

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER GOLUBSKI,

Defendant.

Case No. 22-40055-TC

Trial date: December 2, 2024

**UNOPPOSED MOTION TO FILE NOTICE OF EXCHANGE OF PRETRIAL
WITNESS LISTS OR, ALTERNATIVELY, TO FILE PRETRIAL WITNESS LISTS
UNDER SEAL**

The government, by and through undersigned counsel, respectfully requests that the Court permit the parties to file notice confirming that they have exchanged their initial pretrial witness lists or, alternatively, to file the witness lists under seal until after the conclusion of trial. *See* Doc. 89 (ordering that initial witness and exhibit lists be filed October 7, 2024).¹ This is necessary to protect the rights of both the accused and the witnesses and does not offend the public's right to access.

The Tenth Circuit has expressly held that there is no right to public access of a pretrial witness list. *United States v. Lewis*, 594 F.3d 1270, 1280 (10th Cir. 2010) (“[T]here is no constitutional or statutory right to pretrial disclosure of witness lists in noncapital criminal cases.”); *United States v. Nevels*, 490 F.3d 800, 803 (10th Cir. 2007) (noting that

¹ Counsel for defendant Golubski has indicated that, though the defense diverges on some of the rationale below, the defense agrees with this request to file a notice of exchange or, alternatively, to file the witness lists under seal.

“there is no requirement that the government disclose its witnesses in any manner, except in a case where trial is for treason or other capital offense,” and that even a “defendant in a noncapital case has no absolute right to obtain the names of government witnesses before trial”) (internal quotation marks omitted). Victims, however, do have a right under the Crime Victims’ Rights Act “to be treated with fairness and with respect for the[ir] dignity and privacy.” 18 U.S.C. § 3771(a)(8).

In service of the absence of a right to pretrial witness lists and the presence of a victim’s right to have their privacy respected, federal courts routinely permit the government and the defendant to file pretrial witness lists under seal or instead to file witness lists only *after* trial. *See, e.g., United States v. McCluskey*, No. CR 10-2734 JCH, 2013 WL 12330119, at *2 (D.N.M. May 20, 2013) (permitting the government to file its pretrial witness list under seal, “such that it is viewable only by the defense team, the Government, and the Court”); *United States v. Glatz*, No. 3:19-CR-218-TAV-DCP, 2024 WL 815539, at *1 (E.D. Tenn. Feb. 27, 2024) (ordering that witness list remain under seal); *United States v. Smith*, 139 F. App’x 681, 685 (6th Cir. 2005) (noting that the government’s witness list was filed under seal but a copy was provided to the defense counsel in advance of trial); *United States v. Kubini*, 304 F.R.D. 208, 214 (W.D. Pa. 2015) (ordering the parties to file their witness lists under seal); *see also United States v. Kindley*, No. 4:17-cr-267, ECF 119 (D. Ark. March 12, 2020) (witness list filed on public docket *after* jury verdict was returned in a § 242 sex assault case); *United States v. Connelly*, No. 4:13-cr-43, ECF 73 (D. Mont. Feb. 20, 2014) (parties’ witness lists filed on public docket after jury verdict

was returned in a § 242 sex assault case); *United States v. Gonzalez*, No. 2:04-cr-1189, ECF 97 (C.D. Cal. Feb. 24, 2006) (witness lists filed on the public docket only after closing arguments in a § 242 sex assault case); *United States v. Simmons*, No. 3:04-132, ECF 47 (S.D. Miss. March 9, 2005) (parties’ witness lists filed on the public docket only after jury verdict was returned in a § 242 sex assault case).

Though the First Amendment provides the public with a right to access criminal trials and certain preliminary proceedings, that right is “not absolute” and may be overcome. *United States v. McVeigh*, 119 F.3d 806, 811 (10th Cir. 1997) (“[J]udicial documents . . . may be sealed if the right to access is outweighed by the interests favoring nondisclosure.”); *In re Globe Newspaper Co.*, 729 F.2d 47, 59 (1st Cir. 1984) (factors favoring nondisclosure of judicial documents to the public include: “(i) prejudicial pretrial publicity; (ii) the danger of impairing law enforcement or judicial efficiency; and (iii) the privacy interests of third parties.”). Accordingly, even if there were a public right of access to the pretrial witness lists—which the Tenth Circuit has expressly held there is not—the circumstances of this case justify the parties filing notice that they have exchanged witness lists or, alternatively, filing pretrial witness lists under seal until after trial. Considerations justifying this request include:

(1) Privacy Interest of Victims and Witnesses: This case involves graphic allegations of sexual abuse. Courts have recognized the government’s interest in protecting victims of sex abuse from the potential “adverse personal, professional, and psychological consequences of linking their identities” to their past sexual abuse, going so far as to prohibit

the use of their full names before, during, and after trial. *See, e.g., United States v. Thompson*, 178 F. Supp. 3d 86, 96 (W.D.N.Y. 2016) (prohibiting the use of victims' full names during the testimony and in filings before, during, or after trial); *United States v. Mack*, 808 F.3d 1074 (6th Cir. 2015) (referring to victims by initials alone in a sex trafficking case); *United States v. Gemma*, 818 F.3d 23 (1st Cir. 2016) (referring to victim by initials). The restrictions authorized in other cases involving sexual abuse go beyond the narrowly tailored remedy requested in this motion.

(2) Prejudicial Pretrial Publicity: As discussed in the parties' join motion for a jury questionnaire, Doc. 91 at 4-6, this case has already received extensive regional media coverage. The government is concerned that pretrial publication of witness lists will cause irreparable harm to the victims, witnesses, and defendant. First, pretrial publication of the witness lists is likely to result in harassment of the victims before they have the opportunity to testify.² Second, the government fears that public identification of the victims and other witnesses will encourage increased pretrial publicity and hamper the defendant's efforts to achieve a fair trial.

(3) Danger of impairing law enforcement or judicial efficiency: The government further fears that publication of a pretrial witness list will chill cooperation of victims and

² For example, the government submits that one of the victims identified only by her initials in the indictment was the subject of media coverage (also identifying her by her initials) discussing her allegations, and the victim relayed that: on multiple occasions, press attempted to contact her; after an article was published discussing her allegations that the defendant made her wear a dog collar and walk on all fours, several people barked at her; and her daughter's classmates would approach her daughter, asking about what Golubski had done to the victim—all of which has significantly impacted the victim's health. There are several other victims in this case who have never been publicly identified. The government has a very real fear that the victims will be hounded and tampered with prior to trial if the pretrial witness list is publicly filed.

witnesses, thus defeating the compelling interest in encouraging victims to come forward and put their trust in the legal system. *Thompson*, 178 F. Supp. 3d at 96 (prohibiting the use of victim’s full names before, during, and after trial, in part, because of the government’s “compelling interest in encouraging crime victims to testify by protecting them from the adverse consequences of testifying”). Additionally, the government fears that law enforcement witnesses on the witness lists of both parties may face harassment and pressure both from within and without their ranks before they have the opportunity to testify. *See Ariza v. City of New York*, No. CV-93-5287, 1996 WL 118535, at *3 (E.D.N.Y. Mar. 7, 1996) (noting expert testimony that the “blue wall of silence” operates to discourage law enforcement officers from coming forward about a fellow officer’s misconduct).

The compelling interest in protecting the victims and witnesses from harassment and tampering prior to trial far outweighs the limited public right to access this information, and the nonexistent public right to access this information prior to trial. Accordingly, the government respectfully requests that the Court permit the parties to file notice confirming that they have exchanged their initial witness lists or, alternatively, to file the witness lists under seal until after the conclusion of trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2024, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Tara Allison
Tara Allison