

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE: SEARCH OF ONE DEVICE AND
TWO INDIVIDUALS UNDER RULE 41**

No. 25-sw-82 (ZMF)

ORDER

The government has moved to seal seemingly forever an order of the Court. But this is the Court's order, not the Executive's order. So the Court, not the Executive, decides unsealing. For the reasons stated below, the Court DENIES the government's attempt to muzzle the Court.

I. BACKGROUND

The facts of the related search warrant request are set forth in this Court's May 6, 2025 Order. *See* Order ("the May 6 Order") 1–3, ECF No. 4.

The Court initially docketed the May 6 Order under seal. On May 7, 2025, the Court issued a Minute Order instructing the government "to submit proposed redactions" by 9:00 AM on May 8, 2025. *See* Min. Order (May 7, 2025). On May 7, 2025, the government filed the instant motion to seal the entire case in seeming perpetuity, or, in the alternative, to stay publication of the May 6 Order pending appeal.¹ *See* U.S. Mot. Seal Case No. 25-SW-82 Entirety, Alt. Stay Publ'n Op. ("Mot. Seal/Stay") 1, ECF No. 9.

¹ On April 24, 2025, the government claimed there was great urgency surrounding its request to search [REDACTED] phone. *See* U.S. Mot. Appeal Warrant Rev. 4, ECF No. 1. But its actions reflect otherwise. Over a month has passed, and the government still has not filed an appeal of the May 6 Order denying the request to search [REDACTED] phone. Relatedly, the Court is left to question whether the "continued possession" of that phone is "reasonable" under the Fourth

II. DISCUSSION

“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). “The public’s right of access to judicial records derives from two independent sources: the common law and the First Amendment.” *In re Fort Totten Metrorail Cases*, 960 F. Supp. 2d 2, 5 (D.D.C. 2013) (citing *United States v. El-Sayegh*, 131 F.3d 158, 160–61 (D.C. Cir.1997)).

A. The Government Fails to Rebut the Common Law Presumption of Access

1. *There is a Common Law Right of Access to Judicial Records*

“The common-law right of public access [attaches] to judicial records.” *In re Leopold to Unseal Certain Elec. Surveillance Applications & Ords.*, 964 F.3d 1121, 1127 (D.C. Cir. 2020). This right “is a fundamental element of the rule of law, important to maintaining the integrity and legitimacy of an independent Judicial Branch.” *Id.* (quoting *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 663 (D.C. Cir. 2017)). “At bottom, it reflects the antipathy of a democratic country to the notion of secret law, inaccessible to those who are governed by that law. The right antedates the Constitution, and has been recognized by this court since at least 1894.” *Id.* (internal citations and quotation marks omitted).

The government badly misunderstands the scope of *Leopold*. It argues that the unsealing of judicial records in *Leopold* “pertain[s] only to applications and orders issued pursuant to the Stored Communications Act (“SCA”), 18 U.S.C. § 2703, and the Pen Register Act (“PRA”), 18

Amendment given that there is not probable cause to believe that it contains evidence of a crime. *Asinor v. District of Columbia*, 111 F.4th 1249, 1252 (D.C. Cir. 2024).

U.S.C. 3123.” Mot. Seal/Stay at 5.² Not so. *Leopold* provides a roadmap for how a district court should manage unsealing “judicial records.” *Leopold*, 964 F.3d at 1121. Insofar as the type of material matters to the *Leopold* analysis,³ it merely relates to whether such “materials . . . are judicial records.” *Id.* at 1127–28.

2. *The May 6 Order Is a Judicial Record*

“[N]ot all documents filed with courts are judicial records.” *SEC v. Am. Int’l Grp.*, 712 F.3d 1, 3 (D.C. Cir. 2013). Rather, “whether something is a judicial record depends on ‘the role it plays in the adjudicatory process.’” *Id.* (quoting *El-Sayegh*, 131 F.3d at 163). For example, courts have “held that a withdrawn plea agreement the court never ruled on is not a judicial record subject to the common law right of access because the concept of a judicial record ‘assumes a judicial decision,’ and with no such decision, there is ‘nothing judicial to record.’” *Id.* (quoting *El-Sayegh*, 131 F.3d at 163).

The *Leopold* court stated that “[o]ur sister circuits have held that the closest (although not perfect) analogues—search warrant applications and supporting affidavits—are judicial records.” *Leopold*, 964 F.3d at 1128 (collecting cases in footnote 6). The Court is unaware of any court that has found otherwise. Nor does the government provide a coherent reason why search warrants would not be judicial records.

² The Government makes the same sweeping claim about two other cases cited by the Court—*In re USA*, No. 20-sc-3355, 2021 WL 2935101 (D.D.C. July 13, 2021) and *In re Email Account Maintained on Computer Servers*, 946 F. Supp. 2d 67 (D.D.C. 2013)—but those cases are relevant for the same reasons *Leopold* is. *See infra*.

³ The government’s argument shows a fundamental lack of understanding of criminal process. One of the three judicial records in *Leopold* was “SCA warrants.” 964 F.3d at 1128 (emphasis added). An SCA warrant to search an email account is a Rule 41 search warrant. The government’s applications for SCA warrants are on the same Rule 41 forms and make the same Rule 41 probable cause showings.

Regardless, “[t]here is no doubt that the court orders themselves are judicial records.” *Leopold*, 964 F.3d at 1128; *see also In re U.S. for Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 290 (4th Cir. 2013) (“it is commonsensical that judicially authored or created documents are judicial records”). “Court decisions are the ‘quintessential business of the public’s institutions.’” *Leopold*, 964 F.3d at 1128 (quoting *EEOC v. Nat’l Children’s Ctr., Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996)). The May 6 Order is a judicial record.⁴ It is “recording an official [] decision [] or other matter of legal significance.” *Washington Legal Found. v. U.S. Sent’g Comm’n*, 89 F.3d 897, 905 (D.C. Cir. 1996).⁵

3. *Hubbard Factors Do Not Weigh in Favor of Rebutting the Presumption of Access Afforded to Judicial Records*

“Having found that the requested materials are judicial records, [the Court] next conclude[s] that a common law presumption of access thus attaches . . . , which the government can rebut only by showing competing interests that compel a conclusion that justice requires maintaining a seal. The *Hubbard* factors govern this analysis.” *Leopold*, 964 F.3d at 1129 (internal quotation marks and citation omitted).⁶

There are six *Hubbard* factors that the Court must consider:

⁴ There has been no direction from the Court to unseal the search warrants in this matter.

⁵ Notably, nearly all the cases cited below contemplate whether to unseal documents filed by the parties, not judicial decisions themselves. The Court is unaware of any decision denying unsealing a judicial decision. *Leopold* largely involves an adjacent category: search warrants and SCA orders.

⁶ “[T]he common-law inquiry must yield ‘when Congress has spoken directly to the issue at hand.’” *Leopold*, 964 F.3d at 1131 (quoting *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 669 (D.C. Cir. 2017)). Here, however, Rule 41—the Federal Rule governing search warrant applications—“does [no]t mention sealing at all.” *Id.* at 1129. “Thus, the common-law rule applies.” *Id.*

(1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

Id. at 1131 (quoting *MetLife, Inc.*, 865 F.3d at 665).

As to the first factor, there is a great need for public access. “Access to [judicial decisions about] search warrants and affidavits of probable cause can reveal how the judicial process is conducted. The procedures employed by the prosecutor and law enforcement can be evaluated. Access may also disclose whether the judge is acting as a neutral magistrate [judge].” *Cowles Publ’g Co. v. Murphy*, P.2d 966, 969 (Wash. 1981) (*en banc*). “And the issuance of public opinions is core ‘to the transparency of the court’s decisionmaking process.’” *Leopold*, 964 F.3d at 1128 (quoting *MetLife*, 865 F.3d at 668). “Indeed, since at least the time of Edward III, judicial decisions have been held open for public inspection.” *Id.* (quoting 3 EDWARD COKE, REPORTS, at iii-iv (London, E. & R. Nutt & R. Gosling 1738) (1602)). Unsealing the May 6 Order is essential for the public to see the government’s overreach in searching cellphones without probable cause and publishing precedent as courts unpack future such requests. Indeed, at least one magistrate judge in this district has already refused to sign a similar warrant based on the May 6 Order.

The government argues—without explanation—there is “no stated need” for public access to the May 6 Order. Mot. Seal/Stay at 9. Yet, the stated need could not be more important: public confidence in “the rule of law.” *Leopold*, 964 F.3d at 1127 (quoting *MetLife*, 865 F.3d at 663).

The public’s interest in unsealing is lessened if there are other avenues to access the sealed materials. *See, e.g., United States v. Hubbard*, 650 F.2d 293, 317–18 (D.C. Cir. 1980) (alternative access to sealed document was available via court proceedings, party memoranda, court’s opinion, and more). Here, the public has no alternative access to the May 6 Order. Unsealing is their only

shot at understanding the judicial decision-making process as to probable cause. This places the public need for access at its apex. *Cf. id.* (noting importance of access to documents that shaped judicial decision making). Thus, the first factor weights strongly in favor of unsealing.

As to the second factor, “[p]revious access is a factor which may weigh in favor of subsequent access.” *Id.* at 318. The public had no prior access to the May 6 Order.⁷

The government’s argument is focused on the potential harm to its ongoing investigation. *See* Mot. Seal/Stay at 9. At the outset, it bears noting that this case did not involve a sensitive, lengthy investigation. Rather, it involved a chase, a tackle, and an arrest. Post-arrest, one completed cheek swab and failed attempts to search a phone and take another cheek swab.

The government’s only alleged harm to the ongoing investigation from unsealing is that it would alert █████ of the government’s desire to search █████ phone, which in turn might lead █████ to take steps to “purge evidence stored on the cloud.” *Id.* Specifically, they imagine that █████ will illegally obtain a phone at the jail, find a co-conspirator to obstruct justice with, provide █████ login credentials to that co-conspirator, and then direct the co-conspirator to remotely wipe incriminating information. *See id.* at 9–10. There is no basis in fact to support this multi-step,

⁷ But the public did have access to the Complaint and transcripts from the detention hearings. Those documents outline virtually all the details shared in the May 6 Order, minus the request to search a phone and take a buccal swab. In assessing what already released information remains properly sealed, “the appropriate question is whether the public has previously accessed the remaining information redacted from [a document], not whether the government has previously disclosed other information from that same document.” *CNN v. FBI*, 984 F.3d 114, 119 (D.C. Cir. 2021). Redactions should therefore be narrowly limited to only those few details not already available through public documents. Otherwise, “the common law right can always be defeated in criminal cases.” *United States v. Mitchell*, 551 F.2d 1252, 1264 (D.C. Cir. 1976), *rev’d sub nom. Nixon*, 435 U.S. at 589.

multi-party paranoid fever dream.⁸ First, this was an arrest-generated case of a single defendant with no co-conspirators. It is hard to believe [REDACTED] has on-demand criminal co-conspirators ready to obstruct justice. Second, neither [REDACTED] nor [REDACTED] public defender live under a rock. Presumably, they both know the government almost always attempts to search phones of defendants. So, if [REDACTED] was planning to wipe [REDACTED] phone remotely, [REDACTED] would have done so when [REDACTED] phone was seized upon [REDACTED] arrest, not weeks later. Third, there is no probable cause to believe that there is incriminating information on the phone. *See* May 6 Order. Meaning the government would lose nothing from a remote wipe. Finally, “law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network.” *Riley v. California*, 573 U.S. 373, 390 (2014). This can be accomplished in several ways. In some cases, officers may simply turn the phone off or remove its battery. *See Riley*, 573 U.S. at 390. Alternatively, the government could place the phone in a Faraday bag, which would shield the device from all electromagnetic radiation, such as a phone network, Bluetooth, or a wireless internet signal. *See Riley*, 573 U.S. at 390. The government could also “mirror” (copy) the phone’s contents, to be used as a back-up should the phone be remotely wiped. *See United States v. Flores-Lopez*, 670 F.3d 803, 809 (7th Cir. 2012). And the government could issue a preservation letter pursuant to section 2703(f) of the SCA to compel a provider to preserve [REDACTED] cloud account(s). Presumably, the much-ballyhooed agent’s training and experience has covered these elementary tasks for evidence preservation.

⁸ Given how weak the government’s argument of harm to the investigation is, the Court cannot help but ask if there are other reasons animating its sealing request. Perhaps the government is embarrassed about trying to forcibly search an innocent [REDACTED] or having a warrant rejected given how rare that is? But “even if preventing embarrassment may sometimes justify access restrictions, there is plainly no justification for such restrictions here.” *Mitchell*, 551 F.2d at 1263, *rev’d sub nom. Nixon*, 435 U.S. 589.

