No. 25-2383

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HONOLULU CIVIL BEAT, INC.,

Plaintiff-Appellant,

v.

FEDERAL BUREAU OF INVESTIGATION.

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Hawaii

DEFENDANT-APPELLEE'S ANSWERING BRIEF

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INTRODUCTION

Through its Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), lawsuit, Honolulu Civil Beat, Inc. ("Civil Beat") seeks the Federal Bureau of Investigation's ("FBI") entire investigative files for two state legislators who pleaded guilty, prior to a trial, to honest services wire fraud. The district court correctly granted summary judgment in the FBI's favor, holding that the FBI properly produced certain documents and withheld the remainder under 5 U.S.C. §§ 552 (b)(3), (5), (6), (7)(A), (C), (D), and (E), as disclosure would interfere with enforcement proceedings regarding public corruption, violate third parties' rights to privacy, reveal protected confidential source information and investigative techniques, contravene other statutory directives, or otherwise violate privilege.

In its Appeal, Civil Beat misrepresents and/or misunderstands the FBI's explanation that it is currently investigating public corruption beyond the charges to which the two legislators pleaded guilty, purports to narrow its requests for documents notwithstanding its prior refusals

to do so, changes its position on the necessity of a *Vaughn* index[1], misinterprets well-established legal authority governing the applicable exceptions, and asks this Court to ignore the FBI's declarations and exhibits in favor of its own speculative arguments about the public's interest in the FBI's ongoing criminal investigation.

The district court properly concluded that Civil Beat offered no admissible evidence to contradict the FBI's two declarations and its *Vaughn* index, and it correctly held that the FBI's bases for withholding documents were justified by the facts and the law. Its decision must be affirmed.

STATEMENT OF JURISDICTION

On April 1, 2025, the district court granted the FBI's motion for summary judgment. 1-ER-3[2]. Judgment was entered that day. 1-ER-2. Civil Beat filed a timely notice of appeal on April 11, 2025. 3-ER-386;

[1] "A *Vaughn* index is a submission that identifies the documents withheld, the FOIA exemptions claimed, and a particularized explanation of why each document falls within the claimed exemption." *Transgender Law Ctr. v. Immigr. & Customs Enforcement*, 33 F.4th 1186, 1196 (9th Cir. 2022) (citation modified).

[2] "ER" refers to the Excerpts of Record submitted by the Plaintiff-Appellant.

Fed. R. App. P. 4(a)(1)(B). This Court has appellate jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

1. Whether the FBI provided a sufficient factual basis for the district court to review the applicability of the claimed FOIA exemptions.

2. Whether the district court correctly held that the exemptions claimed by the FBI protect the requested documents from disclosure.

3. Whether the FBI established foreseeable harm if the documents are disclosed.

4. Whether the district court properly held that the FBI appropriately produced the segregable material and was not required to redact before producing the withheld documents.

STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

Based on information received by the FBI about public corruption, the FBI began investigating two Hawai`i state legislators, Representative Ty J.K. Cullen ("Cullen") and Senator Jamie Kalani

English ("English"). SER-55[3] . The investigation resulted in several executed search warrants, their respective arrests, charges, guilty pleas, and sentencing for honest services wire fraud. *Id.* After their respective sentencings, Civil Beat requested the FBI's entire investigative files regarding Cullen on February 25, 2022, and regarding English on January 3, 2023. 3-ER-358,368. Specifically, Civil Beat sought "[a]ll investigative reports and materials maintained by the FBI relating to criminal charges brought against [Cullen] and [English]…those documents related to the criminal investigation against [them]." *Id.* The FBI denied the requests under 5 U.S.C. §§ 552(b)(6) and 7(C) because the requests implicated third persons rights to privacy without demonstrating how the public interest outweighed such rights. 3-ER-361,371. Civil Beat administratively appealed the decision for both requests to the Office of Information Policy ("OIP"), U.S. Department of Justice. 3-ER-365,375. The OIP denied Civil Beat's appeal concerning Cullen on July 29, 2022 and denied Civil Beat's appeal concerning English on January 10, 2023. 3-ER-366,371.

[3] SER refers to the Supplemental Excerpts of Records provided by Defendant-Appellee.

B. PROCEDURAL BACKGROUND

Civil Beat filed its complaint on May 18, 2023. Dkt. No.1[4]. In its report of the parties' planning meeting, FBI added Exemption 7(A) as a basis for withholding the investigative files, explained its position that initial disclosures and discovery were not required before the production of a *Vaughn* index, and stated that it hoped to be able to discuss a timeline for the case disposition at the scheduling conference. SER-273-277. In its scheduling conference statement, the FBI reiterated its positions that its investigation was ongoing, and that the case should be resolved at summary judgment with a *Vaughn* index. SER-268-270. At the time of that filing, the related criminal matter against Milton Choy was pending in district court. *Id.* Choy passed away in prison subsequent to him receiving a sentence term of ten years imprisonment. 2-ER-281–82.

On July 22, 2025, having not been able to reach an agreement with Civil Beat as to the procedure or timing of the submission of its *Vaughn* index and motion for summary judgment, the FBI filed a motion to bifurcate its briefing. SER-248. In that motion, the FBI

[4] "Dkt. No." refers to the docket filing number in the district court.

sought an order allowing it to proceed to obtain summary judgment on its categorical exemptions based on the ongoing investigation into public corruption and the privacy of third parties and then, if those exemptions were denied, brief all other applicable exemptions or deem them waived, as required by *Maydak v. Dep't of Justice,* 218 F.3d 760 (D.C. Cir. 2000)[5]. SER-261-262. Civil Beat objected, arguing "the FBI's proposal for bifurcated review is a waste of time without any legal authority and only serves the FBI's interests in delaying the resolution of this case." SER-184. Civil Beat also claimed that the FBI had not responded to its request for a *Vaughn* index, and it made vague overtures of narrowing the scope of its request. *Id.,* 186. In response, the FBI clarified that it made the motion to *save* time, out of the interest of efficiency, because bifurcation would potentially obviate the

[5] The *Maydak* principal requires the government to complete its review of all the documents and set forth its objection to disclosure in one motion, instead of raising FOIA exemptions claims one at a time in multiple briefs. *Maydak v. U.S. Dep't of Just.,* 218 F.3d 760, 764 (D.C. Cir. 2000) ("as a general rule [the government] must assert all exemptions at the same time, in the original district court proceedings."); *see also Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Just.*, 854 F.3d 675, 681 (D.C. Cir. 2017)("*CREW II*") (citing to *Maydak* in reversing district court's decision to consider an exemption not identified in the initial motion for summary judgment).

need for the detailed *Vaughn* index explaining the basis for withholding *every* single document under *all* exemptions, because the district court could potentially dispose of the entire matter on the categorical exemptions. SER-168. The FBI further clarified that Civil Beat had not narrowed its requests. SER-167. Thus, as the FBI was required to continue its detailed review of the records based on the requests before it, it could obviously not produce the *Vaughn* index until the review was complete. *Id*. The district court denied the FBI's motion and instructed the FBI to file weekly status reports identifying the number of documents and pages the FBI reviewed and indexed, the number that remained to be reviewed, the number of personnel assigned to review and index the documents, and the hours per week each person assigned devoted to the tasks. Dkt. Nos. 52, 55, 56, 59, 61, 62, 64, 65, 66. The FBI complied until it filed its Motion for Summary Judgment on November 4, 2024. SER-114.

