

GOVERNMENT WOULDN'T UNSEAL MICHAEL COHEN'S WARRANTS BECAUSE "MANY UNCHARGED PERSONS ARE NAMED IN THE MATERIALS"

Back on October 11, the NYT moved to unseal the search warrants targeting Michael Cohen, arguing the search was of utmost public interest. A bunch of other media outlets have since joined in. On October 25, the government responded, laying out a bunch of reasons why the warrants had to remain sealed. First, it described investigative reasons: unsealing warrants might reveal the identities of persons of interest in criminal investigations, might jeopardize cooperating witnesses, might disclose the full range of crimes under investigation, and might reveal what evidence the government had already collected in the investigation.

Courts have recognized numerous different ways in which the disclosure of sealed materials could interfere with an investigation. Search warrant materials often reveal "the identities of persons of interest in criminal investigations." In re Search Warrant, 2016 WL 7339113, at *4; In Application of the United States for an Order Pursuant to 18 U.S.C. § 2703(d), 707 F.3d 283, 294 (4th Cir. 2013) (citing fact that "documents at issue set forth sensitive nonpublic facts, including the identity of targets and witnesses in an ongoing criminal investigation"). The disclosure of sealed materials could also jeopardize the cooperation of persons in either the particular

investigation or in future cases. Amodio II, 71 F.3d at 1050. And even when some aspect of a criminal investigation is public, disclosure of a detailed affidavit could “disclose to the subjects the full range of potential criminal violations being investigated, the evidence obtained by the United States prior to the searches, and the information which the subjects and other individuals had provided to the United States or had failed or declined to provide.” In re Sealed Search Warrants Issued June 4 and 5, 2008, 08-M-208 (DRH), 2008 WL 5667021, at *4 (N.D.N.Y. July 14, 2008); see also In re Search Warrant for Secretarial Area Outside Office of Gunn (Gunn), 855 F.2d 569, 574 (8th Cir. 1988) (public access outweighed by fact that disclosure would reveal the “nature, scope and direction of the government’s investigation”).

Let’s see: Cooperating witness, check (Cohen first proffered to Mueller on August 7). Crimes under investigation not already identified, check. Lots of evidence co-conspirators don’t know about, check. The other people being investigated ... hmmm.

Indeed, the government’s second reason to keep the warrants sealed is to protect the privacy interests of third parties who are named in the search warrant, but not charged. The response stated clearly that “many uncharged individuals and entities are named in the” search warrants and other documents.

And in the specific context of third parties named in search warrant applications, that interest is especially weighty, because “a person whose conduct is the subject of a criminal investigation but is not charged with a crime should not have his or her reputation sullied by the mere circumstance of an investigation.” In re

Search Warrant, 2016 WL 7339113, at *4. Moreover, unlike charged defendants, uncharged third parties whose involvement in or association with criminal activity is alleged in search warrant materials may find themselves harmed by the disclosure but without recourse to respond to the allegation. See *In re Newsday, Inc.*, 895 F.2d at 80; *Amodeo II*, 71 F.3d at 1051.3

Here, as set forth in the Government's supplemental submission, **many uncharged individuals and entities are named in the Materials.**

3 The Government has not notified the uncharged third parties that they were named in the Materials, in part because disclosure of that fact to certain of the uncharged third parties would itself impair the ongoing investigation.

Judge William Pauley has not yet ruled and, surprisingly, the press has not yet renewed their request given Cohen's second guilty plea this week.

But read retrospectively, the government's filing makes it clear that part of the reason it insisted on keeping the warrants sealed was to hide the other part of the affidavits covering Cohen's lies to Congress *and the underlying conduct*. I'd be acutely interested to see how the government responded if they did make a renewed request, as I suspect it is all the more important to keep the materials sealed now.

Suffice it to say, though, that the charges Cohen originally pled to, even the campaign finance charges that implicated Trump and the Trump Organization, don't implicate "many uncharged individuals." As I'll show in a later post, the lies Cohen told to Congress do implicate people beyond Cohen himself.

But the underlying Trump Tower deal itself – that's where you begin to get into "many

uncharged individuals and entities.”