

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

MAX BLUMENTHAL,

*Plaintiff,*

v.

CASE NO. \_\_\_\_\_

MARKWAYNE MULLIN, *in his official  
capacity as Secretary of the Department of  
Homeland Security,*

*Defendant.*

**MEMORANDUM IN SUPPORT OF TIME-SENSITIVE MOTION FOR RETURN OF  
ELECTRONIC DEVICES UNLAWFULLY SEIZED BY CUSTOMS AND BORDER  
PROTECTION (CBP) AND FOR RETURN OF ANY CONTENT OBTAINED  
THEREFROM, PURSUANT TO FED. R. CRIM. P. 41(G), AND  
REQUEST FOR EXPEDITED HEARING**

Pursuant to Rule 41(g)<sup>1</sup> of the Federal Rules of Criminal Procedure, journalist Max Blumenthal (“Plaintiff”) files this Memorandum in Support of Motion for the Return of Electronic Devices and any and all information and data copied, reproduced, or retained therefrom that was unlawfully seized on June 10, 2026. Because the items (two smart phones) were seized upon reentry into the United States without probable cause and a warrant and are retained in violation of constitutional and federal law, and their continued seizure and potential search has aggrieved

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<sup>1</sup> Rule 41(g) provides:

A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41(g) (2005).

Plaintiff, immediate return of all the seized items and all copies thereof is necessary under Rule 41(g).

Given the exigent nature of the relief sought, Plaintiff files this motion as time-sensitive and respectfully requests expedited consideration of his motion, and the grant of a hearing as soon as is practically feasible.

As described in more detail below, Plaintiff is suffering acute, ongoing harm as a result of violations of his constitutional and statutory rights. Moreover, Plaintiff's smart phones are integral to his ability to do his job, and the chilling effect resulting from this unconstitutional seizure constitutes a grave concern in and of itself warranting the requested relief.

### **FACTUAL BACKGROUND**

Plaintiff Max Blumenthal is a United States citizen, husband, father of two young children, and resident of Reston, Virginia. *See* Declaration of Max Blumenthal, Exhibit 1 (Blumenthal Decl.), ¶ 1. He is a journalist, filmmaker, and author of four books, including a *New York Times* bestseller, with a journalism career spanning 25 years. *Id.* ¶ 2. He has won several awards, including the Online Journalism Award and the Pierre Sprey Award for Defense Reporting and Analysis. *Id.* His work has been published in news outlets including *The Nation*, *AlterNet*, *The Daily Beast*, the *Huffington Post*, the *New York Times*, and *Los Angeles Times*. *Id.* ¶ 3. Currently, he serves as Editor of an online news publication he founded known as *The Grayzone*. *Id.* ¶ 3.

Plaintiff has written extensively about United States foreign policy and our nation's relationship with the State of Israel; he is highly critical of both. *Id.* ¶ 4. Plaintiff has never been convicted of a crime or credibly accused of posing a national security threat. *Id.* ¶ 4. To Plaintiff's knowledge, he is not the subject of any pending criminal investigation, and there is no search

warrant, arrest warrant, or other judicial process authorizing the seizure or continued retention of his electronic devices. *Id.* ¶ 5.

Prior to the previous trip, Plaintiff had once traveled to Iran, in May 2025, to participate in a public media festival, report on US-Iranian negotiations, and produce a documentary on Iran's Jewish community. When he returned to Washington, Customs and Border Protection (CBP) did not ask him to search or require him to turn over any electronic devices. *Id.* ¶ 6.

On July 3, 2026, Plaintiff embarked on a 6-day trip to Iran to report on the funeral of Ayatollah Ali Khamenei, the largest gathering in human history. *Id.* ¶ 7. Plaintiff entered Iran exactly as reporters working for establishment media outlets such as CNN and NBC did – on a press visa granted by the Iranian Foreign Ministry. *Id.* While in Tehran, he participated in official press events alongside those mainstream reporters, who were also in the country to cover the Ayatollah's funeral. *Id.* ¶ 8. To the Plaintiff's knowledge, no other American reporter was subjected to interrogation or had their devices seized by CBP agents upon their return to the United States. *Id.* ¶ 8.

