

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA,)	
)	
v.)	No. 08-CR-437
)	
PRESTON PINKETT, II)	The Honorable James C. Cacheris
)	
)	Sentencing Date: Sep. 11, 2009
Defendant.)	

**DEFENDANT’S NON-CONFIDENTIAL MEMORANDUM ACCOMPANYING ITS
MOTION FOR AN ORDER PROVIDING PROSPECTIVELY FOR FILING
DOCUMENTS UNDER SEAL PURSUANT TO LOCAL RULE 49(E)**

The Defendant, Preston Pinkett, II, by counsel and pursuant to Local Rule 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, asks for an Order sealing the documents attached to this Motion to Seal.

I. Items to be Sealed and Necessity for Sealing

The defendant asks the Court to seal the confidential medical documents attached to his Motion to Seal. Sealing is necessary because the documents are personal medical documents that should not be released to the public. Counsel for the defendant has considered procedures other than sealing and none will suffice to protect this information from disclosure.

II. Previous Court Decisions Which Concern Sealing Documents

The Court has the inherent power to seal materials submitted to it. *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 is appropriate where there is a substantial probability that the release of the sealed document would compromise the defendant's theories of his defenses to the prosecution. *See, e.g., In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569 (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 to Have the Document Under Seal

The materials to be filed under seal would need to remain until further Order of the Court.

WHEREFORE, the Defendant respectfully requests that an Order be entered allowing the documents attached to his motion to be placed Under Seal.

Respectfully submitted,
Preston Pinkett, II
By Counsel,

Michael S. Nachmanoff,
Federal Public Defender

/s/
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CERTIFICATE OF SERVICE

I certify that on September 8, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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_____/s/_____
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