

IN THE
Supreme Court of the United States

ERIK EGBERT,

Petitioner,

v.

ROBERT BOULE,

Respondent.

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

MOTION FOR LEAVE TO FILE BRIEF FOR RESPONDENT UNDER SEAL

Pursuant to this Court’s Rule 21, Respondent Robert Boule respectfully moves for leave to file the Brief for Respondent under seal. Respondent is also filing a proposed redacted version of his brief with this motion. Counsel for Petitioner Erik Egbert takes no position on this motion.

The Brief for Respondent 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, as well as Respondent's motion to file the Joint Appendix under seal.

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 Brief for Respondent under seal should be granted.

Respectfully submitted,

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JANUARY 19, 2022

CERTIFICATE OF SERVICE

I, Felicia H. Ellsworth, a member of the bar of this Court, hereby certify that on this 19th day of January, 2022, I caused all parties requiring service in this matter to be served copies of the Motion for Leave to File Brief for Respondent Under Seal by overnight courier to the address below.

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