

FILING RESTRICTED ACCESS CRIMINAL SENTENCING

United States District Court
Western District of Michigan

Western District of Michigan [Local Criminal Rule 32](#) governs sentencing and related documents, some of which are filed under restricted access. In addition to becoming familiar with L.Crim.R. 32, parties should familiarize themselves with the Local Criminal Rule governing electronic filing before proceeding, and may want to reference:

[Local Crim. R. 49.10](#), Filing and service by electronic means

Restricted Access submissions may be electronically filed under a menu heading entitled **SEALED/RESTRICTED ACCESS Filings** in CM/ECF. By making an appropriate selection from the [Ex Parte/Restricted Access Filings](#) menu, the document will be automatically restricted upon entry, however, keep in mind that the resulting text on the docket will be available to the public, and the name of the pdf file you upload will appear on the Notice of Electronic Filing (NEF).

The following will describe how to file a restricted access objection/response to presentence report in a criminal case.

To begin, the document must be in pdf format to be filed (when naming the pdf file, keep in mind that the file name will be available to the public). Additionally, it is important that the document be marked appropriately on its face to indicate it is being filed under Restricted Access. This will be the only visual indication that the document is not public. For example, the caption on an Objection to Presentence Report may look like this:

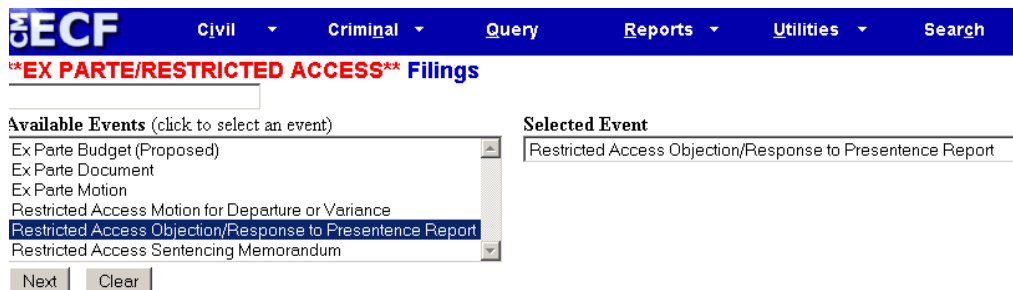
UNITED STATES OF AMERICA, Plaintiff,	
v.	Case No. 1:12-cr-12345
DEFENDANT NAME, Defendant.	Hon. Judge Name
_____ /	FILED UNDER RESTRICTED ACCESS
<u>OBJECTION TO PRESENTENCE REPORT</u>	

After gaining access to CM/ECF, click *Criminal* on the blue menu bar to proceed with electronic filing.

Under the **SEALED/RESTRICTED ACCESS Filings** heading, click [Ex Parte/Restricted Access Filings](#).



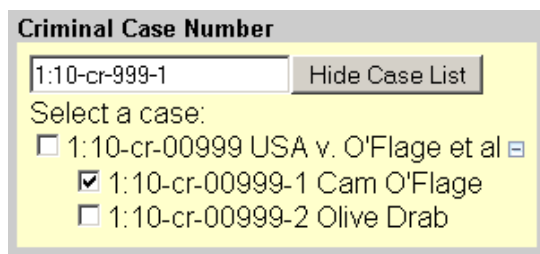
A list of available events will appear. Click to select an appropriate event from the list. For this example, we have selected *Restricted Access Objection/Response to Presentence Report*, which is authorized to be filed under Restricted Access pursuant to Local Criminal Rule 32.2(d) (no leave of court required). Click Next to continue.



The next screen will prompt for the case number. Enter the case number in one of the example formats displayed. The system will search for a match to the information provided.

For this example, we're filing in a multi-defendant criminal case. Select the appropriate case in which to file the Restricted Access Objection/Response to Presentence Report.

- All defendants' cases →
- Defendant O'Flage's case only →
- Defendant Drab's case only →



This objection/response is being filed by defendant O'Flage. Note that we have selected defendant Cam O'Flage's case only above. (DO NOT select all defendants' cases.)

