

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA



**IN RE: REVISED PROCEDURES FOR THE DESIGNATION,
SUBMISSION, FILING AND MANAGEMENT
OF HIGHLY SENSITIVE DOCUMENTS AND
PROCEDURES GOVERNING CURRENTLY
SEALED DOCUMENTS**

MISC. NO. 2:21-mc-0004

GENERAL ORDER

WHEREAS, by General Order entered January 13, 2021, this Court added new security protocols to protect what are known as Highly Sensitive Documents (“HSD”). An HSD presents heightened confidentiality concerns not present in the mine-run of documents for which a sealing order is sought;

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 HSD filers to follow the procedures within. Filers requesting simply a sealing order — but not an HSD designation — must continue to use Section 12 of the Administrative Procedures for Electronic Case Filing.

THEREFORE, IT IS HEREBY ORDERED, effective this date and pending further Order, that a filer seeking an HSD designation must follow the procedures herein in lieu of any contrary procedures in other General Orders, the Local Rules of Procedure for the Southern District of West Virginia, and the Administrative Procedures for Electronic Case Filing, unless otherwise noted below.

I. HSD CATEGORICAL DESIGNATION, EXEMPTION, AND DISPUTE RESOLUTION

- A. *Categorical Designation***: The following are categorically designated HSDs: (1) applications for search warrants relating to high profile national security investigations; (2) applications for electronic surveillance. Filers of these documents will continue to use the conventional filing procedures presently in place for such applications.
- B. *Categorical Exemption***: Absent a contrary showing by a movant resorting to Section II within, the following will be deemed categorically exempt from HSD categorization: (1)

presentence reports; (2) pretrial release reports; (3) pleadings related to cooperation in most criminal cases; (4) the administrative record in Social Security cases; (5) administrative immigration records; (6) sealed civil case filings; (7) routine criminal case filings such as complaints, indictments, and grand jury materials; (8) documents containing unredacted personal identifiers; (9) supervised release petitions; (10) medical records; (11) motions for substantial assistance; and (12) search warrants in routine criminal investigations that do not relate to high profile national security matters and otherwise do not implicate any of the factors for which an HSD designation would be appropriate under Section II.

- C. ***Dispute Resolution:*** Any dispute respecting whether a document qualifies for HSD designation will be resolved by the Chief Judge, or his or her designee, in the event of the absence or unavailability of the assigned judge. Neither counsel nor the parties may require or stipulate to HSD designation. The designation may be affixed only by written order.

II. PROCEDURES FOR HSD DESIGNATION AND MANAGEMENT

- A. ***Seeking HSD Designation:*** A filer seeking an HSD designation must submit a motion and proposed order according to Section 12 of the Administrative Procedures for Electronic Case Filing. Unless *ex parte* process is permitted, the filer must comply with the applicable rules governing service. The movant is obligated to explain the necessity of HSD designation by discussing, for example, the extent to which the filing (1) impacts national security, foreign sovereign interests, or cybersecurity; (2) implicates important domestic or national interests; (3) involves public officials listed in the Order of Precedence maintained by the Ceremonials Division of the Office of the Chief of Protocol of the United States; (4) includes intellectual property or trade secrets; or (5) unfavorably affects the reputational interests of the United States.
- B. ***Proposed HSD Submission by Filers:*** The proposed HSD shall not be uploaded to or appear within the CM/ECF system. It must be filed in accordance with Section II, outside the CM/ECF system. The filer shall submit two (2) conventional copies of the proposed HSD to the Clerk, with a courtesy copy to Chambers. The unfolded HSD must be tendered in a number 9 envelope labeled on both sides as follows: (1) “HIGHLY SENSITIVE

DOCUMENT” in 48 point, boldface type, and (2) the case caption and redacted title of the proposed HSD.

- C. *HSD Management by Clerk:*** The Clerk will maintain the proposed HSD in a secure paper filing system. If the Court ultimately designates the subject document an HSD, or *sua sponte* makes such designation, the Clerk will add to the CM/ECF docket a sterile entry indicating the HSD filing in the relevant case, unless otherwise ordered. The Court will provide distribution instructions for all HSDs in the final line of its designation order.
- D. *Sealed Documents Currently Filed in CM/ECF:*** Unless otherwise ordered by the assigned judge, no sealed document presently in the CM/ECF system will be recharacterized *sua sponte* as an HSD. Any filer or interested party seeking HSD treatment for any currently sealed document must proceed in accordance with Section II.

SO ORDERED this 6th day of April 2021.



THOMAS E. JOHNSTON, CHIEF JUDGE