No. SCPW-24-_____

IN THE SUPREME COURT OF THE STATE OF HAWAI`I

PUBLIC FIRST LAW CENTER, Petitioner, vs. THE HONORABLE MATTHEW J. VIOLA, Senior Judge of the Family Court of the First Circuit, Respondent.	ORIGINAL PROCEEDINGS 1FFM-24-0000018 1FFM-24-0000019 PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS FAMILY COURT OF THE FIRST CIRCUIT, STATE OF HAWAI`I  The Honorable Matthew J. Viola, Family Court of the First Circuit, State of Hawai`i

PETITION FOR WRIT OF PROHIBITION AND WRIT OF MANDAMUS

CERTIFICATE OF SERVICE

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This petition by Public First Law Center (Public First) concerns public access to family court records where a state-sponsored foster and adoption placement results in the death of a child. The deceased child is Isabella P. Kalua f.k.a. Ariel Sellers (Isabella). The records at issue are her child protective act and adoption case files—proceedings brought under Hawai`i Revised Statutes (HRS) chapters 587A and 578, respectively.

For more than two years, the Department of Human Services (DHS) supervised Isabella's care through the family court. Less than a year after her adoption, Isabella went missing and has since been declared dead. Prosecutors allege that her DHS-recommended foster and adoptive parents, Isaac and Lehua Kalua, kept Isabella locked in a dog cage, starved, and slowly murdered her. Isabella's estate alleges that DHS was negligent in placing her with the Kaluas—who had a history of serious crimes, no prior parenting experience, and were financially distressed—and that DHS overlooked a multitude of warning signs indicative of abuse and neglect.

Given the unusual circumstances of Isabella's death, the family court here rightly determined that the disclosure standards were met. The court found a "legitimate purpose" for disclosure under HRS § 587A-40 because it would contribute to public understanding of how DHS and the family court address the problem of child abuse and neglect and how specifically the Kaluas were allowed to take custody of and eventually adopt Isabella. 1FFM-24-18 Dkt. 65 ¶ 43; 1FFM-24-19 Dkt. 59 ¶ 34. The court found there was "good cause" to disclose adoption records under HRS § 578-15 insofar as it would serve that legitimate purpose. 1FFM-24-18 Dkt. 65 ¶ 44.

And yet, despite holding that the disclosure standards were satisfied, the family court disclosed no records from either case—not even the case dockets.[1] The court reasoned that personal information about Isabella's siblings must be redacted and what remained after redactions could not be disclosed because it would present a "distorted and misleading picture" of what happened. 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47. The family court held that the redacted record could not be disclosed because

[1] The family court did order unsealed a redacted special master's report that concerned Isabella, but that was filed in a separate proceeding, FC-M No. 22-1-0191.

of the impression of DHS and the family court that it might create. 1FFM-24-18 Dkt. 65 ¶ 58; 1FFM-24-19 Dkt. 59 ¶ 48. (Public First did not request access to and does not challenge redaction of the siblings' personal information.)

If a redacted document "conveys information," it should be disclosed. *E.g.*, *Honolulu Civil Beat Inc. v. Dep't of the AG*, 151 Hawai`i 74, 88, 508 P.3d 1160, 1174 (2022) ("If the unredactable material within a given record conveys information, it must be disclosed."). The family court departed from this basic principle of access and accountability. Withholding court records on the basis that disclosing a redacted record would convey a less-than-complete picture—the inevitable byproduct of redaction—renders HRS § 587A-40 and HRS § 578-15 legislative nullities. If concern for how DHS and the family court will be perceived by the public is an exception to public accountability after the death of a child, that exception swallows the legitimate purpose. It also creates an unmanageably subjective standard for disclosure. The statutory promise of disclosure in extraordinary circumstances becomes illusory.

The purpose of public access here is to *better understand* events that preceded Isabella's death. Access to court records is one critical source of such information. Court records never provide an objectively complete account of a case's underlying subject matter, but will invariably provide some information about what happened to better inform policy discussions and other public discourse about the case. If disclosure is not appropriate in Isabella's cases, when would it ever be appropriate?

Accordingly, pursuant to HRS § 602-4 and HRS § 602-5, Hawai`i Rules of Appellate Procedure (HRAP) Rule 21, and Hawai`i Court Records Rules (HCRR) Rule 10.15, Public First respectfully petitions this Court to issue a writ of prohibition prohibiting the family court from enforcing any order to maintain the *entirety* of (1) Case No. FC-S 18-00280 (Isabella's child protective act case) and (2) Case No. FC-A No. 21-1-6010 (Isabella's adoption case) under seal[2]; and a writ of mandamus ordering the

[2] Public First asks this Court to take judicial notice of the record of these two cases. Hawai`i Rules of Evidence (HRE) Rule 201; *Uyeda v. Shermer*, 144 Hawai`i 163, 172, 439 P.3d 115, 124 (2019) ("The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records.").

family court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of Isabella's siblings.[3]

I. Statement of Facts

As outlined in the motions to unseal, the information in this section has been publicly disclosed by Isabella's estate or other interested parties in court filings and news media interviews. *See, e.g.*, 1FFM-24-18 Dkt. 1 at 4-6 and Ex. 1; 1FFM-24-19 Dkt. 1 at 4-7 and Ex. 1. For news articles referenced, Public First attached the articles to the motions to unseal. *Id*.

a. Underlying Proceedings

DHS placed Isabella with the Kaluas as resource caregivers in 2019, despite the Kaluas' criminal history. *Cummings v. Kalua*, No. 1CCV-23-1049, Dkt. 1 (*Cummings* Compl.) ¶¶ 10-14; 1FFM-24-18 Dkt. 1 at 4-5 (citing sources for Isaac Kalua's felony assault conviction and Lehua Kalua's drug charges, which were dismissed after completion of drug court); *accord* 1FFM-24-19 Dkt. 1 at 4-5 (same).[4]

Isabella was under the supervision of DHS and the family court for roughly two years during the pendency of her chapter 587A proceeding. In a civil lawsuit against DHS and others, Isabella's estate and siblings allege that during that time, DHS was warned repeatedly—by doctors, a teacher, and others—about signs of abuse and

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[3] Notwithstanding HRAP Rule 21(a), Public First has not attached to this petition the orders resolving the motions to unseal because the family court sealed the proceedings on the motions to unseal—other than the motions themselves—until resolved on appeal. 1FFM-24-18 Dkt. 65 ¶¶ 91-93; 1FFM-24-19 Dkt. 59 ¶¶ 81-83; ***contra*** *In re Copley Press, Inc.*, 518 F.3d 1022, 1027-28 (9th Cir. 2008) (constitutional right of access to motion to unseal proceedings, but portions regarding the underlying secrets may be closed); *Grube v. Trader*, 142 Hawai`i 412, 423 & n.13, 420 P.3d 343, 354 & n.13 (2018) (recognizing right of public access to motions to seal and acknowledging that an interested person may seek leave to file "supporting evidence" for a motion "ex parte and under seal pending the court's disposition of the motion"); *see, e.g.*, 1FFM-24-18 Dkt. 29 at 2-3 (requesting family court provide public access to unseal proceedings); 1FFM-24-19 Dkt. 49 at 10-11 (same). Public First is prepared to file the orders if requested by this Court.

[4] This Court may take judicial notice of the record in *Cummings v. Kalua*. HRE Rule 201; *Uyeda*, 144 Hawaii at 172, 439 P.3d at 124.

neglect, but failed to adequately investigate; instead, DHS advocated for the Kaluas to adopt Isabella. *Cummings* Compl. ¶¶ 10–25.

Specifically, the estate and siblings allege that DHS ignored multiple separate incidents indicative of serious abuse and neglect: (1) a July 3, 2019 eyewitness report to DHS that Isabella was seen "being beaten by Lehua Kalua and was being starved"; (2) records of an August 5, 2019 wellness exam that reported suspicious bruising; (3) records of a October 14, 2019 medical visit for fractured fingers, reported about two weeks after injury; (4) records of a November 8, 2019 medical visit for fractured clavicle, reported 7-14 days after injury; (5) records of a January 17, 2020 medical visit for multiple fractures to Isabella's right leg; and (6) a teacher's February 24, 2020 report of Isabella's troubling behavior and refusal to discuss her home environment. *Id.* A day after the teacher's February 24 report, "DHS representatives were in family court . . . to recommend to the presiding family court judge the termination of the biological parent's parental rights for [Isabella and two siblings] and further recommend that these children be adopted by the Kalua Defendants." *Id.* ¶ 26. The Kaluas started homeschooling Isabella shortly thereafter. *Id.* ¶¶ 25, 27. Each of these incidents occurred while DHS was vested with foster custody of Isabella and subject to the periodic review and continuing jurisdiction of the family court. HRS § 587A-30 (periodic review hearings); HRS § 587A-35 (continuing jurisdiction).

In early 2021, notwithstanding the Kaluas' financial problems and indications of abuse and neglect, DHS petitioned the family court to approve the permanent placement of Isabella with the Kaluas, which it ultimately did. *Cummings* Compl. ¶ 28; 1FFM-24-18 Dkt. 1 at 5-6 & n.4 (citing sources for Isaac Kalua's bankruptcy filing and Lehua Kalua's financial troubles). Less than a year later, the Kaluas reported Isabella missing. *Cummings* Compl. ¶ 29. Subsequent investigation revealed that Isabella's older sibling reported that the Kaluas tortured Isabella and that she was not missing, but had died. *Id.* ¶¶ 30-32; 1FFM-24-18 Dkt. 1 at 6 (citing sources concerning the investigation of Isabella's death); 1FFM-24-19 Dkt. 1 at 6 (same).

The probate court declared Isabella dead as of August 2021. 1FFM-24-18 Dkt. 1 at 6 (citing sources concerning the declaration of Isabella's death); 1FFM-24-19 Dkt. 1 at

6-7 (same). Isabella's estate and her siblings filed a lawsuit against the Kaluas and DHS in August 2023. *Cummings* Compl. at 1.

b. Procedural History

On December 13, 2023, Public First submitted two motions to unseal to the circuit court chief judge for docketing in the appropriate family court proceedings.[5] 1FFM-24-18 Dkt. 1, 5; 1FFM-24-19 Dkt. 1, Dkt. 4. The family court filed each motion in a new special proceeding on January 12, 2024. 1FFM-24-18 Dkt. 65 ¶¶ 1-5; 1FFM-24-19 Dkt. 59 ¶¶ 1-5.

