

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA :

v. : **Case No. 21-cr-332-PLF-1**

PAUL RUSSELL JOHNSON *et al.*, :

Defendants. :

**SUPPLEMENTAL BRIEF REGARDING THE PARTIES' CONSENT MOTION TO
UNSEAL SEARCH WARRANT AND RELATED DOCUMENTS**

On November 19, 2021, the Parties filed a Consent Motion to Unseal Search Warrant and Related Documents (“Motion to Unseal”) requesting that the Court unseal: (1) a redacted copy of the Search Warrant and Receipt of Property (“Search Warrant”); (2) a redacted Affidavit in support of the Search Warrant with Attachments A and B (“Affidavit”); and (3) a redacted Federal Bureau of Investigation (“FBI”) Form FD-302 regarding the search of Mr. Johnson’s home. (ECF No. 55). Previously, U.S. Magistrate Judge Elizabeth W. Hanes of the United States District Court for the Eastern District of Virginia had ordered that unredacted versions of both the Search Warrant and Receipt of Property and the Affidavit in Support of Search Warrant with Attachments A and B be sealed (“Order to Seal”). (Order to Seal, ECF No. 55-2). On November 22, 2021, the Court issued an Order requesting supplemental briefing from the Parties regarding, among other things, whether the Order to Seal still applies to all of the documents the Parties seek to unseal and whether the Parties have received prior permission from Judge Hanes to unseal the documents (“Order”). (ECF No. 58 at 2).

First, with regard to the FBI Form FD-302, the Order to Seal only seals the “Application for Search Warrant, Search Warrant, Affidavit in Support of Search Warrant, and the Memorandum in Support of the Government’s Motion to Seal.” (Order to Seal at 2). By its plain

language, the Order to Seal does not apply to the FBI Form FD-302. However, the Protective Order Governing Discovery (“Protective Order”) requires “prior agreement by the parties or permission from the Court” to disclose the FBI Form FD-302 in a public filing with the Court.¹ (Prot. Order Governing Discovery [“Prot. Order”] at 3, ECF No. 19). The Parties have agreed that the FBI Form FD-302 can be disclosed in a public filing with certain redactions to protect the identity of an uncharged individual and the identities of the FBI agents involved in an ongoing investigation. (See Consent Mot. to Unseal Ex. 2, ECF No. 55-1). Thus, under the Protective Order, the FBI Form FD-302 may be disclosed in a public filing. Accordingly, the Parties withdraw the Motion to Unseal with regard to the FBI Form FD-302, which is currently designated as Exhibit 3.

Second, the Order to Seal is still in effect and applicable to the Search Warrant and Affidavit. However, the Government is working with the United States Attorney’s Office in the Eastern District of Virginia to file a motion in the United States District Court for the Eastern District of Virginia to partially unseal the Search Warrant and Affidavit. Specifically, the Government is requesting that the Parties be permitted to file on the public docket redacted copies of the Search Warrant and Affidavit. The Parties will provide this Court with a copy of Judge Hanes’s Order as soon as it is received. Further, the Parties anticipate providing the Court with a revised Exhibit 2 (the Affidavit), which will contain additional redactions, at the same time that the Parties provide this Court with a copy of Judge Hanes’s Order.²

¹ The Protective Order also requires the Parties and the Court to determine the “procedures for use of designated Sensitive and Highly Sensitive materials during any hearing or the trial of this matter shall be determined by the parties and the Court in advance of the hearing or trial.” (Prot. Order Governing Discovery [“Prot. Order”] at 3, ECF No. 19).

² The Parties have been unable to locate binding legal authority that would permit this Court to unseal the Search Warrant and Affidavit that Judge Hanes sealed in the Eastern District of Virginia. While “[e]very court has supervisory power over its own records and files,” *United States v. Hubbard*, 650 F.2d 293, 315 (D.C. Cir. 1980), and while the Eastern District of Virginia

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Respectfully submitted,

/s/

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sealed records and files are key to the instant case before the Court, the Parties are unaware of any clear “statutes, Rules or cases that provide authority for this Court to unseal materials previously sealed by a judge. . . in another district.” Order at 2. (ECF No. 58).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this pleading was served on all counsel of record via the Court’s electronic filing service.

Date: November 24, 2021

/s/ Kobie Flowers
Kobie Flowers