

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-JSM-TBM

SAMI AMIN AL-ARIAN et al.

MOTION OF MEDIA GENERAL OPERATIONS, INC.,
FOR ACCESS TO SEALED RECORDS

Media General Operations, Inc. ("Media General"),¹ moves this Court to release documents filed under seal since the conclusion of this case. Specifically, Media General seeks access to documents S-66 through S-71. The public record does not appear to set forth any basis for closure of these documents. Moreover, in light of the earlier disposition of this case with the sentencing of two defendants and the acquittal of two others, no fair-trial concerns exist that would support sealing these documents. Grounds for this motion are set forth in the following memorandum of law.

Memorandum of Law

This motion concerns the public's interest in access to documents concerning this high-profile criminal case and the lack of an adequate showing by the parties of the basis for closure. The public enjoys a presumptive right to inspect court records and to attend court proceedings. Under the First Amendment and common law, this right may be abridged only if closure serves a compelling or substantial interest and is no greater than necessary to serve that interest. *U.S. v.*

¹ Media General Operations, Inc. has previously intervened in this action for the limited purpose of seeking access to judicial proceedings and records. *See, e.g.*, Dkt. No. 1475 (granting motion of Media General Operations for access to completed juror questionnaires). *See generally United States v. Ellis*, 90 F.3d 447, 449 (11th Cir. 1996) (allowing media intervention for limited purpose of seeking access to information), *cert. denied*, 519 U.S. 1118 (1997).

Ochoa-Vasquez, 428 F.3d 1015, 1030 (11th Cir. 2005); *United States v. Brazel*, 102 F.3d 1120, 1155 (11th Cir.), *cert. denied*, 522 U.S. 822 (1997); *Newman v. Graddick*, 696 F.2d 796, 802 (11th Cir. 1983). “Because of the important interests at stake, and the careful balancing of interests required,” the basis for denying public access must be “articulated in findings” that identify the “important interest or interests the district court found sufficiently compelling to justify the denial of public access.” *United States v. Kooistra*, 796 F.2d 1390, 1391 (11th Cir. 1986).

In this case, documents S-66 through S-71 appear to have been filed without any showing on the record of the reasons for closure. The docket does not reveal any request for leave to file these documents under seal, as this Court requires. *See, e.g.*, Dkt. No. 1609 (rejecting attempt to file document *in camera* without a preceding motion and order). The parties filing documents S-66 through S-71, therefore, have not adequately identified “sufficiently compelling [interests] to justify the denial of public access.” *Kooistra*, 796 F.2d at 1391. Absent such a showing, the Eleventh Circuit in *Kooistra* found error in the denial of access to judicial records. *Id.* Similarly, in this case, because the litigants did not make a record in support of closure, sealing documents S-66 through S-71 is improper.

Moreover, as this Court has recognized in this case, once the reason for closure evaporates, any seal on documents in the court file must be lifted. So, for example, although the Court previously sealed juror questionnaires in order to protect the fair-trial rights of the Defendants, once the previous trial concluded, the Court recognized that concealment of the records at issue was no longer necessary. *See* Dkt. No. 1475. Similarly, release of the documents filed since the sentencing of Mr. Fariz and Mr. Al-Arian and the acquittal of their co-defendants will not endanger any person’s fair-trial rights, because no further trial is possible in

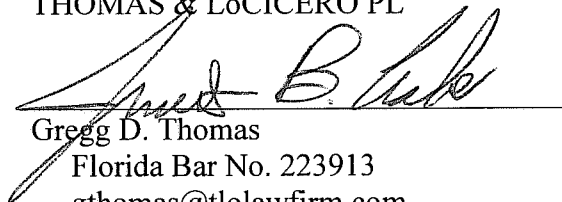
this case. No charges are pending against any Defendant, and Mr. Al-Arian's appeal of his sentence has been dismissed. *See* Dkt. No. 1647. Therefore, to the extent fair-trial concerns might have at some point supported sealing documents S-66 through S-71, such concerns are no longer applicable. For all of these reasons, documents S-66 through S-71 should be unsealed.

Conclusion

No basis exists for the continued closure of documents S-66 to S-71. Accordingly, these documents should be placed in the public record as soon as possible.

Respectfully submitted,

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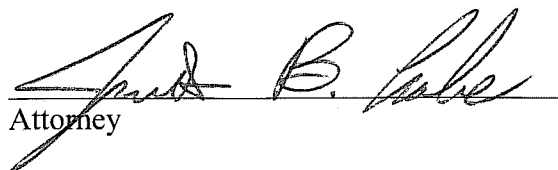
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Attorneys for Intervenor

Media General Operations, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov. 2, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to David M. Snyder, Alison M. Steele, Gregg Darrow Thomas, Stephen N. Bernstein, Stephen M. Crawford, Bruce G. Howie, Walter E. Furr III, Susan Tillotson Bunch, Terry Zitek, Kevin T. Beck, Daniel W. Eckhart, Mara Allison Guagliardo, Wadie E. Said, Cherie L. Krigsman, Alexis L Collins, Steven Douglas Knox, and Brooke Victoria, and deliver notice by other means to Steven K. Barentzen and C. Peter Erlinder.



Attorney