

Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Wilson RODRIGUEZ MACARENO,

Plaintiff,

v.

Joel THOMAS, in his official and individual capacities; Craig GARDNER, in his official and individual capacities; Peter TIEMANN, in his official and individual capacities; Arthur STEPHENSON, in his official and individual capacities; and CITY OF TUKWILA,

Defendants.

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

**PLAINTIFF’S MOTION FOR PROTECTIVE ORDER**

Noted on Motion Calendar:  
September 7, 2018

ORAL ARGUMENT REQUESTED

**I. INTRODUCTION**

Plaintiff Wilson Rodriguez Macareno (“Mr. Rodriguez”) respectfully moves this Court for a protective order pursuant to Fed. R. Civ. P. 26(c)(1)(D) to prevent discovery that may relate to his immigration status, which does not pertain to Defendants’ liability and is only at best tenuously germane to the question of damages.

## II. BACKGROUND

1  
2 Mr. Rodriguez filed the Complaint in this action alleging one cause of action: the  
3 violation of civil rights guaranteed by 42 U.S.C. § 1983. Dkt. 1 ¶¶76-92. He seeks declaratory  
4 and injunctive relief, as well as damages, resulting from the Defendants' violation of his  
5 rights—specifically, for seizing him on February 8, 2018, without probable cause or a judicial  
6 warrant. *Id.* ¶92.

8 On June 19, 2018, Defendants served on Mr. Rodriguez their First Set of Interrogatories  
9 and Requests for Production. Their inquiries included, inter alia, requests for information and  
10 documents relating to any entries into the United States, any immigration court cases involving  
11 Mr. Rodriguez, and any removal orders issued against him. Kang Decl. ¶2. Mr. Rodriguez  
12 served his discovery responses on July 19, 2018, objecting to these requests on grounds of  
13 relevance and proportionality, and notifying Defendants of his intention to seek a protective  
14 order pursuant to Fed. R. Civ. P. 26(c)(1)(D) to protect him from annoyance, embarrassment,  
15 oppression, or undue burden. *Id.* ¶3. In addition, Mr. Rodriguez notified Defendants that he was  
16 not seeking compensatory damages for lost wages. *Id.* ¶3.

19 On August 13, 2018, Defendants notified Mr. Rodriguez of their intention to issue a  
20 subpoena to the United States Department of Justice commanding production of “[a]ny orders  
21 by an immigration judge regarding Wilson Rodriguez Macareno . . . including, but not limited  
22 to, any and all Removal orders or orders related to any appeals to Mr. Macareno’s removal  
23 order” and “any orders in Mr. Macareno’s ‘A-File.’” Kang Decl., Ex. A, at 7; *see also* Kang  
24 Decl. ¶5. Mr. Rodriguez in good faith conferred with Defendants in an effort to resolve the  
25 dispute without court action by explaining his position and sending Defendants a copy of his  
26 removal order in exchange for an agreement to withdraw the subpoena. Kang Decl. ¶¶6-7;  
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1 Aldana Decl. ¶¶3-7. Defendants agreed to withdraw the subpoena pending their assessment of  
2 their “need [for] additional records from [the Department of Justice]” after reviewing the  
3 removal order. Aldana Decl. ¶5.

4 The parties, however, have not been able to reach an agreement as to the discoverability  
5 of any other information relating to Mr. Rodriguez’s immigration status. As Defendants intend  
6 to depose Mr. Rodriguez, Aldana Decl. ¶4, and may seek additional discovery into immigration  
7 status, including by reissuing their subpoena, Mr. Rodriguez seeks relief from this Court.  
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### 9 III. ARGUMENT

#### 10 A. This Court should enter a protective order forbidding inquiry into Mr. 11 Rodriguez’s immigration status information.

12 Courts may, for good cause, limit discovery to protect a party from “annoyance,  
13 embarrassment, oppression, or undue burden” and forbid inquiry into certain matters. Fed. R.  
14 Civ. P. 26(c)(1)(D). The party seeking the order must demonstrate the harm or prejudice that  
15 would result from the discovery. *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1064 (9th Cir. 2004).  
16 Here, as in *Rivera*, both Plaintiff and the public interest would be harmed by permitting the  
17 discovery requested. Disclosure of immigration status information not already known to  
18 Defendants is likely to have a chilling effect not only on Mr. Rodriguez, but on other potential  
19 immigrants and civil rights plaintiffs who fear risking deportation or criminal proceedings by  
20 choosing to enforce their constitutional rights:  
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23 Even documented workers may be chilled by the type of discovery at issue  
24 here. Documented workers may fear that their immigration status would be  
25 changed, or that their status would reveal the immigration problems of their  
26 family or friends; similarly, new legal residents or citizens may feel  
27 intimidated by the prospect of having their immigration history examined in  
28 a public proceeding. Any of these individuals, failing to understand the  
relationship between their litigation and immigration status, might choose to  
forego civil rights litigation. The chilling effect such discovery could have on  
the bringing of civil rights actions unacceptably burdens the public interest.

1 *Id.* at 1065.

2 On the other hand, the immigration-related documents sought by Defendants in no way  
3 pertain to their liability or affirmative defenses in this action. In bringing this action, Mr.  
4 Rodriguez challenges the constitutionality of a seizure that already occurred. *See* Dkt. 1 ¶¶76-  
5 90. Therefore, any immigration-related document that Defendants did not already have at the  
6 time of the seizure bears no relation to their liability or affirmative defenses. *See* Ex. A, *Olivera-*  
7 *Silva v. Campbell, et al.*, 1:17-CV-03215-SMJ, Dkt. 36, at \*4 (E.D. Wash. June 5, 2018)  
8 (granting protective order barring inquiry into immigration status in § 1983 suit alleging Fourth  
9 Amendment violations stemming from defendants’ policy of seizing individuals pursuant to  
10 administrative immigration warrants, finding the information was irrelevant for “[t]he issue is  
11 not whether the facts alleged in the [warrant] were true, but whether the form provided probable  
12 cause to detain Plaintiff”); *see also* Ex. B, *Olivera Silva*, 1:17-cv-03215-SMJ, Dkt. 41 at \*4  
13 (E.D. Wash., June 13, 2018) (denying defendants’ motion to reconsider grant of protective  
14 order, again remarking that the information was “not relevant as to Defendants’ liability”). *Cf.*  
15 *Romero v. Highway Patrol*, No. C05-03014 MJJ, 2007 WL 518987 (N.D. Cal. Feb. 14, 2007)  
16 (permitting discovery regarding plaintiff’s work history and immigration status solely because  
17 the information was relevant to his claim for past and future wages). Defendants may not use  
18 discovery “to engage in ‘fishing expeditions.’” *Rivera*, 364 F.3d at 1072 (citation omitted).

19 To the extent Defendants may assert that immigration status information is relevant to  
20 Mr. Rodriguez’s emotional distress damages, that information would only be relevant after  
21 liability is established. Moreover, in light of the facts already on the record, Dkt. 1 ¶¶33, 45, 48,  
22 any such information would be of very limited probative value. *See* Ex. B, *Olivera Silva*, 1:17-  
23 cv-03215-SMJ, Dkt. 41 at \*4-5 (noting that where it is undisputed that the federal immigration  
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1 authorities issued an administrative warrant for the plaintiff and initiated removal proceedings  
2 against him, there was “sufficient evidence” on the record to address defendants’ potential claim  
3 that the federal government’s investigation into the plaintiff’s immigration status was “an  
4 alternative source of emotional distress”).

