

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:)
AMENDMENT TO THE INSTRUCTIONS) STANDING ORDER 2021-06
FOR THE FILING, SERVICE, AND) (Supersedes Standing Order 2021-2)
MANAGEMENT OF HIGHLY SENSITIVE)
DOCUMENTS)

WHEREAS, 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 filed with the Courts; and

WHEREAS, upon completion of a review, comprised of the Court Services Branch of the Administrative Office of the U.S. Courts and an ad hoc subcommittee, to assess how courts were identifying and managing HSDs, and after discussion with the Executive Committee of the Judicial Conference, the court hereby amends Standing Order 2021-2, to remove search warrants and accompanying documents from being treated as HSDs, unless they relate to high profile national security criminal investigations.

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 certain highly sensitive documents outside of the Court's electronic filing system.

FURTHERMORE, for purposes of this order, only documents that contain highly sensitive information (HSI) qualify as HSDs. For these purposes, HSI refers only to sensitive or confidential information that is likely to be of interest to a foreign power or agent of a foreign power and whose use or disclosure by such a foreign actor would cause significant harm. Documents that the Court anticipates qualifying, and being identified as HSDs, are set forth in Section 1.a. of this Order.

FURTHERMORE, sealed documents that are not HSDs will be filed and served in accordance with established procedures under Local Rule of Civil Procedure 5.8 and Local Rule of Criminal Procedure 49 and will be maintained under seal in CM/ECF. Restricted Documents listed in Section 1.b. below will continue to be subject to restricted access under the current rules and policies, but generally will not qualify as HSDs.

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

shall be subject to the procedures and requirements set forth below. This Standing Order supersedes all inconsistent provisions in existing local rules or other general orders of this Court.

1. Documents Subject to this Order.

The filing procedures set forth in Section 2 below apply to documents that contain highly sensitive information.

- a. The following types of documents are deemed highly sensitive documents (HSDs).
 - Documents or Cases involving National Security, including those matters addressing:
 - Foreign sovereign interests
 - Cybersecurity
 - Law enforcement investigations or intelligence-gathering operations
 - Extent of domestic or international interests
 - Information that would put at risk the safety of public officials or the integrity of governmental operations
 - Non-public intellectual property, including trade secrets
 - Reputational interests of the United States
 - Terrorism
 - Applications for Search Warrants, and related documents, in cases involving HSI.
 - Applications for electronic surveillance pursuant to 18 U.S.C. § 2511, et seq., in cases involving HSI and documents concerning the conduct of such surveillance (e.g. interim and final reports to the Court of the results of such surveillance).
 - Seizure or Inspection Warrants, and related documents, in cases involving HSI.
 - Applications for Order Authorizing Pen Register and Order, and related documents, in cases involving HSI.
 - Arrest Warrants Issued, and related documents, in cases involving HSI.
- b. The following types of sealed or restricted documents/cases are unlikely to be considered HSDs.
 - Sealed and Restricted Filings in Certain Civil Cases
 - Sealed and Restricted Filings in Criminal Cases

- Sealed Criminal Complaints
 - Sealed Informations and Sealed Superseding Informations
 - Sealed Indictments and Sealed Superseding Indictments
 - Sealed and Restricted Probation Documents
 - Sealed and Restricted Civil Cases
 - Sealed and Restricted Criminal Cases
 - Search Warrants and accompanying documents that do not relate to high profile national security criminal investigations.
- c. All documents listed in Section 1.b. shall continue to be filed in accordance with the Local Rules of this Court that govern filing of documents under seal, restricted documents containing personal identifiers and other sensitive or confidential information.

2. Filing of Authorized HSDs (listed in Section 1.a. above).

- a. A party filing an HSD pursuant to this Standing Order shall deliver to the Clerk's Office, by mail or in person, two paper copies of the HSD and a certificate of service.
- b. The Authorized HSDs, listed in Section 1.a. above, must be placed in an envelope marked "HIGHLY SENSITIVE DOCUMENT" and must INCLUDE THE CASE NUMBER AND CAPTION. A party mailing the Authorized HSD shall then place the marked envelope described above in an outer envelope for mailing.
- c. The filing party shall serve the HSD on all other parties pursuant to Federal Rule of Civil Procedure 5(b)(2), except for service via the Court's Electronic Filing System, or, in criminal cases, by any manner specified in Federal Rule of Criminal Procedure 49(a)(3)(B) or (a)(4).
- d. The Clerk's Office will make an informational docket entry in the Court's Electronic Filing System indicating that the HSD was filed with the Court and will maintain the HSD in a secure paper filing system and/or standalone computer system that is not connected to any network and does not have access to the internet.

