

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)

**REPLY IN SUPPORT OF 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

The Financial Times Ltd., Global Investigations Review, and The Guardian (collectively, “Intervenors-Appellants”) respectfully submit this reply in support of their motion to unseal the redacted portions of the briefs filed by Plaintiff-Appellee United States of America (hereinafter, the “Government”) and Defendant-Appellee Saman Ahsani (hereinafter, “Ahsani”). Pursuant to this Court’s Order dated May 31, 2023, said motion is being carried with the case. Doc. No. 119.

As all parties agree, “[t]he default is public access” to judicial proceedings and records, including proceedings and records in disputes over sealing. *BP Expl. & Prod., Inc. v. Claimant ID 100246928*, 920 F.3d 209, 210 (5th Cir. 2019); *see also* Gov’t Merits Br. at 39 (“[L]itigation over sealing should be open to the greatest extent practicable.”). In unsealing litigation, as in all litigation, the presumptive right of access can be overcome only by compelling, countervailing interests in closure, assessed on a case-by-case and, indeed, “line-by-line” basis. *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 419 (5th Cir. 2021) (citation omitted); *see also* *Press-Enter. Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 9–10 (1986); *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 174 (5th Cir. 2011).

When parties seek to seal appellate briefs and other materials filed in this Court, it is this Court that must adjudicate such requests, without reliance on whether “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.” *BP Expl. & Prod., Inc.*, 920 F.3d at 211. Rather, “any claim of secrecy must be reviewed independently in [the appellate] court.” *Id.* (quoting *Baxter Int’l, Inc. v. Abbott Lab’ys*, 297 F.3d 544, 545–46 (7th Cir. 2002)).

Appellate briefs are the appellate court’s “judicial records,” and at stake in the decision to seal them is the public’s right to know “which parts of those materials persuaded” that court, “and which failed to do so (and why).” *MetLife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 668–69 (D.C. Cir. 2017).

This Court and other circuits take the same approach—conducting an independent analysis when parties seek to seal appellate filings—to account for the public’s interest in understanding arguments that may be “vital to the case’s outcome” on appeal. *United States v. Foster*, 564 F.3d 852, 853 (7th Cir. 2009) (Easterbrook, J., in chambers); *see also, e.g., BP Expl. & Prod., Inc.*, 920 F.3d at 211; *MetLife, Inc.*, 865 F.3d at 675; *United States v. Turner*, No. 12-6483, 2013 WL 1729816, at *1 (6th Cir. Apr. 1, 2013); *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012) (“This Court, of course, is not bound by the district court’s decision to seal certain documents below, and retains its own authority to decide whether the parties may file documents under seal in this Court.” (internal quotation marks and citation omitted)).

Here, the parties' redactions to their appellate briefs can be maintained only if this Court finds those redactions necessary to serve compelling, countervailing interests. *BP Expl. & Prod., Inc.*, 920 F.3d at 211. For the reasons set forth in Intervenors-Appellants' merits briefing, their motion to unseal, and herein, particularly in light of the public nature of Ahsani's cooperation with "the United States and other governments," *see* Def.'s Opp'n at 3, the parties cannot justify their redactions by gesturing in the direction of the district court or making talismanic mention of purported safety risks, as they attempt to do. *See* Gov't Opp'n at 2–3 (citing, as basis for sealing appellate briefing, that "sensitive, non-public information that had formed the basis for the district court's finding"); Def.'s Opp'n at 2 (same).

Intervenors-Appellants respectfully ask that the parties' briefs be unsealed in their entirety, or, at minimum, that the Court ensure any remaining redactions are necessary and narrowly tailored to serve compelling interests.

Dated: June 2, 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
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org

Counsel for Intervenors-Appellants

CERTIFICATE OF SERVICE

I, Katie Townsend, hereby certify that I have filed the foregoing Reply in Support of Intervenors-Appellants' Motion to Unseal Appellees' 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: June 2, 2023

/s/ Katie Townsend
Katie Townsend
Counsel for Intervenors-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. 32(a)(7)(B)(ii) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 642 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: June 2, 2023

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