

NO. 13-16732

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNDER SEAL,

PETITIONER-APPELLANT,

v.

ERIC H. HOLDER, JR., Attorney General; UNITED STATES DEPARTMENT
OF JUSTICE; and FEDERAL BUREAU OF INVESTIGATION,

RESPONDENT-APPELLEES

On Appeal from the United States District Court
for the Northern District of California
Case No. 13-cv-1165 SI
Honorable Susan Illston, District Judge

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS AND 18 MEDIA ORGANIZATIONS TO UNSEAL THEIR AMICUS
BRIEF AND THIS MOTION IN CASES 13-15957, 13-16731, 13-16732**

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April 8, 2014

Amici Reporters Committee for Freedom of the Press and 18 other media organizations respectfully ask this Court to unseal their friend-of-the court brief, as well as this motion. The Court cannot constitutionally seal this brief and motion, as nothing in these documents justifies sealing. *Amici* have had no access to confidential materials in the case; the brief only includes information that is already public; and there are clear public policy reasons for requiring that the materials be open. *Amici* acknowledge that this Court has unsealed some other documents in this case, and, therefore, request that its brief and motion be public too.

This Court, and the U.S. Supreme Court, have recognized a “general right to inspect and copy public records and documents, including judicial records and documents.” *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, there is a strong presumption of transparency in this Court in civil cases. *Kamakana*, 447 F.3d at 1178 (“Unless a particular court record is one traditionally kept secret, a strong presumption in favor of access is the starting point.”) (internal quotations omitted). To overcome the strong presumption that civil court records are public, the party seeking to seal must provide “compelling reasons supported by specific factual findings” that override disclosure, and the Court must “base its decision on a compelling reason and articulate the factual

basis for its ruling, without relying on hypothesis or conjecture.” *Id.* at 1179 (internal quotation marks and citations omitted).

Here, there are no compelling reasons to seal *amici*’s brief and motion. The filings only rely on publicly-available material, such as the district court’s opinions; the petitioner and respondent’s redacted briefs; and news articles about National Security Letters and other surveillance programs. Consequently, any purported rationale for sealing would be based on “hypothesis or conjecture,” which *Kamakana* forbids. *Id.*

The Supreme Court has explained that the right to access records is necessary because secrecy weakens the credibility of the justice system and government affairs in general. *Press-Enterprise Co. v. Superior Court of California, Riverside* 464 U.S. 501, 508 (1984) (“*Press-Enterprise I*”). Another key justification for judicial transparency is that “uninhibited, robust, and wide-open debate” about public issues strengthens democracy by giving voters better understanding about government programs put in place by their elected officials. *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 587 (1980) (Brennan, J., concurring) (citation omitted). *Amici*’s brief here informs the public of concerns that members of the media have with a large government surveillance effort, the National Security Letter program. Public knowledge of *amici*’s position will

further the Supreme Court's goals of enhancing debate about issues that affect self-governance and instilling trust in the judicial system.

The government does not consent to this motion, but suggested that it work with *amici* to decide what materials can be public after it sees the brief. Electronic Frontier Foundation consents to the filing of this motion.

Amici, therefore, respectfully request that this Court unseal this motion and friend-of-the-court brief.

Dated: April 8, 2014

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2014, amici Reporters Committee for Freedom of the Press and 18 other media organizations mailed seven paper copies of this motion to unseal to:

Susan Soong, Chief Deputy Clerk - Operations
U.S. Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103
telephone is 415-355-7990.

The Ninth Circuit will effect service on the parties because this is a sealed case. Amici also emailed a searchable PDF file of this document on April 8, 2014 to Susan_Soong@ca9.uscourts.gov.

Dated: April 8, 2014

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