



Memorandum of Understanding: Electronic Filing of Certain Sealed Applications and Orders

This Memorandum of Understanding (“MOU”) is entered into by the Clerk of the United States District Court for the District of Columbia (“USDC”) and the Criminal Division of the U.S. Department of Justice (“DOJ-CR”).

A. Background:

The Local Criminal Rules of this Court permit the electronic filing of certain sealed applications in criminal matters only with prior written authorization. *See* USDC L.CrR 49(e)(1) (“Unless prior written authorization for electronic filing is given by the Clerk of the Court, every document filed under seal in a totally sealed case shall be filed in paper form...”); *id.* (e)(4) (“Unless prior written authorization for electronic filing is given by the Clerk of the Court, every document filed prior to the initial appearance of a criminal defendant, including but not limited to a filing related to a grand jury matter, a pen register application, ... an application for stored electronic information or evidence, ..., and an application for disclosure of electronically stored evidence shall be filed in paper form...”). This MOU constitutes prior written authorization for the electronic filing of certain sealed applications and proposed orders related to criminal matters, in accordance with the procedures and limitations set forth below.

B. Limited Scope:

1. Authorization for electronic filing is limited to the types of sealed applications listed in **Attachment A**, which will be updated as appropriate. All other sealed applications in sealed cases will continue to be submitted for consideration in paper form.
2. Authorization to file sealed applications electronically is limited to attorneys and support personnel assigned to the specific sections of DOJ-CR identified in **Attachment A**.
3. All sealed applications submitted on weekends, outside of normal business hours, or in exigent circumstances, including those of types otherwise approved for electronic filing, may be submitted for consideration in paper form.

C. Process:

Effective immediately, the following process will be followed for the electronic filing of certain sealed applications from DOJ-CR:

1. To file a sealed application, an authorized DOJ-CR attorney or employee will open a sealed case on the USDC Case Management/Electronic Case Files (“CM/ECF”) system *in accordance with written instructions* provided by the Clerk’s Office using the appropriate case type as designated by the Clerk’s Office (*e.g.*, using PR for a pen register/trap and trace application or SC for an application under the Stored Communications Act).¹ The opening of a new sealed case will cause the system to generate a case opening report in the USDC Clerk’s Office.

¹ In January 2018, the USDC Clerk’s Office initiated use of 11 new case types tailored to specific types of sealed applications in criminal investigations. Written guidance regarding the applicability and use of these case types will be provided to DOJ-CR by

2. Designated Clerk's Office staff will review new sealed case opening reports twice a day during regular business hours, at approximately 10:00 a.m. and 2:00 p.m., and will perform quality control to identify any errors in the case opening. Once quality control has been completed, the Clerk's Office will grant the designated attorney or authorized employee of DOJ-CR docket access and notify him or her via email that the sealed application and proposed order may be filed.
3. The DOJ-CR attorney or authorized employee will then docket the sealed application and proposed order *in accordance with written docketing instructions* provided by the Clerk's Office.
4. Designated Clerk's Office staff will identify new sealed applications and proposed orders twice a day during regular business hours, at approximately 10:00 a.m. and 2:00 p.m., and will perform quality control on any such applications and proposed orders. Once quality control has been completed, Clerk's Office staff will assign the matter(s) to the duty Magistrate Judge and, following internal protocols, forward electronically any new applications and proposed orders to the duty Magistrate Judge for consideration.
5. Upon execution by the duty Magistrate Judge of an order either granting or denying an application, designated Clerk's Office staff will electronically certify and docket the order.
6. DOJ-CR will be advised through a notice of electronic filing (NEF) when an order has been signed and docketed.

D. Standard Format of Captions for Sealed Applications and Orders:

1. The case captions for sealed applications and orders will follow standard formats, as agreed upon by the USDC Clerk's Office and DOJ-CR. Each standard caption shall contain variable items of information, depending on the type of application. Any sealed application for a non-disclosure order related to a grand jury subpoena must include reference in the caption to the grand jury subpoena and the subpoena's identifying number, if any.
2. Except as provided in subsection (3), a DOJ-CR attorney or authorized employee must enter the standard caption, including the information responsive to these variables, when initiating or making successive applications in a sealed case. Every document filed by a DOJ-CR attorney or authorized employee in a particular case shall use the same caption. If, at any point, case numbers related to a single investigation are consolidated, the caption pertaining to the earliest-filed matter will be used.
3. A DOJ-CR attorney or authorized employee may opt to omit one or more variables in a caption if disclosure of that information is considered by DOJ-CR to pose a risk of compromising an ongoing investigation.

E. Public Reporting of Caption Information for Certain Sealed Matters:

1. The USDC Clerk's Office will generate biannual reports via CM/ECF reflecting the docket numbers and case captions associated with sealed applications, except for applications related to the non-disclosure of grand jury subpoenas. Beginning as soon as practicable, these docket reports for sealed applications will be made publicly available on March 31 and September 30 of each year in electronic form.
2. The sealed applications docket reports will contain docket numbers and case captions associated with certain sealed applications filed during the six-month period ending six months before the issuance of the report. For example, a sealed application filed in November 2018 would be included in the semi-annual report issued on September 30, 2019.

USDC Clerk's Office and updated as necessary. The types of applications assigned to these 11 new case types formerly had been docketed using the general Miscellaneous (MC) or Magistrate Judge (MJ) case types.

3. Any internal tracking or reference numbers used by DOJ-CR that are placed outside the caption of a sealed application will not be disclosed in the regular release of sealed applications docket reports. Any such internal tracking or reference numbers are intended to remain under seal and shall not be disclosed.

Signed and agreed:



Angela D. Caesar
USDC Clerk of Court

Date: 5/31/18



Raymond N. Hulser
Deputy Assistant Attorney General
Criminal Division, Department of Justice

Date: 5/29/18

ATTACHMENT A

Sealed Applications Authorized for Electronic Filing

1. Attorneys and designated employees of the Office of International Affairs of the Criminal Division of the U.S. Department of Justice (DOJ-OIA) are authorized to file the following documents electronically, as of the dates indicated and subject to the terms and conditions of this MOU:
 - a. As of June 1, 2018, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. § 3512 for orders pursuant to 18 U.S.C. § 2703(d);
 - b. As of November 1, 2018, sealed applications, proposed orders, proposed warrants and related documents pursuant to 18 U.S.C. § 3512 for search warrants pursuant to 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A);
 - c. As of November 1, 2018, sealed applications, proposed orders and related documents for orders for nondisclosure pursuant to 18 U.S.C. § 2705(b); orders for sealing; and orders directing certification pursuant to 18 U.S.C. § 3512; and
 - d. As of November 1, 2018, sealed applications, proposed orders and related documents for orders for commissioners' appointments pursuant to 18 U.S.C. § 3512.
2. Attorneys and designated employees of the Criminal Division of the U.S. Department of Justice are authorized to file the following documents electronically, as of the dates indicated and subject to the terms and conditions of this MOU:
 - a. As of December 11, 2018, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. §§ 3122-27 for pen registers and trap and trace devices;
 - b. As of December 11, 2018, sealed applications, proposed orders and related documents for orders for nondisclosure pursuant to 18 U.S.C. § 2705(b) and orders for sealing;
 - c. As of March 15, 2019, sealed applications, proposed orders and related documents pursuant to 18 U.S.C. § 2703(d); and

- d. As of April 11, 2019, sealed applications, proposed orders, proposed warrants and related documents for search warrants sought pursuant to 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) and/or Rule 41 of the Federal Rules of Criminal Procedure.

Signed and agreed:



Angela D. Caesar
USDC Clerk of Court:

Date: 4/26/19



Jennifer A. Hodge
Deputy Assistant Attorney General
(Acting)

Date: 4/12/19

MOU Effective: May 31, 2018
Attachment A Amended: October 29, 2018
Attachment A Amended: February 25, 2019
Attachment A Amended: April ~~26~~, 2019