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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW CENTER, Movant.	MISC. NO. 26-00112 DKW-KJM [CR NO. 19-CR-99-DKW-KJM] REPLY MEMORANDUM IN SUPPORT OF MOTION TO UNSEAL COURT RECORDS

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On April 3, 2026, Movant Public First Law Center (Public First) filed a motion to unseal the 5K1.1 motion and Defendant Kaulana Freitas's sentencing memorandum in *United States v. Miske*, No. 19-cr-99-DKW-KJM.[1] The Miske case generated extensive media attention, making much of the case facts—*e.g.*, identities of defendants, the nature and details of their involvement, and any plea agreements—publicly known. Defendant Kaulana Freitas is a known cooperator and publicly testified about his illegal activities and relationship with Michael Miske. Freitas is not alone. More than a dozen individuals connected to Miske Enterprise conduct pleaded guilty and agreed to cooperate with the Government.[2] Continued sealing of *the entirety* of the Government's Motion and Defendant

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[1] Public First filed its motion to unseal asserting its own constitutional and common law rights of access to court records, not "on behalf of the public." Dkt. 4. As long established, organizations have standing to assert such claims. *E.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980); *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501 (1984); *Seattle Times Co. v. U.S. Dist. Ct.*, 845 F.2d 1513 (9th Cir. 1988); *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940 (9th Cir. 1998); *Oregonian Publ'g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462 (9th Cir. 1990); *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile*, 117 F.4th 1200 (9th Cir. 2024) [*Maile*].

[2] *United States v. Michael Miske*, No. 19-CR-99, Dkt. 224 (Hunter Wilson), Dkt. 250 (Norman Akau), Dkt. 455 (Harry Kauhi), Dkt. 509 (Michael Buntenbah), Dkt. 636 (Lance Bermudez), Dkt. 928 (Preston Kimoto), Dkt. 1245 (Delia Fabro-Miske); *United States v. Jonah Ortiz*, No. 19-CR-141, Dkt. 21; *United States v. Timothy Taboada*, No. 19-CR-147, Dkt. 43; *United States v. Catherine Nicole Zapata*, No. 19-CR-148, Dkt. 46; *United States v. Jacob Smith*, No. 20-CR-86, Dkt. 52; *United States v. Wayne Miller*, No. 20-CR-113, Dkt. 31; *United States v. Ashlin Akau*, No. 21-CR-16, Dkt. 14; *United States v. Tricia Castro*, No. 21-CR-82, Dkt. 12; *United States v. Jason Yokoyama*, No. 23-CR-103, Dkt. 7.

Freitas's Sentencing Memorandum is unwarranted, particularly given that the public is aware of his cooperation and many of the substantive details of the case.

A. STANDARDS

The Government's opposition does not dispute that the First Amendment right of access applies to the relevant records.[3] *Compare* Dkt. 1 at PageID.7-13, *with* Dkt. 6 at PageID.31-32. And the Government does not argue that the entirety of the Defendant's sentencing memorandum should be sealed. Dkt. 6 at PageID.30 n.3 ("The United States takes no position on the sealing of any additional portions of the Sentencing Memorandum.").

The Government and Freitas—as proponents for sealing—must prove, based on the specific facts of this case, that: "(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." *Phoenix Newspapers*, 156 F.3d at 949. Sealing cannot be based on "conclusory assertions." *Id.*

B. SAFETY AS A COMPELLING REASON

There is no dispute that the safety of cooperators and their families can be a compelling interest under certain circumstances. *See* Dkt. 1 at PageID.13. But it is

[3] Freitas filed his entire opposition to the motion to unseal under seal, so it is impossible for Public First to meaningfully respond to issues or facts beyond those raised by the Government. *See* Dkt. 12 (motion for reconsideration).

not enough to simply identify safety concerns; those safety concerns must be connected to the disclosure of the court records. *Phoenix Newspapers*, 156 F.3d at 950-51. As the Ninth Circuit outlined in connection with asserted claims about juror safety during a juror tampering investigation:

> At no time did the court specifically explain the necessary connection between unsealing the transcript and inflicting irreparable damage upon the security concerns it invoked as a compelling interest. . . .
>
> . . .
>
> Although the court apparently reevaluated its decision not to release the transcript on October 2, the orders it issued on that date reveal nothing about the specific character of the risk to the jury tampering investigation that would *result from unsealing the transcript*. . . . Simply put, there was no evidence in the record, nor were any satisfactory findings entered, establishing *why release of the transcripts would endanger juror safety*. Absent that evidence, there was no reason to delay the release of the transcript.

Id. at 950 (emphases added).

The Government identifies the violent nature of the Miske Enterprise as a potential threat to Freitas and his family *in light of his cooperation*.[4] Dkt. 6 at PageID.36-37. But the danger generally posed by his cooperation is different from

[4] Purported concerns about identifying members of Defendant's family ring hollow because Freitas, as he affirmed on several occasions, is the cousin of the person against whom he cooperated—Michael Miske. There is no evidence proffered that individuals with an interest in Miske's affairs who purportedly pose a threat to Freitas do not already know the identity of Defendant's family members. Regardless, Public First does not object to redacting the names of Defendant's family members if the Court concludes that there is a substantial probability of harm to Defendant's family from disclosing, *e.g.*, character reference letters.

the danger, if any, from disclosing these records. Everyone knows that Freitas cooperated.[5] *E.g.*, Ian Lind, *Bits of the Miske backstory*, iLind (Sept. 28, 2024); Mark Carpenter, *Cousin testifies alleged crime boss ordered him to release chemical into nightclub*, Hawaii News Now (Feb. 15, 2024); Mark Carpenter, *Alleged crime boss used GPS trackers to monitor women he was dating, associate tells jury,* Hawaii News Now (Feb. 16, 2024); Ian Lind, *M Nightclub photos invite questions about Miske's hidden ownership*, iLind (Feb. 22, 2024); Diane Ako, *Accused crime boss Mike Miske's trial date could be pushed back*, KITV4 (Mar. 19, 2022); Ian Lind, *Two more Miske co-defendants expected to flip*, iLind (Mar. 8, 2022); Ian Lind, *Another Miske Case Defendant Released Pending Trial*, Honolulu

[5] The Government cites a Fourth Circuit decision for the proposition that sealing cooperator filings is justified if "there is no suggestion in the record that [the defendant's cooperation] has been reported in media." Dkt. 6 at PageID.33 (citing *United States v. Doe*, 962 F.3d 139, 151 (4th Cir. 2020)). Factually, that case is inapposite because Freitas's cooperation with the Government in the *Miske* case has been covered at length by the media. And unlike the defendant in the Ninth Circuit's separate *Doe* case, this case is not one in which "no members of the media expressed interest in Doe's sentencing, and no one has ever publicly sought access to Doe's court file or proceedings." *United States v. Doe*, 870 F.3d 991, 994 (9th Cir. 2017). News media covered Freitas's sentencing, including reference to his testimony against Miske. *E.g.*, *Cousin, enforcer of late crime boss sentenced*, Hawaii News Now (Jan. 16, 2025). And Public First has repeatedly sought to preserve public access for proceedings related to this case. No. 25-MC-127 (concerning Delia Fabro-Miske sentencing memorandum); No. 22-MC-286 (search warrants); No. 22-MC-08 (exhibits to Miske's motion to compel discovery); No. 21-MC-298 (Norman Akau plea agreement); No. 20-MC-309 (Government's motion for protective order); *cf.* No. 20-MC-343 ("Painkiller" motion to return property).

Civil Beat (Dec. 20, 2021). But, more importantly, Miske and Miske Enterprise affiliates know about his cooperation. *Doe*, 870 F.3d at 1000 (identifying safety concerns when the target is not aware of the defendant's cooperation).

