

Inner City Press

May 26, 2023

MEMORANDUM ENDORSED

By E-mail to chambers

Hon. Gabriel W. Gorenstein, United States Magistrate Judge
Southern District of New York, 500 Pearl Street, New York, NY 10007

Re: Press opposition to the total sealing of criminal case in SDNY Magistrates Court May 25, 2023 from 11:21 to 11:50 am US v. "Doe" (GWG)

Dear Judge Gorenstein:

On behalf of Inner City Press and in my personal capacity, this is next-day opposition to the total sealing of the above-captioned proceeding case, which I witnessed yesterday morning, initially inside Magistrates Courtroom 5A and then for half an hour from the hallway outside the locked courtroom.

Before the courtroom was sealed, defense counsel had been speaking about his failure to make an effective pro hac vice filing before the proceeding and that, it seemed, about bond co-signers. He and one of the two Assistant US Attorneys were summoned behind the courtroom, seemingly to the robing room.

Minutes later the Court announced that in US v. Doe the courtroom would be sealed.

I asked, Is it possible to know the docket number, and the basis for sealing?

The Court's answer was, "No." I left and the courtroom door was locked behind me.

The First Amendment to the U.S. Constitution guarantees to the public a right of access to court proceedings. U.S. CONST. AMEND. I; *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982). The public's right of access is strongest when it comes to criminal proceedings such as these, which are matters of the "high[est] concern and importance to the people." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion).

This is a Press request that the docket number and/or basis for sealing - including who requested the sealing, and when -- be unsealed consistent with *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006) and other applicable case law. This is a request that this opposition to sealing be docketed with the case as,

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for example, took place in *US v. Avenatti*, 19-cr-374 (JMF), Dkt 85, see <https://storage.courtlistener.com/recap/gov.uscourts.nysd.516151/gov.uscourts.nysd.516151.85.0.pdf> See also, *US v. Cruciani*, 21-cr-636 (JPC), Dkt No. 40 (Inner City Press request) and 41 (ruling to unseal).

Other SDNY Magistrate Judges have docketed and granted similar requests - not yet possible yet, since even the docket number is sealed. But consider, e.g., the case in May 2022 of Juan Carlos Bonilla Valladares. Magistrate Judge Katharine H. Parker in response to a similar Inner City Press request, unsealed information in 20-mj-4462, Docket Number 7 (May 12, 2022)

""Juan Carlos Bonilla Valladares ("Defendant") was arrested on a Complaint issued from this District and presented before me on May 11, 2022. At the proceeding, I reviewed a Financial Affidavit submitted by the Defendant that purported to describe the Defendant's financial circumstances. (ECF No. 4.) Based on the Financial Affidavit, I determined that the Defendant qualified for court-appointed counsel pursuant to the Criminal Justice Act ("CJA"), 18 U.S. Code § 3006A. (ECF No. 5.) The Financial Affidavit was filed under seal. On May 11, 2022, Matthew Russell Lee ("Lee"), a reporter with Inner City Press, filed a letter intervening on behalf of the public and requesting that the Financial Affidavit be unsealed. (ECF No. 6.) FN: As a public journalist, Lee has standing to intervene in this matter and assert the public's First Amendment right to access judicial documents. *Id.* at 44, n.2; see also *United States v. Aref*, 533 F.3d 72, 81 (2d Cir. 2008) (holding that a motion to intervene to assert the public's First Amendment right of access to criminal proceedings is proper). Lee argued that the First Amendment to the United States Constitution guarantees the public a right to access judicial documents such as the Financial Affidavit, and that unsealing the Financial Affidavit is consistent with precedent in this Circuit. On May 12, 2022, I ordered the Defendant and the Government to file any responses to Lee's request by May 20, 2022. Neither party filed a response. For the reasons that follow, I find that the Financial Affidavit should be unsealed.

DISCUSSION The First Amendment provides the public with a qualified right to access a wide variety of judicial documents filed in connection with criminal proceedings. *United States v. Avenatti*, 550 F. Supp. 3d 36, 44 (S.D.N.Y. 2021) (collecting cases).¹ That right applies to financial affidavits such as the one at issue. *Id.* at 46 (finding that there is a "qualified First Amendment right of access to [a] Financial Affidavit[]" submitted to assist the court in determining whether a

defendant is eligible for court-appointed counsel); see also *United States v. Suarez*, 880 F.2d 626, 629 (2d Cir. 1989) (finding that there is a First Amendment right to access “CJA forms on which judicial officers have approved payments to attorneys”). Where, as here, the “First Amendment framework applies, continued sealing of the document[] may be justified only with specific, on-the-record findings that sealing is necessary to preserve higher values and only if the sealing order is narrowly tailored to achieve that aim.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). As there are no “on-the-record findings that sealing is necessary,” and insofar as no objections to unsealing have been made, continued sealing of the Financial Affidavit is not appropriate. *Id.*; see also *Avenatti*, 550 F. Supp. 3d at 46 (granting request to unseal defendant’s financial affidavit).

CONCLUSION For the reasons set forth above, Lee’s request to unseal the Financial Affidavit (ECF No. 6) is GRANTED. The clerk of the court is directed to unseal the document at issue (ECF No. 4)."

The same should happen here, forthwith. As the name of Doe's counsel was not given, I am unable to cc or serve them. Since there is no docket number for the Magistrates Court case, this cannot be filed on/by ECF. On May 24, 2023 counsel were directed to email information (about New Jersey probation and firearms laws) to the email address to which this is being sent. It is my understanding that for the AUSAs to request courtroom sealing, approval must be given by Main Justice.

If deemed necessary, PLEASE TAKE NOTICE that Inner City Press and its undersigned reporter, in personal capacity, will move this Court before Honorable Gabriel G. Gorenstein, U.S. Magistrate Judge for the Southern District of New York, at a date and time directed by the Court, for entry of an order granting permission to be heard on unsealing submissions in this case, including but not limited to its docket number and the request for and basis for the May 25, 2023 sealing.

Non-parties such as Inner City Press and myself have standing to intervene in criminal proceedings to assert the public’s right of access. *United States v. Aref*, 533 F.3d 72, 81 (2d Cir. 2008).

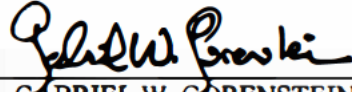
If any further information is needed, please contact the undersigned at matthew.lee@innercitypress.com or 718-716-3540.

Respectfully submitted,

Matthew Russell Lee, Inner City Press

The Court made findings, in a sealed transcript, justifying the sealing of the case name and docket number and the closure of the courtroom in accordance with the requirements of case law. See Waller v. Georgia, 467 U.S. 39 (1984); United States v. Alcantara, 396 F.3d 189, 200 n.8 (2d Cir. 2005). Accordingly, the relief requested in this letter is denied.

So Ordered.



GABRIEL W. CORENSTEIN
United States Magistrate Judge
May 26, 2023