One motion sought to unseal portions of Isabella's child protective act case pursuant to HRS § 587A-40, and the second sought to unseal portions of her adoption case pursuant to HRS § 578-15. 1FFM-24-18, Dkt. 1 at 1-2; 1FFM-24-19 Dkt. 1 at 1-2. Relevant here, the motions sought to unseal: (1) the case docket (index of pleadings); (2) records sufficient to understand the factual and legal record on which the family court approved Isabella's foster and adoption placement with the Kaluas; and (3) records sufficient to understand the factual record presented to the family court by DHS or any other person regarding the Kaluas' fitness as foster and adoptive parents. *Id*. Public First stated that the focus of the requested unsealing was the Kaluas and DHS and further acknowledged that personal information about Isabella's siblings should be redacted. *Id*.

After Public First effected personal service of the motions on the interested parties—including the guardians ad litem for Isabella and her siblings—as ordered by the family court,[6] only Isaac Kalua, DHS, and the Court Appointed Special Advocates program (CASA) objected to the requested unsealing. The objecting parties variously asserted that Public First lacked standing under the adoption statute, *Kema v. Gaddis,* compelled complete secrecy, and the disclosure standards were not met. 1FFM-24-18 Dkt. 21, 53, 58; 1FFM-24-19 Dkt. 19, 47, 52. Mr. Kalua further argued that discovery

[5] After submitting the motions, Public First changed its corporate name and used its current corporate name in the proceedings below and for this petition.

[6] *But see* HCRR Rule 10.10 ("The Clerk shall notify all parties of the motion.").

orders in other cases and concerns over pretrial publicity in his criminal case prevented disclosure. 1FFM-24-18 Dkt. 21 at 7-8; 1FFM-24-19 Dkt. 19 at 5, 11. Public First responded that it had standing based on plain statutory language and legislative intent, 1FFM-24-18 Dkt. 29 at 4-6, Dkt. 55 at 2-9, Dkt. 63 at 2-3; 1FFM-24-19 Dkt. 1 at 8-11; *Kema* did not compel complete secrecy, 1FFM-24-18 Dkt. 29 at 6; 1FFM-24-19 Dkt. 1 at 12-13, Dkt. 49 at 2-4, Dkt. 57 at 2-3; the intent of adoption confidentiality could no longer be served, 1FFM-24-18 Dkt. 1 at 7-8, Dkt. 63 at 2-3; discovery orders in other cases and pretrial publicity concerns did not prevent disclosure, 1FFM-24-18 Dkt. 29 at 8-12; 1FFM-24-19 Dkt. 49 at 6-9, 57 at 2-6; and the disclosure standards were met and exceeded given the extraordinary facts of this case, 1FFM-24-18 Dkt. 1 at 3-92, Dkt. 29 at 7, Dkt. 63 at 3-4; 1FFM-24-19 Dkt. 1 at 3-132, Dkt. 49 at 4-6, Dkt. 57 at 3-6.

On June 10, the family court granted in part and denied in part the motions to unseal.[7] 1FFM-24-18 Dkt. 65; 1FFM-24-19 Dkt. 59. Citing *Kema v. Gaddis*, 91 Hawai`i 200, 204, 982 P.2d 334, 338 (1999), the court held the standard under HRS § 587A-40 was satisfied, concluding access would serve a legitimate purpose insofar as it would "contribute to public understanding and awareness of the response of agencies and the family court to problems of child abuse and neglect . . . and, specifically, as to how and why the Kaluas were deemed appropriate resource caregivers and ultimately adoptive parents." 1FFM-24-18 Dkt. 65 ¶ 43; 1FFM-24-19 Dkt. 59 ¶ 34.

Finding the standard met, the family court ordered disclosure of a redacted copy of a special master's report and stayed the unsealing for 30 days to allow for appellate review. 1FFM-24-18 Dkt. 65 ¶¶ 65-90; 1FFM-24-19 Dkt. 59 ¶¶ 55-80. The special master's report confirmed allegations in the civil lawsuit, but does not disclose information relevant to understanding "how and why" DHS and the family court entrusted the Kaluas specifically with the lives of Isabella and her siblings because that

[7] The family court applied the "legitimate purpose" standard (for child protective act proceedings) to the adoption proceedings. 1FFM-24-18 Dkt. 65 ¶¶ 36-40. For purposes of this petition, Public First does not challenge the family court's application of the "legitimate purpose" standard to adoption proceedings. But if the Court orders an answer to the petition and would consider this separate issue, Public First respectfully requests the opportunity to brief it pursuant to HRAP 28(b)(4)(D).

report did not derive from court records. *Cf. Cummings* Compl., *with* 1FFM-24-18 Dkt. 65 ¶¶ 76, 89 and Dkt. 75 (report); 1FFM-24-19 Dkt. 59 ¶¶ 66, 79 and Dkt. 69 (same).

The family court denied all other relief requested. In deciding not to release *any records from Isabella's child protective act and adoption cases*, the family court reasoned that after redacting information relating to Isabella's siblings, disclosing the resulting redacted version would present "a distorted and misleading picture of contents of the court record and specifically of the factual and legal record on which agency and court decisions placing the Children with the Kaluas were made." 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47. The family court expressed concern that disclosing redacted records would "disserve the legitimate purposes of contributing to public understanding and awareness of the response of agencies and the family court to problems of child abuse and neglect and, specifically, as to how and why the Kaluas were deemed appropriate adoptive parents." 1FFM-24-18 Dkt. 65 ¶ 58; 1FFM-24-19 Dkt. 59 ¶ 48. The family court concluded *everything else—e.g.*, procedural information, required assessments and findings about parental fitness, and agency and court responses to clear signs of Isabella's neglect and abuse—must be withheld. For the family court, it was all or nothing. 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47 ("[I]n order to help the public understand the basis for the DHS and family court determinations that the Kaluas were an appropriate placement for the Children, the entire file would have to be disclosed, not just selected portions of the file.").

II. Statement of Issue Presented and Relief Requested

Issue: Whether concern about disclosure of redacted records creating a "distorted and misleading picture" justifies withholding all court records when there is a "legitimate purpose" for disclosure under HRS § 587A-40 and HRS § 578-15.

Relief Requested: A writ of prohibition prohibiting the family court from enforcing any order to maintain the entirety of (1) Case No. FC-S 18-00280 (Isabella's child protective act case) and (2) Case No. FC-A No. 21-1-6010 (Isabella's adoption case) under seal; and a writ of mandamus ordering the family court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of Isabella's siblings.

III. Standards of Review

a. Writ of Mandamus and Writ of Prohibition

"A person or entity may seek review of a denial or grant of access to a record by petitioning the supreme court, in accordance with Rule 21 of the Hawai`i Rules of Appellate Procedure." HCRR Rule 10.15. A writ of mandamus is appropriate where a petitioner "demonstrates a clear and indisputable right to the relief requested and a lack of other means to redress adequately the alleged wrong or to obtain the requested action." *Kema*, 91 Hawai`i at 204-05, 982 P.2d at 338-39. A writ of prohibition concerns the supervisory power of the Hawai`i Supreme Court "to restrain a judge of an inferior court from acting beyond or in excess of his [or her] jurisdiction." *Honolulu Advertiser, Inc. v. Takao*, 59 Haw. 237, 241-42, 580 P.2d 58, 62 (1978). It is not "to cure a mere legal error or to serve as a substitute for appeal." *Id.* Prohibition is an appropriate procedure to address questions of grave import, such as "the right of the public to attend and to be present at judicial proceedings." *Gannett Pac. Corp. v. Richardson*, 59 Haw. 224, 227, 580 P.2d 49, 53 (1978).

b. Supervisory Power

Pursuant to HRS § 602-4, this Court has the power of "general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law." This supervisory power may be exercised "upon a showing of compelling circumstances." *State v. Johnson*, 96 Haw. App. 462, 32 P.3d 106 (2001); *accord Gannett*, 59 Haw. at 227, 580 P.2d at 53 (exercising supervisory power where case presented a question of "grave import" involving "the right of the public to attend and to be present at judicial proceedings").

IV. When Disclosure of Court Records Would Serve a "Legitimate Purpose," a Court Cannot Withhold All Records Simply Because Redactions Remove Some Relevant Context.

The family court applied an unwritten subjective limitation on the disclosure of court records under HRS § 587A-40 and HRS § 578-15 by holding that, notwithstanding the satisfaction of the disclosure standards, portions of the court record could *only* be disclosed if the disclosure provided a complete picture of the record as a whole.

1FFM-24-18 Dkt. 65 ¶¶ 50-58 (redactions "would render the disclosed information significantly incomplete - and misleadingly so"); 1FFM-24-19 Dkt. 59 ¶¶ 40-48 (same). The family court's reasoning renders the disclosure provisions of HRS § 587A-40 and HRS § 578-15 superfluous because every child protective act or adoption proceeding will require redaction.

a. There Is a Significant "Legitimate Purpose" in Disclosing as Much as Possible About Court Records for Children Who Die After Foster Care and Adoption Through State Officials.

The death of any child by parents that DHS recommended deserves the hard light of public scrutiny to assess what went wrong and how to fix it. *E.g.*, *Kema*, 91 Hawai`i at 205, 982 P.2d at 339 (recognizing that public disclosure of information concerning child abuse and neglect can serve a legitimate purpose under certain circumstances);[8] *In re FG*, 142 Hawai`i 497, 505 n.9, 421 P.3d 1267, 1275 n.9 (2018) ("[W]e note that this is a case in which a child has died while in foster care. State statutes which provide for review of child deaths that occur in state custody demonstrate that Hawai`i has an interest in ensuring accountability in the foster care system.").

Federal law recognizes this principle by *requiring* public disclosure of information from child welfare systems when child abuse or neglect "has resulted in a child fatality or near fatality." Child Abuse Prevention and Treatment Act (CAPTA), 42

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[8] The "legitimate purpose" here is materially different from the more limited concern in *Kema*, which was decided when Peter Boy was only missing; his parents were not charged with Peter Boy's murder until nearly two decades later. *E.g.*, 1FFM-24-19 Dkt. 49 at 2-4 (explaining differences between this case and Kema and citing sources). Nevertheless, even with the limited concern in *Kema*, this Court endorsed the family court's disclosure of information relevant to locating a missing child, including:

> (1) the injuries suffered by Peter Boy when he first came to the attention of DHS; (2) the circumstances and allegations that caused Peter Boy once again to come to the attention of DHS; (3) all known accounts provided to the DHS and law enforcement authorities regarding the disappearance of Peter Boy, including (a) the location of the child when last seen, (b) the names of persons the child was alleged to have been with, (c) the date the child was last seen, (d) a photograph of Peter Boy, and (e) any other information or allegations that might help the public locate Peter Boy.

Kema, 91 Hawai`i at 202-03, 982 P.2d at 336-37.

U.S.C.S. § 5106a(b)(2)(vi). The CAPTA disclosure obligation also extends to information about siblings when relevant to understanding the fatality. U.S. Dep't of Health and Human Services, Children's Bureau, *Child Welfare Policy Manual* § 2.1A.4 ("The information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality.").[9]

And Congress has recognized that public disclosure of related court proceedings serves the same purpose so long as access ensures the "the safety and well-being of the child, parents, and families." 42 U.S.C.S. § 5106a(b)(2). Access to court records is "crucial to reforming and improving the delivery of services to children under the care of the state, and to the formulation of decisions regarding these children's futures." 1FFM-24-19 Dkt. 1 at 129-32 (Justice for Children, *CAPTA Re-Authorization Issue: Requiring "Open Courts" in Juvenile Dependency Hearings* (2001) ("Open courts provide an opportunity for members of the public to critique the flaws in the system, become educated about the child welfare proceedings, initiate informed research and, [sic] ultimately stimulate reform where needed."), *in CAPTA: Successes and Failures at Preventing Child Abuse and Neglect*, Hearing Before the Subcomm. on Select Education of the Comm. on Education and the Workforce, House of Representatives, 107th Cong. (Aug. 2, 2001)).

Congress further recognized that a fatality or near fatality of a child were not the only possible reasons that would justify public disclosure, permitting child welfare agencies to disclose information in other circumstances "pursuant to a legitimate State purpose." CAPTA § 107(b)(2)(v)(VI). DHS administrative rules thus recognize the role of public understanding and accountability in situations such as Isabella's, authorizing as "legitimate state purposes" the "disclosure to the public" when:

> (A) The subject of the report has been criminally charged with committing a crime relating to the child abuse or neglect report;

[9] www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/.

> (B) A law enforcement agency or official, a state's attorney, or a judge of the state court system has publicly disclosed in a report, as part of his or her official duty, information regarding the investigation of a report, or the provision of services by the department;
>
> (C) A legal custodian of the child, the alleged perpetrator, or other party has voluntarily made a public disclosure concerning a child abuse and neglect report, investigation of a report, or the provision of services by the department; or
>
> (D) The child named in the report is missing, has suffered a near fatality, been critically injured, or has died[.]

Hawai`i Administrative Rules (HAR) § 17-1601-6(16) (A)-(D).[10]

Nor has it been disputed that there is substantial public concern surrounding the circumstances that resulted in Isabella's death. 1FFM-24-18 Dkt. 1 at 11-92 (attaching news articles); 1FFM-24-19 Dkt. 1 at 15-98. The Legislature has entertained multiple bill proposals prompted by her death and, among other steps, enacted Act 86 (2023) to have a working group "recommend transformative changes to the State's existing child welfare system." 2023 Haw. Sess. Laws Act 86 § 1 (referencing Isabella's death). Deaths of children in DHS care or DHS-recommended placements are infrequent, but persistent, requiring more public access to court proceedings if there will ever be informed discussion of reform. *See id.* ("Shortcomings in Hawaii's child welfare system are not new, and there is a strong desire in the community to address these concerns"); 1FFM-24-19 Dkt. 1 at 100-07 (news articles regarding Shaelynn Lehano-Stone), 109-11 (Fabian Garcia); *see also* John Hill, *From Hawaii to Texas and Back: How Geanna Bradley Ended Up with the Couple Accused of Killing Her*, Honolulu Civil Beat (Mar. 21, 2024) (Geanna Bradley); John Hill, *Lawsuit Accuses State of Negligence in Placing Boy in*

[10] As specified in the rules, the DHS rules implement CAPTA and HRS § 587A-40. In HRS § 587A-40(b), the Legislature provided that DHS is not bound by the confidentiality provisions for child protective act court proceedings if disclosures are made pursuant to promulgated rules. DHS, however, has refused to disclose information about Isabella's proceeding—notwithstanding mandatory disclosures required by CAPTA and clear discretion under its own rules—because there is no judicial finding or death certificate that Isabella (whose body has never been found) died as a result of child abuse. John Hill, *State Resorts to Absurd Excuses to Stonewall in Infamous Child Abuse Case*, Honolulu Civil Beat (Oct. 18, 2023).

Household Where Geanna Bradley Died, Honolulu Civil Beat (June 12, 2024) (near fatality of A.B.).

Against this backdrop, despite Isaac Kalua and the Department of the Attorney General objecting that no legitimate purpose existed, the family court correctly found that there is a legitimate purpose to publicly disclose Isabella's cases.

b. Redactions Do Not Negate a Legitimate Purpose Justifying Public Disclosure.

The Legislature provided for disclosure of court records when it serves a legitimate purpose. HRS § 587A-40(a). The Legislature did not limit disclosure to only circumstances that permit an objectively complete release of information with full context to avoid potential misinterpretation of the records.[11] *See* Keeping Children and Families Safe Act of 2003, Pub. L. No. 108-36, 117 Stat. 800, 811, § 114(b)(1)(C) (child welfare court proceedings cannot be publicly disclosed if it risks "the safety and well-being of the child, parents, and families").[12] Nevertheless, the family court denied access here because redaction "would create a distorted and misleading picture of contents of the court record." 1FFM-24-18 Dkt. 65 ¶ 57; 1FFM-24-19 Dkt. 59 ¶ 47.

This Court, however, has endorsed redaction in similar circumstances as a means of accomplishing the purposes of public accountability when not all relevant information and context can be provided to the public. *E.g.*, *Honolulu Civil Beat Inc. v. Dep't of the AG*, 151 Hawai`i 74, 88, 508 P.3d 1160, 1174 (2022) ("When some, but not all, of a record is exempt from UIPA disclosure, the record may be entirely withheld only if the permissible redactions are so extensive that what's left is an incomprehensible mishmash of blacked-out paragraphs, scattered words, and punctuation."); *Grube v. Trader*, 142 Hawai`i 412, 427, 420 P.3d 343, 358 (2018); ("Assuming a compelling interest

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[11] Courts give effect to the plain meaning of the Legislature's words. *E.g., In re AS*, 130 Hawai`i 486, 501-02, 312 P.3d 1193, 1208-09 (App. 2013) (foremost obligation is to give effect to intent of legislature to be obtained through language of the statute); *Price v. Coulson*, 144 Hawai`i 392, 442 P.3d 455 (App. 2019) ("sole duty" is to give effect to a statute's plain and obvious meaning); *accord First Ins. Co. v. A & B Properties*, 126 Hawai`i 406, 414, 271 P.3d 1165, 1173 (2012).

[12] The family court did not find that public disclosure of redacted court records here would risk the safety or well-being of Isabella's siblings.

was present in this case and irreparable harm was substantially likely to result, such alternatives might have included, for example, redaction of specific information in a document . . . ."); *cf.* OIP Op. No. F17-02 at 9 (the presence of some protected information does not justify a wholesale redaction of all information); OIP Op. No. 09-02 at 5 (record segregable if what is left is not meaningless). Public First is not aware of any Hawai`i statutes, legislative history, or case law or persuasive authority from other jurisdictions for withholding otherwise public records simply because redactions provide "distorted and misleading" information.[13] As this Court has held, disclosure of *redacted* records is appropriate when the disclosure "conveys information." *Honolulu Civil Beat*, 151 Hawai`i at 88, 508 P.3d at 1174.

Moreover, the family court's novel "distorted and misleading" standard is unmanageably subjective. The family court held that the redacted record could not be disclosed because of the impression of DHS and the family court that it might create—*not* because it would harm the privacy interests of Isabella's siblings.[14] 1FFM-24-18 Dkt. 65 ¶ 58; 1FFM-24-19 Dkt. 59 ¶ 48; *compare Kema*, 91 Hawai`i at 206, 982 P.2d at 340 (denying disclosure because "release of information would be harmful to Peter Boy's siblings"). Courts cannot reliably determine what inferences the public may draw from obviously incomplete (due to redaction) information and cannot limit public access based on concerns about the public potentially using the records irresponsibly. *See, e.g.*,

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[13] The only authority that comes close to the family court's analysis arises in the context of evidentiary rulings under the rule of completeness. *E.g.*, *United States v. Castro-Cabrera*, 534 F. Supp. 2d 1156, 1160-61 (C.D. Cal. 2008) ("Under those circumstances, a court must take care to avoid distortion or misrepresentation of the speaker's meaning, by requiring that the statements be admitted in their entirety and allowing the jury to determine their meaning."); *see* HRE Rule 106. Public disclosure of records, however, is not governed by rules of evidence; the reasons for protecting a jury from potentially misleading testimony do not apply when addressing public access to information; and application of the rule of completeness leads to more disclosure, not zero disclosure.

[14] The family court's standard also creates the potential for unreviewable abuse. Unlike the procedural posture of this case, most motions to unseal are heard by the judge who presided over the underlying matter. A judge should not be permitted to withhold court records from the public based on how the public might perceive the judge's actions in the case.

In re McClatchy Newspapers Inc., 288 F.3d 369, 374 (9th Cir. 2001) ("Silence enforced upon the press to protect the reputation of judges is more likely to 'engender resentment, suspicion, and contempt much more than it would enhance respect.' The same is true of public officials . . . . If less scrupulous papers omit these significant doubts, these papers themselves will be of a character carrying little credibility."); *see also Petroleum Info. Corp. v. U.S. Dep't of the Interior*, 976 F.2d 1429, 1437 (D.C. Cir. 1992) (Ginsburg, J.) ("concerns with public confusion and harming [the agency's] own reputation" can be addressed by warnings and disclaimers about issues with the publicly released information); *Citizens for Envt'l Quality v. U.S. Dep't of Agriculture*, 602 F. Supp. 534, 540 (D.D.C. 1984) ("[D]efendant's assertion that release of the test results could 'confuse or mislead' the public given the public's 'tendency' to equate release of such tests with official validation of their results is particularly unpersuasive. The purpose of FOIA is to provide for disclosure of government documents so that the public may draw its own conclusions." (citation omitted)); *cf.* OIP Op. No. F23-02 (inaccuracies not basis to withhold public record).

The family court's findings regarding a "distorted and misleading" record also presume that (1) judicial silence is better than official verification or correction of information already publicly disclosed in other forums; (2) the current piecemeal disclosure from only select parties is not already a distorted and misleading depiction of what happened; and (3) the court record is an objectively complete depiction of all relevant information concerning Isabella's foster placement and adoption.[15] There is no support for those assumptions.

Thus, there is no legal authority for the family court's novel "distorted and misleading" exception to disclosing redacted records when disclosure otherwise would serve a legitimate purpose.

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[15] For example, if the Kaluas did not disclose to DHS or DHS did not disclose to the family court information that would disqualify the Kaluas as foster or adoptive parents, that information would not be part of the court record. No source of information, including court records, can be expected to provide an objectively complete depiction of events that cannot be distorted or misconstrued.

c. Disclosing Redacted Records of Isabella's Proceedings Would Convey Information.

As explained above, and by the family court, the legitimate purpose for disclosure of Isabella's proceedings is to help the public understand how, after more than two years under DHS and court supervision, a state-sponsored adoption resulted in the death of the adopted child, allegedly at the hands of her adoptive parents. Because the foster and adoption system operates through the family court, public understanding necessarily involves disclosure of *court records*—not just disclosure of a report based on non-judicial sources.

At a minimum, the case docket in these proceedings could be unsealed and would provide basic information about what happened in the cases without risking harm to Isabella's siblings (or presenting a distorted and misleading depiction of the underlying records).

Moreover, the typical contours of records in child protective act and adoption cases can be traced through the laws that govern what *should* happen in such proceedings—HRS chapters 587A and 578. From those basic outlines it is apparent that some records concerning Isabella and the Kaluas can be redacted to exclude information about the siblings.

Under chapter 587A (child protective act), for example:

- While vested with foster custody of a child, DHS must: determine "where and with whom the child shall be placed in foster care"; ensure "that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner"; and provide "the court with information concerning the child." HRS § 587A-15(b).
- DHS must file frequent reports with the court concerning child safety and also submit any reports "prepared by a child protective services multidisciplinary team or consultant." HRS § 587A-18.
- The family court must adopt a service plan—a "specific, comprehensive written plan prepared by an authorized agency"—that identifies, among other things, the responsibilities of DHS and the child's family, steps necessary to facilitate the return of the child to a safe family home, and the frequency and types of contacts between the social worker and the family. HRS § 587A-4; HRS § 587A-27.

- The family court must appoint a guardian ad litem to represent the children for the duration of the 587A case. HRS § 587A-16. The guardian is required to, among other duties, make "face-to-face contact" with the child in the foster home at least once every three months. The guardian is further required to report to the family court every six months regarding the guardian's actions taken to ensure protection of the child's best interests and "recommend how the court should proceed in the best interest of that child." *Id*.

And under chapter 578 (adoption):

- The family court must hold a hearing at which the prospective adoptive parents personally appear. HRS § 578-8(a).
- In order to grant the adoption, the family court must find the that the prospective adoptive parents are "fit and proper persons and financially able to provide the [adopted] individual a proper home and education" and that the adoption is in the "best interests" of the adopted child. HRS § 578-8(a)(3) and -(4).
- Before granting an adoption decree, the family court must notify the director of DHS and "allow a reasonable time for the director to make such investigation as the director may deem proper as to the fitness of the petitioners to adopt the individual" unless the family court "finds that the best interests of the individual to be adopted" justify waiving the requirement for notification and investigation. HRS § 578-8(b).[16]
- "If the court determines that any such report discloses facts adverse to the petitioners or indicates that the best interests of the individual to be adopted will not be subserved by the proposed adoption, it shall thereupon give notice of the determination to the petitioners and afford them a reasonable opportunity to rebut the report." *Id*.

The shape of Isabella's adoption proceeding also can be discerned through form pleadings.[17] For example:

- The petition for adoption identifies who prepared the petition, who submitted supporting affidavits, the basis for the court's jurisdiction, whether the prospective parents disclosed any prior convictions or contacts with child protective services, whether the biological parents

[16] Section 578-8(b) also authorizes the director to delegate this responsibility to an approved child-placing organization. HRS § 578-8(b).

