

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN SABERS
CIRCUIT COURT JUDGE

APPELLANT'S BRIEF

Jeffrey R. Beck
Beck Law, Prof. LLC
221 S. Phillips Avenue, Suite 204
Sioux Falls, SD 57104
Becklaw@outlook.com
Telephone: (605) 359-0135
ATTORNEY FOR INTERESTED
PERSONS AND APPELLANT

Sarah L. Thorne
South Dakota Attorney General's Office
1302 E. Hwy 14
Pierre, SD 57501
Telephone: (605) 773-3215
ATGService@state.sd.us
ATTORNEY FOR PLAINTIFF AND APPELLEE

Kyle Beck
Emily Herbert
Minnehaha County Public Defender's Office
413 N. Main Ave. Ste. 300
Sioux Falls, SD 57104
Telephone: (605) 367-4242
EHerbert@minnehahacounty.gov
KBeck@Minnehahacounty.gov
ATTORNEYS FOR DEFENDANT AND APPELLEE

Notice of Intent to Appeal and Appellant's Docketing Statement filed July 2, 2025.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
PRELIMINARY STATEMENT	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE LEGAL ISSUES	2
STATEMENT OF THE CASE	5
STATEMENT OF THE FACTS	5
ARGUMENT	9
1. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION OR ERRED AS A MATTER OF LAW IN DECLINING TO SEAL THE INTERESTED PARTIES’ IDENTIFYING INFORMATION FROM PUBLIC FILINGS AS VICTIMS UNDER “MARSY’S LAW” WHO HAD MADE A TIMELY INVOCATION OF THE CONSTITUTIONAL RIGHT TO REQUEST TO EXCLUDE THEIR NAMES IDENTIFYING INFORMATION FROM PUBLIC CRIMINAL COURT FILINGS.	10
2. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION OR COMMITTED ERROR WHEN IT DENIED THE INTERESTED PARTIES’ MOTION, PURSUANT TO SDCL §15-15A-13 TO SEAL OR REMOVE FROM PUBLIC DISCLOSURE THEIR NAMES OR IDENTIFYING INFORMATION FROM CRIMINAL COURT FILINGS IN WHICH THEY WERE CRIME VICTIMS WHO HAD INVOKED THEIR CONSTITUTIONAL PROTECTIONS UNDER “MARSY’S LAW”.	17
3. IF THE SUPREME COURT DETERMINES THAT MARSY’S LAW PROVIDES THE CONSTITUTIONAL PROTECTION TO PREVENT A CRIME VICTIM FROM HAVING THEIR NAME, INITIALS, OR OTHER IDENTIFYING INFORMATION FROM BEING INCLUDED IN ANY PUBLIC COURT FILING OR IF MARSY’S LAW PROVIDES THE CONSTITUTIONAL PROTECTION TO MOVE THE COURT UNDER SDCL §15-15A-13 TO SEAL OR REMOVE FROM PUBLIC DISCLOSURE THEIR NAMES OR OTHER IDENTIFYING INFORMATION FROM A COURT RECORD, WHETHER THE DECISION SHOULD APPLY PROSPECTIVELY.	20

CONCLUSION	21
CERTIFICATE OF COMPLIANCE	23
CERTIFICATE OF SERVICE AND MAILING	24

TABLE OF AUTHORITIES

STATUTES CITED:	PAGE
SDCL 15-15A-13	Passim
SDCL 15-26A-3(4)	5
CONSTITUTIONAL AMENDMENTS CITED:	PAGE
Article 6, Section 29	Passim
CASES CITED:	PAGE
<u>State v. Antuna</u> , 2024 S.D. 78, ___ NW3d ___	3, 4, 12
<u>Brendtro v. Nelson</u> , 2006 S.D. 71, 720 N.W.2d 670.	14
<u>Brady v. Maryland</u> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	12
<u>City of Tallahassee v. Florida Police Benevolent Association, Inc.</u> 375 So.3d 178 (Fla. 2023).	15
<u>Davis v. State</u> , 2011 S.D. 51, 804 N.W.2d 618.	14
<u>Doe v. Nelson</u> , 2004 S.D. 62, 680 N.W.2d 302	14
<u>Doe v. Quiring</u> , 2004 S.D. 101,686 N.W.2d 918.	15
<u>Fraternal Order of Police Sioux Falls Lodge No. 1, John Doe Officer One and John Doe Officer Two v. Minnehaha State’s Attorney’s Office and Minnehaha Clerk of Court</u> , 49 CIV 25-1679	2, 8
<u>In Re: Issuance of Summons</u> , 2018 S.D. 16, 908 N.W.2d 160.	13,14, 19
<u>LaClaire v. Bittinger</u> ,_5:23-CV-05030-CBK (D.S.D. March 18, 2024).	13
<u>Matter of an Implicated Individual I</u> , 2023 S.D. 16.	13
<u>Matter of an Implicated Individual II</u> , 2024 S.D. 61..	13
<u>National Bank of Rapid City v. McGuire</u> , 12 S.D. 226, 80 N.W. 1074 (1899).	9
<u>Siers v. Weber</u> , 2024 S.D. 51, 851 N.W.2d 731.	20

<u>South Dakota Bd. of Regents v. Meierhenry</u> , 351 N.W.2d 450 (S.D. 1984).	14
<u>State v. Waldner</u> , 2024 S.D. 67, ___ NW3d ___	13

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

PRELIMINARY STATEMENT

The Interested Persons and Appellants, Sioux Falls Police Officers Number One and Two, will be referred to as “Victim” or “Officers.” The Defendant and Appellee, Samir Albaidhani, will be referred to as “Defendant.” The Plaintiff and Appellee, State of South Dakota will be referred to as “State” or “State’s Attorney.” References to the filings will refer to the specific entry in the Clerk’s Chronological Index of the Record followed by the page number (i.e., R, 10) or those pertinent parts of the record as provided in the Appendix (i.e., App., 17). The Memorandum Decision and Order Denying Motion to Seal issued by the trial court from the June 1, 2025, hearing will be referred to as “MD” followed by the appropriate page number (i.e., MD, p.1).

JURISDICTIONAL STATEMENT

In the criminal matter captioned *State of South Dakota v. Samir Albaidhani*, 49CRI25-1679 the Interested Parties became aware that the Minnehaha County State’s

Attorney planned to file charging documents, including an arrest affidavit and Complaint, containing the names of the victim officers. The interested parties filed a Petition for Writ of Mandamus requesting redaction of the names of John Doe officers One and Two from the public filings. See *Fraternal Order of Police Sioux Falls Lodge No. 1, John Doe Officer One and John Doe Officer Two v. Minnehaha State's Attorney's Office and Minnehaha Clerk of Courts* 49CIV 25-1679. The Court entered a temporary order sealing the filings from public view and requiring redaction of the victim officers' names from future filings while the mandamus action was pending.

The mandamus action came before the court for hearing on April 25, 2025, and on May 9, 2025, Judge Bobbi Rank issued written Findings of Fact, Conclusions of Law, and Order denying the extraordinary relief of mandamus noting that the Interest Parties had an available remedy at law under SDCL §15-15A-13¹ to intervene in the underlying criminal action and denied the mandamus action. The temporary order redacting the victim officer's information was left intact to allow the Interested Parties to pursue their remedy in the criminal action. Thereafter the Interested Persons moved the trial court to Intervene, pursuant to SDCL §15-15A-13, in the criminal matter captioned *State of South Dakota v. Samir Albaidhani*, 49CRI25-1679, to seal from all current and future public filings, pursuant to Article 6, Section 29 of the South Dakota Constitution, the names and all identifying information of victim Officers John Doe One and John Doe Two. The trial court continued the temporary redaction order while the matter was pending.

¹ Judge Bobbi Rank was brought in from out-of-circuit due to the Mandamus action having named the Minnehaha County Clerk of Courts as a Party thereby causing the recusal of all judges of the Second Judicial Circuit.

A hearing on Interested Parties' Motion was held before the Honorable Susan Sabers on June 2, 2025. In a Memorandum Decision and Order Denying Motion to Seal dated June 3, 2025, the trial court denied Interested Parties' Motion to Seal but continued the redaction order for 30 days to allow for an appeal. The Interested Parties appealed the Memorandum Decision and Order and moved this Court to grant a stay of the unsealing and continue the temporary redaction order during the pendency of the appeal. The stay was granted by this Court. It is from the Memorandum Decision that Interested Parties bring this appeal as a matter of right. The Interest Parties filed a Notice of Appeal and Appellant's Docketing Statement on July 2, 2205. The South Dakota Supreme Court has jurisdiction over this appeal pursuant to SDCL 15-26A-3(4).

STATEMENT OF THE ISSUES

- 1. Whether the trial court abused its discretion or erred as a matter of law in declining to prevent inclusion of the Interested Parties identifying information from public filings as victims under "Marsy's Law" who had made a timely invocation of their constitutional rights and requested exclusion of their names or identifying information from public criminal court filings.**

The trial court erred as a matter of law in declining to prevent the Interested Parties names, initials, or identifying information be redacted or excluded from public criminal court filings.

LaClaire v. Bittinger, 5:23-CV-05030-CBK (D.S.D. March 18, 2024)

State v. Antuna, 2024 S.D. 78, ___ NW3d ___

State v. Waldner, 2024 S.D. 67, ___ NW3d ___

- 2. Whether the trial court abused its discretion or committed reversible error when it denied the Interested Parties motion, pursuant to SDCL §15-15A-13 to seal or remove from public disclosure the names or identifying information from criminal court filings in which they were crime victims who had invoked the constitutional rights under “Marsy’s Law.”**

The trial court erred as a matter of law when it determined that crime victims cannot move the court pursuant to SDCL §15-15A-13 to seal or remove from public disclosure the name or identifying information of crime victims from criminal court filings for crime victims that had invoked their constitutional rights under Marsy’s Law.

Doe v. Quiring, 2004 S.D. 101,686 N.W.2d 918.

State v. Antuna, 2024 S.D. 78, __ NW3d __

State v. Waldner, 2024 S.D. 67, __ NW3d __

- 3. If the Supreme Court determines that Marsy’s Law provides the constitutional protection to prevent a crime victim from having their name, initials, or other identifying information included in any public court filing or if Marsy’s Law provides the constitutional protection to move the court, pursuant to SDCL §15-15A-13 to seal or remove from public disclosure their names or other identifying information from a criminal court record, whether the decision should be prospective in application.**

Because this is a case of first impression, upon determining that crime victims have a constitutional right to prevent their names or any identifying

information from being included in a criminal court filing, the holding should be applied retroactively to this case and prospectively to all future instances.

Siers v. Weber, 2024 S.D. 51, 851 N.W.2d 731

Cowell v. Leapley, 458 N.W.2d 514 (S.D.1990)

STATEMENT OF THE CASE

Interested Parties are intervenors in the criminal matter captioned *State of South Dakota v. Samir Albaidhani*, 49CRI25-1679. The Interested Parties are victims of Mr. Albaidhani crimes and intervened under the authority provided in SDCL §15-15A-3 to seal the public filings that had already occurred and request redaction or removal from future filings of the victims' names or identifying information. Interested Parties argue that Marsy's Law provides them with the constitutional protection to prevent public disclosure of their names, initials, or any information that could be used to identify them. A hearing was held on the matter before the Honorable Susan Sabers on June 2, 2025. In a Memorandum Decision and Order on June 3, 2025, the trial court denied Interested Parties' Motion to Seal the public filings.

From the Memorandum Decision comes this appeal. The South Dakota Supreme Court has jurisdiction over this appeal pursuant to SDCL 15-26A-3(4) as a matter of right because the Memorandum Decision was a final order affecting a substantial right made in a special proceeding.

STATEMENT OF FACTS

John Doe Officers One and Two are not parties to the action but are interested persons as the victims of Defendant Albaidhani's alleged crime of attempted murder and aggravated assault. (R, 46). The Interested Parties are employed by the City of Sioux Falls

as police officers on the Sioux Falls Police Department (hereinafter “SFPD”). *Id.* The victim police officers are members of and represented under a collective bargaining unit which is the Fraternal Order of Police Lodge No. 1. As victims of Defendant Albaidhani’s criminal acts, the officers invoked their constitutional rights under Marsy’s Law² to prohibit release of any information, including their identities or initials, which could be used to identify them in public records maintained in the Unified Judicial System filings. (App. 6).

The details of Defendant Albaidhani’s crimes show that on April 3, 2024, Officer One and Officer Two stopped a stolen vehicle operated by Samir Yasser Albaidhani who had absconded from parole and was suspected of being armed. *Id.* When Officers One and Two attempted a traffic stop Albaidhani he fled on foot and attempted to kill the officers by shooting at them. (App. 7). Officer John Doe One was struck by Albaidhani’s gunfire. *Id.* Albaidhani eluded immediate capture at the location of the initial traffic stop and fled the scene. *Id.* The initial contact between Albaidhani and Officers One and Two occurred within the city limits of Sioux Falls, Minnehaha County, South Dakota. *Id.* Albaidhani was subsequently stopped by law enforcement officers from additional agencies near Beresford, South Dakota where he again engaged in a gun battle with law enforcement officers. *Id.* Albaidhani, although wounded during the second gun battle, was taken into custody at the time of the second altercation with law enforcement. *Id.*

Immediately after the initial attempted arrest of Albaidhani, wherein Albaidhani shot at Officers One and Two, the Officers were considered victims of Albaidhani’s crimes. (App. 8). As crime victims, Officers One and Two communicated an invocation of their

² Marsy’s Law is the generic title to rights guaranteed to crime victims under Article 6, Section 29 of the South Dakota Constitution.

constitutional rights under Marsy's Law to the investigating officers and requested anonymity to the investigating agency, the South Dakota Division of Criminal Investigation. *Id.* The Officer's Marsy's Law invocation was also communicated to the Minnehaha County State's Attorney as it was Minnehaha County that had the jurisdictional charging authority regarding the crimes. *Id.*

On April 4, 2024, Albaidhani was released from hospital following treatment for his injuries. In preparation for Albaidhani's release for custody, agents from the South Dakota Division of Criminal Investigation (hereinafter "DCI") drafted and Affidavit in Support of Arrest Warrant. (App. 7). In the Affidavit the agents provided details surrounding Albaidhani's attempted murder and assault of victim officers John Doe One and Two. In detailing the attempted murder and assault the Affiant agent listed the victim SFPD Officers by their names. *Id.* The Affidavit was present to a judicial officer and a warrant was issued for Albaidhani's arrest. *Id.* Upon issuance of the warrant, the Minnehaha County State's Attorney's Office drafted a Compliant within which the victim officers were again listed by name. *Id.*

Upon his release from medical treatment, the Minnehaha County State's Attorney took Albaidhani into custody on the warrant. *Id.* Subsequent to his arrest the Minnehaha County State's Attorney's Office filed documents with the Second Judicial Circuit Clerk of Courts. *Id.* The filed documents included the Affidavit in Support of the Warrant, Complaint, and Warrant of Arrest. *Id.* The documents filed were not redacted by the State's Attorney prior to filing and the documents contained identifying information for the victim officers. *Id.* The Clerk of Courts accepted the unredacted filings which made the documents available for public consumption. *Id.*

John Doe Officers One and Two have invoked their rights under Article 6, Section 29 of the South Dakota Constitution. (App. 8). Subpart 5 of Section 29 of Article 6 provides that crime victims have a constitutional “right . . . to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim.” *Id.* (quoting Art. 6, Sect. 29). The initial filings of the Minnehaha County State’s Attorney’s Office contained identifying information for Officer’s John Doe One and Two. *Id.* The subsequent acceptance of the filings by the Minnehaha County Clerk of Court’s Office will make the documents publicly available in violation of the officer’s constitutional protections. *Id.*

The interested persons filed submitted a request before the Court to seal the filings and prevent usage of the officer’s names or identifying information in future filings in order to request their constitutional rights remain intact. *Id.* The interested parties filed a Petition for Writ of Mandamus requesting redaction of the names of John Doe officers One and Two from the public filings. *See Fraternal Order of Police Sioux Falls Lodge No. 1, John Doe Officer One and John Doe Officer Two v. Minnehaha State's Attorney's Office and Minnehaha Clerk of Courts* 49CIV 25-1679. *Id.* The Court entered a temporary order sealing the filings from public view and requiring redaction of the victim officers’ names from future filings while the mandamus action was pending. *Id.* The interested parties consented to unredacted copies of the filings be provided to Defendant with the caveat that the unredacted copies provided to Defendant could not be disclosed. *Id.*

An action came before the Court in the mandamus actions regarding the underlying

question of whether mandamus relief is an available remedy as sought in the petition. *Id.* The Court held that mandamus relief was not an appropriate remedy due to there being an available remedy within the underlying criminal action pursuant to SDCL §15-15A-13. (App. 9).

Following the trial court's ruling on the mandamus action, the Interested Parties moved the court in the underlying criminal action, pursuant to SDCL §15-15A-13, requesting the court protect from public consumption the names, initials, or any identifying information of the victim officer's from public disclosure pursuant to their constitutional protections provided under Marsy's Law. *Id.* The specific request was that the Court grant an order directing the Minnehaha County State's Attorney's Office comport with Marsy's Law, and direct the Office to remove or redact from all current and future public filings involving Defendant Albaidhani and the victim officers any and all identifying information regarding the identities of Sioux Falls Police Department officers John Doe One and John Doe and to order the Minnehaha County Clerk of Courts, Second Judicial Circuit, to remove or redact the same identifying information contained in current filings with and to refuse or reject any future filings wherein the identifying information of Sioux Falls Police Officers John Doe One and Two is contained. *Id.* The matter came before the trial Court and a hearing was held on the Interested Parties' motion on June 1, 2025. (App. 40). In a Memorandum Decision issued June 2, 2025, the trial court denied Interested Parties' motion. *Id.* It is from the Memorandum Decision that this appeal was taken.

ARGUMENT

The primary questions presented before the Court in this appeal are questions that have not been addressed by the Court on prior occasions. The lack of prior interpretation

or a case bearing directly on the question makes this a case of first impression. *First National Bank of Rapid City v. McGuire*, 12 SD 226, 232, 80 N.W. 1074 (1899). The questions derive from Article 6, Section 29 of the South Dakota Constitution, which when enacted by the voters of South Dakota in 2017, was commonly referred to as “Marsy’s Law.” Marsy’s Law or a derivative thereof has been enacted in 12 states. (M.D. 6). The crux behind Marsy’s Law was to provide crime victims with a set of constitutional rights that could protect them. *See* Article 6, §29 South Dakota Const. (App. 51). Marsy’s Law was oft referred to as the crime victim’s bill of rights which was not dissimilar to “Bill of Rights”³ which provides criminal suspects with a series of rights. Not only has this Court not addressed or been presented with many questions under Marsy’s Law, nor have the other states that have the similar constitutional construct. The questions presented in this instance to the trial court, and now requiring final review by the Court, are those which have not been previously addressed. Appellant argues that the trial court’s analysis of the questions presented was incorrect as a matter of law and should be reversed.

1. Whether the trial court abused its discretion or erred as a matter of law in declining to prevent inclusion of the Interested Parties identifying information from public filings as victims under “Marsy’s Law” who had made a

³ The Bill of Rights refers to the first 10 amendments to the United States Constitution; the most of which are mirrored and adopted in individual state constitutions in one form or another. Rights provided to under the Bill of Rights that are of particular importance to criminal defendants include the following amendment; Fourth (pertaining to search and seizure), Fifth (right to jury trial, grand jury, and self-incrimination), Sixth (right to public trial, jury trial, subpoena power, and confrontation clause), and the Eighth (right to bail, and right against cruel and usual punishment).

timely invocation of their constitutional rights and requested exclusion of their names or identifying information from public criminal court filings?

The trial court committed reversible error when it held that the Interested Parties did not have the ability as crime victims to have their names or other identifying information that could be used to locate the Interested Parties withheld from public criminal court filings. The Interested Parties' ability to prevent disclosure of any information that could be used to locate, intimidate, or harass the victims or their families is a right guaranteed to all citizens under the South Dakota Constitution. Art. 6, Sect. 29(5), SD Const. The request in this case was that the if included in public filings any name or identifying information that could used to locate, intimidate or harass the victim officers not be included in criminal court filings that were publicly accessible. In 2017 the South Dakota voters passed Article 6, Section 29 to the South Dakota Constitution with the enacted amendment referred to as Marsy's Law. The constitutional amendment detailed and guaranteed a series of rights to crime victims. The pertinent subsections of Marsy's Law at issue here are:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

A key in the constitutional protection is the victim the right to protect any information that could be used to locate, intimidate, or harass the victim. It is without equivocation that naming the victim officers in the court filings will provide information

that could be used to locate, intimidate, or harass the victim officers or their families. The officers have requested their names or any identifying information, including use of their initials, not be included for release in the publicly available court documents. Inclusion of the officer's information in the public filings should be prohibited to protect the victim officer's constitutional rights.

It should be noted that request of the victim officers in this case was only for the names, initials, or identifying information to not be included in the public filings or redacted from the public filings. (R, 45). Based on the victim's request the trial court sealed unredacted copies of the court filings that could contain the victim's names or identifying information from public view but made unredacted copies available to the Defendant. *Id.* Any argument by Defendant that keeping the victim information from the public filings somehow infringes on Defendant's right to confront a witness is without merit as the only restriction placed on Defendant or Defendant's counsel was that neither could release the victim's information.

The trial noted that if Marsy's Law were to be interpreted that prevent disclosure of victim's name that a balancing test would need to be performed. (M.D. 7-8). In *State v. Antuna* the Defendant "claimed he has a constitutional right to disclosure of the records by virtue of his right of confrontation and the due process right described in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).[3] Anticipating the assertion of a crime victim's right to privacy set out in Article VI, § 29 of our Constitution (Marsy's Law), Antuna articulated a hierarchical framework under which "[a]ny rights given to K.B. under Marsy's Law are subservient to Antuna's state and federal constitutional rights." 2004 S.D. 78, ¶4, ___ N.W.3d __. The *Antuna* trial court

entertained discussion on the juxtaposition of rights between a victim and defendant under the respective amendments. Based on the nature of Interested Persons request such and inquiry is unnecessary.

The need for an inquiry or balance test may be true if the request was for blanket anonymity regarding the identity of the victims, but such was not the request. The request was to prevent the names or identifying information from being included in publicly available filings. The request allowed Defendant to have unredacted filings. There was no request to hide the victim officer's identities from any discovery and Defendant would be made fully aware of the victim's identities⁴. Defendant would have all the reports and discovery documents, which would contain the victim's information, and his right of confrontation would not be infringed in any way.

In *State v. Waldner* the Court opined that a victim does not have an absolute right to privacy under Marsy's Law. 2024 S.D. 67, ¶47, __N.W.3d __. The Court discussed the because the right was not absolute that a balancing test was needed. *Id.* ¶48. But again, not balancing test is needed here because the Interested Persons are not asking for any relief that would implicate Defendant's constitutional rights. The request is only for the information to be kept confidential from the public not from the Defendant.

Marsy's Law as enacted in South Dakota has had little review by this Court and there is no case on point regarding the issues presented in this inquiry. One case where Marsy's Law was noted in South Dakota was a federal habeas proceeding in *LaClaire v.*

⁴ The victims acknowledge that should a trial be held that their names would or could become publicly available. However, that future concern is not part of the inquiry here as the request is limited to public filings. Should a trial occur the any request for identity protection would dealt with at that time.

Bittinger where the court held that Marsy's Law provided the vehicle by which a crime victim could prohibit the amount of information provided to a criminal defendant that could potentially be used to harass the victim. 5:23-CV-05030 CBK (D.S.D. March 18, 2024). In another the Court placed an affirmative obligation on certain actors regarding an invocation of rights by a crime victim. *In Re: Issuance of Summons*, 2018 S.D. 16 ¶15, 908 N.W.2d 160, 166. Other cases where Marsy's Law was mentioned but wherein no substantive discussion occurred was in both *Matter of an Implicated Individual I* and *Matter of an Implicated Individual II*. Respectively 2023 S.D. 16 and 2024 S.D. 61.

An examination of Marsy's Law as enacted begins with a review of the amendment, which is designed to put forth change. "Constitutional amendments are adopted for the purpose of making a change in the existing system and we are 'under the duty to consider the old law, the mischief, and the remedy, and interpret the constitution broadly to accomplish the manifest purpose of the amendment.'" *Doe v. Nelson* , 2004 S.D. 62, ¶ 15, 680 N.W.2d 302, 308 (quoting *South Dakota Auto. Club, Inc. v. Volk*, 305 N.W.2d 693, 697 (S.D. 1981)). One case that did examine the enactment of Mary's Law was *In re: The Matter of the Issuance of a Summons Compelling an Essential Witness To Appear and Testify in the State of Minnesota*. (2018 S.D. 16). In that case the Court opined that "[t]he object of constitutional construction is 'to give effect to the intent of the framers of the organic law and the people adopting it.'" *Davis v. State* , 2011 S.D. 51, ¶ 77, 804 N.W.2d 618, 643 (Gilbertson, C.J., concurring in result) (quoting *Doe*, 2004 S.D. 62, ¶ 12, 680 N.W.2d at 307). "A constitutional provision, like a statute, must be read giving full effect to all of its parts." *South Dakota Bd. of Regents v. Meierhenry*, 351 N.W.2d 450, 452 (S.D. 1984). "Where a constitutional provision is quite plain in its

language, we construe it according to its natural import.”” *Brendtro v. Nelson*, 2006 S.D. 71, ¶ 16, 720 N.W.2d 670, 675.

"This Court will not construe a constitutional provision to arrive at a strained, unpractical or absurd result." *In Re: Issuance of Summons*, 2018 S.D.16 ¶15, ¶18, 908 N.W.2d 160, 167. (quoting *Brendtro* , 2006 S.D. 71, ¶ 30, 720 N.W.2d at 680 (quoting *Breck v. Janklow*, 2001 S.D. 28 ¶ 12, 623 N.W.2d 449, 455)). Here there the language of the amendment should be clear. The victim has the right to prevent disclosure of “information or records that could be used to locate or harass the victim or the victim's family.” The information or records undoubtedly captures the name, initials, or identifying information of the victims.

In analyzing the plaintiff language of Marsy’s Law the trial court placed much emphasis on *City of Tallahassee v. Florida Police Benevolent Association, Inc.* which was a case where police officers asked to keep the identities from public disclosure following two separate officer involved shootings wherein the suspects were killed. 375 So.3d 178, 182 (Fla. 2023). The question addressed was whether a victim’s name qualified as “information that could be used to locate or harass the victim or the victim’s family.” *Id.* At 183. The Florida Court determined it did not. *Id.* At 184. Here Interested Parties request that this Court not recognize *City of Tallahassee* as controlling authority as the holding runs contrary to common sense, logic, and prior interpretation of “information” by this Court.

The South Dakota Supreme Court has opined that “we generally agree that the category “any identifying information” is broader than the category “name,” and therefore, the broader category encompasses such things as social security numbers,

initials, or other information that identifies a particular individual”. *Doe v. Quiring*, 2004 S.D. 101, ¶18,686 N.W.2d 918. Disclosure of a victim’s name is unequivocally providing information that could be used to locate or harass the victim. The ability to harass a victim fundamentally begins with first knowing the name of that person.

