IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ATI GOVERNMENT SOLUTIONS, LLC, et al. Plaintiffs v. UNITED STATES SMALL BUSINESS ADMINISTRATION, et al. Defendants	Case No. 1:26-cv-03693-ACR Hon. Ana C. Reyes

PLAINTIFFS' OPPOSITION TO DEFENDANTS' SEALED AND *EX PARTE* MOTION TO FILE UNDER SEAL

Late last night, Defendants filed an *ex parte* "Sealed Motion for Leave to File Document Under Seal." Dkt. No. 17. This motion, which Plaintiffs cannot see, and a copy of which the Department of Justice has refused to provide, is Defendants' means of continuing in court what they have started out of court: punishing Plaintiffs without giving them notice or an opportunity to be heard. Because this is not how our judicial system works, this Court should deny the Motion, or at the very least, order Defendants to provide Plaintiffs with sufficient information such that they can appropriately respond.

I. Defendants' Motion to Seal is an Attempt to Avoid an Adversarial Proceeding

For more than a year, Plaintiffs have pleaded with Defendants to explain the basis of their suspension decisions. For more than a year, Defendants have been unable to do so, utterly failing to provide any evidence or explanation to justify their decisions, all the while publicly naming and shaming Plaintiff ATI as the paradigm of a fraudulent government contractor. Now that the time has come for Defendants to justify their actions to the Court, they attempt to do so in secret,

shielded from the scrutinizing eyes of the Plaintiffs and the public. There is no legitimate basis for their request.

Defendants filed their motion to seal under seal and *ex parte*; upon request, they refused to share any version of their filing (or even their underlying rationale for proceeding in such an unusual manner) with Plaintiffs. No redacted version of the motion appears on the public docket. *See* Standing Order, Dkt. No. 10 ¶ 7(k) ("A party must submit a redacted version, suitable for filing on the public docket, of any document that it proposes to seal at the same time the party files a motion to seal. If a party believes that all portions of a sealed document must remain sealed, the party must specifically notify the Court of that belief at the time of filing the motion to seal."). Both the *ex parte* nature of Defendants' filing, and their attempt to submit their filing under seal, are improper. It simply cannot be that every aspect of the Defendants' response must be not only sealed, but presented *ex parte*.

"*Ex parte* submissions 'generally are disfavored because they conflict with a fundamental precept of our system of justice: a fair hearing requires a reasonable opportunity to know the claims of the opposing party and to meet them.'" *Chekkouri v. Obama*, 158 F. Supp. 3d 4, 5–6 (D.D.C. 2016) (quoting *United States v. Microsoft Corp.*, 56 F.3d 1448, 1464 (D.C. Cir. 1995) (per curiam) (citations omitted)). "Exceptions to this rule 'are both few and tightly contained.'" *Id.* at 6 (quoting *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986)). Typically, those exceptions are limited to situations where materials are submitted for *in camera* review to prevent their use in litigation; where "the government has made 'a demonstration of compelling national security concerns;'" or where a statute expressly contemplates *ex parte* review. *Id*. (first quoting *Abourezk*, 785 F. 2d at 1061; then citing *Clifford v. United States*, 136 F.3d 144, 149 (D.C. Cir. 1998)). None of those situations is present here. This is not a case that involves national security or state secrets;

it is a case about a government IT contractor suspended without cause.

The government refuses to explain to Plaintiffs why an *ex parte* filing is necessary, and it strains credulity that the entirety of Defendants' procedural motion is so sensitive that even a redacted version cannot be made available to Plaintiffs. Even where the government claims that disclosure of an *ex parte* submission "would harm significant Government interests," as it purports to do here, *ex parte* proceedings remain disfavored absent a demonstrated "compelling national security concern." *Chekkouri*, 158 F. Supp. 3d at 6 ("The government has not demonstrated a 'compelling national security concern' sufficient to justify protecting the information from limited disclosure to [Plaintiffs'] counsel.").

Sealed proceedings are similarly disfavored absent a compelling need. "'[T]he starting point in considering a motion to seal court records is a strong presumption in favor of public access to judicial proceedings.'" *Grynberg v. BP P.L.C.*, 205 F. Supp. 3d 1, 2 (D.D.C. 2016) (quoting *EEOC v. Nat'l Children's Ctr., Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996)). That "'presumption of transparency[]' . . . is particularly strong in cases where, as here, a government agency is a party." *Fed. Trade Comm'n v. Match Group, Inc.*, No. 1:22-MC-54 (RJL/GMH), 2023 WL 3181351, at *10 (D.D.C. May 1, 2023) (quoting *Friedman v. Sebelius*, 672 F. Supp. 2d 54, 58 (D.D.C. 2023)); *see also Hyatt v. Lee*, 251 F. Supp. 3d 181, 184 (D.D.C. 2017) ("'The interest of the public and press in access to civil proceedings is at its apex when the government is a party to the litigation.'") (quoting *Doe v. Pub. Citizen*, 749 F.3d 246, 271 (4th Cir. 2014)). "'[I]n such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch.'" *Match Group*, 2023 WL 3181351 at *10 (quoting *Fed. Trade Comm'n v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987)).

