

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA,	:	
	:	18-CR-602 (JMF)
-v-	:	
	:	<u>ORDER</u>
MICHAEL COHEN,	:	
Defendant.	:	
	:	
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JESSE M. FURMAN, United States District Judge:

On December 12, 2023, the Court entered an Order to Show Cause directing David M. Schwartz, counsel of record for Defendant Michael Cohen, to explain why he should not be sanctioned for citing cases that appear not to exist. *See* ECF No. 96; *see also* ECF No. 88. On December 15, 2023, Schwartz, through counsel of his own, filed a response to the Court’s Order to Show Cause, which — at his request — the Court temporarily sealed because it disclosed information potentially protected by the attorney-client privilege. *See* ECF No. 97. The Court granted Cohen — through E. Danya Perry (who had entered a notice of appearance on his behalf after the Government filed its opposition to Cohen’s initial motion, *see* ECF No. 91, and then had filed a reply, which disclosed that the cases cited in the original submission could not be “verif[ied],” ECF No. 95, at 3 n.6) — until December 28, 2023, to respond to Schwartz’s submission and to address whether the submission (and Defendant’s response to it) should remain under seal or be docketed, either in redacted or unredacted form.

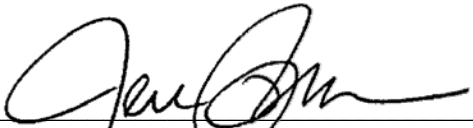
On December 28, 2023, Cohen, through Perry, filed a response. As to the question of sealing, Cohen consents to the public filing of both Schwartz’s December 15, 2023 submission and his response to it — requesting only that personal contact information be redacted from three exhibits. That request is granted, substantially for the reasons set forth in Cohen’s letter. With

those minimal redactions, the Clerk of Court is directed to unseal and docket Schwartz's December 15, 2023 submission and to docket Cohen's December 28, 2023 response.¹

Per the Court's Order of December 18, 2023, Schwartz has until **January 3, 2024**, to file a response to Cohen's submission. Further, the Government may (but is not required to) file a response to these recent developments (either as to whether sanctions should be imposed or as to the merits of Cohen's pending motion for early termination of supervised release) by the **same date**. In light of that, the Court reserves judgment on both whether sanctions should be imposed and whether Cohen's term of supervised release should be terminated early.

SO ORDERED.

Dated: December 29, 2023
New York, New York



JESSE M. FURMAN
United States District Judge

¹ On December 28, 2023, the Court received a motion from Inner City Press to unseal Schwartz's December 15, 2023 filing, a copy of which is attached. In light of the Court's ruling above, that motion is denied as moot.

Inner City Press

December 28, 2023

By E-mail to Chambers

Hon. Jesse M. Furman, United States District Judge
Southern District of New York, 40 Foley Square, New York, NY 10007

Re: Press application to be heard / to unseal filings in US v. Cohen, 18-cr-602
(JMF)

Dear Judge Furman:

Inner City Press has been covering the above captioned criminal case including the filings giving rise to the Court's Order to Show Cause of December 12, 2023 (Dkt. 96). The OTSC called for a filing by December 19 addressing case citations that could not be found.

That filing, it emerged, was never docketed. The Court's December 18 Order (Dkt 97) gave Cohen until December 28 to file a response and stated that "in the absence of a submission by Defendant by December 28, 2023, Schwartz' submission will be unsealed without further notice to the parties."

December 28 has come and gone - it is now 7 pm - and there is nothing in the docket, neither Schwartz response to the December 12 OTSC nor any Cohen response.

This is a Press request that Schwartz' submission be immediately placed in the docket, along with this request and any response that Cohen may or may not have filed without docketing. This is a criminal case, in which the Defendant is seeking an early end to supervision- the presumption that these filings are public is high.

"Representatives of the press must be given an opportunity to be heard on the question of their exclusion from a court proceeding, and we have recognized a similar right of news media to intervene in this Court to seek unsealing of documents filed in a court proceeding." *Trump v. Deutsche Bank AG*, 940 F.2d 146, 150 (2d Cir. 2019). SDNY Judge Rakoff has previously granted an e-mailed Inner City Press request to unseal, in *US v. Weigand*, 20-cr-188 (JSR), see Dkt 250.

"The common law right of public access to judicial documents is firmly rooted in our nation's history." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006).

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Please docket this application to unseal, as SDNY Judges Stein, Hellerstein, Castel, Kaplan, Caproni and others have done. See, e.g., <https://storage.courtlistener.com/recap/gov.uscourts.nysd.516151/gov.uscourts.nysd.516151.85.0.pdf>, Judge Stein's on the record decision to grant Inner City Press' motion to unredact from the sentencing submission in US v. Jen Shah, and Judge Kaplan's Jan 30, 2023 decision to unseal the bond co-signers of Sam Bankman-Fried, which Inner City Press moved for in January 2023.

If appropriate, PLEASE TAKE NOTICE that Inner City Press and its undersigned reporter, in personal capacity, will move this Court before Honorable Jesse M. Furman, U.S. District Judge for the Southern District of New York, at a date and time directed by the Court, for entry of an order granting permission to be heard on sealing or unsealing of the December filings in US v. Cohen, 18-cr-602 (JMF).

If deemed necessary, this now is a request to intervene, see *United States v. All Funds on Deposit at Wells Fargo Bank*, 643 F. Supp. 2d 577, 580 (S.D.N.Y. 2009)

Please act on, and docket, this request, as soon as possible.

Thank you.

Respectfully submitted,

/s/

Matthew Russell Lee, Inner City Press