

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v. Criminal No. 4:12-CR-503-1

JASON DANIEL GANDY,

Defendant.

DEFENDANT'S MOTION TO UNSEAL DE 46, TO RESOLVE THE
CONTRADICTION CONCERNING DE 98'S SEALED STATUS, FOR
PRODUCTION OF THE SEARCH WARRANTS AND AFFIDAVITS
REFERENCED IN DE 46 AND THE CHARGING COMPLAINT, FOR
A RULING ON DE 315, AND NOTING THE RELATED RECORD-
INTEGRITY PATTERN PRESENTED TO THE JUDICIAL COUNCIL

I. RELIEF REQUESTED

Jason Daniel Gandy, proceeding pro se, respectfully moves this Court to:

1. Unseal Docket Entry 46 ("DE 46"), the November 26, 2013 Motion to Suppress Evidence Seized Pursuant to Search Warrants, or state specific, particularized reasons for continued sealing;
2. Resolve the direct contradiction between DE 302's finding that Docket Entry 98 ("DE 98") "was not filed under seal" and DE 98's own certified caption as a "SEALED EX PARTE" transcript;
3. Order production of the two search-warrant affidavits referenced and quoted in DE 46 — the Warrant and Affidavit for Residence and Vehicle, and the Warrant and Affidavit for Unattached Structure — and the criminal complaint underlying this prosecution; and
4. Rule on Defendant's pending DE 315 (Motion to Produce Video Recording of Interview, filed April 10, 2026), which has been pending without a ruling for more than four months, or state the reason no ruling has issued.

**II. GOVERNING STANDARD: THE FIFTH CIRCUIT REQUIRES
PARTICULARIZED, DOCUMENT-SPECIFIC FINDINGS TO JUSTIFY CONTINUED
SEALING**

The public and the parties have a common-law and qualified First Amendment right of access to judicial records. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 8-10 (1986). That right attaches with particular force in criminal proceedings, where public access serves as a structural check on the fairness of the process itself. *Press-Enterprise*, 478 U.S. at 8-9.

The Fifth Circuit has repeatedly and recently reinforced that this presumption is not a formality. Courts "should be ungenerous with their discretion to seal judicial records," and appellate courts "heavily disfavor sealing information placed in the judicial record." *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 418-19 (5th Cir. 2021); *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 519-20 (5th Cir. 2022). A district court "errs" as a matter of law if it "make[s] no mention of the presumption in favor of the public's access to judicial records" and "fail[s] to articulate any reasons that would support sealing." *Binh Hoa Le*, 990 F.3d at 419 (quoting *SEC v. Van Waeyenberghe*, 990 F.2d 845, 849 (5th Cir. 1993)).

The required analysis is not general or file-wide. A court must undertake a "case-by-case, document-by-document, line-by-line" balancing of the public's right of access against any countervailing interest, and must explain its sealing decision "at a level of detail that will allow for [appellate] review." *Binh Hoa Le*, 990 F.3d at 419 (quoting *United States v. Sealed Search Warrants*, 868 F.3d 385, 393, 397 (5th Cir. 2017)). A conclusory invocation of privacy, sensitivity, or the fact that a document was sealed at filing is insufficient. *IFG Port Holdings, L.L.C. v. Lake Charles Harbor & Terminal Dist.*, No. 22-30398, slip op. at 13-14 (5th Cir. Sept. 21, 2023) (vacating sealing orders where the only reasoned decision rested on "unspecified and unsubstantiated privacy concerns" that did not amount to "compelling countervailing interests").

Where sealing orders in a case are either unreasoned one-line docket entries or rest on findings that do not withstand scrutiny, the Fifth Circuit's practice is to vacate the sealing and remand for the district court to state, document by document, "with specific reasons and determinations," whether continued sealing is warranted — and to provide that no revised order issuing within a set period results in automatic unsealing. *IFG Port Holdings*, slip op. at 14-15 (directing that "[i]f no revised order issues within ninety days . . . all sealed material . . . shall be unsealed"). Defendant respectfully asks this Court to apply the same framework here.

