

Docket No.:

In the Supreme Court of the United States

United States Court of Appeals for the Second Circuit
Docket Nos. 10-2905 and 11-479

United States of America v. Felix Sater

**Motion for a Sixty-Day Enlargement of Time to
Petition this Court for Certiorari
in Behalf of Movant-Appellant Oberlander**

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TO: THE HONORABLE JUSTICE RUTH BADER GINSBURG, ASSOCIATE JUSTICE

Introduction

1) I, Richard E. Lerner, an attorney duly admitted to practice in this Court, respectfully seek a sixty-day enlargement, from May 10, 2018 to July 9, 2018, to file a petition for writ of certiorari in behalf of my client Frederick M. Oberlander, as he was recently totally, but not permanently, disabled by concussive head trauma, and cognitive and physical impairment leave him unable to work more than a few hours a week. He has received comparable extensions from other courts and notified his state bar of his status. He can participate in writing for limited periods. His participation here is *indispensable*.

2) I seek this enlargement to file a petition for such writ with respect to an order issued by the Second Circuit on February 9, 2018, and such matters properly brought up for review with respect to it, in a purely collateral proceeding (motions by news media to intervene and unseal the appellate record). Thus, a petition for certiorari is proper, not a writ seeking extraordinary relief, as the order finally resolves that issue, and in any event the merits appeal was closed by the Second Circuit by its issuance of a mandate in 2011.

3) The order adopts in full a Report & Recommendation of Federal District Judge Pamela K. Chen (EDNY), who was acting as special master to the Second Circuit for the limited purpose of reviewing documents to determine what should be unsealed. Accordingly, the Report & Recommendation of Judge Chen, and actions taken by her upon mandate of the Second Circuit when it adopted it, are also brought up for review.

4) The orders are of substantial constitutional concern, as they prohibit (and appear to even criminalize) dissemination of a motion and petition for writ of certiorari, filed in this Court in 2012, which this Court *expressly ordered publicly docketed* and

which, since then, *have been and still are* public here in the U.S. Supreme Court, in the Library of Congress, the National Archives, and (as to the cert petition) on *Westlaw*.

Exhibits

Exhibit A Certified order of Second Circuit, 02/09/2018, adopting in full the conclusions and recommendations of the Report & Recommendation, and addenda thereto, of Judge Pamela K. Chen (EDNY) as Special Master to the Second Circuit.

Exhibit B Report & Recommendation dated July 5, 2017 with addenda (as redacted by Judge Chen).

Explanation

5) I have been Mr. Oberlander’s trial and appellate counsel since inception of the underlying proceedings in 2010 and was lead counsel here in a prior petition for writ of certiorari, U.S. Supreme Court docket 12-112, in which former Solicitor General Paul Clement also appeared as co-counsel for Mr. Oberlander.

6) Mr. Oberlander is an attorney who – most recently, in the United States Court of Federal Claims – represents federally protected crime victims of Felix Sater, previously known here as John Doe. Sater is now generally known everywhere as the serially convicted felon with Russian mafia ties, who, importantly, was also President Trump’s business associate.

7) The issues to be raised in the cert petition arise from a collateral, final order of the Second Circuit issued on February 9, 2010. The merits appeal from which we first petitioned six years ago was closed on December 20, 2011, by issuance of a formal mandate and so is not at issue. Rather, this appeal concerns the unsealing – actually, the failure to unseal – of content of the Second Circuit 10-2905 and related 11-479 dockets on motions made by members of the international and domestic media (as indicated in the service list), and then joined in by Mr. Oberlander.

8) These issues concern the sealing regime in the Second Circuit, whereby that court, and its lower courts, deem it appropriate to maintain under seal documents that they are aware are readily available to the public elsewhere, and of great public interest, for the apparent purpose of chilling their dissemination by overtly threatening criminal contempt prosecution – using sealing orders entered with little if any due process as prior restraints *contra mundum* – purporting to claim the authority to do this simply because they maintain the same information under seal in their own courthouses.

9) Three examples illustrate the issue, though there are many more:

10) *First*, the Second Circuit order has put under seal portions of a petition for writ of certiorari and the related motion filed with this Court in docket 12-112, despite this Court’s formal order of June 25, 2012, which directed the petition and motion to be made public in redacted form. That is, this Court’s *public* version of those documents are now under partial seal below. So, the cert petition and motion that were *ordered* public by this Court six years ago, and are publicly available on the Internet, from the National Archives, from the Library of Congress, and (in the case of the petition) on *Westlaw*, are now blacked-out by order of the Second Circuit.

11) *Second*, Sater’s 1998 cooperation agreement, publicly available all over the Internet, contains his acknowledgement when he agreed to plead guilty that he faced a mandatory sentencing order of restitution of up to \$60 million, and his agreement that he would forever, on request, give the government a list of all his assets everywhere to make good on that forthcoming restitution obligation. But the Second Circuit order approved redactions to it, and its version now blacks all this information out.

12) *Third*, a transcript of a Second Circuit oral argument held February 14, 2011, was unsealed in 2016 by order of an Eastern District of New York judge in related proceedings, and since then has been public on the EDNY docket and is also available all over the Internet. The transcript is of great concern because it shows the Second Circuit panel maintaining in a then-sealed courtroom that private citizens do not have the same First Amendment rights as organized media. Yet – although it is public on another EDNY docket, downloadable on PACER, again by another judge’s explicit order unsealing it – that transcript was just ordered sealed in the Second Circuit by the order adopting Judge Chen’s Report & Recommendation, despite the fact that it was made known to all that that transcript is widely public elsewhere, including that other docket.

13) Without more, these actions might seem relatively harmless. That a court seals documents that anyone can find in a public library may not do irreparable damage, as sealing orders aren’t gag orders, and certainly not global gag orders. But, apparently, they are or can be in the Second Circuit, BECAUSE:

14) **For the last eight years, Second Circuit courts involved in this case have said that if they put a document under seal, even if it, or its content, is public, further dissemination of its content is forbidden on penalty of criminal contempt.**

15) Indeed, in 2011 the Second Circuit issued a *temporary* prior restraint *pendente lite* against not only us, and Sater, but the *entire United States government* not to disseminate anything under seal. And although that *pendente lite* order must have lapsed with the issuance of its appellate mandate on December 20, 2011 – ending the appeal and with it all *pendente lite* orders – the government continues to try to enforce it criminally.

16) In fact, for two years, a grand jury has been investigating alleged violations of that expired *pendente lite* order, because in 2016 a district judge said in dictum that the order is still in effect, and said in 2015 that the dissemination of publicly available information, once it goes under seal after it's first public, "may" be criminal, and twice referred that for criminal investigation.

17) This is a freezing, not chilling, of speech: That grand jury referred to has been investigating whether criminal contempt charges may be brought against persons who it is alleged may have discussed part of the Congressional Record with the media because the part of the Congressional Record in question was also included in a sealed appendix in a dead case. And it is investigating whether charges may be brought against those who allegedly spoke about a *public* court docket because a copy of that *public* docket was also in an appendix that was put under seal.

18) It comes down to this: The Second Circuit's actions threaten prosecution of my client, his lawyers, and all in privity with them – and given the express language of the order should equally threaten everyone working for the government – if they speak to anyone about parts of a petition for writ of certiorari that this court *expressly ordered* public six years ago, and that *remains* public. Moreover, Second Circuit courts have issued rulings that their sealing orders can bind the world as gag orders, without First or Fifth Amendment due process.

19) As we understand it, the Second Circuit's justification is that they are ***not*** bound by the order of this Court, either as law of the case or precedent, that a redacted cert petition be filed publicly because the order resulted from a redaction process that this Court had delegated to its clerical and legal staff, and that, thus, any decision to redact, or

rather not to redact, was not “actually” an order of this “Court,” because the Justices delegated the review to staff, and so did not themselves personally review the materials and decide on the redactions.

20) In sum, the Second Circuit has usurped the authority of this Court to control its own docket by deciding that it can place under seal materials ordered publicly filed by this Court on this Court’s own docket and thereby shut down their dissemination.

21) If anything could make this more significant, it is that these materials are of deep public concern and national importance, implicating the business dealings of the current President of the United States – as indicated by the following factual context.

22) In 1998, Sater was convicted of racketeering in the Eastern District of New York, for operating a Russian and Italian organized crime network of stock fraud that bilked investors, many elderly, some Holocaust survivors, of \$40 million. That should have meant the end of his career, and mandatory sentencing orders of \$80 million of forfeiture and \$40 million of restitution. But it did not, for his case was hidden “off the books,” no sealing orders issued, at least none anyone has seen, so his victims and third parties never knew of his conviction, unless they found record of it outside the court.

23) Armed with the secrecy of his records, and the millions of dollars of criminal proceeds from the stock fraud he was allowed to keep, he wasted no time resuming his crimes and by 2002 had infiltrated Bayrock Group, a real estate developer.

24) Sater spent the next six years helping run Bayrock as a money laundering device for Russian and Kazakh organized crime, hiding his conviction from most of the firm’s lenders and other partners, enabled by the secrecy within the Second Circuit.

25) That he had specific intent to commit criminal fraud is obvious from his now-unsealed sentencing transcript of October 2009, in which, in front of four FBI agents and two AUSA's, he bemoaned the fact that the truth of his conviction was beginning to leak, and he explained how he had successfully hidden it from banks because he knew they'd never have lent to Bayrock if they'd known that he, "a criminal," was involved.

26) One of Bayrock's partners all that time was a New York developer, Donald J. Trump, now in his second year as the 45th President of the United States.

27) What Trump knew of Sater, and when he knew it, is of public concern, not only for the above reasons but because of a Southern District of New York decision and order of December 6, 2016, in *Kriss v. Bayrock Group* (SDNY Docket No. 10-cv-3959).

28) In that order, the Hon. Lorna G. Schofield declined to dismiss a civil RICO complaint that had been filed against Sater and others at Bayrock that charged them with running the company via a pattern of fraud by, *inter alia*, hiding Sater's conviction from the firm's banks and from its other partners. The motion to dismiss argued that even if all those allegations were true, still that did not state a cause of action in civil RICO. Judge Schofield held exactly the reverse – that the hiding of Sater's conviction and that Bayrock was owned by a convicted RICO fraudster – stated a viable cause of action for RICO fraud.

29) She also held that anyone who knew what the defendants were up to, and agreed to, or did, facilitate it, would be liable for racketeering conspiracy.

30) Obviously Mr. Trump's knowledge of this criminal concealment fraud, if any, and when he acquired it, if he did, is urgently important, as he kept on working in partnership with the firm for years and was paid in-kind compensation at the time worth

\$30 million to \$45 million on paper plus millions more in cash – most, if not all, traceable to the proceeds of bank loans that Sater admitted at his October 23, 2009, sentencing as having been acquired by that very fraud that Judge Schofield held constituted, if proved at trial, the operation of a business through a pattern of predicate crime.

31) The acquisition of loan proceeds by such concealment is certain financial institution fraud. The subsequent spending in interstate commerce is money laundering. Moreover, the statute of limitations for financial institution fraud, and for racketeering predicated on same, is **ten years**, not five, 18 U.S.C. §3239(2). It's still open.

32) It's also important for the public to know (if Mr. Trump denies knowledge of Sater's conviction) how this concealment could have gone on.

33) The public does know *some* of what happened, but they are entitled to a full account, so they may exercise their supervisory power over their government, all three branches of it. This is why myriad members of the media intervened to seek the unsealing of the Second Circuit's docket, which has precipitated the forthcoming petition for writ of certiorari.

34) The public is now aware that not only did the government know of the concealment and other frauds that Sater was committing at Bayrock, *it facilitated his commission of them*, and helped him keep all the money he stole, by hiding his criminal docket from the public and by repudiating mandatory sentencing law.

35) The public is now aware that the Second Circuit courts have been operating under a regime of secrecy and threatening Mr. Oberlander and those aligned with him with contempt if he were to reveal governmental misconduct to the public.

36) There's exactly one reason the public knows this, and that's because we fought all the way to this Court in 2012 for the right to tell the world the truth, and this Court gave it to us, and through us gave the truth to the world, when it ordered that the redacted petition for certiorari and accompanying motion be made public.

37) The Second Circuit is trying to take it back.

38) For the importance of the issues, and Mr. Oberlander's medical condition, I request a sixty-day enlargement of time to submit his petition for a writ of certiorari.

WHEREFORE, it is most respectfully requested that this motion for a sixty-day enlargement of time to file the petition for a writ of certiorari be granted.

Dated: New York, New York
April 26, 2018

Respectfully submitted,

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Exhibit “A”

E.D.N.Y.
98-CR-1101
Glasser, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of February, two thousand eighteen.

PRESENT:

José A. Cabranes,
Rosemary S. Pooler,
Denny Chin,
Circuit Judges.

RICHARD ROE, JANE DOE, JOHN DOE 2,

Respondent-Appellant,
v.

UNITED STATES OF AMERICA,

Appellee, **ORDER**
No. 10-2905

JOHN DOE,

Defendant-Appellee.

RICHARD ROE,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent, **No. 11-479**
v.

JOHN DOE1, JOHN DOE 2,

Defendants.

On March 22, 2017, movants Forbes Media LLC and Richard Behar (“Intervenors”) filed a motion to intervene in, and to unseal documents on the dockets of, the two above-captioned appeals. On April 3, 2017, the Government, without opposing the motion to intervene or addressing the substance of the motion to unseal, filed a motion to appoint a special master to oversee the process of evaluating the continued validity of sealing.

On April 10, 2017, with the concurrence of the Government, this Court granted the motion to intervene filed by Intervenors. On that same day, this Court appointed a special master pursuant to Federal Rule of Appellate Procedure 48(a) to review and issue a report and recommendation with respect to Intervenors’ unsealing motion.

The special master, Judge Pamela K. Chen of the United States District Court for the Eastern District of New York,¹ completed her Special Master Report (“the Report”) on July 5, 2017. She submitted a First Addendum to the Report on July 12, 2017, and a Second Addendum on July 14, 2017 (collectively, “the Addenda”). The Report and its Addenda contain complete factual findings and recommendations of law with respect to Intervenors’ unsealing requests. Intervenors filed their objections to the Report on October 12, 2017. The Government filed a memorandum in response to Intervenors’ objections to the Report on November 2, 2017.

Upon *de novo* review² of the Report, the Addenda, and the objections filed thereto, we hereby **ADOPT IN FULL** the conclusions and recommendations of the Report and the Addenda.

The special master shall, in close consultation with the Office of the Clerk of Court, oversee the unsealing all the documents on the dockets of the two above-captioned appeals for which the Report recommends unsealing. The 21 documents on those dockets which the Report recommends be unsealed subject to redaction shall be redacted in the manner set forth in the Report and the Addenda. All documents on those dockets for which the Report recommends continued sealing shall remain under seal.

In addition, in accordance with the special master’s recommendation, Intervenors’ motion to unseal all the motion papers filed by Intervenors in the course of this unsealing action, as well as the *amicus* brief filed in the course of this unsealing action by *amici* DCReport.org et al., is **GRANTED**. It is hereby **ORDERED** that all the motion papers filed by Intervenors in the

¹ This Court first appointed Judge Brian M. Cogan of the Eastern District of New York as special master, but substituted Judge Chen by an order dated April 21, 2017.

² Though Federal Rule of Appellate Procedure 48 does not specify a standard of review for appellate courts reviewing the report of a special master, we are guided by Federal Rule of Civil Procedure 53, which states that a special master’s conclusions of law are subject to *de novo* review.

instant unsealing action, as well the *amicus* brief filed in the instant unsealing action by *amici* DCReport.org, et al., shall themselves be **UNSEALED**.

We hereby **GRANT** Judge Chen the authority to determine whether to unseal any or all motion papers filed in the course of the special master proceeding.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe

Exhibit “B”

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Richard Roe, Jane Doe, John Doe 2,

Respondents - Appellants,

v.

**SEALED REPORT OF
SPECIAL MASTER**

Docket No. 10-2905

United States of America,

Appellee,

John Doe,

Defendant - Appellee.

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Richard Roe,

Petitioner,

v.

Docket No. 11-479

United States of America,

Appellee,

v.

John Doe 1, John Doe 2,

Defendants.

-----x
PAMELA K. CHEN, United States District Judge:

I. Introduction

This is a report by United States District Court Judge Pamela K. Chen, acting as special master, as designated by this panel on April 21, 2017. I was asked to review the motions of Intervenors Richard Behar and Forbes Media LLC (“Forbes”) (collectively, “Intervenors”) and *amici curiae* David Cay Johnston, DCReport.org, Joe Conason, National Memo, Russ Baker,

WhoWhatWhy.org, Dan Wise, and WiseLawNY (collectively, “*Amici*”), joined by Richard Roe¹ as Respondent-Appellee and Petitioner in this matter, to unseal the dockets in cases 10-2905 and 11-479² in their entirety. Significantly, the government and John Doe (“Doe”) have taken the position that sealing is no longer necessary for the vast majority of the sealed documents at issue in this dispute, with two key exceptions, namely, documents containing information about [REDACTED]

[REDACTED] and Doe’s criminal case materials that were attached to the civil RICO styled as *Kriss v. Bayrock Group LLC*, No. 10-cv-03959 (LGS) (DCF) (S.D.N.Y.) (the “SDNY Action”). Initially, there were a few instances where I found the government’s and Doe’s proposed redactions slightly overbroad, but during the hearing process, they agreed to narrow those redactions. I now agree with the government’s and Doe’s position with respect to the sealed documents in this matter.

In light of these developments and for the reasons discussed herein, I recommend that this Court (1) unseal those documents as to which the government and Doe no longer seek sealing, (2) continue to maintain under seal in their entirety Doe’s criminal case materials and two other documents that the government and Doe seek to keep under seal, and (3) unseal the remaining documents subject to redaction. I find that the limited sealing still sought by the government and

¹ Roe’s true name, Frederick M. Oberlander, has been known publicly since August 11, 2011. (See Letter by Richard Lerner dated June 16, 2017, 17-mc-1302, Dkt. No. 16 at 2 (E.D.N.Y.).) Nonetheless, in this Report, I refer to Oberlander by his captioned name, “Roe.”

² Two appellate matters have been opened in connection with Roe’s disclosure of Doe’s criminal case materials, one stemming from Roe’s appeals of the district court’s orders enjoining him and his clients from disseminating Doe’s criminal case materials, docketed in 10-2905, and the other stemming from Roe’s petition for a writ of mandamus directing the district court to unseal the criminal case docket, docketed separately under 11-479. *Roe v. United States* (“*Roe I*”), 414 F. App’x 327, 328 (2d Cir. 2011). Because these matters have been consolidated I refer to them in this Report as a single “matter.”

Doe is justified by their compelling interests in Doe's safety,³ [REDACTED]

[REDACTED], preventing the improper disclosure and dissemination of Doe's pre-sentencing report ("PSR") and information contained therein, and preserving the government's ability to attract future cooperators. I recommend that 104 of the 127⁴ documents reviewed by the government and Doe be unsealed, 21 be unsealed subject to redactions, and 2⁵ documents should remain entirely under seal. A chart itemizing all of the documents currently under seal, the government's position regarding sealing, and my recommendations regarding sealing/unsealing is attached, as Exhibit A, to this Report. Attached as Exhibit B are copies, in both electronic⁶ and hard copy form, of all of the sealed documents, with a few exceptions that are noted herein. The documents are labeled with the same docket numbers as listed on the 10-2905 docket. For documents where I propose redactions, the text to be redacted is highlighted in the document but the text remains visible.

³ Doe's true name, Felix Sater, became public "when the Clerk's Office in the Eastern District of New York inadvertently unsealed the [criminal] docket sheet, revealing that Sater was 'John Doe' and a cooperator." See Summary Order, *In re Applications to Unseal 98 CR 110 (ILG)*, USA v. John Doe 98-CR-1101, 13-2373, Dkt. 161-1 at 3. Nonetheless, in this Report, I refer to Sater by his captioned name, "Doe".

⁴ The Joint Appendix was counted as two documents as it was filed in two parts as Dkt. Nos. 142 and 143. Even though Dkt. Nos. 142 and 143 each contain multiple documents, Dkt Nos. 142 and 143 will each be referred to in this Report as a single "document." Dkt. Nos. 142 and 143, collectively contain materials from Doe's criminal case and the SDNY Action, including the SDNY complaint attaching Doe's 2004 PSR, cooperation and proffer agreements, and financial statement.

⁵ As explained herein, even though I recommend that Doe's 2004 PSR remain under seal in its entirety, the PSR is not counted here as a fully sealed document. Based on the docketing of the Joint Appendix on 10-2905, the PSR is part of Dkt. No. 142 and thus, the sealing of the entire PSR amounts to a redaction of a portion of Dkt. No. 142.

⁶ The password for the disc containing the documents reviewed and attached hereto as a part of Exhibit B is: [REDACTED]

II. Background

A. Prior Proceedings

As the panel is aware, this matter has a long and complicated history. Because the panel is familiar with this history, *Roe v. United States* (“*Roe I*”), 414 F. App’x 327, 328 (2d Cir. 2011), *Roe v. United States* (“*Roe II*”), 428 F. App’x 60, 63 (2d Cir. 2011), *Doe v. Lerner*, 16-2935, Dkt. No. 137-1 at 2-3 (2d Cir. April 20, 2017),⁷ and because much of this history does not relate to the current unsealing motions, I recite only the proceedings related to the pending unsealing motions and otherwise refer to prior decisions by this Court or the district courts in this matter as they bear on my recommendations regarding the pending unsealing motions.

B. Procedural History for the Instant Unsealing Motions

On March 22, 2017, Behar and Forbes moved to intervene in, and unseal, the entire docket in this matter. (See Dkt. No. 379.)⁸ On March 31, 2017, the *Amici* sought leave to file a brief in support of the Intervenors’ unsealing motion. (Dkt. No. 390.) In response, on April 3, 2017, the government did not oppose Behar’s and Forbes’s intervention, but opposed the “blanket unsealing of all sealed docket entries and documents” and requested that the Court appoint a special master to conduct hearings on the unsealing motion. (Dkt. Nos. 396, 398.) Doe joined in the government’s response on April 3, 2017. (Dkt. No. 401.) On April 6, 2017, the Court granted the *Amici*’s motions to brief the unsealing issue. (Dkt. No. 406.) On April 10, 2017, this Court granted

⁷ The last substantive ruling on this matter was this Court’s Summary Order issued on April 20, 2017, denying Lerner and Roe’s appeal from a June 21, 2016 order, by Judge Cogan, partially denying their motion to unseal documents in the civil contempt proceedings. *See Doe v. Lerner*, 16-2935, Dkt. No. 137-1 at 2-3 (2d Cir. April 20, 2017). Lerner and Roe have not sought *certiorari* regarding this Court’s May 21, 2017 ruling, but the time to do so has not yet elapsed.

⁸ All docket references without a case number (e.g., “Dkt. 379”) refer to docket entries in Case No. 10-2905 (2d Cir.).

Intervenors' motion to unseal and the government and Doe's motion to appoint a special master. (Dkt. No. 409.)

1. Proceedings before the Special Master

On April 21, 2017, I was appointed special master by this panel to review the unsealing motions. (Dkt. No. 418.) Adopting the practice established by Judge Cogan, on May 2, 2017, I opened two dockets in the district court. The first docket, which is styled as *In Re the Appointment of Pamela K. Chen as Special Master* (the "Sealed Docket"), 17-mc-1282, is completely under seal from the public, except for the government and John Doe. The second docket, which is styled as *In Re Public Docket - the Appointment of Pamela K. Chen as Special Master* (the "Public Docket"), 17-mc-1302, is publicly available. However, many of the documents filed on the Public Docket have been filed under seal in order to comply with this panel's various sealing orders. A copy of the Sealed Docket, the Public Docket, and the parties filings therein are collectively attached as Exhibit D.⁹

2. The Sealed Documents

Because of the complicated history of this matter and the strict sealing procedures applied by this Court, the process of identifying and gathering all of the currently sealed documents has presented certain difficulties.¹⁰ I first received documents from the Circuit Clerk's Office that consisted primarily of the 2017 unsealing motion and related filings. Thereafter, the Clerk's Office sent me their hard copy files predating 2017, which my office digitized and forwarded to the

⁹ I have not included the attachments to the government's June 9 and 14, 2017 letters (Sealed Docket, 17-mc-1282, Dkt. Nos. 20 and 21), because they are the documents reviewed by the government and Doe, which I have already attached as Exhibit A.

¹⁰ I thank and commend the Clerk's Office staff for their tremendous assistance throughout this process.

government and Doe for their review. The government also reviewed its files and found additional documents. *See* Gov't Letter, dated June 9, 2017, Sealed Docket, 17-mc-1282, Dkt. No. 20 at ECF¹¹ 3 (describing government's process of identifying and collecting documents at issue, which included obtaining documents from four different sources).¹² After comparing the non-public docket, which contains 377 docket entries (excluding entries regarding the 2017 unsealing application), to the public docket, which contains 182 entries (also excluding the 2017 entries), I determined that the non-public entries are primarily administrative entries made by the Circuit's staff and do not reflect filings by the parties. However, the government and Doe provided responses as to only 127 documents, leaving 55 public docket entries unaccounted for. With the assistance of the Clerk's Office, I determined that of these 55 public docket entries, only 9 of those entries represented actual documents, which could not be located. The other 46 entries are administrative entries filed by the Circuit's staff and were not associated with an actual document.

3. Hearings

On June 12, 2017, I provided public notice of my intent to conduct a closed hearing, except as to the government and Doe, regarding the need for continued sealing. (Order dated June 12, 2017, Public Docket, 17-mc-1302.) The notice also provided an opportunity for objections to be raised. *Id.* On June 14, 2017, the Intervenors, the *Amici*, Roe, and others filed objections.¹³ (Public Docket, 17-mc-1302, Dkt. Nos. 5, 7, 8, 9, 10.) Following a public hearing on those

¹¹ "ECF" refers to the pagination generated by the district court's Electronic Court Filing system and not the document's internal pagination.

¹² The Circuit Clerk's Office staff and the government located an additional 12 documents after this letter was filed.

¹³ The objections were initially filed on the Sealed Docket, 17-mc-1282, but were subsequently refiled, with redactions, on the Public Docket, 17-mc-1302.

objections on June 16, 2017, I ordered that the unsealing hearing would be conducted publicly unless and until it became necessary to close the proceeding.

The unsealing hearing took place on June 19, 2017. For the first three hours it was open to the public. Notably, during the public portion of the hearing, the Intervenors put on the record statements from the publicly filed portion of Roe's Supreme Court petition for *certiorari*, setting forth information from Doe's PSR. (See Public Docket, 17-mc-1302, Transcript of Hearing ("Tr."), 06/19/17, attached as Exhibit C, Volume ("Vol.") 1 at 55-58.)¹⁴

After approximately three hours, I made the requisite findings to close the hearing except as to the government, Doe, and, initially, Roe. Roe was permitted to participate in the first fifteen minutes of the closed proceeding, so that I could question him primarily about a sealed letter as to which Roe has asserted the attorney-client privilege.¹⁵ (See Public Docket, 17-mc-1302, Tr. Vol. 2 at 5-6; Dkt. No. 94.) After Roe and his attorney were excused from the courtroom, I conducted an approximately three-and-one-half-hour hearing with the government and Doe to determine the specific reasons for their requests that certain documents and information remain under seal.

4. Written Submissions on Sealing Issue

With respect to written submissions, the Intervenors and *Amici* filed their motions to unseal in this Court, whereas the government and Doe filed their substantive responses in the Sealed Docket, 17-mc-1282. Redacted versions of the government's and Doe's responses were filed on the Public Docket, 17-mc-1302, on June 16, 2017. (See Public Docket, 17-mc-1302, Dkt. Nos. 14

¹⁴ The transcript of the June 19, 2017 hearing is separated into three volumes each with its own pagination.

¹⁵ I also questioned Roe about some other documents he authored to gain clarification about the source of certain factual assertions contained therein. (See Public Docket, 17-mc-1302, Tr. Vol. 2 at 2-5.)

and 15.) In addition, because the Intervenors argued at the June 19, 2017 hearing, for the first time in the current proceedings, that the standard articulated in *United States v. Charmer*, 711 F.2d 1164 (2d Cir. 1983), does not apply to a proceeding such as this one, *i.e.*, a “civil” unsealing motion made by members of the public, as opposed to a litigant, such as Roe (see Public Docket, 17-mc-1302, Tr. Vol. 1 at 67-72), I invited the parties to submit briefing on this issue. Those briefs were filed on the Public Docket, 17-mc-1302, on June 22 and 24, 2017. (Public Docket, 17-mc-1302, Dkt. Nos. 27-30.) Although Roe has not formally moved to unseal the documents in this matter, he nonetheless has filed written submissions regarding the unsealing issue and participated in the proceedings before me, as an “Interested Party.”

III. Discussion

A. The Instant Motions to Unseal

1. Intervenors’ Motion

The Intervenors argue that the public has a First Amendment and common law right of access to appellate proceedings and documents, and that the sealed documents filed in this Court should be unsealed because they are (1) “critical to understanding” the relationship between Doe and our current president, Donald Trump (Intervenors’ Brief, Dkt. No. 379 at 1), and (2) “vital to the public’s ability to understand the proceedings in this Court.” (*Id.* at 17.) The Intervenors further argue that, in the face of the public’s presumptive common law right of access, the government cannot demonstrate a substantial probability that a compelling interest will be harmed by disclosure of these materials. Notably, the Intervenors’ initial moving papers did not acknowledge that the PSR was one of the sealed documents they are seeking to unseal or that a different standard applies to PSRs under *Charmer*. However, as previously noted and as discussed below, the Intervenors argue that *Charmer* is not applicable in this matter and, even if applied, does not bar the disclosure of the PSR in this matter.

2. Amici's Motion

Piggy-backing on the Intervenors' brief, the *Amici* argue more generally that the sealed documents in this matter should be unsealed to "uncover facts regarding the effectiveness and integrity of government and their institutions." (*Amici's Brief*, Dkt. No. 414 at 1.) The *Amici* specifically cite the public's interest in learning more about Doe himself and his connections to President Trump. (*Id.* at 2-6.) At the hearing, the *Amici* focused their argument on the unsealing of the moving parties' briefs in this matter, arguing that these briefs do not contain any non-public information and that their sealing violates the public's First Amendment and common law rights of access. (See Public Docket, 17-mc-1302, Tr. Vol. 1 at 17-18, 82-85.)

3. Government's and Doe's Responses

In recognition of developments relating to this matter that have occurred since 2010—primarily, the wide dissemination of information relating to Doe's criminal case and his cooperation with the government—the government and Doe have taken the position that the vast majority of sealed documents may be fully unsealed, but that several documents should remain under seal in their entirety, including Doe's criminal case materials that are under seal in the SDNY Action, and that a number of other documents should be unsealed with redactions. In support of this continued limited sealing, the government and Doe generally rely upon "five considerations: (1) [REDACTED]; (2) the need to protect the safety of the government's cooperating witnesses and their families; (3) the need to protect the government's ability to continue to attract cooperating witnesses in the future; (4) the need to continue to keep [Doe's] PSR and its contents under seal; and (5) the need to honor sealing decisions by other courts." (Gov't Letter dated June 9, 2017, Sealed Docket, 17-mc-1282, Dkt.

No. 20 at ECF 3.)¹⁶ The government and Doe also set forth in a chart the particularized basis for each document they maintain should be kept under seal or redacted. (*See id.* at ECF 6-13).

B. Legal Standard

Under the common law, the public has 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). Similarly, the First Amendment provides the public with a “qualified . . . right to attend judicial proceedings and to access certain judicial documents.” *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004); *see also Press-Enterprise Co. v. Super. Ct. of Cal.*, 478 U.S. 1, 9 (1986) (“*Press-Enterprise II*”). Both the common law and the First Amendment require courts to first determine whether the presumption of access applies to the documents at issue. The presumption of access attaches only to “judicial documents.” *Lugosch v. Pyramid Co.*, 435 F.3d 110, 119-20 (2d Cir. 2006). “[T]he mere filing of a paper document with the court is insufficient to render that paper a judicial document;” rather, “the item filed must be relevant to the performance of the judicial function and useful in the judicial process in order for it to be designated a judicial document.” *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) (“*Amodeo I*”).

Under the common law, the presumption of access immediately attaches to judicial documents. *See United States v. Gotti*, 322 F. Supp. 2d 230 (E.D.N.Y. 2004). The common law test for determining whether the public is entitled to access judicial documents requires the court to balance the weight of the presumption of access against countervailing interests, such as the

¹⁶ Because Doe “joins in the Government’s position with respect to all of the documents which they identify to remain under seal” (Doe’s Letter dated June 9, 2017, Sealed Docket, 17-mc-1282, Dkt. 19, at ECF 1), with a few exceptions, this Report cites only to the government’s letter brief.

government's interest in confidentiality and privacy. *See Nixon*, 435 U.S. at 597-603; *Lugosch*, 435 F.3d at 119-20. The weight of the common law presumption of access falls on a "continuum" that is determined by "the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts." *United States v. Amodeo* ("*Amodeo II*"), 71 F.3d 1044, 1049 (2d Cir. 1995). Once the presumption of access attaches, however, the presumption applies with greater force under the First Amendment than under the common law. *Newsday LLC v. Cty. of Nassau*, 730 F.3d 156, 163 (2d Cir. 2013).

Although the presumption under the First Amendment carries greater force than under the common law, the presumption under the First Amendment is qualified and only applies to certain judicial documents. The Second Circuit has applied two approaches in determining whether the public's qualified First Amendment right attaches to a particular item. "First, the public has a right to gain access to judicial records (1) that 'have historically been open to the press and general public,' and (2) where 'public access plays a significant positive role in the functioning of the particular process in question.'" *In re New York Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 409 (2d Cir. 2009) (quoting *Hartford Courant Co.*, 380 F.3d at 92); *Press-Enterprise II*, 478 U.S. at 8-9 ("If the particular proceeding in question passes these tests of experience and logic, a qualified First Amendment right of public access attaches."). The second approach considers "the extent to which the judicial documents are 'derived from or are a necessary corollary of the capacity to attend the relevant proceedings.'" *Lugosch*, 435 F.3d at 120.

Where the First Amendment right of access attaches, it may be overcome only if the party opposing access demonstrates that "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise II*, 478 U.S. at 9. A party opposing access must demonstrate that there is a "substantial probability" that disclosure will harm a compelling

governmental interest. *Id.* at 14-15. “[The] district court must make specific, on the record” findings that closure or sealing is warranted. *United States v. Alcantara*, 396 F.3d 189, 199 (2d Cir. 2005) (quotations omitted). Those findings “may be entered under seal, if appropriate.” *United States v. Aref*, 533 F.3d 72, 82 (2d Cir. 2008) (quotation omitted).

The First Amendment right applies to criminal and civil proceedings. *Newsday LLC v. Cty. of Nassau*, 730 F.3d 156, 163 (2d Cir. 2013). It appears, however, that only a few circuits have addressed whether the First Amendment applies to appellate documents. The circuits that have addressed the issue have held that history and logic dictate that the public’s constitutional right of access extends to “judicial documents” generated during the appellate proceedings. See *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1097 (9th Cir. 2014) (holding that public’s right of access extends to appellate dockets and filings therein); *United States v. Moussaoui*, 65 F. App’x 881, 890 (4th Cir. 2003) (“There can be no question that the First Amendment guarantees a right of access by the public to oral arguments in the appellate proceedings of this court.”).

Based on these principles relating to the public’s right of access to the judicial system, I find that the First Amendment right of access applies to appellate proceedings. Appellate records and oral arguments have been historically open to the public, and, logically, public access to appellate proceedings plays a significant role in the functioning of those courts. Public access to appellate proceedings, like public access to trial-level matters, provides assurance to the public that judicial proceedings are conducted fairly to all concerned, discourages litigant misconduct, curbs judicial abuse, and enhances the quality of the proceedings. Thus, the public has both a First Amendment and common law rights of access to the documents deemed to be judicial documents in this matter. However, as the Court has already held in this matter, a different standard applies to the disclosure of PSRs. Under *Charmer*, there is no presumptive right of access to a PSR and a

party seeking its disclosure must make “a compelling demonstration that disclosure of the report is required to meet the ends of justice.” 711 F.2d at 1175; *see Roe II*, 428 F. App’x at 67 (quoting *Charmer*, 711 F.2d at 1175).

C. Findings and Recommendations

Having found that the First Amendment right of access applies to appellate proceedings and based on my consideration of the parties’ written submissions and argument at the hearing, the government’s and Doe’s representations during the closed hearing, the documents at issue, and the relevant law, I find that the majority of the sealed documents in this matter should be unsealed. I also find that the government and Doe have demonstrated that the limited sealing and redaction they seek is “essential to preserve higher values and [are] narrowly tailored to serve that interest.” *Press-Enterprise II*, 478 U.S. at 9. With respect to those documents to which a right of access attaches, I find that the government and Doe have demonstrated a “substantial probability” that disclosure of the documents or portions thereof will harm a compelling governmental interest, namely, protecting the safety of Doe and his family, [REDACTED]

[REDACTED], preventing the unwarranted disclosure of Doe’s PSR, and not hindering the government’s ability to attract cooperating witnesses in the future. *See Press-Enterprise II*, 478 U.S. at 14-15. As to Doe’s criminal case materials, I find that they are not judicial documents as to which a right of access attaches and that they were properly sealed in the SDNY Action. Nothing has changed since the sealing of those documents that justifies their disclosure at this time. Lastly, with respect to Doe’s PSR and information sourced from it, as well as Doe’s financial statement, I find that the moving parties have failed to make a “compelling demonstration that disclosure [of these documents and information] . . . is required to meet the ends of justice.” *Charmer*, 711 F.2d at 1175.

Discussed below and summarized in Exhibit A is a document-by-document unsealing analysis.

1. Documents that Should Be Unsealed in Their Entirety

As reflected in Exhibit A, the government and Doe do not argue for continued sealing as to the vast majority of sealed documents in this matter. The documents that the government and Doe believe may now be unsealed fall into the following categories:

- Documents that are purely administrative in nature. *See, e.g.*, Dkt. No. 180 (Notice of Defective filing); Dkt. No. 250 (Notice of Case Manager Change).
- Documents that appear to have been sealed solely because they reference Doe's and Roe's identities, or attach the docket from Doe's criminal case, all of which have since been unsealed. *See, e.g.*, Dkt. No. 1 (Notice of Appeal by Roe, attaching sealed district court docket in *United States v. Sater*, 98 CR 1101 (ILG) and identifying Respondent by his true name); Dkt. No. 30 (letter from Roe's counsel referring to Roe by his true name); Dkt. No. 41 (Order captioned with Roe's true name); Dkt. No. 73 (Stipulation and Order of Substitution of Attorney for John Doe bearing Doe's true name and signature).
- Documents other than those that are purely administrative in nature that do not reference Doe's criminal case in any way. *See, e.g.*, Dkt. No. 182 (Order directing the parties to confer and submit proposed order); Dkt. No. 189 (Proposed order re Judge Glasser's continued jurisdiction).
- Documents that, while they reference Doe's criminal matter, including his cooperation with the government, only contain information that is now in the public domain, or information, the disclosure of which does not implicate a compelling governmental interest. *See, e.g.*, Dkt. No. 114 (Letter dated 03/03/2011 on behalf of the United States of America re press release discussing Doe's cooperation); Dkt. No. 195 (Order re District Court's continuing jurisdiction to decide issues relating to public disclosure of documents referencing Doe's cooperation).

Almost all of these documents are judicial documents as to which the First Amendment and common law rights of access attach. Because the government has not asserted, nor demonstrated, a compelling interest in non-disclosure, there is no justification for their continued sealing. *See Press-Enterprise II*, 478 U.S. at 9, 14-15 (party opposing access must demonstrate that "closure is essential to preserve higher values and is narrowly tailored to serve that interest"

and there is a “substantial probability” that disclosure will harm a compelling governmental interest); *Lugosch*, 435 F.3d at 119-20 (where common law right of access attaches, court must balance weight of presumption of access against countervailing interests against presumption, such as government’s interest in confidentiality and privacy).

2. Documents that Should Remain Sealed in Their Entirety

a) Doe's Criminal Case Materials

The government and Doe argue for the continued sealing of Doe’s criminal materials that were attached to the SDNY Action, *i.e.*, Doe’s cooperation agreement, financial statement, and PSR, and two proffer agreements between Doe and the government. These materials have been under seal in the SDNY since May 2010. *See Kriss v. Bayrock Group, LLC*, 10-cv-3959, Dkt. Nos. 2, 401, and 406-1, and *compare* with Dkt. 142, JA 496 –JA 551.

I find that continued sealing of these materials is appropriate, with the exception of the first pages of the proffer agreements and the cooperation agreement, as discussed below. As this Court held in April 2017, Doe's criminal materials do not implicate a First Amendment or common law right of access. *Doe v. Roe*, 16-2935-cv, Dkt. No. 137-1 at ECF 3 (2d Cir. April 20, 2017). ■

See United States v. Doe, In the Matter of the Motion to Unseal Docket, 98-cv-1101(ILG), Memorandum and Order, Dkt. 221 at ECF 3. Nor are Doe’s cooperation or proffer agreements relevant to the SDNY Action. *See Amodeo I*, 44 F.3d at 143 (“The mere filing of a paper or document with the court is insufficient to render that paper a judicial document . . .”). The fact of Doe’s cooperation with the government is well-known, and the details of his cooperation agreement and terms of his proffer sessions with the government do not add any new or relevant information. However, the first pages of the cooperation and the proffer

agreements have already been unsealed by Judge Glasser when they were attached to a letter filed by Roe in the Doe's criminal case. (See Dkt. No. 142 at Bates SM0005 (JA 586), SM0006 (JA 587), (JA 589) SM0008.) Therefore, I recommend that the first pages of the cooperation and proffer agreements, which were attached to the SDNY complaint, be unsealed because they are already public, (Dkt. No. 142 at Bates SM0002 (JA 466), SM0004 (JA 468), SM0007 (JA 472)), but that the remainder of the cooperation and proffer agreements remain under seal. Even if a right of access existed as to these documents, to the extent the moving parties argue that these agreements should be unsealed because they are relevant to the unsealing proceedings before this Court, there is a fatal circularity to their argument: if accepted, it would mean that all one would need to do to unseal a document is to move for its unsealing and then claim that the document is a judicial document to which a presumptive right of access attaches because it is relevant to that unsealing proceeding. Surely a document has to be relevant to a proceeding other than one over its own unsealing in order to qualify as a judicial document to which a presumptive right of access attaches. In addition, Doe's cooperation and proffer agreements are not relevant to the public's need to know more about the relationship between Doe and President Trump.

Doe's PSR, as this Court has found and as discussed further below, is also not subject to a right of access, and its disclosure is governed by a heightened standard that requires the moving party to make a compelling showing that disclosure is necessary to meet the ends of justice. Doe's financial statement, because it is a required part of the PSR process, deserves the same degree of protection as the PSR. To permit third parties to obtain and disclose a defendant's financial statement, which contains highly sensitive and personal information, without an "ends of justice" showing would undermine the PSR preparation process, which requires confidentiality to ensure complete and accurate responses by defendants.

b) Government's Motion for Amended Summary Order

The government and Doe also maintain that two other documents—Dkt. Nos. 309 and 330—should remain under seal in their entirety. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 [REDACTED]

18

¹⁸ Also of note is that during the June 19, 2017 closed hearing, the government declined to discuss in greater detail the justification for the continued sealing of Dkt. Nos. 309 and 330, in the presence of Doe's attorney, opting instead to explain further in a sealed and *ex parte* written submission. (See Public Docket, 17-mc-1302, Tr. Vol. 3 at 86-87; Gov't Letter dated June 27, 2017, Sealed Docket, 17-mc-1282, Dkt. No. 29.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Balancing the interests of the government and Doe, on the one hand, against the moving parties' and the public's presumptive right of access, on the other, I find that the sealing of Dkt. Nos. 309 and 330 in their entirety is appropriate. *See Lugosch*, 435 F.3d at 119-20 (where judicial documents involved, court must "balance the presumption of access against countervailing factors"). As discussed, the government and Doe have articulated compelling reasons for the non-disclosure of information [REDACTED]

[REDACTED]

[REDACTED] Indeed, at the June 29, 2017 hearing, Roe's attorney, knowing only that the government filed sealed motions in the summer of 2011, engaged in incendiary speculation about the reasons behind the motions:

This makes this [] incredibly, incredibly of interest to the public how the Government could in secret move to change an order so that the Judge Glasser would not take up the unsealing, which the Second Circuit had ordered him to take up, and which the Government had asked him to take up. So there is -- we submit that there is an issue of overriding misconduct. We submit it's prosecutorial misconduct. And regrettably, it may be judicial misconduct, because that submission should have been made known to the public that the Government was moving in secret to try to undo what the Second Circuit had ordered in public.

(Public Docket, 17-mc-1302, Tr. Vol. 1 at 22.) Unsealing any portion of the motions would only fuel more improper and potentially dangerous speculation by Roe and others.

[REDACTED]

[REDACTED]

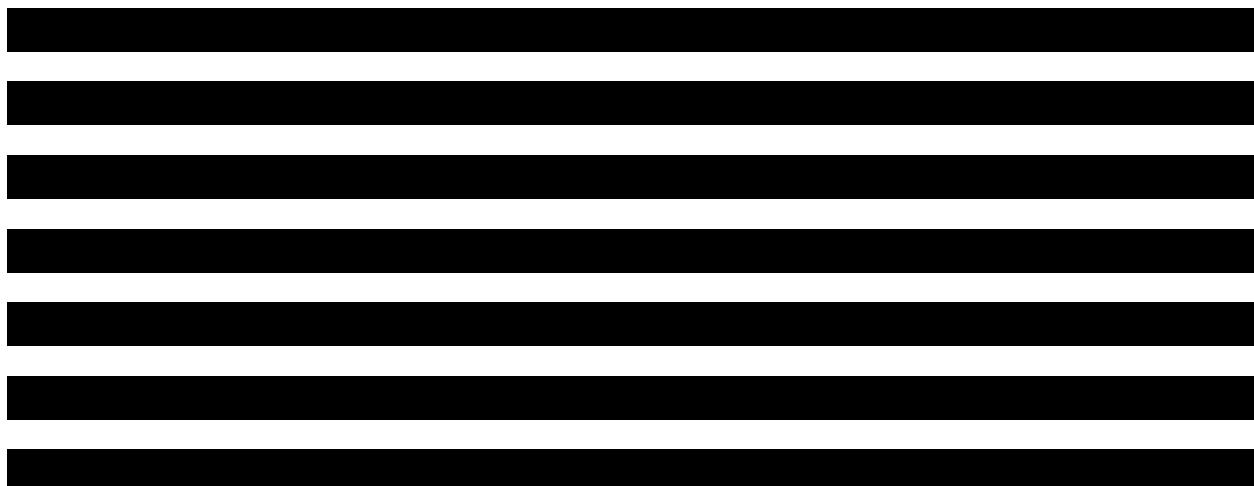
[REDACTED]

3. Documents that should be Unsealed Subject to Redactions

The government and Doe are seeking the unsealing of certain documents with redactions. The specific bases for these redactions, as identified by the government and Doe, are set forth in Exhibit A and are discussed below.¹⁹ Because of the volume of material at issue and the repetitive nature of the documents, I will address the documents in groups according to the interest served by the redactions.

a) Protecting the Safety of Doe and his Family

As the moving parties explain in their unsealing submissions, and as the government and Doe acknowledge, due to the ever-expanding scope of disclosures that have occurred relating to Doe's cooperation, including public disclosures by Doe himself, both the fact and general nature of Doe's cooperation is now well known. (See, e.g., Gov't Letter dated June 9, 2017, Sealed Docket, 17-mc-1282, Dkt. No. 20 at ECF 3-4; Intervenors' Brief, Dkt. No. 379 at 16, Exhibit N (discussing Doe's assistance in investigation members of organized crime, such as La Cosa Nostra ("LCN") and referencing Doe's interviews with the media); *Amici's* Brief, Dkt. No. 414 at 4-6.)



¹⁹ The government and Doe agreed to narrow some of the proposed redactions during the June 19, 2017 hearing and in their supplemental submissions filed thereafter. (See Public Docket, 17-mc-1302, Tr. Vol. 3; Sealed Docket, 17-mc-1282, Dkt. Nos. 22, 23, 24, 25, and 27.)

[REDACTED]

[REDACTED] .20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] .21

20 [REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

Below is a representative sample of the redactions that I propose on the basis of Doe's safety:

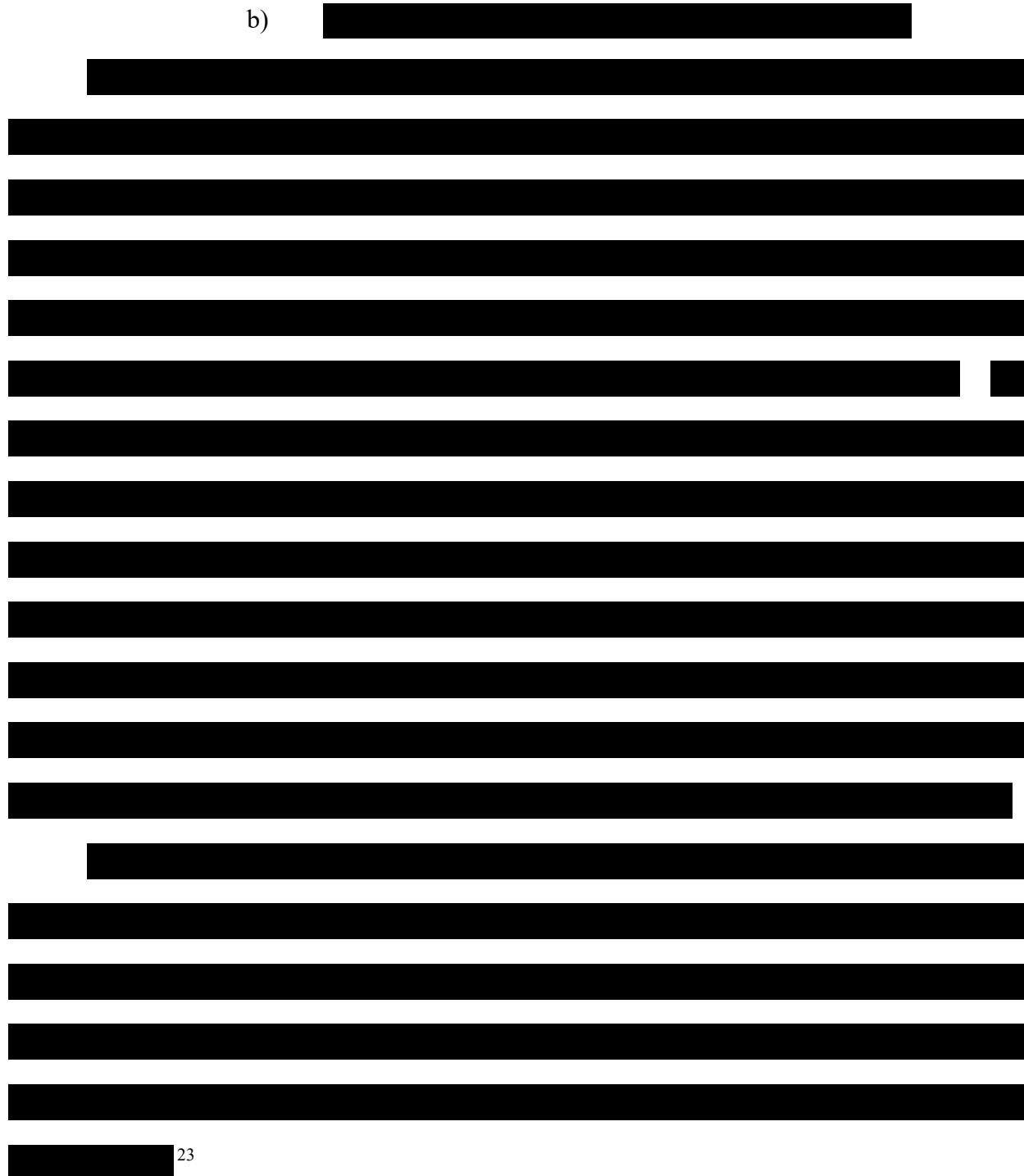
10-2905	Redacted Pages	Redacted Text
Dkt. No.		
Dkt. No. 32	Bates SM0004-	
	SM0005	
		22
Dkt. No. 55	Bates SM0011	
	Bates SM0023	
Dkt. No. 140	Bates SM0013,	
	n.6	

Based on the reasons articulated by the government and Doe, I find that the continued sealing of the proposed redacted information is warranted to protect the safety of Doe and his family, and that the proposed redactions are narrowly tailored.

²² Certain non-substantive redactions are intended to conform the document to the substantive redactions made elsewhere in the document. [REDACTED]

b)

b)



23

I find that this proposed redaction is justified [REDACTED]

[REDACTED]

[REDACTED] and is narrowly tailored to achieve that purpose.

c) Preventing Disclosure of Doe's PSR and Information Sourced from It

As reflected in Exhibit A, there are numerous documents as to which the government and Doe request redactions on the basis that the information came from, or reveal the contents of, Doe's 2004 PSR. As discussed above, both Judges Glasser and Cogan have ruled multiple times that Doe's 2004 PSR and all information obtained from it should not be disclosed—decisions that have all been affirmed by this Court. See *Roe II*, 428 F. App'x at 64, 66-67; *In re Application to Unseal 98 CR 1101 (ILG)*, *United States v. John Doe*, 98 11-cr-1101, 13-2373, Dkt. 161-1 at 3 (2d Cir. June 5, 2017); *In re Doe v. Lerner*, 16-2935, Dkt. No. 137-1 at 3 (2d Cir. April 20, 2017); *see also Roe II*, 428 F. App'x at 64-65 (noting Judges Glasser's and Cogan's separate orders directing Roe and his associates to return to EDNY, or destroy, all copies of PSR in their possession).

[REDACTED]

[REDACTED]

[REDACTED] *Charmer*, 711 F2d. at 1175; Memorandum Decision and Order, *In re Motion for Civil Contempt*, 12-mc-557 (BMC), Dkt. 199 at ECF 8-9 (E.D.N.Y. June 21, 2016); *United States v. Doe, In the Matter of the Motion to Unseal Docket*, 98-cv-1101(ILG), Memorandum and Order, Dkt. 221 at ECF 3-4 (E.D.N.Y. March 13, 2013). In affirming Judge Cogan's June 21, 2016 decision approving the continued sealing of the PSR and all information obtained from it, this Court concluded that “neither the First Amendment nor the common law right of access [was] implicated . . . [because] none of the sealed documents were necessary to understand the merits of the civil contempt proceeding [before Judge Cogan] and there is a strong

interest in secrecy because both John Doe’s safety as a cooperator and the Government’s interest in protecting the identity of cooperators are implicated.” *Doe v. Lerner*, 16-2935, Dkt. No. 137-1 at 3 (2d Cir. April 20, 2017).

Notwithstanding these prior rulings, Intervenors argue that *Charmer* does not apply here because: (1) *Charmer* only stands for the proposition that a PSR is not a judicial document in an “ordinary criminal case,” and that because this is a civil unsealing matter, the applicable access standard is the one from *Press-Enterprise II* and the Circuit’s post-*Charmer* cases, such as *Lugosch* and *Hartford Courant Co.* (Public Docket, 17-mc-1302, Dkt. No. 27 at ECF 9-11); (2) *Charmer* is wrong insofar as it held that a PSR is not a judicial document (*id.* at ECF 11, n. 8); and (3) even if Doe’s PSR was not a judicial document when it was created as part of the criminal proceeding, “it became [one] when it was made part of the record in Doe’s subsequent litigation to prevent its further dissemination” (*id.* at ECF 12). These arguments are unpersuasive.

First, the Intervenors provide no support for their argument that *Charmer* only applies to the disclosure of PSRs in the “ordinary criminal case.” Indeed, in making this argument, the Intervenors fail to acknowledge or address this Court’s and the district courts’ consistent application of *Charmer* in this matter. Furthermore, the sentence in *Charmer* upon which the Intervenors appear to base their argument says nothing of the sort: “This appeal presents questions as to whether and under what circumstances a presentence report prepared by the United States Probation Service . . . for use of the district court in sentencing a defendant in a criminal case may be disclosed to persons other than the defendant, his attorney, or the prosecuting attorney.” *Charmer*, 711 F.2d at 1167; Intervenors’ submission, Public Docket, 17-mc-1302, Dkt. 27 at ECF 10 (citing *Charmer*, 711 F.2d at 1167). The context of *Charmer* itself makes clear that the decision applies to the disclosure of the PSR to third persons outside the “ordinary criminal case.” In

Charmer, the PSR was disclosed to a state attorney general, who sought to use it in a separate antitrust action. It was in this context—not dissimilar to this matter²⁴—that the Circuit announced the rule that a “district court should not authorize disclosure of a presentence report to a third person in the absence of a compelling demonstration that disclosure of the report is required to meet the ends of justice.” *Charmer*, 711 F.2d at 1175.

The Intervenors’ interpretation of *Charmer* runs contrary to the purpose of the standard established in that case, which is to protect against the unwarranted or reckless disclosure of the highly sensitive information contained in a PSR, which is frequently given in confidence and is often unchallenged, unverified, or incomplete. *Id.* at 1171. The disclosure of this sensitive and potentially inaccurate information could cause untold harm, both physical and otherwise, to individuals who provide information included in the PSR, as well as those who are the subjects of it. *Id.* at 1175 (recognizing potentially severe consequences that could result from disclosure of information in PSR). Here, there is an additional concern about harm to the Probation Officer who prepared the PSR and at whom Roe levels seemingly unfounded accusations about the officer’s conduct. (See Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 7, 26, 27.) Indeed, as this panel has already found, “[b]ecause proof of Doe’s conviction (as opposed to his cooperation) remains available from other public documents—including a press release by the United States Attorney’s Office for the Eastern District of New York—and because the PSR is an incomplete and ultimately inadmissible document to which neither Doe nor the government will ever have the opportunity to

²⁴ Roe suggests that the *Charmer* panel may have been operating under the misconception that a government official, such as a state attorney general, does not have First Amendment or common law rights of access, like private citizens do, and thus *Charmer* is distinguishable from this case. Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 11. Roe, however, offers absolutely no support for this theory.

object, . . . the PSR is of dubious utility in the civil case except as a tool to intimidate and harass Doe by subjecting him to danger.” *Roe II*, 428 F. App’x at 67 (emphasis added) (citation omitted).

Second, the Intervenors incorrectly argue that *Charmer* ruled that a PSR is not a judicial document. In fact, the panel in *Charmer* did not apply a First Amendment analysis or reach such a conclusion. Rather, the panel’s conclusion that a heightened standard should be applied to the disclosure of PSRs was based on the unique nature and history of PSRs. *Charmer*, 711 F.2d at 1172-75. In any event, regardless of whether the panel in *Charmer* expressly found that PSRs are not judicial documents, in affirming Judge Cogan’s decision not to disclose the PSR, this Court found that “neither the First Amendment nor the common law right of access is implicated here.” Summary Order, *Doe v. Lerner*, No. 16-2935, Dkt. No. 137-1 at 2 (2d Cir. April 20, 2017); *see also United States v. Alcantara*, 396 F.3d 189, 197 n.6 (2d Cir. 2005) (“Courts have generally held . . . that there is no First Amendment right of access to pre-sentence reports.”)

Third, the argument that even if Doe’s PSR did not start off as a judicial document when it was prepared as part of the criminal case, it became one when it became the subject of the unsealing action, is precisely the “bootstrapping” approach that Judge Cogan rejected earlier in these proceedings. *See Memorandum Decision and Order, In re Motion for Civil Contempt*, 12-mc-557 (BMC), Dkt. 199, at ECF 3-4 (E.D.N.Y. June 21, 2016) (explaining that a sealed docket for the unsealing motions was created to prevent Roe from “bootstrapping himself into the position that the injunctions sought to prohibit,” as he had done in the SDNY Action). In effect, the Intervenors’ argument is that Roe’s act of disclosing Doe’s PSR in the civil action, which set off these protracted unsealing and contempt proceedings, somehow transformed the PSR into a judicial document as to which the public now has a First Amendment right of access. In other words, Roe, by improperly disclosing the PSR at a time when he did not have a First Amendment right to the PSR,

created such a right. The danger inherent in this argument is obvious: it would allow a third party who is not involved in a criminal case in any way to create a presumption of access to a defendant's PSR simply by moving to unseal the PSR in a separate civil action. Sanctioning such a practice would plainly undermine the protections historically afforded to PSRs, *see Charmer*, 711 F.3d at 1169-76, and would promote and reward potentially unlawful conduct.

The moving parties and Roe also argue that, even if *Charmer* applies, disclosure of the PSR is "required to meet the ends of justice." This Court has repeatedly rejected this argument. Nothing has changed since the Court's May 2017 decision affirming Judge Cogan's refusal to unseal the PSR that justifies a different result.

The new "ends of justice" bases relied upon by the Intervenors are that the PSR is (1) "critical to [the public's] understanding" the connection between Doe and President Trump (Intervenors' Brief, Dkt. No. 379 at 1), and (2) "vital to the public's ability to understanding the proceedings in this Court." (*Id.* at 17.) These new bases do not amount to a "compelling demonstration that disclosure of the [PSR] is required to meet the ends of justice." *Charmer*, 711 F.2d at 1175.

With regard to the public's need to understand the connection between Doe and President Trump, the moving parties offer no basis for believing that the PSR contains any such information. Indeed, at the June 19, 2017 hearing, Intervenors' counsel could only argue that the PSR "contains information of the highest public significance *potentially*." (Public Docket, 17-mc-1302, Tr. Vol. 1 at 70 (emphasis added).) The moving parties' belief that the PSR "potentially" contains "information of the highest public significance" plainly does not meet the standard under *Charmer* of demonstrating that disclosure of the PSR is "required to meet the ends of justice." Mere speculation that a document might contain information of public significance is not enough to meet

this demanding standard. Allowing third parties to access a defendant's PSR based on the mere hope that it might contain information of interest to the public would render the confidentiality and protections afforded to PSRs a nullity.²⁵

Furthermore, even if the PSR contained such information, disclosure still would not likely be justified. As a general matter, the "ends of justice" would not be served by releasing information that is of questionable completeness and reliability, especially where disclosure could result in harm not only to the defendant, but to anyone who provided information included in the PSR. Nor would the "ends of justice" be served by breaching the confidentiality that is necessary to facilitate candor, honesty, and completeness by defendants and others who provide information for the PSR.

With regard to the Intervenors' argument that disclosure of the sealed documents in this matter is "vital to the public's ability to understanding *the proceedings* in this Court[]'" (Intervenors' Brief, Dkt. No. 379 at 17 (emphasis added)), as previously discussed, a party cannot cause the propriety of a PSR disclosure to become the subject of a court proceeding—whether through an unsealing proceeding or the improper disclosure of the PSR—and then argue that the PSR must be disclosed because it is the subject of that court proceeding. Thus, given the particular nature of the proceedings before this Court, disclosing the PSR to facilitate the public's understanding of them would not "meet the ends of justice."

25 [REDACTED]

Roe argues that the Supreme Court has made a determination that full disclosure of the PSR is in the “public interest,” *i.e.*, “meets the ends of justice,” as demonstrated by the Court allowing Roe to file a partially redacted petition for *certiorari* that disclosed information from the PSR. (Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 7-9, 16) (arguing that this Court is bound by the Supreme Court’s “law of the case” determination).) This argument is patently meritless. Clearly, the Supreme Court does not make legal findings via its redaction procedures, as administered by its Clerk’s Office staff. And there simply is nothing in the record to even suggest that the Supreme Court made a finding that Doe’s disclosure of Doe’s PSR information—in knowing contravention of this Court’s February 2010 order that any petition to the Supreme Court be filed under seal (*see id.* at 9)—was in the public interest. Indeed, the Supreme Court’s denial of Roe’s petition for *certiorari* and his petition for reconsideration would suggest otherwise.²⁶

Of more merit, however, is the moving parties’ argument that Roe’s public filing of information from Doe’s PSR as part of his petition for *certiorari* justifies the full disclosure of the PSR since the information is already in the public domain. (Intervenors’ Brief, Dkt. No. 379 at 15; Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 25 (citing *Gambale v. Deutsche Bank A.G.*, 377 F.3d 133 (2d Cir. 2004) (court lacks authority to keep sealed what is public).) While it is undisputed that information from, or describing the contents of, Doe’s PSR was publicly filed as part of Roe’s Joint Appendix in the Supreme Court, this disclosure does not justify further disclosure of the PSR.

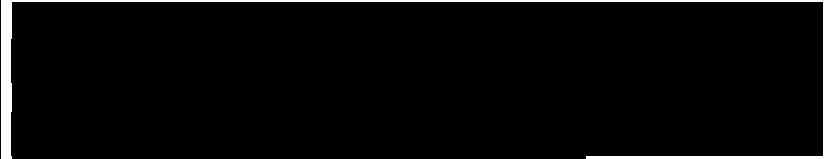
²⁶ Roe also rehashes the same argument he has been making since 2010 about disclosure of the PSR being necessary to shed light on Doe’s purported lies about his ability to pay restitution to the victims of his crimes and the government’s alleged complicity with respect to Doe’s conduct, as well its failure to protect victims’ rights. (Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 7-8, 13.) The Court, however, need not reconsider this argument, which it rejected in its April 20, 2017 Order. *See Doe v. Lerner*, 16-2935, Dkt. No. 137-1 at 2-3 (2d Cir. April 20, 2017).

First, the disclosure of the information by Roe in his petition for *certiorari*, in itself, does not demonstrate that the disclosure meets the ends of justice. Indeed, for the reasons discussed above, I do not think that releasing any of Doe's PSR information in the SDNY Action meets this test.

Second, while it is unfortunate that the sealed information from Doe's PSR was publicly filed on the Supreme Court's docket,²⁷ there is a difference between Roe's allegations about what is in the PSR and confirming those allegations by releasing the PSR. Roe's allegations about what is in the PSR does not justify the disclosure of the entire PSR. Even assuming Roe released actual information from the PSR, the "cat-out-of-the-bag" rationale does not favor disclosure in the same way when the basis for sealing is the sanctity of the PSR as opposed to the defendant's safety or the integrity of the government's investigation. Even if information from the PSR is disclosed, the principle that a PSR should only be disclosed to meet the ends of justice remains intact, and dictates that no additional disclosures be made unless they satisfy this test. Furthermore, permitting disclosure of the PSR under these circumstances would reward Roe and his attorney's improper conduct with respect to the PSR in this matter and potentially incentivize them and others to engage in similar conduct in the future. Accordingly, I do not find that Roe's purported disclosure of information from Doe's PSR on the Supreme Court's docket justifies the additional or full disclosure of the PSR.

²⁷ Roe used the same tactic here to disclose information from Doe's PSR in the public record, when he gratuitously inserted information from the PSR into his submission on the *legal* question of whether *Charmer* applies to this matter, which necessitated the sealing of that submission. (See Public Docket, 17-mc-1302, Dkt. No. 28 at ECF 7.)

Below is a representative sample of the redactions that I propose on the basis of the PSR:

10-2905 Dkt. No.	Redacted Pages	Redacted Text
Dkt. No. 66 ²⁸	Bates SM0016	
	Bates SM0034	
Dkt. No. 140	Bates SM0012	
	Bates SM0013	

²⁸ The same redactions have been made to Dkt. No. 85, which is Roe's Supreme Court petition for *certiorari*. The petition was filed in this case with redactions that cannot be undone in Dkt. No. 85. The redactions indicated above, however, are in addition to the petition's original redactions.

	Bates SM0049	[REDACTED] 29 [REDACTED] [REDACTED] 30
	Bates SM0062	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
		29 [REDACTED] [REDACTED] [REDACTED]
		30 [REDACTED] [REDACTED]

		[REDACTED]
		[REDACTED]
		[REDACTED]
Dkt. No. 142	(JA-496 to JA 551)	[Entire PSR]
Dkt. No. 142	(JA-584) Bates SM0003	[REDACTED]
Dkt. No. 143	(JA-668) Bates SM0017	[REDACTED]

	(JA-669) Bates SM0018	
Dkt. No. 179	Bates SM0028	
	Bates SM0029	
Dkt. No. 266	Bates SM0017	
Dkt. No. 306	Bates SM0012	
Dkt. No. 314	Bates SM0007	

Dkt. No. 337	Bates SM0007	
Dkt. No. 347	Bates SM0022	

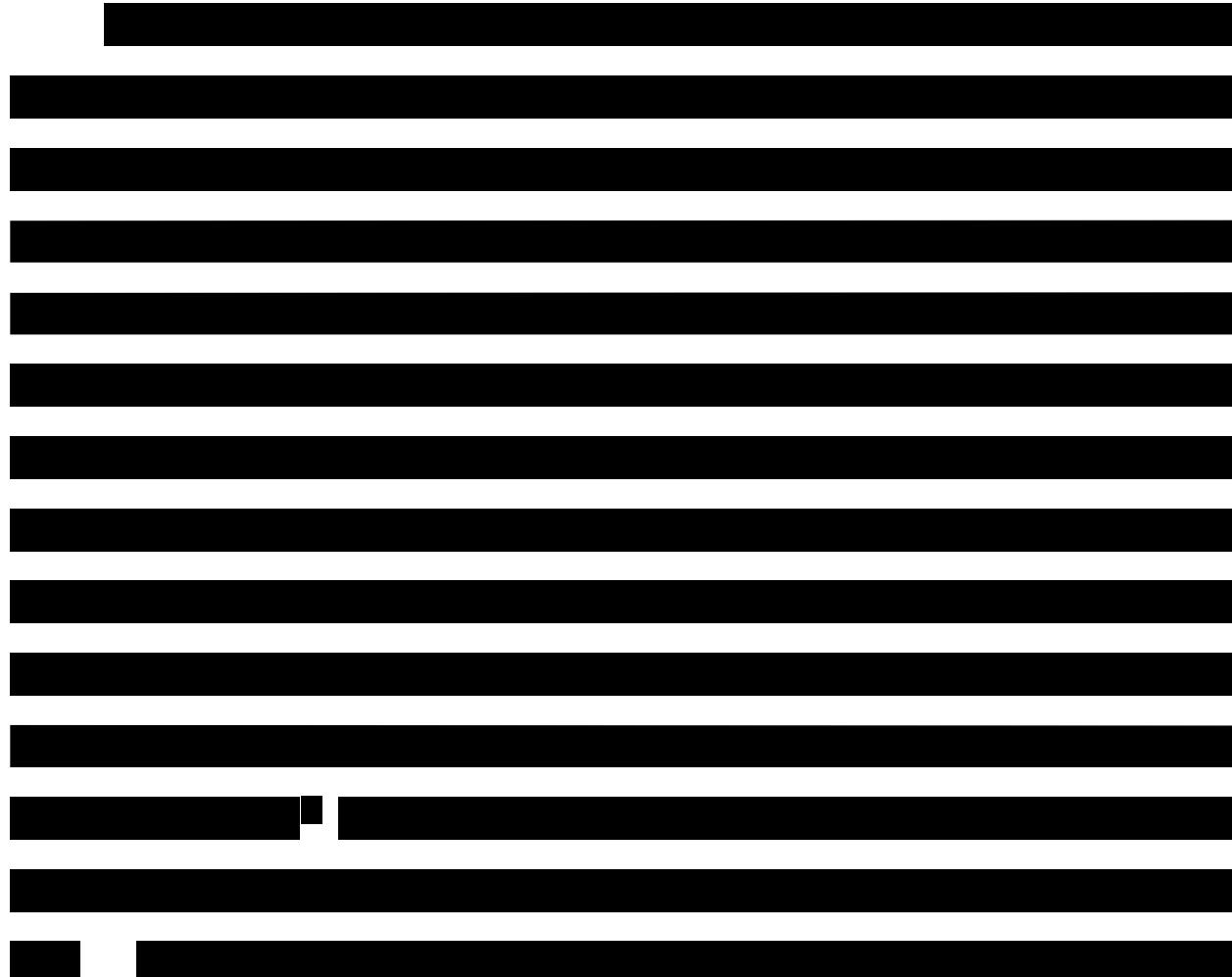
Lastly, there is one document, Dkt. No. 94, which Roe seeks to unseal with redactions. Roe originally filed the document under seal on the basis of attorney-client and work product privileges. However, as part of the hearing process, he has agreed to the unsealing of the document with redactions. [REDACTED]

[REDACTED] I have reviewed the proposed redactions and find that they are appropriate based on Roe's asserted attorney-client and work product privileges.

d) Prior and Existing Court Orders

Although certain documents have been redacted pursuant to prior orders by this Court and the EDNY and SDNY district courts, I believe that the continued sealing of these documents should not be justified solely on the basis of these prior orders because this Court has the authority to (1) revisit and/or rescind its own prior orders based on changed circumstances, and (2) make rulings about unsealing that are different than, or contrary to, those made by district judges in the EDNY and SDNY. To the extent that the government and Doe initially relied on prior court orders as the sole justification for continued sealing, I asked them to provide other bases, if they exist, to

continue the sealing of these documents. Where the government did so, and I agreed with that reasoning, I included them in the prior categories of documents to be sealed or redacted. Where the government and Doe offered no additional basis for sealing, I reviewed the documents independently to determine if the redactions should remain.



10-2905 Dkt. No.	Redacted Pages	Un-Redacted Text
Dkt. No. 143	(JA 634) Bates SM0010	[REDACTED]
	(JA 734) Bates SM0001	[REDACTED]

4. Missing Documents

As discussed above, there appears to be 9 documents from the Court's docket that could not be located. I cannot take a position on the unsealing of the missing documents, but, as a practical matter, they cannot be unsealed because currently there are no documents to unseal.

IV. Conclusion

For the reasons stated above, I recommend that the panel grant, in part, and deny, in part, Intervenor's and *Amici's* motions to unseal.

/s/ Pamela K. Chen
Pamela K. Chen
United States District Judge

Dated: July 5, 2017
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN NY 11201

CHAMBERS OF
HONORABLE PAMELA K. CHEN
DISTRICT JUDGE

July 12, 2017

Hon. Jose A. Cabranes
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, New York 10007

Filed Under Seal

Re: *Roe, et al. v. United States, et al.*, No. 10-2905 and
Roe, v. United States, et al., No. 11-479

Dear Judge Cabranes:

I respectfully provide this Addendum to the Special Master Report that was submitted to the panel on July 5, 2017 (the “Report”). The purposes of this Addendum are to: (1) advise the panel of two filed documents that were identified after the Report was submitted; (2) correct the labels for two documents submitted with the Report; and (3) address the Intervenors’¹ and *Amici*’s requests to unseal the 2017 filings in this Court related to their actual unsealing motions (“2017 filings in No. 10-2905”), as well as related filings made by the parties in district court as part of the Special Master proceedings before me.

1. Newly Identified Documents

On the afternoon of July 5, 2017, after the Report and related exhibits had been submitted to the panel, I was advised by the Circuit Clerk’s Office staff that they had identified two additional documents filed in this matter, Dkt. Nos. 251 and 252 (attached hereto as Exhibit 1), which were previously believed to be missing. *See* Report at 38. The government believes that Dkt. Nos. 251 and 252, which are notices of appearances filed by its attorneys, may be unsealed. *See* Gov’t Letter, dated June 27, 2017, Sealed Docket, 17-mc-1282, Dkt. No. 27 at ECF 2. Accordingly, I find that, although Dkt. Nos. 251 and 252 are not judicial documents, based on their nature and contents, as well as the government’s position regarding unsealing, they should be unsealed.

2. Mislabeled Documents

Also on the afternoon of July 5, 2017, the Circuit Clerk’s Office staff informed me that Dkt. No. 233 was mislabeled as Dkt. 234. Dkt. No. 234 is a staff note indicating that Dkt. No. 233, a letter from Appellants Jane Doe and John Doe 2 dated May 6, 2011, was transmitted to the Circuit’s calendar team staff. As such, Dkt. No. 234 does not represent an actual document and should not have been included in Exhibit A to the Report. Dkt. No. 233, however, should not have

¹ I use the same defined terms in this Addendum as in the Report.

been noted in the Report as missing. Instead, Exhibit A should have indicated that: (1) the government and Doe take the position that Dkt. No. 233, *i.e.*, the letter from Appellants Jane Doe and John Doe 2, may be unsealed; (2) I find that Dkt. No. 233 is not a judicial document; and (3) I recommend that Dkt. No. 233 be unsealed.

In addition, a digital file included on the disc attached to the Report as Exhibit B was misnamed. The files on the disc containing proposed redactions are denominated with the letter "R" along with the document number. The file named "142 (JA 131-146)" should have included the letter "R" to indicate that the document contains a proposed redaction.

3. Unsealing the 2017 Filings in No. 10-2905 and the Special Master Proceedings

In the Report, I inadvertently did not address the Intervenors' and the *Amici*'s requests to unseal their 2017 Filings in No. 10-2905 and their filings in the Special Master proceedings before me. The government and Doe have not argued for the continued sealing of the 2017 Filings in No. 10-2905, and the government, in fact, has taken the position that the *Amici*'s brief can be unsealed "as it contains publicly available facts and legal argument." (Dkt. No. 423 at 3.) Based on my review of the 2017 Filings in No. 10-2905 (Dkt. Nos. 378–453), I recommend that these filings be unsealed because they contain only publicly available information, legal argument, and other information that does not implicate compelling interests that justify their continued sealing.

With regard to the parties' district court submissions in the Special Master proceedings before me, I respectfully request that I be granted the authority to decide whether to unseal these documents (attached to the Report as Exhibit D), which have been filed in the Sealed Docket, 17-mc-1282 (E.D.N.Y.) and the Public Docket, 17-mc-1302 (E.D.N.Y.), after the panel renders its decision on the Intervenors' and the *Amici*'s motions to unseal the 10-2905 and 11-479 dockets.

Respectfully submitted,



Pamela K. Chen
United States District Judge
Eastern District of New York

cc: Hon. Rosemary S. Pooler
Hon. Denny Chin
Catherine O'Hagan Wolfe, Clerk of the Court

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
1	SEALED NOTICE OF CRIMINAL APPEAL, with district court docket, on behalf of Appellant Richard Roe, FILED. [73092] [10-2905]--[Edited 02/03/2011 by RD]--[Edited 02/04/2011 by TS] [Entered: 07/21/2010 09:57 AM]	Yes	Unseal	Unseal	Unopposed
2	PAYMENT OF DOCKETING FEE, on behalf of Appellant Richard Roe, district court receipt # 4653017263, FILED.[73103] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 07/21/2010 10:07 AM]	No	Unseal	Unseal	Unopposed
4	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee USA United States of America, FILED. Service date 07/21/2010 by CM/ECF. [73208] [10-2905] [Entered: 07/21/2010 11:07 AM]	No	Unseal	Unseal	Unopposed
5	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee USA United States of America, FILED. Service date 07/21/2010 by CM/ECF.[73211] [10-2905] [Entered: 07/21/2010 11:08 AM]	No	Unseal	Unseal	Unopposed
7	NOTICE OF APPEARANCE AS SUBSTITUTE COUNSEL, on behalf of Appellee USA United States of America, FILED. Service date 07/22/2010 by CM/ECF. [74286] [10-2905] [Entered: 07/22/2010 03:29 PM]	No	Unseal	Unseal	Unopposed
9	ORDER, dismissing appeal by 11/23/2010, unless Appellant Richard Roe submits Form B, FILED.[142905] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 11/09/2010 12:32 PM]	Yes	Unseal	Unseal	Unopposed
10	FORM B, on behalf of Appellant Richard Roe, FILED. Service date 11/10/2010 by US mail.[146541] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 11/15/2010 03:31 PM]	No	Unseal	Unseal	Unopposed
11	DEFECTIVE DOCUMENT, Form B, [10], on behalf of Appellant Richard Roe, FILED.[146563] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 11/15/2010 03:41 PM]	No	Unseal	Unseal	Unopposed
19	NEW CASE MANAGER, Toneta Sula, ASSIGNED.[150948] [10-2905] [Entered: 11/22/2010 10:05 AM]	No	Unseal	Unseal	Unopposed
21	INDEX/ROA NOTICE, to Appellant Richard Roe, past due material(s) to be submitted by 01/24/2011, SENT.[186694] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 01/14/2011 10:55 AM]	No	Unseal	Unseal	Unopposed
26	Order pursuant to Local Rule 31.2 re the filing of appellants brief	Yes	Unseal	Unseal	Unopposed

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
27	ORDER, setting Appellant's brief due date as 02/28/2011, for Appellant Richard Roe's failure to submit a scheduling notification, FILED.[189510] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 01/19/2011 03:06 PM]	Yes	Unseal	Unseal	Unopposed
30	LETTER, dated 01/24/2011, on behalf of Appellant Richard Roe, RECEIVED. Service date 01/24/2011 by CM/ECF.[193353] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 01/24/2011 04:54 PM]	No	Unseal	Unseal	Unopposed
32	SEALED MOTION, for a temporary stay of unsealing of docket, on behalf of Appellee United States of America, FILED. Service date 01/26/2011 by hand delivery.[195486] [10-2905] [Entered: 01/26/2011 04:27 PM]	No	Redact - [REDACTED] [REDACTED]	Redact: SM0004- SM0005 [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
36	OPPOSITION TO MOTION to seal document [32], on behalf of Appellant Richard Roe, FILED. Service date 01/28/2011 by email, CM/ECF. [196698][36] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 01/28/2011 04:02 PM]	Yes	Redact - [REDACTED]	Redact: SM0002	[REDACTED]
41	MOTION ORDER, granting a temporary stay of unsealing of docket and referring the motion to seal to a motions panel, filed by Appellee United States of America, [32], by DAL, FILED. [196817][41] [10-2905] [Entered: 01/28/2011 05:05 PM]	Yes	Unseal	Unseal	Unopposed
45	OPPOSITION TO MOTION to seal document [32], on behalf of Appellant Richard Roe, FILED. Service date 01/31/2011 by CM/ECF. [198166][45] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 01/31/2011 08:59 PM]	Yes	Redact - [REDACTED]	Redact: SM0002	[REDACTED]
50	LETTER, dated 02/01/2011, on behalf of Appellant Richard Roe, RECEIVED. Service date 02/01/2011 by email, CM/ECF.[198903] [10-2905]--[Edited 02/04/2011 by TS] [Entered: 02/01/2011 02:30 PM]	No	Unseal	Unseal	Unopposed
52	ARGUMENT/SUBMITTED NOTICE, to attorneys/parties, TRANSMITTED.[199120] [10-2905] [Entered: 02/01/2011 03:41 PM]	No	Unseal	Unseal	Unopposed
53	SEALED LETTER, requesting that the motion to seal be placed on the calendar for oral argument, RECEIVED.[200410] [10-2905] [Entered: 02/03/2011 09:52 AM]	No	Unseal	Unseal	Unopposed
55	SEALED MOTION, to file supplemental memorandum of law, on behalf of Appellee United States of America, FILED. Service date 02/03/2011 by hand delivery.[200440] [10-2905] [Entered: 02/03/2011 10:01 AM]	Yes	Redact - [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Redact: SM0010, SM0011, SM0023 [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
61	MOTION ORDER, Appellee's request for oral argument is GRANTED. Appellee's motion for leave to file supplemental memorandum of Law is GRANTED. The memorandum of Law is due February 10, 2011 , [32], [55], FILED. [202487][61] [10-2905] [Entered: 02/04/2011 03:33 PM]	Yes	Unseal	Unseal	Unopposed
63	ARGUMENT/SUBMITTED NOTICE, to attorneys/parties, TRANSMITTED.[202976] [10-2905] [Entered: 02/07/2011 10:12 AM]	No	Unseal	Unseal	Unopposed
64	SEALED SUPPLEMENTARY MEMORANDUM OF LAW TO MOTION [32], on behalf of Appellee United States of America, FILED. Service date 02/07/2011 by hand delivery.[203584][64] [10-2905] [Entered: 02/07/2011 02:58 PM]	Yes	Redact - [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Redact: SM0005-SM0006, SM0019	[REDACTED] [REDACTED] [REDACTED]
66	MOTION, to vacate order closing courtroom during oral argument, grant leave for Appellant to submit opposition to the new arguments raised in the government's supplemental brief, enlarge time to perfect appeal, on behalf of Appellant Richard Roe, FILED. Service date 02/07/2011 by CM/ECF, email. [203920] [10-2905]--[Edited 02/08/2011 by TS] [Entered: 02/07/2011 07:26 PM]	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0016, SM0034, SM0040	[REDACTED]
73	SEALED NON-DISPOSITIVE STIPULATION, for substitution of counsel, on behalf of Defendant-Appellee John Doe, RECEIVED.[205974] [10-2905] [Entered: 02/09/2011 03:45 PM]	Yes	Unseal	Unseal	Unopposed
74	MOTION ORDER, denying motion to vacate order sua sponte closing courtroom, etc., without prejudice to renewal at the time of oral argument on February 14, 2011. [66], FILED. [205981][74] [10-2905] [Entered: 02/09/2011 03:47 PM]	Yes	Unseal	Unseal	Unopposed
77	ORDER, denying without prejudice the stipulation for substitution of counsel for Appellee John Doe, all counsel of record are directed to appear at oral argument on Monday, February 14, 2011, at 1:30 pm, FILED.[206522] [10-2905] [Entered: 02/10/2011 10:42 AM]	Yes	Unseal	Unseal	Unopposed
80	ORDER, consolidating appeal with 11-479, temporarily enjoining parties from disseminating appeal related documents, directing respondent-appellant Richard Roe to make a submission by 5 pm on Friday, 02/11/2011, directing parties to appear at oral argument, FILED.[206961] [10-2905] [Entered: 02/10/2011 02:55 PM]	Yes	Unseal	Unseal	Unopposed

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
82	Order re conforming caption in Docket No. 11-479 to that of 10-2905 listing parties as Richard Roe and John Doe 1, John doe 2	Yes	Unseal	Unseal	Unopposed
84	MOTION ORDER, denying motion for vacatur of the February 8, 2011 order which granted the Government's motion to temporarily seal the docket in 11-479, filed by Petitioner Richard Roe in 11-479, [206696-2], FILED. [207272][84] [10-2905, 11-479] [Entered: 02/10/2011 05:06 PM]	Yes	Unseal	Unseal	Unopposed
85	SEALED MOTION, for emergency stay, for clarification and for reconsideration, on behalf of Appellant Richard Roe, FILED. Service date 02/11/2011 by hand delivery.[207653] [10-2905] [Entered: 02/11/2011 10:53 AM]	Yes	Redact - [REDACTED] [REDACTED]	Redact: SM0046, SM0069, SM0080-SM0081 [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
88	MOTION ORDER, denying without prejudice the emergency motion seeking an immediate stay of the oral argument scheduled for February 14, 2011 and re-consideration of previous orders of this Court, filed by Appellant Richard Roe, [85], [85], FILED. [207786][88] [10-2905] [Entered: 02/11/2011 11:54 AM]	Yes	Unseal	Unseal	Unopposed
94	LETTER, dated 02/11/2011, on behalf of Appellant Richard Roe, RECEIVED.[208843] [10-2905] [Entered: 02/14/2011 10:59 AM]	Yes	No position	Redact: SM0002-SM0004, SM0007-SM0008	Attorney-client privilege; work product privilege
96	NON-DISPOSITIVE SUMMARY ORDER, by JAC, RSP, DC, FILED.[209452] [10-2905] [Entered: 02/14/2011 03:47 PM]	Yes	Unseal	Unseal	Unopposed
98	ORDER, denying petition for writ of mandamus, by JAC, RSP, DC, FILED.[209509] [11-479] [Entered: 02/14/2011 04:05 PM]	Yes	Unseal	Unseal	Unopposed
99	JUDGMENT MANDATE, ISSUED.[209563] [11-479] [Entered: 02/14/2011 04:26 PM]	Yes	Unseal	Unseal	Unopposed
102	CERTIFIED ORDER, dated 02/14/2011, to EDNY, ISSUED.[209646] [10-2905] [Entered: 02/14/2011 05:01 PM]	Yes	Unseal	Unseal	Unopposed
103	CERTIFICATE OF SERVICE, of the Supreme Court petition for writ of certiorari, on behalf of Appellant Richard Roe, RECEIVED.[210523] [10-2905] [Entered: 02/15/2011 03:01 PM]	Yes	Unseal	Unseal	Unopposed
104	MOTION, to extend time to 03/07/2011, on behalf of Appellant Richard Roe, FILED. Service date 02/25/2011 by hand delivery.[219886] [10-2905] [Entered: 02/25/2011 03:30 PM]	No	Unseal	Unseal	Unopposed
109	MOTION ORDER, granting motion to extend time, filed by Appellant Richard Roe, [104], by DC, FILED. [221208][109] [10-2905] [Entered: 02/28/2011 03:26 PM]	Yes	Unseal	Unseal	Unopposed

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
110	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL, on behalf of Appellee USA United States of America, FILED. Service date 03/01/2011 by CM/ECF. [222520] [10-2905] [Entered: 03/01/2011 02:36 PM]	No	Unseal	Unseal	Unopposed
114	LETTER, dated 03/03/2011, on behalf of Appellee United States of America, RECEIVED.[225956] [10-2905] [Entered: 03/04/2011 10:21 AM]	Yes	Unseal	Unseal	Unopposed
117	MOTION, to extend time, on behalf of Appellant Richard Roe, FILED. Service date 03/04/2011 by hand delivery.[226751] [10-2905] [Entered: 03/04/2011 04:13 PM]	No	Unseal	Unseal	Unopposed
124	MOTION ORDER, granting motion to extend time, filed by Appellant Richard Roe, [117], by DC, FILED. [229050][124] [10-2905] [Entered: 03/08/2011 02:45 PM]	Yes	Unseal	Unseal	Unopposed
128	MOTION, for clarification of 02/14/2011 order, on behalf of Appellant Richard Roe, FILED. Service date 03/22/2011 by hand delivery.[241803] [10-2905] [Entered: 03/23/2011 11:16 AM]	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM00015	[REDACTED]
135	LETTER, dated 03/24/2011, requesting permission to respond to Appellant Richard Roe's motion for clarification of the 02/14/2011 order, by 03/30/2011, on behalf of Defendant-Appellee John Doe, RECEIVED.[243436] [10-2905] [Entered: 03/24/2011 01:48 PM]	Yes	Unseal	Unseal	Unopposed
140	SEALED BRIEF, on behalf of Appellant Richard Roe, FILED. [247037] [10-2905] [Entered: 03/29/2011 10:45 AM]	Yes	Redact - [REDACTED] [REDACTED]	Redact: SM0012-SM0013, SM0018, SM0019, SM0049, SM0062	[REDACTED]
141	SEALED SPECIAL APPENDIX, on behalf of Appellant Richard Roe, FILED. [247041] [10-2905] [Entered: 03/29/2011 10:47 AM]	Yes	Redact - [REDACTED] [REDACTED]	Redact: SM0044-SM0045, SM0057	[REDACTED]
142 (App'x Vol. 1)	SEALED APPENDIX, Vol I of II, on behalf of Appellant Richard Roe, FILED. [247053] [10-2905] [Entered: 03/29/2011 10:50 AM]	[see below]	[see below]	[see below]	[see below]
JA 1 - JA 6	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 7 - JA 10	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 11 - JA 94	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 95 - JA 102	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
JA 103 - JA 116	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0014	[REDACTED]
JA 117 - JA 130	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 131 - JA 146	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0004	[REDACTED]
JA 147 - JA 240	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 241- JA 297	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 298- JA 465	SDNY Civil Complaint, <i>Kriss v. BayRock Group LLC</i> , No. 10-cv-03959 (LGS) (DCF) (S.D.N.Y.) Dkt. No. 1. <i>But see</i> , 10-cv-3959 at Dkt. No. 428 which is operative version.	Yes	Redact - [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Redact: SM0002, SM0018, SM0020, SM0022, SM0039- SM0044, SM0046, SM0048	[REDACTED] [REDACTED] [REDACTED]
JA 466 - JA 581	Exhibits to SDNY Civil Complaint inlcuding Doe's criminal materials. <i>See</i> 10-cv-3959 Dkt. No. 406-1, which reflects the operative exhibits.	Yes/No	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0002, SM0004, SM0008- SM0024, SM0031- SM0079, SM0082- SM0086	[REDACTED] [REDACTED] [REDACTED]
JA 582 - JA 590	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0003- SM0004	[REDACTED]
JA 591 - JA 620	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
143 (App'x Vol. 2)	SEALED APPENDIX, Vol II of II, on behalf of Appellant Richard Roe, FILED. [247061] [10-2905] [Entered: 03/29/2011 10:52 AM]	[see below]	[see below]	[see below]	[see below]
JA 621 - JA 624	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
JA 625 - JA 641	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0010	[REDACTED]
JA 642 - JA 651	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 652 - JA 672	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0017- SM0018	[REDACTED]
JA 673 - JA 733	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 734 - JA 738	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0001	[REDACTED]
JA 739 - JA 814	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 815- JA 820	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 821 - JA 834	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 835 -JA 848	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0012	[REDACTED]
JA 849 - JA 910	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 911 - JA 918	Various Joint Appendix Documents	Yes	Redact - [REDACTED] [REDACTED] [REDACTED]	Redact: SM0004	[REDACTED]
JA 919 - JA 937	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 938- JA 947	Various Joint Appendix Documents	Yes	Redact - [REDACTED]	Redact: SM0002	[REDACTED]
JA 948 - JA 1036	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 1037- JA 1137	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed
JA 1138 - JA	Various Joint Appendix Documents	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
148	DEFECTIVE DOCUMENT, sealed appendix, [142], [143], on behalf of Appellant Richard Roe, FILED.[248510] [10-2905] [Entered: 03/30/2011 12:22 PM]	No	Unseal	Unseal	Unopposed
149	OPPOSITION TO MOTION for clarification of the 02/14/2011 order [128], on behalf of Appellee John Doe, FILED. Service date 03/30/2011 by hand delivery. [249017][149] [10-2905] [Entered: 03/30/2011 04:46 PM]	Yes	Unseal	Unseal	Unopposed
150	RESPONSE TO MOTION for clarification of the 02/14/2011 order, on behalf of Appellee United States of America , FILED.[249038] [10-2905] [Entered: 03/30/2011 04:54 PM]	Yes	Unseal	Unseal	Unopposed
170	MOTION, to adjourn oral argument, on behalf of Appellee USA United States of America, FILED. Service date 04/06/2011 by hand delivery.[256463] [10-2905] [Entered: 04/07/2011 02:38 PM]	No	Unseal	Unseal	Unopposed
175	ARGUMENT NOTICE, to attorneys/parties, TRANSMITTED.[259105] [10-2905] [Entered: 04/11/2011 02:23 PM]	No	Unseal	Unseal	Unopposed
176	ORAL ARGUMENT STATEMENT LR 34.1 (a), on behalf of filer , FILED. Service date 04/11/2011 by CM/ECF. [259263] [10-2905] [Entered: 04/11/2011 03:30 PM]	No	Unseal	Unseal	Unopposed
177	DEFECTIVE DOCUMENT, oral argument statement, [176], on behalf of Appellee United States of America, FILED.[259282] [10-2905] [Entered: 04/11/2011 03:39 PM]	No	Unseal	Unseal	Unopposed
178	MOTION ORDER,granting motion to adjourn oral argument. Case to be submitted as of May 2, 2011. No oral argument necessary, [170],FILED. [259347][178] [10-2905] [Entered: 04/11/2011 04:03 PM]	Yes	Unseal	Unseal	Unopposed
179	SEALED BRIEF & APPENDIX, on behalf of Appellee United States of America, FILED. [259535] [10-2905] [Entered: 04/11/2011 05:10 PM]	Yes	Redact - [REDACTED]	Redact: SM0011, SM0015, SM0028, SM0029	[REDACTED]
180	DEFECTIVE DOCUMENT, sealed brief and appendix, [179], on behalf of Appellee United States of America, FILED.[259540] [10-2905] [Entered: 04/11/2011 05:14 PM]	No	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
182	IT IS HEREBY ORDERED that appellee United States shall confer with appellant Richard Roe, and submit by 5:00p.m. on Monday, April 18, 2011, a proposed order that would achieve the parties' objectives as described in the government's letter of March 30, 2011 and appellant Richard Roe's request for clarification of our February 14, 2011 order. FILED.[260494] [10-2905] [Entered: 04/12/2011 01:36 PM]	Yes	Unseal	Unseal	Unopposed
183	SEALED BRIEF & APPENDIX, on behalf of Appellee United States of America, RECEIVED. [261391] [10-2905] [Entered: 04/13/2011 10:21 AM]	Yes	Redact - [REDACTED]	Redact: SM0011, SM0015, SM0028, SM0029	[REDACTED]
185	SEALED MOTION, to file appellee's appendix, on behalf of Appellee United States of America, FILED. Service date 04/12/2011 by hand delivery.[261409] [10-2905] [Entered: 04/13/2011 10:27 AM]	No	Unseal	Unseal	Unopposed
189	PROPOSED ORDER, agreed upon by the government and Richard Roe, as directed by the Court's 04/12/2011 order, on behalf of Appellee United States of America, RECEIVED.[263992] [10-2905] [Entered: 04/15/2011 10:05 AM]	No	Unseal	Unseal	Unopposed
192	SEALED REPLY BRIEF, on behalf of Appellant Richard Roe, FILED. [266841] [10-2905] [Entered: 04/19/2011 10:00 AM]	Yes	Unseal	Unseal	Unopposed
194	MOTION ORDER, granting motion to file Appellee's appendix, [185],FILED. [267450][194] [10-2905] [Entered: 04/19/2011 01:38 PM]	Yes	Unseal	Unseal	Unopposed
195	ORDER, dated 04/19/2011, pursuant to our order of February 14, 2011 and to this order, the District Court retains jurisdiction to decide the government's motion to unseal, as well as to decide any other pending or future motions to unseal that would not result in the public disclosure of docket entries or underlying documents that reference John Doe's cooperation with the government, FILED.[267809] [10-2905] [Entered: 04/19/2011 04:16 PM]	Yes	Unseal	Unseal	Unopposed
198	ORDER, consolidating appeal docket numbers 11-1408 and 11-1411 with lead appeal 10-2905, by JAC, FILED.[268715] [10-2905, 11-1408, 11-1411] [Entered: 04/20/2011 02:34 PM]	Yes	Unseal	Unseal	Unopposed
201	SEALED SUR-REPLY BRIEF, on behalf of Appellee United States of America, FILED. [270628] [10-2905] [Entered: 04/22/2011 11:08 AM]	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
204	SEALED FRAP 28(j) LETTER, dated 04/21/2011, on behalf of Appellant Richard Roe, RECEIVED. Service date 04/21/2011 by email.[271631] [10-2905]--[Edited 04/25/2011 by TS] [Entered: 04/25/2011 11:33 AM]	Yes	Unseal	Unseal	Unopposed
209	SEALED NOTICE OF CRIMINAL APPEAL, with district court docket, on behalf of Appellant Jane Doe and John Doe 2, FILED. [274895] [11-1666] [Entered: 04/27/2011 05:12 PM]	Yes	Unseal	Unseal	Unopposed
217	NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL FORM, on behalf of Attorney Peter A. Norling, Esq. for Appellee USA United States of America in 11-1666, FILED. Service date 04/28/2011 by CM/ECF.[276020] [11-1666, 10-2905]--[Edited 04/29/2011 by YL] [Entered: 04/28/2011 04:22 PM]	No	Unseal	Unseal	Unopposed
218	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Attorney Mr. Todd Kaminsky for Appellee USA United States of America in 11-1666, FILED. Service date 04/28/2011 by CM/ECF.[276028] [11-1666, 10-2905] [Entered: 04/28/2011 04:25 PM]	No	Unseal	Unseal	Unopposed
220	NEW CASE MANAGER, Toneta Sula, ASSIGNED.[276359] [11-1666, 10-2905] [Entered: 04/29/2011 09:47 AM]	No	Unseal	Unseal	Unopposed
221	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Attorney Mr. Todd Kaminsky for Appellee United States of America in 10-2905, 11-1408-cr, 11-1411-cr, FILED. Service date 04/29/2011 by CM/ECF.[276498] [10-2905, 11-1408, 11-1411] [Entered: 04/29/2011 10:48 AM]	Not Reviewed	Not Reviewed	No Position	Missing
222	NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL FORM, on behalf of Attorney Peter A. Norling, Esq. for Appellee United States of America in 10-2905, 11-1408, 11-1411, FILED. Service date 04/29/2011 by CM/ECF.[276530] [10-2905, 11-1408, 11-1411] [Entered: 04/29/2011 11:02 AM]	Not Reviewed	Not Reviewed	No Position	Missing
224	ORDER, oral argument adjourned, FILED.[277677] [10-2905, 11-1408, 11-1411, 11-1666] [Entered: 05/02/2011 11:26 AM]	Yes	Unseal	Unseal	Unopposed
225	ORDER, dated 05/02/2011, if appellants in 11-1666 intend to file a brief, counsel for appellant must advise the Clerk of Court no later than 3:00 p.m. ET on May 6, 2011. FILED.[277705] [10-2905, 11-1408, 11-1411, 11-1666] [Entered: 05/02/2011 11:39 AM]	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
230	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Attorney Mr. Richard E. Lerner, Esq. for Appellant Richard Roe in 11-1408, 11-1411, 11-1666, FILED. Service date 04/29/2011 by email.[280148] [11-1408, 11-1411, 11-1666] [Entered: 05/04/2011 11:30 AM]	No	Unseal	Unseal	Unopposed
231	NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL FORM, on behalf of Attorney Judy C. Selmeci, Esq. for Appellant Richard Roe in 10-2905, 11-1408, 11-1411, 11-1666, FILED. Service date 04/29/2011 by email.[280160] [10-2905, 11-1408, 11-1411, 11-1666] [Entered: 05/04/2011 11:36 AM]	Not Reviewed	Not Reviewed	No Position	Missing
233	LETTER, providing the Court with notice that Appellants Jane Doe and John Doe 2 intend to file a pro se brief, requesting that Attorney Stamatios Stamoulis be relieved as counsel, on behalf of Appellants Jane Doe, John Doe 2, FILED.[280302] [10-2905] [Entered: 05/04/2011 12:59 PM]	No	Unseal	Unseal	Unopposed
236	ORDER, granting Appellants' counsel's request to withdraw as counsel, directing pro se Appellants, Jane Doe and John Doe 2, to file their brief by 05/16/2011, pursuant to this Court's order dated 05/02/2011, FILED.[282177] [10-2905, 11-1666] [Entered: 05/06/2011 09:36 AM]	Yes	Unseal	Unseal	Unopposed
242	SEALED NOTICE OF CRIMINAL APPEAL, with district court docket, on behalf of Appellant Richard Roe, FILED. [286718] [11-1906] [Entered: 05/11/2011 01:40 PM]	Yes	Unseal	Unseal	Unopposed
243	DISTRICT COURT SCHEDULING ORDER, dated 03/23/2011, RECEIVED.[286720] [11-1906] [Entered: 05/11/2011 01:41 PM]	Yes	Unseal	Unseal	Unopposed
245	CRIMINAL DOCKETING NOTICE, to Appellant Richard Roe, ISSUED.[286725] [11-1906] [Entered: 05/11/2011 01:43 PM]	Yes	Unseal	Unseal	Unopposed
250	NEW CASE MANAGER, Toneta Sula, ASSIGNED.[286765] [11-1906] [Entered: 05/11/2011 02:09 PM]	No	Unseal	Unseal	Unopposed
251	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE FORM, on behalf of Attorney Mr. Todd Kaminsky for Appellee United States of America, FILED. Service date 05/12/2011 by hand delivery.[291349] [11-1906] [Entered: 05/17/2011 09:11 AM]	No	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
252	NOTICE OF APPEARANCE FOR ADDITIONAL COUNSEL FORM, on behalf of Attorney Peter A. Norling, Esq. for Appellee United States of America, FILED. Service date 05/12/2011 by hand delivery.[291370] [11-1906] [Entered: 05/17/2011 09:23 AM]	No	Unseal	Unseal	Unopposed
253	NOTICE OF APPEARANCE AS ADDITIONAL COUNSEL FORM, on behalf of Attorney Elizabeth J. Kramer, Esq. for Appellee United States of America in 10-2905, FILED. Service date 05/12/2011 by hand delivery.[291383] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906] [Entered: 05/17/2011 09:26 AM]	No	Unseal	Unseal	Unopposed
255	SEALED PRO SE LETTER BRIEF, on behalf of Appellant Jane Doe, FILED. [291409] [10-2905] [Entered: 05/17/2011 09:40 AM]	Yes	Unseal	Unseal	Unopposed
256	SEALED PRO SE LETTER, joining in the letter brief submitted by Jane Doe, on behalf of Appellant John Doe 2, FILED. [291417] [10-2905] [Entered: 05/17/2011 09:45 AM]	Yes	Unseal	Unseal	Unopposed
259	SEALED MOTION, for clarification of 02/14/2011 order, on behalf of Appellant Richard Roe, FILED. Service date 05/19/2011 by email.[295167] [10-2905] [Entered: 05/20/2011 09:31 AM]	Yes	Unseal	Unseal	Unopposed
262	SEALED LETTER, in support of the motion for clarification of 02/14/2011 order, on behalf of Appellant Richard Roe, RECEIVED.[299059] [10-2905] [Entered: 05/25/2011 10:44 AM]	Yes	Unseal	Unseal	Unopposed
266	SEALED OPPOSITION TO MOTION, for clarification of the 02/14/2011 order, [259], on behalf of Appellee John Doe, FILED. Service date 05/26/2011 by US mail. [300424][266] [10-2905] [Entered: 05/26/2011 02:26 PM]	Yes	Redact - [REDACTED]	Redact: SM0017	[REDACTED]
269	MOTION ORDER,denying motion for clarification of 02/14/2011 order , [259], FILED. [301222][269] [10-2905] [Entered: 05/27/2011 10:57 AM]	Yes	Unseal	Unseal	Unopposed
271	SEALED FRAP 28(j) Letter, on behalf of Appellant Richard Roe, RECEIVED.[315632] [10-2905] [Entered: 06/15/2011 12:03 PM]	Yes	Unseal	Unseal	Unopposed
278	NEW CASE MANAGER, Toneta Sula, ASSIGNED.[317473] [11-2425] [Entered: 06/16/2011 04:22 PM]	No	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
281	ORDER, dated 06/17/2011, consolidating the appeal in docket no. 11-2425-cr with docket no. 10-2905-cr and related cases, directing appellant Richard Roe to submit a letter brief of no more than 3 pages by Tuesday, 06/22/2011 at 5 p.m., directing the government to file a reply letter brief in docket no. 11-2425-cr (or a letter reporting a decision to decline to file a response) of no more than 3 pages by Thursday, 06/24/2011 at 5 p.m., and the appeal in docket no. 11-2425-cr shall be submitted as of Thursday, 06/24/2011 at 5 p.m., FILED.[318211] [10-2905, 11-2425] [Entered: 06/17/2011 01:14 PM]	Yes	Unseal	Unseal	Unopposed
283	AMENDED ORDER, dated 06/17/2011, consolidating the appeal in Docket no. 11-2425-cr with Docket no. 10-2905-cr and related cases, directing appellant Richard Roe to submit a letter brief of no more than 3 pages by Tuesday, 06/21/2011 at 5 p.m., directing the government to file a reply letter brief in 11-2425-cr (or a letter reporting a decision to decline to file a response) of no more than 3 pages by Thursday, 06/23/2011 at 5 p.m., and the appeal in Docket no. 11-2425-cr shall be submitted as of Thursday, 06/23/2011 at 5 p.m., FILED.[318483] [10-2905, 11-2425] [Entered: 06/17/2011 03:46 PM]	Yes	Unseal	Unseal	Unopposed
286	SEALED LETTER BRIEF, on behalf of Appellant Richard Roe, FILED. [321246] [10-2905] [Entered: 06/22/2011 09:26 AM]	Yes	Redact - [REDACTED]	Redact: SM0013	[REDACTED]
290	SEALED LETTER BRIEF, on behalf of Appellee United States of America, FILED. [323356] [10-2905] [Entered: 06/23/2011 04:43 PM]	Yes	Unseal	Unseal	Unopposed
295	NEW CASE MANAGER, Yana Segal, ASSIGNED.[326626] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 06/29/2011 08:59 AM]	No	Unseal	Unseal	Unopposed
296	SUMMARY ORDER AND JUDGMENT, the judgment of the District Court permanently enjoining the dissemination of John Doe's Pre-Sentence Report is affirmed, by JAC., RSP., DC., FILED.[326703] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 06/29/2011 09:51 AM]	Yes	Unseal	Unseal	Unopposed
298	CERTIFIED ORDER, dated 06/29/2011, to EDNY (BROOKLYN), ISSUED.[326716] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 06/29/2011 09:58 AM]	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
300	SEALED LETTER, dated 07/06/2011, confirming unusual timing rules applicable to any motion for reargument made by Appellant Richard Roe, on behalf of Appellant Richard Roe, RECEIVED. Service date 07/01/2011 by US mail.[332571] [10-2905] [Entered: 07/07/2011 10:30 AM]	Not Reviewed	Not Reviewed	No Position	Missing
303	ORDER, dated 07/12/2011, stating that Federal Rule of Appellate Procedure 40 shall govern the timeliness of any petitions filed by the parties for panel rehearing or rehearing in banc or our order of 06/29/2011. No extensions of time to comply with the time limitations of Federal Rule of Appellate Procedure 40 will be granted, FILED.[336248] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 07/12/2011 10:52 AM]	Yes	Unseal	Unseal	Unopposed
306	PETITION FOR REHEARING/REHEARING EN BANC UNDER SEAL, on behalf of Appellant Richard Roe in 10-2905, FILED. Service date 07/13/2011 by US mail.[341387] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 07/18/2011 by YS] [Entered: 07/18/2011 11:41 AM]	Yes	Redact - [REDACTED]	Redact: SM0012-SM0013	[REDACTED]
309	MOTION, for modification of summary order, on behalf of Appellee USA United States of America in 10-2905, 11-1666, UNDER SEAL FILED. Service date 08/03/2011 by hand delivery.[357535] [10-2905, 11-1666] [Entered: 08/05/2011 10:36 AM]	Yes	Seal - [REDACTED] [REDACTED]	Seal	[REDACTED] [REDACTED]
314	PAPERS, petition for rehearing and rehearing en banc under seal on behalf of pro se appellant John Doe II, RECEIVED.[368166] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 08/17/2011 04:06 PM]	Yes	Redact - [REDACTED]	Redact: SM0007, SM0008, SM0012	[REDACTED]
316	DEFECTIVE DOCUMENT, Petition for Rehearing and Rehearing En Banc, [314], on behalf of Appellant John Doe 2 in 10-2905, FILED.[368182] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 08/17/2011 04:12 PM]	No	Unseal	Unseal	Unopposed
317	SEALED MOTION, for leave to file a petition for rehearing en banc, on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 08/24/2011 by email.[377964] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 08/30/2011 by YS] [Entered: 08/30/2011 10:43 AM]	Yes	Unseal	Unseal	Unopposed

Revised Exhibit A to Report by Special Master10-2905

<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
319	SEALED LETTER, dated 08/26/2011, on behalf of Appellee USA United States of America in 10-2905, RECEIVED. Service date 08/26/2011 by hand delivery.[378026] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 08/30/2011 10:58 AM]	Yes	Unseal	Unseal	Unopposed
327	ORDER, dated 09/02/2011, directing the government to file a response to the motion by Appellant John Doe to accept as timely filed a petition for rehearing and for disclosure of the Government's ex parte motion to amend the summary order. The response must be filed on or before 09/08/2011, FILED.[381346] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/02/2011 09:27 AM]	Yes	Unseal	Unseal	Unopposed
328	SEALED RESPONSE TO, MOTION for leave to file a petition for rehearing en banc, on behalf of Appellee United States of America in 10-2905, Appellee United States of America in 11-2425, FILED. Service date 09/08/2011 by hand delivery. [387282][328] [10-2905, 11-2425] [Entered: 09/09/2011 04:26 PM]	Yes	Unseal	Unseal	Unopposed
330	Sesaled Response to, Motion for leave to file a pettiion for rehearing en banc, [328], to Administrartive Attorney, transmitted. [387290] [10-2905] (EM) [Entered: 09/09/2011 04:35 PM]	Yes	Seal - [REDACTED] [REDACTED]	Seal	[REDACTED] [REDACTED]
335	SEALED RESPONSE TO Government's 09/08/2011 response to this court's order of 09/02/2011, on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 09/15/2011 by email. [395174][335] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/20/2011 10:14 AM]	Yes	Unseal	Unseal	Unopposed
337	PAPERS, supplement to the petition for rehearing and rehearing en banc on behalf of John Doe II, RECEIVED.[395186] [10-2905] [Entered: 09/20/2011 10:18 AM]	Yes	Redact - [REDACTED]	Redact: SM0007	[REDACTED]
338	DEFECTIVE DOCUMENT, supplement to petition for rehearing and rehearing en banc, [337], on behalf of Appellant John Doe 2 in 10-2905, FILED.[395190] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/20/2011 10:20 AM]	No	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
341	MOTION, to file supplemental documents to the petition for rehearing and rehearing en banc, on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 09/22/2011 by email.[402118] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/27/2011 11:51 AM]	Yes	Unseal	Unseal	Unopposed
343	MOTION, to correct the docket on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 09/22/2011 by email.[402157] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/27/2011 12:07 PM]	Yes	Unseal	Unseal	Unopposed
347	PETITION FOR REHEARING/REHEARING EN BANC UNDER SEAL, on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 08/15/2011 by email.[403148] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/28/2011 10:25 AM]	Yes	Redact - [REDACTED]	Redact: SM0017, SM0018, SM0022, SM0042	[REDACTED]
354	SUPPLEMENTARY PAPERS TO PETITION FOR REHEARING AND REHEARING EN BANC UNDER SEAL [347], on behalf of Appellant John Doe 2 in 10-2905, FILED. Service date 09/19/2011 by US mail.[435845][354] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 11/02/2011 by YS] [Entered: 11/02/2011 10:49 AM]	Not Reviewed	Not Reviewed	No Position	Missing
359	U.S. SUPREME COURT NOTICE, granting Appellant Richard Roe in 11-1408 extension to file Writ of Certiorari, FILED.[555599] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 03/19/2012 12:58 PM]	No	Unseal	Unseal	Unopposed
360	U.S. SUPREME COURT LETTER, dated 06/25/2012, RECEIVED.[646621] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 06/25/2012 03:55 PM]	Yes	Unseal	Unseal	Unopposed
361	U.S. SUPREME COURT NOTICE of writ of certiorari filing, dated 05/10/2012, U.S. Supreme Court docket # 12-112, RECEIVED.[678069] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 07/31/2012 11:13 AM]	Yes	Unseal	Unseal	Unopposed
362	PAPERS, request under seal to reopen the case, RECEIVED.[721475] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 09/17/2012 by YS] [Entered: 09/17/2012 11:12 AM]	Yes	Unseal	Unseal	Unopposed
366	ORDER, dated 09/17/2012, under seal, FILED.[722180] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/17/2012 04:44 PM]	Yes	Unseal	Unseal	Unopposed

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<u>10-2905 Dkt. No.</u>	<u>Document Description</u>	<u>Judicial Doc.</u>	<u>Gov't/Doe's Position/Rationale</u>	<u>Judge Chen's Reccomendations</u>	<u>Judge Chen's Rationale</u>
367	ORDER, PETITION FOR REHEARING EN BANC DENIED, FILED.[469607] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 12/12/2011 09:57 AM]	Not Reviewed	Not Reviewed	No Position	Missing
368	RESPONSE TO THE APPLICATION, on behalf of Appellee USA United States of America in 10-2905, 11-1408, 11-1411, 11-1666, 11-1906, Appellee United States of America in 11-2425, FILED. Service date 09/19/2012 by hand delivery, US mail. [729102][368] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/25/2012 12:05 PM]	Yes	Unseal	Unseal	Unopposed
370	PAPERS, reply to application on behalf of Respondent-Appellant, RECEIVED.[729682] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 09/27/2012 by YS] [Entered: 09/25/2012 04:12 PM]	Yes	Unseal	Unseal	Unopposed
371	ORDER, dated 09/26/2012, that the matters identified by counsel for John Doe are to be referred to Judge Cogan. The mandate shall be issued forthwith, by JAC, RSP, DC, FILED.[730516] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/26/2012 01:18 PM]	Yes	Unseal	Unseal	Unopposed
373	PAPERS, reply to application on behalf of Respondent-Appellant, RECEIVED.[731687] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 09/27/2012 12:58 PM]	Yes	Unseal	Unseal	Unopposed
374	LETTER UNDER SEAL, dated 03/19/2013, on behalf of Appellee USA United States of America in 10-2905, 11-1408, 11-1411, 11-1666, 11-1906, Appellee United States of America in 11-2425, RECEIVED. No Service.[884951] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425]--[Edited 03/22/2013 by YS] [Entered: 03/22/2013 10:25 AM]	Yes	Unseal	Unseal	Unopposed
376	U.S. SUPREME COURT NOTICE, dated 03/25/2013, U.S. Supreme Court docket # 12-112, stating the petition for writ of certiorari is denied, RECEIVED.[888651] [10-2905, 11-1408, 11-1411, 11-1666, 11-1906, 11-2425] [Entered: 03/26/2013 03:14 PM]	Yes	Unseal	Unseal	Unopposed