

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:13-CV-527-F

U.S. TOBACCO INC., )  
U.S FLUE-CURED TOBACCO )  
GROWERS, INC., and )  
BIG SOUTH DISTRIBUTION, LLC, )

Plaintiffs, )

v. )

**ORDER**  
(UNDER SEAL)

BIG SOUTH WHOLESALE )  
OF VIRGINIA, LLC, d/b/a BIG SKY )  
INTERNATIONAL, BIG SOUTH )  
WHOLESALE, LLC, UNIVERSAL )  
SERVICES FIRST CONSULTING, )  
a/k/a UNIVERSAL SERVICES )  
CONSULTING GROUP, JASON )  
CARPENTER, CHRISTOPHER SMALL, )  
EMORY STEPHEN DANIEL, )  
and other unnamed co-conspirators, )

Defendants, )

UNITED STATES OF AMERICA, )  
Intervenor. )

This matter is before the court on Defendants’ motion [DE-565] to seal the courtroom during the evidentiary hearing scheduled for August 24, 2016. For the reasons stated below, the motion is ALLOWED.

**I. LEGAL STANDARD**

A district court must follow certain procedural requirements when deciding a motion to seal. First, the court must give the public adequate notice of and an opportunity to object to the

proposed sealing.<sup>1</sup> *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253–54 (4th Cir. 1988). If the court decides to seal a document, it must then state its reasons supported by specific factual findings, as well as its reasons for rejecting alternatives to sealing. *Id.*

Substantively, the court’s decision on a motion to seal is guided by its determination of the source of the public’s right of access. Here, the parties agree that the public’s right of access arises under the First Amendment. Accordingly, “access may be denied only on the basis of a compelling governmental interest, and only if the denial is narrowly tailored to serve that interest.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (1988) (citing *Rushford*, 846 F.2d at 253).

## II. DISCUSSION

The focus of the August 24, 2016 evidentiary hearing will be the extent of the work performed by Defendants Carpenter and Small on behalf of various government agencies, primarily the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Defendants represent that over the course of their cooperation with the government they dealt with numerous violent criminals. They fear that disclosure of the extent of this cooperation will endanger their lives and those of their families. Carpenter Decl. [DE-14-1] at 2–3; Small Decl. [DE-14-2] at 2–3. Multiple current and former ATF agents, familiar with the investigations on which Defendants cooperated, concur in this assessment. Lesnak Decl. [DE-26-3] at 4; Whittemore Decl. [DE-26-4] at 2; Kaye Decl. [DE-448-14] at 4.

Throughout this litigation, Plaintiffs and Defendants have submitted numerous motions to seal citing the sensitive nature of the information likely to comprise the bulk of the testimony at

---

<sup>1</sup> At the outset, the court notes that the instant motion was filed on August 16, 2016. In the week since, no member of the press or public has objected to the proposed sealing.

the upcoming evidentiary hearing. Each motion has been unopposed, and each has been granted.<sup>2</sup> The court can perceive no change in circumstance that would demand a different result for the instant motion.

There are no adequate alternatives to sealing in this instance. The evidentiary hearing will not address the merits of the underlying litigation. Instead, the court will consider a single issue—the nature of Defendants’ relationship with the government. Because all testimony and evidence presented will revolve around this sensitive topic, closing the courtroom for only part of the proceedings is not feasible.

Because of the serious threat to the safety of Defendants and their families, and for the reasons stated in the court’s previous orders sealing documents in this case, the August 24, 2016 evidentiary hearing will be sealed.

### III. CONCLUSION

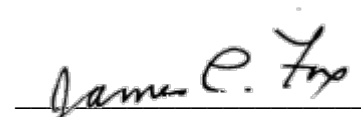
For the foregoing reasons, Defendants’ motion [DE-565] to seal the August 24, 2016 evidentiary hearing is ALLOWED. It is hereby ORDERED that the August 24, 2016 evidentiary hearing will be closed to the public. Only the parties, their counsel, counsel for the government, and court staff will be allowed in the courtroom during the proceeding. Non-party witnesses may be present in the courtroom only during their own testimony. Counsel for each party and counsel for the government are DIRECTED to submit to the court via CM/ECF a list of individuals anticipated to attend the evidentiary hearing no later than **11:59 p.m. on August 23, 2016.**

---

<sup>2</sup> See, e.g., [DE-56, -81, -107, -134, -142, -161, -211, -224, -258, -259, -260, -273, -297, -298, -319, -320, -340, -342, -354, -358, -359, -375, -376, -386, -398, -416, -423, -485, -513, -516, -517, -519].

SO ORDERED.

This the 23rd day of August, 2016.

  
\_\_\_\_\_  
JAMES C. FOX  
Senior United States District Judge