anything
15 that would suggest that, because again I understand these are
16 their personal phones, but they were also using them for work,
17 and you know, my experience in the government is that, you
18 know, there are warnings for that effect, you use your -- you
19 know, phones used for work are subject to review by the
20 employer.

21 **MR. ROBBINS:** May I respond, Your Honor?

22 **THE COURT:** Yes.

23 **MR. ROBBINS:** So I think it's helpful there to look
24 at what the agency's policy actually says.

25 There is nothing in the policy that indicates that an

1 individual who uses their personal phone will have to subject
2 their personal phone for surrendering to be forensically
3 imaged. There is -- it could potentially subject them to
4 disciplinary proceedings, and they're certainly -- what the
5 policy says is that they're certainly responsible for
6 submitting the material to a Government repository, but that's
7 a far cry from requiring somebody to surrender their personal
8 device for intrusive forensic imaging.

9 And the agency, I don't know what authority exists
10 for them to say you must surrender your phone to us, I mean I
11 don't know how they go about doing that. The only way they
12 could do that is to ask, right? I mean they don't have the
13 authority -- with the Government phones, for example, they have
14 the authority to recall these right away and they did. The
15 Government phones they took right away.

16 So what the agency has bandage working on doing is
17 trying to figure out that if people do consent, they've been
18 trying to figure out a way to make this less intrusive, because
19 these are phones, for example, that an individual, you know,
20 their child might call to pick them up at school on one of
21 these phones, so the agency has been working out how to make it
22 logistically feasible to forensically image these phones if
23 they do consent such that they can forensically image the phone
24 in a way that doesn't keep the person from their phone for an
25 extended period of time, and they have been taking the steps to

1 try and make the logistics of that work for the people who do
2 consent.

3 But if somebody doesn't consent to surrender their
4 phone, sure, yes, they could be subjected to, you know,
5 disciplinary proceedings, that's why the unions have a deep
6 concern with this, and yes, they can certainly -- they are
7 certainly responsible for submitting the information that is
8 collected, the work protect that is collected on that phone to
9 a Government repository. But nothing in that policy says that
10 they have to surrender their physical phone and a physical
11 device to forensic imaging.

12 If there was a policy to that then I think -- then
13 yes, the agency would have the capacity to do that, but right
14 now the only way that the agency can reasonably comply with the
15 order is to ask for consent, and then if consent is given to
16 forensically image the phone.

17 I don't know -- I mean how -- they can't physically
18 confiscate a phone that doesn't belong to them, there's --
19 nothing in the policy says that.

20 So I think the agency is doing what the policy
21 allows, they're asking, they're certainly making a more robust
22 attempt to make sure that they are complying with what the
23 policy does require, which is to make sure that people are
24 submitting evidence to Government repositories, and that has
25 happened, 703 of the people who answered their questionnaires

1 did submit evidence into a repository as the policy requires.

2 But surrendering -- but nothing in the policy
3 requires surrendering of a phone, so all the agency can do to
4 comply with the order is ask, that's the -- I mean I don't know
5 what else they can reasonably do to comply with the order.

6 **THE COURT:** Let me ask you just a slightly different
7 question so I'm clear on this.

8 When was it that agents were first notified that they
9 needed to preserve all records on their phones?

10 **MR. ROBBINS:** The original date that they collected
11 information from the personal phones preceded the date of the
12 order. So the agency did, and I don't remember exactly what
13 the date of that was, but they initially did try to collect
14 information that had been on phones, and so the officers had --
15 for example, they would take screenshots of communications that
16 they had on their personal devices and those were submitted.

17 Now, it turned out that during depositions we found
18 out that that wasn't a perfect process and there were -- there
19 may have been some things that were missed.

20 So, for example, one of the individuals at a
21 deposition indicated that he had taken a photograph from one of
22 the intelligence briefings on one of the targets and so he had
23 a photograph of one of the individuals on his personal phone so
24 that when he was out in the field for operations that he could
25 have a picture of that person on his phone. And then at the

1 end of the day when the operation was over he deleted that
2 photograph from his phone.

