No. 23-70023

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE CIVIL BEAT LAW CENTER FOR THE PUBLIC INTEREST, INC.,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAI'I,

Respondent.

MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY WRIT

Katie Townsend
Counsel of Record for Amicus Curiae
Bruce D. Brown
Shannon A. Jankowski*
Sasha Dudding*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org
* *Of Counsel*

The Reporters Committee for Freedom of the Press (the "Reporters Committee") moves for leave to file the attached proposed amicus curiae brief in support of petitioner Civil Beat Law Center for the Public Interest, Inc. ("Civil Beat Law Center") pursuant to Federal Rules of Appellate Procedure 27 and 29.[1]

The proposed amicus brief addresses matters "relevant to the disposition" of this matter. Fed. R. App. P. 29(a)(3) (providing that a motion for leave to file an amicus brief during initial consideration of case on the merits must state "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case"). The Reporters Committee writes to highlight how—by mandating the filing under seal of all sentencing statements, sentencing filings regarding a defendant's cooperation, and competency evaluations in all cases—the U.S. District Court for the District of Hawai'i's recently enacted Criminal Local Rule 5.2 impermissibly disregards the presumptive rights of the press and public to inspect such judicial records under the First Amendment and the common law and hampers the news media's ability to inform the public about criminal cases of public interest.

The Reporters Committee was founded by journalists and media lawyers in 1970, when the nation's press faced an unprecedented wave of government

[1] A corporate disclosure statement for amicus is included in the attached proposed amicus brief.

subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists.

As an organization that advocates for the First Amendment and newsgathering rights of the news media, the Reporters Committee has a strong interest in ensuring that judicial records are accessible to members of the press and public, as guaranteed by the First Amendment and the common law. Criminal Local Rule 5.2 mandates the filing under seal of judicial records that this Court has held are presumptively public and that may only be sealed if—and to the extent that—such sealing is necessitated by compelling, case-specific reasons. The rule thus impermissibly disregards the presumption of openness and contravenes settled law of this Circuit.

Sentencing-related documents and competency evaluations regularly inform the news media's coverage of significant criminal cases. The District of Hawai'i's mandatory, automatic sealing rule will diminish the news media's ability to produce such timely and informative reporting. When the press is denied access to judicial records in criminal cases—records that no party has asked to seal, and no judge has held should be sealed in a given case—it is the public that loses.

As set forth in the proposed amicus brief, this Court should grant mandamus relief—or, in the alternative, to exercise its inherent supervisory authority—and hold that the provisions of Criminal Local Rule 5.2 requiring the automatic filing under seal of sentencing statements, cooperation-related filings, and competency evaluations are impermissible under the Constitution and the common law.

For these reasons, the Reporters Committee respectfully requests leave to file the attached proposed amicus curiae brief in support of petitioner.

Dated: February 7, 2023

Respectfully submitted,

/s/ Katie Townsend
Katie Townsend
Counsel of Record for Amicus Curiae
Bruce D. Brown
Shannon A. Jankowski*
Sasha Dudding*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org

**Of Counsel*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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United States District Court for the District of Hawaii
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Katie Townsend
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REPORTERS COMMITTEE FOR
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Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org
* *Of Counsel*

CORPORATE DISCLOSURE STATEMENT

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

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IDENTITY AND INTERESTS OF AMICUS CURIAE, AND THE SOURCE OF ITS AUTHORITY TO FILE THIS BRIEF

Pursuant to Federal Rules of Appellate Procedure 27 and 29, the Reporters Committee for Freedom of the Press (the "Reporters Committee") has filed a motion for leave to file this amicus curiae brief in support of petitioner Civil Beat Law Center for the Public Interest, Inc. ("Civil Beat Law Center").

Pursuant to Federal Rule of Appellate Procedure 29(a)(4), the Reporters Committee states that no party's counsel authored this brief in whole or in part, and no party, party's counsel, or any other person, other than amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting the brief.

The Reporters Committee was founded by journalists and media lawyers in 1970, when the nation's press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists. As an organization that advocates for the First Amendment and newsgathering rights of the news media, the Reporters Committee has a strong interest in ensuring that judicial records are accessible to members of the press and public, as guaranteed by the First Amendment and common law.

