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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In the Matter of the Summons Number) Case No. 26-mc-80074
OPR-DC-2026-032216-001:)

J. DOE,) **NOTICE OF MOTION AND**
) **MEMORANDUM OF LAW IN**
) **SUPPORT OF MOTION TO QUASH**
) **ADMINISTRATIVE SUMMONS**

Movant,

v.

THE UNITED STATES)
DEPARTMENT OF HOMELAND) **DATE:** To Be Determined
SECURITY,) **TIME:** To Be Determined

Respondent.

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that this motion will be heard as soon as this matter may be scheduled in the above-titled Court of the United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102.

Movant J. Doe respectfully submits the following memorandum of points and authorities in support of Doe's Motion to Quash Summons. This motion is based on Fed. R. Civ. P. 45(d)(3), the points and authorities herein, the declaration of J. Doe and

1 attached Exhibits A and B, and any other evidence that may be entered into the record
2 and/or presented at a hearing.

3
4 **STATEMENT OF FACTS**

5 As set forth in the Declaration of J. Doe, filed herewith, they are a United States
6 citizen residing in the State of Oregon. Doe is associated with a social media account on
7 the online service Reddit. Doe utilizes this account to engage in political speech through
8 direct posts, as well as dialogue with community members in comment threads
9 associated with their own and others' posts. Reddit allows users to post and engage on
10 the service without publicly disclosing their legal identity. Like many other users on the
11 site, Doe uses Reddit to converse anonymously.
12

13 Neither Doe nor their Reddit account are associated with importing or exporting
14 any merchandise or any other thing subject to tax or duty into or out of the United
15 States. They have not traveled out of the country, are not engaged in any international
16 or domestic commerce, have no business concerns outside the United States (or at all),
17 and primarily use their Reddit account to engage in political speech relevant to their
18 local community.
19
20

21 On March 6, 2026, Doe received a notification from Reddit notifying Doe that
22 Reddit had received a "legal request" seeking information related to accounts operated
23 by Doe, and that Reddit intended to comply unless Doe provided Reddit with a motion
24 to quash. Following a request to Reddit for more information, Doe was provided with a
25 redacted copy of the Summons at issue. Ex. A, attached. The Summons was identified
26 as a Department of Homeland Security "Summons To Appear and/or Produce Records -
27
28

1 19 U.S.C. § 1509.”

2 The Summons asserts:

3 Your testimony and/or production of the indicated records is required in
4 connection with an investigation or inquiry to ascertain the correctness of
5 entries, to determine the liability for duties, taxes, fines, penalties, or forfeitures,
6 **and/or to ensure compliance with the laws or regulations administered
by CBP and ICE.**

7 Exhibit A (emph. added).

8 The Summons seeks the following information from Reddit:

9 All customer or subscriber account information for any and all accounts
10 associated with the following identifiers listed below:

11 Reddit User: Tired_Thumb

12 Date: January 1, 2026 - February 18, 2026

13 In addition, for each such account, the information shall include the subscriber's:

- 14 I. Names (including subscriber names, user names, and screen names);
- 15
- 16 2. Addresses (including mailing addresses, residential addresses, business
17 addresses, and e-mail addresses);
- 18
- 19 3. Length of service (including start date) and types of service utilized;
- 20
- 21 4. Telephone or instrument numbers (including model type/numbers, phone
22 numbers, IMSIs, IMEIs, MEIDs, UDIDs, MAC addresses, and advertising IDs);
- 23
- 24 5. Other subscriber numbers or identities (including temporarily assigned
25 network addresses and registration Internet Protocol ("IP") addresses);
- 26
- 27 6. IP addresses when connected to service and posting activity
- 28
- 29 7. Means and source of payment for such service (including any credit card or
30 bank account number) and billing records.

Ex. A.

Although the Summons was addressed to Reddit's Sacramento address, the

1 location where compliance would occur -- its headquarters -- is in San Francisco.

2 <https://www.sec.gov/Archives/edgar/data/1713445/000171344525000096/redditannualre>
3 [port2024.pdf](https://www.sec.gov/Archives/edgar/data/1713445/000171344525000096/redditannualreport2024.pdf).¹

4 ARGUMENT

5 **I. The Administrative Summons Exceeds the Scope of 19 U.S.C. § 1509**

6 The stated authority for the Summons is 19 U.S.C. § 1509. That statute does not
7 provide authority for the Summons that was issued to Reddit.
8

9 Administrative subpoenas are subject to judicial review.² *U.S. v. Golden Valley*
10 *Elec. Ass'n*, 689 F.3d 1108 (2012). “An administrative subpoena may not be “too
11 indefinite or broad.” *Peters v. United States*, 853 F.2d 692, 699 (9th Cir. 1988). “The
12 critical questions are: (1) whether Congress has granted the authority to investigate; (2)
13 whether procedural requirements have been followed; and (3) whether the evidence is
14 relevant and material to the investigation.” *EEOC v. Children's Hosp. Med. Ctr. of N.*
15 *Cal.*, 719 F.2d 1426, 1428 (9th Cir. 1983) (*en banc*), *overruled on other grounds as*
16 *recognized in Prudential Ins. Co. of Am. v. Lai*, 42 F.3d 1299 (9th Cir. 1994).
17
18

19 Even if other criteria are satisfied, “a Fourth Amendment ‘reasonableness’
20
21

22
23 ¹ See *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001) (taking judicial notice of
24 information on government websites); *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723,
25 727 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 823 (2016) (“We may take judicial notice of
26 ‘official information posted on a governmental website, the accuracy of which [is]
27 undisputed’”).

28 ² Although 19 U.S.C. 1509 refers to a “summons” as opposed to a “subpoena,” in the
current case there is no meaningful distinction with how this administrative legal
process operates, as far as counsel can determine.

1 inquiry must also be satisfied.” See *Reich v. Mont. Sulphur & Chem. Co.*, 32 F.3d 440,
2 444 n. 5 (9th Cir. 1994).” *Id* at 1113.

3 Where, as here, the government seeks information implicating First Amendment-
4 protected activities, the government must satisfy a high bar to compel disclosure.

5 Specifically, an investigation that “intrudes into the area of constitutionally protected
6 rights of speech, press, association and petition” requires the government to
7 “convincingly show a substantial relation between the information sought and a subject
8 of overriding and compelling state interest.” *Gibson v. Fla. Legislative Investigation*
9 *Comm.*, 372 U.S. 539, 546 (1963). See also *United States v. Rumely*, 345 U.S. 41, 46
10 (1953); *Bursey v. United States*, 466 F.2d 1059, 1083 (9th Cir. 1972).

11 Courts in civil litigation where First Amendment rights are at stake similarly
12 impose a heightened standard before unmasking the identities of Internet users. See,
13 e.g., *Art of Living Found. v. Does 1-10*, 2011 WL 5444622, at *4 (N.D. Cal. Nov. 9,
14 2011); *Malibu Media, LLC v. J. Does 1-16*, 902 F. Supp. 2d 690, 698-99 (E.D. Pa. 2012);
15 *Enterline v. Pocono Medical Center*, 751 F. Supp. 2d 782, 787-88 (M.D. Pa. 2008); *Doe v.*
16 *Cahill*, 884 A.2d 451, 456-57 (Del. 2005); *Highfields Cap. Mgmt. v. Doe*, 385 F. Supp.
17 2d 969, 974-76 (N.D. Cal. 2005); *Dendrite Int’l Inc. v. Doe*, 342 N. J. Super. 134, 141-42
18 (App. Div. 2001).

19 Under Rule 45(d)(3)(A) of the Federal Rules of Civil Procedure, “the court where
20 compliance is required must quash or modify a subpoena” that requires disclosure of
21 protected matter or subjects a person to undue burden. The procedures under Rule 45
22 are made applicable to the federal agency Summons at issue here pursuant to Rule
23

1 81(a)(5), which provides that “these rules” -- referring to the Federal Rules of Civil
2 Procedure -- “apply to proceedings to compel testimony or the production of documents
3 through a subpoena issued by a United States officer or agency under a federal statute,
4 except as otherwise provided by statute, by local rule, or by court order in the
5 proceedings.”
6

7 The statute the government invokes here is found in Title 19 of the U.S. Code,
8 which deals with “Customs Duties,” and is specifically within Chapter 4 of Title 19,
9 which deals with the “Tariff Act of 1930”; Subtitle III – “administrative provisions”;
10 Part III – “Ascertainment, Collection, and Recovery of Duties.” Not surprisingly,
11 therefore, this statute is in the same Part as statutes that grant Customs agents
12 authority to deal with “entry of merchandise”; “deferral of duty on large yachts
13 imported for sale at United States boat shows”; “unclaimed merchandise”; “disposition
14 of forfeited distilled spirits, wines and malt liquor”; “destruction of abandoned or
15 forfeited merchandise”; “expense of weighing and measuring”; “examination of
16 baggage”; “penalties for failure to declare”; “dutiable value”; “merchandise bearing
17 American trade-mark”; and “importation of wild mammals and birds in violation of
18 foreign law.” Nothing in this statutory structure provides any broad authority for
19 Customs agents to take action beyond the scope of these duties related to import and
20 export of goods.
21
22
23

24 The text of Section 1509, entitled “Examination of Books and Witnesses,” also (as
25 it must) clearly relates to the regulation of import and export. Section 1509 indeed
26 confers summons authority for records related to that topic; but the statute stops far
27
28

1 short of conferring generalized authority to obtain records of any kind beyond the scope
2 of those related to merchandise duties, taxes, or fees. Section 1509 reads, in pertinent
3 part:

4 (a) Authority

5
6 **In any investigation or inquiry conducted for the purpose of**
7 **ascertaining the correctness of any entry, for determining the liability**
8 **of any person for duty, fees and taxes due or duties, fees and taxes**
9 **which may be due the United States, for determining liability for fines**
10 **and penalties, or for insuring compliance with the laws of the United**
11 **States administered by the United States Customs Service, the Secretary³**
(but no delegate of the Secretary below the rank of district director or special
agent in charge) may —

12 (1) examine, or cause to be examined, upon reasonable notice, any record
13 (which for purposes of this section, includes, but is not limited to, any statement,
14 declaration, document, or electronically generated or machine readable data)
described in the notice with reasonable specificity, **which may be relevant to**
such investigation or inquiry —

15 (A) the person who—

16 (i) imported, or knowingly caused to be imported, **merchandise** into the
17 customs territory of the United States,

18 (ii) exported merchandise, or knowingly caused **merchandise** to be
19 exported, to a NAFTA country (as defined in section 3301(4) of this title) or to
20 Canada during such time as the United States-Canada Free-Trade Agreement is
21 in force with respect to, and the United States applies that Agreement to,
Canada,

22 (iii) transported or stored **merchandise** that was or is carried or held
23 under customs bond, or knowingly caused such transportation or storage, or

24 (iv) **filed a declaration, entry, or drawback claim with the Customs**

25
26 ³ Regarding the “Secretary” referred to, while the Secretary of Commerce is referenced
27 in certain provisions of Title 19 (e.g., investigations under § 1862), the default and
28 overarching reference in Title 19 is to the Secretary of the Treasury. *See, e.g.*, 19 U.S.C.
1401(i), (l).

1 **Service;**

2 (B) any officer, employee, or agent of any person described in
3 subparagraph (A);

4 (C) any person having possession, custody or care of records **relating to**
5 **the importation or other activity described in subparagraph (A);** or

6 (D) any other person he may deem proper;

7 . . . to produce records, as defined in subsection (d)(1)(A), and to give such
8 testimony, under oath, as may be relevant to such investigation or inquiry

9 (Emph. added).

