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

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| IN RE: | **:** | |
| | **:** | |
| **PROCEDURES GOVERNING THE** | **:** | **STANDING ORDER** |
| **FILING OR RETRIEVAL OF HIGHLY** | **:** | |
| **SENSITIVE DOCUMENTS** | **:** | |

The Court issues this Standing Order in response to recent disclosures of widespread breaches of both private sector and government computer systems, including an apparent compromise of the confidentiality of the Judiciary's CM/ECF system. In light of this data breach, the Court finds that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to require all parties to file documents that contain highly sensitive information ("HSI") outside of the Court's electronic filing system. Therefore, effective as of the date of this Standing Order and until such time as the Court amends or rescinds this Standing Order, it is

**ORDERED** that parties filing documents that contain HSI ("Highly Sensitive Documents" or "HSDs") shall comply with the procedures and requirements set forth below.

1.      **Definition Of Highly Sensitive Document**.  Only documents that contain HSI qualify as HSDs. For these purposes, "HSI" does not refer to all sensitive or confidential information. Instead, 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[1] and whose use or disclosure by such a foreign actor would cause significant harm. The Court anticipates that the following types of documents will qualify as HSDs:

- Documents in cases involving national security or international terrorism, including those matters addressing foreign sovereign interest,

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[1] *See* 50 U.S.C. § 1801 for the definition of "foreign power" and "agent of a foreign power."

cybersecurity, and ongoing law-enforcement investigations of foreign intelligence-gathering operations;

- Information that would put at risk the safety of public officials or the integrity of governmental operations;

- Applications for and documents related to the execution of search warrants in cases involving HSI, prior to the time that the law requires disclosure of such documents;

- Applications for electronic surveillance pursuant to 18 U.S.C. § 2518 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); and

- Materials whose disclosure to a foreign power or its agents would be unlawful under U.S. law or would substantially assist a foreign power or its agents in the development of that foreign power's competing commercial products or products with military applications.

The standard for designating a document as an HSD is higher than the standard for filing under seal. The fact that a document qualifies for filing under seal does not mean that it satisfies the criteria for HSD designation. The Court will not consider documents HSDs solely because they include personal identifying information or financial information about an entity or an individual. Most sealed filings in civil cases do **not** constitute HSDs. The Court anticipates that the following types of sealed or restricted documents will, in most cases, not qualify as HSDs:

- Sealed criminal complaints, indictments, and informations;

- Pleadings related to cooperation in criminal cases;

- Presentence reports, pretrial release reports, and probation violation reports;

- Social Security records;

- Administrative records in immigration cases; and

- Documents containing commercial or proprietary information, including financial records, that will not assist a foreign power or its agents.

2. **Motions For HSD Designation**.

a. No party may submit an HSD without leave of Court. Whenever possible, a party seeking to designate a document as an HSD shall seek leave by motion in advance of submitting the document to the Court. In the event circumstances do not permit the party to seek leave in advance, the party may submit the motion contemporaneous with submitting the proposed HSD.

b. Any motion to designate a document as an HSD must provide an explanation as to the basis for the request based on the criteria set forth in this Standing Order. A motion for HSD designation must be signed by an attorney whose signature will attest that, pursuant to Fed. R. Civ. P. 11, the attorney has a good-faith belief that the document contains HSI, as defined in this Standing Order. In addition, any motion must state the individuals to whom the HSD may be disclosed.

c. Any party seeking leave to designate a document as an HSD must seek concurrence of all opposing parties and shall report if the motion is contested, is unopposed, or if there are no other parties to consult.

d.      The Motion to designate an HSD must include the HSD, along with a certificate of service, and should be submitted consistent with the procedure for submission of HSDs in Section 3, below. **No party may use the Court's CM/ECF system for any filing relating to an HSD or the designation of a document as an HSD**.

e.      The party filing an HSD must serve the HSD on all other parties entitled to service pursuant to Fed. R. Civ. P. 5(b)(2) or Fed. R. Crim. P. 49(a)(3)(B) or (a)(4), except that no party may use the Court's CM/ECF system to effectuate service of any HSD or any motion or other filing relating to the designation of a document as an HSD.

f.      The presiding judge in a matter will resolve any motion to designate a document as an HSD. In the event that no judge is assigned, then the emergency judge will handle the motion.

g.      Any Order granting a motion seeking HSD designation, or directing the treatment of a document an HSD on the Court's own motion, must (1) state the identity of the persons who are to have access to the documents without further order of the Court, and (2) set forth instructions for the disposition of the restricted documents following the conclusion of the case.

h.      If the Court determines that a Court Order contains HSI, the Clerk's Office will file and maintain the Order consistent with the requirements of Section 5, below, and will serve paper copies of the Order via United States Mail.

i.      If the Court grants the motion to designate a document as an HSD, the Clerk's Office will make an informational docket entry in the Court's CM/ECF system indicating that a party has filed an HSD with the Court.

j.      In the event that a request to treat a document as an HSD is denied, the document will not be docketed for three business days to permit any appeal.

3.      **Submission Of HSDs**. A party seeking to file an HSD must deliver to the Clerk's Office, by mail or in person, two paper copies of the HSD and a certificate of service. The party submitting HSDs must place them in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and including the case caption, case number, and the attorney's or party's name and address. If no case number is assigned, then the party submitting the envelope shall leave a place for the Clerk's Office to complete that information.

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

a.      A party may request that the Court remove a document from the Court's CM/ECF system because it contains HSI.

b.      The request shall be made by delivering a motion, filed in paper and compliant with all provisions of Section 2, above. The judge assigned to a case will resolve such a motion

5.      **Storage Of HSDs**. The Clerk's Office will maintain HSDs in a secure paper filing system, on a secure standalone computer system that is not connected to any network, or in any other manner that the Court determines will provide sufficient security for HSDs.

6.      This Standing Order supersedes all inconsistent provisions in existing Local Rules or any other Standing Order of the Court. However, nothing in this Standing Order changes the filing procedures for documents that meet the test for filing under seal but which do not qualify as HSDs.

7.      This Order takes effect immediately.

<div align="center"><strong>SO ORDERED</strong>:</div>

*/s/ Juan R. Sanchez*
Chief Judge

January 22, 2021