

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
UNITED STATES OF AMERICA)	
)	Crim. No. 1:08-cr-00360 (RMU)
)	
v.)	Judge Ricardo M. Urbina
)	
)	
PAUL A. SLOUGH,)	
NICHOLAS A. SLATTEN,)	
EVAN S. LIBERTY,)	
DUSTIN L. HEARD,)	
DONALD W. BALL,)	
)	
Defendants.)	
_____)	

**JOINT DEFENSE MOTION
TO UNSEAL PROCEEDINGS, COURT DOCUMENTS AND TRANSCRIPTS
PERTAINING TO THE ARREST AND GUILTY PLEA OF JEREMY RIDGEWAY**

Defendants Paul A. Slough, Nicholas A. Slatten, Evan S. Liberty, Dustin L. Heard, and Donald W. Ball, through undersigned counsel, respectfully submits this joint defense motion to unseal the proceedings, court documents and transcripts pertaining to the arrest and guilty plea of Jeremy Ridgeway. Counsel for the United States, Assistant U.S. Attorney Kenneth C. Kohl, has indicated that the Government does not oppose unsealing certain documents related to Mr. Ridgeway’s arrest, but does oppose unsealing Mr. Ridgeway’s plea agreement.¹ The reasons supporting the motion are set forth below.

¹ Subject to limited redactions concerning personal identifiers and privacy act information located within said documents.

I. BACKGROUND

Mr. Slough, Mr. Slatten, Mr. Liberty, Mr. Heard, and Mr. Ball are charged by way of a thirty-five count sealed Indictment² filed on December 4, 2008. The charges arise from events that allegedly occurred on September 16, 2007 at Nisour Square in Baghdad, in the Republic of Iraq. They are charged in Counts One through Fourteen with Voluntary Manslaughter in violation of 18 U.S.C. §§ 3261(a)(1); 1112, in Counts Fifteen through Thirty-Four with Attempt to Commit Manslaughter in violation of 18 U.S.C. §§ 3261(a)(1); 1113, in Count Thirty-Five with Using and Discharging a Firearm During and in Relation to a Crime of Violence in violation of 18 U.S.C. §§ 3261(a)(1); 924(c). They are charged in all Thirty-Five Counts with Aiding and Abetting in violation of 18 U.S.C. § 2.

² The Government filed the Indictment and arrests warrants under seal against each of the above named defendants. In its motion to seal the Indictment, and Other Pleadings, Records, Proceedings and Files, filed on December 4, 2008, the Government represented to the Court that the sealing was “necessary because the Indictment and the bench warrants contain sensitive information, the disclosure of which would not be in the interest of the government or the public.” *See* Gov’t Motion to Seal of December 4, 2008 at 2 (attached hereto as Exhibit 1). Specifically, the Government represented that law enforcement officials believed that the defendants were not aware of the charges against them and that the disclosure of the Indictment and bench warrants “may hinder law enforcement’s efforts in apprehending them, and may also endanger law enforcement personnel and confidential civilian witnesses.” *Id.* The Government also represented that it was “essential that any information concerning the defendants’ having a pending case in [the District of Columbia] be kept under seal until their arrest is accomplished.” *Id.* The Government’s representations to the Court in this regard were false and misleading. Each of the defendants was fully aware that he was a target of a grand jury investigation since June 2008. Counsel for each of the defendants told counsel for the Government that each defendant would self-surrender in the event formal charges were filed. *See, e.g., Letter from David Schertler on behalf of all defense attorneys concerning Blackwater Grand Jury Investigation to J. Patrick Rowan, Jeffrey A. Taylor, and Kenneth C. Kohl* of September 30, 2008 (attached hereto as Exhibit 2). In that letter, Mr. Schertler wrote

[i]n the event that you decide to charge any of our clients, we would ask that you inform us of your decision in advance and permit us to voluntarily surrender our clients to the authorities. Our clients have all served their county honorably in various branches of the armed forces and have no criminal background. Our clients have long understood that this investigation potentially could lead to criminal charges, and each of them is prepared to voluntarily surrender to authorities should that become necessary.

