

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

USDC DNJ DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>January 26, 2021</u>

IN RE: PROCEDURES FOR THE HANDLING, :
FILING, SERVICE AND MANAGEMENT OF : **STANDING ORDER 2021-01**
HIGHLY SENSITIVE DOCUMENTS :

WHEREAS, in response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts;

THE COURT FINDS that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to require the filing of certain highly sensitive documents outside of the Court’s electronic filing system.

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

1. Documents Subject to this Order

The procedures set forth below apply to highly sensitive documents (HSDs), generally defined herein as documents that contain highly sensitive information a) that is likely to be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by such a government would likely cause significant harm or b) whose disclosure could jeopardize the safety of specific individuals. That a document satisfies the legal criteria for filing under seal is a necessary, but not per se sufficient, condition for treatment as an HSD. Very few documents, other than those enumerated in section 1.a., will contain highly sensitive information.

- a. The following types of documents will be presumed to be HSDs:
 - i. Applications for interception of wire, oral or electronic communications, pursuant to 18 U.S.C. § 2518; and
 - ii. All orders granting, authorizing, or denying the aforementioned documents.

A party filing an HSD pursuant to section 1.a. of this Standing Order shall deliver to the Clerk’s Office two paper copies of the HSD in a sealed envelope marked with the notation, “SEALED – HIGHLY SENSITIVE DOCUMENTS,” and with the Case Number and Case Title.

- b. Any other document (including criminal complaints and indictments ordered sealed) that meets one of the following conditions may be deemed an HSD if the

presiding judge (or Chief Judge, when no presiding judge is assigned) so orders, after the motion procedure set forth in section 3 below has been followed:

- i. The document contains classified information or information that could harm national security;
 - ii. Disclosure of the document would likely cause significant harm or could jeopardize the safety of specific individuals; or
 - iii. The document concerns a criminal investigation of an individual that is outside of the United States or of conduct that took place outside of the United States.
- c. The following types of documents, separate and apart from whether they are subject to restricted access or separate sealing order as set forth in section 7 below, generally are presumed to not be HSDs:
- i. Applications for search warrants;
 - ii. Applications for an order for a pen register or trap and trace device under 18 U.S.C. § 3122;
 - iii. Applications for an order for disclosure of customer communications or records under 18 U.S.C. § 2703;
 - iv. Applications for delayed disclosure under 18 U.S.C. § 2705;
 - v. Presentence reports and pretrial release reports and documents related to such reports;
 - vi. Criminal complaints and indictments;
 - vii. Pleadings and documents related to cooperation in most criminal cases;
 - viii. Filings and documents related to petitions for compassionate release and/or other sentencing relief;
 - ix. Petitions for Warrant or Summons of a defendant under Supervision;
 - x. Applications for an ex parte tax order under 26 U.S.C. § 6103;
 - xi. Social Security records;
 - xii. Administrative immigration records;
 - xiii. Sealed filings in most civil cases; and
 - xiv. All orders and warrants granting, authorizing or denying the aforementioned documents.
- d. 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, after the motion procedure set forth in section 3 below has been followed.

2. Filing through Judicial Officer

HSDs that require Court adjudication shall be transmitted via a secure method as approved by the Court. If the prescribed method of secure transmission is not available due to exigent circumstances, transmission by other means must be approved by the Court. The Clerk's Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. Filing of Motions to Treat a Document as an HSD Under Section 1.b.

- a. ***Represented Parties.*** If represented by counsel, in order to have a document treated as an HSD, a party shall file a motion complying with L. Civ. R. 7.1 (except for ex parte criminal applications and filings, which shall follow the procedure in section 3.b.), seeking such treatment via CM/ECF, using a new event called Motion for Highly Sensitive Document, except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document should be afforded treatment as an HSD under the criteria set out in section 1.b. above or why it should otherwise be afforded the heightened protection for HSDs. Once the motion is filed, a “blank placeholder document” [sample form attached] shall be filed using the normal ECF event that one would use to file the proposed HSD, in order to reserve a document number. As soon as practicable after the motion is filed electronically, the filing party shall deliver by paper copy to the Clerk’s Office the following documents in a sealed envelope marked with the notation, “SEALED – HIGHLY SENSITIVE DOCUMENTS,” and with the Case Number and Case Title:

- i. Proposed HSD;
- ii. Printed copy of the filed placeholder;
- iii. Notice of Electronic Filing;
- iv. Certificate of Service – reflecting service has been made consistent with section 3.d. below.

One courtesy copy of the documents listed in i.- iv. above, placed in a sealed envelope marked “SEALED - HIGHLY SENSITIVE DOCUMENTS,” shall be delivered to the presiding district judge and magistrate judge assigned to the case, or to the Chief Judge, if no judge has yet been assigned to the case.

