

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WILSON RODRIGUEZ MACARENO,

Plaintiff,

v.

JOEL THOMAS, *et al.*,

Defendants.

Case No. 2:18-cv-00421-RAJ

**ORDER GRANTING
PLAINTIFF'S MOTION FOR A
PROTECTIVE ORDER AND
DENYING DEFENDANT'S
MOTION TO COMPEL**

I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion for a Protective Order (Dkt. # 12) and Defendants' Motion to Compel (Dkt. # 15). For the reasons stated below, Plaintiff's Motion is **GRANTED** and Defendants' Motion is **DENIED**.

II. BACKGROUND

On February 8, 2018, Plaintiff Wilson Rodriguez Macareno alleges that he was unlawfully arrested after calling the police about a trespasser on his property. Dkt. # 1, ¶ 1. Plaintiff alleges specifically that after calling 911, the Defendant Officers with the Tukwila Police Department arrived a few minutes later and spoke with both him and the suspected trespasser. *Id.*, ¶ 29. The Defendant Officers are also alleged to have asked Plaintiff for his identification, which he provided in the form of a valid Washington State driver's license. *Id.*, ¶ 30.

During the encounter, Plaintiff alleges that Defendant Officer Joel Thomas relayed

1 his identifying information over radio dispatch as well as the information of a co-worker
2 who was also present at the scene. *Id.*, ¶ 32. The dispatcher allegedly reported that Plaintiff
3 was unlawfully present in the United States due to a prior order of removal or exclusion.
4 *Id.*, ¶ 33. Plaintiff alleges, however, that none of the Defendant Officers received
5 information about any judicial arrest warrants for him. *Id.*, ¶ 34.

6 Upon completing their investigation into the trespass, the Defendant Officers
7 allegedly released the trespassing suspect with a warning not to return the property. *Id.*, ¶
8 39. Plaintiff contends that, even after the Defendant Officers completed their investigation,
9 he was not free to leave the encounter. *Id.*, ¶ 40. One of the Defendant Officers allegedly
10 told Plaintiff that they were calling to see if immigration wanted him and would detain him
11 until they heard back. *Id.*, ¶ 43. Thereafter, the Defendant Officers are alleged to have
12 searched Plaintiff's person and confiscated his wallet after handcuffing him.

13 Defendant Officer Thomas is alleged to have accessed data transmitted from A
14 Central Computerized Enforcement Service System Operator ("the ACCESS Operator"),
15 which showed an administrative warrant removal from the United States for Plaintiff and
16 contacted the Immigration and Customs Enforcement ("ICE") Law Enforcement Support
17 Center. *Id.*, ¶¶ 45, 47. Plaintiff alleges he was already detained in handcuffs while
18 Defendant Officer Thomas awaited communication from ICE. *Id.*, ¶ 50. At some point
19 thereafter, ICE officer Mark Bailey allegedly contacted Defendant Officer Thomas and
20 requested the Defendant Officers take Plaintiff into custody on ICE's behalf. *Id.*, ¶ 48.
21 Defendant Officers are alleged to have then voluntarily transported Plaintiff to the ICE
22 field office in Seattle. *Id.*, ¶ 49. Plaintiff alleges that soon thereafter he was transported to
23 the Northwest Detention Center in Tacoma. *Id.*, ¶ 60.

24 On March 21, 2018, Plaintiff filed a Complaint against the Defendant Officers and
25 the City of Tukwila seeking damages, an injunction, and declaratory relief for the alleged
26 Fourth Amendment violation. Dkt. # 1. Defendants filed their Answer on April 19, 2018.
27 Dkt. # 9. Plaintiff moved for a Protective Order on August 30, 2018 to prevent discovery

1 primarily relating to his immigration status, which he argues does not pertain to
2 Defendants' liability. See Dkt. # 12 at 1. That same day, Defendants moved to compel
3 responses to discovery requests regarding Plaintiff's immigration information. Dkt. # 15
4 at 3. The parties completed briefing on the motions on September 14, 2018. Dkt. ## 19,
5 20, 21, 22. These motions are now before the Court.