On or about November 25, 2008, prior to the time the Government moved this Court to seal the Indictment, Government counsel informed counsel for each of the above-named defendants that an Indictment was forthcoming and their clients would need to self-surrender to law enforcement on December 8, 2008. In asking this Court to seal the Indictment, the Government neglected to inform the Court that it had already told counsel for the defendants the fact of the Indictment as well as the nature of the charges, including the fact that the Indictment would include 18 USC § 924(c) charges that carried mandatory periods of incarceration. Thus, it would appear that there was no valid reason for sealing the Indictment.

According to Court records, on November 18, 2008, Jeremy Ridgeway pled guilty to two criminal counts, Voluntary Manslaughter, in violation of 18 U.S.C. §§ 1112; 2 and Attempt to Commit Manslaughter and Aiding and Abetting the same in violation of 18 U.S.C. §§ 1113; 2. *United States v. Jeremy Ridgeway*, Crim. No. 341-2008 (RMU). It appears that Mr. Ridgeway pleaded guilty a second time to a revised information on December 5, 2008.

II. THE PRESENT MOTION

In the present motion, the defendants ask the Court to unseal all records pertaining to the plea proceeding of Jeremy Ridgeway. The material sought can be categorized into three general categories: (1) all plea papers and documents filed with the Court, (2) copies of any and all documents pertaining to the Government's arrest of Mr. Ridgeway including arrest warrant(s) and affidavit(s), and (3) transcripts of Mr. Ridgeway's plea proceedings.

There is a compelling constitutional right for free and public access to all information and proceedings presented in our courts. Here, no countervailing interest would be adversely prejudiced by unsealing all information related to Mr. Ridgeway's plea agreement proceedings given the fact that the Government itself has already moved to unseal the criminal information and factual proffer and, in a nationally televised press conference, publicized the fact of Mr. Ridgeway's guilty plea. In contrast, the defendants will suffer prejudice if they are not able to obtain access to all documents related to Mr. Ridgeway's proceeding before the Court, given that this information is critical to the defendants' significant Constitutional legal challenges to the Government's attempt to create venue in the District of Columbia.

III. LEGAL AUTHORITY

The Supreme Court has explicitly recognized a common law right for open court proceedings and for public access to court documents. *See Nixon v. Warner Communications*,

Inc., 435 U.S. 589, 597 (1978). As the Court explained, “[i]t is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Id.*

Indeed, our Circuit has proclaimed that “[t]he first amendment guarantees the press and the public a general right of access to court proceedings and court documents unless there are compelling reasons demonstrating why it cannot be observed.” *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991). The Court explained that “[w]here . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.” *Id.* (quoting *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606-07 (1982)).

The First Amendment guarantees the right of access to plea agreements in all criminal cases. This is so because “public access to them enhances both the basic fairness of the criminal [proceeding] and the appearance of fairness so essential to the public confidence in the system.” *Washington Post, supra*, 935 F.2d at 288 (citations omitted). Accordingly, the “first amendment creates a general presumption of access to plea agreements. That presumption can be overridden only if (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.” *Id.* at 290. (citations omitted).

IV. LEGAL ANALYSIS

A. NO COMPELLING INTEREST WOULD BE SERVED BY KEEPING MR. RIDGEWAY’S PLEA PROCEEDINGS SEALED.

The burden rests upon the Government to demonstrate a compelling interest that would be served by keeping Mr. Ridgeway’s plea proceedings sealed. The Government cannot meet

that burden in this case. First, the traditional reasons for keeping such proceedings under seal do not exist in this case. As the Court is aware, cooperation plea agreements are typically sealed when (1) a defendant is proactively engaged in covert activities with ongoing law enforcement investigations and the defendant's identity needs to be protected, (2) release of sealed documents could jeopardize or compromise an ongoing investigation, or (3) there are legitimate safety concerns posed to the defendant if the court documents were made public. None of these concerns exists in the present case. Mr. Ridgeway is not assisting law enforcement in any covert investigation. In fact, the Government has already chosen to make public the information and factual proffer in support of Mr. Ridgeway's plea agreement. There is no basis for any other aspects of Mr. Ridgeway's plea proceeding, including the plea agreement itself, to remain sealed. Second, the unsealing of the plea agreement will have no impact on any ongoing investigation. This is especially true in light of the fact that the grand jury has already returned an Indictment against the defendants in this case. Finally, the Government cannot claim to be protecting Mr. Ridgeway in any way since it has already made his cooperation public at a press conference on December 8, 2008.

Although we do not know what reasons the Government proffered to the Court to support sealing any of the matters pertaining to Mr. Ridgeway, we submit that any reasons initially offered are moot. A close look at the facts stated in support of the Government's Affidavit in Support of Application for Arrest Warrant for Mr. Ridgeway, the Government stated that the sealing of Mr. Ridgeway's arrest warrants was necessary due to the "continuing" nature of the investigation, and that releasing court documents concerning Mr. Ridgeway "[would] jeopardize the progress of the investigation." *See Exhibit 3, Affidavit in Support of Application for Arrest Warrant* of November 18, 2008, at 2. Of course, those reasons have become moot with the

Indictment and arrest of the above-named defendants. As such, we respectfully submit that no compelling state interest is served by maintaining a seal of Mr. Ridgeway's plea proceedings.

B. NO COMPELLING INTEREST WOULD BE HARMED IF THE MATTER WERE UNSEALED.

Even assuming, *arguendo*, that the Court were to find a compelling interest exists for keeping the plea proceedings sealed, the Government cannot meet the heavy burden of proving that, in the absence of the sealing, there is a substantial probability any compelling interest would be harmed. Indeed, the opposite is true. The Government has chosen to publicly identify Mr. Ridgeway as an individual who has pleaded guilty. Given the Government's action in publicly announcing Mr. Ridgeway's plea and the facts to which he has admitted, there is no compelling public or governmental interest that would in any way be harmed by unsealing the remaining aspects of Mr. Ridgeway's plea proceeding.

C. THE DEFENDANTS WILL BE PREJUDICED IF MR. RIDGEWAY'S PLEA PROCEEDING IS NOT UNSEALED.

In contrast, the defendants will be prejudiced if they are denied access to the sealed material. Because none of the acts alleged in the Indictment occurred in the District of Columbia and none of the defendants reside in the District of Columbia or has any other ties to the District of Columbia, the defendants intend to assert that venue is not proper in the District of Columbia. The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district where the crime shall have been committed."

Without addressing the merits of our venue challenge, it is critical to making that challenge that all the defendants have access to any and all documents and proceedings pertaining to Mr. Ridgeway's arrest, prosecution and agreement with the Government, including representations made in open Court by Mr. Ridgeway and the Government. A review of the

public entries on the Court's PACER system illustrates that Mr. Ridgeway was before Chief Judge Royce C. Lamberth on November 18, 2008 for a plea proceeding. It appears that Mr. Ridgeway may have been before this Court again on December 5, 2008 for a second plea proceeding. A review of the two criminal informations filed shows that the superceding information contains additional language that the Government is using in an attempt to create improper venue in the District of Columbia. Because we expect that the Government will use Mr. Ridgeway's plea in this jurisdiction as a basis for venue, the information relating to Mr. Ridgeway's plea proceeding is critical to the defendants' ability to fully present their challenge to proper venue.

D. THERE ARE ALTERNATIVES THAT WOULD PROTECT ANY COUNTERVAILING INTEREST.

Finally, to the extent that the Court believed there is any compelling interest that could be harmed in the absence of closure, there are a variety of alternatives to closure that would adequately protect that interest. The Court easily could, for instance, provide the defendants access to the necessary information under a protective order that would govern and restrict any public disclosure of the information. While we do not see any need for such a protective order under the circumstances of this case, we would certainly agree to abide by any order issued by the Court.

CONCLUSION

WHEREFORE, for the reasons set forth above, the defendants respectfully requests that the Court direct the Clerk of the Court to unseal the proceedings, court documents and transcripts pertaining to the arrest and guilty plea of Jeremy Ridgeway.

Date: January 5, 2009

Respectfully submitted,

/s/ David Schertler

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Counsel for Donald Ball

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
)
 v.)
)
)
 PAUL ALVIN SLOUGH,)
)
 NICHOLAS ABRAM SLATTEN,)
)
 EVAN SHAWN LIBERTY,)
)
 DUSTIN LAURENT HEARD,)
)
 DONALD WAYNE BALL,)
)
 Defendants.)

CRIMINAL NO. **CR-08-360**

FILED
DEC 04 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**GOVERNMENT'S MOTION TO SEAL THE CRIMINAL
INDICTMENT AND OTHER PLEADINGS, RECORDS,
PROCEEDINGS AND FILES, AND TO DELAY ENTRY ON
THE PUBLIC DOCKET OF THE FILING OF THIS
MOTION TO SEAL AND ALL RELATED MATTERS**

The United States, by and through its attorney, Jeffrey A. Taylor, the United States Attorney for the District of Columbia, hereby respectfully submits this motion to seal the accompanying criminal Indictment, bench warrants, as well as all other pleadings, proceedings, records and files in this case, including the instant motion to seal, and to delay entry on the public docket of this motion to seal and all related matters. In support of this motion, the government states as follows:

The Indictment in this case charges the defendants with multiple counts of Voluntary Manslaughter, in violation of Title 18, United States Code, Sections 3261(a)(1), 1112, and 2; multiple counts of Attempt to Commit Manslaughter, in violation of Title 18, United States Code,

Sections 3261(a)(1), 1113, and 2; and one count of Using and Discharging a Firearm During and in Relation to a Crime of Violence, in violation of Title 18, United States Code, Sections 3261(a)(1), 924(c), and 2. Each count of Voluntary Manslaughter carries a maximum statutory penalty of ten years; each count of Attempt to Commit Manslaughter carries a maximum statutory penalty of seven years; and the firearms count carries a mandatory minimum statutory penalty of 30 years.

The sealing of the case is necessary because the Indictment and bench warrants contain sensitive information, the disclosure of which would not be in the interest of the government or the public.

Law enforcement believes the defendants are not aware of the specific charges pending against them and disclosure of the Indictment and bench warrants in the public records may hinder law enforcement's efforts in apprehending them, and may also endanger law enforcement personnel and confidential civilian witnesses. Law enforcement believes that disclosure of the Indictment at this time will make it more difficult to secure the defendants' voluntary surrender to law enforcement in Washington, D.C. Accordingly, it is essential that any information concerning the defendants' having a pending case in this district be kept under seal until their arrest is accomplished.

Based on the nature of the ongoing criminal investigation, the government submits that public disclosure of the Indictment would likely compromise the criminal investigation by: (1) placing the personal safety of law enforcement officers, government witnesses, and innocent third parties at substantial risk; and (2) increasing the possibility that the defendants may attempt to flee and avoid apprehension. Each of these factors is particularly important in this instance because the defendants have been charged with crimes of violence that carry significant statutory penalties.

Accordingly, the government submits that these facts present an extraordinary situation and

a compelling governmental interest which justify not only the sealing of the criminal Indictment and all other pleadings, records, proceedings, and files in this case, but also a delay in the public docketing of the filing of these sealed pleadings and the accompanying order until the defendants are apprehended by law enforcement. See Washington Post v. Robinson, 935 F.2d 282, 289 (D.C. Cir. 1991).

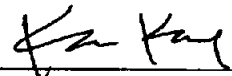
The proposed sealing order permits the Indictment, bench warrants, and the other related pleadings to remain under seal until one or more of the defendants are arrested.

WHEREFORE, for the foregoing reasons and for any other such reasons as may appear to the Court, the government requests that its motion be granted.

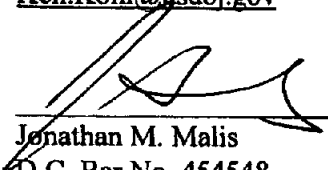
Respectfully submitted,

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By:



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Dated: December 4, 2008

EXHIBIT 2



SCHERTLER & ONORATO, L.L.P.

David Schertler
DC & IL Bars

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DC & CA Bars

Vincent H. Cohen, Jr.
DC, MD & NJ Bars

David H. Dickieson
DC, MD, VA & PA Bars

Lisa Fishberg
DC, MD & NY Bars

Mark E. Schamel
DC, MD & NY Bars

Robert J. Spagnoletti
DC, NJ, NY & TX Bars

Habib F. Ilahi
DC & TX Bars

Claire Morris Clark
VA Bar

Michael Starr
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Peter V. Taylor
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September 30, 2008

VIA EMAIL AND HAND DELIVERY

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RE: ***Blackwater Grand Jury Investigation***

Gentlemen:

On behalf of all the defense attorneys involved in this matter, let me thank you again for the opportunity to meet with you and your colleagues to discuss the unique legal and factual issues attendant to this investigation. Our presentation took longer than we expected, and we appreciated your patience and willingness to hear us out.

As we told you at the end of our meeting, we would like the lines of communication to remain open. As you know, in addition to the information we presented to you in person, we previously provided you with lengthy letters setting forth our legal analysis of the jurisdictional and *Kastigar* issues presented in this case. We remain willing to respond to other questions the Department might have. Further, as you also know, the attorneys representing all six of the Blackwater contractors that have been identified as "targets" in this investigation have been in regular contact with Ken Kohl.

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In that spirit, we have a specific request to make at this time. In the event that you decide to charge any of our clients, we would ask that you inform us of your decision in advance and permit us to voluntarily surrender our clients to the authorities. Our clients have all served their country honorably in various branches of the armed forces and have no criminal background. Our clients have long understood that this investigation potentially could lead to criminal charges, and each of them is prepared to voluntarily surrender to authorities should that become necessary. No legitimate law enforcement purpose would be served by sending armed agents to arrest our clients in their homes in front of their wives and children. In fact, because any decision to bring charges in this case undoubtedly would be a highly publicized event, we are gravely concerned that such tactics would unfairly prejudice our clients in the public eye and would adversely impact their right to a fair trial before an impartial jury. We assure you that we will surrender our clients in an orderly and timely fashion according to any instructions we may receive from law enforcement.

Again, we appreciate the consideration that you have shown us thus far and, regardless of how the Department chooses to proceed in this matter, we will work with you in a spirit of civility and cooperation.

Kindest regards,

A handwritten signature in cursive script, appearing to read "David Schertler", written over a horizontal line.

David Schertler

EXHIBIT 3

CR - 08 - 341 FILED

SEALED

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR ARREST WARRANT**

NOV 18 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

I, John M. Patarini, a Special Agent with the Federal Bureau of Investigation (FBI), being first duly sworn, hereby depose and state as follows:

1. I make this affidavit in support of an arrest warrant for JEREMY P. RIDGEWAY,

2. I have been a Special Agent of the FBI since 1989, and I am currently assigned to the Counterterrorism Squad CT-2, Counterterrorism Division, Washington Field Office. As a Special Agent of the FBI, I am authorized to investigate crimes in which the United States is or may be a party in interest, and perform other duties imposed by law.

3. The Federal Bureau of Investigation has been investigating possible violations of 18 U.S.C. §§ 1112 (Voluntary Manslaughter), 1113 (Attempt to Commit Manslaughter), and related weapon charges, arising out of a September 16, 2007 fatal shooting at Nisur Square in Baghdad, Iraq involving employees of a U.S. government contractor, Blackwater Worldwide. Criminal acts committed by federal contractors in foreign countries are subject to prosecution under the Military Extraterritorial Jurisdiction Act ("MEJA"), 18 U.S.C. § 3261(a)(1), et al., when their work "relates to supporting the mission of the Department of Defense overseas." 18 U.S.C. § 3267(1)(A)(ii)(II).

