25-897-cv

United States Court of Appeals

for the

Second Circuit

JUSTIN C. MUSTAFA,

Plaintiff,

AMERICAN CIVIL LIBERTIES UNION OF CONNECTICUT,

Intervenor-Appellant,

– v. –

BYARS, C/O, GARNER C.I.,

Defendant-Appellee,

STANLEY, CAPTAIN, WALKER C.I., EBONIE SUGGS, CCS, WALKER C.I., PELITIER, C/O, GARNER C.I., SWAN, LT., GARNER C.I.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT (NEW HAVEN)

BRIEF FOR INTERVENOR-APPELLANT

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Corporate Disclosure Statement

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), Appellant American Civil Liberties Union of Connecticut is a private, non-profit Connecticut corporation. It has no parent corporation and no stock, and so no corporation directly or indirectly owns more than 10% of its stock.

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Statement of Jurisdiction

This is an appeal from an order of the District Court for the District of Connecticut (Bolden, J.), denying in part the intervenor-appellant ACLU of Connecticut's motion for immediate disclosure of judicial documents. This Court has jurisdiction over this appeal under 28 U.S.C. § 1291 pursuant to the collateral order doctrine. *See In re N.Y. Times*, 799 Fed. App'x 62, 64 (2d Cir. 2020) (stating that this Court had jurisdiction to review the denial of a motion to unseal pursuant to the collateral order doctrine); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 117-19 (2d Cir. 2006) (reviewing under the collateral order doctrine the district court's denial of the "prompt public disclosure" of sealed summary judgment motion records).

The District Court entered its order on March 21, 2025. The ACLU of Connecticut timely filed its notice of appeal on April 11, 2025.

Statement of the Issues

1. Whether a party's knowing introduction of exhibits at trial without seeking to seal them or close the courtroom vitiates any later claim to sealing.

2. Whether a district court abrogates the contemporaneous access right to judicial documents and inverts the sealing burden by requiring records requesters to litigate for access to non-sealed records.

3. Whether the District Court's order forbidding copies of the trial exhibits was narrowly tailored.

Preliminary Statement

Six weeks in advance of a jury trial before the District of Connecticut, the two parties to an Eighth Amendment excessive force dispute declared that they would both rely on video evidence recorded within the prison. At trial, the parties entered a total of five unique videos into evidence with the consent of the other. They energetically exhibited the videos to the jury in open court over the four-day trial, each contending that the videos proved

their theory of the case. No party moved to seal the videos or close the courtroom.

Five weeks after the sizeable jury verdict for the injured plaintiff, the ACLU of Connecticut (ACLU) asked the district court for copies of the videos. The court demurred for weeks while purportedly investigating whether it still possessed the exhibits, even though a defense motion for a new trial was pending. But during that time, the court located and returned its copies of the digital videos to defense counsel without furnishing copies to the ACLU.

Weeks after that, although the videos remained unrestricted by any sealing order, the district court ordered the parties to submit their views on the ACLU's records request. Two months and twenty days after showing the videos in open court—and consenting to his opponent doing the same—the defendant for the first time objected to public disclosure of the videos. The district court entertained briefing, held a hearing, and then, four months after the ACLU's request for the unrestricted trial exhibits, ordered them partially sealed. The court agreed with the ACLU that the videos could not be restricted from public view. But the district court cited the defendant's broad appeals to 'safety and security' to forbid copying the videos, agreeing that the theoretical possibility of an incarcerated person obtaining the

videos in prison comprised sufficient grounds to permanently bar their dissemination in the free world.

The district court's procedure and resulting sealing order comprised three legal errors, each independently requiring correction by this Court.

Statement of the Case

The law governing public access to court records.

For centuries, courts in this country have operated under a common law rule of public access to their records, founded on the orthodoxy that fulfilling "the citizen's desire to keep a watchful eye on the workings of public agencies" is a prime source of the judiciary's legitimacy. *Nixon v. Warner Commc'ns*, 435 U.S. 589, 598 (1978). The common law foundation—that "[w]hat transpires in the court room is public property," *Craig v. Harney*, 331 U.S. 367, 374 (1947)—is paralleled by the First Amendment, whose guarantees for information-gathering encompass the right to inspect or copy records of court proceedings. *E.g.*, *In re N.Y. Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987). "[F]or what exists of the right of access if it extends only to those who can squeeze through the door?" *United States v. Antar*, 38 F.3d 1348, 1360 (3d Cir. 1994).

The common law and First Amendment rights are triggered by the nature of the court record at issue. Any court record that is "relevant to the performance of the judicial function and useful in the judicial process" is deemed a "judicial document" to which those twin rights of access attach. *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). Most filings in mine-run civil litigation are a 'judicial document,' including pleadings, *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 140 (2d Cir. 2016), motions for summary judgment and supporting documents, *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982), and especially—as relevant here—trial exhibits. *In re Nat'l Broadcasting Co.*, 635 F.2d 945, 952 (2d Cir. 1980).

As soon as a judicial document is submitted to a court, a presumptive right of public access attaches to it. *E.g.*, *United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 134 (2d Cir. 2017).

The litigation producing the trial exhibits here.

In the district court, plaintiff Justin Mustafa alleged in relevant part that in May 2019, defendant-appellee Christopher Byars—a prison guard—violated the Eighth Amendment by stabbing Mustafa's hand with a large brass key and failing to summon medical care. D. Conn. ECF # 1 ¶¶ 18, 22.

The incident transpired at the Garner Correctional Institution in Newtown, Connecticut.

Shortly after Mr. Mustafa filed suit, the district court issued a standing protective order. JA22-JA27. It set forth the various ways in which parties could protect information exchanged in discovery, but warned that "[a]ny Designated Material which becomes part of an official judicial proceeding or which is filed with the Court is public." JA26 at § 14. The district court's local rules also restated decisional law that "[n]o document shall be sealed merely by stipulation of the parties," and a "protective order entered by the Court to govern discovery shall not qualify as an order to seal documents for purposes of this rule." D. Conn. L. Civ. R. 5(e)(3).

In August 2024, the parties first notified the court that they planned to introduce videos recorded in prison at trial. JA39, JA41. In mid-September exhibit lists, Mr. Byars informed the Court that he planned to introduce four such videos, and Mr. Mustafa consented. JA56-JA57. Mr. Mustafa informed the Court that he planned to introduce one such video, and Mr. Byars also consented. JA49. No party moved *in limine* to exclude or limit use of the videos at trial. No party moved to seal the video exhibits ahead of trial. No party moved to close any portion of the trial to the public.

Trial proceeded over four days in open court, and the videos were admitted into evidence as full exhibits. Mr. Byars's video exhibits were lettered H, I, J, and K. Mr. Mustafa's video exhibits were numbered 1 and 1-a. JA73.[1]

The case presented at trial.

During trial, the modest evidence—three witnesses and twenty-four exhibits—framed a very limited dispute: Did Mr. Byars use excessive force on Mr. Mustafa by striking Mr. Mustafa's hand with a large brass skeleton key, and did he fail to provide medical assistance?

The incident.

While passing Mr. Mustafa a dinner tray through a small slot in Mr. Mustafa's cell door (colloquially, the "trap"), Mr. Byars used the trap's large brass skeleton key to hit Mr. Mustafa's hand. The key punctured Mr. Mustafa's hand, causing bleeding and what he testified is a transient shooting pain running up his arm ever since.

All of the action took place at Mr. Mustafa's cell door. Surveillance cameras in the housing unit had views of the front of Mustafa's cell, but

[1] Although the clerk's office returned all trial exhibits to Mr. Byars's counsel alone as detailed below, the videos are part of the record on appeal, Fed. R. App. P. 10(a)(1), and the district court—at the ACLU's urging—ordered his counsel to preserve them for production upon order.

because Byars was standing there, no camera captured the closeup act of the key striking Mustafa's hand. Nonetheless, both parties contended that the video evidence was crucial. Mr. Byars's theory was that it showed Mr. Mustafa faked his injuries. This injury-faking narrative was "not some tangential, small, or side issue," but the defense's *"entire theory of the case*." D. Conn. ECF # 94 at 15 (emphasis in original). Defense counsel cross-examined Mr. Mustafa extensively using the video exhibits, contending that the video showed prompt attention to the injury, and that Mr. Mustafa's demeanor betrayed that he faked it.

The location and context.