The U.S. District Court for the District of Hawai‘i’s new Criminal Local Rule 5.2 mandates the filing under seal of all sentencing statements, sentencing filings regarding a defendant’s cooperation, and competency evaluations. Yet, as this Court has held, such judicial records are presumptively public and may be sealed only for compelling, case-specific reasons. Because Criminal Local Rule 5.2 is irreconcilable with that presumption of openness, it is impermissible as a matter of constitutional and common law.

SUMMARY OF ARGUMENT

“People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (plurality opinion). For this reason, press and public access to judicial proceedings and records has long been recognized as a fundamental component of our judicial system—one necessary to ensure both fairness and the appearance of fairness so important to public trust in the judicial process, particularly in the criminal context. *Id.* at 567–74.

The First Amendment and common law guarantee the press and public a presumptive right to inspect judicial records, including, specifically, sentencing-related documents and competency evaluations. *See United States v. Guerrero*, 693 F.3d 990, 1000–02 (9th Cir. 2012); *CBS, Inc. v. U.S. District Court*, 765 F.2d

823, 825 (9th Cir. 1985). Moreover, it is well settled that where the public has a presumptive constitutional right of access, it is a right to *contemporaneous* access. *See Associated Press v. U.S. District Court*, 705 F.2d 1143, 1147 (9th Cir. 1983) (holding that a forty-eight-hour delay in unsealing judicial records is improper, because the effect of delay is a "total restraint on the public's first amendment right of access" during that time).

In direct contravention of that presumptive right, the U.S. District Court for the District of Hawai'i's Criminal Local Rule 5.2 now requires parties in all criminal cases to file all sentencing statements, sentencing filings regarding a defendant's cooperation, and competency evaluations under seal. This rule—which went into effect on January 1, 2023—reverses the presumption in favor of openness and obstructs the news media's ability to timely report on criminal proceedings of interest to the public. For the reasons herein, the Reporters Committee respectfully urges the Court to grant mandamus relief—or, in the alternative, to exercise its inherent supervisory authority—and hold that these provisions of Criminal Local Rule 5.2 are impermissible under the First Amendment and common law.

ARGUMENT

I. Judicial proceedings and records are presumptively public under the common law and the First Amendment.

A. Openness is a bedrock principle of our criminal justice system.

Openness is "'one of the essential qualities of a court of justice.'" *Richmond Newspapers*, 448 U.S. at 567 (quoting *Daubney v. Cooper*, 109 Eng. Rep. 438, 440 (K.B. 1829)). Said to predate the Constitution itself, the public's right to observe judicial proceedings and inspect judicial records is deeply rooted in American history and is "an indispensable attribute" of our judicial system. *Id.* at 564–68, 569, 580 n.17. Openness serves critically important values. It acts as "an effective restraint on possible abuse of judicial power," *id.* at 596 (citation and internal quotation marks omitted), and "gives assurance that established procedures are being followed and that deviations will become known," *Press-Enter. Co. v. Superior Court* (*Press-Enterprise I*), 464 U.S. 501, 508 (1984). "Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Id*.

Members of the press, who act "as surrogates for the public" when they report on newsworthy court cases, *Richmond Newspapers*, 448 U.S. at 573, rely on contemporaneous access to judicial records and proceedings to help "the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). Timeliness, in particular, is essential if reporting on judicial records is "to be newsworthy and to allow for ample and

meaningful public discussion regarding the functioning of our nation's court systems." *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020).

When news organizations are denied timely access, it is the public that loses.

B. The First Amendment and common law guarantee the public a presumptive right to inspect judicial records in criminal cases.

The press and public have "two qualified rights of access to judicial proceedings and records, a common law right to inspect and copy . . . judicial records and documents," and a stronger "First Amendment right of access to criminal proceedings and documents therein." *United States v. Bus. of Custer Battlefield Museum & Store*, 658 F.3d 1188, 1192 (9th Cir. 2011) (citations and internal quotation marks omitted).

1. The First Amendment guarantees the press and public a presumptive right of access to judicial records.

In determining whether the First Amendment right of access attaches to a proceeding or document, courts look to two complementary and related considerations: "experience"—"whether the place and process have historically been open to the press and general public"—and "logic"—"whether public access plays a significant positive role in the functioning of the particular process in question." *Press-Enter. Co. v. Superior Court* (*Press-Enterprise II*), 478 U.S. 1, 8 (1986). Applying the *Press-Enterprise II* framework, the Supreme Court and this Court have held there is a constitutional right of access to criminal proceedings and

records—including, specifically, sentencing and competency hearings, and related court documents. *See Richmond Newspapers*, 448 U.S. at 580; *Guerrero*, 693 F.3d at 1000–02; *United States v. Rivera*, 682 F.3d 1223, 1229 (9th Cir. 2012); *CBS, Inc.*, 765 F.2d at 825.

Where the First Amendment right of access applies, sealing is permissible only if "(1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest." *Oregonian Publ'g Co. v. U.S. District Court*, 920 F.2d 1462, 1466 (9th Cir. 1990) (citing *Press-Enterprise II*, 478 U.S. at 13–14). Additionally, because "a necessary corollary of the right to access is a right to timely access," even temporary closures must likewise meet this high bar. *Planet*, 947 F.3d at 594–95.

Procedurally, the First Amendment also requires that "(1) those excluded from the proceeding must be afforded a reasonable opportunity to state their objections; and (2) the reasons supporting closure must be articulated in findings" that "include a discussion of the interests at stake, the applicable constitutional principles and the reasons for rejecting alternatives, if any, to closure." *Oregonian Publ'g Co.*, 920 F.2d at 1466 (citations omitted).

Adherence to the constitutional requirement that courts make sealing decisions "on a case-by-case," *Globe Newspaper Co*., 457 U.S. at 608, and "document-by-document basis" is essential, *Associated Press*, 705 F.2d at 1147. A court order that seals each and every document of a certain type impermissibly "reverse[s] the 'presumption of openness.'" *Id*. Indeed, even if there is a compelling interest that could frequently justify sealing a certain type of information, that "does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest." *Globe Newspaper Co*., 457 U.S. at 607–08. For example, there is no compelling interest in sealing information that has become public. *CBS, Inc.*, 765 F.2d at 825. A case-by-case, document-by-document "approach ensures that the constitutional right of the press and public to gain access to criminal trials will not be restricted except where necessary." *Globe Newspaper Co*., 457 U.S. at 609; *see also United States v. Doe*, 870 F.3d 991, 1002 (9th Cir. 2017) (requiring, instead of a "presumption of closure," that "district courts decide motions to seal or redact on a case-by-case basis").

2. The common law guarantees the press and public a presumptive right of access to judicial records.

In addition to the presumptive right of access guaranteed by the First Amendment, the common law also provides a "general right to inspect and copy . . . judicial records and documents," *Nixon v. Warner Commc'ns, Inc*., 435

U.S. 589, 597 (1978), rooted in the need for members of the public to "'keep[] a watchful eye on the workings of public agencies'" and for members of the press "to 'publish information concerning the operation of government,'" *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *id.* at 598).

The common law right applies to a broad range of judicial records—*i.e.*, "'materials on which a court relies in determining the litigants' substantive rights.'" *United States v. Sleugh*, 896 F.3d 1007, 1014 (9th Cir. 2018) (quoting *United States v. Kravetz*, 706 F.3d 47, 54 (1st Cir. 2013)). As discussed below, this right applies to documents related to sentencing proceedings and competency hearings. *See United States v. Kaczynski*, 154 F.3d 930, 931–32 (9th Cir. 1998); *CBS, Inc.*, 765 F.2d at 825.

Under the common law, "'a strong presumption in favor of access is the starting point'" and can be overcome only if the party seeking closure "'articulat[es] compelling reasons . . . that outweigh the general history of access and the public policies favoring disclosure.'" *Bus. of Custer Battlefield Museum & Store*, 658 F.3d at 1194–95 (quoting *Kamakana*, 447 F.3d at 1178–79). If the court finds there is a compelling reason to seal judicial records, it must "'articulate the factual basis for its ruling, without relying on hypothesis or conjecture.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1178–79). As under the First Amendment, courts must make particularized, case-by-case sealing decisions. *Id.*

II. Criminal Local Rule 5.2 impermissibly mandates the automatic sealing of judicial records to which the public's constitutional and common law rights of access apply.

Criminal Local Rule 5.2 requires parties in all cases to file all sentencing statements, sentencing filings regarding a defendant's cooperation, and competency evaluations under seal. This mandatory sealing rule impermissibly reverses the presumption of access. A district court is permitted to seal such records, in whole or in part, only if, upon noticed motion of a party, the court finds sealing is narrowly tailored to serve compelling interests.

A. Criminal Local Rule 5.2's mandatory sealing of sentencing-related records impermissibly reverses the presumption of openness.

