

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
MATTHEW G. HALGREN, Cal. Bar No. 305918  
3 501 West Broadway, 19th Floor  
San Diego, California 92101  
4 Telephone: 619.338.6500  
Facsimile: 619.234.3815  
5 E mail: mhalgren@sheppardmullin.com

**FILED**  
Clerk of the Superior Court

JUL 15 2021

By: C. Beutler, Deputy

6 Attorneys for Non-Party KFMB-TV, LLC  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 SAN DIEGO POLICE DEPARTMENT,

12 Petitioner,

13 v.

14 L.M.,

15 Respondent.

Case No. 2021-00019951-CU-PT-CTL

**RESPONSE SUPPORTING  
UNSEALING COURT RECORDS**

**[DECLARATION OF MATTHEW G.  
HALGREN CONCURRENTLY FILED  
HEREWITH]**

**Ex Parte: July 21, 2021  
Time: 2:30 PM  
Dept.: C-69**

Hon. Katherine A. Bacal

[Petition Filed: 05/05/2021]  
R.O. Hearing: 09/14/2021

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

- I. INTRODUCTION.....6
- II. PROCEDURAL BACKGROUND .....6
- III. THE PRESS HAS STANDING TO SEEK ACCESS TO FILED DOCUMENTS RELATED TO THE GVRO PETITION .....7
- IV. THE FIRST AMENDMENT AND CALIFORNIA LAW BOTH PROHIBIT THE SEALING OF COURT RECORDS RELATING TO THE GVRO PROCEEDING.....8
  - A. The Right of Access to Judicial Proceedings and Records Provides a Strong Presumption Against Sealing .....8
  - B. The Parites Cannot Meet Their Burden of Demonstrating that the Continued Sealing of Records in This Case Satisfies the Compelling/Overriding Interest Test .....11
    - 1. The Sealed Documents Are Court Records of Significant Public Importance .....11
    - 2. The Reasons Supporting Sealing No Longer Exist.....12
    - 3. Speculative Pretrial Publicity Fears Do Not Provide a Basis for Secrecy, Particularly in a County the Size of San Diego.....13
    - 4. Speculative Concerns about Impacts on an Ongoing Investigation Also Do Not Provide a Basis for Secrecy .....15
  - C. Prompt Access to the Records Is Required .....16
- V. CONCLUSION .....17

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page(s)

Cases

*Associated Press v. United States District Court* (9th Cir. 1983)  
705 F.2d 1143 .....7, 14

*Ayala v. Speckard* (2d Cir. 1997)  
131 F.3d 62 .....9

*Brian W. v. Superior Court* (1978)  
20 Cal.3d 618 .....15

*CBS v. United States District Court* (9th Cir. 1983)  
729 F.2d 1174 .....14

*CBS, Inc. v. United States District Court* (9th Cir. 1985)  
765 F.2d 823 .....9

*Matter of Continental Illinois Securities Litigation* (7th Cir. 1984)  
732 F.2d 1302 .....9

*Copley Press, Inc. v. Superior Court* (1991)  
228 Cal.App.3d 77 .....10

*Copley Press, Inc. v. Superior Court* (1992)  
6 Cal.App.4th 106 .....7, 11

*Copley Press, Inc. v. Superior Court* (1998)  
63 Cal.App.4th 367 .....7, 10

*Cox Broadcasting Corp. v. Cohn* (1975)  
420 U.S. 469 .....17

*Elrod v. Burns* (1976)  
427 U.S. 347 .....16

*F.T.C. v. Standard Financial Management Corp.* (1st Cir.1987)  
830 F.2d 404 .....11

*Globe Newspaper Co. v. Superior Court* (1982)  
457 U.S. 596 .....7, 9

*Estate of Hearst* (1977)  
67 Cal.App.3d 777 .....8

1	<i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i> (1999)	
2	20 Cal.4th 1178.....	passim
3	<i>Nebraska Press Ass'n v. Stuart</i> (1976)	
4	427 U.S. 539 .....	14, 15
5	<i>Nixon v. Warner Communications</i> (1978)	
6	435 U.S. 589 .....	8
7	<i>Oregonian Publ. Co. v. District Court</i> (9th Cir. 1990)	
8	920 F.2d 1462 .....	9
9	<i>Paradise Hills Associates v. Procel</i> (1991)	
10	235 Cal.App.3d 1528.....	16
11	<i>People v. Jenkins</i> (2000)	
12	22 Cal.4th 900.....	14
13	<i>Phoenix Newspapers, Inc. v. United States District Court</i> (9th Cir. 1998)	
14	156 F.3d 940 .....	7, 10
15	<i>Press-Enterprise Co. v. Superior Court</i> (1984)	
16	464 U.S. 501 .....	7, 8, 10
17	<i>Press-Enterprise Co. v. Superior Court</i> (1986)	
18	478 U.S. 1 .....	7, 8
19	<i>Press-Enterprise v. Superior Court</i> (1994)	
20	22 Cal.App.4th 498.....	14
21	<i>Richmond Newspapers, Inc. v. Virginia</i> (1980)	
22	448 U.S. 555 .....	7
23	<i>Savaglio v. Wal-Mart Stores, Inc.</i> (2007)	
24	149 Cal.App.4th 588.....	8
25	<i>In re Search of 8420 Ocean Gateway Easton, Maryland</i> (D. Md. 2004)	
26	353 F.Supp.2d 577 .....	16
27	<i>Seattle Times Co. v. United States District Court</i> (9th Cir. 1988)	
28	845 F.2d 1513 .....	15
	<i>United States v. Brooklier</i> (9th Cir. 1982)	
	685 F.2d 1162 .....	10
	<i>United States v. Dickinson</i> (5th Cir. 1973)	
	465 F.2d 496 .....	16

1	<i>United States v. Haller</i> (2d Cir. 1988)	
2	837 F.2d 84 .....	10
3	<i>United States v. Hernandez</i> (9th Cir. 1979)	
4	608 F.2d 741 .....	10
5	<i>United States v. Myers</i> (2d Cir. 1980)	
6	635 F.2d 945 .....	14
7	<i>United States v. Smith</i> (3d Cir. 1985)	
8	776 F.2d 1104 .....	8
9	<i>Up North Plastics</i> (D. Minn. 1996)	
10	940 F.Supp. 229 .....	16
11	<i>Waller v. Georgia</i> (1984)	
12	467 U.S. 39 .....	9, 12
13	<i>Washington Post v. Robinson</i> (D.C. Cir. 1991)	
14	935 F.2d 282 .....	16
15	<u>Constitutions, Statutes, and Rules</u>	
16	Cal. Const., art. I, § 2.....	7, 8
17	Cal. Const., art. I, § 3.....	8
18	Cal. Rules of Court, rule 2.400.....	10
19	Cal. Rules of Court, rule 2.500.....	passim
20	Cal. Rules of Court, rule 2.551.....	6, 7, 8
21	Civ. Proc. Code § 1904 .....	11
22	U.S. Const., 1st Amend. ....	passim
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 KFMB-TV, LLC seeks to unseal all currently sealed records in the above-captioned  
3 gun violence restraining order (“GVRO”) case. Based on the Court’s sealing orders of  
4 May 5, 2021 (ROA 4) and May 7, 2021 (ROA 22), KFMB understands that the currently  
5 sealed records are the unredacted versions of the California Law Enforcement  
6 Telecommunications System Information Form (CLETS-001), the Civil Case Cover Sheet  
7 (CM-010), the Petition for Firearms Restraining Order (GV-100), the Declaration and  
8 Attachments (MC-030, MC-031), the Notice of Court Hearing (GV-109), the Temporary  
9 Firearms Restraining Order (GV-110), the Firearms Restraining Order After Hearing (GV-  
10 130), and the Declaration of Counsel supporting the application to file under seal.  
11 Additionally, KFMB understands that the parties’ papers opposing unsealing have  
12 themselves been filed under seal. Any justification that may have originally supported the  
13 sealing of documents no longer exists because Respondent Larry Millete has been publicly  
14 identified as the subject of this proceeding, and he is aware of the nature of the proceeding.  
15 (ROA 23 [unsealed filings submitted by Respondent’s counsel].) Accordingly, the First  
16 Amendment, the California Constitution, and the California Rules of Court require that the  
17 records be unsealed forthwith.

18 **II. PROCEDURAL BACKGROUND**

19 On May 5, 2021, Petitioner San Diego Police Department initiated this GVRO  
20 proceeding. (ROA 14.) On May 7, 2021, Respondent’s guns were seized. (ROA 23, p.  
21 5.) The Court held a hearing on June 22, 2021, at which Respondent’s counsel appeared.  
22 (ROA 33.) Because the Court’s sealing orders stated that the sealed records would become  
23 public following Respondent’s first appearance, on June 23, 2021, KFMB (through its  
24 Producer, David Gotfredson) made an informal request by email that the Court unseal the  
25 records on its own motion. Pursuant to California Rules of Court, rule 2.551(h)(3), the  
26 Court notified the parties that it was considering unsealing the records and set a hearing on  
27 the issue for June 30, 2021, which was subsequently continued to July 21, 2021. (ROA  
28 45.) Counsel for KFMB intends to appear at the July 21, 2021 hearing.