Regardless, redactions check any harm to the investigation. Redactions conceal sensitive facts and sources/methods used in an investigation. But the government has fallen back into its anti-redaxer habits. *See In re USA for 2703(d) Ord. for Three Email Accts. Serviced by [Redacted] for Investigation of Violation of 18 U.S.C. §§ 641 & 793*, 548 F. Supp. 3d 31, 33 (D.D.C. 2021). The government could have redacted [REDACTED] identifying facts, and details of the requested search. But for unknown or untoward reasons, the government refuses to redact, choosing instead to keep everything under seal. That is not an option.⁹ *See id.*

The government contends that courts must be highly deferential to the government's determination that unsealing would impede its investigation.¹⁰ *See* Mot. Seal/Stay at 7. However,

⁹ The exception to this rule is the very limited circumstance of a case having extraordinary public notoriety and media attention, as to records where “compelling privacy, reputational, and due process interests” are in play. *See In re Press Application for Access to Jud. Recs. in Case No. 23-SC-31*, 704 F. Supp. 3d 161, 172 (D.D.C. 2023). In such cases, it is possible that nothing short of near full-scale redaction of the entire judicial record will protect those interests. *See id.* And in the one example of that limited exception, Judge Boasberg still ordered “redactions [where they were] clearly practicable.” *Id.* Regardless, that is not the case here. [REDACTED] case has no such attention, and the government has failed to allege compelling interests.

¹⁰ Blind deference to the government? That is no longer a thing. Trust that had been earned over generations has been lost in weeks. Numerous career prosecutors have had to resign instead of taking actions that they believe violated their oath of office, or worse, were fired for upholding that oath. *See, e.g.,* Tom Dreisbach, *Why a DOJ prosecutor resigned, telling coworkers and bosses 'you serve no man'*, NPR (Mar. 20, 2025), <https://www.npr.org/2025/03/20/nx-s1-5330879/trump-justice-doj-prosecutor-resignation-jan-6> (noting that seven federal prosecutors resigned from Justice Department due to conflicts between administrative directives and their ethical and legal obligations); Glenn Thrush & Adam Goldman, *Justice Dept. Fires Prosecutors Who Worked on Trump Investigations*, N.Y. Times (Jan. 27, 2025), <https://www.nytimes.com/2025/01/27/us/politics/justice-department-firings-trump-jack-smith.html> (stating that more than a dozen prosecutors were dismissed in “an egregious violation of well-established laws meant to preserve the integrity and professionalism of government agencies”). On the flip side, Department of Justice leaders have decried criminal investigations from the prior administration as ranging from witch hunts to illegal. *See, e.g.,* Spencer S. Hsu, Keith L. Alexander & Tom Jackman, *Interim D.C. U.S. attorney Ed Martin launches probe of Jan 6. prosecutions*, Wash. Post (Jan. 27, 2025), <https://www.washingtonpost.com/dc-md-va/2025/01/27/edward-martin-us-attorney-jan6/> (reporting that Justice Department is reviewing

their argument relies on another mischaracterized case: *Times Mirror Co. v. United States*, 873 F.2d 1210, 1214 (9th Cir. 1989). *Times Mirror* dealt with sealing of warrant materials relating to an ongoing “preindictment investigation.” 873 F.2d at 1214 (emphasis added). “[T]he Ninth Circuit specifically left open the question [of] whether the public has a right of access to warrant materials . . . after indictments have been returned.” *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1046 (S.D. Cal. 2004) (internal quotation marks omitted) (quoting *Times Mirror Co.*, 873 F.2d at 1211). Alternatively, the Fifth Circuit includes “preindictment search warrant materials” as judicial records courts may unseal. *United States v. Sealed Search Warrants*, 868 F.3d 385, 390 (5th Cir. 2017) (emphasis added) (“the decision of whether access should be granted [to pre-indictment search warrant materials] must be left to the discretion of the district courts”). Regardless, neither strand of cases suggest that post-indictment search warrants are immunized from unsealing.

This case has been indicted. See Indictment 1, [REDACTED]

[REDACTED]. On the secrecy spectrum, the end of an investigation is a

Jan. 6 prosecutors for “ruthlessly” prosecuting more than 1,500 individuals which was “an unprecedented, third-world weaponization of prosecutorial power.”). So which prosecutors does the court defer to? The number continues to shrink. Judges have had to reprimand government attorneys for a lack of candor to the court, and worse, probe failures to comply with court orders. See, e.g., Jess Bravin, *Trump Has a Trust Problem in Court*, Wall St. J. (Apr. 28, 2025), <https://www.wsj.com/us-news/law/trump-has-a-trust-problem-in-court-a5d19328> (describing how several judges have expressed doubts about whether government officials are faithfully complying with court orders, with some taking actions such as “excoriat[ing]” officials and “hold[ing] the government in contempt.”); Mattathias Schwartz, *White House Failed to Comply With Court Order, Judge Rules*, N.Y. Times (Feb. 12, 2025), <https://www.nytimes.com/2025/02/10/us/trump-unfreezing-federal-grants-judge-ruling.html> (discussing how Judge McConnell Jr.’s ruling that the Trump administration failed to comply with a court order to release billions of dollars in federal grants signals a rise in defiance against court rulings). These norms being broken must have consequences. High deference is out; trust, but verify is in.

significant benchmark; but so too are the return of a public indictment and the arrest of a defendant.¹¹ In fact, there is a recent trend among courts finding that traditional justifications for sealing no longer apply *post-indictment* because of the “obvious interest in knowing that proper procedures have been followed” and need for “[p]ublic scrutiny of the search warrant process.” *United States v. Loughner*, 769 F. Supp. 2d 1188, 1190–1195 (D. Ariz. 2011). “Public access to these records could play a significant and positive role in the functioning of the particular [criminal justice] process in question.” *United States v. Kott*, 380 F. Supp. 2d 1122, 1124–25 (C.D. Cal.2004) (analyzing justification for sealing search warrant materials *post-indictment*). The government’s secrecy interests must ultimately be weighed against public’s interest in being “armed with enough information to know what questions to ask” of the justice system. *Kott*, 380 F. Supp. 2d at 1124. Additionally, unsealing is often required post-indictment as the government must disclose search warrant materials in the discovery process, particularly to allow for motions to suppress. Considering all of this, this factor weighs moderately in favor of unsealing.

