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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 Case No. 2:18-mj-152 EFB

11 IN THE MATTER OF THE
12 EXTRADITION OF OMAR
13 ABDULSATTAR AMEEN TO THE
14 REPUBLIC OF IRAQ,

MOTION BY CAIR-SV/CC TO UNSEAL
DEFENSE EXHIBIT 112 PURSUANT TO
EASTERN DISTRICT LOCAL RULE
141(f), COMMON LAW, AND THE FIRST
AMENDMENT

15 Judge: Hon. Edmund F. Brennan

16 **MOTION TO UNSEAL DEFENSE EXHIBIT 112**

17 Undersigned counsel, on behalf of the Sacramento Valley Chapter of the Council on
18 American-Islamic Relations, a national grassroots civil rights and advocacy organization,
19 respectfully requests the Court to enter an order to unseal Defense Exhibit 112 (ECF 208-33),
20 which the Court discusses extensively in its Memorandum and Order Declining to Certify
21 Extradition. (Doc. 298, pp.23, 24, 25, 28.) In its dispositive order, the Court identifies this
22 Exhibit as a search warrant affidavit containing inconsistent statements by the witnesses against
23 Mr. Ameen. Eastern District Local Rule 141.1(a)(1) states, “All information provided to the
24 Court in a specific action is presumptively public. . . .” Eastern District Local Rule 141(f)
25 provides, “Upon the motion of any person, or upon the Court’s own motion, the Court may, upon
26 a finding of good cause or consistent with applicable law, order documents unsealed.”

27 As an organization dedicated to empowering the American Muslim community, and as a
28 member of the public, undersigned counsel and CAIR request that the Court unseal this
dispositive exhibit supporting its important order vindicating Mr. Ameen in the extradition case.

1 In addition to advocacy and litigation, CAIR educates the public through media and outreach.
2 No reasons exist to keep the Exhibit sealed, and the press and public have a significant interest,
3 protected by common law and the First Amendment, in reviewing the Exhibit which the Court
4 relied upon in the extradition record and the dispositive order.

5 **I. EXHIBIT 112 WAS NOT SEALED PURSUANT TO THE PROCEDURE**
6 **PROVIDED IN THE LOCAL RULE, WHICH REQUIRED THE COURT**
7 **TO MAKE A DETERMINATION, ON THE RECORD, THAT SEALING**
8 **WAS NECESSARY**

8 The Court's Local Rule 141 provides, "Documents may be sealed only by written order
9 of the Court, upon the showing required by applicable law." The Rule requires a specific request
10 to seal "even if an existing protective order, statute, or rule requires or permits the sealing of the
11 document."

12 The Rule requires four filings to obtain the proper sealing of a document: the Notice of
13 Sealing, the Request to Seal, a proposed sealing order, and "all documents covered by the
14 request." The Notice *must* be filed on the open record. The other three may be filed under seal, if
15 the Court so orders. No Notice was filed under Local Rule 141 to obtain sealing of Exhibit 112
16 (Doc. 208-33). "Unless the Court orders otherwise, court orders sealing documents will also be
17 filed in the publicly available case file and will not reveal the sealed information." There is no
18 corresponding Order by the Court allowing any other Local Rule 141 documents to be filed
19 under seal. Moreover, there is no sealing Order. "The publicly filed order or the docket shall
20 include a notation that a sealed order has been filed." Local Rule 141(d).

21 Local Rule 141(b) mandates that the Notice "shall describe generally the documents
22 sought to be sealed, the basis for sealing, the manner in which the 'Request to Seal Documents,'
23 proposed order, and the documents themselves were submitted to the Court, and whether the
24 Request, proposed order, and documents were served on all other parties." The Notice
25 requirement allows the Court to ensure that documents are only sealed upon a proper showing. It
26 also permits other parties, or the press or public, to know that a document is being sealed and to
27 understand the proffered reasons.
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1 As no Notice was filed under Local Rule 141(b), and thus no Sealing Order was obtained,
2 it is impossible for the undersigned to know upon what grounds the Court based sealing. At
3 other times in this litigation the Court considered issues of sealing, but it apparently did not have
4 the opportunity to consider whether this Exhibit, filed substantively in the extradition case,
5 should be sealed.