III. DE 46 SHOULD BE UNSEALED, OR THE COURT SHOULD STATE SPECIFIC REASONS FOR CONTINUED SEALING

DE 46 was filed under seal on November 26, 2013 — nearly thirteen years ago. It is a motion to suppress; it is not, on its face, a document whose sealing was ever explained on the record with the "specific reasons and determinations" Fifth Circuit law requires. See *IFG Port Holdings*, slip op. at

14. To the extent any interest supported sealing at filing — for example, protection of a minor witness's identity, consistent with Fed. R. Crim. P. 49.1 — that interest can ordinarily be addressed through targeted redaction rather than continued blanket sealing of the entire motion. See *Van Waeyenberghe*, 990 F.2d at 849 (sealing must be no broader than necessary).

Defendant does not ask the Court to assume no legitimate interest exists. He asks the Court to identify it on the record, consistent with binding authority, so that the propriety of continued sealing — or the availability of redaction in place of sealing — can actually be evaluated. A district court's failure to do so is itself reversible. *Binh Hoa Le*,

IV. DE 98'S SEALED STATUS MUST BE RESOLVED, NOT LEFT CONTRADICTIONARY

On March 31, 2025, this Court denied Defendant's motion to unseal (DE 294) by DE 302, which itemized DE 98 among documents found to have "not [been] filed under seal" in the first place. That finding directly conflicts with the document itself: the DE 98 transcript is captioned, in the certified court reporter's own words, "TRANSCRIPT of SEALED EX PARTE PORTION OF HEARING," and the same court reporter confirmed in writing that only this Court could authorize its release. Three weeks after DE 302 issued, the transcript was docketed as DE 303 — marked "(Sealed)" at the moment of filing.

A record in which a court order states a document was never sealed, while the document's own certified caption states the opposite, cannot stand without clarification. This is not a request that the Court reverse DE 302's disposition of Defendant's broader unsealing motion; it is a narrower request that the Court state, specifically as to DE 98, which characterization is accurate, consistent with the particularized, document-specific findings Fifth Circuit law requires for any sealing determination. *Binh Hoa Le*, 990 F.3d at 419; *Sealed Search Warrants*, 868 F.3d at 393, 397.

DE 98 bears directly on Defendant's pending Rule 60(b) motion (DE 316, as supplemented), which relies on DE 98's record of Defendant's April 27, 2017 statements to the Court regarding his position on retained counsel's withdrawal. Defendant's ability to cite, quote, and rely on DE 98 in pending litigation depends on resolution of this contradiction.

V. THE SEARCH-WARRANT AFFIDAVITS AND THE CHARGING COMPLAINT SHOULD BE PRODUCED

DE 46 quotes and relies extensively on two search-warrant affidavits — identified in DE 46 as the Warrant and Affidavit for Residence and Vehicle ("Ex. 1") and the Warrant and Affidavit for Unattached Structure ("Ex. 2") — including their statements that the initial airport inspection of Defendant's computer "uncovered no images characteristic of child pornography." DE 46 ¶¶ 16-17 & n.1. These affidavits are not sealed grand jury material; they are the evidentiary basis DE 46 itself cites for its suppression argument, and their complete, unredacted text is necessary to verify DE 46's characterization of them and to support Defendant's pending post-conviction filings that rely on the same forensic-finding language.

The criminal complaint underlying this prosecution is likewise a foundational charging document. Defendant is entitled to production of a complete copy for the same purpose: to verify what was charged, on what factual basis, and how that basis compares to the trial record and to DE 46's account of the initial computer inspection.

Defendant requests that the Court order the Government to produce complete copies of both search-warrant affidavits (Ex. 1 and Ex. 2 to DE 46) and the criminal complaint, or direct the Clerk to make them available through the normal docket-access channels if they are not otherwise restricted.

VI. DE 315 HAS BEEN PENDING WITHOUT A RULING FOR MORE THAN FOUR MONTHS

On April 10, 2026, Defendant filed DE 315, a Motion to Produce Video Recording of Interview, seeking production of the recording of his July 20, 2012 interrogation and related recorded interviews central to the suppression and derivative-use issues raised in DE 46, DE 287, and DE 316. As of the date of this motion, no ruling on DE 315 has issued, notwithstanding that DE 316 — a separate, later motion — was filed and docketed just eighteen days afterward.