¹¹ The Government also argues that “[s]ealed search warrants have been treated as the functional equivalent of grand jury materials in their shared need for secrecy.”. Mot. Seal/Stay at 7. Not so. First, nothing in the May 6 Order references grand jury proceedings. Even if it did, Federal Rule of Criminal Procedure 6(e) which strictly governs grand jury disclosure “require[s] a district court to hew strictly to the list of exceptions to grand jury secrecy.” *McKeever v. Barr*, 920 F.3d 842, 8476 (D.C. Cir. 2019). The government already disclosed grand jury testimony in its losing effort at the detention hearing appeal without citing an exception to grand jury secrecy. It is quite rich to hear the government now take up the mantle of grand jury secrecy. Moreover, unlike grand jury proceedings, Rule 41 provides neither language about secrecy nor any requirement of sealing. *Compare* Fed. R. Crim. P. 41 *with* Fed. R. Crim. P. 6(e) (providing “secrecy” and sealing requirements). Where drafters “include[] particular language in one section of a [text] but omits it in another section of the same [text], it is generally presumed that [the drafters] act[] intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal citation and quotation marks omitted). Because Rule 41 contains no language like that in Rule 6(e), the government’s attempt to equivocate grand jury proceedings and search warrants falls flat.

As to the third factor, the government has, in fact, objected to disclosure. However, this factor “provides broader protection from disclosure ‘where a *third party*’s property and privacy rights are at issue [and] the need for minimizing intrusion is especially great.’” *United States v. Jackson*, No. 21-mj-115, 2021 WL 1026127, at *7 (D.D.C. March 17, 2021) (quoting *Hubbard*, 650 F.2d at 319) (emphasis added). “Because there are no third-party property or privacy rights at issue, there is no broader protection from disclosure triggered under this factor. Accordingly, this factor leans in favor of disclosure.” *In re Application for Access to Video Exhibits*, 575 F. Supp. 3d 101, 111 (D.D.C. 2021) (internal citations and quotation marks omitted). At most, the government’s opposition only “slightly” pushes the scales towards sealing. *In re Press Application for Access to Jud. Recs. in Case No. 23-SC-31*, 704 F. Supp. 3d 161, 171 (D.D.C. 2023). But even with that push, the scale still tilts in favor of unsealing.

As to the fourth factor, the government asserts this factor is neutral because the government has no property or private interest at stake. *See* Mot. Seal/Stay at 10. The Court agrees.

As to the fifth factor, the government solely alleges prejudice from the possibility of the destruction of evidence. *See* Mot. Seal/Stay at 10. Yet, the case the government cites—*In re Press Application*—does not discuss destruction of evidence. 704 F. Supp. 3d at 172–73. Regardless, the government provided detail in that case on how disclosure would compromise its pending investigation of President Trump. No such details of a unique, sensitive investigation exist here.

In fact, *In re Press Application* highlights the need to unseal judicial orders. There, “large swaths of [the] proceedings ha[d already] been unsealed.” 704 F. Supp. 3d at 166. Notably, “after the [i]ndictment became public, the D.C. Circuit unsealed its opinion” *sua sponte*. *Id.* at 166–67. Soon after, the district court “*sua sponte* ordered briefing on whether [its] affirmed Opinion and Order should remain sealed.” *Id.* at 167. The district court then unsealed 509 pages of materials,

“including briefing, orders, and opinions; 303 pages were unredacted and 206 contained minor redactions.” *Id.* The Court’s similar *sua sponte* action here is limited to 16 pages of judicial records. Just as unsealing orders and opinions did not prejudice the government in *In re Press Application*, it also does not do so here.¹²

Nearly all case law highlights that the fifth factor “considers ‘whether *defendants*’ rights in this proceeding will be prejudiced by release.’” *See, e.g., In re Application for Access to Video Exhibits*, 575 F. Supp. 3d at 111 (quoting *United States v. Munchel*, 567 F. Supp. 3d 9, 19 (D.D.C. 2021)) (emphasis added); *see also Hubbard*, 650 F.2d at 320–21. [REDACTED] not prejudiced by unsealing. Indeed, as the Government concedes, “the defendant may be interested to know the Court’s reasoning in denying a search warrant.” Mot. Seal/Stay at 10. This is especially true given that [REDACTED] is currently litigating a suppression motion. *See* Mot. Suppress Ev. 1,

[REDACTED].

Regardless, the risk of destruction of evidence is highly improbable. First, the government has already obtained its swab of [REDACTED] cheek. *See* Search & Seizure Warrant 1, ECF No. 5. Second, the government no longer appears interested in harassing [REDACTED] for a cheek swab. Finally, the Court has already detailed how preposterous the arguments for spoliation of the phone seized weeks ago is. *See supra* pp. 6–7. Simply put, there is no danger of prejudice. Thus, this factor favors unsealing.

When considering the sixth *Hubbard* factor, “the D.C. Circuit has held that there is ‘a strong presumption of public access to documents that a litigant submits with the intention that the

¹² Yes, *In re Press Application* concluded that the search warrant in that case should remain sealed because of the unique nature of that case. 704 F. Supp. at 173. But that is irrelevant here. The Court has not sought to unseal the search warrant in this run-of-the-mill case. *See* Order Granting Mot. Seal 1, ECF No. 6.

court will rely on them.”” *In re Application for Access to Video Exhibits*, 575 F. Supp. 3d at 114 (quoting *United States v. All Assets Held at Bank Julius Baer & Co.*, 520 F. Supp. 3d 71, 85 (D.D.C. 2020)). “[T]his factor weighs in favor of public release” where “the Government introduce[s documents] to influence the Court’s decision.” *Id.* The cases considering this factor largely examine documents from the parties that were “considered as part of judicial decisionmaking.” *CNN v. FBI*, 984 F.3d 114, 120 (D.C. Cir. 2021). None of these cases imply, let alone hold, that the judicial decision itself would remain under seal. *See, e.g., In re Press Application*, 704 F. Supp. 3d at 173. Because the May 6 Order was “the Court’s decision,” this factor weighs in favor of disclosure.¹³ *In re Application for Access to Video Exhibits*, 575 F. Supp. 3d at 114.

“Altogether, the six *Hubbard* factors weigh in favor of upholding the presumption of public access.” *Id.*

B. There Is a First Amendment Right of Access

The First Amendment provides a separate, qualified right of access to criminal proceedings and certain documents. *See Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 605 (1982). “For a right of access to a document to exist under either the First Amendment or the common law, the document must be a ‘judicial record.’” *In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d 283, 290 (4th Cir. 2013) (quoting *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 63–64 (4th Cir. 1989)). The common law and First Amendment apply the same test of whether a document is a “judicial record.” *See id.* However, “[t]he distinction between the rights of access

¹³ The government argues that the May 6 Order is “now largely moot by virtue of the government’s amended search warrant application.” Mot. Seal/Stay at 10. This is totally irrelevant to the sixth factor analysis. It is also factually incorrect as the amended warrant still contains a rejected request to search [REDACTED] phone.

afforded by the common law and the First Amendment is ‘significant,’ because the common law ‘does not afford as much substantive protection to the interests of the press and the public as does the First Amendment.’” *Va. Dep’t of State Police v. Wash. Post*, 386 F.3d 567, 575 (4th Cir. 2004) (internal citations omitted) (quoting *Goetz*, 886 F.2d at 64 and *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir.1988)). The common law presumes a right to access *all* judicial records. But this presumption can be rebutted if the public’s right of access is outweighed by *competing* interests. *See supra* Part II.A.3. “On the other hand, the First Amendment provides a right of access only to *particular* judicial records and documents, and this right yields only in the existence of a ‘*compelling* governmental interest . . . [that is] narrowly tailored to serve that interest.’” *In re U.S. for an Ord. Pursuant to 18 U.S.C. Section 2703(D)*, 707 F.3d at 290 (quoting *Va. Dep’t of State Police*, 386 F.3d at 575) (emphasis added). In determining whether the right of access attaches to a judicial record, courts analyze two factors known as the “experience and logic” test: (1) “whether the place and process have historically been open to the . . . general public” and (2) “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enter. Co. v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 9–11 (1986); *see also Washington Post v. Robinson*, 935 F.2d 282, 287–88 (D.C. Cir. 1991) (two-part test applies both to court proceedings and judicial records).

When analyzing experience, courts consider nationwide historical practice. *See, e.g., In re Press Application for Access to Jud. Recs. in Case No. 23-SC-31*, 704 F. Supp. 3d 161, 174 (D.D.C. 2023) (discussing historical practice as described across various circuits and districts); *see also United States v. Loughner*, 769 F. Supp. 2d 1188, 1192–93 (D. Ariz. 2011) (discussing historical practice across various circuits, districts, as well as individual states). Courts nationwide regularly unseal both search warrants and related documents to facilitate public access to criminal

proceedings. *See, e.g., In re Application of New York Times Co.*, 585 F. Supp. 2d 83, 86 (D.D.C. 2008). “[S]earch warrant applications and receipts are routinely filed with the clerk of court without seal.” *In re Search Warrant for Secretarial Area Outside Off. of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988); *see also Goetz*, 886 F.2d at 64 (“Frequently . . . the warrant papers including supporting affidavits are open for inspection by the press and public in the clerk’s office after the warrant has been executed.”); *see also In re Press Application*, 704 F. Supp. 3d at 167 (detailing district court grants of requests to unseal specific warrant-related documents, including the warrant application, issued warrant, and several exhibits); *see also In re Application of New York Times Co.*, 585 F. Supp. 2d at 86 (granting post-investigation motion to unseal “search warrants, warrant applications, supporting affidavits, court orders, and returns for all warrants requested by the government . . . with limited portions that would tend to reveal the identity of a confidential informer redacted.” (cleaned up)).¹⁴ Moreover, “in the aftermath of Watergate, numerous states enacted ‘sunshine laws’ codifying the requirement that documents maintained by public entities must be available for public inspection. Many state statutes applied the requirement to search warrant materials, specifying that warrants must be open to the public either after they are served or after criminal charges are filed.” *Loughner*, 769 F. Supp. 2d at 1192 (collecting state laws and finding First Amendment right of access to search warrant materials once an indictment had issued).

¹⁴ The Ninth and Fourth Circuits’ holdings were limited to *pre-indictment* warrant materials. *See Times Mirror Co. v. United States*, 873 F.2d 1210, 1221 (9th Cir. 1989); *see also Goetz*, 886 F.2d at 62. That distinction matters. Indeed, the Ninth Circuit explicitly left open “whether the public has a right of access to warrant materials in either of the following situations: 1) an investigation has been terminated; or 2) an investigation is still ongoing, but an indictment has been returned.” *Times Mirror Co.*, 873 F.2d at 1221.

However, in *In re Press Application*, Judge Boasberg opined that “[t]he historical practice is somewhat muddled, but it suggests that the First Amendment does not open search warrants and related documents to public examination when an investigation is ongoing.” 704 F. Supp. 3d at 174. First, this is irrelevant to the question presented here. The historical practice as to unsealing *search warrants* has no bearing on the historical practice as to unsealing *judicial orders*. As noted above, the Court is unaware of any practice of keeping judicial orders sealed, let alone a long standing one. Indeed, the Court regularly publishes redacted opinions in ongoing sealed cases. *See Unsealed Orders, Opinions, Documents and Docket Reports*, U.S. Dist. Ct. Dist. of Columbia, <https://perma.cc/2AED-276L> (last visited May 23, 2025). To wit, Judge Boasberg unsealed his decision in *In re Press Application* while the investigation of President Trump was pending.¹⁵ *See* Mem. Op. 1, *In re Press Application*, No. 1:23-mc-084 (D.D.C. Nov. 29, 2023), ECF No. 24. Second, this is no Avengers Civil War, but your friendly neighborhood Magistrate Judge must respectfully disagree with the Chief Judge about the historical practice as to search warrants. Magistrate judges have a unique insight on search warrants and related sealing requests, as we alone deal with them daily. *See* Fed. R. Crim. P. 41. Conversations with magistrate judges reflect a growing nationwide practice of vigilance in ensuring search warrants are timely unsealed.¹⁶ All

¹⁵ Unsealing of that search warrant has not been reviewed since Judge Boasberg’s November 2023 order. *See In re Press Application*, No. 1:23-mc-084 (D.D.C). The investigation of President Trump presumably ended on January 20, 2025. Is not the public overdue for the court to revisit the unsealing and redaction decisions?

¹⁶ Many district courts have imposed a time limit on sealing orders and require the government to demonstrate good cause for any extensions. The gold standard appears to be the Western District of Washington which includes in sealing orders the following language:

IT IS HEREBY ORDERED that the search warrants, search warrant returns, application and affidavit in support of the same, and all attachments in this matter, along with this motion and order, shall

it took was one court order to bring this district into line. Prior to *Leopold*, the undersigned rarely observed the government unsealing search warrants. But since then, the government has unsealed hundreds of warrants in those dockets. *See* U.S. Dist. Ct. D.C., Standing Order 22-05 (compelling

be sealed and shall remain sealed until the earliest of the following: (a) two weeks following the unsealing of any charging document in a matter for which the warrants were issued; (b) two weeks following the closure of the investigation for which the warrants were issued; or (c) sixteen months following issuance of the warrant, unless the Court, upon motion of the government for good cause, orders an extension of this Order. Nothing in this Order is intended to create or supersede any other applicable obligation under law.

