No. 19-30001

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

United States of America,

Plaintiff–Appellee,

v.

Devaughn Dorsey,

Defendant–Appellee,

Master Anthony-Jones,

Third-Party Appellant.

On Appeal from a Final Judgment of the
United States District Court for the Western District of Washington
Case No. 2:04-cr-352-RSL, Hon. Robert S. Lasnik

OPENING BRIEF FOR THIRD-PARTY APPELLANT MASTER ANTHONY-JONES

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INTRODUCTION

When members of the public attend a criminal trial at the local courthouse, they need not state their reasons for being there. It is their First Amendment right to enjoy the openness of judicial proceedings. Access to the courts serves the public's interest in "keeping a watchful eye" on the workings of the government. *See Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

Of particular relevance here, the First Amendment right of access is not limited to hearings in a courthouse. It also guarantees a presumption of access to many court documents, including post-sentencing documents concerning a criminal defendant's cooperation with the prosecution. *CBS, Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 765 F.2d 823, 824-26 (9th Cir. 1985). A member of the public does not need a reason to obtain those cooperation documents. They are presumptively open to the public, and a party seeking their closure must demonstrate a compelling interest in sealing them.

Despite all this, when Master Anthony-Jones moved to unseal documents related to criminal defendant Devaughn Dorsey's cooperation with the Government, the district court flipped the presumption of openness on its head. Instead of requiring either party supporting closure—the Government or Dorsey—to provide a rationale for sealing, the district court considered Anthony-Jones's (supposed) lack of need for Dorsey's post-sentencing cooperation documents. Worse still, the court did not even mention the First Amendment right of access, holding instead that an inapplicable local rule of criminal procedure decided the case. Keeping these documents sealed with such little justification threatens the presumption of openness, which is at the heart of our judicial system. *CBS*, 765 F.2d at 824-26. This Court should order them unsealed.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 18 U.S.C. § 371 and 18 U.S.C. §§ 2322(a)(1), (b)(2).

When no other matters are pending before the district court, and, as here, the court denies a motion to unseal, the decision is appealable as a final decision under 28 U.S.C. § 1291. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1129 (9th Cir. 2003). The district court entered the order denying appellant Anthony-Jones's motion to unseal on December 17, 2018. ER 2-4. This order disposed of all of his claims. Anthony-Jones timely filed a notice of appeal on January 3, 2019. ER 1; Fed. R. App. P. 4(a)(1)(A).

ISSUE PRESENTED

Under the First Amendment, Anthony-Jones has a presumed right of access to the court documents he seeks to unseal. *CBS, Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 765 F.2d 823, 824-26 (9th Cir. 1985). Any party attempting to keep them sealed must show a compelling interest in maintaining secrecy, that unsealing would harm that interest, and that alternatives to sealing are inadequate. *Oregonian Publ'g Co. v. U.S. Dist. Court for Dist. of Or.*, 920 F.2d 1462, 1466 (9th Cir. 1990).

The issue is whether the documents should be immediately unsealed because the Government and Dorsey twice failed to satisfy any of the requirements for closure.

RELEVANT CONSTITUTIONAL PROVISION, GUIDELINE, AND RULES

The relevant constitutional provision, sentencing guideline, and rules appear in the addendum to this brief.

STATEMENT OF THE CASE

Legal Background

Secret criminal proceedings are the exception, not the rule, in American law. *United States v. Index Newspapers, LLC*, 766 F.3d 1072, 1088 (9th Cir. 2014). The strong presumption that criminal trials are open to the public dates back "long before the Constitution," indeed "back beyond reliable historical records." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564, 575 (1980); *see Daubney v. Cooper*, 109 Eng. Rep. 438, 440 (K.B. 1829).

The First Amendment enshrines this common-law principle because the public's "freedom to listen" is implicit in the guarantees of free speech and press, which the public cannot fully exercise if the government restricts access to information. *Richmond Newspapers*, 448 U.S. at 576. This principle provides a qualified right of access to criminal trials, *id.*, and to almost all other aspects of a criminal case, from preliminary hearings to jury selection to sentencing proceedings, *see Press-Enter. Co. v. Superior Court of Cal., Riverside Cty.* (*Press-Enterprise I*), 464 U.S. 501, 508, 509 n.8 (1984) (voir dire); *Press-Enter. Co. v. Superior Court of Cal. for the Cty. of Riverside* (*Press-Enterprise II*), 478 U.S. 1, 13 (1986) (preliminary hearings); *United States v. Biagon*, 510 F.3d 844, 848 (9th Cir. 2012) (sentencing proceedings).

Particularly relevant here, the presumption of public access applies not only to attendance at criminal proceedings but to court documents as well. *See CBS, Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 765 F.2d 823, 824-26 (9th Cir. 1985). This presumption includes certain documents concerning a criminal defendant's post-sentencing cooperation with the Government. Under Federal Rule of Criminal Procedure 35(b),

the Government can file a motion to reduce a defendant's sentence if "after sentencing, [the defendant] provided substantial assistance in investigating or prosecuting another person." Fed. R. Crim. P. 35(b). Rule 35(b) motions—colloquially referred to as Rule 35(b) substantial-assistance motions—and related documents trigger the First Amendment right of access and presumption of openness. *See CBS*, 765 F.2d at 824-26.

Factual and procedural background

1. Appellant Master Anthony-Jones was convicted after trial for the murder of Damien Johnson and is currently in Washington state prison. *See* ER 3-4, 40, 43. Anthony-Jones seeks to unseal documents that he believes will establish the bias of Devaughn Dorsey, a key witness against him. ER 42.

Dorsey met Anthony-Jones when the two were cellmates prior to Anthony-Jones's trial. ER 14-15. Dorsey was serving an eighty-four-month prison sentence. ER 2. Dorsey, a friend of Damien Johnson's, said that Anthony-Jones, without any prompting, confessed to murdering Johnson. ER 16-17.

After learning that his sentence could be reduced, Dorsey testified against Anthony-Jones. ER 18-19. While testifying, Dorsey admitted that he hoped his cooperation would persuade the federal Government to file a Rule 35(b) substantial-assistance motion on his behalf. ER 32-33.

Following Anthony-Jones's conviction, the Government filed that motion in this case (under seal), Doc. 63, along with a boilerplate proposed order to seal, ER 46, and a sealed attachment, Doc. 64.

The district court signed the Government's proposed boilerplate order to seal the Rule 35(b) motion without providing any analysis or justification. ER 44. Dorsey filed a sealed response to the Rule 35(b) motion. Doc. 66. The court then granted that motion in a sealed order, Doc. 67, and a sealed supplemental memorandum, Doc. 68. Dorsey's sentence was reduced from eighty-four months to forty-eight months. ER 2. Dorsey is currently in federal prison on other charges. *See* Doc. 445, *United States v. Dorsey, et al.*, No. 2:08-cr-245 (W.D. Wash. Sept. 24, 2010).

2. In 2018, Anthony-Jones filed a motion in the district court below to unseal documents in this (Dorsey's) case. ER 39. Anthony-Jones hoped to uncover evidence exposing "Dorsey's motivation to testify against him, which includes, but is not limited to Mr. Dorsey's bias and self-preservation mens rea." ER 42. Anthony-Jones asked the district court to unseal six items: (1) Dorsey's initial sentencing memorandum, Doc. 38; (2) the Government's Rule 35(b) substantial-assistance motion, Doc. 63; (3) the attachment to the Rule 35(b) motion, Doc. 64; (4) Dorsey's response to the Rule 35(b) motion, Doc. 66; (5) the district court's order granting the motion, Doc. 67; and (6) the district court's supplemental memorandum, Doc. 68.

The Government filed a one-page response, which did not discuss how closure would satisfy the First Amendment's high burden. ER 37-38. Instead, it asserted only that Western District of Washington Local Criminal Rule 55(b)(9) controlled because, the Government contended, it requires "documents related to cooperation to be filed under seal." ER 37. The Government's response did not accurately characterize Local Criminal Rule 55(b)(9), which states: "If the following items are filed, they shall be filed under seal, with access provided only to court staff: … materials relating to § 5K1.1

motions." Local Rules W.D. Wash. CrR 55(b)(9) (referencing U.S. Sentencing Guidelines Manual § 5K1.1). But Section 5K1.1 materials are *pre*-sentencing substantial-assistance motions submitted under U.S. Sentencing Guideline Section 5K1.1. Those materials are not present in this case, which involves materials related to a *post*-sentencing Rule 35(b) motion.

Dorsey filed a two-page response to Anthony-Jones's motion. ER 35-36. Like the Government, Dorsey did not address the First Amendment at all. Nor did he contend that disclosure of the documents would harm him in any way. Instead, he asserted only that a state-court collateral attack by Anthony-Jones—an attack that neither the federal Government nor Dorsey would have any interest in—would be time-barred by a state statute of limitations and that Anthony-Jones already had sufficient opportunity to impeach Dorsey at trial. ER 35-36.

Eight months later, the district court denied Anthony-Jones's motion in a three-page order. ER 2-4. Adopting the Government's argument, the court relied on Local Criminal Rule 55(b)(9) for the proposition that all cooperation documents must be sealed. ER 3. And apparently adopting Dorsey's line of argument, it observed that Anthony-Jones already "had ample opportunity to impeach" Dorsey. ER 4. The district court's order did not mention the First Amendment's presumption of openness or this Court's standard that must be met to overcome it. *See* ER 4.

SUMMARY OF ARGUMENT

The public has a First Amendment right of access to the documents Anthony-Jones seeks. To overcome the First Amendment's presumed right of access, the party seeking sealing must demonstrate a substantial probability that a compelling interest will be

harmed without closure and that reasonable alternatives to sealing do not exist. The Government and Devaughn Dorsey did not meet this demanding burden because neither party asserted a compelling interest, attempted to show a substantial probability of harm, *or* explained why adequate alternatives to sealing were not available. In the absence of this showing, the district court erred in keeping the documents sealed.

The district court further erred when it relied on Local Criminal Rule 55(b)(9) to justify closure. Rule 55(b)(9) covers materials related to Section 5K1.1 pre-sentencing substantial-assistance motions. Although Anthony-Jones seeks cooperation documents, the Rule 35(b) post-sentencing substantial-assistance materials that he seeks are not related to Section 5K1.1. Yet the court erroneously held that Rule 55(b)(9) applies to *all* cooperation documents. By concluding that an inapplicable local rule controlled the case, the district court applied the incorrect legal standard.

Twice, the parties seeking sealing failed to justify it—first, when the Government initially moved to seal the documents, and second, when the Government and Dorsey responded to Anthony-Jones's motion to unseal. Those multiple failures require this Court to order the district court to unseal the documents now.

STANDARD OF REVIEW

A district court's denial of a motion to unseal is reviewed for abuse of discretion. *United States v. Sleugh*, 896 F.3d 1007, 1012 (9th Cir. 2018). When a district court applies the wrong legal standard, as the district court did here, de novo review applies because a legal error is an abuse of discretion. *United States v. Collins*, 551 F.3d 914, 919 (9th Cir. 2009).

ARGUMENT

I. Because the district court did not require the Government or Dorsey to overcome the First Amendment's presumption of openness, it erred in refusing to unseal the documents Anthony-Jones seeks.

This Court's long-settled framework, which the district court did not acknowledge or apply, demands that the documents be unsealed. This Court has adopted a strong presumption in favor of public access to court documents and looks to the First Amendment to determine whether criminal proceedings and documents filed in criminal cases should be sealed. *Oregonian Publ'g Co. v. U.S. Dist. Court for Dist. of Or.*, 920 F.2d 1462, 1465 (9th Cir. 1990). If the document at issue falls under the First Amendment right of access, the court must find that the party seeking closure—whether it has moved to seal or opposed a motion to unseal—has met its burden to demonstrate "an overriding right or interest based on findings that closure is essential to preserve higher values." *Id.* (citing *Press-Enter. Co. v. Superior Court of Cal., Riverside Cty.*, 464 U.S. 501, 510 (1984)) (quotation marks omitted).[1]

This Court has already determined that the First Amendment's presumption of openness applies to five of the six types of documents Anthony-Jones seeks to unseal:

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[1] The First Amendment "is generally understood to provide a stronger right of access" than the common law. *United States v. Doe*, 870 F.3d 991, 997 (9th Cir. 2017) (quotation marks omitted). But the common law still mandates a presumption of openness and requires "compelling reasons" to seal judicial proceedings and documents, *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006), including sentencing memoranda, *see United States v. Kravetz*, 706 F.3d 47, 53 (1st Cir. 2013). Under this common-law standard, Anthony-Jones has a right to access the documents in question because no party asserted any compelling reason to keep them sealed.

the Government's Rule 35(b) motion and attachment (Docs. 63, 64), Dorsey's response to the Rule 35(b) motion (Doc. 66), and the district court's memorandum and order granting the Rule 35(b) motion (Docs. 68, 67). *See CBS, Inc. v. U.S. Dist. Court for Cent. Dist. of Cal.*, 765 F.2d 823, 824-26 (9th Cir. 1985). Therefore, those documents are presumed open to the public, and any party seeking to keep them sealed must overcome that presumption of openness. *Oregonian Publ'g*, 920 F.2d at 1465-67.

This Court has yet to expressly hold that the other document that Anthony-Jones seeks to unseal—Dorsey's sentencing memorandum (Doc. 38)—is governed by the First Amendment right of access. But that is the inescapable consequence of this Court's precedent. As with other criminal proceedings and documents, sentencing is presumed open, *United States v. Biagon*, 510 F.3d 844, 848 (9th Cir. 2007), unless Congress expressly states otherwise, *CBS*, 765 F.2d at 826. Congress has not stated otherwise, so the First Amendment presumptive right of access applies to the sentencing memorandum at issue here.[2]

A. Because the First Amendment right of access attaches to all of the records sought by Anthony-Jones, the remaining question is whether the district court made specific factual findings that (1) sealing serves a compelling interest, (2) without sealing, there is

[2] Other courts have held that the First Amendment right of access applies to sentencing memoranda. *See In re Morning Song Bird Food Litig.*, 831 F.3d 765, 772 (6th Cir. 2016); *In re Hearst Newspapers, LLC*, 641 F.3d 168, 175-76 (5th Cir. 2011); *United States v. Harris*, 204 F. Supp. 3d 10, 14-15 (D.D.C. 2016); *U.S. v. Chanthaboury*, 2013 WL 6404989, at *1-2 (E.D. Cal. Dec. 6, 2013); *U.S. v. Smith*, 2013 WL 2286262, at *1 (E.D. Cal. May 23, 2013); *United States v. James*, 663 F. Supp. 2d 1018, 1020-21 (W.D. Wash. 2009); *United States v. Dare*, 568 F. Supp. 2d 242, 244 (N.D.N.Y. 2008); *United States v. Hirsh*, 2007 WL 1810703, at *2-3 (E.D. Pa. June 22, 2007).

a substantial probability of harm to that interest, and (3) there are no alternatives to sealing that would adequately protect that interest. *Oregonian Publ'g*, 920 F.2d at 1466. The parties requesting sealing must prove all three requirements. Here, they proved none.

Neither the Government nor Dorsey has articulated (much less demonstrated) a compelling interest in keeping the documents sealed. Initially, the district court granted the Government's motion to seal even though it failed to articulate any interest in closure. Then, when Anthony-Jones moved to unseal, the parties seeking closure responded by relying on an inapplicable local rule, an irrelevant state habeas time limit, and Anthony-Jones's purported lack of interest in the documents. But at no time did any party seeking closure assert that *its* interest was compelling, provide facts supporting an interest, or explain how closure would advance that interest.

For its part, the district court did not make the required findings. Instead, the district court wrongly put the onus on Anthony-Jones. The court reasoned that because Anthony-Jones already had a sufficient opportunity to impeach Dorsey, ER 3-4, Anthony-Jones did not need the documents. But the court's reasoning was irrelevant—because these documents are presumed open to the public, Anthony-Jones need not show that "anything would be gained by disclosure." *See Oregonian Publ'g*, 920 F.2d at 1466-67.

To be sure, closure may be required in some cases. For example, documents may remain sealed if specific facts demonstrate that closure is necessary to protect an informant, his family, or an ongoing investigation. *Doe*, 870 F.3d at 998-1000. That these compelling interests are present in *some* cases, however, does not justify sealing

cooperation documents when, as here, the parties fail even to suggest that those interests exist.

In any event, a compelling interest alone does not justify closure. In the rare instance a compelling interest is found, the district court must also conclude that the party seeking sealing has shown a substantial probability that unsealing will harm its compelling interest. *In re Copley Press, Inc.*, 518 F.3d 1022, 1028-29 (9th Cir. 2008). Here, the Government's and Dorsey's failures to provide specific facts or a compelling interest make it impossible for them to meet that high burden. *See United States v. Brooklier*, 685 F.2d 1162, 1169 (9th Cir. 1982).

To justify closure, the district court also must "consider alternatives … such as redaction." *United States v. Index Newspapers, LLC*, 766 F.3d 1072, 1096 (9th Cir. 2014). Here too, the district court neglected to apply the correct legal standard. Its original order to seal the Rule 35(b) materials does not discuss alternatives, ER 44, nor does its order denying unsealing, ER 2-4.

B. Because the district court failed to apply the required First Amendment analysis, this Court can and should stop there.

We find it necessary, however, to rebut the district court's rationale for denying Anthony-Jones's motion to unseal. Mirroring the Government's argument, the district court held that Western District of Washington Local Criminal Rule 55(b)(9) requires "any documents relating to cooperation" to be filed under seal. ER 3. Even if this were true, it should go without saying that local court rules cannot supersede the Constitution and relieve the court of its responsibility to conduct the First Amendment analysis demanded by this Court's precedent. *See Doe*, 870 F.3d at 1002. But by its own terms

the Rule doesn't apply. The rule states that "materials relating to § 5K1.1 motions" "shall be filed under seal." Local Rules W.D. Wash. CrR 55(b)(9). Section 5K1.1 motions are *pre*-sentencing substantial-assistance motions. Rule 35(b) motions, on the other hand, are *post*-sentencing substantial-assistance motions. Put simply, Local Criminal Rule 55(b)(9) does not breathe a word about the documents Anthony-Jones seeks.[3]

II. This Court should order the documents unsealed.

Because Anthony-Jones has shown that sealing was unjustified, this Court should reverse and direct the district court to unseal the documents now. *See Oregonian Publ'g Co. v. U.S. Dist. Court for. Dist. of Or.*, 920 F.2d 1462, 1467-68 (9th Cir. 1990); *United States v. Index Newspapers, LLC*, 766 F.3d 1072, 1096-97 (9th Cir. 2014). This relief is especially appropriate because neither the Government nor Dorsey has ever even mentioned alternatives to sealing.

It is perhaps understandable, although not excusable, that the parties initially did not offer a compelling interest, and the district court did not apply the First Amendment standard, given that no one opposed sealing at that time. But the failure to offer any justification the second time around, when there *was* opposition to sealing, is a different

[3] We recognize that this Court's Rule 27-13(d) requires certain documents to be filed under seal in this Court, most of which do not qualify for the First Amendment's presumption of openness, such as grand-jury material and juvenile records. The Rule also covers "confidential" sentencing memoranda. This Rule would not excuse a failure to show that the sentencing memorandum was "confidential" in the first place. *See Oregonian Publ'g*, 920 F.2d at 1466-67. Nor could a rule governing what is filed under seal in *this* Court excuse the district court from conducting the required First Amendment analysis for sealing in *that* court. *Doe*, 870 F.3d at 1002.

story. The parties should not be given a third bite at the apple, and there is no reason for this Court to further delay access to the documents. *See Phoenix Newspapers, Inc. v. U.S. Dist. Court for Dist. of Ariz.*, 156 F.3d 940, 950 (9th Cir. 1998).[4]

CONCLUSION

This Court should reverse and order the district court to unseal the documents requested by Anthony-Jones.

Respectfully submitted,
s/ Bradley Girard

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[4] If this Court disagrees, at the very least, the Court should reverse and remand with instructions that the district court promptly demand the Government's and Dorsey's justifications, if any, for why every part of every document that Anthony-Jones seeks must remain sealed.

STATEMENT OF RELATED CASES

Counsel for appellant Master Anthony-Jones is unaware of any related cases pending in this Court.

ADDENDUM OF RELEVANT CONSTITUTIONAL PROVISION, GUIDELINE, AND RULES

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U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fed. R. Crim. P. 35. Correcting or Reducing a Sentence

(a) Correcting Clear Error. Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error.

(b) Reducing a Sentence for Substantial Assistance.

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.

(4) Below Statutory Minimum. When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

(c) "Sentencing" Defined. As used in this rule, "sentencing" means the oral announcement of the sentence.

U.S. Sentencing Guidelines Manual § 5K1.1.
Substantial Assistance to Authorities (Policy Statement)

Upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a)The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following:

(1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(3) the nature and extent of the defendant's assistance;

(4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;

(5) the timeliness of the defendant's assistance.

Local Rules W.D. Wash. CrR 55. Records

* * *

(b) Matters to Be Filed Under Seal
If the following matters or items are filed, they shall be filed under seal, with access provided only to court staff:

(1) grand jury matters;

(2) pretrial services reports;

(3) petitions for warrant, until the defendant appears on the petition;

(4) financial affidavits in support of motions for appointment of counsel;

(5) materials relating to motions for leave to withdraw as counsel;

(6) psychological or psychiatric reports;

(7) lists of prospective or seated jurors;

(8) transcripts of voir dire;

(9) materials relating to § 5K1.1 motions;

(10) release status reports;

(11) final presentence reports;

(12) the judge's statement of reasons for the sentence imposed; and

(13) documents received from a defendant who is represented by counsel, pending review by and specific order of the court.

* * *

Ninth Circuit Rule 27-13. Sealed Documents

(a) Introduction
This Court has a strong presumption in favor of public access to documents. Therefore, except as provided in (d) below, the presumption is that every document filed in or by this Court (whether or not the document was sealed in the district court) is in the public record unless this Court orders it to be sealed.

Accordingly, unless a case or document falls within the scope of (d) below, this Court will permit it to be filed under seal only if justified by a motion to seal the document from public view. See (e), (f), (g), and (h) below. The Court will not seal a case or a document based solely on the stipulation of the parties.

When an entire case was sealed in district court, the case will be docketed provisionally under seal in this Court, and within 21 days of filing the notice of appeal, a party must file a motion to continue the seal or the seal may be lifted without notice. See (g) below. When a document was sealed in the district court, the document will be filed provisionally under seal, and must be accompanied by a notice under subsection (d), a motion to seal under subsection (e), or a notice under subsection (f). The document will remain provisionally sealed until the Court rules on any motion to seal.

Documents in Social Security and Immigration cases, including administrative records, are not filed under seal in this Court. However, remote electronic access to documents is limited by rule to the parties to the case, though the documents will be available for public viewing in the Clerk's Office. See Fed. R. Civ. P. 5.2(c); Fed. R. App. P. 25(a)(5). This same rule, however, presumes that the orders and dispositions will be publicly available.

* * *

(d) Presentence Reports, Grand Jury Transcripts, and Sealed Filings Mandated by Statute or Procedural Rule
When a statute or procedural rule requires that a brief or other document be filed under seal (see, e.g., 18 U.S.C. § 5038(c), 3509(d); Fed. R. Crim. P. 6(e)), or when a party is filing an original, revised, or amended presentence report, its attachments, and any confidential sentencing memoranda, a motion under subsection (e) is not required.

Instead, the document(s) shall be submitted under seal in accordance with subsection (c), and accompanied by a notice of filing under seal that references this rule and the pertinent statute or procedural rule.

In cases in which any presentence report is referenced in the brief, the party first filing that brief must file under seal the presentence report, the documents attached to the report, and any sentencing memoranda filed under seal in the district court. The report and documents shall be filed on the same day as the brief that references the report and documents, using the presentence report electronic document filing type, without an accompanying notice of filing under seal. These documents shall not be

included in the excerpts of record. The party submitting the presentence report and related sealed memoranda shall separately notify the opposing party by email (or first class mail if the opposing party is exempt from electronic filing) of the specific documents submitted, and shall provide a copy upon request.

* * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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