

**Case No. 23-55607**

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**In the United States Court of Appeals  
for the Ninth Circuit**

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**COUNTY OF SAN DIEGO**  
*Defendant and Appellant,*

v.

**FRANKIE GREER**  
*Plaintiff,*

and

**THE SAN DIEGO UNION-TRIBUNE, LLC, PRISON LEGAL NEWS,  
AND VOICE OF SAN DIEGO**  
*Intervenors and Appellees*

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On Appeal From the United States District Court  
for the Southern District of California  
Honorable Jinsook Ohta  
Case No. 3:19-cv-0378-JO-DEB

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**BRIEF OF AMICI CURIAE COALITION OF PRESS AND OPEN  
GOVERNMENT ORGANIZATIONS IN SUPPORT OF APPELLEES**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), the undersigned counsel states that The Appeal, Californians Aware, the First Amendment Coalition, Freedom of the Press Foundation, Public Justice, and the Washington Coalition for Open Government are all 501(c)(3) organizations and are not publicly held corporations; none has any parent corporation; and none has shares owned by any publicly held corporation.

The Society of Professional Journalists is a 501(c)(6) organization and is not a publicly held corporation; does not have a parent corporation; and has no shares owned by any publicly held corporation.

Dated: February 23, 2024

By: /s/ Jaqueline Aranda Osorno  
Jaqueline Aranda Osorno  
PUBLIC JUSTICE

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## STATEMENTS OF INTEREST

Amici are a coalition of news media and open government organizations with a deep commitment to protecting First Amendment rights and ensuring government transparency.<sup>1</sup>

**The Appeal** is a nonprofit news organization that exposes the harms of the American criminal legal system and elevates the solutions that emerge from the communities most affected by policing, jails, and prisons in the U.S. The Appeal helps shape the national narrative about justice and punishment through fact-based reporting and analysis that centers the voices of the people directly impacted by the issues it covers and educates the public on how the criminal legal system works. The Appeal has a special focus on communities and policy debates often ignored by traditional national media, or increasingly lost in the consolidation and closure of local news outlets. The Appeal relies heavily on access to public records, including court documents, to produce timely and relevant news coverage.

**Californians Aware** (CalAware) is a nonpartisan nonprofit corporation organized under the laws of California and eligible for tax exempt contributions as

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<sup>1</sup> No party's counsel authored this brief in whole or in part nor did a party, its counsel, or any other person contribute money to fund preparing or submitting this brief. *See* Fed. R. App. P. 29(a)(4). All parties have consented to the filing of this amicus brief.

a 501(c)(3) charity pursuant to the Internal Revenue Code. Its mission is to foster the improvement of, compliance with, and public understanding of the First Amendment and our state's transparency laws, in order to ensure that the public has access to the information it needs to be well-informed about the actions of its government. To that end, CalAware frequently advises on and advocates for greater public access to courts, public records, and public meetings.

The **First Amendment Coalition** (FAC) is a nonpartisan, nonprofit public interest organization dedicated to defending free speech, free press, and the people's right to know. FAC believes that the broadest range of engaged and informed communities is essential to the health of our democracy—that the values expressed by the First Amendment provide a blueprint for an inclusive, equitable society and a responsive, accountable government. To that end, FAC educates, advocates, and litigates to advance government transparency and First Amendment protections for all, especially in the area of access to court records and proceedings.

**Freedom of the Press Foundation** (FPF) is a non-profit organization that protects, defends, and empowers public-interest journalism. FPF regularly writes about and participates in legal proceedings to oppose legislation and judicial orders that violate the First Amendment and undermine press freedoms, including court sealings, gag orders, and prior restraints.



**Public Justice** is a national public interest advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting to preserve access to justice for victims of corporate and governmental misconduct and preserving the civil justice system as an effective tool for holding the powerful accountable. To further its goal of defending access to justice for all, Public Justice has long conducted a special project devoted to ensuring court transparency. Public Justice regularly engages in litigation to unseal court records.

