



VIA ECF

February 27, 2026

Molly C. Dwyer, Clerk of Court
United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

**RE: *Honolulu Civil Beat v. Federal Bureau of Investigation*, No. 25-2383
Supplemental Authority**

Dear Ms. Dwyer:

Pursuant to Fed. R. App. P. 28(j), Appellant Honolulu Civil Beat identifies supplemental authority regarding an issue briefed in this appeal. *Kalbers v. U.S. Dep't of Justice*, Nos. 24-1048 & 24-1477, 2026 U.S. App. LEXIS 3218 (9th Cir. Jan. 30, 2026).

Kalbers addressed FOIA Exemption 3 (confidentiality statute) standards for records obtained through a grand jury subpoena. That discussion is relevant to a secondary issue in this appeal: whether the District Court had a sufficient factual basis and correctly applied standards to determine that a small subset of requested documents (approximately two dozen of over 450) are entirely exempt within the scope of grand jury



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secrecy, Fed. R. Crim. P. 6(e). Dkt. 8-2 at 16 (District Court order); Dkt. 7.1 at 61-63 (opening brief); Dkt. 14.1 at 41-42 (answering brief); Dkt. 19.1 at 26-28 (reply brief).

Although this Court rejected “any per se approach” and decided “only the case before [it],” it did provide a framework for this issue, favorably citing the D.C. Circuit’s decision in *Labow* (discussed in the briefs). *Kalbers*, 2026 U.S. App. LEXIS 3218 at *30 n.5.

First, courts consider several factors that prevent disclosure under Rule 6(e). Courts consider whether the government possesses documents only through a grand jury investigation, whether the documents reveal their source, and whether the request is coterminous with the grand jury file. Second, certain factors may allow disclosure under a preexisting-documents exception.

Id. at *11.

In *Kalbers*, requester sought only documents provided by counsel for the target of a grand jury investigation (a request coterminous with the subpoena). *Id.* at *5-6. DOJ’s only copies – for all but 4 documents among 6 million records – had been stamped by target’s counsel “Produced

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Pursuant to Rule 6(e)." *Id.* at *7. In that specific context, this Court held the stamped records exempt. *Id.* at *25-26.

The Court recognized that most cases are remanded "to determine whether the government could release documents without revealing that they were part of the grand jury file." *Id.* at *16. *Kalbers* acknowledged that commingling grand jury documents with other documents can sufficiently obscure the source. *Id.* at *24, *30.

Respectfully,

/s/ R. Brian Black

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