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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 In re GRAND JURY SUBPOENA
dated February 1, 2006.

13
14 JOSHUA WOLF;

15 Subpoenaed Party.

**NOTICE OF MOTION AND MOTION TO
STAY AND QUASH SUBPEONA AND
SUBPOENA DUCES TECUM;
SUPPORTING DECLARATION OF JOSE
LUIS FUENTES**

Date: February 16, 2006

Time: 9:30 a.m.

Courtroom:

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19 TO THE UNITED STATES OF AMERICA, U.S. ATTORNEY KEVIN V. RYAN,
AND ASSISTANT U.S. ATTORNEY JEFFREY FINIGAN:

20 PLEASE TAKE NOTICE that on a date and time to be set by the Court, subpoenaed
21 party Joshua Wolf will and hereby does move for an order quashing the subpoena and subpoena
22 *duces tecum* issued IN THIS MATTER.

23
24 This motion is made on the following grounds: (1) the subpoenas are being used
25 improperly in connection with state pending criminal cases and investigation; (2) compelling the
26 production of documents under the subpoena *duces tecum* would violate Mr. Wolf's First
27 Amendment rights and the Government cannot meet the burdens compelled by Branzburg v.
28 Hayes, 408 U.S. 665 (1972) and related authority; (3) pursuant to Rule 17(c) compliance with

1 the subpoena would be unreasonable or oppressive and would violate Petitioners' rights under
2 the First and Fourteenth Amendments to the Constitution of the United States. As a result, the
3 witness' appearance would be futile for the United States, a waste of the grand jury's time,
4 harassment of Mr. Wolf, and a misuse of the grand jury process.

5 Additionally, Mr. Wolf respectfully requests that the Court stay any grand jury
6 appearance pending the resolution of this Motion.

7 This motion is based on this notice of motion and motion, the attached memorandum of
8 points and authorities, any reply which will be filed, all exhibits thereto, files and records in this
9 case, and any further evidence which may be presented at the hearing.

10 Respectfully Submitted,

11 Dated: February 15, 2006

12 DAN SIEGEL
13 JOSE LUIS FUENTES
14 SIEGEL & YEE

15 Attorneys for Joshua Wolf
16 Subpoenaed Party

17 By:

18 
19 _____
20 JOSE LUIS FUENTES

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Movant, by counsel Jose Luis Fuentes, submits this Memorandum of Law in Support of
3 his Motion to Quash a federal grand jury subpoena and subpoena duces tecum.

4 I. INTRODUCTION

5 The federal government has subpoenaed video footage shot by Joshua Wolf, a journalist
6 and videographer, related to a July 8, 2005, protest in San Francisco against the G8 Summit then
7 taking place in Perthshire, Scotland. During the protest, a San Francisco police officer received a
8 serious head injury after he violently rushed into a crowd of protesters wielding his baton,
9 without backup and contrary to departmental procedures and guidelines, and was struck on the
10 head from behind while punching a suspect. As a result, the San Francisco Police Department
11 (“SFPD”) initiated an investigation, led by Inspector Lea W. Militello, and local charges are
12 pending against three people in connection with the incident. Records show that Inspector
13 Militello solicited the help of the FBI’s Joint Terrorism Task Force (“JTTF”), and that FBI
14 Special Agent Scott A. Merriam thereafter informed Ms. Militello that the FBI would be
15 “assisting”.

16 The subpoena violates Rule 6 of the Federal Rules of Criminal Procedure because it seeks
17 to convert the grand jury, an arm of the judiciary, into a tool of the executive to assist in a local
18 criminal prosecution and investigation. In addition, the subpoena, which appears to target people
19 based on their political identification and association, and which comes at a time when the FBI is
20 showing increasing, political preoccupation with “anarchists” writ large – a broad, divergent, and
21 variegated (non) group of people across the country – raises the specter of infringement of First
22 Amendment rights, and a return to the pre-Church Committee witch hunts of the FBI.

23 Since the federal government has no jurisdiction in the first place, the subpoena is also
24 violative of the California Shield law (Art. I, §. 2(b) of the California Constitution and Evidence

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1 Code § 1070), which protects journalists from being compelled to divulge “the source of any
2 information” and any “unpublished information”¹

3 II. FACTUAL BACKGROUND

4 On February 4, 2006, the FBI served a subpoena on Joshua Wolf demanding “All
5 documents, writings and recordings related to protest activities conducted in San Francisco,
6 California, on July 8, 2005, between the hours of 6:30 p.m. and 11:59 p.m.” The subpoena, a
7 copy of which is attached as **Exhibit A, Subpoena Duces Tecum to Joshua Wolf and**
8 **incorporated by reference**, also demands “each camera, video recorder, audio recoding device
9 or other hardware or equipment used to record any part of the above described events of July 8,
10 2005”.

11 On July 8, 2005, according to the SFPD’s own version of events, two San Francisco
12 police officers attempted to drive their vehicle through a group of marchers in San Francisco’s
13 Mission District, following reports of vandalism, when someone dropped a piece of foam under
14 the tire of the police car, whereupon Officer #1 jumped out to chase and arrest him. He said he
15 heard fireworks. (Video posted on the internet corroborates that people were lighting fireworks
16 in the street during the march.) Officer #2 reported that someone pointed a “pyrotechnic device”
17 at him or the car (the SFPD’s reports are inconsistent), and he jumped out to chase that person,
18 wielding his baton at people in the crowd along the way. The officers each used force to subdue
19 their suspects. Officer #1 reported using a carotid restraint, to cries from the crowd that he was

20 _____
21 ¹ Art. I, § 2(b) of the California Constitution, and Evidence Code § 1070(a) provide
22 identically, in pertinent part:

23 A publisher, editor, reporter, or other person connected with or employed upon a
24 newspaper, magazine, or other periodical publication, or by a press association or
25 wire service, or any person who has been so connected or employed, cannot be
26 adjudged in contempt by a judicial, legislative, administrative body, or any other
27 body having the power to issue subpoenas, for refusing to disclose, in any
28 proceeding as defined in Section 901, the source of any information procured
while so connected or employed for publication in a newspaper, magazine or
other periodical publication, or for refusing to disclose any unpublished
information obtained or prepared in gathering, receiving or processing of
information for communication to the public.

1 choking the suspect, and Officer #2 reported punching his suspect in the arms and legs. During
2 this time, witnesses report that someone came out of the crowd and hit Officer #2 over the head
3 with some kind of stick. The injured officer was reportedly assisted by a legal observer and
4 civilian medic, until fellow officers and paramedics tended to him, other officers showing and
5 pointing guns in people's faces and shoving those trying to assist out of the way. The injured
6 officer suffered a three inch laceration to his scalp. He was kept for observation, and discharged
7 from the hospital two days later, on July 10, 2004. (See Exhibits B, SFPD incident reports
8 related to July 8, 2005 incident, and D, SFPD Investigator's Chronology – SFPD Incident
9 Reports and Investigator's Chronology, hereby incorporated by reference.)

10 Following the incident, SFPD Field Operations Commander Greg Suhr was reprimanded
11 by the Department for failing to continue to deploy the tactical squad to follow the marchers (the
12 squad had stood down). He transferred out of the Department, and has reportedly taken a high
13 level security position with the San Francisco Public Utilities Commission, asserting that the
14 move was long planned and unrelated to the incident.

15 The SFPD initiated an investigation, led by Inspector Lea W. Militello, and local charges
16 are pending against three people in connection with the incident: the individual accused of
17 putting the foam in front of the police car (preliminary hearing scheduled for March 1, 2006),
18 and two observers, charged with misdemeanors and accused of interfering. They are charged in
19 San Francisco Superior Court.

20 Records show that Inspector Militello solicited the help of the FBI's Joint Terrorism Task
21 Force, and that FBI Special Agent Scott A. Merriam thereafter informed Ms. Militello that the
22 FBI would be "assisting", on the pretext that someone had attempted an arson on a police vehicle
23 (Exhibit C, SFPD Inspector Lea Militello's request for assistance from FBI Joint Terrorism Task
24 Force, hereby incorporated by reference).² Visits by the FBI and SFPD and this subpoena
25 followed.

26
27 ² The pretext is concocted. On information and belief, there was no attempted arson.
28 Marchers dropped a piece of foam they were carrying for a sign when the police officers began
trying to drive through the march. A firecracker ignited it, and it smoldered but did not burn.

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2 **III. ARGUMENT**

3 **A. THE GOVERNMENT HAS NO JURISDICTION TO INVESTIGATE THIS**
4 **LOCAL MATTER, AND ITS PURPOSE IN “ASSISTING” LOCAL LAW**
5 **ENFORCEMENT IS A MISUSE OF THE FEDERAL GRAND JURY**

6 The federal government has no discernible jurisdiction to be investigating this matter, as
7 the events do not appear to transgress any federal criminal law. This is a purely local event,
8 which the SFPD is more than capable of handling, and is handling – notwithstanding Inspector
9 Militello’s unfounded request for assistance from the JTTF (Exhibits C).³ While the movant in
10 no way stipulates to the propriety of any local grand jury subpoena, it is worth noting that the
11 San Francisco District Attorney’s Office has recourse to grand jury proceedings. However,
12 under California shield law, Mr. Wolf has almost absolute immunity to refuse to surrender
13 unpublished information sought by the prosecutor. Miller v. Superior Court 21 Cal.4th 883, 887
14 (1999). as well, if it should choose to avail itself of such a tool. It thus appears that San
15 Francisco Police and the FBI are trying to do an end run around these rules.

16 The federal government may not use the grand jury to “assist” local law enforcement (the
17 word used by the SFPD to describe the FBI’s involvement (Exhibits C and D) – as Rule 6 of the
18 Federal Rules of Criminal Procedure strictly prohibits the federal government from divulging
19 information derived from grand jury proceedings to state or local authorities, unless it can show
20 that this is necessary to enforce federal criminal law. In Re Grand Jury Subpoenas served upon
21 Edward Kiefaber, et al., 774 F.2d 969 (9th Cir. 1985) (quashing grand jury subpoenas as sanction
22 for Government’s disclosure of grand jury materials to local law enforcement agencies).

23 Thus not only is there no predicate, but there is no legal benefit to using the grand jury in
24 this manner. The subpoena should be quashed on these grounds alone. At the very least, the
25 Court should require the government to disclose the subject of its investigation, and thereafter

26
27 ³ While Inspector Militello documented her request for assistance to the FBI’s Joint
28 Terrorism Task Force (Exhibit B), the genesis of the agreement, and who initiated it, is not
known.

1 hold an evidentiary hearing to determine whether there is a predicate for the subpoena. See
2 United States v. R. Enterprises, Inc., 498 U.S. at 301-302 (recognizing that upon a preliminary
3 showing of the unreasonableness of a subpoena, the government should be required to reveal the
4 subject of the grand jury investigation before the movant is put to his/her burden in a motion to
5 quash). “After all, a subpoena recipient ‘cannot put his whole life before the court in order to
6 show that there is no crime to be investigated.’ U.S. v. R. Enterprises, 498 U.S. 292, 302-203
7 (1991), quoting Marston’s, Inc. v. Strand, 114 Ariz. 260, 270, 560 P.2d 778, 788 (1977).”

8 **B. THE SUBPOENA INFRINGES MR. WOLF’S FIRST AMENDMENT**
9 **RIGHTS OF FREE EXPRESSION AND ASSOCIATION**

10 Absent any legitimate basis for involvement, the federal government’s very involvement
11 in this local matter – coming at a time when the national police have begun talking about
12 anarchism the way the FBI used to talk about Communism – raises the specter of broad political
13 repression, and the rerun of a very bad old movie.

14 Only several weeks ago, FBI Special Agent Nasson Walker drafted an affidavit in
15 support of a complaint and arrest of three young, alleged, would-be eco-saboteurs in Auburn
16 (Sacramento County), which reads like a tract against anarchism. (Exhibit E, Affidavit by FBI
17 Special Agent Nasson Walker, hereby incorporated by reference.). His affidavit irrelevantly
18 references “anarchist” or “anarchism” 26 times in its mere 14 pages. The Agent [to wit, the FBI]
19 appears obsessed with the anarchist “lifestyle”, anarchist literature, and anarchist gatherings.
20 The FBI has revealed that it embedded a 20 year old paid informant with the suspects, apparently
21 recruited when she was only 18 or 19. The FBI dressed her up as a medic, and dispatched her to
22 participate in protests around the country.