3 So we had things like that that suggested that
4 forensic imaging would only capture something that was deleted
5 of that nature. But forensic imaging is only going to -- that
6 photograph is going to be duplicated of what's already
7 collected in the case, because that photograph is going to be
8 produced as part of the intelligence briefing that's subject to
9 the other request for production. And so that initial
10 collection took place before the order.

11 After the order we had a stay in place while we were
12 trying to negotiate things and then the order was lifted after
13 the deadline was already gone, so the agency was in a position,
14 well the deadline had already passed, the stay was lifted, and
15 so we were in a position well, okay, what do we do here, we
16 were in the middle of negotiations and now those are over? So
17 we said, okay, we need to start asking people if they'll
18 forensically image their phones.

19 And so CBP started developing this questionnaire.
20 They were in a much tougher situation than ICE, ICE got theirs
21 obviously done earlier because they had much less agents and
22 they surveyed their agents, they had them sign these
23 declarations, nobody used their personal phones so the ICE
24 problem resolved itself. Nobody used their personal phones so
25 there was no need for imaging. But for the CBP we know that

1 people did and so they had to develop this questionnaire.

2 I would direct -- I don't know if Your Honor has had
3 a chance to take a good look at that questionnaire, but it's a
4 very comprehensive questionnaire, partly because this order
5 came down for a limited discovery, but it doesn't make sense to
6 do this once for limited discovery and then do it again for
7 regular discovery, so the agency wanted to get this all done in
8 one fail swoop so they did a very robust questionnaire to be
9 able to handle this forensic imaging issue in one swoop and not
10 have to do it for a limited discovery and then do it again
11 later for regular discovery.

12 And yes, it did take time to develop that
13 questionnaire, because there were concerns about the unions,
14 they did have to look at the CBA to see what was permissible
15 and what was not, they had to look at their internal policy to
16 see what was permissible and what -- and so yes, it did take
17 some time to develop the questionnaire, they wanted to do this
18 right. You know, if they had just gone to agents and said,
19 give us your phones for imaging and people refused, that isn't
20 going to be very successful.

21 I mean not a lot of people are just going to hand
22 over their phone to be picked apart by a court. They wanted to
23 do this in a way that was reasonable to collect information,
24 and so they combined it with this request to do a more robust
25 collection to be submitting any work product on a personal

1 phone into Government repositories.

2 And so yes, they did take a larger approach to doing
3 this, but again, this is not sanctionable conduct, the agency
4 here is not disregarding the court order, it's a very difficult
5 order to comply with and they have taken reasonable steps to
6 try and comply with it.

7 **THE COURT:** Okay. And I do understand your arguments
8 on that point, I just want to go back to make sure I
9 understand, because part of the concern with how long this has
10 taken, I mean obviously the litigation is going on, but it's
11 also a question of information is disappearing in that -- the
12 course of that time, so why I just want to make sure, do you
13 know whether there was ever initially -- back, it would have
14 been before January 16th, I'm not sure what the -- probably --
15 I don't know, when -- you know, early on when discovery was
16 starting in this case -- but at some point whether the agents
17 were notified you need to preserve everything on your devices?

18 **MR. ROBBINS:** Yes, we were -- the Government sent out
19 litigation holds in this case to preserve all evidence relating
20 to this litigation. We sent -- and we've repeatedly done that
21 on a periodic basis.

22 As far as --

23 **THE COURT:** But would you know, was the litigation
24 hold passed onto the field agents?

25 **MR. ROBBINS:** CBP issued it to -- I mean I know they

1 sent out emails to all of the agents in question to all the
2 people at Operation At Large.

3 Now, these agents aren't attorneys, they sometimes
4 receive emails and sometimes they miss it or sometimes they
5 don't understand its significance.