6 **III. LEGAL STANDARD**

7 Federal Rule of Civil Procedure 26 permits parties to obtain discovery about any
8 nonprivileged matter that is relevant to any party's claim or defense and proportional to the
9 needs of the case. Fed. R. Civ. P. 26(b)(1). Considerations regarding the scope of
10 discoverable information include the importance of the issues at stake in the action, the
11 amount in controversy, the parties' relative access to relevant information, the parties'
12 resources, the importance of the discovery in resolving the issues, and whether the burden
13 or expense of the proposed discovery outweighs its likely benefit. *Id.*

14 Under Rule 26(c), courts may, for good cause, limit discovery to protect a party
15 from "annoyance, embarrassment, oppression, or undue burden" and forbid inquiry into
16 certain matters. Fed. R. Civ. P. 26(c)(1)(D). The burden of persuasion is on the party
17 seeking the protective order to show good cause by "demonstrating harm or prejudice that
18 will result from the discovery." *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064 (9th Cir.
19 2004). "If a court finds a particularized harm will result from disclosure of information to
20 the public, then it balances the public and private interests to decide whether a protective
21 order is necessary." *Phillips ex rel. Estates of Byrd v. Gen. Motors. Corp.*, 307 F.3d 1206,
22 1210–11 (9th Cir. 2002). Ultimately, the decision to issue a protective order lies within
23 the court's discretion. *Childress v. Darby Lumber, Inc.*, 357 F.3d 1000, 1009 (9th Cir.
24 2004).

25 **IV. DISCUSSION**

26 Plaintiff seeks a protective order prohibiting inquiry into his immigration status,
27 addresses, and employment history. Dkt. # 12 at 6.

The parties have diverging views on the relevance and importance of Plaintiff's immigration history to the merits of his Fourth Amendment claim. Plaintiff contends that the requested information does not bear on Defendants' liability or affirmative defenses, as any information they did not already have at the time of the seizure is not relevant to the claim. *Id.* at 4. In particular, Defendants seek the following information:

- INTERROGATORY NO. 5: Identify the date you first entered the United States, and the state and closest city to your point of entry.
- INTERROGATORY NO. 6: For any subsequent entries into or departures out of the United States, please list the date of entry/departure and the state and closest city to your point of entry/departure.
- INTERROGATORY NO. 7: Have you ever been the subject of any immigration case or hearing in any state in the United States? If so, please include the court, the date you learned about the case or hearing, and the case number. Please include any hearings or cases you are aware of that involve you in any way, regardless of whether you actually attended the hearing.
- INTERROGATORY NO. 8: Are you currently, or have you ever been, aware of any court or judge that has ordered you to be removed from the United States in any manner? If so, please list:
 - a) When you became aware of the order(s);
 - b) How you became aware of the order(s);
 - c) When each order was entered (if known).
- INTERROGATORY NO. 13: Have you ever had a final order of removal from the country entered against you? If so, please identify the court and jurisdiction the final order was entered in.
- REQUEST FOR PRODUCTION NO. 5: Please provide copies of any orders of removal identified in response to Interrogatory No. 13, above.
- REQUEST FOR PRODUCTION NO. 6: Please provide copies of any documents relating in any way to your current immigration case, including those relating to the status of your case.

Dkt. # 15 at 3–4.

1 Plaintiff argues that both he and the public interest would be harmed by compelling
2 the requested discovery. Specifically, Plaintiff claims that disclosing information about
3 his immigration status will not only have a chilling effect on him, but also on other potential
4 immigrants and civil rights plaintiffs who fear deportation or criminal proceedings by
5 choosing to enforce their constitutional rights. *See* Dkt. # 12 at 3; Dkt. # 21 at 3, 6.

6 Defendants contend, however, that Plaintiff's immigration history is directly
7 relevant to his Fourth Amendment claim. According to Defendants, Plaintiff was
8 unlawfully present in the United States due to an order of removal and had an immigration
9 violation for failure to appear for removal. Dkt. # 15 at 6. Therefore, Defendants argue
10 they are entitled to discover evidence demonstrating that they had reasonable suspicion to
11 believe Plaintiff had engaged in criminal behavior. *Id.* at 5–6. In Defendants' view, the
12 discovery they now seek may confirm that the information they received about Plaintiff on
13 the night of the encounter was accurate. *Id.* at 6. Defendants also contend that Plaintiff's
14 immigration history is relevant to his alleged emotional distress damages. *Id.* They argue
15 that information about Plaintiff's immigration history may show that he suffered emotional
16 distress because of his undocumented status, the order of removal issued against him, and
17 the likelihood that ICE would seek to send him back to his home country. *Id.* at 7.
18 Defendants also add that the law enforcement exception to the Privacy Act of 1974, 5
19 U.S.C. § 552a(b)(7), applies here and entitles them to Plaintiff's immigration history. *Id.*
20 at 8–9.

