



directed that all records be sealed and entries be delayed on the public docket.

### **Factual and Procedural History**

On August 6, 2008, the government filed its first Omnibus Motion to Unseal Search Warrants and Accompanying Documents, and Memorandum of Law in Support Thereof, in connection with the anthrax investigation, which the Court granted that same day. Each of these warrants unsealed on August 6, 2008 pertained to searches of property, lab space, and electronic mail accounts related to Bruce Edwards Ivins. The government now seeks to unseal all of the remaining warrants pertaining to Bruce Edwards Ivins, which fall into the following categories:

a) Duplicate search warrants for email accounts from February, 2008: On February 14, 2008, the government sought and obtained court authorized search warrants for a number of electronic mail accounts belonging to Bruce Edwards Ivins, including two Yahoo! Inc. accounts, along with [kingbadger7@aol.com](mailto:kingbadger7@aol.com), and [goldenphoenix111@hotmail.com](mailto:goldenphoenix111@hotmail.com). Due to technical requirements by AOL and MSN Hotmail, the [kingbadger7@aol.com](mailto:kingbadger7@aol.com) and [goldenphoenix111@hotmail.com](mailto:goldenphoenix111@hotmail.com) search warrants were rejected by those internet service providers (ISPs), and thus the government sought and obtained new search warrants for those accounts on February 22, 2008, using the identical search warrant affidavit. AOL complied with the new search warrant, but again MSN Hotmail rejected the February 22, 2008 warrant on technical grounds, and so the government sought and obtained a third search warrant on March 4, 2008 for the [goldenphoenix111@hotmail.com](mailto:goldenphoenix111@hotmail.com) account, again using the identical search warrant affidavit, this time with success. On August 6, 2008, the Court authorized the unsealing of the initial February 14, 2008 search warrants for these email accounts, and the government now seeks to unseal these three remaining substantially identical warrants which were omitted from

the government's First Omnibus Motion to Unseal.

b) Application and Affidavit for Search Warrant of Ivins residence, July 11, 2008:

Also on August 6, 2008, the government moved to unseal a number of search warrants for property belonging to Bruce Edwards Ivins, including his residence, case number 08-430-M-01, which the Court granted that day. However, the government inadvertently omitted the Application for the search warrant in its filing, and thus out of an abundance of caution we now are moving to unseal that specific document, in case 08-430-M-01.

c) Search warrant pertaining to Sheppard-Pratt Health Systems, Room TE-225, July 12, 2008: On July 11, 2008, the government sought and obtained five search warrants for property belonging to, or in use by, Bruce Edwards Ivins, based on threats he had made to witnesses in connection with this investigation. Specifically, the government was looking for, among other things, a list of potential witnesses in the case that Dr. Ivins claimed to have. In the course of the execution of those search warrants on Saturday, July 12, 2008, the government sought and obtained an emergency search warrant from the Duty Judge that day, The Honorable Richard W. Roberts, for the hospital room occupied by Dr. Ivins at the time. Because the Clerk's Office was not open that day, the search warrant could not be filed, or given a Magistrate Number, until July 14, 2008, at which time it was given number 08-443-M-01. This search warrant, too – which again had a substantially verbatim affidavit to the companion warrants issued on July 11, 2008 – was inadvertently omitted from the government's first Omnibus Motion to Unseal on August 6, 2008, and we move to unseal it at this time.

d) Email search warrants from August 7, 2008: The government sought and obtained court authorization for search warrants of electronic mail accounts belonging to Dr. Ivins. Even though by this point Dr. Ivins had died, the Court authorized the warrants to be sealed in order to prevent another individual from tampering with or deleting electronic mail in those accounts before the ISPs could compile the data and produce it, a process which can take, and has taken, several weeks. Because the ISPs have now produced all responsive information, we move to unseal these seven electronic mail search warrants at this time.

### **Argument**

As the government previously explained in support of its motions to seal and its initial Omnibus Motion to Unseal, this Court has the inherent power to seal affidavits and other documents filed in support of search warrants in order to protect an ongoing investigation and confidential witnesses. Arizona v. Maypenny, 672 F.2d 761, 765 (9th Cir. 1982); In re Sealed Affidavit(s) to Search Warrants, 600 F.2d 1256 (9th Cir. 1979). See Washington Post v. Robinson, 935 F.2d 282, 290 (D.C. Cir. 1991); United States v. Hubbard, 650 F.2d 293 (D.C. Cir. 1980); In the Matter of Search Warrants Issued June 13, 1988 for the Office and Home of William Galvin, Misc. Nos. 87-218, 88-216, reported at 1989 U.S. Dist. LEXIS 5240 (D.D.C. 1989) (“[T]here exists no First Amendment or common law rights of access to search warrant documents during the pre-indictment stage of a criminal investigation.”); Shea v. Gabriel, 520 F.2d 879 (1st Cir. 1975); In re Braughton, 520 F.2d 765, 766 (9th Cir. 1975).

In addition, Federal Rule of Criminal Procedure 6(e) prohibits the disclosure of information obtained during the course of a grand jury investigation, and Federal Rule of Criminal Procedure 49.1 requires that certain personal identifying information be redacted from public filings.

In this case, some of the information contained in the above-captioned search warrants, and accompanying affidavits, applications, and Court Orders, must remain sealed under the pertinent case law and federal rules. However, other information need no longer be sealed or otherwise protected, and thus appropriately should be disclosed and be made part of the public record. The government therefore has prepared redacted versions of the warrants and accompanying documents that the government submits should be made a part of the public record. The government will submit both unredacted and redacted versions to the Court, *in camera*, for the Court to review before ruling on the instant motion.

Respectfully submitted,

JEFFREY A. TAYLOR  
D.C. BAR NUMBER 451-058  
UNITED STATES ATTORNEY

BY:

---

RACHEL CARLSON LIEBER  
Assistant United States Attorney  
DC Bar No. 456-491  
555 Fourth Street, NW, Room 11-909  
National Security Section  
Washington, DC 20530  
(202) 353-8055  
[Rachel.lieber@usdoj.gov](mailto:Rachel.lieber@usdoj.gov)