

1 **I. Background**

2 Petitioner filed this case on July 2, 2016. ECF No. 1. The case has not developed past the
3 pleading stage. The following allegations¹ are taken from the amended petition to provide some
4 backdrop for the instant dispute over whether the response to the petition should be sealed in its
5 entirety:

6 P.A. is a seventeen year-old unaccompanied minor from El Salvador. P.A. came
7 to this country in fear of his life after his brother was murdered in an attempt to
8 escape from gang death threats and violence. P.A. crossed the U.S. Mexican
border in June, 2014, when he was fifteen years old.

9 When P.A. crossed the border near McAllen, Texas, he turned himself in to a
Border Patrol officer because he wanted to apply for asylum.

10 When P.A. was taken into detention he was interrogated by officers who
11 attempted to convince him to sign a voluntary departure form. P.A. resisted and
insisted that he wanted to apply for asylum.

12 After P.A. was detained in South Texas for three days he was transferred to a
13 facility in Houston for three days and was then transferred again to a processing
14 facility in Arizona, where he remained for seven days. During P.A.'s detainment
15 in Arizona, he was interrogated and coerced into making a false statement
16 regarding events that occurred in El Salvador. Due to these coerced statements,
17 P.A. was placed, and has remained in, a secure detention facility since he has been
in federal custody. P.A. did not have the assistance of either an attorney or a
guardian in any of these interrogations. Despite P.A.'s requests to speak with his
family, he was at no time allowed to contact them. In fact, P.A.'s mother did not
know P.A. was detained until he was at the processing facility in Arizona.

18 Around July 2014, P.A. was transferred into the custody of Office of Refugee
19 Resettlement. P.A. was first sent to Shenandoah Juvenile Center in Virginia on or
20 about July 11, 2014. He was then transferred to Sandy Pines Residential
21 Treatment Facility in Florida on or about October 6, 2014. On or about February
22 12, 2015, P.A. was transferred back to Shenandoah Juvenile Center in Virginia.
23 On or about May 27, 2015, he was transferred to Morrison Secure Facility in
Oregon. On or about September 14, 2015, he was transferred back to Shenandoah
24 Juvenile Center. For approximately the first twelve months of P.A.'s detainment
25 with ORR he never saw an immigration judge. On or about October 20, 2015, he
26 was transferred to Yolo County Juvenile Detention Facility in Woodland,
California. He currently remains detained at this facility.

27 From the beginning of P.A.'s detention in ORR custody, P.A.'s mother sought to
28 be reunified with her son. In 2014, P.A.'s mother, who resides in Los Angeles,
California, applied to ORR to have P.A. released to her care. She completed all
the paperwork and home studies required for reunification. She has made
significant efforts to demonstrate that she is capable of caring for her son,
including participation in joint therapy sessions with P.A. while he has been in

¹ The court takes no position on the veracity of the allegations and provides them simply for context.

1 detention, moving into a larger apartment to accommodate P.A., and working
2 with community organizations to build a support system for her and P.A. She has
3 also identified a school for P.A. to attend and secured counseling services to assist
4 him upon his release.

5 The Young Center, appointed by ORR as the child advocate for P.A.,
6 recommended P.A.'s release to his mother, as did the psychologists hired by ORR
7 to assess P.A.

8 For over 21 months, ORR failed to make any decision on P.A.'s release and kept
9 him detained in secure detention centers without any decision.

10 P.A. obtained pro bono counsel in November 2015, and P.A.'s counsel requested
11 the right to participate in the release decision, the right to present and confront
12 evidence, the right to notice of any custody review, and the right to notice of any
13 release decision. ORR never responded to P.A.'s counsel's request to present
14 evidence and never responded to P.A.'s counsel's request as to whether P.A. had
15 a right to counsel in this process.

16 In December 2015, P.A.'s counsel requested a copy of P.A.'s file with ORR.
17 After not receiving the file, P.A.'s counsel requested his ORR file again around
18 March 10, 2016. After repeated attempts to secure the ORR file, P.A.'s counsel
19 asked for intervention from Rep. Zoe Lofgren's office to obtain P.A.'s ORR file.
20 The file was finally received around April 18, 2016.

21 After repeated attempts to obtain a decision on P.A.'s reunification with his
22 mother, P.A. also sought the assistance of Rep. Zoe Lofgren's office to obtain
23 information. In April 2016, more than a year and a half after P.A.'s mother first
24 applied for his release, Respondent Carey, the ORR Director, sent P.A.'s mother
25 an undated letter denying her son's release, stating only "[y]our son poses a safety
26 risk to the community." Respondent Carey did not serve a copy of this letter on
27 either P.A. or P.A.'s counsel. P.A. was never notified, nor was his counsel, of any
28 right to present evidence or any notice of the custody decision-making process.
The letter indicated that P.A.'s mother could request reconsideration of this
decision, which she did through counsel on May 18, 2016. To date, no one from
ORR has responded to this request for reconsideration.

On February 17, 2106, P.A. filed an Application for Asylum and for Withholding
of Removal with the San Francisco Asylum Office. On April 20, 2016, P.A. had
an interview with the asylum office on his application. The interview was
conducted inside the cell block of the Yolo County Juvenile Detention Center and
lasted around 6 hours. P.A. did not receive a lunch break during the six hour
asylum interview—eating only an apple for the entire interview. The bases for his
asylum application included severe physical abuse from his father as well as
threats from and fear of retaliation by the MS-13 gang in El Salvador. P.A. fears
that the gang may retaliate against him since he gave information to Salvadoran
police regarding the gang's activities. The application still remains pending—
four months after his application was filed.

P.A. has also tried to obtain review of his custody from the Immigration Judge,
but has been denied that opportunity as well. On January 26, 2016, P.A.'s
attorneys filed a Motion for a Bond Hearing with the United States Department of
Justice Executive Office for Immigration Review in San Francisco, California,
requesting P.A. be given a bond hearing. On February 9, 2016, the Immigration

1 Judge denied P.A.’s motion for a bond hearing stating the court did not have
2 jurisdiction to make a bond determination.

3 On March 3, 2016, P.A. filed an appeal of the decision of the Immigration Judge’s
4 decision to deny a bond hearing to the Board of Immigration Appeals. On June
5 28, 2016 the BIA dismissed P.A.’s appeal.

6 P.A. has been in custody over two years and has not had any judicial review of his
7 custody. The Immigration Court and Board of Immigration Appeals have decided
8 they do not have jurisdiction to review P.A.’s custody—it is the exclusive domain
9 of ORR. Yet ORR has not given P.A. or his counsel any opportunity to present or
10 confront evidence in a custody review, any notice of a custody review, or any
11 decision relating to P.A.’s custody. The single response that has been received
12 was to P.A.’s mother in an undated letter over a year and a half after ORR
13 assumed custody over P.A.

14 ECF No. 5 (Amended Petition) at 7-11. Respondents have submitted to the court, concurrently
15 with the instant request to seal, their responsive brief and exhibits.

16 **II. Applicable Law**

17 Local Rule 141 governs requests to seal documents. E.D. Cal. L.R. 141. That rule
18 provides that documents may be sealed by order of the court upon the showing required by law.
19 L.R. 141(a). It requires the party making the request to “set forth the statutory or other authority
20 for sealing, the requested duration, the identity, by name or category, of persons to be permitted
21 access to the other documents, and all other relevant information.” L.R. 141(b).

22 The “showing required by law” referred to by our Local Rule is a high one. The court
23 operates under a strong presumption in favor of access to court records. *Ctr. for Auto Safety v.*
24 *Chrysler Group, LLC*, 809 F.3d 1092, 1096 (2016). Accordingly, a party seeking to file
25 something under seal must present “compelling reasons” supporting the request.² *Id.* The
26 compelling reasons standard requires the court to: (1) find a compelling reason supporting sealing
27 the record and (2) articulate the factual basis for the sealing the record, without relying on
28 hypothesis or conjecture. *Id.* at 1096-97. The court must conscientiously balance the competing
interests of the public and the party who wishes to keep the documents private. *Id.* at 1097.

² The court may seal materials attached to discovery motions unrelated to the merits of a case on a lesser showing than “compelling reasons”; in such a situation, a showing of “good cause” suffices. *Id.* at 1097. As the responsive brief and exhibits at issue in the instant request to seal are very much related to the merits of this action, this lesser standard is inapplicable here.

1 “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial court.’”
2 *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 599 (1978)). Some examples of
3 records for which there are compelling reasons to seal are: (1) records that could be used to
4 gratify private spite or promote public scandal; (2) records containing libelous statements; and (3)
5 records that contain business information that could be used to harm a litigant’s competitive
6 standing. *Id.*

7 **III. Analysis**

8 The request to seal filed by respondents is notably brief (a single page). Respondents
9 argue that the court should seal the entirety of their responsive brief and all 24 associated exhibits
10 because the brief and exhibits “pervasively contain sensitive personal information about
11 Petitioner P.A., who is a minor.” Respondents are concerned that the dissemination of the
12 information by its placement in the public record may compromise P.A.’s identity and “otherwise
13 be detrimental to his privacy.”

14 Petitioner agrees that thirteen of the exhibits contain detailed private information about
15 P.A. and should be sealed. However, petitioner argues that the responsive brief and remaining
16 exhibits should not be sealed, except for some redactions.

17 Having reviewed the brief and exhibits, the court agrees with the parties that exhibits B,
18 C, F, G, H, I, J, K, M, O, P, T, and U pervasively contain sensitive and private information about
19 P.A. and should be sealed. Any interest the public may have in the disclosure of these records in
20 this case is outweighed by P.A.’s interest in the privacy of his medical records, psychiatric
21 records, and behavioral history. *Battle v. Martinez*, No. 2:16-cv-0411 TLN CKD P, 2016 U.S.
22 Dist. LEXIS 105203, at *2 (E.D. Cal. Aug. 9, 2016) (granting request to seal psychiatric and
23 medical records); *Friedman v. Adams*, No. 2:13-CV-1345 JCM (CWH), 2016 U.S. Dist. LEXIS
24 101029 (D. Nev. Aug. 1, 2016) (“The need to protect sensitive medical information is a
25 compelling reason to seal records.”); *JSB v. Wheeler*, No. 3:14-CV-0436-LRH-WGC, 2015 U.S.
26 Dist. LEXIS 158650, *8-9 (D. Nev. Nov. 24, 2015) (sealing documents containing sensitive
27 information about the plaintiff, who was a minor); *A.C. v. City of Santa Clara*, No. 13-cv-03276-

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1 HSG, 2015 U.S. Dist. LEXIS 86708, at *4-6 (N.D. Cal. July 2, 2015) (finding compelling reasons
2 justified sealing of medical records and juvenile court records).

3 The court agrees with petitioner that respondent has not provided compelling reasons for
4 sealing the entirety of the brief and remaining exhibits (A, D, E, L, N, Q, R, S, V, W, and X). As
5 petitioner argues, these records can be redacted prior to filing to protect P.A.'s personal
6 information, with unredacted copies filed under seal. Accordingly, the court will direct
7 respondents to review these records and determine appropriate redactions to protect P.A.'s
8 sensitive personal information. Respondent may then resubmit the documents to the court with a
9 narrower request to seal.

10 **IV. Conclusion and Order**

11 In accordance with the above analysis, it is hereby ORDERED that respondents' August
12 1, 2016 request to seal (ECF No. 12) is granted in part and denied in part, as follows:

- 13 1. Exhibits B, C, F, G, H, I, J, K, M, O, P, T, and U shall be filed under seal. Within
14 seven (7) days, respondents shall email these exhibits in PDF format to
15 approvedsealed@caed.uscourts.gov. The Clerk of Court shall file those exhibits under
16 seal. Access to those documents is restricted to the court, the parties, and authorized
17 court personnel.
- 18 2. The request to seal is denied with respect to the brief and exhibits A, D, E, L, N, Q, R,
19 S, V, W, and X, without prejudice. Respondent may file a new request to seal, along
20 with the brief and exhibits A, D, E, L, N, Q, R, S, V, W, and X with proposed
21 redactions, within 21 days of the date of this order.

22 So ordered.

23 DATED: September 21, 2016.


EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE