

**United States Court of Appeals
District of Columbia Circuit**

333 Constitution Avenue, NW Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

Sai
Petitioner

v.

Case Number:

United States Postal Service (USPS)
Respondent

**Petitioner's Motion for Leave to File Motion to Proceed *in Forma Pauperis* and
Appointment of Attorney *Ex Parte* Under Seal**

I, Sai, the petitioner in the above proceeding, would like to file a motion to proceed *in forma pauperis* and to be appointed a *pro bono* attorney (per 28 USC § 1915(e)). I recognize that this Court ordinarily requires that case initiation be accompanied by either a filing fee or a motion to proceed IFP, which includes an affidavit of personal finances, etc. I am willing to supply such an affidavit, but only if it is under seal. Doing so *without* seal would disclose facts that are private, of no public interest, and of no relevance to Respondent; it would in effect require me to choose between exercising my rights to privacy, my rights under §1915, and excessive costs.

As the 1st Circuit said¹ in *Boston Herald, Inc. v. John Connolly*, 321 F.3d 174 (1st Cir. 2003):

"The defendant ... applied under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A (2000), for government funding for a portion of his attorneys' fees and legal expenses. ... The court granted him CJA assistance and, in response to his motions, placed the documents he had submitted under seal. After Connolly's conviction, [a major newspaper]... sought to intervene in the case and to unseal these financial documents, arguing that it had a right of access to them under both the First Amendment and the common law. Connolly opposed. ...

No federal court of appeals, to our knowledge, has considered whether there is a right of access to the

¹ See also e.g. *Olsen v. USA*, 1:07-cv-00034-JAW (D. Maine 2007), relying on *Connolly*

narrow category of documents at issue here: those submitted by a criminal defendant to show financial eligibility for CJA funds. We conclude that there is no right of access to this category of documents under either the First Amendment or the common law. Even if there were a common law presumption of access, there was no abuse of discretion in denying access here.

... [The magistrate judge] concluded that it was appropriate to seal the documents at issue here, because disclosure would "unduly intrude" on the privacy of Connolly and his family. ...

This description of the CJA ... calls into question whether the CJA eligibility documents are judicial documents at all. "Not all documents filed with a court are considered 'judicial documents.'" *United States v. Gonzales*, 150 F.3d 1246, 1255 (10th Cir.1998). ... These facts support a conclusion that the CJA eligibility documents are not essentially judicial in character.

Both the constitutional and the common law rights of access have applied only to judicial documents. [multiple citations omitted] ...

... we think that these are not judicial documents ... Disentangling judges' judicial and administrative roles can be tricky ... [but] we note that the administrative process of determining CJA eligibility is far removed from the core of the judicial function. ...

We would think it the exception, not the rule, to require applicants for benefits programs to disclose private financial data about themselves and their immediate family to the public. ...

CJA eligibility determinations, if they are judicial at all, lie far from the core of judicial power or the merits of the criminal case. Many of the flagship functional justifications for access thus become less relevant. Unlike trials themselves, access to the defendant's CJA financial statements does not provide an "outlet for community concern, hostility, and emotion" concerning a crime. *Richmond Newspapers*, 448 U.S. at 571, 100 S.Ct. 2814. ...

Public access to a defendant's financial information would not usually facilitate greater accuracy in decisionmaking. ... The type of information on the forms is not typically in the public domain and so the public is not well-positioned to challenge accuracy. ...

... [t]he disclosure of a defendant's sensitive personal financial information, which has no bearing on the merits of the criminal trial, could well undermine the judicial process ... In itself, the invasion of privacy inherent in disclosing this data is of concern. See *Corbitt*, 879 F.2d at 230-32 (weighing defendants' personal privacy interests when maintaining seal on presentence reports). ...

