IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

| | |
|---|---|
| UNITED STATES OF AMERICA<br><br>v.<br><br>DIDIER KINDAMBU | Case No. 1:20-MJ-286<br><br>**FILED UNDER SEAL** |

GOVERNMENT'S MOTION TO SEAL COMPLAINT AND
ARREST WARRANT PURSUANT TO LOCAL RULE 49(B)

The United States, by and through undersigned counsel, purspuant to Local Rule 49(B) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an Order to Seal the complaint and arrest warrant in this case until the defendant in this case is arrested.

**I. REASONS FOR SEALING** (Local Rule 49(B)(1))

1. IRS CI is conducting an investigation into a suspected bank fraud scheme being perpetrated by DIDIER KINDAMBU. As set forth in more detail in the affidavit in support of the proposed complaint, the investigation has found substantial evidence that KINDAMBU has fraudulently applied for and then received two loans under the CARES Act Paycheck Protection Program ("PPP"), and then used a substantial portion of the fraud proceeds on items unrelated to legitimate PPP expenses.

2. Premature disclosure of the charges against the defendant in this investigation would jeopardize the safety of the arresting officers. Disclosure of the complaint and arrest warrant would provide the defendant with advanced notice of the charges against him, and the fact that the defendant's arrest is imminent.

## II. REFERENCES TO GOVERNING CASE LAW (Local Rule 49(B)(2))

3. The Court has the inherent power to seal charging documents and arrest warrants. *See United States v. Wuagneux*, 683 F.2d 1343, 1351 (11th Cir. 1982); *State of Arizona v. Maypenny*, 672 F.2d 761, 765 (9th Cir. 1982); *Times Mirror Company v. United States*, 873 F.2d 1210 (9th Cir. 1989); *see also Shea v. Gabriel*, 520 F.2d 879 (1st Cir. 1975); *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975). "The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public's right of access is outweighed by competing interests." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Sealing the complaint and arrest warrant is appropriate where there is a substantial probability that the release of the sealed documents would compromise the government's on-going investigation severely. *See, e.g.*, *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988); *Matter of Eye Care Physicians of America*, 100 F.3d 514, 518 (7th Cir. 1996); *Matter of Flower Aviation of Kansas, Inc.*, 789 F.Supp. 366 (D. Kan. 1992).

## III. PERIOD OF TIME GOVERNMENT SEEKS TO HAVE MATTER REMAIN UNDER SEAL (Local Rule 49(B)(3))

4. The complaint and arrest warrant would need to remain sealed until the defendant is arrested.

5. Upon the arrest of the defendant, pursuant to Local Rule 49(B)(3), the sealed materials will be automatically unsealed and handled as such.

6. The United States has considered alternatives less drastic than sealing and has found none that would suffice to protect this investigation. The United States will move to unseal the documents before they are set to become automatically unsealed if it determines that circumstances warrant such action.

7. The United States further respectfully requests that (1) a copy of the complaint be provided to those law enforcement officials involved in the prosecution of this case; and (2) a copy of the sealed arrest warrant shall be made available to agents of IRS CI, the SBA OIG, and the FDIC OIG for execution of the same.

WHEREFORE, the United States respectfully requests that the complaint, arrest warrant, and this Motion to Seal and proposed Order be sealed until the defendant in this case is arrested.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: Digitally signed by MATTHEW BURKE
Date: 2020.10.15 13:23:24 -04'00'

Matthew Burke
Assistant United States Attorney
2100 Jamieson Ave.
Alexandria, VA 22314
(703) 299-3927