

this Court unsealed twenty-eight redacted documents relating to the eight guilty pleas held under the above styled and numbered cause.¹ Subsequent to this Court's Order, a ninth plea occurred on July 15, 2008. This hearing was not closed and both members of the public and the press attended.² On August 6, 2008, a motion was filed entitled: El Paso Media Group, Inc., d/b/a, The Newspaper Tree to Intervene to Unseal Court Documents and to Open Court Hearings and Request for Hearing on the Motion.³ Intervenor therein, made similar requests of this Court, and additionally, requested no future proceeding be closed.⁴

The government wishes to enlarge the Court's previous disclosure by moving, herein, to unseal redacted versions of the transcripts to the sealed hearings, since the purpose for the closed proceedings in the eight hearings has been ameliorated. Attached hereto, are the government's requested redacted versions of the transcripts which the government seeks to unseal. They are provided to the Court for its review and approval under seal. Should the Court concur that in the request to unseal and agree that the redactions made by the government comply with the applicable law, the government requests that these redacted transcripts be unsealed and made public. The purpose of redaction will be discussed below.

¹The only documents remaining sealed in these pleas are the plea agreements with attached factual bases.

²On July 15, 2008, Fernando Parra plead guilty to an information bearing the above styled cause number: EP-06-CR-1369FM-9.

³Newspaper Tree's Motion makes no mention of the Parra plea.

⁴See: Government's Response and Opposition to Intervenor's Motion of El Paso Media Group, Inc., d/b/a, The Newspaper Tree to Intervene to Unseal Court Documents and to Open Court Hearings and Request for Hearing on the Motion filed in this cause.

Government's Privilege Regarding Informants

It is well settled law that the government maintains a qualified privilege with regard to the identity of its informants. *Rovario v. U.S.* 353 U.S. 53 (1957).

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law. *Scher v. United States*, 305 U.S. 251, 254; *In re Quarles and Butler*, 158 U.S. 532; *Vogel v. Gruaz*, 110 U.S. 311. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourage them to perform their obligation. *Rovario* at p. 59.

The plea agreements reveal the cooperation of the defendants, and additionally, the factual basis attached thereto reveal either the identities of other informers or information which could reveal their identities, as well as the substance of the information they have provided against others, including uncharged coconspirators. Some of this information was revealed during the plea hearings, and the government seeks to redact this information from the plea transcript.

Uncharged Individual's Fifth Amendment Right

As set forth above, the plea hearings reveal to some degree the alleged participation of uncharged coconspirators, and the government seeks to redact this information. The seminal case regarding the right of an uncharged individual or entity to be free from public disclosure of their identity is *U.S. v. Briggs*, 514 F.2d 794 (5th Cir. 1975). The *Briggs* Court held that listing the name of an unindicted co-conspirator in an indictment offends their due process rights. The case of *In re Smith*, 656 F.2d 1101, (5th Cir. 1981), extended the ruling in *Briggs* to include a prohibition against publically naming an uncharged individual in a factual resume created to support a plea of guilty.

The government has redacted very limited portions of the transcripts of the sealed hearings

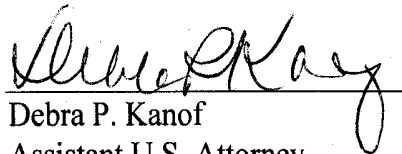
to protect the Fifth Amendment right of uncharged individuals and entities to remain free from public scrutiny unless and until they are formally charged by the government. Additionally, the government preserves its right to maintain the confidentiality of the identity of informants.

Wherefore, premises considered, the government requests this Court unseal the attached redacted versions of the transcripts of the closed proceedings in the above styled and numbered cause.

Respectfully submitted,

JOHNNY SUTTON
UNITED STATES ATTORNEY

By:



Debra P. Kanof
Assistant U.S. Attorney
Texas Bar No. 11093600
700 E. San Antonio Ave., Ste 200
El Paso, Texas 79901
(Tel.) (915) 534-6884
(Fax) (915) 534-6024