6 I know that in the questionnaire the agency once
7 again -- if you take a look at that questionnaire -- it does
8 have a lot about regarding auto deletion and the specific apps
9 that were used, so the agency in the questionnaire tried to
10 make sure that it was doing this in a more robust manner to
11 make sure that things weren't being deleted, but you know -- I
12 don't -- I mean the litigation holds have been sent out.

13 Both DOJ has sent them to both CBP and ICE and CBP
14 and ICE have both -- have sent out the litigation holds to the
15 various agents.

16 **THE COURT:** And -- but do you know when those were
17 first sent out to the agents?

18 **MR. ROBBINS:** The very first ones were probably --
19 were far prior to this order, I mean it was back when the
20 litigation first began, but there have been subsequent
21 litigation holds issued periodically.

22 I can -- if Your Honor would like me to supplement
23 this I can get you the dates of the various litigation holds in
24 this case.

25 **THE COURT:** That would be helpful, especially, you

1 know, just in -- and again, I appreciate that the holds have
2 been sent broadly to ICE and CBP, it's -- I'm concerned more
3 with whether how the word got through to the individual agents.

4 **MR. ROBBINS:** Yeah, to be clear, for example, the
5 individual who deleted the picture on his phone of the target
6 in question, he deleted that the day of the operations, that
7 was before --

8 **THE COURT:** No, that I understand. I'm more
9 concerned with, you know, not that sort of thing that he had
10 just for the day, and you know, deleted that day, but you know,
11 other lost information more along the way here.

12 All right. And then I guess the last question I have
13 for you now, what is the status with respect to Mr. Bovino's
14 phones?

15 **MR. ROBBINS:** So the Government initially produced a
16 phone -- just to give you some background.

17 So for the Government phones the Government made a
18 mistake with the technology. We initially converted the phones
19 to a PDF format, and the reason we did that was because if --
20 there's a different format you can revert to which is called
21 RSMF, which is a short messaging format, but the Government was
22 concerned that by doing that it was going to miss things on the
23 phone that were relevant to discovery, and it requires multiple
24 extractions.

25 The RSMF format only -- it'll capture audio and video

1 that are within a text chain, but it won't capture other things
2 on the phone, and so a set -- another extraction has to be
3 done, and given our timelines we did it to PDF, and that was a
4 poor decision in retrospect, because -- and it was basically
5 because we didn't really understand the technology.

6 What ended up happening is we ended up producing
7 hundreds of thousands of documents, the PDF was a very poor
8 conversion, there were a lot of repetitive documents, it would
9 take out like executable files and convert them into source
10 code, and we spent -- we wasted a lot of time reviewing many,
11 many documents on the PDFs.

12 The plaintiffs contacted us and asked to redo it in
13 RSMF format and so we started testing that. Our office didn't
14 even have the capability of doing that until a few months ago
15 so we weren't really familiar with the technology, but we now
16 realize that's a vastly supervisor way so we do think we've
17 resolved some of the volume issues. Not all of them, there's
18 still a lot, but it's a much better format for producing the
19 phones.

20 So we have stopped doing the PDFs and we're redoing
21 the phones in RSMF and we've worked out a deal with the
22 plaintiffs to do a rolling production of that for the
23 Government phones.

24 The reason I say that is because with respect to the
25 Bovino phone, that was originally produced in the PDF, but I --

1 we are reproducing that in RSMF format, it's actually in our
2 lab, I believe it's ready for review, we were ingesting it over
3 the weekend in RSMF format, and so the Government phone the
4 being produced.

5 Now, there's a complication with the Bovino phone
6 because he lost his Government phone several months ago and he
7 was issued add new phone, and the agency -- I don't know -- I
8 don't want to make any misrepresentations -- but as far as I
9 understand the agency pinged the phone and tried to find the
10 location of the lost phone, sent people out to the location
11 where it last pinged and were unable to find the phone.

