

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)

JOINT APPENDIX

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APPEAL,CLOSED,EFILE,PRO BONO,RMS

**U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:19-cv-01780-VAB**

Mustafa v. Byars
Assigned to: Judge Victor A. Bolden
Referred to: Judge Robert M. Spector (Settlement)
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 11/08/2019
Date Terminated: 10/21/2024
Jury Demand: Plaintiff
Nature of Suit: 555 Prisoner Petitions -
Prison Conditions
Jurisdiction: Federal Question

Plaintiff

Justin C Mustafa

represented by **Elliot B. Spector**
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V.

Defendant

Stanley

Captain, Walker C.I.

TERMINATED: 09/09/2022

represented by **Stanley**
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TERMINATED: 05/03/2024

LEAD ATTORNEY

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Defendant

Ebonie Suggs

CCS, Walker C.I.

TERMINATED: 09/09/2022

represented by **Ebonie Suggs**
PRO SE

Matthew B. Beizer

(See above for address)

TERMINATED: 05/03/2024

LEAD ATTORNEY

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Defendant

Byars

C/O, Garner C.I.

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Defendant**Pelitier***C/O, Garner C.I.**TERMINATED: 12/05/2023*represented by **Matthew B. Beizer**

(See above for address)

*TERMINATED: 05/03/2024**LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Stephen R. Finucane**

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****Swan***LT., Garner C.I.**TERMINATED: 09/09/2022*represented by **Swan**

PRO SE

Matthew B. Beizer

(See above for address)

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ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|-------------------|----------|--|
| 11/08/2019 | <u>1</u> | PRISCS - COMPLAINT against Byars, Pelitier, Stanley, Ebonie Suggs, Swan, filed by Justin C Mustafa. (Attachments: # <u>1</u> cover letter, # <u>2</u> envelope)(Bozek, M.) (Entered: 11/13/2019) |
| 11/08/2019 | <u>2</u> | PRISCS - MOTION for Leave to Proceed In Forma Pauperis by Justin C Mustafa. (Bozek, M.) (Entered: 11/13/2019) |
| 11/08/2019 | <u>3</u> | PRISCS - MOTION to Appoint Counsel by Justin C Mustafa. (Bozek, M.) (Entered: 11/13/2019) |
| 11/08/2019 | <u>4</u> | STANDING PROTECTIVE ORDER. Signed by Judge Victor A. Bolden on 11/8/2019.(Bozek, M.) (Entered: 11/13/2019) |

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| 11/08/2019 | <u>5</u> | ELECTRONIC FILING ORDER FOR COUNSEL - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER. Signed by Judge Victor A. Bolden on 11/8/2019.(Bozek, M.) (Entered: 11/13/2019) |
| 11/25/2019 | <u>6</u> | Notice to petitioner re: Insufficiency <u>2</u> Prisoner Authorization Form. You must submit the attached Prisoner Authorization form which is being sent to you via U.S. mail. If insufficiency not corrected Dismissal due by 12/16/2019 Signed by Judge William I. Garfinkel on 11/25/2019.(Payton, R.) (Entered: 11/25/2019) |
| 12/16/2019 | <u>7</u> | Prisoner Authorization Form by Justin C Mustafa. (Attachments: # <u>1</u> Notice, # <u>2</u> Envelope)(Murphy, Tatihana) (Entered: 12/18/2019) |
| 12/18/2019 | <u>8</u> | ORDER granting <u>2</u> Motion for Leave to Proceed in forma pauperis. If you change your address at any time during the litigation of this case, Local Rules 83.1(c)2 provides that you notify the court. Failure to do so can result in the dismissal of your case. Signed by Judge William I. Garfinkel on 12/18/2019. (Payton, R.) (Entered: 12/18/2019) |
| 06/19/2020 | <u>9</u> | INITIAL REVIEW ORDER. For the reasons stated in the attached Order, Mr. Mustafa's federal claims of violations under the Eighth Amendment and the Fourteenth Amendment, and his state law assault claim will proceed. Signed by Judge Victor A. Bolden on 6/19/2020.(Garcia, A.) (Entered: 06/19/2020) |
| 06/19/2020 | <u>10</u> | ORDER denying <u>3</u> Motion to Appoint Counsel. The Court DENIES without prejudice to renewal Mr. Mustafa's <u>3</u> motion to appoint counsel. Signed by Judge Victor A. Bolden on 6/19/2020. (Garcia, A.) (Entered: 06/19/2020) |
| 07/02/2020 | <u>11</u> | STANDING ORDER RE: INITIAL DISCOVERY DISCLOSURES Signed by Judge Stefan R. Underhill on 07/2/2020.(Fazekas, J.) (Entered: 07/02/2020) |
| 07/02/2020 | | REQUEST FOR WAIVER of Service sent to Swan, Byars, Pelitier on 7-2-2020 by Justin C Mustafa. Waiver of Service due by 8/6/2020 (Fazekas, J.) (Entered: 07/02/2020) |
| 07/23/2020 | <u>12</u> | NOTICE re PRISSCAN Program by Justin C Mustafa (Attachments: # <u>1</u> Envelope) (Freberg, B) (Entered: 07/23/2020) |
| 07/23/2020 | <u>13</u> | MOTION for Reconsideration re <u>10</u> Order on Motion to Appoint Counsel by Justin C Mustafa. (Attachments: # <u>1</u> Envelope)(Freberg, B) (Entered: 07/23/2020) |
| 07/28/2020 | <u>14</u> | WAIVER OF SERVICE Returned Executed as to Swan waiver sent on 7/2/2020, answer due 8/31/2020. filed by Justin C Mustafa. (Fazekas, J.) (Entered: 07/30/2020) |
| 08/19/2020 | <u>15</u> | WAIVER OF SERVICE Returned Executed as to Byars waiver sent on 7/2/2020, answer due 8/31/2020. filed by Justin C Mustafa. (Oliver, T.) (Entered: 08/19/2020) |
| 09/15/2020 | <u>16</u> | NOTICE of Change of Address by Justin C Mustafa (Payton, R.) (Entered: 09/16/2020) |
| 10/20/2020 | <u>17</u> | MOTION for Extension of Time of All Deadlines for 90 Days by Justin C Mustafa. (Freberg, B) (Entered: 10/20/2020) |
| 10/21/2020 | <u>18</u> | ORDER. The Court notes that Defendants have returned their waivers of service, but that no one from the Attorney General's office has filed an appearance. The Clerk of Court is respectfully directed to serve the <u>2</u> Initial Review Order on AAG Madeleine Melchionne and the Office of the Attorney General. Signed by Judge Victor A. Bolden on 10/21/2020. (Millat, C.) (Entered: 10/21/2020) |
| 10/21/2020 | <u>19</u> | ORDER denying without prejudice <u>17</u> Motion for Extension of Time. The motion is DENIED without prejudice because Defendants have not yet responded to the Complaint, and until that time, Plaintiff is not expected to provide any discovery to them. Signed by Judge Victor A. Bolden on 10/21/2020. (Millat, C.) (Entered: 10/21/2020) |

