UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-80880-CIV-LEIBOWITZ

JANE DOE 1, *et al.,*

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.
_____/

UNITED STATES OF AMERICA'S MOTION TO QUASH DEPOSITION SUBPOENA AND FOR PROTECTIVE ORDER WITH SUPPORTING MEMORANDUM OF LAW

Defendant, United States of America, by and through the undersigned Assistant United States Attorneys, pursuant to Rule 26 and 45 of the Federal Rules of Civil Procedure, Local Rule 7.1 and other authority specified below, hereby move this Court for an entry of a protective order and to quash the "Subpoena to Testify at a Deposition in a Civil Action" (Subpoena) that Plaintiffs caused to be served upon the Attorney General of the United States, Todd Blanche.

Plaintiffs' request is extraordinary. The deposition of a sitting cabinet official in civil litigation is almost always improper, save for specific circumstances Plaintiffs come nowhere close to establishing. In the rare instances where district courts have granted attempts to depose agency heads, courts of appeals across the country have consistently vacated their orders. As those courts have explained, such officials rarely have unique information regarding civil litigation, and if the judiciary were to subject high-level Executive branch officials to deposition in such cases, it would threaten the separation of powers, chill agency decision making, discourage public service, and create potential for abuse or harassment.

This case provides no occasion to grant Plaintiffs' extraordinary request. The subpoena plainly exceeds the scope of limited jurisdictional discovery this Court has authorized. And Plaintiffs make no showing that Mr. Blanche has *any* personal knowledge relevant and material to their claims, let alone any information that is unavailable from another source or necessary to litigate this case.

This Subpoena should be quashed and a protective order entered.

MEMORANDUM OF LAW

I. Factual Background

This case was originally filed in September of 2024. [D.E. 1]. Thereafter, several amendments to the Complaint occurred, as well as a venue transfer. [D.E. 9, 36, 45, 61, 104]. Discovery in this case is currently limited to "(a) the existence and content of any mandatory established policies, protocols, and procedures, whether written or otherwise, governing the FBI's conduct in assessing or handling tips, reports, and complaints of sexual abuse, child sexual abuse, and/or child sexual abuse materials, and (b) the exhaustion of administrative remedies by Jane Does 13, 21, and 29." [D.E. 129, 135]. However, on October 9, 2026, Plaintiffs served a Subpoena to take the Deposition of U.S. Attorney General Todd Blanche and to produce "any and all documents pertaining to Jeffrey Epstein". *See* Subpoena of U.S. Attorney General Todd Blanche, attached as Exhibit A. Notably, the Fourth Amended Complaint ("FAC") contains no allegations whatsoever concerning Mr. Blanche. *See* D.E. 104. It only briefly references the Office of the Attorney General, only doing so in the context of the Attorney General's capacity as the ultimate supervisory authority over the FBI. *Id.* at ¶ 73. The FAC contains no allegation showing why Mr. Blanche or the Office of the Attorney General would have any unique and discoverable material.

The Subpoena lists October 28, 2026, as the proposed deposition date, and the location as the Plaintiffs' attorneys' office in New York City, NY. *Id*. Notably, the date, time and location of this deposition was not decided in consultation with the undersigned, but unilaterally set. Given that U.S. Attorney General Todd Blanche is clearly protected by the apex doctrine from being compelled to provide unnecessary testimony, the undersigned reached out to Plaintiffs' counsel to inquire whether they would withdraw this subpoena. Plaintiffs' counsel have made clear that they have no intent to withdraw the subpoena. As a result, the United States files this Motion to Quash and for a Protective Order.

II. Legal Standard

A. Standard to Quash or Modify Subpoena

Federal Rule of Civil Procedure Rule 45 provides that "[o]n motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive."

> Federal Rule of Civil Procedure 45 provides in pertinent part:
> (d) Protecting a Person Subject to a Subpoena.
> . . .
> (3) Quashing or Modifying a Subpoena.
> (A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:
> . . .
> (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
> (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
> (iv) subjects a person to undue burden.

III. Argument

A. The Subpoena is a Clear Violation of the Court's Limited Jurisdictional Discovery Order

On October 9, 2026, Plaintiffs served a subpoena for deposition testimony and duces tecum request for the U.S. Attorney General Todd Blanche. *See* Exhibit A. The duces tecum request seeks

"any and all documents relating to Jeffrey Epstein." *Id.* A subpoena of the United States Attorney General about anything and everything related to Jeffrey Eptein is a clear violation of this Court's limited Jurisdictional Discovery Order. This Court made clear that:

> [t]he Court's Stay of Discovery [ECF No. 67] is LIFTED for the limited purpose of allowing the parties to engage in the recommended limited jurisdictional discovery for ninety (90) days from the date of this Order, after which Defendant may renew its motion to dismiss under the FTCA's discretionary function exception.

[D.E. 135]. That limited discovery referenced by the Court was limited to two jurisdictional issues:

> (a) the existence and content of any mandatory established policies, protocols, and procedures, whether written or otherwise, governing the FBI's conduct in assessing or handling tips, reports, and complaints of sexual abuse, child sexual abuse, and/or child sexual abuse material, and (b) the exhaustion of administrative remedies by Jane Does 13, 21, and 29.

[D.E. 129]. The subpoena for the U.S. Attorney General does not remotely relate to this narrow objective, as "any and all documents related to Jeffrey Epstein" does not relate to FBI policies or the exhaustion of the administrative remedies by Plaintiffs.

Further, Plaintiffs cannot meet Rule 26(b)(1)'s relevance requirement because the existence, content, or application of FBI policies is demonstrably obtainable from the FBI itself, not from the Attorney General. Courts routinely quash subpoenas that exceed the explicit scope of a discovery order, as jurisdictional discovery is particularly constrained. *See Continuum on S. Beach Condo. v. QBE Ins. Corp.*, 338 F.R.D. 668, 671 (S.D. Fla. 2021); *see also Auto-Owners Ins. Co. v. Southeast Floating Docks, Inc.,* 231 F.R.D. 426, 430 (M.D. Fla. 2005) (finding discovery on possible future issue not yet relevant). Limited jurisdictional discovery is exactly that, limited and related to the Court's jurisdiction. Surely, an open-ended subpoena requiring testimony from the sitting U.S. Attorney General which in no way relates to the FBI policies and procedures or the Plaintiffs' administrative claims is outside of the ***limited*** scope of discovery at this juncture of the case.

Here, the Plaintiffs have taken a narrow jurisdictional grant of discovery and attempted to convert it into an excuse to probe the highest-ranking official of the Department of Justice – something the limited discovery order did not permit.

B. The Apex Doctrine Clearly Bars the Deposition of a Sitting Attorney General

"[A] district court should rarely, if ever, compel the attendance of a high-ranking official in a judicial proceeding." *In re United States (Jackson)*, 624 F.3d 1368, 1376 (11th Cir. 2010). This doctrine originates from *United States v. Morgan*, where the Supreme Court held that the Secretary of Agriculture should not have been subjected to a deposition because it was improper "to probe [his] mental processes." 313 U.S. 409, 421-22 (1941). Since then, courts in various jurisdictions, including the D.C. and Eleventh Circuits, have routinely held that high-ranking government officials should not—absent exceptional circumstances—be deposed or called to testify regarding an agency's reasons for taking, or facts regarding, official action. *See, e.g.*, *In re United States (Kessler)*, 985 F.2d 510, 512 (11th Cir. 1993); *Simplex Time Recorder Co.*, 766 F.2d at 586-87. And subsequent court of appeals cases clarify that the limitation on depositions of high-ranking government officials applies regardless of whether the party seeking the deposition intends to probe the officials' mental processes. *In re Musk*, 169 F.4th 445, 448 n.3 (4th Cir. 2026). In fact, undersigned counsel is not aware of a single instance since *Morgan* in which a sitting cabinet official was forced to testify in a civil case regarding an agency's government actions. *See, e.g.*, *In re Dep't of Com.*, 139 S. Ct. 16 (2018) (staying order requiring the deposition of Secretary of Commerce); *Jackson*, 624 F.3d 1368; *In re U.S. Dep't of Educ.*, 25 F.4th 692 (9th Cir. 2022); *In re Clinton*, 973 F.3d 106 (D.C. Cir. 2020); *In re McCarthy*, 636 F. App'x 142 (4th Cir. 2015); *In re United States*, 197 F.3d 310 (8th Cir. 1999).

Even assuming that a deposition of a sitting Cabinet official is theoretically possible, Plaintiffs come nowhere close to demonstrating that this case involves exceptional circumstances. Ordinarily, the party seeking a protective order or to quash a subpoena bears the burden of proof. *See, e.g., In re: Chiquita Brands Int'l, Inc.*, 965 F.3d 1238, 1250 (11th Cir. 2020). "But when it comes to a high-ranking official's deposition, the default is to disallow it." *Harvard v. Dixon*, 4:19-cv-212, 2022 WL 23042768, at *2 (N.D. Fla. 2022) (citing *Kessler*, 985 F.2d at 513). The party seeking the deposition must establish that "extraordinary circumstances" support the request. *Kessler*, 985 F.2d at 512 (quoting *Simplex Time Recorder Co. v. Secretary of Lab.*, 766 F.2d 575, 586 (D.C. Cir. 1985)). "The reason for requiring exigency before allowing the testimony of high officials is obvious." *Id.* That is because "the compelled appearance of a high-ranking officer of the executive branch in a judicial proceeding implicates the separation of powers," *Jackson*, 624 F.3d at 1372, and "[t]he duties of high-ranking executive officers should not be interrupted by judicial demands for information that could be obtained elsewhere," *In re Cheney*, 544 F.3d 311, 314 (D.C. Cir. 2008) (per curiam). Such depositions also "create[] 'a tremendous potential for abuse or harassment.'" *K.C.R. v. County of Los Angeles*, 2014 WL 3434257, at *3 (C.D. Cal. July 11, 2014).

"Extraordinary circumstances" are absent where the proposed depositions are not "essential to the case." *In re U.S. Dep't of Educ.,* 25 F.4th 692, 703 (9th Cir. 2022). In other words, Plaintiffs "must show that the high-ranking officials have firsthand information that is relevant and material to [their] claims and that cannot be reasonably obtained from other sources or modes of discovery." *In re Musk*, 169 F.4th 445, 448 (4th Cir. 2026). Plaintiffs fail to make this showing at every front.

First, Plaintiffs cannot demonstrate that the Attorney General has *any* unique personal knowledge concerning the two limited topics on which this Court has permitted jurisdictional discovery. Plaintiffs' allegations relate to alleged policies and practices that date back to "the 1970s," Fourth Am. Compl. ¶ 5, decades before Mr. Blanche joined the Department of Justice or became the U.S. Attorney General. And Plaintiffs have offered no basis to assume that Mr. Blanche has unique personal knowledge about three Jane Does' exhaustion of administrative remedies. Indeed, the operative complaint makes *no* allegations about Mr. Blanche (who is not a party to this action) at all, and only identifies the Office of the Attorney General in relation to its role formally overseeing the FBI, Fourth Amend. Compl. ¶ 73. There is simply no basis to determine that Mr. Blanche has any unique personal knowledge about anything properly within the scope of discovery in this case, let alone the limited discovery that is authorized at this time.

To be sure, the Attorney General, as the leader of the Department of Justice, is ultimately responsible for all policies and procedures ultimately adopted by the FBI. But that cannot possibly be a basis to compel his deposition on those topics. "If it were, the limitation on deposing high-ranking government officials would be no limit at all." *In re Musk*, 169 F. 3d at 449. *Every* Cabinet head is in charge of policy at his or her agency. And so even if Mr. Blanche had knowledge relevant to limited topics on which discovery has been allowed to proceed—a point for which Plaintiffs have provided no support—it would "merely reinforce the point that [he] was high-ranking," not "that any knowledge [he] gained . . . was unique." *FDIC v. Galan-Alvarez*, No. 1:15-mc-00752 (D.D.C. Sept. 4, 2015).

Second, Plaintiffs fail to establish that deposing the sitting Attorney General is *necessary* considering potential alternatives. Information about any FBI "policies, protocols, and procedures" or Plaintiffs' administrative exhaustion are precisely the kinds of questions that could readily be

answered by party interrogatories, tailored document requests, or other written discovery. But Plaintiffs have not demonstrated that they have exhausted these alternatives. *See Musk*, 169 F.4th at 449 (granting mandamus preventing deposition of high-ranking government personnel where plaintiffs had not exhausted other forms of written discovery); *In re U.S. Dep't of Educ.*, 25 F.4th at 704; *California v. United States*, No. 05-0328, 2006 WL 2621647, at *1 (N.D. Cal. Sept. 12, 2006) (where a party fails "to demonstrate why they [cannot] seek the information they desire by propounding additional interrogatories or noticing other witnesses for deposition," apex deposition should be disallowed); *Synthes USA, LLC v. Spinal Kinetics, Inc.*, No. 09-01201, 2011 WL 811731, at *1 (N.D. Cal. Mar. 2, 2011) (denying apex deposition where requesting party failed to make a "solid, detailed showing" that the witness had "unique and non-repetitive relevant knowledge that cannot be obtained from other sources"); *Harmston v. City & Cnty. of San Francisco*, No. 07-01186, 2007 WL 3306526, at *3 (N.D. Cal. Nov. 6, 2007) (denying apex deposition where the information sought "can be discovered through written interrogatories and requests for admission"). Even if written discovery, once completed, were insufficient, Plaintiffs could still obtain any relevant and material information from depositions of lower-level witnesses or a Rule 30(b)(6) designee. *See, e.g.*, *In re Musk*, 169 F.4th at 449.

In sum, a Cabinet official's deposition is permissible, if at all, only *after* all alternatives are exhausted. And Plaintiffs have made no showing that they have exhausted these alternatives. Permitting this deposition of the sitting Attorney General in this case would be an extraordinary order without precedent in modern history. This subpoena should be quashed.

CONCLUSION

WHEREFORE, for the reasons set forth above, the United States of America respectfully request this Court enter an Order quashing the Subpoena for testimony of U.S. Attorney General Todd Blanche and enter a protective order barring such testimony.

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 7.1, the undersigned certifies that the undersigned has conferred with Plaintiffs' counsel on October 20, 2026 and again on October 26, 2026, and that the Plaintiffs refuse to withdraw the subpoena and oppose the relief sought in this Motion.

Respectfully Submitted,

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