While in Iran, Plaintiff interviewed members of the country's negotiation team, top political officials, academics, prominent journalists, and average citizens for a series of video and print reports for *The Grayzone*. *Id.* ¶¶ 8-9. Additionally, Plaintiff visited various sites that the United States and Israel had bombed during the current war, including Gandhi Hospital, an entire neighborhood in Eastern Tehran, Azadi Football Stadium and Rafi-Nia Synagogue. *Id.* ¶ 10. Plaintiff intends to use the information, photographs and videos he gathered during that trip to write news articles and produce news videos in the course of his employment as a journalist. *Id.* ¶ 11.

Plaintiff departed Tehran, Iran, on a local airline at 5:00 a.m. July 10, 2026. *Id.* ¶ 12. He arrived in Istanbul, Turkey in order to take Turkish Airlines Flight Number 0008 (TK 0008) that was scheduled to depart at 3:55 p.m. on the same day to Virginia. *Id.* ¶ 12. Plaintiff noted that his boarding pass for the flight from Istanbul to Dulles National Airport was marked with the letters “SSSS,” which he understood to mean that he had been flagged by the U.S. Department of Homeland Security (DHS) for a secondary screening upon reentry into the U.S. *Id.* ¶ 13.

Plaintiff arrived at Dulles National Airport in Alexandria, Virginia at approximately 8:00 p.m. on July 10, 2026. *Id.* ¶ 14. Plaintiff’s luggage included one checked suitcase, one carry-on backpack, and a carry- on bag containing two Persian rugs. *Id.* ¶ 15. He disembarked from the plane and proceeded to CBP screening along with other passengers from his flight. *Id.* ¶ 15. After passing through the CBP biometric screening, Plaintiff approached the passport desk where a CBP officer took his passport and placed it in a red box. *Id.* ¶ 15. Plaintiff understood that meant he was not free to proceed. Another CBP officer then approached Plaintiff and directed him to a secondary screening room. *Id.* ¶ 16.

Plaintiff arrived at the secondary screening room and waited approximately 20 to 30 minutes until another CBP officer appeared and spoke with him at a metal desk. *Id.* ¶ 17. A total of two CBP officers engaged in questioning Plaintiff during secondary screening. *Id.* ¶ 17. The CBP officer searched Plaintiff’s carry on bags, which contained a laptop computer and digital camera, and asked him questions about his identity and his work as a journalist. *Id.* ¶ 18. The officers asked an array of questions, including whether the Plaintiff felt threatened at any point while in Iran, whether he was compensated for the interviews he conducted in Iran and how he paid for his travel to Iran. *Id.* ¶ 18. Plaintiff politely responded that he had not felt threatened at

any point, that he was not paid to conduct interviews and that he had paid for his own travel. *Id.* ¶ 18.

The CBP officer then asked Plaintiff whether he had plans to return to Iran soon and Plaintiff politely responded that he did not. *Id.* ¶ 19. After about 10 minutes of questioning, CBP officers escorted Plaintiff to the baggage carousel so that he could retrieve his luggage. *Id.* ¶ 20. Plaintiff identified his luggage and carried it back to the secondary screening area along with the CBP officer who was accompanying him. *Id.* ¶ 20. The CBP officers began searching Plaintiff's luggage. *Id.* ¶ 21. They also demanded that Plaintiff surrender his electronic devices to them. *Id.* ¶ 21. Plaintiff cooperated and turned over two mobile phones that he had on his person: a Google Pixel 6 and a Google Pixel 8. CBP officers did not ask for, open, or take Plaintiff's laptop computer. *Id.* ¶ 21.

When Plaintiff placed his two mobile phones on the table in front of the CBP officers, they said they were required to search his devices for evidence of criminal activity or child sexual material. They thereby instructed him to unlock the devices and asked for Plaintiff's passcodes, but he declined, as this violated his constitutional rights and threatened his journalistic integrity. *Id.* ¶ 22. The CBP officers responded that in that case, they would detain them. *Id.* ¶ 23. One of the CBP officers told Plaintiff that they were going to "hook them up to machines" in order to extract data from them and that it should take one day or so. *Id.* ¶ 23.

CBP officers asked Plaintiff if his phones contained communications with his attorney. *Id.* ¶ 25. Plaintiff did not understand the implication and did not respond. *Id.* ¶ 25. Plaintiff was detained by CBP for a total of approximately 2 hours, after which officers returned his passport at approximately 10:30 p.m. *Id.* ¶ 26. He was permitted to take his luggage, including the laptop computer. *Id.* ¶ 26. CBP officers kept Plaintiff's two smart phones and provided him with a

telephone number to call about the status of his phone devices. *Id.* ¶ 27. Plaintiff left Dulles Airport at approximately 10:30 p.m., exhausted from a long day's travel and the stress of being subjected to unwarranted questioning by CBP. *Id.* ¶ 27.

Plaintiff is a father of two young children. He has never been accused of involvement in any sort of abuse of children or child sexual exploitation. *Id.* ¶ 29. He is unaware of any such allegations against any friends, colleagues, or family members. *Id.* To Plaintiff's knowledge, Iran is not a country known for child sex abuse or production of child pornography. *Id.* Plaintiff does not know why CBP officers did not search or seize his laptop computer or digital camera if they were in fact looking for evidence of criminal activity or child sexual material. *Id.*

Plaintiff believes that DHS and CBP targeted him due to his journalism. *Id.* ¶ 30. On July 7, 2026, a close associate of President Trump's, Laura Loomer, from whom the President is known to take advice, wrote a long post on the social media platform X denouncing Blumenthal and urging the administration to arrest him. *Id.* ¶ 30.



On July 14, 2026, after CBP seized Plaintiff's phones, Loomer published a second post celebrating the seizure and describing Plaintiff as a national security threat. *Id.* ¶ 31. The timing and content of those public statements heighten Plaintiff's concern that he was singled out because of his protected reporting and viewpoints. *Id.*



Plaintiff is also gravely concerned that the Government's forensic examination of his phones will expose confidential source identities, communications with sources, unpublished reporting, and the methods by which he conducts sensitive fieldwork. Disclosure of that information could endanger sources, compromise ongoing investigations, and impair Plaintiff's ability to assure current and prospective sources that their identities and communications will remain confidential.

No one from CBP has contacted Plaintiff about returning his phone devices. *Id.* ¶ 34. On July 14, 2026, Plaintiff called the phone number provided by the CBP officers who seized his phone devices. *Id.* Plaintiff was connected to an automated answering service directing him to send an email to an email address to check on the status of seized devices. *Id.* Plaintiff is not comfortable contacting CBP electronically due to his concerns that it might expose him to further risk of unlawful surveillance or seizure by compromising his cloud accounts.

## **ARGUMENT**

### **I. RULE 41(G) AUTHORIZES RETURN OF PLAINTIFF’S PROPERTY**

Federal Rule of Criminal Procedure 41(g) provides that, when the United States government seizes property without a warrant, the “person aggrieved by... the deprivation of property may move for [its] return.” Fed. R. Crim. P. 41(g). Such a motion must be filed in the district where the property was seized, and if the Court grants the motion, it “must return the property to the movant,” subject only to reasonable conditions necessary to protect the Government’s access to the property for any later lawful use. *Id.*

Rule 41(g) affords an equitable remedy to individuals whose property continues to be retained by the Government outside the context of an ongoing criminal prosecution. *See United States v. Johnson*, 683 F. App’x 241, 248 (4th Cir. 2017); *United States v. Hoffman*, No. 1:18-mc-00016, 2018 U.S. Dist. LEXIS 194544, at \*2 (E.D. Va. Nov. 14, 2018). The Advisory Committee has explained that “[n]o standard is set forth in the rule to govern the determination of whether property should be returned,” and that “[r]easonableness under all of the circumstances must be the test when a person seeks to obtain the return of property.” Fed. R. Crim. P. 41 advisory committee’s note to 1989 amendment.

A Rule 41(g) motion ordinarily should be denied only in the following circumstances: the person seeking return of the property is not lawfully entitled to it; the property is contraband or subject to forfeiture; or the government’s need for the property as evidence continues. *See United States v. Soza*, 599 F. App’x 69, 70 (4th Cir. 2015) (quoting *Jackson v. United States*, 526 F.3d 394, 396 (8th Cir. 2008)). Likewise, if the United States lacks actual or constructive possession of the property, it is not the proper party against whom Rule 41(g) relief may be sought. *United States v. Gomez*, 382 F. App’x 344, 345 (4th Cir. 2010).



None of those circumstances is present here. Plaintiff lawfully owns the electronic devices at issue. The devices are neither contraband nor subject to forfeiture, and, to Plaintiff's knowledge, there is no pending criminal investigation, criminal prosecution, or warrant authorizing their continued seizure or search. Nor has the Government identified any continuing evidentiary need that could justify its ongoing retention of Plaintiff's devices or any copies of the journalistic materials contained therein.