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| 11/04/2020 | <u>20</u> | NOTICE of Appearance by Matthew B. Beizer on behalf of Byars, Pelitier, Stanley, Ebonie Suggs, Swan (Beizer, Matthew) (Entered: 11/04/2020) |
| 11/04/2020 | <u>21</u> | MOTION / Defendants' Request for Revised Scheduling Order by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. Responses due by 11/25/2020 (Beizer, Matthew) (Entered: 11/04/2020) |
| 11/05/2020 | 22 | ORDER granting <u>21</u> Motion for Extension of Time. The Court extends the pre-trial deadlines set forth in the <u>9</u> Initial Review Order as follows: -Defendants shall file their response to the Complaint, either an Answer or motion to dismiss, by December 4, 2020 . -Discovery, according to Federal Rules of Civil Procedure 26 through 37, shall be completed by March 19, 2021 . -All motions for summary judgment shall be filed by April 16, 2021 . -According to Local Rule 7(a), a nonmoving party must respond to a summary judgment motion by May 7, 2021 . If no response is filed, or the response is not timely, the dispositive motion may be granted absent objection. All other terms of the <u>9</u> Initial Review Order remain in effect. Signed by Judge Victor A. Bolden on 11/5/2020. (Millat, C.) (Entered: 11/05/2020) |
| 11/05/2020 | | Set Deadlines/Hearings: Discovery due by 12/4/2020 Dispositive Motions due by 4/16/2021 (Millat, C.) (Entered: 11/05/2020) |
| 11/06/2020 | <u>23</u> | ORDER granting <u>13</u> Motion for Reconsideration. For the reasons described in the attached order and ruling, the Court grants Mr. Mustafa's motion. The Clerk of Court is respectfully directed to appoint <i>pro bono</i> counsel. Signed by Judge Victor A. Bolden on 11/6/2020. (Millat, C.) (Entered: 11/06/2020) |
| 11/12/2020 | 24 | Order Appointing Pro Bono Counsel Jared M. Alfin for Justin C Mustafa pursuant to D. Conn L. Civ. R 83.10. Counsel is directed to contact their client and file an appearance in accordance with Local Rule 5(b) within 14 days. Counsel is further directed to review the Notice Regarding Local Rule 83.10(k): Incurring Pro Bono Expenses and Local Rule 83.10(k) (copies available on the courts website at: http://ctd.uscourts.gov/pro-bono-information-0). Signed by Judge Victor A. Bolden on 11/12/2020. (Freberg, B) (Entered: 11/12/2020) |
| 11/12/2020 | <u>25</u> | NOTICE to Pro Bono Counsel re Incurring Expenses. Signed by Judge Victor A. Bolden on 11/12/2020. (Freberg, B) (Entered: 11/12/2020) |
| 11/24/2020 | <u>26</u> | NOTICE of Appearance by Jared M. Alfin on behalf of Justin C Mustafa (Alfin, Jared) (Entered: 11/24/2020) |
| 12/08/2020 | <u>27</u> | ANSWER to <u>1</u> Complaint with Affirmative Defenses by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. (Beizer, Matthew) (Entered: 12/08/2020) |
| 02/24/2021 | <u>28</u> | Joint REPORT of Rule 26(f) Planning Meeting. (Alfin, Jared) (Entered: 02/24/2021) |
| 02/26/2021 | <u>29</u> | SCHEDULING ORDER: As set forth in the attached Order, the Court adopts the following pre-trial and trial schedule, based on the Rule 26(f) report filed by the parties and adjustments made by the Court: -Damages analysis from any party who has a claim or counterclaim for damages due April 16, 2021 . -Joinder of parties and amendment of pleadings due by May 7, 2021 , with responses to any amended pleadings due by May 21, 2021 . -Designation of trial experts and reports from experts due August 6, 2021 (Plaintiff) and |

