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Attorneys for Nonparty Objector
Public First Law Center

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

STATE OF HAWAI'I,

vs.

BRANDY BLAS, et al.,

Defendants.

NO 1CPC-24-0000150

NONPARTY PUBLIC FIRST LAW
CENTER'S REPLY TO DKT. 477 AND
479 FILED BY DEFENDANT BRANDY
BLAS; CERTIFICATE OF SERVICE

HEARING

JUDGE: Hon. Paul K. Wong

DATE: August 28, 2026

TIME: 9:00 a.m.

TRIAL DATE: January 25, 2027

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**NONPARTY PUBLIC FIRST LAW CENTER'S REPLY TO DKT. 477 AND 479 FILED
BY DEFENDANT BRANDY BLAS**

Nonparty Public First Law Center (Public First) respectfully submits this combined reply to Defendant Brandy Blas' (Defendant) memorandums filed August 24, 2026 "opposing" Public First's objections to Defendant's nonjudicial sealing of exhibits supporting her motions to suppress evidence and dismiss the criminal charges against her. *See* Dkt. 467, 469, 477, 479.

Defendant's oppositions fundamentally miss the mark. As the proponent of secrecy, *Defendant has the burden* to establish a basis for this Court to overcome the constitutional and common law rights of access to court records, on both an initial and continuing basis. It is not Public First's—or the Court's—burden, as Defendant mistakenly suggests, to overcome the "strong presumption" of openness. *Grube v. Trader*, 142 Hawai'i 412, 428, 420 P.3d 343, 359 (2018).

Defendant has failed to overcome the constitutional presumption of openness. The grand jury transcripts (Dkt. 379, 380, 383, 395, 397) and search warrant materials (Dkt. 438-462, 464) should be unsealed, subject to limited redaction, as discussed below.

1. Defendant's Procedural Claims Are Wrong.

First, Defendant erroneously conflates discovery and motions practice for purposes of public access. Dkt. 477 at 4-5; Dkt. 479 at 5-6. Public First did not argue that disclosure is required simply because the State released records to the Defendant in discovery. Documents exchanged between the State and defendants in discovery are not court records.

But everything changed when Defendant filed the motions to suppress and dismiss. A substantive motion for judicial action triggers the strong constitutional and common law presumption of public access. *E.g.*, Dkt. 467 at 1-3; Dkt. 469 at 2-4; *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 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.");

Grube, 142 Hawai‘i at 428, 420 P.3d at 359. Filing documents with the Court imposes substantial procedural and substantive obligations on Defendant to justify secrecy. *Oahu Publ’ns, Inc. v. Ahn*, 133 Hawai‘i 482, 498, 331 P.3d 460, 476 (2014) (“The procedural and substantive safeguards of the public’s right of access ‘are not mere punctilios, to be observed when convenient.’”); *see, e.g.*, Dkt. 467 at 2-3, Dkt. 469 at 2-4.

Second, Defendant confuses the importance of HRPP 6 to this issue. Mere citation to HRPP 6 does not justify sealing. While grand jury secrecy concerns are considered, a court rule—like HRPP 6—does not override a constitutional right. *Maile*, 117 F.4th at 1212 (categorical sealing provision of court rule “unconstitutionally overbroad”). Unlike grand jury proceedings themselves, Defendant’s motions to dismiss the indictment against her and suppress evidence are not traditionally secret proceedings; the constitutional right of access thus attaches. And traditional grand jury secrecy is only a compelling interest in such circumstances if the rationale for such secrecy still makes sense. Dkt. 467 at 6. Defendant does not attempt to argue that the *reasons* for grand jury secrecy apply now that she has been indicted and has access to the grand jury transcripts. As far as the transcripts at issue, there is nothing left for grand jury secrecy to protect.

Last, it is not Public First’s burden to parse records for sealing that it cannot access. Defendant argues that Public First has not justified unsealing the entirety of the filed documents and invites the Court to review the documents. *E.g.*, Dkt. 477 at 5-6; Dkt. 479 at 6-8. That turns the strong presumption of openness on its head.¹ Nor is it the Court’s obligation to scour through a lengthy record because Defendant made vague, unsubstantiated references to privacy or other concerns. *Cf. Pub. First Law Ctr. v. Viola*, 157 Hawai‘i 242, 251, 576 P.3d 755, 764 (2025) (courts have inherent authority to require a party to prepare redacted versions of court records for unsealing).

¹ If, as Defendant claims, there is “personal information” as defined in HCRR 2.19, it is Defendant’s obligation to redact that information, not file everything under seal. HCRR 9. If she wanted something other than the narrowly defined “personal information” sealed, Defendant needed to make a motion to seal that identifies precisely what should be sealed—it was her burden to justify it.

2. Defendant's Privacy Claim Concerning the Search Warrants Lacks Support.

Defendant's sole basis for her assertion of privacy as a compelling interest is a declaration offered by the State for purposes of the discovery protective order. Dkt. 479 at 7-8; *see* Dkt. 314 at 7-8.

But a discovery protective order is not sufficient as a basis for sealing. *E.g., Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003) (presumption of public access is not rebutted by a blanket protective order for discovery). Unlike the "good cause" standard for discovery orders, the constitutional standard for sealing applies the more exacting "compelling interest" standard. *Compare* Dkt. 469 at 2-4 (outlining constitutional and common law standards for sealing), *with* HRPP 16(e)(4) (standard for protective orders for discovery).

And the Hawai'i Supreme Court has made clear that merely protecting reputational concerns is not a basis for sealing court records. *Grube*, 142 Hawai'i at 425, 420 P.3d at 356 ("Although privacy rights may in some instances rise to the level of compelling, simply preserving the comfort or official reputations of the parties is not a sufficient justification."). Defendant has not offered specific facts that support a finding of privacy as a compelling interest that overcomes the constitutional presumption of public access.

Defendant has not met her burden to justify any privacy concerns.

3. Vague and Conclusory Fair Trial Concerns Do Not Justify Sealing.

Courts have recognized fair trial concerns as a basis for sealing court records only in the most compelling of circumstances. This case does not fit.

As the Hawai'i Supreme Court explained in *Ahn*, even if a court has fair trial concerns, "generalized statements of policy" are not adequate alone. 133 Hawai'i at 506, 331 P.3d at 484. There must be *specific facts* demonstrating that "first, there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights." *Id.* at 505, 331 P.3d at 483. The court must consider, at a minimum: "the nature of the evidence sought to be presented; the probability of such information reaching potential jurors; the likely

prejudicial impact of this information upon prospective veniremen; and the availability and efficacy of alternative means to neutralize the effect of such disclosures.” *Gannett Pac. Corp. v. Richardson*, 59 Haw. 224, 233-34, 580 P.2d 49, 56-57 (1978) (footnotes omitted).²

Here, Defendant provides no evidence for the Court to make specific and detailed findings to support a conclusion that irreparable harm to the asserted compelling interests is substantially probable. Defendant does not provide any facts or explanation as to how public disclosure would jeopardize the right to a fair trial. Nor has she addressed the available means of neutralizing any effects of pretrial publicity.

The mere existence of news coverage about the case is not enough to claim that the coverage is so prejudicial that the jury pool will be irreparably tainted, making it impossible to seat a fair and impartial jury. *E.g.*, *Gannett Pac.*, 59 Haw. at 233, 580 P.2d at 56 (“pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial”); *Ahn*, 133 Hawai‘i at 505, 331 P.3d at 483; *Press-Enter. Co. v. Super. Ct.*, 478 U.S. 1, 15 (1986) (“right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of [the right to a fair trial]”); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 554 (1976) (“Taken together, these cases demonstrate that pretrial publicity – even pervasive, adverse publicity – does not inevitably lead to an unfair trial.”); *United States v. Guerrero*, 693 F.3d 990, 1002 (9th Cir. 2012) (“We have made clear that ‘pervasive

² Defendant cites *Honolulu Advertiser v. Takao* to argue that this Court can delay any disclosure until after trial without any case-specific factual findings. Dkt. 477 at 5. That is not the holding in *Honolulu Advertiser*; the Hawai‘i Supreme Court relied on specific facts in that case. 59 Haw. 237, 242, 580 P.2d 58, 63 (1978). As *Gannett Pacific* – decided the day prior – explained, closure depends on the facts. 59 Haw. at 233-34, 580 P.2d at 56-57. Moreover, both *Honolulu Advertiser* and *Gannett Pacific* predate the U.S. Supreme Court’s and Hawai‘i Supreme Court’s articulation of the higher constitutional standards for public access. As the U.S. Supreme Court recognized, and the Hawai‘i Supreme Court expressly acknowledged, delaying access to preliminary hearing transcripts – as permitted in *Honolulu Advertiser* – must be justified under the constitutional standards. *Press-Enter. Co. v. Super. Ct.*, 478 U.S. 1, 13 (1986); *accord Ahn*, 133 Hawai‘i at 506, 331 P.3d at 484 (“Unreasonable delay in the release of a transcript ‘frustrates[s] the ‘community therapeutic value’ of openness.’”).

publicity, without more, does not automatically result in an unfair trial.'"); *United States v. Brooklier*, 685 F.2d 1162, 1169 (9th Cir. 1982) (generalized concerns about "problems of publicity" insufficient to claim prejudice to right to fair trial); *Associated Press v. U.S. Dist. Ct.*, 705 F.2d 1143, 1146 (9th Cir. 1983) (publicity concerns can be resolved by voir dire and clear jury instructions to ensure fair trial); *Seattle Times Co. v. U.S. Dist. Ct for W. Dist.*, 845 F.2d 1513, 1518 (9th Cir. 1988) ("prejudicial publicity is less likely to endanger the defendant's right to a fair trial in a large metropolitan area").

And there are numerous effective tools available to the Court to ensure a fair trial, which Defendant does not address. The Hawai'i Supreme Court recognized as viable alternatives to secrecy: "voir dire at trial"; "the exercise of peremptory and challenges for cause"; "clear and express admonitions to the jury once selected"; and "such other alternative means as may be available to the defendant and to the court at trial." *Gannett Pac.*, 59 Haw. at 234, 580 P.2d at 57; accord *Breiner v. Takao*, 73 Haw. 499, 506, 835 P.2d 637, 641 (1992) (noting consideration of alternatives such as "voir dire, jury instructions, jury sequestration or change of venue or postponement"); *State v. Wakinekona*, 53 Haw. 574, 580, 499 P.2d 678, 682 (1972) (holding voir dire of prospective jurors was sufficient to address pretrial publicity concerns).

With a population of approximately 1,000,000, the City and County of Honolulu can seat an impartial jury through adequate precautions, notwithstanding pretrial publicity. Numerous cases with a much higher profile have proceeded without difficulty using other precautions. Vague fair trial concerns are not a basis for sealing.

4. HCRR Redactions Address Any Legitimate Privacy Concerns.

Minor's names and birthdates are governed by Defendant's obligations to redact under HCRR 2.19 and 9.1. Beyond that, sealing must be justified under the constitutional standard. As it concerns images or "medical information", it is unclear what Defendant means. As a threshold issue, she has not explained why such images or medical information are relevant to the motions to dismiss. In other words, does the Court need to see that information to decide the motions? If not, Defendant should have simply filed redacted or otherwise excised versions of the documents with the Court, not sealed (unredacted) versions.

Without knowing the relevance of the images or medical information, Public First does not have a meaningful opportunity to object to sealing. For example, there would be no objection to redacting graphic images of a deceased minor's body. In contrast, Public First would object to sealing "medical information" describing the nature of injuries to a deceased minor. *E.g., Maile*, 117 F.4th at 1211 (records cannot be sealed simply because medical in nature). But Defendant has not described the nature of the information that she asks the Court to seal.

If Defendant will not make the effort to meet the constitutional standards for sealing, the records should be unsealed – after Defendant complies with her obligations under the HCRR.

CONCLUSION

Public First respectfully requests that this Court preserve the public's right of access to court records and unseal the grand jury transcripts and search warrant materials, subject to limited redaction.

DATED: Honolulu, Hawai'i, August 26, 2026

/s/ Benjamin M. Creps
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CERTIFICATE OF SERVICE

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I certify that on the date set forth below, I will serve the foregoing objection on the following by electronic mail, at the addresses listed below:

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DATED: Honolulu, Hawai'i, August 26, 2026

/s/ Benjamin M. Creps
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