16-308(L),
16-353, 16-1068, 16-1094

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

HSBC BANK USA, N.A., HSBC HOLDINGS PLC,
*Defendants-Appellant*s,

HUBERT DEAN MOORE, JR.,
Appellee.

On Appeal from the United States District Court
for the Eastern District of New York,

BRIEF OF *AMICI CURIAE* THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 25 NEWS MEDIA ORGANIZATIONS IN SUPPORT OF APPELLEE

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The Seattle Times Company: The McClatchy Company owns 49.5% of the voting common stock and 70.6% of the nonvoting common stock of The Seattle Times Company.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

As representatives and members of the news media, *amici* have a strong interest in ensuring that the public's First Amendment and common law rights of access to court documents are upheld. *Amici* regularly report on, or represent journalists who report on, controversies pending before the courts. Collectively, *amici* require access to court records, particularly where they may shed light on a newsworthy event. Sealing of court documents in their entirety interferes with reporters' ability to gather facts and tell stories that the public needs to hear.

Amici are: American Society of News Editors; Association of Alternative Newsmedia; The Center for Investigative Reporting; CNBC, LLC; Daily News, LP; Dow Jones & Company, Inc.; E.W. Scripps Company; First Look Media Works Inc.; Forbes Media LLC; Foundation for National Progress dba Mother Jones; Gannett Co., Inc.; Hearst Corp.; International Documentary Ass'n; Investigative Reporting Workshop at American Univ.; MediaNews Group, Inc. dba Digital First Media, LLC; MPA – The Association of Magazine Media; National Newspaper Ass'n; National Press Photographers Ass'n; National Public Radio, Inc.; The New York Times Company; The NewsGuild – CWA; Online News Ass'n, Reporters Committee for Freedom of the Press, Reporters Without Borders, The Seattle Times Company, and Tully Center for Free Speech. A full description of each party is included in Appx A. Additional counsel are listed in Appx B.

INTRODUCTION AND SUMMARY OF THE ARGUMENT[1]

Access to judicial documents—particularly where fraud and misconduct affecting the public and executive branch conduct are at issue—is necessary to fostering a well-informed citizenry and confidence in our judicial system.

The district court here is engaged in the continued oversight of the deferred prosecution agreement ("DPA") that the Department of Justice submitted regarding the activities of HSBC Bank USA and HSBC Holdings ("HSBC"). The district court was asked to release a sealed report filed by a compliance monitor, and it correctly held that the monitor's report should be public.

As *amici* write separately to emphasize, there can be little doubt that the issues at stake are significant: access to the monitor's report will help the press and public understand the government's handling of one of the largest financial controversies in recent history and the reasoning of the district court's judgment.

Moreover, courts have repeatedly affirmed the importance of openness in cases such as this one, involving newsworthy events pertaining to allegations of fraud and economic misconduct. Here, the overwhelming public interest demands that access be allowed, as this case has fueled intense national debate about

[1] Pursuant to Fed. R. App. P. 29(a), *amici* state that all parties have consented to the filing of this brief. Pursuant to Fed. R. App. P. 29(c)(5) and Local R. 29.1(b), *amici* state as follows: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person—other than the *amici curiae*, their members or their counsel—contributed money that was intended to fund preparing or submitting the brief.

whether the U.S. government has been too lenient in its prosecution of big banks, like HSBC, that contributed to the worldwide economic crisis.

Lastly, *Amici* recognize that compelling interests may justify the sealing of court records in rare circumstances. To the extent a compelling interest exists that would justify some degree of confidentiality, any restrictions on public access must be narrowly tailored, and thus should be handled through limited redactions, rather than complete sealing. Even heavily redacted documents that protect privacy interests can nonetheless provide important information that helps the public hold the government accountable and allows it to understand how the courts work.

For the reasons set forth herein, and in Appellees' brief, *amici* respectfully urge this Court to affirm the district court's order unsealing the monitor's report.

ARGUMENT

I. There is an overwhelming public interest in access to court documents involving newsworthy material; unsealing the monitor's report will serve the vital functions of discouraging government misconduct and promoting informed public discourse.

