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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: PUBLIC FIRST LAW
CENTER,

Objector.

MISC. NO. 26-172
[CR NO. 22-CR-58-JAO-KJM]

OBJECTION TO MOTION TO FILE
UNDER SEAL EXHIBIT B TO THE
UNITED STATES OF AMERICA'S
RESPONSE IN OPPOSITION TO
SULLA'S MOTION FOR BAIL
PENDING APPEAL [DKT. 723]

**OBJECTION TO MOTION TO FILE UNDER SEAL EXHIBIT B TO THE
UNITED STATES OF AMERICA'S RESPONSE IN OPPOSITION TO
SULLA'S MOTION FOR BAIL PENDING APPEAL [DKT. 723]**

Pursuant to Criminal Local Rule 5.2(b)(2) and the public right of access
guaranteed by the First Amendment of the United States Constitution and the
common law, Objector Public First Law Center (Public First) objects to the

Government's motion to seal [Dkt. 723] in *United States v. Paul Joseph Sulla, Jr.*, No. 22-CR-58.¹ The Government has not offered a valid basis for sealing.

As both the Ninth Circuit “and the Supreme Court have recognized, the First Amendment grants the public a presumptive right to access nearly every stage of post-indictment criminal proceedings” including “records filed in those criminal proceedings.” *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. Maile*, 117 F.4th 1200, 1208 (9th Cir. 2024). Contrary to the Government's motion, Dkt. 723 at PageID.12682, the higher First Amendment standard applies to detention proceedings, not just the common law right of public access. *Seattle Times Co. v. U.S. Dist. Ct.*, 845 F.2d 1513, 1516-17 (9th Cir. 1988).

When the First Amendment applies, the party seeking closure must prove 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). That proof must be supported by specific facts, not conclusory assertions. *Phoenix Newspapers, Inc. v. U.S. Dist. Ct.*, 156 F.3d 940, 949 (9th Cir. 1998).

¹ Unless otherwise stated, “Dkt.” refers to the Docket of *United States v. Sulla*, No. 22-CR-58 JAO-KJM.

While medical privacy can be a compelling reason to deny public access in particular circumstances, it does not warrant reflexive automatic sealing. *Maile*, 117 F.4th at 1212 (“[W]e are not persuaded that mandatory, categorical sealing of all medical and health records is the least restrictive means of protecting Hawai‘i residents’ privacy rights.”); accord *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607-08 (1982) (“But as compelling as that interest is, it does not justify a mandatory closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest.”). As the Ninth Circuit observed:

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.

Maile, 117 F.4th at 1211. Accordingly, motions to seal medical and health records must be made and considered by judges “on a case-by-case basis.” *Id.* at 1212-13.

Moreover, medical privacy concerns belong to the subject of the medical information. *E.g.*, *id.* at 1210 (“The individual right to privacy may justify closure where such a right is asserted *by the affected individual* and the court makes pre-closure findings as to the significance of the interest and necessity of closure.”) (emphasis added); accord, *e.g.*, *Franklin v. Arguello*, No. 3:15-cv-196-RCJ-WGC, 2017 U.S. Dist. LEXIS 31254, at *6 (D. Nev. Mar. 6, 2017) (after plaintiff waiver of privacy interest in medical records, “compelling reasons no longer exist for

sealing the records”); *see* Dkt. 723 at PageID.12682 (Government acknowledging that Defendant Sulla “previously disclosed on the public docket in this action” at least some of the medical information at issue).

Here, the Government seeks to seal Defendant Sulla’s medical records attached to its opposition to his motion for bail pending appeal as Exhibit B. Dkt. 723. The Government offers these records solely to prove that Defendant Sulla has refused to take prescribed medication (Atorvastatin, Coreg, Lasix) for his heart condition. Dkt. 722 at PageID.12663-64.

Defendant Sulla has been public about his health condition, including his records of his medical requests while incarcerated. *E.g.*, Dkt. 705 at PageID.12436-38, 12530-42; Dkt. 719 at PageID.12627. Specific to the heart condition referenced by the Government, Defendant Sulla publicly described, for example, his history of heart failure, his open heart surgery to replace two valves and correct an atrial fibrillation, and complications from a collapsed lung after the heart surgery. Dkt. 705 at PageID.12420, 12437, 12460.

First, the Government does not explain why the Court needs to know all the other medical information purportedly contained in these records beyond references to his refusal to take medication. Instead of redacting irrelevant material from these documents before filing, the Government proposes to file complete medical records with no apparent relevance to the motion for bail. If the

Government only submitted the information that the Court needed for resolution of the motion, there is no reason for a motion to seal.

Second, the Government admits that Defendant Sulla has previously disclosed at least some of the relevant medical information. Dkt. 723 at PageID.12682. There is no compelling reason to seal medical information that Defendant Sulla has previously disclosed.

Third, the Government references “personal identifiers” as a basis for sealing. *Id.* Sealing is not required for personal identifiers because Fed. R. Crim. P. 49.1 already requires redaction of critical personal identifiers.

There is no reason to litter the Court’s docket with irrelevant medical records for the sake of unnecessary completeness. Disclosure of excerpts with only the relevant information that Defendant Sulla has already disclosed publicly would not require a motion to seal.

Public First objects to the Government’s motion to seal.

DATED: Honolulu, Hawai‘i, May 11, 2026

Respectfully,

/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:

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