

United States District Court
District Of Maine

Robert C. Peck,

Plaintiff,

v.

2:26-cv-293-JAW

United States of America, et al.

Defendants.

**Plaintiff's Consent Motion for Leave to Conduct Limited
Early Discovery of the United States Before Rule 26(f) Conference**

Under Federal Rule of Civil Procedure 26(d)(1), and with the consent¹ of Defendant United States, Plaintiff Robert Peck moves for a court order authorizing him to conduct early discovery of Defendant United States of America limited solely to the identifying information needed to serve the two John Doe Defendants, who are two unknown immigration agents of the U.S. Department of Homeland Security (DHS). *First Am. Compl.* at ¶¶ 9, 12, 18-19 (ECF No. 6). This Court has already approved the Plaintiff's consent motion for entry of a Protective Order for early discovery "from the United States of information enabling Plaintiff to identify and serve the two individuals identified in the first amended complaint." ECF No 9 at 1; ECF No. 10.

¹ The United States consents only to the relief requested; it disagrees with some of Plaintiff's factual allegations; and it reserves all objections to the interrogatory.

Mr. Peck's civil rights Complaint alleges that the John Doe Defendants violated his federal constitutional rights; it contains a close-up video of those masked DHS agents detaining him, falsely accusing him of committing a federal crime merely by following them in his car at a safe distance as they drove on public roads, and threatening him with a forcible arrest if he continued to follow them. His Complaint also details the time and precise location of their detention of him, plus the license plate number and type of vehicle the agents were driving.

Mr. Peck has diligently but unsuccessfully sought the names and service addresses of the John Doe Defendants from the United States. He requested the information in a FOIA request to DHS, which was denied. Mr. Peck's counsel also asked for this basic information from the Chief of the Civil Division of the U.S. Attorney for the District of Maine who referred that request to Trial Attorneys in Washington, D.C., who work for the U.S. Attorney General. But they have been unable to provide the information.

When a complaint alleges plausible allegations of constitutional violations by government employees whose identity is not known before the filing of a complaint, at least six federal courts of appeals have ruled that "the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds."

Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) (followed by second, third, fourth, seventh, and eighth circuits).²

² The citations concerning the other five circuits are provided below. Although the First Circuit has not addressed the exact timing of the discovery, it has expressly

Relevant Background

Mr. Peck filed this lawsuit on June 4, 2026, (*Compl.* ECF No. 1) against two DHS immigration agents in their individual and personal capacities for unlawfully seizing and retaliating against him in violation of his First and Fourth Amendment rights. Because the two agents wore masks and did not identify themselves, *see* ECF No. 1-1, Mr. Peck does not know their names. After diligently searching publicly available recordings and information about DHS activity in New England and filing a FOIA request with DHS for their identities, to which DHS did not respond within the statutory deadline, Mr. Peck could not identify the two federal agents and instead filed suit against them as John Does. *See Webbert Decl.* at ¶¶ 8-17; *Leighton Decl.* at ¶¶ 3-6.

After Mr. Peck filed suit, his attorneys followed up with DHS on the FOIA request and requested the identifying information directly from John Osborn, the Chief of the Civil Division of the U.S. Attorney’s Office for the District of Maine, who then referred their request to two Trial Attorneys with the U.S. Attorney General’s Civil Division in Washington, D.C. *Webbert Decl.* at ¶¶ 13-20. After Mr. Peck’s attorneys communicated with Mr. Osborn and followed up with DHS about its failure to respond to their FOIA request within the statutorily required deadline, it belatedly denied Mr. Peck’s FOIA request based on the catch-22 requirement that he must first submit written authorizations signed by the two John Doe Defendants before their

“condoned” the practice of naming a John Doe defendant when plaintiff is “unaware of the identity of the person who wronged her . . . at least when discovery is likely to reveal the identity of the correct defendant and good faith investigative efforts to do so have already failed.” *Penalbert-Rosa v. Fortuno-Burset*, 631 F.3d 592, 596 (1st Cir. 2011) (citations omitted).

identifying information would be provided. *Id.* at ¶¶ 15-17.

The Trial Attorneys in D.C. were unable to provide Mr. Peck with information about the John Doe Defendants' identities, explaining that they could not provide any information because they were not representing any party in this action and that early discovery would be appropriate only when the United States became a party to the case. *Id.* at ¶ 21. Now, Mr. Peck has amended his complaint (ECF No. 6) to add a claim under the Federal Tort Claims Act against the United States. And, because he has been unable to obtain the information from the federal government after exhausting efforts to do so and has no other method for obtaining the information, he seeks permission to immediately serve an interrogatory on the United States requesting identifying information about the two John Doe Defendants so he can serve them and proceed with this action.³

Argument

Fed. R. Civ. P. 26(d)(1) permits a party to take early discovery before a Fed. R. Civ. P. 26(f) conference if "authorized . . . by court order." *See also* 8A Wright & Miller, Federal Practice and Procedure § 2046.1 (noting that "courts presented with requests for immediate discovery have frequently treated the question whether to authorize early discovery as governed by the good cause standard").

