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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW
CENTER

MISC. NO. 26-00112 DKW-KJM

UNITED STATES' OPPOSITION TO
MOTION TO UNSEAL [ECF NO. 1];
EXHIBIT A; CERTIFICATE OF
SERVICE

UNITED STATES' OPPOSITION TO MOTION TO UNSEAL

The United States, by and through undersigned counsel, as an interested party submits this opposition to movant Public First Law Center’s motion to unseal (ECF No. 1). The United States opposes unsealing of the Government’s Sealed Motion at Dkt.¹ 1809 (hereinafter “Sealed Motion 1809”) filed in *United States v. Miske, et al.*, No. 19-cr-00099-DKW-KJM (D. Haw.) (hereinafter the “*Miske Case*”).² The continued sealing of Sealed Motion 1809 protects a compelling interest: the physical safety of a witness and his family. There is a substantial risk Freitas may be harmed if Sealed Motion 1809 is unsealed – a concern Freitas also shares – and there are no adequate alternatives to sealing given the pervasive violence and witness intimidation tied to the criminal enterprise at the heart of the *Miske Case*. [REDACTED]

[REDACTED]

[REDACTED] 3

¹ Unless otherwise stated, “Dkt.” refers to the docket in *United States v. Miske, et al.*, No. 19-cr-00099-DKW-KJM (D. Haw.).

² Portions of this opposition have been redacted to avoid disclosure of the nature and substance of Sealed Motion 1809, as well as other information and documents that remain under seal. An unredacted version will be filed under seal and *ex parte*.

³ The United States objects to the unsealing of Kaulana Freitas’s Sealed Sentencing Memorandum at ECF No. 1820 (hereinafter “Sentencing Memorandum”) filed in *United States v. Miske*, Case No. 19-CR-99-DKW-KJM, to the extent that the Sentencing Memorandum references and discusses Sealed Motion 1809 on pages 2, 8-9, 11, 13, and 14, as well as to the extent it identifies any members of Freitas’s family. The United States takes no position on the sealing of any additional portions of the Sentencing Memorandum. Attached and

I. LEGAL STANDARD

“A qualified First Amendment right of public access attaches to in-court sentencing proceedings.” *United States v. Doe*, 870 F.3d 991, 997 (9th Cir. 2017) (“*Doe (9th Cir.)*”); *see also In re Copley Press, Inc.*, 518 F.3d 1022 (9th Cir. 2008) (holding public has a qualified First Amendment right of access to: (1) a plea agreement cooperation addendum; (2) government’s motion to seal the plea agreement and memorandum in support of it; (3) district court’s orders granting the government’s motion to seal; (4) defendant’s plea colloquy transcript; and (5) transcripts of those portions of hearings on the government’s motion to seal that were open to the public). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Where the public has a qualified First Amendment right of access, criminal proceedings and documents may be closed to the public without violating the First Amendment only if three substantive requirements are satisfied: (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of

filed under seal and *ex parte* as Exhibit A is a proposed redacted version of the Sentencing Memorandum.

closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest. The court must not base its decision on conclusory assertions alone, but must make specific factual findings.” *Id.* at 998 (alterations and internal citations and quotations omitted).

In assessing the likelihood of harm, “it is the government that is in the position to know the effects of defendants’ provided information.” *Id.* at 999 (quoting *United States v. Ressam*, 679 F.3d 1069, 1092–93 (9th Cir. 2012)) (cleaned up). While mere speculation or conclusory assertions are insufficient to prevent disclosure of sealed filings, “direct threats are not ‘a strict condition precedent to a district court’s granting of a closure motion.’” *Id.* (quoting *United States v. Doe*, 63 F.3d 121, 130 (2d Cir. 1995)); accord *United States v. Doe*, 962 F.3d 139, 149 (4th Cir. 2020) (“*Doe (4th Cir.)*”) (ordering sealing of motion for sentence reduction and associated order referencing government’s § 5K1.1 motion, agreeing that “a direct threat was not necessary to establish a substantial probability of harm where the record clearly revealed a heightened risk”); cf. *In re Civ. Beat L. Ctr. for Pub. Int.*, No. 21-MC-00298-DKW-KJM, 2021 WL 4898660, at *5 (D. Haw. Oct. 14, 2021) (ordering unsealing of plea agreement where defendant presented only “counsel’s conclusory assertions that disclosure of the plea agreement would endanger [defendant] and his family because it contemplated his cooperation with the Government”).