The **Society of Professional Journalists (SPJ)** is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry, works to inspire and educate the next generation of journalists and protects First Amendment guarantees of freedom of speech and press.

The **Washington Coalition for Open Government (WCOG)** is a Washington State-based independent, nonpartisan, nonprofit organization dedicated to promoting the public's right to know in matters of public interest and in the conduct of the public's business. Its mission is to foster open government, supervised by an informed citizenry, which is the cornerstone of democracy. WCOG and its

members believe government agencies exercise their authority by consent of the governed, and therefore have a duty to act in a transparent manner, including through compliance with disclosure of court and public records.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

Forty-seven people have died in the San Diego County jails since 2021. Many more have suffered serious injuries. The public has a right to know why. It also has a right to know whether these deaths and injuries were preventable and, if so, whether Appellant County of San Diego (hereafter “the County”)—who controls of the health and safety of those it incarcerates—has taken reasonable steps to prevent further deaths or injuries. Despite the public’s significant interest in understanding and scrutinizing the County’s operation of the jails, or perhaps precisely because of that significant interest, the County has spent years fighting to keep information relating to in-custody deaths from the public.

This appeal arises out of the district court’s order to unseal documents created by the San Diego Sheriff’s Department Critical Incident Review Board (CIRB), an internal oversight board that investigates deaths and serious injuries in San Diego County jails. 1-SER-3. Specifically, Appellees-Intervenors seek to unseal CIRB memoranda, records, and reports (together, the “CIRB documents”) relating to twelve deaths at the jail, which were submitted to and relied on by the district court

in its adjudication of dispositive motions in the underlying case. 1-SER-271, 276. In a thorough opinion granting Intervenors' motion to unseal, the district court found that the County failed to meet its burden of demonstrating compelling reasons for keeping the CIRB documents sealed.<sup>2</sup> The district court granted the motion to unseal. 1-SER-10.

This Court should affirm the district court's order. As explained in Section I, access to court records and proceedings by the public, including the media, is fundamental to the operation and integrity of our government. As explained in Section II, the right of access attaches to the CIRB documents because they were submitted in support of a dispositive motion. Because the right of access attaches, it is the County's burden to rebut the strong presumption of access created by common law and the First Amendment. The County has failed to establish a compelling interest in secrecy that overcomes that presumption. Finally, as explained in Section III, vindication of the right of access is particularly critical when court records relate to carceral institutions, such as in this case. The CIRB documents must be unsealed.

## ARGUMENT

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<sup>2</sup> The district court's finding that the CIRB documents are not protected by attorney-client or work product privilege is also the subject of this appeal. Amici express no opinion on that issue.

## **I. Openness Is Fundamental to the Workings of Our System of Government and Law**

Access to public records, including judicial records, is a fundamental element of the U.S. legal system. *See generally Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572–73 (1980); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597–98 (1978); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Phoenix Newspapers Inc. v. U.S. Dist. Ct. for Dist. of Ariz.*, 156 F.3d 940, 946 (9th Cir. 1998). The right of access “is justified by the interest of citizens in ‘keep[ing] a watchful eye on the workings of public agencies.’” *Kamakana*, 447 F.3d at 1178 (citing *Nixon*, 435 U.S. at 598); *see also Associated Press v. U.S. Dist. Ct. for Cent. Dist. of Calif.*, 705 F.2d 1143, 1145 (9th Cir. 1983) (noting that access is “often important to a full understanding of the way in which the judicial process and the government as a whole are functioning”) (internal quotations and citation omitted). Specifically, the right of access to judicial records and proceedings is “‘based on the need for federal courts, although independent—indeed, particularly because they are independent—to have a measure of accountability and for the public to have confidence in the administration of justice.’” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)). As courts have reasoned, “[t]he political branches of government claim legitimacy by election, judges by reason.” *Union Oil Co. of Calif.*

*v. Leavell*, 220 F.3d 562, 568 (7th Cir. 2000). “Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat, which requires compelling justification.” *United States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008) (quoting *Union Oil Co. of Calif.*, 220 F.3d at 568).

The press serves a critical function in gathering and disseminating information that allows the public to keep that “watchful eye” over the government. *Kamakana*, 447 F.3d at 1178 (noting that the public’s “vigilance is aided by the efforts of newspapers”). This is because reporters function as “surrogates for the public,” which relies on news coverage to learn about events or issues of concern. *See Richmond Newspapers*, 448 U.S. at 573. As has long been recognized, public opinion is a key restraint on abuse of government power; “without publicity, all other checks are insufficient.” *Id.* at 596 (Brennan, J., concurring in the judgment) (quoting 1 J. Bentham, *Rationale of Judicial Evidence* 524 (1827)). When reporters face needless obstacles in investigating, publishing, and disseminating the news, the public suffers the consequences.

## **II. The Law Requires That the CIRB Records Be Unsealed**

The CIRB documents will shine a light inside a jail that has long failed to prevent and respond to deaths of people in the County’s custody.<sup>3</sup> Because the County has failed to establish a compelling reason to maintain the CIRB documents under seal, this Court should affirm the district court’s decision ordering unsealing.

### **A. The CIRB Records Are Presumptively Public Because They Were Attached to an Opposition to a Motion for Summary Judgment**

The County argues that the right of access does not attach to the CIRB documents at all because they have been “traditionally kept secret.” Appellant’s Opening Brief (“Opening Br.”) at 48–49. But the County misunderstands, or disregards, established caselaw on the applicability of the right of access. “Determining whether there is a public right of access requires looking at the class of proceedings as a whole[.]” *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1086 (9th Cir. 2014). Unlike grand jury transcripts, which are court records that have not been historically accessible to the public, *see Kamakana*, 447 F.3d at 1185, the CIRB documents were attached to Plaintiff’s opposition to the County’s motion for summary judgment—a motion related to civil trial proceedings to which

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<sup>3</sup> *See generally* San Diego County Sheriff’s Department, Report 2021-109, California State Auditor (Feb. 2022), <https://perma.cc/S6FM-LPF3>.

a historical right of access undoubtedly exists.<sup>4</sup> See *Richmond Newspapers*, 448 U.S. at 580 n.17 (Burger, C.J.) (plurality opinion) (“Whether the public has a right to attend trials of civil cases is a question not raised by this case, but we note that historically both civil and criminal trials have been presumptively open.”); *id.* at 596–97 (Brennan, J., concurring) (referring to the value of open proceedings in civil cases); *id.* at 599 (Stewart, J., concurring) (“[T]he First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal.”). Accordingly, because “the strong presumption of access to judicial records applies fully to dispositive pleadings, including motions for summary judgment and related attachments,” *Kamakana*, 447 F.3d at 1179, the CIRB documents are presumptively public. See also *Ctr. for Auto Safety*, 809 F.3d at 1101 (“[P]ublic access to filed motions and their attachments does not merely

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<sup>4</sup> For this reason, the County’s reliance on *Forbes Media LLC v. United States*, 61 F.4th 1072 (9th Cir. 2023), is misplaced. *Forbes* involved whether a presumptive right of access attached to records filed in third-party technical assistance proceedings under the All Writs Act that were connected to ongoing criminal investigations—not a civil pretrial motion. The Court found the records were “traditionally kept secret” and were not subject to a presumptive right of access under the common law. *Id.* at 1081–83. In contrast, the CIRB documents at issue here were filed in connection with a motion for summary judgment. As discussed, Ninth Circuit case law makes clear that the public has a presumptive right to such records. See *id.* at 1179; *Ctr. for Auto Safety*, 809 F.3d at 1101, 1103.

depend on whether the motion is technically ‘dispositive.’ Rather, public access will turn on whether the motion is more than tangentially related to the merits of a case.”).

**B. There Is No Compelling Interest that Overcomes the Significant Public Interest in Unsealing**

Because the right of access attaches to the CIRB documents, the County can overcome the strong presumption of public access only by showing there are “compelling reasons” for keeping the CIRB documents sealed, which it cannot do here. *See Ctr. for Auto Safety*, 809 F.3d at 1098–99. Specifically, the County has not met its burden of establishing a compelling interest in secrecy that outweighs the public interest in unsealing records that were submitted to and relied on by the district court in its adjudication of a motion for summary judgment. *See Greer v. Cnty. of San Diego*, No. 19-CV-378, 2023 WL 2316203, at \*6, \*16 (S.D. Cal. Mar. 1, 2023).

The question of whether a court record should be sealed begins with a “strong presumption in favor of access to court records.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). This presumption can be overridden only if the party seeking secrecy can establish there are “sufficiently compelling reasons for doing so.” *Id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.--N. Dist. (San Jose)*, 187 F.3d 1096, 1102 (9th Cir. 1999)). In determining whether there are compelling reasons to seal, the court must “conscientiously balance[] the competing



interests of the public and the party who seeks to keep judicial records secret.” *Ctr. for Auto Safety*, 809 F.3d at 1097 (quoting *Kamakana*, 447 F.3d at 1179). “What constitutes a compelling reason [to seal documents] is a determination best left to the sound discretion of the trial court.” *Id.* (quoting *Nixon*, 435 U.S. at 599) (internal quotations omitted).

In this case, the district court rightfully concluded that the County failed to rebut the strong presumption in favor of unsealing the CIRB documents. 1-SER-12–13; *see Kamakana*, 447 F.3d at 1182 (“[A] judge need not document compelling reasons to unseal; rather the proponent of sealing bears the burden with respect to sealing.”). The district court recognized that “[i]nformation about the County’s possible mistreatment of [incarcerated people] is inherently a matter of significant public interest.” 1-SER-11. Indeed, courts across the country have similarly found that the public has a significant interest in matters relating to conditions of confinement in carceral institutions. *See, e.g., Newman v. Graddick*, 696 F.2d 796, 801 (11th Cir. 1983) (“[L]itigation concerning penal administration in Alabama is of paramount importance to the citizens of that state.”); *Hernandez v. Cnty. of Monterey*, No. 13-CV-02354-BLF, 2023 WL 5418753, at \*4 (N.D. Cal. Aug. 21, 2023) (acknowledging that, with regard to jail operations, “the public has a strong interest in knowing how their tax dollars are spent, and in evaluating the performance

of public officials and contractors”); *Braggs v. Dunn*, 382 F. Supp. 3d 1267, 1272 (M.D. Ala. 2019) (“[C]ertain Alabamians may care about correctional understaffing because they care about whether their tax dollars are misspent; others may care about the issue because they do not want their government to violate the Constitution. Either way one looks at it, Alabamians indisputably have a powerful interest in overseeing [the Alabama Department of Corrections’] performance.”); *Storm v. Twitchell*, No. 1:12-CV-00179-CWD, 2014 WL 4926119, at \*14 (D. Idaho Sept. 29, 2014) (“[T]he public has a strong interest in knowing what occurs at the county jails, which are funded entirely by taxpayer dollars. Whether conditions at the county jails violate the Eighth Amendment of the United States Constitution is important information for the general public to know, so that our country can continue to maintain humane incarceration facilities.”); *Kelly v. Wengler*, 979 F. Supp. 2d 1243, 1246 (D. Idaho 2013) (“Idaho taxpayers pay [a private prison company] to operate one of their prisons. With public money comes a public concern about how that money is spent.”).

Further, the district court correctly concluded that the County failed to establish a “compelling reason” for denying the public access to the CIRB documents. 1-SER-10-13. On appeal, the County insists that it has “a profound interest in maintaining a culture of trust between law enforcement and legal

counsel.” Opening Br. at 50–52. The County further warns that, if these records are unsealed, “[w]here communications had been candid and open, they will become hesitant. Where debate about lessons learned and future mitigation had been robust, it will become guarded.” *Id.* at 51. The County offers no specific factual basis for these assertions. *See Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (“Th[e] presumption of access may be overcome only ‘on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.’”) (quoting *Valley Broad. Co. v. U.S. Dist. Ct. for Dist. of Nev.*, 798 F.2d 1289, 1293 (9th Cir. 1986)). And ultimately, the ability of the County to maintain trust and candor between client and counsel going forward simply does not turn on whether the CIRB records are unsealed but on how the County communicates the nature and scope of confidentiality to those who participate in the CIRB reviews. And to the extent the County suggests that disclosure of CIRB documents will impair its ability to remedy its well-documented inability to keep people alive, this Court should reject that argument. By the County’s admission, CIRB investigations and related documents have been shielded from the public for over twenty years. Opening Br. at 9. Given the increasing number of deaths, that secrecy hardly seems to be facilitating any meaningful change.

Ultimately, the public has a right to access the CIRB documents to determine whether the County is carrying out its constitutional obligation to keep people in its custody safe and whether the courts are properly resolving cases involving violations of that obligation. *See E.E.O.C. v. Election Co.*, 900 F.2d 168, 171–72 (9th Cir. 1990) (Reinhardt, J., concurring in part and dissenting in part) (noting that “[s]ince it is important for people to be able to assess the conduct of public institutions, the presumption [of access] weighs even more heavily in favor of public access” in cases involving government entities).

### **III. Access to Court Records is Particularly Critical in Covering Carceral Institutions**

The power of transparency through media coverage has been well-illustrated in San Diego, home of the jails implicated in this appeal. A recent California state audit found that 185 people died in custody between 2006 and 2020, concluding that systemic deficiencies in intake screenings, medical and mental health care, and safety checks have likely contributed to the high rate of deaths.<sup>5</sup> *See* Report 2021-109 at 53. That state audit was conducted only after local lawmakers asked the state auditor to investigate years of deaths at the jail. Jeff McDonald & Kelly Davis, *San*

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<sup>5</sup>At least forty-eight people have died in the same jails since then, including three deaths in the current calendar year alone. San Diego County Sheriff’s Department, *Homicide, In-Custody Deaths, Officer Involved Shootings* (last visited Feb. 22, 2024), <https://perma.cc/8HBD-R7LD>.

*Diego-Area Lawmakers File Joint Request For State Audit Of County Jail Deaths*, San Diego Union-Tribune (May 14, 2021), <https://perma.cc/CU89-RW2S>. Remarkably, lawmakers credited The San Diego Union-Tribune’s “Dying Behind Bars” investigation published in 2019 as an impetus for requesting the audit.

In general, reporters who cover issues relating to incarceration shine a light into America’s darkest institutions. See Shaila Dewan, *Inside America’s Black Box: A Rare Look at the Violence of Incarceration*, N.Y. Times (Mar. 30, 2019), <https://perma.cc/D6TF-BX7B> (“Prisons are the black boxes of our society. With their vast complexes and razor wire barriers, everyone knows where they are, but few know what goes on inside.”). As demonstrated in San Diego, this media coverage is critical. After all, “[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Richmond Newspapers*, 448 U.S. at 572.

But investigating and producing news relating to carceral institutions can be an uphill battle. While the First Amendment protects the rights of non-incarcerated people to communicate by mail with incarcerated people and the rights of incarcerated people to send and receive mail, these rights are not absolute. See *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Procunier v. Martinez*, 416 U.S. 396, 408 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989);

*Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1209–10 (9th Cir. 2017) (discussing First Amendment caselaw relating to prison correspondence). Additionally, carceral institutions are highly surveilled, chilling the exercise of First Amendment rights. Phone calls and in-person interviews between journalists and their incarcerated sources may be recorded and listened to by corrections staff, so talking to the press inherently carries a risk of retaliation for people seeking to share their stories. *See* Brian Nam-Sonenstein, *Breaking News From Inside: How Prisons Suppress Prison Journalism*, Prison Policy Initiative (June 15, 2023), <https://perma.cc/VQZ8-6JXT> (explaining it is “standard prison practice” to censor and surveil incarcerated people’s mail, messages, phone calls, and video visits, all of which “are central to a journalist’s ability to maintain sources, work closely with editors, and report the news without interference”); Dewan (“Prisoner communication is sharply curtailed—it is monitored, censored and costly.”). And facilities may forbid incarcerated people from speaking to journalists entirely. *See* *The Trouble With Reporting On Prisons*, WNYC Studios (Sept. 23, 2016), <https://perma.cc/7QXN-JM68>. Consequently, reporters who cover incarceration rely heavily on access to public records and court dockets.

The risks to incarcerated people when speaking to the press and the steep obstacles reporters face in gathering information affect both the quality and scope of

reporting about the possible mistreatment of incarcerated people. Their treatment is undoubtedly an issue of significant public concern. Millions of people are incarcerated on any given day,<sup>6</sup> and millions more are under control of the carceral system or have had family members in jail or prison.<sup>7</sup> The need for transparency is clear. As the *New York Times* recently reported, at least 6,182 people died in American prisons in 2020, and it is likely that hundreds more died in county jails across the country. See Jennifer Valentino-DeVries & Allie Pitchon, *As the Pandemic Swept America, Deaths in Prisons Rose Nearly 50 Percent*, N.Y. Times (Feb. 19, 2023), <https://perma.cc/7AUP-LRMQ>. Centralized, comprehensive data about carceral mortality rates does not exist, leaving advocates and reporters with the arduous task of collecting that data themselves. *Id.* Ultimately, hundreds of deaths go unreported by the media, and many may go unseen to anyone other than their loved ones and those who work or are confined at the carceral institution where

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<sup>6</sup> According to the Prison Policy Initiative, almost two million people can be held in “1,566 state prisons, 98 federal prisons, 3,116 local jails, 1,323 juvenile correctional facilities, 181 immigration detention facilities, and 80 Indian country jails, as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.” Prison Policy Initiative, *Mass Incarceration, The Whole Pie 2023* (Mar. 14, 2023), <https://perma.cc/2ZH9-FELX> (citing sources).

<sup>7</sup> *Mass Incarceration, The Whole Pie 2023* (reporting that in addition to the millions of people incarcerated, an additional 803,000 are on parole and 2.9 million are on probation); *Report: Every Second, The Impact of the Incarceration Crisis on America’s Families*, FWD.us (Dec. 2018), <https://perma.cc/2GCD-NKTZ>.

the death occurred. According to a recent Congressional subcommittee investigation into the Department of Justice’s compliance with a 2013 law requiring the collection of custodial death data, the Department failed to identify almost one thousand in-custody deaths in Fiscal Year 2021 alone. Staff of S. Permanent Subcomm. on Investigations, Comm. on Homeland Sec. & Gov’t Affairs, 117th Cong., *Uncounted Deaths in America’s Prisons & Jails: How the Department of Justice Failed to Implement the Death in Custody Reporting Act* (Sept. 20, 2022). Without the ability to obtain even the barest minimum of information relating to a death—its mere existence—the public interest in disclosure of *any* documents relating to *any* in-custody deaths, such as the CIRB records in this case, is clear: Without transparency, there can be no accountability. And without accountability, people will keep dying.

### CONCLUSION

For the reasons stated above and in Appellees’ response brief, the Court should affirm the district court’s order unsealing the CIRB documents.

Dated: February 23, 2024

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), Fed. R. App. P. 29(a)(5), and Ninth Circuit Rule 32-1(a) because this brief contains 3,415 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as calculated by Microsoft Word for Microsoft 365, Version 2312. This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a) because this brief has been prepared in proportionally spaced typeface using 14-point Times New Roman font.

Dated: February 23, 2024

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**CERTIFICATE OF SERVICE**

I certify that on February 23, 2023, the foregoing document was served on all parties or their counsel of record through CM/ECF system.

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