
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

IN THE MATTERS OF (1) EXTENDING
THE DEADLINE TO FILE A MOTION TO
EXTEND THE SEAL AND (2)
REDACTION BEFORE UNSEALING
SOME MAGISTRATE JUDGE CASES

GENERAL ORDER
22-019

On August 19, 2022, the Court entered [General Order 22-014](#) implementing a process to review some sealed magistrate judge cases (mj cases) and complaints (or charging documents) to determine if there was any reason those cases and complaints should not be unsealed. The Order pertained to sealed mj cases and complaints filed between January 1, 2012, to July 31, 2022.

The Order required the Clerk's Office to provide a list of the sealed cases to the United States Attorney Office (United States), which after review, it would send to the Federal Defender's Office for the District of Utah (FDO). After those agencies reviewed the hundreds of cases on the list, they could file a motion to continue the seal by October 3, 2022, or the cases and some complaints would be unsealed.

During its review, the United States discovered that many of the sealed complaints required redactions before they could be unsealed. This eventuality was not anticipated when [General Order 22-014](#) was entered. Allowing the entities to file redacted complaints enables the court to preserve the public's right to access judicial records. The United States explained that redaction is necessary to remove personal identifying information, safeguard investigative techniques, and protect the names of minors, witnesses, sources, informants, uncharged individuals, and others. *See Letter*

from Drew Yeates, Criminal Division Chief, United States Attorney's Office for the District of Utah, attached.

The Court agrees with the United States and finds that under Fed. R. Crim. P. 49.1(d), DUCrimR 49-1(a), and case law that redaction is warranted to protect the information identified above and as specified in the letter.

Separately, while these agencies have worked tirelessly to meet the October 3, 2022 deadline to file a motion to continue the seal, additional time is needed for FDO to complete a thorough review of each case. FDO specifically has requested an extension to file any motions to continue the seal.

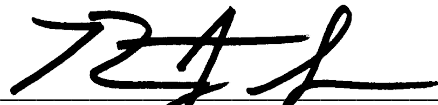
THEREFORE IT IS HEREBY ORDERED that:

1. Unsealing Redacted Cases and Complaints: The United States may provide a copy of the redacted complaints or charging document to the Clerk's Office. After receiving the redacted complaints, the Clerk's Office will send a copy to FDO. FDO will have until November 15 to coordinate additional redaction for the cases on the list with the United States, if it is needed, or to file a motion to seal or redact if an agreement cannot be reached. By December 15, 2022, the Clerk's Office will file the redacted complaint in the correct cases. The redacted complaint will be publicly available; the case will be unsealed as ordered in [General Order 22-014](#); and the unredacted complaint will remain sealed.

2. **Extension of Time for Motions:** The United States and FDO have until October 28, 2022, to send to the Clerk's Office for filing any motions to extend the seal for cases identified on the Clerk's Office list.

SO ORDERED this 26th day of October, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE



U.S. Department of Justice

TRINA A. HIGGINS
United States Attorney
District of Utah

REPLY TO:
J. Drew Yeates
Assistant United States Attorney

Office of the United States Attorney
111 South Main, Suite 1800
Salt Lake City, Utah 84111-1506

(801) 524-5682
(800) 949-9451
Fax: (801) 524-6924

October 10, 2022

United States District Court, District of Utah:

Pursuant to General Order 22-014, the United States Attorney's Office for the District of Utah has worked expeditiously and diligently to clear a decade-long backlog of approximately 300 sealed MJ cases. Counsel for the United States carefully reviewed the cases with an understanding that court filings are presumptively open to the public. The United States has stipulated to the unsealing of approximately 85% of the backlogged cases. The United States has identified approximately four dozen cases that may be unsealed after minor redactions are made to one of more documents contained therein.

The four dozen cases at issue were originally sealed pursuant to DUCrimR 49-2(b) with an understanding that the documents could be redacted prior to unsealing. *See* Federal Rule of Criminal Procedure 49.1(d). Federal Rule of Criminal Procedure 49.1(d) allows a party unsealing a filing to file a redacted version for the public record. Moreover, DUCrimR 49-2(a) encourages counsel to "redact personal identifiers" and "confidential portions of a Document when they are not directly pertinent to the issues before the court."

The United States' proposed redactions to previously sealed Criminal Complaints are narrow in scope and necessary to remove personal identifying information (PII), sensitive investigative techniques, and names of minors, witnesses, sources, cooperators, informants, and uncharged coconspirators. A Criminal Complaint is a mere allegation based upon the low evidentiary standard of probable cause and is a temporary charging document. Authorizing limited redaction pertaining to unproven allegations is supported by sound public policy.

The United States proffers the following findings and justifications to establish good cause for the redactions.

- DUCrimR 49-2(a) encourages counsel to "redact personal identifiers" and "confidential portions of a Document when they are not directly pertinent to the issues before the court."
- Federal Rule of Criminal Procedure 49.1(d) allows a party unsealing a filing to file a redacted version for the public record.
- There is ordinarily "no legitimate governmental interest served" by the government's public allegation of wrongdoing by an uncharged party." *In re Smith*, 656 F.2d 1101, 1106-07 (5th Cir. 1981). *See also United States v. Anderson*, 55 F. Supp 2d 1163, 1169-70 (D. Kan. 1999) (finding a due process violation as a result of the

government's "unqualified identification of movants as unindicted coconspirators in its pretrial moving papers [which] allows for the reasonable inference that they have been labeled criminals"); *United States v. Smith*, 992 F. Supp. 743 (D.N.J. 1998) (noting a court should determine whether a *compelling need* for disclosure exists or will serve the interests of justice, especially where a sentencing memo contains allegations implying named third parties engaged in criminal conduct with defendant when such allegations were not raised at trial).

- Courts have precluded the public identification of unindicted third-party wrongdoers in plea hearings, sentencing memoranda, and other government pleadings. *See Finn v. Schiller*, 72 F.3d 1182 (4th Cir. 1996); *United States v. Briggs*, 514 F.2d 794 (5th Cir. 1975); *United States v. Anderson*, 55 F.Supp.2d 1163 (D. Kan 1999); *United States v. Smith*, 992 F. Supp. 743 (D.N.J. 1998).

Accordingly, good cause has been established for the redactions in this small number of cases.

Sincerely,

TRINA A. HIGGINS
United States Attorney

/s/ J. Drew Yeates

J. Drew Yeates
Assistant United States Attorney
Chief, Criminal Division