

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>JOHN DOE I, et al.,</b>  Plaintiffs,  v.  <b>COLONEL TYREE V. BLOCKER, in his official capacity as Commissioner of the Pennsylvania State Police,</b>  Defendant.	Case No. 2:16-cv-6039
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**PLAINTIFFS' REPLY TO DEFENDANT'S MEMORANDUM  
OF LAW IN RESPONSE TO PLAINTIFFS' MOTION TO COMPEL**

Plaintiffs John Doe I and John Doe II, by and through their undersigned counsel, hereby file this reply to Defendant's response to Plaintiffs' motion to compel.

Contrary to Defendant's assertion, Defendant has not provided full and complete responses to Plaintiffs' request for production of documents. Instead, Defendant has lodged a new and untimely set of more focused objections. Plaintiffs continue in their efforts to resolve this issue, but to date, have been unsuccessful. *See* Letter from Plaintiffs' Counsel to Defendant's counsel dated April 30, 2018.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Motion to Compel and order the production of responsive documents and full and complete substantive interrogatory answers within fourteen (14) days of the disposition.

Respectfully submitted

/s/ Jonathan S. Goldstein

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Dated: April 30, 2018



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Re: *Doe v. Blocker*, E.D.Pa. No. 16-6039

Dear Ms. Le and Mr. Joel:

As stated in our March 30, 2018 letter, your January 19, 2018 objections to Plaintiffs' First Set of Requests for Production of Documents on Defendants were clearly untimely. Rule 34 unambiguously provides, in pertinent part, that: "The party to whom the request is directed must respond in writing within 30 days after being served." Fed.R.Civ.P. 34. Plaintiffs' Requests for Production were served on November 7, 2017, making December 7, 2017, the deadline for responses. Without ever requesting or being granted an extension of time to respond by Plaintiffs, Defendant unilaterally "extended" the deadline for responses, a practice not authorized under Rule 34. Defendant's communications to Plaintiffs that the holiday season made responding difficult did not render the time period for responses or objections inapplicable. Thus, Defendant's untimely objections are waived. *See Harris v. PV Holding Corp.*, No. CIV.A. 09-1568, 2009 WL 2600415, at \*1 (E.D. Pa. Aug. 20, 2009) ("failure to object to the request for production of documents and depositions of witnesses within the time fixed by the rules constitutes a waiver of any objection") (quoting *Keystone Medical Corp. V. Rosner*, No. 86-6400, 1987 WL 6015, at \*1 (E.D.Pa. Jan.29, 1987)).

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Your April 27, 2018 letter raises new objections not included in your January 19, 2018 response to Plaintiffs' Requests for Production. Even if Defendant could make a compelling argument that the objections raised in January are not waived, which Plaintiffs vigorously dispute, the new objections are, without doubt, waived, as Defendant raises them nearly 6 months after being served with the Requests for Production.

Plaintiffs do not waive any right to pursue waiver or more complete answers, but nevertheless respond to your letter of April 27, 2018, as follows:

Request No. 9

The new bases for your continued objection to this request, which seeks documents related to interactions between the Pennsylvania State Police (PSP) and individuals subject to a Section 302 temporary emergency commitment, for a period of one-year following the 60-day transfer period under 18 Pa.C.S. § 6105 (a)(2)(i), appears to be threefold.

First, your letter assumes a single plaintiff in this action, which is not the case. The action, as you are aware, challenges the Pennsylvania statutory scheme whereby an individual subjected to an temporary emergency commitment under 50 P.S. § 7302 (Section 302) is permanently deprived of his/her Second Amendment rights based solely on a physician's opinion that the person is committable under Section 302 without due process of law. *See* 18 Pa. C.S. § 6105(c)(4) (Section 6105). Thus, Plaintiffs stand by the assertion in our March 30, 2018 letter that interactions between PSP and individuals who have suffered this penalty go directly to the heart of this litigation.

Second, PSP does not contend that no responsive records exist. Instead, PSP now objects on the grounds that the documents sought are "not maintained in any other single database or easily searchable manner." There is no requirement in Rule 34 that documents requested be easily compiled. That the request may require PSP to exert effort to comply is not an appropriate reason for an objection.

Third, Request No. 9 does not request mental health information shielded from disclosure pursuant to 37 Pa. Code § 33.103. The request is for "Any and all documents for the last 7 years, which relate to interactions between the Pennsylvania State Police (or other law enforcement agency) and individuals subject to a Section 302 temporary emergency commitment, for a period of one-year following the 60-day transfer period under 18 Pa. Const. Stat. Ann. § 6105 (a)(2)(i). This requests [sic] includes, but is not limited to, search warrants, arrests, incident reports, police encounters, the entry of court orders and the commencement of forfeiture proceedings." Documents relating to search warrants, arrests, incident reports, police encounters, court orders and forfeiture proceedings do not constitute mental health records.

To the extent that this request does implicate specific mental health records, PSP's assertion that the records are private and protected does not place them beyond the reach of this litigation. Indeed, this litigation centers on mental health records and the impact of those records

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on individuals' Second Amendment rights. In other contexts, protected records are discoverable. For example, records of sexual assaults against minors are statutorily sealed, but, if litigation centered on certain aspects of those assaults, under proper terms and conditions, those records would be available to the litigants. Plaintiffs seek to obtain mental health records responsive to this request utilizing a protective order or some other appropriate protective scheme.

#### Requests Nos. 19 and 20

Plaintiffs' Requests No. 19 and 20 pertain to (1) arrests, detentions, incarcerations, stop and frisks, charges, and/or court proceedings that relate to (a) an individual subject to a Section 302 temporary emergency commitment, (b) during the 60-day transfer period under 18 Pa.C.S. § 6105(a)(2)(i). (Request No. 19); and (2) instances where the Pennsylvania State Police targeted for investigation the same group of individuals (Request No. 20).

Neither request seeks mental health records, as arrests, detentions, incarcerations, stop and frisks, charges, court proceedings, or the identity of individuals targeted for investigation are not mental health records under any interpretation of "mental health records." Therefore, 37 Pa. Code § 33.103 is inapplicable. Even if these requests, in fact, seek mental health records, Plaintiffs ask that those records be provided with an appropriate protective plan in effect.

Further, as stated above regarding Request No. 9, nothing in Rule 34 suggests a party is excused from producing documents that are not easily compiled.

#### Request No. 18

Request No. 18 seeks documents or communications relating to any applications for post-deprivation relief by individuals subject to a Section 302 temporary emergency commitment. Contrary to your assertion, this request does not seek mental health records protected by 37 Pa. Code § 33.103. The information requested relates to applications for post-deprivation relief, including the applicant's address, the facility in which the commitment occurred, and subsequent actions involving the PICS database. None of this information falls within any reasonable definition of mental health records.

As stated in regard to Request Nos. 9, 19 and 20, Plaintiffs are amenable to PSP's providing the requested documents, to the extent that mental health records are involved, under an appropriate protective order.

#### Requests Nos. 10 and 13

Request No. 10 seeks "any documents or communications relating to notification by a judge of a Pennsylvania court of common pleas, Pennsylvania mental health review officer, or Pennsylvania county mental health and mental retardation administrator to the Pennsylvania State Police concerning a Section 302 temporary emergency commitment." Request No. 13 asks for "any documents or communications relating to submission or input of Section 302 temporary emergency commitments by the Pennsylvania State Police into the PICS database."

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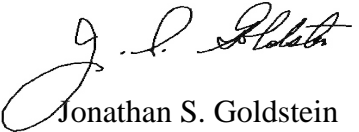
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These requests do not seek mental health records, but rather documents relating to notification to PSP regarding Section 302 commitments and to the entry of this information into the PICS database. These are not mental health records, and 37 Pa. Code § 33.103 does not apply. In addition, the amount of work PSP must do to produce the documents is not a basis for a valid objection to the requests. In any event, if the requested records do constitute mental health records, Plaintiffs request their production under a protective order or other protective device.

Plaintiffs request that PSP provide the requested documents, without objections, and provide Plaintiffs with a reasonable timetable for production. Plaintiffs will set up a meet and confer phone call if needed to provide clarification.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. S. Goldstein", written over the printed name.

Jonathan S. Goldstein

Shawn M. Rogers

**CERTIFICATE OF SERVICE**

I, Shawn M. Rodgers, Esq., hereby certify that on the 30th day of April, 2018, the foregoing Reply to Defendant's Memorandum of Law in Response to Plaintiffs' Motion to Compel was filed electronically and is available for viewing and downloading from the ECF system of the United States District Court for the Eastern District of Pennsylvania.

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Date: April 30, 2018