12 That's my understanding, I want to confirm that with
13 the agency, and they are confirming -- in preparation for
14 today's hearing I asked if they could confirm that and I'm
15 trying to find out, but they -- but it's my understanding they
16 have not been able to collect the phone that was originally
17 lost.

18 When somebody gets -- loses a Government phone they
19 get issued a new phone and he did that at some point, I believe
20 it was in January where he lost his phone. The agency has
21 attempted to locate it, but has not been able to locate that
22 phone.

23 But the phone that they do have is being reproduced
24 in the RSMF format, so I'm hoping that will resolve some of the
25 issues with the production of that phone.

1 As far as his personal phone the agency -- this Court
2 had an order issued ordering that his personal phone be imaged,
3 and the agency at his exit interview gave him the court order
4 which told him that he was supposed to provide his personal
5 phone and he refused to provide his personal phone.

6 He also indicated, according to CBP, CBP advised me
7 that he indicated that he did not use his personal phone at the
8 operations and that he asserted that, but again, they gave him
9 the court order, and this is part of the problem with custody
10 and control, the agency has no way to compel if somebody
11 declines to provide their personal phone, and so they attempted
12 to comply with the order, but they can't compel somebody to
13 provide their phone because it's not in that you are custody or
14 control.

15 **THE COURT:** All right. Well and I know that is
16 something that the plaintiffs may be raising sort of separately
17 in a different matter, but --

18 **MR. ROBBINS:** That's my misunderstanding, yes.

19 **THE COURT:** All right. But let me -- Ms. Worth, let
20 me give you an opportunity to be heard now.

21 **MS. WORTH:** Thank you, Your Honor, I would like to
22 address some of what's been discussed.

23 So first of all, Your Honor, none of what you just
24 heard is compliance with the imaging order. The order requires
25 imaging. Mr. Robbins is saying no reasonable person could say

1 that they're not trying to comply with an imaging order, but
2 what Your Honor heard is that they didn't even show the order
3 to their employees and say, this order requires me to image
4 your phone, give me your phone so I can image the phone. That
5 didn't happen. Still to this day it hasn't happened.

6 In terms of what they have been doing, which is maybe
7 asking some questions, maybe conducting some conversations with
8 officers, I don't understand why none of that happened over the
9 past several months either immediately when the order came down
10 -- well actually before the order came down, then after the
11 order came down, and then even during the period when there was
12 a stay.

13 This issue about the stay of the order as to personal
14 phones I think is a misdirect, Your Honor, because that stay
15 was temporary and it was explicitly so that the parties could
16 meet and confer about how many of the personal phones were
17 going to need to be submitted for imaging. It wasn't to see if
18 maybe we would just forget about the whole phone thing and say
19 never mind, that was never contemplated.

20 So the idea that the agencies would just sit on their
21 hands during the stay and not even conduct any of this kind of
22 background preparation for such time that the order came back
23 into effect without a stay, I don't think that that shows any
24 attempt to comply with the order. And none of what you just
25 heard happened until we moved for contempt.

1 So really the record is very clear that there was a
2 disregard for the Court's order until plaintiffs finally moved
3 for sanctions, and that's just not sustainable, Your Honor,
4 it's not a way that we can continue to litigate this case, and
5 I think that it shows why a coercive sanction is the only
6 remedy that's reasonably calculated to achieve compliance with
7 the order.

8 You know, there were a few other representations that
9 were made very specifically that I'd like to address, Your
10 Honor.

11 One was that CBP's in-house lab requires consent, and
12 I think Your Honor pointed this out, but there's a court order
13 that requires the imaging. So I don't know what that consent
14 policy is, but there's a court order. That consent policy also
15 has not been produced.

16 So again, I'll go back to the fact that this is their
17 burden and production and their burden of persuasion.
18 Plaintiffs have met their burden to show the order to show
19 cause should issue, they're raising an affirmative defense of
20 impossibility, they're bringing up this consent requirement
21 from their lab, they have not substantiated that. We've got a
22 declaration from a technologist at a lab saying that they need
23 to consent, there's been absolutely nothing produced that
24 substantiates that, but there's a court order in place.

