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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW
CENTER

MISC. NO. 26-198 JAO-RT

RESPONSE TO UNITED STATES
OF AMERICA'S MOTION FOR
RECONSIDERATION OF
COURT'S ORAL RULING
REGARDING MOTION TO
UNSEAL [ECF NO. 1] TO
PREVENT MANIFEST INJUSTICE
[DKT. 9]

**RESPONSE TO UNITED STATES OF AMERICA'S MOTION FOR
RECONSIDERATION OF COURT'S ORAL RULING REGARDING
MOTION TO UNSEAL [ECF NO. 1] TO PREVENT MANIFEST
INJUSTICE [DKT. 9]**

Public First Law Center respectfully requests that the Court deny the
Government's motion for reconsideration. The Court's unsealing order was not
"overbroad". The Government has failed to identify a manifest error of law or fact
that warrants reconsideration. LR 60.1.

At the May 28, 2026 hearing, Public First offered the alternative of courthouse-only access *if the Court had concerns about Mr. Rudo's safety*. Dkt. 11 at 24 (“courthouse availability is an option as a lesser restrictive option than wholesale sealing *if there are any real safety interests*” (emphasis added)). The Court found that the Government failed to identify a compelling interest for safety based on the specific facts of this case.

[T]he government's position does not sufficiently outline what the compelling interest is in keeping ECF no. 68 sealed. Much of what is already public in the criminal case differed from what was already public in *Doe* upon which the government relies.

First, Mr. Rudo testified in open court where he acknowledges that he is cooperating with the government and hoped to receive a benefit. Two, he testified before his coconspirators. Three the transcripts of his testimony are public. Four, there has been no suggestion of an ongoing investigation. Four, his plea agreement is public. And finally, five, the sentencing filings mentioned in a header, for example 5k. There is also here as opposed to *Doe* a clear press interest.

Id. at 26-27 (cleaned up).

The substance of the Government's motion concerns policy arguments for changing how cooperator-related filings are handled generally, not in this specific case.¹ There is no question that the Ninth Circuit has recognized a constitutional

¹ The Government also continues to cast aspersions regarding the filing of the motion to unseal here. Public First briefly addressed those issues at the hearing, and the circumstances are not relevant to the Government's motion. If the Court anticipates entering any findings of fact regarding the filing or any sanctions, including imposing procedures that exceed current rules, Public First requests an opportunity to respond with fact declarations.

presumption of public access to cooperation-related documents. *CBS, Inc. v. U.S. Dist. Ct.*, 765 F.2d 823, 825-26 (9th Cir. 1985) (Rule 35 motion based on cooperation); *Oregonian Publ'g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1467 (9th Cir. 1990) (plea agreement with cooperation language); *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008) (plea agreement with cooperation addendum); *accord United States v. Doe*, 870 F.3d 991, 998, 1002 (9th Cir. 2017) (assuming constitutional presumption for 5K1.1 motion and remarking that the CCACM Report “*correctly* recogniz[ed] that a presumption of closure for all court filings would not be consistent with our circuit’s case law” (emphasis added)). Citing a Sixth Circuit case does not call Ninth Circuit precedent into question. Dkt. 9 at PageID.44. It is not a manifest error of law to follow clear Ninth Circuit precedent. And if the Government wanted to challenge that precedent, it should have taken the opportunity provided by this Court to appeal the unsealing order.

Moreover, the Government’s discussion of the *interim* CCACM Report does not reflect the final word on the subject of cooperator-related court filings. After *Doe*, in December 2017, the Judicial Conference’s Advisory Committee on Criminal Rules refused to advance proposed rules that would implement the 2016 interim guidance. Among other concerns, some members “opposed a solution based on secrecy in judicial proceedings, and described the CCACM 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).

The Government's arguments may be appropriate for policy discussions in addressing changes to the local rules. But the proper forum for that discussion is in a Rules Committee, not individual cases on an ad hoc basis unrelated to the specific facts of the case.² There is no manifest error of law in the Court following the District's procedures under the current local rules.

Lastly, the Government's concern about flagging cooperator filings, Dkt. 9 at PageID.45-46, has nothing to do with this motion to unseal. The Local Rules already flag cooperator filings by allowing the Government to file 5K1.1 motions under seal without an accompanying motion to seal. The only Government motion connected to sentencing that may be sealed without a motion to seal is a cooperator-related motion. Crim. LR 5.2(a)(9). A simple docket activity report can identify every cooperator in the District, which Public First can demonstrate if requested. Courthouse-only access for the motion concerning Mr. Rudo will not change that. Unsealing the Government's motion is not a manifest injustice.

There is no basis for the Government's motion for reconsideration. Limitations on access must be grounded in case-specific facts, and here, Mr.

² Public First has repeatedly offered to assist in working on local rules that balance legitimate safety concerns for cooperators and the issue of public access.

Rudo's cooperation is widely known and confirmed in numerous court filings and public statements by the Government and Mr. Rudo—and as admitted at the hearing. *See, e.g.*, Dkt. 11 at 15, 19. No tangible safety concerns are implicated.

Public First respectfully requests that the Court deny the Government's motion.

DATED: Honolulu, Hawai'i, June 17, 2026

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