

United States Court of Appeals for the Fifth Circuit

ORDER General Docket No. 2021-1

This order establishes procedures to identify and ensure the security of Highly Sensitive Documents (HSD).

The Court finds that, pursuant to FEDERAL RULE OF APPELLATE PROCEDURE 25(a)(2)(B) and FIFTH CIRCUIT RULE 25.2.8, good cause exists to require all parties to file certain HSD outside the Court's Electronic Case Files (CM/ECF) system.

HSD are documents containing information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. HSD include sealed documents involving national security, foreign sovereign interests, criminal activity related to cybersecurity or terrorism, investigation of public officials, the reputational interests of the United States, and extremely sensitive commercial information likely to be of interest to foreign powers. Unless they fall into one the above-listed categories, HSD do not include presentence reports or related documents, pleadings related to cooperation in criminal cases, social security administrative records, immigration administrative records, and most sealed documents in civil cases.

Effective as of the date of this order and until expressly revoked or superseded the filing of HSD will be governed by the requirements and procedures set out below.

1. Documents designated as HSD by the nine district courts retain that designation on appeal unless this Court determines the designation is not warranted.

2. Any party seeking to designate a document as a highly sensitive document in the first instance or to change its designation as an HSD will do so by motion. Parties must contact the Clerk's Office for guidance before filing such motions because the motions will be submitted outside of CM/ECF.

Contents. The motion must specifically address (1) the ruling by the district court as to the HSD designation, (2) the reasons that the HSD designation should continue on appeal, (3) how the document falls within this Court's definition of HSD, and (4) the potential for irreparable injury if the documents are not treated as HSD.

The motion must request the narrowest possible scope of documents to be treated as HSD. For example, the motion should propose that only certain pages or lines of a document be treated as HSD rather than an entire document.

The filer must provide a certificate of service and all service should be accomplished outside the court's electronic filing system. The filing party must serve the HSD on the other party by personal delivery, mail, or third-party carrier, as specified in FEDERAL RULE OF APPELLATE PROCEDURE 25(c)(1)(A)-(C).

Filing. Place the motion and any accompanying documents in a sealed envelope marked with the case number and short title caption, and the words "HIGHLY SENSITIVE DOCUMENT." Seal this envelope inside another envelope addressed to the Clerk's Office and submit it to the Clerk's Office.

Pro se parties must submit and serve any such motion and related documents in paper directly to the Court by personal delivery, mail, or third-

party carrier, as specified in FEDERAL RULE OF APPELLATE PROCEDURE 25(c)(1)(A)-(C).

For voluminous submissions, the Clerk of Court may direct the filing of an electronic copy on a secure electronic device such as a USB drive. The Clerk will specify the required security standards for the electronic device and handling procedures for such a submission. The party will affix to the flash drive itself a label providing the case number as well as the date on which the flash drive was presented to the Clerk's Office for filing, and place the USB flash drive in an envelope clearly marked with the case number and "HIGHLY SENSITIVE DOCUMENT." Seal this envelope inside another envelope addressed to the Clerk's Office and submit to the Clerk's Office.

3. Upon motion of a party, the Court may determine that a document previously filed under seal in CM/ECF may qualify for HSD designation. The motion must establish how the document falls within this Court's definition of HSD and the potential for irreparable injury if the documents are not treated as HSD. Additionally, if the document was sealed in a district court, the party must seek an HSD designation from the district court before seeking relief from this Court.

4. The Court will issue an order resolving the motion. Orders will ordinarily be public unless a judge directs otherwise, in which case the Clerk will make a notation on the docket and serve and maintain the order in paper format.

Dated this 15th day of January 2021.



Priscilla R. Owen

PRISCILLA R. OWEN

*Chief Judge, United States Court of Appeals
for the Fifth Circuit*

A True Copy
Certified order issued Jan 15, 2021

Stylle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit