

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF
A RESIDENCE LOCATED AT [REDACTED]
[REDACTED], A
RECREATIONAL VEHICLE [REDACTED]
[REDACTED], A
BLACK TRAILER [REDACTED]
[REDACTED] AND A CELL PHONE
CURRENTLY BEING USED BY JEREMY
BROWN UNDER RULE 41

SW No. 21-SW-315

Filed Under Seal

**APPLICATION TO SEAL SEARCH WARRANT, AFFIDAVIT IN SUPPORT,
AND MEMORANDUM IN SUPPORT THEREOF**

The United States of America, by and through its undersigned counsel, respectfully submits under seal this *ex parte* application for an Order placing the above-captioned search warrant, and the application and affidavit in support thereof, and all attachments thereto and other related materials such as this application and order (collectively, the “Warrant”) under seal until further order of the Court.

LEGAL BACKGROUND FOR SEALING

1. The Court has the inherent power to seal court filings when appropriate, including the Warrant. *United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978)). *See also, e.g., In re Sealed Affidavit(s) to Search Warrants*, 600 F.2d 1256, 1257 (9th Cir. 1979) (finding that the court has inherent power to seal search warrant affidavits). Such sealing is within the discretion of the District Court. *See Nixon*, 435 U.S. at 598 (common-law right to inspect and copy judicial records is not absolute, but the decision whether to permit access is best left to the sound discretion of the trial court in the light of the relevant facts and circumstances of the particular case).

2. More particularly, the Court may seal the Warrant and related filings to prevent serious jeopardy to an ongoing criminal investigation when, as in the present case, such jeopardy creates a compelling governmental interest in preserving the confidentiality of the Warrant. *See Washington Post v. Robinson*, 935 F.2d 282, 287-89 (D.C. Cir. 1991).

3. Courts have traditionally been “highly deferential to the government’s determination that a given investigation requires secrecy and that warrant materials be kept under seal.” *Times Mirror Co. v. United States*, 873 F.2d 1210, 1214 (9th Cir. 1989). Therefore, courts have routinely granted government requests to seal warrant materials where there is a need for secrecy. *Id.*; *see also id.* at 1215, 1219 n.13 (Sealed search warrant materials have been treated as the functional equivalent of grand jury materials in their shared need for secrecy.). While courts may disagree whether there even exists a qualified right under the common law or the First Amendment to access to sealed search warrant materials,¹ courts are in general agreement that a movant is not entitled to access to sealed search warrant materials if disclosure would compromise an ongoing investigation or endanger witnesses. *See, e.g., id.* at 1212-1221 (“warrant proceedings and materials should not be accessible to the public, at least while a pre-indictment investigation is still ongoing”); *Baltimore Sun Co.*, 886 F.2d at 64 (“the need for sealing affidavits may remain after execution and in some cases even indictment”); *In re Search Warrants for National Builder Corp.*, 833 F. Supp. 644, 645-646 (N.D. Ohio 1993) (grand jury target was not entitled to the unsealing of a search warrant affidavit if it would compromise an ongoing investigation).

¹ *See, e.g., Times Mirror Co.*, 873 F.2d at 1212-1221 (no right of access to sealed search warrant materials exists under the First Amendment, the common law, or Fed. R. Crim. P. 41(g)); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 64 (4th Cir. 1989) (no First Amendment right of access, but qualified common law right of access); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (qualified First Amendment right of access).

REQUEST FOR SEALING

4. Such an Order is appropriate because the Warrant relates to an ongoing criminal investigation, the extent of which is not fully known to the public or to additional subject(s). In particular, the nature and scope of evidence available to law enforcement, as set forth in the search warrant affidavit, is neither public nor known to the outstanding subject(s) of the investigation. Accordingly, disclosure may reveal the existence, scope, and direction of the Government's ongoing investigation. Once alerted to the investigation and the scope of such evidence available to law enforcement, potential co-conspirators could be immediately prompted to flee from prosecution, destroy or conceal incriminating evidence, alter their operational tactics to avoid future detection, attempt to influence or intimidate potential witnesses, and otherwise take steps to undermine the investigation and avoid future prosecution.

5. Therefore, based on the foregoing, there are reasonable grounds to believe that disclosure of the Warrant and the details in the search warrant affidavit would result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, or other serious jeopardy to this investigation. *Cf.* 18 U.S.C. § 2705(b)(2)-(5). In short, because of such potential jeopardy to the investigation, there exists a compelling governmental interest in confidentiality to justify the sealing the Warrant, this application, and this Order. *See Robinson*, 935 F.2d at 287-89.

ACCORDINGLY, it is respectfully requested that the above-captioned warrant, the application and affidavit in support thereof, and all attachments thereto and other related materials (including this application) be placed under seal until further order of this Court.

Respectfully submitted,

CHANNING D. PHILLIPS
ACTING UNITED STATES ATTORNEY
D.C. Bar Number 415793

By: /s/ Louis Manzo
LOUIS MANZO
Massachusetts Bar No. 68837
Special Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20530
Telephone: 202-262-6570
Email: louis.manzo@usdoj.gov

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ORDER

This matter having come before the Court pursuant to the application of the United States to seal the above-captioned warrant and related documents, including the application and affidavit in support thereof and all attachments thereto and other related materials (collectively the “Warrant”), the Court finds that, because of such reasonable grounds to believe the disclosure will result in flight from prosecution, destruction of or tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the investigation, the United States has established that a compelling governmental interest exists to justify the requested sealing.

1. IT IS THEREFORE ORDERED that the application is hereby GRANTED, and that the warrant, the application and affidavit in support thereof, all attachments thereto and other related materials, the instant application to seal, and this Order are sealed until otherwise ordered by the Court.

2. IT IS FURTHER ORDERED that the Clerk’s office shall not make any entry on the public docket of the Warrant until further order of the Court.

Date: September 29, 2021

  Zia M. Faruqui
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ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE

cc: LOUIS MANZO
Special Assistant United States Attorney
United States Attorney's Office
555 Fourth Street, N.W.
Washington, D.C. 20530