

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA**

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IN RE: )  
PROCEDURES FOR THE FILING OF ) STANDING ORDER  
HIGHLY SENSITIVE DOCUMENTS ) 21-04

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In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents (HSDs) filed with the courts. Consistent with Judicial Council policy and pursuant to Civil Rule 5(d)(3)(A) and Criminal Rule 49(b)(3)(A), good cause exists to require parties in the District of South Dakota to file certain HSDs outside of the court’s electronic filing system.

**THEREFORE, IT IS ORDERED** that, effective as of the date of this order and until the Court orders otherwise, the filing of certain HSDs shall be subject to the procedures and requirements set forth below. This Order supersedes any and all inconsistent provisions in existing Local Rules or other Standing Orders of this court.

**1. Documents Subject to this Order**

The filing procedures set forth below apply to documents that contain highly sensitive information. Highly sensitive documents are documents that contain highly sensitive non-public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. **Very few documents filed under seal in the District of South Dakota are HSDs.** Counsel in civil cases are strongly encouraged to carefully analyze whether their documents actually meet these standards.

- a. The court anticipates that HSDs may be filed in cases involving the following:
  - i. National security issues;
  - ii. Foreign sovereign interests;
  - iii. Cybersecurity or major infrastructure security;
  - iv. Ongoing intelligence-gathering operations;
  - v. Safety of public officials or government interests;
  - vi. Non-public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;
  - vii. Documents that would give foreign competitors of U.S. corporations a competitive advantage;
  - viii. The reputational interests of the U.S. or any State, or local government;
  - ix. False Claims or Qui Tam cases;

- x. Applications for production of stored electronic communications under 18 U.S.C. § 2703; or
  - xi. Applications for electronic surveillance under 18 U.S.C. §2518.
- b. The Court also anticipates that where any of the above are referenced, applications for search warrants may constitute HSDs.
- c. The following types of documents are generally not considered HSDs:
- i. Presentence reports, pretrial release reports, and documents related to such reports;
  - ii. Pleadings related to cooperation in most criminal cases;
  - iii. Sealed indictments, criminal complaints, arrest warrants or petitions for action on conditions of release;
  - iv. Grand jury proceedings;
  - v. Social Security records;  
Most sealed filings under protective orders in most cases, including matters claimed to be trade secrets but not of value to the intelligence service of a foreign government and settlement agreements;
  - vii. Medical, mental health or rehabilitation records;
  - viii. Attorney discipline proceedings;
  - ix. Administrative immigration records;
  - x. Juvenile proceedings;
  - xi. Documents containing personal or financial information; or
  - xii. Education records.
- d. Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

## **2. Filing of Motions to Treat a Document as an HSD**

Represented parties and pro se litigants

- a. A represented party or pro se party must file a motion to treat a document as an HSD and a proposed order in the same fashion as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain, in detail, why the proposed document constitutes an HSD under the criteria set out in paragraph 1 above or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD. The motion should be filed in paper along with the HSD in accordance with paragraph 2(b) below.
- b. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought to be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and e-mail address. If paper cannot be used, please call the clerk's office to find out the requirements of



submitting the information on an electronic device. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as an HSD has been filed.

- c. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties as follows:
  - i. Criminal cases – by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4), except for service via the court's electronic filing system; or
  - ii. Civil cases – by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system.
- d. The Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. Any order resulting from this Standing Order may be by text entry only, stating whether the motion is sufficient to classify the document as an HSD. 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.

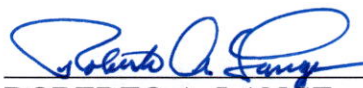
**3. Service of Highly Sensitive Court Orders**

If the court determines that a court order contains highly sensitive information, the clerk's office will file and maintain the order in a secure paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail.

Any questions about how a motion in an HSD should be filed with the court pursuant to this Standing Order should be directed to [Matt\\_Thelen@sdd.uscourts.gov](mailto:Matt_Thelen@sdd.uscourts.gov) or 605-330-6614.

DATED this 10<sup>th</sup> day of February 2021.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE