

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

GARRETT THEROLF,

Petitioner,

v.

SUPERIOR COURT OF THE
STATE OF CALIFORNIA,
COUNTY OF MADERA

Respondent.

MADERA COUNTY
DEPARTMENT OF SOCIAL
SERVICES

Real Party in Interest.

No. _____

RELATED APPEALS PENDING

Nos. F082698; F082701

Madera County Superior Court
Juvenile Division
Hon. Thomas L. Bender, Dept. 36
Case Nos. MJP018664; MJP018547

**PETITION FOR AN EXTRAORDINARY WRIT OF MANDATE OR
PROHIBITION OR OTHER APPROPRIATE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES
[Appendix of Exhibits Filed Under Separate Cover]**

MUNGER, TOLLES & OLSON LLP

* Jordan D. Segall (SBN 281102)

Lloyd S. Marshall (SBN 331566)

350 South Grand Avenue, 50th Floor

Los Angeles, California 90071-3426

Telephone: (213) 683-9100

Facsimile: (213) 687-3702

jordan.segall@mto.com

lloyd.marshall@mto.com

Attorneys for Petitioner Garrett Therolf

INTELLECTUAL PROPERTY, ARTS,

AND TECHNOLOGY CLINIC

UNIVERSITY OF CALIFORNIA AT

IRVINE SCHOOL OF LAW

Susan E. Seager (SBN 204824)

Jack Lerner (SBN 220661)

P.O. Box 5479

Irvine, CA 92616-5479

Telephone: (949) 824-5447

Facsimile: (949) 824-2747

sseager1.clinic@law.uci.edu

jlerner@law.uci.edu



Court of Appeal, Fifth Appellate District

Appellate Court Writ Petition

Information Sheet

Petitioner:

Respondent:

Lower Court Case #

1. Trial is set for (date):
2. The trial court order asserted to be erroneous was entered as follows:
 - a. Title and location of court (specify):
 - b. Date of each order (specify):
3. Reason for delay in filing this petition (specify):
4. The record filed or lodged in support of this petition includes a copy of the lower court:
 - a. Order
 - b. Pleadings
 - c. Motion with supporting and opposition papers
 - d. Reporter transcripts
 - e. Other (specify):
5. The following record was not filed or lodged in support of this petition:
 - a. Record (specify):
 - b. Reason (specify):
 - c. Will be filed or lodged on (date):
6. A petition concerning the subject of this petition was previously filed as follows:
 - a. Title and location of court:
 - b. Case number:
 - c. Disposition:

7. A temporary stay order is requested pending the determination of the petition, and a court reporter's transcript will not be filed or lodged with the court before the stay order is decided.
- a. Real parties in interest
 - Have received actual notice of the request for a stay order
 - Have not received actual notice of the request for a stay order
 - b. A summary of all evidence concerning the matter of this petition and in support of the stay order is set forth (include any testimony adverse to your petition)

In attachment 7b

As follows:

8. The petition seeks review of an order denying a motion to
- a. suppress evidence
 - b. set aside an information

AND

- c. defendant was arraigned on (date)
- d. the trial court motion was

Made within 60 days following the date of the arraignment.

Not made within 60 days following the date of the arraignment for the reason set forth (specify facts showing why defendant was unaware of any issues or had no opportunity to raise the issue of the motion)

In attachment 8d.

As follows:

9. This petition seeks review of an order
- a. granting or denying a motion for change of venue
 - b. denying a motion to quash service of summons
 - c. granting or denying a motion to expunge notice of lis pendens

AND

- d. written notice of the lower court order was served on (date):
- e. the lower court extended time to file this petition and a copy of the order is attached.
- f. other (specify):

10. I understand that the court must be advised of any matters affecting this petition which happen after the filing of this petition.

COURT OF APPEAL 5th APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER:
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 281102 NAME: Jordan Segall FIRM NAME: Munger, Tolles & Olson LLP STREET ADDRESS: 350 South Grand Ave, 50th Floor CITY: Los Angeles STATE: CA ZIP CODE: 90071-3426 TELEPHONE NO.: (213) 683-9100 FAX NO.: (213) 687-3702 E-MAIL ADDRESS: jordan.segall@mto.com ATTORNEY FOR (name): Garrett Therolf	SUPERIOR COURT CASE NUMBER: MJP018664; MJP018547
APPELLANT/ Garrett Therolf PETITIONER: RESPONDENT/ Madera County Department of Social Services REAL PARTY IN INTEREST:	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Garrett Therolf
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	


Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 06/29/2021

Jordan Segall

(TYPE OR PRINT NAME)



(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION TO THE PETITION.....	8
PETITION FOR AN EXTRAORDINARY WRIT OF MANDATE OR PROHIBITION OR OTHER APPROPRIATE RELIEF	14
STATEMENT OF THE CASE	14
STATEMENT OF FACTS.....	15
ABSENCE OF ADEQUATE REMEDY AT LAW	22
AUTHENTICITY OF EXHIBITS	25
PRAYER FOR RELIEF	26
VERIFICATION	28
MEMORANDUM OF POINTS & AUTHORITIES	29
I. Standard of Review	29
II. The Juvenile Court Erred in Denying Petitioner’s Requests	30
A. Section 827(a)(2) Creates a Strong “Presumption in Favor of Release” of a Deceased Child’s Juvenile Case File.....	30
B. The Juvenile Court Disregarded Section 827(a)(2)’s Presumption and Considered Impermissible Factors.....	32
C. The Juvenile Court Erred by Concluding that Section 827 Requires a Dependency Petition to Establish the Existence of a Juvenile Case File.....	32
D. The Juvenile Court Erred by Failing to Hold a Hearing	38
E. The Juvenile Court Erred by Failing to Cite Evidence or Make Factual Findings To Support Its Denial of Petitioner’s Requests	38
C. This Court Should Vacate the Orders and Issue a Published Decision Clarifying the Standards Applicable to Section 827(a)(2) Requests.....	41
CONCLUSION	43
CERTIFICATE OF COMPLIANCE	45

TABLE OF AUTHORITIES

	<u>Page</u>
STATE CASES	
<i>Continental Ins. Co. v. Superior Court</i> (1995) 32 Cal.App.4th 94	12, 28, 33
<i>In re Elijah S.</i> (2005) 125 Cal.App.4th 1532	<i>passim</i>
<i>Gabriel P. v. Suedi D.</i> (2006) 141 Cal.App.4th 850	28
<i>In re Gina S.</i> (2005) 133 Cal.App.4th 1074	24, 40
<i>J.E. v. Superior Court</i> (2014) 223 Cal.App.4th 1329	24
<i>In re Keisha T.</i> (1995) 38 Cal.App.4th 220	20, 28, 31, 32
<i>Pack v. Kings County Human Services Agency</i> (2001) 89 Cal.App.4th 821	<i>passim</i>
<i>People v. Knoller</i> (2007) 41 Cal.4th 139	28, 33, 36
STATE STATUTES	
2007 Cal. Legis. Serv. Ch. 468 (S.B. 39)	<i>passim</i>
Cal. Public Records Act	19
Code Civ. Proc. § 1086.....	22
Welf. & Inst. Code § 827.....	<i>passim</i>
Welf. & Inst. Code § 827(a)(1)	20, 31
Welf. & Inst. Code § 827(a)(2)	<i>passim</i>
Welf. & Inst. Code § 827(e).....	33, 34, 36, 37

**TABLE OF AUTHORITIES
(Continued)**

	<u>Page</u>
STATE RULES	
Cal. Rules of Court, rule 5.552.....	34, 35, 41
OTHER AUTHORITIES	
87 Ops.Cal.Atty.Gen. 72 (2004).....	33, 35

INTRODUCTION TO THE PETITION

Petitioner Garrett Therolf files this petition for an extraordinary writ, seeking reversal of two erroneous orders by the Juvenile Division of the Madera County Superior Court (the “Juvenile Court”) denying his requests for the release of the juvenile case files of two deceased minors.

Petitioner is a veteran journalist who has filed some 40 successful requests to release the juvenile case files of children who died under suspicious circumstances while under the jurisdiction of the juvenile court. He has used Welfare and Institutions Code section 827(a)(2)’s unique disclosure procedure to obtain these files, in order to explain to the public how the child welfare system failed these children.

In this case, Petitioner seeks the disclosure of the juvenile case files of T.S., a two-year-old boy whose burned remains were found in a field outside of Madera, California in 2020; and of the boy’s sister, D.S., who died suddenly in 2015 when she was only four months old. The siblings’ parents have been charged with T.S.’s murder. Petitioner seeks the two juvenile case files to report on whether the child welfare system failed in its duty to protect T.S. and D.S. from fatal abuse or neglect. Public scrutiny of these files is of particularly heightened importance because a Madera County social worker has recently been investigated for throwing away hundreds of complaints of child abuse. Release of the juvenile case files

might reveal whether this social worker discarded any reports involving the family of T.S. and D.S.

The Juvenile Court's orders below contained four significant legal errors. *First*, the Juvenile Court listed several "reason(s) for denial" of Petitioner's Requests that *cannot* be considered when adjudicating petitions seeking the juvenile case files of *deceased* children under Welfare and Institutions Code section 827(a)(2)(A)–(C). (App. 26, 30.)¹ *Second*, the court incorrectly concluded that the deceased fourth-month-old girl, D.S., had no juvenile case file because no dependency petition had been filed prior to her death. (App. 26.) *Third*, the court failed to hold a hearing before issuing its orders, as required by statute. *Fourth*, the court denied Petitioner's Requests without making any factual findings by a preponderance of the evidence, as required by law. (App. 26–27, 30–31.)

This Petition seeks to remedy these errors. Section 827(a)(2) provides that the Juvenile Court's orders "shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ" for this precise purpose. (Welf. & Inst. Code, § 827, subd. (a)(2)(F).)

¹ "App." refers to the Appendix of Exhibits filed concurrently with this Petition.

* * *

In July 2020, the burned body of a two-year-old boy, T.S., was found in a field outside Madera, California. The Madera County Department of Social Services filed a mandatory report with the State of California stating that the local child welfare services and law enforcement agencies conducted investigations and concluded that the boy died of “abuse” and “neglect” while under the care of his parents, B.S. and S.S. (App. 20.) After an investigation, T.S.’s parents were charged with the boy’s murder. (See Petitioner’s Request for Judicial Notice (“RJN”) Ex. A, p. 2.)

Five years before the couple was charged with murdering their son, their daughter, D.S., died while in their care. She was four months old. Madera County social workers investigated D.S.’s death and initiated “dependency cases” for her surviving siblings following her death. (App. 15.) After the investigation, the surviving children remained with B.S. and S.S. (RJN Ex. B, p. 2).

Petitioner, a journalist with the U.C. Berkeley Graduate School of Journalism who regularly reports on California’s child welfare system, filed two Requests for Disclosure of Juvenile Case Files (the “Requests”) on January 13, 2021, seeking disclosure of the juvenile case files of D.S. and T.S. pursuant to Welfare and Institutions Code section 827(a)(2). (App. 3–7, 9–13.) Section 827(a)(2) mandates that juvenile case files “that pertain

to a deceased child who was within the jurisdiction of the juvenile court ... shall be released to the public.” (Welf. & Inst. Code, § 827, subd. (a)(2)(A), italics added.) As the Fifth Appellate District held in *Pack v. Kings County Human Services Agency* (2001) 89 Cal.App.4th 821, 838 (*Pack*), the mandatory language of section 827(a)(2) means that the juvenile court “has no discretion and *must* release all the records of the deceased child” unless there is a specific showing that such release would be “detrimental” to a surviving child “connected” to the case file. (*Ibid.*, citing Welf. & Inst. Code, § 827, subd. (a)(2).) Under the statute, the court must find “by a preponderance of the evidence” that release of the juvenile case file “is detrimental to the safety, protection, or physical or emotional well-being of another child” before it can prevent release of the file. (*Ibid.*)

The Juvenile Court failed to properly apply section 827(a)(2) to Petitioner’s Requests. Instead, the court improperly placed the burden on Petitioner by requiring him to establish by a “preponderance of the evidence” that the records are “necessary and have substantial relevance” to the Petitioner’s “legitimate need.” (App. 26, 30.) The Juvenile Court also weighed “the policy considerations favoring confidentiality of the juvenile case file.” (App. 26, 30.) But imposing burdens on Petitioner and weighing “policy considerations favoring confidentiality” are expressly prohibited by the statute. To the contrary, petitions seeking deceased children’s files enjoy “a presumption *in favor* of the release of documents,”

and the court can *only* consider the interests of living children connected to the deceased child’s case. (Welf. & Inst. Code, § 827, subd. (a)(2)(B), (C), italics added.) “[N]o weighing or balancing of the interests of those other than a [living] child is permitted.” (*Id.*, § (a)(2)(C).) By applying the wrong standard and considering factors other than detriment to a living child, the Juvenile Court “transgress[ed] the confines of the applicable principles of law” and thereby abused its discretion. (*Continental Ins. Co. v. Superior Court* (1995) 32 Cal.App.4th 94, 108 (*Continental*); see also *Pack, supra*, 89 Cal.App.4th at p. 838.)

The Juvenile Court also abused its discretion by erroneously concluding that D.S. lacked a juvenile case file, and by failing to schedule a statutorily required hearing before issuing its orders. Moreover, no substantial evidence existed to support the Juvenile Court’s finding that disclosure of the two children’s juvenile case files would be “detrimental” to the surviving children — which is not surprising, given the Juvenile Court’s failure to hold the required hearing. (See *Pack, supra*, 89 Cal.App.4th at pp. 825, 842.)

Writ review is appropriate to remedy the Juvenile Court’s errors. Orders denying requests for a deceased child’s juvenile case file “shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.” (Welf. & Inst. Code, § 827, subd. (a)(2)(F).) In enacting this provision, the Legislature recognized that “the requirement of

an expedited decision” regarding the release of juvenile case files “becomes manifest” after a child’s death, “because community reaction to the child’s death may abate with the passage of time and, without a prompt investigation and assessment, the opportunity to effect positive change may be lost.” (2007 Cal. Legis. Serv. Ch. 468 (S.B. 39).) Such is the case here. The facts surrounding the tragic deaths of D.S. and T.S. suggest that California’s child welfare system may have failed to protect these children from abuse. The public, including other children exposed to the child welfare system, have a substantial interest in a thorough investigation of the matter. Without public access to the case files that the Welfare and Institutions Code guarantees, the public will be thwarted from learning the scope of the problem and from making changes to address it. Vindicating these substantial public interests is precisely why Section 827(a)(2)(F) guarantees “immediate[]” appellate review via extraordinary writ. The Petition should be granted.

**PETITION FOR AN EXTRAORDINARY WRIT OF MANDATE
OR PROHIBITION OR OTHER APPROPRIATE RELIEF**

**TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE
JUSTICES OF THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA FOR THE FIFTH APPELLATE DISTRICT:**

Petitioner Garrett Therolf respectfully petitions this Court to issue an Extraordinary Writ of Mandate or Prohibition, or other appropriate relief, directing Respondent Superior Court of the State of California for the County of Madera to (1) vacate its February 26, 2021 Orders in No. MJP018664 and No. MJP018547 denying Garrett Therolf's Requests for Disclosure of Juvenile Case Files, and (2) to enter new and different orders granting Garrett Therolf's Requests for Disclosure of Juvenile Case Files.

That relief is the subject of related appeals from the same Orders in No. F082701 and No. F082698.

In support of the Petition, Petitioner alleges as follows:

STATEMENT OF THE CASE

1. This Petition arises from (1) a February 26, 2021 Order in Case No. MJP018664 denying Petitioner Garrett Therolf's Request for Disclosure of the Juvenile Case File of D.S., and (2) a February 26, 2021 Order in Case No. MJP018547 denying Petitioner Garrett Therolf's Request for Disclosure of the Juvenile Case File of T.S. (collectively, the "Orders"). Because both D.S. and T.S. died while "within the jurisdiction of the juvenile court," their juvenile case files must be released absent a

showing that such release would be “detrimental” to another child. (Welf. & Inst. Code, § 827, subd. (a)(2)(A).) However, the Juvenile Court below summarily denied both of Petitioner’s Requests. (App. 24–31.)

2. Petitioner Garrett Therolf is a journalist associated with the Investigative Reporting Program at the University of California, Berkeley, where he regularly reports on issues related to California’s child welfare system. Over the past fifteen years, Petitioner filed over 40 requests pursuant to section 827(a)(2) to unseal the juvenile case files of deceased children across California, all of which were granted. Petitioner filed the instant Requests as part of his ongoing effort to promote public scrutiny and informed debate regarding the circumstances surrounding the deaths of D.S. and T.S., and to promote reform to prevent future child deaths by abuse and neglect.

3. Respondent is the Superior Court of the State of California for the County of Madera.

4. The real party in interest is the Madera County Department of Social Services, which objected to Petitioner’s Requests before the Juvenile Court below.

STATEMENT OF FACTS

5. D.S. died on August 16, 2015 in Madera, California, while in the custody of her parents, B.S. and S.S. She was four months old. The Madera County Department of Social Services (the “Department”) filed

juvenile dependency petitions in the Madera County Juvenile Court with respect to D.S.'s siblings following her death. (App. 15.)

6. Five years later, D.S.'s brother T.S. was reported missing on July 15, 2020. T.S.'s burned corpse was found eight days later in a field outside of Madera, California. He was two years old. Thereafter, the Department filed a mandatory report with the California Human and Health Services Agency stating that there was a "criminal investigation" by "law enforcement" and an investigation by Madera County Child Welfare Services, and that the latter agency concluded that the boy died of "abuse" and "neglect" while in the care of his parents. (App. 20.) The Department later filed section 300 dependency petitions for T.S.'s surviving siblings. (App. 20.)

7. As widely reported in the media, T.S.'s parents, B.S. and S.S., have since been charged with T.S.'s murder, and criminal proceedings are currently pending in Madera County. (RJN Ex. A.) The full names of D.S., T.S., and their parents—and the facts surrounding D.S.'s death and the investigation by the child welfare services—have also been widely publicized. (RJN Exs. A, B.) News media has also reported that Child Welfare Services failed to remove any of D.S.'s siblings from the family home after her death in 2015, but removed three surviving children after T.S.'s death in 2020. (RJN Ex. B.)

8. Petitioner filed the instant Requests with the Juvenile Court on January 13, 2021, seeking disclosure of the juvenile case files of D.S. and T.S. pursuant to section 827(a)(2). (App. 3–7, 9–13.) The Requests asked for specific documents from within the juvenile case files, including (1) the California Law Enforcement Telecommunication system history for the children’s family; (2) the Child Abuse Central Index history for the children’s family; (3) Madera County Department of Social Services records concerning public assistance provided to the children’s family; (4) any recordings or transcripts of child abuse hotline calls concerning the children; (5) records concerning ER investigations involving the children’s family; (6) recordings of calls to the police relating to the children that were reported to the Department of Social Services; (7) any written statements or correspondence concerning such calls; (8) correspondence related to the handling of the children’s juvenile case; and (9) correspondence involving former Madera County Department of Social Services employee Sierra Lindman, to the extent it related to the children’s cases.² (App. 5–7, 11–13.)

² According to media reports, former Madera County social worker Sierra Lindman was the subject of a criminal investigation by the Madera County District Attorney for allegedly intentionally discarding hundreds of child abuse reports.

9. Petitioner’s Requests explained that such documents all fell within section 827’s broad definition of “juvenile case file,” which “covers a wide range of records,” even “where no juvenile court proceedings have been instituted and the matter is handled informally.” (App. 5, 11, quoting *In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1552.) The Requests also noted that that Petitioner had, on several occasions, received these types of documents in response to a request filed under section 827(a)(2). (App. 6, 12.)

10. The Department filed objections to the Requests (the “Objections”) on January 27, 2021. (App. 15–18, 20–23.)

11. In its Objection to the Request for D.S.’s file, the Department admitted that there could be “records pertaining to” D.S. “generated in relation to her siblings,” but asserted that D.S. did not have a juvenile case file because no dependency petition was filed prior to her death. (App. 15.)

12. By contrast, the Department did not deny that T.S. had a juvenile case file. (App. 20.) Instead, the Department admitted that Madera County Child Welfare Services and “law enforcement” conducted an investigation into the boy’s death and concluded that T.S. died of “abuse” and “neglect,” and stated that his parents were under “law enforcement investigation.” (App. 20.)

13. In both of its Objections, the Department asserted that Petitioner had not shown a “legitimate purpose” for each Request and that

releasing the documents would “serve[] only the self-interest of the petitioner, who would stand to benefit financially” from reporting on the circumstances surrounding D.S. and T.S.’s deaths. (App. 15, 20.) The Department also asserted that disclosure would “potentially jeopardize” the law enforcement murder investigation of D.S. and T.S.’s parents, would infringe on the privacy of the surviving siblings, and “could be potentially detrimental to the safety, protection, emotional and physical well-being of the surviving siblings.” (App. 15, 20.) Finally, the Department asserted that the Requests “seek[] to circumvent” the denial of a previous request filed under the California Public Records Act. (*Ibid.*³)

14. The Juvenile Court issued its Orders regarding Petitioner’s Requests on February 26, 2021, using Judicial Council Forms JV-573 and JV-574. On the JV-573 forms, the Juvenile Court checked Box 5 to indicate it would “conduct a review of the juvenile case file and any filed objections.” (App. 27, 31.) But the Juvenile Court did not check Box 4 to schedule a hearing on the Requests. (*Ibid.*)

³ The Department attached to each of its Objections a copy of Form SOC 826 (“Child Fatality/Near Fatality County Statement of Findings and Information”) that contained limited, basic information about T.S.’s death. (App. 16-17, 21-22.) The Department stated that the Form had been provided to Petitioner in response to his earlier Public Records Act request. (App. 15, 20.) The Department did not provide a Form SOC 826 report for D.S.

15. The Juvenile Court used Form JV-574 to deny Petitioner's Requests. Form JV-574 contains separate sections for adjudicating requests for the juvenile case files of *living* children and *deceased* children, pursuant to the different standards applied to such requests under Welfare and Institution Code section 827(a)(1) and (a)(2), respectively. (App. 26, 30; see also Welf. & Inst. Code, § 827, subd. (a)(1)(Q); *In re Keisha T.* (1995) 38 Cal.App.4th 220, 240-241 (*Keisha T.*)) Section 2 of Form JV-574 contains boxes for denying a petition for the following reasons: that "[a]ccess is not in the child's best interest"; that "[t]he need for access does not outweigh the privacy rights of the child and the policy considerations"; or that "[p]etitioner has not shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner." (App. 26, 30.) Section 3 contains similar reasons for granting a request. (App. 26, 30.) But although Section 2 and 3 reflect the standards that apply *only* to requests for the files of *living* children, they contain no language stating as such.

16. Section 5 on JV-574 contains the correct standard for orders denying a petition for the juvenile case file of a *deceased* child, as set forth in Welfare and Institutions Code section 827(a)(2). (App. 27, 31; see Welf. & Inst. Code, § 827, subds. (a)(2)(A)–(C).) Section 5 indicates that the court "finds by a preponderance of the evidence that access to the juvenile case file [of the deceased child] or of any portion of it is detrimental to the

safety, protection, or physical or emotional well-being of another child” connected to the juvenile case. (App. 27, 31; see Welf. & Inst. Code, § 827, subd. (a)(2)(A).) But Section 5 does not provide space for the juvenile court to make factual findings, or otherwise indicate that citation to specific factual findings is necessary.

17. On both JV-574 forms, the Juvenile Court checked boxes in Section 2 indicating that “the court denies the request” based on the following “reason(s) for denial”: (1) that “access is not in the child’s best interests” and (2) that Petitioner had “not shown by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.” (App. 26, 30.)

18. On the Form JV-574 denying the Request for T.S.’s file, the Juvenile Court checked the box in Section 2 indicating that the “need for access does not outweigh the privacy rights of the child and the policy considerations favoring confidentiality of the juvenile case file.” (App. 30.)

19. On the Form JV-574 denying the Request for D.S. file, the Juvenile Court also checked the box in Section 2 indicating that “[t]here are no responsive records,” seemingly endorsing the Department’s assertion that the lack of a dependency petition prior to D.S.’s death meant that D.S. did not have a juvenile case file. (App. 15, 26.)

20. Finally, on both JV-574 forms, the Juvenile Court also checked Box 5, indicating that “the request is denied” because the court

found “by a preponderance of the evidence that access to the juvenile case file or of any portion of it is detrimental to the safety, protection, or physical or emotional well-being” of a surviving child “connected” to D.S.’s and T.S.’s files. But the Juvenile Court did not cite any factual findings. (App. 15, 26.)

21. On April 23, 2021, Petitioner filed notices of appeal with respect to the Juvenile Court’s February 26, 2021 Orders. The appeals have been docketed as No. F082701 and No. F082698.

ABSENCE OF ADEQUATE REMEDY AT LAW

22. Other than the writ mechanism, Petitioner has no plain, speedy, and adequate remedy at law for the Juvenile Court’s improper denial of his Requests, which seek the disclosure of information that is vital to the public interest. (See Code Civ. Proc., § 1086; Welf. & Inst. Code, § 827, subd. (a)(2)(F) [an order denying a request under section 827(a)(2) is “immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ”].)

23. The Juvenile Court’s Orders “shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.” (Welf. & Inst. Code, § 827, subd. (a)(2)(F).) Such expedited review directly advances the purposes of the statute. As the preamble to the bill adding the above language to section 827(a)(2)(F) explains, “the Legislature has concluded that when a dependent child dies

within the jurisdiction of the juvenile court, the presumption of confidentiality for juvenile case files evaporates and *the requirement of an expedited decision becomes manifest*, because community reaction to the child's death may abate with the passage of time and, without a prompt investigation and assessment, the opportunity to effect positive change may be lost.” (2007 Cal. Legis. Serv. Ch. 468 (S.B. 39) [italics added].) The Legislature has concluded that disclosure of the facts surrounding a child’s death due to abuse or neglect serves the public interest. By granting an avenue for expedited appellate review, the Legislature sought to ensure such facts are disclosed in time to make a difference.

24. Expedited appellate review of the Juvenile Court’s decision here is particularly appropriate. The circumstances surrounding D.S. and T.S.’s deaths suggest that officials in Madera County may have failed to take appropriate steps to protect the children from abuse. Such a failure could be indicative of broader, systemic issues within the County and elsewhere. More children could be harmed. Indeed, the risk of abuse at home has only increased in the prior year, with widespread closures of schools and daycare centers during the pandemic. Without access to the relevant facts, however, there is no way for the public to know the extent of the immediate risk. Nor can the public know what steps might alleviate

such risk, either now or in the future. Section 827(a)(2)(F) guarantees “immediate[]” appellate review to address precisely this concern.⁴

25. The Court of Appeal regularly entertains petitions seeking writ relief to vacate an order denying a request under section 827. (See, e.g., *J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1332 [granting petition for writ of mandate].)

26. Petitioner also can appeal, and has appealed, the denial of his Requests. (See, e.g., *Pack, supra*, 89 Cal.App.4th, p. 826 [reviewing appeals by petitioners]; *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1081 fn. 7 [“An order denying a petition under section 827 is appealable as a final judgment.”].)

27. There is no statutory deadline for this Petition. (See Welf. & Inst. Code section 827, subd. (a)(2)(A).) Moreover, three months before the Juvenile Court issued its Orders, on November 19, 2020, California Governor Gavin Newsome issued an executive order requiring all non-essential businesses to shut down and all non-essential workers to stay home, which caused substantial disruption to counsel’s work schedule. The

⁴ “Providing public access to juvenile case files in cases where a child fatality occurs as a result of abuse or neglect will promote public scrutiny and an informed debate of the circumstances that led to the fatality thereby promoting the development of child protection policies, procedures, practices, and strategies *that will reduce or avoid future child deaths and injuries.*” (2007 Cal. Legis. Serv. Ch. 468 (S.B. 39), italics added.)

University of California, Irvine, Law School's Intellectual Property, Arts, and Technology Clinic did not join the case until one month ago, on May 24, 2021. The fact that this Petition is filed after 60 days should not be misinterpreted to signal a lack of urgency. A speedy decision by this Court is urgently needed because Petitioner is working on a news report about this case that he plans to publish soon. If this case is decided based on Petitioner's pending appeal, Petitioner is unlikely to receive a decision from this Court for a year or more, and the news about this case will not hold the same public interest at that later date.

AUTHENTICITY OF EXHIBITS

28. All exhibits accompanying this Petition are true copies of original documents filed in the Juvenile Court. The exhibits are contained in an Appendix of Exhibits filed under separate cover.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

1. Issue an extraordinary writ of mandate or prohibition—without a hearing or further notice, or with such further hearing or notice as the Court deems proper—directing the Juvenile Court (1) to vacate its February 26, 2021 Orders in No. MJP018664 and No. MJP018547 denying Garrett Therolf’s Requests for Disclosure of Juvenile Case Files; and (2) to enter a new and different order granting Garrett Therolf’s Requests for Disclosure of Juvenile Case Files; or

2. Issue an extraordinary writ of mandate or prohibition —without a hearing or further notice, or with such further hearing or notice as the Court deems proper—directing the Juvenile Court to (1) to vacate its February 26, 2021 Orders in No. MJP018664 and No. MJP018547 denying Garrett Therolf’s Requests for Disclosure of Juvenile Case Files; and (2) provide the record to this Court, so that this Court may thereupon conduct a review of the record under the substantial evidence standard, enter an order granting Garrett Therolf’s Requests for Disclosure of Juvenile Case Files, and publish an opinion reaffirming the correct legal standards for section 827(a)(2) petitions; or

3. Issue an alternative writ of mandate or prohibition, or an order to show cause, compelling the Juvenile Court to show cause why a writ of mandate or prohibition should not issue and, upon return of the

alternative writ or order to show cause, if any, issue an extraordinary writ as set forth above;

4. Award Petitioner the costs of this Petition; and
5. Grant such other and further relief as may be just and proper.

DATED: June 28, 2021

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP

By: /s/ Jordan D. Segall
JORDAN D. SEGALL

INTELLECTUAL PROPERTY, ARTS,
AND TECHNOLOGY CLINIC
UNIVERSITY OF CALIFORNIA AT
IRVINE SCHOOL OF LAW

By: /s/ Susan Seager
SUSAN SEAGER

VERIFICATION

I, Jordan D. Segall, declare as follows:

1. I am a partner in the firm of Munger, Tolles & Olson LLP, counsel for Petitioner Garrett Therolf in this matter. I am admitted to the bar of this Court.
2. I have read the foregoing Petition and know its contents. All facts alleged in the foregoing Petition, not otherwise supported by documents in the record submitted in support of the petition, are true to the best of my knowledge. As to facts supported by documents in the record, I am informed and believe them to be true. True and correct copies of all necessary documents filed in Madera Superior Court No. MJP018664 and Madera Superior Court No. MJP018547 are included in the Appendix of Exhibits filed herewith.

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

Executed at Pasadena, California, on this 28th day of June, 2021.

/s/ Jordan D. Segall
JORDAN D. SEGALL

MEMORANDUM OF POINTS & AUTHORITIES

I. Standard of Review

An order on a petition under Welfare and Institutions Code section 827 is reviewed for abuse of discretion. (*Keisha T.*, *supra*, 38 Cal.App.4th at p. 225.) “There is an abuse of discretion when the trial court’s action ‘transgresses the confines of the applicable principles of law.’ [Citation.]” (*Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 862; see also *Continental*, *supra*, 32 Cal.App.4th at p. 108 [“The scope of discretion always resides in the particular law being applied.”].) Thus, “an abuse of discretion arises if the trial court based its decision on impermissible factors” or “on an incorrect legal standard.” (*People v. Knoller* (2007) 41 Cal.4th 139, 156 (*Knoller*).

Under Welfare and Institutions Code section 827(a)(2)(A), a deceased child’s juvenile case file can be withheld only upon a showing of prejudice to another child. (Welf. & Inst. Code, § 827, subd. (a)(2)(A).) “The juvenile court thus does not have, given the evidence, a range of viable alternative options within the bounds of the law” when considering whether to release a deceased child’s file. (*Pack*, *supra*, 89 Cal.App.4th at p. 838.) Rather, the court has “no discretion” and “*must* release all the records of the deceased child” unless a specific showing of prejudice to another child is made. (*Ibid.*)

A finding of prejudice to another child pursuant to 827(a)(2)(A) is reviewed under the “substantial evidence” standard. (*Ibid.*) “Review on the basis of substantial evidence ensures that restrictive orders will be rigorously tested against the record facts and upheld only when there is evidence of sufficient value to justify the effective rebuttal of the presumption favoring disclosure.” (*Id.*, at p. 840.) As such, the Juvenile Court’s finding below that disclosure would be “detrimental” to the surviving children based on a “preponderance of the evidence” is reviewable under the substantial evidence standard. (*Id.*, at p. 838).

II. The Juvenile Court Erred in Denying Petitioner’s Requests

A. Section 827(a)(2) Creates a Strong “Presumption in Favor of Release” of a Deceased Child’s Juvenile Case File

Welfare and Institutions Code section 827(a)(2) mandates that juvenile case files “that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300 *shall be released* to the public pursuant to an order by the juvenile court after a petition has been filed.” (Welf. & Inst. Code, § 827, subd. (a)(2)(A), italics added.)⁵ Section 827(a)(2) thus “represents a *presumption in favor of release* of documents when a child is deceased.” (*Id.*, subd. (a)(2)(B), italics added.)

⁵ As explained above, both D.S. and T.S. were “within the jurisdiction of the juvenile court pursuant to Section 300” at the time of their deaths. (Welf. & Inst. Code, § 827, subd. (a)(2)(A); see *Elijah S.*, *supra*, 125 Cal.App.4th at pp. 1543–1545, 1546–1451.)

In enacting the provision, “the Legislature intended to significantly *increase* the public’s right of access to otherwise confidential juvenile records concerning deceased children, by creating a *presumption* in favor of the release of such records based on the premise that the child’s death had eliminated his or her legal interest in the confidentiality of such records.” (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1555 (*Elijah S.*)). At bottom, section 827(a)(2) reflects a strong public policy in favor of public access to the facts surrounding the deaths of children that may be attributable to abuse or neglect.

The law therefore treats a request for disclosure of the juvenile record of a *deceased* child in precisely the opposite manner it treats a request for disclosure of the juvenile record of a *living* child: “In contrast to the veritable presumption in favor of confidentiality that attends the juvenile records of a living child, subdivision (a)(2) reflects a veritable presumption in favor of release when the child is deceased.” (*Pack, supra*, 89 Cal.App.4th at p. 829; see also 2007 Cal. Legis. Serv. Ch. 468 (S.B. 39) [“the Legislature has concluded that when a dependent child dies within the jurisdiction of the juvenile court, the presumption of confidentiality for juvenile case files evaporates”].) “Thus, unlike records pertaining to a living dependent, which must be maintained as confidential unless some sufficient reason for disclosure is shown to exist, records pertaining to a deceased dependent *must be disclosed* unless the statutory reasons for

confidentiality are shown to exist.” (*Pack, supra*, 89 Cal.App.4th at 829, italics added.)

Indeed, the *only* permissible ground for withholding a deceased child’s file is a “showing” that releasing the file would be “detrimental to the safety, protection, or physical or emotional well-being of another child” connected to the juvenile case. (Welf. & Inst. Code, § 827, subd.

(a)(2)(A).) The burden is on the party opposing disclosure to make this showing by a preponderance of the evidence. (See *id.*, subds. (a)(2)(A)–

(B).) In the absence of such a showing, the court “has no discretion and *must* release all the records of the deceased child.” (*Pack, supra*, 89

Cal.App.4th at 829.) “[N]o weighing or balancing of the interests of those other than a child is permitted.” (Welf. & Inst. Code, § 827, subd.

(a)(2)(C).)

B. The Juvenile Court Disregarded Section 827(a)(2)’s Presumption and Considered Impermissible Factors

The Juvenile Court disregarded section 827(a)(2)’s presumption and considered factors that section 827(a)(2) expressly prohibits. In denying the Requests, the Juvenile Court completed Section 2 of Form JV-574, which is used to indicate the basis for denying a request for the juvenile case file of a *living* child under Welfare and Institution Code section 827(a)(1). (App. 26, 30; see Welf. & Inst. Code, § 827, subd. (a)(1)(Q); *Keisha T., supra*, 38 Cal.App.4th at pp. 240–241.) Because a living child’s

juvenile records are presumptively confidential, Section 827(a)(1) places the burden on the party seeking access, weighing the extent of that party's "legitimate need" against, *inter alia*, "the privacy rights of the child and the policy considerations favoring confidentiality." (App. 26, 30; see also *Pack, supra*, 89 Cal.App.4th at 829; *Keisha T., supra*, 38 Cal.App.4th at pp. 240–241.) Section 2 of Form JV-574 reflects this standard, although without indicating that this standard is restricted to requests for the files of living children. (App. 26, 30.)

Because both D.S. and T.S. are deceased, Petitioner's Requests arose under Welfare and Institutions Code section 827(a)(2). (App. 3, 9.) And, as explained above, section 827(a)(2) makes a deceased child's juvenile records presumptively public. There is no balancing test under section 827(a)(2); the records "shall" be disclosed absent a specific "showing by a preponderance of the evidence" that disclosure would be "detrimental" to another child. (Welf. & Inst. Code, § 827, subs. (a)(2)(A)–(C).)

The Juvenile Court's Orders confirm that it misapprehended the legal standard applicable to Petitioner's Requests. Under section 827(a)(2), the only permissible consideration was whether a "preponderance of the evidence" establishes that release of the requested documents "is detrimental" to the "safety, protection, or physical or emotional well-being" of a *surviving* child "connected" to the dead child's case file. (Welf. & Inst. Code, § 827, subs. (a)(2)(A)–(C).) Yet on each of the JV-574 forms for

D.S. and T.S., the Juvenile Court checked two boxes in Section 2 indicating that it was denying each Request because “access is not in the child’s best interests” and because Petitioner failed to show by a preponderance of the evidence “that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner.” (App. 26, 30.) On its Form JV-574 Order for T.S., the Juvenile Court also checked a third box indicating that it had concluded that “need for access does not outweigh the privacy rights of the child and the policy considerations favoring confidentiality of the juvenile case file.” (App. 30.)

When the Juvenile Court checked off Section 2 on its Orders, it did precisely what section 827(a)(2) prohibits: it weighed the extent of Petitioner’s “legitimate need” against the *deceased* children’s “best interests” and “the policy considerations favoring confidentiality of the juvenile case file.” (App. 26, 30; see Welf. & Inst. Code, § 827, subds. (a)(2)(A), (C) [prohibiting consideration of these factors].) Thus, by applying an incorrect legal standard and considering impermissible factors in denying Petitioner’s Requests, the Juvenile Court abused its discretion as a matter of law. (See *Continental, supra*, 32 Cal.App.4th at p. 108; *Knoller, supra*, 41 Cal.4th at p. 156.) The Orders should be vacated on that ground alone.

C. The Juvenile Court Erred by Concluding that Section 827 Requires a Dependency Petition to Establish the Existence of a Juvenile Case File

Section 827's definition of "juvenile case files" includes "a wide range of records," including files created by county child welfare agencies to investigate suspected child abuse without any court proceedings initiated. (*Elijah S.*, *supra*, 125 Cal.App.4th at p. 1552, quoting 87 Ops.Cal.Atty.Gen. 72, 75–76 (2004); Welf. & Inst. Code, § 827, subd. (e) [defining "juvenile case files"].) Here, the Department asserted that D.S. had no juvenile case file because no dependency petition was filed on her behalf. (App. 15.) The Juvenile Court appeared to endorse the Department's position, indicating in its JV-574 Order for D.S. that "[t]here are no responsive records" and adding that "no records exist." (App. 26.)

That was error. Section 827(e) uses the term "juvenile *case* file," not "juvenile *court* file," because a juvenile case file includes both records filed *in* court and records created *outside* of the court by government agencies, in some cases where court proceedings are never initiated.

Section 827(e) defines a "juvenile case file" as "a petition filed in a juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making the probation officer's report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge,

referee, or other hearing officer.” California Rule of Court 5.552(a)

similarly defines a “juvenile case file” broadly as:

(1) All documents filed in a juvenile court case; (2) Reports to the court by probation officers, social workers of child welfare services programs, and CASA volunteers; (3) Documents made available to probation officers, social workers of child welfare services programs, and CASA volunteers in preparation of reports to the court; (3) Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers, social workers of child welfare services programs, and CASA volunteers; (4) Transcripts, records, or reports related to matters *prepared* or released *by* the court, probation department, or *child welfare services program*; and (6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings.

(Cal. R. Ct. 5.552(a), italics added.)

The Court of Appeal has held that a “‘juvenile case file,’ as defined and used in section 827, includes “agency files *where no juvenile court proceedings have been instituted and the matter is handled informally.*” (*Elijah S., supra*, 125 Cal.App.4th, p. 1552, quoting 87 Ops. Cal. Atty. Gen 72, 75–76 (2004), italics added.) “A deceased child” can be “within the jurisdiction of the juvenile court and therefore has a juvenile case file without “hav[ing] been the subject of any section 332 dependency petition.” (*Id.* at p. 1544.) As such, a “juvenile case file” includes “written reports and documentation [that] are not always required to be filed directly with the juvenile court, and are *frequently under the control of the applicable county agencies rather than in the possession of the juvenile*

court.” (*Ibid.*, italics added.) Indeed, a juvenile case file “*necessarily* include[s] reports or other written statements by social workers, probation officers, child protective investigators and public agency personnel involved in investigating a suspected case of neglect or abuse concerning a child.” (*Id.* at pp. 1551–1552, italics added.)

Based on this broad definition, D.S. plainly had a juvenile case file.⁶ The Department admitted that dependency “cases were commenced with [D.S.’s] siblings” after the girl’s death and that there could be “records pertaining to [D.S.] ... that are maintained by this Court or ... [the] Department.” (App. 15.) The Department’s admission suggests there are files pertaining to D.S. created by social workers or other “personnel involved in investigating a suspected case of neglect or abuse” of D.S. after her death. (*Elijah S.*, *supra*, 125 Cal.App.4th at 1551–1552.) Such a file “necessarily” falls within section 827’s ambit. (*Ibid.*; see also App. 6–7, 12–13.) Indeed, social workers almost certainly investigated whether D.S. died of abuse or neglect as part of their investigation into whether dependency petitions should be filed in the court to remove the surviving siblings from their home. The Department’s failure to institute dependency

⁶ There is no dispute that T.S., the murdered two-year-old boy, has a juvenile case file. The Department did not deny the existence of T.S.’s juvenile case file in its Objections. (App. 20.) And the juvenile court implicitly found that T.S. has a juvenile case file because it did not check the “no responsive records” box in its order. (App. 30.)

proceedings prior to D.S.'s death cannot shield documents pertaining to D.S. from disclosure.

The Juvenile Court abused its discretion by incorrectly applying section 827(e)'s definition of a juvenile case file. (See *Knoller, supra*, 41 Cal.4th at p. 156.) All of the the requested documents are part of D.S.'s "juvenile case file" and must be released. (Welf. & Inst. Code, § 827, subds. (a)(2), (e).)

D. The Juvenile Court Erred by Failing to Hold a Hearing

The Juvenile Court also failed to comply with section 827(a)(2)'s required hearing procedures. Under section 827(a)(2)(F), if an interested party opposes a request for the release of a deceased juvenile's case file, the court "*shall* set the matter for hearing" after the opposition is filed and "*shall* render its decision within 30 days of the hearing." (Welf. & Inst. Code, § 827, subd. (a)(2)(F), italics added.) The Juvenile Court did not schedule a hearing in this case after the Department filed its Objections, much less hold one. Instead, the Juvenile Court summarily denied Petitioner's Requests without a hearing. (App. 26, 30.)

E. The Juvenile Court Erred by Failing to Cite Evidence or Make Factual Findings To Support Its Denial of Petitioner's Requests

In opposing the Requests, the Department asserted that releasing the requested documents would be "detrimental" to the surviving siblings of D.S. or T.S. (App. 15, 20). But the Department failed to cite any evidence,

let alone a “preponderance of evidence,” to support its assertion. (App. 15, 20; see Welf. & Inst. Code, § 827, subd. (a)(2)(A).) In subsequently ratifying the Department’s position, the Juvenile Court similarly failed to cite any evidence or make any factual findings. (App. 26, 30.) Without such a showing by the Department or any evidence cited in factual findings by the Juvenile Court, Petitioner’s Requests must be granted. The Juvenile Court should be ordered to release the files.

This Court has held that, in light of the strong presumption in favor of disclosure, orders denying requests under section 827(a)(2) based on supposed harm to surviving children must be reviewed under the “substantial evidence” standard and “rigorously tested against the record facts and upheld only when there is evidence of sufficient value to justify the effective rebuttal of the presumption favoring disclosure.” (*Pack, supra*, 89 Cal.App.4th at p. 838.) No such evidence was mustered by the Department or cited by the Juvenile Court below. The Department asserted in its Objections that releasing the files might harm D.S. and T.S.’s surviving siblings, but offered zero evidence to support that claim.⁷ (App.

⁷ The Department also asserted that releasing the case files might somehow “jeopardize” the investigation of T.S.’s murder. (App. 15, 20.) The Department again offered no evidence to support this conclusory claim. Even if such a concern were well-founded (which it is not), it would be irrelevant, because the statute provides that the *only* interests that may be weighed in applying section 827(a)(2) are those of *other*, surviving children. (See Welf. & Inst. Code, § 827, subd. (a)(2)(C).)

15, 20.) Nor do the Juvenile Court’s Orders cite any evidence or make any factual findings supporting a finding that any surviving children who are “directly or indirectly connected to” the requested files of D.S. or T.S. would have their “safety, protection, emotional and physical well-being” harmed by the release of D.S. and T.S.’s case files. (App. 26–27, 30–31.) Mere assertions, without evidence, are not a “showing by a preponderance of evidence.” (Welf. & Inst. Code, § 827, subd. (a)(2)(A).)

In any event, the conclusion that release of the files here would prejudice T.S. and D.S.’s surviving siblings strains credulity. It has been publicly reported that the surviving siblings have been removed from their home and that the parents have been charged with murder. (RJN Ex. A, p. 3.) Given that these key facts are already public, the release of T.S. and D.S.’s juvenile case files would not prejudice the surviving siblings. The presumption is in favor of disclosure, and neither the Department nor the juvenile court has even made a serious effort to overcome that presumption—much less actually done so. Notably, unlike in *Pack*, the lawyers for the surviving children filed *no* written objections contending that their clients’ interests would be impaired or even implicated by granting the Requests—and, because the Juvenile Court held no hearing, they made no oral objections, either. (See 89 Cal.App.4th at p. 826.)

To the extent there are legitimate concerns that releasing a juvenile case file may be “detrimental” to any surviving siblings, section 827(a)(2)

contemplates that *redaction*, rather than a complete refusal to disclose the records, is the preferred remedy. Section 827(a)(2)(A) provides that personally identifiable information of children other than the deceased should typically be redacted before the juvenile case file is disclosed. Redaction protects the privacy interests of living children implicated by the deceased child’s juvenile records, while also permitting the disclosure of the bulk of the records consistent with section 827(a)(2) presumption in favor of disclosure. For that reason, the Court of Appeal has recognized that juvenile courts should grant requests under section 827 whenever redaction is feasible. (See, e.g., *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1088 [reversing juvenile court’s denial of section 827 petition, noting that “the document could easily be redacted to remove any confidential information that does implicate [the child’s] privacy interests”].)

The Juvenile Court failed to make any findings—much less findings by a preponderance of the evidence—that redaction was infeasible in this instance. To the contrary, there are no facts suggesting that redaction here is inadequate to protect any interests of D.S. and T.S.’s surviving siblings, and the Department has not argued otherwise.

F. This Court Should Vacate the Orders and Issue a Published Decision Clarifying the Standards Applicable to Section 827(a)(2) Requests

Even if this Court is not inclined to direct the Juvenile Court to issue a new order granting Petitioner’s Requests, the Court should vacate the

Orders and conduct its own review of the evidence, as this Court did in *Pack, supra*, 89 Cal.App.4th, p. 842.

In the alternative, this Court should remand the matter for a hearing and consideration under the proper standard. (See, e.g., *In re Gina S., supra*, 133 Cal.App.4th at p. 1088 [reversing denial of section 827 petition and remanding to juvenile court for reconsideration under the proper standard].) At bottom, the Juvenile Court’s error was rooted in its misunderstanding of the legal standards that apply to Petitioner’s Requests. (See *ante* at pp. 25–27; App. 26–27, 30–31.) Such a misunderstanding may have been prevented had the Juvenile Court held a hearing as required by section 827(a)(2)(F) and permitted Petitioner to discuss what legal standards apply, and could similarly be rectified on remand. At a minimum, this Court should issue a published decision reaffirming that different standards must be used for deciding requests for disclosure of juvenile case files for deceased children compared to the files of living children, and pointing out the errors in the JV forms used by the Juvenile Court below.⁸

⁸ The Judicial Council form JV-570 for filing a request under section 827 requires all requesters, including those seeking the files of deceased children, to provide a “reason” for seeking the file, which is contrary to section 827(a)(2). Similarly, while Rule of Court 5.552 contains the legal standard for deciding requests for the juvenile case files of living children, it fails to include the different standards for requests for the files of deceased children.

* * *

“A child’s death from abuse or neglect often leads to calls for reform of the public child protection system. Without accurate and complete information about the circumstances leading to the child's death, public debate is stymied and the reforms, if adopted at all, may do little to prevent further tragedies.” (2007 Cal. Legis. Serv. Ch. 468 (S.B. 39).) Thus, “when a dependent child dies within the jurisdiction of the juvenile court, the presumption of confidentiality for juvenile case files evaporates and *the requirement of an expedited decision becomes manifest.*” (*Ibid.*) This Petition seek to vindicate that public interest. The tragic deaths of D.S. and T.S. should not go unexamined. The Petition should be granted, and the requested documents released. If this Court concludes that redactions are necessary, the records should be released with only those redactions necessary to protect the identities of the surviving siblings while allowing the maximum amount of information possible to become public.

CONCLUSION

The Court should issue a writ of mandate or prohibition directing the Juvenile Court (1) to vacate its February 26, 2021 Orders in No. MJP018664 and No. MJP018547 denying Garrett Therolf’s Requests for Disclosure of Juvenile Case Files, and (2) to enter new and different orders granting Garrett Therolf’s Requests for Disclosure of Juvenile Case Files. In the alternative, the Court should conduct its own “substantial evidence”

review of the relevant record (*Pack, supra*, 89 Cal.App.4th at p. 835), and issue its own ruling ordering the release of the requested juvenile case files due to the lack of such evidence.

DATED: June 29, 2021

Respectfully submitted,

MUNGER, TOLLES & OLSON LLP

By: /s/ Jordan D. Segall
JORDAN D. SEGALL

INTELLECTUAL PROPERTY, ARTS,
AND TECHNOLOGY CLINIC
UNIVERSITY OF CALIFORNIA AT
IRVINE SCHOOL OF LAW

By: /s/ Susan Seager
SUSAN SEAGER

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rules 8.486(a)(6) and 8.204(c) of the California Rules of Court, the enclosed “Petition for a Peremptory Writ of Mandate or Prohibition or Other Appropriate Relief and Memorandum of Points & Authorities” is produced using 13-point Roman type, and that, including footnotes, but excluding the tables, the certificate, the verification, and any supporting documents, the Petition and Memorandum together contain 8,128 words, which is fewer than the 14,000 words allowed by these rules. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: June 29, 2021

MUNGER, TOLLES & OLSON LLP

By: /s/ Jordan D. Segall
JORDAN D. SEGALL
Attorneys for Petitioner GARRETT
THEROLF

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, 27th Floor, San Francisco, California 94105.

On June 29, 2021, I served true copies of the foregoing document on the interested parties in this matter as follows:

**Superior Court of California, County of Madera
Department 36, Juvenile Division
200 South G Street
Madera, California 93637**

**Madera County Department of Social Services
720 East Yosemite Avenue
Madera, California 93637**

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 29, 2021, at San Francisco, California.

/s/ Irving Girshman