One such instance related to disclosure of an officers name, which subsequently lead to the party using the name to stalk the officer and his family, occurred recently in with another officer from the Sioux Falls Police Department. Following an officer involved shooting the officer, who was considered the assault victim, had his named released. The Father of the shooting victim armed with the name of the officer utilized the internet to determine a location where he expected the officer to be. (App. 49) The suspect went to the location with the intent to confront, harass, or intimidate the officer. *Id.* It was later learned the suspect, because he had the name of the officer, found the officer’s fiancé and located an event on her FaceBook page. The suspect planned to go their wedding rehearsal and confront the officer and his fiancé. Thankfully the suspect’s wife and others tipped off law enforcement regarding the suspect’s activities and he was arrested. *See* 49CRI24-2592. The suspect pleaded guilty to stalking and threatening a law enforcement officer or his family. *Id.* The officer and his fiancé too were successful and granted protection orders to limit the suspect’s activities. *See* 41TPO24-59 and 41TPO24-58. The entire course of conduct and nefarious activity engaged in by the suspect began because the “information” learned by the suspect, the publicly disclosed name of the officer, provided what was needed to locate the victim officer and his family.

Because the victim officers have invoked their constitutional rights, inclusion of the officer’s identifying information in the public filings should be prohibited and the

officers have a right to request the information be redacted from public view and to order the State's Attorney and the Clerk of Courts to prevent public disclosure of any information, which includes their name or initials, "that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim." All filings must not contain the names, initials, or any identifying information of the victim officers pursuant to the invocation of their constitutional rights.

2. Whether the trial court abused its discretion or committed reversible error when it denied the Interested Parties motion, pursuant to SDCL §15-15A-13 to seal or remove from public disclosure the names or identifying information from criminal court filings in which they were crimes victims who had invoked the constitutional rights under "Marsy's Law."

The trial court committed reversible error when it determined that it did not have the power to order redaction and grant the Interested Parties request, as crime victims, to have their names, initials, or other information that could be used to identify them redacted from the public court filings. Because public disclosure of the victim's names or identifying information could lead to harassment of the victims or their families, the Interested Parties should have been able, pursuant to SDCL §15-15A-13, to have the information redacted from public filings. The necessity to utilize the authority under SDCL §15-15A-13 was prompted by the victim's request to the State's Attorney, prior to any filing having occurred, to not have their names, initials, or any other identifying information included in the public filings.

It is undisputed that prior to any document regarding Defendant having been filed there was a request made by the Interested Parties, pursuant Article 6, Section 29(5), to both the South Dakota Division of Criminal Investigation and the Minnehaha State's Attorney's Office that the victim officers had invoked their protections under Marsy's Law and requested their names, initials, or any other identifying information not be included in the filings⁵. The request was to simply be listed as John Doe Officer One and John Doe Officer Two or some equivalent thereof. The Minnehaha County State's Attorney did not honor the victim officer's request and filed Application in Support for an Arrest Warrant and Complaint listing the victim officers by name. (R, 1-5). The Interested Parties initially brought a mandamus action to stop the filings but application for the writ was denied due to the available remedy in this action pursuant to SDCL §15-15A-13. (App. 17)⁶.

In deciding the request to redact or seal the public filings the trial court determined it did not have the ability to "force" the State to redact their filings as that was

⁵ Article 6, Section 29 specifically provides that "[t]he victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right." Here the victim's rights were asserted and communicated through their retained attorney.

⁶ The Complaint was filed by the State after 5 p.m. and a 'courtesy call' was provided to the victims regarding the filings and fact their names were included and to inform them that once the filings were accepted by the Minnehaha County Clerk of Courts the following morning their identities would become public. In response the Interested Parties commenced a mandamus action, 49CIV25-1679, to prevent the filings from becoming public. It was from the mandamus action that the initial sealing of the filings occurred in this file pending hearing on the mandamus action. After the mandamus was dismissed the trial court entered an order continuing to seal the unredacted criminal filings. The seal order has been extended and now remains in effect by this Court's order during the pendency of this appeal.

not a power granted to the court under South Dakota Law. (M.D., 8). The holding appears to run contrary to SDCL §15-15A-13 which specifically provides that “[a] request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court’s own motion.” The relief available for the victim officers in SDCL §15-15A-13 provides that “[t]he court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-13..” And when deciding how to “[limit] the manner of access, the court will use the least restrictive means that achieves the purposes of this access rule and the needs of the requestor.” Here the victim officers requested their names, initials, or any information that could be used to identify them be prohibited from publicly accessible records or from disclosure by the Defendant. To grant the victim’s request the trial court needed to order the redactions. Again, the request to the order the redaction was made to the court because the State would not honor the request prior to filing.

“Article VI, § 29 states that a victim may assert and seek enforcement of these rights “in any trial or appellate court, or before any other authority with jurisdiction over the case” (Emphasis added.)” *In Re: Issuance of Summons*, 2018 SD 16 ¶15, 908 N.W.2d 160, 166. “This right, along with nearly all the rights listed in Article VI, § 29, appears to place some affirmative obligations on law enforcement, prosecutors, state and local corrections, and the courts in South Dakota.” *Id* 17, 167. Here, a request to the prosecutor, made prior to any filing having occurred, was for the victim’s information not to be included in the public filing. An affirmative obligation existed on part of the

prosecutor to protect the constitutional rights invoked by the victims and that obligation was not upheld. The filing should have occurred without the victim information which would have prevented the victim from having to move the court to have their rights enforced.

The presence in a record of sealed records or redacted records and not uncommon and the court often orders a party to redact information or order certain documents to be filed under seal. Based on the timing and unique circumstances here there were both redacted documents and unredacted documents. When the Interested Parties made their initial request to the trial court to have their information redacted from public filings, the Interested Parties conceded that an unredacted version of the filings be provided to Defendant Albaidhani with the caveat that Albaidhani or his counsel could not release the unredacted versions for public consumption. (M.D. 2). The victim's request to redact only from public filings their victim identity or identifying information was done to not prejudice the Defendant in any way or trigger a constitutional battle between the Victim's rights and Defendant's rights.

3. If the Supreme Court determines that Marsy's Law provides the constitutional protection to prevent a crime victim from having their name, initials, or other identifying information included in any public court filing or if Marsy's Law provides the constitutional protection to move the court, pursuant to SDCL §15-15A-13 to seal or remove from public disclosure their names or other identifying information from a criminal court record, whether the decision should be prospective in application.

Upon a determination by this Court that Marsy's Law provides the constitutional protection to have their name, initials, or other identifying information withheld from public filings, the rule should be given retroactive application in this case and prospective application to all future cases. Interested Parties under the "analysis of whether the decision in a particular case is given retroactive effect begins with a determination of whether the decision issues a "new rule" of constitutional law, or whether the case simply restates an "old rule." If the decision simply restates an old rule, the rule should be applied retroactively". *Siers v. Weber*, 2024 S.D. 51, ¶7, 851 N.W.2d 731 (quoting *Cowell v. Leapley*, 458 N.W.2d 514, 518 (S.D.1990)). As a case of first impression regarding interpretation of the specific protections under Article 6, Section 29 a holding on behalf the Interested Parties would be a "new rule."

Retroactive application and the benefit of the new rule should be provided to Interested Parties due to the current order in effect that has prevented disclosure of the victim officer's names or identifying information. The Interested Parties should get the benefit of the new rule.

A prospective application is best suited for future cases due the fact that going back and removing information from cases that have already become public would be impractical as the information in those cases, unlike the case before the Court, has already been made publicly available⁷. The disclosure has already occurred.

CONCLUSION

⁷ In this case an Order sealing from public view any filings that contain the name or identity of John Doe Officers One and Two. The order was initially granted to allow the mandamus action to be heard in the civil action; it was extended to allow the Motion to be heard in the underlying criminal action; and, it remains in placed during the pendency of this appeal by grant of this Court.

In consideration of the constitutional protections guaranteed a crime victim under Article 29 of the South Dakota Constitution, the trial court abused its discretion or erred as a matter of law in holding that a crime victim could not request that their names, initials, or other identifying information be prevented from inclusion or redacted from public filings and the trial court holding should be reversed. Additionally, this Court should hold that the rule allowing a crime victim to keep their names, initial, or identifying information from public consumption should be applied retroactively.

REQUEST FOR ORAL ARGUMENT

The Interest Parties request oral argument on the matters contained herein.

Respectfully submitted this 11th day of September, 2025.

/s/ Jeffrey R. Beck
Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL §15-26A-66(b) using Times New Roman typeface in 12-point type. Appellant's Brief contains 5,806 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 11th day of September, 2025.

/s/ Jeffrey R. Beck
Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

CERTIFICATE OF MAILING AND ELECTRONIC FILING

The undersigned attorney hereby certifies that on the 11th day of September, 2025 a true and correct copy of the above Appellant's Brief, submitted on behalf of Interested Parties, served on Appellee's via electronic file and serve upon the following:

Counsel for Defendant/Appellee

Kylie Beck at kbeck@minnehahacounty.gov
Emily Herbert at eherb@minnehahacounty.gov

Counsel for State of South Dakota/Appellee

Sarah Thorne at ATGService@ujs.state.sd.us

And the electronic original of Appellant's Brief was emailed to the Clerk of the South Dakota Supreme Court at SCCLerkBriefs@ujs.state.sd.us, and two correct copies of the brief were mailed to the same at:

Clerk of the South Dakota Supreme Court
500 East Capitol Avenue
Pierre, SD 57501-5070

/s/ Jeffrey R. Beck
Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interest Parties

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN SABERS
CIRCUIT COURT JUDGE

TABLE OF CONTENTS TO APPELLANT'S APPENDIX

Jeffrey R. Beck
Beck Law, Prof. LLC
221 S. Phillips Avenue, Suite 204
Sioux Falls, SD 57104
Becklaw@outlook.com
Telephone: (605) 359-0135
ATTORNEY FOR INTERESTED PERSONS AND
APPELLANT

Sarah L. Thorne
South Dakota Attorney General's Office
1302 E. Hwy 14
Pierre, SD 57501
Telephone: (605) 773-3215
ATGService@state.sd.us
ATTORNEY FOR PLAINTIFF AND APPELLEE

Kylie Beck
Emily Herbert
Minnehaha County Public Defender's Office
413 N. Main Ave. Ste. 300
Sioux Falls, SD 57104
Telephone: (605) 367-4242
EHerbert@minnehahacounty.gov
KBeck@Minnehahacounty.gov
ATTORNEYS FOR DEFENDANT AND APPELLEE

Notice of Intent to Appeal and Appellant's Docketing Statement filed July 2, 2025.

TABLE OF CONTENTS

1.	4/4/2025	Copy of Email(s) Regarding Warrant	APP.001
2.	4/7/2025	Copy of Email(s): From Judge Sogn re: Redaction of Affidavit and Complaint	APP.002
3.	5/7/2025	Motion: Motion to Seal	APP.005
4.	5/7/2025	Brief: Interested parties brief in support of Motion to Seal	APP.006
5.	5/9/2025	Findings of Fact and Conclusions of Law and Order	APP.017
6.	5/13/2025	Order: Re: Redactions and Sealing Originals	APP.024
7.	5/28/2025	Brief: Objection to Interested person's Motion to Seal	APP.025
8.	6/3/2025	Memorandum Decision: and Order Denying Motion to Seal	APP.040
9.	4/11/2024	Affidavit in Support of Arrest Warrant	APP.49
10		South Dakota Constitution, Article 6, Section 29.	APP.051
11		SDCL: § 15-15A-13	APP.053

CERTIFICATE OF SERVICE AND ELECTRONIC FILING

The undersigned attorney hereby certifies that on the 15th day of September, 2025 a true and correct copy of the above Table of Contents to Appellant's Index, submitted on behalf of Interested Parties, served on Appellee's via electronic file and serve upon the following:

Counsel for Defendant/Appellee

Kylie Beck at kbeck@minnehahacounty.gov
Emily Herbert at eh Herbert@minnehahacounty.gov

Counsel for State of South Dakota/Appellee

Sarah Thorne at ATGService@ujs.state.sd.us

And the electronic original of Appellant's Brief was emailed to the Clerk of the South Dakota Supreme Court at SCCLerkBriefs@ujs.state.sd.us

/s/ Jeffrey R. Beck

Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interest Parties

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee
vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN SABERS
CIRCUIT COURT JUDGE

APPENDIX

Jeffrey R. Beck
Beck Law, Prof. LLC
221 S. Phillips Avenue, Suite 204
Sioux Falls, SD 57104
Becklaw@outlook.com
Telephone: (605) 359-0135
ATTORNEY FOR INTERESTED
PERSONS AND APPELLANT

Sarah L. Thorne
South Dakota Attorney General's Office
1302 E. Hwy 14
Pierre, SD 57501
Telephone: (605) 773-3215
ATGService@state.sd.us
ATTORNEY FOR PLAINTIFF AND APPELLEE

Kylie Beck
Emily Herbert
Minnehaha County Public Defender's Office
413 N. Main Ave. Ste. 300
Sioux Falls, SD 57104
Telephone: (605) 367-4242
EHerbert@minnehahacounty.gov
KBeck@Minnehahacounty.gov
ATTORNEYS FOR DEFENDANT AND APPELLEE

Notice of Intent to Appeal and Appellant's Docketing Statement filed July 2, 2025

TAB 1

Meyer, Julie

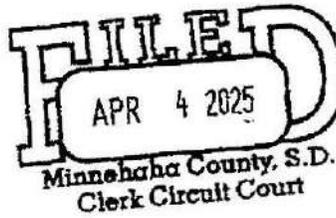
From: Looze, Dalton <dlooze@minnehahacounty.gov>
Sent: Thursday, April 3, 2025 7:01 PM
To: Meyer, Julie; Vandenhul, Julie
Subject: Albaidhani, Samir Yasser DOB 12/2/99- Arrest Warrant
Attachments: Albaidhani, samir Minnehaha Co. Warrant.pdf

Hello,

On 4/3/25 DCI agent John Basche dropped off a warrant for Mr. Albaidhani. The warrant is not in the system yet. The warrant has been manually added to Mr. Albaidhani's booking card but I wanted to make you both aware. Please let me know if you have any questions and i have attached a copy of the warrant to this email.

Thank you,

Cpl. Looze #1498
Minnehaha County Jail
605-367-4318



TAB 2

Sogn, Judge Jon

From: Haggar, Daniel <dhagggar@minnehahacounty.gov>
Sent: Friday, April 4, 2025 2:30 PM
To: Sogn, Judge Jon; Bogue, Eric; Jeff Beck (becklaw@outlook.com); Whittington, Amber; Keith.Allenstein@siouxfalls.gov
Cc: Folsom, Amy; Beck, Kylie; Thoennes, Karl; Houwman, Judge Robin
Subject: RE: [EXT] Albaidhani

Your Honor,

I will get a redacted affidavit and complaint filed. Given the circumstances and the pending writ of mandamus petition, I would ask that this email string be filed in both the criminal file and the civil file.



DANIEL K. HAGGAR
 Minnehaha County State's Attorney
 415 North Dakota Ave.
 Sioux Falls, SD 57104
 605.367.4226
 dhagggar@minnehahacounty.org

PLEASE FILE - THANKS.
 Jon Sogn

CRI 25-2551
 CIV 25-1679

From: Sogn, Judge Jon <jon.sogn@ujs.state.sd.us>
Sent: Friday, April 4, 2025 1:51 PM
To: Bogue, Eric <ebogue@minnehahacounty.gov>; Haggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>; Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
Cc: Folsom, Amy <afolsom@minnehahacounty.gov>; Beck, Kylie <kbeck@minnehahacounty.gov>; Thoennes, Karl (Court Admin) <karl.thoennes@ujs.state.sd.us>; Houwman, Robin (Judge) <Robin.Houwman@ujs.state.sd.us>
Subject: RE: Albaidhani

The end result is the same regardless of whether the clerk's office redacts the information or the SA does so, and it makes more sense to me to put that obligation on the SA.

The complaint only identifies one of the officers, so in the complaint his name should be redacted. The affidavit identifies both officers, and because the petition for writ is made on behalf of both officers, for now I believe the names of both officers should be redacted in the affidavit.

Again, I want to make it clear that my orders today are not binding on the judge who addresses the petition for writ.

Jon

From: Bogue, Eric <ebogue@minnehahacounty.gov>
Sent: Friday, April 4, 2025 1:17 PM
To: Sogn, Judge Jon <jon.sogn@ujs.state.sd.us>; Haggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>; Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov

Cc: Folsom, Amy <afolsom@minnehahacounty.gov>; Beck, Kylie <kbeck@minnehahacounty.gov>; Thoennes, Karl <Karl.Thoennes@UJS.STATE.SD.US>; Houwman, Judge Robin <Robin.Houwman@uj.s.state.sd.us>
Subject: RE: [EXT] Albaidhani

Judge Sogn:

Thank you for your response. Given your clarification, isn't it sufficient and in keeping with your prior email/order to simply have the Clerk's office redact such information without requiring new documents to be filed? If that is not sufficient, is your order that only the Complaint be redacted (as only one victim is named in the Complaint) or that the Affidavit also be redacted (as the other officer is a witness at this point)?

Eric



ERIC H. BOGUE
Chief Civil Deputy State's Attorney
415 North Dakota Ave.
Sioux Falls, SD 57104
605.367.4226
ebogue@minnehahacounty.gov

From: Sogn, Judge Jon <jon.sogn@uj.s.state.sd.us>
Sent: Friday, April 4, 2025 1:07 PM
To: Bogue, Eric <ebogue@minnehahacounty.gov>; Hagggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>; Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
Cc: Folsom, Amy <afolsom@minnehahacounty.gov>; Beck, Kylie <kbeck@minnehahacounty.gov>
Subject: RE: Albaidhani

Not at all. I am just saying that until the writ is decided by the judge assigned to the case that the names will remain redacted. In the meantime, the public is entitled to see the complaint and arrest affidavit with the officers' names redacted.

From: Bogue, Eric <ebogue@minnehahacounty.gov>
Sent: Friday, April 4, 2025 1:03 PM
To: Sogn, Judge Jon <jon.sogn@uj.s.state.sd.us>; Hagggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>; Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
Cc: Folsom, Amy <afolsom@minnehahacounty.gov>; Beck, Kylie <kbeck@minnehahacounty.gov>
Subject: RE: [EXT] Albaidhani

Judge Sogn:

With all due respect, it appears that you are granting the Writ without a hearing. The previous email/order appeared sufficient to prevent any further release until such time as we have a hearing on the Petition. While we are not unmindful of the Petitioners concerns, we do not believe that a Writ of Mandamus is the correct route or remedy in this case. We would respectfully request that all parties have the opportunity to present our respective positions to the Court. As we now understand that the "Court" will not be any of the judges in the Second Circuit, that appears additional justification to wait.

Eric



ERIC H. BOGUE
 Chief Civil Deputy State's Attorney
 415 North Dakota Ave.
 Sioux Falls, SD 57104
 605.367.4226
 ebogue@minnehahacounty.gov

From: Sogn, Judge Jon <jon.sogn@ujs.state.sd.us>
 Sent: Friday, April 4, 2025 12:48 PM
 To: Hagggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>;
 Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
 Cc: Folsom, Amy <afolsom@minnehahacounty.gov>; Bogue, Eric <ebogue@minnehahacounty.gov>; Beck, Kyfie
 <kbeck@minnehahacounty.gov>
 Subject: RE: Albaidhani

As a heads-up, I anticipate ordering SA to file by close of business today a redacted version of the complaint and the affidavit in support of arrest warrant, with the identity of the two law enforcement officers redacted. Those redacted pleadings will be available to the public.

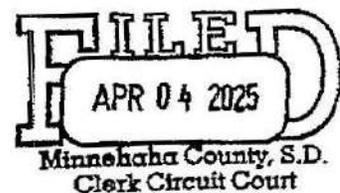
From: Hagggar, Daniel <dhagggar@minnehahacounty.gov>
 Sent: Friday, April 4, 2025 12:16 PM
 To: Sogn, Judge Jon <jon.sogn@ujs.state.sd.us>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>;
 Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
 Subject: RE: [EXT] Albaidhani CRI

Please include Eric Bogue, Amy Folsom, and me. Thank you.

From: Sogn, Judge Jon <jon.sogn@ujs.state.sd.us>
 Sent: Friday, April 4, 2025 11:52 AM
 To: Hagggar, Daniel <dhagggar@minnehahacounty.gov>; Jeff Beck (becklaw@outlook.com) <becklaw@outlook.com>;
 Whittington, Amber <awhittington@minnehahacounty.gov>; Keith.Allenstein@siouxfalls.gov
 Subject: Albaidhani CRI

There have been several emails this morning with different recipients. Please advise who from your respective offices you want included on emails regarding either the criminal case or the mandamus petition. Thank you.

Jon Sogn



TAB 3

TAB 4

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
	:SS	
COUNTY OF MINNEHAHA)	SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA,
Plaintiff,

vs.

SAMIR ALBAIDHANI,
Defendant

49CR125-2551

**INTERESTED PERSON'S BRIEF IN
SUPPORT MOTION TO SEAL**

COMES NOW Fraternal Order of Police Sioux Falls Lodge No. 1 and John Doe Officers One and Two, pursuant SDCL 15-15A-13, by and through the undersigned counsel, in support of support of their Motion to Seal, respectfully submits the following:

Factual Background

Police Officers One and Two are not parties to the action but are interested persons as the victim's of Defendant Albaidhani's alleged crimes. Officer One and Officer Two are employed by the City of Sioux Falls as police officers on the Sioux Falls Police Department (hereinafter "SFPD"). The officers are members of and represented under a collective bargaining unit. Petitioner Fraternal Order of Police is the collective bargaining unit representing SFPD police officers and sergeants. As the victims of Defendant Albaidhani's criminal acts, the officer's invoked their constitutional rights under Marsy's Law¹ to prohibit release of any information, including their identities or initials, which could be used to identify them in public records maintained in the Unified Judicial System filings.

The details of Defendant Albaidhani's crimes show that on April 3, 2024 Officer One and Officer Two stopped a stolen vehicle operated by Samir Yasser Albaidhani who had absconded

¹ Marsy's Law is the generic title to rights guaranteed to crime victims under Article 6, Section 29 of the South Dakota Constitution.

from parole and was suspected of being armed. Following the traffic stop Albaidhani fled on foot and attempted to kill the officers by shooting at them. Officer John Doe One was struck by Albaidhani's gunfire. Albaidhani eluded immediate capture at the location of the initial traffic stop and fled the scene. Albaidhani was subsequently stopped by law enforcement officers from additional agencies near Beresford, South Dakota where he again engaged in a gun battle with law enforcement officers. Albaidhani, although wounded during the second gun battle, was taken into custody at the time of the second altercation with law enforcement.

On April 4, 2024 Albaidhani was released from hospital following treatment for his injuries. In preparation for Albaidhani's release for custody, agents from the South Dakota Division of Criminal Investigation (hereinafter "DCI") drafted an Affidavit in Support of Arrest Warrant. In the Affidavit the agents provided details surrounding Albaidhani's attempted murder and assault of victim officers John Doe One and Two. In detailing the attempted murder and assault the Affiant agent listed the victim SFPD Officers by their names. The Affidavit was presented to a judicial officer and a warrant was issued for Albaidhani's arrest. Upon issuance of the warrant, the Minnehaha County State's Attorney's Office drafted a Complaint within which the victim officers were again listed by name.

Upon his release from medical treatment, the Minnehaha County State's Attorney took Albaidhani into custody on the warrant. Subsequent to his arrest the Minnehaha County State's Attorney's Office filed documents with the Second Judicial Circuit Clerk of Courts. The filed documents included the Affidavit in Support of the Warrant, Complaint, and Warrant of Arrest. The documents filed were not redacted by the State's Attorney prior to filing and the documents contained identifying information for the victim officers. The Clerk of Courts accepted the unredacted filings which made the documents available for public consumption.

John Doe Officers One and Two have invoked their rights under Article 6, Section 29 of the South Dakota Constitution. Subpart 5 of Section 29 of Article 6 provides that crime victims have a constitutional “right . . . to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim.” The initial filings of the Minnehaha County State’s Attorney’s Office contained identifying information for Officer’s John Doe One and Two. The subsequent acceptance of the filings by the Minnehaha County Clerk of Court’s Office will make the documents publicly available in violation of the officer’s constitutional protections.

The interested persons filed submitted a request before the Court to seal the filings and prevent usage of the officer’s names or identifying information in future filings in order to request their constitutional rights remain intact. The interested parties filed a Petition for Writ of Mandamus requesting redaction of the names of John Doe officers One and Two from the public filings. *See Fraternal Order of Police Sioux Falls Lodge No. 1, John Doe Officer One and John Doe Officer Two v. Minnehaha State’s Attorney’s Office and Minnehaha Clerk of Courts* 49CIV 25-1679. The Court entered a temporary order sealing the filings from public view and requiring redaction of the victim officers’ names from future fillings while the mandamus action was pending. The interested parties consented to unredacted copies of the filings be provided to Defendant with the caveat that the unredacted copies provided to Defendant could not be disclosed.

An action came before the Court in the mandamus actions regarding the underlying question of whether mandamus relief is an available remedy as sought in the petition. The Court held that mandamus relief was not an appropriate remedy due to there being an available remedy within the underlying criminal action pursuant to SDCL §15-15A-13. Now comes the interested parties with

this action in the underlying criminal action pursuant to SDCL §15-15A-13 requesting this Court protect from public consumption the names, initials, or any identifying information of the victim officer's from public disclosure pursuant to their constitutional protections provided under Marsy's Law. The specific request is that the Court grant an order directing the Minnehaha County State's Attorney's Office comport with Marsy's Law, and direct the Office to remove or redact from all current and future filings involving Defendant Albaidhani and the victim officers any and all identifying information regarding the identities of Sioux Falls Police Department officers John Doe One and John Doe and to order the Minnehaha County Clerk of Courts, Second Judicial Circuit, to remove or redact the same identifying information contained in current filings with and to refuse or reject any future filings wherein the identifying information of Sioux Falls Police Officers John Doe One and Two is contained. In support of their Motion, the interest parties submit the following:

Issue Presented

Whether mandamus is an available remedy to prevent public disclosure of the identities of crime victims who have invoked their rights guaranteed under Article 6, Section 29 of the South Dakota Constitution?

1. Crime Victims Possess the Authority to Request Their Information be Removed or Redacted from Public Records.

As stated in the opening the request by the victim officers to have their identifying information redacted from any and all current or future filings in this or any case wherein they are the alleged victim of a crime is found in SDCL §15-15A-13. SDCL §15-15A-13 specifically provides that "[a] request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion." It is without question that the victim officers are persons identified in the court record and therefore have standing to bring the motion. The victim officers were identified by

name in both the Affidavit in Support of Arrest Warrant and the Initial Complaint. They too were later identified in the Indictment.

The relief available for the victim officers in SDCL §15-15A-13 provides that “[t]he court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1..” And when deciding how to “[limit] the manner of access, the court will use the least restrictive means that achieves the purposes of this access rule and the needs of the requestor.” Here the victim officers are simply requesting their names, initials, or any information that could be use to identify them be prohibited from publicly accessible records or from disclosure by the Defendant.

2. Marsy’s Law Prohibits Release of a Crime Victim’s Identifying Information.

South Dakota voters passed the constitutional amendment which enacted Marsy’s Law which detailed and guaranteed a series of rights to crime victims. The pertinent subsections of Article 6, Section 29 at issue here are:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

A key in the protections is the victim the right to protect any information that could be used to locate or harass the victim. It is without equivocation that naming the victim officers in the court filings will provide information that could be used to locate, intimidate, or harass the victim officers or their families. The officers have requested their names or any identifying information, including

use of their initials, not be included for release in the publicly available court documents. Inclusion of the officer's information in the public filings should be prohibited to protect the victim officer's constitutional rights.

The South Dakota Supreme Court has opined that "we generally agree that the category "any identifying information" is broader than the category "name," and therefore, the broader category encompasses such things as social security numbers, initials, or other information that identifies a particular individual". *Doe v. Quiring*, 2004 S.D. 101, ¶18,686 N.W.2d 918. Because the victim officers have invoked their constitutional rights, inclusion of the officer's identifying information in the public filings should be prohibited and the officers have a right to request the information be redacted from public view and to order the State's Attorney and the Clerk of Courts to prevent public disclosure of any information, which includes their name or initials, "that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim." All filings must not contain the names, initials, or any identifying information of the victim officers pursuant to the invocation of their constitutional rights.

3. Police Officer's are Entitled to the Protection of Marsy's Law.

The constitutional protections provided crime victims as adopted under Marsy's Law do not carve out an exception that law enforcement officers working in their official capacity cannot be crime victims. Quite the opposite is true. The amendment specifically provides that "as used in this section, the term, victim, means a person against whom a crime or delinquent act is committed". The Amendment uses very simple language for a very simple proposition . . . "a person." Undoubtedly an officer is "a person" and here they were "a person against whom a crime or delinquent act was committed." Albaidhani was charged with Attempted Murder (First

Degree) of a Law Enforcement Officer, Aggravated Assault against Law Enforcement, and Commission of a Felony While Armed with a Firearm. All of which are crimes under South Dakota law. And all of which were perpetrated against the victim officers. Absent any exception, the officers are crime victims and entitled to the constitutional protections.

4. The State's Attorney has a Duty to Redact.

The Minnehaha County State's Attorney's Office ("SAO") is responsible for drafting and filing the charging documents associated with prosecution of Defendant Albaidhani. Pursuant to SDCL §16-21A-1 the SAO is a "registered user" for filing into the South Dakota Odyssey 7 electronic filing as served and maintained by the South Dakota Unified Judicial System. In addition to defining the filing system and registered users, SDCL §16-21A-1, defines the following:

16-21A-1. Definitions.

- (1) "Registered user" means an attorney or party registered with the South Dakota Odyssey7 electronic filing system.
- (2) "Electronic filing system" means the Odyssey7 file and serve system maintained by the South Dakota Unified Judicial System.
- (3) "Confidential" means any records not accessible to the public as provided by § 15-15A-7. A document marked as "confidential" means that the document will not be accessible to the public but will be accessible to court personnel and attorneys or parties in the case as permitted by applicable law or court order.
- (4) "Sealed" means any record where access is restricted by order of the court. A document marked "sealed" will not be accessible to the public but will be accessible to court personnel and attorneys or parties in the case as permitted by applicable law or court order.

Pursuant to subsection (3) by marking the documents confidential the record is still available to the Defendant, it is just not available to the public. And when SAO, as a Registered User, filed the documents with victim officers confidential, identifying information knowing that the officers had invoked their constitutional protections and requested the information not be made available for public consumption as disclosure could lead to the intimidation, harassment, or abuse that Marsy's

Law was enacted to protect, the SAO had a duty to file as confidential under seal. The process to file under seal is very simple and the SAO should have complied with the filing requirements.

SDCL §16-21A-5 details the process for the filing of confidential-sealed documents by providing:

- (1) A party electronically filing a document that is not accessible to the public in whole or in part is responsible for redaction or designating the document as confidential or sealed before transmitting it to the court. For any redacted document a sealed version of the original unredacted document should also be filed electronically.
- (2) In documents prepared for filing with the court, information that would otherwise be included in the document but required by § 15-15A-9 not to be disclosed in court documents must be separately filed on a Confidential Information Form and may be included in those documents only by reference.
- (3) It is the responsibility of the parties to seek advance approval from the court for submitting a document as sealed or confidential if that document is not already declared confidential or sealed by existing law, court rules or order. The title of a sealed or confidential document will appear on any electronic register of actions for the case.

The SAO had a duty to file as Confidential any documents in Albaidhani's criminal case, wherein the victim officers were to be named. If for some reason the SAO did not think that the victim officers' names or initials were considered confidential information, but knew the officers had invoked their constitutional guarantee to protect their information from disclosure, the SAO had a duty to get approval from the Court to file as sealed to victim officer's request. The SAO failed to do so, and the Court should grant the motion and compel the SAO to file as sealed any and all filings wherein the victim officer's are included.

5. The Clerk of Courts Shall Not Accept Filings Containing Constitutionally Protected Identifying Information.

The Odyssey electronic filing system is maintained by the South Dakota Unified Judicial System and the Clerk of Courts for the respective county manages the files submitted for filing into the system. The Minnehaha County Clerk of Courts is responsible for accepting or denying

submissions by Registered Users in Minnehaha County. Here the Minnehaha County Clerk should not have accepted the filings that contained confidential information. The documents submitted by the SAO in Albaidhani's criminal file contained confidential information and the Clerk had a duty to reject the filing. SDCL §15-15A-7 provides that records should be excluded from public view that are confidential include those detailed in state law, court rule, or case law.

As detailed in *Doe v. Quiring*, when determining what is confidential information, the concept captures "other information that identifies a particular individual". 2004 S.D. 101, ¶18,686 N.W.2d 918. The reports contained names of the officers would is unequivocally information that could be used to identify the victim officers. Because the information was confidential, once the Clerk was informed the victim officers had invoked the rights to prevent the disclosure of identifying information, the Clerk had duty to reject the filings submitted by the SAO and order they resubmit pursuant statute as detailed SDCL §16-21A-5. Because the Clerk failed to reject the filings that could have divulged the victim officers confidential information, the victim officers are asking the Court to order the Clerk review future filings in this action to determine if the filings contain any information that could lead to the a member of the public learning the identities of the victim officers and to reject the filings if such information is contained. However, should the Registered User file documents complying with the process to seal under provided in SDCL §16-21A-5, the Clerk can accept the filings as the request here is only that the filings unredacted filings be sealed from public disclosure by not prohibited from disclosure to Defendant and his counsel pursuant to an order prohibiting disclosure of the unredacted versions by Defendant or his counsel.

6. Prohibiting Defendant From Disclosing Victim Identities Does Not Infringe Upon Defendant's Right of Confrontation.

The victim officers understand Defendant too has a constitutional right involved in this matter as well, that being the ability to know his accusers under the Sixth Amendment to the United

States Constitution. However, in criminal prosecutions the State brings the action on behalf of the victim and the victim is not a party listed in the caption. Additionally, the victim officers are not asking their information not be disclosed to Defendant via the filings, they are simply asking the Court to restrict public access to the information and limit Defendant or his counsel from disclosing the victim officer's identifying information. Very simply, there is no prejudice to the Defendant by being provided the information but prohibited from publicly disclosing the victim's identity or information that could be used to identify and harass the victim officers in violation of their constitutional rights.

The least restrictive method for protecting the rights of the victims and Defendant is to order the filings be redacted from public view while simultaneously providing unredacted versions pursuant to the statute to Defendant. Requiring the filings redact the victim officer's information will provide the constitutional protections of the officers. And providing unredacted versions of the filings to Defendant would not prejudice Defendant in a manner as he will receive unredacted versions subject to a non-release order.

Conclusion

Based upon the foregoing the Court should order the Minnehaha County State's Attorney's Office to remove or redact from all current and future filings any and all identifying information regarding the identities of Sioux Falls Police Department officers John Doe One and John Doe and ordering the Minnehaha County Clerk of Courts, Second Judicial Circuit, to remove or redact the same identifying information contained in current filings with and to refuse or reject any future filings wherein the identifying information of Sioux Falls Police Officers John Doe One and Two is contained unless the SAO/Registered User has followed SDCL §16-21A-5 regarding filings containing confidential information.

Respectfully submitted this 7th day of May, 2025.

BECK LAW, PROF. LLC

/s/ Jeffrey R. Beck
Jeffrey R. Beck
221 South Phillips Ave., Ste. 204
Sioux Falls, SD 57104
P: (605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiffs, hereby certifies on this 7th day of May 2025 a true and correct copy of the Interested Parties' Brief in Support of Motion to Seal was served, via Odyssey efile and on the following parties or interested persons: Kylie Beck at kbeck@minnehahacounty.gov; Daniel Hagggar at Dhagggar@minnehahacounty.gov; Emily Herbert at eherbert@minnehahacounty.gov; Eric Bouge at ebouge@minnehahacounty.gov; Caroline Srstka at caroline.Srstka@ujs.statesd.us; and, Seth Klentz at Seth.petersonstuart@gmail.com

/s/ Jeffrey R. Beck
Jeffrey R. Beck
Beck Law, Prof. LLC
221 S. Phillips Ave. Suite 204
Sioux Falls, South Dakota 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

TAB 5

STATE OF SOUTH DAKOTA)
 : SS
 COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
 SECOND JUDICIAL CIRCUIT

<p>FRATERNAL ORDER OF POLICE SIOUX FALLS LODGE No. 1, JOHN DOE OFFICERS ONE AND TWO, Petitioners,</p> <p>vs.</p> <p>MINNEHAHA COUNTY STATE'S ATTORNEY'S OFFICE and SECOND JUDICIAL CIRCUIT CLERK OF COURTS, Respondents.</p>	<p>49CIV25-001679</p> <p>FINDINGS OF FACT AND CONCLUSION OF LAW AND ORDER</p>
--	---

The above-entitled matter came on for Hearing on the 25th day of April, 2025, before the Honorable Bobbi Rank, Circuit Court Judge, presiding. The Petitioners did not appear personally but appeared by and through their attorney Jeffrey R. Beck; the Minnehaha County State's Attorney's Office ("MCSO") appeared by and through Deputy State's Attorneys, Eric Bogue and Crystal Nesheim Johnson; the Unified Judicial System/Second Judicial Circuit Clerk of Courts ("Clerk of Courts") appeared by and through their attorney Caroline A. Srstka; and Intervenor Defendant Samir Yasser Albaidhani ("Defendant") did not appear personally but appeared by and through his attorneys Kylie Beck and Emily Herbert of the Minnehaha County Public Defender's Office. The Court considered the file in its entirety and arguments of counsel, took judicial notice of State v. Albaidhani (49CRI25-2551), and issued its oral ruling. The Court gave the parties the opportunity to submit their proposed findings, conclusions, and orders, and the time for such objections and proposals having expired, the Court hereby makes the following:

FINDINGS OF FACT

1. On April 1, 2025, the Defendant is alleged to have been in an incident in which he shot at two police officers, striking one of the officers, within the City of Sioux Falls, Minnehaha County, South Dakota. He was later apprehended in another county by the South Dakota Highway Patrol and officers from the Beresford Police Department.
2. On April 3, 2025, an Affidavit in Support of Arrest Warrant was prepared by agents from the South Dakota Division of Criminal Investigation ("DCI"). The Affidavit, Complaint with Request for Arrest Warrant, and Warrant of Arrest were presented on April 3, 2024, to Hon. Douglas E. Hoffman. Judge Hoffman issued the warrant for Albaidhani's arrest that same day.
3. On April 4, 2025, Petitioners filed their Petition for Writ of Mandamus seeking complete anonymity for John Doe Officer One and John Doe Officer Two by requiring Respondents MCSAO and the Clerk of Courts to redact any and all identifying information regarding the identities of the Officers contained in the then current filings and from all future filings.
4. On April 4, 2025, Hon. Jon Sogn issued an informal order by email directing that the Clerk of Courts designate as confidential all filings in *State v. Albaidhani*, 49CRI25-002551, until a hearing could be had on the Petition for Writ of Mandamus.
5. Later that day, Judge Sogn issued an additional Order directing that MCSAO file redacted copies of the Complaint and Affidavit.
6. The mandamus case was assigned to Judge Bobbi J. Rank, an out of circuit judge.
7. The State submitted its response to the Petition for Writ of Mandamus on April 11, 2025.

8. The Defendant moved to intervene in the mandamus action, which was granted by the Court without objection on April 25, 2025.
9. Due to the existence of an active criminal case in which more filings may be forthcoming, and hence time being of the essence, the Court scheduled the mandamus case for a hearing on April 25, 2025, on the sole issue of whether a writ of mandamus was an available remedy. The Court gave the parties the opportunity to fully brief that issue prior to hearing.
10. In its Order to Schedule Hearing, the Court issued an interim order regarding filings up to the time of the hearing, based on the previous order of Judge Sogn and stipulation by the State.
11. An unredacted copy of all documents was provided to the Defendant through counsel.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and the subject matter of the proceeding.
2. Venue of this action is proper in Minnehaha County.
3. SDCL § 21-29-1 grants this Court the authority to issue a writ of mandamus:

The writ of mandamus may be issued by the Supreme and circuit courts, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

4. SDCL § 21-29-2 further states when such writs must be issued:

The writ of mandamus must be issued in all cases *where there is not a plain, speedy, and adequate remedy, in the ordinary course of law*. It must be issued upon affidavit, upon the application of the party beneficially interested.

(emphasis added).

5. The South Dakota Supreme Court has frequently set forth the requirements for the issuance of a writ of mandamus:

"A writ of mandamus is an extraordinary remedy that will issue only when the duty to act is clear." *Krsnak v. S.D. Dep't of Env't and Nat. Res.*, 2012 S.D. 89, ¶ 9, 824 N.W.2d at 434 (quoting *Woodruff v. Bd. of Comm'rs for Hand Cnty.*, 2007 S.D. 113, ¶ 3, 741 N.W.2d 746, 747). "A writ of mandamus 'commands the fulfillment of an existing legal duty, but creates no duty itself, and' does not act 'upon . . . doubtful or unsettled law.'" *Id.* (omission in original) (quoting *Woodruff*, 2007 S.D. 113, ¶ 3, 741 N.W.2d at 747). "To prevail on a writ of mandamus or prohibition, Petitioners must show 'a clear legal right to performance of the specific duty sought to be compelled and the [respondent] must have a definite legal obligation to perform that duty.'" *Id.* (alteration in original) (quoting *Cheyenne River Sioux Tribe v. Davis*, 2012 S.D. 69, ¶ 13, 822 N.W.2d 62, 66). "The writ of mandamus must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." SDCL 21-29-2.

Bohn v. Bueno, 2024 S.D. 6, ¶13, (emphasis added).

6. SDCL § 15-15A-13 provides a method by which public access to information in court records can be prevented:

A request to prohibit public access to information in a court record may be made by any party to a case, *the individual about whom information is present in the court record*, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

(emphasis added).

7. As set forth in SDCL § 15-15A-13, such request must first be made to the court overseeing the case to which such records have been filed or will be filed.

8. Under Marsy's Law, a victim has the "right to be free from intimidation, harassment and abuse" and the "right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family." S.D. Const. Art. 6 § 29 (2)(5).

9. Marsy's Law also provides the victim with a right to privacy and "the right to be heard in any proceeding during which a right of the victim is implicated." *Id.* at § 29(6)(9).

10. Additionally, Marsy's Law contains the following procedure:

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law *in any trial...court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law* for the violation of any right and ensuring that victims' rights and interests are protected in a manner no less vigorous than the protections afforded to criminal defendants and children accused of delinquency. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

Id. (emphasis added).

11. SDCL § 15-15A-13 and Marsy's Law provide the Petitioners with a plain, speedy, and adequate remedy before the trial court, in the ordinary course of law. *See State v. Antuna*, 2024 S.D. 78; *State v. Waldner*, 2024 S.D. 67 (victims asserting rights to privacy within the criminal case).

12. The Petitioners have failed to make a proper motion under either SDCL 15-15A-13 or under Marsy's Law within the criminal case prior to filing their Petition for Writ of Mandamus in this matter.

13. Judges in criminal cases routinely address filings, discovery and confidentiality issues, and related protective orders. The State, the Defendant, and (potentially) victims all have the right to be heard in relation to these matters.
14. A writ of mandamus regarding ongoing filings in a criminal case could result in conflicting rulings between the mandamus judge and criminal case judge, which could strain judicial economy and the rights of the Defendant.
15. It must be left to the trial court within the criminal case to decide what rights and remedies the Petitioners have under SDCL 15-15A-13 and Marsy's Law.
16. The Court would note, however, that the only case cited by Petitioners on the merits of whether Marsy's Law protects officers' names was overturned on appeal. *City of Tallahassee v. Florida Police Benevolent Assn.*, 375 So.3d 178 (Fla. 2023).
17. Therefore, the duty of Respondents to act in redacting or rejecting documents is not clear.
18. The Clerk of Court is certainly not required to make complicated legal judgments regarding statutory and constitutional rights in determining what filings to accept or reject.
19. The Petitioners have failed to satisfy the requirements for the extraordinary remedy of a Writ of Mandamus, and a writ is not an available remedy.
20. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so and any Conclusion of Law that is more properly a Finding of Fact shall be deemed so.
21. The Court incorporates its oral ruling herein as if set forth in full.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition of the Fraternal Order Of Police Sioux Falls Lodge No. 1, John Doe Officers One And Two for a Writ of Mandamus is DENIED, and the case is DISMISSED.

Dated this 9th day of May, 2025.

BY THE COURT:

By: Bobbi J. Rank
Bobbi J. Rank
Circuit Court Judge

Attest
Jarrott, Brenda
Clerk/Deputy



TAB 6

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA
Plaintiff,

vs.

SAMIR YASSER ALBAIDHANI,
Defendant.

CRI 25-2551

**ORDER RE: REDACTIONS
AND SEALING OF ORIGINALS**

The Court having reviewed the pending Motion to Seal and the matter having been scheduled for hearing on June 2, 2025,

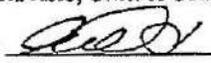
NOW, THEREFORE, IT IS HEREBY ORDERED that current unredacted filings shall remain under seal until the pending Motion is finally determined, with unredacted copies provided to the defense subject to the prior protective order that the names of the officers are not publicly disclosed;

FURTHER, IT IS ORDERED that until the pending Motion is finally determined, all future filings which include the names of Officer 1 and/or Officer 2 shall be filed with the Clerk of Court under seal and provided to the defense under the terms of the prior protective order, along with a redacted copy to be filed with the Clerk of Court for public disclosure.

Dated this 13 day of May, 2025.


Susan M. Sabers
Circuit Court Judge



ATTEST:
Karla Kolb, Clerk of Court
By , Deputy

FILED
MAY 13 2025
Minnehaha County, S.D.
Clerk Circuit Court
000024
000024

TAB 7

STATE OF SOUTH DAKOTA)
)
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT
SECOND JUDICIAL CIRCUIT

<p>STATE OF SOUTH DAKOTA, Plaintiff, vs. SAMIR ALBAIDHANI, Defendant.</p>	<p>49CRI25-2551 OBJECTION TO INTERESTED PERSON'S BRIEF RE: MOTION TO SEAL</p>
---	--

Samir Albaidhani, by and through his attorneys of record, Kylie Beck and Emily Herbert of the Minnehaha County Public Defender's Office, respectfully request this Court to deny Interested Person's Motion to Seal and to further vacate any Order sealing the names of the law enforcement officers from public view.

RELEVANT FACTUAL STATEMENT

Mr. Albaidhani was arrested and criminally charged with several felony-level offenses arising from April 1, 2025. Some of the charges against Mr. Albaidhani include allegations of attempted first-degree murder of a law enforcement officer and aggravated assault against a law enforcement officer, both charges necessitate that the law enforcement officer was acting within their official capacity at the time of the alleged crime. On April 4, 2025, an Affidavit in support of Application for Arrest Warrant and a Complaint with Request for Arrest Warrant Thereon were both filed in E-Courts and listed the names of two law enforcement officers within the caption of the pending charges. Before Defense Counsel's appointment to Mr. Albaidhani, these two filings

were removed from E-Courts. Several emails were filed into 49CRI25-2551, including one from Judge Jon Sogn instructing the Clerk to designate the two filings that included the names of the two law enforcement officers as confidential until a hearing could be had on the matter, because of the petition for writ of mandamus requested by Jeff Beck.¹ That same day, Mr. Albaidhani made his appearance on the complaint, and Judge Sogn verbally ordered that the Defendant and his counsel are not to publicly discuss the names of the law enforcement officers. No formal Order was ever filed to reflect this verbal order. Also on April 4th, 2025, 49CIV25-1679 was initiated and a Petition for Writ of Mandamus was filed and a subsequent brief by the Petitioner was filed on April 24, 2025. The Minnehaha County State's Attorney, Second Circuit Clerk of Courts, and Samir Albaidhani, as an Interested Party, all filed responses to the petition. A hearing was held in front of Judge Bobbi Rank on April 25, 2025, which was set to hear from the parties the sole issue of whether a Writ of Mandamus was the appropriate avenue for relief and was not considering the merits of the request. At that hearing, Judge Rank denied the Petitioner's request, holding that the appropriate avenue for relief would be contained within the criminal case, where the Defendant is a named party, and a proper avenue to address the Petitioner's request exists. Defendant disputes the factual statement provided by the Interested Party and asserts that the present issue deals with a procedural, legal issue, not a factual one.

¹ Email filed on 4/4/25.

ISSUES RELEVANT TO INTERESTED PARTIES MOTION TO SEAL

1. Whether Marsy's Law applies to law enforcement officers; and if it is, whether it is being applied correctly.
2. Whether Marsy's Law grants Police Officers One and Two party status in this matter.
3. Whether the relief sought by Police Officers One and Two through SDCL 15-15A-13 is an available remedy.
4. Whether sealing the identities of the law enforcement officers is appropriate under the law.
5. Whether placing a protective order upon the defendant and his attorney is lawful and appropriate.

LEGAL ANALYSIS

1. Whether Marsy's Law applies to law enforcement officers; and if Marsy's Law is applicable, whether it is being applied correctly.
 - a. Marsy's Law does not apply to law enforcement officers.

Law enforcement officers, while in their official capacity, have duties that give them power and authority that the average citizen does not have. Officers are provided vehicles, paid for by taxpayer dollars, modified to allow for an in-vehicle computer, which the average citizen's vehicle does not have, allowing officers to search information on members of the public that the average citizen does not have access to or the capabilities to do; law enforcement vehicles are also equipped with light bars and sirens – not something found in a vehicle of the average citizen – allowing the officer to pull vehicles over, whether it be for a traffic violation, or a felony stop, again, not something the average citizen can do. The duties that law enforcement officers have while in their official capacity extend beyond their ability to operate a police car and traffic stops, it reaches far beyond that. Officers are provided with a firearm to carry, that they are allowed to use, when appropriate, and at times, fatally injure someone with, and the investigation into whether that use of a firearm was justified, is not public. Law enforcement officers are mandatory reporters and by law, are required to report abuse. Ideally all citizens would report abuse, but the law does not

require that. Law enforcement officers are public servants, working a job that they have chosen to do, where dangerous situations may present themselves. Law enforcement officers are paid with taxpayer dollars. Law enforcement officers take an oath to serve and protect. Law enforcement must be held accountable, whether they are patrolling the streets, or named as an alleged victim of a crime. In allowing the name of a law enforcement officer, who is involved in a criminal case, for actions taken while in their official capacity as a law enforcement officer, to be hidden, accountability does not exist. By merely naming a law enforcement officer, the individual officer, their department, and law enforcement as an entity, are being held accountable, and allow for the justice system to work. Because of the unique role that an individual chooses to take on when becoming a law enforcement officer, events occurring while in their official capacity *do not afford officers* the ability to be viewed as a victim hidden from the public eye.

b. If the Court finds that Marsy's Law is applicable, the Interested Party's interpretation is not a correct application.

Marsy's Law became part of the South Dakota Constitution in November 2016. S.D. Const. art. VI, § 29. Marsy's Law afforded state constitutional protections to victims, and in relevant part to this matter states:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records. This does not limit law enforcement from sharing information with the public for the purposes of enlisting the public's help in solving a crime.²

² S.D. Const. art. VI, § 29.

The rights provided by Marsy's Law are set forth clearly and explicitly. Marsy's Law does not provide for complete anonymity or blanket protection for an individual considered to be a victim. The Petitioners, through their Writ of Mandamus, point to Florida, as Florida's Marsy's Law mirrors South Dakota's, for guidance as to how the court in South Dakota should interpret the protections afforded to a victim through Marsy's Law. This case cited by the Petitioner was overturned in 2023 by the Florida Supreme Court.³ The court was tasked with making the determination as to whether law enforcement officer's names could be released, and held that "Marsy's Law guarantees to no victim—police officer or otherwise—the categorical right to withhold his or her name from disclosure."⁴ No such right is enumerated in the text of article I, section 16(b) of the Florida Constitution.⁵ The Florida Supreme Court further stated that:

Nor, as a matter of structure, would such a right readily fit with two other guarantees contained in article I: the right expressed in section 16(a) of the criminally accused "to confront at trial adverse witnesses," and the right found in section 24(a) of every person to inspect or copy public records.⁶

The Florida Court did not consider the specific question of whether a law enforcement officer is a victim deserving of the protections of Marsy's Law when they are considered a victim

³ *City of Tallahassee v. Fla. Police Benevolent Ass'n, Inc.*, 375 So. 3d 178 (Fla. 2023).

⁴ *Id.* at 181.

⁵ *Id.*, (section 16(a) of the Florida Constitution mirrors the language contained within the paragraphs following the enumerated rights contained within S.D. Const. art. VI, § 29).

⁶ *Id.*, (section 24(a) of the Florida Constitution is substantially similar to statutes contained within SDCL § 15-15A); (section 24(a) is now Fla. Stat. Ann. § 119.07 (West), and continues to maintain language similar to that contained within SDCL § 15-15A generally); (SDCL § 15-15A, particularly SDCL § 15-15A-13, most recently was analyzed by the South Dakota Supreme Court in 2023 where the Court, upon request by the unnamed implicated individual to redact personally identifying information, found appropriate to redact "any "personally identifying information," such as "personal email addresses, home addresses, phone numbers, and birth dates." "Matter of Implicated Individual, 2023 S.D. 16, ¶ 21.)

of a crime occurring while working in their official capacity.⁷ Rather, the Florida Court held that no victim is provided the right under Marsy's Law to categorically withhold their name from disclosure.⁸ Albaidhani urges the Court to follow the lead of Florida, like Officers One and Two asked within their Petition for a Writ and hold that no victim, including Officers One and Two, get to withhold their name from disclosure. The law is silent in South Dakota as to whether a law enforcement officer is considered a victim under Marsy's law, and Florida does not provide guidance on this issue.

2. Marsy's Law does not grant Police Officers One and Two party status in this matter.

Police Officers One and Two are not parties to *State of South Dakota v. Samir Albaidhani*, 49CRI25-2551, but rather interested persons.⁹

In *State v. Waldner*, victim E.H. filed a motion to quash the defendants' subpoena duces tecum seeking to compel her to produce her journals and diaries dating back to 2010.¹⁰ The circuit court denied the motion to quash and ordered the journals to be delivered to the court for an in-camera review.¹¹ E.H. then petitioned the Court for an intermediate appeal, seeking review of the order denying the motion to quash.¹² The Court considered the right to an appeal under Marsy's Law, specifically finding that Under Article VI, § 29 of the South Dakota Constitution "affords crime victims the opportunity to seek enforcement of their rights from this Court."¹³ However, it does not "grant a victim party status in a criminal case, nor does it specify the procedural steps regarding

⁷ *Id.*

⁸ *Id.*

⁹ See *Interested Person's Brief in Support [of] Motion to Seal*, pg. 1.

¹⁰ *State v. Waldner*, 2024 S.D. 67, ¶ 12, 14 N.W.3d 229, 235.

¹¹ *Id.* ¶ 15.

¹² *Id.*

¹³ *Id.* ¶ 19.

when or how a victim may appeal to this Court. Therefore, notwithstanding the lack of an express requirement in Marsy's Law directing the Legislature to enact statutes to allow for implementation and enforcement of victims' rights, we decline to hold that the right to appeal under Marsy's Law is self-executing."¹⁴

Even if this court considers Police Officers One and Two victims for purposes of Marsy's law, such victim status would not allow the individuals to be parties to this criminal case under *Waldner*.¹⁵ As such, Police Officers One and Two do not have standing as the parties to the case to request continuances of the case and file an appeal.¹⁶ Rather, as interested persons they may request to prohibit public access to information in a court record under SDCL 15-15A-13.

3. The relief being sought by Police Officers One and Two through SDCL 15-15A-13 is not an available remedy.

Police Officers One and Two seek relief through SDCL 15-15A-13, which details the procedure for requests to prohibit public access to information in court records:

A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.¹⁷

¹⁴ *Id.* ¶ 22.

¹⁵ *Id.* ¶ 22.

¹⁶ *Waldner* directs individuals exercising the right to appear under Marsy's Law to conform to the requirements of SDCL 15-26A-4 through 15-26A-6 for appeals permitted by SDCL 15-26A-3. *Id.* ¶ 25.

¹⁷ SDCL § 15-15A-13.

SDCL 15-15A-13 “provides a procedure for a party seeking “to prohibit public access to information in a court record” when “there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law.”¹⁸

In *Implicated Individual I*, Sanford challenged the unsealing of a search warrant file containing multiple search warrants, returns of the warrants, inventories, and affidavits regarding an investigation.¹⁹ The circuit court sealed the search warrant files because of law enforcement’s concerns that disclosure could impede the continuing investigation.²⁰ The Press argued the documents should be unsealed while the State argued unsealing the file could interfere with the ongoing investigation and Sanford argued the release would impact his privacy and reputation.²¹ The circuit court issued a protective order prohibiting the Press from disclosing and disseminating any sealed information obtained through participation in the proceedings.²² The court relied upon SDCL 23A-35-5.1, ordering the documents to be unsealed once an indictment is filed or the investigation is terminated.²³ On appeal, the South Dakota Supreme Court found the “express provisions of SDCL 23A-35-4.1 control the access to information issue presented in this case, as specifically contemplated by our rules concerning access to court records,” affirming the circuit court’s orders.²⁴ Although SDCL 23A-35-4.1 is “at the center of this appeal,” the Court discussed its authority to determine what information should be redacted in all instances.²⁵ Per SDCL 15-15A-8, personal identifying information “such as social security numbers, as well as certain

¹⁸ *State v. Matter of Implicated Individual*, 2021 S.D. 61, ¶21, 966 N.W.2d 578, 584. (quoting SDCL § 15-15A-13).

¹⁹ *See Implicated Individual I*, 2021 S.D. 61, 966 N.W.2d 578.

²⁰ *Id.* ¶ 4.

²¹ *See Implicated Individual I*, 2021 S.D. 61, 966 N.W.2d 578.

²² *Id.* ¶ 7.

²³ *Id.* ¶ 9.

²⁴ *Id.* ¶ 35.

²⁵ *Id.* ¶ 23.

financial documents and the names of minor children in particular cases” should be redacted in all instances.²⁶

Although *Implicated Individual I* primarily deals with SDCL 23A-35-4.1 rather than SDCL 15-15A-13, the Court does discuss when personal information should be redacted. Here, there are no social security numbers, financial information, or names of minor children to be redacted from the case’s filings. Rather, Police Officers One and Two are seeking to redact “their names, initials, or any information that could be use[d] to identify them...” from publicly accessible records.²⁷ Such a request is not the least restrictive means required under SDCL 15-15A-13. Requesting any information that could be used to identify Police Officers One and Two is far too broad of a request. Additionally, unlike in *Implicated Individual I*, there is no pending investigation, a compelling interest the State held in preventing the public disclosure of the affidavits. Here an Indictment was returned by the Minnehaha County Grand Jury on April 27, 2025, and a jury trial has been scheduled for July 21, 2025. There is no concern that releasing Police Officers One and Two’s identifying information would hinder an ongoing investigation as charges have officially been filed.

In *Implicated Individual II*, the State filed a notice of completed investigation, triggering the unsealing of the affidavits.²⁸ Sanford filed a motion to stay, citing (among other arguments) that he was entitled to inspect the affidavits before their unsealing to invoke rights guaranteed by SDCL 15-15A-13, which was denied by the circuit court.²⁹ The South Dakota Supreme Court

²⁶ *Id.* ¶ 24.

²⁷ See *Interested Person’s Brief in Support [of] Motion to Seal*, pg. 5.

²⁸ *Implicated Individual II*, 2023 S.D. 16, ¶ 7, 989 N.W.2d 517, 520.

²⁹ See *Implicated Individual II*, 2023 S.D. 16, 989 N.W.2d 517.

found that the “circuit court properly applied the provisions of SDCL 15-15A-13 and SDCL 23A-35-4.1 in considering, and ultimately denying, Sanford’s request to inspect and redact the affidavits before they were unsealed. Before ruling on the request, the court thoroughly considered the various statutory and constitutional grounds asserted by Sanford with respect to information that could conceivably be contained in the affidavits. The court’s approach to redaction fell soundly within its discretion, and the court appropriately exercised its discretion to “decide whether there [were] sufficient grounds to prohibit access” to contents of the affidavits under SDCL 15-15A-13.”³⁰

Here, the court can adhere to *Implicated Individual II*’s holding by redacting any personal identifying information such as “personal email addresses, home addresses, phone number, and birth dates.”³¹ Albadhani contends a redaction of this extremely personal identifying information, rather than Police Officers One and Two’s names is within the court’s discretion and satisfies SDCL§15-15A-13 as a more restrictive means of redaction than that sought by the Officers.

Albadhani is guaranteed “the right to a speedy and public trial, by an impartial Jury of the State and district wherein the crime shall have been committed...”³² The right to a public trial can also be found in S.D. Const. art. VI, § 7.³³ “In general, courts conduct public trials ‘for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.’”³⁴ “[T]he public has the right to be present

³⁰ *Id.* ¶ 22.

³¹ *Id.* ¶ 21.

³² U.S. Const. amend. VI.

³³ (“In all criminal prosecutions the accused shall have the right to ... a speedy public trial...”).

³⁴ *State v. Rolfe (Rolfe I)*, 2013 S.D. 2, ¶ 17, 825 N.W.2d 901, 906 (quoting *Waller v. Georgia*, 457 U.S. at 46, 104 S.Ct. at 2215).

whether or not any party has asserted the right.”³⁵ However, this right is now absolute.³⁶ This right may give way in “certain cases to other rights or interests, such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information. Such circumstances will be rare, however, and the balance of interests must be struck with special care.”³⁷

Although Officers One and Two have not brought the argument that future hearings should be closed before this court, this is an important consideration. If the court redacts the Officers’ names, this issue will have to be readdressed before a jury trial, where Albaidhani has the right to a public trial. SDCL 23A-24-6 gives the circuit court the discretion to close any portion of criminal proceedings “at which a minor is required to testify concerning rape of a child, sexual contact with a child, child abuse involving sexual abuse, or any other sexual offense involving a child ...”³⁸ This case does not involve any such testimony warranting closure of the proceedings. The public is allowed to attend Albaidhani’s jury trial, where Officers One and Two would presumably be called by the State to testify. Their names would be disclosed to the public then. Thus, redaction of their names from any filings would be futile as their identities would come to light at a public jury trial.

³⁵ *Id.* (quoting *Presley v. Georgia*, 558 U.S. 209, 214, 130 S.Ct. 721, 724–25, 175 L.Ed.2d 675 (2010)) (internal quotation marks omitted).

³⁶ *Id.* ¶ 18 (citing *Globe Newspaper Co. v. Super. Ct. for Norfolk Cnty.*, 457 U.S. 596, 606, 102 S.Ct. 2613, 2620, 73 L.Ed.2d 248 (1982)).

³⁷ *Id.* (quoting *Presley*, 558 U.S. at 213, 130 S.Ct. at 724); *State v. Slota*, 2015 S.D. 15, ¶ 10, 862 N.W.2d 113, 117.

³⁸ *Slota*, ¶ 11, 862 N.W.2d at 117 (citing SDCL 23A-24-6).

4. Whether a protective order of unredacted documents and placement under seal is an appropriate remedy.

a. A protective order of unredacted documents is not the appropriate remedy.

This Court filed an Order on May 13, 2025, within which the Court continued the protections of unredacted filings and that until the Motion is determined, all future filings which include the names of the law enforcement officers shall be filed under seal and provided to the defense under the terms of the prior protective order.³⁹

A protective order of unredacted documents is unduly burdensome and hinders the effectiveness of counsel. SDCL 15-6-26(c) sets forth when protective orders may be sought and imposed. The purpose of a protective order, which is clear through statute, is to protect the disclosure of *discovery* information or materials that are substantive in nature and would be contained within a deposition, interrogatory, or other discovery. The name of an alleged victim is not discovery, and therefore the statutory protection of a protective order is not applicable. If the Court were to find that the name of an alleged victim is discovery, SDCL 15-6-26(c) further states that “upon a motion... accompanied by a certification that the movant has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action, and for good cause shown...”⁴⁰ To the Defendants knowledge, this Motion by the Interested Parties was made while there has been no dispute that needs to be resolved, and that no conference or attempt to confer with other parties has been made, as SDCL 15-6-26(c) requires. Additionally, no reason has been provided by the Interested Parties as to why they are seeking this protective order of the names of the law enforcement officers, or why one must be placed. By

³⁹ Order Re: redactions and sealing of originals; filed May 13, 2025.

⁴⁰ SDCL § 15-6-26(c).

including the name or initials of an alleged victim, there is no annoyance, embarrassment, oppression, undue burden, expense, or otherwise listed reason within SDCL 15-6-26(c) that the alleged victim could possibly face. Further, nothing has been provided that suggests any reasons set out in SDCL 15-6-26(c) has occurred or would occur, that would necessitate a protective order.

b. Placement of unredacted documents under seal is not the appropriate remedy.

A “sealed” filing means any record where access is restricted by order of the Court.⁴¹ A document that is marked “sealed” is only accessible to court personnel and attorneys or parties of the case that are permitted by applicable law or court order and are not accessible to the public.⁴² A sealed document or filing contained within the record is the most extreme protection within a case. Matters involving a juvenile victim are filed less restrictively than the currently proposed way of filing in the present matter⁴³ regardless of whether Marsy’s Law has been invoked. When alleged to be a victim in adult criminal proceedings, a *juvenile* alleged victim is afforded heightened protection as to their name due to their status as a juvenile and are named by their initials and date of birth only.⁴⁴ The purpose of the request to require filings be under seal in 49CRI25-2551 is to not name an *adult* law enforcement officer who was acting within their official capacity at the time they became involved in matters subsequently charged out in a criminal case in documents that the public may access.

Sealing documents in this matter is not only overly burdensome and restrictive, but also a hindrance. For example, Defense was not given a copy of the unredacted Indictment at the

⁴¹ SDCL § 16-21A-1(4).

⁴² *Id.*

⁴³ SDCL § 15-15A-9(3),(4).

⁴⁴ SDCL § 15-15A-9(3).

Arrestment. The State's Attorney on the case, through conversation with counsel for Defense, was made aware of this on May 8th, 2025, and worked to get a sealed copy of the Indictment to provide to Defense, which was subsequently provided on May 14th, 2025.

5. **The State and Federal Constitutional Rights of the interested party, Samir Albaidhani, are and will be implicated and violated if the Interested Party's Motion to Seal is granted or continuation of the current Order by the Circuit Court Judge is allowed.**

- a. **The 6th Amendment of the United States Constitution and subsequently through the 14th Amendment of the South Dakota Constitution provide an accused with enumerated rights.**

The rights enumerated within the 6th and 14th Amendments have expanded and created subsequent legal principles. Most notably as it pertains to the present matter include: the right to counsel, the right to a reasonable investigation, the right to confront an accuser, the right to public proceedings, and the right to present a complete defense. Granting the relief being sought by Police Officers One and Two will have a chilling effect and constrain these rights that are afforded to Mr. Albaidhani. The current Order by the Circuit Court violates the rights afforded to Mr. Albaidhani.

- b. **Marsy's Law is inferior to a Defendant's Constitutional Rights.**

Marsy's Law, a state constitutional right, provided to victims, does not outweigh or trump the state *and federal* constitutional rights of a criminal defendant, namely Samir Albaidhani. No right provided in Marsy's Law can outweigh a right provided to criminal defendant that is provided federally, through the United States Constitution.

CONCLUSION

For these reasons set forth above, the Defendant respectfully requests that this Court deny the Interested Party's Motion to Seal, and vacate Its order filed on May 13th, 2025, placing unredacted filings containing law enforcement names under seal.

Respectfully submitted this 27th day of May, 2025.

/s/Kylie Beck

Kylie Beck

Senior Deputy Public Defender

Minnehaha County Public Defender's Office

Attorney for Defendant

/s/Emily Herbert

Emily Herbert

Senior Deputy Public Defender

Minnehaha County Public Defender's Office

Attorney for Defendant

TAB 8

commonly referred to as “Marsy’s Law” found in Article 6, Section 29 of the South Dakota Constitution. Asserting their rights under Marsy’s Law, the officers seek to prohibit release of any information in public records maintained in court filings that could be used to identify them, including their names and initials.

The Fraternal Order of Police Sioux Falls Lodge No. 1 and Officers One and Two (collectively Interested Parties) initially filed a Petition for Writ of Mandamus against the Minnehaha County State’s Attorney’s Office and the Second Judicial Circuit Clerk of Courts in 49CIV 25-1679, in which they requested an Order directing the State’s Attorney’s Office to redact from all current and future filings in Defendant’s criminal case “any and all identifying information regarding the identities of” Officers One and Two and to order the Clerk of Courts to reject any future filings containing the officers’ identifying information. At the time the mandamus action was filed, this underlying criminal case was assigned to Judge Jon Sogn. Judge Sogn ordered the temporary redaction of the officers’ names from publicly accessible documents while the mandamus case was pending. An out-of-circuit judge, Judge Bobbi Rank, was appointed to hear the mandamus action, however, because the Minnehaha County Clerk of Courts was a named party in that action.

Following the parties’ briefing, Judge Rank held a hearing on April 25, 2025, and issued an oral decision denying mandamus relief. Judge Rank’s decision was later memorialized in written Findings of Fact, Conclusions of Law, and an Order dated May 9, 2025. Judge Rank found that the extraordinary relief of mandamus was unavailable because SDCL 15-15A-13 offered a remedy within the criminal case. Judge Rank then denied the Petition for Writ of Mandamus and dismissed the civil matter.

Defendant filed an Affidavit for Change of Judge in the present case on April 30, 2025, resulting in the appointment on May 2, 2025, of the undersigned to preside over the criminal charges. On May 7, 2025, Interested Parties filed a Motion to Seal pursuant to SDCL 15-15A-13, asking this Court to order the Minnehaha County State's Attorney's Office and the Minnehaha County Clerk of Courts to redact from all current and future filings all identifying information regarding the identities of Officers One and Two. This Court entered an Order Re: Redactions and Sealing of Originals, maintaining the status quo pending a final resolution of the Motion to Seal. Defendant objected to the Motion to Seal and filed a brief supporting its position. The State did not brief the issue, but appeared at the hearing, ultimately deferring to this Court as to the legal issue involved.

ANALYSIS

Interested Parties' Motion to Seal is brought pursuant to SDCL 15-15A-13, which provides, in relevant part:

A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. . . . The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

SDCL 15-15A-13 (emphasis added). As this quote makes clear, the South Dakota Supreme Court has emphasized that "a court's discretion to 'prohibit public access to information in a court record'" as set forth in SDCL 15-15A-13 is limited by the existence of "*sufficient grounds to prohibit access according to applicable constitutional, statutory and common law.*" Matter of Implicated Individual, 2023 S.D. 16, ¶ 5, 989

N.W.2d 517, 520 (Implicated Individual II) (quoting In re an Appeal by an Implicated Individual, 2021 S.D. 61, ¶ 21, 966 N.W.2d 578, 584 (Implicated Individual I) (quoting SDCL 15-15A-13) (emphasis added)). Interested Parties argue that the provisions of Marsy’s Law, specifically Subsections 2, 3, and 5 of Article 6, Section 29, provide them a constitutional right to prevent the release of their names and initials as alleged victims in this matter.

The constitutional amendment commonly known as Marsy’s Law was passed by ballot initiative in 2017. In 2018, the South Dakota Legislature proposed amendments to Marsy’s Law, which were subsequently adopted by the voters. The current version of Marsy’s Law is, therefore, a combination of language obtained from the initiated measure and modified by the Legislature. Interested Parties argue that the most pertinent sections to this dispute are Subsections 2, 3, and 5. Those subsections provide a crime victim with the following rights:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused; . . .
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records. . .

S.D. Const. Art. VI, § 29. Because this Court does not view Subsections 2 or 3 as relevant to its analysis here, we focus our discussion on Subsection 5.

As an initial matter, it should be noted that Marsy’s Law only applies to those deemed to be a “victim” of a crime. Here, both sides briefed the issue of whether police officers acting in their office capacity could qualify as such—the defense arguing in

opposition and Interested Parties arguing in support of such a finding. Because it is not necessary to reach that issue to resolve the present Motion to Seal, this Court leaves that issue for another day. For purposes of this ruling, the Court assumes without deciding that Officers One and Two qualify as victims under Marsy's Law. Given that assumption, this Court must consider the breadth and scope of the protections offered therein.

Interested Parties argue that Marsy's Law gives Officers One and Two the right to prevent the disclosure of "any identifying information." In essence, they argue that Marsy's Law provides complete anonymity to crime victims upon the assertion of that right. Neither the word "identity" nor the phrase "identifying information" appears in the text of Marsy's Law, however. This Court cannot construe the language of Marsy's Law as broadly as requested by Interested Parties and must be guided by the plain language of South Dakota's Constitution and laws.

As quoted above, Subsection 5 of Article 6, Section 29 provides that a victim has the right, upon request, "to prevent the disclosure to the public, or the defendant . . . of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim[.]"¹ Contrary to the argument of Interested Parties, that subsection does not expressly provide a right to prevent the disclosure of any and all identifying information. The South Dakota Legislature knows how to prevent the public disclosure of names or identifying information if it so chooses and, indeed, has done so in numerous other contexts. See, e.g., SDCL 22-24B-15 (addressing public access to sex offender registry

¹Interested Parties do not assert that the officers' names or initials are "confidential" or "privileged" within this second phrase of Subsection 5, but simply that their names could be used to locate them.

and providing: “Nothing in this section permits the release of the name or any identifying information regarding the victim of the crime to any person other than law enforcement agencies, and such victim identifying information is confidential”); and SDCL 15-15A-9 (requiring names of crime victims under age 18 to appear solely as initials in criminal proceedings and making records involving protection order proceedings in which a child under age 18 is a petitioner or respondent confidential). Neither the voters by ballot initiative, nor the Legislature by its amendments, included language prohibiting the disclosure of a victim’s “identifying information” or language protecting a victim’s complete anonymity within South Dakota’s version of Marsy’s Law.

Interested Parties argue that a victim’s name could easily be used in locating a victim, especially in the digital world in which we live. But that argument proves too much. A myriad of descriptors including a victim’s likeness, location at a particular time, or even employment status as a police officer, could similarly be used to locate a victim. Had such a broad construction been the intent behind Marsy’s Law, that language could have easily been included. Given its absence, this Court declines to stretch the express language of Marsy’s Law to such an extreme to create additional, unintended rights.

Marsy’s Law currently exists, in some version, in 12 states, including California, Florida, Georgia, Illinois, Kentucky, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin. Despite this fact, this Court and the parties have identified only one reported highest-court decision addressing the issue herein presented. In City of Tallahassee v. Florida Police Benevolent Association, Inc., two city police officers sought to prevent public disclosure of their personal identifying information, including their names. 375 So. 3d 178, 182 (Fla. 2023). The Florida

Supreme Court was, therefore tasked with determining whether a victim's name qualified as "information or records that could be used to locate or harass the victim or the victim's family." Id. at 183. The Florida Supreme Court held quite firmly that it did not:

Fairly read, the text does no such thing. For it is one thing to identify a person and another altogether to locate or harass him or her. Widely circulated dictionaries are helpful for identifying the plain meaning of constitutional language. To "identify" a person is to "fix the identity of" him or her. But to "locate" a person is to "establish [that he or she is] in a certain place." To "identify" someone, then, is to distinguish him or her from other persons; to "locate" that person is to determine his or her physical whereabouts. The "information or records" from section 16(b)(5) that could be used to accomplish the former are not necessarily the same as those that could be used to accomplish the latter. Marsy's Law speaks only to the right of victims to "prevent the disclosure of information or records that could be used to locate or harass" them or their families. One's name, standing alone, is not that kind of information or record; it communicates nothing about where the individual can be found and bothered.

Id. at 184 (internal citations omitted). The Florida Supreme Court went on to cite both the ability and action of its own state legislature in concealing victim's identities, much as this Court noted our own Legislature's actions, above.

Protecting a victim's location is distinguishable from protecting a victim's identification, as the Florida court found: "Protecting crime victims from being located—as opposed to identified—is a meaningful distinction, for exposure of a crime victim's location creates a threat of physical danger that exposure of his or her name alone does not generally pose." Id. at 185. This Court finds the reasoning of the Florida Supreme Court to be persuasive. Although an individual's name is among the many facts that may be used to locate that individual, a name alone does not provide location details about the individual. Nothing in the plain language of Marsy's Law prevents the disclosure of a victim's name. And, if it did, courts would be forced to weigh that right against a

defendant's right to confront adverse witnesses in a public trial—a balancing that this Court need not perform on the facts presented here.

CONCLUSION

This Court's ability to prohibit public access to information in court records is controlled by SDCL 15-15A-13 and limited by South Dakota's constitutional, statutory, and common law. Marsy's Law does not provide a crime victim with a right of complete anonymity and does not authorize this Court to grant the relief sought by Interested Parties. Officers One and Two do not have a constitutional right to prevent the public disclosure of their names or initials.

This Court both understands and shares the officers' concerns over the public disclosure of their names. Such disclosure will, at a minimum, prompt unwanted publicity of the same. Although this Court is aware that some other counties routinely use victims' initials in place of their full names, that is not the issue presented here. The issue here is this Court's ability to force the parties to redact their filings—a power not granted to this Court under South Dakota law.

ORDER

It is hereby ORDERED that the Motion to Seal is DENIED. Because this ruling presents a case of first impression in South Dakota and is of significant factual and legal importance to these parties, this Court's Order Re: Redactions and Sealing Originals dated May 13, 2025, will remain in place for 30 days from the date of this ruling to allow

Interested Parties an opportunity to seek appellate review of this ruling, should they so elect.

Dated at this 3rd day of June, 2025.



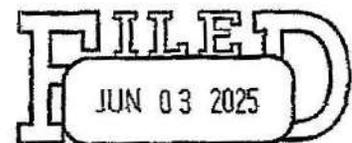
ATTEST:
Karla Kalb, Clerk of Courts

By: *Karla Kalb*
Deputy

BY THE COURT

Handwritten signature of Susan M. Sabers in black ink.

Susan M. Sabers
Circuit Court Judge

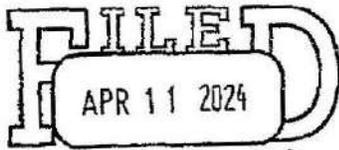


Minnehaha County, S.D.
Clerk Circuit Court

5. The attorney reported to Your Affiant that on March 28th, 2024, victim 2, Peter James Prostrullo (DOB 02/01/1991), a Sergeant with the Sioux Falls Police Department, had testified in court regarding the same trial for the defendant's son. The attorney reported that while victim 2 was waiting outside of the courtroom, the defendant had walked out of the courtroom and stated, "5 up, 5 down" to victim 2, in reference to the five officers testifying in the hearing. The defendant was seen on video surveillance from the Minnehaha County Court House at 425 North Main Avenue walking past victim 2 toward the bathroom, then shortly after walking back toward the courtroom though stopping outside of it, standing, and looking toward victim 2, before re-entering the court room.
6. Detective Hand spoke with victim 2, who reported the defendant stating "5 up, 5 down" to him while walking out of the courtroom on March 28th, 2024. Victim 2 interpreted the defendant's statement as a threat.
7. The attorney showed Your Affiant an email from Billie Moe-Peskey, which stated, "Jay just wants to say if Austin comes near us, (he's having a wedding this fall possibly right across the street from our house) Jay will not be happy & cannot guarantee what might happen. He even went out looking for him tonight." The attorney reported that "Jay" is a nickname for the defendant. Your Affiant located the defendant's home address as 5300 West 24th Street, Sioux Falls, Minnehaha County, South Dakota. Victim 1 had a wedding website which provided hotel blocks for guests at the Hyatt Place at 4935 Lake Shore Boulevard, Sioux Falls, Minnehaha County, South Dakota, a three-minute, .6-mile drive from the defendant's home address. The wedding is scheduled for September 14th, 2024.
8. Detective Hand spoke with victim 1, who reported testifying in court on April 9th, 2024, regarding the same trial for the defendant's son. Victim 1 reported that after his testimony, he began walking out of the courtroom, where he noticed the defendant staring at him. Victim 1 reported that the defendant began punching his hand into his other open hand while staring at him. Victim 1 interpreted the defendant's actions as a threat.
9. All these events occurred in Sioux Falls, Minnehaha County, South Dakota.

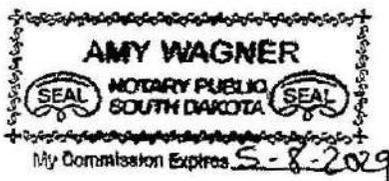
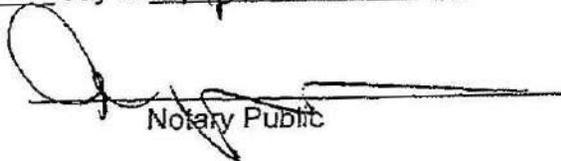


Kyle Ochsner



Minnehaha County, S.D.
Clerk Circuit Court

Subscribed and sworn before me this 11 day of April, 2024.

Notary Public

TAB 10

§ 29.000051 Rights of crime victim. A victim shall have the following rights:

1. The right to due process and to be treated with fairness and respect for the victim's dignity;
 2. The right to be free from intimidation, harassment and abuse;
 3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;
 4. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions;
 5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records. This does not limit law enforcement from sharing information with the public for the purposes of enlisting the public's help in solving a crime;
 6. The right, upon request, to privacy, which includes the right to refuse an interview, deposition or other discovery request, and to set reasonable conditions on the conduct of any such interaction to which the victim consents;
 7. The right, upon request, to reasonable, accurate and timely notice of, and to be present at, all proceedings involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated;
 8. The right, upon request, to be promptly notified of any release or escape of the accused;
 9. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated;
 10. The right, upon request, to confer with the attorney for the government;
 11. The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any pre-sentence or disposition investigation or compiling any pre-sentence investigation report or plan of disposition, and to have any such information considered in any sentencing or disposition recommendations;
 12. The right, upon request, to receive a copy of any pre-sentence report or plan of disposition, and any other report or record relevant to the exercise of a victim's right, except for those portions made confidential by law;
 13. The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case;
 14. The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal conduct and as provided by law for all losses suffered as a result of delinquent conduct;
 15. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings;
 16. The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody;
 17. The right, upon request, to be informed in a timely manner of all post-judgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender. Any parole authority shall extend the right to be heard to any person harmed by the offender;
 18. The right, upon request, to be informed in a timely manner of clemency and expungement procedures, to provide information to the Governor, the court, any clemency board and other authority in these procedures, and to have that information considered before a clemency or expungement decision is made, and to be notified of such decision in advance of any release of the offender; and
-
19. The right to be informed of these rights, and to be informed that a victim can seek the advice of an attorney with respect to the victim's rights. This information shall be made available to the general public and provided to each crime victim in what is referred to as a Marsy's Card.

