

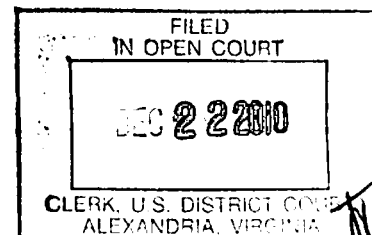
IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
 v.)
)
 JEFFREY ALEXANDER STERLING)

UNDER SEAL

No. 1:10cr485 (LMB)



**MOTION OF THE UNITED STATES
TO SEAL INDICTMENT**

The United States of America, by and through undersigned counsel, pursuant to Local Rule 49(B) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an Order to Seal the indictment returned December 22, 2010, in the captioned proceeding, and the arrest warrant issued as a result of that indictment. The United States requests that the indictment and arrest warrant remain sealed until the defendant has been arrested and appears in a federal district court pursuant to Rule 5 of the Federal Rules of Criminal Procedure.

I. REASONS FOR SEALING

1. The defendant has been indicted for felony offenses regarding the unauthorized disclosure of classified information. If convicted, the defendant faces the possibility of a lengthy prison sentence.

2. The defendant is believed to reside in Missouri. Because of the upcoming holidays, his arrest is not anticipated until early January.

3. Premature disclosure of the charges against the defendant would jeopardize the ability of the FBI to locate and arrest the defendant without incident. The defendant is not believed to be violent, but the FBI must nevertheless take all necessary steps to protect the safety of the law

enforcement officers making the arrest, the defendant, his family, and the public. These measures would be severely compromised if the defendant were aware of the charges against him.

4. This case is likely to generate considerable publicity when the indictment is made public. Although the defendant is no longer a government employee, he has knowledge and possession of classified information. Premature disclosure of the charges will undoubtedly result in attempts by the press to contact the defendant, and it is possible that the defendant may disclose additional classified information to retaliate against the government for bringing these charges, thereby further jeopardizing national security.

5. The United States has considered alternatives less drastic than sealing and, for at least until the defendant is arrested and has an initial court appearance, has found none that would accomplish both the safe arrest of the defendant and the protection of national security.

II. REFERENCES TO GOVERNING CASE LAW

6. The Court has the inherent power to seal a criminal indictment. *See United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); *see also Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Sealing an indictment is appropriate where there is a substantial probability that the release of the sealed documents would compromise the government's on-going investigation severely. *See In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988);

Matter of Eye Care Physicians of America, 100 F.3d 514, 518 (7th Cir. 1996); *Matter of Flower Aviation of Kansas, Inc.*, 789 F.Supp. 366 (D. Kan. 1992).

III. PERIOD THE INDICTMENT IS TO REMAIN SEALED

7. The indictment would need to remain sealed until the defendant is arrested and first appears before a magistrate judge or other judicial officer pursuant to Rule 5 of the Federal Rules of Criminal Procedure. This most likely will take place in a district other than the Eastern District of Virginia.

8. Once the defendant is arrested and first appears in federal court, pursuant to Local Rule 49(B)(3), the sealed materials will be automatically unsealed and handled as such.

9. The United States will move to unseal the indictment and arrest warrant before it is automatically unsealed if the government determines that circumstances warrant such action.

WHEREFORE, the United States respectfully requests that the indictment, arrest warrant, this motion to seal, and the attached proposed order be sealed until the defendant is arrested and has an initial appearance.

Respectfully submitted,

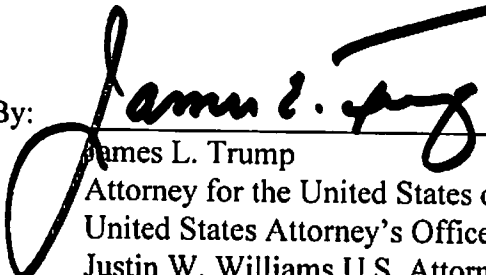
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