25 Additionally, Your Honor, counsel said that ICE

1 conducted interviews with the officers and that those
2 interviews resulted in the declarations attesting to the lack
3 of phone use. This is the first we're hearing about the
4 interviews. Your Honor may recall that our proposal during the
5 meet and confer included custodial interviews and the agencies
6 said no.

7 So I don't know what these interviews were, but
8 there's no declaration substantiating that they in fact
9 occurred, and so all we have is this one unauthenticated
10 example declaration saying I did not use any personal phone at
11 the operation.

12 So that's all the indicia of sort of improper
13 coaching for what the testimony should be, and on a very narrow
14 issue that's not actually addressing this question about
15 custody or control.

16 The -- what you heard about CBP's approach to
17 supposed compliance with the order is to ask agents who used
18 their personal phones to do self-collection, and Your Honor,
19 self-collection is why we have the imaging order. It did not
20 work, it's not reasonable, and that's not compliance or
21 attempted compliance with the imaging order.

22 What you've heard is that the vast majority of CBP
23 agents are using their phone not just for work purposes but in
24 the field. So you know, very relevant evidence that we need
25 for our record here is in danger of being lost and it's not

1 being collected in a forensically sound manner and in a manner
2 where counsel is actually reviewing it and able to make these
3 responsiveness determinations.

4 What you saw in that CBP questionnaire is this really
5 vague sort of directive, like go ahead and send any Government
6 records to us. That's not going to suffice, Your Honor, and
7 it's certainly not compliance with the existing court order
8 which already requires imaging.

9 And also, Your Honor, I'd add, we haven't received
10 any of that either. You know, it's not like the Government
11 said, okay, we're not -- we're going to disregard the imaging
12 order but we'll get you a bunch of stuff any way, they haven't
13 done that. So I don't know really understand why we're talking
14 about this self-collection idea when, you know, that hasn't
15 even happened.

16 You also heard a representation that CBP policy
17 doesn't allow the phone use and doesn't allow them to take the
18 phones for imaging purposes. None of those policies were
19 produced. Collective bargaining agreements also were not
20 produced. We've asked for them, to the extent that they're
21 relevant we'd like to see them, they haven't been produced, and
22 as Your Honor point the out, you haven't heard from the union.

23 There was a comment that the imaging takes some time.
24 Yeah, it takes a few hours. As I note in my declaration we've
25 imaged personal devices of witnesses in this case, they also

1 get calls from their family, it's entirely possible to do in
2 the course of an afternoon, and it's pretty routine.

3 You know, as to litigation holds, Your Honor, I mean
4 that's been a huge issue. We've got extensive testimony on
5 this, and if you need sort of anymore submissions on it we can
6 get that for you, but the idea that they sent out a lit hold
7 with any -- with speed is -- has just not been substantiated.

8 You also did not hear from counsel whether that
9 litigation hold extended to personal phones, and you know, the
10 testimony from agents really suggests that either they did not
11 receive a litigation hold or they did not -- it was not made
12 salient for them such that there were no sort of follow-up
13 conversations about what that meant or verifications that they
14 were turning off auto delete either before or after the Court's
15 order came down.

16 So we are concerned that this data is being lost, and
17 that's why, you know, we put in the illustration of
18 Mr. Bovino's devices being allowed to leave the agency, the
19 delays in following court orders are actively causing prejudice
20 to the plaintiffs here.

21 In terms of Mr. Bovino's device there are several
22 unanswered questions, just while we're on that subject, Your
23 Honor. We asked the same question as Your Honor I think two
24 weeks ago what happened with the phone that he lost when he was
25 sort of recalled from the field I guess in January, and we have

1 not received an answer to that question in two weeks.

2 We were told originally that the agency was trying to
3 locate it and that there may have been data in a Cloud backup
4 or you know other ways of sort of accessing data that may have
5 still been on that phone or accessible to the agency. We
6 haven't heard a peep about that since.