3. Filing a Request to Treat a Document as an HSD.

If a party wishes to have documents treated as HSD that have not been identified in Section 1.a. of this Order, the following procedure should be used to make the request to treat a document as an HSD.

- a. The requesting party shall deliver to the Clerk's Office, by mail or in person, two copies of the completed Standing Order 2021-2 Requests to Clerk of Court Form. If a party is filing a Request to Treat a Document as an HSD, select the first box on the form. The party shall seek concurrence of all opposing parties and check the appropriate box on the form. The party must attach to the form an explanation as to why the proposed document constitutes an HSD under the criteria set out in Section 1 of this Order or why it should otherwise be subject to the heightened protection for HSDs.
- b. The request must include the HSD sought to be filed along with a certificate of service.
- c. All documents described above must be placed in an envelope marked "HIGHLY SENSITIVE DOCUMENT" and must INCLUDE THE CASE NUMBER AND CAPTION. A party mailing the documents shall then place the marked envelope described above in an outer envelope for mailing.
- d. The filing party shall serve the HSD on all other parties pursuant to Federal Rule of Civil Procedure 5(b)(2), except for service via the Court's Electronic Filing System, or, in criminal cases, by any manner specified in Federal Rule of Criminal Procedure 49(a)(3)(B) or (a)(4).
- e. If all parties concur with the request, a determination will be made by the Clerk of Court by completing the "Designation of Highly Sensitive Document/Case" section on the "Request" form. If the request is granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk's Office will maintain the HSD in a secure paper filing system and/or a secure standalone computer system not connected to any network and that does not have access to the internet. If the request is denied, the party may seek relief with Chief Magistrate Judge Karoline Mehachick.

If the parties do not concur with the request, the matter will be reviewed and decided by Chief Magistrate Judge Karoline Mehachick

4. Removal of Existing HSDs or Highly Sensitive Cases from the Court’s Electronic Filing System.

- a. Upon request of a party to the Clerk of Court, it may be determined that an electronically-filed document, case, or any portion thereof, is highly sensitive and the HSD or case shall be removed from the Court’s Electronic Filing System and maintained in the Clerk’s Office.
- b. The request shall be made by delivering to the Clerk’s Office, by mail or in person, two copies of the completed Standing Order 2021-2 Requests to Clerk of Court Form. If the party is filing a Request for Removal of Existing Highly Sensitive Document from the Court’s Electronic Filing System, the party should select the second box on the form. If the party is filing a Request for Removal of Existing Highly Sensitive Case from the Court’s Electronic Filing System, the party should select the third box on the form. The party shall seek concurrence of all opposing parties and check the appropriate box on the form.
- c. If the party is filing a Request for Removal of Existing Highly Sensitive Document, the party must attach an explanation as to why the document constitutes an HSD under the criteria set out in Section 1 of this Order or why it should otherwise be subject to the heightened protection for HSDs, along with a certificate of service and a copy of the HSD sought to be removed.
- d. If the party is filing a Request for Removal of Existing Highly Sensitive Case, you must attach an explanation as to why the existing case, or any portion of it, constitutes an HSC under the criteria set out in Section 1 of this Order or why it should otherwise be subject to the heightened protection for HSCs, along with a certificate of service.
- e. The party must also complete the remaining parts of the form, including the Case Number, Case Caption, Document Number, and Type of Document.
- f. The filing party shall serve the HSD on all other parties pursuant to Federal Rule of Civil Procedure 5(b)(2), except for service via the Court’s electronic filing system, or, in criminal cases, by any manner specified in Federal Rule of Criminal Procedure 49(a)(3)(B) or (a)(4).
- g. If all parties concur with the request, a determination will be made by the Clerk of Court by completing the “Designation of Highly Sensitive Document/Case” section on the “Request” form. If granted, the documents or case will be removed from the Court’s Electronic Filing System and maintained in a secure paper filing system and/or a secure standalone computer system not connected to any network

and that does not have access to the internet. If the request is denied, the party may seek relief with Chief Magistrate Judge Karoline Mehalchick.

If the parties do not concur with the request, the matter will be reviewed and decided by Chief Magistrate Judge Karoline Mehalchick.

5. Notice of Highly Sensitive Court Orders

If the Court determines that a Court Order contains highly sensitive information, the Clerk's Office will file in a secured paper filing system and/or on a secure standalone computer system that is not connected to any network and does not have access to the internet and will send paper copies of the order on the parties via mail.

6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this Standing Order should be directed to the Clerk's Office at Scranton: 570-207-5600; Harrisburg: 717-221-3920; Williamsport 570-323-6380.

IT IS SO ORDERED, this 13th day of April, 2021.

S/John E. Jones III

Hon. John E. Jones III, Chief Judge
United States District Judge
Middle District of Pennsylvania