Defendant does not ask the Court to grant DE 315 in this motion. He asks only that the Court rule on it, or state the reason a ruling has not issued, consistent with the same transparency principles that govern sealing determinations: a district court's silence on a pending, case-dispositive discovery request is itself a matter the record should reflect with reasons, not leave unexplained. Defendant notes that any recordings depicting a minor witness are subject to appropriate protective handling, and does not ask that such recordings be produced in a manner inconsistent with any protective order already governing this case or with Fed. R. Crim. P. 16(d); Defendant asks only that the Court rule on the manner and scope of production, including whether review by Defendant through appropriate institutional channels, or in camera review, is the appropriate mechanism.

VII. THE COURT'S AUTHORITY TO COMPEL A RULING ON LONG- PENDING MOTIONS IS WELL ESTABLISHED, AND UNDUE DELAY IS ITSELF A COGNIZABLE HARM

The principle that unexplained delay in ruling on a pending motion is independently correctable is not novel. This Court's own supervisory authority over its docket exists against the backdrop of the Fifth Circuit's recognition that "where a district court persistently and without reason refuses to adjudicate a case properly before it," appellate intervention is warranted "in order that [the court of appeals] may exercise the jurisdiction of review given by law." *In re United States, ex rel. Drummond*, No. 17-20618, slip op. at 3 (5th Cir. Mar. 23, 2018) (quoting *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 662-63 (1978)).

Notably, *Drummond* arose in this same district. There, the Fifth Circuit granted mandamus and ordered a district judge to adjudicate two motions that had been pending approximately four years, holding that "the district court's delay in adjudicating this case is simply inexcusable." *Id.* at 3-4 (quoting *Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990) ("justice delayed is justice denied")). The Fifth Circuit has likewise held that a seven-month delay in entering judgment can independently warrant mandamus relief. *In re Hood*, 135 F. App'x 709, 711 (5th Cir. 2005). Other circuits addressing undue delay specifically in the ruling on habeas-adjacent post-conviction motions have reached the same conclusion. *Johnson*, 917 F.2d at 1285 (fourteen-month delay in ruling on habeas petition); *McClellan v. Young*, 421 F.2d 690, 691 (6th Cir. 1970) (same).

Defendant cites this authority not to request mandamus in this motion — that relief lies with the court of appeals, not this Court — but because it confirms the legal premise

underlying Sections III, IV, and VI above: a court is expected to either rule on a pending matter or state why it has not, and prolonged, unexplained silence on a dispositive motion is not a neutral act. DE 315 has now been pending longer than the seven-month delay found independently sanctionable in *In re Hood*. The original suppression motions, DE 34 and sealed DE 46, remained unresolved for a period comparable to the four years the Fifth Circuit found "simply inexcusable" in *Drummond* — a case arising, like this one, in the Southern District of Texas.

VIII. THE SEALING QUESTIONS RAISED ABOVE ARE NOT ISOLATED — THEY SIT ALONGSIDE A DOCUMENTED PATTERN OF RECORD- INTEGRITY MISMATCHES ALREADY BEFORE THE JUDICIAL COUNCIL

Defendant does not ask this Court to decide, in this motion, the merits of the judicial-conduct complaint concerning these mismatches; that matter is separately before the Fifth Circuit Judicial Council on Defendant's petition for review of the June 10, 2026 order dismissing that complaint. Defendant notes it here because the sealing and access questions raised in Sections III and IV above do not exist in isolation. They sit alongside a pattern, documented in Defendant's own filings and presented to the Judicial Council, in which later official descriptions of specific filings do not match the filings themselves:

