

IN THE  
**Supreme Court of the United States**

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ERIK EGBERT,

*Petitioner,*

*v.*

ROBERT BOULE,

*Respondent.*

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**MOTION FOR LEAVE TO FILE JOINT APPENDIX UNDER SEAL**

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Pursuant to this Court's Rule 21, Respondent Robert Boule respectfully moves the Court to permit the filing under seal of the Joint Appendix. The parties are also filing a proposed redacted version of the Joint Appendix concurrently with this motion. Counsel for Petitioner Erik Egbert takes no position on this motion.

The Joint Appendix contains material deemed confidential under a protective order stipulated among the parties, U.S. Customs and Border Patrol, and U.S. Immigration and Customs Enforcement, and entered by the district court (Dist. Ct. Dkt. 53 (hereinafter "Protective Order")). The proposed redacted material has remained sealed throughout these proceedings, including in the Ninth Circuit—which sealed significant parts of the briefs and appendices, and which closed oral argument in the case

(C.A. Dkts. 41, 61, 86), and in this Court, which granted Respondent's motion to file the brief in opposition under seal. This material should remain sealed now.

The Protective Order, which remains in force (Protective Order ¶ 10), explicitly protects as confidential and limits the disclosure of "internal CBP and ICE records, including but not limited to personnel records, ... law enforcement records, investigative records, [and] ... disciplinary records;" "Agent Egbert's employment records, including ... materials created during any internal-affairs investigation, and any disciplinary records;" and "any information that the producing party is obligated by contract or state or federal law to keep confidential," among other types of information. *Id.* ¶ 2. The Protective Order indicates that it is to be interpreted broadly: "The protections conferred by this agreement cover not only confidential material ... 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, conversations, or presentations by parties or their counsel that might reveal confidential material." *Id.* ¶ 3. The proposed redacted material is plainly confidential under the terms of the Protective Order. In addition to being protected by the Protective Order, the United States has asserted law enforcement privilege over this material. *See* Dist. Ct. Dkts. 115, 117-119 (explaining why this material should remain sealed); *see also* C.A. Dkt. 29, Ex. 6. The undersigned counsel has conferred with counsel for the United States, and the United States supports continuing to maintain the information under seal in this Court at this time.

For the foregoing reasons, the motion to file the Joint Appendix under seal should be granted.

Respectfully submitted,

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DECEMBER 20, 2021

## CERTIFICATE OF SERVICE

I, Felicia H. Ellsworth, a member of the bar of this Court, hereby certify that on this 20th day of December, 2021, I caused all parties requiring service in this matter to be served copies of the Motion for Leave to File Joint Appendix under Seal by overnight courier to the address below.

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