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law in any trial or appellate court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law for the violation of any right and ensuring that victims'

rights and interests are protected in a manner no less vigorous than the protections afforded to criminal defendants and children accused of delinquency. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

The granting of these rights to any victim shall ensure the victim has a meaningful role throughout the criminal and juvenile justice systems and may not be construed to deny or disparage other rights possessed by victims. The Legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to further define, implement, preserve, and protect the rights guaranteed to victims by this section.

As used in this section, the term, victim, means a person against whom a crime or delinquent act is committed. In the case of a victim who is killed or incapacitated as a result of the crime or delinquent act, or who is a minor, the term also includes any spouse, parent, child, sibling, or as designated by the court, grandparent, grandchild, or guardian. The term does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.

Nothing in this section or any law enacted under this section creates a cause of action for damages against the state or any political subdivision of the state, or any officer, employee, or agent of the state or of any political subdivision of the state.

History: SL 2017, ch 220 (Initiated Constitutional Amendment S) approved Nov. 8, 2016, eff. Nov. 16, 2016. Amendment proposed by SL 2018, ch 2, § 2, approved June 5, 2018, eff. July 1, 2018.

TAB 11

15-15A-13. Requests to prohibit public access to information in court records.

A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

Source: SL 2004, ch 333 (Supreme Court Rule 04-06), eff. July 1, 2004; SDCL § 15-15A-10; SL 2005, ch 291 (Supreme Court Rule 05-05), eff. Feb. 25, 2005.

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NO. 31131

FRATERNAL ORDER OF POLICE
SIOUX FALLS LODGE No. 1,
JOHN DOE OFFICERS ONE AND TWO,
Interested Parties and Appellant,

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee.

APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

HONORABLE SUSAN SABERS
Circuit Court Judge

APPELLEE ALBAIDHANI'S RESPONSE BRIEF

KYLIE BECK
EMILY HERBERT
Minnehaha County Public Defender
413 North Main Avenue
Sioux Falls, SD 57104
Attorney for Appellee Albaidhani

JEFF BECK
Beck Law, Prof. LLC
221 S. Phillips Ave Ste 204
Sioux Falls, SD 57104
Attorney for Appellant

DANIEL HAGGAR
CRYSTAL JOHNSON
Minnehaha County State's Attorney's Office
415 North Dakota Avenue 2nd Fl
Sioux Falls, SD 57104
Attorney for Appellee State of South Dakota

SARAH THORNE
MATTHEW TEMPLAR
ALEXIS TRACY
South Dakota Attorney General's Office
1302 E. Highway 14
Pierre, SD 57501
Attorney for Appellee State of South Dakota

Notice of Appeal Filed on July 2, 2025

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES..... i

PRELIMINARY STATEMENT.....1

JURISDICTIONAL STATEMENT.....2

STATEMENT OF THE CASE.....2

ARGUMENT.....4

1. The trial court did not abuse its discretion nor err in declining to seal the Interested Parties’ identifying information from public filings following their invocation of “Marsy’s Law.” 4

2. The trial court did not abuse its discretion nor err in denying Interested Parties Motion to Seal or request to remove the names or identifying information from public filings pursuant to SDCL § 15-15A-13 and South Dakota Constitution Article Six, Section 29.....10

3. If the Court finds Marsy’s Law provides a crime victim with a right of complete anonymity and authorizes the trial court to force parties to redact filings, this should be applied proactively.....16

CONCLUSION 17

CERTIFICATE OF COMPLIANCE..... 19

APPENDIX 20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>City of Tallahassee v. Fla. Police Benevolent Ass'n, Inc.</i> , 375 So. 3d 178 (Fla. 2023)	5, 6, 7
<i>Cowell v. Leapley</i> , 458 N.W.2d 514 (S.D. 1990)	17
<i>Doe v. Quiring</i> , 2004 S.D. 101, 686 N.W.2d 918.....	9
<i>Matter of Implicated Individual</i> , 2021 S.D. 61, 966 N.W.2d 578	11, 12, 13
<i>Matter of Implicated Individual</i> , 2023 S.D. 16, 989 N.W.2d 517.....	12, 14
<i>Siers v. Weber</i> , 2014 S.D. 51, 851 N.W.2d 731	17
<i>State v. Antuna</i> , 2024 S.D. 78, 15 N.W.3d 439	9
<i>State v. Packed</i> , 2007 S.D. 75, 736 N.W.2d 851	15
<i>State v. Slota</i> , 2015 S.D. 15, 862 N.W.2d 113	16
<i>State v. Waldner</i> , 2024 S.D. 67, 14 N.W.3d 229	15
Statutes	Page(s)
Article 6, Section 29 of the South Dakota Constitution	2, 10
Fla. Stat. Ann. § 119.07 (West).....	6
S.D. Const. art. IV, § 29.....	3, 4, 11
SDCL § 15-15A.....	6, 11
SDCL § 15-15A-13	Passim
SDCL § 15-15A-8	12
SDCL § 15-15A-1	10, 12
SDCL § 23A-6-22.1.....	15, 16
SDCL § 23A-24-6	15, 16
SDCL § 23A-35-5.1	13
SDCL § 23A-35-4.1	13, 14, 15
U.S. Const. amend. VI	8

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NO. 31131

FRATERNAL ORDER OF POLICE
SIOUX FALLS LODGE No. 1,
JOHN DOE OFFICERS ONE AND TWO,
Interested Parties and Appellant,

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee,

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellee, Samir Albaidhani, is referred to as "Appellee Albaidhani." Appellants, the Interested Parties, will be referred to as "Appellants." Plaintiff and Appellee, the State of South Dakota, is referred to as "State." All references in this brief to the Settled Record are referred to as SR, followed by the page number. Reference to the Appellant's Brief is referred to as AB, followed by the page number. Reference to the Memorandum Decision and Order Denying Motion to seal is referred to as MD, followed by the page number. Reference the Appellee Albaidhani's Appendix is referred to as A.App., followed by the page number.

JURISDICTIONAL STATEMENT

Appellants appeal the Memorandum Decision and order Denying Motion to Seal entered by the Honorable Susan M. Sabers, Circuit Court Judge, Second Judicial Circuit, Minnehaha County. MD at 9. The Memorandum Decision and Order was filed on June 3, 2025. *Id.* Appellee timely filed a Notice of Appeal on July 2, 2025. Thus, this Court has determined that it has jurisdiction to take this appeal pursuant to § 15-26A-3.

STATEMENT OF THE CASE

This appeal arises from the Honorable Susan Saber's Memorandum and Order Denying the Interested Parties' Motion to Seal. *See generally*, AB. An Order was entered against the Appellants on June 3, 2025. MD at 9.

Appellee Albaidhani is charged by indictment with two counts of Attempted First Degree Murder of a Law Enforcement Officer; three counts of Aggravated Assault Against a Law Enforcement Officer; Commission of a Felony While Armed with a Firearm; Grand Theft; Receiving or Possession of a Stolen Vehicle; and Possession of a Firearm by a Violent or Drug-Related Convicted Felon. SR 28. The criminal charges against Appellee Albaidhani are pending, and he is presumed innocent of the charges against him. Appellee Albaidhani disputes the factual rendition provided by the Appellants and does not believe that they are relevant to the issue before this Court.

Officers John Doe One and John Doe Two are the alleged victims of the Attempted Murder and Aggravated Assault charges. SR 28. They have invoked

their constitutional rights found in Article 6, Section 29 of the South Dakota Constitution, the rights “victims” are afforded under what is commonly referred to as “Marsy’s Law.” S.D. Const. art. IV, § 29.

The Fraternal Order of Police Sioux Lodge No. 1 and Officers John Doe One and Two filed a Petition for Writ of Mandamus in 49CIV25-1679 against the Minnehaha County State’s Attorney’s Office and the Second Judicial Circuit Clerk of Courts, requesting an Order directing the State’s Attorney’s Office to redact any and all identifying information regarding the identities of Officers One and Two and to order the Clerk of Courts to reject any future filings containing the officers identifying information from all current and future filings. A.App. p.1. The Honorable Bobbi Rank heard argument on April 25, 2025, and issued an oral decision denying mandamus relief because SDCL § 15-15A-13 provided a remedy within the criminal case. A.App. p. 37-42. Judge Rank denied the Petition for Writ of Mandamus and dismissed the civil matter in written Findings of Facts, Conclusions of Law, and an accompanying Order dated May 9, 2025. A.App. p. 45-51.

Pursuant to SDCL § 15-15A-13, Appellants filed a Motion to Seal, seeking an order from the court directing the Minnehaha County State’s Attorney’s Office and the Minnehaha County Clerk of Courts to redact all identifying information regarding the identities of Officers One and Two. SR 45. Appellee Albaidhani objected to the Motion. SR 59. The trial court entered an Order Re:

Redactions and Sealing of Originals, maintaining the status quo pending a final resolution of the Motion to Seal. SR 58.

ARGUMENT

1. The trial court did not abuse its discretion nor err in declining to seal the Interested Parties' identifying information from public filings following their invocation of "Marsy's Law."

In 2017, the constitutional amendment "Marsy's Law" was passed by ballot initiative in South Dakota. The South Dakota Legislature subsequently proposed amendments to Marsy's Law, later adopted by voters. Marsy's Law, as captured in Article Six, Section 29 of the South Dakota Constitution affords state constitutional protections for victims, including:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;...
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

S.D. Const. art. VI, § 29. These rights are set forth clearly and explicitly. Notably absent from Marsy's Law's protections is a right to complete anonymity. *See Id.* Yet Appellants argues that Marsy's Law includes the right to prevent disclosure

of a victim's name. AB 11. Not only does this misinterpret Marsy's Law, but risks infringing on the rights of the accused to confront all witnesses against them.

The issue in this appeal is largely due to the Appellants' misinterpretation of the language of Marsy's Law, and a misplaced believe that an invocation of Marsy's Law provides the ability for complete anonymity and misinterprets what is considered "information or records that could be used to locate or harass the victim...or which could disclose confidential or privileged information about the victim." *Id.*

First, "information or records that could be sued to locate or harass the victim or the victim's family" does not categorically include a victim's name. The Supreme Court of Florida, whose statutory scheme of Marsy's Law nearly mirrors that of South Dakota, had to decide whether law enforcement officer's names could be released when the officer's sought invocation of their Marsy's Law rights. *City of Tallahassee v. Fla. Police Benevolent Ass'n, Inc.*, 375 So. 3d 178 (Fla. 2023). The court ultimately held that "Marsy's Law guarantees to no victim – police officer or otherwise – the categorical right to withhold his or her name from disclosure." *Id.* at 181.

Nor, as a matter of structure, would such a right readily fit with two other guarantees contained in article I: the right expressed in section 16(a) of the criminally accused "to confront at trial adverse witnesses," and the right found in section 24(a) of every person to inspect or copy public records.

Id. Section 24(a) of the Florida Constitution is substantially similar to statutes contained within SDCL § 15-15A.¹ The Florida Court held that no victim is provided with the right under Marsy's Law to categorically withhold their name from disclosure. *City of Tallahassee* at 181, 183. In South Dakota, the law is silent as to whether a law enforcement officer is considered a victim under Marsy's law, and Florida does not provide guidance on this issue.² S.D. Const. art. 6, § 29; *City of Tallahassee* at 181.

The Florida Court went even further to distinguish information used to locate from information used to identify, explaining that this is a significant distinction, and explained that exposure of a name alone does not create the concerns of danger that other information that could be used to locate, could create. *Id.* at 185.

And even though any number of facts can be used to identify a crime victim, such as physical characteristics, sex, age, nationality, or occupation, the Florida Constitution says nothing about protecting the disclosure of those facts. That is because the constitutional text does not guarantee the concealment of absolutely any fact that might be used to identify a victim—to pick him or her out from among others—but on “prevent[ing] the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information of the victim.”

¹ Section 24(a) is now Fla. Stat. Ann. § 119.07 (West) and continues to maintain language like that contained generally within SDCL § 15-15A.

² Though not an issue in the present appeal, Appellee asserts that law enforcement officers, while acting in their official capacity as a public servant, do not qualify as a victim under Marsy's Law. The Florida Court did not consider the specific question of whether a law enforcement officer is a victim deserving of the protections afforded through Marsy's Law when they are considered a victim of a crime occurring while working in their official capacity as a law enforcement officer.

Id. at 185-86. The issue before the Florida Court aligns squarely with the issue before this Court, with nearly identical statutory schemes for consideration.

The issue before the Supreme Court of Florida aligns squarely with the issue before this Court, with nearly identical statutory schemes for consideration. Predictably, Appellants argue the decision “runs contrary to common sense, logic, and prior interpretation of information by this court.” AB at 15. Appellants note *City of Tallahassee* Appellants assert that Marsy’s Law provides victims the right to protect any information that could be used to locate, intimidate, or harass the victim, and further asserts that naming the law enforcement officer in the court filings will provide information that could used to locate, intimidate, or harass the officer or their families; and that the invocation of these rights included the request that their names or any identifying information, including initials, not be included for release in the publicly available court documents.³ AB at 12. Appellants reference a case regarding a separate Sioux Falls Police Officer as an example of why this Court should reverse the trial court’s decision. *Id.* at 16. The facts of the protection order and subsequent criminal case are not analogous to those in the present case, and this Court should not give it consideration. The allegations are from April 2024, where an officer and his fiancé assert that the father of an individual, who was shot by police officers,

³ Appellants previously asked the circuit court to rely upon this Florida case when considering this issue, prior to the trial court’s ruling against them. A.App. p. 6; SR p. 98.

found a public wedding website that provided the date and location of their wedding. The officer was subsequently identified using his initials within the criminal file, making this a moot point.⁴

This appeal arises from a criminal case pending against Appellee Albidhani, who is protected by both the federal and state constitution. If the Court interprets Marsy's Law as suggested by the Appellants, Appellee Albidhani's constitutional rights are infringed upon, creating a chilling effect for all defendants in criminal cases.

Marsy's Law does not allow for the names of a victim to be kept confidential. However, if any sort of limitation were to be placed upon the access to the names of "victims," Appellee Albidhani's rights must be considered and analyzed in a balancing test. Appellants' request to keep the names private in public filings may be their request on its face. However, the request is much more expansive and infringes on Appellee Albidhani's rights in the pending criminal matter.⁵ Appellee Albidhani has the Sixth Amendment right to confront and cross-examine the witnesses against him. U.S. Const. amend. VI. By ordering the names of the victims confidential, he is limited in his ability to exercise this right.

4 41TPO24-58, 41TPO24-59 list the officer and his fiancé's name, unredacted.

5 See 49CRI25-2551 transcript of motions hearing – Appellant refers to the officers as John Doe Officers 1 and 2. The motions hearing was a public hearing, not a publicly available filing, contradicting Appellant's claim here.

Marsy's Law has not been thoroughly litigated in the State of South Dakota; however, the cases cited to by the Appellant support the ruling made by the trial court in this matter. Though, the issues raised in those cases are not directly on point. Indeed, the misstatements made by the Appellant in regard to those cases is concerning. See generally, *LaClaire v. Bittinger*, 5:23-CV-05030-CBK (D.S.D. March 18, 2024),⁶ *State v. Antuna*, 2024 S.D. 78, 15 N.W.3d 439.⁷

This Court distinguished between "name" and "any identifying information" in *Doe v. Quiring*. 2004 S.D. 101, ¶ 18, 686 N.W.2d 918, 922. This Court has addressed "any identifying information" and what is generally encompassed within that category and has held that "any identifying information" is a broad category including things such as social security numbers, initials, or other information that identifies a particular individual. *Id.* ¶ 17. Appellee Albaidhani contends a redaction of this extremely personal identifying information, rather than names is appropriate and within the trial court's discretion.

⁶ Federal Writ of Habeas Corpus where the Petitioner had filed motions prior to trial in the state criminal case, including a motion to compel the prosecution to provide all of the victims Facebook social media messages and texts messages posted or sent prior to, during or after the alleged rape; to which the prosecution noted the victim had invoked their Marsy's Law rights to prevent disclosure of private information that could be used to harass her, and such motion was denied (p. 2); in the Federal Writ of Habeas Corpus, the issue raised on appeal was not related to what Marsy's Law allows or protects disclosure of, rather an evidentiary issue.

⁷ Intermediate Appeal from trial court order where the court directed the State to determine whether any counseling or mental health records on the part of the victim existed, and if so, provide them to the court for an in-camera review; the State appealed, and this Court held that the defendant did not have an avenue to force or compel a victim to disclose whether she received counseling, or documentation thereof without any showing that the victim did receive such services as a result of the alleged rape. This decision was based upon an evidentiary issue, not Marsy's Law.

The trial court correctly declined to seal the Interested Parties' identifying information from public filings following their invocation of Marsy's Law. The relief sought by Appellants is illogical, unconstitutional, and misaligned with this Court's prior rulings.

2. The trial court did not abuse its discretion nor err in denying Interested Parties Motion to Seal or request to remove the names or identifying information from public filings pursuant to SDCL § 15-15A-13 and South Dakota Constitution Article Six, Section 29.

The trial court correctly determined that SDCL § 15-15A-13 and South Dakota Constitution Article Six, Section 29, does not provide crime victims with a right of complete anonymity and the authorization to force parties to redact filings as requested by Interested Parties. Appellants argue the trial court erred as a matter of law when it determined that crime victims cannot move the court pursuant to SDCL § 15-15A-13 to seal or remove from public disclosure the name or identifying information of crime victims from criminal court filings for crime victims who had invoked their constitutional rights under Marsy's Law. Appellants also argue the trial court committed reversible error when it determined that it did not have the power to order redaction and grant the Interested Parties' request, as crime victims, to have their names, initials, or other information that could be used to identify them redacted from the public court filings. The court did not err in either manner when correctly determining SDCL §15-15A-13 does not provide an avenue for crime victims to seek complete

anonymity. The court also correctly determined that South Dakota law does not allow the trial court to force parties to redact filings as requested.

Interested Parties seek relief through SDCL 15-15A-13, which details the procedure for requests to prohibit public access to information in court records:

A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

SDCL § 15-15A-13. This section “provides a procedure for a party seeking “to prohibit public access to information in a court record” when “there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law.” *Matter of Implicated Individual*, 2021 S.D. 61, ¶ 21, 966 N.W.2d 578, 584 (quoting SDCL § 15-15A-13).

Marsy’s Law does not provide for complete anonymity or blanket protection for crime victims. S.D. Const. art. VI, § 29. Subsection 5 of Article 6, Section 29 provides a victim has a right, upon request, “to prevent the disclosure to the public, or the dependent... of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose

confidential or privileged information about the victim.” However, the trial court correctly determined that this subsection does not expressly provide a right to prevent the disclosure of any and all identifying information. SDCL § 15-15A, particularly SDCL § 15-15A-13, was most recently analyzed by this Court in 2023, where the Court, upon request by the unnamed implicated individual to redact personally identifying information, found it appropriate to redact “any “personally identifying information,” such as “personal email addresses, home addresses, phone numbers, and birth dates.” *Matter of Implicated Individual*, 2023 S.D. 16, ¶ 21, 989 N.W.2d 517, 524. Appellants’ belief that a name, including initials, is considered identifying information is a misstatement of this Court’s recent definition.

In *Implicated Individual I*, Sanford challenged the unsealing of a search warrant file containing multiple search warrants, returns of the warrants, inventories, and affidavits regarding an investigation. *See Matter of Implicated Individual*, 2021 S.D. ¶ 14, 61, 966 N.W.2d 578, 582. The trial court sealed the search warrant files because of law enforcement’s concerns that disclosure could impede the continuing investigation. *Id.* ¶ 4. The decision by the trial court included argument by The Press that the documents should be unsealed while the State argued unsealing the file could interfere with the ongoing investigation and Sanford argued the release would impact his privacy and reputation. *See Implicated Individual I*, 2021 S.D. 61, ¶24, n.9. The trial court issued a protective order prohibiting the Press from disclosing and disseminating any sealed

information obtained through participation in the proceedings. *Id.* ¶ 7. The court relied upon SDCL § 23A-35-5.1, ordering the documents to be unsealed once an indictment is filed or the investigation is terminated. *Id.* ¶ 9. On appeal, the South Dakota Supreme Court found the “express provisions of SDCL § 23A-35-4.1 control the access to information issue presented in this case, as specifically contemplated by our rules concerning access to court records,” affirming the trial court’s orders. *Id.* ¶ 35. Although SDCL § 23A-35-4.1 is “at the center of this appeal,” the Court discussed its authority to determine what information should be redacted in all instances. *Id.* ¶ 23. Per SDCL § 15-15A-8, personal identifying information “such as social security numbers, as well as certain financial documents and the names of minor children in particular cases” should be redacted in all instances. *Id.* ¶ 24.

Although *Implicated Individual I* primarily deals with SDCL § 23A-35-4.1 rather than SDCL § 15-15A-13, the Court does discuss when personal information should be redacted. Here, there are no social security numbers, financial information, or names of minor children to be redacted from the case’s public filings. Rather, Appellants are seeking “to seal the public filings that had already occurred and request redaction or removal from future filings of the victims’ names or identifying information” and argue “Marsy’s Law provides them with the constitutional protection to prevent public disclosure of their names, initials, or any information that could be used to identify them.” AB at 5. Requesting any information that could be used to identify Appellants is far too

broad of a request and not the least restrictive means required under SDCL § 15-15A-1. Additionally, unlike in *Implicated Individual I*, there is no pending investigation, a compelling interest the State held in preventing the public disclosure of the affidavits. See *Implicated Individual I* at ¶ 24.

Here, an Indictment was returned by the Minnehaha County Grand Jury on April 27, 2025, and a jury trial has been scheduled for in 2026. There is no concern that releasing Appellants' identifying information would hinder an ongoing investigation, as charges have officially been filed.

In *Implicated Individual II*, the State filed a notice of completed investigation, triggering the unsealing of the affidavits. 2023 S.D. 16, ¶ 7. Sanford filed a motion to stay, citing (among other arguments) that he was entitled to inspect the affidavits before their unsealing to invoke rights guaranteed by SDCL 15-15A-13, an argument denied by the trial court. *Id.* at ¶ 2. The South Dakota Supreme Court found that the "circuit court properly applied the provisions of SDCL § 15-15A-13 and SDCL § 23A-35-4.1 in considering, and ultimately denying, Sanford's request to inspect and redact the affidavits before they were unsealed." *Id.* ¶ 22. The Court's approach to redaction fell soundly within its discretion, and the court appropriately exercised its discretion to "decide whether there [were] sufficient grounds to prohibit access" to contents of the affidavits under SDCL § 15-15A-13." *Id.*

Here, the Court can adhere to *Implicated Individual II's* holding by

redacting any personal identifying information, such as “personal email addresses, home addresses, phone numbers, and birth dates.” *Id.* ¶ 21. Appellee Albaidhani contends a redaction of this extremely personal identifying information, rather than Police Officers One and Two’s names, is within the trial court’s discretion and satisfies SDCL § 15-15A-13 as a more restrictive means of redaction than that sought by the Officers.

Appellants are requesting the absolute right to privacy that the Court has held crime victims do not have. *State v. Waldner*, 2024 S.D. 67, ¶ 47, 14 N.W.3d 229, 235. The Court in *Waldner* specifically notes that to read a victim's right of privacy under the State constitution as absolute, or superior to the rights of a defendant, would at some point infringe upon a defendant's federal due process right to defend against a charge. *Id.* at ¶ 48. “[D]ue process is in essence the right of a fair opportunity to defend against the accusations.” *Id.* (quoting *State v. Packed*, 2007 S.D. 75, p 23, 736 N.W.2d 851, 859).

The trial court was correct in its finding that the court lacks the ability to force parties to redact filings per SDCL § 15-15A-13 and South Dakota’s constitutional, statutory, and common law. SDCL § 23A-35-4.1 also allows courts to limit access to an affidavit “[i]n cases of alleged rape, incest, or sexual contact, if the victim is a minor.” SDCL § 23A-6-22.1 also allows for protection for minors:

[u]pon the request of any minor victim or the minor victim's parent or guardian in a prosecution for rape, incest, or sexual contact, the court shall order that the name of the minor and the specific details of the alleged acts be suppressed if the trial court finds a compelling interest after consideration of the following factors: the minor

victim's age, psychological maturity and understanding, the nature of the crime, the desires of the victim, and the interests of the parents and relatives.

SDCL § 23A-6-22.1. No similar statutory scheme exists for alleged victims to request complete redaction of their names from public filings.

Appellants concede that Officer One and Two's names "would or could become publicly available" at trial. AB at 13, n.4. SDCL 23A-24-6 gives the trial court the discretion to close any portion of criminal proceedings "at which a minor is required to testify concerning rape of a child, sexual contact with a child, child abuse involving sexual abuse, or any other sexual offense involving a child ..." *State v. Slota*, 2015 S.D. 15, ¶ 11, 862 N.W.2d 113, 117 (quoting SDCL § 23A-24-6). This case does not involve testimony that warrants the closure of the proceedings. The public is allowed to attend Appellee Albaidhani's jury trial, where Officers One and Two would presumably be called by the State to testify. Their names would be disclosed to the public at that point in time. Thus, forced redaction from any filings would be futile as their identities would become publicly available at trial.

It is clear that the trial court was correct in determining that Marsy's Law does not provide a crime victim with a right of complete anonymity and does not grant Appellants a constitutional right to prevent the public disclosure of their names or initials.

3. If the Court finds Marsy's Law provides a crime victim with a right of complete anonymity and authorizes the trial court to force parties to redact filings, this should be applied proactively.

The “analysis of whether the decision in a particular case is given retroactive effect begins with a determination of whether the decision issues a “new rule” of constitutional law, or whether the case simply restates an “old rule.” If the decision simply restates an old rule, the rule should be applied retroactively.” *Siers v. Weber*, 2014 S.D. 51, ¶ 8, 851 N.W.2d 731, 735 (quoting *Cowell v. Leapley*, 458 N.W.2d 514, 518 (S.D. 1990)).

Here, Appellants argue that a prospective application of any potential “new rule” is best suited for future cases, given that disclosure is already occurring, making the point moot. AB at 21. Appellee Albaidhani agrees.

CONCLUSION

The relief being sought by the Appellants is contradictory to statute, case law and logic. Affirmance of the trial court’s decision is necessary. The argument that a law enforcement officer, whose status as a “victim” arises during events occurring while in their official capacity, to seek anonymity of their name under the guise of an invocation of Marsy’s Law, is paradoxical. Furthermore, the language of Marsy’s Law applies to a victim. A defendant in a criminal case has the state and federal constitutional protection of the presumption of innocence; that unless and until the government is able to meet their high burden of proof beyond a reasonable doubt, a defendant is innocent of the offenses against him. There is no victim of a defendant who is innocent of the offenses alleged against them. Whether it was an oversight of the legislation, or a failure to correctly

define, as Marsy's Law is written, the rights of it are not even applicable to a party, like the Appellants in this case, as there is not a victim, Appellee Albaidhani is presumed innocent. Yet, even with the protections afforded to a defendant in a criminal case, they often find themselves with their name, photo and a one sided version of alleged criminal behavior and charges broadcast across the news or social media. The presumption of innocence does not allow an individual to be kept from the public eye. Marsy's Law, a state constitutional amendment does not allow for anonymity, the relief being sought by the Appellants. For the foregoing reasons, Appellee Albaidhani respectfully requests that this Court AFFIRM the trial court's Order.

Respectfully submitted this 28th of October, 2025.

/s/ Kylie Beck

Kylie Beck

Attorney for Appellee

/s/ Emily Herbert

Emily Herbert

Attorney for Appellee

Minnehaha County Public Defender

413 North Main Ave.

Sioux Falls, South Dakota 57104

Telephone: (605)367-4242

CERTIFICATE OF COMPLIANCE

- I. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellee's Brief contains 4,795 words.

- II. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 28th day of October, 2025.

/s/ Kylie Beck

Kylie Beck

Attorney for Appellee

/s/ Emily Herbert

Emily Herbert

Attorney for Appellee

Minnehaha County Public Defender

413 North Main Ave.

Sioux Falls, South Dakota 57104

Telephone: (605)367-4242

APPENDIX

Petition for Writ of Mandamus.....A-1
Transcript of Motion Hearing held on April 25th, 2025B-1
Findings of Fact and Conclusion of Law and OrderC-1

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
) :SS
COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

FRATERNAL ORDER OF POLICE SIOUX
FALLS LODGE No. 1, JOHN DOE
OFFICERS ONE AND TWO,
Petitioners

49CIV25-001679

PETITION FOR WRIT OF MANDAMUS

vs.

MINNEHAHA COUNTY STATE'S
ATTORNEY'S OFFICE, and SECOND
JUDICIAL CIRCUIT CLERK OF COURTS
Respondents

COMES NOW Fraternal Order of Police Sioux Falls Lodge No. 1 and John Doe Officers One and Two, by and through the undersigned counsel, and hereby moves the Court, pursuant to SDCL §§ 21-29-1 and 2 to issue a writ ordering the Minnehaha County State's Attorney's Office to comport with Article 6, Section 29 of the South Dakota Constitution (hereinafter "Marsy's Law"), and direct the Office to remove or redact from all current and future filings in 49CIV25-_____, *State of South Dakota v. Samir Yasser Albaidhani*, any and all identifying information regarding the identities of Sioux Falls Police Department officers John Doe One and John Doe and to order the Minnehaha County Clerk of Courts, Second Judicial Circuit, to remove or redact the same identifying information contained in current filings with and to refuse or reject any future filings wherein the identifying information of Sioux Falls Police Officers John Doe One and Two is contained. In support of the Petition for Writ of Mandamus, Petitioners submit the following:

Issue Presented

Whether police officers that are the victims of crime while working in the official capacity are protected and can invoke their the rights guaranteed under Article 6, Section 29 of the South Dakota Constitution and prevent public disclosure of their identities?

A-1

Factual Background

On April 3, 2024 officers of the Sioux Falls Police Department attempted to stop a stolen vehicle operated by Samir Yasser Albaidhani. Following the traffic stop Albaidhani attempted to kill the officers by shooting at them. Upon being shot at, Sioux Falls Police Officers One and Two defended themselves by exchanging gunfire with Albaidhani. During the exchange of gunfire Officer John Doe One was struck by Albaidhani's gunfire. Albaidhani eluded immediate capture at the location of the initial traffic stop and fled the scene. Albaidhani was subsequently stopped by law enforcement officers from additional agencies near Beresford, South Dakota where he again engaged in a gun battle with law enforcement officers. Albaidhani, although wounded during the second gun battle, was taken into custody at the time of the second altercation with law enforcement.

On April 4, 2024 Albaidhani was released from hospital following treatment for his injuries. In preparation for Albaidhani's release for custody, agents from the South Dakota Division of Criminal Investigation (hereinafter "DCI") drafted an Affidavit in Support of Arrest Warrant. In the Affidavit the agents provided details surrounding Albaidhani's attempted murder and assault of the Sioux Falls Police Officers. In detailing the attempted murder and assault the Affiant agent listed the Sioux Falls Police Officers, who were the victim's of Albaidhani's crimes, by their names. The Affidavit was present to a judicial officer and a warrant was issued for Albaidhani's arrest. Upon issuance of the warrant the Minnehaha County State's Attorney's Office drafted a Complaint within which Officer John Doe Number One was again listed by his name.

Upon his release from medical treatment, the Minnehaha County State's Attorney took Albaidhani into custody on the warrant. Subsequent to his arrest the Minnehaha County State's Attorney's Office filed documents with the Second Judicial Circuit Clerk of Courts. The filed

documents included the Affidavit in Support of the Warrant, Complaint, and Warrant of Arrest. The documents filed were not redacted by the State's Attorney prior to filing and the documents contained identifying information for the victim officers. The Clerk of Courts accepted the unredacted filings which made the documents available for public consumption.

John Doe Officers One and Two have invoked their rights under Article 6, Section 29 of the South Dakota Constitution. Based on the filings of the Minnehaha County State's Attorney's Office and the subsequent acceptance of the filings by the Minnehaha County Clerk of Court's Office, identifying information for Officer's John Doe One and Two have been made publicly available in violation of the officer's constitutional protections. John Doe officers One and Two are requesting their constitutional rights be protected and move the Court to take the necessary steps to command the Minnehaha County State's Attorney's Office and the Minnehaha County Clerk of Court's Office to remedy the current usurpation of their rights and enjoin both from future violations.

Reasons to Grant the Writ

1. Issuance of a Writ is the Only Available Remedy.

The power of the Circuit Court to grant Petitioner's request is set forth in SDCL § 21-29-1 which provides that:

[A] writ of mandamus may be issued by the Supreme and circuit courts, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person."

And SDCL §21-29-1 provides that "[t]he writ of mandamus must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon affidavit, upon the application of the party beneficially interested." This is one such case where

there is no other remedy available to protect the Officer's constitutional rights and issuance of the Writ is the only and proper course of action.

In order to issue a writ three criteria must be met:

First, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires, a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

In re Rolls Royce Corp., 775 F.3d 671, 675 (5th Cir. 2014) (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (alterations in original)). Here, all the criteria have been met or can be shown to have been satisfied.

Firstly, the officers in this situation have no other means under which relief can be granted other than to issue a writ prohibiting the Clerk from making the current filings public without redaction of the Officer's identifying information and prohibiting the State from identifying the officers in future filings. Because the State has filed documents identifying the officers the only conclusion that can be reached is that the State, irrespective of the fact that the officers are victims of Albaidhani's crimes, does not view Marsy's Law to be applicable to the officers.

Secondly, the officers right to issuance of the writ is clear and undisputable. The officers are victims of crime and are guaranteed protection of their identifying information under the South Dakota Constitution. The constitutional guarantee is clear and undisputable.

Finally, issuance of the writ is proper under the circumstances. The writ simply seeks to prohibit release of the victim's information for public consumption. The requested writ does not impact the right of the defendant to be provided the an unredacted report pursuant to the

discovery process. Upon release of an unredacted report to the Defendant for preparation of his defense he and his respective counsel would be subject to the Standing Order of the presiding judge of the Second Judicial Circuit Court which prohibits the release of law enforcement records, records that would divulge the identities of the officers but would be protected from public disclosure by the Order. The Court should be satisfied that the proper exercise of discretion would be issuance of the writ.

2. Marsy's Law Prohibits Release of a Crime Victim's Identifying Information.

South Dakota voters passed the constitutional amendment which enacted Marsy's Law which detailed and guaranteed a series of rights to crime victims. The pertinent subsections of Article 6, Section 29 at issue here are:

2. The right to be free from intimidation, harassment and abuse;
3. The right to be reasonably protected from the accused and any person acting on behalf of the accused;
5. The right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.

A key in the protections is the victim the right to protect any information that could be used to locate or harass the victim. It is without equivocation that naming the victim officers in the Affidavit and Complaint will provide information that could be used to locate, intimidate, or harass the victim officers or their families. The officers have requested their names or any identifying information, including use of their initials, not be included for release in the publicly available court documents. Inclusion of the officer's information in the public filings should be enjoined.

3. Police Officer's are Entitled to the Protection of Marsy's Law.

The constitutional protections provided crime victims as adopted under Marsy's Law do

not carve out an exception that law enforcement officers working in their official capacity cannot be crime victims. Quite the opposite is true. The amendment specifically provides that "as used in this section, the term, victim, means a person against whom a crime or delinquent act is committed". The Amendment uses very simple language for a very simple proposition . . . "a person." Undoubtedly an officer is "a person" and here they were "a person against whom a crime or delinquent act was committed." Albaidhani was charged with Attempted Murder (First Degree) of a Law Enforcement Officer, Aggravated Assault against Law Enforcement, and Commission of a Felony While Armed with a Firearm. All of which are crimes under South Dakota law. And all of which were perpetrated against the victim officers.

South Dakota has not had an opportunity to address the question of whether a law enforcement officer can be a victim deserving the protections of Marsy's Law, but other jurisdictions have addressed the issue. One such state is Florida. Florida adopted the same version of Marsy's Law as was adopted by South Dakota.

In *Florida Police Benevolent Association, Inc., John Doe 1 and John Doe 2 v. City of Tallahassee Florida*, the specific question before the court was whether officers while serving in the official capacity could be victims of crime and request their names be withheld from public consumption and confidentiality under Marsy's Law. The answer was yes. *See*, No. 1D20-2193, First District Court of Appeals, Florida 2021. The basic facts in *Florida Police* were identical to those as presented here with exception that the suspects died in both Florida cases whereas here Albaidhani lived. In *Florida Police* the Officer's were crime victims of an assault and attacked by the suspect. The same is true here. In *Florida Police* the appellate court ruled Marsy's Law guarantees applied to the officers and their names could be held confidential. The same rule should be applied here.

Conclusion

Based upon the foregoing the Court should hold that John Doe officers one are crime victims and a writ should be issued ordering the Minnehaha County State's Attorney's Office to to remove or redact from all current and future filings in 49CRI25-_____, *State of South Dakota v. Samir Yasser Albaidhani*, any and all identifying information regarding the identities of Sioux Falls Police Department officers John Doe One and John Doe and ordering the Minnehaha County Clerk of Courts, Second Judicial Circuit, to remove or redact the same identifying information contained in current filings with and to refuse or reject any future filings wherein the identifying information of Sioux Falls Police Officers John Doe One and Two is contained.

Respectfully submitted this 4th day of April, 2025.

BECK LAW, PROF. LLC

/s/ Jeffrey R. Beck

Jeffrey R. Beck
221 South Phillips Ave., Ste. 204
Sioux Falls, SD 57104
P: (605) 359-0135
Becklaw@outlook.com
Attorney for Petitioner

1 STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

:SS

2 COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

3 FRATERNAL ORDER OF POLICE
4 SIOUX FALLS LODGE NO. 1, 49CIV25-1679
5 JOHN DOE OFFICERS ONE AND TWO,

6 PETITIONERS,

7 vs. MOTIONS HEARING

8 MINNEHAHA COUNTY, SECOND JUDICIAL
9 CIRCUIT CLERK OF COURTS,

10 RESPONDENTS.

11 BEFORE: THE HONORABLE BOBBI J. RANK

12 Circuit Court Judge, Winner,

13 South Dakota.

14 APPEARANCES: Jeffrey R. Beck
15 Attorney at Law
16 Beck Law, Prof. L.L.C.
221 South Phillips Avenue, Ste. 204
Sioux Falls, South Dakota 57104

17 for the Petitioners;

18 Eric H. Bogue
19 Crystal Nesheim Johnson
20 Minnehaha County Deputy State's Attorneys
415 North Dakota Avenue
Sioux Falls, South Dakota 57104

21 for the Respondent,
22 Minnehaha County;

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

Caroline A. Srstka
Attorney at Law
Unified Judicial System
4101 West 38th Street, Suite 102
Sioux Falls, South Dakota 57106

for the Respondent,
Second Judicial Circuit
Clerk of Courts;

Kylie Beck
Emily Herbert
Attorneys at Law
Minnehaha County Public
Defender's Office
413 North Main Avenue
Sioux Falls, South Dakota 57104

for the intervening party,
Defendant Albaidhani.

24 PROCEEDINGS: The above-entitled proceedings commenced at
25 1:30 p.m., on the 25th day of April, 2025, in Courtroom 6B at
the Minnehaha County Courthouse, Sioux Falls, South Dakota.

B-2

1 THE COURT: Good afternoon, everyone. I am Judge Rank, and
2 we'll go on the record. The case is Fraternal Order of
3 Police and John Doe Officers One and Two versus the
4 Minnehaha County State's Attorney's Office and Second
5 Judicial Circuit Clerk of Courts. This is Minnehaha County
6 civil file 25-1679. I have been -- I am an out of circuit
7 judge assigned to this case in that the presiding judge of
8 the Second Circuit deemed all judges in the circuit to have
9 a conflict and therefore asked the Chief Justice to appoint
10 a judge out of circuit, and that is how I got involved in
11 this case. And so I would ask the attorneys to, please,
12 make your appearances. If you have clients with you,
13 please introduce them as well. Starting with the
14 Petitioners.

15 MR. BECK: Jeff Beck, Your Honor, on behalf of the
16 Petitioners, Fraternal Order of Police, Sioux Falls Lodge
17 No. 1 and Sioux Falls Police Department officers John Doe
18 One and Two, who are not personally present.

19 MR. BOGUE: Eric Bogue, on behalf of the State's Attorney's
20 Office.

21 MS. SRSTKA: Caroline Srstka, on behalf of the State Court
22 Administrator's Office and Minnehaha County Clerk of
23 Courts.

24 MS. BECK: Kylie Beck and Emily Herbert, from the Public
25 Defender's Office, appearing on behalf of Samir Albaidhani,

B-3

1 as an interested party.

2 THE COURT: Okay. Sorry I should have been faster,

3 Ms. Beck and Ms --

4 MS. HERBERT: Emily Herbert.

5 THE COURT: Okay. All right. And so this hearing has been
6 scheduled and the Court issued an order. And the sole
7 issue for this hearing is whether mandamus is available
8 relief in this matter. And I have read the party's
9 submissions, I have read the petition, I have read the
10 affidavit, I have read the subsequent brief by Mr. Beck,
11 the response from the State, and there is a motion to
12 intervene. And I believe Ms. Srstka filed on behalf of the
13 Clerk, basically indicating that the Clerk would do
14 whatever they were ordered to do. And, frankly, this Court
15 has a question from the face of the petition as to whether
16 mandamus is an available remedy in this matter. And
17 obviously mandamus is an extreme remedy, which is not often
18 granted, and so I want to hear about that as a matter of
19 law.

20 And so, Mr. Beck -- well, first of all, let me address
21 the motion to intervene.

22 The Defendant in Minnehaha County criminal file
23 25-2551 -- and I am going to take judicial notice of that
24 case as part of this proceeding -- has moved to intervene
25 in this case as an interested party. His Counsel, as they

B-4

1 made their appearances, are here, representing his
2 interest. We have had previously -- discussed off the
3 record as to whether he was asserting a right to be
4 personally present today or present remotely. Given that
5 this is simply a motion to intervene at this point in time,
6 and as I remember -- previous, again, off-the-record
7 discussions per his counsel, he is not taking a position in
8 reference to the issue today, which is whether mandamus is
9 a proper and legal remedy; is that correct?

10 MR. BECK: Judge, upon, I guess, further review following
11 our motion to intervene, we do have a position, but given
12 no decision as to the motion to intervene, no additional
13 briefing was submitted. I don't believe it would have been
14 appropriate to submit anything without authority to do so.
15 We do have a position that the Writ of Mandamus is not
16 appropriate.

17 THE COURT: Okay. And so -- and I apologize, I got the
18 cart before the horse a little bit in regard to that. I
19 was asking that mostly going to his right to appear. But
20 given that the Court had not yet determined the motion to
21 intervene until this hearing, I think he has not asserted a
22 right to be personally present or remotely present at this
23 time for the reasons stated by Counsel in terms of the
24 procedure that we're in here.

25 And so, first -- my first question for the State's

B-5

1 Attorney Office, Clerk of Courts, and for the Petitioners
2 in this case is: Is there an objection to the motion to
3 intervene, Mr. Beck?

4 MR. BECK: None.

5 MR. BOGUE: None from the State.

6 MS. SRSTKA: No, Your Honor.

7 THE COURT: And so I will grant the motion to intervene of
8 the Defendant in file 25-2551.

9 And so getting to the heart of the issue, I said that
10 I have read everything in this matter, and, Mr. Beck, I
11 will get right to the heart of it. And so you agree that
12 the legal standard on a Writ of Mandamus, in order for that
13 to even be an available remedy, is that there has to be no
14 speedy and adequate remedy existing in the ordinary course
15 of law. Correct?

16 MR. BECK: No adequate remedy?

17 THE COURT: Correct.

18 MR. BECK: Yeah. And so if you look at the -- I guess, the
19 three prongs as the Court has to do, there has to be no
20 adequate remedy. And we would say that the -- that there
21 should have been a remedy. The filings never should have
22 occurred because they were confidential. But because they
23 were filed, that leaves us with no other available remedy
24 other than --

25 THE COURT: Well, I understand your argument on the merits.

B-6

1 But, I mean --

2 MR. BECK: Maybe a Writ of Prohibition.

3 THE COURT: Again -- what is that?

4 MR. BECK: I said maybe alternatively, a Writ of
5 Prohibition to prohibit any future filings that contain
6 confidential information.

7 THE COURT: Well, you filed for a Writ of Mandamus, and so
8 I will stick with mandamus here.

9 MR. BECK: Correct.

10 THE COURT: And so you -- I just want to make sure that we
11 agree on the standard here. And so for mandamus to even be
12 applicable, there has to be no plain, speedy, and adequate
13 remedy existing in the ordinary course of law. Correct?

14 MR. BECK: Correct.

15 THE COURT: I am just talking about legal standard.

16 MR. BECK: Correct. I 100 percent agree with the Court.

17 THE COURT: And you agree that it is an extraordinary
18 remedy that will issue only when the duty to act is clear.
19 Correct?

20 MR. BECK: Yes, Your Honor.

21 THE COURT: Okay. And so first of all, the State in their
22 response referenced SDCL 15-15A-13 saying the State is not
23 sure that you have the right to a Writ of Mandamus in this
24 case as there is a legal right under that statute for what
25 at you are trying to do here. And I didn't see that you

B-7

1 responded to that statute in your brief.

2 MR. BECK: No. I don't believe I addressed 15 -- I don't
3 think -- I saw that they had cited 15-15A-13 and I had
4 cited 15-15A-7 on the confidential and --

5 THE COURT: Well, let me get to that statute.

6 MR. BECK: And I have to look at --

7 THE COURT: And you cite that statute and you named the
8 Clerk of Courts as a defendant -- or a respondent here.
9 And I have read that statute. And so where is the duty
10 that is imposed on the Clerk of Court in this statute?

11 MR. BECK: Well, the duty imposed on the Clerk of Court,
12 Your Honor, when we look at the fact that criminal records
13 are monitored by the UJS and so Odyssey is created by UJS,
14 it talks about it in --

15 THE COURT: Where? I mean, you cited 15. You say the
16 Clerk has a duty to not accept these filings. Right? That
17 is your argument. Right?

18 MR. BECK: Correct.

19 THE COURT: And so, I mean, is your argument that the Clerk
20 of Court has to review every filing and somehow figure out
21 whether it contains confidential information?

22 MR. BECK: They do. And we get rejected -- as a routine
23 filer, we -- I mean, my brief in this one got rejected for
24 example.

25 THE COURT: Well, I understand being rejected because maybe

B-8

1 it didn't meet the filing rules or something like that, or
2 you didn't check a box or something like that. But is the
3 Clerk required to review every filing and make the
4 determination, Oh, that could be confidential; Oh, that
5 could be an issue under Marsy's Law; better reject that.
6 Is that seriously the duty that you are saying is on the
7 Clerk here?

8 MR. BECK: Well, if you look at the 15-15A-7, it says these
9 records are explicitly prohibited from public consumption
10 and from filing. And so if you have a record that falls
11 under that -- and that is why I cited because we have a
12 record that falls under that containing confidential
13 information --

14 THE COURT: Right. And that is a general reference to
15 confidential information. Correct?

16 MR. BECK: Correct. And so if you encounter one of those
17 situations, the Clerk would have a duty to reject that
18 because they can't accept filings that by law are in --
19 would be violative of one of those things laid out in
20 15-15A-7. And so I would say that that right there is
21 their duty.

22 THE COURT: So they have a duty to review every filing and
23 figure out whether there could be some confidential part in
24 some area of law; is that correct?

25 MR. BECK: That is on that list, yeah. And so if we file

B-9

1 --

2 THE COURT: But Marsy's Law is not on that list. Correct?

3 MR. BECK: But it also says via case law, it talks about
4 general confidential information, state statute.

5 THE COURT: Correct. And I just want to make sure that I
6 understand what duty you're wanting put on the Clerk here.
7 And so the duty is the Clerk has to review every filing and
8 they have to determine, Does it include something not only
9 in this list, but we have to go through every filing and
10 they have to determine, Well, there could be something in
11 here that is in some other statute that is confidential and
12 so they have to review every filing to make that
13 determination; is that right?

14 MR. BECK: I would argue that they do review every filing
15 before they accept it and they have that duty under the
16 list. If it is on the list, they have -- they can't accept
17 it. They can't put it out there for public consumption.
18 And here what we're asking for them to do is for them to
19 recognize that the confidential information of an
20 individual who invokes their rights under Marsy's Law, you
21 know, -- again, it starts with the State. So that
22 authorized user knew or should have known that there --

23 THE COURT: And that specifically is put in the statute
24 that was cited in 16-28A-5. Right?

25 MR. BECK: Yeah. That the users should have known, but

B-10

1 then the double check is the Clerk. The double check is
2 the Clerk's Office. You know, if we file one simple
3 divorce proceeding and we happen to fail to redact a credit
4 card number or bank account number, when we file those, we
5 will get an e-mail from the Clerk saying, I can't accept
6 this until you send me a redacted version because I saw a
7 credit card number on it. Why? Because that is on the
8 list under 15-15A-7 and they had a duty to look at it.

9 THE COURT: And so let's take that argument and let's say
10 they filed that, and so then is the proper remedy a Writ of
11 Mandamus to make them unfile it?

12 MR. BECK: To make them unfile it. Well, they would
13 have -- they would have to then get a record from the --
14 get an order from the judge to seal it, remove it.

15 THE COURT: Within that case. Right?

16 MR. BECK: Within that case, but at that point it had been
17 put out there for public consumption. Here, the Court
18 earlier said something about, Oh, like, cart before the
19 horse, you said it in the conversation, once that here --
20 we're talking about Marsy's Law, a Constitutional
21 protection, I would say that that is by far more egregious
22 err to file something in violation of a Constitutional
23 protection than it would be to release a Social Security
24 number or some financial information that could be
25 remedied.

B-11

1 Here, we knew that we had -- I want to say a filing
2 in -- a believed filing in error or an alleged filing error
3 that occurred, the minute the State sent that over and the
4 Clerk put that in that it was filed after hours, the Clerk
5 was kept here late. Luckily enough it had not been made
6 available for public consumption. And so between --

7 THE COURT: And so the proper remedy was to go straight to
8 the Writ of Mandamus; is that right?

9 MR. BECK: Well, we didn't have any other available --
10 there is absolutely no other remedy that. We had conferred
11 with the State to see if they would redact it. We
12 conferred with the -- I guess, the State's Attorney and
13 said, Will you take this out of there, this needs to be
14 taken out, we can't have it. And they said, No.

15 THE COURT: Well, isn't there a judge that has jurisdiction
16 over the criminal case?

17 MR. BECK: Well, yes. So we went to -- I guess, probably
18 some of the history that this Court is not privy to before
19 we got to where we are today -- and so the filing occurred
20 after five p.m. and so this was like 5:45 at night, when
21 the initial one was sent in. We were then read in why
22 conversations that had occurred because the City attorney
23 was alerted to the fact that, Hey, just to let you know,
24 these got filed and accepted by the Clerk and in the
25 morning, they are going -- they are open for public

B-12

1 consumption because they have been accepted by the Clerk.
2 And so we had more conversations, Will you -- can you have
3 this pulled back, is there anything that can be done? No.
4 So then we started e-mails between the judge. And one of
5 the judges put all Second Circuit judges on it and so for
6 everyone, to, sort of, like, How can we address this?
7 Because at that point it had not been assigned to a judge.
8 The only judge we had was the judge that based on the
9 random luck of the draw which one gets the one o'clock in
10 front of them that day. I mean, you just -- you get a
11 judge. And so we went to that judge and said, Is there
12 anything that we can do? And so if maybe we can have a
13 hearing right away in the morning to -- and in lieu of the
14 hearing Judge Sogn said, Tell you what, I am going to do an
15 initial appearance on Mr. Albaidhani this morning and
16 because I am going to do that, here is what I am going to
17 do, and he granted the temporary order that he granted.
18 THE COURT: Within the criminal case. Right?
19 MR. BECK: Yeah. Within the criminal case and he said,
20 Here is how we are going to handle it. And so the Writ of
21 Mandamus obviously would not be filed in the criminal case,
22 it is filed on the outside to stop that activity from
23 occurring in that respective case.
24 THE COURT: I just want to be clear, and that e-mail is in
25 the file. Right? The judge in the criminal case where

B-13

1 these filings occurred -- because they're not occurring in
2 this case, they're occurring in the criminal case. Right?

3 MR. BECK: Yes, correct.

4 THE COURT: And so the judge in the criminal case basically
5 issued an informal order and said, I am going to order that
6 this be blocked from public consumption. Right?

7 MR. BECK: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. BECK: So when we look at -- it was two fold. That was
10 blocked from public consumption and then required that --
11 that the State had to file the redacted.

12 THE COURT: And he issued that order within the criminal
13 case?

14 MR. BECK: Yeah. And then we made it -- because we agreed
15 that -- to not run foul of Ms. Albaidhani's Sixth Amendment
16 Right, that he would be entitled to that unredacted
17 document that would contain the names, but then subject to
18 the order, he couldn't release those or counsel could not
19 make those available for public consumption. They were
20 used specifically to make sure that he was entitled to his
21 Sixth Amendment Rights. Our request was specifically to
22 the confidential nature of public that those documents
23 should not be made public. And so the judge ordered the
24 public part sealed, but an unsealed part be given to the
25 Defendant.

B-14

1 THE COURT: All right.

2 MR. BECK: But, again, since it happened -- I mean, my Writ
3 of Mandamus was filed at 3:55 in the morning. And so from
4 the time I was read in at eight o'clock at night to seven
5 o'clock in the morning something had to be done to stop
6 those from becoming public consumption. The only available
7 remedy that we had was to file a Writ of Mandamus to ask
8 the Court to stop it.

9 THE COURT: And so I am going to ask the obvious question,
10 Mr. Beck: Why is your remedy not within the criminal case?
11 Not within a motion in the criminal case under Marsy's Law,
12 under the statutes? Why is your legal remedy not within
13 the existing criminal case where the Defendant is already a
14 party and doesn't have to move to intervene? Where
15 obviously any discovery issues, anything regarding any
16 documents will be in front of that judge? And so, I guess,
17 answer that for me.

18 MR. BECK: Because that had already occurred. It needed to
19 occur. Had it got filed, again, you can't unring the bell.

20 THE COURT: Well, you did unring the bell though within the
21 criminal case, didn't he?

22 MR. BECK: Um, well, based on the filing of the Writ of
23 Mandamus, but to file it in the -- I don't believe filing
24 in the criminal case would have been the proper channel to
25 do it. The Writ of Mandamus is its own separate civil

B-15

1 action and it had to be brought civilly. You can't bring
2 the Writ of Mandamus under the criminal side, it had to be
3 brought separate under the civil side and so that is why it
4 required against those respective parties that you are
5 requesting the relief from, here the Clerk and the filer,
6 the registered user.

7 THE COURT: Mr. Bogue, is there a remedy within the
8 criminal case in reference to these filings?

9 MR. BOGUE: Yes, Your Honor. 15-15A-13, a simple motion
10 can be made by any party, and granted the witnesses,
11 victims in this case would not necessarily be a party, but
12 they would be under the next category, Any individual about
13 whom the information is present in the court record can
14 also make that motion; or on the Court's own motion can
15 make that motion to redact or make that information
16 confidential or private. That motion should have been made
17 in the criminal file. We don't -- we are not here to
18 dispute the nature and classification of these individual
19 officers as victims. I think our filing makes that clear.
20 While Mr. Beck and I currently have differences of
21 historical reference as to how this case unfolded, those
22 arguments can be brought up if the Court continues this
23 matter to another date. But under the three criteria for
24 whether writ is available, one, there must be --

25 THE COURT: The court reporter said you're going too fast

B-16

1 for her. You can start over.

2 MR. BOGUE: Sorry. Usually my wife tells me that I talk
3 too slow.

4 The three criteria for a Writ of Mandamus is: One,
5 there must be clear legal right in performance of specific
6 duty sought; there must be a clear obligation to perform
7 that duty; and, finally, as the Court led off today's
8 hearing with, the Writ of Mandamus must be issued in all
9 cases where there is not a plain, speedy, and adequate
10 remedy in the ordinary course of law. That is both in
11 21-29-2 and also restated by the Supreme Court in *Bohn*
12 *versus Bueno*, 2024 South Dakota 6, at paragraph 12. And as
13 the State mentioned in its brief, 15-15A-13 provides that
14 normal, adequate, and plain, speedy. And as Judge Sogn
15 clearly demonstrated by his own reaction to the request,
16 that happened almost instantaneously in the criminal file,
17 those things are not per se confidential, but upon request
18 of the victim under Marsy's Law arguably they can be, and
19 at that point Judge Sogn did make that ruling. And so the
20 remedy is available in the ordinary course of law, Your
21 Honor.

22 THE COURT: Mr. Beck, you disagree with that?

23 MR. BECK: I -- I don't disagree with 15-15A-13, and I
24 think that -- I would have to look back, I don't have the
25 e-mail string printed out when the initial e-mails went out

B-17

1 regarding the writ and getting filed. One of the problems
2 that we have is that the communications with the State
3 regarding the filing, the State didn't feel that a Marsy's
4 Law invocation became confidential information or triggered
5 confidential information. And so --

6 THE COURT: Well, and we will address that in a second, but
7 just in terms of the --

8 MR. BECK: Right, right. And so because of that, the
9 filing, if we go to 15-15A-13, that would save for those
10 filings, those filings, um, were going to become open when
11 the clerk's office turned on the computer in the morning.
12 And based on the fact that you have a shooting involving
13 law enforcement, they were going to become open. We filed
14 a Writ of Mandamus. The request also in that communication
15 was, We need to do something in the interim. That
16 communication was all occurring under the civil case. And
17 the judge in issuing that order, arguably -- one could
18 argue that it was made by -- because of that statute. You
19 know what I mean, like, let's figure this out. But that
20 was limited to what was currently filed. Additional
21 filings, as this Court knows, are invariably going to come.

22 THE COURT: But doesn't that -- can't -- I mean, a remedy
23 that you are asking from this Court is: Judge, you need to
24 direct the State and the Clerk that any filing going
25 forward in the criminal case, if they are going to

B-18

1 reference John Doe One or Two, it has to be redacted and
2 then an unredacted copy needs to be provided to the
3 Defendant and a redacted copy publicly available, and you
4 want that remedy going forward until the end of the case.
5 Correct? The criminal case.

6 MR. BECK: 15-15A says that from a record in a case, and
7 so, arguably that is from a record that exists.

8 THE COURT: Okay. And so let me then turn to the language
9 of Marsy's Law itself then. And so you are -- I mean, the
10 heart of your argument is that under section 29, Marsy's
11 Law, that your clients, John Does One and Two, have the
12 right upon request to prevent disclosure to the public
13 information which can be used to locate or harass them.
14 Right, that is your argument?

15 MR. BECK: Yes, Judge, yep.

16 THE COURT: And so Marsy's Law itself -- and your argument
17 is that John Doe One and Two are victims. Right?

18 MR. BECK: Yes, Judge.

19 THE COURT: Okay. And so Marsy's Law itself says that the
20 victim, the retained attorney of the victim, a lawful
21 representative of the victim, upon request of the victim,
22 may assert and seek enforcement of the rights enumerated in
23 this section and any other rights afforded to the victim by
24 law in any trial court or before any authority with
25 jurisdiction over the case as a matter of right, and that

B-19

1 that court shall act properly upon such request affording
2 remedy by due course of law for violation of his right.
3 And so even under the language of Marsy's Law, how does
4 that not give your clients the right to ask for prospective
5 relief from the judge in the criminal case?

6 MR. BECK: Well, again, we did ask for it. I mean, that
7 was part of the whole e-mail string when the writ was filed
8 was it was filed under the -- I guess, at that point.

9 THE COURT: You filed the writ first. Right? Here is the
10 writ. Right? You said, Hey, I am filing a Writ of
11 Mandamus, or however that went down. Right?

12 MR. BECK: Correct.

13 THE COURT: Going to file a writ. And it was not, I am
14 filing a motion before you under Marsy's Law -- "you" being
15 Judge Sogn or whatever judge -- filing a motion before you,
16 filing for this in the criminal case. I mean, basically
17 the writ is what started this off or at least the
18 allegation that the writ was coming. Right?

19 MR. BECK: Right. And there was some communications that I
20 was not privy to. Because I was not read in until -- there
21 had been communications with the City Attorney's Office
22 before I got brought in. And I know there had been
23 communications with the court that I was not privy to. And
24 so when I got read in, it was, We tried these remedies and
25 they are unavailable to us, and so what do we have left?

B-20

1 THE COURT: Was a formal motion ever made to the judge in
2 the criminal case?

3 MR. BECK: Not by me, and so I don't know what the --

4 THE COURT: So it is not like this is a case where a motion
5 was made to the criminal court judge and the criminal court
6 judge said, Nope, don't care what Marsy's Law says, there
7 is no jurisdiction for me to consider this, it was not like
8 this was done. It was just, I understand there could have
9 been informal conversations, and I won't get into all of
10 that. Okay. But this is not a situation where someone
11 made a motion to the circuit court judge assigned to the
12 criminal case and they failed to act. Right? Basically
13 the first legal process was the writ. Right?

14 MR. BECK: Submitted by -- that I submitted, yes, Judge.
15 The first request for legal remedy was the Writ of
16 Mandamus.

17 THE COURT: Okay. And so going back to the question: Once
18 Marsy's Law itself provides you with authority to seek that
19 remedy from Judge Sogn, who is the current judge assigned
20 to the criminal case?

21 MR. BECK: Again, yes, it would.

22 THE COURT: I am not talking about prospective, going
23 forward.

24 MR. BECK: Yes. Marsy's Law gave us the ability to make
25 the request and all of these requests are going to go to

B-24

1 the State and we made those requests to the State and the
2 State said, No, we don't think Marsy's Law applies. And
3 so, yes, then it would have required a motion to the court
4 to do that. However, we needed emergency relief because I
5 would say based on the timing, it had to get before the
6 court and the -- I believe the appropriate relief at that
7 point was the seeking of a Writ of Mandamus to get that
8 stopped.

9 THE COURT: Is the State at least -- at that point was not
10 sure that the duty to act was clear in reference to Marsy's
11 Law. Right?

12 MR. BECK: Yes. Well, the State, I believe, explicitly
13 said that --

14 MR. BOGUE: Your Honor, can I answer at this point?

15 THE COURT: Go ahead.

16 MR. BOGUE: He is making factual statements that are simply
17 not true. This goes back to my earlier statement that we
18 have a very different understanding of the factual
19 chronology in this case. And so --

20 THE COURT: Okay.

21 MR. BOGUE: I reassert that under 15-15A-13, that he had a
22 remedy, he just didn't use it.

23 THE COURT: Right. I just scheduled argument on this
24 particular issue, and I understand that it goes a little
25 bit -- going a little bit outside of the nucleus, but I

B-22

1 want to make sure that I understand what your argument is.

2 Okay. And so turning to Counsel for the Defendant in
3 the criminal case, you have stated your thoughts actually
4 in your motion to intervene, which some legal argument in
5 your motion to intervene, which has been granted, and so, I
6 guess, what is the Defendant's position in reference to
7 whether they -- I should say the Defendant in the criminal
8 case -- what his position as to whether mandamus is a
9 proper remedy in this case?

10 MS. BECK: We don't believe that mandamus is the
11 appropriate remedy. We believe the appropriate remedy
12 would be within the criminal case. We believe that the
13 Court in that matter would have jurisdiction to hear any
14 issues that may arise or concerns. As well as 15-15A-13,
15 we believe would have been the appropriate remedy to be
16 sought.

17 I would note, at this point in time all that has been
18 done is a petition for a writ. At this point, there has
19 not been any sort or Writ of Mandamus actually granted.
20 Yet what has been sought by the Petitioners of the civil
21 case has effectively occurred by the order within the
22 criminal case without the court actually having to grant
23 the Writ of Mandamus in the civil action, which I think
24 shows very clearly that the remedy can be handled within
25 the criminal case. I think the other reason that it would

B-23

1 be most appropriate to be handled within the criminal case
2 is the basis for the Writ of Mandamus comes down to the
3 interpretation of Marsy's Law. My understanding, based on
4 argument here today and briefs, is that Petitioners'
5 petition is that invoking Marsy's Law essentially creates
6 anonymity for a named-alleged victim or to the point where
7 their name should be filed as confidential. Nowhere in
8 Marsy's Law does it indicate that a name would be
9 confidential. Rather identifying information; such as
10 address or a phone number, where someone could be located
11 or harassed would be considered more of the confidential
12 information. And I believe case law would support that.
13 Case law is directly on point that out of Florida that a
14 name itself is not to be kept out of documents. And so I
15 explain this because I think it is important that the
16 reason that this writ is being sought is due to the
17 interpretation of Marsy's Law and that it comes directly
18 out of the criminal case. And I don't believe that the
19 interpretation of Marsy's Law is correct and that is
20 something that should be handled within the criminal case
21 through the appropriate remedies; such as 15-15A-13.

22 THE COURT: Thank you. And so, Mr. Beck, in regard to --
23 and I understand your argument as to the applicability of
24 Marsy's Law -- and I am -- I am asking this question again
25 focused on the standard for a Writ of Mandamus and that

B-24

1 standard being -- or the remedy itself, which is an
2 extraordinary remedy that will issue only when the duty to
3 act is clear. And so I am going to -- I am asking this
4 question in reference to that. Okay. And so as I said, I
5 have read through everything and in your initial petition
6 you cited a Florida case, um, which -- let me.

7 MR. BECK: Yeah, Police Benevolent, Your Honor.

8 THE COURT: Correct. And as is pointed out by the State in
9 their response, that case, *Florida Police Benevolent*
10 *Association versus Tallahassee*, that was a lower court --
11 that was a lower Florida court case.

12 MR. BECK: I cited the appellate and it got reversed in the
13 Supreme Court. And, again --

14 THE COURT: I understand your argument in reference to
15 that.

16 MR. BECK: Yeah.

17 THE COURT: But at least looking at the lay of the land, so
18 to speak, and so you originally cited that because Florida
19 has a similar or identical version of Marsy's Law; is that
20 correct?

21 MR. BECK: Yes, Your Honor.

22 THE COURT: And as we look at the lay of the land, the
23 Florida Supreme Court, when interpreting Marsy's Law -- and
24 that was a different -- it was a different factual
25 situation because I think it was -- there was an

B-25

1 officer-involved shooting and the city was going to release
2 the names of the officers. Right? And so it really
3 wasn't -- there was not an existing criminal case. And so
4 a little bit different procedural posture than our case.
5 But in that case, ultimately, the Supreme Court -- Florida
6 Supreme Court found that Marsy's Law didn't preclude the
7 city from releasing the names of the police officers whose
8 conduct was at issue in that case and they quashed that
9 lower court decision. Correct?

10 MR. BECK: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. BECK: And, I guess, as far as today, I thought -- I
13 thought that the limited issue before the Court was not to
14 address that --

15 THE COURT: Correct. And I am not -- I will tell you at
16 this point in time that I am not making a determination as
17 to whether Marsy's Law applies to these officers as
18 victims. Okay. But I think that as you go into the
19 standard of whether the right to the remedy is clear, I
20 think that is relevant to mandamus, you know what I mean?
21 And so that is why I ask that question though.

22 MR. BECK: And if I could, going to the -- the argument as
23 far as being contained under the 15-15A in the criminal
24 side, that based on the timing that you didn't have a judge
25 assigned to the case, it was just the Clerk that was going

B-26

1 to open these files. There was -- I believe Mr. Albaidhani
2 was set on the calendar for a 1:30 initial appearance, that
3 was just going to be a random whatever judge was for it
4 that day. And so the -- Judge Sogn when he issued that
5 order says, Because this request has been made over here,
6 and I can't unring that bell, here is what I am going to do
7 on this side, in the criminal case. And so arguably,
8 the -- to make -- I guess, because my fear that I have
9 before this Court is that the Court says, Well, yep, it
10 really needs to go under the criminal case, and then for
11 the criminal judge to go, Well, we had only put this
12 prohibition in place because this writ was pending with
13 this requested relief. I am hoping that the Court
14 understands where I am going.

15 THE COURT: I understand. I understand.

16 MR. BECK: And so a temporary writ can be granted to say
17 that, Okay, based upon the emergency, it should be granted
18 for the opportunity for those victims to bring and have
19 their motion heard in criminal court. And I think then
20 that everything then would track under the criminal side
21 and the arguments would then be heard there. And it would
22 probably -- excuses this Court from having to hear it any
23 further as well. And it would bounce everything over to
24 the criminal side. I think that that can be relief that at
25 least maintains the status quo because, again, if we unring

B-27

1 the bell, we can't. And so if we create a gap where that
2 information is going to be released, and then we have
3 victim officers that want to maintain anonymity, we are not
4 prejudicing the Defendant at all because he has been
5 provided with an unredacted copy. And so I would think
6 that that -- that that at minimum should be at least
7 potentially the requested relief that should be granted.

8 THE COURT: Mr. Bogue, what is the State's position in
9 regard to this?

10 MR. BOGUE: Well, Your Honor, State believes that
11 Petitioners are reading into 15-15A-13 things that are not
12 present. He is saying this is only retroactive and not
13 prospective in nature. There is none of that language
14 present in that statute, nor is there any limiting language
15 that says that a court can't issue a temporary hold on
16 those documents pending the -- pending the required hearing
17 that the statute requires them to have to balance the need
18 of the competing parties.

19 THE COURT: "The Court" in this case, and it would be "the
20 Court" in the criminal case?

21 MR. BOGUE: Correct, Your Honor. Thank you. And, again, I
22 would say that per the Court's direction for today the sole
23 question is whether the writ is available. And, again,
24 there are three tests. And so we are really not focusing
25 on the other two, per the Court's instructions, and I

B-28

1 respect that. But focusing solely on the: Is there
2 another remedy available? Clearly there is. Clearly the
3 Petitioners failed to even make any effort to make that
4 motion or that request to the criminal court, but yet the
5 court granted it anyway and gave them the relief they
6 sought pending some final review in this case, plus the
7 ultimate handling of this matter in the criminal case. As
8 the Court correctly said at the beginning, this is an
9 extraordinary and extreme remedy. And the State stands
10 that -- making a somewhat local geographic reference -- we
11 are not contesting that the Petitioners can't get to the
12 west side of the Interstate, they just can't do it by 85th
13 Street because there is no bridge across it. There is no
14 route through the Writ of Mandamus in this case because he
15 has another remedy. That is our sole argument, Your Honor.
16 THE COURT: Any final comments in this matter before the
17 Court rules on the -- again, the limited issue that this
18 hearing was noticed for Mr. Beck?
19 MR. BECK: No, Judge. Again, going with -- I guess, final
20 argument would be that one would argue that the -- at the
21 time this was filed there was no other adequate remedy.
22 Something had to be done. And that was to compel the Clerk
23 from sealing those records. And so we would believe that
24 the Court could issue a writ temporarily, which comports
25 with what the issuance of the -- the same order that Judge

B-29

1 Sogn issued in the criminal case to say with the time
2 number to say that this writ is good for ten days, and
3 within that ten days, you know, Petitioners must file
4 within the criminal case because that is where we believe
5 the proper remedy would be held. Because if we create a
6 gap, there is potential for what we believe is confidential
7 information to be made available for public consumption and
8 we can't unring that bell. Thank you, Judge.

9 THE COURT: Okay. Any final comments from anyone in
10 reference to this matter before this Court issues its
11 decision?

12 MR. BOGUE: Nothing further from the State, Your Honor.

13 THE COURT: Okay. All right. And so and I had made the
14 parties aware in this matter that I had planned to bench
15 this decision, and I am going to do so. And I scheduled
16 this hearing, I understand that time is of the essence in
17 this matter because this is a criminal case and there will
18 be ongoing filings and some of those filings I expect that
19 these officers will be referenced. And so the Court
20 scheduled this hearing in an expedited fashion. And the
21 Court is also aware of the recent decisions of the Supreme
22 Court warning the courts, warning courts not to over use
23 their *sua sponte* powers.

24 In this case, the Court, upon reviewing everything,
25 felt that the best route was to schedule this hearing and

B-30

1 place the parties on notice of the issue that the Court
2 thinks is a preliminary and dispositive issue in this
3 matter, which is whether mandamus is the proper remedy
4 here. And so that is why I issued the order that I did.
5 And I gave the opportunity for additional briefing and
6 hearing on that issue.

7 And also when the Court -- I did not issue the
8 temporary writ upon review of the file because it --
9 because review of the file in the petition didn't reveal to
10 the Court that there was no speedy and adequate remedy in
11 this case.

12 And so as I look at the standard in this matter, as I
13 said, South Dakota law allows trial court to issue Writ of
14 Mandamus when there is no plain, speedy, and adequate
15 remedy in the ordinary course of the law. And the South
16 Dakota Supreme Court has been very clear that the writ is
17 an extraordinary remedy that will issue only when the duty
18 to act is clear. And that it commands the fulfillment of
19 an existing duty. But that it creates no duty itself and
20 does not act upon doubtful or unsettled law.

21 And the -- and so as I look at this matter, I also
22 have reviewed Marsy's Law itself, which was referenced, and
23 I have reviewed 15-15A-13, 16-21A-5, and I have also
24 reviewed other cases involving Marsy's Law; such as *State*
25 *vs. Waltner* and *State vs. Antuna*. In which -- although

B-31

1 it's a little bit different procedural context -- the
2 victims -- victim in each case clearly asserted their
3 rights to privacy within the criminal case. And as I look
4 at all of these matters, it is clear to me that the
5 officers in this case have an adequate remedy, an adequate
6 legal remedy in this case and a plain, speedy, and adequate
7 remedy in the ordinary course of law. And that is to make
8 a motion to the judge within the criminal case. And I
9 understand the -- Mr. Beck's comments referencing, I guess,
10 how this came about, but I don't think that there has ever
11 been a proper motion made within the criminal case to allow
12 the circuit court judge assigned to the criminal case to
13 address this matter as, in this Court's view, it in fact
14 required to do promptly under Marsy's Law.

15 And I would also note that -- although the Petitioners
16 in this case -- although there had been some reference from
17 the Supreme Court in regard to Marsy's Law that victims
18 don't become parties in the criminal case, they clearly
19 have rights within the criminal case under Marsy's Law and
20 they have legally cognizable interest within the criminal
21 case, which would be effected by the outcome of certain
22 findings within the criminal case.

23 And so I don't find that mandamus is a proper remedy
24 in this case. Especially in light of the fact that it is
25 an extraordinary remedy that will not often issue.

B-32

1 And in regard to the duty to act in this case, as I
2 said, I am not making a determination as to whether these
3 officers are in fact victims under Marsy's Law. I think
4 that is a matter that is properly addressed by the Court
5 within the criminal case; however, and, again, I am only
6 going to whether mandamus is a proper remedy because
7 mandamus has certain requirements. And that requires that
8 a writ will issue only when the duty to act is clear. And
9 I can't say that based upon this record. And I think that
10 is for something for the -- that is something for the judge
11 in the criminal case to determine.

12 Now it's been -- due to the -- well, let me back up.
13 It's also clear to me that the judge in the criminal case
14 has the power to issue this type of order within the
15 criminal case because essentially he has already done it.
16 It's just that it was procedurally odd. And the other
17 thing that I will say in reference to this matter, why I am
18 convinced that mandamus is not the proper remedy,
19 obviously, the victims have rights under Marsy's Law.
20 Defendants in criminal cases have extremely important
21 Constitutional rights as well. And this Court, making
22 determinations as to filings within a criminal case;
23 meaning that the Defendant in this criminal case has to
24 intervene in a civil case and then you potentially -- and
25 perceive this issue with potential discovery issues coming

B-33

1 up within the criminal case, it is a very odd procedural
2 posture that I don't think is envisioned or allowed through
3 a Writ of Mandamus.

4 And the other concern that I have in this matter is,
5 again, with potential discovery issues or whatever may be
6 happening in the criminal case, that you have me issuing an
7 order in this case and the judge in the criminal case
8 issuing orders -- and I apologize because my mind works in
9 pop culture references and if you know them sometimes they
10 are funny, and if you don't, sometimes it is weird -- but
11 it reminds me of the *Spiderman* meme where they're pointing
12 at each other and nobody knows what is going on. And so
13 that is my concern in reference to this matter with this
14 Court serving jurisdiction through a Writ of Mandamus that
15 I do not think is allowed under the law.

16 And so in reference to the request for me to issue a
17 temporary writ, again, I don't find that there are grounds
18 for Writ of Mandamus here because of its very specific
19 procedural requirements. And so it is going to be my
20 intention to dismiss this matter. However, I will say that
21 that dismissal doesn't become final in this matter until,
22 obviously, I sign the written order of dismissal. And
23 until that is done, then, obviously, this Court's previous
24 orders are in effect until this matter is formally
25 dismissed.

B-34

1 And so I am not saying that these officers don't have
2 rights under Marsy's Law. I am not saying that they don't
3 have a remedy within the criminal case. I am just saying
4 that they don't have the remedy of mandamus in this case.

5 I will say one thing in regard to the comments in
6 reference to the Clerk of Courts because I want to address
7 that: And so I -- in viewing all of the statutes, I also
8 do not think that there is a clear duty to act on the Clerk
9 of Courts here in which they are required to review every
10 potential filing and essentially make a legal determination
11 as to whether there are -- if it is a confidential
12 document, especially in this case where I have made my
13 comments to Marsy's Law. And so that is another reason in
14 reference to this reference to my order.

15 And so I am going to order the State to give me a
16 proposed order in reference to this matter. If you wish to
17 do written findings and conclusions, you are free to do
18 that. If you simply wish to incorporate the Court's oral
19 findings and conclusions into that order, then that is
20 sufficient for the Court.

21 And, Mr. Beck, if you wish to submit your own findings
22 and conclusions or objections in reference to the order,
23 you would have five days from receipt of the order to do
24 that.

25 MR. BECK: From receipt of the State's proposed?

B-35

1 THE COURT: Correct.

2 MR. BECK: Okay.

3 THE COURT: Anything else before we go off the record
4 today?

5 MR. BECK: Nothing from the Petitioner, Your Honor.

6 MR. BOGUE: Nothing from the State.

7 THE COURT: Okay. Thank you, everyone.

8 (At 2:31 p.m., the proceedings were adjourned.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

B-36

FINDINGS OF FACT

1. On April 1, 2025, the Defendant is alleged to have been in an incident in which he shot at two police officers, striking one of the officers, within the City of Sioux Falls, Minnehaha County, South Dakota. He was later apprehended in another county by the South Dakota Highway Patrol and officers from the Beresford Police Department.
2. On April 3, 2025, an Affidavit in Support of Arrest Warrant was prepared by agents from the South Dakota Division of Criminal Investigation ("DCI"). The Affidavit, Complaint with Request for Arrest Warrant, and Warrant of Arrest were presented on April 3, 2024, to Hon. Douglas E. Hoffman. Judge Hoffman issued the warrant for Albaidhani's arrest that same day.
3. On April 4, 2025, Petitioners filed their Petition for Writ of Mandamus seeking complete anonymity for John Doe Officer One and John Doe Officer Two by requiring Respondents MCSAO and the Clerk of Courts to redact any and all identifying information regarding the identities of the Officers contained in the then current filings and from all future filings.
4. On April 4, 2025, Hon. Jon Sogn issued an informal order by email directing that the Clerk of Courts designate as confidential all filings in *State v. Albaidhani*, 49CRI25-002551, until a hearing could be had on the Petition for Writ of Mandamus.
5. Later that day, Judge Sogn issued an additional Order directing that MCSAO file redacted copies of the Complaint and Affidavit.
6. The mandamus case was assigned to Judge Bobbi J. Rank, an out of circuit judge.
7. The State submitted its response to the Petition for Writ of Mandamus on April 11, 2025.

8. The Defendant moved to intervene in the mandamus action, which was granted by the Court without objection on April 25, 2025.
9. Due to the existence of an active criminal case in which more filings may be forthcoming, and hence time being of the essence, the Court scheduled the mandamus case for a hearing on April 25, 2025, on the sole issue of whether a writ of mandamus was an available remedy. The Court gave the parties the opportunity to fully brief that issue prior to hearing.
10. In its Order to Schedule Hearing, the Court issued an interim order regarding filings up to the time of the hearing, based on the previous order of Judge Sogn and stipulation by the State.
11. An unredacted copy of all documents was provided to the Defendant through counsel.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this action and the subject matter of the proceeding.
2. Venue of this action is proper in Minnehaha County.
3. SDCL § 21-29-1 grants this Court the authority to issue a writ of mandamus:

The writ of mandamus may be issued by the Supreme and circuit courts, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board, or person.

4. SDCL § 21-29-2 further states when such writs must be issued:

The writ of mandamus must be issued in all cases *where there is not a plain, speedy, and adequate remedy, in the ordinary course of law*. It must be issued upon affidavit, upon the application of the party beneficially interested.

(emphasis added).

5. The South Dakota Supreme Court has frequently set forth the requirements for the issuance of a writ of mandamus:

"A writ of mandamus is an extraordinary remedy that will issue only when the duty to act is clear." *Krsnak v. S.D. Dep't of Env't and Nat. Res.*, 2012 S.D. 89, ¶ 9, 824 N.W.2d at 434 (quoting *Woodruff v. Bd. of Comm'rs for Hand Cnty.*, 2007 S.D. 113, ¶ 3, 741 N.W.2d 746, 747). "A writ of mandamus 'commands the fulfillment of an existing legal duty, but creates no duty itself, and' does not act 'upon . . . doubtful or unsettled law.'" *Id.* (omission in original) (quoting *Woodruff*, 2007 S.D. 113, ¶ 3, 741 N.W.2d at 747). "To prevail on a writ of mandamus or prohibition, Petitioners must show 'a clear legal right to performance of the specific duty sought to be compelled and the [respondent] must have a definite legal obligation to perform that duty.'" *Id.* (alteration in original) (quoting *Cheyenne River Sioux Tribe v. Davis*, 2012 S.D. 69, ¶ 13, 822 N.W.2d 62, 66). "The writ of mandamus must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." SDCL 21-29-2.

Bohn v. Bueno, 2024 S.D. 6, ¶13, (emphasis added).

6. SDCL § 15-15A-13 provides a method by which public access to information in court records can be prevented:

A request to prohibit public access to information in a court record may be made by any party to a case, *the individual about whom information is present in the court record*, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

(emphasis added).

7. As set forth in SDCL § 15-15A-13, such request must first be made to the court overseeing the case to which such records have been filed or will be filed.

