

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

**GENERAL ORDER REGARDING PROCEDURES FOR THE FILING, 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 Civil Rule 5(d)(3)(A) and Criminal Rule 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.

**THEREFORE, IT IS HEREBY ORDERED** that, effective as of the date of this General 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 General Order supersedes any and all inconsistent provisions in existing local rules or other orders of this Court. It is presumed that documents filed under seal through the Court's current electronic filing system remain secure, and any party moving to file documents under this General Order bear the burden to justify such exceptional treatment. This General Order does not limit or preclude the filing of documents under seal (containing proprietary or confidential information) as currently exists.

**1. Documents Subject to this General Order**

The filing procedures set forth below apply to documents that contain Highly Sensitive Information ("HSI") and documents containing HSI shall be known as Highly Sensitive Documents ("HSDs"). The following filing procedures set forth below apply to HSDs:

- a. HSI does not refer to all sensitive or confidential information. Instead, it refers only to information that is likely to be used by a hostile foreign government or its intelligence service to harm the interests of the United States, or likely to be used to commit foreign or domestic crimes, so that disclosure or use will cause significant harm; and any other information which, if disclosed, would pose a risk

to national security, a clear and present danger to life and safety or result in grave or extreme harm;

- b. HSDs include applications for electronic surveillance under 18 U.S.C. § 2518;
- c. The Court anticipates that HSDs may also include documents that, in the judgment of the filing party, are or contain HSI that is substantially likely to adversely affect:
  - i. the nation's security;
  - ii. a foreign sovereign interest;
  - iii. the ability of an entity to maintain cybersecurity;
  - iv. ongoing law-enforcement investigations or intelligence-gathering operations involving documents that are substantially likely to be used to commit domestic or international crimes;
  - v. the safety of public officials, individuals cooperating with law enforcement in criminal investigations or prosecutions, or the integrity of government operations;
  - vi. nonpublic intellectual property, trade secrets, or highly confidential commercial information; or
  - vii. the reputational interests of the United States.
- d. The Court anticipates that the following do not contain HSI and are not HSDs, and that these documents will continue to be filed under existing sealing procedures:
  - i. search warrant applications and search warrants;
  - ii. presentence reports and pretrial-release reports and documents related to those reports;
  - iii. social security records;
  - iv. administrative records in immigration cases; and
  - v. most sealed filings in civil cases.

## **2. Filing of Motions to Treat a Document as an HSD**

- i. Any party shall file a motion to treat a document as an HSD and a proposed order electronically under existing procedures in Local Rule CV-5(a)(7)(C), **except that a copy of the proposed HSD shall not be filed electronically.** The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraphs 1.a and 1.c. above or why it should otherwise be subject to the heightened protection for HSDs. These

documents may be filed only: (i) in person; (ii) by United States Mail; or (iii) by a commercial delivery service (such as Federal Express, DHL or UPS).

- ii. HSDs filed under these procedures must be filed with the Clerk of Court in the Division where the case is filed. No separate courtesy copy is needed unless specifically requested.
- iii. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk's Office the HSD sought to be filed along with a certificate of service in the form of two paper copies.
- iv. The filing party shall serve the proposed HSD on the other parties as specified herein.
- v. The Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. This entry will be the only notice of receipt by the Clerk, unless there is a request for a file-stamped copy.
- vi. The Clerk's Office will file and maintain HSDs in a secure paper filing system, or on a secure standalone computer system that is not connected to any network, or both, but not otherwise.
- vii. Requests by a filing party for a file-stamped copy of any HSD document will not be honored while this General Order is in effect, unless the requesting party delivers in-person to the Clerk a written request signed by the filing party or their counsel requesting the return of a file-marked copy of the HSD and an extra copy to be file-marked. File-marked copies will not be transmitted or made available other than in-person. The filing party must present the requested extra copy to be file-stamped at the time of filing.

### **3. Service of Highly Sensitive Court Orders**

If the court determines that a court order contains HSI, the Clerk's Office will file and maintain the order in a secure paper filing system and/or may determine that the order will be maintained on a secure standalone computer system that is not connected to any network. The Clerk's Office will serve the copies of the order to entitled parties via mail.

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

- a. Upon motion of a party or upon its own motion, the Court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the Court's electronic filing system and maintained by the Clerk's Office on a secure standalone computer system that is not connected to any network.
- b. A party's motion to remove an HSD or highly sensitive case from the Court's electronic filing system shall explain why such document or case is highly sensitive

under the criteria set out above or why it should otherwise be subject to the heightened protection for HSDs.

**5. Questions about HSD Filing Procedures**

Any questions about how an HSD should be filed with the Court pursuant to this General Order should be directed to the Clerk's Office at the appropriate division of the Clerk's Office.

**SO ORDERED** and **SIGNED** this 19th day of January, 2021.

FOR THE COURT:

A handwritten signature in black ink, reading "Rodney Gilstrap", written over a horizontal line.

RODNEY GILSTRAP

Chief United States District Judge