6 Elsewhere, the Court noted that the protective order in this case did not prohibit the
7 Defense from discussing the contents of the affidavit which would later be filed as Exhibit 112.
8 Doc. 136, Order. In reaching this conclusion, the Court noted a “strong presumption in favor of
9 public access to court records,” citing *Kamakana v. City and County of Honolulu*, 447 F.3d 1178
10 (9th Cir. 2006). The Court also noted the need for federal courts “to have a measure of
11 accountability and for the public to have confidence in the administration of justice.” *Ctr. For*
12 *Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016). Even warrant
13 materials, which in some circumstances are not subject to the presumption of openness, are not
14 “sacrosanct.” Doc. 136, p. 4, citing *Kamakana*, 447 F.3d at 1185. A “blanket claim” will not
15 exempt a document from the public’s right of access. *Id.*

16 Before the affidavit was filed as an Exhibit, the Court refused to unseal it based on a
17 general protection of “pre-indictment” search materials in criminal cases. Doc. 107. This was in
18 March 21, 2019, over two years before the Court extensively cited the document as one of the
19 bases for its Order denying extradition. Moreover, as the Court noted in that Order, there are no
20 pending domestic criminal charges against Mr. Ameen. Doc. 298, p. 30. The Government
21 cannot keep this dispositive exhibit sealed in perpetuity simply by claiming that it is forever
22 “pre-indictment.” Vague assertions must fall to the public interest in understanding the
23 resolution of Mr. Ameen’s case.

24 As discussed below, the fact that the affidavit was filed as an Exhibit and relied on by the
25 Court in its Order at Document 298, gives it a different constitutional dimension as a dispositive
26 court record, not as part of a “separate, pre-indictment criminal investigation” as discussed in the
27 prior Order at Document 107, page 2. As the Court demonstrated in its Order at Document 298,
28 this search warrant affidavit is no longer “separate” from the extradition case. Rather, it is

1 central to the shifting stories provided by the Government witnesses that undermined probable
2 cause. This means that the public and press interest in reviewing it and understanding its relation
3 to the Court's decision is weightier. Sealing of Exhibit 112 is not mandated or sacrosanct, and it
4 must fall to the weighty interests here.

5 Given the lack of any finding related to sealing at the time the Exhibit was filed, and the
6 correspondingly weighty burden to justify continued sealing, the Court must order Exhibit 112
7 unsealed in the public record at this time.

8 **II. THE COURT'S DENIAL OF AMEEN'S EXTRADITION CENTERS ON**
9 **EXHIBIT 112. UNDER THE FIRST AMENDMENT AND COMMON**
10 **LAW, IT MUST BE UNSEALED FOR PUBLIC INSPECTION.**

11 The First Amendment and the common law afford the press and the public a strong
12 presumption in favor of right of access to court documents. *Hagestad v. Tragesser*, 49 F.3d 1430
13 (9th Cir. 1995). Under the First Amendment, the press and the public enjoy a presumptive right
14 of access to court documents in criminal proceedings. *Oregonian Pub. Co. v. U.S. Dist. Court for*
15 *Dist. Of Oregon*, 920 F.2d 1462 (9th Cir. 1990). This First Amendment right may only be
16 overcome if the proponent of sealing establishes specific reasons proving that sealing is
17 necessary to preserve higher values and is narrowly tailored to serve that overriding interest. *Id.*
18 Courts should unseal court documents whenever possible. *Phoenix Newspapers, Inc. v. U.S.*
19 *Dist. Court*, 156 F.3d 940 (9th Cir. 1998). This Court "need not document compelling reason to
20 unseal; rather the proponent of sealing bears the burden with respect to sealing. A failure to meet
21 that burden means that the default posture of public access prevails". *Kamakana v. City and*
22 *County of Honolulu*, 447 F.3d 1181-82 (9th Cir. 2006).

23 A non-party seeking to intervene may request that the court unseal documents. *United*
24 *States v. Kott*, 135 F. App'x 69 (9th Cir. 2005); *see also Flynt v. Lombardi*, 782 F.3d 963 (8th Cir.
25 2015); *Jessup v. Luther*, 227 F.3d 993 (7th Cir. 2000). As authorized by Eastern District Local
26 Rule 141(f), CAIR-SV/CC moves the Court to unseal the search warrant application, included in
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1 the record as Defense Exhibit 112, cited throughout the Court’s dispositive extradition denial.
2 ECF No. 208.¹

3 Should the Government request that the Exhibit be maintained under seal, it must
4 establish two things: That sealing is necessary to preserve a compelling government interest and
5 that sealing is narrowly tailored to serve that interest. *See Globe Newspaper Co. v. Superior*
6 *Court*, 457 U.S. 596 (1982); *see also Times Mirror Co. v. United States*, 873 F.2d 1210 (9th Cir.
7 1989); *see generally Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978); *Press-*
8 *Enterprise Co. v. Superior Court of California for Riverside County*, 478 U.S. 1 (1986).