4. FBI investigators have interviewed many of the Iraqi survivors of the September 16 shooting incident, and other eyewitnesses who were present on the scene. The witnesses report that a convoy of four heavily-armored Blackwater vehicles entered the Nisur Square traffic circle located just outside the International Zone in western Baghdad at around noon on September 16, 2007, and positioned their vehicles in a manner to stop the flow of civilian traffic from all directions. FBI investigators have confirmed the identification of this particular Blackwater convoy as "Red Detail Tactical Support Team No. 23," or "Raven 23." The four armored vehicles were occupied by a total of 19 Blackwater independent contractors.

5. The eyewitnesses state that, while parked at the circle, one or more of the turret gunners in the Blackwater vehicles opened fire into a small white Kia sedan that had approached the intersection from the south, fatally wounding the driver. Heavy machine gunfire continued from the Blackwater convoy, directed at the white Kia sedan and other vehicles in the traffic lanes south of the circle, and eventually toward unarmed civilians attempting to run to safety. The witnesses also observed the convoy fire several grenades into civilian vehicles and over the fence of a nearby middle school. The white Kia sedan burst into flames and the two occupants of the vehicle were killed.

6. As the convoy departed from the intersection, the witnesses observed the Blackwater independent contractors continue to fire at pedestrians to the east of the traffic circle, and at a red bus and unarmed civilians to the west of the circle. As the convoy proceeded back to the International Zone on a road to the north of the circle, other eyewitnesses observed members of the convoy open fire again into the rooftops, windshields, and trunks of three other vehicles, wounding at least three other civilians.

7. An FBI review of hospital records, Iraqi police and army reports, and an examination of several vehicles recovered from the scene, has confirmed that at least 14 people were killed in the attack, at least 20 more were injured, and approximately 18 vehicles were damaged by gunfire or grenades in the vicinity of the traffic circle, and on the road proceeding north from the circle. Another 18 individuals were targeted by gunfire from the Blackwater convoy, but not injured.

I. Request for Arrest Warrant for Defendant Jeremy P. Ridgeway

8. One of the Blackwater independent contractors who fired his weapon during the September 16 shooting has been positively identified by witnesses as JEREMY P. RIDGEWAY.

9. Mr. Ridgeway and his legal counsel have met with the federal prosecutors handling the investigation, and has agreed to voluntarily enter a plea of guilty to two criminal charges in this case. Mr. Ridgeway has agreed to a written factual proffer describing his actions on September 16, and acknowledging that his use of deadly force against the Iraqi civilians was not objectively reasonable. The factual proffer will be filed with the Court in support of Mr. Ridgeway's guilty plea. A true and accurate copy of the factual proffer is affixed to this affidavit, and incorporated by reference. All of the factual assertions contained in the factual proffer are accurate to my knowledge, and are supported by information that the FBI has received from witness interviews, forensic testing, and other sources.


II. Request for Sealing

10. Since this investigation is continuing, disclosure of the arrest warrant, this affidavit, and/or this application and the attachments thereto will jeopardize the progress of the investigation.

Accordingly, I request that the Court issue an order that the arrest warrant, this affidavit in support of application for arrest warrant, the application for arrest warrant, and all attachments thereto be filed under seal until further order of this Court.


John M. Patarini
Special Agent, FBI
Washington Field Office

Sworn to and subscribed before me
on this 18th day of November, 2008,


ROYCE C. LAMBERTH
Chief Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA)	
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v.)	Judge Ricardo M. Urbina
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PAUL A. SLOUGH,)	
NICHOLAS A. SLATTEN,)	
EVAN S. LIBERTY,)	
DUSTIN L. HEARD,)	
DONALD W. BALL,)	
)	
Defendants.)	
_____)	

PROPOSED ORDER

It is **HEREBY ORDERED** that the Joint Defense Motion to Unseal Proceedings, Court Documents and Transcripts Pertaining to the Arrest and Guilty Plea of Jeremy Ridgeway is **GRANTED**.

It is **ORDERED** that the Clerk of the Court will unseal the proceedings, court documents and transcripts pertaining to the arrest and guilty plea of Jeremy Ridgeway.

SO ORDERED.

Date

The Honorable Ricardo M. Urbina
US District Court Judge