

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,
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)

**INTERVENORS-APPELLANTS' MOTION TO UNSEAL
APPELLEES' BRIEFS**

Katie Townsend
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org

Counsel for Intervenors-Appellants

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that, in addition to the persons and entities listed in Plaintiff-Appellee's and Defendants-Appellees' Certificates 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.

The Financial Times Limited is a private company, and is a wholly owned subsidiary of private company Financial Times Group Limited, which is wholly owned by private company Nikkei Inc. No publicly held corporation owns 10% or more of the stock of The Financial Times Limited.

Global Investigations Review is owned and operated by Law Business Research Limited, which is a private company and issues no stock.

Guardian US's legal entity is Guardian News & Media LLC, a company incorporated in Delaware, whose registered office is at 315 West 36th St., New York, N.Y. 10018. Guardian News & Media LLC's parent corporation is Guardian News & Media Limited, a private company. No publicly held corporation owns 10% or more of Guardian US's stock.

The names of opposing law firms and counsel in the case are Jennifer Marie McCoy and Paul E. Coggins of Locke Lord LLP, counsel for defendants Saman

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

MOTION TO UNSEAL

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27.4 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, “Intervenors-Appellants”) respectfully move this Court for an order unsealing the redacted portions of the briefs filed by Plaintiff-Appellee United States of America (hereinafter, the “Government”) and Defendant-Appellee Saman Ahsani (hereinafter, “Ahsani”). Counsel for the Government and for Ahsani have represented that they oppose this Motion.

On May 8, the Government and Ahsani each filed a motion to file their briefs *ex parte* and under seal. Doc. Nos. 70, 74. The parties filed redacted versions of their briefs on the public docket and served those versions on Intervenors-Appellants. Doc. Nos. 84, 85. The Court granted both motions shortly after their filing. Doc. No. 83.

There is “no doubt” that “parties’ appellate briefs” are judicial records, presumptively open to the public. *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 669 (D.C. Cir. 2017). “Every court has supervisory power over its own records and files,” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978), and “any claim of secrecy must be reviewed independently” in this Court to account for the role appellate filings play in *this* adjudication, *United States v.*

Foster, 564 F.3d 852, 853 (7th Cir. 2009) (Easterbrook, J., in chambers). Any resulting sealing or redactions must be narrowly tailored to serve compelling, countervailing interests in closure. See *Press-Enter. Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 9–10 (1986); *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 420 (5th Cir. 2021); *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 174 (5th Cir. 2011). Such a requirement ensures that “the public [is] able to access the courtroom it pays for,” and that “the public know[s] that courts are deciding cases fairly and impartially.” *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 210–12 (5th Cir. 2019).

Neither the Government nor Ahsani can overcome the presumption of access to their briefs here.¹ This Court requires parties seeking to file sealed documents on appeal to “explain in particularity the necessity for sealing in this court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding.” *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 518 n.3 (5th Cir. 2022) (quoting *BP Expl.*

¹ Intervenors-Appellants would urge the Court to resolve this issue while there is still time to avoid resolving the merits and conducting oral argument—scheduled for June 6, see Doc. No. 50—on the basis of arguments that Intervenors-Appellants “w[ere] never permitted to see and to rebut,” *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986). At a minimum, however, the sealing of Appellees’ briefs should be addressed alongside the merits.

& Prod., Inc., 920 F.3d at 211). Yet that is what the parties asked the Court to do here. *See* Gov't Mot. at 3 (“[T]he brief contains passages that reference materials that the district court has kept under seal[.]”); Ahsani Mot. at 2–3 (same).

The parties’ sealing motions fail to describe any asserted compelling interest in closure—itself a glaring omission. But assuming it is the one they argue supports their shared position on the merits—avoiding public mentions of Ahsani’s cooperation with law enforcement—that interest does not justify redactions to their briefing. As Intervenor-Appellants’ concurrently filed reply brief addresses in greater detail, Ahsani’s cooperation is a matter of public knowledge, including through extensive media coverage and court records, belying any claim of a compelling interest in sealing discussions of his cooperation. *See* ROA.480–671; ROA.690; ROA.714–15; ROA.721–22.

The parties appear to redact legal arguments and basic information about the proceedings below and in this Court. For instance, in Ahsani’s heavily redacted brief, five pages of the factual background section following the words “this appeal revolves around” are *entirely* redacted. Ahsani Br. at 3–7; *see also* Gov’t Br. at 7–10 (redacting descriptions of proceedings below). Descriptions of the district court’s appealed-from, and publicly docketed, order are likewise redacted. Ahsani Br. at 9, 11. So are arguments regarding the interests in sealing, with most of the section titled “Appellants’ Right of Access is Outweighed by [redacted]” occluded

by black boxes. *Id.* at 13–20; *see also* Gov’t Br. at 31 (redactions to description of Government’s interests in closure). These redactions are not justified on the present circumstances of this case, and only underline that the Government and Ahsani, together, have advanced wildly overbroad secrecy claims throughout the Ahsani Prosecution and this litigation. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1184 (9th Cir. 2006) (noting that “review of the United States’ proposed redactions support[ed] the decision to unseal” records where some were transparently unjustified).

It is a bedrock principle of our judicial system that courts “issue public decisions after public arguments based on public records.” *Union Oil Co. v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000). But without access to the redacted portions of the parties’ briefing, Intervenors-Appellants have no way of knowing whether the parties advocate for the redaction of discussions of Ahsani’s cooperation that have already been made public, or even *why* Ahsani argues the presumption of access has been overcome. *See* Ahsani Br. at 13–20. At bottom, the parties ask this Court to resolve consequential questions regarding the public’s right of access to judicial records on the basis of legal arguments and factual contentions that neither the public nor Intervenors-Appellants have had the opportunity to see. Precedent does not tolerate that result. “The right to public access ‘serves to promote trustworthiness of the judicial process, to curb judicial

abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.” *United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 682 (3d Cir. 1988)). This Court should not lightly abrogate that principle here.

For these reasons and those given in their opening and reply briefs, Intervenor-Appellants respectfully ask that the parties’ briefs be unsealed in their entirety, or, at minimum, that the Court ensure any remaining redactions are narrowly tailored to serve compelling interests in closure.

Dated: May 18, 2023

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
(202) 795-9300
ktownsend@rcfp.org

Counsel for Intervenor-Appellants

CERTIFICATE OF SERVICE

I, Katie Townsend, hereby certify that I have filed the foregoing Intervenor-Appellants' Motion to Unseal Appellees' Redacted Briefs 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: May 18, 2023

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

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

1. This document complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because this document contains 1,085 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), pursuant to Fed. R. App. P. 27(d)(1)(E), 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: May 18, 2023

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