10 If one stopped reading there (and ignored the context of Title 19), there could be
11 an argument that the text of 19 U.S.C. § 1509 confers the type of broad summons
12 authority the government is attempting to wield here. But § 1509(d)(1)(A) limits the
13 type of record or document that can be obtained under this section. That section reads
14 in pertinent part:
15

16 (d) Special procedures for third-party summonses

17 (1) For purposes of this subsection—

18 (A) The term “records” includes those—

19 (i) required to be kept under **section 1508** of this title; or

20 (ii) **regarding which there is probable cause to believe that they**
21 **pertain to merchandise the importation of which into the United States**
22 **is prohibited.**
23

24 19 U.S.C. § 1509(d)(1)(A) (emph. added). Both Section 1508, and subsection (ii) quoted
25 above, unambiguously cover only imports and exports. Simply put, the statute limits
26 the government’s summons authority to records regarding imports and exports (and the
27 duties, tariffs, and fines associated with such commerce).
28

1 Notably, there is no provision in the *statute* that allows the government to issue
2 such summons “to ensure compliance with the laws or regulations administered by CBP
3 and ICE,” as asserted by DHS in this Summons. Exhibit A. The government appears to
4 have gratuitously added that language to the summons, as part of its apparent theory
5 of throwing legal processes against the wall to see what sticks.
6

7 Here, there is no plausible nexus between the documents sought and those
8 permissible by statute. J. Doe is a U.S. citizen who has not traveled out of the country,
9 is not engaged in any international commerce, has no business concerns outside the
10 United States, and primarily uses their Reddit account to engage in political speech
11 relevant to their local community. Yet the government claims the right to obtain Doe’s
12 name, telephone number, home address, banking and credit card information, IP
13 addresses, telephone model number(s), and the names of any other accounts associated
14 with their Reddit account. The information sought by the government in no way
15 pertains to customs or importing or exporting merchandise, and is clearly intended to
16 chill free speech.
17
18

19 The government’s misuse of 19 U.S.C. § 1509 summons power in this case is not
20 new. Indeed, in 2017 (during the first Trump administration), it was the subject of a
21 2017 report from the Department of Homeland Security’s own Office of Inspector
22 General, criticizing improper and illegal use of these types of summons. Ex. B. In that
23 report, DHS itself found that it was unlawful for the government to issue a 1509
24 summons to try to unmask an anonymous twitter (now X) user:
25
26

27 CBP issued the summons to Twitter regarding the @ALT_USCIS account for the
28 purpose of identifying the owner of the account. CBP took the position that it

1 needed this information in order to “insur[e] compliance with the laws of the
2 United States administered by the [Service]” — i.e., to investigate possible
3 criminal violations by CBP officials, including murder, theft, and corruption.

4 However, Subtitle III, Part III of Title 19 — under which Section 1509 falls
5 — addresses ascertainment, collection, and recovery of *customs duties*

6 . . . CBP’s purpose in issuing the summons to Twitter was unrelated to the
7 importation of merchandise or the assessment and collection of customs duties.

8 Ex. B. at 2-3 (page 3-4 of PDF) (emph. in original). DHS went on to list other
9 impermissible common uses of these summonses. *Id.* at 4 (page 5 of PDF).

10 Although DHS has attempted to erase or conveniently forget history, it cannot
11 ignore its own legal opinion on this exact matter, when nothing in the law or
12 constitution has changed in the intervening time period. The government’s request
13 exceeds the scope of what is permissible under 19 U.S.C. § 1509, and the Summons at
14 issue must be quashed.

15 **II. The Summons Violates the First Amendment**

16 The administrative Summons at issue seeks to unmask an anonymous speaker
17 engaging in political speech on the internet. The U.S. Supreme Court has consistently
18 protected the right of individuals and groups to engage in anonymous political speech.
19 *See, e.g., Buckley v. American Constitutional Law Found.*, 525 U.S. 182, 199-200 (1999);
20 *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995). Courts in California have also
21 upheld this right. *See e.g., Krinsky v. Doe 6*, 159 Cal. App. 4th 1154, 1164 (Cal. App.
22 2008); *Rancho Publications v. Superior Court*, 68 Cal. App. 4th 1538, 1548 (Cal. App.
23 1999) (holding that the California Constitution protects the right to anonymous political
24 speech).
25
26
27
28

1 In *Krinsky*, the California Court of Appeals noted the reasons why anonymous
2 speech, especially on the internet, is important, and why people may want to engage in
3 it:
4

5 The use of a pseudonymous screen name offers a safe outlet for the user to
6 experiment with novel ideas, express unorthodox political views, or criticize
7 corporate or individual behavior without fear of intimidation or reprisal. In
8 addition, by concealing speakers' identities, the online forum allows individuals
of economic, political, or social status to be heard without suppression or other
intervention by the media or more powerful figures in the field.

9 159 Cal. App. 4th at 1162.

10 Compliance with the summons at issue would compromise the exercise of Doe's
11 fundamental rights by chilling Doe's ability to freely associate with others, as well as to
12 engage in political speech in a public forum. It would also chill the rights of others who
13 see Doe targeted by the government in this manner. Such a summons "is subject to the
14 closest scrutiny." *NAACP v. Alabama*, 357 U.S. 449, 461 (1958). *See also Bates v. City of*
15 *Little Rock*, 361 U.S. 516, 524 (1960). If speakers engaged in protected speech are
16 identified, their fundamental rights may be subject to forms of private retribution
17 following court-ordered disclosures. *NAACP*, 357 U.S. at 462-63.

18 This Court may order disclosure only where the government has "demonstrated
19 so cogent an interest" in obtaining this information "as to justify the substantial
20 abridgment of associational freedom which such disclosures will effect. Where there is a
21 significant encroachment upon personal liberty, the [government] may prevail only
22 upon showing a subordinating interest which is compelling." *Bates*, 361 U.S. at 524. *See*
23 *also NAACP*, 357 U.S. at 463.

24 Because anonymous actors engaged in protected political speech possess a First
25

1 Amendment right to remain anonymous, the government must prove a compelling
2 interest in such identification. *McIntyre*, 514 U.S. at 347. Because the government has
3 failed to do so, an order compelling the production of identities would grossly infringe on
4 the First Amendment rights of Doe.
5

6 **CONCLUSION**

7 J. Doe respectfully requests that the Court quash the administrative Summons
8 at issue.
9

10 Dated: March 12, 2026.

11 /s/ *Matthew Kellegrew*
12 Matthew Kellegrew, CA State Bar # 296166
13 Admitted to N.D. Cal.
14 Civil Liberties Defense Center
15 mkellegrew@cldc.org
16 1711 Willamette St., Suite 301 # 359
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4 Attorneys for Movant J Doe

5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**

7 *In the Matter of the Summons Number*) Case No. 26-mc-80074
8 *OPR-DC-2026-032216-001:*)

9 J DOE,) **DECLARATION OF J DOE IN**
Movant,) **SUPPORT OF MOTION TO QUASH**
10) **SUMMONS**

11 vs.)

