IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JOHN ALAN CONROY,	)	
#42054-177	)	
	)	
Plaintiff,	)	
	)	**Case No. 16−cv−750−SMY**
vs.	)	
	)	
S. HENRY,	)	
DON WILLIAMS,	)	
TEXAS DEPARTMENT OF PUBLIC SAFETY,	)	
BIG SPRING POLICE DEPARTMENT,		
JOHN HOWARTH,		
IMMIGRATION AND CUSTOMS ENFORCEMENT,		
DAVID SLOAN,		
STEVEN S. SUCSY,		
WAYNE MCKIM,		
JUSTINE FLANAGAN, and		
JUDGE DAVID R. HERNDON,		
Defendants.		

MEMORANDUM AND ORDER

YANDLE, District Judge:

On July 6, 2016, Plaintiff John Alan Conroy, an inmate in the United States Penitentiary at Marion Correctional Center ("Marion") filed a *pro se* action for alleged violations of his constitutional rights by persons acting under the color of federal authority. *See Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). (Doc. 1). Plaintiff's original Complaint alleged that after being moved from a three person cell to a single cell in the Sex Offender Management Unit, he was subject to harassment from fellow inmate Billy Minner causing Plaintiff to fear for his safety and personal property. (Doc. 1, pp. 5, 7, 11). In connection with these allegations,

Plaintiff named the United States, the Federal Bureau of Prisons, and inmate Minner. He sought injunctive relief moving Minner away from sex offenders, directing the United States to investigate Minner and requiring the BOP to review its policies and procedures. He also sought punitive damages and attorney's fees. On November 9, 2016, the Court dismissed Plaintiffs' claims with prejudice for failure to state a claim (Doc. 14). The Court allowed Plaintiff until December 14, 2016, to file an amended complaint. (Doc. 14, pp. 7-9).

On December 12, 2016, Plaintiff deposited the following materials in the mail at Marion: (1) Motion for Leave to File Amended Complaint under John Doe or for Case to be Sealed (Doc. 15); (2) Amended Complaint; and (3) Exhibit A (SANE – Sexual Assault Nurse's Exam) and Exhibit B (BOP Clinical Encounter) (Exhibit A and Exhibit B are contained in a single 6-page PDF); and (4) Exhibits Part Two. The Motion for Leave to File Amended Complaint under John Doe or for Case to be Sealed was filed on December 15, 2016 ("Motion to Seal"). (Doc. 15). The Clerk refrained from filing the Amended Complaint and exhibits pending a decision on Plaintiff's Motion to Seal. (Doc. 15).

This matter is now before the Court for a ruling on the Motion to Seal (Doc. 15).

Background

A brief review of Plaintiff's conviction and collateral attacks is necessary to place Plaintiff's Motion to Seal in context.[1] Plaintiff pleaded guilty to production of child pornography (18 U.S.C. § 2251(a)) and receiving a visual depiction of a minor engaging in sexually explicit conduct (18 U.S.C. § 2252(a)(2)). *United States v. Conroy*, No. 10-cr-041-C-

[1] Plaintiff recently filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 alleging actual innocence. *See Conroy v. Walton*, Case No. 3:15-cv-528-DRH (filed May 11, 2015). That petition was dismissed with prejudice on July 20, 2015. *Id*. at Doc. 13. Portions of this history are taken from that order of dismissal.

BG-, Doc. 271 (N.D. Tex.). In March 2011, he was sentenced to a total term of 405 months' imprisonment. *Id*. at Doc. 36. Consistent with the plea agreement, no direct appeal was taken.

For purposes of the plea agreement and sentencing, Plaintiff admitted that while he was unemployed and often left to care for his live-in girlfriend's children, he engaged in numerous sexual acts with the victim, who at the time was 7 years old. Relevant to the present action, Plaintiff and the victim performed oral sex on each other and Plaintiff placed a razor in the victim's anus, causing lacerations. These acts were videotaped, and the recordings were found during a consent search, as was a razor matching the description given by the victim. Plaintiff was interrogated by law enforcement agents, and he admitted to having sexual contact with the victim on 12 occasions during an approximately nine-month period. Other details are not relevant to the Court's consideration of the instant motion and, therefore, have been omitted.

In February 2012, pursuant to 28 U.S.C. § 2255, Plaintiff moved to vacate, set aside, or correct his sentence. *Conroy v. United States*, No. 12-cv-015-C, Doc.1 (N.D. Tex.). The district court denied Plaintiff's Section 2255 motion. *Conroy*, No. 12-cv-015-C, Doc. 14. The Court of Appeals for the Fifth Circuit subsequently declined to issue a certificate of appealability. *Conroy*, No. 12-cv-015-C, Doc. 20. Plaintiff subsequently filed two applications for permission to seek successive collateral review: Both were denied. No. 14-10643 (Oct. 29, 2014); No. 16-10027 (Mar. 16, 2016).

Plaintiff also filed a § 1983 action against police alleging threats and coercion during their investigation of him. *Conroy v. Rider*, 2013 WL 12092200 (N.D. Texas Sept. 5, 2013). The district court dismissed the action as time barred and frivolous. *Id.* The Fifth Circuit affirmed in an order that assessed two strikes under the PLRA and warned Plaintiff as follows:

> The district court's dismissal of Conroy's complaint and our dismissal of this appeal as frivolous each counts as a strike under § 1915(g). See Adepegba v.

> Hammons, 103 F.3d 383, 387–88 (5th Cir.1996). Conroy is cautioned that if he receives a third strike under § 1915(g) he will not be allowed to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he "is under imminent danger of serious physical injury." § 1915(g).

Conroy v. Rider, 575 Fed. Appx. 509, 510 (5th Cir. 2014).

In May 2015, Plaintiff initiated a Section 2241 action asserting actual innocence. *See Conroy v. Walton*, Case No. 3:15-cv-528-DRH (filed May 11, 2015). Plaintiff's primary argument was that a SANE report[2] demonstrated the victim's alleged injuries were false. *Conroy v. Walton*, Case No. 3:15-cv-528-DRH (Doc. 13, pp. 4-5). Plaintiff raised additional arguments pertaining to alleged legal errors in his conviction and sentencing. *Id.* Plaintiff's petition was dismissed on the merits, with prejudice. (Doc. 13, p. 10). The Seventh Circuit affirmed the dismissal on appeal. *Conroy v. Walton*, Case No. 3:15-cv-528-DRH (Doc. 45-1).

Motion to Seal

Plaintiff seeks to proceed with this case as a "John Doe" or to have the entire case sealed (Doc. 15). In his motion, Plaintiff states the Amended Complaint involves "sensitive" information and "refers to allegations of a violent rape." (Doc. 15). Plaintiff is referring to the violent sexual acts perpetrated on his 7-year-old victim. The Amended Complaint and the exhibits attached thereto reference these acts and seeks to relitigate Plaintiff's previous habeas petitions, as well as his § 1983 action. Plaintiff contends having this information in the public domain places his safety at risk. As support for this argument, Plaintiff states he has had several altercations with other inmates as a result of public availability of the order dismissing his § 2255 petition. In one incident, Plaintiff was hit over the head with a lock, causing a sever laceration. In

[2] "SANE" is the acronym for sexual assault nurse examiner. *See* https://www.ncjrs.gov/ovc_archives/reports/saneguide.pdf sane report. The SANE report is attached to the amended petition. (Doc. 10-1, pp. 2-8).

another incident, an inmate threatened to "wrap a typewri[t]er" around Plaintiff's head because Plaintiff "cut up a little girl so [he] could have sex with her."

Both requests are denied. The information in the Amended Complaint is not new information. The details of Plaintiff's crime are already a part of the public record. Thus, as a practical matter, allowing Plaintiff to proceed as a "John Doe" or sealing the entire case will not afford the protection Plaintiff seeks. Considering the above, Plaintiff has not established exceptional circumstances justifying proceeding under a fictitious name or placing the entire case under seal. *See e.g., Doe v. Vill. of Deerfield*, 819 F.3d 372, 377 (7th Cir. 2016) (To proceed anonymously, a party must demonstrate "exceptional circumstances" that outweigh the public policy in favor of open proceedings and any prejudice to the opposing party that would result from anonymity.); *Union Oil Co. of California v. Leavell*, 220 F.3d 562, 567 (7th Cir. 2000) (citations omitted) (Judicial proceedings are public, rather than private, affairs, and when people call on the courts, they must accept the openness that goes with those proceedings); *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997) (use of fictitious names in litigation is disfavored, and the Court has an independent duty to determine whether exceptional circumstances justify a departure from this rule).

Although the Court is denying Plaintiff's Motion to Seal (Doc. 15), it will direct the Clerk of the Court to seal the following: Exhibit A (SANE – Sexual Assault Nurse's Exam) and Exhibit B (BOP Clinical Encounter) (as noted above, Exhibit A and Exhibit B are contained in a single 6-page PDF). These exhibits reveal confidential medical information and one of the exhibits reveals the identity of the minor victim in petitioner's underlying criminal case. Accordingly, **the Clerk of Court is DIRECTED to SEAL these documents.**

Disposition

IT IS HEREBY ORDERED that the Motion for Leave to File Amended Complaint under John Doe or for Case to be Sealed (Doc. 15) is **DENIED**.

FURTHER, the Court **DIRECTS** the Clerk of the Court to docket Plaintiff's Amended Complaint and the attached exhibits.

FURTHER, the following exhibits **SHALL** be filed under **SEAL**: **Exhibit A (SANE – Sexual Assault Nurse's Exam) and Exhibit B (BOP Clinical Encounter) (as noted above, Exhibit A and Exhibit B are contained in a single 6-page PDF).**

IT IS SO ORDERED.

DATED: December 19, 2016

s/ STACI M. YANDLE
STACI M. YANDLE
United States District Judge