7 And also there was a statement that during
8 Mr. Bovino's exit interview he supposedly said that he didn't
9 use the device at operations. Again, I think there's this sort
10 of aligning of the language of the order and what it requires,
11 it's not phone uses during a particular operation, but also
12 that's not what we were told that he said, Your Honor, and you
13 know, we will have to move on the question of lost ESI from
14 Mr. Bovino at another time, but just to correct the record, we
15 were told that Mr. Bovino said he didn't have Government
16 records on his personal phone. So I don't know what that
17 means, we asked the agency what that means and they said, we
18 don't know, you'll have to ask Mr. Bovino.

19 So I don't think that we have any information about,
20 you know, what was actually said there, and this just goes back
21 to the issue, which is that the Government has been saying they
22 don't have PCC over these phones, but in fact, Your Honor, they
23 didn't even try to find out what's on these phones until after
24 we moved for contempt.

25 **THE COURT:** All right.

1 Thank you. Mr. Robbins, anything further?

2 **MR. ROBBINS:** Well yes, I do want to rebut this
3 notion that nothing happened until after the plaintiffs moved
4 to contempt -- for contempt.

5 The -- it is true that the questionnaire was not sent
6 out until after the plaintiffs' move, but the development of
7 that questionnaire began before any movement for contempt.

8 As I said before, there are significant
9 considerations for the agency in trying to avoid sprawling
10 litigation here. Unfortunately -- I mean one of the unions has
11 already filed a grievance on this issue and the agency has been
12 trying to develop this carefully in a measured way to avoid
13 this from getting out of control with respect to its unions.

14 And so yes, the questionnaire didn't go out until
15 after the plaintiffs had contacted us, but the preparation of
16 that and looking into this and trying to develop a plan for
17 trying to comply with the order began along before that.

18 I would also point out the collection of ESI occurred
19 before the Court's order in March. We produced WhatsApp chats,
20 for example, on screenshots from the personal phones before
21 that, before the order came down. So this isn't a situation
22 where the Government wasn't collecting information on the
23 personal phones.

24 And I realize that it has taken some time, but that
25 is because this is a difficult process and the agency is trying

1 to do it in a reasonable way. But again, this is not disregard
2 of a court order.

3 **THE COURT:** All right.

4 **MS. WORTH:** Your Honor, I'm sorry, very briefly?

5 **THE COURT:** Yeah, just briefly, if you --

6 **MS. WORTH:** Your Honor, just on that collection
7 issue. I think that counsel may be referring to some
8 collection and production that took place the night before
9 depositions, so that's only of the handful of people who were
10 actually deposed.

11 I'm talking about the evidently hundreds of people
12 who have relevant ESI who have told the agency they have
13 relevant ESI, and there's absolutely nothing in the record
14 indicating that auto delete was suspended, that they got lit
15 holds, that they were contacted, and that they have been
16 collecting responsive data either with or without attorney
17 oversight.

18 Thank you.

19 **THE COURT:** All right. Ms. Hansen, did you wish to
20 be heard? I've -- you've been sitting here patiently, but I
21 wanted to give you an opportunity.

22 **MS. HANSEN:** No, thank you, Your Honor, we have
23 nothing to add.

24 **THE COURT:** Okay. Thank you. Anything further,
25 Mr. Robbins?

1 **MR. ROBBINS:** Nothing further, Your Honor.

2 **THE COURT:** Okay. So I'm going to take this under
3 submission and go back and look over everything carefully.

4 It would be helpful to see at least from defendants
5 some supplemental submission with respect to the litigation
6 holds.