Accordingly, Rule 41(g) authorizes this Court to exercise its equitable jurisdiction and order the immediate return of Plaintiff's electronic devices, together with any information, data, or copies obtained from them. It should exercise this jurisdiction in light of the Government's lack of legitimate interest in continuing to confiscate Plaintiff's phones, and the constitutional violations detailed below.

## **II. THE GOVERNMENT'S CONTINUED RETENTION OF PLAINTIFF'S ELECTRONIC DEVICES VIOLATES THE FIRST AND FOURTH AMENDMENTS.**

### *A. The Seizure and Continued Retention of Plaintiff's Electronic Devices Impermissibly Burdens Plaintiff's First and Fourth Amendment Rights.*

Plaintiff's electronic devices are not just personal property. They contained his contacts, personal, professional, and sources, and other material related to his journalistic work, including unpublished reporting, interview recordings, photographs, video footage, research materials, communications with sources, and other work product gathered for public dissemination. The Government's warrantless seizure and continued retention of those materials therefore burdens core First Amendment interests while simultaneously constituting an unreasonable seizure under the Fourth Amendment. U.S. Const. amends I, IV. *See infra*, Part III.

The Supreme Court has recognized that news reporters are "entitled to some constitutional protection of the confidentiality of [their] sources." *Pell v. Procunier*, 417 U.S. 817, 834 (1974) (citing *Branzburg v. Hayes*, 408 U.S. 665 (1972)). The Fourth Circuit has likewise explained that

this protection is “necessary to ensure a free and vital press, without which an open and democratic society would be impossible to maintain.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 287 (4th Cir. 2000).

Government action that interferes with reporters’ ability to gather and disseminate news, or that chills relationships between journalists and their confidential sources, raises substantial First Amendment concerns. *See Branzburg*, 408 U.S. at 707–08 (“Official harassment of the press undertaken not for purposes of law enforcement but to disrupt a reporter's relationship with his news sources would have no justification.”); *Rossignol v. Voorhaar*, 316 F.3d 516, 521–22 (4th Cir. 2003) (holding that government officials’ coordinated seizure of newspapers to suppress critical reporting violated “the most elemental tenets of First Amendment law” and constituted a prior restraint); *Media Matters for Am. v. Paxton*, 138 F.4th 563, 580 (D.C. Cir. 2025) (explaining that bad-faith investigative techniques may abridge journalists' First Amendment rights and burden protected newsgathering activities).

Although the reporter’s privilege “is not absolute and will be overcome whenever society’s need for the confidential information in question outweighs the intrusion on the reporter's First Amendment interests,” the Fourth Circuit requires courts to balance those competing interests by considering “(1) whether the information is relevant, (2) whether the information can be obtained by alternative means, and (3) whether there is a compelling interest in the information.” *Ashcraft*, 218 F.3d at 287 (quoting *LaRouche v. Nat'l Broad. Co.*, 780 F.2d 1134, 1139 (4th Cir. 1986)). This balancing inquiry reflects the Fourth Circuit’s recognition that the Government’s investigative interests must be weighed against the First Amendment interests implicated by compelled disclosure of confidential journalistic materials. *Ashcraft*, 218 F.3d at 287.

These principles were recently applied by the Eastern District of Virginia in *In re Natanson*, where the Government seized an investigative journalist's laptops, cellular telephone, recording device, and other electronic devices containing confidential source information, conversations with sources, notes, recordings, draft articles, and other unpublished journalistic work product. *See In re Natanson*, No. 1:26-sw-00054 (AJT), 2026 U.S. Dist. LEXIS 113296, at \*13–14 (E.D. Va. May 4, 2026). Rejecting the Government’s contention that the Fourth Amendment alone governed the analysis, the court explained that “[t]he Government's expansive view of what is permissible under the Fourth Amendment entirely disregards Natanson’s rights under the PPA and the First Amendment.” *Id.* at \*14–15. The court further found that the Government’s seizure had “restrained” the journalist’s First Amendment rights through its seizure of “all of Ms. Natanson's work product, documentary material, and devices.” *Id.* at \*7–8. Recognizing that journalists “do not enjoy absolute press immunity from legal constraints,” the court emphasized that a reporter’s First Amendment interests must be carefully balanced against the Government's asserted law enforcement interests and concluded that the Government could not simply review all seized journalistic materials because doing so would disregard the constitutional and statutory protections afforded to the press. *Id.* at \*7–8, \*15–17. Indeed, the court explained that it “cannot ignore the seizure's effect on Natanson's ability to function as a journalist,” nor could it disregard “the harassing and chilling effects such a seizure could have on a reporter, particularly one focused on Executive Branch conduct.” *Id.* at \*18–20.