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| | | <p>September 3, 2021 (Defendant).</p> <p>-Depositions of fact witnesses to be completed by October 1, 2021.</p> <p>-Depositions of expert witnesses to be completed by October 1, 2021 (Plaintiff) and October 29, 2021 (Defendant).</p> <p>-Discovery to be completed by October 29, 2021.</p> <p>-The Court will convene a post-discovery telephonic status conference on November 4, 2021, at 10:00 a.m. Dial-in: (888) 808-6929; Participant code: 9284309.</p> <p>-Dispositive motions due December 15, 2021; responses to any dispositive motions due January 5, 2022; and reply briefs to any responses due January 19, 2022.</p> <p>-Joint trial memorandum due March 25, 2022.</p> <p>-Trial-ready date will be May 2, 2022.</p> <p>Signed by Judge Victor A. Bolden on 02/26/2021. (Millat, C.) (Entered: 02/26/2021)</p> |
| 02/26/2021 | 30 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. Post-Discovery Telephonic Status Conference set for 11/4/2021 10:00 AM before Judge Victor A. Bolden. Dial-in: (888) 808-6929; Passcode: 9284309. (Millat, C.) (Entered: 02/26/2021) |
| 05/27/2021 | <u>31</u> | MOTION for Extension of Time until June 4, 2021 Disclose Damage Analysis by Justin C Mustafa. (Alfin, Jared) (Entered: 05/27/2021) |
| 05/28/2021 | 32 | ORDER granting <u>31</u> Motion for Extension of Time until June 4, 2021 to Disclose Damage Analysis. Signed by Judge Victor A. Bolden on 05/28/2021. (Millat, C.) (Entered: 05/28/2021) |
| 09/16/2021 | <u>34</u> | Consent MOTION for Extension of Time <i>Regarding</i> Discovery Deadlines by Justin C Mustafa. (Alfin, Jared) (Entered: 09/16/2021) |
| 09/16/2021 | | Docket Entry Correction re 33 Entered in Error - Per the local rules, discovery is not to be filed. (Imbriani, Susan) (Entered: 09/23/2021) |
| 09/17/2021 | 35 | <p>ORDER granting <u>34</u> Motion for Extension of Time. The Court adopts the following pre-trial schedule:</p> <p>-Depositions of fact witnesses to be completed by November 1, 2021.</p> <p>-Depositions of expert witnesses to be completed by November 1, 2021.</p> <p>-Discovery to be completed by November 29, 2021.</p> <p>-The Court will convene a post-discovery telephonic status conference on December 2, 2021, at 12:00 p.m. Dial-in: (888) 808-6929; Participant code: 9284309.</p> <p>-Dispositive motions due January 15, 2022; responses to any dispositive motions due February 5, 2022; and reply briefs to any responses due February 19, 2022.</p> <p>-Joint trial memorandum due March 25, 2022.</p> <p>-Trial-ready date will be May 2, 2022.</p> <p>Signed by Judge Victor A. Bolden on 09/17/2021. (Dalton, A.) (Entered: 09/17/2021)</p> |
| 09/17/2021 | 36 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. <i>RESET FROM 11/4/2021 10:00 AM</i> Post-Discovery Telephonic Status Conference set for 12/2/2021 12:00 PM before Judge Victor A. Bolden. Dial-in: (888) 808-6929; Passcode: 9284309. (Dalton, A.) (Entered: 09/17/2021) |
| 11/02/2021 | <u>37</u> | MOTION for Security for Costs by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. (Attachments: # <u>1</u> Memorandum in Support)(Beizer, Matthew) (Entered: 11/02/2021) |
| 11/04/2021 | 38 | ORDER denying <u>37</u> Motion for Security for Costs. The Court DENIES the motion for security of costs because the plaintiff is proceeding <i>in forma pauperis</i> . <i>Barile v. Armstrong</i> , No. 3:00-CV-2253 (HBF), 2005 WL 2481475, at *1 (D. Conn. Sept. 29, |

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| | | 2005) (A "district court may deny a motion for costs based on a litigant's indigency, [and] [w]hether to grant or deny a motion for costs is within the sound discretion of the district court." (internal citation omitted)). Signed by Judge Victor A. Bolden on 11/4/2021. (Dalton, A.) (Entered: 11/04/2021) |
| 11/10/2021 | <u>39</u> | MOTION for Security for Costs by Swan. (Attachments: # <u>1</u> Memorandum in Support) (Beizer, Matthew) (Entered: 11/10/2021) |
| 11/15/2021 | 40 | ORDER denying as moot <u>39</u> Motion for Security for Costs. In light of the Court's prior ruling, ECF No. 38 , the Court DENIES as moot the motion for security for costs. Signed by Judge Victor A. Bolden on 11/15/2021. (Dalton, A.) (Entered: 11/15/2021) |
| 11/29/2021 | 41 | CANCELLATION NOTICE. The post-discovery telephonic status conference set for December 2, 2021, at 12:00 p.m. is CANCELLED . If the parties wish to meet with a Magistrate Judge to discuss settlement, the parties may jointly file such a request by December 2, 2021. Signed by Judge Victor A. Bolden on 11/29/2021. (Dalton, A.) (Entered: 11/29/2021) |
| 01/04/2022 | <u>42</u> | Second MOTION for Extension of Time until 1/31/22 <i>Regarding</i> Discovery Deadlines with Consent 35 Order on Motion for Extension of Time,,, by Justin C Mustafa. (Alfin, Jared) (Entered: 01/04/2022) |
| 01/05/2022 | 43 | ORDER granting <u>42</u> Motion for Extension of Time. The Court grants the motion for extension of time and adopts the following pre-trial schedule: <ul style="list-style-type: none"> - Depositions of fact witnesses to be completed by January 31, 2022. - Discovery to be completed by January 31, 2022. - Dispositive motions due March 1, 2022; responses to any dispositive motions due March 21, 2022; and reply briefs to any responses due April 4, 2022. - Joint trial memorandum due September 2, 2022. - Trial-ready date is October 3, 2022. <p>If the parties wish to meet with a Magistrate Judge to discuss settlement, they should jointly notify the Court of their interest by February 4, 2022.</p> <p>Given the age of this case, the Court is not likely to grant further extensions of time.</p> <p>Signed by Judge Victor A. Bolden on 1/5/2022. (Dalton, A.) (Entered: 01/05/2022)</p> |
| 02/25/2022 | <u>44</u> | MOTION to Incur Pro Bono Expenses by Justin C Mustafa. (Alfin, Jared) (Entered: 02/25/2022) |
| 02/26/2022 | <u>45</u> | MOTION for Summary Judgment by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. Responses due by 3/19/2022 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Material Facts, # <u>3</u> DOC AD 8.9, # <u>4</u> DOC AD 9.6, # <u>5</u> Affidavit, # <u>6</u> Plaintiff's deposition, # <u>7</u> Deposition exhibits, # <u>8</u> Affidavit, # <u>9</u> Attachments to Declaration, # <u>10</u> Affidavit, # <u>11</u> Affidavit)(Beizer, Matthew) (Entered: 02/26/2022) |
| 02/26/2022 | <u>46</u> | Sealed Document: Suggs Declaration Attachments by Byars, Pelitier, Stanley, Ebonie Suggs, Swan re <u>45</u> MOTION for Summary Judgment . (Beizer, Matthew) (Entered: 02/26/2022) |
| 02/26/2022 | <u>47</u> | MOTION to Seal Suggs Declaration Attachments by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. (Beizer, Matthew) (Entered: 02/26/2022) |
| 02/28/2022 | 48 | ORDER granting <u>47</u> Motion to Seal. The Court finds that good cause exists to seal these documents and that sealing is supported by clear and compelling reasons and is narrowly |