The user is prompted to upload the pdf document (see below). Browse and upload the document, as well as any attachments, if applicable. Note that all documents submitted under this one filing transaction will be restricted in the same manner.

The screenshot shows the ECF filing interface. At the top, there is a navigation bar with 'ECF' logo and menu items: Civil, Criminal, Query, Reports, Utilities, Search, and Logout. Below the navigation bar, the page title is '**EX PARTE/RESTRICTED ACCESS** Filings' followed by the case number '1:10-cr-00999 USA v. O'Flage et al'. The main instruction is 'Select the pdf document and any attachments.' Under 'Main Document', there is a text input field containing 'N:\cmecf\samplepdfs\ObjtoPSR.pdf' and a 'Browse...' button. Below this, a red warning states 'LIMIT ATTACHMENTS TO 5 PER FILING.' and a link to 'Attachments' for more info. The next instruction is 'Select a Category, enter a Description, or both to identify ea. attachment:'. This is followed by a table with three columns: 'Attachments', 'Category', and 'Description'. The first row is numbered '1.' and has a 'Browse...' button in the 'Attachments' column and a dropdown menu in the 'Category' column. At the bottom, there are 'Next' and 'Clear' buttons.

Select the presentence report that the objection/response relates to:

The screenshot shows the ECF filing interface. At the top, there is a navigation bar with 'ECF' logo and menu items: Civil, Criminal, Query, Reports, and Utilities. Below the navigation bar, the page title is '**EX PARTE/RESTRICTED ACCESS** Filings' followed by the case number '1:10-cr-00999 USA v. O'Flage et al'. The instruction is 'Select the appropriate event(s) to which your event relates:'. Below this, the case number '1:10-cr-00999 Cam O'Flage' is displayed. A checkbox is checked next to the event '01/11/2012 20 (RESTRICTED ACCESS) INITIAL PRESENTENCE REPORT as to Cam O'Flage ; an objection meeting, if necessary, is scheduled for January 26, 2012 at 10:30 am in Grand Rapids with this U.S. Probation Officer [Access to this document is available to the Court and attorney(s) for USA, Cam O'Flage only] (USPO Schmoie, Joe)'. At the bottom, there are 'Next' and 'Clear' buttons.

Next, select the role of the filer of the objection/response to presentence report. For this example, the objection/response is being filed by the defendant.

The screenshot shows the ECF filing interface. At the top, there is a navigation bar with 'ECF' logo and menu items: Civil, Criminal, Query, and Reports. Below the navigation bar, the page title is '**EX PARTE/RESTRICTED ACCESS** Filings' followed by the case number '1:10-cr-00999 USA v. O'Flage et al'. The instruction is 'Select the role of the filer of this document.'. There are two radio button options: 'defendant' (which is selected) and 'USA'. At the bottom, there are 'Next' and 'Clear' buttons.

The subsequent screen is **significant**. On the screen below, while holding down the Ctrl key on your keyboard, left-click with the mouse to **select the applicable defendant and the USA**. The selection on this screen determines which parties will have access to the filed document.*

The screenshot shows the ECF (Electronic Case Filing) interface. At the top, there is a navigation bar with the ECF logo and menu items: Civil, Criminal, Query, Reports, Utilities, Search, and Logout. Below the navigation bar, a red banner reads "**EX PARTE/RESTRICTED ACCESS** Filings". Underneath, the case number "1:10-cr-00999 USA v. O'Flage et al" is displayed.

The main content area is divided into two sections. On the left, there is a tree view of parties with expand/collapse icons. The parties listed are USA (pla), Cam O'Flage (dft), and Olive Drab (dft). On the right, there is a message: "The document will be RESTRICTED, only available to the parties you select below. Pick the applicable defendant and USA:". Below this message is a "Select the Party:" section with a list box containing three options: "USA [pla]", "O'Flage, Cam [dft]", and "Drab, Olive [dft]". The "USA [pla]" option is currently selected. At the bottom of the selection area are two buttons: "Next" and "Clear".

NOTE: The selection on this screen is VERY IMPORTANT. A wrong selection here will have unintended consequences.

Release the Ctrl key and click *Next*.

On the next screen, a message will be displayed to bring important information to the attention of the filer:

This entry on the docket will be accessible to the public - USE CAUTION when adding information to the docket text.

*If the filer wants to disclose a restricted access filing to a co-defendant, it is recommended that take place outside of CM/ECF (send attached to an e-mail, snail mail).

The docket text is presented:

The screenshot shows the ECF (Electronic Case Filing) interface. At the top is a blue navigation bar with the ECF logo and menu items: Civil, Criminal, Query, Reports, Utilities, Search, and Logout. Below the navigation bar, the text reads: ****EX PARTE/RESTRICTED ACCESS** Filings**. A link for case 1:10-cr-00999 USA v. O'Flage et al is visible. The main content area is a light gray box with a yellow background for the docket text. It says: "Docket Text: Modify as Appropriate." followed by "(RESTRICTED ACCESS) OBJECTION/RESPONSE to presentence report [20] by defendant" and a text input field containing "[Access to this document is available to the Court and attorney(s) for USA, Cam O'Flage only] (D'Fence, Victor)". At the bottom of this box are "Next" and "Clear" buttons.

Additional Information

There is a white free-text box provided wherein the filer may, at their option, add additional pertinent information they deem appropriate, however it is not typically necessary to do so. Note that as previously cautioned, any information typed in the box will appear to the public on the docket report.

The final docket text is displayed:

The screenshot shows the ECF interface with the same navigation bar. The text reads: ****EX PARTE/RESTRICTED ACCESS** Filings** and the case link. The docket text box now says: "Docket Text: Final Text" followed by "(RESTRICTED ACCESS) OBJECTION/RESPONSE to presentence report [20] by defendant [Access to this document is available to the Court and attorney(s) for USA, Cam O'Flage only] (D'Fence, Victor)". Below this box is a red warning: "Attention!! Pressing the NEXT button on this screen COMMITS THIS TRANSACTION. You will have no further opportunity to modify this transaction if you continue." Below the warning, the text "Source Document Path (for confirmation only):" is circled in red, followed by "ObjtoPSR.pdf pages: 1". At the bottom are "Next" and "Clear" buttons.

Notice at the bottom of the screen, that the *Source Document Path* appears for confirmation. *This is a reminder to check the pdf file name, to ensure that it does not inadvertently disclose information or otherwise compromise the restricted access matter.*

Clicking the Next button on the Final Text screen commits the transaction. As with other filings, a Notice of Electronic Filing (NEF) will display as a confirmation of filing/receipt, and simultaneously, electronic notification of the filing will be sent to all counsel. However, if correctly filed, only the applicable defendant, the USA, and the court will have access to the restricted access document(s) filed under the transaction.

This document has described how to file a restricted access objection/response to the presentence report in a criminal case. Leave of court is NOT required to file an objection/response to the presentence report under restricted access.

Generally, it is expected that sentencing memoranda and motions for departure or variance will be public filings. However, occasionally these documents contain sensitive or confidential information. Note that **leave of court IS REQUIRED to file such documents under restricted access**. To accomplish this, the user may file an *ex parte* motion for leave to file a document under restricted access. Select *Ex Parte Motion* from the [Ex Parte/Restricted Access Filings](#) menu. Refer to the Western District of Michigan [Filing Ex Parte](#) reference for more information on how to file a document *ex parte*.

RESTRICTED ACCESS FILINGS SUMMARY

Documents should be marked RESTRICTED ACCESS in the caption to identify them on their face.

Only events referred to as “Restricted Access...” and properly filed under the [Ex Parte/Restricted Access Filings](#) menu option under the **SEALED/RESTRICTED ACCESS Filings** menu heading will have restricted access placed on the documents filed.

Once properly filed, restricted access documents are only available to the applicable defendant, the USA, and the Court.

However, the DOCKET TEXT/ENTRY ON THE DOCKET, the NEF, and the PDF FILE NAME(S) are available to the public.