That purported risk to his safety by *publicly* cooperating with the Government exists irrespective of whether these documents are released to the public. The Government has not proven what specific irreparable harms would occur—to a substantial probability—beyond simply further documenting Defendant's known cooperation if the Court disclosed *any portion* of the 5K1.1 motion and sentencing memorandum.[6]

Public First does not dispute that Miske engaged in acts of witness intimidation and tampering leading up to his 2024 trial that could justify temporary protective measures. But, despite referencing threats to other individuals while they were incarcerated, the Government does not identify any threats against

[6] Public First acknowledges that a document that details otherwise *unknown* cooperation raises other issues—as this Court observed when rejecting generic safety concerns based on the violence of the Miske Enterprise in connection with Norman Akau's plea agreement. *In re Civil Beat Law Ctr. for the Pub. Interest*, No. 21-MC-298 DKW-KJM, 2021 U.S. Dist. LEXIS 202418, at *13-15 (D. Haw. Oct. 14, 2021). If a document described cooperation that is part of a secret ongoing investigation, for example, redaction subject to regular updates from the Government on the status of the investigation may be appropriate. *See, e.g.*, *In re Civil Beat Law Ctr. for the Pub. Interest*, No. 22-MC-286 DKW-KJM, Dkt. 23 (setting schedule for reports on status of pending investigations related to disclosure of Miske search warrants). Nothing in the Government's opposition references secret investigation concerns related to Defendant's cooperation.

Freitas—Miske's cousin—during his incarceration or since his release in March 2026.[7]

Moreover, the Ninth Circuit has recognized that facts can change. *See In re Copley Press, Inc.*, 518 F.3d 1022, 1028 (9th Cir. 2008) ("[A]fter the government took steps to reduce the danger, the district court found that 'compelling reasons no longer exist[ed]' for sealing these documents and ordered them unsealed."). Miske is deceased, the Miske Enterprise is dismantled after most of its members cooperated with the Government against Miske, and—most importantly—everyone knows who cooperated. There is no specific evidence proffered by the Government to show that, after Miske's death and the collapse of the Miske Enterprise, Freitas faces an ongoing safety risk, much less proof—as needed here—that *releasing portions of these records* threatens his safety in light of all publicly known circumstances.

The Government speculates that alleged remnants of the Miske Enterprise may attempt to intimidate Freitas in light of the ongoing civil forfeiture proceeding. Dkt. 6 at PageID.36. First, the Miske Enterprise would not benefit

[7] Although not dispositive of the issue, the Government does not even claim that Freitas needed protective custody while incarcerated at FCI Lompoc. The Ninth Circuit observed in *Doe* that the lack of specific threats does not make safety concerns "entirely speculative" and that such direct threats are not "a strict condition precedent" to sealing. 870 F.3d at 999. But that observation does not mean that the lack of specific threats against Freitas has no weight in the analysis.

from disrupting the forfeiture proceeding. The beneficiary of Miske's estate is his young granddaughter, not the Miske Enterprise. *E.g.*, *United States v. Real Property*, No. 25-CV-28 DKW-KJM, Dkt. 24-3 at PageID.396-99, Dkt. 24-4 at PageID.437. Second, even if a ten-year-old or her proxies were to engage in witness intimidation of Freitas, it would be futile. Freitas has already testified regarding his connection to the Miske Enterprise and its activities. That testimony is admissible regardless of whether he is unavailable due to unlawful intimidation. *E.g.*, FRE 804. Third, beyond his testimony in the main case, the Government did not call Freitas as a witness in the forfeiture proceeding nor has it explained how his testimony would be needed in the civil proceeding. *See, e.g.*, *Miske*, No. 19-CR-99, Dkt. 1731, 1736. The Government cannot merely point at the civil forfeiture proceeding and assume disclosure of court records will interfere with that proceeding. *E.g.*, *Phoenix Newspapers*, 156 F.3d at 950 (generalized statements that unsealing would compromise an ongoing investigation are insufficient).

The Government also references the 2016 "Survey of Harm to Cooperators" prepared for the Court Administration and Case Management Committee of the Judicial Conference. Dkt. 6 at PageID.34 n.5. That survey is not a substitute for the case-specific proof required to justify sealing under the First Amendment. *United States v. Doe*, 870 F.3d 991, 1002 (9th Cir. 2017) (recognizing, after review

of the 2016 report, that "a presumption of closure for all court filings would not be consistent with our circuit's case law"). Moreover, as the Ninth Circuit noted, a primary concern identified in the survey is the problem of access to court records when cooperators are *in prison*. *Id.* at 999. Freitas is no longer incarcerated.

