

No. 23-20097

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

SAMAN AHSANI, CYRUS ALLEN AHSANI

Defendants – Appellees,

v.

THE FINANCIAL TIMES LIMITED, GLOBAL INVESTIGATIONS REVIEW,
AND THE GUARDIAN,

Intervenors – Appellants.

On Appeal from the United States District Court for the Southern District of Texas
Case No. 4:19-CR-147 (Hon. Andrew S. Hanen)

MOTION TO EXPEDITE APPEAL BY INTERVENORS-APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to the persons and entities listed in Plaintiff-Appellee's Certificate of Interested Persons, the following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification.

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The names of opposing law firms and counsel in the case, who participated before the district court, are Jennifer Marie McCoy and Paul E. Coggins of Locke Lord LLP, counsel for defendants Saman Ahsani and Cyrus Allen Ahsani. In

addition, Rachel Gagnebin Talay, of H Street Law PLLC, represented Saman Ahsani and Cyrus Allen Ahsani until January 11, 2023. The United States was represented at the district court by Suzanne Elmilady, Dennis R. Kihm, Gerald Michael Moody, Jr., Gwendolyn Amelia Stamper, and Jonathan Robell, and is represented by Jeremy Raymond Sanders on appeal.

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.5 of the Rules and Internal Operating Procedures of the U.S. Court of Appeals for the Fifth Circuit, the Financial Times Ltd., Global Investigations Review, and The Guardian (collectively, “Media Intervenors” or “Intervenors-Appellants”) respectfully move to expedite their appeal from an order of the U.S. District Court for the Southern District of Texas denying their motion to unseal the sentencing memoranda and other judicial records filed in connection with the January 30, 2023 sentencing of defendant Saman Ahsani in *United States v. Ahsani*, No. 4:19-CR-147-1 (S.D. Tex.) (hereinafter, the “Ahsani Prosecution”).

Counsel for Media Intervenors has contacted counsel for the government and Saman Ahsani to confer about this Motion; both have stated that they take no position.

On March 9, 2023, Media Intervenors filed their Notice of Appeal from a February 23, 2023 order of the U.S. District Court for the Southern District of Texas denying their motion to unseal sentencing memoranda and related records in the Ahsani Prosecution. *See Order, United States v. Ahsani*, No. 4:19-CR-147-1 (S.D. Tex. filed Feb. 23, 2023), ECF No. 133 (hereinafter, the “Order”). The Order violates Media Intervenors’ First Amendment and common law rights of access to criminal proceedings, including sentencing proceedings, and related judicial records, and—given Media Intervenors’ lack of any opportunity to respond

to the parties’ arguments in opposition to unsealing—Media Intervenors’ due process rights. Because the presumptive right of the press and public to access judicial proceedings and inspect judicial records is a right of contemporaneous access, Media Intervenors’ inability, as a result of the Order, to access sealed records in the Ahsani Prosecution is an ongoing injury that supports expedited appellate review. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). In addition, expedited resolution of the appeal is warranted because guidance from this Court is needed to ensure that the press and public, including Media Intervenors, are not improperly denied contemporaneous access to the sentencing memoranda and other judicial records that will be filed in the Ahsani Prosecution in connection with the upcoming sentencing of Saman Ahsani’s co-defendant, Cyrus Allen Ahsani, which is scheduled for August 21, 2023. Order, *United States v. Ahsani*, No. 4:19-CR-147-2 (S.D. Tex. filed Jan. 19, 2023), ECF No. 124. Accordingly, and for the reasons herein, there is good cause for the Court to expedite briefing and oral argument. Loc. R. 27.5.

RELEVANT BACKGROUND

The Ahsani Prosecution arises out of a “pervasive and wide-ranging international corruption scheme” spearheaded by Saman Ahsani and his brother, Cyrus Allen Ahsani, in their former roles as executives of Monaco-based energy

consultancy Unaoil. ECF No. 132 at 4. Intervenors-Appellants—and other members of the news media in the United States, United Kingdom, and around the world—have reported extensively, for years, on the Unaoil corruption scandal, including the Ahsanis’ cooperation with authorities in the United Kingdom and United States, and the United States government’s prosecution of the Ahsanis. *See* ECF Nos. 66–66-8, 123, 123-1.

In March 2019, Saman Ahsani and Cyrus Allen Ahsani each pleaded guilty to one count of conspiracy to violate the Foreign Corrupt Practices Act. *See* Minute Entry, Mar. 25, 2019. On June 19, 2020, Media Intervenors moved to intervene in the Ahsani Prosecution for the limited purpose of obtaining an order unsealing sealed judicial records that had been filed to that date, as well as transcripts of proceedings, and to obtain access to the defendants’ sentencing proceedings and future, related filings. ECF No. 66. On July 28, 2020, the district court, the Honorable Vanessa D. Gilmore, granted Media Intervenors’ motion to intervene, ordered that the sealed records be unsealed except for limited redactions and one sealed document, and ordered that Media Intervenors and the public would receive notice of and access to future proceedings, including the Ahsanis’ sentencing proceedings. ECF No. 83.

