

**U.S. District Court
District of Hawaii (Hawaii)
CIVIL DOCKET FOR CASE #: 1:23-cv-00175-SOM-RT**

In Re: Civil Beat Law Center for the Public Interest
Assigned to: JUDGE SUSAN OKI MOLLWAY
Referred to: MAGISTRATE JUDGE ROM TRADER
Cause: 05:552 Freedom of Information Act

Date Filed: 04/07/2023
Date Terminated: 05/18/2023
Jury Demand: None
Nature of Suit: 895 Freedom of Information Act
Jurisdiction: Federal Question

Petitioner

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Interested Party

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Interested Party

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| Date Filed | # | Docket Text |
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| 04/07/2023 | <u>1</u> | Miscellaneous Case Filing Fee/USA Applications <i>Motion to Unseal Motion by USA as to Defendant Ty Cullen's Sentencing [Dkt. 22]</i> Filing fee \$ 49, receipt number AHIDC-2822951., filed by Civil Beat Law Center for the Public Interest. (Attachments: # <u>1</u> Certificate of Service)(Black, Robert) Modified on 4/7/2023 (jtt1). Modified event type to motion to unseal document on 4/10/2023 (cib). (Entered: 04/07/2023) |
| 04/07/2023 | <u>2</u> | Corporate Disclosure Statement by Civil Beat Law Center for the Public Interest. (Attachments: # <u>1</u> Certificate of Service)(Black, Robert) (Entered: 04/07/2023) |
| 04/07/2023 | 3 | NOTICE of Case Assignment: Please reflect Miscellaneous case number MC 23-00235 SOM-RT on all further pleadings. (jtt1) (Entered: 04/07/2023) |
| 04/10/2023 | 4 | EO: The court directs the Government and Mr. Cullen each to respond no later than April 17, 2023, to Civil Beat's request that the motion for downward departure be unsealed. re <u>1</u> . (JUDGE SUSAN OKI MOLLWAY) (cib) (Entered: 04/10/2023) |
| 04/11/2023 | <u>5</u> | MOTION to Stay of Proceedings; Certificate of Service Micah W. J. Smith appearing for Interested Party United States (Attachments: # <u>1</u> Proposed Order)(Smith, Micah) (Entered: 04/11/2023) |
| 04/11/2023 | 6 | EO: The court asks Civil Beat to respond to the Government's motion to stay by April 17, 2023. The deadline for responses by the Government and Defendant Ty Cullen to the motion to unseal is vacated for now. The deadline will be reset if the motion to stay is denied. re <u>5</u> , <u>1</u> . (JUDGE SUSAN OKI MOLLWAY) (cib) (Entered: 04/11/2023) |
| 04/11/2023 | <u>7</u> | MEMORANDUM in Opposition re <u>5</u> MOTION to Stay of Proceedings; Certificate of Service filed by Civil Beat Law Center for the Public Interest. (Black, Robert) (Entered: 04/11/2023) |
| 04/12/2023 | 8 | NOTICE of Hearing on Motion <u>5</u> MOTION to Stay of Proceedings. Motion Hearing via Video Conference is set for 4/14/2023 at 11:00 AM before JUDGE SUSAN OKI MOLLWAY. The courtroom manager will provide the applicable participants with instructions and information to connect by video prior to the scheduled video conference date. (tl) (Entered: 04/12/2023) |
| 04/13/2023 | <u>9</u> | REPLY re <u>5</u> MOTION to Stay of Proceedings; Certificate of Service filed by United States. (Smith, Micah) (Entered: 04/13/2023) |
| 04/14/2023 | <u>10</u> | EP: In Re: <u>5</u> United States of America's Motion for Stay of Proceedings. Oral arguments heard. <u>5</u> United States of America's Motion for Stay of Proceedings-- DENIED . By 4/24/2023, the Government shall respond to the <u>1</u> motion to unseal the downward departure motion. The response shall be filed for public viewing and may address what, if any, constitutional and/or common law standards apply when material is sealed. Alternatively, the Government may state that it is reserving that issue, in which event the Government shall articulate the standard it is presently applying. In either event, the Government shall number the paragraphs in the downward departure motion and, for each numbered paragraph, identify in its response to the motion to unseal any words or sentences it contends must remain sealed to avoid negative impact. Any such identification shall be accompanied by a description of the asserted negative impact and the nature of the evidence that such a negative impact is likely to result. If the |

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| | | <p>Government believes for a particular paragraph that it cannot provide any description of the negative impact or summarize the supporting evidence without prejudicing its investigation or otherwise creating or increasing some risk, the Government should so indicate for that particular paragraph.</p> <p>By 5/01/2023, Mr. Black shall file a response to the government's briefing.</p> <p>Hearing on the <u>1</u> Motion to Unseal, is SET for 5/9/2023 at 10:00 AM, in person, before the Honorable Susan Oki Mollway.</p> <p>(Reporter–Debra Read) (JUDGE SUSAN OKI MOLLWAY)(tl) (Entered: 04/17/2023)</p> |
| 04/17/2023 | <u>11</u> | <p>EO: Given the extent of the proceedings in this matter, the court directs the Clerk's Office to convert this miscellaneous case to a civil case and to close the miscellaneous case file. The litigants should then file materials under the new civil case number. (JUDGE SUSAN OKI MOLLWAY)(tl) (Entered: 04/17/2023)</p> |
| 04/17/2023 | <u>12</u> | <p>NOTICE of Case Reassignment: Please be advised that, pursuant to ECF No. 11 , MC 23–00235 SOM–RT has been converted to a civil case and is now closed. Please reflect new Civil case number CV 23–00175 SOM–RT on all further filings in this case. (eta) (Entered: 04/17/2023)</p> |
| 04/21/2023 | <u>13</u> | <p>MOTION for Extension of Time to File Response/Reply as to <u>1</u> MOTION to Unseal Document ; <i>Certificate of Service</i> Micah W. J. Smith appearing for Interested Party United States (Smith, Micah) (Entered: 04/21/2023)</p> |
| 04/21/2023 | <u>14</u> | <p>ORDER GRANTING <u>13</u> GOVERNMENT'S REQUEST TO EXTEND THE TIME TO RESPOND TO THE MOTION TO UNSEAL THE MOTION FOR DOWNWARD DEPARTURE MOTION.</p> <p>For good cause shown, the Court grants the government's requested extension, and the government's response is now due on or before May 1, 2023.</p> <p>Signed by JUDGE SUSAN OKI MOLLWAY on 4/21/2023.</p> <p>(cib) (Entered: 04/21/2023)</p> |
| 04/24/2023 | <u>15</u> | <p>EO: The deadline for Civil Beat's optional reply memorandum is continued to noon on May 5, 2023. re <u>1</u> . (JUDGE SUSAN OKI MOLLWAY) (cib) (Entered: 04/24/2023)</p> |
| 05/01/2023 | <u>16</u> | <p>RESPONSE in Support of <i>Partial Sealing</i>; <i>Certificate of Service</i> filed by United States. (Sorenson, Kenneth) (Entered: 05/01/2023)</p> |
| 05/01/2023 | <u>17</u> | <p>SEALED DECLARATION OF KENNETH M. SORENSON; EXHIBIT A – filed by United States. (Attachments: # <u>1</u> Exhibit A) (jni) (Entered: 05/02/2023)</p> |
| 05/02/2023 | <u>18</u> | <p>EO: The court has reviewed ECF No. <u>17</u> , the Declaration of Kenneth M. Sorenson with an attached exhibit, which has been submitted under seal. This document is not viewable by Civil Beat. It was not the court's expectation that the Government's response to Civil Beat's motion to unseal would leave Civil Beat as much in the dark as it was before the Government filed its response. At this point, Civil Beat cannot even see the material that the Government appears to be agreeing may be unsealed. The court directs the Government to file, no later than noon on May 3, 2023, a new unsealed exhibit that shows Civil Beat what the Government is agreeing may be unsealed. The Government may want to accomplish this by blacking out words it proposes remain sealed and filing a version of the downward departure motion with those black lines and without the interspersed explanatory material included in the recently filed sealed exhibit. In addition to filing for public viewing a redacted downward departure motion, the Government is directed to file for public viewing by noon on May 3, 2023, a document explaining the redactions in terms that avoid disclosing information that the Government determines should not be publicly revealed. For example, it is unclear to the court why the Government's concern expressed at ECF No. 17–1, PageID 108, line 9, cannot be stated publicly without publicly detailing the substance of the proposed redaction. This court recognizes the Government's concern that, in addressing the motion to unseal, it not reveal the very</p> |

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| | | <p>information it is attempting to keep sealed. Nevertheless, the reasons for redactions do not themselves appear to reveal that very information. In preparing the documents required by this minute order, the Government should also take pains not to seek redaction of material that might reasonably be gleaned from the Government's own public statements. By way of example, the Government may want to revisit the proposed redaction of material in quotation marks at ECF 17-1, PageID 106. (JUDGE SUSAN OKI MOLLWAY) (cib) (Entered: 05/02/2023)</p> |
| 05/03/2023 | <u>19</u> | <p>SUPPLEMENT re 18 Link,,,,,, by United States ; <i>Certificate of Service</i>. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Sorenson, Kenneth) Modified on 5/3/2023 USA to resubmit a redacted version of Exhibit 2 (eta). (Attachment 2 replaced on 5/3/2023) (apg). Modified on 5/3/2023 (eta). (Entered: 05/03/2023)</p> |
| 05/04/2023 | <u>20</u> | <p>REPLY re <u>1</u> MOTION to Unseal Document filed by Civil Beat Law Center for the Public Interest. (Black, Robert) (Entered: 05/04/2023)</p> |
| 05/09/2023 | <u>21</u> | <p>EP: <u>1</u> Motion to Unseal Motion By USA as to Defendant Ty Cullen's Sentencing, filed by Civil Beat Law Center for the Public Interest.</p> <p>Mr. Smith participated by phone.</p> <p>Discussion held.</p> <p>Oral arguments heard.</p> <p><u>1</u> Court RULES that, if and when the Government's motion is unsealed, the court will not redact the case number, case name, or date of the sentencing hearing.</p> <p><u>2</u> Court TAKES UNDER ADVISEMENT the issue of potential redactions to Paragraphs 3 through 6 of the Government's motion.</p> <p><u>3</u> Court ORDERS the parties to meet and discuss potential redactions of Paragraph 7. The parties shall file a joint update, by Friday, May 12, 2023 at noon, notifying the court as to whether the parties reached an agreement about redactions to Paragraph 7.</p> <p><u>4</u> Court INVITES the parties to file optional, supplemental briefs by Friday, May 12, 2023 at noon. The sole focus of these briefs should be whether case law supports the notion that as a court considers whether information in a judicial record should be disclosed because it is already in the public domain, the court can or should assess how widely available or widely circulated the public information is.</p> <p>(Reporter-Debra Read) (JUDGE SUSAN OKI MOLLWAY)(tl) (Entered: 05/09/2023)</p> |
| 05/12/2023 | <u>22</u> | <p>MEMORANDUM in Support re <u>1</u> MOTION to Unseal Document filed by Civil Beat Law Center for the Public Interest. (Black, Robert) (Entered: 05/12/2023)</p> |
| 05/12/2023 | 23 | <p>EO: The parties have notified the court about several matters. It is the court's understanding that the parties agree to the public release of paragraph 7 of the downward departure motion provided the following words are redacted: the three words preceding "in Hawaii" in the first sentence of paragraph 7, and the word before "offense" in the second sentence of paragraph 7. Civil Beat is no longer requesting periodic status reports to the court by the Government, but the Government will respond to inquiries by Civil Beat about whether sealing continues to be warranted. The court will proceed to address the portions of the motion to unseal that remain in contention after reviewing any timely filings relating to that motion. re <u>1</u> (JUDGE SUSAN OKI MOLLWAY) (cib) (Entered: 05/12/2023)</p> |
| 05/17/2023 | <u>24</u> | <p>ORDER GRANTING IN PART AND DENYING IN PART CIVIL BEAT'S MOTION TO UNSEAL THE GOVERNMENT'S DOWNWARD DEPARTURE MOTION re <u>1</u> .</p> <p>The court directs the Government to prepare an unsealed version of the motion for downward departure, redacted only as permitted by this order. This new version of the</p> |

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| | | <p>downward departure motion shall be filed in both this action and in Crim. No. 22-00013.</p> <p>Once the new version of the downward departure motion has been filed, the Clerk of Court shall enter partial judgment for Civil Beat consistent with this order and shall then close this civil action.</p> <p>Signed by JUDGE SUSAN OKI MOLLWAY on 5/17/2023. (cib) (Entered: 05/17/2023)</p> |
| 05/18/2023 | <u>25</u> | REDACTION of <i>Sealed Motion</i> by United States. (Sorenson, Kenneth) (Entered: 05/18/2023) |
| 05/18/2023 | <u>26</u> | CLERK'S JUDGMENT entered on 5/18/2023 pursuant to ECF <u>24</u> ORDER GRANTING IN PART AND DENYING IN PART CIVIL BEAT'S MOTION TO UNSEAL THE GOVERNMENT'S DOWNWARD DEPARTURE MOTION. (jni) (Entered: 05/18/2023) |