A constitutionally-based right of access to otherwise private personal financial data of one's own and one's family imposes a high price on the exercise of one's constitutional right to obtain counsel if in financial need. Our system of justice cherishes "the principle that defendants are not to be avoidably discriminated against because of their indigency." *Holden v. United States*, 393 F.2d 276, 278 (1st Cir.1968). But a strict disclosure requirement could well discourage eligible defendants from availing themselves of their right to counsel by forcing them to choose between privacy and CJA assistance — a choice that other defendants do not face. ...

On balance, then, disclosure would not play "a particularly significant positive role in the actual functioning of the process" of determining CJA eligibility. *Press-Enterprise II*, 478 U.S. at 11, 106 S.Ct.

2735. Rather, disclosure is likely to play a negative role. Nor do the lessons of tradition support the wisdom of public access. The First Amendment does not grant a right of access, over the defendant's objection, to financial documents submitted to demonstrate the defendant's eligibility for CJA funds. ...

In addition to any constitutional right, there is also a presumption of public access to "judicial records" under the common law. ... The common law presumption is limited to "judicial records." As we have established already, we do not think that CJA eligibility documents qualify as such. Rather, they are administrative paperwork generated as part of a ministerial process ancillary to the trial. While the review of these documents is conducted by a district judge or magistrate judge, that role could have been assigned to another institution. ...

Personal financial information, such as one's income or bank account balance, is universally presumed to be private, not public. See *United States v. Amodeo (Amodeo II)*, 71 F.3d 1044, 1051 (2d Cir.1995) (courts analyzing common law presumption should "consider the degree to which the subject matter is traditionally considered private rather than public"). ...

Recognition of the importance of financial privacy is also enshrined in public policy. The Freedom of Information Act, applicable only to executive branch materials, exempts personal and confidential financial information from disclosure. See 5 U.S.C. § 552(b)(4) (2000). Congress recently singled out financial information for special privacy protection when it approved an overhaul of the nation's banking regulations. [multiple citations omitted] ...

... we hold that neither the First Amendment nor the common law provides a right of access to financial documents submitted with an initial application to demonstrate a defendant's eligibility for CJA assistance. We also hold that, even if there were a common law presumption of access, then it would be outweighed here, as the courts below found, by Connolly's countervailing privacy interests."

As in *Connolly*, my IFP Motion would not be a "judicial document". The information in my IFP Motion would be neither already public nor of any journalistic interest, and would generally be protected as "public disclosure of private facts". If public disclosure of that information is compelled by this Court, I would be chilled from filing the IFP Motion, as would be similarly situated *pro se* parties who value their privacy. My finances and personal details which would be disclosed in an IFP Motion are not otherwise relevant to this proceeding, of no import to Respondent, and would substantially harm my personal privacy to disclose publicly.

Unlike Connolly, who was "the defendant in a highly publicized criminal trial", there is no journalistic interest in my personal life. This is an administrative proceeding; the public interest in it is limited to

Defendant USPS's failure to obey the FOIA. Therefore, although my IFP Motion would be under 28 USC § 1915 rather than under the CJA, I believe that the *Connolly* court's argument applies even *more* strongly in my case. If I am not granted leave to file under seal, I will be forced to pay the Court's filing fee in order to protect my personal privacy.

Therefore, I move that I be granted leave to file a motion and affidavit to proceed IFP ("IFP Motion") under seal, *without* providing a copy thereof to Respondent USPS; and that any personal information about me that is of no material relevance to this case (such as my home address, date of birth, financial information, any part of my social security number²; my signature; etc.) be redacted from all unsealed documents in this proceeding.

I further request that this motion, and any subsequent IFP motion, be considered *in parallel* with the rest of this case, so that it does not harm the speedy resolution of this case.

Respectfully submitted,

Sai, *petitioner pro se*

dccc@s.ai

+1 510 394 4724

PO Box 401159, San Francisco, CA 94110

² The last 4 digits of a social security number, requested by the Court as part of an affidavit in support of a motion to proceed *in forma pauperis*, are very commonly used in financial transactions. Their public disclosure would materially harm me by better enabling third parties to commit financial fraud and identity theft against me, and would in no way benefit the public or defendant.