The press and public have a presumptive constitutional and common law right to contemporaneously inspect documents filed in connection with sentencing proceedings; restrictions on that right are proper only if—and only to the extent—they are necessitated by case-specific compelling reasons. The mandatory sealing of sentencing statements and cooperation-related documents under Criminal Local Rule 5.2(a)(2) and (9) violates the public's access rights.

"[A] qualified First Amendment right of public access attaches to in-court sentencing proceedings," *Doe*, 870 F.3d at 997, and the sentencing-related documents covered by Criminal Local Rule 5.2, as does the common law right of access. *See id.*; *Kravetz*, 706 F.3d at 53–56; *In re Hearst Newspapers, L.L.C.*, 641

F.3d 168, 176 (5th Cir. 2011); *In re Copley Press, Inc.*, 518 F.3d 1022, 1026 (9th Cir. 2008); *United States v. Schlette*, 842 F.2d 1574, 1582 (9th Cir. 1988); *CBS, Inc.*, 765 F.2d at 825; *United States v. Chanthaboury*, No. 12-CR-188, 2013 WL 6404989, at *1 (E.D. Cal. Dec. 6, 2013). This openness "operates to check any temptation that might be felt by either the prosecutor or the court . . . to seek or impose an arbitrary or disproportionate sentence" and "allows the public to observe whether the defendant is being justly sentenced." *Hearst Newspapers*, 641 F.3d at 179 (citation and internal quotation marks omitted). Moreover, news reporting about sentencing can contribute "to an informed public debate over [sentencing] laws," *id.* at 180 (citation and internal quotation marks omitted), and "[t]he penal structure," which "is essential if the corrections process is to improve," *CBS, Inc.*, 765 F.2d at 826.

Where the public's presumptive right of access applies, courts must make sealing determinations on a case-by-case basis. *See Doe*, 870 F.3d at 1002; *CBS, Inc.*, 765 F.2d at 826. An interest that justifies sealing—or, more properly, redacting—a sentencing-related document in one case may not in another. For example, a trial court may redact mention of a defendant's cooperation with law enforcement in a sentencing-related document if it finds redaction is "the only way to protect" the defendant from some cognizable harm, but must unseal those records when the danger fades and "'compelling reasons no longer exist[].'"

Copley Press, 518 F.3d at 1028 (citation omitted); *see also Oregonian Publ'g Co.*, 920 F.2d at 1467. Relatedly, if a defendant's cooperation is public knowledge, no sealing or redaction of references to the defendant's cooperation is warranted. *See Wash. Post v. Robinson*, 935 F.2d 282, 291–92 (D.C. Cir. 1991); *CBS, Inc.*, 765 F.2d at 825; *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009). And, sealing sentencing documents to protect an ongoing investigation—another reason oft-cited by the government—is improper when there is no evidence that disclosure would harm the investigation or the investigation is public knowledge. *See CBS, Inc*., 765 F.2d at 825; *James*, 663 F. Supp. 2d at 1021.

In requiring *all* sentencing statements and cooperation-related documents to be filed under seal, Criminal Local Rule 5.2 imposes a "presumption of closure" that is "not [] consistent with [this] circuit's case law." *Doe*, 870 F.3d at 1002; *see also Oregonian Publ'g Co*., 920 F.2d at 1466. The rule violates the public's presumptive right of timely access to sentencing-related documents, and the Reporters Committee urges this Court to find it invalid.

B. Criminal Local Rule 5.2's mandatory sealing of competency evaluations violates the presumption of openness.

The press and public also have a presumptive First Amendment and common law right of contemporaneous access to competency evaluations. *See Guerrero*, 693 F.3d at 1000–02; *Kaczynski*, 154 F.3d at 931–32. Competency evaluations "may determine the critical question of whether a criminal defendant

will proceed to trial." *Guerrero*, 693 F.3d at 1001. Access to such evaluations "permits the public to . . . ensure that the proceedings are conducted in an open, objective, and fair manner," which is "especially significant where a defendant accused of a violent felony is not tried because he was found incompetent." *Id.* Like other presumptively public records, competency evaluations may not be sealed absent compelling reasons, adjudged on a case-by-case basis and after considering less-restrictive alternatives. *See id.* at 1002; *In re Motion to Unseal Court Records*, No. 18-MC-477, 2019 WL 1495248, at *3 (D. Haw. Apr. 4, 2019). By requiring these records to be filed under seal in their entirety, Criminal Local Rule 5.2(a)(8) infringes the public's rights of timely access.

