

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: PROCEDURES FOR HIGHLY
SENSITIVE DOCUMENTS

ADMINISTRATIVE ORDER
2021-02

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MARGO K. BRODIE, Chief Judge

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 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 highly sensitive documents, as defined herein, 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 filing of certain highly sensitive documents, as defined herein, shall be subject to the procedures and requirements set forth below. This Administrative Order supersedes any and all inconsistent provisions in existing local rules, administrative procedures, or other general orders of this Court. This Administrative Order does not limit or preclude the filing of documents under seal in accordance with existing procedures.

1. Documents Subject to this Order. The filing procedures and descriptions set forth below apply to documents known as Highly Sensitive Documents ("HSDs").

- a. HSDs are not all documents containing sensitive, proprietary or confidential information. Applications for search warrants, applications for the interception of wire, oral, or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap and trace devices, and wiretaps, are also not necessarily HSDs. Similarly, presentence reports or

related documents, pleadings related to cooperation in criminal cases, social security administrative records, immigration administrative records, and most sealed documents in civil cases are not HSDs. Instead, HSDs are those documents containing information that is likely to be of interest to the intelligence service of a foreign government and the use or disclosure of which by a hostile foreign government would likely cause significant harm to the United States or its interests. Examples of HSDs are documents involving national security, cybersecurity, terrorism, investigation of public officials, the reputational interests of the United States, and extremely sensitive commercial information likely to be of interest to foreign powers.

- b. If a filer believes that the documents to be filed on ECF are HSDs, the filer shall file a motion to designate the documents as HSDs as provided in Section 2 below.
- c. Non-HSDs shall continue to be filed under existing sealing procedures.
- d. Whether a document is an HSD shall be determined by the presiding District or Magistrate Judge assigned to a case or motion. A judge may decide *sua sponte* to treat any document as an HSD, whether or not a party has sought such designation. All documents submitted pursuant to this Order shall be treated as HSDs pending a judicial determination.
- e. If a document is not designated as an HSD, the filer retains the ability to file such a document in the Court's CM/ECF system under seal in accordance with local rules and administrative procedures.

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

- a. Any filer seeking to have a document treated as an HSD shall file a motion to

designate a document as an HSD. The motion to designate AND the proposed HSD shall **not** be filed electronically but rather pursuant to the procedures in Section 3 below.

- b. The motion to designate the document as an HSD shall set forth why the proposed document constitutes an HSD under the criteria set forth above or why it should otherwise be subject to the heightened protection for HSDs.
- c. The Court will issue an order on the motion and,
 - i. if granted, an informational entry will be made on the case docket indicating that the motion to designate and the HSD have been filed with the Court. The Clerk's Office will maintain the motion to designate and the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network. To the extent a party seeks to have the informational entry sealed, the request should be made in the motion to designate.
 - ii. if denied, and after any appeal of any denial of a motion to designate is exhausted, the filer may file the document using existing procedures via CM/ECF.

3. Procedures for Filing an HSD

- a. The filing party shall deliver to the Clerk's Office (in-person) paper copies of the motion to designate and the proposed HSD. In addition, one copy and any additional courtesy copies required by the District or Magistrate Judge assigned to the case or motion, must be provided to that judge according to his or her requirements.
- b. The upper right portion of the motion and the proposed HSD shall be labeled

“SEALED” and “HSD.”

- c. The 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 on the HSD Cover Sheet provided on the Court’s Website.

4. Removal of Existing HSDs from the Court’s Electronic Filing System

- a. A party may make a motion to remove an HSD or, upon its own motion, a Judge may determine that a document that has been filed electronically is an HSD and direct that the HSD be removed from the Court’s electronic filing system and maintained by the Clerk’s Office in a secure paper filing system.
- b. A motion to remove an HSD from the Court’s electronic filing system shall identify the specific document number to be designated as an HSD and set forth why such document is highly sensitive under the criteria set out in Section 1 or why it should otherwise be subject to the heightened protection for HSDs. Such a motion shall be filed as indicated in Sections 2 and 3.

5. Questions about HSD Filing Procedures. Any questions about how an HSD should be filed with the Court pursuant to this Administrative Order should be directed to the Clerk’s Office at (718) 613-2285 or (631) 712-6010.

SO ORDERED.

Dated: February 03, 2021
Brooklyn, New York

S/Margo K. Brodie
MARGO K. BRODIE
Chief Judge