



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

January 7, 2021

**REDACTED – BY ECF**

**UNREDACTED – BY E-MAIL, EX-PARTE, REQUEST TO BE FILED UNDER SEAL**

Honorable Katherine Polk Failla  
United States District Judge  
Southern District of New York  
40 Foley Square  
New York, New York 10007

**Re: *United States v. Efrain Reyes*, 18 Cr. 454 (KPF)**

Dear Judge Failla:

The Government writes to respectfully oppose New York Daily News (the “Daily News”) reporter Stephen Rex Brown’s December 29, 2020 motion to unseal the change-of-plea and sentencing transcripts, and the parties’ sentencing submissions, in the case of defendant Efrain Reyes (collectively, the “Reyes Documents”). *See* Dkt. #306.<sup>1</sup>

Mr. Brown brings this application on the basis that Mr. Reyes—who sadly passed away on November 27, 2020—“is the subject of public interest because he was the last person to share a cell with Jeffrey Epstein.” *Id.* Indeed, Mr. Brown has already learned and publicized that Mr. Reyes “agreed to cooperate with the feds on his narcotics case” and was cooperative with agents investigating the Epstein matter.<sup>2</sup> As discussed below, however, the Reyes Documents contain virtually no additional information about Epstein, *i.e.*, the stated issue of public interest, whereas they do [REDACTED]

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<sup>1</sup> For ease of reference, the Reyes Documents are submitted under seal as Exhibits A through D to the redacted version of this letter.

<sup>2</sup> Elizabeth Keogh & Stephen Rex Brown, “Harassed by guards and extorted by inmates, Jeffrey Epstein shared suicidal thoughts at NYC federal jail,” N.Y. DAILY NEWS, Dec. 27, 2020, available at <https://www.nydailynews.com/new-york/ny-epstein-mcc-suicide-20201228-fk2h7hzynzburdqwb44jydlmq-story.html> (last viewed Jan. 3, 2021); Elizabeth Keogh, Thomas Tracy & Stephen Rex Brown, “Last man to share jail cell with Jeffrey Epstein died last month of COVID,” N.Y. DAILY NEWS, Dec. 28, 2020, available at <https://www.nydailynews.com/new-york/ny-efrain-reyes-jeffrey-epstein-mcc-20201228-wqmo7p4wefeltlultaaddf3gkq-story.html> (last viewed Jan. 3, 2021).

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[REDACTED]

Accordingly, and for the reasons set forth below, the Government submits that [REDACTED]

[REDACTED] outweigh the minimal public interest in the Reyes Documents, which, as noted above, contain no new information about Epstein.

### **I. Background**

On August 1, 2018, agents arrested Mr. Reyes on the charge of conspiring to distribute 280 grams or more of crack cocaine, as well as quantities of heroin and marijuana, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) and (C). The charge stemmed from Mr. Reyes's participation in a long-running conspiracy to distribute such drugs at and around the Lambert Houses in the West Farms section of the Bronx, New York.

[REDACTED] On August 26, 2019, he pled guilty to the charge against him contained in the Indictment. *See* Ex. A (plea transcript). [REDACTED] At the outset of the plea proceeding, the Court confirmed that the parties were asking for the transcript to be sealed and subject to delayed docketing, then invited defense counsel to explain the basis for that request. *Id.* at 2. Defense counsel responded:

[REDACTED]

[REDACTED]

On April 13, 2020, this Court sentenced Mr. Reyes. *See* Ex. B (sentencing transcript). Early in that proceeding, the Court again addressed sealing [REDACTED]

[REDACTED] In advance of sentencing, the parties filed sentencing memoranda dated April 8, 2020. *See* Ex. C (defense submission), Ex. D (Gov't submission). [REDACTED]

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As detailed below, at various points in the plea colloquy, sentencing proceeding, and sentencing submissions, the Court and parties noted that Mr. Reyes was Epstein's last cellmate and had been transferred out of their shared cell shortly before Epstein committed suicide.

[REDACTED]

On December 27, 2020, the Daily News ran an article that discussed, among other things, Mr. Reyes's time in custody with Epstein and Mr. Reyes's recent death, citing Mr. Reyes's niece as one of its principal sources of information. The next day, the Daily News ran a follow-up article that discussed the same general topics. Mr. Brown now moves for this Court to unseal the Reyes Documents.

## **II. Applicable Law**

Although there is a qualified right of public access to court documents, the Second Circuit and District Courts therein have recognized that certain circumstances may warrant the delayed docketing or filing of documents under seal to [REDACTED]

[REDACTED]

The Second Circuit has also

[REDACTED]

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recognized that even docketing the applications to seal those materials could be prejudicial. *See United States v. Alcantara*, 396 F.3d 189, 200 n.8 (2d Cir. 2005).

### III. Discussion

The Reyes Documents should not be unsealed because they contain no new information relevant to the movant's stated interest, and because the information they do contain [REDACTED]

As noted above, the Reyes Documents say very little about Epstein or Mr. Reyes's experience living with Epstein. Specifically, the Reyes Documents contain the following that might be construed as having any relevance to Epstein:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Together, these documents say nothing more about Epstein than has already been thoroughly reported by Mr. Brown and others; however, they contain that information in a context that weighs heavily against unsealing these materials.

Specifically, the Reyes Documents contain a significant amount of information wholly irrelevant to the movant's stated interest but [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

If this information is made public, there is a serious risk that

[REDACTED]

Unsealing the Reyes Documents also increases these risks because

[REDACTED]

The unsealing and disclosure of the Reyes Documents also stands to

[REDACTED]

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<sup>4</sup> While it is true that Mr. Reyes's niece provided information to Mr. Brown, including that Mr. Reyes cooperated with investigators on the Epstein matter, Mr. Reyes's niece is likely unaware of the specific information that would be disclosed in the Reyes Documents.

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[REDACTED]

Although Mr. Brown's motion repeatedly uses the phrase "under wraps" to describe the sealing at issue—suggesting it is an inappropriate hiding of important information from the public—the Government submits that sealing the Reyes Documents is fully justified, and indeed necessary, to ensure [REDACTED]

[REDACTED] These are compelling governmental interests that the Government submits substantially outweigh the public interest in the extremely limited (and already public) information about Epstein contained in the Reyes Documents.<sup>5</sup>

\* \* \*

For the foregoing reasons, the Government respectfully submits that the Reyes Documents, as well as the unredacted version of this letter, should be maintained under seal. If the Court so directs, the Government can and will submit a proposed Order and/or proposed findings that the Court could enter on the record in support of continued sealing.

The Government has conferred with Mr. Reyes's counsel, Marlon Kirton, Esq., who agrees with the Government's position on this matter.

Respectfully submitted,

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<sup>5</sup> The Government has considered whether the Reyes Documents could be redacted to protect the interests set forth above while also making public the limited information relating to Epstein, which is the basis for Mr. Brown's motion. Unfortunately, given the context of the few relatively brief references to Epstein, the Government believes that disclosure of any part of the documents will give rise to the issues set forth above.