Similar concerns are present here. Plaintiff's electronic devices function as the modern equivalent of his newsroom. They contain confidential communications with sources, unpublished reporting, interview recordings, photographs, video footage, and other journalistic work product accumulated over decades of investigative reporting. During his recent reporting trip to Iran,

Plaintiff interviewed senior Iranian officials, negotiators, academics, and civilians and gathered extensive documentary material intended for future publication. Like the seizure in *In re Natanson*, the Government's continued retention of Plaintiff's devices burdens not only his possessory interest in personal property, but his ability to communicate with confidential sources, pursue ongoing investigations, prepare future publications, and continue functioning as an investigative journalist.

Application of the Fourth Circuit's balancing test confirms that the Government's ongoing confiscation of Plaintiff's devices cannot withstand constitutional scrutiny. First, the Government has not identified any specific information on his phones that is relevant to an ongoing criminal investigation or otherwise necessary to further a legitimate law enforcement objective.

Second, to the extent the Government seeks information concerning Plaintiff's international travel or reporting activities, such information could have been obtained through substantially less intrusive means than the wholesale seizure and continued retention of Plaintiff's electronic devices. Finally, the Government has articulated no compelling interest sufficient to justify its continuing possession of Plaintiff's confidential source communications, unpublished reporting, interview recordings, photographs, video footage, and other materials protected by the First Amendment. Under *Ashcraft*, any governmental interests do not outweigh the extraordinary intrusion on Plaintiff's First Amendment rights.

Furthermore, the Government's seizure and confiscation of Plaintiff's phones raise the specter of unlawful viewpoint discrimination. Plaintiff is widely known for viewing United States foreign policy and our nation's relationship with Israel through a critical lens. His reporting has led him to be targeted in vitriolic fashion by individuals with close relationships to high-ranking members of the current Administration, including Laura Loomer. Although Plaintiff entered Iran under the same press-visa process and attended the same official press events as reporters from

CNN, NBC, and other American media organizations, Plaintiff alone was subjected to seizure of his electronic devices. This suggests that Plaintiff was singled out for retaliation and punishment based upon his viewpoints.; As the Supreme Court has explained, “differential treatment, unless justified by some special characteristic of the press, suggests that the goal of regulation is not unrelated to suppression of expression.” *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983). See also *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995) (explaining that “[w]hen the government targets... particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.”); *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685–87 (4th Cir. 2000) (recognizing that the First Amendment includes “the right to be free from retaliation by a public official” for engaging in protected speech); *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (“Official reprisal for protected speech ‘offends the Constitution [because] it threatens to inhibit exercise of the protected right.’” (quoting *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998))).

Incidentally, CBP’s questioning mirrored many of Loomer’s questions: she asked who had paid for his trip, as did CBP. This raises genuine concerns about the fact that Plaintiff was subjected to this unconstitutional action because his viewpoints are disapproved of by an influential associate of the current Administration.

*B. The Government's Continued Retention of Plaintiff's Devices Is Independently Unreasonable Under the Fourth Amendment.*

The constitutional question before this Court is not merely whether CBP could initially seize Plaintiff’s electronic devices at the border, but whether the Government may continue to retain and review those devices long after the seizure has occurred.

First, the Government lacked the authority to seize and search Plaintiff’s devices in the first instance. Although Fourth Amendment protections are diminished at border crossings, “the Fourth

Amendment must not be read in a vacuum” where the Government's actions implicate First Amendment rights. *Roaden v. Kentucky*, 413 U.S. 496, 501 (1973). Rather, “the constitutional requirement that warrants must particularly describe the ‘things to be seized’ is to be accorded the most scrupulous exactitude when the ‘things’ are books, and the basis for their seizure is the ideas which they contain.” *Stanford v. Texas*, 379 U.S. 476, 485 (1965). Likewise, the Supreme Court has long recognized that wholesale seizures of expressive materials are constitutionally suspect, observing that “where there is even a charge against one particular paper, to seize all, of every kind, is extravagant, unreasonable and inquisitorial.” *Marcus v. Search Warrant of Prop. at 104 E. Tenth St., Kan. City, Mo.*, 367 U.S. 717, 729 n.22 (1961).

