

**UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CASE NO. 3:15-cr-00047-RJC-DCK-1**

**UNITED STATES OF AMERICA**

**v.**

**DAVID HOWELL PETRAEUS,**

**Defendant.**

**NEWS MEDIA INTERVENORS' REPLY IN SUPPORT OF THEIR  
MOTION TO INTERVENE AND UNSEAL (ECF NO. 21) AND FURTHER MOTION TO  
UNSEAL STATEMENT OF REASONS (ECF NO. 27)**

The Reporters Committee for Freedom of the Press, The Associated Press, Bloomberg L.P., The Charlotte Observer Publishing Co., Dow Jones & Company, Inc., First Look Media, Inc., National Public Radio, Inc., The New York Times Company, and The Washington Post (the “News Media Intervenors”) hereby submit this reply in support of their Motion to Intervene and Unseal (ECF No. 21) and Further Motion to Unseal Statement of Reasons (ECF No. 27).

**BACKGROUND**

On April 27, the News Media Intervenors filed a Motion to Intervene and Unseal the Sentencing Memorandum filed under seal by Defendant David H. Petraeus (ECF No. 17), as well as the sentencing letters submitted to the Court in connection with his sentencing. On May 1, the News Media Intervenors filed a Further Motion to Unseal the Statement of Reasons (ECF No. 25).

Petraeus filed a response to the Motion to Intervene and Unseal on May 4. (ECF No. 26). He filed a separate response to the Further Motion to Unseal on May 13. (ECF No. 30). On

May 11, the Court issued an Order requiring the government to respond to both of the News Media Intervenors' motions to unseal. Pursuant to that Order, on May 14, the government filed a response to the Motion to Intervene and Unseal, and a separate response to the Further Motion to Unseal. (ECF Nos. 32 and 31, respectively).

### **REPLY**

Neither Defendant nor the Government opposes unsealing of the Sentencing Memorandum, the sentencing letters submitted in connection with Defendant's sentencing hearing, or the Statement of Reasons. Defendant, however, has requested that "the Court order the redaction of (1) the single quotation from Defendant's PSR [Presentence Investigation Report] in the sentencing memorandum, and (2) personal contact information for individuals who submitted letters to the Court, through counsel, in support of Defendant." Def.'s Resp. (ECF No. 26) at 1. The government "does not oppose" unsealing of the Sentencing Memorandum and sentencing letters to the extent "recommended by Defendant Petraeus," or "any of the redactions" that he has proposed. Gov.'s Resp. (ECF No. 32) at 2.

With respect to the Statement of Reasons, Defendant has requested that his social security number be redacted from page four before it is unsealed and made available to the public. Def.'s Resp. (ECF No. 30) at 1. The government has indicated that it "will defer to" Defendant's request regarding the proposed redaction of his social security number in the Statement of Reasons. Gov.'s Resp. (ECF No. 31) at 2.

The News Media Intervenors do not object to the redaction of home addresses, home telephone numbers, personal cellular telephone numbers, and personal email addresses of the authors of the sentencing letters submitted to the Court. Nor do they object to the proposed redaction of Defendant's social security number in the Statement of Reasons.

With respect to the single sentence of the sealed Sentencing Memorandum that Defendant seeks to redact, the News Media Intervenors, who are not privy to its content, defer to the Court on whether the redaction requested by Defendant is essential to preserve higher values. To be clear, the issue is not whether the PSR itself should be unsealed—the News Media Intervenors have not sought that relief—but, rather, whether a sentence in the Sentencing Memorandum filed by Defendant in connection with his sentencing hearing may be redacted. The authority cited by the parties, *United States v. Trevino*, does not address that question. That case involved a criminal defendant who was seeking full disclosure of the PSRs of the co-conspirators who testified against him. 89 F.3d 187, 188 (4th Cir. 1996).

Where, as here, information contained in a PSR has been reproduced in a sentencing memorandum, such information is subject to the First Amendment right of access that attaches to that document generally, and the constitutional presumption must be overcome to justify its redaction.<sup>1</sup> See *In re Washington Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986) (holding “that the First Amendment right of access applies to documents filed in connection with plea hearings and sentencing hearings in criminal cases, as well as to the hearings themselves”); see also *People v. Private Sanitation Indus. Ass’n*, 519 N.Y.S.2d 106, 109–10 (Cnty. Ct. 1987) (permitting disclosure of information contained in a presentence memorandum, notwithstanding a state statute generally providing for their secrecy, because once the information is used at trial or a related proceeding, “it becomes subject to First Amendment rights”); cf. *United States v. Huckaby*, 43 F.3d 135 (5th Cir. 1995) (affirming order unsealing a PSR, stating that because sentencing hearings, at which the contents of the PSR may be disclosed, are open to the public,

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<sup>1</sup> The constitutional presumption of openness may be overcome “only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984) (“*Press-Enterprise I*”); see also *In re Charlotte Observer*, 882 F.2d 850, 853 (4th Cir. 1989).

“it is difficult to conceive that confidentiality of the information in a [PSR] must be maintained under all circumstances, and no court has so held”); *In re Antrobus*, 519 F.3d 1123, 1126 (10th Cir. 2008) (granting motion to unseal portions of PSR that “were submitted as Exhibit D to [defendant’s] response”); *Mitchell v. Superior Court*, 690 P.2d 51, 54 (Ariz. 1984) (voiding a blanket “order” or rule “keeping all presentence reports confidential even after sentencing”). To the extent the sealing of a portion of the Sentencing Memorandum as proposed by Defendant is not necessitated by an overriding interest, that document should be unsealed in its entirety.

This the 18th day of May, 2015.

Respectfully submitted,

/s/ Katie Townsend

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NEWS MEDIA INTERVENORS' REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE AND UNSEAL (ECF NO. 21) AND FURTHER MOTION TO UNSEAL STATEMENT OF REASONS (ECF NO. 27)** was filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing and serve counsel for all parties, as set forth below.

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This the 18th day of May, 2015.

/s/ Katie Townsend \_\_\_\_\_