- b. ***Ex Parte Criminal Applications and Filings.*** To designate a document as an HSD when making an ex parte criminal application or filing, the Government shall include in the submission an application and proposed order to designate the document as an HSD. The Court will treat the proposed HSD and accompanying application and order as an HSD while the application is under consideration.
- c. ***Pro Se Parties.*** If not represented by counsel, in order to have a document treated as an HSD, a party shall file by paper a motion complying with L. Civ. R. 7.1 to treat a document as an HSD, the proposed HSD, and a certificate of service (reflecting service has been made consistent with section 3.d. below), along with one courtesy copy of the foregoing documents. The motion shall explain why the proposed document should be afforded treatment as an HSD under the criteria set out in section 1.b. above or why it should otherwise be afforded the heightened protection for HSDs. These documents shall be submitted to the Clerk’s Office in a sealed envelope marked with the notation “SEALED - HIGHLY SENSITIVE DOCUMENTS,” and with the Case Number and Case Title.

- d. Except as excused by the Court, the filing party shall serve the HSD on the other parties as follows:
 - i. Civil cases - by any manner specified in Fed. R. Civ. P. 5(b)(2), except for service via the Court's electronic filing system; or
 - ii. Criminal cases - by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4).
- e. The Court will issue an order deciding the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been accepted by the Court outside the CM/ECF filing system. The Clerk's Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. Service of Highly Sensitive Court Orders

If the Court determines that a court order contains highly sensitive information, the Clerk's Office will maintain the order in a secure paper filing system or secure standalone computer system that is not connected to any network and will serve paper copies of the order on all parties by mail or via a secure method as approved by the Court.

5. 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 and maintained by the Clerk's Office in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- b. Represented parties seeking to remove an existing HSD or highly sensitive case from the Court's electronic filing system shall file a motion complying with L. Civ. R. 7.1 in civil matters and in criminal matters, a proposed order to accompany supporting documents, using a new event on the Court's CM/ECF system called Motion to Remove Existing Highly Sensitive Document, and shall explain why such document or case should be afforded treatment as an HSD under the criteria set out in section 1.b. above or why it should otherwise be afforded the heightened protection for HSDs. Pro se parties may file such a motion by paper copy. Prior to filing such a motion, serious consideration should be given to whether or not a document or case, which arguably was or contained HSDs when originally filed, still qualifies as an HSD or highly sensitive case, despite the passage of time or change in circumstances. In the event the explanation itself would be highly sensitive, the supporting brief and any supporting affidavits will be served upon any opposing party (unless excused by Order or operation of law) and then shall be delivered in printed form (or as otherwise directed) to the judge presiding over the case. The judge presiding over the matter shall determine if the brief and/or

motion shall then be filed in CM/ECF, under seal or otherwise, or treated as an HSD.

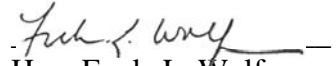
6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this Standing Order should be directed to ECF helpdesk at ecfhelp@njd.uscourts.gov. HSDs must **not** be emailed to the ECF helpdesk.

7. Sealed or Restricted Filing Procedures

This Standing Order does not change any procedures for filing under seal documents that are considered sensitive or confidential but do not meet the definition of an HSD and are filed, in civil matters, under L. Civ. R. 5.3. Nor does this Standing Order alter any procedures in criminal matters for filing under seal, pursuant to statute, sensitive or confidential documents that do not qualify as HSDs.

IT IS SO ORDERED, this 26th day of January, 2021.


Hon. Freda L. Wolfson
U.S. Chief District Judge
District of New Jersey

PLACEHOLDER DOCUMENT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PLACEHOLDER FOR

Plaintiff(s)

Case Number:

v.

Defendant(s)

**PLEASE USE THIS PLACEHOLDER TO FILE
SEALED HIGHLY SENSITIVE DOCUMENTS (HSDs)
IN BOTH CIVIL AND CRIMINAL CASES**

INSTRUCTIONS:

- 1) **FILE** - File this placeholder in ECF in place of the sealed HSD using the normal ECF event you would use to file the sealed HSD.
- 2) **PRINT** - Print the filed placeholder from ECF as well as a copy of the NEF (Notice of Electronic Filing) for the placeholder AND the sealed HSD.
- 3) **DELIVER** – Deliver the paper documents to the clerk’s office within 48 hours of the filing.
- 4) **COURTESY COPIES** - Provide one courtesy copy to the presiding district judge and one to the magistrate judge assigned to the case or one to the Chief Judge if no Judge has yet been assigned to the case.
- 5) The above should be submitted to the clerk’s office and to presiding judge in sealed envelopes marked “SEALED: HIGHLY SENSITIVE DOCUMENT.”