III. Criminal Local Rule 5.2 will hamper the press's ability to report on criminal cases of public concern.

A. Mandatory, automatic sealing will hinder reporting because litigating to unseal records is costly and delays access to newsworthy information.

Members of the public, including news organizations, simply do not have the resources to intervene and unseal judicial records in all criminal cases; thus a mandatory, automatic sealing rule necessarily will result in less newsworthy information being available to the public. As professor and veteran journalist Toni Locy teaches journalists, "A legal challenge can drag on for months, if not years, and few news organizations can afford to cover the cost. You cannot fight every battle." Toni Locy, *Covering America's Courts* 149 (2013). This is particularly

true given the financial challenges faced by the news industry today. *See, e.g.*, Brad Adgate, *Newspapers Have Been Struggling and Then Came the Pandemic*, Forbes (Aug. 20, 2021), https://perma.cc/74J3-T7FK.

In a 2015 survey of top news editors, almost two-thirds of respondents (65%) said their newsrooms were less able to pursue legal action than they were a decade before, largely due to financial restraints. Knight Foundation, *In Defense of the First Amendment: U.S. News Leaders Feel Less Able to Confront Issues in Court in the Digital Age* (Apr. 2016), https://perma.cc/NWT8-YXKY. That trend continues. *See* Penelope Muse Abernathy, Univ. N.C., *News Deserts and Ghost Newspapers: Will Local News Survive?* 15 (2020), https://perma.cc/YP4E-KHBD (quoting former newspaper manager recalling "going to court to get access to public records . . . . 'We fought those battles like crazy,' he said. 'I'm very concerned that is what's lost.'"). Because news organizations cannot litigate over sealed records in every case, readers will be deprived of newsworthy information.

Even when news organizations do successfully move to unseal judicial records, the intervening denial of the public's right of contemporaneous access may have caused the records to lose their newsworthiness. Timeliness is a defining characteristic of news. As one journalism scholar stated succinctly: "It is, after all, called the 'news' business and not the 'olds' business." Janet Kolodzy, *Convergence Journalism: Writing and Reporting Across the News Media* 59

(2006). Indeed, "[t]he peculiar value of news is in the spreading of it while it is fresh." *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918); *see also Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.").

Today, with the public's ever-growing reliance on obtaining news through digital and social media, "the need for immediacy of reporting news is even more vital." *Planet*, 947 F.3d at 594 (internal quotation marks omitted). The *Los Angeles Times* and the *Honolulu Star-Adviser* websites, for example, measure the timeliness of news updates in minutes. Social media platforms like Twitter mark new posts by the second. "By a large majority, nearly two-thirds of adults now say they look at news at least several times a day. We are now a nation of serial news consumers." *How Americans Describe Their News Consumption Behaviors*, Am. Press Inst. (June 11, 2018), https://perma.cc/M3L2-84PB. Crime and public safety are among the most-followed news topics, making timely reporting on them especially important. *See The News Consumption Habits of 16- to 40-Year-Olds*, Am. Press Inst. (Aug. 31, 2022), https://perma.cc/5UBG-S4CM.

B. Sentencing-related documents and competency evaluations have informed reporting about cases of public concern.

Sentencing-related documents and competency evaluations are an important source for journalists reporting on criminal cases. When these documents are automatically sealed, the public loses access to timely, informative reporting about cases of local and national interest.

For example, in *United States v. Kaczynski*—the criminal prosecution of the Unabomber—the district court granted news organizations' motion to unseal Kaczynski's court-ordered psychiatric evaluation. 154 F.3d at 931–32. This Court affirmed, holding that disclosure "would serve the ends of justice by informing the public about the court's competency determination and Kaczynski's motivation for committing the Unabomber crimes." *Id.* Reporting on the evaluation delved into Kaczynski's diagnoses and motivations, including his schizophrenia and isolation. *See Unabomber Psychiatric Report Released*, L.A. Times (Sept. 12, 1998), https://perma.cc/SHL3-39Y3.

