

MEMORANDUM

DATE: December 10, 2007

TO: Professor Dan Coquillette
Professor Richard Marcus

FROM: Andrea Thomson

CC: Judge Lee H. Rosenthal

SUBJECT: Statutes Requiring or Permitting Sealing

This memorandum addresses research that we discussed at the November 2007 Civil Rules meeting regarding statutes that require sealing of cases or documents. The research issues arose in part in response to a letter from Judge Easterbrook to the Director of the Administrative Office stating that the consensus of the Judicial Council of the Seventh Circuit is that too many cases are being filed under seal. In the Council's opinion "the only justification for sealing an entire piece of litigation is a statute requiring that step (as, for example, the False Claims Act does for the initial stages of *qui tam* litigation)." As the Sealing Sub-Committee has examined potential avenues for addressing limits on sealing, the issue arose as to the effect of a potential rule limiting courts' ability to seal cases to circumstances where a statute requires sealing. Thus, my research so far has focused on which federal statutes actually require sealing. While there are not too many federal statutes that require sealing of entire cases, there are quite a few that address sealing of at least part of the record. A summary of the statutes I have found is below.

Before I get into the substance of the research, I wanted to provide a brief note on my methodology for searching for statutes regarding sealing. A search in the U.S. Code database in Westlaw for statutes containing the word "seal" turns up close to 950 results, but the majority of the

results appear to be irrelevant. For example, the search turned up references to sealing in the Constitution or in rules of procedure, as well as references to seals of offices, etc. To narrow the search results, I tried searching for more specific references to sealing, such as filing under seal or “seal” within the same sentence as “document” or “case.” I believe that variations of these types of searches should have turned up all or most of the statutes that would require sealing a case. I have separated those statutes that require sealing of all or a portion of a case from those that permit a court to seal portions of a case because it seems that the statutes requiring sealing would be most relevant to the analysis of a potential rule limiting sealing to instances required by statute. Nonetheless, I have separately included those statutes I found that permit sealing (rather than require it) because those statutes may also have an effect on a potential rule limiting sealing to situations where a statute requires sealing.

Statutes Requiring Sealing of Cases or Portions of Cases

- **8 U.S.C.A. § 1533.** Removal Court Procedure.
 - “In any case in which the Attorney General has classified information that an alien is an alien terrorist, the Attorney General may seek removal of the alien under this subchapter by filing an application with the removal court” 8 U.S.C.A. § 1533(a)(1). Any application that is submitted under this statute is to be submitted *ex parte* and in camera, and “shall be filed under seal with the removal court.” 8 U.S.C.A. § 1533(a)(2).

- **8 U.S.C.A. § 1535.** Appeals.
 - The Attorney General can seek review of a denial of an order sought under § 1533 by filing an appeal in the D.C. Circuit. The entire record is to be transmitted to the Court of Appeals under seal and the Court of Appeals is to hear the matter *ex parte*. 8 U.S.C.A. § 1535(a)(2).
 - Likewise, if the United States seeks to take an interlocutory appeal of a determination under § 1534(e)(3) regarding treatment of classified information, the entire record and any classified information is to be transmitted to the Court of Appeals under seal. 8 U.S.C.A. § 1535(b)(2). “A verbatim record of such appeal shall be kept under seal in the event of any other judicial review.” *Id.*

- Similarly, if there is an appeal of the decision of the judge after the removal hearing, by either the alien or the Attorney General, the entire record is to be transmitted to the Court of Appeals, and any information received in camera and *ex parte*, and any portion of the order that would reveal the substance or source of the information, is to be transmitted under seal. 8 U.S.C.A. § 1535(c)(3).
 - Finally, the alien or the Attorney General may petition to the Supreme Court for a *writ of certiorari*, and any information transmitted to the Court of Appeals under seal must, if submitted to the Supreme Court, also be transmitted under seal. 8 U.S.C.A. § 1535(d).
- **15 U.S.C.A. § 1116.** Injunctive Relief (in Trademark Act of 1946).
 - Courts have power to grant injunctions to prevent violation of a right of a registrant of a trademark or to prevent a violation of certain parts of section 1125. An order under the subsection and any supporting documents must be sealed until the person against whom the order is directed has the opportunity to contest the order. 15 U.S.C.A. § 1116(d)(8).
- **18 U.S.C.A. § 9, App. 3.** Classified Information Procedures Act.
 - Section 9 requires creation of rules establishing procedures for the protection against unauthorized disclosure of any classified information in the custody of the United States courts, courts of appeal, or the Supreme Court. The rules apply in criminal cases involving classified information, and appeals therefrom. Every document filed by the defendant in the case must be filed under seal and turned over to the court security officer, who is to examine the document and determine whether it contains classified information. If it does, the court must make sure it is appropriately marked. If not, it must be unsealed and placed in the public record. 18 U.S.C.A. § 9, App. 3(9)(a).
- **18 U.S.C.A. § 2339B.** Providing material support or resources to designated foreign terrorist organizations (in Antiterrorism and Effective Death Penalty Act of 1996).
 - In a civil proceeding under this section, the U.S. may make an *ex parte* request, and the court may authorize, redaction of classified information from documents to be introduced into evidence or made available to the defendant in discovery. If the court enters an order granting the request, the entire text of the document must be sealed and preserved in the court's records. 18 U.S.C.A. § 2339B(f)(1)(B). If the court denies a request, the U.S. may take an interlocutory appeal and the text of the documents and transcripts of *ex parte* arguments must be maintained under seal and delivered to the appellate court. 18 U.S.C.A. § 2339B(f)(1)(C). The U.S. may petition the court *ex parte* to admit, in lieu of classified writings, copies with redactions, stipulations admitting relevant facts, and/or a declassified summary of classified information. 18 U.S.C.A. § 2339B(f)(2)(A). Likewise, with respect to trial testimony, the court can prevent disclosure of classified information by permitting the U.S. to provide the court, *ex parte*, with a proffer of the witness's response or

requiring the defendant to provide the court with a proffer of the nature of the information the defendant seeks to elicit. 18 U.S.C.A. § 2339B(f)(3)(B).

- **18 U.S.C.A § 3123.** Issuance of an order for a pen register or a trap and trace device.
 - The government may make an application for use of a pen register or trap and trace device, and the court shall enter an *ex parte* order if the requisite showing has been made. If the government obtains an order, it must maintain a record of certain information and must provide that record *ex parte* and under seal to the court. 18 U.S.C.A. § 3123(a)(3)(B). An order authorizing the installation and use of a pen register or trap and trace device must specify that the order is to be sealed until otherwise ordered by the court and that those obligated to comply with the order may not disclose the order. 18 U.S.C.A. § 3123(d).
- **18 U.S.C.A. § 3509.** Child victims’ and child witnesses’ rights.
 - “All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order.” 18 U.S.C.A. § 3509(d)(2).
- **18 U.S.C.A. § 3511.** Judicial review of requests for information.
 - The recipient of a request for records, a report, or other information under section 2709(b) of Title 18, section 626(a) or (b) or 627(a) of the Fair Credit Reporting Act, section 1114(a)(5)(A) of the Right to Financial Privacy Act, or section 802(a) of the National Security Act of 1947 may petition for an order modifying or setting aside the request. 18 U.S.C.A. § 3511(a). For all proceedings under this section, subject to any right to an open hearing in a contempt proceeding, the court must close any hearing to the extent necessary to prevent unauthorized disclosure of a request for records, a report, or other information made to any person or entity under the relevant statutes. Petitions, filings, records, orders, and subpoenas must be kept under seal to the extent necessary to prevent unauthorized disclosure. 18 U.S.C.A. § 3511(d).
 - *** Portions of 18 U.S.C.A. §3511 were held to be unconstitutional in *Doe v. Gonzales*, 500 F. Supp. 2d 379 (S.D.N.Y. 2007). Legislation is currently pending to amend the statute. Relevant for our purposes, subsection (d) is proposed to be amended to state: “(d) Disclosure. In making determinations under this section, unless the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case, the court shall disclose to the petitioner, the counsel of the petitioner, or both, under the procedures and standards provided in the Classified Information Procedures Act (18 U.S.C. App.) or other applicable law, portions of the application, National Security Letter, or other related materials.” The proposed legislation would also repeal section 3511(e), requiring the court to review *ex parte* and in camera any government submissions that may include classified information. It looks like the sealing section may be removed by the proposed amendments.
- **28 U.S.C.A. § 657.** Arbitration award and judgment.

