

DISSENT BY ACOBA, J.

With all due respect, I would grant certiorari and order oral argument, inasmuch as it appears that (1) Officer A. Sagucio (Officer Sagucio) was present and was the field training supervisor of Officer Ming Wang who made the arrest and, thus, Officer Sagucio was a relevant witness to the basis for the stop and the subsequent field sobriety test and, therefore, should have been subject to subpoena, see Biscoe v. Tanaka, 76 Hawai'i 380, 385, 878 P.2d 719, 724 (1994) (stating that "[i]n order ensure that an arrestee's rights are adequately protected, the director should issue all requested subpoenas unless the witness does not possess any relevant evidence or the subpoena request is otherwise deficient[,]” and that “the refusal to issue the subpoena would constitute an abuse of discretion”); (2) the refusal to allow Officer J. Eagle (Officer Eagle), who conducted the field sobriety test and who, according to Petitioner, was “yards away” from the hearing but was personally excluded therefrom despite being in uniform because he did not produce identification satisfactory to the hearing officer was, with all due respect, an abuse of discretion, see Freitas v. Admin. Dir. of Courts, 108 Hawai'i 31, 58, 116 P.3d 673, 700 (2005) (Acoba, J., dissenting as to Part III) (stating that “the sign-in [and identification] procedure . . . is based upon an amorphous threat to security” that “exclude[s] not just the sources of a supposed disruption, but individuals who” are necessary “to maintain

'public confidence in the value and soundness of this important governmental process'" (quoting Freitas v. Admin. Dir. of Courts, 104 Hawai'i 483, 489, 92 P.3d 993, 999 (2004))), and unduly burdened Petitioner's due process right to a fair hearing, especially in light of the fact that Officer Eagle failed to appear in response to a prior and later subpoena, see Farmer v. Admin. Dir. of the Courts, 94 Hawai'i 232, 238, 11 P.3d 457, 463 (2000) (noting that procedural due process requires that a person have an "opportunity to be heard at a meaningful time and in a meaningful manner" (citation omitted)); and (3) this case poses the undecided issues of whether, as stated by Petitioner, (a) "[t]he police can ignore a driver's subpoena and the driver['s] . . . hearing is continued [indefinitely]," (b) if "the police officer [in uniform] does not bring any identification, the officer will [not] have to testify in person" in response to a subpoena, and (c) the hearing officer can refuse to issue "a subpoena . . . [if] the officer neither prepares a police report nor a sworn statement," although a relevant and material witness.

A handwritten signature in black ink, appearing to be a stylized name, possibly "O'Connor", written in a cursive script.