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6 Attorney for Defendant Dwayne Yuen

7 UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF HAWAII

9 **UNITED STATES OF AMERICA,**

10 Plaintiff,

11 v.

12 **DWAYNE YUEN,**

13 Defendant.

No. 1:23-CR-00016-JMS
1:24-CR-00077-JMS
1:25-MC-00325-JMS-WRP

Response to ECF 86
Third-Party Motion to Unseal

1 The defendant, DWAYNE YUEN, through court-appointed counsel submits
2 this response to the third-party motion to unseal (1:25-MC-003250JMS at ECF #1).
3 The district court directed parties to respond to the motion under docket 1:23-CR-
4 00016 at ECF #86. The third-party motion, filed by Public First Law Center of
5 Honolulu, Hawaii, seeks to unseal the defendant's sentencing memorandum (ECF
6 #67¹) and his motion to supplement that sentencing memorandum (ECF #77).

7 The defendant agrees with the government's recommendations regarding
8 unsealing and redacting ECF #77 and has no further recommendations or requested
9 redactions.

10 The defendant requests the following *additional* categories of redactions to
11 ECF #67:

- 12 1. Personal information about the defendant's family members, their
13 medical and mental health conditions, and their status as victims of
14 crimes (portions throughout the sentencing memorandum and portions
15 of Exhibit "B" at ECF #67);
- 16 2. The defendant's psychological testing, treatment, evaluation, and
17 analysis (portions throughout the sentencing memorandum, portions of
18 Exhibit "B," and all of Exhibit "C" to ECF #67);
- 19 3. The defendant's specific objections to the Presentence Investigation

¹ All further docket references are to docket 1:23-CR-00016.

1 Report (Section labelled “Unresolved Objections to PSIR beginning at
2 page 12 of sentencing memorandum at ECF #67);

3 4. Sentencing materials written by minors (All of Exhibit “F” to ECF
4 #67).

5 The defendant has submitted a proposed redacted form of ECF #67 to the court and
6 the government by email. The defendant’s additional proposed redactions are
7 indicated in blue.

8 **Discussion**

9 The law recognizes two qualified rights of access to judicial proceedings and
10 records: (1) a First Amendment right of access to criminal proceedings and
11 documents, and (2) a common law right to inspect and copy public records and
12 documents, including judicial records and documents. *U.S. v. Custer Battlefield*
13 *Museum*, 658 F.3d 1188, 1192 (9th Cir. 2011). Courts must ask two questions to
14 determine whether a qualified First Amendment right of public access applies to a
15 particular proceeding or document: (1) whether the place and process have
16 historically been open to the press and general public, and (2) whether public access
17 plays a significant positive role in the functioning of the particular process in
18 question. *Press-Enterprise v. Cal. Super. Ct.*, 478 U.S. 1, 8 (1986). This two-part
19 test is commonly referred to as the “experience and logic” test. *Id.* at 9. However,
even when the experience and logic test is satisfied, the public's First Amendment

1 right of access establishes only a strong presumption of openness, and the public
2 still can be denied access if closure is necessitated by a compelling governmental
3 interest and is narrowly tailored to serve that interest. *Times Mirror v. U.S.*, 873
4 F.2d 1210, 1211 n.1 (9th Cir. 1989). A qualified First Amendment right of public
5 access can attach to in-court sentencing proceedings. *See U.S. v. Rivera*, 682 F.3d
6 1223, 1229 (9th Cir. 2012); *U.S. v. Biagon*, 510 F.3d 844, 848 (9th Cir. 2007); *CBS*
7 *v. U.S. Dist. Ct.*, 765 F.2d 823, 825 (9th Cir. 1985).