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6 Balancing the substantial harm caused by Defendants’ inquiry against the minimal (if  
7 any) value of the information weighs strongly in favor of granting a protective order that  
8 prohibits Defendants from seeking immigration-related information not already in their  
9 possession. These concerns are well recognized by courts in the Ninth Circuit in both  
10 employment and other civil rights cases. *See, e.g., Ex. A, Olivera Silva*, 1:17-CV-03215-SMJ,  
11 Dkt. 36 at \*3-4 (noting that forced disclosure of immigration status “will likely deter individuals  
12 coming forward regarding immigration-related due process issues”); *Bailon v. Seok AM No. 1*  
13 *Corp.*, No. C09-05483JRC, 2009 WL 4884340, at \*5 (W.D. Wash. Dec. 9, 2009) (finding  
14 “plaintiffs’ immigration status is irrelevant to claims for wages for work already performed” and  
15 granting protective order prohibiting discovery on immigration-related information such as  
16 “immigration documents, passports, visas, social security numbers, tax identification numbers,  
17 and information about national origin and entry into the United States”); *Washington v. Horning*  
18 *Bros.*, No. 2:17-CV-0149-TOR, 2018 WL 2208215, at \*3-6 (E.D. Wash. May 14, 2018)  
19 (preventing inquiry into U Visa documentation in discrimination case in light of, inter alia, “the  
20 Ninth Circuit’s preference for finding this information impermissible” and concerns regarding  
21 retaliation not only against plaintiff-intervenors but also their families); *E.E.O.C. v. Global*  
22 *Horizons, Inc.*, No. Civil 11-00257-LEK, 2013 WL 704923 (D. Haw. Feb. 26, 2013) (where  
23 plaintiff sought emotional harm damages, upholding protective order barring discovery of  
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1 matters that could suggest one's immigration status such as employment experience and living  
2 arrangements).

3 While not binding on this Court, the Washington Supreme Court's recent adoption of  
4 new evidentiary rule 413 is instructive. Wash. R. Evid. ER 413 (effective Sept. 1, 2018). As of  
5 September 1, 2018, evidence of a party's or witness's immigration status "shall not" be  
6 admissible in civil cases unless it is an essential fact to prove an element of a party's cause of  
7 action. *Id.* at § (b). The purpose of the new rule is both to ensure access to the courts—a concern  
8 now also reflected in the federal discovery rules as referenced above—and to avoid prejudice.  
9 Washington Courts, Proposed Rules Archives, Proposal to Adopt New R. Evid. 413, *available*  
10 *at* <[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplayArchive&rule](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=605)  
11 [Id=605](http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplayArchive&ruleId=605)>.  
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14 In light of the above considerations, this Court should issue a protective order  
15 prohibiting Defendants from inquiring into Mr. Rodriguez's immigration status information.  
16 Specifically, the Court should find that information relating to immigration status includes, but  
17 is not limited to: place of birth, national origin, immigration documents, passports, visas, social  
18 security numbers or statements, tax identification number or other information, status of  
19 immigration proceedings, and information regarding entry into the United States. Furthermore,  
20 inquiry into address and employment history should likewise be prohibited because such  
21 information could result in the improper probing of immigration status information of Mr.  
22 Rodriguez, his family members, neighbors, and acquaintances. Such information does not bear  
23 on the issue of liability and any purported relevance to emotional damages is outweighed by the  
24 potential chilling effect and prejudice.  
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**IV. CONCLUSION**

For all of the foregoing reasons, Mr. Rodriguez respectfully requests that this Court grant his motion for a protective order.

Dated this 30th day of August 2018.

s/Matt Adams

Matt Adams, WSBA #28287

s/ Glenda M. Aldana Madrid

Glenda M. Aldana Madrid, WSBA #46987

s/ Leila Kang

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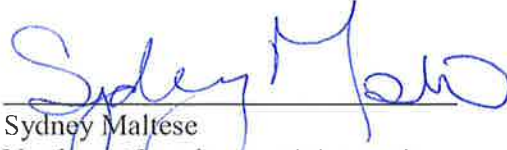
CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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And I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: None.

DATED this 30th day of August, 2018.

  
Sydney Maltese  
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