At least six federal courts of appeals have held that district courts should permit plaintiffs in civil rights cases to conduct threshold discovery

³ Plaintiff is glad to drop the request for early discovery if the U.S. accepts or successfully facilitates service of the complaint and summons for the two John Does. *See* Webbert Decl. Ex. I.

regarding the identity of individual defendants so those defendants can be served. *Gillespie*, 629 F.2d at 642, *cited by Alston v. Parker*, 363 F.3d 229, 233 n. 6 (3d Cir. 2004) (noting that “access to discovery may well be critical” when civil rights plaintiffs are unaware of the identities of defendants); *see also Chidi Njoku v. Unknown Special Unit Staff*, 217 F.3d 840 (4th Cir. 2000) (citing *Gillespie* and ordering district court to afford civil rights plaintiff “a reasonable opportunity to properly identify” John Doe defendants); *Valentin v. Dinkins*, 121 F.3d 72, 75 (2d Cir. 1997) (reversing district court for not allowing plaintiff discovery to fully identify defendant and citing with approval *Gillespie* and rulings of Seventh and Eighth Circuits that trial courts should permit plaintiff to identify a Doe defendant through discovery).

Moreover, district courts in this Circuit have often found good cause for early discovery “in cases where plaintiffs seek to identify unknown defendants.” *Breaking Glass Pictures v. Swarm Sharing Hash File SHA1: £973F491D02C1E0220DBC534D8F8EDC15FC53FAEF*, No. 13-10735-PBS, 2013 WL 2407226, at *3 (D. Mass. May 1, 2013). For example, Judge Nivison recently granted a similar motion for an early Rule 45 subpoena on the United States regarding the identities of two federal immigration agents in *Carvajal-Muñoz v. Ravencamp*, No. 26-cv-190-JCN, ECF No. 23 (D. Me. June 26, 2026). Such orders are granted when a “plaintiff has no other means of identifying the proper defendant,” *Breaking Glass Pictures*, 2013 WL 2407226, at *4, and the proposed discovery is “limited” and “sufficiently specific” to identify an unknown defendant, *Strike 3 Holdings Inc. v. Doe*, 678 F. Supp. 3d 201, 206 (D. Mass. 2023).

Mr. Peck has good cause for early discovery because he must identify the John Doe Defendants so they can be served and he has no other means of obtaining that information. Moreover, the burden on the federal government is minimal. Mr. Peck has video evidence that John Doe 1 and 2 are real people in the employ of the federal government and that video details the physical characteristics of the individual officers, the uniforms they wore, and the insignia on their tactical vests. Mr. Peck provided that video to DHS on January 30, 2026, in his notice of claim along with the date of his detention and other detailed information about the location and time of day of the actions by John Doe 1 and 2.

In June Mr. Peck provided DHS with a copy of his court complaint that provided even more details about John Doe 1 and 2 including the kind of car they were driving and the license plate number as well as a more specific time frame and precise location of his unlawful detention. ECF No. 1 at ¶¶ 54-84.

This information detailed in the original Complaint (and now in the First Amended Complaint) is more than sufficient for the federal government to identify them. But because the federal government has not voluntarily identified the two federal agents, an interrogatory targeted at identifying these two individuals is the only way for claims against them to proceed. *Cuebas v. Davila*, 618 F. Supp. 2d 124, 133 (D.P.R. 2009) (finding that “only discovery proceedings will provide [plaintiffs] with the means to obtain the names of the remaining unknown defendants”).

Because good cause has been shown, Plaintiff requests that the Court

authorize him to immediately serve the following interrogatory on Defendant United States of America:

Interrogatory No. 1: Provide the full legal name, the full address of the current place of employment, job title, badge number, and an address suitable for service of process under Fed. R. Civ. P. 4(i)(3) on the federal agents identified in the Complaint as John Doe 1 and John Doe 2 and depicted in the video attached as Exhibit 1 to the Complaint.

The parties were not, however, able to agree on whether the response time for the answer to this interrogatory should be shorter than the standard 30-day deadline. Thus, Plaintiff reserves the right to move separately for an order of the Court providing for a shorter response deadline, as expressly allowed by Rule 33(b)(2) (“A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.”).

Respectfully submitted,

Date: August 7, 2026

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