8. Under Marsy's Law, a victim has the "right to be free from intimidation, harassment and abuse" and the "right, upon request, to prevent the disclosure to the public, or the defendant or anyone acting on behalf of the defendant in the criminal case, of information or records that could be used to locate or harass the victim or the victim's family." S.D. Const. Art. 6 § 29 (2)(5).

9. Marsy's Law also provides the victim with a right to privacy and "the right to be heard in any proceeding during which a right of the victim is implicated." *Id.* at § 29(6)(9).

10. Additionally, Marsy's Law contains the following procedure:

The victim, the retained attorney of the victim, a lawful representative of the victim, or the attorney for the government, upon request of the victim, may assert and seek enforcement of the rights enumerated in this section and any other right afforded to a victim by law *in any trial...court, or before any other authority with jurisdiction over the case, as a matter of right. The court or other authority with jurisdiction shall act promptly on such a request, affording a remedy by due course of law* for the violation of any right and ensuring that victims' rights and interests are protected in a manner no less vigorous than the protections afforded to criminal defendants and children accused of delinquency. The reasons for any decision regarding the disposition of a victim's right shall be clearly stated on the record.

Id. (emphasis added).

11. SDCL § 15-15A-13 and Marsy's Law provide the Petitioners with a plain, speedy, and adequate remedy before the trial court, in the ordinary course of law. *See State v. Antuna*, 2024 S.D. 78; *State v. Waldner*, 2024 S.D. 67 (victims asserting rights to privacy within the criminal case).

12. The Petitioners have failed to make a proper motion under either SDCL 15-15A-13 or under Marsy's Law within the criminal case prior to filing their Petition for Writ of Mandamus in this matter.

13. Judges in criminal cases routinely address filings, discovery and confidentiality issues, and related protective orders. The State, the Defendant, and (potentially) victims all have the right to be heard in relation to these matters.
14. A writ of mandamus regarding ongoing filings in a criminal case could result in conflicting rulings between the mandamus judge and criminal case judge, which could strain judicial economy and the rights of the Defendant.
15. It must be left to the trial court within the criminal case to decide what rights and remedies the Petitioners have under SDCL 15-15A-13 and Marsy's Law.
16. The Court would note, however, that the only case cited by Petitioners on the merits of whether Marsy's Law protects officers' names was overturned on appeal. *City of Tallahassee v. Florida Police Benevolent Assn.*, 375 So.3d 178 (Fla. 2023).
17. Therefore, the duty of Respondents to act in redacting or rejecting documents is not clear.
18. The Clerk of Court is certainly not required to make complicated legal judgments regarding statutory and constitutional rights in determining what filings to accept or reject.
19. The Petitioners have failed to satisfy the requirements for the extraordinary remedy of a Writ of Mandamus, and a writ is not an available remedy.
20. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so and any Conclusion of Law that is more properly a Finding of Fact shall be deemed so.
21. The Court incorporates its oral ruling herein as if set forth in full.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters the following:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition of the Fraternal Order Of Police Sioux Falls Lodge No. 1, John Doe Officers One And Two for a Writ of Mandamus is DENIED, and the case is DISMISSED.

Dated this 9th day of May, 2025.

BY THE COURT:

By: Bobbi J. Rank
Bobbi J. Rank
Circuit Court Judge

Attest:
Jarrott, Brenda
Clerk/Deputy



CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the APPELLEE RESPONSE BRIEF were electronically served upon:

SHIRLEY A. JAMESON-FERGEL
Clerk of the Supreme Court
SCClerkBriefs@uj.s.state.sd.us

JEFF BECK
Interested Parties
becklaw@outlook.com
Attorney for Appellant

SARAH THORNE
MATTHEW TEMPLAR
ATGService@uj.s.state.sd.us
Attorneys for Appellee State of South Dakota

DANIEL HAGGAR
CRYSTAL JOHNSON
ujservice@uj.s.state.sd.us
Attorneys for Appellee State of South Dakota

Dated this 28th day of October, 2025.

/s/ Kylie Beck
Kylie Beck
Attorney for Appellee

/s/ Emily Herbert
Emily Herbert
Attorney for Appellee

Minnehaha County Public Defender
413 North Main Ave.
Sioux Falls, South Dakota 57104
Telephone: (605)367-4242

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 S.D. Highway 1889, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

October 1, 2025

OCT 15 2025

Shirley A. Johnson Lepp
Clerk

Supreme Court of the State of South Dakota
Attn: The Honorable Steven R. Jensen, Chief Justice
500 East Capitol Avenue
Pierre, SD 57501

Re: *State of South Dakota v. Samir Albaidhani*, Appeal No. 31131

Dear Chief Justice Jensen:

I am assigned to represent the State of South Dakota in this appeal. I have reviewed the settled record, as well as John Doe Officers One and Two's Appellant's brief. The settled record reflects the State made no argument for or against the Officers' requests to redact or seal their names, as recognized by the Honorable Susan M. Sabers in her Memorandum Decision and Order Denying Motion to Seal. SR: 78.

Because the State took no position in the circuit court proceedings, I believe it would be inappropriate for the State to now brief and argue the issue on appeal. *See State v. Willingham*, 2019 S.D. 55, ¶ 25, 933 N.W.2d 619, 625 ("Issues not raised before the circuit court cannot ordinarily be raised for the first time on appeal."). Thus, the State does not intend to file an Appellee's Brief or participate further in this appeal. However, if the Court orders the State to provide briefing or argument, then, of course, it will comply with that order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew W. Templar".

Matthew W. Templar
Assistant Attorney General

cc: Kylie Beck, Counsel for Appellee Samir Albaidhani
Jeffrey R. Beck, Counsel for Appellants John Doe Officers One and Two
Crystal Johnson and Eric Bogue, Minnehaha County State's Attorney's Office

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

APPEAL FROM THE CIRCUIT COURT
SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE SUSAN SABERS
CIRCUIT COURT JUDGE

APPELLANT'S REPLY BRIEF

Jeffrey R. Beck
Beck Law, Prof. LLC
221 S. Phillips Avenue, Suite 204
Sioux Falls, SD 57104
Becklaw@outlook.com
Telephone: (605) 359-0135
ATTORNEY FOR INTERESTED
PERSONS AND APPELLANT

Sarah L. Thorne
South Dakota Attorney General's Office
1302 E. Hwy 14
Pierre, SD 57501
Telephone: (605) 773-3215
ATGService@state.sd.us
ATTORNEY FOR PLAINTIFF AND APPELLEE

Kylie Beck
Emily Herbert
Minnehaha County Public Defender's Office
413 N. Main Ave. Ste. 300
Sioux Falls, SD 57104
Telephone: (605) 367-4242
EHerbert@minnehahacounty.gov
KBeck@Minnehahacounty.gov
ATTORNEYS FOR DEFENDANT AND APPELLEE

Notice of Intent to Appeal and Appellant's Docketing Statement filed July 2, 2025.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	2
1. A Crime Victim has a Constitutional Rights to Privacy and too Request Their Names or Other Identifying Information be Redacted from Public Filings and the Trial Court’s Holding to the Contrary Should be Reversed.	2
2. No Balancing Test is Needed to Regarding the Constitutional Rights of a Crime Victim in Juxtaposition to a Defendant’s Constitutional Rights.	14
CONCLUSION	14
CERTIFICATE OF COMPLIANCE	15
CERTIFICATE OF SERVICE AND MAILING	16

TABLE OF AUTHORITIES

STATUTES CITED:	PAGE
SDCL 15-15A-13	12-13
Fla. Admin. Code Ann. R.2.4233 (2023)	10-12
Ohio R.C. 2930.07(D)(1)(a)(i)	9
CONSTITUTIONAL AMENDMENTS CITED:	PAGE
Article 6, Section 29	2, 9
Ohio Const, Art. One, Section 10(a)(D)	6-8
CASES CITED:	PAGE
<u>City of Tallahassee v. Florida Police Benevolent Association, Inc.</u> , 375 So.3d 178 (Fla. 2023).	Passim
<u>Doe v. Quiring</u> , 2004 S.D. 101,686 N.W.2d 918.	2
<u>Facebook, Inc. v. Superior County of San Diego County</u> , 471 P.3d383, 2678 Cal.Rptr.3d 267.	4
<u>State ex rel. Gatehouse Media Holdings II, Inc. D/B/A The Columbus Dispatch, Relator, v. The City of Columbus Police Department, Case No. 2023-1327</u> , argued February 11, 2025.	Passim
<u>State ex rel. Gatehouse Media Holdings II, Inc., v. Columbus Police Department</u> , Slip Opinion No. 2025-Ohio-5423	Passim

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 31131

STATE OF SOUTH DAKOTA,
Plaintiff and Appellee

vs.

SAMIR ALBAIDHANI,
Defendant and Appellee

FRATERNAL ORDER OF POLICE LODGE NO. 1 AND
JOHN DOE OFFICERS ONE AND TWO,
Interested Persons and Appellants

INTRODUCTION

The Responsive Brief of Appellee Albaidhani fails to recognize a crime victims' right to privacy guaranteed by the South Dakota Constitution and the erroneous interpretation of what constitutes information that could be used to locate or harass a crime victim or the victim's family. Additionally, any recommendation for a balancing test, should the Court determine the requested information can be withheld, would be an improper analysis. Albaidhani cannot articulate any impact on his constitutional rights as criminal defendant that would stem from the crime victim's names being withheld or redacted from criminal court filings. A crime victim's right to privacy and their ability to withhold the identifying information from the filings are constitutional protections that should not be infringed upon and are those that trumps any protection held by Defendant. The trial court order denying the crime victim's requests to redact their names or other identifying information from public filings should be reversed.

ARGUMENT

1. A Crime Victim has Constitutional Rights to Privacy and too Request Their Names or Other Identifying Information be Redacted from Public Filings and the Trial Court's Holding to the Contrary Should be Reversed.

Both the trial court and Appellee fail to recognize that the crime victim's request was not for complete anonymity, but simply a constitutionally protected request to protect their privacy by invocation of their right to prevent disclosure of information which could be used to locate or harass a crime victim or the victim's family and that the same be withheld or removed from *public* filings. Defendant Albaidhani would have the unredacted filings and the reports which contained the victim-officer's names, subject to the order that the information could not be publicly released.

The Interested Parties' ability to prevent disclosure of any information that could be used to locate, intimidate, or harass the victims or their families and the right to privacy are rights guaranteed to all citizens under the South Dakota Constitution. Art. 6, Sections 29(5) and (6). SD Const. The pertinent parts provide that a crime victim can prevent disclosure of "information or records that could be used to locate or harass the victim or the victim's family" and "the right . . . to privacy." See *S.D. Const. Art. 6, Sect. (5) and (6)*. Defendant erroneously argues that naming the victim is not the kind of "information or record" that could be used to locate or harass the victims or their families and relies on *City of Tallahassee v. Florida Police Benevolent Association, Inc.* 375 So.3d 178, 182 (Fla. 2023). We would argue the Florida Supreme Court got it wrong not only in its interpretation of what constitutes information about a victim but also a wholesale disregard for the victim's overarching right to privacy.

In response to the protections provided in Article 6, Section 5, common sense and logic dictate that a logical approach should be applied when analyzing the question of what constitutes information that could be used to locate a victim. A victim's name is unequivocally information that could be used to locate them and would be a key piece of the puzzle in determining the identity of person, which is a fundamental prerequisite of locating or harassing that person. If a person does not possess basic information, which would be the name of a person, their ability to locate that person can be prevented.

One example of how knowledge of a person's name could demonstrate that one's name is a key piece of information is shown in the following hypothetical. Picture a court proceeding wherein the Defendant is a high-profile public figure accused of assaulting one of his employees. The case is one which has captured the media's attention and is receiving press coverage. A hearing is held before that court and up to that stage of proceedings no information, including the name, has been provided about the victim in any filings. During the hearing the judge issues an order commanding that the victim's privacy is paramount and that no one is to provide any "information" regarding the victim. Following the proceeding one of the attorneys answers a reporter's question regarding the hearing and responds that based on the judge's order she is prohibited from commenting about any information regarding "Melvin Milquetoast" and names the victim. Does disclosure of the victim's name not violate the order? Knowledge of the name is the key piece of information needed to locate and potentially harass the victim.

Defendant Albaidhani argues that based on *City of Tallahassee* that knowledge of the name or knowing the "identity" of a victim is not "information" that could be used to

locate the victim. Does Albaidhani not believe that the Judge who issued the order in the preceding hypothetical prohibiting disclosure of “information” regarding the victim will not be summoning the respective counsel who authored the disclosure naming the victim before the court on contempt? The ordering judge would absolutely bring counsel before him on regarding release of the victim’s name. The name is information that can be used to locate and harass the victim or their family.

This Court previously held that “we generally agree that the category “any identifying information” is broader than the category “name,” and therefore, the broader category encompasses such things as social security numbers, initials, or other information that identifies a particular individual”. *Doe v. Quiring*, 2004 S.D. 101, ¶18,686 N.W.2d 918. Disclosure of a victim’s name is unequivocally providing information that could be used to locate or harass the victim. The ability to harass a victim fundamentally begins with first knowing the name of that person. Other courts too have found that name is a piece of information like an email address that could be used to identify a person. See *Facebook, Inc. v. Superior County of San Diego County*, 471 P.3d383, 2678 Cal.Rptr.3d 267. A person’s name is captured under the broader protection of information.

Albaidhani is correct that Marsy’s Law does not say “identify” in the text of the Amendment. That is true. However, it is argued that not only does release of a victim’s name violate his constitutional guarantee of privacy, a person’s name is information that provides the identity of the victim. The combination of the two is why reliance on *City of Tallahassee* would be imprudent and Appellant request treatment to the contrary.

Support for why *City of Tallahassee* should be disregarded can be found when it is put in contrast to a recently decided Ohio Supreme Court case which addressed the question of whether police officers are victims under Marsy’s Law. The Ohio case had been argued and was pending before the Supreme Court of Ohio when the Appellant’s in this case filed their initial mandamus action and their subsequent request in this action requesting their names or initial not be included or redacted from the public filings. See *State ex rel. Gatehouse Media Holdings II, Inc. D/B/A The Columbus Dispatch, Relator, v. The City of Columbus Police Department*, Case No. 2023-1327, argued February 11, 2025. On November 25, 2025, the seven-member Ohio Supreme Court issued their opinion. See *State ex rel. Gatehouse Media Holdings II, Inc., v. Columbus Police Department*, Slip Opinion No. 2025-Ohio-5423.¹²

In *City of Columbus* the press, Columbus Dispatch, filed a writ of mandamus requesting the Court order the City of Columbus Police Department to release unredacted body camera footage of the shootout between the suspect and victim police officers. The mandamus action had come following the City’s release of redacted videos subsequent to a local media’s open records request for the police videos. The Columbus police officers

¹ The opinion release on November 25, 2025, carries a disclaimer which provides that: “This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decision, Supreme Court of Ohio, . . . of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.”

² Regarding difference in how the case was cited from the original caption as briefed and argued in juxtaposition to the slip opinion, a note on the slip opinion provides that “until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex. Rel. GateHouse Media Ohio Holdings II, Inc. v. Columbus Police Dept.*, Slip Opinion No. 2025-Ohio-5243.”

had invoked their constitutional right to privacy under Ohio's version of Marsy's Law and the City of Columbus refused to

If the City of Columbus were to release of unredacted video footage would thereby release the names of police officers that were the victims of attempted murder by a suspect that died in a shootout. *Id.* ¶9. The City of Columbus Police Department had a policy not to release the names of the officers under the privacy protections provided to crime victims under Ohio's constitutional amendment guaranteeing certain rights to crime victims.

The citizens of the State of Ohio enacted an amendment to its constitution that is similar in language to both South Dakota's and Florida's versions of Marsy's Law as enacted by the respective states. See *Ohio Const, Art. One, Section 10(a)(D)*. Ohio's version of the Crime Victim's Bill of Rights was passed in 2017 with an affirmative vote of 83% of the voters. The text of Ohio's Amendment provides:

Article I, Section 10a - Rights of victims of crime

(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused:

(1) to be treated with fairness and respect for the victim's safety, dignity and privacy;

(2) upon request, to reasonable and timely notice of all public proceedings involving the criminal offense or delinquent act against the victim, and to be present at all such proceedings;

(3) to be heard in any public proceeding involving release, plea, sentencing, disposition, or parole, or in any public proceeding in which a right of the victim is implicated;

(4) to reasonable protection from the accused or any person acting on behalf of the accused;

(5) upon request, to reasonable notice of any release or escape of the accused;

(6) except as authorized by section 10 of Article I of this constitution, to refuse an interview, deposition, or other discovery request made by the accused or any person acting on behalf of the accused;

(7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim;

(8) to proceedings free from unreasonable delay and a prompt conclusion of the case;

(9) upon request, to confer with the attorney for the government; and

(10) to be informed, in writing, of all rights enumerated in this section.

(B) The victim, the attorney for the government upon request of the victim, or the victim's other lawful representative, in any proceeding involving the criminal offense or delinquent act against the victim or in which the victim's rights are implicated, may assert the rights enumerated in this section and any other right afforded to the victim by law. If the relief sought is denied, the victim or the victim's lawful representative may petition the court of appeals for the applicable district, which shall promptly consider and decide the petition.

(C) This section does not create any cause of action for damages or compensation against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(D) As used in this section, "victim" means a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

(E) All provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws.

(F) This section shall take effect ninety days after the election at which it was approved.

In *Columbus Police Department* it is the practice of the State not to release the names of officers that are the victims of crimes. The facts of both *City of Tallahassee* and *Columbus Police Department* are analogous in terms of how the officers became crime victims. In both cases the suspects died after shooting at police officers. The officers were the victims of the attempted murder and aggravated assault. In *City of Tallahassee* the City took the position that even though the police officers were working in their official capacity, they were still classified as crime victims. However, the City determined that it could not prevent release of the victim-officers names because the names were not “information” that could be used to locate or harass the victim or the victim’s family. In holding the City could not prevent the release of the officers names the Florida Supreme Court failed to recognize the overarching right to privacy as guaranteed by the Florida Constitution. The failure to recognize the right to privacy is the flaw in the holding under *City of Tallahassee*.

Unlike *City of Tallahassee*, *Columbus Police Department* properly recognized that the basis of a victim’s rights inquiry begins with the right to privacy as guaranteed through the adoption of Marsy’s Law to the state constitution. In *Columbus Police Department* the City took the position that the names were indeed information protected from disclosure under the right to privacy as guaranteed under the enactment of Marsy’s Law in Ohio. *Columbus Police Department*, ¶8. Under Section 10(A)(a)(1) a victim is entitled to a right to privacy. *Ohio Const. Art. I, Sec. 10(A)*. The basic premise was that the right to privacy as guaranteed under Marsy’s Law prevented disclosure of a victim’s name when the victim either requested the same or had invoked their rights under the constitution. In bringing the writ of mandamus to compel release of the body-camera

footage, which would release the officer's names, the Columbus Dispatch did not question whether crime victims had a right to privacy, the question presented was whether a police officer acting in their official capacity could be the victim of a crime. Asking the court to determine that the police officers that had been shot at were not crime victims was the Dispatch's attempt to usurp the recognized right to privacy. By not challenging whether a crime victim had a right to privacy, in *Columbus Polic Department* all parties appeared in general agreement that a crime victim had a constitutional right to privacy. By trying to get the officers excluded from the group based on their occupation the Columbus Dispatch was simply trying to carve out an exception to who could be a crime victim, not what rights were guaranteed to a crime victim. By holding that police officers could indeed be a crime victim, the Ohio Supreme Court affirmed that all crime victims have a right to have their name withheld from any an all filings under their right to privacy as guaranteed within Marsy's Law.

South Dakota too has a right to privacy contained its version of Marsy's Law as does both Ohio and Florida. *S.D. Const., Art. 6, Section 29 (6)*. It is the right to privacy guaranteed to a crime victim under the South Dakota Constitution that the inquiry should start. To begin the discussion on what is "information" under subsection 5 ignores the overarching right to privacy. The right to privacy was understood by all parties in *Columbus Polic Department* and the same should hold true in when examining applying the protections in South Dakota.

Ohio passed R.C. 2930.07("the Victim's Privacy Law") mandating the privacy of crime victim information. The statute was enacted by the Ohio legislature to address the protections guaranteed through the passage of Marsy's Law. The key here is the

legislature recognized the right to privacy, which meant the victim had a right to protect their name from release. In passage to the law the Ohio legislature provided that “on request of a crime victim, case documents . . . shall be redacted prior to public release subject to [the Public Records Act] to remove the name, address, or other identifying information of the victim.” See *Ohio R.C. 2930.07(D)(1)(a)(i)*. *Columbus Police Department*, ¶13. The enactment of the Victim’s Privacy Law in Ohio was the legislature’s recognition of how to address the constitutional protections founded upon one of the predicates that a crime victim’s right to privacy include the ability of anonymity in public records.

The State of Florida too passed some rules or legislation following the passage of Marsy’s Law to protect the constitutional rights of crime victims. Florida Rules of General Practice and Judicial Administration Rule 2.423 passed to address “Marsy’s Law” crime victim information in public filings. Fla. Admin. Code Ann. R.2.4233 (2023)³. The complete process on how Marsy’s Law protections are to be addressed by the Clerk is provided as:

(a) Scope and Purpose. As provided by article I, section 16 of the Florida Constitution, known as “Marsy’s Law,” the following rule shall govern public access to and the protection of the records of the judicial branch of government in criminal and juvenile justice cases as it pertains to confidential crime victim information. This rule shall be interpreted to be consistent with the scope and purpose of rule 2.420.

(b) Definitions.

(1) “Confidential crime victim information” means any information contained within a court record that could be used to locate or harass the victim or the victim’s family, or

³ The Florida Rule was passed after the appeals court ruling in *City of Tallahassee* but before the Florida Supreme Court opinion.

which could disclose confidential or privileged information of the victim.

(2) “Crime” and “criminal” include delinquent acts and conduct.

(3) A “victim” is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed. The term “victim” includes the victim’s lawful representative, the parent or guardian of a minor victim, or the next of kin of a homicide victim, except upon a showing that the interest of such individual would be in actual or potential conflict with the interests of the victim. The term “victim” does not include the accused.

(c) Confidential and Exempt Records. In accordance with rule 2.420(c)(9), confidential crime victim information is determined to be confidential on the grounds that confidentiality is required to comply with the Florida Constitution.

(d) Procedure for Identifying Confidential Crime Victim Information in Criminal and Juvenile Court Records

(1) The filer of an initial charging document shall prominently indicate the existence of confidential crime victim information pursuant to article I, section 16 of the Florida Constitution. If the filer indicates the existence of confidential crime victim information, the clerk of the court shall designate and maintain the confidentiality of any such information contained within the initial charging document.

(2) Except as provided under subdivision (d)(1), the filer of any document with the court under subdivision (d) shall ascertain whether it contains any confidential crime victim information. If the filer believes in good faith that information is confidential, the filer shall request that the information be maintained as confidential by contemporaneously filing a “Notice of Confidential Crime Victim Information within Court Filing.”

(3) A crime victim, the filer, a party, or any affected nonparty may file a Notice of Confidential Crime Victim Information within Court Filing at any time.

(4) Filers of subsequent court filings shall limit the presence of crime victim identifying information in accordance with rule 2.425(a)(3) or file a Notice of Crime Victim Information within Court Filing with each subsequent court filing that contains confidential crime victim information.

(5) A Notice of Confidential Crime Victim Information within Court Filing:

(A) Shall identify the precise location of the confidential information within the document being filed.

(B) Shall be confidential to the extent it contains crime victim information pursuant to article I, section 16.

(C) Shall not be required when an entire case file is maintained as confidential.

(D) A form shall accompany this rule.

(6) If a Notice of Crime Victim Information within Court Filing is filed, the clerk of court shall review the filing identified as containing confidential crime victim information to determine whether the purported confidential information is facially subject to confidentiality under article I, section 16(b)(5) of the Florida Constitution.

(A) The clerk of the court shall designate and maintain the confidentiality of any such information contained within a court record.

(B) If the clerk determines that the information is not confidential, the clerk shall notify the filer in writing within 5 days of filing the notice and thereafter shall maintain the information as confidential for 10 days from the date such notification by the clerk is served. The information shall not be held as confidential for more than that 10-day period, unless a motion has been filed pursuant to rule 2.420(d)(3).

A summary of Florida's process provides that the filer of information believed confidential under Marsy's Law shall notify the Clerk and the same shall be held confidential by the Clerk. *Id.* Following the confidential notice the Clerk will review and if believe the information is not confidential the office will treat as confidential for 10 days to allow the movant to take further action. *Id.*

Unlike Ohio or Florida, South Dakota has not specifically enacted any legislation following the passage of Marsy's Law on how to protect a crime victim's privacy. The lack of a process enacted after the passage of Marsy's Law in South Dakota does not however negate the protections provided under the constitution. The ability of a crime victim to have their guaranteed privacy right protected is provided in SDCL §15-15A-13.

The officers here invoked their constitutional protections and first asked the prosecutor's office to redact or remove their names from the public filings. That request was denied. The officers then intervened in the criminal case to have the names redacted or removed. And SDCL §15-15A-13 specifically provides that "[a] request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion." The relief available for the victim officers in SDCL §15-15A-13 provides that "[t]he court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider the purpose of this rule as set forth in § 15-15A-13". In this case the applicable grounds to prevent disclosure of the victim-officers' names is found in the South Dakota Constitution. The right to privacy is paramount and the ability to prevent disclosure of their names is one of the ways in which the right to privacy is carried out.

This Court should follow the interpretation of Marsy's Law as provided by Ohio which starts with the overarching principle that a crime victim has a right to privacy and dignity, which includes prevention of disclosure of their name from public documents. The Ohio Supreme Court opined that even if it were to hold "that the Constitution provides some generalized right to obtain public records, we would be hard pressed to say that this generalized right prevails over the more specific guarantee of crime-victim privacy rights established by Marsy's Law's constitutional protection. *Id.* ¶32. The constitutional protection of Marsy's Law would trump any protection provided Defendant or any concern regarding open records.

2. No Balancing Test is Needed to Regarding the Constitutional Rights of a Crime Victim in Juxtaposition to a Defendant's Constitutional Rights.

Defendant Albaidhani requests that if the Court finds that a crime victim can request their name be withheld or redacted from the public filing that a balancing test should be utilized to weigh the constitutional rights of the crime victim to those of the Defendant. We would argue such is not the proper remedy here as no right possessed by the Defendant will be infringed upon. The victim's request applies only to the public filings. Defendant Albaidhani would have access to the reports and the unredacted filings. Even there was an impact on Albaidhani's rights, the rights of the crime victim would trump those of the defendant. See, *Columbus Police Department*, PP 10-11. The State has a duty to protect the constitutional rights of the crime victim and any impact it may have on their case due to a criminal defendants' right does not outweigh the victim's rights.

CONCLUSION

Article 29 of the South Dakota Constitution provides a crime victim with the right to privacy and the right to have information withheld from public filings. The trial court holding that denied crime victims their right to privacy and denial of their request to have their names, initials, or other identifying information not be included or redacted from public filings should be reversed. The Court should hold that crime victims do have a right to privacy and they can request to keep their names, initial, or identifying information from public consumption and that the crime victim names in this case should be prevented from public disclosure.

Respectfully submitted this 1st day of December, 2025.

/s/ Jeffrey R. Beck
Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL §15-26A-66(b) using Times New Roman typeface in 12-point type. Appellant's Reply Brief contains 4,398 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2010.

Dated this 1st day of December, 2025.

/s/ Jeffrey R. Beck
Jeffrey R. Beck
BECK LAW, Prof. LLC
221 S. Phillips Ave., Suite 204
Sioux Falls, SD 57104
(605) 359-0135
Becklaw@outlook.com
Attorney for Interested Parties

