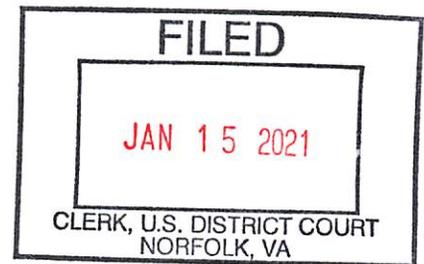IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

IN RE:
PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS

STANDING ORDER

In response to recent disclosures of widespread breaches of both private sector and government computer systems, the Judicial Conference of the United States Courts has directed all federal courts to issue new security procedures to protect materials that contain highly sensitive information ("highly sensitive documents" or "HSDs").

ACCORDINGLY, THE COURT FINDS that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require all parties to file certain HSDs outside of the Court's electronic filing system.

IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the Court orders otherwise, the filing of certain HSDs shall be subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other standing orders of this Court.

1. **Documents Subject to this Order: General Definition "HSDs"**

   The following documents are deemed HSDs:

   a. Applications for search, seizure, and arrest warrants, including those filed by the United States Probation Office, prior to disclosure required by law;

   b. Applications for interception of wire, oral, or electronic communications pursuant to 18 U.S.C. § 2518;

c.   Pleadings, filings, or transcripts in criminal cases discussing undisclosed cooperation; and,

d.   Statements of Reasons in criminal cases.

The Court may, on its own motion or on motion of a party pursuant to Section 2 below, direct that the following material be designated as HSD:

e.   Under seal criminal complaints where the United States Attorney moves for such designation and for good cause shown;

f.   Materials whose disclosure could jeopardize national security or would pose a clear and present danger to life and limb or result in grave or extreme harm in either a civil or criminal case; or,

g.   Materials whose disclosure to a foreign power or its agents (as defined by 50 U.S.C. § 1801) would be unlawful under United States law or would substantially assist a foreign power or its agents in the development of that foreign power's competing commercial products or products with military applications.

That a document satisfies the legal criteria for filing under seal does not mean that it satisfies the conditions needed for designation as an HSD. Documents will not be considered HSDs solely because they include personal identifying information or financial information about an entity or an individual.

The following documents generally are NOT deemed HSDs:

a.   Most sealed filings in civil cases do not constitute HSDs;

b.   Presentence reports, pretrial release reports, and probation violation reports unless they include information about undisclosed cooperation;

c. Social Security records, administrative immigration records; qui tam complaints; and,

d. Commercial or proprietary information.

Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motions to File, Filing, and Service of HSDs**

a. **If represented by counsel**, any party seeking to file an HSD must, before such filing, seek leave of court for such filing. Any other party may also move the Court to designate a filing as an HSD if, in its judgment, the filing qualifies as an HSD. The motion shall explain why such document is highly sensitive or why it should otherwise be subject to the heightened protection for HSDs. A request for HSD designation shall be accompanied by a certification, subject to Rule 11, of the movant's good faith belief that the material meets the criteria set forth in Section 1, above;

b. The motion to seal and to treat a document as an HSD via CM/ECF shall go forward under existing procedures, *except that a copy of the proposed HSD shall NOT be filed electronically.* Instead, a blank placeholder document shall be attached to the motion in place of the proposed HSD to reserve the document number. **If** the memorandum in support of the motion contains highly sensitive information necessary to explain the basis for classification as an HSD, the memorandum may be served on any opposing party and delivered (but not filed via CM/ECF) in printed form to the presiding judge. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk's office the HSD sought to be filed along with a certificate of service.

c. The filing party shall serve the HSD on the other parties as follows:

    i. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the Court's electronic filing system; or

    ii. Criminal cases - by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).

d. As directed in Section 2(b) above, counsel shall file the motion to treat a document as an HSD under existing CM/ECF procedures. Counsel shall also submit two paper copies, using unfolded 8½ x 11 paper, of the memorandum in support of the Motion to file, the HSD sought to be filed, and a certificate of service, as directed in Section 2(b). Regardless of whether or not these documents contain highly sensitive information, these documents shall be submitted to the Clerk's Office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted), along with the CM/ECF placeholder document number described in Section 2(b). However, when the HSD exceeds fifty pages, counsel must also provide the documents to the Court on a secure electronic device; and,

e. The Court will issue an order on the motion and, if granted, an entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk's office will serve paper copies of these orders by mail and shall reflect such service in an informational entry.

f. **If a party proceeds Pro Se without CM/ECF privileges:**

    i. **Also subject to Federal Rule of Civil Procedure 11, the Pro Se party shall submit to the Clerk's office for filing a motion** to treat a document as an HSD, the HSD sought to be filed, and a certificate of service in the form of two paper copies, using unfolded 8½ x 11 paper. Regardless of whether or not these documents contain highly

sensitive information, these documents shall be submitted to the Clerk's Office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted), along with the CM/ECF case number. The motion to seal and to treat a document as an HSD shall go forward under existing procedures, *except that a copy of the proposed HSD shall NOT be filed electronically.* The Pro Se party shall explain why the proposed document is an HSD or why it should otherwise be subject to the heightened protection accorded to HSDs;

ii. **The Pro Se party shall serve** the proposed HSD as specified in paragraph 2(c) above; and,

iii. **The Court will issue an order on the Pro Se motion** and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk's office will serve paper copies of these orders by mail and shall reflect such service in an informational entry.

3. **Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System**

   a. Upon motion of a party or upon its own motion, the Court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the Court's electronic filing system. The Clerk's office will make an informational docket entry in the Court's electronic filing system indicating that the HSD remains on file with the Court.

   b. A party's motion to remove alleged HSD materials or a highly sensitive case from the Court's electronic filing system shall explain why such document or case is highly sensitive under the criteria set out in Section 2 above or why it should otherwise be subject

to the heightened protection for HSDs. The judge presiding over the matter shall determine if the document or case shall then be treated as an HSD.

4.   Secure Electronic Device Defined

A secure electronic device would include any device approved by the Court as such, including a USB flash drive commonly referred to as a thumb drive. Secure electronic devices submitted to the Court are not returnable.

5.   Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this Standing Order should be directed to the relevant division of this Court:

Alexandria - (703) 299-2100
Newport News - (757) 247-0784
Norfolk - (757) 222-7202
Richmond - (804) 916-2220

IT IS SO ORDERED, this 15th day of January, 2021.

_____/s/_____
Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE