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Memorandum

To: Hon. Reena Raggi, Chair, Privacy Protection Subcommittee
From: George Cort and Joe Cecil, Federal Judicial Center
Subject: SOCIAL SECURITY NUMBERS IN FEDERAL COURT DOCUMENTS

Summary of Findings: The Center identified 2,899 documents with one or more unredacted Social Security numbers among the almost ten million documents filed in federal district and bankruptcy courts in a recent two-month period. Seventeen percent of these documents appeared to qualify for an exemption from the redaction requirement under the relevant privacy rules. An unknown number of the remaining documents may qualify for a waiver of the privacy protection under the rules, but we could not determine whether such a waiver applied to the documents identified in this study.

Search Methodology: Your Subcommittee asked the Center to identify unredacted Social Security numbers in recently filed federal court documents.¹ We first identified almost ten million unsealed documents filed during November and December 2009, in all 94 district courts and 92 of the 94 bankruptcy courts.² We

¹ The Federal Rules of Civil, Criminal, Bankruptcy, and Appellate Procedure were amended in December 2007 to protect privacy of individuals identified in court documents by requiring redaction of Social Security numbers, taxpayer-identification numbers, birth dates, the names of minors, and financial-account numbers. Our study sought to identify only documents containing Social Security numbers, including Social Security numbers designated in the document as taxpayer identification numbers, employee identification numbers, and financial account numbers. Generally, the privacy rules include exceptions from the redaction requirement for filings made under seal; official records of a state court; administrative or agency proceedings; financial account numbers identifying property that may be subject to forfeiture; court records filed before December, 2007; *pro se* filings in actions seeking a writ of *habeas corpus* or to set aside a criminal sentence; and actions for Social Security or immigration benefits or detention. The criminal privacy rule includes additional exceptions for documents related to a criminal investigation prepared before filing of a criminal charge; charging documents and affidavits prepared in support of charging documents; and arrest or search warrants. The bankruptcy privacy rule includes an additional exception recognizing the statutory requirement that the Social Security number of a non-attorney bankruptcy petition preparer appear on the proper form. All of the privacy rules recognize that a filer waives the protection as to the filer's own information by filing it without redaction and not under seal. These rules appear in Appendix A. This study did not examine documents filed in appellate cases or documents filed in paper form.

² One bankruptcy court did not maintain its documents in a format that permitted an electronic search of the text. A second bankruptcy court was not included in the study because of a miscommunication in our office that delayed our access to the court's data.

identified documents to search by using a computer scripting language to query bankruptcy and district court electronic case management data in the courts' CM/ECF backup databases. The Structure Query Language (SQL) program identified all documents filed in the bankruptcy and district courts from November 1 through December 31 2009. We excluded all sealed records and other documents that were designated as unavailable on the courts' electronic public access systems (PACER).

We then ran a Practical Extraction and Report Language (PERL) program to identify text that corresponded to the distinct Social Security number format (e.g., 123-45-6789). The PERL program was unable to convert certain types of non-text documents, such as PDF documents stored as static images, and we were unable to detect Social Security numbers that might reside within such documents. We then reviewed the search output files and visually reviewed over 3,200 filed documents to determine if the string of characters appeared to be a valid Social Security number. Where multiple numbers appeared in a document, we examined each number in order until we located a valid Social Security number. If the number appeared to be a valid Social Security number, we then examined the context of the number within the document to make a preliminary determination of the basis for a possible exemption from the redaction requirement under the privacy rules.

Incidence of Unredacted Social Security Numbers: As indicated in Table 1 below, we found 2,899 documents with unredacted Social Security numbers, which is approximately one out of every 3,400 court documents examined. We found a greater number of documents containing Social Security numbers filed in bankruptcy courts, which proportionally have more documents filed than in district courts.

Table 1: Documents with Unredacted Social Security Numbers

DOCUMENTS	Total	Bankruptcy	Civil + Criminal
Examined	9,830,721	7,738,541	2,092,080
With SSN numbers	2,899	2,244	655
Ratio SSN/Examined	1 : 3,391	1 : 3,448	1 : 3,194

Included among the documents with Social Security numbers were 71 instances of unsuccessfully redacted Social Security numbers. Such unsuccessful attempts

included strikeovers, scratchouts, blackouts, and use of word processing applications that remove sections of text. These unsuccessful redaction efforts still allowed the Center's electronic text search program to detect the full Social Security number. Of particular concern is the apparent use of word processing redaction techniques that retain the Social Security number in the metadata that are retained when the documents is converted to a PDF format for filing in court.³ The full Social Security number appeared when the apparently redacted text was cut and pasted into a word processing document.

Approximately 91% of the 2,899 documents (or 2,629 documents) contain entries that clearly appear to be Social Security numbers. Nine percent of the documents (or 270 documents) contain entries following the Social Security number format that were identified as taxpayer identification numbers, financial account numbers, or employee identification numbers. We believe these numbers are identical to the Social Security number of the person identified in the document.⁴

We counted only documents containing Social Security numbers and did not attempt to count the number of distinct Social Security numbers that appeared in the documents. Still, we were surprised by the prevalence of documents with Social Security numbers for more than one individual. We estimate that approximately 20% of the 2,899 documents included an unredacted Social Security number for more than one person, most often the Social Security number of a joint debtor. We also found numerous documents containing Social Security numbers for persons who were not part of the litigation. For example, some bankruptcy documents included the debtor's income tax return with the Social Security number of the tax preparer remaining unredacted. Some commercial bankruptcy documents listed the Social Security numbers of creditors, employees or investors in the bankrupt enterprise. One such bankruptcy document listed 122 Social Security numbers for creditors. The problem of Social Security numbers of third parties is not limited to bankruptcy documents. One document filed in an MDL product liability action, for example, listed unredacted Social Security numbers for over 300 of the claimants.

³ For a discussion of the problems of redacting metadata in electronically-filed court documents, see Guidance on Redacting Personal Data Identifiers in Electronically-Filed Documents ([http://www.cadc.uscourts.gov/internet/home.nsf/Content/Guidance%20on%20Redacting%20Personal%20Data%20Identifiers%20in%20Electronically%20Filed%20Documents/\\$FILE/ECF%20Redaction%20Guide.pdf](http://www.cadc.uscourts.gov/internet/home.nsf/Content/Guidance%20on%20Redacting%20Personal%20Data%20Identifiers%20in%20Electronically%20Filed%20Documents/$FILE/ECF%20Redaction%20Guide.pdf)) and Effective Personal-Identity and Metadata Redaction Techniques for E-Filing (<http://www.njd.uscourts.gov/cm-ecf/RedactTips.pdf>).

⁴ We also believe that our results underestimate the extent to which Social Security numbers may be deduced from the documents examined in this sample. We did not count among the documents with Social Security numbers those documents that identified the suspect number as a general account number, student identification number, and other identification number, even if the suspect number conformed to the Social Security number format. Many of the excluded documents with commercial and personal services account numbers and student identification numbers appeared to be based on Social Security numbers and often shared the last four digits of the redacted Social Security number.

We noticed that full Social Security numbers in bankruptcy documents often appeared in response to a request on official bankruptcy forms for only the last four digits of the Social Security number. For example, we estimate that approximately 450 of the 2,899 documents we identified as containing unredacted Social Security numbers were *Bankruptcy Form 7: Statement of [Debtor's] Financial Affairs*. The form requires debtors to list the names of businesses of the debtor and the Social Security number or tax ID number associated with the business. Even though the current version of the form asks for only the last four digits of the Social Security number, these documents reported the full Social Security number. (Some of these forms also appeared to be outdated and asked for the full Social Security number instead of just the last four digits.) Social Security numbers also frequently appeared on the debtor's employee pay stubs submitted as exhibits in bankruptcy filings.

We also found Social Security numbers appearing on 284 submissions of *Bankruptcy Form 21: Statement of Social Security Number or Individual Tax Identification Number*. This form requires the debtor to enter the unredacted Social Security number and is not supposed to be filed as part of the court record. When such documents do appear with unredacted Social Security numbers, they often are inserted among numerous other documents that had been combined into a single bankruptcy filing.

Unredacted Social Security numbers in civil and criminal cases tend to show up in exhibits, depositions, and interrogatories. In criminal cases, Social Security numbers often appear in judgment and sentencing orders. Social Security numbers also appear in habeas corpus petitions filed by US attorneys seeking custody of an inmate serving a sentence in a state or local facility.

Exemptions to the Redaction Requirement: As indicated in Table 2 below, approximately 17% of the 2,899 documents (or 491 documents) we identified as containing Social Security numbers appear to qualify for an exemption from the redaction requirement under the rules. We made only a preliminary assessment of the basis for an exemption since we were able to examine only the specific document containing the Social Security number and were not able to interpret the role of this document in the larger context of the litigation. For example, we were unable to identify the party filing the document and were, therefore, unable to identify documents filed by *pro se* litigants that might be exempt from the redaction requirement. (We do note in the table those instances where the document on its face indicates that it was obviously filed by a *pro se* litigant, which more accurately can be regarded as a waiver of the privacy protection.)