21 To grant a protective order, the Court must find that Plaintiff shows good cause by
22 “demonstrating harm or prejudice that will result from the discovery.” Fed. R. Civ. P. Rule
23 26(c); *Rivera*, 364 F.3d at 1063; *Estates of Byrd*, 307 F.3d 1206, 1210–11 (9th Cir. 2002).
24 Here, Plaintiff states here that permitting discovery into his immigration status would have
25 a chilling effect on him—in particular, the concern that this discovery may be used against
26 him in immigration proceedings. Dkt. # 21 at 6. He also notes that compelling discovery
27 related to both his immigration status and employment history may deter future plaintiffs

1 from bringing meritorious claims and may result in improper probing into his immigration
2 status and that of his family members, neighbors, and acquaintances. Dkt. # 12 at 3, 6.
3 The Ninth Circuit has discussed the chilling effect that discovery into a plaintiff's
4 immigration status can have and expressed it "unacceptably burdens the public interest."
5 *Rivera*, 364 F.3d at 1065 (noting the substantial burden discovery into a plaintiff's
6 immigration status can have on civil rights actions). Accordingly, the Court finds that good
7 cause exists to protect Plaintiff from discovery into his information related to his
8 immigration status given the substantial burden that would result.

9 Moreover, Defendants fail to show that the requested discovery is patently relevant
10 to the substance of Plaintiff's claims. Here, Plaintiff alleges that he was wrongfully
11 detained after the encounter relating to the trespass ended. The issue is whether the
12 information Defendants had at the time, such as the data transmitted from the ACCESS
13 Operator and the information from the radio dispatcher, provided reasonable suspicion for
14 a stop and probable cause for a detainment. *See Devenpeck v. Alford*, 543 U.S. 146, 152
15 (2004) ("Whether probable cause exists depends upon the reasonable conclusions to be
16 drawn from the facts known to the arresting officer at the time of the arrest."); *cf. United*
17 *States v. Montoya de Hernandez*, 473 U.S. 531, 559 (1985) (explaining that "post hoc
18 rationalizations" have no place in Fourth Amendment jurisprudence). In opposing
19 Defendants' motion, Plaintiff also states that he has already provided Defendants with a
20 copy of the removal order issued by the immigration court. Dkt. # 21 at 5. Thus, further
21 inquiry into Plaintiff's immigration history is only tenuously relevant and outweighed by
22 the chilling and prejudicial effect that would occur.¹ *See Rivera*, 364 F.3d at 1065. As to
23 Defendants' argument that the additional information sought is relevant to Plaintiff's
24 emotional distress damages, Defendants have not demonstrated that the probative value of
25 the additional information outweighs the substantial burden. Defendants already have in

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27 ¹ This includes information that Defendants received via subpoena from federal agencies,
28 including the Department of Justice. *See* Dkt. # 22 at 6.

1 their possession Plaintiff's removal order and the testimony of the Defendant Officers who
2 claim Plaintiff admitted to his undocumented status on the night of the incident. See Dkt.
3 # 19 at 8. Finally, Defendants fail to show that the law enforcement exception of the
4 Privacy Act permits them to seek information from private litigants. Dkt. # 15 at 9 (citing
5 *United States v. W.R. Grace*, 401 F. Supp. 2d 1093 (D. Mont. 2005) (permitting federal
6 prosecutors to obtain patient medical records from a federal agency in a criminal case)).

7 Accordingly, the Court finds that permitting discovery into Plaintiff's immigration
8 history, as well as his employment and address history, would produce a chilling effect that
9 could bear upon Plaintiff's ability to effectuate his rights. Additionally, the interest
10 Defendants have in discovering additional information into Plaintiff's immigration status
11 does not outweigh the substantial burden articulated above. Therefore, Plaintiff's Motion
12 for a Protective Order (Dkt. # 12) is **GRANTED**. Defendants' Motion to Compel (Dkt. #
13 15) is **DENIED**.

14 V. CONCLUSION

15 For the reasons stated above, the Court **GRANTS** Plaintiff's Motion for a
16 Protective Order (Dkt. # 12) and **DENIES** Defendants' Motion to Compel (Dkt. # 15).

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18 DATED this 29th day of January, 2019.

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22 The Honorable Richard A. Jones
23 United States District Judge
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