Whether sealing is warranted in a given matter is generally determined by application of the D.C. Circuit's *Hubbard* test, which considers six factors:

> (1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure, and the identity of that person; (4) the strength of any property or privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

Nat'l Children's Ctr., 98 F.3d at 1409 (citing *United States v. Hubbard*, 650 F.2d 293, 317–22 (D.C. Cir. 1980)). Without an opportunity to review the basis for Defendants' motion to seal, nor any information about the contents of what Defendants propose to seal, Plaintiffs are unable to engage in a detailed analysis of the *Hubbard* factors. Nevertheless, based on the Defendants' actions to date and Plaintiffs' understanding of the likely basis for Defendants' attempt to proceed in a sealed and *ex parte* proceeding, it is exceedingly unlikely that Defendants satisfy the *Hubbard* test. The need for public access—to scrutinize the legitimacy of the federal government's actions and the accuracy of the government officials' public statements about the Plaintiffs—is paramount; the Defendants have made repeated public statements identifying the Plaintiffs as a target of their supposed antifraud efforts, bringing the matter squarely within the scope of public discourse and awareness; the government has provided no explanation to Plaintiffs as to what the basis for its objection to disclosure might be; and to the extent the government purports that privacy is necessary to avoid disclosure of a law enforcement investigation, Defendants already made that information public by declaring on social media that they were referring Plaintiffs to law enforcement. Dkt. No. 1 ¶ 27.

II. There is No Need for a Sealed, *Ex Parte* Proceeding

As noted in the Complaint, Plaintiffs are aware of a DOJ investigation which, based on

public statements made by Defendant Loeffler, was referred by SBA and presumably initiated at SBA's behest in October 2025. Plaintiffs assume that this is why Defendants wish to proceed *ex parte*. But this Court should not take Defendants' word that a DOJ investigation here is good-faith or legitimate; to the contrary, this Court should approach the SBA and DOJ's apparent collusion here with skepticism.

Moreover, any DOJ investigation subsequent to the suspension should have no bearing on the issue in this case: the SBA's arbitrary, capricious, and unconstitutional suspension and *de facto* debarment of Plaintiffs, which should have been based on facts—no matter their provenance. Surely, the SBA did not base its suspension decisions on grand jury information or information obtained through any other investigation that did not exist at the time of suspension. *See* FED. R. CRIM. P. 6(e)(3)(B) ("A person to whom information is disclosed under Rule 6(e)(3)(A)(ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal criminal law."). Rather, as the SBA stated in its FAR Suspension Notice, Dkt. No. 1 at Exh. 1, the SBA based its suspension decision, made within hours of the posting of defamatory videos by a known internet provocateur, on something else entirely, and is trying to rely on an impermissible *post hoc* rationalization to backfill its improper decision-making with a bad faith investigation invented from whole cloth. *Id.* ¶¶ 17 (on October 20, 2026, Defendant Loeffler announced that the "SBA has launched an investigation" and attributed the investigation to the O'Keefe video), 19 (on October 21, 2026, Defendant Loeffler quoted her October 20, 2026 post and announced the suspensions); *see also Landmark Hosp. of Salt Lake City v. Azar*, 442 F. Supp. 3d 327, 334 (D.D.C. 2020) ("the Court may not accept 'post hoc rationalizations for agency actions.'") (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 43, 50 (1983)).

DOJ's proposed approach would offer government agencies a bulletproof excuse to act without the scrutiny of the adversarial process or the constitutional requirements of notice and an opportunity to be heard. A government agency could prompt a grand jury (or civil enforcement) investigation, take adverse, non-criminal enforcement action, and then cite the investigation it prompted for why the agency cannot explain its actions. This circular process would have the effect of allowing a unitary executive to act unconstitutionally, by using the grand jury and the criminal investigation process as both a sword and a shield. Unsurprisingly, courts have therefore long recognized that "[Federal Criminal] Rule 6(e) does not draw a veil of secrecy over all matters occurring in the world that happen to be investigated by a grand jury. . . . The mere fact that information has been presented to the grand jury does not itself permit withholding." *Labow v. U.S. Dep't of Just.*, 831 F.3d 523, 529 (D.C. Cir. 2016) (citation modified) (citing *Senate of P.R. v. U.S. Dep't of Just.*, 823 F.2d 574, 582 (D.C. Cir. 1987)). The same principle would apply to any criminal or civil investigation by DOJ. The American legal system is not meant to operate in darkness, and this Court should not allow the government to do so here.

III. If Necessary, this Court Should Hold an Immediate Sealed Hearing on the Motion

Plaintiffs cannot properly respond to a motion they have not read and to which they have no access. Before this Court agrees to proceed *ex parte*, however, it should order the parties to appear for a sealed hearing on this Motion. If the basis for Defendants' Motion is a sealed or grand jury investigation, a sealed—but not *ex parte*—proceeding would be consistent with practice in this District. *See* LCrR 6.1 (providing for sealed, but not necessarily *ex parte* proceedings in grand jury matters); *In re Grand Jury Subpoenas*, 823 F. Supp. 3d 1, 6 (D.D.C. 2026) (ruling on grand jury matter after sealed, adversarial hearing). Such a hearing could explore whether any investigation is, in fact, being conducted in good faith, or is instead a mere vehicle for the SBA

and DOJ to persist in their improper activity. Before this Court requires Plaintiffs to proceed blindfolded, it should at least require the government to sustain a heavy burden.

IV. Conclusion

Justice Brandeis famously stated that "sunlight is said to be the best of disinfectants." Because the rule of law, taxpayers, and this Court deserve an adversarial, litigated proceeding that will expose the SBA's arguments and decision, the Motion should be denied.

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Dated: November 2, 2026

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CERTIFICATE OF SERVICE

I, Matthew E. Feinberg, hereby certify that on this 2nd day of November 2026, a true copy of the foregoing document was served on each party appearing in the action by filing through the United States District Court's online case filing system, CM/ECF, to:

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