Defense counsel devoted substantial trial time to describing the location of the incident that evening in May 2019: the Foxtrot Unit of Garner, also known as "Fox Unit," "F Unit," or "F block." The F unit was the "restrictive housing unit in the facility."[2]

The two correctional employee witnesses who testified at trial—Mr. Byars and Patrick Kennedy—were asked multiple questions about the precise layout of the F unit.[3] All ten units at Garner have a distinctive triangular

[2] Oct. 2, 2024 Trial Tr. [D. Conn. ECF # 115] at 47:22-23 (testimony of P. Kennedy).
[3] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 34:1-37:25 (testimony of C. Byars).

shape.[4] As the employees testified, the F unit's layout was "the same or similar" as the other nine housing units at Garner.[5] The F unit comprised two levels of cells[6] on a hallway open on one side to a large atrium referred to as "the day room."[7] The F unit contained twenty-seven cells on the first floor and twenty-one on the second.[8]

On the first floor, at a vertex of the triangular unit, was the glassed-in "control bubble" and an open-air desk staffed by correctional employees. All of the cells in F unit lined the exterior walls of the triangle. Each cell had a remotely operated[9] solid door with a window in it[10] looking onto the dayroom. At the time of the parties' interaction—second shift, beginning at 4 p.m.[11]—there were two employees assigned to F unit.[12]

The correctional employees also testified at length to F unit's rules and restrictions.[13] Among these: People in the unit lived in a single cell, alone.[14]

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[4] Garner's layout, and each of its ten housing units' distinctive triangular shape, is visible to the public on freely available satellite imagery. *See* Google Maps, *Garner Correctional Institution*, https://maps.app.goo.gl/bNWY7N8swVDkVZgE6 (last accessed July 14, 2025).
[5] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 35:10-12 (testimony of C. Byars).
[6] Sept. 30, 2024 Trial [D. Conn. ECF # 124] at 29:2-3 (testimony of C. Byars).
[7] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 34:24-35:9 (testimony of C. Byars).
[8] Sept. 30, 2024 Trial Tr. [D. Conn. ECF # 124] at 28:23-29:1 (testimony of C. Byars).
[9] *Id.* at 36:17-18 (testimony of C. Byars).
[10] *Id.* at 36:12-13 (testimony of C. Byars).
[11] *Id.* at 38:17-21 (testimony of C. Byars).
[12] *Id.* at 29:4-6 (testimony of C. Byars).
[13] *See generally* Oct. 2, 2024 Trial Tr. [D. Conn. ECF # 115] at 48:10-49:9 (testimony of P. Kennedy).
[14] *Id.* at 48:19-20 (testimony of P. Kennedy).

Before any prisoner living in the F unit left their cell, they were restrained via the placement of handcuffs through the trap in their cell door.[15] In contrast to other units at the prison, rather than eating meals with others or generally spending time communally in the dayroom, they ate alone in their cells.[16] Indeed, both employee witnesses testified at length about how, in May 2019, they went cell-to-cell to deliver meals, explaining which cells were located where and how the two officers "toured" the unit to deliver food and generally check on cells.[17] The officers' testimony generally aligns with the Department of Correction's detailed written regulations about restrictive housing units[18] and use of restraints[19], which the department makes available online.[20]

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[15] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 96:19-24 (testimony of C. Byars).
[16] Oct. 2, 2024 Trial Tr. [D. Conn. ECF # 115] at 50:11-54:25 (testimony of P. Kennedy).
[17] *Id.* at 50:4-57:13 (testimony of P. Kennedy).
[18] Administrative Directive 9.4, State of Connecticut Department of Correction (June 16, 2016), shorturl.at/WN5ZP.
[19] Administrative Directive 6.5, State of Connecticut Department of Correction (October 1, 2018), https://portal.ct.gov/-/media/doc/pdf/ad/ad06/ad0605.pdf?la=en.
[20] The Department has successfully urged the District of Connecticut to take judicial notice of its regulations, including those that discuss restrictive statuses and restraint processes, *e.g.*, *Barfield v. Milling*, No. 3:14-cv-914, 2015 WL 1737671, at *3 n.1 (D. Conn. Apr. 16, 2015). It routinely deploys this information in motions for summary judgment against *pro se* plaintiffs. *See, e.g.,* Decl. of Angel Quiros [ECF # 43-3] ¶ 8, *Ashby v. Quiros*, No. 17-cv-916 (D. Conn. Sep. 26, 2019) (detailing circumstances in which prisoners would be "handcuffed in front as well as secured with leg irons and a tether chain" versus "handcuff[ed] . . . behind the back along with leg irons and tether chain"), Decl. of Corr. Off. Eshou [ECF # 43-4] ¶¶ 3-10, *Ashby v. Quiros*, No. 17-cv-916 (D. Conn. Sep. 26, 2019) (attesting to "the duration required" to apply various restraints, move an incarcerated person to another location, and remove the restraints); Decl. of Counselor-Supervisor Bonaventura [ECF # 43-5] ¶¶ 15-25, *Ashby v. Quiros*, No. 17-cv-916 (discussing restraint practices for people on restrictive status).

Lastly, the correctional employee witnesses testified about the cameras in F unit and what they could and could not capture in May 2019, when all the trial exhibits at issue were recorded. At the time, as the defense witnesses explained in detail, there were four cameras in F unit.[21] Two were on the top tier. Of those, one captured the top tier, the apex of the unit including the staff desk and Mr. Mustafa's cell, and part of the dayroom; that was the source of Exhibit 1 for the plaintiff and Exhibit J for the defendant.[22] Another camera was in front of the open-air officers' station in the dayroom, one directly above it in the ceiling, and one on the second floor.[23] The cameras could be seen on video,[24] and hence, could be seen with the naked eye. The cameras could be, and were, moved around to different locations on the unit—and indeed, some if not all have been moved since May 2019.[25]

The video exhibits.

There are six exhibits at issue—Exhibits 1, 1A, H, I, J, and K—though these comprise only five videos, as Exhibit 1 and Exhibit J are the same.

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[21] Sept. 30, 2024 Trial Tr. [D. Conn. ECF # 124] at 47:24-25 (testimony of C. Byars).
[22] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 34:1-19 (testimony of C. Byars).
[23] Sept. 30, 2024 Trial Tr. [D. Conn. ECF # 124] at 48:6-14 (testimony of C. Byars).
[24] *See id.* at 48:12-14.
[25] *Id.* at 48:20-23 (testimony of C. Byars explaining that a camera has since been moved to face the shower area).

Exhibit 1

Exhibit 1 is a two-hour, low frame-rate digital video of the triangular-footprint prison tier on which Mr. Mustafa was housed, recorded from a fixed surveillance camera located on the second floor. Exhibit 1 has no audio track, and no time- or date-stamps on it. The video captures Mr. Byars in front of Mr. Mustafa's cell, but because Mr. Byars is blocking the camera's view, Mr. Mustafa is not visible. The predominant action in Exhibit 1 is an incarcerated person mopping the dayroom floor for almost the entire two hours.

Exhibit 1A

Exhibit 1A is a forty-three second video appearing to be the product of a person using a handheld device to record a surveillance video as it played on a monitor. Exhibit 1A has an audio track, but it captures only the breathing sounds of whoever was holding the handheld device. The video playing on the monitor is from a fixed camera trained on the tier, but from a different side of the triangle than that depicted in Exhibit 1, and from the first floor rather than the second. Exhibit 1A captures two corrections employees standing at a cell door.

Exhibit H

Exhibit H is a twenty-one minute and forty-eight second digital video made by handheld camera. The video depicts Mr. Mustafa being taken to the prison infirmary after his injury, and from there to a holding cell for transport to a hospital. The video begins on the housing unit, with many yelled questions from the people housed there, reflecting that they saw the goings-on surrounding the incident. Once off the unit, none of the employees escorting Mr. Mustafa speaks much or at all, with one employee calling out for a door to be opened. Two employees other than those escorting Mr. Mustafa are visible as he is moved through the halls. None of the employees escorting Mr. Mustafa turns their radios down, and so the recording captures radio traffic audible to anyone in earshot. As depicted in Exhibit I, none of the doors through which Mr. Mustafa passes are operated by the employees escorting him; they are remotely controlled by other employees monitoring via two-way mirror, video, radio, or callbox.

After a stop at the infirmary, the employees walk Mr. Mustafa to a holding cell, where they instruct him on which restraints they intend to place on him. The cell appears to be in a visiting area used for purposes other than medical transports, as telephones and a table are visible outside.

Exhibit I

Exhibit I is a four minute and twenty second digital video made by handheld camera. It depicts Mr. Mustafa being walked through the corridors of Garner to a cell. The video has an audio track, but few or no words are spoken by the correctional employees, and no other employees are visible beyond those escorting Mr. Mustafa. The speaking on the video is done by Mr. Mustafa, who upon reaching the dayroom of his unit begins yelling his version of events to people housed there who could see him through their cell windows.

Exhibit J

Exhibit J appears to be the same video as Exhibit 1, designated with a defense exhibit letter because Mr. Byars introduced the video during his case in chief.[26]

Exhibit K

Exhibit K is another two-hour, no-audio surveillance recording, from above the desk in the dayroom. Most of the recording captures five or six correctional employees standing around the desk. The cameras that recorded trial exhibits J and K were across the dayroom from one another, yielding "opposite" images.[27]

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[26] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 89:17-23 (testimony of C. Byars confirming that J is "essentially the same video" as Exhibit 1).
[27] *Id.* at 34:24-35:6 (testimony of C. Byars).

The exhibits as viewed at trial.

At trial, Mr. Mustafa's counsel showed the jury Ex. 1 during his case in chief, including extensively during his examination of Mr. Byars.[28]

Mr. Byars's counsel showed the jury Exs. J and K during his exam of Byars.[29] Byars's counsel also showed Ex. J during his exam of correctional employee Patrick Kennedy.[30]

Mr. Byars's counsel showed the jury Ex. H during Byars's direct exam.[31] Mr. Mustafa's counsel also used Ex. H to ask questions of Mustafa.[32]

During closing arguments, Mr. Mustafa's counsel referred to the videos extensively, and re-played Exhibit 1 for the jury, urging it to disregard Mr. Byars's claim of having tried to ward off an attempted assault: "[S]o what was the attempted assault? . . . We see the trap. You can see it in the video."[33]

Mr. Byars's counsel similarly relied on the video exhibits in his close, making extensive arguments about their contents[34] and replaying Exhibits K and H to reinforce his defense. "I am going to play this briefly, and you are

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[28] Sept. 30, 2024 Trial Tr. [D. Conn. ECF # 124] at 41:23-52:10.
[29] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 33:3-42:14; 45:6-46:21; 55:17-59:17, 87:15-92:17 (Exs. J, K, and L side by side).
[30] Oct. 2, 2025 Trial Tr. [D. Conn. ECF # 115] at 50:1-65:23 (ex. of Kennedy by Byars's counsel).
[31] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 42:15-45:6 46:22-47:5.
[32] *Id.* at 141:4-143:16 (ex. of Mustafa by his counsel).
[33] October 3, 2024 Trial Tr. [D. Conn. ECF # 161] at 42:1-20, 49:5-11 (playing video for the jury while commenting), 49:24-50:17, 84:16-21, 85:22-25.
[34] *Id.* at 57:6-17, 59:10-23, 63:21-24.

going to see [Mustafa] roll his eyes . . . Watch right here . . . He is rolling his eyes."[35]

Exhibits 1A and I were not played for the jury. However, the jury had access to all the videos during deliberations.[36]

Only three of the six videos (1A, H, and I) have an audio track. None of the audio from the videos was transcribed by the court reporter.

Mr. Mustafa takes a large verdict, the ACLU requests the trial exhibits, and Mr. Byars suddenly opposes public viewing of the videos he showed in open court.

Mr. Byars's injury-faking defense did not convince the jury. After brief deliberation, the jury rendered a defense verdict on the medical indifference count, but found Mr. Byars liable for the excessive force count and awarded Mr. Mustafa $1.35 million. D. Conn. ECF # 111. Mr. Byars moved for a new trial shortly thereafter.

Local media covered the verdict in early November,[37] and on November 14th, the ACLU called the district court clerk to request copies of the video exhibits played at trial. Over the course of a few telephone calls, the clerk's office stated that it was investigating whether the Court still possessed the

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[35] *Id.* at 70:11-17 (Exhibit K), 76:20-77:21 (Exhibit H).
[36] *Id.* at 90:8-10.
[37] Lisa Backus, *Jury Awards $1.3M to Former CT Inmate Who Says He Was Stabbed by a Prison Guard*, CT Insider, https://www.ctinsider.com/news/article/justin-mustafa-christopher-byars-doc-assault-19899793.php (Nov. 8, 2024).

trial exhibits (even though Mr. Byars's motion for a new trial was pending). During a call on November 18th, a clerk's office supervisor stated she needed to verify that the Court still possessed the exhibits, citing D. Conn. L. Civ. R. 83.6's provision for return of trial exhibits to the parties.

Four days later, the ACLU's counsel telephoned the supervisor again and left a voicemail. That same day, the clerk's office returned all trial exhibits to Mr. Byars's counsel. JA75-JA76. By the end of the day, in a case that had been pending for seven years, gone to judgment, and in which a protective order was already in place, Mr. Byars moved for a protective order restricting how the parties could handle the videos. D. Conn. ECF # 128. The Court so-ordered the motion without further briefing two days later. D. Conn. ECF # 129.

On December 3rd, the district court ordered Byars and Mustafa to a settlement conference scheduled for January 2nd, presumably in light of Mr. Byars's pending Rule 50 motion. D. Conn. ECF # 132. The next day, still having heard nothing about its records request, the ACLU wrote to Chief Judge Michael Shea to appeal its constructive denial. On December 9th, the court docketed the ACLU's appeal letter and ordered the parties to "file responses outlining their respective positions" by January 10th. JA77-JA80.

With the briefing deadline set for after the parties' settlement conference, the ACLU feared the closure of the case before its request could be fulfilled. On December 16th, it moved for expedited intervention and fulfillment of its records request, citing its common law and First Amendment rights to judicial documents and emphasizing the decisional law around prompt access. JA83-JA93.

Mr. Mustafa took no position on the ACLU's motion. D. Conn. ECF # 141. Mr. Byars opposed, contending that there was no expedited need to brief the question. JA95-JA96. Byars also claimed that the protective order he obtained forty-nine days after the verdict governed the public's access to the trial exhibits, arguing that anyone seeking the exhibits needed to show good cause to modify the order. JA98.

For the very first time in the seven-year litigation, Mr. Byars also announced that regular public access to the videos he displayed in open court two and a half months earlier "would put peoples' safety and security at serious risk." JA99. He asked that the court, at a minimum, restrict access to the video to "view the video in a controlled setting," "order that no persons viewing the video be allowed to record or reproduce it," and "order that all persons that view the video sign and log and sign a document agreeing to be

subject to the Court's protective order and other related orders in this case." JA99-JA100.

The ACLU replied, pointing out that trial exhibits remained under the control of the district court until disposition of the case [JA102-JA103]; that the protective order standard does not govern sealing [JA104-JA105]; that Byars's failure to "identify which part of which of the six videos he wishes to restrict from public access, what it shows, or how the depiction harms him" failed to satisfy the First Amendment [JA106]; that Byars had undermined the merits of any sealing claim by playing the videos in open court [JA105-JA107]; and that he was too late to seek further delay to public access because his "clock on restricting public access started ticking on August 30th, when he first announced his intention to show the videos at trial." JA109.

On December 24th, the court granted intervention, ordered Mr. Byars to preserve the trial exhibits, and gave him another opportunity—until January 10, 2025—"to provide . . . specificity" necessary to support "continued sealing" of the videos, although they had never been sealed. JA111-JA113.

Byars filed a supplemental objection on January 10th, devoting half of it to an argument that the district court lacked jurisdiction, and Eleventh Amendment sovereign immunity. JA115-JA121. He also complained that the

ACLU's common law and First Amendment assertions were "attempt[s] to circumvent Connecticut Freedom of Information law." JA132-JA133.

On the merits, Byars argued that security concerns justified sealing the videos. JA132-JA133. He categorized these as "blind spots," "prison layout," "restraint processes," "transportation processes," and "the Fox or F unit." JA122-JA124. He added that the portions of the videos depict "medical care"—*i.e.*, a nurse moving around the unit—but did not elaborate. JA124. Nor did he set out any rationale for barring the free world from seeing any of these things depicted in the videos, and testified to at length in trial, when those incarcerated at Garner see such things every day for years on end and are free to speak about it.

The Court held a hearing on the matter on January 13th. At the hearing, it brushed off both Byars's contention that the court lacked lawful control over the trial exhibits, and, the ACLU's argument that Byars should have sought sealing before or during trial. It then granted Byars and the ACLU post-hearing briefing that concluded on January 28th.

After the hearing, Mr. Byars for the first time filed a declaration from a Connecticut prison administrator identifying some portions of the trial exhibits that he contended ought not to be seen by the public. JA145. Suggesting that the videos were "under loan" from the Department of

Correction as a courtesy, JA147 at ¶ 10, the administrator reprised the same basic categories as in counsel's briefing. JA149-JA153. But he did not refer to *any* specific portions of Exhibits 1, 1A, J, or K, other than to note that the entirety of them depict prison layout and camera visibility. JA149-JA150. As to the latter, ironically, he narrated at length what he perceived to be the blind spots from cameras at Garner in May 2019. JA149. He did not address the testified-to movement of those stationary cameras since that time—or any other change from six years ago to the present day.

The administrator's main bone to pick was with the handheld camera videos—videos H and I—which he argued showed various other areas of Garner, as well as restraint and transport processes. JA151-JA152, JA154. For these, alone, the administrator identified particular timestamps and portions of the videos that he found objectionable. *Id.*

Following Byars's submission of the administrator's declaration, the ACLU filed a brief emphasizing that the information Byars belatedly wished to keep secret was not only known to anyone present in court during trial, but the thousands of people who have passed through Garner since it was built in 1992 (let alone the 562 of them currently incarcerated there[38]). JA156. And

[38] *Average Confined Inmate Population And Legal Status*, Connecticut Department of Correction Research Unit (June 1, 2025), https://surl.lu/khwjjq.

all the more so, given the transcripts in this very case detailing these things, as well as the administrator's step-by-step description.

As to the administrator's suggestion that the videos might somehow fall into the hands of incarcerated people, the ACLU's brief also detailed the nineteen prison rules comprehensively barring incarcerated people from possessing videos such as the trial exhibits, requiring incoming and outgoing mail to be searched for contraband, mandating that visitors be search for the same, compelling inmates to be strip-searched after contact visits, and requiring prison employees to look into each cell at least once every half-hour to check for rules violations. JA172-JA248.

On March 21st, the Court issued an order agreeing with the ACLU that it enjoys common law and First Amendment rights of access to the trial exhibits. JA249. However, the Court concluded that "safety and security concerns warrant sealing videos depicting the layout and security procedures of correctional facilities," and thus limited the ACLU's rights to viewing the exhibits and not copying them. JA261. The Court thus ordered Mr. Byars's counsel to provide the ACLU access to the videos.

In its decision, the Court considered the videos as a group, rather than individually. The Court did not single out any video or any portion thereof, nor consider whether it might be possible to redact them.

The ACLU appealed on April 11, 2025. JA267. Mr. Byars did not cross-appeal.

Summary of Argument

This *ex post facto* sealing dispute involves a litigant who strategically showcased prison videos at trial in an open courtroom, only to reverse course months later and demand they be treated with the utmost sensitivity and confidentiality. Both procedurally and substantively, this was too little, too late. The defendant's about-face provoked three legal errors at the district court level, which must be vacated.

The first is waiver. Here, the ACLU's contention is so straightforward that this Court has not yet had to pronounce it. Ordinary principles of waiver dictate that a party knowingly relinquishes the ability to seek sealing when he displays exhibits in open court without asking to close the courtroom and seal the exhibits before, or during, the hearing. The same goes for exhibits that he allows his opponent to display in open court.