For centuries, the United States has valued transparency in its judicial system as a significant means of promoting public confidence in government and creating an informed citizenry. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980) (stating openness has always been considered "an indispensable attribute" of the justice system). Among other things, access "permits the public to participate in and serve as a check upon the judicial

process—an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). As this Court has stated, "[w]ithout monitoring…the public could have no confidence in the conscientiousness, reasonableness, or honesty of judicial proceedings." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995) ("*Amodeo II*"). And "[s]uch monitoring is not possible without access to testimony and documents that are used in the performance of Article III functions." *Id.* at 1048.

Accordingly, it is well-settled that the public and the press have a broad presumptive right of access to court proceedings and documents rooted both in the U.S. Constitution and common law, which arises from the public's interest in observing the federal courts' handling of matters before them. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *Hartford Courant Co. v. Pellegrino,* 380 F.3d 83, 91 (2d Cir. 2004). It is this public interest in the information in judicial documents that plays a key role in determining whether access is allowed under both the common law and First Amendment. The common law test requires courts to "weigh[] the interests advanced by the parties in light of the public interest and the duty of the courts," *United States v. Amodeo* ("*Amodeo I*"), 44 F.3d 141, 146 (2nd Cir. 1995) (quoting *Nixon v. Warner Communications*, 435 U.S. 589, 602 (1978)), while the First Amendment standard employs the so-called "experience and logic" test, examining both whether the documents "have

historically been open to the press and general public" and whether "public access plays a significant positive role in the functioning of the particular process in question." *Lugosch*, 435 F.3d at 120 (quoting *Press–Enter. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 8 (1986) ("*Press–Enterprise II*") (quotation marks omitted)).

A. The public interest in access is at its highest when documents shed light on governmental actions and possible misconduct.

The law of this Circuit firmly establishes that the public's right of access extends to documents similar to those at issue here. *See United States v. Erie Cty., N.Y.*, 763 F.3d 235, 236–37 (2d Cir. 2014) (finding a right of access to monitor's reports); *Amodeo I*, 44 F.3d at 143 (same); *United States v. Haller*, 837 F.2d 84, 85–89 (2d Cir. 1988) (stating plea agreements are presumptively open to the press and public).

However, it is not just the type of document at issue that is significant. The public's right of access is strongest when it provides a means of monitoring governmental conduct. *See Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966) (stating the right of access "guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism"); *see also United States v. El-Sayegh*, 131 F.3d 158, 161 (D.C. Cir. 1997) (stating the right of access is especially important where documents assure a means for public monitoring of "prosecutorial misconduct"); *Seattle Times Co. v.*

United States Dist. Court, 845 F.2d 1513, 1517 (9th Cir. 1988) (stating access to pretrial documents is important to understanding whether "government as a whole are functioning") (citation omitted). As the Seventh Circuit has explained, "in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch." *Smith v. United States Dist. Court for S. Dist.*, 956 F.2d 647, 650 (7th Cir. 1992) (citation omitted).

Indeed, courts have found that public access to law enforcement materials involved in a judicial proceeding play an arguably even more significant role "in the functioning of the criminal justice system" than access to ordinary judicial documents because they afford the press and public the ability to "ensure that judges are not merely serving as rubber stamps" for the executive branch. *In re Application of N.Y. Times Co.*, 585 F. Supp. 2d 83, 90 (D.D.C. 2008); *accord, e.g. In re Washington Post*, 807 F.2d 383, 391 (4th Cir. 1986) (vacating district court's sealing orders where the district court simply "deferr[ed] to the executive branch"); *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1180 (6th Cir. 1983) (stating a confidentiality agreement between parties could not justify sealing records because a court cannot blindly accept parties' agreements for secrecy "without seriously undermining the tradition of an open judicial system"); *Amodeo I*, 44 F.3d at 146 (finding a right of access to a monitor's reports is

important where the court reviews them "to make sure that the [appointed] officer is doing what she was appointed to do").

Thus, while both the Government and HSBC attempt to argue that the monitor's report should not be unsealed because it is an executive document, the fact that the report is a product of the Government's decision to defer prosecution of HSBC weighs in favor, not against, public access. Absent public scrutiny of the oversight role played by the judiciary in this case, as the district court explained in its earlier order, there is the risk that the court may appear as a mere "potted plant" in a matter involving intense public interest and concern. *United States v. HSBC Bank USA, N.A.*, No. 12-CR-763, 2013 WL 3306161, at *5 (E.D.N.Y. July 1, 2013) ("*HSBC I*"). Thus, unsealing the monitor's report is especially necessary where, as here, the district court is "continuing [its] obligation to monitor the execution and implementation of the DPA." *See United States v. HSBC Bank USA, N.A.*, No. 12-CR-763 (JG), 2016 WL 347670, at *4 (E.D.N.Y. Jan. 28, 2016) ("*HSBC II*").

B. The monitor's report pertains to a matter that is clearly newsworthy and of great importance to the public.

The "logic" prong of the *Press-Enterprise* access test is satisfied where public access plays a "significant positive role" in monitoring government procedures. *See Lugosch*, 435 F.3d at 120 (citation omitted). This Court has held that unsealing is proper where the "issues involved are manifestly ones of public

concern," defined as a "matter that is both newsworthy and of great importance" or "directly relate[] to the functioning of governmental processes." *Erie Cty.*, 763 F.3d at 242 (internal citation and quotation marks omitted).

Applying this rule, this Court has found cases involving fraud and corruption to be matters of public concern. *See, e.g.*, *Amodeo I*, 44 F.3d at 142–43; *Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982). For example, in *Joy*, the public's interest in monitoring a company's fraudulent mismanagement and self-dealing weighed strongly in favor of unsealing a special committee report. *See id*. (stating that "foreclosing public scrutiny" in a case involving a "publicly owned company…and management's obligations to shareholders" is "wholly unjustifiable").

Similarly, this Court has found that matters raising questions about government conduct justifies a heightened public concern. *See Erie*, 763 F.3d at 242. In *Erie*, this Court concluded that unsealing "compliance reports" was in the public interest because those documents would "enable[] the public to understand, monitor, and respond to the progress" involving the Department of Justice and "the Court's role in overseeing that progress." *Id*. "In short, access enables the public to decide whether the Court and the parties—all governmental entities—are doing their jobs in fulfilling the terms of the settlement agreement." *Id.*; *see also Amodeo II*, 71 F.3d at 1050 (finding where an appointed officer's reports, pursuant to a consent decree, investigated allegations of union-related corruption that

"journalists may seek access to judicial documents for reasons unrelated to the monitoring of Article III functions").

Applying these criteria here, it is clear that the monitor's report should be unsealed. From the moment the Department of Justice decided in 2012 to defer prosecution of HSBC, through an agreement that included a record-breaking $1.9 billion fine, and to the present time, there has been widespread and intense public debate concerning this case both nationally and overseas. *See, e.g.*, Editorial, *Too Big to Indict,* N.Y. TIMES, Dec. 11, 2012, http://nyti.ms/2eaFlY8; Dominic Rushe and Jill Treanor, *HSBC's Record $1.9bn Fine Preferable to Prosecution, US Authorities Insist*, THE GUARDIAN, Dec. 11, 2012, http://bit.ly/2dq6hTw; Ese Erheriene and Margot Patrick, *Iranian Miniskirts, Bags of Cash Raise Doubts Over Controls at HSBC*, The Wall St. Journal, March 29, 2016, http://on.wsj.com/1UrRvM8; Christopher M. Matthews, *Justice Department Overruled Recommendation to Pursue Charges Against HSBC, Report Says*, The Wall St. Journal, July 11, 2016, http://on.wsj.com/29zawgr; Jesse Singal, *HSBC Report Should Result in Prosecutions, Not Just Fines, Say Critics*, THE DAILY BEAST, July 18, 2012, http://thebea.st/2dvK2f2; Matt Taibbi, *Gangster Bankers: Too Big to Jail*, ROLLING STONE, Feb. 14, 2013, http://rol.st/18HJtGh.

Just as this Court ruled in *Joy* in favor of public access because of newsworthy questions involving a publicly owned company and its shareholders,

the district court here, similarly found "[t]his case implicates matters of great public concern" and granted access because HSBC Bank "serves 2.4 million customers" and "operates more than 230 bank branches throughout the United States." *HSBC II*, 2016 WL 347670, at *5. The importance of openness in this case is even further amplified by questions of HSBC's alleged fraud and mismanagement, which contributed to the 2008 worldwide economic downturn. According to the Government, not only did HSBC process money for one of the "most powerful and deadly drug gangs in the world," it also aided "rogue states including Libya, Sudan, Burma and Iran" in a scheme which "went on for decades" and resulted in the laundering of hundreds of millions of dollars. Rushe and Treanor, *HSBC's Record $1.9bn Fine Preferable to Prosecution, US Authorities Insist*, *supra*, at 8.

Reports of the Government's decision to enter into the DPA with HSBC prompted heated debate among politicians in the highest levels of state and federal government. For instance, Department of Justice Assistant Attorney General Lanny Breuer strongly defended the agreement despite calling HSBC's actions a "blatant failure," while Senator Elizabeth Warren harshly admonished officials with Treasury for not helping Justice pursue charges against the bank. *See, e.g.*, Glenn Greenwald, *HSBC, Too Big to Jail, Is the New Poster Child for US Two-Tiered Justice System*, THE GUARDIAN, Dec. 12, 2012, http://bit.ly/2dCWJT4;

Linette Lopez, *Elizabeth Warren Savaged A Treasury Official During A Hearing on HSBCs International Money Laundering Scandal*, BUSINESS INSIDER, Mar. 7, 2013, http://read.bi/2ebD3un.

But the public interest in this matter is not limited to HSBC's misconduct. Members of the public and Congress have also questioned the actions of the Department of Justice in this case. Indeed, in its order, the district court cited the role of the Department—"[its] decision to file a DPA" and "the progress of the arrangement" between the Department and HSBC—as factors that justified and even required disclosure. *HSBC II*, 2016 WL 347670, at *5.

In particular, press reports have covered the growing public concern over the Department's initial judgment that banks like HSBC are too important to the global economy to prosecute. *See, e.g.*, Glenn Greenwald, *HSBC, Too Big to Jail, Is the New Poster Child for US Two-Tiered Justice System*, *supra*, at 9. The public's criticism of the DOJ, in fact, eventually led to a Congressional report on the subject in 2016. *See generally* Staff of H. Comm. On Financial Serv., 114th Cong., *Too Big to Jail: Inside the Obama Justice Department's Decision Not to Hold Wall Street Accountable* (2016) (criticizing former Attorney General Eric Holder for suggesting to lawmakers that HSBC was "too big to fail" and then retreating from that claim); *see also* Matthews, *Justice Department Overruled Recommendation to Pursue Charges Against HSBC, Report Says*, *supra*.

The media has also reported on public doubts about the Department's increasing strategy to use DPAs more generally. *See* Jonathan Sack, *Deferred Prosecution Agreements - The Going Gets Tougher*, FORBES, May 28, 2015, http://bit.ly/2dpMsfc (stating "DPAs have been attacked from many sides—judges, elected officials and commentators—for being too lenient on companies and too frequently used in lieu of prosecutions of individuals"). *See also* ECF No. 21 (in a letter to Judge Gleeson one member of the public wrote, "I believe we must prevent further moral hazard by not allowing criminal activity to go unpunished. DPAs seem to be the cost of doing business and the 'lapses' continue"). The public's worry over DOJ using DPAs has grown into the additional concern that HSBC serves as a model for other cases involving delay in DPA compliance. *See* Sack, *Deferred Prosecution Agreements - The Going Gets Tougher*, *supra* (reporting that last year the Justice Department extended its agreements with three banks, including Standard Chartered, Barclays Bank PLC and UBS Group AG). There has also been widespread interest in the way monitors work generally and the tensions with the companies they examine. *See* Rachel Louise Ensign and Max Colchester, *Meet the Private Watchdogs Who Police Financial Institutions*, THE WALL ST. JOURNAL, Aug. 30, 2015, http://on.wsj.com/1NIOcMY.

In short, by November 2015, when appellee Herbert Dean Moore, Jr., sent a letter to the district court describing the importance of public access to the

monitor's report, his argument was representative of a groundswell of public concern. *See* ECF No. 42 (Moore's Letter). In fact, as the district court itself stated in its order approving the agreement, it was aware of the "heavy public criticism of the DPA" and had "received unsolicited input from members of the public urging me to reject [it]." *HSBC I*, 2013 WL 3306161, at *7.

The public's interest in this case has not waned since the district court issued its order unsealing the monitor's report. Subsequent news reports and commentary have focused on how the sealing of the agreement further erodes the public's trust in the government's use of DPAs, and on the importance of judicial oversight. *See, e.g.*, Jonathan Sack, *Deferred Prosecution Agreements - The Going Gets Tougher, supra*, at 11; James Ball and Harry Davies, *HSBC Money-Laundering Procedures Have Flaws Too Bad to Be Revealed*, THE GUARDIAN, June 15, 2015, http://bit.ly/28YTzcg; Greg Farrell and Keri Geigeer, *U.S. Considers HSBC Charge That Could Upend 2012 Settlement*, BLOOMBERG.COM, Sept. 7, 2016, http://bloom.bg/2cG6JPw; David Zaring, *Judges Left Out of Deferred Prosecution Agreements*, N.Y. TIMES, Apr. 29, 2016, http://nyti.ms/2dpNpnW ("If the government is going to set up compliance programs with the specter of a court order looming at the end, then it should not expect that courts will stay out of the process from the beginning.").

Public release of the report would no doubt lead to further news coverage about the Government's actions, and could also increase public confidence in the judiciary's role in overseeing the resolution of these financial controversies. Gretchen Morgenson, *Fair Game: A Bank Too Big to Jail*, N.Y. TIMES, July 15, 2016, http://nyti.ms/29QjjYY (quoting a professor of finance and an authority on regulatory failures as stating that granting access to the monitor's report would be "the best kind of anticorruption action").

II. Sealing documents in their entirety is inappropriate when redactions are sufficient, as even redacted documents can contribute to public understanding of court cases.

Rejecting arguments from both HSBC and the Government that redacting the monitor's report would make it "either useless or incomprehensible," the district court below concluded, instead, that even a redacted report would provide important "information that the public has a right to see." Special Appendix at 13, n.11. *Amici* agree that redactions are an appropriate means of addressing compelling interests for protecting confidential information, while still allowing access to information of public concern.

This Court has stated that where a compelling interest has been shown, "it is proper for a district court, after weighing competing interests, to edit and redact a judicial document in order to allow [press and public] access to appropriate portions of the document…." *Amodeo I*, 44 F.3d at 147. In other words, a court

should redact only those portions that, in its own determination, truly threaten the protected interests. *See, e.g.*, *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (stating the trial judge should consider alternatives to "wholesale sealing of the papers" such as the "redaction of names and perhaps portions of the . . . materials contained in the motion papers"); *Haller,* 837 F.2d at 85–89 (holding that it was improper to seal the whole plea agreement but proper to redact one paragraph specifying the defendant's obligation to testify before a grand jury).

Other circuits and lower courts uniformly agree that courts should consider alternatives to sealing and close only those portions of the record that require sealing. *See, e.g.*, *SEC v. TheStreet.com*, 273 F.3d 222, 231 (2d Cir. 2001); *United States v. Criden*, 675 F.2d 550, 561 (3d Cir. 1982); *Media Gen. Operations, Inc. v. Buchanan*, 417 F.3d 424, 429 (4th Cir. 2005); *United States v. Chagra*, 701 F.2d 354, 365 (5th Cir. 1983); *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997); *United States v. Brooklier*, 685 F.2d 1162, 1172 (9th Cir. 1982); *Sibley v. Sprint Nextel Corp.*, 254 F.R.D. 662, 667 (D. Kan. 2008); *United States v. Polsen*, 568 F. Supp. 2d 885, 928 (S.D. Ohio 2008); *Banks v. Office of the Senate Sergeant-at-Arms*, 233 F.R.D. 1, 10–11 (D.D.C. 2005).

Indeed, courts have found redactions to be the appropriate alternative to wholesale sealing in cases dealing with much more sensitive subject matter. *See United States v. Pelton*, 696 F. Supp. 156, 159 (D. Md. 1986) (stating "[i]n

balancing the opposing interests of national security and the public's right of access to a public trial, the court finds … that both interests can be reasonably well accommodated by making public a redacted version of the transcripts" of a criminal espionage trial); *United States v. Sattar*, 471 F. Supp. 2d 380, 387–90 (S.D.N.Y. 2006) (concluding that a psychiatric evaluation of the defendant should be publicly filed with limited redactions); *United States v. Ressam*, 221 F. Supp. 2d 1252, 1263–64 (W.D. Wash. 2002) (redaction or complete closure of national security documents was not sufficiently compelling); *see also Haller*, 837 F.2d at 85–89 (holding that it was improper to seal the whole plea agreement but proper to redact one paragraph).

Thus, while the Government correctly raises the fact that Courts may sometimes find redactions inferior to unsealing because they would make the documents unintelligible, that is the rare case. Gov. Br. at 45–46 (discussing *Amodeo II*). Indeed, the federal rules of procedure provide for various forms of redactions in court filings to similarly ensure a presumption of openness with court filings. *See* Fed. R. Bankr. P. 9037(a); Fed. R. Civ. P. 5.2(a); Fed. R. Crim. P. 49.1(a); Fed. R. App. P. 25(a)(5) (incorporating by reference the other rules of procedure on this matter).

Moreover, redactions will not, as the Government claims, necessarily interfere with the public's interest in the remainder of the document. For example,

in 2015, *TechDirt*, a news publication, wrote about the release of heavily redacted documents discussing the FBI's procedures for using "Stingray" cellphone trackers. *See* Tim Cushing, *FBI Hands Over 5000 Pages of Stingray Info to MuckRock, Redacts Nearly All of It*, TECHDIRT, May 1, 2015, http://bit.ly/1KPGGM0. The story reported that while most of the 5,000 pages contain "page after page of redactions," disclosure of the documents remained important because they "g[ave] a small, narrow glimpse behind the FBI's veil of secrecy – as well as some more insight into its Stingray-related legal maneuvering." *Id.*

Similarly, this past year, the government declassified documents in response to a Freedom of Information Act lawsuit brought by the American Civil Liberties Union about military drone policies. *See* Charlie Savage, *U.S. Releases Rules for Airstrike Killings of Terror Suspects*, N.Y. TIMES, Aug. 6, 2016, http://nyti.ms/2aJTOX8. The documents which had previously been unavailable revealed important information about the government's procedures used in drone strikes. *Id.*

Many other important news stories have also been based on heavily redacted documents. *See, e.g.*, Jason Ng, *Malaysia Orders Freeze of Accounts Tied to Probe of Alleged Transfers to Prime Minister Najib*, WALL ST. JOURN., Jul. 7,

2015, http://on.wsj.com/1fjIx1U; Eric Lichtblau and Adam Goldman, *F.B.I. Papers Offer Closer Look at Hillary Clinton Email Inquiry*, N.Y. TIMES, Sept. 2, 2016, http://nyti.ms/2cgnZGo; Mark Mazzetti, *In 9/11 Document, View of a Saudi Effort to Thwart U.S. Action on Al Qaeda*, N.Y. TIMES, July 15, 2016, http://nyti.ms/29UNgba; David Kravets, *Some Reading Between the Lines of Redacted NSA Documents*, WIRED, Feb. 19, 2014, http://bit.ly/2fggEM3.

In fact, news organizations often impose redactions on their own documents to further the public interest. *See, e.g.*, Glenn Greenwald, *A Redaction Re-Visited: NSA Targeted "The Two Leading" Encryption Chips*, THE INTERCEPT, Jan. 4, 2016, http://bit.ly/1O1tJkW. Similarly, courts will often heavily redact their own opinions rather than completely sealing them. *See, e.g.*, Tim Cushing, *HP Asks for Heavily-Redacted Documents to Be Sealed Judge Responds with Heavily-Redacted Refusal*, TECHDIRT, Aug. 10, 2015, http://bit.ly/1UAxu3r.

Thus, where the district court exercised its discretion to make "targeted redactions" to "alleviate" the concerns raised by the Government, HSBC, the Monitor, and the Federal Reserve, disclosure of a redacted document is not merely appropriate but required.

CONCLUSION

For the reasons stated above, *amici curiae* urge this Court to affirm the district court's orders and uphold the release of the monitor's report.

Dated: October 27, 2016

Respectfully submitted,

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APPENDIX A: DESCRIPTION OF AMICI

The Reporters Committee for Freedom of the Press is a voluntary, unincorporated association of reporters and editors that works to defend the First Amendment rights and freedom of information interests of the news media. The Reporters Committee has provided assistance and research in First Amendment and Freedom of Information Act litigation since 1970.

With some 500 members, American Society of News Editors ("ASNE") is an organization that includes directing editors of daily newspapers throughout the Americas. ASNE changed its name in April 2009 to American Society of News Editors and approved broadening its membership to editors of online news providers and academic leaders. Founded in 1922 as American Society of Newspaper Editors, ASNE is active in a number of areas of interest to top editors with priorities on improving freedom of information, diversity, readership and the credibility of newspapers.

Association of Alternative Newsmedia ("AAN") is a not-for-profit trade association for 130 alternative newspapers in North America, including weekly papers like The Village Voice and Washington City Paper. AAN newspapers and their websites provide an editorial alternative to the mainstream press. AAN members have a total weekly circulation of seven million and a reach of over 25 million readers.

The Center for Investigative Reporting (CIR) believes journalism that moves citizens to action is an essential pillar of democracy. Since 1977, CIR has relentlessly pursued and revealed injustices that otherwise would remain hidden from the public eye. Today, we're upholding this legacy and looking forward, working at the forefront of journalistic innovation to produce important stories that make a difference and engage you, our audience, across the aisle, coast to coast and worldwide.

CNBC is a business news television channel owned by NBCUniversal Media, LLC, which is one of the world's leading media and entertainment companies in the development, production and marketing of news, entertainment and information to a global audience.

Daily News, LP publishes the New York Daily News, a daily newspaper that serves primarily the New York City metropolitan area and is the ninth-largest paper in the country by circulation. The Daily News' website, NYDailyNews.com, receives approximately 26 million unique visitors each month.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

The E.W. Scripps Company serves audiences and businesses through television, radio and digital media brands, with 33 television stations in 24 markets. Scripps also owns 34 radio stations in eight markets, as well as local and national digital journalism and information businesses, including mobile video news service Newsy and weather app developer WeatherSphere. Scripps owns and operates an award-winning investigative reporting newsroom in Washington, D.C. and serves as the long-time steward of the nation's largest, most successful and longest-running educational program, the Scripps National Spelling Bee.

First Look Media Works, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

Forbes Media LLC is the publisher of Forbes Magazine and Forbes Asia, as well as an array of investment newsletters and the leading business website, Forbes.com. Forbes has been covering American and global business since 1917.

The Foundation for National Progress is the award-winning publisher of Mother Jones magazine and MotherJones.com. It is known for ground-breaking investigative journalism and impact reporting on national issues.

Gannett Co., Inc. is an international news and information company that publishes 109 daily newspapers in the United States and Guam, including USA TODAY. Each weekday, Gannett's newspapers are distributed to an audience of more than 8 million readers and the digital and mobile products associated with the company's publications serve online content to more than 100 million unique visitors each month.

Hearst Corporation is one of the nation's largest diversified media and information companies. Its major interests include ownership of 15 daily and more than 30 weekly newspapers, including the Houston Chronicle, San Antonio Express-News, San Francisco Chronicle and Albany Times Union; hundreds of magazines around the world, including Good Housekeeping, Cosmopolitan, ELLE

and O, The Oprah Magazine; 31 television stations, which reach a combined 18 percent of U.S. viewers; ownership in leading cable networks, including Lifetime, A&E, HISTORY and ESPN; significant holdings in automotive, electronic and medical/pharmaceutical business information companies; a majority stake in global ratings agency Fitch Group; Internet and marketing services businesses; television production; newspaper features distribution; and real estate.

The International Documentary Association (IDA) is dedicated to building and serving the needs of a thriving documentary culture. Through its programs, the IDA provides resources, creates community, and defends rights and freedoms for documentary artists, activists, and journalists.

The Investigative Reporting Workshop, a project of the School of Communication (SOC) at American University, is a nonprofit, professional newsroom. The Workshop publishes in-depth stories at investigativereportingworkshop.org about government and corporate accountability, ranging widely from the environment and health to national security and the economy.

MediaNews Group Inc., dba Digital First Media, publishes the San Jose Mercury News, the East Bay Times, St. Paul Pioneer Press, The Denver Post and the Detroit News among other significant community papers throughout the United States.

MPA – The Association of Magazine Media, ("MPA") is the largest industry association for magazine publishers. The MPA, established in 1919, represents over 175 domestic magazine media companies with more than 900 magazine titles. The MPA represents the interests of weekly, monthly and quarterly publications that produce titles on topics that cover politics, religion, sports, industry, and virtually every other interest, avocation or pastime enjoyed by Americans. The MPA has a long history of advocating on First Amendment issues.

National Newspaper Association is a 2,400 member organization of community newspapers founded in 1885. Its members include weekly and small daily newspapers across the United States. It is based in Springfield, Illinois.

The National Press Photographers Association ("NPPA") is a 501(c)(6) non-profit organization dedicated to the advancement of visual journalism in its creation, editing and distribution. Since its founding in 1946, the NPPA has vigorously promoted the constitutional rights of journalists as well as freedom of the press in all its forms, especially as it relates to visual journalism.

National Public Radio, Inc. (NPR) is an award-winning producer and distributor of noncommercial news, information, and cultural programming. A privately supported, not-for-profit membership organization, NPR serves an audience of more than 26 million listeners each week via more than 1000 noncommercial, independently operated radio stations, licensed to more than 260 NPR Members and numerous other NPR-affiliated entities.

The New York Times Company is the publisher of The New York Times and The International Times, and operates the news website nytimes.com.

The News Guild – CWA is a labor organization representing more than 30,000 employees of newspapers, newsmagazines, news services and related media enterprises. Guild representation comprises, in the main, the advertising, business, circulation, editorial, maintenance and related departments of these media outlets. The News Guild is a sector of the Communications Workers of America. CWA is America's largest communications and media union, representing over 700,000 men and women in both private and public sectors.

Online News Association ("ONA") is the world's largest association of online journalists. ONA's mission is to inspire innovation and excellence among journalists to better serve the public. ONA's more than 2,000 members include news writers, producers, designers, editors, bloggers, technologists, photographers, academics, students and others who produce news for the Internet or other digital delivery systems. ONA is dedicated to advancing the interests of digital journalists and the public generally by encouraging editorial integrity and independence, journalistic excellence and freedom of expression and access.

Reporters Without Borders has been fighting censorship and supporting and protecting journalists since 1985. Activities are carried out on five continents through its network of over 150 correspondents, its national sections, and its close collaboration with local and regional press freedom groups. Reporters Without Borders currently has 10 offices and sections worldwide.

The Seattle Times Company, locally owned since 1896, publishes the daily newspaper The Seattle Times, together with The Issaquah Press, Yakima Herald-Republic, Walla Walla Union-Bulletin, Sammamish Review and Newcastle-News, all in Washington state.

The Tully Center for Free Speech began in Fall, 2006, at Syracuse University's S.I. Newhouse School of Public Communications, one of the nation's premier schools of mass communications.

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CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION,
TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS
PURSUANT TO FED. R. APP. P. 32(A)(7)(C)

Pursuant to Fed. R. App. P. 32(a)(7)(C), I, Bruce D. Brown, do hereby certify:

1. Brief of *Amici Curiae* complies with the type-volume limitation Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,284 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

2. This brief of *Amici Curiae* complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Mac in 14-point, Times New Roman font.

Dated: October 27, 2016

By: /s/ Bruce D. Brown
Bruce D. Brown
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system on October 27, 2016.

Dated: October 27, 2016

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