23 Of course, there is no such thing as an anarchist movement, or anarchist agenda, and any
24 two people who self-identify as anarchists are probably more likely to disagree on history,
25 philosophy, social organization, or political strategy than any two people who identify as
26 Christian, Muslim, Republican, or Democrat. Invocations of dread anarchism add nothing more
27 to the indicia of probable cause recited in Agent Walker’s affidavit than if all the terms were
28 replaced with the word “Christian” – and no one can gainsay that Christians have committed far

1 more atrocities in history than anarchists. It is axiomatic in this country that people are not guilty
2 by mere association to unpopular individuals, groups, ideas, or suspected criminals. Anarchists
3 occupy all positions in society. Professor Noam Chomsky is one. This undoubtedly is of little
4 consolation to the current Administration, but that is all they should have to say about it. George
5 Orwell was one too.

6 Based on information and belief, during the week of July 11, 2005, Lea W. Militello,
7 Suzanne G. Solomon, and Scott A. Merriam visited Joshua Wolf's residence, and interviewed
8 him for about an hour and a half. They asked Mr. Wolf if he makes it a habit to document
9 anarchist protests. They wanted information on "Anarchist Action," such as who they are and
10 what their mission is. The SFPD's incident reports and investigative documents likewise reveal
11 generalizations about anarchists and anarchism. (Exhibits B and D).

12 On the face of it, the federal government is doing nothing more (or less) than trying to
13 exploit an unfortunate, local incident in order to chill the free expression and association of
14 activists who participate in demonstrations like the July 8, 2005 protest against the G8 Summit,
15 many of whom apparently espouse anarchist beliefs (such as local autonomy, indigenous rights,
16 freedom from government oppression and state terrorism, living with a small ecological
17 footprint, and serving one another through acts of kindness and mutual support). It is readily
18 apparent that the FBI is engaged in an illegal, full field investigation of anarchists and anarchism,
19 and if the Court has any doubt as to this, then it should hold an evidentiary hearing to inquire into
20 it. This assertion is based not only on the evidence at hand in this case, and the lack of any other
21 predicate for FBI involvement, but on the sordid history of the federal government's misuse of
22 the grand jury system to harass members of reviled groups or political ideologies, and the FBI's
23 long and sordid history of attempting to "expose, disrupt, misdirect, discredit, or otherwise
24 neutralize" unpopular groups and individuals, in J. Edgar Hoover's infamous words.⁴

25
26 ⁴ COINTELPRO last reared its ugly head in the Bay Area, as far as anyone knows, when
27 the FBI attempted to frame environmental activists Judi Bari and Darryl Cherney by accusing
28 them of transporting a car bomb which was obviously placed by an attempted assassin under Ms.
Bari's car seat. In 2002, a federal jury in San Francisco awarded plaintiffs in the ensuing civil

1 The grand jury system is enshrouded in secrecy and is, by its very nature, susceptible to
2 abuse. See generally, Mark Kadish, *Behind the Locked Door of An American Grand Jury: Its*
3 *History, Its Secrecy, and Its Process*, 24 Fla.St.U.L.Rev. 1 (1996); Michael Deutsch, *The*
4 *Improper Use of the Federal Grand Jury: An Instrument for the Internment of Political Activists*,
5 75 J.Crim.L. & Criminology 1159 (1984). "A consequence of grand jury secrecy is that neither
6 the courts nor Congress, nor, especially, the public, can gauge how the institution is being used."
7 Marvin E. Frankel & Gary P. Naftalis, *The Grand Jury: An Institution on Trial* 125 (1977).

8
9 Very few of the procedural protections guaranteed to defendants in criminal trials are
10 available during grand jury proceedings. For example, an indictment may be based entirely on
11 hearsay evidence, Costello v. United States, 350 U.S. 359 (1956), the prosecutor has no
12 obligation to present exculpatory evidence, United States v. Williams, 504 U.S. 36 (1992), and
13 the Fourth Amendment exclusionary rule does not apply, United States v. Calandra, 414 U.S. 41
14 (1972). According to established practice, 18 U.S.C. § 3332, and Fed.R.Crim.P. 6 and 17, a
15 United States attorney may cause a grand jury subpoena to issue without specific grand jury
16 authorization. See, In re Lopreato, 511 F.2d 1150 (1st Cir. 1975); In re Grand Jury Proceedings
17 (Schofield), 486 F.2d 85 (3d Cir. 1973).

18 Furthermore, unlike witnesses summoned to appear before a court, witnesses subpoenaed
19 before a grand jury have almost no procedural protections available to them. Under Blair v.
20 United States, 250 U.S. 273 (1919), a witness subpoenaed before a grand jury has no standing to
21 challenge a grand jury investigation. Witnesses are interrogated in secret without any members
22 of the public or press present and, because grand jury proceedings are not adversarial, only the
23 prosecution is represented. The witness is not even permitted to have counsel present in the
24 grand jury room. The prosecutor may examine, cross-examine or present evidence without

25
26 rights lawsuit 4.4 million dollars against the FBI and their dupes and accomplices, the Oakland
27 Police, allocating the bulk of the award against the defendants based on their violations of
28 plaintiffs' First Amendment rights. This was small recompense for the calumnies and years of
suffering the pair endured as a result of the attempted frame-up, which some believe drove Judi
Bari to her early death from cancer in 1997 at age 47.

1 complying with the Federal Rules of Evidence, and the witness “has an absolute duty to answer
2 all questions, subject only to a valid Fifth Amendment claim.” United States v. Mandujano, 425
3 U.S. 564, 581 (1976). The witness, who may be the target of the investigation, is not entitled to
4 notice of the privilege against self-incrimination or the possibility of representation by counsel.

5 The grand jury is frequently referred to as a “tool of the prosecutor.” “[A]lthough grand
6 jury subpoenas are occasionally discussed as if they were the instrumentalities of the grand jury,
7 they are in fact almost universally instrumentalities of the United States Attorney’s office or of
8 some other investigative or prosecutorial department of the executive branch.” In re Grand Jury
9 Proceedings (Schofield), 486 F.2d 85, 90 (3d Cir. 1973). “[T]he enormous range of discretion
10 held by prosecuting authorities in the United States allows them to use the law for political and
11 other ends.” Norman Dorsen & Leon Friedman, *Disorder in the Court: Report of the*
12 *Association of the Bar of the City of New York Special Committee on Courtroom Conduct* 170
13 (1973).

14 In light of the susceptibility of the grand jury to abuse, it comes as no great surprise that
15 the history of the grand jury system both in England, where it originated in the seventeenth
16 century, and in the United States, is tarnished with instances where improper political
17 motivations were permitted to interfere with its proper function. For example, in the antebellum
18 South, the grand jury system was used to enforce slavery laws and indict outspoken opponents of
19 slavery for sedition. Richard D. Younger, *The People’s Panel: The Grand Jury in the United*
20 *States*, 85-133 (1963). Similarly, in the post-Civil War South, the grand jury system formed an
21 integral part of the “reign of terror” in which blacks and Reconstruction officials were indicted in
22 order to harass and intimidate them, while Ku Klux Klan members who deprived blacks of their
23 right to vote were not indicted. *Id.* at 128-29.

