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

IN RE:	)	
INSTRUCTIONS FOR THE FILING,	)	STANDING ORDER 2021-2
SERVICE, AND 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;

   THE COURT FINDS that, pursuant to <u>Federal Rule of Civil Procedure 5(d)(3)(A)</u> and <u>Federal Rule of Criminal Procedure 49(b)(3)(A)</u>, 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, HSDs, as more specifically defined in Section 1.a. below, generally involve matters of national security, Title III applications, and warrants.

   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
      - Applications for Electronic Surveillance under 18 U.S.C. § 2518
      - Affidavit of Agent
      - Search Warrant Issued
      - Search Warrant Issued Delayed Notice
      - Search Warrant Returned Unexecuted
      - Seizure or Inspection Warrant
      - Seizure Warrant Issued, Seizure Warrant Returned Unexecuted
      - Application for Order Authorizing Pen Register and Order
      - Application for Order Authorizing Interception of Wire Communications and Order
      - Title III Applications and Orders
      - Arrest Warrant Issued
      - Warrant Issued
      - Order for Warrant
      - Warrant Returned Unexecuted
      - Qui Tam Actions

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

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 not 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 Mehalchick.

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

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 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 15th day of January 2021.

<u>s/ John E. Jones III</u>
Hon. John E. Jones III, Chief Judge
United States District Judge
Middle District of Pennsylvania