- District courts are required to provide, by local rule, that the contents of any arbitration award made under this chapter (Ch. 44 - Alternative Dispute Resolution) shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment or the action has otherwise been terminated. 28 U.S.C.A. § 657(b) (entitled “Sealing of arbitration award”).
- **28 U.S.C.A. § 2635. Filing of official documents.**
 - In civil actions commenced in the Court of International Trade under section 516A of the Tariff Act of 1930, the administering authority established to administer title VII of the Tariff Act of 1930 or the United States International Trade Commission shall transmit to the clerk of court the record of such action. 28 U.S.C.A. § 2635(b)(1). The administering authority or the Commission shall identify and transmit under seal to the clerk of court any document, comment, or information that is given confidential or privileged status by the Government agency whose action is being contested and that is required to be transmitted to the clerk. 28 U.S.C.A. § 2635(b)(2).
 - When an application for an order directing the administering authority or the Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930, “the administering authority or the Commission shall transmit under seal to the clerk of the Court of International Trade, as prescribed by its rules, the confidential information involved, together with pertinent parts of the record. . . . The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under a protective order consistent with section 777(c)(2) of the Tariff Act of 1930.” 28 U.S.C.A. § 2635(c).
 - In other civil actions in the Court of International Trade in which review is based on the record made before an agency, the agency must “identify and transmit under seal to the clerk of the court any document, comment, or other information that was obtained on a confidential basis and that is required to be transmitted to the clerk under paragraph (1) of this subsection. . . . The confidential status of such information shall be preserved in the civil action, but the court may examine the confidential information in camera and may make such information available under such terms and conditions as the court may order.” 28 U.S.C.A. § 2635(d)(2).
- **31 U.S.C.A. § 3730. Civil actions for false claims.**
 - A complaint filed by a private person under the False Claims Act (section 3729) must remain under seal for at least 60 days, and shall not be served on the defendant until the court orders. 31 U.S.C.A. § 3730(b)(2). The Government may, for good cause, move for extensions of time for the complaint to remain under seal. 31 U.S.C.A. § 3730(b)(3).
 - *** Proposed legislation is pending that would amend section 3730(b) to allow the Government to move to dismiss the *qui tam* relator who is an employee of the Federal Government in certain circumstances, and to require that a motion to dismiss and

supporting papers cannot be made public without prior written consent of the person bringing the civil action and cannot be subject to discovery by the defendant. The proposed legislation would further provide that if a motion to dismiss is granted, the matter must remain under seal.

- **42 U.S.C.A. § 1396h.** State False Claims Act requirements for increased State share of recoveries.
 - If a State has a law relating to false claims that meets certain criteria, the Federal medical assistance percentage for any amounts recovered under a State action brought under such law shall be decreased by 10%. 42 U.S.C.A. § 1396h(a). Among the requirements of the state law is that the law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. 42 U.S.C.A. § 1396h(b)(3).
- **42 U.S.C.A. § 10608.** Closed circuit televised court proceedings for victims of crime.
 - In order to allow victims of a crime to watch criminal trial proceedings where venue is inconvenient, the trial court shall order closed circuit televising of the proceedings in certain circumstances. 42 U.S.C.A. § 10608(a). “No public broadcast or dissemination shall be made of the signal transmitted pursuant to subsection (a) of this section. In the event any tapes are produced in carrying out subsection (a) of this section, such tapes shall be the property of the court and kept under seal.” 42 U.S.C.A. § 10608.
- **49 U.S.C.A. § 1154.** Discovery and use of cockpit and surface vehicle recordings and transcripts.
 - “A court may allow a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.” 49 U.S.C.A. § 1154(a)(4)(B).
- **50 U.S.C.A. § 1802.** Electronic surveillance authorization without court order; certification by Attorney General; reports to Congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court (in Foreign Intelligence Surveillance Act of 1978).
 - The President may authorize electronic surveillance without a court order to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies that certain requirements are met. 18 U.S.C.A. § 1802(a)(1). “The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification.” 18 U.S.C.A. § 1802(a)(3). It must remain sealed unless an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804, or until the certification is necessary to determine the legality of the surveillance under section 1806(f). *Id.*

- **50 U.S.C.A. § 1803.** Designation of judges (in the Foreign Intelligence Surveillance Act of 1978).
 - If a judge denies an application for an order authorizing electronic surveillance under the chapter, the judge must provide a written statement of each reason for his decision, and on motion by the United States, the record should be transmitted under seal to the court of review. 50 U.S.C.A. § 1803(a).
 - If the court of review determines that the application was properly denied, the court of review must provide a written statement of reasons, and on a petition by the United States for a *writ of certiorari*, the record must be transmitted under seal to the Supreme Court. 50 U.S.C.A. § 1803(b).

- **50 U.S.C.A. § 1805b.** Additional procedure for authorizing certain acquisitions concerning persons located outside the United States.
 - The Director of National Intelligence and the Attorney General may authorize acquisition of foreign intelligence information regarding people believed to be outside the United States if certain criteria are met. 50 U.S.C.A. § 1805b(a). The Attorney General must submit under seal to the court a copy of his certification that the required criteria have been met. 50 U.S.C.A. § 1805b(c). All petitions made under this section must be filed under seal. 50 U.S.C.A. § 1805b(k). Further, the court may review *ex parte* and in camera Government submissions that may include classified information. *Id.*
 - *** Legislation is pending to repeal this section effective December 31, 2009 (with certain exceptions for those acquisitions authorized prior to the sunset provision). In addition, there appears to be pending legislation that would remove portions of the current statute, including the section on sealing petitions and filing a sealed certification (although the amendment would still specify that the order would be *ex parte*).

- **50 U.S.C.A. § 1805c.** Submission to Court review of procedures.
 - The Government is required to submit procedures by which the Government determines that acquisitions conducted pursuant to section 1805b do not constitute electronic surveillance. 50 U.S.C.A. § 1805c(a). The court is to determine if the procedures are clearly erroneous and enter an order. 50 U.S.C.A. § 1805c(c). The Government may appeal the order, and on a petition for a *writ of certiorari*, the record must be transmitted under seal to the Supreme Court. 50 U.S.C.A. § 1805c(d).
 - *** Legislation is pending that would change this section to relate to emergency procedures for acquisition of foreign intelligence. In addition, legislation is pending to repeal this section effective December 31, 2009 (with certain exceptions for those acquisitions authorized prior to the sunset provision).

- **50 U.S.C.A. § 1822.** Authorization of physical searches for foreign intelligence purposes.
 - The President (acting through the Attorney General) may authorize physical searches

without a court order to acquire foreign intelligence information for up to one year if certain requirements are certified. 50 U.S.C.A. § 1822(a)(1). The Attorney General must immediately submit under seal to the Foreign Intelligence Surveillance Court a copy of the certification of meeting the statutory requirements. 50 U.S.C.A. § 1822(a)(3). It must remain sealed unless an application for a court order regarding the physical search is made under sections 1821(4) and 1823 or the certification is necessary to determine the legality of the physical search under section 1825(g). *Id.*

- The Foreign Intelligence Surveillance Court has jurisdiction to hear applications for and grant orders approving physical searches under certain conditions. 50 U.S.C.A. § 1822(c). If the judge denies the application, the judge must provide a written statement in the record of the reasons for denial, and on motion of the United States, the record must be transmitted under seal to the court of review established under section 1803(b). *Id.*
- If the reviewing court determines that the application was properly denied, the court must provide for the record a written statement of the reasons for the decision, and on petition of the United States for a *writ of certiorari*, the record must be transmitted under seal to the Supreme Court. 50 U.S.C.A. § 1822(d).
- **50 U.S.C.A. § 1861.** Access to certain business records for foreign intelligence and international terrorism investigations.
 - The Director of the FBI or his designee may make an application for an order requiring the production of tangible things for an investigation to obtain foreign intelligence information not concerning a U.S. person or to protect against international terrorism or clandestine intelligence activities, but the investigation must not be solely based on activities protected by the First Amendment. 50 U.S.C.A. § 1861(a)(1). A person receiving a production order may challenge the order's legality by filing a petition and may challenge a non-disclosure order in connection with production by filing a petition to set aside the non-disclosure order. 50 U.S.C.A. § 1861(f)(2)(A)(i). A petition for review of an order affirming, modifying, or setting aside an order, by the Government or any person receiving the order, may be filed with the court of review, and the reviewing court must provide written reasons for its decision and upon a petition for a *writ of certiorari*, the record shall be transmitted under seal to the Supreme Court. 50 U.S.C.A. § 1861(f)(3).
 - Judicial proceedings under this section must be completed expeditiously and the records of the proceedings (including petitions, orders, statements of reasons for decision) shall be maintained under security measures established by the Chief Justice of the Supreme Court. 50 U.S.C.A. § 1861(f)(4).
 - "All petitions under this subsection shall be filed under seal. In any proceedings under this subsection, the court shall, upon request of the Government, review *ex parte* and *in camera* any Government submission, or portions thereof, which may include classified information." 50 U.S.C.A. § 1861(f)(5).
 - *** Proposed legislation is pending that appears to remove the discussion of sealing from subsection (f).

Statutes Authorizing (But Not Necessarily Requiring) Sealing of Documents

- **12 U.S.C.A. § 1786.** Termination of insured credit union status; cease and desist orders; removal or suspension from office; procedure (in Federal Credit Union Act).
 - The National Credit Union Administration Board “may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph 2.” 12 U.S.C.A. § 1786(s)(6).
- **12 U.S.C.A. § 1818.** Termination of status as insured depository institution.
 - “The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).” 12 U.S.C.A. § 1818(u)(5).
- **12 U.S.C.A. § 4522.** Public disclosure of final orders and agreements.
 - The Office of Federal Housing Enterprise Oversight’s Director may file any document or part of a document under seal in a hearing conducted under another sub-chapter if the Director determines in writing that disclosure would be contrary to the public interest. 12 U.S.C.A. § 4522(d).
- **12 U.S.C.A. § 4586.** Public disclosure of final orders and agreements (in Federal Housing Enterprises Financial Safety and Soundness Act).
 - Generally, hearings regarding charges issued by the Secretary of Housing and Urban Development are to be open to the public unless the Secretary determines that public hearings would be contrary to the public interest. The Secretary may file any document under seal in any hearing under this section if she determines in writing that disclosure would be contrary to public interest. 12 U.S.C.A. § 4586(d).
- **12 U.S.C.A. § 4639.** Public disclosure of final orders and agreements (in Federal Housing Enterprises Financial Safety and Soundness Act).
 - Generally, hearings with respect to charges issued by the Director are open to the public, unless the Director determines that it would be contrary to the public interest. The Director may file any document under seal in any hearing commenced by the Director if determined in writing that the disclosure would be contrary to public interest. 12 U.S.C.A. § 4639(d).
- **15 U.S.C.A. § 77z-1.** Private securities litigation (in Securities Act of 1933).

