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PUBLIC FIRST LAW CENTER

IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

SPECIAL PROCEEDING TO UNSEAL
ADOPTION PROCEEDINGS

1FFM-24-0000018

MOVANT PUBLIC FIRST LAW
CENTER'S REPLY TO SUBSTANTIVE
JOINDER OF RESPONDENT COURT
APPOINTED SPECIAL ADVOCATES
PROGRAM, FILED APRIL 22, 2024
[DKT 58]

JUDGE: MATTHEW J. VIOLA

**MOVANT PUBLIC FIRST LAW CENTER'S REPLY TO SUBSTANTIVE JOINDER
OF RESPONDENT COURT APPOINTED SPECIAL ADVOCATES PROGRAM,
FILED APRIL 22, 2024 [DKT 58]**

Movant Public First Law Center (Public First) files this response to Respondent Court Appointed Special Advocates Program's (CASA) substantive joinder, filed April 22, 2024 as Dkt. 58, to the opposition filed April 1, 2024 by Respondent Department of Human Services (DHS) as Dkt. 53.

As a threshold matter, it is unclear what interest CASA holds and for who it speaks, if anyone. CASA has not made apparent any authority it has to represent the siblings' interests or object on their behalf to the requested disclosure — over the non-objections of the court-appointed representatives.

In any event, CASA and DHS both argue, at bottom, that this Court should construe the relevant disclosure standard to mean *nothing*. Neither the statute, legislative history, nor facts of this case support that position. Dkt. 1, 2-8; Dkt. 55, 1-8. They also ask this Court to pretend Isabella’s adoption has been routine. It has not.

Complete secrecy is not necessary here. The identities of the adoption triad — Isabella, Sellers & Joseph, the Kaluas — are publicly known. The adopted child is dead, and the motion does not seek to unseal personal information about her siblings. The biological parents and court-appointed advocates for the children have not opposed the requested unsealing. The adoptive parents are charged with murdering their adopted daughter. What, then, is left to protect?

“Good cause” under HRS § 578-15(b) is met and exceeded here. If it is not, then the Legislature’s words mean nothing. While the State may have concerns about public scrutiny and accountability for its role in what went horribly wrong with this adoption placement, those concerns do not negate the plain language of the statute.

1. There is nothing left for adoption confidentiality to protect.

CASA’s legislative history argument leads nowhere. CASA discusses why the general rule of confidentiality exists, Dkt. 58 at 5-8 — which is not in dispute — but fails to explain *what* “confidentiality interests” remain to be protected.

CASA argues that the purpose of adoption secrecy, as far back as Territory days, was to make it “so that, after adoption, all public records will indicate that the child is the natural child of the adopting parents.” Dkt. 58 at 5 (*citing* S. Stand. Comm. Rep. No. 90 (1945) at 276). As Public First acknowledged in its motion, this helps to “avoid the stigma of illegitimacy” and “allow the birthparents to make new lives for themselves.” Dkt. 1 at 5-6 (*citing* *Lum, Privacy v. Secrecy*). Thus, the purpose of secrecy is to conceal the *fact* of adoption. But that — and much more — is already publicly known here.

It is public knowledge that: Isabella was removed from her biological parents and adopted by the Kaluas; DHS supported the adoption; government prosecutors allege the Kaluas abused, neglected, and slowly starved and murdered Isabella while they were receiving government money for her care; and Isabella is dead. Adoption

secrecy, here, can no longer serve its intended purpose. Instead, it serves only as cover for any problems or deficiencies that led to an adoption that resulted in Isabella's death.

2. "Good cause" is not ambiguous. It means a "legally sufficient reason."

Public First and CASA agree that "good cause" means "a legally sufficient reason." Dkt. 58 at 4. Although CASA and Public First disagree about *whether* such a reason exists under the facts here, that does not render the term "good cause" ambiguous. What CASA misconstrues as ambiguity is really the broad and flexible discretion afforded to judges by the "good cause" standard.

Like DHS, CASA argues the Legislature's 1990 addition of "upon a showing of good cause" somehow reflects an intent to restrict the Court's discretion to release judicial records. But the plain language that authorizes court-ordered unsealing of adoption records and relevant legislative history say otherwise. The Senate Committee on Judiciary added the "good cause" language to H.B. 2089 (bill that became Act 338). *See Exhibit 4*. That Committee clearly stated that it did so to ensure that the discretion already afforded to courts was *preserved*, should the additional amendments ever call that into doubt (as DHS does today):

Your Committee believes this amendment is necessary to ensure that this procedure, which is currently available, *will still be available in addition to the other procedures established by the bill as amended*.

S. Stand. Comm. Rep. No. 3056 at 1241 (emphasis added). CASA also sidesteps entirely the legislative recognition that "there are compelling arguments for fully opening up adoption records." *Id.* at 1242.

3. "Good cause" to unseal adoption records exists here.

CASA asserts that there is no "good cause" for disclosure. That is wrong, for all the reasons previously briefed. Dkt. 1 (motion); Dkt. 29 (reply to Kalua opposition); Dkt. 55 (reply to DHS opposition). Here there is a legally sufficient reason—good cause—for disclosing adoption records because DHS decided that a child and her siblings should be adopted by the Kaluas and within a year the Kaluas were charged with the child's murder. The public has demanded answers about how this happened and how it will be prevented from reoccurring. *E.g.*, Exhibit 1 (compilation of news

articles). DHS has only stonewalled. *Id.* The conduct of DHS in handling this adoption is very much the public's concern.

CASA claims that finding "good cause" under the circumstances of this case "is inconsistent with the legislative history and intent behind" HRS § 578-15(b) and that doing so would lead to an "absurd" result. Dkt. 58 at 6-9. For the reasons discussed above, CASA is simply wrong. There is nothing absurd about disclosing records to allow public scrutiny of a government-sponsored adoption that resulted in the death of the adopted child. Nor is there good reason to delay public accountability any longer.

4. Request for Public Access to Motion to Unseal Proceeding

As previously briefed, Public First requests that the Court provide public access to this proceeding to unseal—subject to any motion to seal specific matters that interested parties believe must be considered by the Court *in camera*. Dkt. 29 at 2-3.

CONCLUSION

Public First respectfully requests that, pursuant to HRS § 578-15(b), the Court grant its motion and unseal appropriate court records, or otherwise publicly disclose information, from the adoption proceeding of Isabella Kalua.

DATED: Honolulu, Hawai'i, May 10, 2024

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