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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOSEPH MARTIN DANKS,

Petitioner,

v.

RON BROOMFIELD, Warden of California  
State Prison at San Quentin,

Respondent.<sup>1</sup>

Case No. 1:11-cv-00223-JLT

DEATH PENALTY CASE

ORDER REGARDING PETITIONER'S  
REQUEST TO FILE DOCUMENTS  
UNDER SEAL

I. INTRODUCTION

On June 27, 2023, Petitioner, through counsel, the Habeas Corpus Resource Center by attorney Margo Hunter, filed on the public docket a Notice of Request to Seal portions of the sealed reporter's transcript of state trial court proceedings dated July 7, 1992, November 10, 1992, January 22, 1993, and February 1, 1993, (collectively the "Sealed Reporter's Transcript") relating to Petitioner's motions to substitute counsel pursuant to *People v. Marsden*, 2 Cal. 3d 118 (1970). (Doc. 86.) The Notice is associated with the Court's June 2, 2023 order (Doc. 83) that modified case scheduling to afford counsel for Respondent, Deputy Attorney General Justain Riley, access to the Sealed Reporter's Transcript while preparing

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<sup>1</sup> Pursuant to the Federal Rules of Civil Procedure, Rule 25(d), Ron Broomfield, Warden of San Quentin State Prison, shall be substituted as Respondent in place of his predecessor wardens.

1 Respondent’s answer to the 28 U.S.C. § 2254 habeas corpus petition filed in this proceeding.

2 Petitioner has submitted ex parte and in camera to the Court the Sealed Reporter’s  
3 Transcript along with a Proposed Order and Request to Seal, as required by Eastern District of  
4 California Local Rule (“Local Rule”) 141.<sup>2</sup> (See Doc. 86, at 2.) Petitioner states the Sealed  
5 Reporter’s Transcript has not been provided to Respondent because these documents remain  
6 sealed in state court. (*Id.*)

7 Respondent has not opposed Petitioner’s sealing request, and the time for doing so has  
8 expired. Local Rule 141(c). Petitioner’s sealing request is therefore deemed unopposed.

## 9 II. BACKGROUND

10 In 1993, Petitioner, then serving six life sentences for six prior convictions of first  
11 degree murder, was convicted in Kern County Superior Court of the first degree murder of his  
12 cellmate and sentenced to death. (See Doc. 28, at 19-20) In 2003, Petitioner filed in the  
13 California Supreme Court a first petition for writ of habeas corpus. (See *id.* at 27.) In 2004,  
14 the California Supreme Court affirmed the judgment of conviction and sentence. (See *id.* at  
15 26.) That same year, the California Supreme Court denied rehearing (*id.*), and the United  
16 States Supreme Court denied certiorari (*id.*). In 2010, the California Supreme Court denied  
17 Petitioner’s first petition for writ of habeas corpus. (See *id.* at 30.)

18 Petitioner began this federal proceeding on February 9, 2011 by filing a request for a  
19 stay of execution and appointment of counsel. (Doc. 1.) On February 17, 2011, the Habeas  
20 Corpus Resource Center was appointed as counsel to represent Petitioner. (Doc. 5.)

21 On September 13, 2011, Petitioner filed in the California Supreme Court a second  
22 petition for writ of habeas corpus. (See Doc. 28, at 30-31.)

23 On September 15, 2011, Petitioner filed herein the operative § 2254 habeas corpus  
24 petition. (Doc. 28.) Later that same year, this Court: (i) dismissed as premature Claim 36  
25 (alleging execution incompetence), (ii) stayed these federal proceedings in abeyance of state

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27 <sup>2</sup> Local Rule 141(b) directs a party seeking to seal documents to electronically file a “Notice of Request to Seal  
28 Documents” and to e-mail a “Request to Seal Documents,” proposed order, and all documents covered by the  
request to the appropriate Judge or Magistrate Judge’s proposed order e-mail box. All reference to pagination is to  
ECF system pagination unless stated otherwise.

1 exhaustion proceedings, and (iii) found the equal protection subclaims in Claims 31 and 33 to  
2 be unexhausted. (*See* Doc. 34, at 6, 10; Doc. 41, at 2.)

3 On September 10, 2021, the Kern County Superior Court denied all claims in  
4 Petitioner’s second petition for writ of habeas corpus. (*See* Doc. 70, at 2.) On October 22,  
5 2021, the California Court of Appeal denied Petitioner’s appeal and request for a certificate of  
6 appealability. (*See id.*) On January 5, 2022, the California Supreme Court denied Petitioner’s  
7 petition for review. (*See id.*) On October 3, 2022, the United States Supreme Court denied  
8 Petitioner’s petition for writ of certiorari. (*See* Doc. 73, at 2.)

9 On October 18, 2022, the Court lifted its exhaustion stay. (*See* Doc. 74, at 1.)

10 On March 10, 2023, the Court ordered stricken from the § 2254 petition the  
11 unexhausted equal protection subclaims in Claims 31 and 33. (Doc. 81.)

### 12 III. DISCUSSION

13 Petitioner supports the sealing request by observing that the Sealed Reporter’s  
14 Transcript, portions of the sealed state record which must remain sealed in this proceeding, is  
15 cited in his operative § 2254 petition.

16 Requests to seal documents in this district are governed by Local Rule 141, which  
17 provides that documents may be sealed only upon written order of the Court after a specific  
18 request to seal has been made. Local Rule 141(a). The request to seal shall set forth “the  
19 statutory or other authority for sealing, the requested duration, the identity, by name or  
20 category, of persons to be permitted access to the document, and all relevant information.”  
21 Local Rule 141(b).

22 The Court observes there is a “strong presumption in favor of access to court  
23 records[.]” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir.  
24 2016) (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).  
25 “The presumption of access is ‘based on the need for federal courts, although independent –  
26 indeed, particularly because they are independent – to have a measure of accountability and for  
27 the public to have confidence in the administration of justice.’ ” *Id.* (quoting *United States v.*  
28 *Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995)).

1 A request to seal material must normally meet the high threshold of showing that  
2 “compelling reasons” support secrecy. *See Ctr. for Auto Safety*, 809 F.3d, at 1096-97. A party  
3 seeking to file something under seal must present “compelling reasons” supporting the request.  
4 *Id.* The compelling reasons standard requires that the Court: (1) find a compelling reason  
5 supporting sealing the record, and (2) articulate the factual basis for sealing the record without  
6 relying on hypothesis or conjecture. *Id.* at 1096-97. The Court must “conscientiously balance”  
7 the competing interests of the public and the party who wishes to keep the documents private.  
8 *Id.* at 1097; *see also Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-81 (9th  
9 Cir. 2006). “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the  
10 trial court.’” *Ctr. for Auto Safety*, 809 F.3d, at 1097 (quoting *Nixon v. Warner Commc'ns,*  
11 *Inc.*, 435 U.S. 589, 599 (1978)).

12 The Ninth Circuit has stated that “compelling reasons” sufficient to outweigh the  
13 public's interest in disclosure and justify sealing court records exist, for example, when “court  
14 files might have become a vehicle for improper purposes, such as the use of records to gratify  
15 private spite, promote public scandal, circulate libelous statements, or release trade secrets.”  
16 *Id.* at 1179 (citing *Nixon*, 435 U.S., at 598). However, “[t]he mere fact that the production of  
17 records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation  
18 will not, without more, compel the court to seal its records.” *Kamakana*, 447 F.3d, at 1179  
19 (citing *Foltz*, 331 F.3d, at 1136).

20 Where the material is, at most, “tangentially related” to the merits of a case, the request  
21 to seal may be granted on a lesser showing of “good cause” to find prejudice or harm for each  
22 document sought to be protected. *Ctr. for Auto Safety*, 809 F.3d, at 1096-1102; *see also*  
23 *Kamakana*, 447 F.3d, at 1178-80; *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th  
24 Cir. 1992); *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010). For example,  
25 in such a case, a “particularized showing” that public disclosure would cause annoyance,  
26 embarrassment, oppression, or an undue burden will suffice to seal non-dispositive records.  
27 *Kamakana*, 447 F.3d, at 1180; *see also* Fed. R. Civ. P. 26(c)(1). Pursuant to Federal Rule of  
28 Civil Procedure 5.2(d), a court “may order that a filing be made under seal without redaction.”

1 Petitioner has complied with Local Rule 141. The Court has reviewed the Request to  
2 Seal and the Sealed Reporter's Transcript documents sought to be sealed and finds compelling  
3 reasons to grant the Request. These documents contain sealed state court reporter's transcript  
4 of *Marsden* and related proceedings including information regarding representation, the  
5 attorney client relationship, and attorney work product, that is privileged and confidential  
6 under state law and by order of the California Supreme Court. (See Docs. 87 & 88.) Thus, the  
7 Court **ORDERS:**

8 1. Petitioner's Request to Lodge Documents under Seal is **GRANTED**.

9 2. The Sealed Reporter's Transcript dated July 7, 1992 (totaling 16 pages),  
10 November 10, 1992 (totaling 15 pages), January 22, 1993 (totaling 6 pages), and February 1,  
11 1993 (totaling 33) pages, shall be **LODGED UNDER SEAL** until further order of the Court,  
12 with **SERVICE UPON ONLY COUNSEL FOR THE PARTIES**. These documents shall  
13 not be publicly filed unless otherwise ordered by the Court.

14 3. Petitioner's counsel shall email the above Transcripts to  
15 ApprovedSealed@caed.uscourts.gov for lodging under seal in compliance with Local Rule 141  
16 **WITHIN THREE DAYS** of the date of entry of this order.

17  
18 IT IS SO ORDERED.

19 Dated: **July 6, 2023**

  
UNITED STATES DISTRICT JUDGE