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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER
Defendant.

Case No. CR01-24-31665

OBJECTION TO DEFENDANT'S MOTION TO
UNSEAL THE IGG SUPPRESSION BRIEFING
AND HEARING

COMES NOW the State of Idaho, by and through the Latah County Prosecuting Attorney, and objects to Defendant's Motion to Unseal the IGG Suppression Briefing and Hearing ("Motion"). The State does not oppose unsealing the IGG suppression briefing and record of the hearing, but the Court should wait to unseal until after the trial to protect both parties' right to a fair trial and the ability to select a fair and impartial jury.

As Defendant notes, the "national and international attention" in this case have led to the sealing of "many pleadings," Mot. at 2, as well as most of the evidence. As Defendant also notes, sealing those records has been proper under Idaho Administrative Rule 32. *See id.* The rule

expressly contemplates sealing information “temporarily” when it is necessary to “preserve the right to a fair trial.” I.A.R. 32(i)(3)(A)(6). The State does not think it wise to change this practice so close to trial.

Defendant argues that this Court is required to unseal the IGG information pursuant to his right to a public trial. (Mot. at 2.) While his right to a public trial can extend to a suppression hearing, that right is not absolute. *See Waller v. Georgia*, 467 U.S. 39 (1984). A court can close a public hearing, including a suppression hearing, if there is an overriding interest that is likely to be prejudiced, the closure is no broader than necessary to protect that interest, and the court has considered reasonable alternatives. *See id.* at 47-48.

The need to protect the jury pool in a high-profile case where the evidence considered may not come in at a trial constitutes an overriding interest that satisfies the *Waller* test. *See, e.g., State v. Sowell*, 71 N.E.3d 1034, 1046-48 (Ohio 2016) (holding court could close suppression hearing consistent with *Waller* in a case with a “high degree of public interest . . . to avoid prejudice to the jury pool”). As the U.S. Supreme Court has recognized, “[p]ublicity concerning pretrial suppression hearings . . . poses special risks of unfairness” because it can “inform potential jurors of inculpatory information wholly inadmissible at the actual trial.” *Press-Enterprise v. Riverside County*, 478 U.S. 1, 14-15 (1986). That risk “does not automatically justify refusing public access on every motion to suppress.” *Id.* But this is not a routine motion to suppress in a routine case.

The risk of exposing jurors to information that may be deemed inadmissible is particularly strong here given the publicity this case has received and the fact that most of the evidence in the case is still under seal. In fact, the defense has not only acknowledged the uniqueness of the publicity this case has received but has affirmatively argued that publicity has warranted shielding from public view information that would be available in a routine case. *See, e.g., Stipulation for*

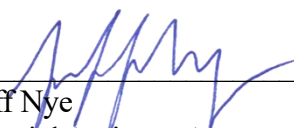
Nondissemination Order, filed 1/3/2023 (explaining a non-dissemination order was justified to “protect against adversely affecting the integrity of the case to be presented at trial” because “this case involves matters that have received a great deal of publicity”). And the unsealing of a hearing in particular increases the risk of tainting the jury pool. *See* Order Granting Defendant’s Motion to Change Venue, filed 9/6/2024 (finding, based on defense expert testimony, that “there is an uptick in [media] coverage before and after hearings”).

Unsealing the IGG information before trial is particularly problematic because, even setting aside the pending suppression issue, there are still questions about the extent to which the IGG information may be presented at trial. The State plans to raise the issue in a forthcoming motion in limine. But if the Court finds all the IGG information inadmissible, unsealing the IGG briefing and holding the hearing in public view presents too great a risk of tainting the jury pool.

Defendant suggests unsealing the IGG information will not affect jury selection because the “issues raised are legal issues.” (Mot. at 3.) But Defendant’s witness disclosure for the hearing tells a different story—a story in which the defense plans on calling multiple fact witnesses to discuss details on how IGG was used in this case.

This Court can and should, consistent with *Waller* and the Idaho Administrative Rules, keep the IGG information *temporarily* sealed until after the trial to protect the integrity of the trial.

RESPECTFULLY SUBMITTED this 17th day of January, 2025.



Jeff Nye
Special Assistant Attorney General

CERTIFICATE OF DELIVERY

I hereby certify that true and correct copies of the OBJECTION TO DEFENDANT'S MOTION TO SUPPRESS RE: GENETIC INFORMATION were served on the following in the manner indicated below:

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Dated this 17th day of January, 2025.