Both are true here. In fall 2024, Mr. Byars mounted his defense to a prisoner's excessive force claim using a series of prison videos. Mr. Byars did not seek sealing before or during trial. Not only did he extensively show the jury the video exhibits himself, but he quickly consented to his adversary doing so as well. As a result, he had waived his ability to seek

sealing by the time—prompted by the district court—that he began making noises to that effect months later.

But Mr. Byars's failure to seek sealing when he needed to had an additional ramification: It substantively negated any belated claim he made that a higher interest (confidentiality or the like) trumps regular public access to the video exhibits. Mr. Byars's First Amendment arguments regarding sensitivity or confidentiality as a higher value mandating restriction of access are thoroughly undermined by his own handling of the video exhibits.

The second legal error prompted by Byars's about-face was the district court's delaying access to the video exhibits for months, and then inverting the twin presumptions of access to judicial documents by giving the parties to the case what amounted to a right of first refusal.

The common law and the First Amendment provide strong presumptions of access to judicial documents and assure the public's right to quick access to them. For trial exhibits, the presumptions attach the moment they are submitted to a court—and continue in force, uninterrupted, unless a court enters a sufficient sealing order restricting access. Here, where no party even contested the strong access presumptions by moving to seal the video exhibits, and no court rebutted

the presumptions through a sealing order, the presumptions were conclusive. As a result, the district court's obligation was to quickly produce the trial exhibits upon the ACLU's request.

Even more, the district court lacked any higher interest to support its four month-long delay in adjudicating the request. As this Court has held, de-prioritizing fulfillment of document requests in favor of routine business is not a higher interest. Nor is actively soliciting parties to revisit their litigation choices—here, to *not* seek sealing. In our system of adversarial litigation, counseled parties' strategic decisions about which issues to litigate and which to skip are given deference. The courts have no role in double-checking the parties' intent or making their contentions for them.

Finally, under the First Amendment, any sealing order must be narrowly tailored; that is, no broader than necessary to protect a higher interest. The partial sealing order the district court ultimately issued violates the narrow tailoring mandate in three ways, each of which requires vacatur.

First, a court runs afoul of narrow tailoring, as the District of Connecticut did here, when it bases sealing orders on general conclusions or broad statements. Courts must examine each document to be sealed and make findings supporting any sealing order as to each.

Second, a sealing order restricting access to an entire judicial document can never be narrowly tailored where targeted redactions would suffice. By definition, an order is not narrowly tailored where it only identifies small parts of a document necessary to seal, yet seals the entirety.

And third, the narrow tailoring mandate safeguards against the diminution of access based on speculation of harm or an extended chain of causation. No sealing order founded on the guess that one day, an incarcerated person may obtain a laptop and view the trial exhibits can survive narrow tailoring where the relevant prison system's comprehensive enforcements make that a least-likely possibility. Correct application of the narrow tailoring principle is doubly vital here, where a prison guard asks to collapse the *Press-Enterprise II* standard[39] into the rational basis one governing incarcerated people's access to information, thereby leveling-down the free world's rights.

On the basis of these three errors—waiver, inversion of the access presumptions, and lack of narrow tailoring—this Court should vacate.

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[39] See *Press-Enterprise Co. v. Superior Ct. (Press-Enterprise II)*, 478 U.S. 1, 13-14 (1986).

Standard of Review

Legal conclusions reached by a district court when sealing judicial documents are reviewed *de novo*. *E.g.*, *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 139 (2d Cir. 2016). Sealing decisions as a whole are reviewed for abuse of discretion, *id.*, under which standard incorrect legal conclusions or misapplications of legal principles automatically comprise abuse. *E.g.*, *Ratliff v. Davis Polk & Wardwell*, 354 F.3d 165, 168 (2d Cir. 2003).

This appeal raises three legal questions, and so each garners *de novo* review.

Argument

1. By publishing the video exhibits in open court without restriction and letting his opponent do the same, Mr. Byars both waived any later claim to sealing and conclusively demonstrated that he lacks any interest sufficient to overcome the public's rights of access.

Mr. Byars's contradictory litigation conduct is striking. Six weeks before trial, he notified the district court that he would introduce in-prison videos as exhibits. His opponent announced plans to do the same. At trial, both parties did so, and his counsel based much of Mr. Byars's examination, Mr. Mustafa's cross-examination, and closing argument to those videos. Only months after the verdict, once he became aware of a request for copies of the videos, did Mr. Byars first mention confidentiality or ask that the public be barred from seeing the trial exhibits. His conduct both waived his ability to later seek sealing, and demonstrated that he lacks an interest in sealing sufficient to overcome the public's right to trial exhibits.

It is true this Court has never needed to consider the question of waiver for a party in Mr. Byars's shoes. This may be because the question of whether a party who freely offers up judicial documents—screening them as trial exhibits in open court, no less—can later claim they are confidential is so clear-cut that no litigant has had cause to appeal it. District courts within this Circuit are in agreement, as are the Third and Seventh Circuits on analogous

claims. This Court should follow their unanimous lead and hold that a party waives the ability to seek sealing by publishing exhibits in open court—and letting his adversary do so—without seeking sealing before or at the time of the publication.

1.1. Mr. Byars waived any later ability to move for sealing when he himself introduced the video exhibits in open court without restrictions, and when he agreed to Mr. Mustafa's doing the same.

Mr. Byars's introduction of the exhibits in open court, lack of objection to his opponent doing the same, and decision not to seek sealing of the exhibits or closure of the courtroom before or at the time of the publication waived his ability to later seek restrictions on those exhibits.

Forfeiture "is the failure to make the timely assertion of a right," while waiver is the "intentional relinquishment or abandonment of a known right"; here, the right to ask that a judicial document be sealed or a courtroom be closed. *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 n.1 (2017) (cleaned up).[40] Because courts are often asked to divine whether a lawyer's silence comprised mere oversight (forfeiture) or a "conscious[] refrain" from asserting an argument "as a tactical matter" (waiver), the animating distinction is volition. *United States v. Yu-Leung*, 51 F.3d 1116,

[40] Until he relinquished it, Mr. Byars's 'right' was to make a sealing or courtroom closure motion, which the court could then adjudicate.

1122 (2d Cir. 1995). With close calls, context may help. *E.g.*, *Yu-Leung*, 51 F.3d at 1122-23 (concluding that defendant who devoted opening statement and cross-examination to incidents outside the charged conspiracy period had to have known that such evidence was subject to a relevance dispute, and thereby waived later objection). But the job of identifying waiver is no trouble at all when the waiving party takes affirmative action, or has unmistakable, actual notice of the need to seek restrictions on information filed by an opponent and decides against it.

1.1.1. Byars waived the ability to seek sealing by publishing the information at issue in open court without restriction.

Whether parties waived the right to seek sealing depends upon whether they took steps to control access to the information at the time of its submission. The background rule is that "[w]hat transpires in the court room is public property." *Craig v. Harney*, 331 U.S. 367, 374 (1947). And so, a party waives their ability to later seek sealing where it declines "to seek protections at or before trial" when purportedly confidential information is—or is known to be planned—to be presented there. *Benedict v. Hankook Tire Co.*, 323 F. Supp. 3d 747, 758 (E.D. Va. 2018) (denying post-trial sealing motion where movant did not move to seal and "did not avoid discussing confidential topics or seek to prevent Plaintiff from doing so in open court").

The waiver rule applies with particular force where—as here—the party asking to restrict access to judicial documents "itself was the party that publicized a portion of the [documents] in their opening statement," in examination of one of its witnesses and cross-examination of its opponents', "in closing arguments," and by proffering the documents "as evidence for the jury," without seeking sealing or courtroom closure. *Carnegie Mellon Univ. v. Marvell Tech. Grp.*, No. 09-290, 2013 WL 1336204, at *6 (W.D. Pa. Mar. 29, 2013) (holding that such behavior comprised waiver of right to seek sealing). *See also Binney & Smith Inc. v. Rose Art Indus.*, No. 94 C 6882, 1995 WL 110127, at *3 (N.D. Ill. Mar. 13, 1995) (holding that proceeding with preliminary injunction hearing without seeking sealing "constitutes waiver of any claim to concealment of the evidence presented"); *DDK Hotels, LLC v. Williams-Sonoma, Inc.*, No. 19 CV 226, 2024 WL 4554641, at *2 (E.D.N.Y. Sep. 29, 2024) (holding that "plaintiffs have waived their right to now seek to seal [] information" that they themselves filed unredacted, and ordering unsealing of any other versions of the same information).

The point is not that litigants must choose between introducing their best evidence and preserving the confidentiality of that evidence. Rather, they must move to seal purportedly sensitive information (and/or the courtroom

in which it is presented) before presenting it. Mr. Byars did not do so and thus relinquished his rights.

1.1.2. Mr. Byars also waived his ability to later seek sealing when he agreed to Mr. Mustafa's use of the video exhibits.

Mr. Byars's own use of the exhibits at trial is conclusive. But on top of that, Mr. Byars readily acquiesced to his adversary's use of the exhibits at trial. This too comprised waiver.

The Third Circuit reached that conclusion where a defendant was warned by the plaintiff that she intended to introduce some of the defendants' designated-confidential documents, and then "failed to assert its interest" in confidentiality at trial or seek sealing of the exhibits when the plaintiff introduced them. *Littlejohn v. BIC Corp.*, 851 F.2d 673, 680 (3d Cir. 1988). The defendant's decisions "constituted a waiver of whatever confidentiality interests might have been preserved." *Id.*

District courts in this Circuit have likewise found waiver of the right to seek sealing where a party waited "[n]early three months" before asking to seal an adversary's filing, *Fischman v. Mitsubishi Chem. Holdings Am.*, No. 18-CV-8188, 2019 WL 3034866, at *1 (S.D.N.Y. July 11, 2019) (collecting cases); where the information had been discussed in open court without any party seeking to have the transcript redacted, *Nycomed US, Inc. v. Glenmark*

Generics, Inc., No. 08-CV-5023, 2010 WL 889799, at *6 n.7 (E.D.N.Y. Mar. 8, 2010); and where a party waited "nearly a year" to seek sealing. *Next Caller Inc. v. Martire*, 368 F. Supp. 3d 663, 666-67 (S.D.N.Y. 2019). The District of Connecticut recently denied sealing of videos in a prisoner abuse case on the same basis. Order Denying Sealing [ECF # 169], *Lord v. Padro*, No. 22-cv-322 (D. Conn. Mar. 28, 2024) [JA266] (denying where "nearly identical" videos filed by the plaintiff "have been on the court docket and in the public domain" for seven months, yet "[t]he Defendants have never taken any action to seal" them).

Trial courts outside of our circuit hew to the same analysis. *See, e.g.*, *In re Bard IVC Filters Prods. Liab. Litig.*, No. MDL 15-2641, 2019 WL 186644, at *4–5 (D. Ariz. Jan. 14, 2019) (finding waiver where defendant waited until after trial to seek sealing despite the public's right of access attaching "at the time admitted into evidence"); *Williams v. City of Long Beach*, No. 19-cv-5929, 2021 WL 6497197, at *2 (C.D. Cal. Nov. 23, 2021) (same where counsel "allow[ed] Plaintiff's counsel to file," and "fail[ed] to raise the confidentiality issue").

Inadvertent disclosure does not yield waiver so long as the party takes immediate steps to control access to the information. Nor does the unilateral exposure of sensitive information by an adversary, so long as a party takes

immediate action to seal the filing. But a party like Mr. Byars, who knows that his opponent has introduced purportedly sensitive documents, consciously relinquishes the ability to seek restrictions by declining to immediately do so. The district court's order must be reversed on that basis alone.

1.2. Substantively, Mr. Byars's unrestricted publication of the trial exhibits defeated his later claim that sealing served any higher value.

In addition to waiving his right to later ask for them, Mr. Byars's decision not to seek restrictions when he publicized his exhibits in open court substantively defeats the merits of his sealing claim.

All movants seeking to restrict public access to judicial documents must overcome both the common law and First Amendment rights of access. To best the common law right, Mr. Byars must have shown that his interests outweigh the presumption of access, *e.g.*, *United States v. Erie Cnty., N.Y.*, 763 F.3d 235, 239 (2d Cir. 2014), which is at its strongest because Byars showed the materials in open court. *In re Nat'l Broadcasting Co.*, 635 F.2d 945, 952 (2d Cir. 1980). To overcome the First Amendment right, Byars must have shown that sealing was essential to preserve higher interests. *E.g.*, *In re Demetriades*, 58 F.4th 37, 46 (2d Cir. 2023). By publishing the exhibits in open court and not seeking sealing until months later, when he learned of a

request for copies of them, Mr. Byars conclusively demonstrated that he considered his own interests in sealing to be unimportant.

The Seventh Circuit has held that a party destroys claims of confidentiality by either introducing purportedly sensitive evidence at trial or declining to object to its introduction. *In re Cont'l Illinois Sec. Litig.*, 732 F.2d 1302, 1305, 1312 (7th Cir. 1984). It reasoned that the document sought was "voluntarily offered into evidence by a party whose possession of the information in no way depended on use of court process," and "witnesses testified in open court, on both direct and cross-examination, about the contents of" it. *Id.* Although the court agreed with the would-be sealer that the attorney-client and work product privileges could be important values, it concluded that "[t]here is little interest in the confidentiality of documents which have been publicly discussed by their custodian." *Id.* at 1314. *See also Cleveland v. Ludwig Inst. for Cancer Research*, No. 19-cv-2141, 2022 WL 395962, at *7-8 (S.D. Cal. Feb. 8, 2022) (unsealing where defendants had "frequently repeated" a supposedly confidential phrase in other litigations "without any attempt . . . to strike or seal the pleadings," as their "own treatment of the relevant language. . . undermine[d] their assertions of the importance of confidentiality").

The Southern District of New York reached the same conclusion about a defendant's claim that the plaintiff breached a confidentiality promise when it filed certain documents with its complaint. Although aware of the filings for two months, the defendant did not move to seal them—and itself filed copies of the materials in support of its motion to dismiss. That, concluded the court, showed that the defendant did not actually consider the materials confidential. *ING Glob. v. United Parcel Serv. Oasis Supply Corp.*, No. 11 CIVL. 5697, 2012 WL 4840805, at *6 (S.D.N.Y. Sep. 25, 2012). *See also*, *e.g.*, *Rekor Sys., Inc. v. Loughlin*, No. 19-cv-7767, 2023 WL 1972587, at *3 (S.D.N.Y. Feb. 10, 2023) (denying defense motion to preclude use of purportedly privileged documents where defendants took no action after "Plaintiff published the communications on the public docket," indicating that they did not treat the documents as confidential); *Cruz v. Coach Stores, Inc.*, 196 F.R.D. 228, 230 (S.D.N.Y. 2000) (similar); *Curto v. Medical World Comm'ns, Inc.*, 783 F. Supp. 2d 373, 379 (E.D.N.Y. 2011) (similar).

Courts in this Circuit are hardly alone. *See*, *e.g.*, *Doe v. Lockwood*, 89 F.3d 833, 1996 WL 367046, at *5-6 (6th Cir. 1996) (summary order) (affirming dismissal of claim that defendants violated his right to privacy by disclosing a medical condition plaintiff had himself disclosed in open court); *Rivera v. Sunbeam Prod. Inc.*, No. 23-cv-2298, 2025 WL 1651944, at *3

(D. Colo. Jun. 11, 2025) (de-designating purportedly commercially sensitive discovery introduced into evidence by defendant at trial in separate litigation); *Glaxo Inc. v. Novopharm Ltd.*, 931 F. Supp. 1280, 1301 (E.D.N.C. 1996) (party undermined trade secrets claim over information contained within the "135 of its own documents" that it "admitted . . . without seal" in a different litigation, or in the forty-two documents admitted "without seal or objection" by its opponent in the same).

Mr. Byars's litigation conduct is subject to the same conclusion. He treated his—and his opponent's—video exhibits as what they are, mundane footage of a prison, without a care for who saw them. Because he evinced no interest in secrecy when he and his opponent revealed the exhibits to the public, he lacks any interest sufficient to overcome the common law and First Amendment presumptions of public access to them.

2. By inverting the presumption of access, delaying, and making the ACLU litigate its request for unrestricted judicial documents, the district court violated the contemporaneous access right.

The district court's treatment of the ACLU's records request also requires reversal. On November 14, 2024, the court received the ACLU's request for the videos played at trial, which were then unrestricted by any sealing order. For four months, it 'looked into' whether it possessed the exhibits and solicited the parties to litigate the ACLU's request. Doing so violated this Court's command of prompt access to court records and inverted the presumption that unrestricted judicial documents are available upon request.

2.1. Because no one disputed the access presumptions at the time of the ACLU's request, the district court had a duty to quickly produce the trial exhibits.

The district court's first error was its refusal to immediately produce unrestricted judicial documents. Making records requesters litigate to see documents that are not sealed inverts the presumptions of access.

The public access right is a presumption of law. It can vary in weight under the common law, but does not under the First Amendment. A motion to seal, or a sealing order, may overcome the two access presumptions if detailed, on-the-record findings support the conclusion that "countervailing concerns" outweigh the common law presumption, *United States v. Amodeo*, 71 F.3d

1044, 1052 (2d Cir. 1995), and, that sealing (1) is essential to preserve higher values, and (2) would be narrowly tailored to preserve those higher values, so as to rebut the First Amendment one. *Press-Enterprise II*, 478 U.S. at 13-14.

Whether a sealing motion or order overcomes the access presumptions depends upon the interests asserted in the restriction, but a *non-existent* sealing motion or order—as was the case here—can never do so. A court that has never sealed a trial exhibit has necessarily never identified the "extraordinary circumstances" needed to overcome the common law presumption of public access to it, *Bernstein*, 814 F.3d at 142, nor has the party who never even sought sealing proved the existence of a compelling interest and that sealing will be a narrowly tailored way to accomplish that interest. *E.g.*, *N.Y. Times*, 828 F.2d at 116.

Here, the video exhibits displayed at trial were judicial documents to which the presumptions of access attached the instant they were submitted to the district court. *Courthouse News v. Corsones*, 131 F.4th 59, 68 (2d Cir. 2025); *Lugosch*, 435 F.3d at 126. That presumption of unrestricted access remained operative, undiminished, unless and until a court sealed them.[41]

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[41] Novel filing types require a district court to determine whether they are judicial documents in the first instance. But for trial exhibits or other categories of document long ago deemed 'judicial documents,' no analysis is required, because this Court has supplied the answer: the presumptions apply.

