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Submitted via ECF

February 8, 2023

The Honorable Andrew S. Hanen  
United States District Court for the Southern District of Texas  
515 Rusk Street, Room 9110  
Houston, TX 77002

Re: United States v. Saman Ahsani (4:19-CR-147-1)

On January 24, 2023, the Financial Times, Ltd., The Guardian, and Global Investigations Review (collectively, “Media Intervenors”) filed a Motion to Unseal Sentencing Memoranda in the above-captioned case (ECF No. 123) (hereinafter, the “Motion”). The Motion argued that the sentencing memoranda filed under seal by Saman Ahsani and by the government (ECF Nos. 115 and 116) should be immediately unsealed in their entirety—or with, at most, only limited redactions necessitated by a compelling interest—in accordance with the First Amendment and common law.

Though Mr. Ahsani, through his counsel, informed the undersigned counsel for Media Intervenors that he would oppose the relief sought by the Motion, no public opposition has been filed by Mr. Ahsani. Nor has the government publicly filed or stated any opposition to the Motion.

Mr. Ahsani was sentenced on January 30, 2023.

Media Intervenors respectfully request that the Court enter an order granting Media Intervenors’ Motion and unsealing the sentencing memoranda, as well as any other sealed judicial records concerning Mr. Ahsani’s sentencing.<sup>1</sup> Alternatively, Media Intervenors respectfully request that the Court enter an order directing the parties to file any responses to the Motion, which has been pending since January 24, within seven (7) days. In the event any opposition is filed, Media Intervenors further request that they be granted an opportunity to file a reply within seven (7) days.

Further, since the filing of Media Intervenors’ Motion, additional documents appear to have been filed under seal in this matter, including the Statement of Reasons filed in connection with Saman Ahsani’s sentencing (ECF No. 129). Media Intervenors respectfully request that the Court unseal those judicial records as well. Both the constitutional and common law

<sup>1</sup> Prior to Media Intervenors’ filing of their Motion on January 24, Mr. Ahsani’s counsel filed a “sealed event” (ECF No. 118). As noted in the Motion, to the extent that filing “pertains to [Mr. Ahsani’s] sentencing or this motion to unseal, it should also be unsealed.” Mot. at 2, n. 1. The same is true of the “sealed events” now docketed at ECF Nos. 122 and 130.

rights of access apply fully to the Statement of Reasons, like other “documents filed for use in sentencing proceedings.” *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 176 (5th Cir. 2011) (stating that “courts of appeals have also recognized a First Amendment right of access to” such documents and collecting cases); *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848–50 (5th Cir. 1993) (finding common law access right attaches to court orders). The importance of public oversight of sentencing is no less critical when it comes to the court’s written bases for the judgment, “especially . . . in this case, where, as in the vast majority of criminal cases, there was no trial, but only a guilty plea.” *Hearst Newspapers, L.L.C.*, 641 F.3d at 176; *see also Rita v. United States*, 551 U.S. 338, 357 (2007) (“By articulating reasons” for imposing a particular sentence on a defendant, “the sentencing judge not only assures reviewing courts (and the public) that the sentencing process is a reasoned process but also helps that process evolve.”).

In addition to the constitutional and common law presumption of access, the statute requiring a court to file a statement of reasons contemplates that such documents—like other judicial records filed in connection with the sentencing process—are presumptively public. *See* 18 U.S.C. § 3553(c) (requiring courts to state the reasons for the imposition of a particular sentence “in open court,” and requiring that “a transcription or other appropriate public record of the court’s statement of reasons” be provided to the Sentencing Commission); *see also* S. Rep. No. 98-225, at 80 (1983), *reprinted in* 1984 U.S.C.C.A.N. at 3263 (emphasis added) (contemplating that a court’s “statement of reasons” would “inform[] the defendant *and the public* of the reasons for the sentence.”).<sup>2</sup>

Under the First Amendment, the right of access to the Statement of Reasons may be overcome “only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984). Under the common law, a court may only seal this judicial record if it makes specific findings that the presumption of access is outweighed by the interests in nondisclosure. *Van Waeyenberghe*, 990 F.2d at 848–49. Because there has been no showing of any compelling interest that would necessitate the sealing of the Statement of Reasons, either in whole or in part, it should be unsealed. To the extent the Court makes specific findings that a compelling interest justifies sealing some portion of the Statement of Reasons in this case, any such sealing should be narrowly tailored to serve that interest, and the Court should make public a redacted version of the Statement of Reasons.

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<sup>2</sup> Media Intervenors are aware that the form promulgated by the Judicial Conference for a court’s statement of reasons states that it is “not for public disclosure.” *See* Statement of Reasons, Form AO 245B, <https://www.uscourts.gov/sites/default/files/ao245b.pdf>. To the extent, however, that language is interpreted to either mandate or authorize automatic sealing of statements of reasons—including the Statement of Reasons filed in this action—without a court being required to make any specific factual findings as to the necessity of such sealing in a particular case, it does not pass constitutional muster; such a requirement would be unconstitutional both on its face and as applied here.

In sum, to the extent any judicial documents—including any transcripts of any proceedings—concerning Mr. Ahsani’s sentence are currently under seal, Media Intervenors respectfully request that they be unsealed. To the extent such records or proceedings are not reflected on the public docket, Media Intervenors also respectfully request that they be publicly docketed.

Dated: February 8, 2023

Respectfully submitted,

/s/ Katie Townsend

Katie Townsend

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was electronically filed on February 8, 2023. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Katie Townsend*  
Katie Townsend  
*Counsel for Media Intervenors*