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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. 26-00198

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

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

The United States hereby respectfully moves this Court to reconsider its decision stated on the record at the May 28, 2026, hearing regarding Public First Law Center’s (PFLC) motion to unseal (ECF No. 1) the Government’s Sealed Motion at Dkt. No.¹ 68 (hereinafter “Sealed Motion 68”) filed in *United States v. Rudo*, No. 22-cr-00055-JAO (D. Haw.). Although the United States respectfully maintains that Sealed Motion 68 must remain sealed to protect a compelling interest, the Court should, at a minimum, restrict access to Sealed Motion 68 via a “courthouse-only” access rule to prevent digital harvesting.

At the end of the May 28 hearing, PFLC conceded for the first time that such a rule would preserve the asserted First Amendment right of public access to Sealed Motion 68. By admitting that remote electronic access to the document is not required, it is now apparent that PFLC’s motion was overbroad. Narrowly tailoring the Court’s Order by preventing remote electronic access to Sealed Motion 68 and requiring physical inspection at the court clerk’s office serves a compelling interest and mitigates some of the risks unsealing poses to the physical safety of a witness who will soon be reporting to the Bureau of Prisons to serve his sentence.

¹ Unless otherwise stated, “Dkt.” refers to the docket in *United States v. Rudo*, No. 22-cr-00055-JAO (D. Haw.).

I. LEGAL STANDARD

“In the Ninth Circuit a successful motion for reconsideration must ... [(1)] demonstrate some reason why the Court should reconsider its prior decision ... [and] [(2)] set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *Jacob v. United States*, 128 F. Supp. 2d 638, 641 (D. Haw. 2000) (citation modified). There are “three grounds justifying reconsideration: (i) an intervening change in controlling law, (ii) the availability of new evidence, and (iii) the need to correct clear error or prevent manifest injustice.” *Id.* (citation modified). “The District of Hawaii has implemented these standards in Local Rule 60.1.” *White v. Sabatino*, 424 F. Supp. 2d 1271, 1274 (D. Haw. 2006). “Whether or not to grant reconsideration is committed to the sound discretion of the court.” *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003) (citation modified).

II. ARGUMENT

A. There Is a Sufficient Basis for the Court to Reconsider Its Unsealing Order

There is good reason for the Court to reconsider its oral Order unsealing Sealed Motion 68—to prevent manifest injustice resulting from the way PFLC presented its motion to unseal. A brief procedural history demonstrates the manifest unfairness of the proceedings.

The United States filed Sealed Motion 68 over six weeks prior to Rudo's scheduled sentencing on May 28, 2026. Dkt. Nos. 68, 73. At 2:50 p.m. the day before sentencing, PFLC filed a motion requesting wholesale unsealing of Sealed Motion 68. ECF No. 1. Considering the timing, the Court reasonably construed PFLC's motion to request hearing on an expedited basis and prior to Rudo's sentencing. *See* ECF No. 4 (noting the Court's frustration with PFLC's "delayed filing" and cautioning PFLC to file "more expeditiously" in the future). At 4:31 p.m., the Court issued an electronic order (EO) instructing interested parties to file any objections to the motion by 8:30 a.m. the following morning or seek a continuance of Rudo's sentencing. *Id.*

Following the EO, PFLC did nothing to inform the Court or interested parties that its motion did not require immediate attention. The United States discussed the matter with Rudo's counsel who indicated that Rudo had already flown to Hawaii from the continental United States at considerable personal expense to attend his sentencing and opposed any delay. Accordingly, the United States did not request an extension of the Court's expedited filing deadline and submitted its opposition to PFLC's motion shortly before midnight. ECF No. 5-1. The Court subsequently set the motion for a hearing on May 28, 2026, at 9:30 a.m., prior to Rudo's sentencing. ECF No. 7.

During the hearing, PFLC informed the Court its motion did not require ruling prior to Rudo's sentencing. After sentencing, the Court took up PFLC's motion. At the end of the hearing, PFLC essentially conceded for the first time that a rule limiting access to Sealed Motion 68 to the courthouse-only was sufficient to preserve the asserted First Amendment right of public access. Their admission was a material change from the argument advanced in their motion to unseal, which sought complete and unfettered access to Sealed Motion 68. The statement further conflicted with their motion, which asserted that PFLC "lacks sufficient information to offer alternatives to closure." ECF No. 1 at 7, n.2. Had PFLC provided any notice of this alternative, the Court and the United States would have had an opportunity to research and consider such a proposal prior to the hearing. Given this history and the compelling interest in witness safety extant, the Court has a strong basis to reconsider its Order to avoid manifest injustice.

B. A Courthouse-Only Physical Access Limitation Would Afford At Least Some Degree of Protection for Witness Safety

While the public maintains a qualified presumption of access to criminal court proceedings and records under the First Amendment, the Ninth Circuit has openly questioned whether such a right still extends to cooperation-related documents today. *See United States v. Doe*, 870 F.3d 991, 997-98 (9th Cir. 2017) ("*Doe (9th Cir.)*") (assuming without deciding such a right extends to 5K1.1-related documents considering circuit precedent). More recently, the Sixth Circuit

has concluded that no such right of access attaches to cooperation agreements because such documents have historically been kept confidential to protect lives and secure state evidence. *United States v. Kincaide*, 119 F.4th 1074 (6th Cir. 2024). In reaching its decision, the Sixth Circuit examined *In re Copley Press*, 518 F.3d 1022 (9th Cir. 2008), which subjected cooperation agreements to the First Amendment right of access. *Id.* at 1084. Finding that decision was devoid of “any analysis of cooperation agreements or any reasoning as to why the First Amendment might provide a right of access to these documents,” the Sixth Circuit declined to follow “*Copley Press*’s unreasoned rule.” *Id.* The Sixth Circuit also correctly observed that *Doe* (9th Cir.) had cast doubt on that anachronistic precedent. *Id.*

Indeed, as the Court of Appeals noted in *Doe* (9th Cir.), “when we decided *CBS* and *Copley Press*, electronic filing had not made court documents so easily accessible, nor had the CCACM released its report finding that new inmates are often required by other prisoners to produce copies of their case dockets to prove they did not cooperate with the government.” 870 F.3d at 997. Throughout the opinion, the Ninth Circuit went on to highlight the danger posed to cooperators by the advent of electronic docketing. It acknowledged that the threat landscape has changed entirely with electronic filing. *Id.* at 1001 (“The CCACM Report highlights the grave threats faced by defendants who cooperate with the

government in the era of remote electronic access to court files”). For this reason, the Ninth Circuit has warned district courts to tread carefully in this arena. *Id.* at 1002 (9th Cir. 2017) (“In light of the CCACM Report’s revelations about the risks posed by remote electronic access to court filings, caution is warranted.”).

The Ninth Circuit also underscored that selective unsealing of cooperator cases creates a roadmap for bad actors. That is, when specific documents are unsealed, it destroys the uniform anonymity the judiciary has sought to protect. *See Doe (9th Cir.)* 870 F.3d at 1001 (noting that the selective redaction of cooperation-related documents “would flag the filings” because the “publicly available and remotely accessible filings would immediately look different from the filings in non-cooperators’ cases”). And if cooperators know that their entire cooperation history may be made public, many future potential cooperators will refuse to cooperate or testify at all, severely hamstringing federal law enforcement, potentially resulting in defendants going unprosecuted, and leaving Hawaii a more dangerous place. The Ninth Circuit has adopted this view, as expressed in the CCACM Report, explaining that “the threat to cooperators [] interferes with the gathering of evidence and the presentation of witnesses” in unrelated criminal cases “because criminal case dockets are being compared in order to identify cooperators.” *Id.* (citation modified).

In the era of electronic PACER access, docket scraping bots are used by criminal organizations specifically to find cooperators. Accordingly, in the continued interest of protecting the safety of government witnesses, the Court should narrowly tailor its decision regarding PFLC's motion by restricting remote electronic access to Sealed Motion 68 and requiring physical inspection at the court clerk's office. As PFLC conceded at the hearing on its motion, requiring a member of the public or press to physically walk into the clerk's office to request a document satisfies the asserted right of access. The restriction would, however, prevent the threat of algorithmically-created cooperator databases and bulk digital harvesting by creating a logistical barrier that partially mitigates the risk to a cooperator's physical safety.

The law supports such an approach. *See Doe (9th Cir.)* 1002 ("District courts may wish to consider employing other alternatives, consistent with our case law, to protect cooperators from retaliation and to safeguard ongoing investigations."); *see also Courthouse News Serv. v. Smith*, 126 F.4th 899 (4th Cir. 2025) (holding that Virginia law permitting only attorneys to access court records online was narrowly tailored to serve important government interest in protecting court records from mass data harvesting for sensitive personal information). And the Federal Rules of Criminal Procedure explicitly provide a basis for "courthouse-only" access. *See* FED. R. CRIM. P. 49.1(e)(2) ("For good cause, the court may by

order in a case ... limit or prohibit a nonparty's remote electronic access to a document filed with the court."); FED. R. CIV. P. 5.2(e)(2) (same).

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court reconsider its oral order of May 28, 2026, and restrict access to Sealed Motion 68 to the court clerk's office.

DATED: June 12, 2026, at Honolulu, Hawaii.

Respectfully Submitted,

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By: /s/ Mohammad Khatib
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CERTIFICATE OF SERVICE

I hereby certify that, on the dates and by the methods of service noted below,
a true and correct copy of the foregoing was served electronically through
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DATED: June 12, 2026, at Honolulu, Hawaii.

/s/ Mohammad Khatib
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