IT IS FURTHER ORDERED that on or before the earliest of the dates specified above, the government shall file a motion in which it either (1) provides good cause for a further order of this Court permitting these documents to remain under seal for an additional period of time, or (2) requests an order of this Court to unseal this warrant and all related documents, including the motion and order to seal the same. In the event the government fails to file the motion required by this Order on or before the earliest of the three triggering events, and the Court has not otherwise extended the sealing period following a showing of good cause by the government, the Clerk of Court shall unseal this warrant and all related documents without further order of the Court.

See, e.g., Order 1–2, *In re Subject Items currently located within a business named Northwest Autos Unlimited*, No. 1:20-mj-312 (W.D.W. June 3, 2020), ECF No. 4.

Unfortunately, in most districts unsealing procedures are not memorialized in court orders, standing orders, or local rules. Instead, courts broker unwritten agreements with U.S. Attorney's Offices. This is problematic. First, it leaves the public's First Amendment rights to side deals to which the public has no visibility, let alone a voice. Second, it severely limits district courts' ability to assess nationwide historical practices as to unsealing, thereby unnecessarily "muddling" First Amendment analysis.

the government to unseal Rule 41 SCA search warrants in a series of dockets: 22-sc-9999, 23-sc-9999, 24-sc-9999, 25-sc-9999, etc.).¹⁷ Unsealing is trending.

To be sure, the warrants unsealed pursuant to *Leopold* are only in completed investigations. But *Leopold* set a basement, not a ceiling: *Leopold* narrowly considered only completed investigations. Other courts have gone further. As noted above, courts have traditionally recognized a “common-law right of access [as] cover[ing] search-warrant materials without regard to the existence of an *ongoing* investigation,” and “[s]uch a common-law right is an appropriate consideration to take into account when examining the scope of the First Amendment.” *In re Press Application*, 704 F. Supp. 3d at 174 (citing *In re New York Times Co.*, 585 F. Supp. 2d at 89) (emphasis added) (internal quotation marks omitted). Moreover, in considering historical practices, courts should review overall warrant unsealing, not zooming into the exact moments of unsealing vis-à-vis the investigation. Considering how unsealing would impact an ongoing (versus a completed) investigation is better left to the subsequent balancing of compelling interest analysis. *See infra* p. 22.

Setting this all aside, the historical practice against unsealing is based on a rotten foundation. The government has failed to follow through on its obligation and implied promise to unseal search warrants. *Robinson* allows for limited sealing to protect investigations. 935 F.2d at

¹⁷ A spot check of the unsealed pleadings raises grave concerns. First, there are still hundreds of warrants dating back years, waiting to be unsealed. The government is moving with the urgency and efficiency of a child cleaning up a messy room one-toy-at-a-time. The administrative burden of timely unsealing is of no consequence post-*Leopold*. Second, the government’s redactions looks like they spilled a black inkwell on their fillings. To have such sweeping redactions in *completed* investigations appears to violate the spirit and letter of *Leopold*. But that is a problem for that case (tagging @Leopold), not this one.

289 n.10. It does not justify unquestioned permanent sealing.¹⁸ Yet that happens regularly. The public is in the dark on this because they have no visibility into permanently sealed documents. And defendants have no incentive to seek unsealing for the public's benefit. Permanent unsealing derives from the government's malfeasance in following up on its sealing request. Here is an example—chosen at random—of such malfeasance: 23-sw- remains under seal. It was a search of the home of Target Individual 1. The government moved to seal the search warrant materials because:

If the search warrant materials are not placed under seal, there is a real risk that the target might learn that is under investigation or alert others who may be involved of the investigation. This will allow to alter activities, conceal evidence, flee the jurisdiction, or take other steps to interfere with the investigation. Thus, the confidentiality of the investigation and the safety of law enforcement and others participating in the investigation could be compromised by the premature release of the information contained in the affidavit.

Mot. Seal Search Warrant Materials 1,

. On January 5, 2023, the government executed the warrant. *See* Compl. 3, *United States v. Perry*, No. 1:23-cr-093 (D.D.C. Jan. 6, 2023), ECF No. 1. Target Individual 1 knew about the search then. On January 6, 2023, the government charged Target Individual 1 by complaint. *See id.* The government did not file the complaint or affidavit in support under seal, even though it laid the investigation out in

¹⁸ Indefinite sealing raises First Amendment concerns, as “there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.” *Landmark Commc’ns, Inc. v. Virginia*, 435 U.S. 829, 838 (1978). “When the government’s [secrecy] concern dissipates, the First Amendment’s protection . . . warrants consideration.” *Microsoft Corp. v. United States Dep’t of Just.*, 233 F. Supp. 3d 887, 900 (W.D. Wash. 2017) (collecting cases finding that courts’ practice of indefinite sealing across criminal contexts—including prohibiting a grand jury witness from disclosing his own testimony—violated the First Amendment).

detail. *See* Statement Offense Support Guilty Plea 2–3, *United States v. Perry*, No. 1:23-cr-093 (D.D.C. May 9, 2023), ECF No. 25. But the search warrant remained under seal. On May 9, 2023, Target Individual 1 pleaded guilty in open court and swore to a detailed statement of facts. *See id.* None of this was under seal. But the search warrant remained under seal. On August 30, 2023, the court sentenced the defendant. *See* J. 1, *United States v. Perry*, No. 1:23-cr-093 (D.D.C. Aug. 30, 2023), ECF No. 41. To date, the search warrant remains under seal. Why? Is it:

- that there is “a real risk that the target might learn that [REDACTED] is under investigation”?
 - o No. It seems [REDACTED] has already been tipped off to that.
- for fear of “alert[ing] others who may be involved of the investigation”?
 - o Again, no. Presumably the public search of [REDACTED] residence, indictment, plea, and sentencing would have tipped off these mysterious possible co-conspirators cited in nearly every one of the government’s canned sealing requests.
- unsealing “will allow [REDACTED] to alter activities, conceal evidence, flee the jurisdiction, or take other steps to interfere with the investigation”?
 - o Again, no. [REDACTED] has already pleaded guilty and been sentenced in public documents. Moreover, the defendant would have necessarily received a copy of the affidavit in discovery. [REDACTED] has seen the full monty.
- that the “confidentiality of the investigation and the safety of law enforcement and others participating in the investigation could be compromised by the premature release of the information contained in the affidavit”?
 - o No, again. We are *years* past premature release.