In its Motion for Summary Judgment, the FBI argued that seven statutory exemptions prevented the release of the requested records. SER-115. In support of its Motion, the FBI provided two declarations. One was a 68-page declaration from Michael Seidel, FBI Section Chief

of the Record/Information Dissemination Section in Winchester Virginia, detailing how the FBI searches its databases for responsive documents, and how the respective statutory exemptions applied to each of the documents in this matter. 3-ER-291–357. Seidel attached to his declaration Exhibit "M", a 30-page *Vaughn* index, which he explicated in his declaration. SER-79-113. A second 6-page FBI declaration from Special Agent Aryn Nohara from the Honolulu, Hawaii, Field Office addressed statutory exemption 7(A) and the harm that would be caused to the government's enforcement proceedings if the requested records were released. 3-ER-380-85. The two declarations and *Vaughn* index collectively described all seven of the applicable exemptions as required by *Maydak*.

First, the FBI explained that under § 552(b)(6), third parties included in the requested records had a right to their nontrivial privacy interests and those privacy rights outweighed any public interest. SER-132. Second, under § 552(b)(7)(A), the FBI described how release of the records would interfere with its enforcement proceedings. SER-135. Third, the FBI addressed the additional privacy concerns under § 552(b)(7)(C), which protects third parties such as agency staff,

witnesses, and other persons of interest involved in the enforcement proceeding, whose rights outweigh those of public interest. SER-139. Fourth, under § 552(b)(7)(D), the FBI explained how information that would lead to the disclosure of confidential sources remains protected. SER-141. Fifth, the FBI described how some of its records that revealed its otherwise unknown investigative techniques were protected under § 552(b)(7)(E). SER-142. Sixth, as Exemption 3 protects from disclosure information otherwise protected by another statute, the FBI identified four such laws: Rule 6(e) of the Federal Rules of Criminal Procedure, the Pen Register Act, the National Security Act, and the Bank Secrecy Act and it specifically noted on its *Vaughn* Index to which documents those laws applied. SER-143-145. Seventh, the FBI described how its internal notes and memoranda were protected under Exemption 5 as attorney-client, work product, or deliberative process privileged. SER-145-147. Finally, the FBI explained that all reasonably segregable material had been produced, and to the extent non-exempt information existed, it was so intertwined as to render the document meaningless should it be redacted. SER-147-148.

Civil Beat filed its Counter Motion for Summary Judgment and its Opposition on December 20, 2024. SER-43. Civil Beat first argued that the FBI's declarations were lengthy but boilerplate and lacked sufficient detail to justify any withholding. SER-57. It also argued the *Vaughn* index did not describe the documents or otherwise provide sufficient detail to assess the withholdings validity. SER-59. Second, Civil Beat argued that privacy rights do not justify withholding the investigative files—addressing only Exemption 7(C) and ignoring 7(b)(6)—and instead suggested the records could be redacted to remove any legitimate privacy concerns as other information had already been made public—notably referring to only Cullen, English, and Choy and ignoring other individuals who might be named in the records. SER-61-63. Civil Beat also claimed that the public has an interest[6] into the corrupt public officials—in particular, speculating about the "FBI's decision to meddle in Hawaii's legislative process," and wondering why

[6] Civil Beat pointed the district court to a chart it prepared identifying articles about the legislators in support of its public interest argument; most of the articles were published by Civil Beat and related to the community and legislature's response to the corruption, not to the FBI's investigation into the corruption. 2-ER-273. No other media outlet or individual has submitted a FOIA request.

the "FBI allowed Cullen and English to continue serving as legislators after arresting them," apparently under the odd belief that the FBI can somehow remove individuals from the Hawai`i state legislature.[7] SER-64–66.

Third, Civil Beat argued that the "records do not concern pending proceedings" because Cullen and English had already been charged, pleaded guilty, sentenced, served time, and released, and the scope and nature of the proceedings concerning them were known. SER-66. Civil Beat also argued the risks of disclosure identified by the FBI were too general. SER-68–70.

Fourth, Civil Beat addressed the National Security Act statutory protection under Exemption 3, arguing that the FBI did not provide sufficient detail. SER-69. Fifth, Civil Beat argued that there is no presumption that the FBI's sources are confidential, and that the existence of such sources does not justify withholding the entirety of the files. SER-70. Civil Beat further claimed that since Milton Choy had

[7] To the degree Civil Beat contends English could have been arrested, it cannot credibly contend that his arrest would somehow automatically operate to remove him from the legislature.

been identified and has since died, there are no confidential sources in the files. SER-72.

Sixth, Civil Beat addressed two additional laws relied on by the FBI under Exemption 3 – the Pen Register Act and Grand Jury Secrecy. SER-74. It claimed that the FBI overstated their scope as applied to the records and argued the records could just be redacted. *Id.*

Seventh, Civil Beat claimed that the FBI's basis for withholding records that would reveal law enforcement techniques was too general, and documents could be redacted. SER-73. Eighth, Civil Beat argued that the FBI's privileges identified under Exemption 5 were too conclusory without a detailed privilege log, and that the categorical claim that the entire files could be withheld under this exemption should be rejected. SER-74-75.

Ninth, Civil Beat argued that the FBI's reliance on the Bank Secrecy Act under Exemption 3 was unclear. SER-75. Finally, Civil Beat argued the FBI must be required to produce the records with redactions to eliminate the protected information because the conclusory declarations and *Vaughn* index did not provide enough detail to justify withholding entire documents. SER-75-76.

The FBI filed its Reply in Support on January 22, 2025. SER-22. It argued that Civil Beat's lack of evidence, failure to specifically rebut the information provided in the FBI declarations and accompanying *Vaughn* index, and its conclusory allegations failed to overcome the FBI's good faith declarations justifying the applicable exemptions. SER-28-39. The FBI reiterated that beyond what the FBI had already produced, it was unable and not required to further segregate by redacting the records because the protected information was so intertwined in the records that such redactions would render the records meaningless. SER-30. The FBI noted that Civil Beat had failed to address that § 552(b)(6) protected the privacy interests of third parties mentioned in the records. SER-31. And it directed the district court's attention to the specific paragraphs in each of the declarations that justified the withholding under each exemption, to which the Civil Beat had not responded. SER-31-39.

Civil Beat submitted its Reply in Support of its Counter-Motion on January 29, 2025. SER-4. It repeated its positions that the district court should not defer to the FBI's declarations which are too general and insufficient, that documents can be produced with redactions, and

that the district court should rule only on the categorical exemptions, deferring the remaining exemptions to a later date. SER-8, 11, 14, 16. In response to Civil Beat's footnote 5 in which Civil Beat questioned the *Vaughn* index's lack of dates or individualized information per record and raised other concerns, (SER-12), the FBI submitted the supplemental declaration of Michael Seidel. 2-ER-60. Seidel explained that the FBI does not provide dates if doing so would interfere with ongoing law enforcement proceedings and that there were gaps in serial numbers listed in the index because the records related to matters not responsive to Civil Beat's FOIA requests. *Id*. Seidel also attached to his supplemental declaration an amended *Vaughn* index. 2-ER-65.

The district court held a hearing on February 20, 2025. 2-ER-22 During the hearing, Civil Beat conceded that the investigation was on-going[8]. 2-ER-32. Civil Beat was unable to provide specific information

[8] Shortly after the hearing, Civil Beat published an article about the FBI's ongoing investigation. *See* https://www.civilbeat.org/2025/03/influential-hawaii-lawmaker-took-35000-under-fbi-surveillance/ ("Acting U.S. Attorney Ken Sorenson confirmed that officials are still working on the case, but he declined to answer questions. 'If you run this story, you've been told by the acting U.S. Attorney that it will endanger an ongoing operation,' he said.") (last visited September 4, 2025)

at the hearing beyond speculative argument in response to the FBI's declarations. 2-ER-36–38.

On April 1, 2025, the district court entered its order granting summary judgment to the FBI. 1-ER-3. It focused primarily on the enforcement proceeding exemption 7(A) but also concluded that the remaining exemptions applied. 1-ER-6. Before addressing each exemption, the district court recognized that courts afford deference to agency declarations explaining the factual basis for their withholdings, especially to law enforcement agencies that have specialized expertise. 1-ER-9. The district court then found that the Seidel and Nohara declarations complied with the Ninth Circuit's requirements of providing tailored reasons for withholding records based on their knowledge of the investigation and records, and potential for foreseeable harm. 1-ER-10-11. It further held that the *Vaughn* index reinforced the FBI's arguments and declarations by identifying and demonstrating how the withheld records would reveal sensitive information. 1-ER-12.

Finding the FBI's declarations and *Vaughn* index sufficient, the district court then turned to Exemption 7(A). Evaluating this

exemption, the district court held that the FBI met the three elements set forth in *FBI v. Abramson*, 456 U.S. 615, 622 (1982): the FBI established that (1) it is a law enforcement agency; (2) the records were compiled for law enforcement purposes, and that (3) their release would interfere with enforcement proceedings. 1-ER-14. In reaching this conclusion, the district court accepted the declarations of Seidel and Nohara, concluding that they were sufficiently detailed without disclosing the very information they were seeking to protect under *NLRB v. Robbins Tire & Rubber Co.,* 437 U.S. 214, 224–37 (1978). 1-ER-14–15.

Although granting summary judgment as to Exemption 7(A) meant that the district court did not need to address the other six applicable exemptions, it did so, nonetheless. It proceeded in order of the remaining exemptions, beginning with 3, which applies to records "specifically exempted from disclosure by statute." 1-ER-15. The district court employed the two step-inquiry set forth by the Ninth Circuit in *Civ. Beat. L. Ctr. For the Pub. Int., Inc v. Centers for Disease Control & Prevention*, 929 F.3d 1079, 1084 (9th Cir. 2019): (1) whether the statute identified by the agency is a statue of exemption within the

meaning of the statute; and (2) whether the withheld records satisfy the criteria of the exemption statute. *Id.* It first found that Fed. R. Crim P. Rule 6(E) prohibits the disclosure of matters before the grand jury, and that the Seidel Declaration and *Vaughn* index established that grand jury materials were contained in the records. 1-ER-16. It then held that the Pen Register Act protects from disclosure information pertaining to certain court orders authorizing the installation and use of a trace device, including information pertaining to the existence of the device and existence of an investigation, and that the FBI appropriately withheld names, phone numbers, locations, and other information gathered from the tracing device. *Id*. Third, it found that the National Security Act of 1947 requires the protection of intelligence sources and methods from unauthorized disclosure, and that as a member of the intelligence community, the FBI was obligated to comply with the applicable directive and withhold the specific documents Seidel had identified. 1-ER-16–17. Finally, the district court held that the Bank Secrecy Act exempts reports and records collected under its authority, which Seidel explained and applied. 1-ER-17. Based on the

foregoing conclusions, the district court held that the four statutes identified by the FBI justified withholding the identified records.

Next, the district court addressed Exemption 5, which protects inter/intra agency memoranda or letters that would not be available by law to a party other than the agency in litigation. *Id.* It held that the FBI properly withheld deliberative materials, attorney-client privileged documents, and attorney work product under *Am. C.L. Union of N. California v. Dep't of Justice,* 880 F.3d 473, 483 (9th Cir. 2018). 1-ER-17–18. Turning to Exemption 6, the district court held that the FBI appropriately withheld personal information of third parties, including witnesses, suspects, and law enforcement personnel (special agents and staff), because their interest outweighed any potential public interest. 1-ER-18. Addressing Exemption 7(C), like its analysis of Exemption 6, the district court held that the FBI appropriately withheld records compiled for law enforcement purposes that if disclosed would constitute an unwarranted invasion of privacy. *Id.*

As to 7(D), the district court held that the identity of confidential sources was protected, and that the FBI had adequately demonstrated the disclosure of such information in the records could jeopardize

ongoing investigations and deter future cooperation with law enforcement. 1-ER-19. Turning to Exemption 7(E), the district court held that the FBI appropriately invoked it to protect its records that would reveal non-public investigative techniques or procedures, hindering future investigations. *Id.*

Finally, the district court acknowledged that the FBI had identified 237 pages of public source material that could be segregated for disclosure and that it had already produced the de-duplicated records, before holding that no further non-exempt information could reasonably be released without revealing exempt information. 1-ER-19-20.

SUMMARY OF ARGUMENTS

1. The 68-page declaration by Michael Seidel, FBI Section Chief of the Record/Information Dissemination Section, the 6-page declaration by Special Agent Aryn Nohara, and a 30-page *Vaughn* index the FBI attached to its Motion for Summary Judgment provided the district court with sufficient factual basis to grant summary judgment.

2. The district court correctly determined that the files could be categorically withheld under §552(b)(7)(A) because the FBI's two

declarations established that release of the records would interfere with enforcement proceedings. It then correctly found that the remaining six exemptions also prevented the release of the records.

3. The district court properly relied on the sufficient declarations of Seidel and Nohara to find that the release of the records would lead to foreseeable harm.

4. The district court properly relied on the FBI declarations in holding that the FBI was not obligated to redact or otherwise further segregate the documents for production.

STANDARD OF REVIEW

This Court reviews summary judgment decisions in FOIA cases *de novo*. *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016). Accordingly, this Court reviews evidence in the light most favorable to the nonmoving party, determines whether there are any genuine issues of material fact, and decides whether the district court correctly applied the correct substantive law. *Id.* at 989.

