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Dkt. 259 MOT

Attorneys for Movant Public First Law Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

vs.

JUAN BARON,

Defendant.

CR NO 1CPC-22-0000461

MOTION TO UNSEAL COURT
RECORDS; MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO
UNSEAL COURT RECORDS; and
NOTICE OF HEARING MOTION

HEARING MOTION

JUDGE: Hon. Catherine H. Remigio

DATE: July 8, 2025

TIME: 2:30 p.m.

TRIAL DATE: None

NOTICE OF ELECTRONIC FILING
GENERATED BY JEFS

MOTION TO UNSEAL COURT RECORDS

Pursuant to the constitutional right of access provided by the First Amendment to the U.S. Constitution; article I, section 4 of the Hawai`i Constitution; the common law right of access; and Hawai`i Court Records Rule (HCRR) 10.10, Movant Public First Law Center (Public First) moves to unseal entirely the docket entries numbered 71 and 72.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL COURT RECORDS

Public First moves for public access to docket entries 71 and 72 (together, sealed exhibits), which appear to be Exhibits “1” thru “22” submitted in support of the State of Hawai`i’s (State) motion to determine voluntariness of Defendant Juan Tejedor Baron’s (Defendant) statements to police. Dkt. 69 and 70.¹

Notwithstanding its reliance on HCRR 9.1, the State did not meet the procedural or substantive standards for sealing when they filed the sealed exhibits under seal without a motion and without any judicial findings. Accordingly, Public First asks the court to unseal the sealed exhibits in their entirety.

I. Legal Standards

The Hawai`i Supreme Court has recognized that the public has the right to access judicial proceedings and records, including criminal proceedings. *Grube v. Trader*, 142 Hawai`i 412, 422, 420 P.3d 343, 353 (2018); *accord Oahu Publc’ns, Inc. v. Ahn*, 133 Hawai`i 482, 507, 331 P.3d 460, 485 (2014). There is a “strong presumption that court proceedings and the records thereof shall be open to the public.” *Grube*, 142 Hawai`i at 428, 420 P.3d at 359. The right of access includes evidentiary-related proceedings. *United States v. Brooklier*, 685 F.2d 1162, 1170 (9th Cir. 1982) (“it is clear that the considerations supporting the public’s qualified right of access to the criminal trial itself apply as well to hearings on motions to suppress evidence”); *accord Civil Beat Law Ctr. for the Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1208 (9th Cir. 2024) (“As both we and the

¹ Although the undersigned has been added to this case as an electronic filer, consistent with HCRR 10.4, neither movant nor its counsel have used the JIMS/JEFS database to gain access to the sealed exhibits.

Supreme Court have recognized, the First Amendment grants the public a presumptive right to access nearly every stage of post-indictment criminal proceedings, including pretrial proceedings, preliminary hearings, voir dire, trials, and post-conviction proceedings, as well as records filed in those criminal proceedings.”).

The proponent of sealing has the burden to overcome this presumption of access. *Oregonian Publ’g Co. v. U.S. Dist. Court*, 920 F.2d 1462, 1465-67 (9th Cir. 1990). This right can only be overcome by findings on the record that “the closure is essential to preserve higher values” and that the closure is “narrowly tailored” to serve that interest. *Grube*, 142 Hawai’i at 424, 420 P.3d at 355; *Ahn*, 133 Hawai’i at 498, 331 P.3d at 476. The court must consider in its findings whether: “(1) the closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.” *Grube*, 142 Hawai’i at 424, 420 P.3d at 355.

“To qualify as compelling, the interest must be of such gravity as to overcome the strong presumption in favor of openness. . . . [T]he asserted interest must be of such consequence as to outweigh both the right of access of individual members of the public and the general benefits to public administration afforded by open trials.” *Grube*, 142 Hawai’i 425-26, 420 P.3d at 356-57. If a compelling interest exists, “a court must find that disclosure is sufficiently likely to result in irreparable damage to the identified compelling interest.” *Ahn*, 133 Hawai’i at 507, 331 P.3d at 485. “It is not enough that damage could possibly result from disclosure, nor even that there is a ‘reasonable likelihood’ that the compelling interest will be impeded; there must be a ‘substantial probability’ that disclosure will harm the asserted interest.” *Grube*, 142 Hawai’i at 426, 420 P.3d at 357. The harm “must be irreparable in nature.” *Id.*

If there is a compelling interest that would be irreparably harmed by disclosure, redaction is an adequate alternative to concealing an entire document from the public. *Ahn*, 133 Hawai’i at 507-08, 331 P.3d at 485-86; *accord Oahu Public’ns Inc. v. Takase*, 139 Hawai’i 236, 246-47, 386 P.3d 873, 883-84 (2016). “[S]imply preserving the comfort or official reputations of the parties is not sufficient justification [for closure].” *Grube*, 142 Hawai’i at 425, 420 P.3d at 356.

To justify sealing, this Court must make “specific findings” regarding each element of the substantive standards. *Ahn*, 133 Hawai‘i at 507, 331 P.3d at 485; *Grube*, 142 Hawai‘i at 424-25, 420 P.3d at 355-56. In rejecting a trial court’s bare reference to generic concerns, the Hawai‘i Supreme Court emphasized the need for facts and evidence:

The trial court may not rely on generalized concerns, but must indicate facts demonstrating compelling interest justifying the continued sealing of the documents. Additionally, the court must specifically explain the necessary connection between unsealing the transcript and the infliction of irreparable damage resulting to the compelling interest.

Grube, 142 Hawai‘i at 424-25, 420 P.3d at 355-56. “In the absence of such details, there is nothing by which the court could have determined that the asserted interest was of sufficient gravity to displace the strong presumption in favor of openness.” *Grube*, 142 Hawai‘i at 426, 420 P.3d at 357.

II. Factual Background

The State charged Defendant with murder in the second degree and three counts of theft by indictment filed April 13, 2022. Dkt. 1.

The State moved to determine the voluntariness of certain statements Defendant made to police on December 16, 2022. Dkt. 69 at 2.² The State’s motion was supported by twenty-two exhibits and extensively cites the exhibits—in many instances, quoting the exhibits verbatim. *Id.* at 9-63. All of the exhibits, however, were unilaterally filed under seal without motion or judicial consideration. Dkt. 70. The State cited HCRR Rules 2.19, 9.1, and vaguely claimed pretrial publicity “could potentially affect parties’ right to a fair trial.” *Id.* at 1 (formatting altered). The motion was set to be heard April 16, 2024. Dkt. 174.

Defendant pleaded guilty on March 18, 2024. Dkt. 190. Defendant moved to withdraw his guilty plea on September 16, 2024. Dkt. 217. The court denied Defendant’s motion on May 6, 2025. Dkt. 253. Defendant is scheduled to be sentenced on July 30, 2025. *Id.*

² Pinpoint citations reference the page of the corresponding PDF.

III. HCRR 9 does not authorize blanket sealing of evidence supporting a substantive criminal pretrial motion.

HCRR prohibits the public filing of “personal information.” HCRR 9.1(a). That term is expressly limited to “social security numbers, dates of birth (except for traffic citations), names of minor children, bank or investment account numbers, and social service reports.” HCRR 2.19. Moreover, HCRR 2.19 contemplates *some* public disclosure of personal information:

To the extent a social security or account number is required in an accessible document, the last 4 digits may be displayed, provided that no more than half of the social security or account digits are disclosed. To the extent a birthdate is required in an accessible document, the birth year may be displayed. Except as provided in Rule 9.1, to the extent the name of a minor is required in an accessible document, the initials of the minor may be displayed.

