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1ST CIRCUIT COURT
STATE OF HAWAII
FILED
2023 OCT -5 AM 8:47

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CLERK

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVID ALAN LOPEZ,

Plaintiff,

v.

DIANE R. CORN, HEARING OFFICER,
et al.

Defendant.

CIVIL NO. 1CCV-20-0000762

RESPONSE TO DHS SURREPLY

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In its Surreply (Dkt. 89), the Department of Human Services (DHS) continues to sidestep the public's constitutional right of access and the presumption of openness. It is for the proponent of secrecy to overcome this presumption. That has not happened here with respect to the *limited* relief sought by the motion to unseal. Instead of confronting the applicable legal standard, DHS describes this action as something it is not and ignores extensive information about the underlying facts that is already public.

I. Chapter 587A does not justify sealing this entire chapter 91 proceeding

DHS asserts, "There is not a 'non-confidential portion' of a case involving an investigation pursuant to the Child Protective Act (Hawai'i Revised Statutes §587A, et.

seq.)” Dkt. 89 at 1. DHS is wrong. First, contrary to DHS’s assertion, there is a non-confidential portion of this case – and it plainly includes the subjects of the instant motion, which DHS already provided unsolicited to the Law Center. Neither the case docket nor initial pleading (exhibits omitted) identify this case as involving a chapter 587A investigation, nor do they identify any minor children. The lone statute cited by the initial pleading is HRS § 91-14. Dkt. 1 at 1. Nothing in that section or chapter 91 provides a basis for sealing the case docket or initial pleading.

Second, DHS fails to provide any legal authority for the proposition that chapter 587A applies here to require complete closure. Although HRS § 587A-40 generally requires associated family court records to be sealed subject to further court order, this case is not a chapter 587A proceeding and was not filed in family court. HRS § 587A-40 (addressing access to “child protective proceedings *under this chapter*” (emphasis added)); cf. HRS § 587A-12 (requirements for petition), *with* Dkt. 1 (invoking only HRS ch. 91 jurisdiction).¹ DHS offers only a general reference to chapter 587A in its entirety. Dkt. 89 at 1-2. Nothing in chapter 587A, however, mandates the complete closure of a chapter 91 appeal, even where the appealed-from decision involves allegations of harm to a child (if that is the case here). As explained below, not every case that concerns allegations of harm to a child – including the allegations ostensibly at issue here – is sealed, even in family court.²

II. *Kema v. Gaddis* is distinguishable and inapt

DHS relies on one case, *Kema v. Gaddis*, to argue that this agency appeal should be entirely sealed. But *Kema* illustrates, again, what this case is not. *Kema* concerned a

¹ If this *were* a chapter 587A proceeding, this Court would lack jurisdiction over the case. HRS § 587A-5 (conferring exclusive jurisdiction to family court); *see also* Conf. Comm. Rep. No. 112-10 (2010) (“The purpose of this measure is to create within the jurisdiction of the family court a new Child Protective Act”).

² The Law Center is *not* asserting that this Court should unseal everything in this case just because this action is not a chapter 587A proceeding. As previously stated, the Law Center recognizes that various interests may justify continued sealing or redaction of records in the case. Law Center Reply Mem. at 7-8. The Law Center addresses chapter 587A only because DHS takes the position that this entire case must remain sealed based on that statutory chapter.

proceeding in the family court pursuant to the statutory predecessor to chapter 587A. *Kema v. Gaddis*, 91 Hawai'i 200, 202, 982 P.2d 334, 336 (1999). The case involved a missing child ("Peter Boy") and a request to the family court to unseal "all of the confidential records of the child protective matter involving Peter Boy and his siblings" under HRS § 587-81 and HRS § 571-84(b). *Id.* at 201-204, 982 P.2d at 335-338. The Hawai'i Supreme Court blocked the family court's release of a redacted court file, reasoning that, under the circumstances, the redactions were insufficient to protect the privacy interests of Peter Boy's siblings. Before this Court, by contrast, is a chapter 91 appeal, the public's constitutional right of access to civil court proceedings, and a request to unseal *nonconfidential* court records. There is no request here to unseal records or information legitimately protected by chapter 587A or any other authority.

III. DHS fails to address the records and information that are already public

DHS argues, "There is no reasonable argument that the release of Appellant's name, and sufficient information to determine that case involved a Child Protective Act investigation, is in the best interests of the minor child involved." Dkt. 89 at 3. The "best interests of the child or serves some other legitimate purpose" standard, however, applies to disclosures of family court records in chapter 587A cases. *See* HRS § 587A-40. As noted, DHS cites no authority to make that standard apply here.

DHS's argument also fails to recognize what is already public. As previously noted, "two family court TRO actions [FC-DA No. 18-1-0235; FC-DA No. 18-1-0195], and related appeal [CAAP-18-0000451], involving petitioner Lopez are open, and extensive substantive portions of the court record in those matters are public." Law Center Reply Mem. at 6. The record on appeal, for example, identifies the parties and contains detailed factual allegations. *E.g.*, CAAP-18-0000451, Dkt. 21 at 12-24 (mother's TRO petition and order), 64-73 (father's TRO petition and order), 329-67 (family court's FOF-COL); *see also id.* Dkt. 36 and 37 (trial transcripts). Notably, this public record appears to contain the *entire* DHS casefile for the minor — including interview notes and an unredacted final report, prepared by DHS social worker Allyson Enos — and received into evidence by the family court. *Id.* Dkt. 21 at 59, 91-182 (Ex. 4). This public information far exceeds the disclosure requested here. DHS fails to grapple with this

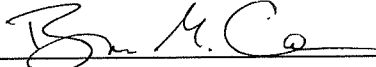
fact or its legal consequence. *E.g.*, *Civil Beat Law Ctr. for the Public Interest v. City & County of Honolulu*, 144 Hawai'i 466, 482, 445 P.3d 47, 63 (2019) (“a person cannot claim a legitimate privacy interest in information that has already been made public.”); *accord In re Copley Press*, 518 F.2d 1022, 1025 (9th Cir. 2008) (“Once information is published, it cannot be made secret again.”).

DHS argues further, “Both the Hawai'i Supreme Court and the Intermediate Court of Appeals seal Child Protective Act cases in the same way that this Court sealed this record.” Dkt. 89 at 3. Again, this is not a proceeding brought under the Child Protective Act. The case at bar more closely resembles the above-referenced family court TRO cases and appeal, which ostensibly touched on a chapter 587A investigation, but are not 587A proceedings. *E.g.*, CAAP-18-0000451 Dkt. 21 at 59, 91-182 (DHS casefile). Aside from sparse redactions, those proceedings are entirely open.³

IV. Conclusion

The Law Center respectfully requests that the Court unseal the initial pleading filed in this case, with deference to the Court's review of the exhibits to that pleading for privacy concerns, and the case docket.

DATED: Honolulu, Hawai'i, October 5, 2023



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³ The ICA's practice of using pseudonyms for opinions issued in family court cases does not justify sealing court records. For example, in the consolidated family court TRO proceedings involving the petitioner in this case, the ICA issued a pseudonym decision. *KL v. DL*, No. CAAP-18-451, 2023 Haw. App. LEXIS 65 (Feb. 28, 2023). Yet most of the court records are not sealed. *E.g.*, CAAP-18-0000451, Dkt. 21 (ROA), 39, 53, & 59 (appellate briefs).