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| | | tailored to serve those reasons. <i>See</i> D. Conn. L. Civ. R. 5(e). Signed by Judge Victor A. Bolden on 2/28/2022. (Dalton, A.) (Entered: 02/28/2022) |
| 02/28/2022 | 49 | ORDER granting <u>44</u> Motion to Incur Pro Bono Expenses. Signed by Judge Victor A. Bolden on 2/28/2022. (Dalton, A.) (Entered: 02/28/2022) |
| 03/10/2022 | <u>50</u> | Consent MOTION for Extension of Time until March 31, 2022 To Respond to Motion For Summary Judgment <u>45</u> MOTION for Summary Judgment by Justin C Mustafa. (Alfin, Jared) (Entered: 03/10/2022) |
| 03/11/2022 | 51 | ORDER granting <u>50</u> Motion for Extension of Time. The Court extends the deadline to respond to Defendants' motion for summary judgment until March 31, 2022 . Signed by Judge Victor A. Bolden on 3/11/2022 (Dalton, A.) (Entered: 03/11/2022) |
| 03/31/2022 | <u>52</u> | Statement of Material Facts re <u>45</u> MOTION for Summary Judgment filed by Justin C Mustafa. (Attachments: # <u>1</u> Exhibit Exhibit 1)(Alfin, Jared) (Entered: 03/31/2022) |
| 03/31/2022 | <u>53</u> | OBJECTION re <u>45</u> MOTION for Summary Judgment filed by Justin C Mustafa. (Alfin, Jared) (Entered: 03/31/2022) |
| 03/31/2022 | <u>54</u> | AFFIDAVIT re <u>53</u> Objection Signed By Justin Mustafa filed by Justin C Mustafa. (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Exhibit Exhibit C, # <u>4</u> Exhibit Exhibit D, # <u>5</u> Exhibit Exhibit E, # <u>6</u> Exhibit Exhibit F, # <u>7</u> Exhibit Exhibit G, # <u>8</u> Exhibit Exhibit H)(Alfin, Jared) (Entered: 03/31/2022) |
| 04/12/2022 | <u>55</u> | REPLY to Response to <u>45</u> MOTION for Summary Judgment filed by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Exhibit, # <u>3</u> Affidavit) (Beizer, Matthew) (Entered: 04/12/2022) |
| 09/09/2022 | <u>56</u> | ORDER granting in part and denying in part <u>45</u> Motion for Summary Judgment. For the reasons described in the attached ruling and order, Defendants' motion for summary judgment is GRANTED in part and DENIED in part . Signed by Judge Victor A. Bolden on 9/9/2022. (Bartlett, H.) (Entered: 09/09/2022) |
| 09/26/2022 | <u>57</u> | NOTICE OF APPEAL as to <u>56</u> Order on Motion for Summary Judgment, by Pelitier. Filing fee \$ 505, receipt number ACTDC-7080838. (Beizer, Matthew) (Entered: 09/26/2022) |
| 09/27/2022 | <u>58</u> | CLERK'S CERTIFICATE RE: INDEX AND RECORD ON APPEAL re: <u>57</u> Notice of Appeal. The attached docket sheet is hereby certified as the entire Index/Record on Appeal in this matter and electronically sent to the Court of Appeals, with the exception of any manually filed documents as noted below. Dinah Milton Kinney, Clerk. Documents manually filed not included in this transmission: none (Fanelle, N.) (Entered: 09/27/2022) |
| 10/06/2022 | <u>59</u> | NOTICE of Appearance by Stephen R. Finucane on behalf of Byars, Pelitier (Finucane, Stephen) (Entered: 10/06/2022) |
| 03/29/2023 | <u>60</u> | MOTION to Incur Pro Bono Expenses by Justin C Mustafa. (Alfin, Jared) (Entered: 03/29/2023) |
| 03/30/2023 | 61 | ORDER granting <u>60</u> Motion to Incur Pro Bono Expenses. The Court GRANTS the motion to incur pro bono expenses, provided that any such expense does not exceed the \$2,000 limit. <i>See</i> D. Conn. Notice Regarding Local Rule 83.10(k): Incurring Pro Bono Expenses (stating that only "expenses in excess of \$2,000 per case require prior approval by the Budget Committee of this court in addition to the presiding judge"). Signed by Judge Victor A. Bolden on 3/30/2023. (Bartlett, H) (Entered: 03/30/2023) |

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| 11/14/2023 | <u>62</u> | ORDER of USCA as to <u>57</u> Notice of Appeal filed by Pelitier, USCA Case Number 22-2187. (Barry, L) (Entered: 11/21/2023) |
| 12/05/2023 | <u>63</u> | MANDATE of USCA dated 12/5/2023 Reversing <u>57</u> Notice of Appeal filed by Pelitier (Barry, L) (Entered: 12/07/2023) |
| 04/26/2024 | <u>64</u> | JUDGMENT. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Judge Victor A. Bolden on 4/26/2024.(Murphy, T) (Entered: 04/26/2024) |
| 04/26/2024 | 65 | ORDER. The Court will hold a telephonic status conference on April 30, 2024 at 10:00 a.m. Status Conference set for 4/30/2024 10:00 AM in Remote Setting before Judge Victor A. Bolden. Dial In: (888) 808-6929 Participant Code: 9284309. If prompted to enter a security code, please bypass it. Signed by Judge Victor A. Bolden on 4/26/24. (Chan, A.) (Entered: 04/26/2024) |
| 04/30/2024 | <u>66</u> | NOTICE of Appearance by Jeffrey O. McDonald on behalf of Justin C Mustafa (McDonald, Jeffrey) (Entered: 04/30/2024) |
| 04/30/2024 | 67 | Minute Entry for proceedings held before Judge Victor A. Bolden: Status Conference held on 4/30/2024. Total Time: 0 hours and 5 minutes (Court Reporter H. Ireland) (Chan, A.) (Entered: 04/30/2024) |
| 04/30/2024 | 68 | ORDER. The Court respectfully directs the Clerk of Court to refer this case to a Magistrate Judge for settlement discussions. The Court also adopts the following amended pre-trial schedule: - Joint trial memorandum shall be due by August 9, 2024 ; - Final pre-trial conference shall be on September 19, 2024 at 10:00 a.m. in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden; - Jury selection shall be on September 23, 2024 at 9:00 a.m. in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden. Signed by Judge Victor A. Bolden on 4/30/24. (Chan, A.) (Entered: 04/30/2024) |
| 04/30/2024 | 69 | ORDER REFERRING CASE to Magistrate Judge Robert M. Spector for Settlement. Signed by Judge Victor A. Bolden on 4/30/2024.(Murphy, T) (Entered: 04/30/2024) |
| 04/30/2024 | 70 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Telephonic Pre-Settlement Conference is set for May 6, 2024, at 09:30 AM before Judge Robert M. Spector. A date for the settlement conference will be set during the telephone call. As the Court requires parties or their representatives with settlement authority to attend (in-person or by remote means) the settlement conference, counsel should obtain dates of unavailability from their clients over the next 60 days and have their own calendars available to aid in the scheduling. During the telephone call, counsel should be prepared to discuss what information needs to be exchanged and anything else that needs to be accomplished prior to the settlement |