1 Counsel for KFMB met and conferred with counsel for Petitioner and Respondent  
2 on July 12, 2021 and July 14, 2021, respectively; the parties were not able to come to an  
3 agreement on all issues. (Halgren Decl., ¶¶ 4, 5.) KFMB understands that Petitioner filed  
4 an opposition to the unsealing on July 12, 2021; however, because that opposition was  
5 filed under seal, KFMB does not know of its contents. (Halgren Decl., ¶ 4.) Pursuant to  
6 California Rules of Court, rule 2.551(h)(3), a response following an opposition may be  
7 filed within five days, making this response timely.<sup>1</sup>

8 **III. THE PRESS HAS STANDING TO SEEK ACCESS TO FILED**  
9 **DOCUMENTS RELATED TO THE GVRO PETITION**

10 The Supreme Court established the media's standing under the First Amendment to  
11 seek access to court proceedings decades ago. (See *Globe Newspaper Co. v. Superior*  
12 *Court* (1982) 457 U.S. 596, 609, fn. 25 [“[R]epresentatives of the press and general public  
13 ‘must be given an opportunity to be heard on the question of their exclusion.’”]; *Richmond*  
14 *Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 580; *Press-Enterprise Co. v. Superior*  
15 *Court* (1984) 464 U.S. 501, 508-510 (*Press-Enterprise I*); *Press-Enterprise Co. v. Superior*  
16 *Court* (1986) 478 U.S. 1, 7 (*Press-Enterprise II*.) The First Amendment also gives the  
17 press and the public standing to seek access to court records. (See, e.g., *Phoenix*  
18 *Newspapers, Inc. v. United States District Court* (9th Cir. 1998) 156 F.3d 940, 949 [“[I]f a  
19 court contemplates sealing a document or transcript, it must provide sufficient notice to the  
20 public and press to afford them the opportunity to object or offer alternatives.”];  
21 *Associated Press v. United States District Court* (9th Cir. 1983) 705 F.2d 1143, 1147.)

22 Like the First Amendment, the California Constitution provides a right of access to  
23 court records, which the press and the public have standing to assert. (See Cal. Const., art.  
24 I, § 2, subd. (a); *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th  
25 1178, 1216-1218 & fn. 36; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106,  
26 113-114 (*Copley II*); *Copley Press, Inc. v. Superior Court* (1998) 63 Cal.App.4th 367, 373

27 \_\_\_\_\_  
28 <sup>1</sup> To the extent the Court considers it necessary for KFMB to move to intervene, KFMB  
requests that this memorandum be deemed a motion to intervene.

1 (*Copley III*) [“[B]oth the federal (U.S. Const., 1st Amend.) and the state (Cal. Const., art. I,  
2 § 2, subd. (a)) Constitutions provide broad access rights to judicial records in criminal and  
3 civil cases.”].) Indeed, as the result of the passage of Proposition 59, there is now an  
4 express constitutional right of public access to all “information concerning the conduct of  
5 the people’s business.” (See Cal. Const., art. I, § 3, subd. (b), par. (1).) The right of access  
6 created by Proposition 59, which must be “broadly construed,” applies to court records.  
7 (Cal. Const., art. I, § 3, subd. (b), par. (2); *Savaglio v. Wal-Mart Stores, Inc.* (2007) 149  
8 Cal.App.4th 588, 597 [recognizing constitutional right of access to civil court records  
9 under Proposition 59].)<sup>2</sup>

10 Finally, California Rules of Court, rules 2.550 and 2.551 apply to all court records  
11 and specifically give the public standing to seek the unsealing of court records: “A party or  
12 member of the public may move, apply, or petition, or the court on its own motion may  
13 move, to unseal a record.” (Cal. Rules of Court, rule 2.551(h)(2).)

14 **IV. THE FIRST AMENDMENT AND CALIFORNIA LAW BOTH PROHIBIT**  
15 **THE SEALING OF COURT RECORDS RELATING TO THE GVRO**  
16 **PROCEEDING**

17 Both federal and state law provide strong protections for the right of the public and  
18 the press to access court records. On the facts of this case, there is no basis on which the  
19 parties may overcome these important rights to transparent judicial proceedings.

