

ROBERT BRIAN BLACK 7659
BENJAMIN M. CREPS 9959
DÉVI DIANA STONE CHUNG 12173
Public First Law Center
700 Bishop Street, Suite 1701
Honolulu, Hawai'i 96813
brian@publicfirstlaw.org
ben@publicfirstlaw.org
fellow@publicfirstlaw.org
Tele: (808) 531-4000
Facsimile: (808) 380-3580

Attorneys for Movant Public First Law Center

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW
CENTER,

Movant.

MISC. NO. 26-00112 DKW-KJM
[CR NO. 19-CR-99-DKW-KJM]

MOTION FOR
RECONSIDERATION OF ORDERS
[DKT. 8 AND 10] GRANTING THE
GOVERNMENT'S MOTION TO
SEAL [DKT. 5] AND DEFENDANT
KAULANA FREITAS' MOTION TO
SEAL [DKT. 7]

**MOTION FOR RECONSIDERATION OF ORDERS [DKT. 8 AND 10]
GRANTING THE GOVERNMENT'S MOTION TO SEAL [DKT. 5] AND
DEFENDANT KAULANA FREITAS' MOTION TO SEAL [DKT. 7]**

Pursuant to Local Rule 60.1, Movant Public First Law Center ("Public
First") moves for reconsideration of the May 5, 2026 Orders granting the
Government's Motion to Seal [Dkt. 5] and Defendant Kaulana Freitas' Motion to

Seal [Dkt. 7],¹ based on manifest error of law. The May 5 Orders [Dkt. 8 and 10] fail to comply with the First Amendment requirements for sealing orders.

The First Amendment provides a qualified right of presumptive public access to motions to seal. *In re Copley Press, Inc.*, 518 F.3d 1022, 1028 (9th Cir. 2008). When the First Amendment applies, the Court must enter an order with specific findings of fact that “(1) 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.” *Oregonian Publ’g Co. v. U.S. Dist. Ct.*, 920 F.2d 1462, 1466 (9th Cir. 1990).²

¹ Defendant headed his motion to seal: “WARNING: THIS DOCUMENT FILED UNDER SEAL PURSUANT TO CRIMINAL LOCAL RULE 5.2(a)(9).” Notwithstanding that header, Defendant filed the document publicly.

² In addition to the deficient content of the May 5 Order, Local Rule 5.2(c) provides: “No later than seven (7) days after the filing of a motion to seal, any person may oppose the motion.” That timeframe is consistent with the constitutional requirement that courts provide a “meaningful opportunity” for members of the public to address motions to seal. *Phoenix Newspapers v. U.S. Dist. Ct.*, 156 F.3d 940, 949 (9th Cir. 1998) (“[I]f a court contemplates sealing a document or transcript, it must provide sufficient notice to the public and press to afford them the opportunity to object or offer alternatives. If objections are made, a hearing on the objections must be held as soon as possible.”). That did not happen here. The Government’s motion was filed on Friday May 1 and Defendant’s motion on Monday May 4. Public First did not have a meaningful opportunity—much less the seven days provided by local rule—to address the motions to seal before the May 5 Orders.

As the Ninth Circuit explained:

The procedural and substantive safeguards described in *Oregonian* and *Brooklier* are not mere punctilios, to be observed when convenient. They provide the essential, indeed only, means by which the public's voice can be heard. All too often, parties to the litigation are either indifferent or antipathetic to disclosure requests. This is to be expected: it is not their charge to represent the rights of others. However, balancing interests cannot be performed in a vacuum. Thus, providing the public notice and an opportunity to be heard ensures that the trial court will have a true opportunity to weigh the legitimate concerns of all those affected by a closure decision. Similarly, entry of specific findings allows fair assessment of the trial judge's reasoning by the public and the appellate courts, enhancing trust in the judicial process and minimizing fear that justice is being administered clandestinely.

Phoenix Newspapers, 156 F.3d at 951.

The May 5 Orders do not comply with constitutional requirements. The orders rely on “good cause”, not the applicable higher “compelling interest” standard. Also, they fail to provide specific factual findings that would allow for “meaningful appellate review” regarding the three substantive standards that must be met. *Id.* at 950.

Aside from these procedural defects, Defendant's motion in particular failed to satisfy the substantive standards for his requested relief. Defendant sought to seal *the entirety* of his opposition to the motion to unseal, depriving Public First of the opportunity to meaningfully address that opposition.

Defendant proffered three general bases for sealing the whole opposition. First, he refers to medical information. Dkt. 7 at PageID.45-46. The Ninth Circuit has expressly rejected reflexive sealing of medical information without a case-specific analysis. *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile*, 117 F.4th 1200, 1211 (9th Cir. 2024) (“Not everything that might qualify as a medical or health record necessarily contains information that is private, and not everyone may care to keep every medical or health record private. And, even assuming that every filed record implicates an identically strong privacy interest, we expect that selective redaction could sufficiently protect that interest in many instances.”). Defendant does not explain how medical privacy concerns will be implicated or harmed nor why targeted redactions would be insufficient to protect those interests.

Second, Defendant cites Local Rule 5.2. Dkt. 7 at PageID.46. As the U.S. Supreme Court and Ninth Circuit have held, blanket rules cannot substitute for case-specific analysis when the First Amendment is implicated. *Civil Beat Law Ctr.*, 117 F.4th at 1211-12 (citing *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982)). The general principles of Local Rule 5.2 cannot justify sealing Defendant’s entire briefing on the motion to unseal.

Third, Defendant references safety concerns and prematurely revealing the very secrets that are the subject of the motion to unseal before the Court has an opportunity to resolve that motion. Dkt. 7 at PageID.46. Public First does not

dispute that the qualified right of public access may be overcome *to the limited extent* that, during a sealing proceeding, a party must discuss “the facts the parties hope to keep secret”. *Copley Press*, 518 F.3d at 1027. Thus, while the parties’ justifications for hiding information from the public must be argued publicly, a party is not required to waive its specific secrets during the court’s review of a motion to seal.

Even though the Order granting its motion to seal is defective, the Government’s redacted opposition [Dkt. 6] proves that it is possible to comply with *Copley Press* and the First Amendment. The Government’s motion to seal stated that it only redacted information contained in the currently sealed records (sealed motion, sealed sentencing memorandum, and presentence investigation reports, Dkt. 5 at PageID.24). The Government, however, did not redact publicly available information or its arguments for why the requested records should remain under seal. Defendant makes no such effort.

Even if Defendant has compelling interests that would be harmed by disclosure—which is not supported by his generic claims (beyond preserving the secrecy of currently sealed information before the motion to unseal is decided)—Defendant cannot hide the entirety of his legal arguments from the public.

Based on the foregoing, Public First respectfully requests that the Court grant this motion for reconsideration, require Defendant to file a version of his

opposition to the motion to unseal that redacts only information from currently sealed filings, and revise the orders on the motions to seal [Dkt. 8 and 10] to comply with constitutional requirements. If the Court declines to require a redacted opposition, Public First lodges its objection to Defendant's motion to seal and requests a hearing pursuant to the procedural safeguards outlined in *Phoenix Newspapers*.

DATED: Honolulu, Hawai'i, May 6, 2026

Respectfully,

/s/ R. Brian Black
ROBERT BRIAN BLACK
BENJAMIN M. CREPS
DÉVI DIANA STONE CHUNG
Public First Law Center
Attorneys for Public First Law Center