Those principles apply with particular force to modern electronic devices. As the Supreme Court acknowledged in *Riley v. California*, modern smartphones differ from other physical objects “in both a quantitative and a qualitative sense,” because they possess an “immense storage capacity,” and can contain a digital record of nearly every aspect of a person’s life. 573 U.S. 373, 393–97 (2014). Indeed, “[w]ith all they contain and all they may reveal,” modern cell phones hold “the privacies of life.” *Id.* at 403 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). Recognizing those heightened privacy interests in the border-search context, the Ninth Circuit has likewise held that an extensive, off-site forensic examination of electronic devices is “a substantial intrusion upon personal privacy and dignity” that differs fundamentally from a routine border search. *United States v. Cotterman*, 709 F.3d 952, 967–68 (9th Cir. 2013) (en banc). The court explained that electronic devices “are capable of storing warehouses full of information” and therefore require heightened constitutional consideration when subjected to prolonged forensic review. *Id.* at 964–65.

Although *Cotterman* is not binding on this Court, its reasoning is persuasive because Plaintiff challenges not merely the initial border seizure of his devices, but the Government's continued retention and apparent forensic exploitation of electronic devices containing decades of constitutionally protected journalistic work product. Even CBP's own policy restricts searches of individuals' electronic devices to *rare* occasions, for the purpose of identifying and combatting terrorist activity, drug smuggling, human smuggling, bulk cash smuggling, and child pornography. See Border Search of Electronic Devices at Ports of Entry, *United States Customs and Border Protection*, <https://www.cbp.gov/travel/cbp-search-authority/border-search-electronic-devices> (last visited July 15, 2026). Plaintiff is an internationally renowned, award winning journalist and best-selling author. He has been critical of U.S. foreign policy for his entire career, spanning a couple decades, and has never been accused of, let alone charged with, a crime. Thus, the Government lacked any justification for seizing and searching his devices in the first place.

*In re Natanson* also confirms that the Fourth Amendment analysis cannot be divorced from the First Amendment interests implicated by the seizure of journalistic materials. The court rejected the Government's "expansive view of what is permissible under the Fourth Amendment" because it disregarded the journalist's independent rights under the First Amendment and the Privacy Protection Act. *Natanson*, 2026 U.S. Dist. LEXIS 113296, at \*14–15. That reasoning is especially relevant here, where the Government continues to retain electronic devices containing extensive confidential source communications and unpublished journalistic work product. Notably, CBP did not choose to seize and search Plaintiff's laptop and digital camera. If they were truly looking for evidence of a crime (and specifically the crime of child pornography possession), then it is unclear why they would not have sought access to those devices. It suggests that what

they really wanted was access to information specific to smart phones, such as Plaintiff's journalistic contacts and source material.

Assuming *arguendo* the Government initially possessed authority to seize Plaintiff's electronic devices at the border that power does not permit the indefinite retention and review of those devices absent a continuing justification sufficient to satisfy the Fourth Amendment. Because the Government has neither identified a particularized need for Plaintiff's electronic devices nor demonstrated that its continuing possession of decades of protected journalistic work product is constitutionally reasonable, under Rule 41(g), this Court should order the immediate return of Plaintiff's devices and any information or copies obtained from them.

### **III. THE PRIVACY PROTECTION ACT INDEPENDENTLY REQUIRES THE RETURN OF PLAINTIFF'S JOURNALISTIC WORK PRODUCT AND DOCUMENTARY MATERIALS.**

Congress enacted the Privacy Protection Act ("PPA"), 42 U.S.C. § 2000aa, to provide heightened statutory protections against government searches and seizures of journalists' work product and documentary materials. The Act reflects Congress's recognition that indiscriminate government access to a journalist's unpublished materials threatens the free flow of information, chills confidential sources, and undermines the First Amendment interests essential to a free press. S. Rep. No. 96-874, at 4–8 (1980), reprinted in 1980 U.S.C.C.A.N. 3950, 3950–54.

The PPA generally prohibits government officers and employees from searching for or seizing a person's "work product materials" or "documentary materials" possessed in connection with a purpose to disseminate information to the public through a newspaper, book, broadcast, or other similar form of public communication. 42 U.S.C. §§ 2000aa(a), (b). "Work product materials" include those prepared or created in anticipation of communicating information to the public, including mental impressions, conclusions, opinions, and theories. 42 U.S.C. § 2000aa-



7(b). “Documentary materials” include photographs, recordings, notes, drafts, electronically stored information, and other materials upon which information is recorded. 42 U.S.C. § 2000aa-7(a).