Table 2: Preliminary Assessment of Documents with Social Security Numbers that May Qualify as Exemptions to the Redaction Requirement⁵

DOCUMENTS	TOTAL	BANKRUPTCY	CIVIL	CRIMINAL
Possible Basis for Exemption				
<i>State Court Proceeding</i>	160	98	58	4
<i>Non-Atty. Bankruptcy Preparer</i>	125	125	0	0
<i>Obviously Pro Se</i>	86	9	68	9
<i>Agency Proceeding</i>	56	13	40	3
<i>SSN of Filing Attorney</i>	34	28	5	1
<i>Charging Document/Affidavit</i>	17	0	0	17
<i>Filed before December, 2007</i>	4	0	0	4
<i>Arrest/Search Warrant</i>	4	0	0	4
<i>Criminal Investigation</i>	3	0	0	3
<i>Order Regarding SS Benefits</i>	1	0	0	1
<i>Forfeiture Account Number</i>	1	0	1	0
SUBTOTAL	491	273	172	46
No Apparent Basis for Exemption or Waiver	2,408 (83%)	1,971 (87%)	352 (67%)	85 (65%)
TOTAL	2,899	2,244	524	131

⁵ Although the privacy rules allow an exemption for an action for immigration benefits or detention, no such document was found.

The most common basis for an exemption was the filing of a record of a state court proceeding. In bankruptcy proceedings this occurred, for example, when a state court order resolving a previous dispute or granting a divorce was included among the filings. Criminal cases sometimes included state court records indicating state prosecution of previous criminal activity.

We found 125 documents that included the Social Security number for a non-attorney bankruptcy petition preparer. This number is required by statute to appear on the document in unredacted form.⁶ In addition we found 34 documents where the filing attorney included his or her Social Security number with the filing, even though no Social Security number was requested. Often this was the result of some request for payment for services rendered or to be rendered.

An unknown number of the 2,408 documents that do not appear to meet the standards for an exemption may still involve a waiver of protection under the privacy rules. Such a waiver arises when a person files his or her own private information without redaction and not under seal.⁷ As noted above, our search technique did not permit us to identify the party filing the document and accurately assess the likelihood of such a waiver. However, we did determine that among those documents containing Social Security numbers with no apparent basis for an exception to the redaction requirement were 248 documents from cases with one or more *pro se* litigants. (These are not included in the “obviously *pro se*” count in Table 2.) It is likely that some of these documents may involve a waiver of the redaction requirement.

⁶ 11 U.S.C. § 110.

⁷ A waiver also may arise when a party authorizes his or her attorney to file a document with the private information unredacted. We have no basis on which to assess whether such an explicit authorization was made in counseled cases.

Appendix A: Federal Procedural Rules Protecting Individual Privacy

Federal Rules of Civil Procedure**Rule 5.2. Privacy Protection for Filings Made with the Court****(a) Redacted Filings.**

Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 5.2(c) or (d); and
- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases.

Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from

removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

- (1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;
- (2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:
 - (A) the docket maintained by the court; and
 - (B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.
- (d) Filings Made Under Seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

- (e) Protective Orders.

For good cause, the court may by order in a case:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

- (f) Option for Additional Unredacted Filing Under Seal.

A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

- (g) Option for Filing a Reference List.

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

- (h) Waiver of Protection of Identifiers.

A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.

Federal Rules of Criminal Procedure**Rule 49.1. Privacy Protection For Filings Made with the Court****(a) Redacted Filings.**

Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or the home address of an individual, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials;
- (4) the last four digits of the financial-account number; and
- (5) the city and state of the home address.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

- (1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record is not subject to the redaction requirement when originally filed;
- (5) a filing covered by Rule 49.1(d);
- (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255;
- (7) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
- (8) an arrest or search warrant; and

(9) a charging document and an affidavit filed in support of any charging document.

(c) Immigration Cases.

A filing in an action brought under 28 U.S.C. § 2241 that relates to the petitioner's immigration rights is governed by Federal Rule of Civil Procedure 5.2.

(d) Filings Made Under Seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(e) Protective Orders.

For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(f) Option for Additional Unredacted Filing Under Seal.

A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(g) Option for Filing a Reference List.

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(h) Waiver of Protection of Identifiers.

A person waives the protection of Rule 49.1(a) as to the person's own information by filing it without redaction and not under seal.

Federal Rules of Bankruptcy Procedure**Rule 9037. Privacy Protection For Filings Made with the Court****(a) Redacted filings.**

Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) Exemptions from the redaction requirement.

The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding unless filed with a proof of claim;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by subdivision (c) of this rule; and
- (6) a filing that is subject to § 110 of the Code.

(c) Filings made under seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) Protective orders.

For cause, the court may by order in a case under the Code:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) Option for additional unredacted filing under seal.

An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for filing a reference list.

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Waiver of protection of identifiers.

An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.