9 As established above, there are no longer higher values or government interests justifying
10 non-disclosure, and the absence of any specific, factual reasons for keeping the Exhibit under
11 seal requires that the Court open the Exhibit to the public and the press.

12 Given that the Court has already discussed the relevant document in a prior Order, where
13 it held that the Defense could discuss that document and that the protective order did not control
14 the Court’s decision on sealing, reliance on a blanket protective order cannot justify non-
15 disclosure and, here, would be grossly misplaced as the document is an exhibit in the record. *See*
16 *Foltz v. State Farm Mutual Auto Insurance Company*, 331 F.3d 1122, 1138 (9th Cir.2003).

17 Moreover, the Court has also discussed the relevant document at length in its Order
18 Declining Extradition, which indicates that the document does not otherwise qualify for sealing.
19 The Court suggested in Doc. 136 that the sealed Exhibit does not disclose witnesses by name —
20 and certainly does not reveal more than the court order — and stated that the Government *cannot*
21 *rely on vague assertions of witness safety to keep the information from the public.* (Doc. 136, p.
22 5.) (emphasis added). In any case, any such specific assertions could be dealt with by
23 appropriate redactions, but there is no indication that full sealing is necessary.

24 The public and the press’s overwhelming interest in accessing the sealed Exhibit and the
25 Court’s reliance on the Exhibit invalidates any reason for non-disclosure. An Exhibit may be
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28 ¹ The undersigned has consulted with the Defense, which concurs that there is no reason to
maintain Exhibit 112 under seal. The Defense has authorized the undersigned to notify the Court
that the Defense supports this Motion.

1 sealed to protect the confidentiality of an ongoing investigation, yet that is a temporary
2 justification for sealing and cannot warrant overriding such a strong public interest in accessing
3 the Exhibit. The dispositive order's reliance on the Exhibit evinces the significance of the
4 Exhibit to this case, to the public and to the press, and warrants greater deference to the
5 presumption in favor of disclosure. The press and the public must be able to access the sealed
6 Exhibit because it is evidently necessary to understand the Government procedures, the workings
7 of Omar Ameen's case, and the Court's denial of extradition.

8 As the sealed Exhibit is central to the Court's extradition denial, and crucial for
9 government accountability and transparency, a generalized reliance on the protective order
10 cannot justify permanent sealing.

11 **III. THE PRESS AND THE PUBLIC HAVE A COMMON LAW RIGHT OF**
12 **ACCESS TO EXHIBIT 112**

13 In addition to the First Amendment right of access, the Court of Appeals for the Ninth
14 Circuit has "long recognized the public and media's common-law right to inspect and copy
15 judicial records." *Valley Broadcasting Co. v. United States Dist. Court*, 789 F.2d 1289, 1293 (9th
16 Cir. 1986). Even under common law, a proponent of continued sealing must establish a
17 compelling showing supported by specific facts outweighing the history and public policies
18 favoring disclosure. *Pintos v. Pacific Creditors Assoc.*, 565 F.3d 1106, 1115 (9th Cir. 2009); *See*
19 *Kamakana v. City and County of Honolulu*, 447 F.3d 1179-79 (9th Cir. 2006); *see also San Jose*
20 *Mercury News v. U.S. Dist. Court*, 187 F.3d 1096 (9th Cir. 1999).

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22 In *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1127 (9th Cir. 2003) and *San Jose*
23 *Mercury News, Inc.*, 187 F.3d 1096 (9th Cir. 1999), for instance, the Ninth Circuit protected
24 public access to court documents because the parties failed to meet the heavy burden of
25 establishing compelling reasons. Given the strong presumption in favor of public access, the
26 Court should order the Exhibit unsealed. *See United States v. Bus. Of Custer Battlefield Museum*
27 *& Store*, 658 F.3d 1188 (9th Cir. 2011).
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IV. CONCLUSION

Both the federal common law and the First Amendment require that the Court grant this motion to unseal Exhibit 112. There are no interests outweighing the public and the press's heightened interest in accessing the Exhibit cited in the dispositive denial of extradition.

DATED: September 14, 2021

/s/ Layli Shirani
LAYLI SHIRANI
CAIR-Sacramento Valley/Central California