

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS,**

CBS BROADCASTING INC.,

SERGIO GOMEZ,

DANIEL PACHECO,

and UNIVISION

Misc. Action No. 15-mc-410

Related to: Criminal Nos. 1:02-cr-388

**REQUEST FOR ENTRY OF PROPOSED ORDER UNSEALING
DOCUMENTS RELATED TO CRIM. NO. 1:02-CR-388-ESH-2**

On April 3, 2015, the Reporters Committee for Freedom of the Press, CBS Broadcasting Inc., Sergio Gomez, Daniel Pacheco, and Univision (collectively, “the Applicants”) filed an application to unseal court records in the criminal prosecutions of Salvatore Mancuso Gomez (“Mancuso”), Criminal Matter No. 1:02-cr-388-ESH-2, and Juan Carlos Sierra Ramirez (“Sierra Ramirez”), Criminal Matter No. 1:02-cr-388-ESH-3. On April 14, 2015, this Court issued an Order to Show Cause requiring that “for the documents and proceedings that” either party to the Mancuso matter seeks to keep “under seal in whole or in part, the party shall, on or before April 30, 2015, show cause, as required by the overriding-interest test articulated in [*Press-Enterprise Co. v. Superior Court of Cal.*, 464 U.S. 501, 510 (1984) (“*Press-Enterprise I*”)] and the LCrR

17.2(b) factors, why these documents and proceedings should remain under seal.” See ECF No. 8 (hereinafter, the “OSC”).¹

The April 30 deadline set by the Court in its OSC has passed, and neither the government nor Mancuso has made such a showing. Indeed, neither Mancuso nor the government has filed a response of any kind in the above-captioned matter. To Applicants’ knowledge, the Court has not extended the parties’ time to respond to the OSC. On April 29, 2015, the government filed an unopposed motion to unseal Mancuso’s plea agreement and related statement of facts in the underlying criminal action against Mancuso, Criminal Matter No. 1:02-cr-388-ESH-2, where it stated that “the parties [had] reviewed the sealed filings in the case . . . to determine which documents should be unsealed” and “agree[d] that the plea agreement and statement of facts can be unsealed.” See Mot. to Unseal Plea Agreement and Statement of Facts, *United States v. Mancuso-Gomez*, No. 02-cr-388-ESH-2 (D.D.C. April 29, 2015), ECF No. 145. That motion did not address the remaining documents and proceedings under seal in the Mancuso matter except to state that “[a] separate motion and order will be filed later to address the remaining documents now under seal.” *Id.*²

The First Amendment right of the press and public to access court documents and proceedings is an “immediate and contemporaneous” right. *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“*Grove Fresh*”). “Each passing day may constitute a separate and cognizable infringement of the First Amendment.” *Id.* (quoting *Neb. Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (1975)). As the Fourth Circuit recently explained,

¹ That same day, the Court issued a separate Order to Show Cause in the Sierra Ramirez matter. In that case, the parties were given additional time, to May 4, 2015, to file a response to the Order to Show Cause to accommodate a request for an extension of time made by Sierra Ramirez’s counsel. See ECF No. 9; see also ECF No. 5. On May 4, counsel for Sierra Ramirez filed a response to the Court’s Order to Show Cause that is almost entirely under seal and accompanied by a sealed motion to seal. See ECF No. 11. Applicants will respond to the submission made by Sierra Ramirez’s counsel in a separate filing.

² Applicants were not served with a copy of the government’s motion.

because “the public benefits attendant with open proceedings are compromised by delayed disclosure of documents,” courts reject “pleas by litigants that the public right of access can be accommodated” by delaying the release of information; “the value of openness . . . is threatened whenever immediate access to ongoing proceedings is denied, whatever provision is made for later public disclosure.” *Company Doe v. Pub. Citizen*, 749 F.3d 246, 272–73 (4th Cir. 2014) (holding that the “district court erred by failing to act expeditiously” on a sealing motion); *see also Grove Fresh*, 24 F.3d at 897 (“To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”)

The Court’s OSC provided the government and Mancuso an opportunity to identify those sealed documents—if any—or portions thereof that they contend must remain under seal, and to articulate how such sealing satisfies the standard set forth in *Press-Enterprise I*, 464 U.S. 510. Because neither the government nor counsel for Mancuso has demonstrated that the continued sealing of any document or proceeding in the Mancuso case is “essential” to serve an “overriding interest” and “narrowly tailored to serve that interest,” *Press-Enterprise I*, 464 U.S. at 510, as required by this Court’s April 15 Order to Show Cause, the remaining sealed documents and proceedings in Criminal Matter No. 1:02-cr-388-ESH-2 should be unsealed forthwith.

For the reasons set forth above and in their motion to unseal, Applicants hereby request that the Court enter their Proposed Order unsealing the documents and proceedings in the case against Mancuso. *See* ECF No. 1-2 (Proposed Order).

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Dated: May 5, 2015

Respectfully submitted,

/s/ Katie Townsend

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REQUEST FOR ENTRY OF PROPOSED ORDER UNSEALING DOCUMENTS RELATED TO CRIM. NO. 1:02-CR-388-ESH-2** was filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing and serve counsel for the following parties:

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I further certify that the foregoing **REQUEST FOR ENTRY OF PROPOSED ORDER UNSEALING DOCUMENTS RELATED TO CRIM. NO. 1:02-CR-388-ESH-2** was served via email and U.S. Mail on counsel for the following parties:

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This the 5th day of May, 2015.

/s/ Katie Townsend