United States Court of Appeals

FIFTH CIRCUIT
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August 04, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 23-20097 USA v. Financial Times
USDC No. 4:19-CR-147-1
USDC No. 4:19-CR-147-2

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: ____________________________
Whitney M. Jett, Deputy Clerk
504-310-7772

Mr. Paul Edward Coggins Jr.
Ms. Suzanne Elmilady
Ms. Jennifer Marie McCoy
Mr. Scott A. C. Meisler
Mr. Nathan Ochsner
Mr. Jeremy Raymond Sanders
Ms. KatieLynn B. Townsend

United States Court of Appeals for the Fifth Circuit

No. 23-20097

United States of America,

Plaintiff—Appellee,

versus

Saman Ahsani; Cyrus Allen Ahsani,

Defendants—Appellees,

versus

The Financial Times Limited;
Global Investigations Review; The Guardian,

Intervenors—Appellants.

Appeal from the United States District Court
for the Southern District of Texas
USDC Nos. 4:19-CR-147-1,
4:19-CR-147-2

UNPUBLISHED ORDER

Before Higginbotham, Smith, and Engelhardt, *Circuit Judges*:

Per Curiam:

Appellants *The Financial Times*, *Global Investigations Review*, and *The*

Guardian ("intervenors") move to unseal the briefs filed in this court by appellees, the parties in the underlying criminal prosecution, *i.e.*, the United States and defendants Saman and Cyrus Ahsani. The parties oppose the motion. After carefully reviewing the sealed information, we deny the motion without prejudice.

We read intervenors' motion as raising both First Amendment and common-law claims of access to the sealed information. The two standards differ somewhat. Under the First Amendment, to overcome the presumption of openness to court proceedings, a court ordering information to remain under seal must ensure that it is protecting an "overriding interest" and that sealing is both "essential" and "narrowly tailored" to serve that interest. *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 181 (5th Cir. 2011) (quoting *Press-Enter. Co. v. Superior Ct.*, 478 U.S. 1, 9 (1986)), *as revised* (June 9, 2011).

Under the common-law right of access to judicial records, a court must balance the public's right of access against any interests in sealing the information. *Vantage Health Plan, Inc. v. Willis-Knighton Med. Ctr.*, 913 F.3d 443, 450 (5th Cir. 2019). The public's right of access amounts to a presumption in favor of disclosure, but this court has not yet specified the weight of that presumption. *See id.*[1] Instead, our inquiry is case-by-case, document-by-document, and line-by-line, balancing the interest in keeping each piece of information sealed against the public's presumptive right to access it. *See Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021).

Our circuit also has not specified the scope of the First Amendment access right within a prosecution. It definitely attaches to certain proceed-

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[1] We have, however, quoted out-of-circuit precedent characterizing the "presumption that all trial proceedings should be subject to" public scrutiny in general as "strong." *United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (quoting *United States v. Ladd*, 218 F.3d 701, 704 (7th Cir.2000)).

ings, e.g., sentencing hearings, but not necessarily to judicial records generally, as some other circuits have held. *See Hearst*, 641 F.3d at 175–76 (collecting cases). We need not answer the question here because we assume *arguendo* that the stricter standard of the First Amendment applies, and we find the presumption of access overcome.

Finally, we conduct our review independently from the district court. *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 211 (5th Cir. 2019).

* * * * *

Intervenors ask us to unseal appellee's briefs, either *in toto* or leaving only narrow redactions. Their primary argument is that Saman Ahsani's "cooperation" with the United States is not only public knowledge but also widely reported.

Unlike intervenors, we have the benefit of knowing exactly what information is sealed. [redacted]

The interests involved here are compelling. The importance of not compromising the integrity of ongoing investigations is clear.[2] The same applies to the interest in protecting cooperating individuals and their families from harm.[3] We also conclude that an interest in keeping sensitive personal and familial information private can be compelling enough to defeat the pre-

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[2] *See United States v. Sealed Search Warrants*, 868 F.3d 385, 395 (5th Cir. 2017) (discussing the interest in the context of pre-indictment warrant materials); *Hearst*, 641 F.3d at 185; *accord United States v. Doe*, 870 F.3d 991, 1000–01 (9th Cir. 2017); *United States v. Valenti*, 987 F.2d 708, 714 (11th Cir. 1993).

[3] *See Hearst*, 641 F.3d at 184–85; *accord Doe*, 870 F.3d at 998–99; *United States v. Doe*, 962 F.3d 139, 147–48 (4th Cir. 2020) (collecting cases).

sumption of access to judicial records provided by the First Amendment.[4] That is especially true when the information relates neither to the public interest in the case nor to the public interest more broadly.

With the compelling interests identified, we ask whether keeping the information sought by intervenors under seal is essential and narrowly tailored to furthering those interests. Our answer is yes. The few redactions in the United States's response brief are limited and necessary to protected information heavily bearing on one or more of the interests discussed above. And although the Ahsanis' brief is significantly more redacted, those redactions are similarly narrowly tailored.[5]

We reach this conclusion after carefully considering the interests at stake and conducting a line-by-line analysis of the redacted briefs.[6] *Binh Hoa Le*, 990 F.3d at 419. We have afforded its full weight to the strong presumption of public access under the First Amendment. *See Hearst*, 641 F.3d at 181.

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[4] *See Bradley ex rel. AJW v. Ackal*, 954 F.3d 216, 229, 232–33 (5th Cir. 2020) (acknowledging a minor's privacy interests but finding them outweighed by the public interest in access); *United States v. Amodeo*, 71 F.3d 1044, 1051 (2d Cir. 1995) ("Financial records of a wholly owned business, family affairs, illnesses, embarrassing conduct with no public ramifications, and similar matters will weigh more heavily against access than conduct affecting a substantial portion of the public."); *see also In re Bos. Herald, Inc.*, 321 F.3d 174, 188, 190 (1st Cir. 2003) (acknowledging the privacy interest in personal financial information).

[5] With the exception of *de minimis* redactions that appear accidental, such as of the page number and document number on page 14, and the heading on page 13, which appears in unredacted form in the table of contents.

[6] Because this circuit has not held that the First Amendment provides a right of access to judicial records generally, it has not determined a proper procedure for reviewing sealed information. We have no reason to believe that the procedure would differ from that employed in the common-law context, which is already exacting.

The motion to unseal appellees' briefs is DENIED without prejudice. Intervenors may renew their motion to unseal as information becomes public or the interests involved attenuate. We appreciate the potential difficulty in ascertaining when that may occur.