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IN THE DISTRICT COURT OF THE FIRST CIRCUIT
KO'OLAUPOKO / KO'OLAULOA DIVISION
STATE OF HAWAII

STATE OF HAWAII,

vs.

JAMES M. BOTELHO,

Defendant.

1DTA-25-00071

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. Alvin K. Nishimura

DATE: December 10, 2025

TIME: 9:30 a.m.

TRIAL DATE: December 10, 2025

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 and article I, section 4 of the Hawai'i Constitution, Movant Public First Law Center (Public First) moves to unseal entirely the docket entries numbered 255 and 256.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL COURT RECORDS

Public First moves for public access to docket entries 255 and 256 (together, sealed exhibits), which appear to be two trial exhibits submitted by Defendant James M. Botelho (Defendant) and received into evidence by the court. Dkt. 253, 255, 256.¹

The court did not satisfy the constitutionally required procedural or substantive standards for sealing judicial records when it ordered the exhibits filed under seal without a publicly noticed motion to seal and without any written 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 Publ'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 criminal proceedings and trials. *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 Supreme Court have recognized, the First Amendment grants the

¹ Public First conventionally filed and served this motion because, if added as an electronic filer to the case, it would have electronic access to the documents that it is seeking to unseal. HCRR 10.4.

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 the presumption of access.

Oregonian Publ'g Co. v. U.S. Dist. Court, 920 F.2d 1462, 1465-67 (9th Cir. 1990).

When a party or trial court seeks to prevent public access to criminal proceedings or records, “both procedural and substantive requirements” must be satisfied to overcome the right of public access. *Grube*, 142 Hawai`i at 423, 420 P.3d at 355.

Procedurally, to justify sealing, “the public must be afforded both notice of the closure and an opportunity to be heard. . . . [M]otions requesting closure must be docketed a reasonable time before they are acted upon.” *Id.*; accord *United States v. Biagon*, 510 F.3d 844, 848 (9th Cir. 2007) (oral motion at hearing insufficient notice). This Court also 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.

Substantively, the court must make 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.” *Id.* at 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's 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.

II. Factual Background

The State charged Defendant with driving under the influence by complaint filed January 15, 2025. Dkt. 1.

Trial began on November 5, 2025. Dkt. 252. The court received two defense exhibits into evidence, under seal. Dkt. 255, 256.

Trial is scheduled to resume December 10, 2025. Dkt. 260.

III. The procedural and substantive requirements for sealing judicial records have not been met.

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. There is no such motion or findings in the record.

Second, there is no apparent factual basis to support sealing here. In rejecting a trial court's bare reference to generic concerns, for example, 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; 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). The proponent of sealing must also 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. And 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). There appears to be *no evidence* of record to support sealing the sealed exhibits.

Third, to the extent sealing was based on a protective order – *e.g.* Dkt. 95, 107 – protective orders alone are not a valid basis for sealing records filed with the court. *E.g.*, *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003) (common law presumption of public access is not rebutted by a blanket protective order for discovery); *Markel Am. Ins. Co. v. Internet Brands, Inc.*, No. CV-17-2429 (AJWx), 2017 U.S. Dist. LEXIS 224860, at *20-21 (C.D. Cal. Aug. 2, 2017) (“The issue of sealing discovery is not the same as sealing adjudicatory materials - an issue governed by the Ninth Circuit authorities cited above, and ultimately the First Amendment.”); *Dew v. E.I. Dupont Nemours & Co.*, No. 5:18-CV-73-D, 2024 U.S. Dist. LEXIS 216518, at *69 (E.D.N.C. Nov. 27, 2024) (“The standard a party must satisfy before being granted a protective order differs by an order of magnitude from the standard a party must satisfy to keep judicial documents out of the public eye.”). Protective orders apply in the limited context of discovery and may be imposed on a lower standard – mere “cause” – that falls far below the showing required when the constitutional standards of public access apply at trial. HRPP 16(e)(4).

IV. Conclusion

For the foregoing reasons, Public First respectfully requests that this Court fully unseal docket entries 255 and 256.

DATED: Honolulu, Hawai'i; November 18, 2025

/s/ Benjamin M. Creps
ROBERT BRIAN BLACK
BENJAMIN M. CREPS
Attorneys for Movant
Public First Law Center

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 Alvin K. Nishimura, judge of the above-entitled court, in his courtroom at the District Court of the First Circuit, Ko`olaupoko / Ko`olauloa Division, 45-939 Pookela St., Kane`ohe, Hawai`i, Courtroom A, on **December 10, 2025 at 9:30 a.m.**, or as soon thereafter as counsel may be heard.

DATED: Honolulu, Hawai`i; November 18, 2025

/s/ Benjamin M. Creps
ROBERT BRIAN BLACK
BENJAMIN M. CREPS
Attorneys for Movant
Public First Law Center