

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Case No. 00-40104-01/02-JTM

WILLIAM LEONARD PICKARD and CLYDE  
APPERSON,  
Defendants.

MEMORANDUM AND ORDER

This matter is before the court on the government's motion to stay (Dkt. 802) the unsealing of the confidential informant's file pending an appeal of the court's order. (Dkt. 801). The court determines that a stay is appropriate. *See In re Lang*, 414 F.3d 1191, 1201 (10th Cir. 2005) (discussing factors).

With respect to the likelihood of success as to an appeal, the court believes it correctly decided the issue of the common law right of access to the record. At the same time, however, the court is mindful that it has twice previously determined the file should remain under seal. *United States v. Pickard*, 2014 WL 1356053 (D. Kan. April 7, 2014); *United States v. Pickard*, 2012WL 1658899 (D.Kan. May 9, 2012), and that the Tenth Circuit has agreed that the concerns raised by the government "are unquestionably, in principle,

legitimate governmental interests." *United States v. Apperson*, 642 Fed.Appx. 892, 900 (10th Cir. 2016). Thus, there remains a potential for the government to suffer irreparable injury based on the unsealing, unless the stay is granted. Granting the stay preserves the status quo pending an appeal.

At the same time, granting the stay will not result in substantial harm to the defendants. By separate *in camera* inspection of the CI file and the remaining pleadings in the action, the court by the same Order concluded that defendants' claims of fraud on the court were without merit, and denied such claims. The court finds in its discretion that granting the stay during an appeal is in the public interest.

IT IS SO ORDERED this 17<sup>th</sup> day of November, 2017, that the government's Motion to Stay is hereby granted as to the unsealing of the CI file, until such time as the court otherwise directs.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE