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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee,
INDEX NEWSPAPERS LLC,
DBA The Stranger,
Intervenor - Appellant,
v.
MATTHEW DURAN,
Defendant - Appellee.

CAUSE NO. 13-35243
MOTION TO UNSEAL FILE

1. Identity of Moving Party

Index Newspapers LLC, dba *The Stranger*, the Appellant, by and through its attorney, Neil M. Fox, seeks the relief set out in section 2, *infra*.

2. Statement of Relief Sought

The Stranger seeks an order by this Court to unseal the file in this case. This motion is brought under Circuit Rule 27-13(d).

1 **3. Factual Background**

2 This case involves the appeal of an order denying a motion to unseal a
3 district court file in *In re Matthew Duran*, Western Washington District No.
4 No.12-GJ-00149. The appellant, Index Newspapers LLC, also filed a parallel
5 writ of mandamus petition in *Index Newspapers, LLC v. United States District*
6 *Court for the Western District of Washington*, No. 13-71021. Both cases have
7 been set for oral argument on February 5, 2014.

8 The file for the writ case (No. 13-71021) is open to the public and
9 accessible through PACER. The file for the appeal case is sealed and not
10 accessible. Most of the documents that have been filed in the sealed appeal case
11 have been filed in the unsealed writ case.¹

12 Previously, Index Newspapers filed a motion in the appeal case to unseal
13 the docket from the district court and file it in the writ case. By order entered
14 on August 2, 2013, Commissioner Shaw denied this motion without prejudice.

15 **4. Argument**

16 Index Newspapers LLC has argued, in both this appeal and in the parallel
17 writ case, that the proceedings below in this case should be unsealed under the
18 First Amendment and the common law. The file in this appeal, however,
19 remains sealed, while the file in the writ case is open to the public.

20 The same First Amendment and common law right of public access apply
21 to this appeal as to the district court file. For the same reasons the district court
22 file should be unsealed, this Court should unseal the file in this appeal as well.
23 Given the fact that parallel writ case is unsealed, there is even less of a reason to
24 keep the appeal hidden from public viewing.

25 _____
26 ¹ Mr. Duran has filed, under seal, unredacted transcripts from his district
27 court appearances in both the writ and appeal cases, No. 13-71021, Appendices
28 H & I; No. 13-35243, ER (Duran) 104-180. Index has filed redacted copies of
these transcripts in the writ case. No. 13-71021, Dkt. No. 21.

1 Accordingly, when this Court decides the appeal and the writ, the Court
2 should at the same time enter an order unsealing the file in the instant case,
3 under Circuit Rule 27-13(d), so that the public has full access to the litigation
4 over whether the district court's files were properly sealed. The Government
5 should be allowed to propose redactions to the sealed transcripts filed by Mr.
6 Duran.

7 **5.. Conclusion**

8 This Court should unseal the file in this case for the same reasons it
9 should unseal the district court file. The ruling on this motion should be
10 deferred until ruling on the appeal itself.

11 Dated this 2nd day of January 2014.

12 Respectfully submitted,

13 /s/ Neil M. Fox

14 WSBA NO. 15277

15 Attorney for Index Newspapers LLC

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20 Fax: 206-448-2252

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1
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 2nd of January 2014, I electronically filed the
4 foregoing with the Clerk of the Court using the CM/ECF system which will
5 send notification of such filing to attorney of record for all parties.

6 I certify or declare under penalty of perjury that the foregoing is true and
7 correct, this 2nd day of January 2014 at Seattle WA.

8 /s/Neil M. Fox
9 NEIL M. FOX
10 WSBA NO. 15277
11 Attorney for Petitioner
12 Law Office of Neil Fox, PLLC
13 2003 Western Ave. Suite 330
14 Seattle WA 98121
15 Telephone: 206-728-5440
16 Fax: 206-448-2252
17 e-mail: nf@neilfoxlaw.com

18 I also certify that on the 2nd day of January 2014 I deposited copies of the
19 foregoing into the United States Mail in envelope, with proper first postage
20 attached, addressed to:

21 Judge Richard Jones
22 United States District Court for the
23 Western District of Washington
24 700 Stewart St., Suite 13128
25 Seattle, WA, 98101

26 I certify or declare under penalty of perjury that the foregoing is true and
27 correct, this 2nd day of January 2014 at Seattle WA.

28 /s/ Alex Fast
Legal Assistant for Neil M. Fox