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October 15, 2021

*Via ECF*

The Honorable Patrick J. Schiltz  
United States District Court  
300 South Fourth Street  
Courtroom 14E  
Minneapolis, MN 55415

**Re: *In re Application of the Reporters Committee for Freedom of the Press to Unseal Certain Search Warrant Materials*, Case No. 20-mc-82-PJS-TNL**

Dear Judge Schiltz:

Pursuant to the Court's order, *see* ECF No. 29, Petitioner Reporters Committee for Freedom of the Press ("RCFP") and Respondent United States of America (the "Government") respectfully submit this joint letter outlining their positions ahead of the status conference set for October 22, 2021.

On December 8, 2020, RCFP filed an application to unseal certain search warrant materials. ECF No. 1. At a status conference held on February 24, 2021, the Court denied RCFP's application without prejudice, ECF No. 23, and RCFP and the Government agreed to engage in discussions about the docketing and sealing practices relevant to RCFP's application. The Court also indicated that RCFP and the Government should jointly discuss these issues with representatives of the Clerk's Office, as appropriate. Since that date, RCFP and the Government have had numerous calls with each other and the Clerk's Office to ascertain how government applications to engage in surveillance are currently docketed and sealed in the District of Minnesota.

During the discussions and based on newly learned information about the docketing and sealing practices for electronic surveillance orders in the District of Minnesota, RCFP made a number of requests for changes to the Court's docketing practices that were not a part of RCFP's initial application. The Government does not object to the following requested changes:

- Adding "flags" to dockets involving search warrants and other surveillance requests in the CM/ECF system to delineate the authority under which each surveillance warrant or order is sought. The flags would cover: warrants issued pursuant to Federal Rule of Criminal Procedure 41; warrants issued pursuant to the Stored Communication Act ("SCA"), 18 U.S.C. § 2703; orders issued pursuant to 18 U.S.C. § 2703(d); orders sought under the

All Writs Act, 28 U.S.C. § 1651; orders for pen register and trap and trace devices, 18 U.S.C. § 3123; and tracking device warrants, 18 U.S.C. § 3117. Where multiple sources of authority are used to justify an application, all corresponding flags would be included.

- Placing a notice on the Court's website to inform the public that when warrants and other surveillance orders are unsealed, they are available for viewing in person at the Clerk's Office.

During the negotiations, RCFP and the Government also identified several areas of disagreement. These are:

- Whether the District of Minnesota should apply the same docketing and unsealing practices it currently uses for warrants to surveillance applications sought under 18 U.S.C. § 2703(d), and the pen register and trap and trace statute. Specifically, whether dockets for these types of surveillance requests should generally be unsealed at the time of filing, and whether the underlying materials should be unsealed after six months absent an individualized showing of the need for continued sealing.
- Whether denied and amended applications for warrants and other surveillance orders must be docketed and subjected to the same unsealing procedures outlined above. This argument pertains to applications for Rule 41 warrants, SCA warrants, 18 U.S.C. § 2703(d) orders, pen register and trap and trace orders, and tracking device warrants.

RCFP plans to file an application seeking docketing and unsealing of the materials described above, based on the First Amendment and common law rights of access to court records.

Respectfully submitted,

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