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| | | conference for the discussions to be productive. Please use the following dial-in for this call: (877) 873-8017; Access Code: 7040261. (Blickley, J) (Entered: 04/30/2024) |
| 05/01/2024 | <u>71</u> | NOTICE of Appearance by Edward David Rowley on behalf of Byars <i>in his individual capacity</i> (Rowley, Edward) (Entered: 05/01/2024) |
| 05/02/2024 | <u>72</u> | MOTION for AAG Matthew B. Beizer to Withdraw as Attorney by Byars, Pelitier, Stanley, Ebonie Suggs, Swan. (Beizer, Matthew) (Entered: 05/02/2024) |
| 05/03/2024 | 73 | ORDER granting <u>72</u> Motion to Withdraw as Attorney. The Court GRANTS the motion to withdraw the appearance of Assistant Attorney General Matthew B. Beizer. Attorney Matthew B. Beizer terminated. Signed by Judge Victor A. Bolden on 5/3/24. (Chan, A.) (Entered: 05/03/2024) |
| 05/06/2024 | 74 | Minute Entry for proceedings held before Judge Robert M. Spector: A telephonic pre-settlement conference was held on 5/6/2024. 9 minutes. (Blickley, J) (Entered: 05/06/2024) |
| 05/06/2024 | 75 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Settlement Conference via Zoom is set for June 20, 2024, at 09:30 AM before Judge Robert M. Spector. (Blickley, J) (Entered: 05/06/2024) |
| 05/06/2024 | <u>76</u> | ORDER. A Settlement Conference is scheduled in this case for June 20, 2024, at 9:30 AM . Please see the attached Settlement Conference Order for detailed instructions and deadlines. Signed by Judge Robert M. Spector on May 6, 2024.(Blickley, J) (Entered: 05/06/2024) |
| 06/20/2024 | 77 | Minute Entry for proceedings held before Judge Robert M. Spector: Settlement Conference via Zoom held on 6/20/2024. Total Time: 3 hours. The case did not settle today, but settlement discussions are ongoing. The Court will hold an <i>ex parte</i> call with counsel for the plaintiff on June 24, 2024 . A separate calendar notice shall enter. (Blickley, J) (Entered: 06/20/2024) |
| 06/20/2024 | 78 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. An <i>ex parte</i> call with counsel for the plaintiff is set for June 24, 2024 at 09:30 AM before Judge Robert M. Spector. Please use the following dial-in for this call: (877) 873-8017; Access Code: 7040261. (Blickley, J) (Entered: 06/20/2024) |
| 06/24/2024 | 79 | Minute Entry for proceedings held before Judge Robert M. Spector: An <i>ex parte</i> call with counsel for the plaintiff held on 6/24/2024. 2 minutes. This case has not settled, and further settlement discussions will not be fruitful at this time. If the parties decide that they would like to resume settlement discussions, they should reach out to the Court at RMS_Settlement@ctd.uscourts.gov. (Blickley, J) (Entered: 06/24/2024) |
| 08/09/2024 | <u>80</u> | Joint MOTION Joint Motion to Modify Scheduling Orders re 68 Order,, Set Deadlines/Hearings,, by Byars.Responses due by 8/30/2024 (Finucane, Stephen) (Entered: 08/09/2024) |
| 08/12/2024 | 81 | ORDER granting <u>80</u> Joint Motion to Modify Scheduling Order. The Court GRANTS the joint motion to modify the scheduling order, ECF No. 68, and adopts the following amended pre-trial schedule: - Joint trial memorandum shall be due by August 21, 2024 ; - Final pre-trial conference shall be on September 19, 2024 at 10:00 a.m. in Courtroom |

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| | | Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden; - Jury selection shall be on September 30, 2024 at 9:00 a.m. in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden. Signed by Judge Victor A. Bolden on 8/12/24. (Cunningham, A) (Entered: 08/12/2024) |
| 08/21/2024 | <u>82</u> | Joint MOTION for Extension of Time until August 30, 2024 to file the Joint Trial Memorandum by Byars. (Finucane, Stephen) (Entered: 08/21/2024) |
| 08/22/2024 | 83 | ORDER granting <u>82</u> Motion for Extension of Time. The Court GRANTS the Joint Motion for an Extension of Time until August 30, 2024 to file the Joint Trial Memorandum. Signed by Judge Victor A. Bolden on 8/22/2024. (Cunningham, A) (Entered: 08/22/2024) |
| 08/30/2024 | <u>84</u> | TRIAL MEMO <i>FIRST JOINT Trial Memorandum</i> by Byars Estimated trial time One Week. (Finucane, Stephen) (Entered: 08/30/2024) |
| 09/01/2024 | 85 | ORDER. The Court GRANTS the parties leave to supplement the Joint Trial Memorandum by September 16, 2024 with any motions <i>in limine</i> , proposed voir dire questions, and proposed post-trial jury instructions. Signed by Judge Victor A. Bolden on 9/1/2024. (Cunningham, A) (Entered: 09/01/2024) |
| 09/03/2024 | <u>86</u> | MOTION to Continue 9/19/2024 <i>Pretrial</i> by Justin C Mustafa. (Spector, Elliot) (Entered: 09/03/2024) |
| 09/04/2024 | 87 | ORDER granting <u>86</u> Motion to Continue. The Court GRANTS the motion to continue the final pretrial conference until September 25, 2024 at 11:00 a.m. Signed by Judge Victor A. Bolden on 9/4/2024. (Cunningham, A) (Entered: 09/04/2024) |
| 09/16/2024 | <u>88</u> | TRIAL MEMO <i>Second JOINT Trial Memorandum</i> by Byars Estimated trial time One Week. (Attachments: # <u>1</u> Supplement Proposed Witness Lists and attachment, # <u>2</u> Supplement Proposed General Voir Dire questions, # <u>3</u> Supplement Proposed Supplemental Voir Dire questions (Def. Objects to #s 22 and 25), # <u>4</u> Supplement Plaintiff's Proposed Jury Instructions, # <u>5</u> Supplement Defendant's Proposed Jury Instructions)(Finucane, Stephen) (Entered: 09/16/2024) |
| 09/17/2024 | 89 | ORDER. The parties may file motions <i>in limine</i> by September 18, 2024 . Given the lateness of this filing, and closeness of the trial date, however, any responses to the motions <i>in limine</i> must be filed by September 20, 2024 . The Clerk of Court is also respectfully ordered to amend the caption in the case to Mustafa v. Byars. Signed by Judge Victor A. Bolden on 9/17/2024.(Cunningham, A) (Entered: 09/17/2024) |
| 09/18/2024 | <u>90</u> | MOTION in Limine <i>Re Disciplinary Reports</i> by Justin C Mustafa.Responses due by 10/9/2024 (McDonald, Jeffrey) (Entered: 09/18/2024) |
| 09/18/2024 | <u>91</u> | MOTION in Limine <i>re Convictions</i> by Justin C Mustafa.Responses due by 10/9/2024 (McDonald, Jeffrey) (Entered: 09/18/2024) |
| 09/18/2024 | <u>92</u> | MOTION in Limine <i>re Other Acts</i> by Justin C Mustafa.Responses due by 10/9/2024 (McDonald, Jeffrey) (Entered: 09/18/2024) |
| 09/18/2024 | <u>93</u> | MOTION in Limine <i>re: Plaintiff Offering His Own Out-of-Court Statements</i> by Byars.Responses due by 10/9/2024 (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Supplement attachment page, # <u>3</u> Exhibit Plaintiff's Proposed Exhibit 7, # <u>4</u> Exhibit Plaintiff's Proposed Exhibit 8, # <u>5</u> Exhibit Plaintiff's Proposed Exhibit 9, # <u>6</u> Exhibit |