This warrant and many others should have long since been unsealed.¹⁹ Had they been unsealed, the historical practice would not be “muddled.” To ignore this and still find in favor of a historical practice of no unsealing would be to reward the government’s malfeasance.

Regardless, the government has unsealed enough warrants to find that experience supports a First Amendment right of access.

Next is logic. This factor “weighs strongly in favor of a qualified First Amendment right.” *In re New York Times Co.*, 585 F. Supp. 2d at 89.²⁰ It is a “general proposition that the First Amendment guarantees the press and the public a general right of access to court proceedings and court documents unless there are compelling reasons demonstrating why it cannot be observed.” *Id.* at 89–90 (internal quotation marks omitted) (quoting *Robinson*, 935 F.2d at 287). This is because “openness of judicial processes and documents gives assurance that established procedures are being followed and that deviations will become known and corrected.” *Id.* at 90 (internal quotation marks omitted) (quoting *Press-Enter. Co. v. Superior Ct. (Press-Enterprise I)*, 464 U.S. 501, 508 (1984)). “The fact that proceedings are open demonstrates to the public that judicial processes are fair and that there is nothing to hide.” *Id.*

¹⁹ It seems we are awaiting an intrepid plaintiff like Mr. Leopold—whose love language is litigation—to take up the mantle of fighting the government’s resistance to complying with its obligation to unseal. This constant resistance, even in completed public prosecutions, is perplexing. It is either based in sloppiness or a desire to hide something. But sloppiness is not an excuse. See *Leopold*, 964 F.3d at 1123 (finding administrative burden irrelevant to whether a judicial record may be released). And what is there to hide if they have done nothing wrong?

²⁰ The Court recognizes that *In re New York Times Co.* dealt with “post-investigation” warrant materials. 585 F. Supp. 2d at 89. But as to the spectrum of cases on First Amendment access to warrants, this case is closer to post-investigation, where Judge Lamberth has found a First Amendment right of access, than it is pre-indictment, where other circuits have found no such right. See *id.*; see also *supra* n.14.

With respect to judicial decision about warrants, “[p]ublic access . . . serves as a check on the judiciary because the public can ensure that judges are not merely serving as a rubber stamp for the police.” *Id.* Indeed, this very concern is addressed in the May 6 Order. And as the Eighth Circuit has elaborated, “public access to documents [related to] search warrants is important to the public’s understanding of the function and operation of the judicial process and the criminal justice system and may operate as a curb on prosecutorial or judicial misconduct.” *In re Search Warrant for Secretarial Area Outside Off. of Gunn*, 855 F.2d at 573. Finally, “even though a search warrant is not part of the criminal trial itself . . . a search warrant is certainly an integral part of a criminal prosecution. Search warrants are at the center of pre-trial suppression hearings, and suppression issues often determine the outcome of criminal prosecutions. Pre-trial suppress[i]on hearings, and other kinds of non-trial proceedings in criminal and civil cases, have been held to be subject to the first amendment right of public access by other federal courts of appeals.” *Id.* (collecting cases). Logic thus also supports a First Amendment right of access.

The Court next turns to the government’s alleged compelling interest in keeping the materials sealed and whether sealing is narrowly tailored to serve that interest. *See Press-Enterprise II*, 478 U.S. at 13–14. The government identifies a compelling interest: maintaining the integrity of its purported ongoing investigation. But the government cannot short circuit the public’s First Amendment rights by simply throwing up its hands and shouting “ongoing investigation.” The narrow tailoring of “that interest can be accomplished by simply redacting [sensitive information], which the Court [already] direct[ed] the government to do in this case.” *In re New York Times Co.*, 585 F. Supp. 2d at 91. For the reasons discussed at length above, including that: 1) [REDACTED] is incarcerated; 2) the government has seized [REDACTED] DNA; 3) there is no risk of spoliation of the phone or related cloud accounts; and 4) the Court has given the government the

chance to redact documents, the government has failed to overcome a First Amendment right of access. *See supra* Part II.A.3.

C. *Nken Factors Do Not Support a Stay of the May 6 Order*

In the alternative, the government moves to “stay publication of the [May 6] Order” pending appeal to Judge Ali. Mot. Seal/Stay at 11. “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Nken v. Holder*, 556 U.S. 418, 433 (2009) (internal citation and quotation marks omitted). The four factors to be considered by a court in issuing a stay pending appeal are: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). On a motion to stay, “it is the movant’s obligation to justify the court’s exercise of such an extraordinary remedy.” *Cuomo v. U.S. Nuclear Regul. Comm’n*, 772 F.2d 972, 978 (D.C. Cir. 1985).

1. *Likelihood of Success on the Merits*

The government argues it “is likely to succeed on the merits because neither *Leopold* nor *Hubbard* favor unsealing.” Mot. Seal/Stay at 11. Wrong. Both the common law and First Amendment rights of access support the Court’s limited unsealing with redactions. *See supra* Parts II.A–B.

2. *Irreparable Harm to the Government*

Because the government failed to establish a likelihood of success on the merits, *see supra* Parts II.A–B, it “must show a high degree of irreparable harm to justify the granting of a stay.” *In*

re Special Proc., 840 F. Supp. 2d 370, 374 (D.D.C. 2012). It is well established that the alleged “injury must be both certain and great . . . [,] actual and not theoretical[,]” and be “of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Wis. Gas Co. v. Fed. Energy Regul. Comm’n*, 758 F.2d 669, 674 (D.C. Cir. 1985) (emphasis removed) (internal quotation marks omitted). “Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. . . . Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.” *Id.*

Here, the government claims it “will be irreparably harmed because once the Order is published, the information sought to be protected will be in the public domain. Once the defendant learns of the extent of the government’s investigation and the type of evidence it is seeking to obtain, ■ may take steps to destroy any remaining evidence—permanently prejudicing the government.” Mot. Seal/Stay at 11. First, this canned language is far too generic to justify irreparable harm. Second, there is no proof to support the government’s theory of harm. To show actual injury, “[t]he movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.” *Wis. Gas Co.*, 758 F. 2d at 674. The government has provided *no proof* that ■ previously tried to obstruct or destroy evidence in this—or any—criminal investigation. To the contrary, the government acknowledged that ■ “did not take . . . steps [to destroy evidence] when initially arrested.” Mot. Seal/Stay at 9. Nor has the government tendered any empirical evidence that, in § 922(g) cases, destruction of evidence is common or likely to occur.

