IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

IN RE: PROCEDURES FOR THE FILING,	)	
SERVICE, AND MANAGEMENT OF HIGHLY	)	**STANDING ORDER**
SENSITIVE DOCUMENTS	)	

In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts; the Court **FINDS** that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require all parties to file certain highly sensitive documents outside of the court's electronic filing system.

It is **ORDERED** that, effective as of the date of this order and until such time as the Court orders otherwise, the filing of documents deemed to be highly sensitive shall be subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules, administrative policies, or other standing or administrative orders of this Court.

I.   Documents Subject to this Order

A Highly Sensitive Document (HSD) is a document that contains sensitive or confidential information that may be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by hostile foreign governments would likely cause significant harm. **The Court anticipates that relatively few documents filed in this Court will be classified as HSDs.** In determining whether a document is an HSD, factors to be considered might include whether the case involves matters of national security, foreign sovereign interests, or cybersecurity; the extent of domestic or international interests; the involvement of public officials; intellectual property or trade secrets; or the reputational interests of the United States. A document that meets these criteria may be classified as a HSD only upon motion and order of the Court.

The following types of documents are **unlikely** to be classified as HSDs:
  A.   presentence reports and pretrial release reports and documents related to such reports;
  B.   pleadings related to cooperation in criminal cases;
  C.   Social Security records;
  D.   administrative records in immigration cases; and
  E.   most sealed filings in civil cases.

The filing procedures set forth below apply to documents a party considers to be highly sensitive information.

II. Filing of Motions to Designate a Document as an HSD

A. If the filing party seeks to have a document designated as an HSD as defined by this Order, a party **MUST** submit a motion to treat a document as an HSD by providing the clerk's office or a judicial chamber, if so directed by a judicial officer, the motion, a copy of the proposed HSD, and the certificate of service, if service is required. The motion must state the party's good faith belief that the proposed HSD meets the criteria set out in Section I above.

B. The required documents **MUST** be submitted in paper to the clerk's office or to a judicial chamber, if so directed by a judicial officer, in a sealed envelope marked "**HIGHLY SENSITIVE DOCUMENT**." The outside of the envelope must include the case caption, with confidential information redacted, and the case number, if available.

C. The filing party shall serve the proposed HSD on the other parties, if required, as follows:
    1. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system or by other electronic means; or
    2. Criminal cases - by any manner specified in Criminal Rule 49(a)(4).

D. A response or reply to the motion must be filed as specified in Section II(A - C).

E. If the presiding district or magistrate judge, or when no presiding judge has been assigned, the chief district judge, determines the document meets the HSD definition, the judge will issue an order to that effect. An informational entry will be made on the case docket indicating that the order has been filed. If the order grants the motion a separate informational entry will be made to indicate the HSD has been filed with the court. The clerk's office will maintain the Court's order and the HSD in a secure paper filing system.

III. Service of Highly Sensitive Court Orders

If the court determines that a court order contains highly sensitive information, the clerk's office will file and maintain the order in a secure paper filing system and will serve paper copies of the order on the parties via mail.

IV. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System

A. Upon motion of a party or upon its own motion, the Court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the court's electronic filing system and maintained by the clerk's office in a secure paper filing system.

B. A party's motion to remove an HSD or highly sensitive case from the court's

electronic filing system shall explain why such document or case is highly sensitive under the criteria set out in Section I above or why it should otherwise be subject to the heightened protection for HSDs.

V.   Questions about HSD Filing Procedures

Any questions about how a proposed HSD should be submitted to the court pursuant to this Standing Order should be directed to the clerk's office at:

Bismarck: 701-530-2300   or   Fargo 701-297-7000

This order supersedes the Court's Administrative Order issued on January 12, 2021.

IT IS SO ORDERED, this 16th day of February, 2021.

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   /s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court

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