[17] The family court's adoption forms are available at www.courts.state.hi.us/self-help/courts/forms/oahu/family_court_forms. HRE Rule 201; *Botelho v. Atlas Recycling Ctr., LLC*, 146 Hawai`i 435, 447 n.9, 463 P.3d 1092, 1104 (2020) (taking judicial notice of form on government website).

consented to the adoption, and whether the biological parents were served with notice of the petition. Form 1F-P-2023, Petition for Adoption (Non-consent).

- There are a multitude of exhibits to be submitted with adoption petitions. Adoption Procedures and Forms Memorandum (eff. June 1, 2002) (describing adoption "case flow"). One is a "Medical Certificate for the Child" that identifies the examining doctor and the doctor's findings about the child's "physical and mental condition." Form 1F-P-1035, Medical Certificate.
- To grant the adoption, the family court must issue findings and a decision, which would identify whether: (1) the petitioners were represented by counsel; (2) the DHS director was notified of the adoption (or if the family court waived the notice requirement); (3) a placing agency was involved; (4) petitioners had a relationship to the children; and (5) consent was required or obtained. Form 1F-P-881, Findings and Decision.

These guideposts confirm that portions of the judicial record can be disclosed without jeopardizing the privacy interests of Isabella's siblings. And separate from the content of specific records is the procedural information they can convey—*e.g.*, dates periodic reports were filed, review hearings held, or in-person visits conducted.

For more than two years DHS and the family court had supervisory jurisdiction over Isabella. The purpose of disclosing family court records here is not to judge in hindsight the decisions made by DHS or the family court. The purpose is to allow the public to understand how this foster and adoption placement unfolded.

What information was available about the fitness of the Kaluas as parents? What evidence of rehabilitation existed regarding the Kaluas' history of drug use and criminal conduct? Did DHS provide the family court with information about reports of abuse and neglect of Isabella? If so, how did DHS and the family court assess or resolve those reports? Were the required assessments done; reports submitted; review hearings held; face-to-face visits maintained; and parental fitness findings made? Did the State's COVID-19 pandemic protocols impact Isabella's foster and adoption placement? If some rules were not followed, then why not? If all rules were followed, to the letter, then how can they be revised to serve more effectively as the guardrails of child safety? These questions concern one of the most significant functions of our government—

protecting vulnerable children—and they remain unanswered. Only access to court records will start to provide some context for understanding these issues.

A quarter of a century ago, this Court announced: "We recognize that the media has expressed interest in other child protective proceedings and take this opportunity to provide guidance to the family courts." *Kema*, 91 Hawai`i at 205, 982 P.2d at 339. Today, even if the Court is inclined to affirm the family court, Public First respectfully requests that the Court take the opportunity to clarify *Kema* in the context of these rare but recurring cases concerning deaths in DHS care or DHS-sponsored adoptions. While Public First does not believe that the disclosure standards set by the Legislature and the guidance in *Kema* permit complete secrecy in death cases, the family court and the public would benefit from further guidance. In the end, if secrecy in these extraordinary cases is the norm, then the statutory disclosure standards are illusory, and the public will not have access to the information necessary for informed debate about, and critical oversight of, the foster and adoption system.

d. Public First Has No Remedy Other Than a Writ of Mandamus.

This Court has recognized that a petition for writ of prohibition or mandamus is the appropriate procedure for reviewing a family court's decision to unseal otherwise confidential records. *Kema*, 91 Hawai`i at 204-05, 982 P.2d at 338-39. HCRR Rule 10.15 further expressly provides that a petition to this Court is the appropriate procedure for reviewing a court's decision on a motion to unseal.

And when a nonparty raises legal concerns unrelated to the merits of an underlying proceeding and that cannot be appealed—as here—then relief in the nature of prohibition or mandamus is appropriate. *Gannett*, 59 Haw. at 235, 580 P.2d at 57 (petition for writ of prohibition or mandamus is the appropriate procedure for members of the public excluded from judicial proceedings); *State v. Nilsawit*, 139 Hawai`i 86, 94, 384 P.3d 862, 870 (2016) (media entities may seek writ of prohibition or mandamus when denied application for extended coverage because order is not immediately appealable or related to the merits of the underlying proceeding); *Honolulu Police Dep't v. Town*, 122 Hawai`i 204, 216-17, 225 P.3d 646, 658-59 (2010) ("HPD is not a party to the case. . . . Having no remedy by way of appeal, HPD properly sought redress from the

[order denying HPD's motion to quash subpoena duces tecum] by mandamus."); *Breiner v. Takao*, 73 Haw. 499, 502, 835 P.2d 637, 640 (1992) ("[M]andamus is the appropriate remedy where the order of the court imposed a restraint on free speech rights unrelated to the merits of the criminal trial and thus could not be raised on appeal.").

CONCLUSION

Public First respectfully requests that the Hawai`i Supreme Court issue a writ of prohibition prohibiting the family court from enforcing any order to maintain the entirety of (1) Case No. FC-S 18-00280 (Isabella's child protective act case) and (2) Case No. FC-A No. 21-1-6010 (Isabella's adoption case) under seal; and a writ of mandamus ordering the family court to disclose redacted records for those cases, with appropriate redactions to protect the privacy of Isabella's siblings.

Dated: Honolulu, Hawai`i, July 8, 2024

Respectfully submitted,

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