Plaintiff’s electronic devices plainly contain both categories of protected materials. During Plaintiff’s recent professional trip to Iran, he likewise gathered interviews with senior Iranian officials, negotiators, academics, and civilians, together with extensive photographic and video documentation intended for future publication. These materials were created and maintained for the purpose of communicating news and information to the public and therefore fall squarely within the protections afforded by the PPA.

The Eastern District of Virginia recently applied these statutory protections in *In re Natanson*. Recognizing that the PPA “embeds a structural preference for subpoenas over search warrants” because subpoenas provide “an adversary process” in which production occurs only after judicial process has been afforded, whereas searches immediately intrude upon protected journalistic materials, the court rejected the Government’s contention that its proposed filter-team procedures adequately protected the journalist’s rights. *Natanson*, 2026 U.S. Dist. LEXIS 113296, at \*21–27 (quoting *In re Subpoena Duces Tecum*, 228 F.3d 341, 348 (4th Cir. 2000)). Instead, the court concluded that meaningful judicial supervision was necessary before the Government could review a journalist’s protected work product and documentary materials and therefore appointed a special master to conduct that review. *Id.* at \*27–30. The court explained that such judicial supervision was necessary to safeguard the constitutional and statutory interests implicated by the Government’s seizure of protected journalistic materials. *Id.* at \*23–30.

The Fourth Circuit’s decision in *Sennett v. United States* illustrates the narrow circumstances in which the PPA’s “suspect exception” applies. There, law enforcement officers obtained a search warrant for the residence of a photojournalist after developing probable cause to

believe that she had participated in a coordinated act of criminal vandalism during a protest that caused more than \$200,000 in property damage. The officers relied on surveillance footage showing that the plaintiff arrived at the scene with the group of suspected vandals in the middle of the night, remained with the group throughout the incident, fled in the same direction after the vandalism was complete, and appeared to be documenting the event as part of the group's activities. *Sennett v. United States*, 667 F.3d 531, 533–37 (4th Cir. 2012). The Fourth Circuit concluded that these facts established probable cause to believe that the plaintiff had participated in criminal activity—such as conspiracy or aiding and abetting—and therefore held that the search fell within the PPA's suspect exception because there was probable cause to believe that the plaintiff herself had committed the criminal offense to which the seized journalistic materials related. *Id.* at 535–37; see also 42 U.S.C. §§ 2000aa(a)(1), (b)(1). None of those circumstances is present here. To Plaintiff's knowledge, the Government has not identified any criminal offense of which he is suspected, much less demonstrated probable cause to believe that Plaintiff committed an offense to which his journalistic work product relates. Accordingly, the suspect exception does not authorize the Government's continued retention or review of Plaintiff's protected work product and documentary materials.

Nor can generalized references to national security or border security substitute for the statutory showing required by the PPA. The Act permits searches and seizures of protected journalistic materials only where one of its enumerated exceptions applies, and, to Plaintiff's knowledge, the Government has not demonstrated that any such exception authorizes its continued retention and review of Plaintiff's work product and documentary materials. *See* 42 U.S.C. §§ 2000aa(a), (b).

Plaintiff's electronic devices contain precisely the work product and documentary materials Congress intended to protect through the Privacy Protection Act. Unlike the circumstances presented in *Sennett*, the Government has not demonstrated that any of the Act's narrowly drawn exceptions authorize its continued retention and review of Plaintiff's journalistic materials. Consistent with *In re Natanson*, the Government may not circumvent the PPA's protections through unilateral executive review of protected journalistic work product absent the judicial safeguards required by Congress and recognized by this Court. The PPA therefore provides an independent statutory basis for ordering the immediate return of Plaintiff's electronic devices and any work product materials, documentary materials, or copies obtained therefrom.

### **CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that this Court grant his Motion pursuant to Federal Rule of Criminal Procedure 41(g) and order the Government to immediately return Plaintiff's electronic devices, together with any information, data, or copies obtained therefrom. Because the Government's continued retention of Plaintiff's electronic devices continues to burden Plaintiff's constitutional and statutory rights, Plaintiff further respectfully requests that the Court schedule an expedited hearing at the earliest practicable date and grant such other and further relief as the Court deems just and proper.

Dated: July 16, 2026

Respectfully submitted,

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