20 **A. The Right of Access to Judicial Proceedings and Records Provides a**  
21 **Strong Presumption Against Sealing**

22 The First Amendment right of access applies to all types of court records and  
23 proceedings. The right finds its origin in cases in the criminal context, including court  
24 records that relate to potentially criminal conduct. (*Press-Enterprise I, supra*, 464 U.S. at  
25 pp. 508-510 [transcripts of voir dire]; *Press-Enterprise II, supra*, 478 U.S. at pp. 9-13  
26 [transcripts of preliminary hearings]; *United States v. Smith* (3d Cir. 1985) 776 F.2d 1104,

27 <sup>2</sup> The press also has standing under common law to seek access to court records. (*Nixon v.*  
28 *Warner Communications* (1978) 435 U.S. 589, 597; *Estate of Hearst* (1977) 67  
Cal.App.3d 777, 782.)



1 1111 [bill of particulars].) In *NBC Subsidiary (KNTV-TV), Inc. v. Superior Court* (1999)  
2 20 Cal.4th 1178, 1217-1218, California's Supreme Court applied the constitutional right of  
3 access to court proceedings and records in civil cases.

4 Because the public has a presumptive right of access to judicial proceedings and  
5 records under the First Amendment, court proceedings can be closed and court records  
6 sealed only upon proof of an interest more compelling than the constitutional right of  
7 public access, that can be served by no less restrictive means than a sealing order, and  
8 which is supported by clear findings made on the record. (*Globe Newspaper, supra*, 457  
9 U.S. at pp. 606-607 ["Where . . . the State attempts to deny the right of access in order to  
10 inhibit the disclosure of sensitive information, it must be shown that the denial is  
11 necessitated by a compelling governmental interest and is narrowly tailored to serve that  
12 interest."].) "The public's right of access to judicial records has been characterized as  
13 'fundamental to a democratic state.'" (*Matter of Continental Illinois Securities Litigation*  
14 (7th Cir. 1984) 732 F.2d 1302, 1308.)

15 Furthermore, the presumption of openness may be overcome only by competent  
16 evidence sufficient to meet the test. (*Oregonian Publ. Co. v. District Court* (9th Cir. 1990)  
17 920 F.2d 1462, 1467 [vacating trial court's sealing order entered with "no evidentiary  
18 support"].) Speculation and conjecture cannot support a denial of access. (See, e.g., *CBS,*  
19 *Inc. v. United States District Court* (9th Cir. 1985) 765 F.2d 823, 825; *Oregonian Publ.,*  
20 *supra*, 920 F.2d at p. 1466 [findings cannot be based on conclusory assertions; rather the  
21 interest justifying sealing must be specified with particularity, and there must be findings  
22 that the closure remedy is narrowly confined to protect that interest]; *Waller v. Georgia*  
23 (1984) 467 U.S. 39, 46-48 [speculation that some harm or prejudice might occur cannot  
24 meet the compelling interest test]; *Ayala v. Speckard* (2d Cir. 1997) 131 F.3d 62, 70 ["We  
25 believe the sensible course is for the trial judge to recognize that open trials are strongly  
26 favored, to require persuasive evidence of serious risk to an important interest in ordering  
27 any closure, and to realize that the more extensive is the closure requested, the greater  
28

1 must be the gravity of the required interest and the likelihood of risk to that interest.”];  
2 *United States v. Hernandez* (9th Cir. 1979) 608 F.2d 741, 747.)

3 Thus, under the First Amendment, a heavy burden exists on the party seeking  
4 nondisclosure or sealing of documents to show such interference with the public’s First  
5 Amendment access rights is “strictly and inescapably necessary” to protect a compelling  
6 government interest. (*United States v. Brooklier* (9th Cir. 1982) 685 F.2d 1162, 1167;  
7 *Copley Press, Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 84-87 (*Copley I*)  
8 [compelling reasons must establish why and to what extent records should be made  
9 private].) An order denying access to court records must satisfy both the procedural and  
10 substantive requirements of the First Amendment. (See *United States v. Haller* (2d Cir.  
11 1988) 837 F.2d 84, 86-87; *Copley III, supra*, 63 Cal.App.4th at p. 374 [compelling reasons  
12 must establish why and to what extent records should be made private].)

13 There are two procedural prerequisites that must be met before court records may  
14 be sealed: (1) Those seeking access must be afforded a reasonable opportunity to state their  
15 objections; and (2) The reasons supporting closure or sealing must be articulated in  
16 findings. (*Brooklier, supra*, 685 F.2d at pp. 1167-1168; see also *Press-Enterprise I, supra*,  
17 464 U.S. at p. 509 [requiring findings specific enough for a reviewing court to determine if  
18 the closure order was properly entered].) A proponent of sealing must also satisfy all  
19 elements of the following three-part test to seal any portion of a court record: that  
20 (1) sealing the records serves a compelling interest; (2) there is a substantial probability, in  
21 the absence of sealing, this compelling interest would be harmed; and (3) there are no  
22 alternatives to sealing that would adequately protect the compelling interest at issue.  
23 (*Phoenix Newspapers, supra*, 156 F.3d at p. 949.)

24 California also applies the compelling interest standard to the sealing of court  
25 records. (*NBC Subsidiary, supra*, 20 Cal.4th at pp. 1217-1218; Cal. Rules of Court, rules  
26 2.400, 2.500, and 2.550 et. seq.) The California Rules of Court break the test out into five  
27 elements, but the same principles apply: records are presumed to be open, and a record  
28

1 must not be filed under seal without a court order. Under the California rules, the Court  
2 may order that a record be filed under seal only if it expressly finds that:

- 3 (1) There exists an overriding interest that overcomes the right of public  
access to the record;
- 4 (2) The overriding interest supports sealing the record;
- 5 (3) A substantial probability exists that the overriding interest will be  
prejudiced if the record is not sealed;
- 6 (4) The proposed sealing is narrowly tailored; and
- 6 (5) No less restrictive means exist to achieve the overriding interest.

7 (Cal. Rules of Court, rule 2.550(d).) These prerequisites to sealing court records apply to  
8 all civil and criminal cases. (Cal. Rules of Court, rule 2.550 (Advisory Committee  
9 Comment).)

10 **B. The Parites Cannot Meet Their Burden of Demonstrating that the**  
11 **Continued Sealing of Records in This Case Satisfies the**  
12 **Compelling/Overriding Interest Test**

13 **1. The Sealed Documents Are Court Records of Significant Public**  
14 **Importance**

15 Under California law, court records include all documents “filed in or received by  
16 the court, such as the pleadings and motions filed by the parties and evidence admitted in  
17 court proceedings.” (*Copley II, supra*, 6 Cal.App.4th at p. 113; see also Civ. Proc. Code  
18 § 1904 [“A judicial record is the record or official entry of the proceedings in a Court of  
19 justice, or of the official act of a judicial officer, in an action or special proceeding.”]; Cal.  
20 Rules of Court, Rule 2.550, subd. (b)(1) [“court record” is “all or a portion of any  
21 document, paper, exhibit, transcript, or other thing filed or lodged with the court”]; *F.T.C.*  
22 *v. Standard Financial Management Corp.* (1st Cir.1987) 830 F.2d 404, 409 [“[d]ocuments  
23 which are submitted to, and accepted by, a court of competent jurisdiction in the course of  
24 adjudicatory proceedings, become documents to which the presumption of public access  
25 applies.”].)

26 Although the public’s right to access court records does not depend on whether the  
27 records are particularly important, it is worth noting that the records at issue here are of  
28 special importance. Respondent is the husband of Maya Millete, a mother of three who  
went missing from the family’s Chula Vista home on January 7, 2021. The San Diego

1 media, including KFMB, has reported on Ms. Millete's disappearance as it is an issue of  
2 interest to the public.<sup>3</sup> It is important for the press and public to understand the  
3 government's handling of this case so that they may exercise their supervisory roles over  
4 the government. (See *Waller, supra*, 467 U.S. at p. 47 [explaining that the public has a  
5 strong interest in subjecting government conduct to scrutiny].)

6 GVROs and the conditions under which they are imposed are also of interest to the  
7 public. When California became the first state to authorize GVROs, there was widespread  
8 press coverage, as critics said the bill "infringed on the Second Amendment right to keep  
9 and bear arms."<sup>4</sup> This remains an issue of importance, especially in San Diego. Just this  
10 week, the California Attorney General issued a press release stating that San Diego County  
11 produced 37 percent of California's GRVOs in 2020 – the highest percentage in the state.<sup>5</sup>  
12 The San Diego public has a right to know what evidence is considered sufficient to support  
13 a GVRO authorizing the police to enter a person's home and seize his firearms.

14 The documents at issue here became court records upon being filed with the clerk of  
15 the court. Under both California law and the First Amendment, these important documents  
16 must be publicly released absent strict compliance with the compelling/overriding interest  
17 test. As explained below, the parties cannot satisfy this test.

## 18 2. The Reasons Supporting Sealing No Longer Exist

19 In May 2021, Petitioner filed three motions to seal, all of which argued that sealing  
20 was necessary so that Respondent would not be alerted to the pending GVRO before  
21 having his guns seized:

---

22  
23 <sup>3</sup> E.g., David Gotfredson, *Search for Maya Millete: 6 months later* (July 7, 2021) KFMB-  
24 TV <<https://www.cbs8.com/article/news/investigations/search-for-maya-millete-six-months/509-bb3f0ab3-3d18-4c36-8610-8f5101e79b01>> (as of July 14, 2021).

25 <sup>4</sup> Sharon Bernstein, *California governor signs 'gun violence restraining order' law* (Sept.  
26 30, 2014) Reuters <<https://www.reuters.com/article/us-usa-california-gun-control/california-governor-signs-gun-violence-restraining-order-law-idUSKCN0HP2JD20141001>> (as of July 14, 2021).

27 <sup>5</sup> *Attorney General Bonta Meets with San Diego City Officials, Highlights Success of the*  
28 *City's Gun Violence Restraining Order Program* (July 13, 2021) California Attorney  
General <<https://oag.ca.gov/news/press-releases/attorney-general-bonta-meets-san-diego-city-officials-highlights-success-city%E2%80%99s>> (as of July 14, 2021).

1 [T]he media might alert the Respondent or his relatives that a Gun Violence  
2 Restraining Order (GVRO) is being sought prior to service. This would  
3 create an opportunity for the Respondent to either hide firearms or allow for  
the opportunity to use the firearms prior to service of the GVRO and seizure  
of the Respondent's outstanding firearms."

4 (ROA 17 p. 2; see also ROA 2; ROA 21.) Respondent is now fully aware the GVRO, and,  
5 as he stated in his own declaration, his gun collection has been seized. (ROA 23, p. 5.)  
6 There is no element of surprise that must be maintained. In any event, Respondent's  
7 identity has now been publicly disclosed, including via his own response to the GVRO  
8 petition, which is filed in unredacted form on the public docket. (ROA 23.)

9 Accordingly, none of the grounds previously offered for sealing the records  
10 presently exist. In partial recognition of this fact, Petitioner has advised KFMB that it will  
11 assent to the unsealing of some information that is currently redacted. (Halgren Decl.,  
12 ¶ 4.) Nevertheless, Petitioner and Respondent continue to insist that certain information  
13 may not be released, though they present their arguments in their sealed filing, to which  
14 KFMB does not have access. (*Ibid.*) KFMB understands that the most significant  
15 information Petitioner wishes to maintain under seal is (1) the redacted substantive  
16 justifications for obtaining the GVRO contained in the petition and accompanying  
17 declaration, and (2) the two photographs submitted in support of the declaration.<sup>6</sup> There is  
18 no basis for continuing to prevent the public from accessing these important court records.

19 **3. Speculative Pretrial Publicity Fears Do Not Provide a Basis for Secrecy,**  
20 **Particularly in a County the Size of San Diego**

21 Although KFMB has not been permitted to review the parties' papers, KFMB  
22 assumes that one of the bases for the request to maintain the seal is a purported concern  
23 over publicity that Mr. Millete may face in advance of a potential criminal trial related to  
24 the disappearance of his wife. However, speculative fears about the impact of press  
25 coverage on a trial that may or may not ever occur cannot constitute a compelling interest  
26 in this case.

27 \_\_\_\_\_  
28 <sup>6</sup> KFMB will consent to the redaction/tiling of the face of the minor depicted in one of the  
photographs.

1 Many courts have held that concerns about the impact of press coverage, prior to or  
2 during trial, are almost always misplaced. Pretrial publicity, even if pervasive and  
3 concentrated, does not inevitably lead to an unfair trial in criminal cases. (*Associated*  
4 *Press*, *supra*, 705 F.2d at p. 1146; *Nebraska Press Ass'n v. Stuart* (1976) 427 U.S. 539,  
5 554, 565 [It cannot be said that “juror exposure to information about a state defendant’s  
6 prior convictions or to news accounts of the crime with which he is charged alone  
7 presumptively deprives the defendant of due process.”]; *United States v. Myers* (2d Cir.  
8 1980) 635 F.2d 945, 953 [pointing out that even the intensive publicity surrounding the  
9 events of Watergate, “very likely the most widely reported crime of the past decade,” did  
10 not prevent the selection of impartial jurors and concluding that “[d]efendants, as well as  
11 the news media, frequently overestimate the extent of the public’s awareness of news”]; cf.  
12 *People v. Jenkins* (2000) 22 Cal.4th 900, 945 [“[T]here is ‘no presumption of a deprivation  
13 of due process of law aris[ing] from juror exposure to publicity concerning the case.’”].)