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| | | Plaintiff's Proposed Exhibit 10, # <u>7</u> Exhibit Plaintiff's Proposed Exhibit 11)(Finucane, Stephen) (Entered: 09/18/2024) |
| 09/20/2024 | <u>94</u> | Memorandum in Opposition re <u>92</u> MOTION in Limine re <i>Other Acts</i> filed by Byars. (Finucane, Stephen) (Entered: 09/20/2024) |
| 09/20/2024 | <u>95</u> | OBJECTION <i>Objection to Doc. 92, see also Doc. 94</i> filed by Byars. (Finucane, Stephen) (Entered: 09/20/2024) |
| 09/20/2024 | <u>96</u> | OBJECTION <i>Objection to Doc. 90</i> filed by Byars. (Finucane, Stephen) (Entered: 09/20/2024) |
| 09/20/2024 | <u>97</u> | OBJECTION <i>Objection to Doc. 91</i> filed by Byars. (Attachments: # <u>1</u> Supplement, # <u>2</u> Exhibit Criminal History)(Finucane, Stephen) (Entered: 09/20/2024) |
| 09/23/2024 | <u>98</u> | <p>ORDER denying <u>90</u> Motion in Limine re Disciplinary Reports; denying <u>91</u> Motion in Limine re Convictions; denying <u>92</u> Motion in Limine re Other Acts; granting in part and denying in part <u>93</u> Motion in Limine re Plaintiff Offering His Own Out-of-Court Statements.</p> <p>The Court DENIES Plaintiff's motions in limine to exclude Plaintiff's prior convictions, disciplinary reports, and other acts without prejudice to renewal at trial, when the Court can evaluate the admissibility of such evidence in context. <i>See In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.</i>, 643 F. Supp. 2d 471, 476 (S.D.N.Y. 2009) ("[C]ourts considering a motion in limine may reserve judgment until trial, so that the motion is placed in the appropriate factual context.") (internal citation omitted)</p> <p>While Plaintiff's proposed exhibits 7, 8, 9, 10, and 11 arguably may be admissible as business records, to the extent that the proper evidentiary foundation can be laid, <i>see</i> Fed. R. Evid. 803(6) (requiring, <i>inter alia</i>, through "the testimony of the custodian or another qualified witness," that the "record was kept in the course of a regularly conducted activity of a[n]... organization,... [and] making the record was a regular practice of that activity"), Plaintiff's out-of-court statements contained in those records are hearsay that are not admissible under another exception. <i>See</i> Fed. R. Evid. 805 (allowing "[h]earsay within hearsay... if each part of the combined statements conforms with an exception to the rule."). Thus, Defendant's motion, ECF No. 93, is GRANTED in part, to the extent that it seeks to prevent Plaintiff from introducing these records as full exhibits at trial. To the extent that the motion seeks to prevent Plaintiff from testifying about having submitted these DOC Inmate Request Forms, or preclude their admission, if a proper evidentiary foundation is laid under Rule 803(6), and any inadmissible hearsay contained within them is redacted, the motion is DENIED in part.</p> <p>Signed by Judge Victor A. Bolden on 9/23/2024. (Cunningham, A) (Entered: 09/23/2024)</p> |
| 09/25/2024 | <u>99</u> | Minute Entry for proceedings held before Judge Victor A. Bolden: Pretrial Conference held on 9/25/2024, (Jury Selection set for 9/30/2024 at 09:00 AM in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden). Total time 26 minutes. (Court Reporter Heather Ireland.) (Murphy, T) (Entered: 09/25/2024) |
| 09/27/2024 | <u>100</u> | General Voir Dire Questionnaire. (Cunningham, A) (Entered: 09/27/2024) |
| 09/27/2024 | <u>101</u> | Supplemental Voir Dire Questionnaire. (Cunningham, A) (Entered: 09/27/2024) |
| 09/27/2024 | <u>102</u> | Pre-Trial Jury Instructions. (Cunningham, A) (Entered: 09/27/2024) |
| 09/27/2024 | <u>103</u> | Annotated Post-Trial Jury Instructions. (Cunningham, A) (Entered: 09/27/2024) |
| 09/27/2024 | <u>104</u> | Verdict Form. (Cunningham, A) (Entered: 09/27/2024) |

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| 09/30/2024 | <u>105</u> | NOTICE of Appearance by Jeffrey O. McDonald on behalf of Justin C Mustafa (McDonald, Jeffrey) (Entered: 09/30/2024) |
| 09/30/2024 | <u>106</u> | NOTICE of Appearance by Forrest Alan Noirot on behalf of Justin C Mustafa (Noirot, Forrest) (Entered: 09/30/2024) |
| 09/30/2024 | <u>107</u> | Minute Entry for proceedings held before Judge Victor A. Bolden: Jury Selection held on 9/30/2024. Jury Trial started and continued until 10/1/2024. (Jury Trial set for 10/1/2024 at 09:00 AM in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden). Total Time: 5 hours and 30 minutes. (Court Reporter Heather Ireland.) (Murphy, T) (Entered: 09/30/2024) |
| 10/01/2024 | <u>108</u> | Minute Entry. Proceedings held before Judge Victor A. Bolden: Jury Trial held on 10/1/2024. Jury Trial Continued Until 10/2/2024. (Jury Trial set for 10/2/2024 at 09:00 AM in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden). Total Time: 5 hours and 45 minutes. (Court Reporter Heather Ireland.) (Murphy, T) (Entered: 10/01/2024) |
| 10/02/2024 | | ORAL MOTION under Rule 50 by Byars.(Murphy, T) (Entered: 10/03/2024) |
| 10/02/2024 | <u>109</u> | Minute Entry for proceedings held before Judge Victor A. Bolden: Jury Trial held on 10/2/2024. Jury Trial Continued Until 10/3/2024. Motion Hearing held on 10/2/2024 re ORAL MOTION Under Rule 50 filed by Byars. Motion taken under advisement. (Jury Trial set for 10/3/2024 at 09:00 AM in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden). Total Time: 4 hours and 42 minutes. (Court Reporter Cassie Zayas.) (Murphy, T) (Additional attachment(s) added on 10/3/2024: # <u>1</u> Replacement PDF-MAIN) (Murphy, T). (Entered: 10/03/2024) |
| 10/03/2024 | <u>110</u> | Minute Entry for proceedings held before Judge Victor A. Bolden: Jury Trial completed on 10/3/2024. Total Time: 5 hours and 38 minutes. (Court Reporter Heather Ireland.) (Murphy, T) (Entered: 10/03/2024) |
| 10/03/2024 | <u>111</u> | JURY VERDICT with foreperson's signature redacted for Justin C. Mustafa against Christopher Byars in the amount of \$1,350,000.00. (Murphy, T) (Entered: 10/08/2024) |
| 10/08/2024 | <u>112</u> | Unredacted document with FOREPERSON'S SIGNATURE regarding Jury Verdict <u>111</u> . Access to the pdf document is restricted pursuant to Federal Rule of Civil Procedure 5.2(e). (Murphy, T) (Entered: 10/08/2024) |
| 10/08/2024 | <u>113</u> | Marked Witness List. (Murphy, T) (Entered: 10/08/2024) |
| 10/08/2024 | <u>114</u> | Marked Exhibit List. (Murphy, T) (Entered: 10/08/2024) |
| 10/21/2024 | <u>115</u> | TRANSCRIPT of Proceedings: Type of Hearing: Jury Trial *WITNESS EXCERPTS* Justin Mustafa and Patrick Kennedy. Held on October 2, 2024 before Judge Victor A. Bolden. Court Reporter: Cassie Zayas. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 11/11/2024. Redacted Transcript Deadline set for 11/21/2024. Release of Transcript Restriction set for 1/19/2025. (Zayas, Cassie) (Entered: 10/21/2024) |

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| 10/21/2024 | <u>116</u> | NOTICE by Byars <i>Defendant Byars' Notice of Proposed Post-Trial Briefing Schedule</i> (Finucane, Stephen) (Entered: 10/21/2024) |
| 10/21/2024 | <u>117</u> | JUDGMENT entered in favor of Justin C Mustafa against Byars. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Clerk on 10/21/2024.(Murphy, T) (Entered: 10/21/2024) |
| 10/21/2024 | | JUDICIAL PROCEEDINGS SURVEY - FOR COUNSEL ONLY: The following link to the confidential survey requires you to log into CM/ECF for SECURITY purposes. Once in CM/ECF you will be prompted for the case number. Although you are receiving this survey through CM/ECF, it is hosted on an independent website called SurveyMonkey. Once in SurveyMonkey, the survey is located in a secure account. The survey is not docketed and it is not sent directly to the judge. To ensure anonymity, completed surveys are held up to 90 days before they are sent to the judge for review. We hope you will take this opportunity to participate, please click on this link: https://ecf.ctd.uscourts.gov/cgi-bin/Dispatch.pl?survey (Murphy, T) (Entered: 10/21/2024) |
| 10/22/2024 | 118 | SCHEDULING ORDER: The Court adopts the post-trial briefing schedule requested by the Defendant, ECF No. 116. Initial briefs shall be due October 31, 2024 . The Court also <i>sua sponte</i> extends the deadline for any motions for attorney's fees until October 31, 2024 . Signed by Judge Victor A. Bolden on 10/22/2024.(Cunningham, A) (Entered: 10/22/2024) |
| 10/31/2024 | <u>119</u> | MOTION for Attorney Fees by Justin C Mustafa.Responses due by 11/21/2024 (Attachments: # <u>1</u> Affidavit Exhibit A, # <u>2</u> Exhibit B to Affidavit)(McDonald, Jeffrey) (Entered: 10/31/2024) |
| 10/31/2024 | <u>120</u> | MOTION for New Trial <i>First Motion for Judgment as a Matter of Law, for New Trial, and For Remittitur, Fed. R. Civ. Pro. 50; 59</i> by Byars. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Supplement attachments page, # <u>3</u> Exhibit Jury Instructions, # <u>4</u> Exhibit Except Transcript from second day of plaintiff's testimony, # <u>5</u> Supplement Verdict Form, Wingster v. Lyons et al., 3:20-CV-1087, # <u>6</u> Supplement Judgment, Wingster v. Lyons et al., 3:20-CV-1087, # <u>7</u> Supplement Verdict Form, Ross v. Blake litigation, # <u>8</u> Supplement Verdict Form, Martinez v. Brois, et al., 6:20-CV-6759, # <u>9</u> Supplement Judgment, Martinez v. Brois, et al., 6:20-CV-6759, # <u>10</u> Supplement Lexis summary, Martinez v. Brois, et al., 6:20-CV-6759)(Finucane, Stephen) (Entered: 10/31/2024) |
| 11/12/2024 | <u>121</u> | TRANSCRIPT of Proceedings: Type of Hearing: Jury Selection. Held on 9/30/24 before Judge Victor A. Bolden. Court Reporter: Heather A. Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 12/3/2024. Redacted Transcript Deadline set for 12/13/2024. Release of Transcript Restriction set for 2/10/2025. (Ireland, Heather) (Entered: 11/12/2024) |