1. DE 98 compared with DE 141 (counsel-withdrawal history). DE 141 states that Defendant "insisted on firing very good lawyers over and over and over again" and that "the record seems to indicate that he fired them." DE 98 records Defendant telling the Court, as to Charles Flood, "I did oppose him quitting. I did not want him to quit," and, as to Dan Cogdell and Nicole DeBorde, "I don't want them to quit. I would like them to stay on and go to trial."
2. DE 174 compared with DE 178 (Count One — knowledge of unlawfulness). DE 174 argued the Government failed to prove Defendant knew the charged conduct was unlawful "especially at any time prior to his presence in the U.K." DE 178 addressed only whether minors may legally engage in prostitution in the U.K. — not the knowledge argument DE 174 raised.
3. DE 174 compared with DE 178 (Count Two — the photograph). DE 174 described K.V. as "wearing his underwear in the fashion of a loin cloth." DE 178, ruling on that same motion, described him as "laying naked on the massage table."
4. DE 174 compared with DE 178 (Count Three — knowledge the images were child pornography). DE 174's argument was that there was "no proof that Defendant knew the specific images were child pornography." DE 178 answered with "ample evidence that Mr. Gandy had a sexual interest in children, including trips to Southeast Asia and uncharged conduct" — evidence outside the scope of the motion DE 174 actually filed.
5. DE 174 compared with DE 178 (Count Six — K.D.'s testimony). DE 174 stated the record as "K.D. testified that he rubbed a man's leg and then left the massage room." DE 178 denied the motion on the basis that "the massages included the client rubbing the genitals of the victim or the victim rubbing the genitals of the client." K.D.'s complete

trial testimony (DE 190 at 2-143 to 2-164) contains no testimony describing genital contact of any kind.

6. DE 285 compared with DE 286 and DE 288 (scope of the filing). DE 285 is identified in later filings as a motion for return of property. The filing itself also sought docket access, raised the July 20, 2012 interrogation and its alleged effect on the later questioning of K.V., and included a compassionate-release request — none of which the property-only characterization addressed.

7. DE 287 compared with DE 289 (direct use versus investigative use). DE 287 alleged that investigators were "using my illegally obtained statements" while K.V. was being interrogated. DE 289 characterized the filing as alleging only that Defendant's "involuntary statements were used against him at trial" — a narrower proposition than the one DE 287 actually presented.

8. DE 302 compared with DE 98's own caption (sealed status). DE 302 itemized DE 98 among documents found to have "not [been] filed under seal." DE 98's own certified caption reads "TRANSCRIPT of SEALED EX PARTE PORTION OF HEARING," and the court reporter separately confirmed in writing that only this Court could authorize its release.

Each of these comparisons is drawn directly from the docket entries themselves and has already been presented to the Judicial Council as part of Defendant's pending petition for review. Defendant raises them here not to ask this Court to adjudicate the conduct complaint, but because they bear directly on why the sealing and access questions in Sections III and IV are not merely administrative: several of the documents whose sealed status is unclear or contested — DE 46 and DE 98 chief among them — are the same documents whose contents bear on this documented pattern. Resolving their public status is a precondition to any complete, transparent record of what each filing actually said, which is the narrow relief this motion requests.

IX. REQUESTED RELIEF

Defendant respectfully requests that the Court:

1. Unseal DE 46 in full; or, in the alternative, state specific, document- particularized reasons for its continued sealing, consistent with Binh Hoa Le, June Medical Services, and IFG Port Holdings, and identify whether redaction could serve any such interest in place of continued sealing;
2. State on the record whether DE 98 (and its docketed transcript, DE 303) is or is not currently under seal, resolving the contradiction between DE 302's itemization and the transcript's own sealed-ex- parte caption;
3. If DE 98 is sealed, either unseal it given its centrality to Defendant's pending Rule 60(b) proceedings, or state the specific interest justifying continued ex parte treatment;
4. Order production of the two search-warrant affidavits referenced in DE 46 (Ex. 1 and Ex. 2) and the criminal complaint;

5. Rule on DE 315, or state the reason no ruling has issued, and specify the appropriate mechanism and scope for any production it orders; and
6. Consistent with IFG Port Holdings, slip op. at 14-15, and In re United States, ex rel. Drummond, No. 17-20618 (5th Cir. Mar. 23, 2018), set a deadline by which any reasons required above must issue, with the understanding that the absence of a timely, reasoned order supports the relief requested.

CERTIFICATE OF SERVICE

I certify that on _____, a copy of this motion was served on the United States Attorney's Office for the Southern District of Texas via electronic filing.

Respectfully submitted,

Jason Daniel Gandy Defendant, Pro Se Register No.: 73006279 Institution: FCI
Memphis Date: _____