The problems with the government’s theory of harm does not stop at a lack of proof. Their theory frames a near-impossible scenario as a certain one. The May 6 Order deals with three pieces

of evidence: [REDACTED] phone / cloud accounts; [REDACTED] DNA (via buccal swab); and Ms. [REDACTED] DNA (via buccal swab). The sheer absurdity of the destruction of the phone / cloud accounts is addressed above. *See supra* pp. 6–7. The government has already obtained [REDACTED] DNA. Finally, the destruction of [REDACTED] DNA veers on bad science-fiction. The chance that [REDACTED] could manipulate the DNA in [REDACTED] cheek cells is close to, if not, zero. Though gene-editing techniques certainly exist, they are highly regulated, technical, and expensive. *See The gene-therapy revolution risks stalling if we don't talk about drug pricing*, Nature (April 25, 2023), <https://perma.cc/WGV5-7ETU> (CRISPR gene-editing costs approximately \$1 million per treatment). And it is ludicrous to suggest that [REDACTED] will become a fugitive to escape a cheek swab to connect [REDACTED] to a gun [REDACTED] legally purchased, licensed, and possessed. “[T]he allegations made by [the government] are so speculative and hypothetical that it would be difficult to conclude that irreparable injury would occur even if the allegations were supported by evidence. The fact that [the government has] not attempted to provide any substantiation is a clear abuse of this court’s time and resources.” *Wis. Gas Co.*, 758 F.2d at 675.

Moreover, “[t]he key word in [the first *Nken* factor] is *irreparable*.” *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (emphasis added). The Court is sympathetic to the government’s need to keep certain portions of its investigative process confidential, even post-indictment. But “[t]he basis for injunctive relief in the federal courts has always been irreparable harm and *inadequacy of legal remedies*.” *Sampson v. Murray*, 415 U.S. 61, 88 (1974) (emphasis added) (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07 (1959)). There is an adequate legal remedy here: redaction. The government cannot in good conscience allege imminent, irreparable injury when the Court has offered an avenue by which it can *avoid* the alleged injury altogether. *See* Min. Order (May 7, 2025).. Indeed, the government is

free to redact as much of the May 6 Order as it needs—although, the Court will consider the possibility of over-redaction should the issue arise. *See In re USA for 2703(d) Ord. for Three Email Accts. Serviced by [Redacted] for Investigation of Violation of 18 U.S.C. §§ 641 & 793*, 548 F. Supp. 3d 31, 33 (D.D.C. 2021). Thus, the second factor weighs strongly against staying publication of the Order.

3. *Substantial Injury to Other Interested Parties*

The government proffers that “because no party is seeking disclosure of the Order, there is no specific movant who would be harmed by staying publication.” Mot. Seal/Stay at 11. “But how do you petition the court to open a case if you don’t know it exists?” *In search of the secret docket*, Reporters Committee for Freedom of the Press, <https://perma.cc/WLX4-JYFG> (last visited May 28, 2025). Public inaction must be viewed against this backdrop. To then justify sealing by public inaction is victim blaming.

Regardless, the Court is seeking disclosure of the order. And failing to do so harms [REDACTED] [REDACTED]—whose immediate interests are directly implicated. Again, as the government concedes, “the defendant may be interested to know the Court’s reasoning in denying a search warrant.” Mot. Seal/Stay at 10. This is especially true given that [REDACTED] is currently litigating a suppression motion. *See supra* Part II.A.3. Suppression issues play an outsized role in criminal cases. Not to mention the lack of probable cause finding in the May 6 Order could be relevant to a motion to dismiss the indictment.

4. *The Public Interest*

“The public interest is a uniquely important consideration in evaluating a request for” a stay. *Nat’l Ass’n of Mfrs. v. Taylor*, 549 F. Supp. 2d 68, 77 (D.D.C. 2008) (quoting *Am. Cetacean Soc. v. Baldrige*, 604 F. Supp. 1411, 1416 (D.D.C. 1985)). Here, it weighs heavily against a stay.

The government claims that “the public has minimal interest in disclosure,” despite well-established principles to the contrary. Mot. Seal/Stay at 12. Again, not so. *See supra* Part II.B. Public access to criminal proceedings provides a “safeguard against the corrupt or overzealous prosecutor,” especially, as at this juncture, where there is no jury present. *Press-Enterprise II*, 478 U.S. at 12–13 (1986) (quoting *Duncan v. Louisiana*, 391 U.S. 145, 156 (1968)). “[P]ublic access to [criminal proceedings] enhances both the basic fairness of the criminal [proceeding] and the appearance of fairness so essential to public confidence in the system.” *Robinson*, 935 F.2d at 288 (internal citations and quotation marks omitted) (quoting *Oregonian Pub. Co. v. U.S. Dist. Ct. for Dist. of Or.*, 920 F.2d 1462, 1465 (9th Cir. 1990)). Such public access “serves an important function of monitoring prosecutorial or judicial misconduct.” *Id.* “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Press-Enterprise II*, 478 U.S. at 13 (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980)). The government fails to acknowledge, and makes no attempt to dispute, the public interest in access to criminal proceedings. Thus, the fourth factor weighs against staying publication of the Order.

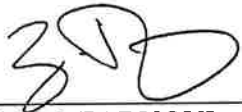
For the foregoing reasons, the Court DENIES the government’s motion to stay unsealing pending appeal. It is long past time to unseal the May 6 Order. Given the government’s inaction, the Court has made proposed redactions to the May 6 Order. *See* Attachment A. On June 3, 2025 at 9:00 AM, the Court will publish the redacted May 6 Order on the court’s website. The government has until then to submit alternative proposed redactions.

III. CONCLUSION

No secret courts. This means no forever sealed judicial decisions—including warrants—as they are the foundation for secret courts. Without visibility, the public cannot hold courts or the government accountable. The Framers knew this. Thomas Jefferson said “wherever the people are well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.” *Thomas Jefferson to Richard Price*, Library of Congress, <https://perma.cc/YGD8-RSS2> (last visited May 28, 2025). Transparency is foundational to what makes America great.

Transparency requires courts to timely unseal—with redactions if needed—*every* judicial decision, including search warrants. Courts abdicate their duty to ensure transparency if they only monitor unsealing in high profile warrants.

Date: May 29, 2025



ZIA M. FARUQUI
UNITED STATES MAGISTRATE JUDGE