The mere fact that a “[d]efendant’s cooperation has technically been available to the public” does not mean his cooperation is “already a matter of public record” where there is no suggestion that the defendant’s cooperation has been reported in the media. *Doe (4th Cir.)*, 962 F.3d at 151.

II. ARGUMENT

Sealed Motion 1809 [REDACTED]

[REDACTED]

[REDACTED] was filed and heard in connection with Freitas’s sentencing. *See* Sealed Motion 1809; Dkt. 1810 (scheduling hearing on Sealed Motion 1809 for date of Freitas’s sentencing hearing). The motion describes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] To provide the public – including members of the Miske Enterprise, [REDACTED]

[REDACTED], and those in the community who remain loyal to Miske or simply upset with Freitas for his actions – with this information would measurably heighten the danger faced by Freitas and his family.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Absent continued sealing of Sealed Motion 1809, there is a heightened risk of harm to Freitas and his family given (1) the incredibly violent nature and sweeping breadth of the Miske Enterprise; (2) the sheer number of individuals who were prosecuted in connection with the *Miske Case* (thirteen); (3) the extensive scale of attempted witness intimidation and tampering that occurred in the *Miske Case*; (4) the significant financial loss that Miske’s Estate, its beneficiaries, and other interested parties now face as a result of the prosecution and ongoing litigation, providing a continuing basis for retribution;⁶ and (5) the ongoing related criminal obstruction investigation and civil forfeiture litigation, which may potentially pull in Freitas and other witnesses.

The harm is not merely speculative. The Miske Enterprise was a violent and pervasive threat in Hawaii for decades. And when it came under investigation and prosecution, Enterprise members engaged in a pattern of witness intimidation and tampering against incarcerated and unincarcerated witnesses alike.⁷ [REDACTED]

⁶ In *Doe (9th Cir.)*, the Ninth Circuit identified financial loss to a drug trafficking organization as a factor contributing to a heightened risk to a cooperating defendant. 870 F.3d at 998-99 (“district court’s conclusion that the risks to Doe and his family were speculative is contradicted by the evidence in the record about Doe’s involvement with a wealthy, international cartel . . . which lost roughly half a million dollars as a result of Doe’s arrest”).

⁷ For example, in or around 2022, Miske had copies of FBI interview

[REDACTED]

[REDACTED].⁸ While many Enterprise members are now in custody or dead, others have already served their sentences or will be released in due course. Moreover, there are unindicted individuals still loyal to Miske and the Enterprise who remain out in the community. Having presided over the *Miske Case*, this Court is well aware that there have been significant security and safety concerns with respect to the defendants and witnesses connected to this case.

[REDACTED]

[REDACTED]

[REDACTED]

memoranda detailing proffer sessions Jacob Smith had with the government about Miske's conduct and the Enterprise's racketeering activity delivered to Smith's cell at FDC Honolulu in an apparent attempt to intimidate Smith. *See* Trial Tr. Day 50 at 79-82 (Dkt. 1605).

[REDACTED]

Kimoto himself was also the victim of witness intimidating and tampering after he was incarcerated, including two occasions when Miske had other inmates approach Kimoto to ask questions about where Kimoto stood and whether he planned to go to trial, and advising Kimoto that they could beat the case and needed to stay together. *See* Trial Tr. Day 12 at 98-100 (Dkt. 1594).

⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Indeed,

given that Freitas is not in custody, his exposure – particularly in an isolated and geographically condensed location like Hawaii – is broader and less predictable than if he were in a controlled environment like a prison or somewhere on the mainland.

B. There Are No Alternatives to Closure that Would Adequately Protect Witness Safety

There are no adequate alternatives to sealing that would adequately protect the safety of Freitas and his family. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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requests that, at a minimum, Section II (pages 4-5) of the motion – [REDACTED]
[REDACTED] – should remain redacted and under seal.

III. CONCLUSION

For the foregoing reasons, movant's Motion to Unseal should be denied and Sealed Motion 1809, as well as those portions of the Sentencing Memorandum referencing and discussing Sealed Motion 1809 and identifying Freitas's family members, should remain sealed.

DATED: May 1, 2026, at Honolulu, Hawaii.

Respectfully Submitted,

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