

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

MAR 21 2024

TAMMY H. DOWNS, CLERK

By:  DEP. CLERK

Case No. 4:24-SW-00062 JJV
4:24-SW-00063 JJV

IN THE MATTER OF THE SEARCH OF
THE RESIDENCE LOCATED AT 4
DURANCE COURT, LITTLE ROCK,
ARKANSAS 72223 (SUBJECT
PROPERTY) and A WHITE 2022 TOYOTA
HIGHLANDER, WITH VEHICLE
IDENTIFICATION NUMBER (VIN)
5TDDZRBH9NS161319. (SUBJECT
VEHICLE)

Filed Under Seal

MOTION TO UNSEAL REDACTED SEARCH WARRANT PAPERS

Comes now the United States of America by and through Jonathan D. Ross, United States Attorney, and Kristin H. Bryant, Assistant United States Attorney, for its Motion to Unseal Redacted Search Warrant Papers, states as follows.

On March 6, 2024, this Court authorized Search and Seizure Warrants for a white Toyota Highlander with VIN number 5TDDZRBH9NS161319 (SUBJECT VEHICLE) and the residence located at 4 Durance Court, Little Rock, Arkansas 72223 (SUBJECT PROPERTY) in case numbers 4:24-SW-00062 JJV and 4:24-SW-00063 JJV. In support of the Search and Seizure Warrants, a Bureau of Alcohol, Tobacco, Firearms, and Explosives Special Agent (ATF SA) submitted a sworn affidavit. The United States also submitted a motion to seal the warrants and the accompanying documents (Search Warrant Papers). This Court ordered the search of the vehicle and residence, and entered an order to seal stating, "The Court finds that the above-described papers should be and they are, hereby sealed until formal charges have been filed as a result of the investigation by criminal complaint or indictment, or until such time as a motion is

made to the Court setting forth why the sealing of the search material is no longer justified.”

The search warrants were executed on March 19, 2024. The subject of the search warrant, Bryan Malinowski, opened fire on the ATF Special Agents executing the warrant, and was subsequently shot. Based on information since made public, Malinowski is not expected to survive.

At this time, the United States seeks to unseal a redacted version of the search warrant papers. The purpose of the redactions is to protect the safety and identity of confidential sources, to protect any ongoing investigations, to protect the privacy rights of any individuals named in the search warrant affidavit that may be under investigation or potential subjects of an investigation, to protect law enforcement sensitive techniques, and to protect the identity of the Special Agents.

“A party seeking sealing of court documents must show that a restriction of the right of public access is necessitated by a compelling United States interest.” *United States v. Suppressed*, No. 4:08MJH195 HIA, 2010 WL 4962885, at *3 (F.D. Mo. Oct. 22, 2010). “The party seeking closure or sealing must show that such a restriction of the first amendment right of public access is necessitated by a compelling United States interest.” *Id.*

In *United States v. Suppressed*, the movants sought disclosure of the complete search warrant affidavit, which would have revealed information regarding confidential informants. *Id.* at *4. The United States sought to unseal the warrant, but with redactions made to protect the identity of confidential informants. *Id.* The district court found that the redactions, which eliminated “only the identities of the witnesses” was “narrowly tailored to protect the privacy and reputational interests of those alleged to be involved in the unlawful scheme.” *Id.* The court

further noted that, "although the identities of the witnesses who provided information to the FBI are deleted from the affidavit, the detailed information which they provided to the agents about the criminal scheme is not redacted in any significant way." *Id.* Therefore, the court said, "based on a review of the entire record, the undersigned concludes the United States has demonstrated that continuing the sealing of the redacted portions of the search warrant documents is necessitated by a compelling United States interest to protect the safety and identity of cooperating individuals and witnesses, and the need to protect the identity and reputation of any co-conspirators who will not be criminally charged." *Id.* at *5

In this case, the United States has redacted information that, if not redacted, would allow the public to identify any cooperating individuals or any potential subjects, as well as the date of birth/PII for Mr. Malinowski, and sensitive law enforcement techniques. The information contained in the affidavit still sets forth the criminal scheme but is narrowly tailored to protect cooperators and potential subjects. There are minimal redactions in the affidavit, but those redactions are necessary.

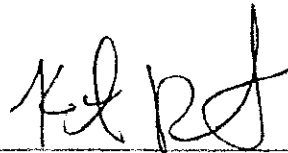
Furthermore, the Special Agents names have been redacted and should remain redacted to protect their privacy. *See Schoenberg v. Fed. Bureau of Investigation*, 820 F. App'x 609, 610 (9th Cir. 2020) (finding that "disclosure of the [agent's] name implicates a 'nontrivial or ... more than [] de minimis' personal privacy interest' and 'FBI agents have a legitimate interest in keeping private matters that could conceivably subject them to annoyance or harassment,' particularly when they were involved in 'especially controversial' investigations.").

Finally, the United States anticipates search warrant returns will be made to the Court within the next 48 hours. Certain details that may be found in the search warrant returns, such as

serial numbers of firearms seized or electronic identifying information of electronic devices seized, will continue to be the subject of an ongoing investigation. The United States anticipates providing to this Court, simultaneously with the search warrant returns, a redacted version calculated to protect this ongoing investigation.

The United States has a compelling interest in maintaining the integrity of an ongoing criminal investigation by denying public access to the details of the ongoing criminal investigation in this matter. The interest of the United States in this regard has been recognized by the United States Court of Appeals for the Eighth Circuit. *Certain Interested Individuals v Pulitzer Publishing Company*, 895 F.2d 460 (8th Cir. 1990) (*Gunn II*); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (*Gunn I*).

For the reasons stated in the United States' original motion to seal, which is incorporated herein by reference, and the foregoing, the United States requests the Court unseal the redacted Search Warrant Papers attached as Exhibit 1, including the redacted version of the search warrant returns that will soon be made to the Court.



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