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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. ANDREW MARNELL, Defendant.	No. 2:20-MJ-3313 GOVERNMENT'S *EX PARTE* APPLICATION FOR ORDER SEALING DOCUMENTS; DECLARATION OF AUSA KERRY L. QUINN; [PROPOSED] ORDER SEALING DOCUMENTS **(UNDER SEAL)**

The government applies ex parte for an order directing that the complaint and its attachment and the arrest warrant, as well as this ex parte application, the memorandum of points and authorities, the declaration of AUSA Kerry L. Quinn, and this Court's sealing order, and all documents subsequently filed under this same case number until such time as an unsealing order is issued, be kept under seal until further order of the Court, or until the government determines that these materials are subject to its discovery obligations, at which time they may be produced to defense counsel, or the government otherwise determines that disclosure would be in the public interest or would otherwise serve a law enforcement purpose,

in which case the government is also permitted to disclose the sealed information.

This ex parte application is based on the attached memorandum of points and authorities, the declaration of AUSA Kerry L. Quinn, and the records and files in this case.

Dated: July 15, 2020

Respectfully submitted,

NICOLA T. HANNA
United States Attorney

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Assistant United States Attorney
Chief, Criminal Division

/s/
KERRY L. QUINN
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MEMORANDUM OF POINTS AND AUTHORITIES

The government requests that this Court seal the complaint and arrest warrant, as well as this ex parte application and all supporting documents, to maintain the integrity of its investigation. Approval from this Court to seal these documents is required under Local Rule 79-5.1. The Court of Appeals for the Ninth Circuit has held that district courts have the inherent power to seal affidavits in support of warrants. In re Sealed Affidavit (Agosto), 600 F.2d 1256 (9th Cir. 1979) (per curiam) (holding that even aside from Federal Rule of Criminal Procedure 41 "courts have inherent power, as an incident of their constitutional function, to control papers filed with the courts within certain constitutional and other limitations"); see also Offices of Lakeside Non-Ferrous Metals, Inc., 679 F.2d 778, 779-80 (9th Cir. 1982) (citing Agosto).

The Court of Appeals for the Seventh Circuit has rejected the proposition that pre-indictment disclosure of a search warrant affidavit is required under either constitutional principles or Federal Rule of Criminal Procedure 41. In re EyeCare Physicians of America, 100 F.3d 514 (7th Cir. 1996). In doing so, the Seventh Circuit held:

> By the very nature of a secret criminal investigation of this type, the target of an investigation more often than not remains unaware of the specific grounds upon which a warrant was issued. If preindictment disclosure of sealed warrant affidavits was required to satisfy due process (assuming there had been a predicate deprivation of life, liberty or property), the hands of law enforcement would be needlessly tied and investigations of criminal activity would be made unduly difficult if not impossible.

Id. at 517. Accord In re Grand Jury Proceedings, 115 F.3d 1240, 1247 (5th Cir. 1997). Similar principles apply to a complaint and attached affidavit.

Here, for the reasons described in the attached declaration, sealing is necessary to maintain the integrity of the government's investigation. Accordingly, the government requests that the documents described in the attached declaration be kept under seal until further order of the Court, or until the government determines that these materials are subject to its discovery obligations, at which time they may be produced to defense counsel, or the government otherwise determines that disclosure would be in the public interest or would otherwise serve a law enforcement purpose, in which case the government is also permitted to disclose the sealed information.

DECLARATION OF AUSA KERRY L. QUINN

I, Kerry L. Quinn, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I represent the government in the investigation of this matter, in which the government has submitted an affidavit in support of a complaint and arrest warrant.

2. The arrest warrant in this case has not yet been executed, and a related search is being planned at the time of the arrest. The likelihood of discovering the items sought in the search warrant would be diminished if the affidavit in support of the arrest warrant in this case were made publicly available before the warrant was executed.

3. Further, public disclosure of the warrant or the information in the warrant application could seriously jeopardize other aspects of the investigation, which is ongoing. The investigation is still in a covert stage, and to the best of my knowledge, the primary target does not know about the investigation, much less the status of the investigation and evidence gathered to date. In this situation, disclosure of the warrant to the target or associated individuals could lead to: (1) flight from prosecution; (2) destruction of or tampering with evidence; (3) intimidation of potential witnesses; or (4) otherwise seriously jeopardizing the investigation. Further, to the extent that all of the potential co-conspirators involved in the crimes under investigation have not yet been identified, public disclosure of the warrant and information in the warrant application could lead individuals involved in criminal

activity to take steps to mask their identity and their criminal activity, all of which would seriously jeopardize the investigation.

4. Accordingly, the government requests that the complaint and arrest warrant and all attachments thereto, as well as this ex parte application, the memorandum of points and authorities, this declaration, and this Court's sealing order, and all documents subsequently filed under this same case number until such time as a unsealing order is issued, be kept under seal until further order of the Court, or until the government determines that these materials are subject to its discovery obligations, at which time they may be produced to defense counsel, or the government otherwise determines that disclosure would be in the public interest or would otherwise serve a law enforcement purpose, in which case the government is also permitted to disclose information the sealed information.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on July 15, 2020.

KERRY L. QUINN