8 Where the public has a qualified First Amendment right of access, criminal
9 proceedings and documents may be closed to the public without violating the First
10 Amendment if three substantive requirements are satisfied: (1) closure serves a
11 compelling interest; (2) there is a substantial probability that, in the absence of
12 closure, this compelling interest would be harmed; and (3) there are no alternatives
13 to closure that would adequately protect the compelling interest. *Oregonian Publ'g*
14 *v. U.S. Dist. Ct.*, 920 F.2d 1462, 1466 (9th Cir. 1990); *see also Times Mirror v. U.S.*,
15 873 F.2d 1210, 1211 n.1 (9th Cir. 1989); *U.S. v. Doe*, 870 F.3d 991, 998 (9th Cir.
16 2017)). The decision to seal documents is within the discretion of the district court
17 upon consideration of the relevant facts and circumstances of the particular case.
18 *Nixon v. Warner Comm.*, 435 U.S. 589, 599 (1978).

18 **Medical and mental health information**

19 The need to protect medical privacy qualifies as a compelling reason. *See*,

1 *e.g.*, *G. v. Hawaii*, No. 08-00551, 2010 WL 2607483 at *1 (D. Haw. June 25, 2010)
2 (sealing deposition testimony under the “compelling reasons” standard because they
3 contain information about Plaintiffs’ medical conditions and treatment); *Abbey v.*
4 *Hawaii Employers Mut. Ins.*, No. 09-000545, 2010 WL 4715793, at *1 (D. Haw.
5 Nov. 15, 2010); *U.S. v. Bennett*, 2:24-CR-00093-LK, 2024 WL 4202165, at *4
6 (W.D. Wash. Sep. 16, 2024); *Karpenski v. Am. Gen. Life*, No. 2:12-cv-01569-RSM,
7 2013 WL 5588312, at *1 (W.D. Wash. Oct. 9, 2013) (need to protect medical
8 privacy qualifies as a “compelling reason” for sealing records).

9 Even where a defendant has put his health at issue, he is nonetheless entitled
10 to the court’s protection of sensitive medical information whose privacy is ensured
11 by Federal law. *See* Health Insurance Portability and Accountability Act (HIPAA),
12 Pub. L. 104–191 (1996) (regulating use and disclosure of “Protected Health
13 Information.”).

14 In this case, the sentencing materials contain deeply personal medical and
15 mental health information about the defendant, his mother, and his father. They all
16 have a right to privacy in their medical and mental health information. Redacting
17 those portions of the sentencing materials that refer to medical and mental health
18 information would serve a compelling interest in protecting their medical privacy
19 while still allowing substantial portions of those documents to become unsealed and
public. There are no less restrictive means of protecting that privacy right.

Presentence Report information

In accordance with Criminal Local Rule 32.2(b)(4), presentence reports must be filed under seal. Local Rules of Practice for the U.S. Dist. Ct. for the Dist. of Haw., Chapter II, Rule 32.2(b)(4) (2023). Appellate courts have also repeatedly expressed the opinion that materials in presentence reports should be kept confidential. *See U.S. v. Charmer Industries*, 711 F.2d 1164, 1172–74 (2d Cir. 1983); *U.S. v. Walker*, 491 F.2d 236, 238 (9th Cir.), cert. denied, 416 U.S. 990 (1974).

One portion of the defendant’s sentencing memorandum details specific objections to findings and guideline calculations found in the presentence report for this case. Therefore, that portion of the memorandum should be redacted to keep that information confidential.

Sentencing materials written by minors

The defendant submitted, as part of his sentencing package of materials, many notes and cards written apparently by very young minor children and given to the defendant at the end of each school year. Although the government has redacted some names in those materials, because the defendant did not seek consent of the parents of those children to submit their private letters in a public court forum, the entire contents of that section should be redacted.

Conclusion

Therefore, the defendant respectfully requests that the court adopt the defendant's additional recommended redactions.

Dated: October 21, 2025

s/ Sandy D. Baggett
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Service Certificate

I certify that on October 21, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will notify Assistant United States Attorney: Rebecca A. Perlmutter and Gwendelynn Bills.

I further certify that on October 21, 2025, I served all sealed documents by email to the court and to AUSA Rebecca Perlmutter and AUSA Gwendelynn Bills.

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