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ARGUMENT

A. THE FBI PROVIDED A SUFFICIENT FACTUAL BASIS FOR THE DISTRICT COURT TO RELY UPON IN GRANTING SUMMARY JUDGMENT

When determining the application of FOIA exemptions, courts may award summary judgment "solely on government affidavits so long as the affiants are knowledgeable about the information sought and the affidavits are detailed enough to allow the court to make an independent assessment of the government's claim." *Lion Raisins v. U.S. Dep't of Agric.*, 354 F.3d 1072, 1079 (9th Cir. 2004)(citation omitted). Agency affidavits or declarations must "reasonably describe the justifications for nondisclosure and show that the content withheld falls within one of FOIA's exemptions." *Hamdan v. U.S. Dep't of Just.*, 797 F.3d 759, 772 (9th Cir. 2015) (citation omitted). Such submissions are "presumed to be in good faith." *Id.* (citation omitted). The FBI's declarations and *Vaughn* index satisfy this Court's standard for summary judgment.

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I. The FBI's Submissions Were Adequately Particularized to Support the District Court's Decision.

To support its invocation of various FOIA exemptions, the FBI painstakingly provided more than 70 pages worth of explanation in the Seidel and Nohara Declarations. 3-ER-291; 380. And it provided a detailed 30-page *Vaughn* index in response to Civil Beat's request[9]. 2-ER-65. In its Opening Brief ("OB"), Civil Beat's sole argument, across various exemptions, is that these submissions did not provide enough detail or context to support withholding. *See e.g.*, OB pp. 36, 38, 48, 50, 53, 54, 58. Civil Beat both mischaracterizes the declarations and misstates the burden that the FBI must meet to provide an adequate factual basis for withholding the information.

The Seidel and Nohara Declarations each provided detailed reasoning to support each of the exemptions it invoked. In support of Exemption 7(A), both Seidel and Nohara explained how release of the

[9] Civil Beat's Footnotes 15 and 16 (OB pp. 37 and 40) misrepresent the record, as FBI had sought to bifurcate the briefing on the categorical exemptions, but Civil Beat objected to the request, thereby necessitating the production of the *Vaughn* index justifying *every* applicable exemption. SER-248 and181.

requested records would interfere with enforcement proceedings beyond the actions of Cullen and English. 3-ER-306-07; 380-85. In support of Exemption 6 and 7(C), Seidel explained why release would cause an unwarranted invasion of personal privacy of Cullen and English. Most notably, third parties whose identities are unknown, and who have provided source material in the investigation would be outed. 3-ER-329–35. The chilling effect to both this ongoing investigation, and future investigations, would be substantial if it becomes known that FBI sources in highly sensitive investigations will be disclosed through FOIA.

In support of Exemption 3, Seidel identified four federal statutes that independently protect records from disclosure. 3-ER-322–28. In support of Exemption 5, Seidel explained why the FBI withheld privileged information. 3-ER-315-22. In support of Exemption 7(D), he explained that some information contained in the requested records implicate confidential sources. 3-ER-337-41. Finally, in support of Exemption 7(E), Seidel explained that the FBI was required to withhold records that would disclose investigative techniques not generally

known to the public. 3-ER-341-54. The *Vaughn* index identified if and how each exemption applied per document. SER-79-113.

Civil Beat calls the FBI's declarations "generic." OB p. 40. But this description mischaracterizes the agency's submissions. For example, consider the FBI's explanation for invoking Exemption 7(E). 3-ER-341. Seidel explains that investigative files include information, often in administrative headings, that "identify the location of the office and squads that originated or received the document." 3-ER-344. He explains that the FBI withheld this information to avoid "disclos[ing] techniques and procedures for law enforcement investigations or prosecutions." 3-ER-341. Finally, he justifies this decision on the ground that disclosure would "reveal the targets, the physical areas of interest of the investigations . . . and allow subject[s] to employ countermeasures targeted toward concealing particular types of behavior." 3-ER-344. Then, the legend on the Vaughn index, coupled with the index itself, identified each applicable 7E category per document. SER-79, 80. This particularized explanation meets this Court's factual basis standard. *See Ecological Rts. Found. v. U.S. Env't Prot. Agency,* 2023 WL 4342100, at *1 (9th Cir. 2023) (finding adequate

factual basis, where agency submitted "35-page affidavit that divides its records into eight categories, with detailed justifications for its withholdings and redactions.")

Civil Beat also contends that the FBI's *Vaughn* index was inadequate because it did not provide context as to the content of the documents. OB p. 37. But Civil Beat again mischaracterizes to the Court the proper burden the FBI must meet in fashioning a *Vaughn* index. It is the "function, not the form of the index that is important." *Keys v. U.S. Dep't of Just.*, 830 F.2d 337, 349 (D.C. Cir. 1987) (citation omitted). Accordingly, this Court has held that agencies are required only to produce information that would not require "disclos[ing] facts that would undermine the very purpose of its withholding." *Yonemoto v. Dep't of Veterans Affs.*, 648 F.3d 1049, 1062 (9th Cir. 2011) (citations omitted). Providing contextual information for each document on the *Vaughn* index, as Civil Beat suggests the FBI is required to do, would reveal the very information that FOIA statutory exemptions are designed to protect. *See e.g.*, *Wiener v. F.B.I.,* 943 F.2d 972, 982 (9th Cir. 1991) (finding *Vaughn* index sufficient, as revealing nature of tax return information would compromise statutory confidentiality

guarantee). Civil Beat's position is simply not supported, and the district court correctly followed this Court's precedent in relying upon the FBI's declarations and index.

II. The District Court Appropriately Deferred to the FBI's Submissions.

Where, as demonstrated above, agencies' good-faith submissions "reasonably describe the justifications for nondisclosure," this Court affords the declarations "considerable deference." *Hamdan*, 797 F.3d 759 at 772. Indeed, this Court has acknowledged that law enforcement agencies such as the FBI should be afforded special deference in Exemption 7 determinations[10]. *ACLU of N. Cal v. FBI,* 881 F.3d 776 (9th Cir. 2018). Here, five out of the seven exemptions relied upon by the FBI fell under Exemption 7.

Civil Beat's contention that the FBI was afforded "blind deference" mischaracterizes the district court's reasoning on two grounds. *See* OB p. 30. First, the district court gave substantial weight only to the FBI's declarations explaining the factual basis for its withholdings, not to the

[10] Civil Beat tries to argue around this standard by not disputing that the records were compiled for law enforcement purposes, however that concession does not obviate the deference afforded to agency expertise.

agency's legal conclusions. 1-ER-9. This Court has determined this level of deference proper in *all* FOIA cases, regardless of type of content withheld (not merely in the national security context as argued by Civil Beat at OB p. 31). *See e.g.*, *Ecological Rts. Found.*, 2023 WL 4342100, at *1 (deferring to agency's declarations in FOIA case involving EPA environmental litigation records); *Am. C.L. Union of N. California v.*, 880 F.3d at 491 (same, in FOIA case involving DOJ's use of electronic surveillance in criminal investigations).

Second, deference was particularly appropriate here, as Civil Beat did not dispute nor provide any alternate evidence to contravene the FBI's good-faith declarations, beyond mere speculation. *Ecological Rts. Found.*, 2023 WL 4342100, at *1 (determining that the district court was "entitled to take [the agency's] materials at face value absent contrary evidence in the record"). Since Civil Beat did not actually offer any admissible evidence to contradict the FBI's two good faith factually comprehensive declarations, the district court appropriately afforded the FBI's declarations deference.