12 THE UNITED STATES) **DATE: To Be Determined**
13 DEPARTMENT OF HOMELAND) **TIME: To Be Determined**
SECURITY,)

14)
15 Respondent.)
16)

17 I, J DOE, an individual whose rights and interests are implicated by the
18 Summons at issue in this matter declare the following:

- 19 1. I am a citizen of the United States, and a resident of the State of
20 Oregon.
21
22 2. I am associated with the Reddit account Tired_Thumb.
23
24 3. I use this account to post about events and issues local to my region
25 of Oregon and beyond. I regularly engage in political speech, both in my direct
26 posts as well as in the comment threads of others posts I access using Reddit. I
27 utilize this account to engage in political speech through direct posts, as well as
28 dialogue with community members in comment threads associated with my own

1. To (Name, Address, City, State, Zip Code) Reddit, Inc. Corporation Service Company Legal Compliance 2710 Gateway Oaks Drive Suite 150N Sacramento, California 95833	DEPARTMENT OF HOMELAND SECURITY SUMMONS To Appear and/or Produce Records 19 U.S.C. § 1509
Summons Number: OPR-DC-2026-032216-001	

By the service of this summons upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

(A)	<input type="checkbox"/>	APPEAR before the U.S. Customs and Border Protection (CBP) Officer or U.S. Immigration and Customs Enforcement (ICE) Special Agent named in Block 2 at the place, date, and time indicated to testify and give information.
(B)	<input checked="" type="checkbox"/>	PRODUCE the records (including statements, declarations, and other documents) indicated in Block 3 before the CBP Officer or ICE Special Agent named in Block 2 at the place, date, and time indicated.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties, or forfeitures, and/or to ensure compliance with the laws or regulations administered by CBP and ICE.

Failure to comply with this summons will render you liable to proceedings in a U.S. District Court to enforce compliance with this summons as well as other sanctions.


2. (A) CBP Officer or ICE Special Agent			(B) Date and Time
Name	[Redacted]	Telephone	3/4/2026 8:00 AM
Title	Special Agent	[Redacted]	
Address	11320 Random Hills Road Fairfax, VA 22030 United States	Fax	

3. Records required to be produced for inspection

Please see attached continuation page.

You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede the investigation and thereby interfere with the enforcement of federal law.

Issued under authority of section 509, Tariff Act of 1930, as amended by Pub. L. No. 95-410 (19 U.S.C. § 1509); 44 F.R. 2217; Homeland Security Act of 2002.

4. Name of person authorized to service this summons or any other CBP Officer or ICE Special Agent [Redacted]	5. Date of issue - 2/19/2026 3:21 PM Eastern
	By: [Redacted]
	6. Name, title, address, and telephone number of person issuing this summons
If you have any questions regarding this summons, contact the CBP Officer or ICE Special Agent identified in Block 2	Name [Redacted] Title Special Agent in Charge (Acting) Address Homeland Security Investigations 11320 Random Hills Road Fairfax, VA 22030 United States Telephone [Redacted]

<p>1. To (Name, Address, City, State, Zip Code) Reddit, Inc. Corporation Service Company Legal Compliance 2710 Gateway Oaks Drive Suite 150N Sacramento, California 95833</p>	<p>DEPARTMENT OF HOMELAND SECURITY</p> <p>SUMMONS (Continuation)</p> <p>To Appear and/or Produce Records 19 U.S.C. § 1509</p>
--	---

Summons Number: OPR-DC-2026-032216-001

3. Records required to be produced for inspection (continued)

The following applies if checked:

<input type="checkbox"/>	<p>Child Exploitation: This subpoena is in regard to an investigation involving Child Exploitation and/or transmission of Child Pornography via the internet. Please do not disclose/notify the user of the issuance of this subpoena. Disclosure to the user could impede an investigation or obstruct justice.</p>
--------------------------	---

All customer or subscriber account information for any and all accounts associated with the following identifiers listed below:
 Reddit User: Tired_Thumb

Date: January 1, 2026 - February 18, 2026

In addition, for each such account, the information shall include the subscriber's:

1. Names (including subscriber names, user names, and screen names);
2. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
3. Length of service (including start date) and types of service utilized;
4. Telephone or instrument numbers (including model type/numbers, phone numbers, IMSIs, IMEIs, MEIDs, UDIDs, MAC addresses, and advertising IDs);
5. Other subscriber numbers or identities (including temporarily assigned network addresses and registration Internet Protocol ("IP") addresses);
6. IP addresses when connected to service and posting activity
7. Means and source of payment for such service (including any credit card or bank account number) and billing records.

Please return all records to the below individual:

██████████ Senior Special Agent
 U.S. Immigration and Customs Enforcement
 11320 Random Hills Road
 Fairfax, VA 22030
 ██████████

Method of Response:

Preferred:

Return the requested records in an accessible data file format such as ".XLS", ".CSV", ".TXT", or ".PDF". The data file(s) should be delivered via e-mail to: Special Agent ██████████

NOTE: The ICE e-mail system limits incoming messages containing file attachments to 10 MB. For larger files send the summons response in multiple e-mail messages.