7 I'm just thinking, you know -- well to the extent, I
8 mean I'll allow both sides to do briefing if they want, but it
9 should be no more than five pages of briefing, I'm not really
10 sure there's anything more to brief at this point, but if
11 there's, you know, additional evidence or something you want to
12 explain that, especially with respect to when litigation holds
13 were issued to the agents and what form those took that would
14 be helpful to see that information and there's no -- I mean in
15 terms of exhibits there's no page limit, it's just I'm thinking
16 to the extent you needed any briefing on that to explain the
17 submission, or you know, any points that came up here today you
18 wanted to clarify, but I'm not really expecting there would
19 need to be much of that from either side.

20 So let me ask Mr. Robbins how long you think you
21 would need to collect information about those litigation holds.

22 **MR. ROBBINS:** I think a few days just to get the
23 agency to provide what -- I can -- it won't take long for me to
24 provide the dates that DOJ provided its litigation holds, but
25 to give the agency a few days to respond to make sure that they

1 can collect what they sent.

2 **THE COURT:** Right. Okay. So I don't know, is next
3 Monday, next Tuesday for a deadline --

4 **MR. ROBBINS:** That should be fine.

5 **THE COURT:** -- that's fine? Okay.

6 **MS. WORTH:** Your Honor, if I may, just because of the
7 urgency of getting this process going, it seems like Friday
8 might be a reasonable deadline if they're simply submitting
9 when they issued litigation holds.

10 I did want to just clarify, Your Honor, whether -- to
11 the extent that there's leave to submit any kind of brief Your
12 Honor is limiting that to any commentary on the litigation hold
13 issue, right, this is not sort of some new supplemental
14 briefing?

15 **THE COURT:** I mean that's really what I had in mind,
16 I'm not sure what else the parties would -- I mean I feel like
17 that what was submitted already is thorough, so.

18 **MS. WORTH:** Yes.

19 **MR. ROBBINS:** Your Honor, may I --

20 **THE COURT:** Yes.

21 **MR. ROBBINS:** -- say something?

22 On what has already been submitted I know there was
23 an issue where the plaintiffs filed objections to the
24 Government's supplemental brief. The plaintiffs have alleged
25 that our brief was untimely, but I would respectfully submit to

1 the Court that our brief was timely filed.

2 **THE COURT:** Right. No, I -- yeah, I do believe your
3 brief was timely filed. I think that the plaintiffs were off
4 in terms of what that order required in October. It was -- I
5 think there was a four-day deadline maybe to exchange
6 information for the joint stipulation, but really you had until
7 seven days before the hearing to file. So I don't think that
8 the defendants' supplemental brief was untimely.

9 **MR. ROBBINS:** Okay, Your Honor. Thank you.

10 **THE COURT:** All right. So well let me ask
11 Mr. Robbins though, in terms of the plaintiffs' request that
12 this issue on the litigation hold, can you provide that
13 information by Friday, is that deadline workable?

14 **MR. ROBBINS:** What's today, Tuesday? I think it
15 should be workable, yes.

16 **THE COURT:** Okay. So if you can get anything in on
17 that by Friday and then we'll go from there.

18 **MS. WORTH:** And then --

19 **MR. ROBBINS:** Okay.

20 **MS. WORTH:** -- Your Honor, this would be only if
21 absolutely necessary, but to the extent their submission is
22 substantive and warrants any response could we submit that
23 response Monday?

24 **THE COURT:** Well I'm not -- I mean I wasn't really
25 seeing this as more of a back and forth kind of response, I was

1 thinking just if either side had just additional information to
2 submit that it would be done simultaneously by Friday.

3 **MS. WORTH:** Okay.

4 **THE COURT:** All right.

5 **MS. WORTH:** Understood.

6 **THE COURT:** All right, if there's nothing then
7 further I will let you go and I'll look out for that additional
8 information.

9 **MS. WORTH:** Thank you, Your Honor.

10 **THE COURT:** All right.

11 **MR. ROBBINS:** Thank you, Your Honor.

12 **THE COURT:** Thank you all.

13 **THE CLERK:** We are now adjourned.

14 **(Proceeding adjourned at 12:02 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



March 28, 2026

Signed

Dated

TONI HUDSON, TRANSCRIBER