Also, after *Doe*, in December 2017, the Judicial Conference's Advisory Committee on Criminal Rules refused to advance proposed rules that would implement guidance based on the 2016 survey. Among other concerns, some members "opposed a solution based on secrecy in judicial proceedings, and described the CACM amendments as shifting from the current culture of transparency to a culture of secrecy." Advisory Comm. on Crim. Rules, *Report of the Advisory Comm. on Crim. Rules* (Dec. 8, 2017), *in* Comm. on Rules of Practice & Procedure at 122 (Jan. 4, 2018).

At the same time, the Administrative Office of the United States Courts established a Task Force on Protecting Cooperators. The Administrative Office published the Task Force's final report and recommendations in 2020. Admin. Office of the U.S. Courts, *Memorandum Regarding Final Report of the Task Force on Protecting Cooperators* (Mar. 18, 2020). Unlike the sealing proposal that originated from the 2016 report, the Task Force recommended changes that "would restore a degree of practical obscurity to sensitive criminal case records, making the fact of a defendant's cooperation less obvious while not unduly restricting

public access." Specifically, it recommended removing public PACER access to plea and sentencing records. Task Force on Protecting Cooperators, *Final Report of the Task Force on Protecting Cooperators* at 10-15 (Aug. 2018). A member of the public would be required to visit the courthouse public terminals to review plea or sentencing records. *Id.*; *accord Doe*, 870 F.3d at 1002 ("In light of the CCACM Report's revelations about the risks *posed by remote electronic access to court filings*, caution is warranted." (emphasis added)).

As recognized by the Task Force, there are viable case-specific solutions short of sealing. The generalized concerns about court records disclosing government cooperation when otherwise unknown to the public—unlike here—may be addressed in different ways. Here, no one has articulated how disclosure of the contents of Government's 5K1.1 motion and Defendant's sentencing memorandum will endanger Freitas beyond simply further confirming the fact—already known—that he cooperated against Miske. If there are specific (unstated) concerns, redaction should be sufficient. But, at a minimum, the fact that he provided substantial cooperation by testifying for three days against Miske is not a secret and should not be sealed. And in the end, as emphasized by the Task Force, courthouse-only access would be an alternative if no other option were adequate. *E.g.*, 24-MC-653 Dkt. 7.

Thus, even assuming possible harm to Freitas, it is not clear how sealing the *entirety* of the filings is the least restrictive means of protecting Freitas given the highly publicized nature of this case and his cooperation. The facts used to justify sealing must go beyond generalized concerns.

C. THE PRESENTENCE INVESTIGATION REPORT AS A COMPELLING REASON

Separate from Defendant's safety, in its motion to seal the opposition, the Government referenced information from the presentence investigation report. Dkt. 5 at PageID.24. It is unclear whether the Government's 5K1.1 motion or Defendant's sentencing memorandum reference facts also included in the presentence investigation report. PSR confidentiality is not a basis for sealing documents other than records directly related to the PSR process. For example, in a sentencing memorandum, if a defendant discusses his childhood to argue for a reduced sentence, that argument is not confidential simply because that same information is discussed in a PSR. *E.g.*, *Cyphert v. Scotts Miracle-Gro Co.*, 831 F.3d 765,780 (6th Cir. 2016) (records "would not become PSR-related documents entitled to confidentiality merely because they were the source for information provided to the Probation Office"); *United States v. Santarelli*, 729 F.2d 1388, 1390 (11th Cir. 1984) ("Thus the inclusion in the presentence report by the probation department of information known to the Government which is material to sentencing does not *ipso facto* confer a status of secrecy or privilege upon the

information which did not previously exist."). Absent independent compelling reasons for sealing, information is not confidential merely because it is discussed in a PSR.

D. CRIMINAL LR 5.2(A)(9)

Lastly, as argued in prior briefing, the automatic sealing required by Criminal LR 5.2(a)(9) is unconstitutional. Dkt. 1 at PageID.14-16. The Government makes no effort to defend the rule.

CONCLUSION

Public First respectfully requests that this Court unseal the Government's Motion as to Defendant Kaulana Freitas [*Miske* Dkt. 1809] and Defendant Freitas's Sentencing Memorandum [*Miske* Dkt. 1820].

DATED: Honolulu, Hawai'i, May 15, 2026

Respectfully,

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