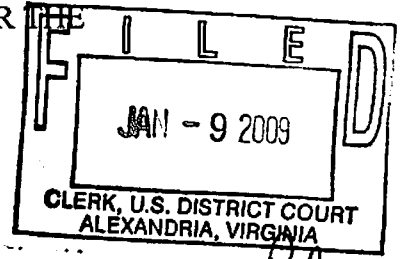


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA,)
)
 v.)
)
 STEVEN J. LEVAN,)
)
 Defendant.)

Case No: 1:09-MJ-23 RB

UNDER SEAL

**GOVERNMENT'S MOTION TO SEAL COMPLAINT, AFFIDAVIT IN SUPPORT
THEREOF AND ARREST WARRANT PURSUANT TO
LOCAL RULE 49(B)**

The United States, by and through undersigned counsel, pursuant 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, affidavit in support thereof, and arrest warrant until the defendant is arrested.

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

1. The United States Postal Inspection Service is investigating charges of access device fraud (18 U.S.C. § 1029(a)(2)) against the defendant, Steven J. Levan.

2. Premature disclosure of the charges against the defendant would jeopardize the ongoing criminal investigation by threatening our ability to locate and arrest the defendant and may lead to the destruction of evidence.

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

3. The Court has the inherent power to seal complaints, affidavits in support thereof, 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, affidavit in support thereof, 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, affidavit in support thereof, and arrest warrant would need to remain sealed until the defendant is arrested.
5. Upon occurrence of the event specified in paragraph 4, pursuant to Local Rule 49(B)(3), the government will immediately move the Court to unseal the affected materials.
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 in advance of the defendant's arrest if it determines that circumstances warrant such action.

WHEREFORE, the United States respectfully requests that the complaint, affidavit in support thereof, and arrest warrant and this Motion to Seal and proposed Order be sealed until the defendant is arrested, whereupon the government will move for the unsealing of those materials.

Respectfully submitted,

Dana J. Boente
Acting United States Attorney

By: 
Thomas H. McQuillan
Counsel of the United States
Assistant United States Attorney
Virginia Bar No. 27108
United States Attorney's Office
Justin W. Williams U.S. Attorney's Building
2100 Jamieson Avenue
Alexandria, Virginia 22314
Phone: 703-299-3700
Fax: 703-299-3981
Email Address: thomas.mcquillan@usdoj.gov