Upon a request for these unrestricted documents, the First Amendment and common law required the district court to produce the document quickly, not to hold it back while prompting the parties to try rebutting the presumption.

Instead, the District of Connecticut turned the presumptions of access into a right of first refusal for filers. Left unchecked, this would mean the public may only see judicial documents so long as no party objects. This Court should reverse.

2.2 The district court violated the contemporaneous access right by delaying disclosure of unrestricted judicial documents.

In addition to violating the rights of access to unrestricted judicial documents, the district court's conduct violated the strong First Amendment guarantee of prompt access. "[C]ontemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power." *In re Oliver*, 333 U.S. 257, 270 (1948). The presumptive right of public access to a judicial document attaches as soon as it is filed, and after that point, the court delaying—or a party asking to delay—public access bears the burden of overcoming the First Amendment guarantee, *Corsones*, 131 F.4th at 67, by proving that delay is (1) essential to preserve a higher value, and (2) narrowly tailored to serve that interest. *E.g.*, *In re N.Y. Times Co.*, 828 F.2d at 116.

The First Amendment obligates courts to provide access as quickly as possible.[42] Even if an access delay is imposed for a compelling reason, it will fail narrow tailoring review if the compelling objective could reasonably be accomplished with "significantly less delay." *Corsones*, 131 F.4th at 70.

Neither the District Court's month-long delay in purportedly locating the trial exhibits, nor three-month solicitation and entertainment of objections to disclosure, passes First Amendment scrutiny.

2.2.1. The district court had no compelling interest in delaying production of the records for three weeks while it looked into the ACLU's request.

The first unconstitutional delay imposed by the district court spanned November 14th (when the ACLU requested the videos) to December 9th (when the district court sought objections to the ACLU's request). During that period, the court clerk's office purported to be trying to find the trial exhibits. The court had neither a compelling interest in dragging its feet, nor was a three-week delay narrowly tailored to accomplish any such interest.

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[42] Unlike the media requesters in *Corsones* and similar same-day-access cases, the ACLU does not contend that the district court violated its First Amendment rights by failing to supply the requested records within hours. The delay period it contests is the four months between its request for the unrestricted trial exhibits on November 14, 2024 and the district court's March 21, 2025 decision restricting access to those exhibits.

For sealing purposes, courts have no interest in routine administrative delays as a higher value. A higher value is one whose "social value" achieves "benefit[s]" arguably outweighing the First Amendment virtue of public access to court records. *Corsones*, 131 F.4th at 68. Since *Lugosch*, putting court records requests on the backburner in favor of routine business has been marked off as being of far lesser value than the public's right of access. In *Lugosch*, the district court pushed off a records requester's intervention motion without explanation, presumably to attend to the other tasks. This Court held that putting off records requests was not a neutral non-decision, but an affirmatively harmful one. *Lugosch*, 435 F.3d at 126 ("[H]olding the intervention motion in abeyance was a delay that was effectively a denial of any right to contemporaneous access"). "[F]ailing to act expeditiously," this Court explained, was error. *Id.*

The point is not that our busy district courts must provide "instantaneous[] access" to judicial documents no matter what else is happening, because their routine processing of the litigation on their dockets naturally has a social benefit to the rule of law. *Corsones*, 131 F.4th at 67. It is that the First Amendment right is *so* important, that only the need to respond to "unpreventable circumstance[s] [like] inclement weather or a security threat, for example," may be a higher value.

Courthouse News Serv. v. Schaefer, 2 F.4th 318, 329 (4th Cir. 2021) (holding that state courts' failure to justify unavailability of newly filed civil complaints within one day "might well" have been constitutional had access delays been the result of such events).

Delaying public access to judicial documents in favor of routine administrative delays also fails narrow tailoring review, which asks whether delays "could not have been reasonably shortened to a significant degree without impairing" whatever interest lay in handling routine business first. *Corsones*, 131 F.4th at 70. A court's *ability* to grant faster public access typically means that a failure to do so is not narrowly tailored.

Corsones makes the point plainly. There, the Vermont judiciary contended that its delays in providing public access to newly filed civil complaints were—in the aggregate—small enough to be a narrowly tailored means of accomplishing its interest in preventing the revelation of sensitive personal identifiers. But because certain courthouses were markedly faster than others in accomplishing the same personal-identifier checks, this Court drew the inference that "some of the delays were attributable to some of Vermont's courts not giving the same priority, or the same efficiency, as other county courts to achieving relatively prompt disclosure." *Id.* at 71. The statistics provided by the Vermont judiciary showed that "greater

recognition of the First Amendment obligation" of quick disclosure would speed things up, and thus the judiciary's actions failed narrow tailoring. *Id.*

The Court reached the same conclusion about statistics showing improvements made during the litigation. Although the Vermont judiciary claimed on appeal that its process improvements yielding smaller wait times cut against a conclusion of unconstitutionality, this Court disagreed. The improvements instead demonstrated that the Vermont courts "were reasonably capable of accomplishing . . . considerably more speed than" they had been, thus indicating a lack of narrow tailoring. *Id.* at 72.

The same must be true for the district court's delays here. It does not take more than a day to answer the yes/no question of whether a court possesses a trial exhibit—let alone twenty-five days—particularly where the records sought were stored in the court's Jury Evidence Recording System, which among other things "[s]tores all exhibits submitted prior to trial, and designate[s] just those admitted into evidence for the jury's use during deliberations."[43] And it does not take much longer than that to copy and transmit electronic files. Spending more than a couple of days on those

[43] D. Conn., *Jury Evidence Recording System (JERS)*, https://www.ctd.uscourts.gov/jury-evidence-recording-system-jers (last visited June 18, 2025).

tasks suggests that the district court was ignoring the request or prioritizing other business.

The district court indisputably could have furnished faster access to the trial exhibits. For one, the court conveyed the videos to defense counsel eight days after the ACLU's request, confirming that (1) the court possessed them, and (2) was able to produce them. But it did not pause to give copies to the ACLU before returning them to defense counsel. For another, the instantaneous, round-the-clock availability of judicial documents on CM/ECF provides an unavoidable juxtaposition. The District of Connecticut is "capable of" providing "considerably more speed" in public access to electronically stored documents, and failing to do so violated the ACLU's right to contemporaneous access. *Corsones*, 131 F.4th at 72.

2.2.2. The district court had no interest in prompting the parties to reconsider their failure to seek sealing.

Nor did the District Court have any interest in second-guessing or triple-checking the strategic choices of the parties by soliciting and entertaining objections to a request for unrestricted judicial documents. The trial court did not explain why it did so. Its motivations could have been grounded in a desire to give the parties a chance to move to seal, or, the wish to ensure for itself that the parties had not publicly revealed

anything they ought not have. Delaying public access for either reason fails constitutional scrutiny.

Assuming that a compelling interest lies in offering parties the chance to ask that judicial documents be sealed, delaying public access to solicit and entertain objections months after public revelation of the documents was not a narrowly tailored means of accomplishing the goal. The district court already had the narrowly tailored method of offering parties the opportunity to seal, in the form of D. Conn. L. Civ. R. 5(e)(1)(4). While Rule 5 sets out parties' duties when seeking sealing, subsection (e)(1)(4) gives them the flexibility to choose whether to (a) electronically file a motion to seal accompanied by both redacted and unredacted versions of the relevant documents; (b) electronically file the sealing motion without the documents proposed for sealing; or (c) move for *in camera* inspection of the documents in question, supported by an electronically filed motion to seal. Having already been given three methods by which to seek sealing *before* the exhibits were submitted, delaying public access to give counsel yet another chance to utilize the local rules both "unduly impose[d] on" the ACLU's right of access and was unnecessary. *Corsones*, 131 F.4th at 70.

Giving parties yet another chance to reconsider their strategic decisions also lacks a compelling interest. To begin with, "[d]elaying

disclosure to prevent sloppy filers from whatever disadvantages or embarrassments they might suffer . . . does not serve a higher value," because it is not the courts' job "to protect filers . . . from their own carelessness in disclosing matters" they should not have. *Id.* at 71. Mr. Byars was, of course, the antithesis of a sloppy filer: He was aware of the video exhibits for years, and intentionally chose to submit them to the court and base his full-throated faking-it defense on their contents. Tellingly, when asked at the pre-trial conference whether he had any pre-trial queries, Mr. Byars's counsel confirmed that "[t]he only question I have is technical," about the easiest way to *play* the videos, not whether they be sealed or the courtroom be closed.[44] The district court's delaying public access while it prompted Mr. Byars to have second thoughts (and then entertained them) served no compelling interest.

True, courts may have a constitutionally sufficient interest in ensuring for themselves that newly filed judicial documents do not publicly reveal personally identifying information—particularly of third parties—that "can bring ruin and misery" or "serious harms" upon public revelation. *Corsones*, 131 F.4th at 69, 71. *See, e.g.,* 11 U.S.C. § 107(b)(1) ("[O]n the

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[44] "For videos, do you prefer that we play them through a witness, or do you rather that we just play them? They are going to be full exhibits by agreement." Sept. 25, 2024 Pre-Trial Conf. Tr. [D. Conn. ECF # 167] at 20:7-9.

bankruptcy court's own motion, the bankruptcy court may protect an entity with respect to a trade secret or confidential research, development, or commercial information"). But the district court did no such thing here, and its local rules disclaim any role in doing so. D. Conn. Electronic Filing Policies & Proc. 8 (Mar. 22, 2024) ("The Clerk will not review any pleadings for [Fed. R. Civ. P. 5.2(a) mandated] redaction."). It received the trial exhibits into evidence in open court without reviewing them for any information it deemed highly sensitive, and raised no concern during trial upon seeing the videos played.

A district court moreover has no responsibility to hunt for the parties' possible sealing arguments. At every stage of litigation, the federal courts rely on the principle that it is the parties' responsibility to precisely identify their contentions, not the courts'. *E.g.*, Fed. R. Civ. P. 34(b)(2)(B) (any objected-to request for document production must "state with specificity the grounds for objecting to the request, including the reasons"); Fed. R. Civ. P. 72(b)(2) (requiring a party seeking Article III review of a magistrate judge's report and recommendation to "serve and file specific written objections" to it); *Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 112 (2d Cir. 1999) (dismissing appeal for failure to precisely identify issues because such a brief "is at best an invitation to the court to scour the record,

research any legal theory that comes to mind, and serve generally as an advocate for appellant").[45]

In short, the district court's decision to force the ACLU to litigate for access to unrestricted judicial documents violated the First Amendment's guarantee of contemporaneous access.

3. The sealing order's cursory application to all trial videos, failure to target redactions, and reliance on already-prevented harm each violates the First Amendment's narrow tailoring mandate.

Finally, the district court's sealing order must be vacated for its lack of narrow tailoring under the First Amendment.[46]

Sealing is only permissible if "no broader than necessary to protect the countervailing interest advanced" against regular access. *ABC, Inc. v. Stewart*, 360 F.3d 90, 104 (2d Cir. 2004). The inquiry scrutinizes access restrictions with "rigor[]" exceeding intermediate scrutiny, *Corsones*, 131 F.4th at 73, and compels a finding of unconstitutionality wherever a less-

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[45] Federal courts long ago disclaimed an adversarial role in the related realm of Freedom of Information Act disputes. Government practice in the 1970's was to claim exemptions over large tranches of data and then seek *in camera* inspection, effectively forcing the district courts to locate and adjudicate bases for withholding. *See Vaughn v. Rosen*, 484 F.2d 820, 826 (D.C. Cir. 1973). In prescribing now-universally adopted procedures to end the practice, the D.C. Circuit explained that trial courts were "never designed to act in an adversarial capacity." *Id.* (mandating that withholding agencies file what is effectively a privilege log).

[46] Below, the ACLU contended that sealing fails both the common law and the First Amendment tests. Here, for avoidance of doubt, the ACLU focuses on the First Amendment alone.

restrictive alternative would suffice. *See*, *e.g.*, *Press-Enterprise II*, 478 U.S. at 15 (reversing closure of pretrial hearing where *voir dire* would have eliminated the asserted harm of juror taint); *ABC*, 360 F.3d at 104 (vacating closure where "there were at least two available alternatives to complete closure that would have effectively addressed . . . concern about the candor of prospective jurors"); *Hartford Courant Co. v. Carroll*, 986 F.3d 211, 222 (2d Cir. 2021) (affirming injunction against statute closing all criminal proceedings of children transferred to adult court where permitting defendants to seek closure on a case-by-case basis could "adequately . . . protect[] juveniles from the stigma of being criminally tried").

Nonetheless, the district court here permanently barred the public from copying the trial videos without rigorously examining each video, without ordering redaction rather than sealing entire exhibits, and on the basis of implausible harms. Each error independently merits correction by this Court.

3.1. The District Court's bulk sealing yields automatic vacatur for its failure to make specific findings of the need to restrict each trial exhibit.

First, the district court's sealing order fails narrow tailoring review because it restricted access to five different trial exhibits without identifying which portions of which exhibit merited sealing.

The district court broadly concluded that all of the trial videos "depict the inside of" the housing unit on which Mr. Mustafa was held, and recited verbatim the objections presented by Mr. Byars's post-hearing declarant. But while the declaration specifies the exact points in *some* of the exhibits supporting Mr. Byars's sealing contentions, the district court incorporated none of that specificity and instead barred copying of every video exhibit from start to finish. The trial court treated the declaration's specificity as a jumping-off point from which to generalize that the exhibit portions *not* identified posed the same purported harms. That mandates *vacatur*.

To overcome the First Amendment presumption of public access—one that is "especially strong" when it involves trial exhibits, *Amodeo II*, 71 F.3d at 1049—a sealing order must analyze each document it restricts "specifically" and "rigorously." *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 167 (2d Cir. 2013). The District of Connecticut's failure to do so here was the same "legal error," and thus abuse of discretion mandating vacatur, that this Court identified in *Brown v. Maxwell*, 929 F.3d 41, 48, 50-51 (2d Cir. 2019). *Compare id.* (so concluding where district court based sealing on "generalized statements about the record as a whole" rather than document-by-document analysis) *with In re Applications to Unseal*, 568 F. App'x 68, 70 (2d Cir. 2014) (summary order) (affirming particularized

review as "sufficient" where district court "laid out each document that was to remain sealed in a series of tables and noted for each the basis for continued sealing," "[w]here possible . . . limit[ing] the sealing to redactions on certain pages").

There are six trial exhibits at issue comprising five distinct videos, since Plaintiff's Exhibit 1 and Defendant's Exhibit J are the same video. Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] 89:17-23. The district court did not analyze each video individually, nor distinguish among them. It is not even clear from the record whether the district court viewed the videos in making its ruling, though it had previously seen them in open court along with the jury.

Nor did the district court distinguish the portions of the videos that were shown in open court during trial—approximately 26 minutes in total across the three videos (from four exhibits)—from the portions that were not. Of course, as trial exhibits, all videos were in the court's JERS system and available for jurors to view at their discretion.[47] Nonetheless, the district court might have considered, in the first instance, the specific

[47] *See, e.g.*, Trial Tr. Oct. 3, 2024 [D. Conn. ECF # 164] at 70:15-17 (defense counsel tells jury in closing that "I have limited time, so I won't show you the whole [video], but you are welcome to look at that in the jury room if you would like.").

videos and portions thereof played in an open courtroom. It did not, instead lumping all five videos together and considering them *en masse*.

The district court's broadly phrased "safety and security" concerns, JA261, are precisely the kind of generalization that this Court deems legal error. *See*, *e.g.*, *Gannett Media Corp. v. United States*, No. 22-2160, 2022 WL 17818626, at *3 (2d Cir. Dec. 20, 2022) (summary order) (vacating where district court cited only "privacy concerns" and a need "to protect the robust and candid functioning of [DOJ] internal processes" rather than "make the requisite specific findings"). Absent "particularized review," *Brown* at 929 F.3d at 50-51, no sealing order can meet narrow tailoring.[48] This Court must therefore vacate and remand for specific analysis of each trial video.

3.2. The sealing order's applicability to all portions of every trial exhibit is fatally overbroad where selective redaction would suffice.

Second, a sealing order fails narrow tailoring review where it is broader than necessary to accomplish a compelling interest. Even assuming *arguendo* that Mr. Byars has an interest in preventing people living at Garner from seeing on video that which they see with their own eyes every

[48] For the same reason, the district court's concern that no video depicting the inside of a prison may ever be restricted, JA264, is also wrong. Sealing depends upon the specific contents of the judicial document at issue, not its broad categorization.

day, the district court's order barring the public from copying *any* portion of *any* of the five videos requires reversal where selective redaction would suffice. The district court evidently considered its sealing order narrowly tailored because its prohibition is limited to use of the videos. JA264-JA265. It failed to appreciate that the *scope* of the use prohibition fails narrow tailoring, applying as it does to all parts of every video exhibit.

The narrow tailoring command requires that access bars be no broader than necessary to accomplish the higher value asserted. *E.g. ABC*, 360 F.3d at 104. And so, this Court and the ones below it insist "that district courts avoid sealing judicial documents in their entirety unless necessary." *United States v. Aref*, 533 F.3d 72, 83 (2d Cir. 2008). *See, e.g.*, *Attestor Master Value Fund v. Argentina*, 113 F.4th 220, 235 (2d Cir. 2024) (finding that concerns animating sealing deprecated by subsequent developments and ordering parties to re-file proposed sealing matter "redacting only material" still eligible for sealing); *see also Valassis Commc'ns, Inc. v. News Corp.*, No. 17-cv-7378, 2020 WL 2190708, at *1 (S.D.N.Y. May 5, 2020) ("[R]edacting sensitive information is a preferable alternative to sealing an entire document."). Portions of documents "with no apparent relation" to sensitive material may not be sealed without violating the narrow tailoring

requirement. *Susquehanna Int'l Grp. Ltd. v. Hibernia Express (Ireland) Ltd.*, No. 21 Civ. 207, 2021 WL 3540221, at *4 (S.D.N.Y. Aug. 11, 2021).

The thrust of Mr. Byars's contention below—adopted wholesale by the sealing order—was that every portion of every video depicts the prison layout and blind spots in cameras, and some depict transport and restraint processes. But Mr. Byars failed to prove that the safety and security interests he invoked could be protected only by restricting every frame of every video.

