

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

**IN RE APPLICATION OF THE  
ASSOCIATED PRESS, GANNETT  
CO., INC., GRAY MEDIA GROUP,  
INC., HEARST CORPORATION,  
AND THE TEXAS TRIBUNE TO  
UNSEAL COURT RECORDS**

Misc. Action No. \_\_\_\_\_

**APPLICATION OF THE ASSOCIATED PRESS, GANNETT CO., INC.,  
GRAY MEDIA GROUP, INC., HEARST CORPORATION, AND THE  
TEXAS TRIBUNE TO UNSEAL COURT RECORDS**

1. The Associated Press, Gannett Co., Inc., Gray Media Group, Inc., Hearst Corporation, and the *Texas Tribune* (“Applicants”) respectfully move this Court for an order unsealing certain court records related to search warrants obtained pursuant to Federal Rule of Criminal Procedure 41 and executed at the Laredo home and campaign office of U.S. Representative Henry Cuellar on or about January 19, 2022. *See Valerie Gonzalez, FBI Probe Targets Rep. Cuellar’s Home, Campaign HQ in Laredo*, The Monitor (Jan. 19, 2022), <https://perma.cc/R28U-T86V>.

2. Specifically, Applicants request an order unsealing the search warrant applications, any supporting affidavits, the search warrants themselves, the returns, the docket sheets, and any related judicial records (the “Warrant Materials”).

**INTEREST OF THE APPLICANTS**

3. The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population.

4. Gannett Co., Inc., is the largest local newspaper company in the United States. Its more than 200 local daily brands in 45 states—together with the iconic USA TODAY—reach an estimated digital audience of 140 million each month. Gannett subsidiaries own and operate a number of media properties in Texas, including the *Austin-American Statesman*, *The Abilene Reporter-News*, *Corpus Christi Caller-News*, *The El Paso Times*, *San Angelo Standard-Times*, *Times Record News (Wichita Falls)*, *Amarillo Globe-News* and the *Lubbock Avalanche-Journal*.

5. Gray Media Group, Inc., currently owns and/or operates television stations and digital properties in 113 television markets reaching approximately 36 percent of U.S. television households. Gray journalists serve the state of Texas from KGNS – Laredo and other Texas television stations.

6. Hearst Corporation is one of the nation’s largest diversified media, information and services companies with more than 360 businesses. Its major

interests include ownership of 15 daily and more than 30 weekly newspapers, including Texas's *Houston Chronicle*, *Laredo Morning Times*, and *San Antonio Express-News*.

7. The *Texas Tribune* is the only member-supported, digital-first, nonpartisan media organization that informs Texans—and engages with them—about public policy, politics, government and statewide issues. The *Tribune* was founded in 2009 by John Thornton, Evan Smith, and Ross Ramsey.

8. Like all members of the press and public, Applicants have a strong interest in understanding the disposition of matters before the federal courts, especially where the federal government has applied for authorization to take investigative steps that implicate “important constitutional rights such as the Fourth Amendment protection against unreasonable searches and seizures.” *United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1194 (9th Cir. 2011) (quoting *In re N.Y. Times Co.*, 585 F. Supp. 2d 83, 90 (D.D.C. 2008)).

9. In any case where a member of the press or public seeks access to warrant materials, there is a keen public interest in transparency. The common law and First Amendment rights of access to such materials “promote[] the trustworthiness of the judicial process, curb[] judicial abuses, and provide[] the

public with a better understanding of the judicial process, including its fairness.”

*United States v. Sealed Search Warrants*, 868 F.3d 385, 395 (5th Cir. 2017).

10. That need for transparency is at its apex where an investigation may also implicate the “powerful public interest” in understanding potential misconduct by a sitting public official, *In re L.A. Times Commc’ns LLC*, 28 F.4th 292, 298 (D.C. Cir. 2022), as well as the heightened separation-of-power concerns raised by a search that may have “resulted in the disclosure of legislative materials to agents of the Executive,” *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654, 661 (D.C. Cir. 2007).

#### **FACTUAL AND PROCEDURAL BACKGROUND**

11. Rep. Cuellar is currently serving his ninth term as a Member of Congress, representing Texas’s 28<sup>th</sup> congressional district. *See* Biography, United States Congressman Henry Cuellar, <https://perma.cc/GV2N-2SFC>.

12. On or about January 19, 2022, the Federal Bureau of Investigation (“FBI”) executed search warrants at Rep. Cuellar’s home and campaign office. *See* Gonzalez, *supra*. FBI spokesperson Roseanne Hughes confirmed the agency was “conducting court-authorized law enforcement activity” at Cuellar’s home. *Id.*

13. The searches were also witnessed by members of the press and public present at the scene. A reporter saw “cases and other items taken from the

congressman's house as over two dozen agents filed in and out of the residence [that] afternoon," *id.*, and FBI agents were likewise observed at the office, *see id.*

14. On information and belief, the warrants were issued by a magistrate judge or judges of the U.S. District Court for the Southern District of Texas. *See* Fed. R. Crim. Proc. 41(b)(1) (describing authority of a magistrate judge "to issue a warrant to search for and seize a person or property located within the district").

15. Cuellar publicly confirmed the searches, noting "[t]here is an ongoing investigation that will show that there was no wrongdoing on my part." Patrick Svitek, *After FBI Raid, U.S. Rep. Henry Cuellar Says Investigation Will Prove "No Wrongdoing on My Part"*, Tex. Trib. (Jan. 25, 2022), <https://perma.cc/6UDL-NHUS>. According to Cuellar's attorney, the Justice Department "informed [him] that Congressman Cuellar is not a target of the investigation." Aaron Navarro, *Texas Rep. Henry Cuellar Is Not the Target of FBI Investigation, His Attorney Says*, CBS News (Apr. 13, 2022), <https://perma.cc/69WQ-6AQ6>.

16. Shortly after the warrants were executed, ABC News reported that the searches were prompted by a federal grand jury probe related to Azerbaijan. *See* Mike Levine, *Feds Issue Subpoenas Seeking Records Related to Rep. Cuellar and His Wife, Associates*, ABC News (Jan. 21, 2022), <https://perma.cc/3378-CQ4S>. The Associated Press confirmed that report based on a source "with direct

knowledge of the probe.” Eric Tucker & Jake Bleiberg, *Lawyer: US Rep. Cuellar Not the Target of FBI Investigation*, AP (Apr. 13, 2022), <https://bit.ly/3Gil8es>.

17. Congressman Cuellar has served as the co-chair of the Congressional Azerbaijan Caucus and “has been an outspoken advocate for the nation over the past decade.” Levine, *supra*. A subpoena from the probe reviewed by ABC News sought records “‘relating to anything of value’ that the congressman, his wife, and others close to them may have been offered by certain business leaders or foreign officials,” *id.*, including entities that the Justice Department previously named in a “scheme to conceal that a 2013 congressional delegation to Baku—which did not include Cuellar, according to press reports—was paid for by SOCAR, the state-owned gas company, ‘in order to gain access to these public officials,’” *id.*

18. Because they raise unique separation-of-power concerns above and beyond an ordinary investigation, searches of the property of Members of Congress are of paramount public interest. *See, e.g.*, Krishnadev Calamur & Ryan Lucas, *The Justice Department Watchdog Will Review a Trump-Era Probe of Democratic Lawmakers*, NPR (June 11, 2021), <https://perma.cc/L8J8-Q2C8>.

19. For past searches involving Members of Congress, the Justice Department has sometimes included “special procedures” in its warrant applications to minimize infringement on the prerogatives of the legislative branch. *Rayburn House Off. Bldg.*, 497 F.3d at 656. The Justice Department also recently

revised its rules to “ensure that full weight is accorded to separation-of-powers concerns.” Michael Balsamo et al., *Justice Department to Tighten Rules on Seizing Congress Data*, AP (June 14, 2021), <https://perma.cc/CD8A-ANW9>.

20. The search and seizure of Congressman Cuellar’s property was especially unusual due to its proximity to his competitive primary. See Abby Livingston, *Timing of FBI Raid on Henry Cuellar’s Home So Close to Election Raises Questions*, Tex. Trib. (Feb. 1, 2022), <https://perma.cc/2T2Y-ATSF>.

21. As a matter of longstanding policy, to avoid disrupting the democratic process, the Justice Department requires additional consultation with the Public Integrity Section of the Criminal Division when prosecutors “are faced with a question regarding the timing of charges or overt investigative steps near the time of a primary or general election.” Memorandum from the Att’y Gen. Regarding Election Year Sensitivities (Apr. 11, 2016), <https://perma.cc/2ZBN-SXXJ>.

22. The adequacy (or inadequacy) of the Justice Department’s guidance on taking overt investigative steps close-in-time to an election is a subject of keen public interest and a source of recurring public debate. See Michelle Onibokun & Chuck Rosenberg, *The Justice Department’s Policy Against Election Interference Is Open to Abuse*, Lawfare (Sept. 11, 2020), <https://perma.cc/W8VB-YM5J>.

23. As local news media underlined at the time, the Department’s silence following the highly publicized searches left voters “stuck with no confirmation

one way or the other regarding whether or not Cuellar is a target of the investigation as they head[ed] to the polls for Election Day.” Christian Alejandro Ocampo, *FBI Won’t Officially Clear Cuellar of Wrongdoing Before Election Day*, Laredo Morning Times (May 22, 2022), <https://perma.cc/G3SA-PWQJ>.

24. On May 24, 2022, Congressman Cuellar narrowly won his party’s nomination for another term. See Mariana Alfaro, *Henry Cuellar Defeats Jessica Cisneros in Contentious Texas Primary Race*, Wash. Post (June 21, 2022), <https://perma.cc/935Z-FTJD>. The general election is November 8, 2022.

25. To Applicants’ knowledge, the Warrant Materials remain under seal.

### **REQUEST FOR RELIEF**

26. Applicants seek an order unsealing the Warrant Materials.

27. Applicants seek any further relief the Court deems just and proper.

Dated: August 16, 2022

Respectfully submitted,

*s/ Katie Townsend*

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*\*Pro hac vice application forthcoming*

*Counsel for Applicants The Associated Press, Gannett Co., Inc., Gray Media Group, Inc., Hearst Corporation, and The Texas Tribune*

## CERTIFICATE OF SERVICE

I, Katie Townsend, hereby certify that on the 16th day of August, 2022, a copy of the foregoing was filed electronically using this Court's CM/ECF system, and sent via U.S. Mail to:

United States Attorney's Office for the Southern District of Texas  
P.O. Box 1179  
Laredo, TX 78042-1179

Dated: August 16, 2022

Respectfully submitted,

*s/ Katie Townsend*

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Katie Townsend  
REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS

*Counsel for Applicants The Associated Press, Gannett Co., Inc., Gray Media Group, Inc., Hearst Corporation, and The Texas Tribune*