Alternates:

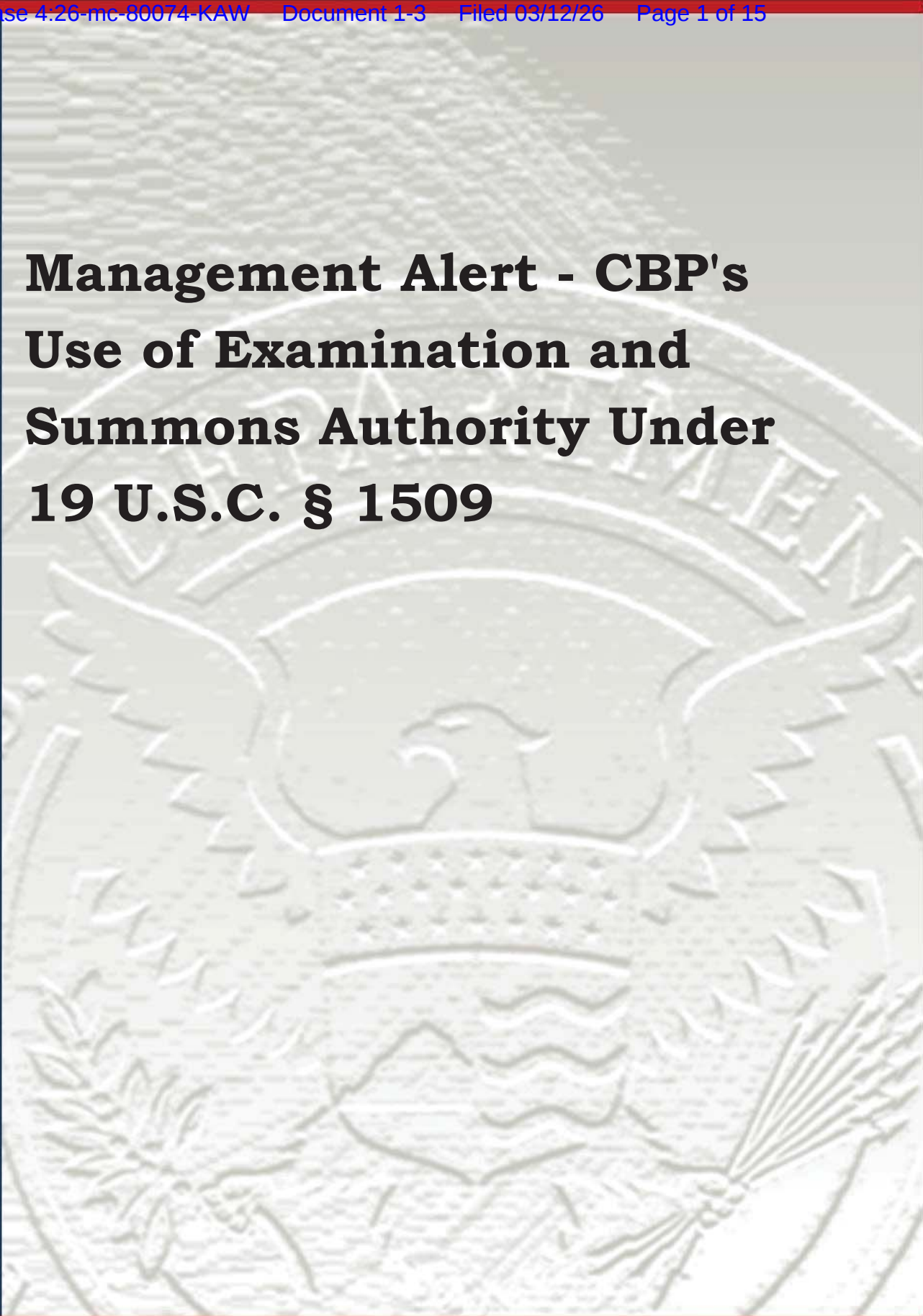
The records should be delivered to Special Agent ██████████ at U.S. Immigration and Customs Enforcement:
 11320 Random Hills Road, Fairfax, VA, 22030

If you have questions, please contact Special Agent ██████████

You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede the investigation and thereby interfere with the enforcement of federal law.

OFFICE OF INSPECTOR GENERAL

**Management Alert - CBP's
Use of Examination and
Summons Authority Under
19 U.S.C. § 1509**



**Homeland
Security**

November 16, 2017

OIG-18-18

EXHIBIT B




OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

November 16, 2017

MEMORANDUM FOR: Kevin McAleenan
Acting Commissioner
U.S. Customs and Border Protection

FROM: John Roth 
Inspector General

SUBJECT: Management Alert – *CBP's Use of Examination and Summons Authority Under 19 U.S.C. § 1509*

For your action is our final management alert, *CBP's Use of Examination and Summons Authority Under 19 U.S.C. § 1509*, prepared by the DHS OIG Special Reviews Group. This final management alert incorporates the management response provided by your office.

The alert contains three recommendations aimed at ensuring that CBP personnel are informed and trained on the appropriate exercise of CBP's examination and summons authority under 19 U.S.C. § 1509. Based on the information provided in CBP's response to the draft alert, we consider Recommendations 1 and 2 resolved and open, and Recommendation 3 unresolved and open.

As prescribed by DHS Directive 077-01, *Follow-Up and Resolution for Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written update on your corrective action plan and the target completion date for each recommendation. In this update, please identify the parties responsible for implementing the corrective action and provide any other supporting documentation necessary to inform us about the current status of the recommendations. Until your response is received and evaluated, the recommendations will remain open. Please send your written update to Special.Reviews@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act of 1978*, as amended, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over DHS. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Diana Shaw, Director of the Special Reviews Group, at (202) 254-4100.

EXHIBIT B



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Background

On March 14, 2017, the U.S. Customs and Border Protection (CBP) Office of Professional Responsibility (OPR) issued a summons to Twitter, Inc. (Twitter) purportedly pursuant to its authority under 19 U.S.C. § 1509. The summons sought “[a]ll records regarding the twitter account @ALT_USCIS to include, User names, account login, phone numbers, mailing addresses, and I.P. addresses.” On April 6, 2017, Twitter filed a complaint against CBP in federal court claiming the summons exceeded the scope of CBP’s authority under 19 U.S.C. § 1509. Twitter further accused CBP of attempting to “unmask” the @ALT_USCIS anonymous speaker and infringing upon his or her First Amendment rights. On April 7, 2017, CBP withdrew the summons, and Twitter subsequently dismissed its complaint.

In the course of investigating the circumstances surrounding these events, the Department of Homeland Security (DHS) Office of Inspector General (OIG) identified issues concerning CBP’s policies and practices with respect to summonses issued pursuant to 19 U.S.C. § 1509 (Section 1509 Summonses). As described further below, lack of clear guidance on the proper use of Section 1509 Summonses has resulted in inconsistent — and, in some cases, improper — use of such summonses. While we understand that CBP has taken steps to clarify the guidance, CBP can and should do more to ensure that its personnel are properly informed and educated about the appropriate use of Section 1509 Summonses.

CBP OPR’s Use of a Section 1509 Summons in the @ALT_USCIS Case

CBP issued the summons to Twitter regarding the @ALT_USCIS account for the purpose of identifying the owner of the account. CBP took the position that it needed this information in order to “insur[e] compliance with the laws of the United States administered by the [Service]” — *i.e.*, to investigate possible criminal violations by CBP officials, including murder, theft, and corruption.

However, Subtitle III, Part III of Title 19 — under which Section 1509 falls — addresses ascertainment, collection, and recovery of *customs duties*. Specifically, section 1509(a)(1) authorizes the U.S. Customs Service¹ (Service) to examine, or cause to be examined, any “record” that

¹ Pursuant to Section 403(1) of the *Homeland Security Act of 2002*, the functions, personnel, assets, and liabilities of the U.S. Customs Service were transferred from the Secretary of the Treasury to the Secretary of Homeland Security. DHS Delegation Number 7010.3 delegates to the CBP Commissioner, and through him to his officers and CBP employees, all rights, privileges, powers, and duties previously enforced or www.dhs.oig.gov



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may be relevant to an investigation or inquiry conducted by the Service for the purpose of (1) ascertaining the correctness of any entry [of merchandise]; (2) determining the liability of any person for duties, fees, and taxes due to the United States; (3) determining liability for fines and penalties; or (4) “insuring compliance with the laws of the United States administered by the [Service].”

Section 1509(d) details special procedures for issuing summonses to third parties. Section 1509(d)(1)(A) limits the scope of third-party summonses to “records” pertaining to prohibited merchandise, or records required to be kept under 19 U.S.C. § 1508. Section 1508 defines “records” as documents pertaining to the importation of merchandise into the customs territory of the United States, the filing of a draw-back claim, or the transportation and storage of merchandise carried or held under bond.

CBP’s purpose in issuing the summons to Twitter was unrelated to the importation of merchandise or the assessment and collection of customs duties. Accordingly, CBP may have exceeded the scope of its authority under Section 1509 when it issued the summons to Twitter, a fact CBP OPR appeared to tacitly acknowledge when, on May 25, 2017, the Executive Director of CBP OPR’s Investigative Operations Division (IOD) emailed CBP OPR personnel clarifying the limited contexts in which Section 1509 Summonses may properly be used:

In the upcoming revised IOP, there will be additional information included to assist you and your agents navigate Title 8 and 19 summonses. In addition, the Commissioner has asked we change the review process. Until those details are finalized, I wanted to give you supplemental guidance regarding the issuance of summonses under 19 U.S.C § 1509 in criminal and administrative investigations involving employee misconduct. OPR IOD may utilize a 1509 summons authority in investigations and inquiries involving employee misconduct, but only where such misconduct is connected to the importation, certain exportations, or transportation or storage under bond, of merchandise. In such investigations, OPR may use a 1509 summons to obtain entry records or other records required to be kept under 19 U.S.C. § 1508. In instances where records are sought from third parties, such as telecommunications providers, social media outlets, and banks, who are not otherwise obligated to keep records pursuant to 1508, the issuance of a 1509 summons requires probable cause to believe that the records relate to an importation of merchandise that is prohibited. Prior to issuance of a section 1509 summons to a third party, OPR agents are required to consult with the appropriate Associate/Assistant Chief Counsel office.

(emphasis added)

The guidance communicated in this email brings CBP OPR’s policy on the use of Section 1509 Summonses in line with the purpose and language of Title 19, and should assist CBP OPR personnel in determining when such summonses may properly be used. However, we

administered by the U.S. Customs Service, including the summons authority provided under 19 U.S.C. § 1509.



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understand that this email guidance is not yet reflected in CBP OPR's official operating policies or procedures. Specifically, as explained below, we understand that CBP OPR has not updated its Special Agent Internal Operating Procedures (IOP) to communicate this guidance on the proper use of Section 1509 Summonses, including the new legal review process.

CBP OPR's Policy and Practice Regarding Use of Section 1509 Summonses

CBP exercises its examination and summons authority under 19 U.S.C. §1509 using summons form DHS 3115, "Summons to Appear and/or Produce Records, 19 U.S.C. § 1509." CBP OPR's Special Agent Internal Operating Procedures sets forth the agency's policy with respect to the use of DHS 3115 / Section 1509 Summonses. Chapter 10.1 of the most recent version of the IOP, issued on April 15, 2016, states the following:

DHS Summons to Appear and/or Produce Records (DHS 3115)

SAs will utilize the [DHS 3115](#) to obtain information related to Title 8 and Title 19 violations. This form may not be modified or updated in any manner. Absent a nexus to a Title 8 or Title 19 violation, the DHS 3115 may not be used. Coordinate with the AUSA or state/local prosecutor on use of the DHS 3115.

This type of summons authorizes the examination of records to ensure compliance with customs law. As the DHS 3115 form, itself, specifies, it may be utilized "in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties or forfeitures, and/or to insure compliance with the laws or regulations administered by CBP and ICE."

The DHS 3115 cannot be used in drug-smuggling or export investigations. If the investigation does not meet these limited criteria, the use of the DHS 3115 is not authorized.

Data provided by CBP to DHS OIG indicates that DHS 3115 regularly has been used by CBP OPR personnel in violation of the policy. For instance, despite the express prohibition against use of DHS 3115 in drug-smuggling cases, CBP OPR used DHS 3115 in at least 43 drug-smuggling cases between January 2015 and May 2017, representing approximately 20% of the total summonses issued by CBP OPR during this period. Based on this data, it appears CBP OPR's use of DHS 3115 during this period violated its own policy at least 1 out of every 5 times.