- In a plaintiff class action under this sub-chapter, terms and provisions of any settlement agreement of a class action are not to be filed under seal, except that the court may order filing under seal portions of the settlement agreement as to which good cause is shown for filing under seal. Good cause exists only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party. 15 U.S.C.A. § 77z-1(a)(5).
- **15 U.S.C.A. § 77u-4.** Private securities litigation (in Securities Act Amendments of 1964).
 - In private securities litigation brought as a plaintiff class action under this chapter, settlements are not to be filed under seal, unless the court orders filing under seal the portions of the agreement as to which good cause is shown. Good cause exists only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party. 15 U.S.C.A. § 77u-4(a)(5).
- **26 U.S.C.A. § 7461.** Publicity of proceedings.
 - The general rule is that Tax Court reports and evidence shall be public records, but the Tax Court may make any provision which is necessary to prevent disclosure of trade secrets or other confidential information, including a provision that a document or information be placed under seal.
- **26 U.S.C.A. § 7612.** Special procedures for summonses for computer software.
 - “In any court proceeding to enforce a summons for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to such software, including requiring that any information be placed under seal to be opened only as directed by the court.” 26 U.S.C.A. § 7612(c)(1).
- **28 U.S.C.A. § 1610.** Exceptions to the immunity from attachment or execution.
 - Property of a foreign state in the United States is not immune from attachment or execution if certain criteria are met. “At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7), the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.” 28 U.S.C.A. § 1610(f)(2)(A). In providing the assistance, the Secretaries may provide information to the court under seal. 28 U.S.C.A. § 1610(f)(2)(B)(i).
- **38 U.S.C.A. § 7268.** Availability of proceedings.
 - The United States Court of Appeals for Veterans Claims may make provisions necessary to prevent disclosure of confidential information, including a provision that any such document or information be placed under seal. 38 U.S.C.A. § 7268(b)(1).

Rules of Procedure Requiring or Permitting Sealing

Although rules of procedure that address sealing fall a bit outside the scope of what we are looking into at this time, I came across some procedural rules regarding sealing as I was researching the statutes. Because it seems that such rules could be affected by a proposed rule that permitted sealing only when required by statute, I have included some of those rules regarding sealing below. While this is not yet a complete list of rules governing sealing because I have not exhaustively researched all rules regarding sealing, I thought it could be useful to provide a brief summary of those that I came across in my research regarding the statutes.

- **FED. R. BANKR. P. 9037.** Privacy Protection for Filings Made with the Court.
 - The court may order that a filing be made under seal without redaction. FED. R. BANKR. P. 9037(c).
 - An entity making a redacted filing may also file an unredacted copy under seal. FED. R. BANKR. P. 9037(e).
 - A filing that contains redacted information can be filed with a reference list that identifies items of redacted information and specifies an appropriate identifier that corresponds to each item listed. The list must be filed under seal. FED. R. BANKR. P. 9037(f).
 - The rule is adopted in compliance with section 205(c)(3) of the E-Government Act of 2002, which requires the Supreme Court to create rules to protect privacy relating to electronic filing. FED. R. BANKR. P. 9037, advisory committee's note (2007).
- **U.S. VET. APP. R. 48.** Sealing of Cases.
 - A party requesting disclosure must make an immediate application under 38 U.S.C. § 7332(b)(2)(D), caption the case "In re: Seal Case No. . . .", and serve a copy of the application on the protected person. "[T]he Clerk will enter the case as 'withdrawn' on the docket, assign a new case number and recaption the case using an encoded identifier, and seal the record on appeal and the file of the Court." U.S. VET. APP. R. 48(a).
 - "The procedures described in this rule may, in the Court's discretion, be applied to cases that the Court orders sealed but that do not contain records protected by 38 U.S.C. § 7332." U.S. VET. APP. R. 48(b).
- **D.C. CIR. R. 47.1.** Matters Under Seal.
 - "Any portion of the record that was placed under seal in the district court or before an agency remains under seal in this court unless otherwise ordered." D.C. CIR. RULE 47.1(a).