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B. THE DISTRICT COURT CORRECTLY HELD THAT THE FBI'S STATED EXEMPTIONS JUSTIFY ITS WITHHOLDING OF RECORDS

Because the FBI provided the district court with a sufficient factual basis to determine the applicability of the claimed exemptions, this Court should proceed to address the exemptions on the merits.

Contrary to Civil Beat's representations to the Court, OB pp. 21–22, FOIA exemptions are *not* narrowly construed. Courts "have no license to give statutory exemption[s] anything but a fair reading." *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019) (citation modified). The Supreme Court has held that the FOIA statute offers no textual indication to depart from this rule, as it "expressly recognizes that important interests are served by its exemptions" and "those exemptions are as much a part of FOIA's purposes and policies as the statute's disclosure requirement." *Id.* (citation modified).

I. The FBI Established that Exemption 7(A) Protects the Disclosure of Records that if Released Would Interfere with its Enforcement Proceedings

Exemption 7(A) categorically prohibits disclosure that "could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A). To meet its burden, agencies must satisfy a

straightforward two step test by establishing that: (1) the records were compiled for law enforcement purposes,[11] and (2) disclosure could reasonably interfere with pending or *contemplated* enforcement proceedings. *Lewis v. I.R.S.*, 823 F.2d 375, 379 (9th Cir. 1987); *Polynesian Cultural Ctr., Inc. v. N.L.R.B.*, 600 F.2d 1327, 1329 (9th Cir. 1979). Under this exemption, the government is "not required to make a specific factual showing with respect to each withheld document." *Barney v. IRS*, 618 F.2d 1268, 1273 (9th Cir. 1980) (citation omitted). Instead, courts allow categorical withholdings under this exemption when disclosure would generally interfere with enforcement proceedings. *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224–37 (1978).

Notwithstanding the FBI representations to the contrary, Civil Beat has decided, without offering any evidentiary support, that the FBI's enforcement proceedings related to public corruption are complete and therefore Exemption 7(A) does not apply. And Civil Beat claims that its FOIA requests were narrowly tailored to exclude any reference

[11] Civil Beat does not dispute that the requested records were compiled for law enforcement purposes. OB p. 23, n.11.

to other investigations in that Civil Beat sought only "records of the criminal conduct that Cullen pleaded guilty to" which was "distinct from any other public corruption purportedly being investigated by the FBI." OB pp. 25–26. This representation is demonstrably false, however, as Civil Beat's FOIA requests clearly seek "all documents *related* to the criminal charges brought" and "documents *related* to the criminal investigation." 3-ER-358, 368. In essence, Civil Beat rejected FBI requests to narrow the sweeping scope of the FOIA demand and now misstates that demand to this Court as being somehow tailored and therefore arguably less intrusive and damaging to ongoing FBI operations. SER-202-203.

The district court properly disregarded Civil Beat's rhetoric and hyperbolic arguments, instead accepting the good faith, sufficiently detailed declarations provided by the FBI explaining that the enforcement proceedings are in fact ongoing and how release of the requested records would impact its work. During the February 20, 2025, hearing, Civil Beat conceded that both Cullen and English had cooperated with the FBI, which lead to further investigations. 2-ER-32. Civil Beat did not provide any evidence in response to the district

court's questions to contradict the good faith declarations that the investigation was on-going. 2-ER-31. It responded only with its argument that the declarations lacked detail. 2-ER-41. But Seidel's Declaration explained that the FBI invoked this exemption because "information and evidence contained within the FBI's investigatory files could be used in the government's future prosecution of corruption by other public officials that are directly associated with the investigation of Mr. Cullen and Mr. English." 3-ER-307; *Boyd v. Crim. Div. of U.S. Dep't of Just.*, 475 F.3d 381, 386 (D.C. Cir. 2007) (affirming Exemption 7(A) as to documents related to requestor's prosecution, as disclosure would reveal details of ongoing investigations "related to" the requestor). And Seidel noted that disclosure of Cullen's and English's investigative files would allow targets, witnesses, and third-parties access to information about the focus, scope, and strategy of other related public corruption investigations. 3-ER-306. This could reasonably lead to witness tampering, fabrication of evidence, or other interference. *Id.*; *see Shannahan v. I.R.S.,* 672 F.3d 1142, 1146 (9th Cir. 2012) (affirming Exemption 7(A) in case where files would reveal "nature, direction, scope, and limits of the criminal proceedings").

Additionally, Nohara, the Special Agent on the ground in Honolulu, explained that the investigation into public corruption has not been completed and that there remain suspects of interest who could use the released information to thwart the investigation by intimidating witnesses, destroying evidence, and changing their behavior. 3-ER-383–385.

To the extent that Civil Beat argues that Exemption 7(A) does not apply because the investigations into *Cullen and English specifically* are closed, this claim misconstrues the scope of the exemption. As Civil Beat conceded that both Cullen and English cooperated with the FBI, leading to further investigations, it naturally follows that the files are full of information related to and intertwined with pending enforcement proceedings. To be sure, this Court certainly bars "endlessly protect[ing] material simply because it [is] in an investigatory file." *NLRB*, 437 U.S. at 230. But the FBI here does not define "enforcement proceedings" so broadly as to include all other potential public corruption targets, as Civil Beat alleges. OB p. 25. Instead, the FBI invoked Exemption 7(A) to protect information only about *closely connected* ongoing proceedings. 3-ER-380 ("The FBI continues to

investigate public corruption matters that are *directly associated* with the investigations into English and Cullen." (emphasis added)).

Moreover, Civil Beat does not provide the full context of the D.C. Circuit's ruling in *Citizens for Resp. & Ethics in Washington v. U.S. Dep't of Justice*, 746 F.3d 1082 (D.C. Cir. 2014) ("*CREW I*") to justify its argument for disclosure. OB p. 27. There, the DOJ had argued that its investigation remained ongoing because three individuals still had to be sentenced. *Id.* at 1097. By the time the D.C. Circuit ruled however, the sentences had been completed. *Id.* at 1098. As such, although the court agreed that "so long as the investigation continues to gather evidence for a possible future criminal case, and that case would be jeopardized by the premature release of that evidence, Exemption 7(A) applies" it found that the "vague nature of the DOJ's mention of ongoing investigations especially when coupled with reliance on specifically enumerated proceedings" combined with the passage of time, and the admission at oral argument that the only ongoing proceeding was an appeal, rendered categorical withholding inappropriate. *Id.* at 1098. Here, the FBI has not conceded that the enforcement proceedings relate to only sentencing or an appeal, nor has it made vague overtures, but

instead provided two declarations explaining that the FBI is continuing its investigation into public corruption.

The district court correctly followed this Court's precedent in affording deference to the good faith declarations provided by people with knowledge about the FBI's enforcement proceedings in holding that the files were categorically exempt from production under Exemption 7(A).