The possibility of redacting or selectively cutting the video exhibits, with particular attention to those parts that were shown in open court absent any objection from anyone, is fatal to narrow tailoring here. A single frame of a single camera does not necessarily contain multitudes. *Bernstein*, 814 F.3d at 145 (pointing out that even if the Court were to accept defendants' "higher value" argument, the document at issue did not actually contain the complained-of "confidential" client information). As the Fourth Circuit has held in an analogous context, where state police urged that the entirety of an ongoing criminal investigation be sealed, "not every release of information contained in an ongoing criminal investigation file will necessarily affect the integrity of the investigation." *Virginia Dep't of State Police v. Washington Post*, 386 F.3d 567, 579 (4th Cir. 2004). Thus, "it is not enough simply to

assert this general principle without providing specific underlying reasons." *Id.*

Take, for example, the stationary camera footage comprising Exhibit 1. The viewshed of the camera capturing Exhibit 1 does not move and does not exclusively capture restraint application or transport of an incarcerated person (if it does at all). It depicts the large open area of a living unit that anyone residing there can see. Worse for tailoring, the camera's location in 2019 was revealed in testimony at trial, as was the number of cameras at that time, and the number of staff members working on the unit. Restricting the entire video—including the portion depicting the encounter at the heart of Mr. Mustafa's claim and Mr. Byars's faking-it defense—disposes the baby with the bathwater.

Or, consider the brief portion of Exhibit H that Mr. Byars identifies as containing Mr. Mustafa partially undressed after prison officials chose to strip search him while he was injured. A narrowly tailored sealing order might limit its applicability to redaction or blurring of that portion.

The sealing order may also be the flawed product of the district court's failure to consider whether any restriction accounted for what was actually displayed in open court. The district court treated every second of every video equally, but most of the exhibits were not displayed in the courtroom, nor

were most portions of the ones that were. *Compare* Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] 140-143 (Ex. H played from start until 10:22) *with* Decl. of W. Mulligan [D. Conn. ECF # 158] ¶ 20 (objecting to 0:14:40- 0:16:40 of Ex. H).

And, the sealing order failed entirely to grapple with the overbreadth inherent in restricting information that is already publicly available. One of the two harms relied upon by Mr. Byars to advocate sealing was that people currently incarcerated at Garner obtain the videos and study them to learn the layout of the prison, *et cetera*. But the state prison system itself states that the Garner prison opened on November 17, 1992.[49] In the three decades since, tens of thousands of incarcerated people, plus staff, have learned its layout by living or working there. The 562 people currently incarcerated there experience its layout firsthand every day. To the extent Byars's argument is based on preventing them from knowing what they already do, it is beside the point.

The same goes for camera angles from stationary cameras—visible to anyone who has ever been inside—as well as restraint processes and

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[49] Connecticut Dep't of Correction, *Garner Correctional Institution*, https://portal.ct.gov/doc/facility/garner-ci (last accessed July 14, 2025). *See Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008) (permissible to take judicial notice of the fact of a publication).

transport processes, which are documented in prison procedures and plainly visible to anyone either undergoing them or watching another do so. "As a matter of logic and common sense," where information is available through other means, it is speculative to assert that sealing is required to restrict access. *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 597 (1982). The sealing order's applicability to portions of the trial exhibits containing such things requires vacating it.

3.3. The Connecticut prisons' comprehensive countermeasures make sealing unnecessary to prevent the least-likely occurrence.

Lastly, the sealing order fails narrow tailoring review because it restricts the public's First Amendment right of access in the name of preventing two improbable evils conjured by Mr. Byars.

The first danger cited by Mr. Byars was that people currently living at Garner will obtain and study copies of the trial videos. The second, even more fanciful story was that free people who know that they are to be incarcerated at Garner will study the materials and use them to bad ends once inside.

In neither case does Byars's amorphous appeal to the dangers of a general 'enhanced knowledge' of Garner suffice. Where other, better, measures are available, the First Amendment may not be diminished in the name of reducing some possibility that additional public awareness will result

in harm. *United States v. Graham*, 257 F.3d 143, 155 (2d Cir. 2001). *Accord Cornelio v. Connecticut*, 32 F.4th 160, 171 (2d Cir. 2022) (holding that, even under intermediate scrutiny, "the government must do more than simply posit the existence of the disease sought to be cured" by a speech restriction, and prove that the restriction "will in fact alleviate these harms in a direct and material way") (internal citation omitted).

But more glaringly, the Connecticut prison system affirmatively requires itself to search, inspect, vet, and prevent what it deems contraband from ever being obtained by any means, possessed in any form, or viewed by an incarcerated person.

The trial exhibits would comprise contraband in any Connecticut prison. The prison system's rules ("Administrative Directives") define contraband as any item whatsoever that has not been "authorized for retention upon admission to the facility, issued while in custody, purchased in the facility commissary, or approved at the [prison]," JA173, or as Mr. Byars himself more aptly shorthanded, "anything not authorized by the State of Connecticut."[50] The system seizes and destroys any contraband it finds after the conclusion of any administrative and/or criminal proceedings flowing from its possession. JA200. It forbids—and thus seizes and

[50] Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 17:24.

destroys—computers or VHS/DVD players, tapes and CDs from outside if not factory-sealed on arrival, any depiction of blueprints, drawings, or other descriptions of prison facilities, and, of course, materials "encouraging or instructing in the commission of criminal activity." JA184, JA209. The Connecticut prison system forbids incarcerated people to "loan, trade, sell, give or transfer property to another in[carcerated person]." JA175.

The system's guards "tour" housing units "to "reinforce the rules" at least "every 30 minutes," JA221, or "every fifteen minutes" in certain restrictive units, Oct. 1, 2024 Trial Tr. [D. Conn. ECF # 159] at 55:8-10, meaning that guards "go cell-to-cell," looking into the window to "make sure there [are] no cell violations at the time." *Id*. The system forbids incarcerated people to cover their cell windows, treating covering as a disciplinary violation.[51] The system performs top-to-bottom searches "of an in[carcerated person]'s cell" whenever "directed by a supervisor or as required by facility policy." JA232. It strip searches each incarcerated person "[u]pon initial placement in a specialized housing unit," including "[r]estrictive [h]ousing" like F unit at Garner in 2019. JA227. It searches by metal detector or "other

[51] *E.g.*, Ruling on Defs.' Mot. for Summ. J., *Paschal-Barros v. Balatka*, No. 18-cv-2021, 2020 WL 5230994, at *1 (D. Conn. Sep. 1, 2020); Findings of Fact and Conclusions of Law, *Wright v. Cunningham*, No. 16-cv-2115, 2019 WL 4686573, at *1 (D. Conn. Sep. 23, 2019).

authorized scanner/detecting systems" "[w]henever an in[carcerated person] is suspected of ingesting or inserting metallic contraband in a body cavity." JA230.

The state's prisons also relentlessly scrutinize the people and things entering and exiting. They open and inspect "[a]ll incoming publications," JA210, and all inbound "tapes and CDs," JA183-JA184, for descriptions or encouragement of "methods of escape from correctional facilities," "blueprints, drawings, or other descriptions of [prisons]," or encouragement "in the commission of criminal activity." JA208-210, JA184-185. It opens and inspects all incoming mail for contraband or anything "jeopardiz[ing] legitimate penological interests." JA206. It inspects outgoing mail for the same. JA205. If a person is allowed a prison-issued tablet device, DOC reviews and approves "[a]ll available content" before clearing it for access on the device. JA217.

The prison system also prevents contact visits from serving as conduits to secreted laptops and videos. It pat- *and* strip-searches all incarcerated people "[a]t the conclusion of any contact visit," or after entering any public visiting area." JA226-JA227. It runs every visitor through a metal detector. JA230-JA231. It forbids all "personal belongings of a social visitor or inmate . . . in the visiting room unless authorized." JA243. And it bars visitors from

"deliver[ing] or receiv[ing] any item, to include written correspondence . . . to or from" an incarcerated person. JA244.

In sum, this vast scale of countermeasures used by the prison system virtually eliminates the possibility of a Garner resident obtaining a forbidden laptop to view the forbidden *Mustafa* trial exhibits.

Critically, the analysis would be different were an incarcerated person requesting the videos. Challenging the censorship of materials available within prison is a rational basis-like inquiry. *E.g.*, *Reynolds v. Quiros*, 25 F.4th 72, 85 (2d Cir. 2022). But narrow tailoring acts as a bulwark against such reasoning applying beyond the walls. Were a tight fit not required, clips of *Escape From Alcatraz* filed with a court could be expected to be sealed as "methods of escape from correctional facilities," encouragement "in the commission of criminal activity," JA208-JA210, or "jeopardiz[ing] legitimate penological interests," JA206, rather than dismissed as overreaches. Simply because incarcerated people may be barred from certain information does not mean that everyone else should be, too, on the theory that 'somehow' it will make its way inside, or that a free person who read or watched the material will one day be imprisoned. Indeed, doing so collapses the *Press Enterprise II* standard and reduces everyone's access to information.

The Supreme Court has carefully warded off government efforts to reduce the stock of information upon which free people may draw to match that of people with diminished First Amendment rights. *E.g.*, *Butler v. Michigan*, 352 U.S. 380, 383 (1957) (the First Amendment does not permit the government to "reduce the adult population . . . to reading only what is fit for children"); *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74 (1983) ("The level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox."). This Court must do the same and vacate the sealing order.

Conclusion

Because the defendant waived his sealing contentions when he and his opponent published the video trial exhibits in open court without objection or restriction, and because the district court delayed production of unrestricted documents for months, inverted the presumption of access, and broadly sealed the videos without making findings as to each, the ACLU requests that the Court vacate the district court's partial sealing order.

July 16, 2025

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/s/ Dan Barrett

Dan Barrett

July 16, 2025

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I hereby certify that true and accurate copies of the foregoing brief were served electronically through the Court's ACMS System in accordance with Rule 25 of the Federal Rules of Appellate Procedure on this 16 day of July to the Clerk of the Court and the following counsel of record.

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