As to sentencing-related documents, in 2015, the Reporters Committee and eight media organizations successfully moved to unseal documents related to the sentencing of retired general and former Central Intelligence Agency director David Petraeus. *See United States v. Petraeus*, No. 15-CR-47, 2015 WL 3606028, at *2 (W.D.N.C. June 8, 2015). Petraeus had pleaded guilty to one misdemeanor charge related to sharing classified information with his biographer but avoided

prison time, prompting criticism that he had been afforded unusual leniency. *See* Peter Maass, *Petraeus Plea Deal Reveals Two-Tier Justice System for Leaks*, The Intercept (Mar. 3, 2015), https://perma.cc/XP8U-LT2J. Petraeus's sentencing memorandum, letters of support, and the court's statement of reasons were filed under seal automatically, pursuant to a local rule in the U.S. District Court for the Western District of North Carolina. The letters revealed that well-known public officials had asked the court to avoid imposing prison time, including senators who had been outspoken about the dangers of leaks. *See* Cora Currier, *Leak Critics Ask Judge Not to Send Petraeus to Jail for Unauthorized Disclosures*, The Intercept (June 8, 2015), https://perma.cc/5RQ3-EB7J.

Soon after, the district court "remedie[d] the earlier issues" with its mandatory, automatic sealing rule, amending the local rule to require that sealing decisions be made "on a case-by-case basis by the Court upon the filing of a motion." *See* LCrR 49.1.1(a) & Advisory Committee Notes, W.D.N.C., https://perma.cc/57ZZ-JSSR. As a result, local journalists can now obtain and report on sentencing documents without litigating. *See, e.g.*, Michael Gordon, *A Former NFL Star's Letter Asked a Judge to Go Easy on a Swindler. It Was a Fake.*, Charlotte Observer (May 19, 2021), https://perma.cc/4MRR-UNWP; Michael Gordon, *Disgraced Former NC Congressman and Billionaire Donor Face*

Prison in Bribery Scandal, Charlotte Observer (Aug. 20, 2020), https://perma.cc/2RH4-YWBP.

Recently, reporting on sentencing-related documents has shed light on cases across the country related to the January 6 attack on the U.S. Capitol. These documents have revealed defendants' motivations, whether they have expressed remorse, why prosecutors have sought harsher (or lighter) punishments, and sentencing trends. *See, e.g.*, Jordan Fischer, *Officer Sicknick Assault Suspect Ordered to Serve 80 Months in Prison*, WUSA9 (Jan. 27, 2023), https://perma.cc/R4C7-TU9C; Christopher Spata, *No Jail For 'Frothing' Capitol Rioter Who Faced Mental Health Struggle*, Tampa Bay Times (Dec. 12, 2022), https://perma.cc/LL8M-D88D; Nick Grube, *DOJ Seeks 4-Year Prison Sentence for Hawai'i Proud Boys Founder*, Civil Beat (Nov. 28, 2022), https://perma.cc/8GHP-AP9U; Tom Jackman, *NYPD Veteran Who Assaulted Police Receives Longest Jan. 6 Sentence Yet: 10 Years*, Wash. Post (Sept. 1, 2022), https://perma.cc/RP6S-THGH; Heather Szilagyi et al., *Surveying Evidence of How Trump's Actions Activated Jan. 6 Rioters*, Just Sec. (May 12, 2022), https://perma.cc/KBV9-7XHT.

As this reporting highlights, a rule automatically sealing all sentencing documents and competency evaluations in all cases would deprive the public of timely and important information about cases of public concern.

CONCLUSION

For the foregoing reasons, the Reporters Committee urges the Court to grant mandamus relief—or, in the alternative, to exercise its inherent supervisory authority—and hold that the automatic sealing of sentencing statements, cooperation-related filings, and competency evaluations under Criminal Local Rule 5.2 is impermissible under the First Amendment and the common law.

Dated: February 7, 2023

Respectfully submitted,

/s/ Katie Townsend
Katie Townsend
Counsel of Record for Amicus Curiae
Bruce D. Brown
Shannon A. Jankowski*
Sasha Dudding*
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Telephone: (202) 795-9300
Facsimile: (202) 795-9310
ktownsend@rcfp.org

** Of Counsel*

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

9th Cir. Case Number(s): 23-70023

I am the attorney for amicus curiae the Reporters Committee for Freedom of the Press.

This brief contains 3,898 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

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Signature */s/ Katie Townsend* **Date** February 7, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Honorable J. Michael Seabright
Honorable Jill A. Otake
United States District Court for the District of Hawaii
300 Ala Moana Boulevard
Honolulu, HI 96850

Description of Document(s) *(required for all documents)*:

Brief of Amicus Curiae

Signature /s/Katie Townsend **Date** February 7, 2023

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