Saman Ahsani was sentenced on January 30, 2023. ECF No. 132. In advance of his sentencing, a number of documents were filed under seal, including

his statement of no objections to the presentence report, ECF No. 113, both parties' sentencing memoranda, ECF Nos. 115, 116, and an unidentified "sealed event," ECF No. 118. On January 24, Media Intervenors filed a motion to unseal the sentencing memoranda and related documents, invoking their presumptive rights of access to those court records under the First Amendment and common law. ECF No. 123. The district court did not issue a ruling or address Media Intervenors' motion before or during Saman Ahsani's public sentencing hearing. Thereafter, on February 8, Media Intervenors requested, *inter alia*, that the district court set a briefing schedule on their motion. ECF No. 131.

On February 23, the district court, the Honorable Andrew S. Hanen, entered the Order denying Media Intervenors' motion to unseal. ECF No. 133. The Order indicates, *inter alia*, that on February 7, 2023 the parties had filed a sealed joint response in opposition to Media Intervenors' motion. *Id.* The public docket refers to this filing only as a "sealed event," ECF No. 130. Media Intervenors did not have notice of—or an opportunity to respond to—the parties' joint opposition before the district court entered its Order. On March 9, Media Intervenors timely appealed. ECF No. 136.

ARGUMENT

The press and public have a First Amendment right of access to criminal proceedings—including, specifically, criminal sentencing proceedings—and

related court records. *In re Hearst Newspapers, LLC*, 641 F.3d 168, 176–77 (5th Cir. 2011) (holding “that the public and press have a First Amendment right of access to sentencing proceedings” and stating that “courts of appeals have also recognized a First Amendment right of access to documents filed for use in sentencing proceedings”). The press and public also have a “right to inspect and copy judicial records” under common law. *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993). Where, as here, the First Amendment right of access applies, closure or sealing is permissible only if—and only to the extent—it is necessitated by a compelling government interest. *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984); *In re Hearst Newspapers, LLC*, 641 F.3d at 181.

On appeal, Media Intervenors seek reversal of the district court’s Order denying their motion to unseal judicial records related to Saman Ahsani’s sentencing, including the parties’ sentencing memoranda. Expedited appellate review of the Order is warranted for the following reasons. Loc. R. 27.5.

First, where there is a presumptive right of public access, it is a right of contemporaneous access, since “[t]o delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994). Here, the district court’s Order maintains the judicial records related to Saman Ahsani’s sentencing under seal in their entirety, indefinitely. ECF No. 133.

Because the Order, so long as it remains in effect, will continue to deprive the public, including Media Intervenors, of their presumptive First Amendment right to inspect judicial records filed in the Ahsani Prosecution, this Court's expedited review of that Order is warranted. *See Elrod*, 427 U.S. at 373.

Second, the public has a particularly strong interest in prompt access to the sealed records in the Ahsani Prosecution that weighs in favor of expedited appellate review. Saman Ahsani was sentenced to fifteen months' incarceration—a term the government argued was “appropriate in this case” considering, on one hand, Ahsani's “critical part” in the “profoundly serious” Unaoil bribery scheme, including the payment of bribes and destruction of evidence, and, on the other, the fact that he had “been doing everything he possibly can for the last four years” to “make amends” in “an extraordinary and exemplary way.” ECF No. 132 at 4–5. The public has a powerful, urgent interest in understanding the basis for the sentence that Saman Ahsani received. *United States v. Raybould*, 130 F. Supp. 2d 829, 833 (N.D. Tex. 2000) (“Few things would cause the public to be more suspicious of our system of criminal justice than to have secret proceedings that lead to special sentencing treatment for select criminal defendants.”).

Third, expedited review of this appeal is warranted in light of the upcoming sentencing of Cyrus Allen Ahsani by the district court on August 21, 2023. This Court's guidance as to the correct legal standards to be applied by the district court

is needed in order to safeguard the public’s right of contemporaneous access to the sentencing memoranda and related documents that will be filed in the Ahsani Prosecution in the coming months in connection with Cyrus Allen Ahsani’s sentencing. For that reason, too, there is good cause for the Court to expedite Media Intervenors’ appeal.

Finally, neither the government nor Saman Ahsani will be prejudiced by expediting this case. The briefing schedule proposed below would give Appellees ample time—thirty (30) days—to file their briefs following the filing of Intervenors-Appellants’ opening brief.

Intervenors-Appellants respectfully request the following briefing and oral argument schedule:

Intervenors-Appellants’ Opening Brief: April 7, 2023

Appellees’ Briefs: May 8, 2023

Intervenors-Appellants’ Reply: May 22, 2023

Oral Argument: June 2023 (or first available setting).

CONCLUSION

For the foregoing reasons, Intervenors-Appellants respectfully request that the Court expedite briefing and oral argument in their appeal.

Dated: March 16, 2023

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

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CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) and 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 1,561 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word Version 16.70, part of Microsoft Word for Office 365, in 14-point Times New Roman font.

Dated: March 16, 2023

/s/ Katie Townsend
Katie Townsend
Counsel for Intervenors-Appellants

CERTIFICATE OF SERVICE

I, Katie Townsend, hereby certify that I have filed the foregoing Unopposed Motion to Expedite Appeal by Intervenors-Appellants electronically with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. I certify that all participants in this case are registered as CM/ECF Filers and that they will be served by the CM/ECF system.

Dated: March 16, 2023

/s/ Katie Townsend
Katie Townsend
Counsel for Intervenors-Appellants