- “In any case in which the record in the district court or before an agency is under seal in whole or in part and a notice of appeal or petition for review has been filed, each party must promptly review the record to determine whether any portions of the record under seal need to remain under seal on appeal. If a party determines that some portion should be unsealed, that party must seek an agreement on the unsealing.” D.C. CIR. RULE 47.1(b).
 - Parties may move to unseal portions of the record in the D.C. Circuit, and such motions will usually be referred to the district court, although the court may decide the unsealing itself. D.C. CIR. RULE 47.1(c).
 - If briefing refers to sealed material, the filing party must file 2 sets of briefs, one for public use with the sealed material redacted, and one for court use with the sealed material included. D.C. CIR. RULE 47.1(d)(1).
 - The clerk, in conjunction with issuing the mandate, must order the parties to show cause why the record (or sealed portions) should not be unsealed. D.C. CIR. RULE 47.1(f)(1). If material is not unsealed, it will be stored for 20 years, at which point the court will reconsider whether it should be unsealed. D.C. CIR. RULE 47.1(f)(2).
- **D.C. CIR. R. 47.6.** Appeals from the Alien Terrorist Removal Court.
 - “Unless otherwise specified herein, all submissions filed in the court in an appeal from the Alien Terrorist Removal Court must be filed under seal. In addition, any submission containing or referring to classified information must so indicate in an appropriate legend on the face of the submission. The court and all parties to a removal proceeding must comply with all applicable statutory provisions for the protection of classified information, and with the ‘Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information.’” D.C. CIR. R. 47.6(a)(3).
 - “An appeal from the denial of a removal application must be conducted ex parte and under seal. No submissions, including the notice of appeal and the memorandum in support of the appeal, will be served on the alien.” D.C. CIR. R. 47.6(b)(3).
 - “An appeal from a discovery determination will be conducted ex parte and under seal. No submissions, except the notice of appeal, will be served on the alien.” D.C. CIR. R. 47.6(c)(3).
 - In an appeal from a decision after a removal hearing, “[a]ny portion of the record sealed in the Removal Court must be transmitted to and maintained by this court under seal.” D.C. CIR. R. 47.6(d)(3). Briefs and memoranda in an appeal from a decision after a removal hearing must be filed under seal to the extent necessary to comply with subsection (a)(3). D.C. CIR. R. 47.6(d)(4).
- **TAX CT. R. 103.** Protective Orders.
 - The court may make an order to protect parties or others from annoyance, embarrassment, oppression, or undue burden or expense, including a requirement that the parties file specified documents in sealed envelopes to be opened as directed by the court. TAX CT. R. 103(a)(8).

- **U.S. CT. OF INT’L TRADE R. 3.1.** Actions Transferred to the Court of International Trade from a Binational Panel or Committee Pursuant to 19 U.S.C. § 1516a(g)(12)(B) or (D).
 - If there is a request for transfer, “[a]ny documents that were filed under seal pursuant to NAFTA Article 1904 Panel Rule 56 or NAFTA Extraordinary Challenge Committee Rule 30 shall be treated in the same manner as a document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested. U.S. CT. OF INT’L TRADE R. 3.1(d)(3).

- **U.S. CT. OF INT’L TRADE R. 73.2.** Documents in an Action Described in 28 U.S.C. § 1581(c) or (f).
 - “In an action described in 28 U.S.C. § 1581(c), any document, comment, or information that is accorded confidential or privileged status by the agency whose action is being contested and that is required to be filed with the clerk of court, shall be filed under seal.” U.S. CT. OF INT’L TRADE R. 73.2(c)(1).
 - In an action under 28 U.S.C. § 1581(f), the administering authority or the Commission must file, with the clerk of the court, under seal, the confidential information involved, together with pertinent parts of the record. U.S. CT. OF INT’L TRADE R. 73.2(d).

- **9TH CIR. R. 27-13.** Motions to Seal.
 - “If the filing of any specific documents or part of a document under seal is required by statute or a protective order entered below, the filing party shall file the materials or affected parts under seal together with an unsealed and separately captioned notification setting forth the reasons the sealing is required. Notification as to the necessity to seal based on the entry of a protective order shall be accompanied by a copy of the order. Any document filed under seal shall have prominently indicated on its cover and first page the words ‘under seal.’” 9TH CIR. R. 27-13(a).
 - Motions to seal may be made on grounds permitted by law. 9TH CIR. R. 27-13(b).
 - “Absent an order to the contrary, any portion of the district court or agency record that was sealed below shall remain under seal upon transmittal to this court.” 9TH CIR. R. 27-13 advisory committee’s note.