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**Clerk, U.S. District and
Bankruptcy Courts**

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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

Standing Order No. 21-3 (BAH)

Chief Judge Beryl A. Howell

ORDER ON HIGHLY SENSITIVE DOCUMENTS

In response to recent disclosures of widespread cybersecurity breaches of both private and government computer systems, the Executive Committee of the Judicial Conference of the United States (“JCUS”) has directed all federal courts to implement new security procedures to protect highly sensitive documents (“HSDs”) that, if obtained without authorization and improperly released, could cause harm to the United States, the Federal Judiciary, litigants and others.¹ As an initial step, on January 8, 2021, this Court issued a Notice that HSDs may no longer be filed under seal in this Court’s Case Management/Electronic Case Filing (“CM/ECF”) system.² This Order provides additional findings and guidance, as follows:

- (1) **Good Cause for Not Filing On CM/ECF System.** The Court finds, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), for the reasons prompting the JCUS direction, that good cause exists to require that no HSDs be filed on the Court’s CM/ECF system and that HSDs instead be filed with the Court in accordance with the procedures outlined herein, consistent with the Local Rules of this Court. *See* D.D.C.

¹ *See* Memorandum from James C. Duff, Secretary of the Judicial Conference of the United States, Re: Policy Change for Sealed Filings in CM/ECF (Jan. 6, 2021), at <http://jnet.ao.dcn/judicial-conference/policy-change-sealed-filings-cmecf>; *see also* Memorandum from James C. Duff, Director, Administrative Office of the Courts, Re: Judiciary Response to Highly Sensitive Document Threat (Jan. 7, 2021), at <http://jnet.ao.dcn/about-ao/directors-office/judiciary-response-highly-sensitive-document-threat>.

² *See* D.D.C. URGENT NOTICE – Highly Sensitive Documents May Not be Filed on CM/ECF (Jan. 8, 2021), at https://www.dcd.uscourts.gov/sites/dcd/files/DDC%20NOTICE_Change%20in%20Procedures%20for%20Filing%20of%20Highly%20Sensitive%20Documents_20210108%20FINAL.pdf.

LCvR 5.1(h)(1)/ LCrR 49(f)(6)(i) (requiring court order for document to be filed under seal “in a manner authorized by the Clerk”); LCvR 5.1 (h)(2) & (3)/ LCrR 49(f)(6)(ii) & (iii) (instructions for filing “[w]hen it is necessary to file a sealed document in paper form”); LCvR 5.4(e)/ LCrR 49 (e) (providing exception to requirement of electronic filing for “document filed under seal in a totally sealed case”).

(2) **HSDs Subject to this Order.**

- a. **Generally.** HSDs comprise a limited category of documents that require a heightened level of protection not provided by sealing on the CM/ECF system because they contain classified information or information that, if disclosed, could reasonably be expected to harm national security or cause exceptionally grave damage or injury to any person, entity, institution, or interest of the United States.
- b. **Civil Cases.** Documents containing closely-held trade secrets, confidential government enforcement information and similar sensitive information may be treated as HSDs. Social security records, administrative immigration records, and civil filings subject to privacy protection under Federal Rule of Civil Procedure 5.2 and D.D.C. LCvR 5.4(f), will not normally qualify as HSDs and may continue to be filed under seal on the CM/ECF system.
- c. **Criminal Investigative Matters and Cases.** Government applications for communications interceptions, under 18 U.S.C. § 2518, and sealed applications for electronic and physical search warrants, under 18 U.S.C. § 2703 and Fed. R. Crim. P. 41, and related documents, may be considered HSDs upon satisfaction of the circumstances set out in paragraph (2)(a). Pretrial service reports, presentence investigation reports, cooperation agreements and criminal filings subject to privacy protection under Federal

Rule of Criminal Procedure 49.1 will not normally qualify as HSDs and may continue to be filed under seal on the CM/ECF system.

- (3) **Filing and Service of HSDs.** The following procedures shall govern the filing of HSDs.
- a. **Motion Required.** A party seeking to file a document as an HSD must file a motion with the presiding judge or, if no judge is assigned or the assigned judge is unavailable, with the Chief Judge. Such a motion may be filed in the CM/ECF system, under seal as appropriate, without the proposed HSD that is the subject of the motion attached. The motion shall explain, without disclosure of any highly sensitive information, why the proposed HSD should be subject to heightened protections. As soon as practicable after the motion is filed, the moving party shall deliver two paper copies of the proposed HSD, or an electronic copy on a secure electronic device, to this Court's Clerk's Office, packaged in a manner prescribed by the Clerk's Office. Service of the motion shall be in accordance with regular practice and service of the HSD may be made by any manner specified in Fed. R. Civ. P. 5(b)(2) or Fed. R. Crim. P. 49(a)(4).
 - b. **Court Orders.** If the motion to file a document as an HSD is granted, an informational entry will be made on the case docket indicating that an HSD has been filed with the Court. If the motion is denied, the movant may instead seek permission to file the document under seal on CM/ECF in accordance with D.D.C. Local Civil Rule 5.1(h)
 - c. **Storage of HSDs.** HSDs and related orders containing highly sensitive information shall be maintained in the Clerk's Office in a secure paper filing system and/or a secure independent electronic storage system.
- (4) **Removal of Existing HSDs from Court's CM/ECF System.** Upon motion of a party, as set forth in paragraph 3(a), or upon its own motion, the Court may determine that a document that

was previously filed electronically qualifies as an HSD and order that the HSD be removed from the CM/ECF system and maintained in accordance with paragraph 3(c).

SO ORDERED, this 12th day of January, 2021



Beryl A. Howell

BERYL A. HOWELL
Chief Judge