

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE APPLICATION OF USA FOR
2703(d) ORDER FOR THREE EMAIL
ACCOUNTS SERVICED BY
[REDACTED] FOR
INVESTIGATION OF VIOLATION OF
18 U.S.C. §§ 641 AND 793

SC No. 20-sc-3355

MOTION TO PARTIALLY UNSEAL AND WITHDRAW MOTION

The United States of America, moving by and through its undersigned counsel, respectfully submits this motion under seal to partially unseal the matter and withdraw its Motion to Partially Unseal of June 11, 2021 [Docket Entry #3]. The government no longer believes the case (in its entirety) requires sealing, and proposes a redacted Application, Order, the other ECF documents in the docket, and Docket Report that can be disclosed to the public. *See* Attachment A. A proposed Order is attached at Attachment B.

This matter was under seal because it related to an ongoing criminal investigation. The government has recently closed its criminal investigation without any criminal charges. While the government would not ordinarily take any step to publicly disclose information related to any criminal investigation, in this case the government was required to provide notice directly to the users of the accounts at issue in this Order, pursuant to 28 C.F.R. §50.10, that their electronic records were sought by the government, but not obtained. As such, the government believes the existence of this matter, and a redacted copy of some of the materials in the docket case can be made public.

The government also seeks to redact portions of the Application, the signed Order, other

materials in the Docket, and the Docket to protect several legitimate interests.¹ The Application provides information from which others may infer the identities of subjects of the underlying investigation; it also discusses the scope and status of the investigation, witness statements, theories of liability, the results of criminal legal process, and investigative steps taken. The proposed redactions to the Application, the Order, docket entries, and the docket protect these interests. *See Leopold v. United States*, 964 F.3d 1121, 1132 (D.C. Cir. 2020) (“protecting privacy interests” is a legitimate concern justifying sealing); *In re Los Angeles Times Comm. LLC*, 2021WL2143551 at * (D.D.C. May 26, 2021) (Howell, C.J.) (rejecting media request to unseal any part of purported search warrant material in closed case). Government counsel is further required to protect these interests, and further has an obligation to avoid publicity that might prejudice any person or party, particularly where no criminal charges have been brought. *See, e.g.*, Local Criminal Rule 57.5(b) (2) (“With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation”); United States Department of Justice, *Justice Manual*, §1-7.400 (“DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations. Except as provided . . . DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are

¹ The government’s Motion of June 11, 2021 initially sought to maintain the entirety of the Application under seal. The relief requested therein is the subject of this Motion and Docket Entry #4, and therefore unnecessary.

publicly filed”); *id.* at 1-7.410 (“DOJ ordinarily does not confirm or deny the existence of an investigation”); D.C. Bar Rules of Professional Responsibility 3.6 (Trial publicity) and 3.8(f) (prohibited extrajudicial comments by prosecutor).

For these reasons the government requests that the proposed redactions be approved, and the Court accept this filing under seal because it describes the material to remain sealed. The Court has the inherent power to seal court filings when appropriate when there is a compelling governmental interest to do so. *See Washington Post v. Robinson*, 935 F.2d 282, 287-89 (D.C. Cir. 1991); *United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (citing *Nixon v. Warner Comm’n’s, Inc.*, 435 U.S. 589, 598 (1978)).

Based on the foregoing, the government moves the Court to execute the proposed Order.

Respectfully submitted,

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