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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW
CENTER

Movant.

MISC. NO. 25-325-JMS-WRP
[CR. NO. 23-00016-JMS]

REPLY TO DEFENDANT'S
RESPONSE [DKT. 92] TO MOTION
TO UNSEAL

**REPLY TO DEFENDANT'S RESPONSE [DKT. 92]
TO MOTION TO UNSEAL**

Movant Public First Law Center (Public First) objects to Defendant Dwayne Yuen's request that this Court seal substantial portions of his sentencing memorandum. In his response to Public First's motion to unseal,¹ Yuen seeks to withhold public access to four broad categories of information relevant to his sentencing. Sealing all the requested information is not justified under the relevant standards for public access.

¹ Yuen did not serve Public First with his response to Public First's motion. Dkt. 92 at PageID.808.

Information about Family Members

Yuen seeks to seal all information “about the defendant’s family members, their medical and mental health conditions, and their status as victims of crimes.” Dkt. 92 at PageID.802.² His only argument concerns “medical and mental health information.” *Id.* at PageID.804-05. Any concerns about revealing non-party medical information can be resolved by redacting the identity of individuals (*e.g.*, names and relationship to Yuen). If Yuen sought leniency from this Court based on illness in his family, the public should be aware of such claims. Redactions adequately protect a non-party’s privacy concerns while providing a more narrowly tailored solution than withholding all reference to such sentencing arguments. *E.g., Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 949 (9th Cir. 1998) (sealing requires finding that “there are no alternatives to closure that would adequately protect the compelling interest”).

Yuen’s Medical Information

Next, Yuen seeks to seal all information regarding his “psychological testing, treatment, evaluation, and analysis.” Dkt. 92 at PageID.803. As noted in Public First’s motion to unseal and unaddressed by Yuen, the Ninth Circuit has held that not all medical information filed with courts must be sealed. *Civil Beat*

² “Dkt.” refers to the docket of *United States v. Dwayne Yuen*, No. 23-CR-16-JMS.

Law Ctr. for the Pub. Interest, Inc. v. Maile, 117 F.4th 1200, 1211 (9th Cir. 2024).

As it specifically concerns mental health information, the Ninth Circuit has affirmed—over privacy objections—disclosure of such information in criminal cases.³ *E.g.*, *United States v. Guerrero*, 693 F.3d 990, 1003 (9th Cir. 2012); *United States v. Kaczynski*, 154 F.3d 930, 931-32 (9th Cir. 1998). Moreover, Yuen and his counsel openly discussed his mental health during public proceedings in this case. *E.g.*, Dkt. 54 at PageID.206-07; Peter Boylan, *Hawaii Youth Basketball Coach Gets 33 Years in Sex Abuse Case*, Honolulu Star-Advertiser (Aug. 15, 2025) (noting defense counsel “shared excerpts from Yuen’s psychological evaluation” at sentencing); *see In re Copley Press*, 518 F.2d 1022, 1025 (9th Cir. 2008) (“Once information is published, it cannot be made secret again.”); *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 (2d Cir. 2004) (“We simply do not have the power, even were we of the mind to use it if we had, to make what has thus become public private again.”).

³ Contrary to Yuen’s argument, Dkt. 92 at PageID.805, HIPAA does not apply to court filings. *E.g.*, *United States v. Calafiore*, No. 1:21-cr-115-ADA-BAM-3, 2023 U.S. Dist. LEXIS 143932, at *1-2 (E.D. Cal. Aug. 16, 2023) (denying motion to seal sentencing records based on HIPAA argument); *accord Tokmo v. Pactiv Evergreen Grp. Holdings Inc.*, No. 2:25-cv-1614-DAD-CKD (PS), 2025 U.S. Dist. LEXIS 127264, at *3 (E.D. Cal. July 3, 2025) (denying motion to seal based on HIPAA and explaining the limitations of HIPAA).

To the extent Yuen sought to sway this Court regarding sentencing by reference to his medical and mental health history, that information must be available to the public to consider the fairness and integrity of how this Court administers justice.

Objections to Guideline Calculations

Next, Yuen seeks to seal discussion of guideline calculations in the sentencing memorandum. Dkt. 92 at PageID.806. His argument is premised on confidentiality for presentence reports.⁴ *Id.* The motion to unseal concerns his sentencing memorandum, not the presentence report. And the Ninth Circuit has recognized that there is no absolute confidentiality for documents simply because they are, or are related to, presentence reports. *United States v. Schlette*, 842 F.2d 1574, 1583, *amended*, 854 F.2d 359 (9th Cir. 1988); *see U.S. Indus., Inc. v. U.S. Dist. Ct.*, 345 F.2d 18, 20, 22-23 (9th Cir. 1965) (pre-*Press Enterprise* case requiring unsealing of sentencing statement sent to probation officer with redactions to protect the identity of grand jury witnesses). Moreover, the Court addressed Yuen's objections to the presentence report in open court at the sentencing. Dkt. 78. A defendant's arguments and advocacy concerning a proper

⁴ Yuen does not argue that the specific portions at issue concern the confidential information in a presentence report, as referenced in Crim. Local Rule 32.2(e). In any event, that Rule only authorizes sealing without a motion to seal; it does not prohibit this Court from unsealing the same information on motion.

sentence, including the guideline calculations that influence that determination, should be available to the public.

Submissions by Minors

Finally, Yuen seeks to withhold public access to materials prepared by minors because he did not have parental consent. Dkt. 92 at PageID.806. He cites no authority for that proposition. If Yuen did not have parental consent to submit the materials, perhaps he should not have provided copies to the Court at all, but he did seek to influence his sentencing with these documents. At best, Yuen raises a privacy concern that is addressed by sufficient redactions to keep the minors from being identified, not withholding the documents in their entirety as Yuen suggests.

Based on the foregoing reasons, Public First respectfully requests that this Court unseal Yuen's sentencing memorandum and his motion to supplement that sentencing memorandum [Dkt. 67, 77].

DATED: Honolulu, Hawai'i, October 24, 2025

/s/ Robert Brian Black
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CERTIFICATE OF SERVICE

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I hereby certify that, on the dates and by the methods of service noted below
a true and correct copy of the foregoing will be served on the following at their last
known addresses:

Served Electronically:

Rebecca A. Perlmutter	rebecca.perlmutter@usdoj.gov	October 24, 2025
Gwendelynn Bills	gwendelynn.e.bills@usdoj.gov	October 24, 2025
Sandy D. Baggett	sandy@sandybaggett.com	October 24, 2025

DATED: Honolulu, Hawai'i, October 24, 2025

/s/ Robert Brian Black
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