14 KFMB is aware of no evidence in the record that would support sealing on the basis  
15 that publicity related to this case will saturate the entire jury pool of San Diego County  
16 (which has more than 3 million residents). (*Nebraska Press*, *supra*, 427 U.S. at p. 554;  
17 *Press-Enterprise v. Superior Court* (1994) 22 Cal.App.4th 498, 503-504 (*Press-Enterprise*  
18 *III*)). To make a prejudice finding, the evidence must be “clear . . . that further publicity,  
19 unchecked, would so distort the views of potential jurors that 12 [c]an not be found who  
20 would, under proper instructions, fulfill their sworn duty to render a just verdict  
21 exclusively on the evidence presented in open court’ . . . .” (*CBS v. United States District*  
22 *Court* (9th Cir. 1983) 729 F.2d 1174, 1178 (quoting *Nebraska Press*, *supra*, 427 U.S. at p.  
23 569).)

24 [P]ervasive publicity, without more, does not automatically result in an unfair  
25 trial. In assessing the prejudicial nature of such publicity, this court looks  
26 “not simply to its effect on individual viewers but to its capacity to inflame  
27 and prejudice the entire community.” In other words, the publicity must  
28 create a “‘pattern of deep and bitter prejudice’ . . . throughout the  
community.”

1 (*Seattle Times Co. v. United States District Court* (9th Cir. 1988) 845 F.2d 1513, 1517,  
2 citations omitted.) Even if information is prejudicial, its effect is minimized when it is  
3 disclosed “almost two months before the jury is scheduled to be impaneled” (or, as here,  
4 when no criminal trial has been scheduled at all because no criminal charges have been  
5 filed). (*Id.* at pp. 1516, 1518.) “[P]rejudicial publicity is less likely to endanger the  
6 defendant’s fair trial in a large metropolitan area such as Seattle” (or San Diego). (*Id.* at p.  
7 1518.) Moreover, searching voir dire, peremptory challenges, and admonitions/  
8 instructions to the jury are all viable alternatives to secrecy. (*Ibid.*; see also *Nebraska*  
9 *Press, supra*, 427 U.S. at pp. 563-564; *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1223-  
10 1225; *Brian W. v. Superior Court* (1978) 20 Cal.3d 618, 625.) If voir dire fails to impanel  
11 an impartial jury, the options of a continuance or change of venue are still open. (*Seattle*  
12 *Times, supra*, 845 F.2d at p. 1518.)

13 Here, San Diego County’s population in excess of 3 million people is sufficiently  
14 large to seat a fair jury in this case regardless of the amount or substance of pretrial  
15 publicity. Any argument to the contrary is necessarily speculative and not supported by  
16 evidence. Additionally, there is no reason to suppose that the information sealed in this  
17 case will have more of an impact on the fairness of any future trial than other information  
18 that has already been published about Ms. Millete’s missing person case. Accordingly,  
19 while the right to a fair trial is important, in this case pretrial publicity concerns do not  
20 “support[] sealing the record,” there is no reason to think that fair trial rights “will be  
21 prejudiced if the record is not sealed,” the proposed sealing is not “narrowly tailored,” and  
22 “less restrictive means exist to achieve” the interest. (Cal. Rules of Court, rule 2.550(d);  
23 see also *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1217-1218.) The records must be  
24 unsealed.

25 **4. Speculative Concerns about Impacts on an Ongoing Investigation Also**  
26 **Do Not Provide a Basis for Secrecy**

27 It is possible that Petitioner believes disclosure of the sealed information may  
28 interfere with the ongoing investigation of Ms. Millete’s disappearance. Even if this is so,

1 there is no evidence that the government's interest in avoiding possible interference with  
2 an ongoing investigation is an overriding interest that justifies the sealing of records in this  
3 case. "More than a conclusory allegation of an ongoing investigation is required . . . . The  
4 government must make a specific factual showing of how its investigation will be  
5 compromised by the release of the" record. (*Up North Plastics* (D. Minn. 1996) 940  
6 F.Supp. 229, 233; *In re Search of 8420 Ocean Gateway Easton, Maryland* (D. Md. 2004)  
7 353 F.Supp.2d 577, 582.)

8 Here, it appears that Respondent has access to all of the sealed information, except  
9 perhaps the two photographs of his own gun collection. (ROA 23, p. 6.) At a minimum,  
10 and especially in light of the descriptions of Respondent's interactions with investigators  
11 contained in his declaration (ROA 23), there is no reason to suppose that any of the sealed  
12 information would be so surprising to Respondent that it would enable him to thwart an  
13 investigation. Therefore, concerns over an investigation are also insufficient to meet the  
14 elements required for sealing under the First Amendment and California Rules of Court,  
15 rule 2.550(d). (*NBC Subsidiary, supra*, 20 Cal.4th at pp. 1217-1218.)

16 **C. Prompt Access to the Records Is Required**

17 The parties may argue that the sealed information will eventually become public,  
18 and that KFMB should simply be patient. However, "[t]imeliness of publication is the  
19 hallmark of 'news' and the difference between 'news' and 'history' is merely a matter of  
20 hours." (*United States v. Dickinson* (5th Cir. 1973) 465 F.2d 496, 512; *Washington Post v.*  
21 *Robinson* (D.C. Cir. 1991) 935 F.2d 282, 287 [emphasizing "the critical importance of  
22 *contemporaneous* access . . . to the public's role as overseer of the criminal justice  
23 process," original italics].) "Loss of First Amendment freedoms, even for minimal periods  
24 of time, unquestionably constitutes irreparable injury." (*Elrod v. Burns* (1976) 427 U.S.  
25 347, 373; accord, *Paradise Hills Associates v. Procel* (1991) 235 Cal.App.3d 1528, 1539.)  
26 Accordingly, the Court should order the records unsealed now, not later.

27  
28




1 V. CONCLUSION

2 The continued sealing of the records in this case would violate the First Amendment  
3 and California law. Public access to the documents submitted in the GVRO proceeding is  
4 a fundamental and vital right. "Public records by their very nature are of interest to those  
5 concerned with the administration of government, and a public benefit is performed by the  
6 reporting of the true contents of the records by the media. The freedom of the press to  
7 publish that information appears . . . to be of critical importance to our type of government  
8 in which the citizenry is the final judge of the conduct of public business." (*Cox*  
9 *Broadcasting Corp. v. Cohn* (1975) 420 U.S. 469, 495.) The records should be unsealed in  
10 their entirety immediately.

11 Dated: July 15, 2021

12 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

13  
14 By   
15 MATTHEW G. HALGREN  
16 Attorneys for Non-Party KFMB-TV, LLC

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
MATTHEW G. HALGREN, Cal. Bar No. 305918  
3 501 West Broadway, 19th Floor  
San Diego, California 92101  
4 Telephone: 619.338.6500  
Facsimile: 619.234.3815  
5 E mail: mhalgren@sheppardmullin.com

**FILED**  
Clerk of the Superior Court

JUL 15 2021

By: C. Beutler, Deputy

6 Attorneys for Non-Party KFMB-TV, LLC  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10  
11 SAN DIEGO POLICE DEPARTMENT,

12 Petitioner,

13 v.

14 L.M.,

15 Respondent.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 2021-00019951-CU-PT-CTL

**DECLARATION OF MATTHEW G.  
HALGREN IN SUPPORT OF  
RESPONSE SUPPORTING  
UNSEALING COURT RECORDS**

**Ex Parte: July 21, 2021  
Time: 2:30 PM  
Dept.: C-69**

Hon. Katherine A. Bacal

[Petition Filed: 05/05/2021]  
R.O. Hearing: 09/14/2021

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF MATTHEW G. HALGREN

I, Matthew G. Halgren, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an associate with Sheppard, Mullin, Richter & Hampton LLP, attorneys of record for Non-Party KFMB-TV, LLC.

2. If called as a witness, I could and would competently testify to all facts stated herein, which are within my personal knowledge.

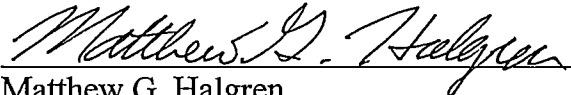
3. This declaration is submitted in support of KFMB's RESPONSE SUPPORTING UNSEALING COURT RECORDS.

4. On July 12, 2021, I met and conferred by telephone with Jeffrey Brooker, counsel for Petitioner San Diego Police Department. Mr. Brooker informed me that that afternoon he expected to file under seal his opposition to unsealing the sealed records in this case. He said he could not tell me the reasons supporting his position. He advised me that his opposition would include a consent to un-redacting some, but not all, information that is currently redacted in the public versions of the sealed documents.

5. On July 14, 2021, I met and conferred by telephone with Bonita Martinez, counsel for Respondent Larry Millete. She advised me that she wished to maintain the records under seal in order to maximize protection for her client and his family. We were not able to reach an agreement regarding unsealing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 15th day of July, 2021, at San Diego, California.

  
Matthew G. Halgren