Id. Only when “a complete social security number, account number, birthdate, or name of a minor child is required for adjudication of a case” is a sealed filing under HCRR 9.1 cover appropriate. *Id.*

The State obviously exceeded the scope of automatic sealing contemplated by HCRR 2.19 and 9.1. The State has not identified any “personal information” warranting protection. Dkt. 70. Nor could it be that *everything* in the twenty-two exhibits is “personal information” under the rules. That is plainly not the case. *E.g.*, Dkt. 69 at 22-23 (discussing Ex. 7), 24 (discussing Ex. 8); 25-26 (discussing Ex. 9), 27 - 29 (discussing Ex. 10, 11, and 12), and 30-33 (discussing Ex. 1, 14, 15, 16, 17, 18, 19, 20, 21, 22).

IV. The State did not meet its burden to seal judicial records.

The State’s conclusory fair trial assertions do not justify the blanket sealing of evidence supporting a substantive criminal pretrial motion.

First, the law plainly requires a motion and judicial findings *before* a judicial record may be sealed. *E.g.*, *Ahn*, 133 Hawai‘i at 507, 331 P.3d at 485; *Grube*, 142 Hawai‘i at 424-25, 420 P.3d at 355-56. The State did not do that. Dkt. 70, 71, 72.

Second, generic concerns and conclusory statements are not sufficient to seal judicial records. *Grube*, 142 Hawai‘i at 424-25, 420 P.3d at 355-56; *Ahn*, 133 Hawai‘i at 505, 331 P.3d at 483 (“While these reasons are indisputable in the generic sense, they do

not as stated provide sufficient justification for a closure of a court proceeding.”); *accord Roy v. GEICO*, 152 Hawai`i 225, 342, 524 P.3d 1249, 1267 (App. 2023) (rejecting “[c]onclusory claims” as a basis for sealing). But that is all the State offered. Dkt. 70.

Third, the proponent of sealing must provide evidence of a “substantial probability” that a compelling interest – assuming one exists – would be “irreparably harmed” in the absence of closure. *Grube*, 142 Hawai`i at 424, 420 P.3d at 355. The State provided no such evidence. Dkt. 70.

Fourth, the proponent of sealing must establish that there are *no* alternatives to closure that would adequately protect the compelling interest. *E.g.*, *Ahn*, 133 Hawai`i at 505, 331 P.3d at 483 (requiring specific facts demonstrating reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights). The State again failed to do so. Dkt. 70.

Last, absent more, speculative fair trial concerns about pretrial publicity are not sufficient “compelling interests” to justify sealing judicial records. *E.g.*, *Gannett Pac. Corp. v. Richardson*, 59 Haw. 224, 233, 580 P.2d 49, 56 (1978) (“pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial”); *Ahn*, 133 Hawai`i at 505, 331 P.3d at 483; *Press-Enter. II*, 478 U.S. at 15 (“right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of [the right to a fair trial]”); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 554 (1976) (“Taken together, these cases demonstrate that pretrial publicity even pervasive, adverse publicity does not inevitably lead to an unfair trial.”); *United States v. Guerrero*, 693 F.3d 990, 1002 (9th Cir. 2012) (“We have made clear that ‘pervasive publicity, without more, does not automatically result in an unfair trial.’”); *Brooklier*, 685 F.2d at 1169 (generalized concerns about “problems of publicity” insufficient to claim prejudice to right to fair trial); *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1146 (9th Cir. 1983) (publicity concerns can be resolved by voir dire and clear jury instructions to ensure fair trial).

V. Conclusion

For the foregoing reasons, the Law Center respectfully requests that this Court fully unseal docket entries 71 and 72.

NOTICE OF HEARING MOTION

TO: ALL PARTIES AND COUNSEL

NOTICE IS GIVEN that the foregoing motion to unseal court records shall come on for hearing before the Honorable Catherine H. Remigio, judge of the above-entitled court, in her courtroom at Ka'ahumanu Hale, 777 Punchbowl Street, 3rd Floor, Courtroom 7, Honolulu, Hawai'i, on Tuesday, **July 8, 2025** at **2:30 p.m.**, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai'i; May 29, 2025

/s/ Benjamin M. Creps

ROBERT BRIAN BLACK

BENJAMIN M. CREPS

Attorneys for Movant

Public First Law Center