II. The FBI Established that Exemption 3 Prevents the Disclosure of Information Protected by Another Statute

Exemption 3 protects records that are exempt from disclosure under another statute. 5 U.S.C. § 552(b)(3). To determine whether the FBI satisfies this rule, this Court employs a two-step inquiry: (1) whether the statute identified by the agency is a statute of exemption within the meaning of Exemption 3, and (2) whether the withheld records satisfy the criteria of the exemption statute. *Hamdan*, 797 F.3d at 776. The district court correctly determined that the FBI withheld documents under four such statutes.

First, Federal Rule of Criminal Procedure 6(e) is a qualifying statute under Exemption (3) and bars disclosure of "matter[s] occurring

before a grand jury." *Labow v. United States Dep't of Just.*, 831 F.3d 523, 529 (D.C. Cir. 2016) ("*Labow I*") (citation modified). The requested files contain such information, including Federal Grand Jury subpoenas, subpoena returns, and documents analyzing information obtained from both. 3-ER-316. Civil Beat misapplied *Labow v. United States Dep't of Justice* 278 F.Supp.3d 431 (D.D.C. 2017) ("*Labow II*") to suggest that this exemption was applied too broadly. OB p. 52. There, the court held that Exemption 3 protects the FBI's grand jury documents but still subjected the documents first to *in-camera* review because the FBI included only a one-sentence description outlining why the exemption applied. *Id.* at 444 ("[W]ithheld records include the subpoenas themselves, returns on subpoenas, and discussions of subpoenas."). This situation is different because the FBI does not provide a one sentence description. Instead, Seidel's Declaration is detailed, explaining that the records include, among other information, the identities of witnesses, sources of information, the steps the grand jury took in its investigation, and summaries of the information subpoenaed and returned. 3-ER-316-17.

Second, the Pen Register Act bars disclosure of information pertaining to certain court "order(s) authorizing or approving the installation of use of a pen register or a trap and trace device" and information pertaining to "the existence of the pen register or trap and trace device or the existence of the investigation." 18 U.S.C. § 3123(d). The FBI withheld such information, including the identities of individual(s) targeted by the pen registers, the location(s) of the devices, and information gathered by the device(s). 3-ER-317–18. Again, Civil Beat misreads *Labow I* to suggest that this exemption was applied too liberally. The mere existence of a pen register order certainly does not enable the FBI to automatically withhold "all information that may be contained in or associated with a pen register order." *Labow I*, 831 F.3d at 528. However, courts have repeatedly held that "information regarding the target of pen registers, and reports generated as a result of pen registers" is information that "falls squarely under" the Pen Register Act. *Brown v. FBI,* 873 F.Supp.2d 388, 401 (D.D.C. 2012); *see also Labow II*, 278 F.Supp.3d at 441 ("Information at the crux of a pen register order that, as here, happens to appear in a document outside of the order itself . . . falls within the scope of Exemption 3's protection as

triggered by the Pen Register Act."). A review of the *Vaughn* index establishes that the FBI did not apply this consideration to every document, just specific ones. 2-ER-85.

Third, the National Security Act of 1947, 50 U.S.C. § 3024(i)(1) protects intelligence sources and methods from disclosure under Exemption 3. *Hunt v. C.I.A.*, 981 F.2d 1116, 1118 (9th Ct. 1992) (citing *C.I.A. v. Sims*, 471 U.S. 159 (1985)). The FBI provided a sufficient basis to invoke this exemption, stating that disclosure would reveal the FBI's sources and methods of gathering intelligence. 3-ER-318–19.

Finally, the Bank Secrecy Act ("BSA") states that with respect to reports submitted to the Treasury, "a report and records of reports are exempt from disclosure under section 552 of title 5, and may not be disclosed under any State, local, tribal, or territorial 'freedom of information,' open government,' or similar law." 31 U.S.C. § 5139. Civil Beat is correct that the BSA concerns only reports collected from financial institutions by FinCEN (OB p. 50) and it is specifically applicable here. The FBI withheld only information obtained from FinCEN that was gathered through the BSA during criminal investigative activities. 3-ER-322.

III. The FBI Established that Exemption 5 Protects Privileged Information

Exemption 5 protects from disclosure "'inter-agency or 'intra-agency' memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). The exemption encompasses such records that would normally be protected in litigation, such as (1) deliberative-process, (2) attorney-client, and (3) attorney work-product privileged materials. *Am. C.L. Union of N. California*, 880 F.3d at 483. The FBI provided an adequate basis on which to invoke this exemption and detailed how release would foreseeably cause harm under three applicable privileges.

First, under the deliberative-process privilege, the FBI withheld handwritten interview notes because such notes contained Special Agents' "thoughts, ideas, and impressions" that guided broader investigative policy but were not necessarily placed in the official record. 3-ER-325. Release of such notes would cause a chilling effect on agents' willingness to comprehensively record interviews and cause public confusion. 3-ER-326; *United States Fish & Wildlife Serv. v. Sierra Club, Inc.*, 592 U.S. 261, 272 (2021) (finding deliberative process privilege, where documents did not reflect final agency decision).

Second, under the attorney-client privilege, the FBI withheld confidential communications between FBI and DOJ counsel and FBI employees that "reflect[ed] the seeking and/or providing of legal advice." 3-ER-327. Release of such information would "disrupt the adversarial process of litigation by providing access to information related to the government's potential legal strategies." 3-ER-327–28; *Hickman v. Taylor*, 329 U.S. 495, 510 (1947) (holding that attorney's notes of client interviews are not discoverable absent a showing of "necessity or justification").

Finally, under the attorney work product privilege, the FBI withheld correspondence between the FBI and the U.S. Attorney's Office. 3-ER-328. Release of such information would "interfere with government attorneys' ability to properly prepare their legal theories and strategies." *Id.*; *Am. C.L. Union of N. California,* 880 F.3d at 489 (finding attorney work product privilege, where documents "specifically address[ed] legal arguments").

Civil Beat offers no authority for its assertion that the FBI is required to produce a privilege log in addition to the *Vaughn* index. OB p. 53. That demanded redundancy is unsupported and nonsensical.

Instead, the FBI sufficiently described the basis for the privileges in the Seidel declaration, and then clearly identified the specific records these three privileges attached to in its *Vaughn* index. 2-ER-66.

IV. The FBI Established that Exemptions 6 and 7(C) Protect the Privacy of Third Parties

Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Exemption 7(C) protects "records of information compiled for law enforcement purposes, . . . to the extent" disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy." *Id.* § 552(b)(7)(C)[12]. In evaluating both exemptions, this Court employs a two-step balancing test. *Cameranesi v. United States Dep't of Def.*, 856 F.3d 626, 637 (9th Cir. 2017). First, this Court evaluates whether the personal privacy interest at stake is nontrivial or more than de minimis. *Id.* If the agency succeeds in this showing, the requestor then must demonstrate

[12] Civil Beat is correct that Exemption (6) employs a higher standard of privacy than Exemption 7(C). OB p. 43 n.19. The government meets both privacy thresholds.

the public interest sought to be advanced is a significant one and that information sought will advance it. *Id.*

1. Cullen, English and Third Parties Named in the Files Retain a Nontrivial Privacy Interest

First, Cullen's and English's privacy interests are more than de minimis. As the Seidel Declaration discusses, the withheld documents include detailed information regarding Cullen's and English's plea deals—information that is not within the public domain even though investigation into both individuals has concluded. 3-ER-304. Civil Beat misunderstands *CREW II* when it asserts that Cullen and English retain *no* privacy interest in the requested records. OB p. 44. As *CREW II* explains, although convicted individuals retain a "diminished privacy interest" in their records, they still "retain[] a privacy interest in the facts of [their] conviction." 854 F.3d at 682–83.

Second, third parties named in the records retain substantial privacy interests. This category includes individuals named as targets, individuals investigated but cleared, witnesses, confidential informants, agents, and FBI staff. 3-ER-329-39. This Court has repeatedly found that information about such individuals should be withheld to protect them from reputational threat, harassment by the media, being

threatened by those under investigation, and potentially being disclosed as a confidential informant or undercover agent. *See e.g.*, *Cameranesi*, 856 F.3d at 638 ("Disclosures that would subject individuals to possible embarrassment, harassment, or the risk of mistreatment constitute nontrivial intrusions into privacy under Exemption 6."). Thus, *all* individuals named in the investigative files have nontrivial interests in the records they are identified on.

2. These Individuals' Right to Privacy Outweigh Any Public Interest in Disclosure

This Court considers two factors when evaluating public interest in disclosure: (1) whether "the public interest sought to be advanced is a significant one—one more specific than having the information for its own sake," and (2) whether "the requested information is likely to advance that interest." *Id.* at 639 (citation modified).

Civil Beat articulates no public interest that justifies intrusion into these individuals' privacy based on the above two-step test – it simply asks rhetorical questions and argues *it* is interested in the information to answer its own questions. OB p. 47. This Court has held that disclosure is warranted only if the information "appreciably further[s] the public's right to monitor the agency's action." *Forest Serv.*

Emps. for Env't Ethics v. U.S. Forest Serv., 524 F.3d 1021, 1027 (9th Cir. 2008) (citation modified). Civil Beat's reliance on speculation as to the FBI's "interactions with the Hawai`i legislature" to justify disclosure does not meet its burden. OB pp.46–47. As the Seidel Declaration explains, there is "[no] evidence of wrongdoing/impropriety by the FBI or other federal government agencies concerning the criminal investigations of Mr. Cullen and Mr. English." 3-ER-305.

Civil Beat accuses the FBI of "meddling" in the affairs of the Hawaii State legislature while simultaneously trumpeting the sweeping impact and success of the FBI's investigation into public corruption in Hawaii's elected public officials. OB pp 4-7; 47. What Civil Beat may fail to grasp is that investigations into corrupt elected officials, *whose primary job is introducing and voting on legislation,* will naturally involve the legislative process. This is even more the case following the Supreme Court's holding in *McDonnell v. United States,* 579 U.S. 550 (2016). In *McDonnell* the Court narrowed the definition of "official acts" to implicate only "decision[s] or action[s] on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's

official capacity…that "involve[s] a formal exercise of governmental power". *Id*. At 574. The Court rejected the concept that setting up a meeting, speaking with other officials or organizing events was sufficient to qualify as official acts. Thus, to sustain a conviction against an elected official related to an "official act" the government must prove a "pending matter" which may by law be brought before that elected official. The act must necessarily involve the exercise of that official's government power, *i.e*. in this case, the introduction or business of deliberating and passing on legislation.[13]

The record is more than clear that English and Choy had been at the game of corrupt influence long before the FBI was able to convert Choy into a source. The FBI's actions halted the ongoing and corrupt activities of English with minimal, if any, effect on the State legislative process at all. While Civil Beat feigns concern about "meddling", the government conducted an efficient and highly successful investigation. Additionally, because the English arrest was secretly conducted and

[13] Civil Beat incorrectly argues that the FBI bribed English to introduce legislation. OB p. 7, 42,46. English introduced the cesspool bill, S.B. 2360, on his own. The FBI later, through Choy, paid $1,000 as thank you for introducing the bill. 22-CR-00012 Dkt. No. 8 at PageID #s 69-70; 2-ER-100.

resulted in his cooperation, the government was able to continue to utilize Choy as a source. This led directly to the arrest and conviction of Cullen. And the cesspool bill that Civil Beat is so concerned about died a natural death when the Hawaii State legislature suspended its 2020 session due to the COVID-19 pandemic. *See* English Memorandum of Plea Agreement, 22-cr-00012 Dkt. No. 8 at PageID #75; Honolulu StarAdvertiser, https://www.staradvertiser.com/2020/03/16/breaking-news/lawmakers-will-recess-legislative-session-tuesday-due-to-coronavirus-concerns/.[14]

Moreover, Civil Beat once again mischaracterizes *CREW I*. In that case, the FBI had declined to prosecute a member of Congress, Tom DeLay – the Majority Leader of the House of Representatives – after an investigation by the FBI into lobbyist Jack Abramoff led to 21 convictions and guilty pleas, including by 2 of DeLay's senior aids. *CREW I*, 746 F.3d 1087. The D.C. Circuit found that the public interest outweighed DeLay's privacy rights because disclosure could establish

[14] Notably, the Star-Advertiser has not submitted its own FOIA request or otherwise supported Civil Beat's unsubstantiated suggestion that the FBI has somehow "meddled" with the legislative process or otherwise engaged in nefarious conduct.

whether the government had the evidence against him but "nevertheless pulled its punches" i.e., whether "influential public officials are subjected to the same investigative scrutiny and prosecutorial zeal as local aldermen and little-know lobbyists." *Id.* at 1093-94. Specifically, while the D.C. Circuit held that DeLay had a substantial interest in his privacy, it found the public interest outweighed it because disclosure is "more likely to shed light on how the [FBI and DOJ] are performing their statutory duties." *Id.* at 1095. In contrast, here, there were no public trials, and there is no issue of a *declination* of prosecution. Instead, the FBI is actively investigating other directly related individuals. There has been no legitimate accusation of favoritism or of the FBI not acting fully in line with its statutory duty.

Because the individuals identified in the records have non-trivial privacy interests, and the public interest does not outweigh them, the

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district court property granted summary judgment as to these Exemptions[15].

V. The FBI Established That Exemption 7(D) Protects Confidential Sources

Exemption 7(D) protects "records or information compiled for law enforcement purposes, . . . to the extent" that disclosing the records "could reasonably be expected to disclose the identity of a confidential source" or, in the context of a criminal investigation, "information furnished by a confidential source." 5 U.S.C. § 552(b)(7)(D); *see also Rovario v. United States*, 353 U.S. 53, 60–61 (1957) (noting that the government can withhold information that would disclose the identity of a confidential informant except where that information would be "relevant and helpful to the defense of the accused").

Civil Beat contends there is no presumption of confidentiality. OB p. 54. The FBI never argued for such a presumption. Instead, the FBI provided a sufficient basis to invoke this exemption as to individuals

[15] Although Civil Beat extensively describes the state's legislative priorities and process, ostensibly to bolster its public interest argument (*see* OB pp. 4-12), the balancing test is applied only to Exemptions 6 and 7(C). Thus, the district court properly granted summary judgment as to the other five exemptions without considering the public interest with respect to them.

included on particular documents. As the Seidel Declaration explains, the FBI withheld permanent source symbol numbers given to confidential sources, the names and other identifying information of confidential sources, and the names and other identifying information of those assured confidentiality. 3-ER-337-41. And as the *Vaughn* index indicates, the exemption did not apply to all documents. 2-ER-71.

Civil Beat presumes erroneously that Choy was the only confidential informant because he was a publicly identified confidential source. OB pp. 54-55. But its assumption is just that – a belief without any basis. The FBI never stated that Choy was its *only* confidential source. It has no obligation to identify any or all sources utilized in an investigation. Such an obligation would flout the FBI's commitment to protect sources for their own sake and the sake of its investigations. *Pac. Energy Inst., Inc. v. U.S. I.R.S.*, 74 F.3d 1246, at *1 (9th Cir. 1996) (finding agency's withholdings proper, as documents included information about individuals whose assurances of liability could reasonably be inferred). The *Vaughn* index clearly identifies the documents that reflect confidential source information, and those were properly withheld as explained by Seidel.

VI. The FBI Established That Exemption 7E Protects Non-Public Investigative Techniques

Exemption 7(E) protects "records or information compiled for law enforcement purposes, . . . to the extent that" releasing the records "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E). "Exemption 7(E) only exempts investigative techniques not generally known to the public." *Rosenfeld v. U.S. Dep't of Justice,* 57 F.3d 803, 815 (9th Cir.1995).

The FBI articulated a sufficient basis to invoke this exemption. As the Seidel Declaration explains, the FBI withheld sensitive investigative file numbers, locations and identities of FBI units, secure communication methods, collection and analysis of information, the focuses of specific FBI investigations, the identities of sensitive investigative databases, surveillance techniques, code names, details about undercover operations, monetary payments, and details of operation plans. 3-ER-341-54.

Civil Beat argues that this exemption was applied too broadly. But again, Civil Beat erroneously interprets this Court's precedent. In *Hamdan v. U.S. Dep't of Justice*, this Court held that withholding under Exemption 7(E) was proper because the documents included details of non-public investigative techniques. 797 F.3d 759, 777-78 (9th Cir. 2015) (noting that the exemption applies to specific means, even if broader category of investigative technique is public). Just as the surveillance techniques identified in *Hamdan* would enable individuals to "educate themselves about law enforcement methods used to locate and apprehend persons," *id.* at 777, disclosing the techniques that the Seidel Declaration identifies would result in the same foreseeable harm.

C. THE DISTRICT COURT CORRECTLY ASSESSED THE FORESEEABLE HARM THAT WOULD ENSUE IF THE REQUESTED RECORDS WERE RELEASED

For each exemption invoked, the FBI detailed the harm that would ensue if the documents were released. 3-ER-306, 308, 309, 314, 324, 337, 338, 339, 350, 354. The district court properly deferred to these assertions, as this Court gives substantial weight to agencies' "predictive judgment of the harm that will result from disclosure of information." *CREW I*, 746 F.3d at 1098 (citation omitted).

To the extent that Civil Beat calls the FBI's descriptions of harm conclusory, vague, and generic based on this Court's ruling in *CREW I*, OB pp. 32-35, it again mischaracterizes this Court's precedent. In *CREW I*, this Court held that the agency's submissions were insufficient because they did not "characteristically support an inference" that disclosure would interfere with pending enforcement proceedings. *Id.* at 1099. This is not such a case, as both the Seidel and Nohara Declarations detail explicitly that disclosure would cause such foreseeable harm.

D. THE DISTRICT COURT CORRECTLY HELD THAT REDACTIONS OR OTHER FURTHER SEGREGATION WAS NOT REQUIRED

Based on the FBI's explanation that all segregable material had been produced, 3-ER-355, the district court properly agreed that what the FBI produced satisfied the appropriate standard. *See Hamdan*, 797 F.3d 759 at 779. Civil Beat did not carry its burden in establishing that further segregability was required. In *Hamdan*, this Court clarified its segregability standard: "the agency can meet its burden by providing the district court with a reasonably detailed description of the withheld material and 'alleging facts sufficient to establish an exemption.'" *Id.*

The district court need not become a "document clerk, reviewing each and every document an agency withholds;" it "may rely on an agency's declaration in making its segregability determination." *Id.* The Court rejected the standard proffered by Civil Beat – that the FBI must describe the portions of the documents withheld and how it is dispersed in the document, and that withholding a document in full is inappropriate. *Id.* at 780. Just as the *Hamdan* Court found that further disclosure was not required by the State Department and the FBI[16] because their good faith declarations identified the withheld documents, provided an individualized explanation of the material being withheld, identified the corresponding exemption, and specifically noted where the withheld portions were "so inextricably intertwined with the non-exempt portion, that any segregable material would not be meaningful" *id.*, the FBI here should not be required to further justify segregability beyond its good-faith declarations and *Vaughn* index.

[16] The Court remanded as to a third agency's segerability assessment because its declarations lacked sufficient detail to allow the district court to determine the claimed exemptions applied throughout the entire documents.

Moreover, demanding redaction to independently verify the FBI's submissions—when there has been no evidence of bad faith—would be onerous and unreasonable. *See Nat'l Archives & Recs. Admin. v. Favish,* 541 U.S. 157, 175 (2004) (noting in FOIA cases, "government misconduct [is] easy to allege and hard to disprove, so courts must insist on a meaningful evidentiary showing").

For example, consider an entry on the FBI's *Vaughn* index. Serial Number 159 indicates that document type is FD-1023, FD-1036, Source Reporting is responsive to Cullen, and it is withheld based on exemptions b(3), (5); (7)(A); 6/7(C) (1, 3, 4); 7(D) (4, 5); 7(E) (1, 2, 7, 15, 16, and 20). 2-ER-66. A review of the legend on the preceding page provides further information: the document contains national security information; names and identifying information of FBI agents and staff; names and identifying information of third parties merely mentioned; names and identifying data of third parties of investigative interest;[17] names and identifying data and information provided by individuals under an implied assurance of confidentiality; names and identifying

[17] Further indicating that the enforcement proceedings are ongoing, and that the FBI is continuing its investigation into others who may be referenced in the requested files as protected by Exemption 7(A).

data and information provided by individuals under an express assurance of confidentiality; sensitive investigative file numbers; identities and/or locations of FBI units, squads, and divisions; database identifiers and search results; investigation code names; undercover operations; investigative techniques; and procedures relevant to the FBI's information program. 2-ER-65. And a review of the Fourth Seidel Declaration indicates that the "FD" designations mean the document is an internal FBI form. 3-ER-310.

Civil Beat would have the FBI go through each document, for example Number 159, and redact every bit of that protected information, and then produce what would essentially be a blacked-out page, all so that Civil Beat could satisfy itself to review that blacked-out page. The law simply does not support this unreasonable demand. Instead, the district court properly applied this Court's standards in accepting the FBI's good faith declarations explaining that the information that could be segregated had been produced, and everything else could not be produced without infringing on the applicable exemptions or leading to a nonsensical production.

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CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment entered in favor of the FBI.

Respectfully submitted,

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