This same data reflects the use of DHS 3115 summonses in other questionable contexts. For instance, a DHS 3115 summons was used to obtain records from Craigslist in a matter involving a Border Patrol agent who allegedly attempted to sell government-issued night vision goggles on the site. Similarly, a DHS 3115 summons was used in several cases in which a CBP employee requested sick leave under false pretenses. It is difficult to see how such employee misconduct bears a nexus to Title 8



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(aliens and nationality) or Title 19 (customs duties), as required by CBP OPR policy.

This evidence demonstrates a lack of understanding of the proper use of DHS 3115 / Section 1509 Summonses on the part of CBP OPR personnel. It indicates that these summonses are being used to obtain records — including records from third parties — in a wide range of cases having no nexus to Title 8 or Title 19. Such uses violate CBP OPR’s stated policy and potentially open up the agency to legal challenges, as in the @ALT_USCIS case.



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Recommendations

Recommendation 1: We recommend that CBP update the Special Agent Internal Operating Procedures immediately to reflect the guidance on the use of Section 1509 Summonses provided in the May 25, 2017 email referenced in this report from the Executive Director of CBP OPR's Investigative Operations Division.

Recommendation 2: We recommend that relevant CBP personnel receive training on the proper use of Section 1509 Summonses as soon as practicable.

Recommendation 3: We recommend that CBP look at use of Section 1509 Summonses across the agency to determine how such summonses are being used, and whether such uses comport with the law and CBP's updated policy.

Management Comments and OIG Analysis

CBP concurred with the recommendations and provided comments to the draft alert. A summary of CBP's response and our analysis follows. We have included a copy of CBP's management response in its entirety in Appendix A. CBP also provided technical comments to the alert. We made changes to incorporate these comments, where appropriate.

CBP has taken, and is continuing to take, corrective action to address the issues raised in this alert. Specifically, CBP informed us that, between April and June 2017, CBP OPR delivered both verbal and written guidance to OPR agents at headquarters and field offices relating to the issuance of Section 1509 Summonses / DHS 3115. These updates were followed by training for OPR Special Agents in Charge (SACs) in July 2017. CBP further informed us that it will revise its IOP to reflect the updated guidance on the issuance of DHS 3115. Once the updated IOP is released, training will be provided to OPR SAC Offices.

Finally, CBP has created a CBP-wide working group to review and update the current CBP Directive on the Examination and Summons Authority Under 19 U.S.C. § 1509 to ensure that it reflects the updated guidance on the proper use of Section 1509 Summonses.

Response to Recommendation #1: Concur. CBP agreed to issue a revised IOP by April 30, 2018, which will include updated guidance on the issuance of Section 1509 Summonses / DHS 3115. The revised IOP will provide guidance on the issuance of Section 1509 Summonses



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consistent with the guidance provided in the May 25, 2017 email from the Executive Director of CBP OPR's IOD. The revised IOP will also lay out a multi-level approval process for Section 1509 Summonses, which includes preliminary review by an OPR SAC, legal review by an Associate or Assistant Chief Counsel, review by the IOD Executive Director, and approval by the CBP OPR Assistant Commissioner.

While awaiting issuance of the revised IOP, CBP has taken steps to disseminate information about the updated guidance and new approval process to relevant CBP OPR personnel. This included issuing verbal and written guidance between April and June 2017.

OIG Analysis of CBP's Response: CBP concurred with our recommendation and provided copies of the written guidance already provided to CBP OPR personnel on the appropriate use of Section 1509 Summonses / DHS 3115. However, this recommendation will remain open and resolved until CBP OPR issues a revised IOP reflecting the updated guidance.

Response to Recommendation #2: Concur. CBP agreed to provide training to all OPR SAC Offices following issuance of the revised IOP, which will include training on the updated guidance regarding issuance of Section 1509 Summonses / DHS 3115. CBP also conducted training with all OPR SACs in July 2017 on the appropriate use of Section 1509 Summonses / DHS 3115.

OIG Analysis of CBP's Response: CBP concurred with our recommendation and provided a copy of the training materials used to train OPR SACs in July 2017 on the appropriate use of Section 1509 Summonses / DHS 3115. The guidance provided in the training materials is consistent with the guidance provided in the May 25, 2017 email from the Executive Director of CBP OPR's IOD. However, this recommendation will remain open and resolved until CBP OPR completes the training it intends to conduct at all OPR SAC Offices following issuance of the revised IOP.

Response to Recommendation #3: Concur. On May 5, 2017, CBP created a CBP-wide working group to update the CBP Directive on the Examination and Summons Authority Under Title 19 U.S.C. § 1509 (Directive). The working group updated the Directive to reflect the current use of the examination and summons authority by various offices within CBP, and included a new training requirement for offices across CBP on the proper use of Section 1509 Summonses. The Directive is in final draft and is currently out for review and comment by all impacted CBP Offices.



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OIG Analysis of CBP's Response: CBP concurred with our recommendation and provided a copy of the final draft version of the updated Directive. One sub-section of the draft Directive specifically addresses summonses issued to third parties pursuant to 19 U.S.C. § 1509, including social media outlets like Twitter. The sub-section specifies that if the requested records are not required to be kept under 19 U.S.C. § 1508, such summonses may be issued only if CBP has probable cause to believe the requested records pertain to merchandise the importation of which into the U.S. is prohibited. This instruction is consistent with the guidance provided in the May 25, 2017 email from the Executive Director of CBP OPR's IOD. A separate section of the draft Directive also requires CBP Offices to provide training to employees on best practices associated with the issuance of the 1509 summons.

While the draft Directive addresses the concerns reflected in Recommendations 1 and 2 of this alert, it does not address Recommendation 3. Recommendation 3 calls on CBP to review how its personnel have been using Section 1509 Summonses to determine whether such summonses are consistently being used in compliance with the law and CBP's updated policy. Accordingly, this recommendation will remain unresolved and open until CBP provides evidence that it has conducted this retrospective review.



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Authorities

This management alert reflects work performed by the DHS OIG Special Reviews Group pursuant to Section 2 of the *Inspector General Act of 1978*, as amended. Specifically, this management alert provides information about the inconsistent and improper use of Section 1509 Summonses by CBP OPR for the purpose of keeping the Secretary of DHS and Congress fully and currently informed about problems and deficiencies relating to the administration of DHS programs and operations and the necessity for and progress of corrective action. This management alert is designed to promote the efficient and effective administration of, and to prevent and detect fraud and abuse in, the programs and operations of DHS.



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Appendix A
CBP Response to the Alert


1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

OCT 27 2017

MEMORANDUM FOR: John Roth
Inspector General
Department of Homeland Security

FROM: Sean M. Mildrew 
Senior Component Accountable Official
U.S. Customs and Border Protection

SUBJECT: Management's Response to OIG Draft Management Alert: "CBP's
Use of Summons Authority" (Project No. 17-SRG-3)

Thank you for the opportunity to review and comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

The CBP Office of Professional Responsibility's (OPR) intent has always been, and will continue to be, to utilize every lawful tool at its disposal to aggressively investigate allegations of criminal or serious misconduct on the part of CBP officers, agents or other employees. Guidance regarding the use of Section 1509 Summonses, as reflected in the OPR Special Agent Internal Operating Procedures (IOP), dated April 15, 2016, is consistent with that intent.

In May 2017, as referenced in OIG's draft alert, OPR headquarters issued new written guidance to its Special Agents in Charge on the use of Section 1509 Summonses. The new policy, presently in effect, requires that all summons requests undergo a legal sufficiency review and receive final written approval by the Assistant Commissioner of OPR prior to issuance. The new policy guidance will be incorporated into an updated IOP.

The draft report contained three recommendations, with which CBP concurs. Attached find CBP's detailed response to each recommendation.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were previously provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Attachment



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Attachment: Management Response to the Office of Inspector General (OIG) Draft Management Alert: “CBP’s Use of Summons Authority” (Project No. 17-SRG-3)

The OIG recommended that CBP:

Recommendation 1: Update the Special Agent Internal Operating Procedures immediately to reflect the guidance on the use of Section 1509 Summonses provided in the May 25, 2017 email referenced in this report from the Executive Director of CBP OPR’s Investigative Operations Division.

Response: Concur. CBP’s Office of Professional Responsibility (OPR) has initiated a three pronged approach for immediate corrective action. The first prong commenced in April 2017, when CBP OPR delivered verbal guidance to OPR agents at headquarters and field offices on the issuance of the Customs Summons. The guidance included the requirement to obtain concurrence from the CBP Office of Chief Counsel (OCC) prior to issuance of any Customs Summons. The second prong for immediate corrective action was completed in May 2017, when CBP OPR provided additional written guidance to OPR agents related to the issuance of the Customs Summons. Lastly, the third prong for immediate corrective action was finalized in June 2017. CBP OPR released written guidance to OPR agents on the issuance of the DHS 3115, Customs Summons, and Immigration Enforcement Subpoena to Appear and/or Produce Records (Title 8 USC § 1225(d)), requiring final approval from the Assistant Commissioner of OPR on all requests.

The guidance also includes a three level approval process. First, OPR Special Agents in Charge (SAC) will review all summons and subpoenas and supporting documentation to ensure compliance with applicable authorities and policies, prior to submission to OCC. Next, the appropriate Associate or Assistant Chief Counsel (ACC) office will review the requests for legal sufficiency and provide a recommendation regarding issuance of the subpoena or summons. Lastly, the OPR SAC will ensure a copy of the summons or subpoena and ACC’s legal review and recommendation are forwarded to IOD Headquarters for review by the IOD Executive Director and approval by the CBP OPR Assistant Commissioner. In addition, CBP OPR is revising the Investigative Operations Division (IOD) Internal Operating Procedures (IOP) 2.0, and expects to issue the updated guidance no later than April 30, 2018. The IOP 2.0 will include the revised and updated guidance on the issuance of the DHS 3115.

Estimated Completion Date (ECD): April 30, 2018

Recommendation 2: Relevant CBP personnel receive training on the proper use of Section 1509 Summonses as soon as practicable.

Response: Concur. In July 2017, all OPR SACs were provided updated training from CBP OCC on the authority and issuance of the DHS 3115, pursuant Title 19 U.S.C. § 1509, as it relates to CBP OPR. Additionally, once the IOP 2.0 is released, OPR anticipates conducting an



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Attachment: Management Response to the Office of Inspector General (OIG) Draft
Management Alert: "CBP's Use of Summons Authority" (Project No. 17-SRG-3)
Page 2

IOP 2.0 Training to all of the OPR SAC Offices. The training will cover every chapter of IOP 2.0, to include the updated guidance on the issuance of the DHS 3115 Summons.

ECD: May 30, 2018

Recommendation 3: Look at use of Section 1509 Summonses across the agency to determine how such summonses are being used, and whether such uses comport with the law and CBP's updated policy.

Response: Concur. On May 5, 2017, CBP created a CBP-wide working group, spearheaded by CBP OCC, to update the CBP Directive on the Examination and Summons Authority under Title 19 U.S.C. § 1509. The working group reviewed the existing CBP Directive and has revised it to reflect the current use of the summons authority by various offices within CBP. The CBP Directive will also include a training requirement for offices across the agency on proper use of Section 1509 summonses. The CBP Directive is in final draft and pending review and comment from all impacted CBP Offices.

ECD: May 30, 2018



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Department of Homeland Security

Appendix B
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Attorneys for Movant J Doe

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

In the Matter of the Summons Number) Case No. 26-mc-80074
OPR-DC-2026-032216-001:)

J DOE,) **[PROPOSED] ORDER GRANTING**
) **MOVANT J DOE’S MOTION TO**
) **QUASH SUMMONS**
)
)
)

vs.)

THE UNITED STATES) **DATE: To Be Determined**
DEPARTMENT OF HOMELAND)
SECURITY,) **TIME: To Be Determined**
Respondent.)
)
)
)

PROPOSED ORDER

On March 12, 2026, Movant J Doe moved this Court for an order quashing a Summons served on Reddit from the Department of Homeland Security. Upon consideration of the briefing, exhibits and argument of the parties, this Court finds a lawful basis to quash the subpoena at issue. The motion filed by Movant J Doe is hereby GRANTED.

IT IS SO ORDERED

Dated: _____, 2026.

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JUDGE NAME