24 Earlier this century, the grand jury system was improperly used to frame labor organizers
25 and union leaders and to facilitate witch hunts for Communist sympathizers. Deutsch, *supra*, at
26 1171-73, 1175-78. More recently, during the Nixon administration, over one thousand political
27 activists were subpoenaed to more than one hundred grand juries across the nation. *Id.* at 1179.
28 The targets of these grand juries included anti-Vietnam War activists, leftist academics, the

1 Catholic left, and supporters of the women's movement and the black nationalist movement. *Id.*
2 at 1180. Members of the National Lawyers Guild were frequently involved in representing
3 persons called before grand juries and also worked to expose the abuses of the grand jury system.
4 The grand juries were widely understood at the time to be domestic intelligence-gathering
5 operations, which prompted many activists to go to jail rather than cooperate. *Id.* at 1182. As
6 Senator Edward M. Kennedy astutely observed, "under the [Nixon] administration, we have
7 witnessed the birth of a new breed of political animal--the kangaroo grand jury--spawned in a
8 dark corner of the Department of Justice, nourished by an administration bent on twisting law
9 enforcement to serve its own political ends, a dangerous form of Star Chamber secret inquisition
10 that is trampling the rights of American citizens from coast to coast." *Washington Post*, March
11 14, 1972, at 2, col. 3. Recently, Senator Tom Harkin expressed similar concern regarding a
12 subpoena issued against student organizers of an anti-war conference at Drake University in
13 Iowa, along with the local chapter of the National Lawyers Guild, when he said: "I don't like
14 the smell of it,...It reminds me too much of Vietnam when war protesters were rounded up,
15 when grand juries were convened to investigate people who were protesting the war.'" *Des*
16 *Moines Register*, February 7, 2004. The government subsequently withdrew its subpoena after
17 the affected parties filed a motion to quash.

18 In the case at bar, the federal government is clearly overstepping its bounds again. Grand
19 juries "are not licensed to engage in arbitrary fishing expeditions, nor may they select targets of
20 investigation out of malice or an intent to harass." United States v. R. Enterprises, Inc., 498 U.S.
21 at 299 (1991). Rather, the proper role of the grand jury is to serve as "a primary security to the
22 innocent against hasty, malicious and oppressive persecution; it serves the invaluable function in
23 our society of standing between the accuser and the accused. . . to determine whether a charge is
24 founded upon reason or was dictated by an intimidating power or by malice and personal ill
25 will." Wood v Georgia, 370 U.S. 375, 390 (1962). See also, Costello v. United States, 350 U.S.
26 359, 362 (1956); Hale v Henkel, 201 U.S. 43, 59 (1906).

27 While Congress has refused to grant general investigatory subpoena power to the Justice
28 Department or the FBI, cf. United States v. Minker, 350 U.S. 179, 191 (1956) (Black, J.,

1 concurring) (“Apparently Congress has never even attempted to vest FBI agents with such
2 private inquisitorial power”), as a practical matter, the subpoena power of the grand jury is an
3 investigatory tool used to gather information which cannot be gained by usual investigatory
4 means. For example, the subpoena power has been used to assist the FBI, the Internal Security
5 Division of the Department of Justice, and other federal agencies in gathering intelligence data
6 and in obtaining information which is otherwise inaccessible. See, e.g., United States v. Ryan,
7 455 F.2d 728 (9th Cir. 1972) (court reversed conviction where the IRS sought records which it
8 could not have obtained through enforcement of an administrative subpoena, but which the
9 Government obtained instead through subpoenas *duces tecum*); In re September 1972 Grand
10 Jury, 454 F.2d 580, 585 (7th Cir. 1971) (“[I]t would be an abuse of the grand jury process for the
11 government to conduct a general fishing expedition under grand jury sponsorship with the mere
12 explanation that the witnesses are potential defendants”; “[W]e hold it to be an abuse of the
13 grand jury process for the Government to impose on that body to perform investigative work that
14 can be, and theretofore has been successfully accomplished by the regular investigative agencies
15 of Government.”); see also Donner & Cerruti, “The Grand Jury Network,” *The Nation*, Jan. 2,
16 1972; Cowan, “The New Grand Jury,” *New York Times Magazine*, April 29, 1973.⁵

17
18 Mr. Wolf is a freelance videographer, who records video for the Indy Media Center, an
19 amalgam of independent media websites, which also produces a cable television news segment.
20 He shot video of the July 8, 2005 protest, which is posted on at least one of the websites. In this
21 case, Mr. Wolf also sold edited portions of video from the July 8, 2005 protest to three major
22 television networks. The government has subpoenaed Mr. Wolf because he declined FBI in
23 person demands that he produce video shot during the protest. The SFPD and the FBI already
24 have the internet video.

25
26 ⁵ “Officials of the Justice Department ... firmly endorse the idea that the juries should be
27 used to extract information the FBI can’t obtain A. William Olson, then head of the
28 department’s Internal Security Division, saw nothing wrong with the use of the grand jury as a
tool to develop broad information for the Government.” Cowan, “The New Grand Jury,” *New
York Times Magazine*, April 29, 1973.

1 The United States Supreme Court has directed the federal courts to ensure that grand jury
2 investigations respect the First Amendment rights of reporters. In Branzburg v. Hayes, 408 U.S.
3 665 (1972), the Supreme Court held that although the First Amendment does not protect
4 newspaper reporters from being subpoenaed to testify about their sources, "grand jury
5 investigations if instituted or conducted other than in good faith, would pose wholly different
6 issues for resolution under the First Amendment. . . . We do not expect courts will forget that
7 grand juries must operate within the limits of the First Amendment as well as the Fifth."
8 Branzburg, 408 U.S. at 707-08. In the case at bar, the government is using the grand jury as a
9 tool of intimidation, and to engage in a fishing expedition, in a manner proscribed by the
10 Supreme Court, and censured by lawmakers.

11 Since the movant has made a showing that the government is proceeding in bad faith by
12 attempting to chill and harass a political community, by misusing a federal grand jury in an effort
13 to "assist" local authorities in pending local criminal cases, and by attempting to circumvent the
14 California Shield Law which protects a reporters' files and sources, the Court should sanction the
15 government by quashing the subpoena. Branzburg, 408 U.S. at 707-08; In Re Grand Jury
16 Subpoenas served upon Edward Kiefaber, et al., 774 F.2d 969 (9th Cir., 1985)(quashing grand
17 jury subpoenas as sanction for Government's disclosure of grand jury materials to local law
18 enforcement agencies).

19 At a bare minimum, since the movant has made a prima facie showing that the subpoena
20 infringes his First Amendment rights, the government must show a compelling need for the
21 requested records and that such records have a substantial relationship to this compelling interest.
22 United States v. Citizens State Bank, 612 F.2d 1091 (8th Cir. 1980). In addition, the government
23 must show that the relevant information can not be obtained through less intrusive means.
24 National Commodity and Barter Association v. United States, 951 F.2d 1172, 1174 (10 Cir.
25 1991). Mr. Wolf should then be given a chance to respond.

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28

1 IV. CONCLUSION

2 WHEREFORE, Joshua Wolf respectfully requests that the Court stay and ultimately
3 quash the subpoena and the subpoena duces tecum. In the alternative, Mr. Wolf respectfully
4 requests that the Court require the government to identify the nature and purpose of its
5 investigation, and to show that the requested records bear a substantial relationship to a
6 compelling governmental interest, and that they cannot be obtained through less intrusive means,
7 and if the government makes such an initial showing, provide Mr. Wolf with the opportunity to
8 show that the deprivations of his First Amendment rights outweigh the government's cited
9 interest(s). Mr. Wolf also respectfully requests such further relief as the Court deems just and
10 proper.

11 Respectfully Submitted,

12 Dated: February 15, 2006

13 SIEGEL & YEE

14 Attorneys for Joshua Wolf
15 Subpoenaed Party

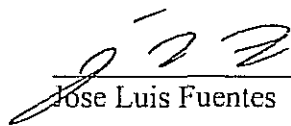
16 By:

17 
18 JOSE LUIS FUENTES

19 Attorney Ben Rosenfeld contributed to this motion.

20 **CERTIFICATE OF SERVICE**

21
22 I, Jose Luis Fuentes, certify that on the 15th day of February, 2006, I caused the
23 foregoing Motion to Quash and associated documents to be served on the U.S. Attorney's Office,
24 Northern District of California, by mailing a copy of the documents by First Class U.S. mail. In
25 addition, faxed copies of all documents were sent to the U.S. Attorney's office on the 15th day of
26 February, 2006 at 415-436-6846.

27 
28 JOSE LUIS FUENTES