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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: CIVIL BEAT LAW CENTER
FOR THE PUBLIC INTEREST,

Petitioner.

MISC. NO. 22-286 DKW-KJM
[CR NO. 19-99 (01) DKW-KJM]

**RESPONSE TO THE
GOVERNMENT'S SECOND
STATUS REPORT [DKT. 31]**

**RESPONSE TO THE GOVERNMENT'S
SECOND STATUS REPORT [DKT. 31]**

Petitioner Civil Beat Law Center for the Public Interest (Law Center) filed a motion to unseal search warrants related to the criminal investigation of an alleged RICO enterprise run by Michael J. Miske Jr. as indicted in *United States v. Miske*, Cr. No. 19-99. In addition to ordering certain warrant proceedings unsealed, the Court ordered some warrants to remain sealed and others redacted based on ongoing criminal investigations and privacy concerns. Dkt. 22, 23. The Court held that the continued sealing and redactions were subject to the Government filing a status report every six months to address whether the information should

remain sealed or redacted. Dkt. 23 at PageID.617-18. In its second status report, the Government requests continued withholding of two search warrants (Nos. 19-MJ-1189 and 20-MJ-542) because it states that those warrants concern an open criminal investigation. Dkt. 31 at PageID.1147. The Government’s conduct during the *Miske* trial, however, raises a question as to whether that investigation is open or closed. Thus, in light of indications that the investigation may be closed, Petitioner respectfully requests that the Court (1) unseal Nos. 17-MJ-909 Dkt. 1-1 and 19-MJ-787 Dkt. Nos. 1, 1-1, 1-2, 2, 5, 5-1, and 5-2; and (2) request confirmation—*in camera*—from the Government whether (a) the investigation is active; and (b) the investigation is anticipated to close no later than May 14, 2025.

On May 19, 2024, the Government filed a supplemental exhibit list during the *Miske* trial. *United States v. Miske*, No. 19-CR-99-01 Dkt. [*Miske* Dkt.] 1506.

That list included:

1-1124	Application/Affidavit for Search Warrant for the person of Jordan Kipi and residence on Poelua Street; No. 20-00542 RT; May 14, 2020
1-1125	Search Warrant for the person of Jordan Kipi and residence on Poelua Street; No. 20-00542 RT; May 14, 2020

Id. at PageID.14545. The Government planned to introduce as trial exhibits the application, affidavit, and search warrant regarding Jordan Kipi that it now asks

this court to maintain under seal. The Court publicly discussed these exhibits and potential questioning of witnesses about Mr. Kipi during Day 74 of the *Miske* trial. *Miske* Dkt. 1507 at PageID.14548. The Government’s willingness to introduce these documents as trial exhibits and publicly discuss them calls into question the existence of an active investigation.¹

This Court is not required to blindly accept the Government’s assertion that an investigation is active. *Cf. Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 950 (9th Cir. 1998) (rejecting, for purposes of sealing, sufficiency of statement without further support: “The Court has been advised that the investigation is ongoing and that it is in a posture that the disclosure of the transcript would constitute a serious risk of compromising the investigation.”). The Government’s assertion has direct legal and constitutional significance because it impacts the existence and nature of the public’s right of access. Because the Government’s conduct calls into question the assertion of an active investigation for purposes of cutting off public access, the Court is warranted in conducting an inquiry to ascertain for itself that non-conclusory facts support the Government’s claim that the public has no right to access these records.

¹ Although the Government only identified the No. 20-MJ-542 materials related to Mr. Kipi as trial exhibits, it has been disclosed publicly that Nos. 19-MJ-1189 and 20-MJ-542 both concerned Mr. Kipi. *Miske* Dkt. 557 at PageID.3911 (e.g., “MJ 19-1189 RT, APP (jkkipi@gmail.com).pdf”).

Further based on the information already disclosed by the Government, it is apparent that the Government executed a warrant on Mr. Kipi personally on or about May 14, 2020. As a consequence, any investigation of Mr. Kipi's conduct that justified these warrants should be completed no later than May 14, 2025. *See* 18 U.S.C. § 3282(a) (five year general statute of limitations for non-capital offenses). In light of its public disclosures, the Government should be able to commit that this matter can be closed by that date.

CONCLUSION

In light of indications that the investigation may be closed, Petitioner respectfully requests that the Court (1) unseal Nos. 17-MJ-909 Dkt. 1-1 and 19-MJ-787 Dkt. Nos. 1, 1-1, 1-2, 2, 5, 5-1, and 5-2; and (2) request confirmation—*in camera*—from the Government whether (a) the investigation is active; and (b) the investigation is anticipated to close no later than May 14, 2025.

DATED: Honolulu, Hawai`i, July 17, 2024

/s/ R. Brian Black
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