ELIZABETH A. STRANCE 4715
Corporation Counsel

E. BRITT BAILEY 9814
Deputy Corporation Counsel
County of Hawai‘i
101 Aupuni Street, Suite 325
Hilo, Hawai‘i 96720
Telephone: (808) 961-8251
Facsimile: (808) 961-8622
Email: elizabethb.bailey@hawaiicounty.gov

Attorneys for HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 **HAWAI‘I POLICE DEPARTMENT’S NOTICE OF SUBMISSION OF ITS PETITION FOR WRIT OF MANDAMUS; EXHIBIT “A” – “F”; CERTIFICATE OF SERVICE FILED AUGUST 7, 2024; CERTIFICATE OF SERVICE**

HAWAI‘I POLICE DEPARTMENT’S NOTICE OF SUBMISSION OF ITS PETITION FOR WRIT OF MANDAMUS; EXHIBIT “A” – “F”; CERTIFICATE OF SERVICE FILED AUGUST 7, 2024

TO: KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai‘i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720
Attorneys for Respondent
STATE OF HAWAI‘I

JENNIFER BROWN
L. RICHARD FRIED, JR.
WILLIAM A. HARRISON
Hawai‘i Innocence Project
2485 Dole Street, Suite 206
Honolulu, HI 96822

ANNE E. LOPEZ
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

BARRY SCHECK
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Attorneys for Petitioner
ALBERT IAN SCHWEITZER

KEITH SHIGETOMI
PO BOX 17779
Honolulu., HI 96817

RAQUEL BARILLA
The Innocence Center
6549 Mission Gorge Rd. #379
San Diego, CA 92120
Attorneys for Petitioner
SHAWN SCHWEITZER

Pursuant to the provisions of Rule 23 of the Rules of the Circuit Courts of the State of Hawai‘i, YOU ARE HEREBY NOTIFIED that the undersigned has filed with the HAWAII SUPREME COURT a PETITION FOR WRIT OF MANDAMUS; EXHIBITS “A” – “F”; CERTIFICAT OF SERVICE ("Petition"), a copy of which is attached hereto as Exhibit "A".

Dated: Hilo, Hawai‘i, August 7, 2024.

HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

EXHIBIT “A”

SCPW-24-_____

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I, Petitioner, vs. THE HONORABLE PETER K. KUBOTA, Judge of the Circuit Court of Third Circuit, State of Hawai‘i, Respondent.	ORIGINAL PROCEEDINGS Civil No. 3CSP-23-0000003; 3CSP-23-0000017 PETITION FOR WRIT OF MANDAMUS; EXHIBITS “A”-“F”; CERTIFICATE OF SERVICE CIRCUIT COURT OF THE THIRD CIRCUIT HONORABLE PETER K. KUBOTA

PETITION FOR WRIT OF MANDAMUS

EXHIBITS “A”-“F”

OFFICE OF THE CORPORATION COUNSEL
ELIZABETH A. STRANCE 4715
Corporation Counsel
E. BRITT BAILEY 9814
Deputy Corporation Counsel
County of Hawai‘i
101 Aupuni St., Suite 325
Hilo, Hawai‘i 96720
Telephone: 808-961-8251
Email: elizabethb.bailey@hawaiicounty.gov

Attorneys for Petitioner Hawai‘i Police Department, County of Hawai‘i

[NOTICE OF SERVICE BY USPS CERTIFIED MAIL AND/OR ELECTRONIC FILING

SERVICE GENERATED BY JEFS]

PETITION FOR WRIT OF MANDAMUS

Comes now Petitioner, HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I ("**HPD**"), by and through its undersigned attorney, E. BRITT BAILEY, and moves this Court to issue a Writ of Mandamus directing the Honorable Peter K. Kubota, Judge of the Circuit Court, Third Circuit ("**Respondent**") to vacate Respondent's August 5, 2024-denial of HPD's Motion to Quash and ordering Respondent to maintain the confidentiality of the requested law enforcement records *at this time* to allow HPD to complete its current criminal investigation into new developments concerning the death of Ms. Dana Ireland. The *Subpoena Duces Tecum* served upon HPD on August 1, 2024 ("**Subpoena**") oppressively and unreasonably orders the production of law enforcement records that are the subject of a current and ongoing criminal investigation. *See* Subpoena, attached hereto as **Exhibit "A"**. This Petition is brought pursuant to the Hawai‘i Rules of Appellate Procedure, Rule 21(a) and is based upon the matters presented below and the attached documents from the record in the original proceedings.

I. STATEMENT OF FACTS

This Petition arises from HPD's limited participation in original proceedings pertaining to ALBERT IAN SCHWEITZER's *Motion for Finding of Actual Innocence*, in Case Nos. 3CSP-23-0000003, Dkt. 123, and SHAWN SCHWEITZER'S *Joint Petition for Relief Pursuant to HRS § 661B*, in 3CSP-23-0000017, Dkt. 81 (collectively "**Special Proceeding**").

HPD appears in this matter only in response to the ALBERT IAN SCHWEITZER and SHAWN SCHWEITZER's ("**Schweitzers**") Subpoena demanding law enforcement records related to on ongoing and open criminal investigation. Given recent developments in the Ireland matter, the current criminal investigation is in its infancy. Not only are several of the requested records incomplete and/or unfinished, but several of the requested records are in process and

EXHIBIT A

simply not available *at this time*. Following service of the Subpoena, HPD filed its *Motion to Quash Subpoena Duces Tecum, served August 1, 2024* ("**Motion to Quash**") because disclosure of law enforcement records relating to current and ongoing criminal investigations frustrates a legitimate government purpose and contravenes the law. See Motion to Quash, filed August 2, 2024, attached hereto as **Exhibit "B"**. On August 5, 2024, Respondent denied HPD's Motion to Quash seemingly finding an arbitrary and unsupported threadbare nexus to the now vacated and dismissed criminal matters and treating the Subpoena as a request for *Brady*-like materials. See Court Minutes of August 5, 2024 in Original Proceedings, Dkt. 184, attached hereto as **Exhibit "C"**.

HPD respectfully Petitions this Court to issue a Writ of Mandamus vacating Respondent's August 5, 2024-denial of HPD's Motion to Quash and ordering Respondent to maintain the confidentiality of the requested law enforcement records *at this time* to allow HPD to complete its current criminal investigation. Premature release of the requested law enforcement records is unreasonable, oppressive and could reasonably be expected perceptibly to interfere with, disrupt and harm that criminal investigation.

The facts as relevant to Petitioner HPD are set forth below:

On July 28, 2024, just days after the death of the now identified Albert Lauro, Jr. ("**Lauro**"), the Schweitzer, by and through their counsel, filed their *Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B* ("**Motion to Compel**"). *See* Motion to Compel, attached hereto as **Exhibit "D"**.

On July 29, 2024, the State of Hawai‘i, represented by Deputy Prosecuting Attorney Shannon M. Kagawa, filed its *Memorandum in Opposition* to the Motion to Compel. *See* Mem. n in Opp. of Motion to Compel, attached hereto as **Exhibit "E"**.

On July 30, 2024, Respondent granted the Schweitzers' Motion to Compel permitting them to issue the Subpoena to HPD and demanding the production of law enforcement records relating to the open and ongoing Ireland criminal investigation.

On August 1, 2024, Respondent issued its *Order Granting Motion to Compel Discovery Re: Joint Petition for Relief Pursuant to HRS Chapter 661B* ("**Order**"). *See* Order, attached hereto as **Exhibit "F"**. The Order demands a subpoena issue to HPD for records related to new developments in the case involving now identified Unknown Male #1 as Albert Lauro, Jr.. *Id.* at 2-4.

On August 1, 2024, the Office of Corporation Counsel, County of Hawai'i, on behalf of HPD, accepted service of the Schweitzers' Subpoena. The Subpoena commands the production of law enforcement records as outlined in the Order. Exhibit "A". Specifically, the Subpoena orders the production of records related to new developments surrounding the identification of Unknown Male #1 as Albert Lauro, Jr. Such records include, though are not limited to, the autopsy report, evidence obtained from Lauro's cellular telephone, and witness interviews. *Id.*

On August 2, 2024, HPD, by and through the undersigned counsel, filed its Motion to Quash. Exhibit "B". HPD argues the Schweitzers are not entitled to the requested records *at this time* because release of the records or their substantive content would frustrate HPD's legitimate criminal investigative purpose and compromise the integrity of the open criminal investigation. *Id.* at 3-9. In addition, HPD argues the Schweitzers' reliance on *Brady v.* Maryland, 373 U.S. 83 (1963), to produce the requested documents is misplaced. *Id.* at 9. The Schweitzers did not file a written Opposition to HPD's Motion to Quash.

During the August 5, 2024-hearing on HPD's Motion to Quash, HPD's counsel argued the Subpoena should be quashed as unreasonable and oppressive pursuant to Hawai'i Revised

Statutes ("**HRS**") §§ 92F-13 and 92F-22 due to the open and ongoing criminal investigation. Following HPD's counsel's argument, Respondent specifically asked the Schweitzers whether they believed the *Brady* doctrine applied to the request for the law enforcement records. Schweitzers' counsel confirmed *Brady* does not apply. Notwithstanding all counsel's agreement on *Brady's* inapplicability and inability in the Special Proceeding to override the statutory protections related to the release of law enforcement records, Respondent denied HPD's Motion to Quash and ordered production of the subpoenaed documents. Respondent set a return on the production of documents for August 7, 2024. Exhibit "C", Dkt. 184.

II. STATEMENT OF ISSUE PRESENTED AND RELIEF SOUGHT

This Petition presents the following issue: Whether Respondent's denial of HPD's Motion to Quash is plainly arbitrary and without support in the record.

HPD seeks a Writ of Mandamus directing Respondent to vacate Respondent's August 5, 2024-denial of HPD's Motion to Quash and ordering Respondent to maintain the confidentiality of the requested law enforcement records *at this time* to allow HPD to complete its current criminal investigation.

III. STATEMENT OF REASONS FOR ISSUING THE WRIT

Petitioner submits that a writ of mandamus should issue where Respondent failed to quash the Subpoena and is requiring production of law enforcement records subject to a current and ongoing criminal investigation. Respondent's denial of HPD's Motion to Quash contravenes the law regarding disclosure of government records that would frustrate a government purpose. Pursuant to HRS §§ 92F-13 and 92F-22, release of the records at this time would frustrate HPD's legitimate criminal investigation purpose and compromise the integrity of the current and ongoing investigation. Additionally, Respondent's reliance on the requested law enforcement

records as *Brady*-like materials is wholly misplaced, plainly arbitrary, and not supported by the record.

Mandamus relief is proper where the petitioner demonstrates the following:1) a clear and indisputable right to relief; and 2) a lack of other means to adequately redress the alleged wrong or obtain the required action. *Kema v. Gaddis*, 91 Hawai‘i 200, 204, 982 P.2d 334, 338 (1999) (holding mandamus to prevent any disclosure of confidential family court records was proper remedy). “On review, the action of a trial court in enforcing or quashing [a] subpoena will be disturbed only if plainly arbitrary and without support in the record.” *Bank of Hawaii v. Shaw*, 83 Hawai‘i 50, 59 (Haw. App. 1996) (internal quotation marks and citations omitted). For the following reasons, Petitioner is entitled to mandamus relief.

A. HRS §§ 92F-13 and 92F-22 Precludes the Disclosure of the Requested Law Enforcement Records

Compelling HPD to disclose its law enforcement records relating to an *ongoing* criminal investigation contravenes the law. Pursuant to HRS §§ 92F-13 and 92F-22, disclosure of the requested records *at this time* would frustrate HPD’s legitimate criminal investigative purpose and compromise the integrity of the open criminal investigation. The Schweitzers’ premature Subpoena is unreasonable and oppressive.

Under the Uniform Information Practices Act (“UIPA”), “[a]ll government records are open to public inspection *unless access is restricted or closed by law*.” HRS § 92F-11(a) (emphasis added). HRS §92F-13 provides the exceptions to this general rule:

> HRS § 92F-13. Government records; exceptions to general rule
>
> This part *shall not require disclosure of*:
>
> (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

> (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
>
> (3) *Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function*;
>
> (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
>
> (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

(emphasis added).

Law enforcement records may be withheld under HRS § 92F-13(3) if the police department establishes specific facts demonstrating: (1) *that a related criminal case is under investigation* or is being prosecuted in the courts, and (2) that disclosure of the [records] would in some particular way *disrupt or harm that investigation or prosecution*." OIP Op. Ltr. No. F20-04, 2020 WL 3629605, at *9 (Hawaii A.G. June 10, 2020) (citation omitted) (emphasis added).

In demonstrating that a criminal case is under investigation, the Office of Information Practices ("OIP") is guided by the federal courts' interpretation and application of a similar exception under the Freedom of Information Act, *i.e.* Exemption 7(A) protecting from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. *Id.* OIP recognizes a matter under investigation is not endlessly protected. *Id.* The exception, however, applies as long as an enforcement proceeding is pending or prospective. *Id.* (citing *Seegull Mfg. Co. v. NLRB*, 741 F.2d 882, 886-887 (6th Cir. 1984)). The exception applies even "where an investigation, though in a dormant stage, 'is nonetheless an 'active' one which will hopefully lead to a 'prospective

law enforcement proceeding.' " *Id.* (quoting *Nat'l Public Radio v. Bell*, 431 F. Supp. 509, 514 (D.D.C. 1977)).[1]

With respect to establishing whether disclosure of law enforcement records would disrupt or harm an investigation in some discernable way, OIP is again guided by the federal courts observing that:

> courts have sustained an agency's withholding of such information as details regarding initial allegations giving rise to an investigation; interviews with witnesses and subjects; an investigator's summary of findings; investigative reports furnished to the prosecuting attorneys; contacts with prosecuting attorneys regarding allegations; prosecutive opinions; and other materials that would permit a target of an investigation to discern the investigation's scope, direction, limits, and sources of information relied upon.

Id., 2020 WL 3629605, at *9.

On August 5, 2024, Respondent denied HPD's Motion to Quash and ordered the production of law enforcement records pertaining to an open and ongoing investigation. Exhibit "C", Dkt. 184. Respondent provided a return on the production of the law enforcement records and set a further hearing for August 7, 2024. *Id.*

Disclosure of the records, *at this moment*, could reasonably be expected perceptibly to interfere with, disrupt and harm that investigation. Given the new developments in the

[1] *See, e.g., Vento v. IRS*, No. 08-159, 2010 WL 1375279, at *7 (D.V.I. Mar. 31, 2010) (finding use of Exemption 7(A) reasonable to protect investigator's interview notes and summaries created "in anticipation of an enforcement proceeding, even if a formal action had not yet been filed"); *Judicial Watch v. FBI*, No. 00-745 (TFH), 2001 WL 35612541, at *16 (D.D.C. Apr. 20, 2001) (accepting agency's representation that "proceedings may become necessary as investigation progresses" as sufficient to establish legitimate possibility of prospective law enforcement proceeding); *Nat'l Pub. Radio v. Bell*, 431 F. Supp. 509, 514-15 (D.D.C. 1977) (explaining although investigation into death of nuclear-industry whistleblower Karen Silkwood is "dormant," it "will hopefully lead to a 'prospective law enforcement proceeding' " and disclosure "presents the very real possibility of a criminal learning in alarming detail of the government's investigation of his crime before the government has had the opportunity to bring him to justice").

underlying case, HPD is currently in the midst of completing interviews of witnesses and/or subjects, analyzing Lauro's electronic devices, finalizing written narratives, and awaiting autopsy and toxicology reports. Releasing incomplete records during this ongoing investigation would categorically disrupt the criminal investigation and could jeopardize the integrity of the investigation. For example, the premature release of evidence or information could create greater potential for witness intimidation and harassment[2], impede the investigation[3], prevent the

[2] *See, e.g.*, *NLRB v. Robbins Tire & Rubber Co*., 437 U.S. 214, 232 (1978) (holding NLRB established interference with its enforcement proceeding by showing release of witness statements would create greater potential for witness intimidation and could deter cooperation); *Solar Sources, Inc. v. U.S.*, 142 F.3d 1033, 1039 (7th Cir. 1998) (stating that disclosure could result in "chilling and intimidation of witnesses"); *Judicial Watch, Inc. v. DOJ*, 102 F. Supp. 6, 19-20 (D.D.C. 2000) (reiterating prematurely disclosing documents related to witnesses could result in witness tampering or intimidation and could discourage continued cooperation); *Anderson v. USPS*, 7 F. Supp. 2d 583, 586 (E.D. Pa. 1998) (explaining release "would expose actual or prospective witnesses to undue influence or retaliation"), *aff'd*, 187 F.3d 625 (3d Cir. 1999) (unpublished table decision); *Wichlacz v. U.S. Dep't of Interior*, 938 F. Supp. 325, 331 (E.D. Va. 1996) (finding Independent Counsel "justified in concluding that there are substantial risks of witnesses intimidation or harassment [and] reduced witness cooperation" in investigation which remains active and ongoing); *Holbrook v. IRS*, 914 F. Supp. 314, 316 (S.D. Iowa 1996) (releasing information might permit targets of pending investigation to "tamper with or intimidate potential witnesses"); *Dow Jones & Co. v. DOJ*, 880 F. Supp. 145, 150 (S.D.N.Y. 1995) (disclosing "statements by interviewees . . . might affect the testimony or statements of other witnesses and could severely hamper the Independent Counsel's ability to elicit untainted testimony."), *vacated on other grounds*, 907 F. Supp. 79 (S.D.N.Y. 1995).

[3] *See, e.g.*, *Robbins Tire*, 437 U.S. at 224 (finding "Congress recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations"); *Int'l Union of Elevator Const. Local 2 v. U.S. Dep't of Labor*, 804 F. Supp. 2d 828, 833 (N.D. Ill. 2011) (recognizing law enforcement agencies have "legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage" when presenting case) (quoting *Robbins Tire*, 437 U.S. at 224)); *Amnesty Int'l v. CIA*, 728 F. Supp. 2d 479, 526-27 (S.D.N.Y. 2010) (finding disclosure of information in open investigations would reveal what individuals and activities were under investigation, what evidence had been collected, and compromise confidentiality of investigation; such disclosures were " 'precisely the kind of interference that Congress . . . want[ed] to protect against' ") (quoting *Robbins Tire*, 437 U.S. at 247)); *Azmy v. DOD*, 562 F. Supp. 2d 590, 605 (S.D.N.Y. 2008) (explaining disclosure of "names of individuals and organizations of ongoing law enforcement interest" could reasonably be expected to interfere with investigation because "subjects of the Government's interest would likely attempt to conceal

government from obtaining information in the future[4], hinder HPD's ability to control or shape the investigation[5], enable targets of the investigation to elude detection[6] or to suppress or fabricate evidence.[7] Therefore, Petitioner implores this Court to issue a Writ of Mandamus to

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their activities"); *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 119 (D.D.C. 2005) (holding "release of this information could undermine the effectiveness" of agency's investigation); *Judicial Watch v. DOJ*, 306 F. Supp. 2d 58, 75-76 (D.D.C. 2004) (observing release of documents during course of investigation could damage agency's ability to obtain information).

[4] *See, e.g., Ctr. for Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 930 (D.C. Cir. 2003) (recognizing witnesses "would be less likely to cooperate" and "potential witness or informant may be much less likely to come forward and cooperate with the investigation if he believes his name will be made public"); *Alyeska Pipeline Serv. v. EPA*, 856 F.2d 309, 311 (D.C. Cir. 1988) (ruling that disclosure might identify who had provided documents and would "thereby subject them to potential reprisals and deter them from providing further information"); *Lieff, Cabrasher, Heimann & Bernstein v. DOJ*, 697 F. Supp. 2d 79, 85 (D.D.C. 2010) (confirming withholding of information about investigation was proper where disclosure could provide details about " 'particular types of allegedly illegal activities being investigated' " including "names of potential witnesses, who would then be 'less likely to cooperate' ") (quoting *Alyeska Pipeline Serv*., 856 F. 2d at 312)); *EDUCAP, Inc. v. IRS*, No. 07-2106, 2009 WL 416428, at *6 (D.D.C. Feb. 18, 2009) (explaining agency's "expressed concern that release of the interview notes could deter potential witnesses from providing information is sufficient" to show interference).

[5] *See, e.g., J.P. Stevens & Co. v. Perry*, 710 F.2d 136, 143 (4th Cir. 1983) (finding premature disclosure would "hinder [agency's] ability to shape and control investigations"); *Carter, Fullerton & Hayes v. FTC*, 637 F. Supp. 2d. 1, 13 (D.D.C. 2009) (same); *EDUCAP*, 2009 WL 416428, at *5 (same).

[6] *See, e.g., Moorefield v. U.S. Secret Serv*., 611 F.2d 1021, 1026 (5th Cir. 1980) (explaining disclosure of requested information would enable targets "to elude the scrutiny of the [Secret] Service"); *Leopold v. DOJ*, 301 F. Supp. 3d 13, 29 (D.D.C. 2018) (applying FOIA Exemption 7(A) because disclosure " 'could reasonably be expected to interfere with enforcement proceedings,' . . . because disclosure 'would tip off subjects and persons of investigative interest, thus giving them the opportunity to take defensive actions to conceal their criminal activities, elude detection, and suppress and/or fabricate evidence' ").

[7] *See, e.g*., *Juarez v. DOJ*, 518 F.3d 54, 58 (D.C. Cir. 2008) (finding release "would compromise the investigation as it could lead to destruction of evidence"); *Solar Sources*, 142 F.3d at 1039 (stating disclosure "could result in destruction of evidence"); *Alyeska Pipeline*, 856 F.2d at 312 (ruling disclosure could allow for destruction or alteration of evidence, fabrication of alibis, and identification of witnesses).

keep the requested documents protected and confidential under HRS § 92F-13 in order to avoid harming, compromising, undermining or disrupting HPD's criminal investigation.

HRS § 92F-22 prohibits release of the requested records to the Schweitzers because the records requested are held by a law enforcement agency and are being compiled for the purposes of criminal investigation and prosecution. HRS § 92F-22(1)(A) and (B) state:

> An agency is not required by this part to grant an individual access to personal records, or information in such records:
>
> (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
>
> (A) *Information or reports prepared or compiled for the purpose of* criminal intelligence or of *a criminal investigation, including reports of informers, witnesses, and investigators*; or
>
> (B) *Reports prepared or compiled at any stage of the process of enforcement of the criminal laws* from arrest or indictment through confinement, correctional supervision, and release from supervision.

HRS § 92F-22 (emphasis added). HPD is a law enforcement agency, and the records Respondent ordered to be produced by HPD are being compiled for the purposes of criminal investigation. The Schweitzers, therefore, are not entitled to the subpoenaed documents compiled for the purposes of the ongoing criminal investigation.

B. Respondent's Reliance on *Brady v. Maryland* to Order the Production of the Law Enforcement Records Related to a Current and Ongoing Criminal Investigation is Misplaced and Not Supported by the Record

On August 5, 2024, Respondent specifically asked both Counsels for the Schweitzer Petitioners whether they believed *Brady* applied to the Subpoena's request for the production of law enforcement records pertaining to the current and ongoing criminal investigation. Both counsels stated that the *Brady Doctrine* did not apply. Their views mirror the arguments in HPD's Motion to Quash stating the *Brady* Doctrine is inapplicable because *Brady* is a *pre-trial*

discovery rule requiring the government to disclose exculpatory evidence to a *defendant in a criminal case* that is material to the defendant's guilt or punishment. Exhibit "B". at 9; see also *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). The Schweitzers' convictions have been vacated and their cases dismissed without prejudice. *See* Exhibit "C", Dkt. 117. Neither of the Schweitzers is a defendant in a current criminal case.

Reliance on *Brady* would mean that the Subpoena was somehow served per Hawai'i Rules of Penal Procedure ("**HRPP**") Rule 17 and not per Hawai'i Rules of Civil Procedure ("**HRCP**") Rule 45. The original proceedings, however, are civil in nature and Respondent ordered the issuance of the Subpoena per HRCP Rule 45. If the matter were criminal in nature, Respondent would not have permitted the direct service of the Subpoena to HPD. HRPP Rule 17(b) "does not permit a direct subpoena to police or other governmental personnel to discoverable material of information independently and apart from HRPP Rule 16(b)(2)." *Honolulu Police Dept. v. Town*, 122 Hawai'i 204, 225 P.3d 646 (2010). The requested law enforcement records are not discoverable materials pursuant to a criminal proceeding of an evidentiary nature. *Id.* at 214. Instead, the subpoenaed law enforcement records are plainly related to an open and ongoing criminal investigation.

Nevertheless, Respondent ordered HPD to comply with the Subpoena's request to disclose law enforcement records seemingly construing the production as being *Brady*-like materials. Respondent's ruling is plainly arbitrary and not supported by the record. Instead, the record supports a finding that reliance on the *Brady* Doctrine is wholly misplaced.

IV. CONCLUSION

Based on the foregoing arguments and authorities, Petitioner respectfully requests that this Court grant the instant Petition and issue a Writ of Mandamus directing Respondent to

vacate Respondent's August 5, 2024-denial of HPD's Motion to Quash and ordering Respondent to maintain the confidentiality of the requested law enforcement records *at this time* to allow HPD to complete its current criminal investigation.

Dated: Hilo, Hawai'i, August 7, 2024.

HAWAI'I POLICE DEPARTMENT, COUNTY OF HAWAI'I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

EXHIBIT A

STATE OF HAWAI`I CIRCUIT COURT OF THE THIRD CIRCUIT	SUBPOENA NOTICE TO APPEAR ✓ SUBPOENA DUCES TECUM	
CASE NUMBER 3CSP-23-0000017	CASE NAME SHAWN SCHWEITZER V. STATE OF HAWAII	
ATTORNEY (NAME and ADDRESS) KEITH S. SHIGETOMI 3380 ATTORNEY AT LAW P.O. BOX 17779 HONOLULU, HAWAII 96817 TELEPHONE (808) 753-1774		

THE STATE OF HAWAI`I TO:
ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE OF HAWAI`I
YOU ARE COMMANDED to subpoena the individual named below.

NAME AND ADDRESS OF WITNESS
Hawaii Police Department Custodian of Records/Authorized Rep 349 Kapiolani Street Hilo, Hawaii 96720

COMMENTS:
Please bring the materials set forth on page 2.

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated to testify as a witness on behalf of the

✓ PLAINTIFF ☐ DEFENDANT

✓ You are further ordered to bring with you the items listed in the comments section.

DATE	TIME
8/2/24	2:30 p.m.

LOCATION/ROOM
The Honorable Peter K. Kubota
Third Circuit Court
777 Kilauea Avenue
Hilo, Hawaii 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this court.

Effective Date of 28-Oct-2019
Signed by: /s/ Cheryl Salmo
Clerk, 3rd Circuit, State of Hawai`i

The Original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at : http:/www.courts.state.hi.us

In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date.

EXHIBIT A

EXHIBIT A

Ryan accepted service

EXHIBIT A

EXHIBIT A

a. Any tapes (video or oral), emails, or written communications concerning the taking of a swab from Albert Lauro, Jr. on July 19, 2024 including everything said by anyone to Albert Lauro, Jr. before, during, and after the swabbing; what he said before, during and after the swabbing; where the swabbing took place, surveillance of Albert Lauro, Jr. before the swabbing took place and afterwards.

b. Any and all information gathered that shows a relationship between Albert Lauro, Jr. and either Ian Schweitzer, Shawn Schweitzer, or Frank Pauline;

c. All surveillance (reports, photos, videos, over hearings of voice communications, or digital communications) of Unknown Male #1;

d. All interviews of family members, friends, or others concerning Albert Lauro, Jr. before or after February 7, 2024;

e. Any and all information apart from DNA testing tending to show Albert Lauro, Jr. committed the assault, rape, and murder of Dana Ireland by himself or acting in concert with individuals other than Petitioners;

f. The date and time the Hilo Police Department, Hawai'i County law enforcement, or Hawai'i County Prosecutors learned about the death of Albert Lauro, Jr.;

g. Evidence obtained from a search warrant for Albert Lauro, Jr.'s home, place of work, or vehicles;

h. Evidence obtained from a search of Albert Lauro, Jr.'s phones, computers, or other devices;

i. The autopsy report on the death of Albert Lauro, Jr.'s and all investigative reports concerning whether the manner of death was a suicide or homicide;

j. Any and all other information discovered during the investigation of Albert Lauro, Jr., that tends to exculpate Petitioners;

EXHIBIT A

ELIZABETH A. STRANCE 4715
Corporation Counsel

E. BRITT BAILEY 9814
Deputy Corporation Counsel
County of Hawai‘i
101 Aupuni Street, Suite 325
Hilo, Hawai‘i 96720
Telephone: (808) 961-8251
Facsimile: (808) 961-8622
Email: elizabethb.bailey@hawaiicounty.gov

Attorneys for
HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 **HAWAI‘I POLICE DEPARTMENT’S MOTION TO QUASH *SUBPOENA DUCES TECUM*, SERVED AUGUST 1, 2024**; MEMORANDUM OF LAW; DECLARATION OF RIO AMON-WILKINS; DECLARATION OF E. BRITT BAILEY; EXHIBIT “A”; NOTICE OF HEARING; CERTIFICATE OF SERVICE **Hearing** Date: August 5, 2024 Time: 10:00 a.m. Judge: Honorable Peter K. Kubota

HAWAI‘I POLICE DEPARTMENT’S MOTION TO QUASH *SUBPOENA DUCES TECUM*, SERVED AUGUST 1, 2024

The HAWAI‘I POLICE DEPARTMENT (“HPD”), by and through its undersigned attorney, hereby respectfully moves this Honorable Court for an Order quashing the *Subpoena Duces Tecum* served August 1, 2024 pursuant to the Court’s granting of ALBERT IAN

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SCHWEITZER and SHAWN SCHWEITZER's ("Petitioners") *Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B*, filed July 28, 2024 [Dkt. 133].

Alternatively, should the Court determine Petitioners are entitled to information contained in the subpoenaed documents, HPD respectfully requests the Court: (1) conduct an *in camera* review of the subpoenaed documents to determine what information therein is relevant to Petitioners' claims of innocence, and (2) if such documents exist, issue a protective order regarding such confidential materials subject to HRS §§ 92F-13 and 92F-22, which (a) precludes their use for any purpose other than litigating the instant proceeding, and (b) bars Petitioners, their attorneys, representatives, agents, experts, and all persons, entities or parties acting by, through, under or in concert with them, from disclosing the confidential and statutorily protected documents and their substantive content to any other persons, offices or other entities, including the media.

This Motion is made pursuant to Rule 45 of the Hawai'i Rules of Civil Procedure and/or Rule 17 of the Hawai'i Rules of Penal Procedure and is based upon the attached Memorandum of Law, Declaration of Rio Amon-Wilkins, Declaration of E. Britt Bailey, Exhibit "A", the records and files of this case, and any and all evidence to be adduced at the hearing of this petition.

Dated: Hilo, Hawai'i, August 2, 2024.

HAWAI'I POLICE DEPARTMENT, COUNTY OF HAWAI'I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 MEMORANDUM OF LAW

MEMORANDUM OF LAW

The Hawai‘i Police Department ("HPD") moves to quash the *Subpoena Duces Tecum* served on the Hawai‘i Police Department on August 1, 2024 ("Subpoena"), pursuant to this Court's granting of ALBERT IAN SCHWEITZER and SHAWN SCHWEITZER's ("Petitioners") *Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B*, Dkt. 133, and the subsequent *Order Granting Motion To Compel Discovery RE; Joint Petition For Relief Pursuant to HRS Chapter 661B*, filed August 1, 2024, Dkt. 169.

The Subpoena demands the production of statutorily protected documents relating to new developments in the underlying and ongoing criminal investigation into the death of Ms. Dana Ireland. HPD is in the process of completing its current investigation specifically related to the new developments involving the identification of Unknown Male #1 as Albert Lauro, Jr. (deceased). It has been just two (2) weeks since HPD learned of Mr. Lauro's death, and the ongoing investigation is in its infancy and currently incomplete.

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Compelling the unrestricted disclosure of subpoenaed documents relating to an *ongoing* criminal investigation contravenes the law. Pursuant to Hawai‘i Revised Statutes ("HRS") §§ 92F-13 and 92F-22, Petitioners are not entitled to the requested records *at this time* because release of the records or their substantive content would frustrate HPD's legitimate criminal investigative purpose and compromise the integrity of the open criminal investigation. For these reasons, Petitioners' premature Subpoena is unreasonable and oppressive, and this Motion should be granted.

Alternatively, should the Court determine Petitioners are entitled to information contained in the subpoenaed documents, HPD respectfully requests the Court: (1) conduct an *in camera* review of the subpoenaed documents to determine what information therein is relevant to Petitioners' claims of innocence, and (2) if such documents exist, issue a protective order regarding such confidential materials subject to HRS §§ 92F-13 and 92F-22, which (a) precludes their use for any purpose other than litigating the instant proceeding, and (b) bars Petitioners, their attorneys, representatives, agents, experts, and all persons, entities or parties acting by, through, under or in concert with them, from disclosing the confidential and statutorily protected documents and their substantive content to any other persons, offices or other entities, including the media. Without such a protective order in place, Petitioners could disclose the confidential information without restriction and frustrate, compromise and potentially undermine HPD's legitimate criminal intelligence and investigative agency functions.

I. FACTUAL AND PROCEDURAL HISTORY

On July 28, 2024, just days after the death of the now identified Albert Lauro, Jr. ("Lauro"), Petitioners filed their *Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B*, Dkt. 133 ("Motion to Compel"). The

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Motion to Compel seeks an extensive number of records relating to the open and ongoing investigation into the death of Ms. Dana Ireland. Motion to Compel at 20-21.

On July 30, 2024, following a hearing on Petitioners' Motion to Compel, this Honorable Court granted the Motion to Compel permitting Petitioners to issue a subpoena duces tecum to HPD for the documents outlined in their Motion to Compel. The Court provided an exceptionally brief return date of August 1, 2024, at 9:30 a.m., for the return on the subpoena duces tecum.

On July 31, 2024, Petitioners served an unissued *Subpoena Duces Tecum* on HPD ("July 31st-Subpoena").

On August 1, 2024, HPD filed its *Motion to Quash Subpoena Duces Tecum*, Dkt. 167, in response to the July 31-Subpoena.

On August 1, 2024, the Court issued its *Order Granting Motion to Compel Discovery Re: Joint Petition For Relief Pursuant to HRS Chapter 661B* [Dkt. 169] ("Order"). The Order, in relevant part, narrows the items requested under the July 31, 2024-Subpoena, requires Petitioners to file a new subpoena duces tecum reflecting the Court's Order, and requires all items responsive to the new subpoena be delivered to the Court for an *in-camera* inspection.

On August 1, 2024, and pursuant to the Order, Petitioners served the unissued Subpoena on HPD. *See* Order, attached as Exhibit "A".

On August 1, 2024, the Court set the Subpoena's return date and the hearing on this Motion for August 5, 2024 at 10:00 a.m. Minutes in 3CSP-23-0000003, dated August 1, 2024, Dkt. 173; Minutes in 3CSP-23-0000017, dated August 1, 2024, Dkt. 105.

II. ARGUMENT

HPD respectfully requests this Court quash the Subpoena because compliance contravenes laws precluding disclosure of law enforcement records relating to current and

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ongoing criminal investigations, which laws were enacted to avoid the frustration of legitimate government purposes. Additionally, Petitioners' reliance on *Brady v. Maryland* to support the Motion to Compel is wholly misplaced.

A. Disclosure of the Subpoenaed Records Will Harm and Disrupt HPD's Open Criminal Investigation

Under the Uniform Information Practices Act ("UIPA"), "[a]ll government records are open to public inspection unless access is restricted or closed by law." HRS § 92F-11(a) (emphasis added). HRS §92F-13 provides the exceptions to this general rule:

> **HRS § 92F-13. Government records; exceptions to general rule**
>
> This part shall not require disclosure of:
>
> (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
>
> (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
>
> (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
>
> (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and
>
> (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature.

(emphasis added).

Law enforcement records may be withheld under HRS § 92F-13(3) if the police department establishes specific facts demonstrating: (1) that a related criminal case is under investigation or is being prosecuted in the courts, and (2) that disclosure of the [records] would

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in some particular way disrupt or harm that investigation or prosecution." OIP Op. Ltr. No. F20-04, 2020 WL 3629605, at *9 (Hawaii A.G. June 10, 2020) (citation omitted) (emphasis added).

In demonstrating that a criminal case is under investigation, the Office of Information Practices ("OIP") is guided by the federal courts' interpretation and application of a similar exception under the Freedom of Information Act, *i.e.* Exemption 7(A) protecting from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. *Id.* OIP recognizes a matter under investigation is not endlessly protected. *Id.* The exception, however, applies as long as an enforcement proceeding is pending or prospective. *Id.* (citing *Seegull Mfg. Co. v. NLRB*, 741 F.2d 882, 886-887 (6th Cir. 1984)). The exception applies even "where an investigation, though in a dormant stage, 'is nonetheless an 'active' one which will hopefully lead to a 'prospective law enforcement proceeding.' " *Id.* (quoting *Nat'l Public Radio v. Bell*, 431 F. Supp. 509, 514 (D.D.C. 1977)).[1]

With respect to establishing whether disclosure of law enforcement records would disrupt or harm an investigation in some discernable way, OIP is again guided by the federal courts observing that:

[1] *See, e.g., Vento v. IRS*, No. 08-159, 2010 WL 1375279, at *7 (D.V.I. Mar. 31, 2010) (finding use of Exemption 7(A) reasonable to protect investigator's interview notes and summaries created "in anticipation of an enforcement proceeding, even if a formal action had not yet been filed"); *Judicial Watch v. FBI*, No. 00-745 (TFH), 2001 WL 35612541, at *16 (D.D.C. Apr. 20, 2001) (accepting agency's representation that "proceedings may become necessary as investigation progresses" as sufficient to establish legitimate possibility of prospective law enforcement proceeding); *Nat'l Pub. Radio v. Bell*, 431 F. Supp. 509, 514-15 (D.D.C. 1977) (explaining although investigation into death of nuclear-industry whistleblower Karen Silkwood is "dormant," it "will hopefully lead to a 'prospective law enforcement proceeding' " and disclosure "presents the very real possibility of a criminal learning in alarming detail of the government's investigation of his crime before the government has had the opportunity to bring him to justice").

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> courts have sustained an agency's withholding of such information as details regarding initial allegations giving rise to an investigation; interviews with witnesses and subjects; an investigator's summary of findings; investigative reports furnished to the prosecuting attorneys; contacts with prosecuting attorneys regarding allegations; prosecutive opinions; and other materials that would permit a target of an investigation to discern the investigation's scope, direction, limits, and sources of information relied upon.

Id., 2020 WL 3629605, at *9.

Petitioners seek law enforcement records pertaining to an open and ongoing investigation. Disclosure of the records, at this moment, could reasonably be expected perceptibly to interfere with, disrupt and harm that investigation. Given the new developments in the underlying case, HPD is currently in the midst of completing interviews of witnesses and/or subjects, analyzing Lauro's electronic devices, finalizing written narratives, and awaiting autopsy and toxicology reports. Releasing incomplete records during this ongoing investigation would categorically disrupt the criminal investigation and could jeopardize the integrity of the investigation. For example, the premature release of evidence or information could create greater potential for witness intimidation and harassment[2],

[2] *See, e.g.*, *NLRB v. Robbins Tire & Rubber Co*., 437 U.S. 214, 232 (1978) (holding NLRB established interference with its enforcement proceeding by showing release of witness statements would create greater potential for witness intimidation and could deter cooperation); *Solar Sources, Inc. v. U.S.*, 142 F.3d 1033, 1039 (7th Cir. 1998) (stating that disclosure could result in "chilling and intimidation of witnesses"); *Judicial Watch, Inc. v. DOJ*, 102 F. Supp. 6, 19-20 (D.D.C. 2000) (reiterating prematurely disclosing documents related to witnesses could result in witness tampering or intimidation and could discourage continued cooperation); *Anderson v. USPS*, 7 F. Supp. 2d 583, 586 (E.D. Pa. 1998) (explaining release "would expose actual or prospective witnesses to undue influence or retaliation"), *aff'd*, 187 F.3d 625 (3d Cir. 1999) (unpublished table decision); *Wichlacz v. U.S. Dep't of Interior*, 938 F. Supp. 325, 331 (E.D. Va. 1996) (finding Independent Counsel "justified in concluding that there are substantial risks of witnesses intimidation or harassment [and] reduced witness cooperation" in investigation which remains active and ongoing); *Holbrook v. IRS*, 914 F. Supp. 314, 316 (S.D. Iowa 1996) (releasing information might permit targets of pending investigation to "tamper with or intimidate potential witnesses"); *Dow Jones & Co. v. DOJ*, 880 F. Supp. 145, 150 (S.D.N.Y. 1995) (disclosing "statements by interviewees . . . might affect the testimony or statements of

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impede the investigation[3], prevent the government from obtaining information in the future[4], hinder HPD's ability to control or shape the investigation[5], enable targets of the investigation to

other witnesses and could severely hamper the Independent Counsel's ability to elicit untainted testimony."), *vacated on other grounds*, 907 F. Supp. 79 (S.D.N.Y. 1995).

[3] *See, e.g.*, *Robbins Tire*, 437 U.S. at 224 (finding "Congress recognized that law enforcement agencies had legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations"); *Int'l Union of Elevator Const. Local 2 v. U.S. Dep't of Labor*, 804 F. Supp. 2d 828, 833 (N.D. Ill. 2011) (recognizing law enforcement agencies have "legitimate needs to keep certain records confidential, lest the agencies be hindered in their investigations or placed at a disadvantage" when presenting case) (quoting *Robbins Tire*, 437 U.S. at 224)); *Amnesty Int'l v. CIA*, 728 F. Supp. 2d 479, 526-27 (S.D.N.Y. 2010) (finding disclosure of information in open investigations would reveal what individuals and activities were under investigation, what evidence had been collected, and compromise confidentiality of investigation; such disclosures were " 'precisely the kind of interference that Congress . . . want[ed] to protect against' ") (quoting *Robbins Tire*, 437 U.S. at 247)); *Azmy v. DOD*, 562 F. Supp. 2d 590, 605 (S.D.N.Y. 2008) (explaining disclosure of "names of individuals and organizations of ongoing law enforcement interest" could reasonably be expected to interfere with investigation because "subjects of the Government's interest would likely attempt to conceal their activities"); *Elec. Privacy Info. Ctr. v. DHS*, 384 F. Supp. 2d 100, 119 (D.D.C. 2005) (holding "release of this information could undermine the effectiveness" of agency's investigation); *Judicial Watch v. DOJ*, 306 F. Supp. 2d 58, 75-76 (D.D.C. 2004) (observing release of documents during course of investigation could damage agency's ability to obtain information).

[4] *See, e.g., Ctr. for Nat'l Sec. Studies v. DOJ*, 331 F.3d 918, 930 (D.C. Cir. 2003) (recognizing witnesses "would be less likely to cooperate" and "potential witness or informant may be much less likely to come forward and cooperate with the investigation if he believes his name will be made public"); *Alyeska Pipeline Serv. v. EPA*, 856 F.2d 309, 311 (D.C. Cir. 1988) (ruling that disclosure might identify who had provided documents and would "thereby subject them to potential reprisals and deter them from providing further information"); *Lieff, Cabrasher, Heimann & Bernstein v. DOJ*, 697 F. Supp. 2d 79, 85 (D.D.C. 2010) (confirming withholding of information about investigation was proper where disclosure could provide details about " 'particular types of allegedly illegal activities being investigated' " including "names of potential witnesses, who would then be 'less likely to cooperate' ") (quoting *Alyeska Pipeline Serv*., 856 F. 2d at 312)); *EDUCAP, Inc. v. IRS*, No. 07-2106, 2009 WL 416428, at *6 (D.D.C. Feb. 18, 2009) (explaining agency's "expressed concern that release of the interview notes could deter potential witnesses from providing information is sufficient" to show interference).

[5] *See, e.g., J.P. Stevens & Co. v. Perry*, 710 F.2d 136, 143 (4th Cir. 1983) (finding premature disclosure would "hinder [agency's] ability to shape and control investigations"); *Carter, Fullerton & Hayes v. FTC*, 637 F. Supp. 2d. 1, 13 (D.D.C. 2009) (same); *EDUCAP*, 2009 WL 416428, at *5 (same).

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elude detection[6] or to suppress or fabricate evidence.[7] *See* Declaration of Rio Amon-Wilkins ¶ 6. Therefore, the subpoenaed documents must remain protected and confidential under HRS § 92F-13 in order to avoid harming, compromising, undermining or disrupting HPD's criminal investigation.

HPD is aware of the temporal nature of its current statutorily-supported position. HPD recognizes the subpoenaed records are not endlessly protected from disclosure. However, compelling HPD to prematurely turn over records now, two (2) weeks following Lauro's death and prior to completing its investigation of the new developments, is contrary to applicable law, unreasonable and oppressive.

B. The Subpoenaed Documents Should Not Be Turned Over Because They Are Being Compiled for the Purposes of Criminal Investigation and Prosecution

HRS § 92F-22 prohibits release of the requested records to Petitioners because the records requested are held by a law enforcement agency and are being compiled for the purposes of criminal investigation and prosecution. HRS § 92F-22(1)(A) and (B) state:

> An agency is not required by this part to grant an individual access to personal records, or information in such records:

---

[6] *See, e.g., Moorefield v. U.S. Secret Serv*., 611 F.2d 1021, 1026 (5th Cir. 1980) (explaining disclosure of requested information would enable targets "to elude the scrutiny of the [Secret] Service"); *Leopold v. DOJ*, 301 F. Supp. 3d 13, 29 (D.D.C. 2018) (applying FOIA Exemption 7(A) because disclosure " 'could reasonably be expected to interfere with enforcement proceedings,' . . . because disclosure 'would tip off subjects and persons of investigative interest, thus giving them the opportunity to take defensive actions to conceal their criminal activities, elude detection, and suppress and/or fabricate evidence' ").

[7] *See, e.g*., *Juarez v. DOJ*, 518 F.3d 54, 58 (D.C. Cir. 2008) (finding release "would compromise the investigation as it could lead to destruction of evidence"); *Solar Sources*, 142 F.3d at 1039 (stating disclosure "could result in destruction of evidence"); *Alyeska Pipeline*, 856 F.2d at 312 (ruling disclosure could allow for destruction or alteration of evidence, fabrication of alibis, and identification of witnesses).

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> (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
>
> > (A) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports of informers, witnesses, and investigators; or
> >
> > (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.

HRS § 92F-22 (emphasis added). HPD is a law enforcement agency and the records requested by Petitioners are being compiled for the purposes of criminal investigation. Petitioners, therefore, are not entitled to the subpoenaed documents compiled for the purposes of the ongoing criminal investigation.

C. Petitioner's Reliance on *Brady v. Maryland* to Produce Documents is Inapt

In their Motion to Compel, Petitioners rely on *Brady v. Maryland*, 373 U.S. 83 (1963), to support their request for law enforcement records. This reliance, however, is misplaced. The *Brady* Doctrine is a pre-trial discovery rule requiring the government to disclose exculpatory evidence to a defendant in a criminal case that is material to the defendant's guilt or punishment. *See Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Here, both Petitioners' convictions have been vacated and their cases dismissed without prejudice. See 3CSP-23-0000003, *Findings of Fact, Conclusions of Law Granting Petition to Vacate, Set Aside, and Correct Judgment, and to Release Albery Ian Schweitzer from Custody*, filed October 20, 2023 [Dkt. 117]; see also Minutes in 3CSP-23-0000017, dated October 23, 2023, Dkt. 68. Neither Petitioner is a defendant in a criminal case before this Court.

III. CONCLUSION

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Based on the foregoing reasons and authorities, HPD respectfully requests this Court quash the Subpoena pursuant to HRS §§ 92F-13 and 92F-22.

Alternatively,, should the Court determine Petitioners are entitled to information contained in the subpoenaed documents, HPD respectfully requests the Court: (1) conduct an *in camera* review of the subpoenaed documents to determine what information therein is relevant to Petitioners' claims of innocence; and (2) if such information exists, issue a protective order regarding such confidential materials subject to HRS §§ 92F-13 and -22, which (a) precludes their use for any purpose other than litigating the instant proceeding, and (b) bars Petitioners, their attorneys, representatives, agents, experts, and all persons, entities or parties acting by, through, under or in concert with them, from disclosing the confidential and statutorily protected documents and their substantive content to any other persons, offices or other entities, including the media.

Dated: Hilo, Hawai‘i, August 2, 2024.

HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 **DECLARATION OF RIO AMON-WILKINS**

DECLARATION OF RIO AMON-WILKINS

I, RIO AMON-WILKINS, declare the following:

1. I am currently the Captain of the Criminal Investigations Division and the Custodian of Record herein for the Hawai'i Police Department, County of Hawai'i.

2. I make this Declaration based upon my personal knowledge and am competent to testify about the matters contained in this Declaration.

3. The information requested in the *Subpoena Duces Tecum*, served on August 1, 2024 to Hawaii Police Department, pertains directly to an open and ongoing criminal investigation.

4. Due to the open and ongoing criminal investigation, several of the requested records are incomplete, and/or not yet available.

5. Detective Derek Morimoto is the lead detective in this matter and is on vacation until August 9, 2024. Therefore, some of the records requested are currently inaccessible.

6. Releasing records of Police Report D-74774 prematurely could result in loss of witness testimony, tampering of witnesses and/or witness testimony, and/or destruction of evidence that

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would adversely affect the ability of the HPD to complete its investigation and/or the State to prosecute the matter.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: Hilo, Hawai'i, August 1, 2024.

RIO AMON-WILKINS
Captain, Criminal Investigations Division
HAWAI'I POLICE DEPARTMENT

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 **DECLARATION OF E. BRITT BAILEY**

DECLARATION OF E. BRITT BAILEY

I, E. BRITT BAILEY, declare under penalty of perjury, that that following is true and correct:

1. I am an attorney at law and licensed to practice before this Court.

2. I am the attorney for the Hawai‘i Police Department in the above captioned matter.

3. I make this *Declaration* based on personal knowledge and review of the record; and, if called upon to testify, will verify the same.

4. Attached hereto as Exhibit “A” is a true and correct copy of Petitioners’ *Subpoena Duces Tecum* to the Hawai‘i Police Department, served on August 1, 2024.

Dated: Hilo, Hawai‘i, August 1, 2024.

/s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel

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STATE OF HAWAI`I CIRCUIT COURT OF THE THIRD CIRCUIT	SUBPOENA NOTICE TO APPEAR ✓ SUBPOENA DUCES TECUM	
CASE NUMBER 3CSP-23-0000017	CASE NAME SHAWN SCHWEITZER V. STATE OF HAWAII	
ATTORNEY (NAME and ADDRESS) KEITH S. SHIGETOMI 3380 ATTORNEY AT LAW P.O. BOX 17779 HONOLULU, HAWAII 96817 TELEPHONE (808) 753-1774		

THE STATE OF HAWAI`I TO:
ANY OFFICER AUTHORIZED BY LAW TO SERVE SUBPOENAS IN THE STATE OF HAWAI`I
YOU ARE COMMANDED to subpoena the individual named below.

NAME AND ADDRESS OF WITNESS
Hawaii Police Department Custodian of Records/Authorized Rep 349 Kapiolani Street Hilo, Hawaii 96720

COMMENTS:
Please bring the materials set forth on page 2.

WITNESS, YOU ARE COMMANDED to appear at the time and place indicated to testify as a witness on behalf of the

✓ PLAINTIFF ☐ DEFENDANT

✓ You are further ordered to bring with you the items listed in the comments section.

DATE	TIME
8/2/24	2:30 p.m.

LOCATION/ROOM
The Honorable Peter K. Kubota
Third Circuit Court
777 Kilauea Avenue
Hilo, Hawaii 96720

DISOBEDIENCE of this subpoena may be punished as contempt by this court.

Effective Date of 28-Oct-2019
Signed by: /s/ Cheryl Salmo
Clerk, 3rd Circuit, State of Hawai`i

The Original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at : http:/www.courts.state.hi.us

In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date.

Received

AUG 01 2024

Office of the Corporation Counsel
County of Hawaii

Ryan accepted service

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a. Any tapes (video or oral), emails, or written communications concerning the taking of a swab from Albert Lauro, Jr. on July 19, 2024 including everything said by anyone to Albert Lauro, Jr. before, during, and after the swabbing; what he said before, during and after the swabbing; where the swabbing took place, surveillance of Albert Lauro, Jr. before the swabbing took place and afterwards.

b. Any and all information gathered that shows a relationship between Albert Lauro, Jr. and either Ian Schweitzer, Shawn Schweitzer, or Frank Pauline;

c. All surveillance (reports, photos, videos, over hearings of voice communications, or digital communications) of Unknown Male #1;

d. All interviews of family members, friends, or others concerning Albert Lauro, Jr. before or after February 7, 2024;

e. Any and all information apart from DNA testing tending to show Albert Lauro, Jr. committed the assault, rape, and murder of Dana Ireland by himself or acting in concert with individuals other than Petitioners;

f. The date and time the Hilo Police Department, Hawai'i County law enforcement, or Hawai'i County Prosecutors learned about the death of Albert Lauro, Jr.;

g. Evidence obtained from a search warrant for Albert Lauro, Jr.'s home, place of work, or vehicles;

h. Evidence obtained from a search of Albert Lauro, Jr.'s phones, computers, or other devices;

i. The autopsy report on the death of Albert Lauro, Jr.'s and all investigative reports concerning whether the manner of death was a suicide or homicide;

j. Any and all other information discovered during the investigation of Albert Lauro, Jr., that tends to exculpate Petitioners;

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAIʻI

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAIʻI, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 NOTICE OF HEARING

NOTICE OF HEARING

TO: KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawaiʻi County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720
Attorneys for Respondent
STATE OF HAWAIʻI

JENNIFER BROWN
Hawaiʻi Innocence Project
2485 Dole Street, Suite 206
Honolulu, HI 96822

BARRY SCHECK
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Attorneys for Petitioner
ALBERT IAN SCHWEITZER

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KEITH SHIGETOMI
PO BOX 17779
Honolulu., HI 96817

RAQUEL BARILLA
The Innocence Center
6549 Mission Gorge Rd. #379
San Diego, CA 92120
Attorneys for Petitioner
SHAWN SCHWEITZER

NOTICE IS HEREBY GIVEN that the foregoing motion shall come on for hearing before the Honorable Judge Peter K. Kubota, Judge of the above-entitled court, on August 5, 2024, at 10:00 a.m., or soon thereafter as the matter can be heard, in his courtroom 3E located at Hale Kaulike, 777 Kilauea Avenue, Hilo, Hawai‘i, 96720.

Dated: Hilo, Hawai‘i August 2, 2024.

HAWAI‘I POLICE DEPARTMENT,
COUNTY OF HAWAI‘I

By: /s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel
Its Attorney

EXHIBIT B

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing document was served on the parties identified below by electronic filing through the JEFS Court electronic filing system on August 2, 2024:

KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai‘i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720
Attorneys for Respondent
STATE OF HAWAI‘I

JENNIFER BROWN
Hawai‘i Innocence Project
2485 Dole Street, Suite 206
Honolulu, HI 96822

BARRY SCHECK
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Attorneys for Petitioner
ALBERT IAN SCHWEITZER

EXHIBIT B

EXHIBIT A

KEITH SHIGETOMI
PO BOX 17779
Honolulu., HI 96817

RAQUEL BARILLA
The Innocence Center
6549 Mission Gorge Rd. #379
San Diego, CA 92120
Attorneys for Petitioner
SHAWN SCHWEITZER

Dated: Hilo, Hawai‘i, August 2, 2024.

/s/ E. Britt Bailey_____
E. BRITT BAILEY
Deputy Corporation Counsel

EXHIBIT B

EXHIBIT A

PRINTABLE CASE VIEW

Generated: 6-AUG-2024 10:42 AM **User: C3SATTY_EBB**

Search Criteria: Case ID or Citation Number: 3CSP-23-0000003

1 record(s) total

Case ID: 3CSP-23-0000003 - ALBERT IAN SCHWEITZER v. STATE OF HAWAI'I **Extended Case Title:** ALBERT IAN SCHWEITZER v. STATE OF HAWAI'I **Type:** SP - Special Proceeding **Nature of Action:** 18011 - Habeas Corpus/Petition **Method of Case Initiation:** N - Petition **Committed/Transferred Case ID:** **Case Security Level:** 1 **Sealed:** No **Assigned Judge:** Kubota, Peter **Status:** ACTIVE - Active Case **Case Age(Days):** 560 **Last Updated:** 05-Aug-2024	**Filing Date:** MONDAY, JANUARY 23, 2023 **Filing Time:** 15:04:51 **Court:** THIRD CIRCUIT **Location:** NORTH AND SOUTH HILO DIVISION **Division:** 3E - Third Circuit, 1st Division **Tax Map Key:** **Premises Address:**	

Related Cases

No related cases were found.

Case Parties

Seq #	Assoc	End Date	Type	ID	Name / Aliases
1	Brown, Jennifer L Harrison, William A. Fried, L. Richard		Petitioner	@2448155	SCHWEITZER, ALBERT IAN
2	SCHWEITZER, ALBERT IAN		Attorney	A10885	Brown, Jennifer L
3	SCHWEITZER, ALBERT IAN		Attorney	A2948	Harrison, William A.
4	SCHWEITZER, ALBERT IAN		Attorney	A764	Fried, L. Richard
5			Respondent	A7373	Kagawa, Shannon M.
6			Respondent	A9686	Waltjen, Kelden Braun Akoni
7			Other	D3C01	Third Circuit Court 1st Division
8			Court Reporter	RP3CIRCT	Recorded Proceeding 3rd Circuit
9			Court Reporter	RSPVR3	Supervising Court Reporter 3rd Circuit

EXHIBIT C

EXHIBIT A

Seq #	Assoc	End Date	Type	ID	Name / Aliases
10			Attorney	A9814	Bailey, Elizabeth Britt

Bail / Bond Information

No Bails were found.

Events

Event	Parties	Date	Time	Room	Location	Judge	Appearance Disposition
Further Hearing	Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney Elizabeth B Bailey - Attorney	08/09/2024	10:00:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	
Further Hearing		08/07/2024	10:00:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	
Hearing on Motion	Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney Elizabeth B Bailey - Attorney	08/05/2024	10:00:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	OTH-Other
Hearing on Motion		08/01/2024	09:30:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	CON-Continued
Hearing on Motion	Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney	07/30/2024	08:30:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	OTH-Other
Status Conference	Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney	07/02/2024	11:00:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	
Hearing on Motion		06/04/2024	08:30:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	CON-Continued

Event	Parties	Date	Time	Room	Location	Judge	Appearance Disposition
Petition(s) For	Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney	01/24/2023	09:00:00	Third Circuit, 1st Division	NORTH AND SOUTH HILO DIVISION	Kubota, Peter	GRT-Granted

Dockets

Docket #	Date	Docket	Document Name	Parties	Filing Party
1	01/23/2023	Exhibit Albert Ian Schweitzer Writ of Habeas Corpus	Writ of Habeas Corpus	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
3	01/23/2023	Stipulation to _____ EFile Document upload of type Stipulation to	JOINT STIPULATED FACTS; EXHIBITS 1 - 26 ; DECLARATION OF COUNSEL; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
5	01/23/2023	Payment Due to Court		Jennifer L Brown - Attorney	
7	01/23/2023	Payment Payment by Credit Card-Civil in the amount of $315.00 by Brown, Jennifer L.		Jennifer L Brown - Attorney	
8	01/23/2023	Petition-Post Convict Relief EFile Document upload of type Petition-Post Convict Relief	PETITION TO VACATE JUDGMENT AND RELEASE PETITIONER ALBERT IAN SCHWEITZER FROM CUSTODY; MEMORANDUM IN SUPPORT OF PETITION; EXHIBITS 1 - 17 ; DECLARATION OF COUNSEL; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
10	01/23/2023	Petition-Post Convict Relief EFile Document upload of type Petition-Post Convict Relief	PETITIONER FOR POST-CONVICTION RELIEF	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
12	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
14	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 3	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
15	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 4	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
16	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 5	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
17	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
18	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

19	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
20	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
21	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
23	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
24	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
25	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
26	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
27	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
28	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 16	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
29	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 17	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
30	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 19	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
31	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
33	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 21	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
34	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 22	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
35	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 23	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
36	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 24	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
37	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 25	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
38	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
40	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
41	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
42	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 3	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
43	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 4	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

44	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 5	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
45	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 7	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
46	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 8	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
47	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 9	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
48	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 10	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
49	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 11	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
50	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 12	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
51	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
52	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
53	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
54	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
55	01/23/2023	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
57	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 1	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
58	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 2	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
59	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 3	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
60	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 4	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
61	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 5	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
63	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 6	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
64	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 7	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
65	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 8	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
66	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 9	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
67	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 10	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

69	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 11	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
70	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 14	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
71	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 15	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
73	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 12	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
74	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 13	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
75	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 16	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
76	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 17	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
77	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 18	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
78	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 19	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
80	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 20	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
81	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 21	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
82	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 22	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
84	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 18 - Part 1	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
85	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 18 - Part 2	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
86	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 3	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
87	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 18 - Part 4	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
88	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 18 - Part 5	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
89	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 18 - Part 6	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
91	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6 - Part 1	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
92	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6 - Part 2	ALBERT I SCHWEITZER - Petitioner	SCHWEITZER, ALBERT IAN
93	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6 - Part 3	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
94	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 1 - Part 4	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

95	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6 - Part 5	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
96	01/23/2023	Exhibit EFile Document upload of type Exhibit	Exhibit 6 - Part 6	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
98	01/24/2023	Application for Extd Coverage	APPLICATION FOR EXTENDED COVERAGE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	

104	01/24/2023	Minutes JUDGE:PETER K. KUBOTA CLERK:LISA VIERNES BAILIFF:EDDIE YEICHY 3CSP071000007IN THE MATTER OF ALBERTIAN SCHWEITZER RE: MOTION FOR RECONSIDERATION 3CSP-23-3 ALBERT IAN SCHWEITZER VS. STATE OF HAWAII RE: 1. PET TO VACATE JUDGMENT AND RELEASE PETR ALBERT IAN SCHWEITZER FROM CUSTODY FILED 1/23/23; 2. PET TO VACATE, SET ASIDE OR CORRECT JUDGMENT OR TO RELEASE PETR FROM CUSTODY FILED 1/23/23; 3. APPLICATION FOR EXTENDED COVERAGE FILED 1/24/23; CONVENEND AT 9:21 A.M.; RECORDER: JAVS 3E APPEARANCES: S. BRITTAIN, ATTY/JUDGES FOR JUSTICE S. KAGAWA, DEPUTY PROS ATTY DEFENSE COUNSELS: BARRY SCHECK, NY INNOCENCE PROJECT SUSAN FRIEDMAN, NY INNOCENCE PROJECT JENNIFER BROWN, HI INNOCENCE PROJECT WILLIAM HARRISON, HI INNOCENCE PROJECT RICHARD FRIED, HI INNOCENCE PROJECT KEN LAWSON, HI INNOCENCE PROJECT VIRGINIA HENCH, NY INNOCENCE PROJECT DEFT, PRESENT (VIA HCCC) 3SP071000007 ADDRESSED FIRST:		Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney	

		CRT: INFORMED MR. BRITTAIN IT RECEIVED A STIPULATION FROM PROSECUTORS AND INNOCENCE PROJECT TO WITHDRAW PETITION; GRANTED STIPULATION TO WITHDRAW MATTER MAKING MOTION FOR RECONSIDERATION MOOT; BRITTAIN: OBJECTED; ARGUMENTS MADE; CRT: NOTED OBJECTION; STILL GRANTED STIPULATION TO WITHDRAW; ADDRESSED 3CSP-23-3: CRT: ADDRESSED EXTENDED COVERAGE; HEARING NO OBJECTION FROM THE PARTIES GRANTED ORDER; RICHARD FRIED: ADDRESSED THE CRT AS TO THE ORDER THEIR COUNSELS WOULD PRESENT THEIR PORTION OF THE CASE; AT 9:28 AM OPENING STATEMENTS: S. FRIEDMAN UNTIL 9:42 A.M. STATE DECLINE PRESENTING AN OPENING STATEMENT; FRIEDMAN: CALLED NANCY DINH TO THE STAND; AT 9:43 AM NANCY DINH IS SWORN IN TO TESTIFY BY DIRECT EXAM UNTIL 10:27 A.M.; PARTIES STIPULATED EXHIBITS 1-11 INTO EVIDENCE; FRIEDMAN: REQUEST TO ADMIT			

		EXHIBIT 1, 2, 3, 4 INTO EVIDENCE; ST: HAD NO OBJECTION; CRT: RECEIVED EXHIBIT 1, 2, 3, 4 INTO EVIDENCE; FRIEDMAN: REQUESTED TO QUALIFY MS. DINH AS AN EXPERT IN FORENSIC DNA TESTING; ST: HAD NO OBJECTION; CRT: WITNESS SHALL BE QUALIFIED AS SUCH; RECESS AT 10:27 AM; RECONVENED AT 10:46 AM W/THE SAME PARTIES PRESENT; CRT: HAD MS. FRIEDMAN, THE STATE AND WITNESS MS. DINH VERIFY AND CONFIRM PETITIONERS EXIHIBITS 1 THRU 4 PROVIDED TO THE COURT CLERK AND THE EXHIBITS USED DURING TESTIMONY IS ONE IN THE SAME; AT 10:47 AM WITNESS NANCY DINH RESUMED TESTIFYING BY DIRECT EXAM UNTIL 11:38 AM; CROSS EXAMINATION UNTIL 11:47 AM; EXCUSED; FRIEDMAN: REQUESTED EXHIBITS 5, 6 THRU 9, 10 & 11 BE ADMITTED INTO EVIDENCE; ST: HAD NO OBJECTION TO REQUESTS; CRT: RECEIVED EXHIBITS 5, 6 THRU 9, 10, & 11 INTO EVIDENCE; RECESS AT 11:48 AM;			

		RECONVENED AT 1:06 PM W/THE SAME PARTIES PRESENT; HARRISON: CALLED MATTHEW MARVIN AS THE NEXT WITNESS WHO WILL BE APPEARING VIA ZOOM FROM MISSISSIPPI; PETRS EXHIBITS 11 THRU 29 HAS BEEN PROVIDED TO THE EXPERT PRIOR TO THIS PROCEEDING; THE STATE WILL STIPULATE THAT THE EXHIBITS ARE IN EVIDENCE AND THAT THESE ARE TRUE AND CORRECT COPIES THAT THE WITNESS HAS IN MISSISSIPPI; CONFIRMED THAT THE EXHIBITS PROVIDED TO THE EXPERT ARE THE EXACT COPIES PROVIDED TO THE COURT FOR SUBMISSION; AT 1:09 PM MATTHEW MARVIN APPEARING VIA VIDEO IS SWORN IN TO TESTIFY BY DIRECT EXAM UNTIL 2:16 PM; HARRISON: REQUESTED TO QUALIFY MR. MARVIN AS AN EXPERT IN TIRE TRACK EXAMINATION; ST: HAD NO OBJECTION; CRT: QUALIFIED MR. MARVIN AS SUCH; HARRISON: REQUESTED EXHIBIT 13, 14, 18, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 28, AND 12 IN TO EVIDENCE; ST: HAD NO OBJECTION TO REQUESTS; CRT: RECEIVED EXHIBIT 13, 14, 18, 15, 16, 17, 19, 20, 21, 22, 23, 25, 27, 28, AND 12 INTO EVIDENCE; RECESS AT 2:16 PM;		

		RECONVENED AT 2:24 PM SAME PARTIES PRESENT; AT 2:26 PM MATTHEW MARVIN RESUMED TESTIFYING BY CROSS EXAMINATION UNTIL 2:36 PM; DIRECT EXAMINATION BY THE CRT UNTIL 2:40 PM; EXCUSED; BROWN: CALLED ADAM FREEMAN; AT 2:41 PM ADAM FREEMAN APPEARED VIA VIDEO AND IS SWORN IN TO TESTIFY BY DIRECT EXAM UNTIL 3:45 PM; STATE HAD NO QUESTIONS; EXCUSED; BROWN: REQUESTED TO SUBMIT EXHIBITS 30 THRU 34 INTO EVIDENCE; CERTIFIED EXHIBITS BEFORE DR. FREEMAN ARE SAME AS THE EXHIBITS BEING OFFERED INTO EVIDENCE; MOVED TO QUALIFY ADAM FREEMAN AS AN EXPERT IN FORENSIC ODONTOLOGY; CRT: NOTED PARTIES HAD STIPULATED THE EXHIBITS INTO EVIDENCE (PETR EXHIBITS 30 THRU 34); QUALIFIED WITNESS AS AN EXPERT IN FORENSIC ODONTOLOGY; BROWN: OFFERED EXHIBIT 31, 32, 33, 34 INTO EVIDENCE CRT: RECEIVED EXHIBITS 31, 32, 33, 34 INTO EVIDENCE; RECESS AT 3:46 PM; RECONVENED AT 4:07 PM W/THE SAME PARTIES PRESENT; AT 4:07 PM CLOSING ARGUMENTS			

		B. SCHECK UNTIL 4:29 PM STATE UNTIL 4:33 PM CRTS RULING: REVIEWED THE EXPERT WITNESS TESTIMONY PRESENTED AND STATED THE BASIS FOR ITS DECISION; NEW EVIDENCE CONCLUSIVELY PROVES THAT IN A NEW TRIAL A JURY WOULD LIKELY REACH A DIFFERENT VERDICT OF ACQUITTAL; VACATED THE CONVICTION OF DEFT AND HE SHALL BE IMMEDIATELY BE RELEASED FROM CUSTODY IN THIS COURTROOM; EXECUTED THE ORDER FOR IMMEDIATE RELEASE; INSTRUCTED DEFT TO REPORT TO HCCC TOMORROW TO EXECUTE ANY DISCHARGE PAPERWORK AND PICK-UP ANY PERSONAL ITEMS THERE; DISMISSED THE INDICTMENT WITHOUT PREJUDICE; RECESS.			
100	01/25/2023	Order	ORDER ON APPLICATION FOR EXTENDED COVERAGE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
102	02/03/2023	Request for Transcript	REQUEST FOR WRITTEN TRANSCRIPT OF PROCEEDINGS DATE OF PROCEEDINGS: 1/24/23	ALBERT I SCHWEITZER - Petitioner	
105	03/01/2023	Request for Transcript EFile Document upload of type Request for Transcript	Proposed Request for Written Transcript/Recording of the Proceedings	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
107	03/06/2023	Request for Transcript	REQUEST FOR WRITTEN TRANSCRIPT OF PROCEEDINGS DATE OF PROCEEDINGS: 1/24/23	Shannon M Kagawa - Respondent	Kagawa, Shannon M.

EXHIBIT C

EXHIBIT A

109	03/10/2023	Exhibit List Plaintiff's exhibit list (1-23, 25, 27-28, 30-34) with exhibit offered for identification and received in evidence on 1/24/23. Exhibit 24 offered for identification only on 1/24/23.	Sealed	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
111	08/17/2023	Req for Audio-Video Recording	(PROPOSED) REQUEST FOR WRITTEN TRANSCRIPT/RECORDING OF PROCEEDINGS	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent	
113	08/22/2023	Req for Audio-Video Recording	REQUEST FOR RECORDING OF PROCEEDINGS DATE OF PROCEEDINGS: 1/24/23	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
115	10/20/2023	Prop Find Facts, Cncl of Law EFile Document upload of type Prop Find Facts, Cncl of Law	FINDINGS OF FACT, CONCLUSIONS OF LAW GRANTING PETITION TO VACATE, SET ASIDE, AND CORRECT JUDGMENT, AND TO RELEASE PETITIONER ALBERT IAN SCHWEITZER FROM CUSTODY	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
117	10/20/2023	Findings/Fact Concl of Law-Ord	FINDINGS OF FACT, CONCLUSIONS OF LAW GRANTING PETITION TO VACATE, SET ASIDE, AND CORRECT JUDGMENT, AND TO RELEASE PETITIONER ALBERT IAN SCHWEITZER FROM CUSTODY	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent	Brown, Jennifer L
119	03/05/2024	Motion for _____	MOTION TO WITHDRAW AS COUSEL	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	Fried, L. Richard, Harrison, William A., Brown, Jennifer L
121	03/05/2024	Order Granted	ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	

123	03/07/2024	Motion for _____ EFile Document upload of type Motion for	MOTION FOR FINDING OF ACTUAL INNOCENCE; PETITIONER ALBERT IAN SCHWEITZER S MEMORANDUM IN SUPPORT OF FINDING OF ACTUAL INNOCENCE; DECLARATION OF L. RICHARD FRIED, JR.; DECLARATION OF WILLIAM A. HARRISON; EXHIBITS 1-2; NOTICE OF HEARING MOTION AND CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner	Fried, L. Richard
125	03/15/2024	Memorandum in Opposition State of Hawaii's Memorandum in Opposition to Motion for Finding of Actual Innocence	State of Hawaii's Memorandum in Opposition to Motion for Finding of Actual Innocence	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
127	06/04/2024	Petition for ____ EFile Document upload of type Petition for	JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

129	06/04/2024	Minutes JUDGE:PETER K. KUBOTA PRESIDING CLERK:CARIN MEDEIROS BAILIFF:EDDIE YEICHY 3CSP-23-3ALBERT IAN SCHWEITZER vs STATE OF HAWAII RE:Petitioners Motion for a Finding of Actual Innocence CONVENED: 8:34 A.M. RECORDED: JAVS 3E APPEARANCES: DPA, Shannon Kagawa CRT:The Court checked with Ms. Brown regarding todays hearing, it was our understanding that the case was settled with the legislature appropriating funds and there was no need for a proceeding on this. Ms. Brown indicated this hearing could be stricken and they want to proceed with the petition to preserve evidence for any future investigation. But then we heard from you evidence to the contrary, that maybe they had not settled. So I will continue this about a month or so and schedule a conference. A Status Hearing on the instant petition is scheduled for: 7/30/24 at 8:30 a.m. and Conference on: 7/2/24 at 11:00 a.m., all parties may participate by zoom. If petitioner wishes to file an additional petition to preserve evidence, they may calendar same for 8:30 a.m. Recess		All Case Parties	

130	07/26/2024	Memorandum in Opposition State of Hawaii's Memorandum in Opposition to Joint Petition for Relief Pursuant to HRS Chapter 661B; Declaration of Counsel; Memorandum of Law and Exhibits "1-2"	State of Hawaii's Memorandum in Opposition to Joint Petition for Relief Pursuant to HRS Chapter 661B; Declaration of Counsel; Memorandum of Law and Exhibits "1-2"	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
131	07/26/2024	Document Exhibit 2 for State of Hawaii's Memorandum in Opposition to Joint Petition for Relief Pursuant to HRS Chapter 661B; Declaration of Counsel; Memorandum of Law and Exhibits "1-2"	Sealed	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
133	07/28/2024	Motion to Compel Discovery EFile Document upload of type Motion to Compel Discovery	MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT; DECLARATION OF COUNSEL; EXHIBITS 1 - 11 ; NOTICE OF HEARING; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
135	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "1" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
136	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "2" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
137	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "3" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
138	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "4" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

139	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "5" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
140	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "6" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
141	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "7" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
142	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "8" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
143	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "9" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
144	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "10" TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
145	07/28/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "11" [REDACTED] TO PETITIONERS' MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
146	07/28/2024	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L

148	07/29/2024	Memo in Reply/Response to_____ EFile Document upload of type Memo in Reply/Response to	PETITIONER S REPLY TO STATE S OPPOSITION TO PETITIONERS JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. 661B; MEMORANDUM OF LAW IN SUPPORT; DECLARATION OF COUNSEL; EXHIBIT 1 - 2 ; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
150	07/29/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "1" TO PETITIONER S REPLY TO STATE S OPPOSITION TO PETITIONERS JOINT PETITION FOR RELIEF PURSUANT H.R.S. 661B	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
151	07/29/2024	Exhibit EFile Document upload of type Exhibit	EXHIBIT "2" TO PETITIONER S REPLY TO STATE S OPPOSITION TO PETITIONERS JOINT PETITION FOR RELIEF PURSUANT H.R.S. 661B	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
152	07/29/2024	Exhibit EFile Document upload of type Exhibit	Sealed	ALBERT I SCHWEITZER - Petitioner	Brown, Jennifer L
154	07/29/2024	Memorandum in Opposition STATE OF HAWAIIS MEMORANDUM IN OPPOSITION TO MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B	STATE OF HAWAII S MEMORANDUM IN OPPOSITION TO MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
156	07/29/2024	Motion to Continue STATE OF HAWAIIS MOTION TO CONTINUE THE JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B	STATE OF HAWAII S MOTION TO CONTINUE THE JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B	ALBERT I SCHWEITZER - Petitioner	Kagawa, Shannon M.
158	07/30/2024	Motion for _____	MOTION TO UNSEAL AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO UNSEAL	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	

160	07/30/2024	Minutes JUDGE:PETER K. KUBOTA CLERK:LISA VIERNES BAILIFF:NAOMI SCHUBERT 3CSP-23-3ALBERT IAN SCHWEITZER VS. SOH 3CSP-23-17SHAWN SCHWEITZER VS. SOH RE: 1. MOT OF FINDING ACTUAL INNOCENCE FILE 3/7/24 2. JOINT PET FOR RELIEF PURSUANT TO HRS CHAPTER 661B FILED 6/20/24 3. MOT TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PET FOR RELIEF PURSUANT TO HRS CHAPTER 661 B FILED 7/28/24 4. SOHS MOT TO CONTINUE THE JOINT PET FOR RELIEF PURSUANT HRS CHAPTER 661 B FILED 7/29/24 CONVENED AT 8:37 AM; RECORDER: JAVS 3E APPEARANCES: W. HARRISON, ATTY/A. SCHWEITZER (INNOCENCE PROJ) J. BROWN, ATTY/A. SCHWEITZER (INNOCENCE PROJ) B. SCHECK, INNOCENCE PROJ (VIA VIDEO) K. SHIGETOMI, ATTY/S. SCHWEITZER I. SCHWEITZER, PETR S. SCHWEITZER, PETR K. LAWSON, (INNOCENCE PROJ) S. KAGAWA, DEPUTY PROS ATTY M. KAGAMI, DEPUTY PROS ATTY CRT: ADDRESSED STATES MOTION TO CONTINUE (ONLY 661B) FIRST (#4);		Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney	

		HARRISON: OBJECTED TO CONTINUANCE; ARGUMENTS MADE; SHIGETOMI: OBJECTED AS WELL; ARGUMENT MADE; CRT: NOTED MOTION OF FINDING OF ACTUAL INNOCENCE WAS FILED IN MARCH 7, 2024 AND NOT MAY AS HE HAD THOUGHT; THE STATE FILED ITS RESPONSE ON FRIDAY, 7/26/24; AT 8:41 AM ARGUMENTS MADE FOR MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY: HARRISON UNTIL 8:44 AM SCHECK UNTIL 8:59 AM SHIGETOMI UNTIL 9:00 AM STATE UNTIL 9:04 AM HARRISON REBUTTAL UNTIL 9:05 AM CRT: TOOK JUDICIAL NOTICE OF THE PROCEEDINGS AND FINDINGS OF FACT/CONCLUSIONS OF LAW AND ORDER IN 3CSP-23-003 AS APPLICABLE TO 3CSP-23-17; NOTED THE PRESENCE OF DEPUTY CORP COUNSEL FOR THE COUNTY IS IN GALLERY; CRTS RULING: FOUND INVESTIGATION INTO THE PERSON KNOWN AS UNKNOWN MALE #1, WHO IS NOW IDENTIFIED AS ALBERT LAURO JR. IS MATERIAL AND RELEVANT TO THE DETERMINATION OF THE ACTUAL INNOCENCE OF IAN AND SHAWN SCHWEITZER AND IS NECESSARY AND COMPELLING FOR THESE PARTIES TO AVAIL THEMSELVES			

		OF ANY KIND OF EXCULPATORY INFO WHICH MAY HAVE ARISEN FROM THE INVESTIGATION INTO ALBERT LAURO JR.; GRANTED MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY; PARTIES MAY BE SUBMIT A REQUEST FOR ISSUANCE OF SUBPOENA DUCES TECUM (SDT) RETURNABLE ON THURSDAY, AUGUST 1, 2024; SUBJECT TO ANY DISPUTE FROM CORP COUNSEL AND HPD AND ANY MOTION TO QUASH; THE SDT SHALL BE ISSUED W/ALL OF THE DOCUMENTS AND EVIDENCE LISTED IN THE MOTION TO PRESERVE EVIDENCE FILED BY THE SCHWEITZER BROTHERS; DOCUMENTS PRODUCED BY HPD SHALL BE SUBMITTED FOR IN-CAMERA REVIEW BY THIS CRT AS WHETHER OR NOT SAID DOCUMENTS CAN BE DISCLOSED TO THE PETRS; MATTER CONTINUED TO AUG 1, 2024 AT 9:30 PM FOR RETURN ON SDT; RE: MOTION FOR FINDING OF ACTUAL INNOCENCE: AT 9:09 AM ARGUMENTS MADE RE: FINDING OF ACTUAL INNOCENCE SCHECK UNTIL 9:25 AM RECESS AT 9:26 AM; RECONVENED AT 9:35 AM; W/ THE SAME PARTIES PRESENCE; CONTINUED W/ ARGUMENTS RE: M-FOR FINDING OF ACTUAL INNOCENCE: W. HARRISON UNTIL 9:42 AM			

		K. SHIGETOMI UNTIL 10:02 AM S. KAGAWA UNTIL 10:17 AM K. SHIGETOMI REBUTTAL UNTIL 10:17 AM CRT: MATTER CONTINUED TO AUGUST 1, 2024 AT 9:30 AM FOR FURTHER HRG ON MOTIONS/RT ON SUBPOENA DUCES TECUM; PARTIES MAY APPEAR VIA VIDEO; WILL REVIEW DOCUMENTS PROVIDED VIA SDT; INSTRUCTED THE ATTYS FROM THE INNOCENCE PROJECT TO PREPARE ORDER GRANTING THEIR MOTION TO COMPEL PRODUCTION W/SUBPOENA, RETURNABLE ON 8/1/24 AT 9:30 AM IN CRTRM 3E; THEY ARE TO ALSO PREPARE AN ORDER DENYING MOTION TO CONTINUE; RECESS.			
161	07/31/2024	Subpoena Duces Tecum Return of Service	Return of Service	ALBERT I SCHWEITZER - Petitioner	SCHWEITZER, ALBERT IAN
163	08/01/2024	Notice	HAWAI'I POLICE DEPARTMENT'S NOTICE OF APPEARANCE OF COUNSEL; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
165	08/01/2024	Application for Extd Coverage	APPLICATION FOR EXTENDED COVERAGE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	

167	08/01/2024	Motion to Quash EFile Document upload of type Motion to Quash	HAWAI I POLICE DEPARTMENT S MOTION TO QUASH SUBPOENA DUCES TECUM, SERVED JULY 31, 2024; MEMORANDUM OF LAW; DECLARATION OF RIO AMON-WILKINS; DECLARATION OF E. BRITT BAILEY; EXHIBIT A ; NOTICE OF HEARING; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	Bailey, Elizabeth Britt
169	08/01/2024	Order Granted	ORDER GRANTING MOTION TO COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
171	08/01/2024	Application for Extd Coverage	APPLICATION FOR EXTENDED COVERAGE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	

173	08/01/2024	Minutes JUDGE:PETER K. KUBOTA CLERK:LISA VIERNES BAILIFF:NAOMI SCHUBERT 3CSP-23-3ALBERT IAN SCHWEITZER vs. STATE OF HAWAII 3CPC-23-17SHAWN SCHWEITZER vs. STATE OF HAWAII RE: 1. RT ON SDT; 2. FURTHER HRG RE: M-FINDING OF ACTUAL INNOCENCE FILED 3/7/24 AND JOINT PET FOR RELIEF PURSUANT TO HRS CHAPTER 661 B FILED 6/20/24 CONVENED AT 9:32 AM; RECORDER: JAVS 3E APPEARANCES: K. SHIGETOMI, DEF COUNSEL FOR S. SCHWEITZER (VIA VIDEO) S. KAGAWA, PROS ATTY B. BAILEY, DEPUTY CORP COUNSEL CRT: INFORMED PARTIES IT WAS HIS INTENT TO CONTINUE MATTER TO TOMORROW, 8/2/24 AT 2:30 PM; CONTINUED MATTER FOR ARGUMENTS ON MONDAY; BRITT BAILEY: REQUESTED MORE TIME TO REVIEW DOCUMENTS PROVIDED AND TO FILE ANOTHER MOTION; MATTER WAS CONTINUED TO AUGUST 5, 2024 AT 10:00 AM FOR RETURN ON SUBPOENA DUCE TECUM (SDT) AND MOTION TO QUASH SDT; CRT: NOTED TIM WRIGHT SUBMITTED AN APPLICATION FOR EXTENDED COVERAGE;		All Case Parties	

		KAGAWA/SHIGETOMI: TOOK NO POSITION; CRT: PERMITTED MEDIA COVERAGE PURSUANT TO APPLICATION FOR EXTENDED COVERAGE SUBMITTED BY T. WRIGHT; RECESS.			
174	08/02/2024	Return of Service EFile Document upload of type Return of Service or Summons	Return of Service	ALBERT I SCHWEITZER - Petitioner	SCHWEITZER, ALBERT IAN
176	08/02/2024	Motion to Quash EFile Document upload of type Motion to Quash	HAWAI I POLICE DEPARTMENT S MOTION TO QUASH SUBPOENA DUCES TECUM, SERVED AUGUST 1, 2024; MEMORANDUM OF LAW; DECLARATION OF RIO AMON-WILKINS; DECLARATION OF E. BRITT BAILEY; EXHIBIT A ; NOTICE OF HEARING; CERTIFICATE OF SERVICE	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	Bailey, Elizabeth Britt
178	08/05/2024	Order	ORDER ON APPLICATION FOR EXTENDED COVERAGE *GRANTED	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	
180	08/05/2024	Request for Transcript EFile Document upload of type Request for Transcript	EXPEDITED REQUEST FOR WRITTEN TRANSCRIPT/RECORDING OF PROCEEDINGS	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	Bailey, Elizabeth Britt
182	08/05/2024	Req for Audio-Video Recording EFile Document upload of type Req for Audio-Video Recording	EXPEDITED REQUEST FOR RECORDING OF PROCEEDINGS	ALBERT I SCHWEITZER - Petitioner Shannon M Kagawa - Respondent Kelden B Waltjen - Respondent Third Circuit Court 1st Division - Other	Bailey, Elizabeth Britt

184	08/05/2024	Minutes JUDGE:PETER K. KUBOTA CLERK:LISA VIERNES BAILIFF:NAOMI SCHUBERT 3CSP-23-3ALBERT IAN SCHWEITZER VS. STATE OF HAWAII 3CPS-23-17SHAWN SCHWEITZER VS. STATE OF HAWAII RE: 1. MOT TO QUASH SDT; 2. FURTHER HRG ON M-FINDING ACTUAL INNOCENCE AND JOINT PET FOR RELIEF; 3. M-TO UNSEAL CONVENED AT 10:05 AM; RECORDER: JAVS 3E APPEARANCES: B. BAILEY, CORP COUNSEL FOR COH-HPD S. KAGAWA, PROS W. HARRISON, ATTY/A. SCHWEITZER J. BROWN, INNOCENCE PROJ R. FRIED, INNOCENCE PROJ K. LAWSON, INNOCENCE PROJ B. SCHECK, INNOCENCE PROJ K. SHIGETOMI, ATTY/S. SCHWEITZER R. BARILLA, ATTY/S. SHWEITZER S. SCHWEITZER, DEFT A. SCHWEITZER, DEFT AT 10:08 ARGUMENTS HAD RE: MOTION TO UNSEAL EVIDENCE: KAGAWA UNTIL 10:08 AM BAILEY UNTIL 10:09 AM HARRISON UNTIL 10:09 AM SHIGETOMI UNTIL 10:09 AM CRTS RULING: ORDERED THE UNSEALING OF THE DNA REPORT IDENTIFYING		Jennifer L Brown - Attorney William A Harrison - Attorney L. Richard Fried - Attorney Elizabeth B Bailey - Attorney	

		ALBERT LAURO JR. AS THE UNKNOWN MALE #1; RE: DET. GUILLERMOS POLICE REPORT: NOT SURE IF CONFIDENTIAL INFORMATION INCLUDING PROTECTED/SENSITIVE INFORMATION IS INCLUDED IN THE REPORT; PERMITTED HPD TIME TO RE-DACT ANYTHING NECESSARY AND SUBMIT UNDER SEAL FOR IN-CAMERA REVIEW AND IT WILL CONSIDER RELEASE OF DET. GUILLERMOS REPORT (REPORT AFTER INTERVIEW OF SHAWN SCHWEITZER BACK IN 3/2000); COUNTY SHALL HAVE UNTIL 8/7/24 (WEDNESDAY) 10:00 AM FOR SUBMISSION OF THE RE-DACTED GUILLERMO REPORT; BAILEY: MADE A MOTION TO WITHDRAW THE PREVIOUS M-QUASH FILED 8/1/24 RE: 8/31/24 SUBPOENA; NOTED THERE IS A DECLARATION FR. CAPT. AMMON-WILKENS; BECAUSE CAPT AMMON-WILKENS IS ILL, HES HAD DET. JELSMA BRING THEM TO CRT; CRT: PERMITTED MS. BAILEY TO SUPPLEMENT W/CAPT. AMMON-WILKENS DECLARATION AS TO THE COMPLETENESS OF THE RECORD PRODUCED PURSUANT TO THE SUBPOENA; AT 10:14 AM MOTION TO QUASH FILED 8/2/24; BAILEY UNTIL 10:17 AM KAGAWA CONCURRED W/MS. BAILIEYS ARGUMENTS HARRISON UNTIL 10:20 AM SHIGETOMI UNTIL 10:20 AM AT 10:20 AM RE: BRADY ARGUMENTS		

		HARRISON/SHIGETOMI UNTIL 10:22 AM CRTS RULING: ORDERED COH-HPD TURN OVER THE MATERIALS IN THEIR POSSESSION TODAY AND WILL HAVE A CONTINUING DUTY TO SUPPLEMENT EVERY WEDNESDAY AT 10:00 AM OTHER MATERIALS TO BE SUBMITTED FOR IN-CAMERA FOR REVIEW; CRT WILL MAKE DETERMINATION AS TO WHAT IS TO BE RELEASED TO DEFENDANTS AND/OR TO THE PUBLIC BY THIS WEDNESDAY, 8/7/24 AT 10:00 AM; ON THAT DATE, WHATEVER THE CRT ORDERS TO BE PRODUCED TO DEFENSE COUNSEL, SUBJECT TO ANY PROTECTIVE ORDER PROPOSED, SHALL BE TURNED OVER TO THEM ON WEDNESDAY, 8/7/24; SHOULD THERE BE ANY DOCUMENTS THAT NEED TO BE RE-DACTED, IT WILL ORDER THE RE-DACTIONS AND THE COH-PD SHALL PRODUCE THEM BY 4:00 PM ON 8/7/24; THE HRG ON ACTUAL INNOCENCE MOTIONS SHALL BE CONTINUED TO AUGUST 9, 2024 AT 10:00 AM; ON AUGUST 7, 2024, THIS CRT WILL ORDER DOCUMENTS TO BE PRODUCED TO THE INNOCENCE PROJECT TEAM FOR FURTHER ARGUMENT AS TO THE ACTUAL INNOCENCE; ALL PARTIES WILL BE GIVEN UNTIL AUGUST 8, 2024 (THURSDAY) 4:00 PM TO FILE SUPPLEMENTAL MEMOS RE: THE ACTUAL INNOCENCE; THIS CRT WILL HEAR ADDITIONAL ARGUMENTS ON AUGUST 9, 2024 AT 10:00 AM WHICH COULD TESTIMONY OF STEVEN KRAMER OR A REPRESENTATIVE OF FACL			

		OR ANY OTHER WITNESSES THAT COUNSELS CHOOSES TO CALL; BAILEY: PROVIDED EVIDENCE IN OPEN CRT BY DET. JELSMA; JELSMA: CONFIRMED HE RECEIVED THE SEALED EVIDENCE FR. CAPT. AMMON-WILKENS FROM HIS IN-TRAY IN HIS OFFICE; CRT: RECEIVED PROFFERED EVIDENCE FOR IN-CAMERA REVIEW; WILL CONVENED THIS HRG ON WEDNESDAY, 8/7/24 AT 10:00 AM; SUGGESTED TO THE PARTIES TO SUBMIT ANY PROTECTIVE ORDER FORM IN ADVANCE; INSTRUCTED MR. HARRISON TO PREPARE ORDER DENYING MOTION TO QUASH SUBPOENA; RECESS.			

Claims Management

No Claims were found.

JENNIFER L. BROWN, #10885
L. RICHARD FRIED, JR., #764
WILLIAM A. HARRISON, #2948
HAWAI‘I INNOCENCE PROJECT
2485 Dole Street, Suite 206
Honolulu, Hawai‘i 96822
Telephone Number: (808) 965-6548
E-Mail: jenbrown@hawaiiinnocenceproject.org

BARRY SCHECK, #1634765 (New York) (*pro hac vice*)
INNOCENCE PROJECT
40 Worth Street, Suite 701
New York, NY 10013
Telephone Number: (212) 364-5398
E-Mail: bscheck@innocenceproject.org

Attorneys for Petitioner,
ALBERT IAN SCHWEITZER

KEITH S. SHIGETOMI, #3380
P.O. Box 17779
Honolulu, HI 96817
Telephone Number: (808) 753-1774
E-Mail: keithsshigetomi@gmail.com

RAQUEL BARILLA, #265526 (California) (*pro hac vice*)
THE INNOCENCE CENTER
6549 Mission Gorge Rd., #379
San Diego, CA 92120
Telephone Number: (619) 928-2856
E-Mail: raquel@theinnocencecenter.org

Attorneys for Petitioner,
SHAWN SCHWEITZER

//

EXHIBIT D

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B; MEMORANDUM IN SUPPORT; DECLARATION OF COUNSEL; EXHIBITS "1"-"11"; NOTICE OF HEARING; CERTIFICATE OF SERVICE MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B

Petitioners ALBERT IAN SCHWEITZER ("Ian Schweitzer") by and through his attorneys, JENNIFER BROWN and WILLIAM HARRISON of the Hawai'i Innocence Project and BARRY SCHECK of the Innocence Project (admitted *pro hac vice*), and SHAWN SCHWEITZER by and through his attorneys KEITH SHIGATOMI, and RAQUEL BARILLA of The Innocence Center (admitted *pro hac vice*) hereby moves this Court for an Order to compel the HAWAI'I COUNTY PROSECUTING ATTORNEY and the HAWAI'I COUNTY POLICE DEPARTMENT to preserve all evidence obtained in its investigation of the Dana Ireland murder and Case no. 3PC-99-0000147 and any and all evidence obtained post-conviction in relation to Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 from the time of the Dana Ireland murder on December 24, 1991, through the present, as well as any evidence that may be

EXHIBIT D

EXHIBIT A

obtained in the future in relation to the Dana Ireland murder and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 after a hearing on this Motion scheduled for July 30, 2024.

Furthermore, Petitioners hereby moves this Court for an Order to compel the HAWAI'I COUNTY PROSECUTING ATTORNEY and the HAWAI'I COUNTY POLICE DEPARTMENT to produce all evidence in their possession in relation to the Dana Ireland murder investigation and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 from the time of the Dana Ireland murder on December 24, 1991, through the present, as well as any evidence that may be obtained in the future in relation to the Dana Ireland murder and Case nos. 3PC-99-0000147, 3CSP-23-0000003, and 3CSP-23-0000017 after a hearing on this Motion scheduled for July 30, 2024.

This Motion is made pursuant to H.R.S. §844D-126, H.R.P.P. Rule 40(g), H.R.C.P. 37(a) and is supported by all of the records and files before this court, the attached Memorandum in Support of this Motion, the Declaration of Counsel, the attached Exhibits "1"-"11", and any other evidence to be produced for the Motion hearing scheduled to be heard on July 30, 2024.

RELEVANT PROCEDURAL BACKGROUND IN SUPPORT OF THIS MOTION

1. On December 24, 1991, someone (referred to as "Unknown Male #1")[1] kidnapped and sexually assaulted Dana Ireland ("Ms. Ireland") and left her badly injured on a fishing trail.

[1] ***The identity of Unknown Male #1 is no longer "unknown."*** The post-conviction investigative efforts of the Petitioners have led to the parties identification of Unknown Male #1's, which was confirmed first through abandoned DNA collection tested with results provided to the parties on on July 1, 2024 and then further confirmed through the DNA testing of a buccal swab of Unknown Male #1's DNA on July 24, 2024. Petitioners will continue to refer to him as Unknown Male #1 in this Motion where applicable and now "Known Male #1" thereafter were applicable. *See* attached Exhibits "5" and "11".

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Due to her injuries, Ms. Ireland died on December 25, 1991. Dkt. 3, Joint Stipulated Facts ("JSF")[2] filed January 23, 2023, at ¶ 2.

2. Years later, on October 9, 1997, Albert Ian Schweitzer ("Ian") and Shawn Schweitzer ("Shawn") were indicted for Ms. Ireland's rape, kidnap, and murder.[3] However, based on DNA results, the Hawai'i County Prosecutor's Office dismissed all charges against Ian and Shawn on October 20, 1998. JSF at ¶ 8.

3. In May of 1999, the Prosecution secured a reindictment of Ian and Shawn, based on the false and incentivized statements of a jailhouse informant. JSF at ¶ 9.

4. On February 16, 2000, a jury found Ian guilty of Second-Degree Murder, Kidnapping, and Sexual Assault in the First Degree. Ian was sentenced to a term of: (l) life imprisonment with the possibility of parole for the Second-Degree Murder, (2) 20 years in prison for Kidnapping, and (3) 20 years in prison for Sexual Assault in the First Degree, all terms to run consecutively. JSF at ¶ 13. On May 9, 2000, Shawn pled guilty to manslaughter and kidnapping (by omission) related to Dana Ireland and was sentenced to one year in jail with credit for time served and five years of probation. JSF at ¶ 14.

5. The Hawai'i Supreme Court affirmed Ian's conviction. *State v. Schweitzer*, 103 Hawaii 400 (2004).

6. Ian filed an initial Petition to Vacate, Set Aside or Correct Judgment or to Release Petition pursuant to Hawai'i Rule Penal Procedure Rule 40 on February 3, 2017, and filed

[2] The statement of facts comes from the parties agreed upon Joint Stipulated Facts filed on January 23, 2023. All internal citations in the Joint Stipulate Facts have been omitted in this document.

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amended petitions on February 7, 2017, and January 16, 2018. (Case no. 3PRl71-000002). JSF at ¶ 15.

7. In May 2019, Hawai‘i Innocence Project and the Innocence Project entered into a cooperation agreement with the Hawai‘i County Prosecutors to reinvestigate the Dana Ireland murder based on Ian’s claim of being innocent and wrongfully convicted of Ms. Ireland’s murder.

8. On January 23, 2023, Ian filed another H.R.P.P. Rule 40 Petition asserting his actual innocence and pointing to new DNA evidence implicating Unknown Male #1 whose DNA was found on all relevant tested physical evidence, new bite mark evidence, and newly presented tire tread evidence.

9. Hawai‘i County Prosecutors did not dispute this new evidence and at an evidentiary hearing on January 24, 2023, the Court vacated Ian’s convictions based on this new evidence and dismissed the charges against him under 3PC-99-0000147.

10. On April 6, 2023, Shawn filed a H.R.P.P. Rule 40 Petition for Post-Conviction Relief.

11. On October 20, 2023, this Court issued its Finding of Facts and Conclusion of Law vacating Ian’s in 3CSP-23-0000003, pursuant to H.R.P.P. Rule 40 (d), finding that the evidence presented post-conviction that “[t]his Court further concludes that the new DNA and bitemark evidence, newly discovered tire tread evidence, and the recent recantation of Shawn conclusively proves that in a new trial a jury would likely reach a verdict of acquittal.” FOFCL ¶ 6.

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12. After further briefing, the Hawai‘i County Prosecutor’s Office dismissed all charges against Shawn on October 23, 2023, for the same reasons it vacated Ian’s convictions on January 24, 2023.

13. Since both Ian and Shawn’s convictions have been vacated, both parties have brought a Petition for Relief and Compensation pursuant to HRS § 661B-1, which is currently before this Court. (Dkt. 127) and scheduled for a hearing on July 30, 2024.

RELEVANT FACTUAL BACKGROUND IN SUPPORT OF THIS MOTION

Post-conviction Investigation Conducted by the Petitioners Led to the Identity of Unknown Male #1 Whose DNA was Found on All Relevant Evidence is Ms. Ireland’s Murder

14. On or about February 7, 2024, Petitioners’ counsel, Barry Scheck, contacted Steve Kramer (“Kramer”) from Indago Solutions[4] to assist Petitioners in identifying Unknown Male #1, whose DNA was recovered on all relevant crime scene evidence collected by the Hawai‘i County Police Department on or around December 24, 1991, the date of Ms. Ireland’s murder.

15. Kramer is a retired FBI attorney and federal prosecutor who led the genetic genealogy team that solved the Golden State Killer case in 2018. Kramer co-founded the FBI Forensic Genetic Genealogy (“FGG”) team which now has over 200 FBI members nationwide and his efforts have helped to solve hundreds of FGG cases. Kramer started Indago Solutions using software that allowed them to automate the FGG method to quickly solve criminal cases with DNA. Kramer agreed to assist Petitioners in the investigation of Unknown Male #1 who was responsible for Ms. Ireland’s murder.

16. On or about February 26, 2024, Kramer notified Petitioners’ Counsel that Indago Solutions had identified a person who they believed could be Unknown Male #1 in Ms. Ireland’s

[4] https://www.indago.ai/

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case. Kramer advised that the suspected person was likely Unknown Male #1 based on his genetics, ancestry, age, and address history, among other factors.

17. Specifically, Kramer advised Petitioners' Counsel that in 1991, the suspect he believed was Unknown Male #1, lived less than two miles from where Ms. Ireland's body was located on the Wa'a Wa'a fishing trail. Furthermore, the Facebook social media accounts of the suspect he believed was Unknown Male #1, suggested that he was an avid shore fisherman and likely familiar with the fishing trail in Wa'a Wa'a where Ms. Ireland's body was found. Additionally, the suspect he believed was Unknown Male #1, would have been in his mid-20s at the time of the crime with a small stature and build that would make it likely that the Jimmy-Z's t-shirt would have been an appropriate size.[5]

18. The suspect he believed was Unknown Male #1's Facebook page also showed that he likely owned or had access to a pickup truck in the early 1990s, which was consistent with what witnesses reported seeing at the bicycle collision site and the Wa'a Wa'a fishing trail. As this Court has already determined in vacating Petitioners' convictions for Ms. Ireland's murder, Ian's Volkswagen Bug did not leave the tire tread tracks at the bicycle collision site or the Wa'a Wa'a fishing trail, as previously argued by the State during their trials. It was most likely that a

[5] The Jimmy-Z's t-shirt was found at the fishing trail in Wa'a Wa'a fishing trail. At the time that Petitioners' were charged with Ms. Ireland's murder, the State presented trial testimony that Co-Defendant Frank Pauline had worn this t-shirt when he committed Ms. Ireland's murder. JSF at ¶ 10. However, because this t-shirt was soaked in Ms. Ireland's blood, DNA testing at the time of the trials was not advanced enough to elicit DNA results of who owned and wore the t-shirt at the time of Ms. Ireland's murder. JSF at ¶ 12. Post-conviction DNA testing conducted FACL on behalf of the Petitioners, which was presented as new evidence in Petitioners' H.R.P.P. Rule 40 Petitions, showed that Unknown Male #1 had left his semen on the t-shirt as well as was the habitual wearer of the t-shirt. JSF at ¶ 16. This new DNA evidence on the t-shirt was one of reasons that this Court vacated the Petitioners' convictions for Ms. Ireland's murder, demonstrates their actual innocence, and implicates Unknown Male #1 as being responsible for Ms. Ireland's murder. FOF at ¶ 37, Dkt. 117.

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truck or van was involved in Ms. Ireland's murder, a vehicle that the suspect Kramer identified as likely Unknown Male #1 appears to have owned at the time of Ms. Ireland's murder and further evidenced by the fact that the suspect identified as Unknown Male #1 likely lived at or near and likely frequented to fish. *See* JSF at ¶¶ 24-30.

19. In addition, Kramer advised that the DNA retrieved from semen found on Ms. Ireland and other crime scene evidence indicated that Unknown Male #1 was likely to be a male with 80% Filipino ancestry, which was consistent with the suspect that Kramer identified as Unknown Male #1, because his ancestry indicates that he had three Filipino grandparents.

20. Upon learning of this critical investigatory lead, Petitioners' Counsel informed Kramer that he should advise the FBI of his findings, and Kramer contacted the FBI's genetic genealogy team to follow up on the FGG information and independently review Indago's results.

21. A few weeks later, Kramer advised Petitioners' Counsel that the FBI had confirmed Indago's results (the suspect that Kramer had identified as likely being Unknown Male #1) and that they would be working with the Hawai‘i County Police Department ("HCPD") to obtain an abandoned DNA sample from suspected Unknown Male #1, who still resided on Hawai‘i Island and still lived in an area in proximity to the crime scenes. This suspected Unknown Male #1's abandoned DNA sample would be compared against the DNA found on the crime scene evidence in Ms. Ireland's murder to confirm whether or not he was Unknown Male #1.

22. The Forensic Analytical Crime Lab (FACL) had been retained by the Innocence Project to do post-conviction DNA testing in this case. Their work led to the convictions being vacated. When the Hawai‘i County Prosecuting Attorney's Office ("HCPA") informed the Petitioners' Counsel that the HCPD wanted the evidence returned to them, Scheck informed

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prosecutors and the court that petitioners would do so but wanted notice and opportunity to be heard on any additional DNA testing on the evidence. The HCPA subsequently gave notice that they were no longer going abide by the Discovery and Cooperation Agreement between the parties because they wanted the continuing investigation to be "cleaner." *See* Petitioners' Exhibit "1", Discovery and Cooperation Agreement between Petitioners Counsel and HCPA; *see also* Petitioners' Exhibit "2", Letter from HCPA requesting to dissolve Discovery and Cooperation Agreement between Petitioners Counsel and HCPA and Exhibit

23. The Hilo police department then asked FACL to do additional DNA testing on the Ireland case. On April 16, 2024, Petitioner told FACL they could not do so because Petitioners believed the Hilo Police department had a conflict of interest and did not trust them. FACL agreed not to do testing on the case. Prosecutors finally agreed to a proposal that the results of any testing performed by FACL in the Ireland case had to be communicated at the same time to petitioners and the prosecution. *See* Petitioners' Exhibit "3", Email from FACL regarding evidence; *see also* Petitioners' Exhibit "4", Email to FACL regarding preservation of evidence.

24. On July 1, 2024, Forensic Analytical Crime Lab ("FACL") notified Petitioners' Counsel that the abandoned DNA from the suspected Unknown Male #1 matched the Unknown Male #1's DNA from relevant evidence collected from the crime scene. FACL also sent this information to the HCPA. Exhibit "5", email from FACL to parties regarding results of the abandoned DNA collection of suspected Unknown Male #1.

25. At a July 2, 2024, confidential status conference with this Court, Petitioners' Counsel, over the objection of HCPAs Shannon Kagawa and Michael Kagami, requested the Court order that the HCPD and the HCPA follow best practices when investigating suspected Unknown Male #1's involvement in Ms. Ireland's murder. Specifically, Petitioners' Counsel

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requested that the HCPD and the HCPA record any search or interrogation of now identified Unknown Male #1, that any warrant go through this Court, and also requested that the Hawai‘i FBI assist in the investigation. The HCPA Michael Kagami, although he agreed recording everything is the best practice, denied having the ability to instruct the HCPD on how to conduct their investigation. *See* Exhibit “6”, email to HCPA regarding best practices to adhere to regarding suspected Unknown Male #1.

26. During the July 2, 2024, confidential status conference, Petitioners’ Counsel informed this Court that the Petitioners’ legal team had intentionally shielded themselves from knowing the name of suspected Unknown Male #1.

27. At a July 2, 2024, confidential status conference with this Court, Schweitzers’ Counsel informed the Court of the developments regarding the identity of suspected Unknown Male #1 and asked HCPAs Shannon Kagawa and Mike Kagami to assure us best practices that would be followed in the arrest of Unknown Male #1, the search of his home, and any interviews conducted by law enforcement. We specifically asked that the search and arrest be led by the Hawai‘i FBI agent who had assisted Detective Morimoto in doing the covert collection, or at the very least that she would be consulted and present. We specifically emphasized that we thought the HCPD had a conflict of interest and that in addition to the assistance of the Hawai‘i FBI agent the Attorney General’s office should be involved to assure the fairness and independence of the final stage of the investigation of Unknown Male #1. We requested that the search and any interview be videotaped, and no leading questions be asked on inducements offered to Unknown Male #1 to incriminate petitioners. We explicitly warned, based on advice from Stephen Kramer and Petitioners’ Counsel, Mr. Scheck’s personal knowledge of how arrests and searches are done in these situations that all efforts be made to isolate Unknown Male #1 from close associates so

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that they could be separately interviewed, and measures be taken to prevent him from fleeing, destroying evidence, or committing suicide.

28. HCPA Mike Kagami said that he thought our suggestions were "good ideas," but the prosecutors had no authority to tell HCPD what to do. HCPA Shannon Kagawa agreed. Petitioners counsel expressed frustration and astonishment at that answer, given the conflict-of-interest issues, and told them they were leaving us no choice and we would have to reach out to the United States Attorney's office and/or the Attorney General's office if they would not stipulate to getting the police department to abide by best practices. We also told the prosecutors and the court that we had honored HCPA Shannon Kagawa's request not to tell our clients that Unknown Male #1 had been identified or his name. Indeed, we told everyone that as of that date we deliberately had asked Kramer not to provide the name of Unknown Male #1. *See* Petitioners' Exhibit "7", email to HCPA regarding Stipulation.

29. On July 8, 2024, Petitioners' Counsel learned someone leaked to the media information that that Unknown Male #1 had been identified. We immediately notified HCPA Shannon Kagawa about the leak, and she confirmed that she had also been approached by the media to confirm that rumor. Petitioners' Counsel became increasingly concerned that the identity of Unknown Male #1 could be released to the public before the HCPD and or the Hawai‘i FBI could obtain a warrant for Unknown Male #1's arrest. *See* Petitioners' Exhibit "8", letter to HCPA regarding the leak to the media.

30. On July 9, 2024, Petitioners' Counsel Keith Shigetomi talked to HCPA Kagami about our concerns about the leak. HCPA Kagami said he would follow up on this. On this same day, Hawai‘i Innocence Project Co-Directors Rick Fried and Kenneth Lawson, concerned about the conflict of interest, reached out to United States Attorney Clare Connors to request that the

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federal government take over the investigation. She responded via e-mail saying her first Assistant, Larry Tong, would be in touch.

31. On July 10, 2024, Kenneth Lawson called Assistant US Attorney Larry Tong. Tong was aware a Hawai‘i FBI agent had been assisting HCPD in their investigation into suspected Unknown Male #1 and were confident that Hawai‘i FBI agent's participation would prevent any improprieties from occurring and would report any misconduct by HCPD. Tong told Lawson, because of this, his office will not get involved in the investigation at this time. He recommended we call the Attorney General's Office to discuss our concerns.

32. On July 11, 2024, Schweitzers' legal team sent a detailed letter to prosecutors Kagawa and Kagami memorializing what happened in the July 2, 2024, conference with the Court. Exhibit "8". At that conference, we reiterated the guidelines we wanted the HCPA's office to follow since Unknown Male #1 had been identified. Specifically, we noted:

a. Preserve all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past or moving forward;

b. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward;

c. Preserve all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding Unknown Male #1 including any evidence obtained prior to and during the process of identifying Unknown Male #1 during the Dana Ireland murder investigation in the past or moving forward;

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d. Video tape the execution of any search warrant on the home or other property of Unknown Male #1, use body cam video at his arrest, and videotape any interrogation from Miranda warnings to the end of interview and videotape any subsequent interviews;

e. Preserve a chain of custody for all evidence; and,

f. Document and preserve all communications of any kind between members of law enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the investigation.

See Exhibit "8".

33. In that letter, we also outlined very specifically why we thought the HCPD and the HCPA office had an actual or apparent conflict of interest in conducting the investigation of suspected Unknown Male #1. Exhibit "8". Specifically, we made the following points:

a. First, since the hearings that resulted in the convictions of Petitioners being vacated, HCPD issued statements reflecting their belief that Unknown Male #1 was a "fourth perpetrator" in Ms. Ireland's murder along with the Schweitzer brothers and Frank Pauline. This statement demonstrates that despite the Petitioners' exonerations, which were reached during our Discovery and Cooperation Agreement (Ex. "1") with HCPA, HCPD is in stark disagreement with HCPA and holding fast to the unproven belief that not only were Petitioners' and Defendant Frank Pauline involved in Ms. Ireland's murder, that there was also another "fourth perpetrator" (presumably Unknown Male #1) responsible for the crime. HCPD held steadfast to this mistaken belief and going as far as to make public statements to the press continuing to incriminate the Schweitzers and Frank

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Pauline and support their "fourth person" theory despite our clients' their exonerations.

b. Second, Lincoln Ashida, who was one of the HCPAs in the Petitioners' criminal trials decades ago, recently told Hawai'i News Now that despite Ian's exoneration "'another trial, prosecution and conviction is possible' against Schweitzer based upon other admissible and incriminating evidence." In response to Shawn's exoneration, Ashida gave a statement to Honolulu Civil Beat, that "we stand by every fact that is already in the record, that has not been altered or changed for the past 23 years." Ashida further doubled down on the correctness of the convictions stating "[t]here" is no evidence to substantiate allegations against any of the prosecutors or investigators who worked on these cases."

c. Third, based on the evidence gathered in our Discovery and Cooperation Agreement (Ex. "1") and the documents provided by the HCPA indicate there is substantial evidence that Ashida made a materially false representation to the court and the public at the allocution to buttress a weak case based on jailhouse informant testimony and undermined by rounds DNA testing excluding the Petitioners. Mr. Ashida had close working relationships with a number of former colleagues in HCPA as well as HCPD. As we all know, Petitioner Shawn ultimately passed a polygraph administered by a respected polygrapher during our reinvestigation, which was recorded and contains a full set of charts. COL, Dkt. 117 at ¶ 6.

d. Lastly, given the undisputed DNA results and the fact that suspected Unknown Male #1 has been identified, there is good reason to believe that HCPD gave

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Pauline information to convict the Petitioners, a fact that Pauline testified to at his trial. Similarly, there is reason to believe that HCPD, Mr. Ashida, or others gave jailhouse informants John Gonsalves and Michael Ortiz information in an effort to convict the Petitioners. The circumstances leading to their involvement in the Petitioners' convictions could reveal serious constitutional and civil rights violations as well as potential criminal conduct. Our goal in relaying the information to HCPA was not to make any accusations against their current office, but to highlight the fact that there is indeed a past and very present threat of more false information getting leaked or fed to suspected Unknown Male #1 in HCPD's investigation, especially if influenced by any parties that had prior involvement in the wrongful convictions of Petitioners. *See* Exhibit "8".

34. On July 15, 2024, at 10:00 a.m., Petitioners' Counsel and HCPA's Kagawa and Kagami had a video conference to meet and confer on the issues outlined in the July 11, 2024, letter. Exhibit "8". Petitioners' Counsel reiterated our concerns and requested the Hawai‘i FBI agent lead the investigation into suspected Unknown Male #1 and that they work with the Attorney General's Office. HCPA Kagami said he would call the Attorney General's office to discuss our request and concerns.

35. In an effort to protect the integrity of the investigation, on July 15, 2024, Petitioners' Counsel sent an email to Attorney General Lopez and Criminal Justice Division Administrator Goto, expressing a desire to have them involved in the investigation to ensure the investigators followed best practices. We copied prosecutors HCPA Kagawa and Kagami on the email. *See* Exhibit "9", email to the Attorney General.

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36. On July 19, 2024, in response to our July 15, 2024, e-mail, Anne Lopez sent Petitioner's counsel a letter stating:

> "I share the Hawaii Innocence Project's desire to see that the collection and preservation of statements and evidence in furtherance of the investigation of Unknown Male #1, be handled with all possible diligence and fairness. Pursuant to your request that the Department of the Attorney General intervene in the investigation into Unknown Male #1, I have contacted Hawaii County Police to make sure they are aware of your specific concerns and proposals. Based on my discussions, I am assured that the Hawaii County Police Department is capable of handling the investigation of Unknown Male #1, and that they are committed to doing so in a thorough and impartial manner." *See* Exhibit "10".

37. On July 19, 2024, on the same day the Attorney General's office sent the above letter (referenced as Exhibit "10"), unbeknownst to Petitioners' Counsel at the time, HCPD collected DNA via buccal swabs from suspected Unknown Male #1 and sent it to FACL to be compared to the abandoned DNA sample of the suspected Unknown Male #1 that had already been collected and submitted for DNA testing on July 1, 2024. The FACL received the reference sample of suspected Unknown Male #1 on the buccal swabs on July 23, 2024, and conducted DNA testing on this sample.

38. On July 24, 2024, FACL sent Petitioners' Counsel a report confirming that suspected Unknown Male #1's DNA matches the prior surreptitious sample, and all DNA evidence collected and tested from the crime scene evidence for Ms. Ireland's murder. *See* Exhibit "11", original filed under seal and redacted report filed publicly. Petitioners' counsel was deeply disturbed that it appears from this report that when HCPD Detective Moromoto took the swab, suspected Unknown Male #1 was not in the custody of HCPD nor were his premises searched.

39. Upon learning of these DNA results that now identified Unknown Male #1 as being responsible for Ms. Ireland's murder, Petitioners' Counsel requested an immediate

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confidential chambers conference with this Court which was held on July 25, 2024. Petitioners' Counsel again asked the HCPA's Shannon Kagawa and Michael Kagami to notify us and this Court if Unknown Male #1 (hereafter referred to as "Known Male #1) was arrested and in custody of the HCPD, and HCPA's Kagawa and Kagami refused to answer Petitioners' Counsels questions, stating that it was an ongoing investigation.

Now Known Male #1 is Presumed Dead by Suicide After his DNA Sample was Taken by HCPD and Before he was Brought to Justice for Ms. Ireland's Murder

40. On July 26, 2024, Kenneth Lawson, Co-Director of the Hawai'i Innocence Project, contacted the Honolulu Medical Examiner's office to determine if Known Male #1 was still alive, as there was no record of Known Male #1's arrest in any public database. Lawson was referred to the Medical Examiner's office in Hilo, which then confirmed that Known Male #1 was in their morgue and had died by an apparent suicide on July 23, 2024.

41. On July 26, 2024, Petitioners' Counsel requested an emergency chambers conference to inform this Court that now Known Male #1 had apparently committed suicide. Petitioners' Counsel asked the HCPA's Shannon Kagawa and Michael Kagami (the latter of whom appeared by phone), if they were aware that now Known Male #1 had committed suicide and when they were informed of this information. Prosecutors Kagawa and Kagami did not appear shocked or surprised by this information and stated that they could not confirm or deny any information about now Known Male #1 and his apparent suicide, saying that it was an ongoing investigation. When asked what is the "ongoing investigation" that they were referring to because both Ms. Ireland and now Known Male #1 are both deceased, they again refused to answer.

42. This Court then instructed Petitioners' Counsel to file a Motion to Compel Discovery to HCPA and HCPD, requiring them to produce any relevant information regarding

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Ms. Ireland's murder, especially the facts and circumstances surrounding their actions in the investigation of now Known Male #1 and his subsequent suicide.

Any Exculpatory Statements Made by Known Male #1 Are Highly Relevant to Petitioners' Actual Innocence Petition And Refutes the Theory that Petitioners Acted as Co-Conspirators

43. Petitioners have been excluded as sources of the DNA recovered from all probative items collected from the crime scene of Ms. Ireland's murder. JSF at ¶ 19. This Court vacated Petitioners' convictions given the overwhelming proof of actual innocence. *See* COL, Dkt. 117.

44. After Petitioners were exonerated, former and current individuals at the HCPA's Office and the HCPD have made public statements to the media regarding their false and unfounded belief and contending that Petitioners and Pauline were guilty, that nothing improper was done in the investigation, and that an unapprehended fourth perpetrator, now Known Male #1, committed the kidnapping, rape, and murder with Petitioners. Inducing now Known Male #1 to flee, destroy evidence, or commit suicide would impede an investigation of police and prosecutorial misconduct in this case. But now Known Male #1 is still the *only* person whose DNA conclusively establishes his presence at the crime scenes of Ms. Ireland's murder. Any exculpatory statements or other evidence provided to the HCPA and HCPD would refute the theory that Petitioners were involved with now Known Male #1 in Ms. Ireland's murder as co-conspirators. The HCPA and HCPD are entitled to their theory of the case, but justice requires an impartial and proper investigation where best practices are utilized.

45. Petitioner's shared their investigative leads which resulted in the identification of now Known Male #1 with the understanding that the HCPA and HCPD were dedicated to pursuing a cooperative effort towards uncovering the truth about Ms. Ireland's murder and seeking justice for Petitioners and the Ireland family. But their handling of the investigation into

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now Known Male #1 reflects a complete abandonment of best practices and basic fundamental principles of justice.

46. Counsel for Petitioners did everything in their power to find now Known Male #1 and investigate that case fairly and impartially with the assistance of the FBI and the leading experts in Forensic Genetic Genealogy cases. We urged them repeatedly to get arrest and search warrants to prevent now Known Male #1 from fleeing, destroying evidence, or killing himself. Frankly, any experience homicide investigator with the DNA evidence provided to the prosecutors and police in this matter, even if it were not provided by genetic genealogy but a conventional CODIS hit, would have sought an arrest and search warrant before getting a swab to confirm the STR DNA profile that was covertly collected. Their failure to do so is deeply disturbing.

47. Specifically, the HCPA refused to confirm if the HCPD had executed a search and arrest warrant for now Known Male #1 so that he could not flee, destroy evidence, or take his own life his after DNA was collected, stating that their definition of best practices differed but would not confirm or deny what procedures were followed.

48. If now Known Male #1 had been taken into custody and put on suicide watch after his DNA was collected, he would still be alive. If now Known Male #1 was still alive, the circumstances surrounding Ms. Ireland's murder could have been further investigated and revealed. His apparent suicide has irreparably hampered all interest in Petitioners' ability to uncover the truth and receive closure after the decades that they served wrongfully convicted of Ms. Ireland's murder.

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49. The HCPA and the HCPD should not be permitted to conceal their egregious disregard for best practices and common sense under the guise of protecting an "ongoing investigation."

50. Petitioners, Ms. Ireland's family, and the public have every right to know all of the circumstances surrounding the collection of now Known Male #1's DNA on July 19, 2024, his subsequent suicide on July 24, 2024, and whether he provided any information regarding his involvement Ms. Ireland's murder and the wrongful conviction of the Petitioners.

51. Petitioners' hereby move to compel disclosure of documents, tapes (audio and video), photographs, emails, digital information, or any other physical evidence obtained by HCPD or the Hawai'i FBI that have been gathered since February 7, 2024 when Stephen Kramer, of Indago Solutions, forwarded information from his genetic genealogy investigation identifying suspected Unknown Male #1 that tend to show that now Known Male #1 committed the assault, kidnapping, sexual assault, and murder of Dana Ireland on December 24, 1991. This request for this Court to compel the production of documents and things includes, but is not limited to the following:

a. Any tapes (video or oral), emails, or written communications concerning the taking of a swab now Known Male #1 on July 19, 2024, including everything said by anyone to now Known Male #1 before, during, and after the swabbing; what he said before, during and after the swabbing; where the swabbing took place, surveillance of now Known Male #1 before the swabbing took place and afterwards.

b. All plans and communications, written and oral, about the decision to not to follow the proposed best practices petitioners suggested to prosecutors that police

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seek an arrest warrant and search warrant apprehend now Known Male #1 after it was confirmed by the covert collection of his DNA from a fork that he was the contributor of incriminating biology from the crime scene, including who made the decision not to arrest now Known Male #1 or execute a search warrant before or after the swabbing;

c. Any and all information gathered that shows a relationship between now Known Male #1 and either Ian Schweitzer, Shawn Schweitzer, or Frank Pauline;

d. All surveillance (reports, photos, videos, over hearings of voice communications, or digital communications) of now Known Male #1;

e. All interviews of family members, friends, or others concerning now Known Male #1 before or after February 7, 2024;

f. Any and all information apart from DNA testing tending to show now Known Male #1 committed the assault, rape, and murder of Dana Ireland by himself or acting in concert with individuals other than Petitioners;

g. When and how did Hilo police or Hilo prosecutors learn about the death of now Known Male #;

h. Whether or now Known Male #1's home, place of work, or vehicles ever searched or impounded and the results of this search;

i. Whether now Known Male #1"s phones, computers, or other devices recovered or searched and the results of this search;

j. All communications, written, digital, oral between HCPA and Lincoln Ashida concerning the re-investigation of Petitioners' convictions or the court's decision to vacate that convictions;

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k. The autopsy report on the death of now Known Male #1 and all investigative reports concerning whether the manner of death was suicide or homicide;

l. Any and all other information discovered during the investigation of now Known Male #1 that tends to exculpate petitioners.

m. Preservation of all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past or moving forward;

n. Preservation of all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward;

o. Preservation of all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding now Known Male #1 including any evidence obtained prior to and during the process of identifying now Known Male #1 during the Dana Ireland murder investigation in the past or moving forward;

p. Preserve a chain of custody for all evidence; and,

q. Document and preserve all communications of any kind between members of law enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the investigation.

r. Any statements made by now Known Male #1 that incriminate himself are highly relevant to Petitioners' Actual Innocence Petition.

s. Any statements by now Known Male #1 about the guilt or innocence of Petitioners, or the absence of any statements about the guilt or innocence of Petitioners is relevant to Petitioners' Actual Innocence petition.

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t. Any evidence that HCPD and HCPA knowingly, recklessly, or negligently allowed now Known Male #1 to remain at large after swabbing him for DNA so that he could flee, destroy evidence, or commit suicide is relevant to Petitioners' Actual Innocence claim.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

EXHIBIT D

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) MEMORANDUM IN SUPPORT OF MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

MEMORANDUM IN SUPPORT OF MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B

Under the landmark case *Brady v. Maryland* (1963) 373 U.S. 83, the United States Supreme Court held that the suppression by the prosecution of evidence favorable to the accused violates due process where the evidence is *material to guilt* or punishment, regardless of the good faith or bad faith of the prosecution. *Domingo v. State*, 76 Haw. 237, *State v. Mark*, 120 Haw. 499, *State v. Diaz*, 100 Haw. 210, *State v. Alkire*, 148 Haw. 73. In *United Staes v. Bagley*, the United States Supreme Court explained evidence is "material only if there is a reasonable probability that, had the evidence been disclosed to the defense, *the result of the proceeding* would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *United States v. Bagley*, 473 U.S. 667, 682 (1985).

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The Hawai‘i Rules of Penal Procedure (H.RP.P.) Rule 16 also outlines the specific materials that must be disclosed by the prosecutor once the case is in the trial phase. *State v. Moses*, 107, Haw. 282, *State v. Kwak*, 80 Haw. 291. The primary focus of *Brady* and related jurisprudence is on ensuring a fair trial and due process for the defendant, not on pre-charge investigations. Although at first glance it may appear that in Hawai‘i, the duty to disclose *Brady* evidence is primarily tied to the trial process, the Hawai‘i Rule of Professional Conduct (H.R.P.C.) 3.8 extends this obligation. Under these rules, the prosecutor or other government lawyer is required to "make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to *negate the guilt* of the accused" except when the prosecutor seeks a protective order from a court. H.R.P.C. 3.8(b). Further, section 3.8, subsection (c) states that when "a prosecutor knows of new credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted" the prosecutor shall disclose the evidenced to the court or to the defense." 3.8(b)(1)-(2). Indeed, "A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the convictions of innocent persons." H.R.P.C, Rule 3.8, Comment 1.

Although these rules do not explicitly mandate the disclosure of *Brady* evidence during the investigative phase before charges are filed, this procedural posture of this case does require the government disclose potentially exculpatory evidence to Petitioners' counsel. First, the investigative phase of this case is occurring against a suspect who we now know to be deceased. Since Petitioners were once convicted of Ms. Ireland's murder, their convictions have been

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vacated, but this vacatur was made without prejudice, leaving the possibility that the prosecution may seek to recharge them. Indeed, as discussed in more detail *supra* in the Petitioners' Motion, both current and former prosecutors from the Hawai'i County Prosecuting Attorney's Office have made statements implying they believe Petitioners were involved in Ms. Ireland's murder and the mistaken belief that Unknown Male #1 was the fourth perpetrator. Any information, especially information that is required to be disclosed under *Brady* and the H.R.P.C. ethical rules must be turned over to Petitioners because the Hawai'i County Prosecuting Attorneys seek to use this evidentiary hearing to contest actual innocence, as evidenced by their opposition to Petitioners' Petition for a finding of actual innocence and compensation under H.R.S. 661B. *See* Prosecutor Kagawa's Memorandum in Opposition filed July 26, 2024, Dkt. 130.

In conclusion, not granting Petitioners' Motion to Preserve and Compel Discovery and requiring the Hawai'i County Prosecuting Attorney's Office and the Hawai'i County Police Department to turn over the discovery that Petitioners request, may change the results and outcome of this proceeding, as well as any future proceeding as it relates compensation under H.R.S. 661B, depending on how this Court rules on their Petition. Thus, the Hawai'i County Prosecuting Attorney's Office have a duty to disclose favorable evidence as the posture of this case is one that well beyond the investigative phase. The upcoming hearing on July 30, 2024, is a proceeding involving an assessment of the Petitioners' actual innocence and a potential hearing on what compensation the Petitioners may be entitled to under H.R.S. 661B, and without the requested discovery, the outcome of this proceeding may be severely and unfairly impacted.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

EXHIBIT D

EXHIBIT A

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

EXHIBIT D

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) DECLARATION OF COUNSEL MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

DECLARATION OF COUNSEL

I, Jennifer Brown, declare as follows:

1. I am one of the attorneys representing Petitioners in this case.

2. I can testify to the following based on my own personal knowledge, except otherwise indicated, in which case my testimony is based on information and belief.

3. Attached hereto as Exhibit "1" is a true and correct copy of the Discovery and Cooperation Agreement between Petitioners' Counsel and HCPA.

4. Attached hereto as Exhibit "2" is a true and correct copy of the letter from HCPA requesting to dissolved the Discovery and Cooperation Agreement between Petitioners' Counsel and HCPA.

5. Attached hereto as Exhibit "3" is a true and correct copy of an email from FACL regarding preservation of DNA evidence.

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6. Attached hereto as Exhibit "4" is a true and correct copy of to FACL regarding Petitioners' request that this Court intervene regarding the preservation of DNA evidence.

7. Attached hereto as Exhibit "5" is a true and correct copy of the email from FACL that the abandoned DNA collected from suspected Unknown Male #1 was a match to the DNA profile in Ms. Ireland's murder.

8. Attached hereto as Exhibit "6" is a true and correct copy of Petitioners' Counsel's email to HCPA regarding best practices.

9. Attached hereto as Exhibit "7" is a true and correct copy of Petitioners' Counsel's email to HCPA regarding stipulating to best practices.

10. Attached hereto as Exhibit "8" is a true and correct copy of Petitioners' Counsel's email to HCPA regarding the media leak and best practices.

11. Attached hereto as Exhibit "9" is a true and correct copy of Petitioners' Counsel's email to the Hawai'i Attorney General.

12. Attached hereto as Exhibit "10" is a true and correct copy of the letter received by Petitioners' Counsel's from the Hawai'i Attorney General.

13. Attached hereto as Exhibit "11" is a true and correct copy of FACL's lab report confirming the identity of now Known Male #1.

I declare under penalty of perjury of the laws of the United States and the State of Hawai'i that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner

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EXHIBIT A

ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

EXHIBIT D

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) NOTICE OF HEARING MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

NOTICE OF HEARING

To: KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai'i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720

Attorneys for Respondent
STATE OF HAWAI'I

NOTICE IS HEREBY GIVEN that Petitioners' "Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B" shall come for a hearing before the Honorable Peter K. Kubota, Judge of the above-entitled Court, in his courtroom in the Hale Kaulike 777 Kilauea Avenue Hilo, Hawai'i 96720-4212, on July 30, 2024 at 8:30 A.M., as previously scheduled by this court.

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885

WILLIAM A. HARRISON, #2948
BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

EXHIBIT D

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) CERTIFICATE OF SERVICE MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached "Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B, Memorandum in Support of Motion, Declaration of Counsel, Exhibits '"1"-"11", and Notice of Hearing" was duly served upon the following parties listed below via electronic filing:

KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai'i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720

Attorneys for Respondent
STATE OF HAWAI'I

DATED: Honolulu, Hawai'i, July, 28, 2024,

/s/ Jennifer L. Brown
JENNIFER BROWN, #10885
WILLIAM A. HARRISON, #2948

EXHIBIT D

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BARRY SCHECK, #1634765 (New York)*

Attorneys for Petitioner
ALBERT IAN SCHWEITZER
**Admitted Pro Hac Vice*

/s/ Keith Shigetomi
KEITH S. SHIGETOMI, #3380
RAQUEL BARILLA, #265526 (California)*

Attorneys for Petitioner
SHAWN SCHWEITZER
**Admitted Pro Hac Vice*

EXHIBIT D

EXHIBIT A

KELDEN B. A. WALTJEN 9686
Prosecuting Attorney

SHANNON M. KAGAWA 7373
Deputy Prosecuting Attorney
County of Hawaii
655 Kilauea Avenue
Hilo, Hawaii 96720

Tel. No. (808) 961-0466

Attorneys for the State of Hawaii

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

ALBERT IAN SCHWEITZER and SHAWN SCHWEITZER, Petitioner, vs. STATE OF HAWAII, Respondent.	)	3CSP-23-3; 3CSP-23-17 STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B Honorable Judge Peter Kubota Hearing Date: July 30, 2024 Hearing time: 8:30 a.m.

STATE OF HAWAII'S MEMORANDUM IN OPPOSITION TO MOTION TO PRESERVE EVIDENCE AND COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO H.R.S. CHAPTER 661B

The STATE OF HAWAII, by and through SHANNON M. KAGAWA, Deputy Prosecuting Attorney for the County and State of Hawaii, respectfully submits the following response to the Petitioners' Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B.

In submitting this memorandum, the State does not waive further submissions and arguments.

Petitioners argue that the State has a duty to provide them with materials related to the investigation of death of Dana Ireland. Petitioners cite *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 and Rule 16, Hawaii Rules of Penal Procedure. *Brady* and Rule 16 confer a duty to disclose evidence favorable to **criminal defendants**. *Brady*, 373 U.S. at 87, 83 S.Ct. at 1196-7 (the suppression by the prosecution of evidence favorable to **an accused** upon request violates due process where the evidence is material either to guilt or to punishment)(bold added). Pursuant to Rule 1, Hawaii Rules of Penal Procedure, penal rules govern the procedure in all **penal proceedings**. Petitioners, however, are not accused criminal defendants. The State does not have any duty to provide Petitioners with the materials they seek.

Based on the foregoing, the State respectfully requests that this Court deny Petitioners' Motion to Preserve Evidence and Compel Discovery Re: Joint Petition for Relief Pursuant to H.R.S. Chapter 661B.

Dated: Hilo, Hawaii, _July 29, 2024_____.

STATE OF HAWAI'I

_/s/SHANNON M. KAGAWA_____
SHANNON M. KAGAWA
Deputy Prosecuting Attorney

EXHIBIT E

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
HILO DIVISION
STATE OF HAWAI`I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI'I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017 (Prior Case no: 3PC-99-0000147) ORDER GRANTING MOTION TO COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B MOTION HEARING Date: July 30, 2024 Time: 8:30 AM Judge: Honorable Peter K. Kubota

ORDER GRANTING MOTION TO COMPEL DISCOVERY RE: JOINT PETITION FOR RELIEF PURSUANT TO HRS CHAPTER 661B

This matter came on for hearing pursuant to Petitioner ALBERT IAN SCHWEITZER'S Motion to Compel Discovery on July 30, 2024. The motion was joined by SHAWN SCHWEITZER.

Appearing in court on the matter were ALBERT IAN SCHWEITZER, his attorneys, JENNIFER BROWN and WILLIAM HARRISON of the Hawai'i Innocence Project, BARRY SCHECK of the Innocence Project (admitted *pro hac vice)* appearing via zoom; SHAWN SCHWEITZER and KEITH S. SHIGETOMI appeared personally and RAQUEL BARILLA of The Innocence Center (admitted *pro hac vice)* appearing via zoom on behalf of SHAWN SCHWEITZER; and SHANNON M. KAGAWA and MICHAEL S. KAGAMI for the State of Hawai'i; and the Court being fully advised in the premises and having considered the records and files in this matter as well as the arguments of counsel.

IT IS HEREBY ORDERED that the Motion to Compel Discovery re; Joint Petition for

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Relief Pursuant to HRS Chapter 661B is granted in part as follows:

IT IS FURTHER ORDERED that a Subpoena be issued to the Hawai'i Police Department for the following items:

All Documents, tapes (audio and video), photographs, emails, digital information, or any other physical evidence obtained by Hilo Police Department, Hawai'i County law enforcement, or the FBI that have been gathered since February 7, 2024 when Stephen Kramer, of Indago Solutions, forwarded information from his genetic genealogy investigation identifying Albert Lauro, Jr. which tend to show that Albert Lauro, Jr. committed the assault, kidnapping, sexual assault, and murder of Dana Ireland on December 24, 1991. This includes but is not limited to the following:

a. Any tapes (video or oral), emails, or written communications concerning the taking of a swab from Albert Lauro, Jr. on July 19, 2024 including everything said by anyone to Albert Lauro, Jr. before, during, and after the swabbing; what he said before, during and after the swabbing; where the swabbing took place, surveillance of Albert Lauro, Jr. before the swabbing took place and afterwards.

b. Any and all information gathered that shows a relationship between Albert Lauro, Jr. and either Ian Schweitzer, Shawn Schweitzer, or Frank Pauline;

c. All surveillance (reports, photos, videos, over hearings of voice communications, or digital communications) of Unknown Male #1;

d. All interviews of family members, friends, or others concerning Albert Lauro, Jr. before or after February 7, 2024;

e. Any and all information apart from DNA testing tending to show Albert Lauro, Jr. committed the assault, rape, and murder of Dana Ireland by himself or acting in concert with

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individuals other than Petitioners;

f. The date and time the Hilo Police Department, Hawai'i County law enforcement, or Hawai'i County Prosecutors learned about the death of Albert Lauro, Jr.;

g. Evidence obtained from a search warrant for Albert Lauro, Jr.'s home, place of work, or vehicles;

h. Evidence obtained from a search of Albert Lauro, Jr.'s phones, computers, or other devices;

i. The autopsy report on the death of Albert Lauro, Jr.'s and all investigative reports concerning whether the manner of death was a suicide or homicide;

j. Any and all other information discovered during the investigation of Albert Lauro, Jr., that tends to exculpate Petitioners;

THIS COURT FURTHER ORDERS the preservation of all police reports, notes, and any other documentary evidence (including audio and visual evidence) generated at any point in time during the Dana Ireland murder investigation in the past and moving forward:

k. The preservation of all ~~physical Preservation of all~~ physical evidence, forensic evidence, evidence testing results, documentary evidence regarding the same generated at any point in time during the investigation in the past or moving forward; pkk

l. The preservation of all physical evidence, forensic evidence, evidence testing results, documentary evidence regarding Albert Lauro, Jr. including any evidence obtained prior to and during the process of identifying Albert Lauro, Jr. during the Dana Ireland murder investigation in the past or moving forward;

m. The preservation of the chain of custody for all evidence; and,

n. The preservation of all communications of any kind between members of law

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enforcement, communications with witnesses, potential suspects, and anyone contacted as part of the Dana Ireland murder investigation.

THIS COURT FURTHER ORDERS that all items required to be produced pursuant to this Order shall be delivered to the chambers of Honorable Peter K. Kubota for an *in camera* inspection, no later than August 2, 2024 at 2:30 PM. Counsel for the Petitioners shall file a Subpoena Duces Tecum for the items listed in paragraphs a-j of this Order.

Dated: Hilo, Hawai'i AUG 0 1 2024

THE HONORABLE PETER K. KUBOTA
Judge of the Above-Entitled Court

APPROVED AS TO FORM:

/s/ *Shannon K. Kagawa*
SHANNON K. KAGAWA
Attorney for the STATE OF HAWAI'I

EXHIBIT F

EXHIBIT A

SCPW-24-_____

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

HAWAI‘I POLICE DEPARTMENT, COUNTY OF HAWAI‘I, Petitioner, vs. THE HONORABLE PETER K. KUBOTA, Judge of the Circuit Court of Third Circuit, State of Hawai‘i, Respondent.	ORIGINAL PROCEEDINGS Civil No. 3CSP-23-0000003; 3CSP-23-0000017 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing document was served on the parties identified below by USPS certified mail and/or electronic filing through the JEFS Court electronic filing system on August 7, 2024:

KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai‘i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720
Attorneys for Respondent
STATE OF HAWAI‘I

EXHIBIT A

JENNIFER BROWN
L. RICHARD FRIED, JR.
WILLIAM A. HARRISON
Hawai‘i Innocence Project
2485 Dole Street, Suite 206
Honolulu, HI 96822

ANNE E. LOPEZ
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

BARRY SCHECK
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Attorneys for Petitioner
ALBERT IAN SCHWEITZER

KEITH SHIGETOMI
PO BOX 17779
Honolulu., HI 96817

RAQUEL BARILLA
The Innocence Center
6549 Mission Gorge Rd. #379
San Diego, CA 92120
Attorneys for Petitioner
SHAWN SCHWEITZER

Dated: Hilo, Hawai‘i, August 7, 2024.

/s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel

EXHIBIT A

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

ALBERT IAN SCHWEITZER, SHAWN SCHWEITZER, Petitioners, vs. STATE OF HAWAI‘I, Respondent.	Case No. 3CSP-23-0000003; 3CSP-23-0000017) CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing document was served on the parties identified below by electronic filing through the USPS Mail and/or JEFS Court electronic filing system on August 7, 2024.

KELDEN WALTJEN
SHANNON KAGAWA
MICHAEL KAGAMI
Office of the Hawai‘i County Prosecuting Attorney
655 Kilauea Ave
Hilo, HI 96720
Attorneys for Respondent
STATE OF HAWAI‘I

JENNIFER BROWN
L. RICHARD FRIED, JR.
WILLIAM A. HARRISON
Hawai‘i Innocence Project
2485 Dole Street, Suite 206
Honolulu, HI 96822

ANNE E. LOPEZ
Department of the Attorney General
425 Queen Street
Honolulu, HI 96813

BARRY SCHECK
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013
Attorneys for Petitioner
ALBERT IAN SCHWEITZER

KEITH SHIGETOMI
PO BOX 17779
Honolulu., HI 96817

RAQUEL BARILLA
The Innocence Center
6549 Mission Gorge Rd. #379
San Diego, CA 92120
Attorneys for Petitioner
SHAWN SCHWEITZER

Dated: Hilo, Hawai‘i, August 7, 2024.

/s/ E. Britt Bailey
E. BRITT BAILEY
Deputy Corporation Counsel