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| 11/13/2024 | <u>122</u> | MOTION for Extension of Time to File Response/Reply as to <u>120</u> MOTION for New Trial <i>First Motion for Judgment as a Matter of Law, for New Trial, and For Remittitur, Fed. R. Civ. Pro. 50; 59</i> until 11/21/2024 by Justin C Mustafa. (McDonald, Jeffrey) (Entered: 11/13/2024) |
| 11/14/2024 | 123 | ORDER granting <u>122</u> Motion for Extension of Time to File Response/Reply. The Court GRANTS the motion for an extension of time until November 21, 2024 to respond to Defendant's post-trial brief, ECF No. 120. Signed by Judge Victor A. Bolden on 11/14/2024. (Cunningham, A) (Entered: 11/14/2024) |
| 11/14/2024 | <u>124</u> | TRANSCRIPT of Proceedings: Type of Hearing: Trial Testimony Day 1. Held on 9/30/24 before Judge Victor A. Bolden. Court Reporter: Heather Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 12/5/2024. Redacted Transcript Deadline set for 12/15/2024. Release of Transcript Restriction set for 2/12/2025. (Ireland, Heather) (Entered: 11/14/2024) |
| 11/21/2024 | <u>125</u> | RESPONSE re <u>120</u> MOTION for New Trial <i>First Motion for Judgment as a Matter of Law, for New Trial, and For Remittitur, Fed. R. Civ. Pro. 50; 59</i> filed by Justin C Mustafa. (Attachments: # <u>1</u> Memorandum in Support)(McDonald, Jeffrey) (Entered: 11/21/2024) |
| 11/22/2024 | <u>126</u> | Acknowledgment of Receipt as to Plaintiff. (Murphy, T) (Entered: 11/22/2024) |
| 11/22/2024 | <u>127</u> | Acknowledgment of Receipt as to Defendant Byars. (Murphy, T) (Entered: 11/22/2024) |
| 11/22/2024 | <u>128</u> | MOTION for Protective Order by Byars.Responses due by 12/13/2024 (Attachments: # <u>1</u> , # <u>2</u> Text of Proposed Order Proposed Protective Order re: Correctional Video Recordings) (Finucane, Stephen) (Entered: 11/22/2024) |
| 11/26/2024 | 129 | ORDER granting <u>128</u> Motion for Protective Order. For the reasons stated in the underlying motion, ECF No. 128, the Court GRANTS the motion for a protective order. Signed by Judge Victor A. Bolden on 11/26/2024. (Cunningham, A) (Entered: 11/26/2024) |
| 12/02/2024 | 130 | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A telephonic Pre-Settlement Conference is set for 12/3/2024 at 09:00 AM before Judge Robert M. Spector. As the Court requires parties or their representatives with settlement authority to attend (in-person or by remote means) the settlement conference, counsel should obtain dates of unavailability from their clients over the next 60 days and have their own calendars available to aid in the scheduling. During the telephone call, counsel should be prepared to discuss what information needs to be exchanged and anything else that needs to be accomplished prior to the settlement conference for the discussions to be productive. Please use the following dial-in for this call: +1 203-684-6202; Access Code: 952 440 972#. (MacCarthy, C) (Entered: 12/02/2024) |

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| 12/03/2024 | <u>131</u> | Minute Entry for proceedings held before Judge Robert M. Spector: A telephonic pre-settlement conference was held on 12/3/2024. 12 minutes (MacCarthy, C) (Entered: 12/03/2024) |
| 12/03/2024 | <u>132</u> | NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Settlement Conference via Zoom is set for 1/2/2025 at 10:00 AM before Judge Robert M. Spector. (MacCarthy, C) (Entered: 12/03/2024) |
| 12/03/2024 | <u>133</u> | ORDER. A Settlement Conference via Zoom is scheduled in this case for January 2, 2025 at 10:00 AM . Please see the attached Settlement Conference Order for detailed instructions and deadlines. On or before December 16, 2024 , the parties shall jointly email RMS_Settlement@ctd.uscourts.gov regarding whether the parties intend to go forward with the settlement conference. Signed by Judge Robert M. Spector on December 3, 2024. (MacCarthy, C) (Entered: 12/03/2024) |
| 12/03/2024 | <u>134</u> | MOTION for Leave to File <i>responses to Documents 119 and 125 within fourteen days following the settlement conference, if necessary</i> by Byars. (Finucane, Stephen) (Entered: 12/03/2024) |
| 12/09/2024 | <u>135</u> | ORDER. In light of the attached letter, the Court wishes for the parties to file responses outlining their respective positions by January 10, 2025 . Signed by Judge Victor A. Bolden on 12/9/2024.(Cunningham, A) (Entered: 12/09/2024) |
| 12/16/2024 | <u>136</u> | ORDER granting <u>134</u> Motion for Leave to File. The Court GRANTS leave to respond to plaintiff's filings, ECF Nos. 119 and 125, within 14 days of the settlement conference. Signed by Judge Victor A. Bolden on 12/16/2024. (Cunningham, A) (Entered: 12/16/2024) |
| 12/16/2024 | <u>137</u> | Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> by ACLU of Connecticut.Responses due by 1/6/2025 (Attachments: # <u>1</u> Exhibit 1)(Barrett, Dan) (Entered: 12/16/2024) |
| 12/16/2024 | <u>138</u> | NOTICE of Appearance by Dan Barrett on behalf of ACLU of Connecticut (Barrett, Dan) (Entered: 12/16/2024) |
| 12/16/2024 | <u>139</u> | Disclosure Statement by ACLU of Connecticut. (Barrett, Dan) (Entered: 12/16/2024) |
| 12/17/2024 | <u>140</u> | ORDER. The parties shall file an expedited response to the emergency motion, ECF No. 137, by December 20, 2024 , and any reply to any such response shall be due by December 23, 2024 . Signed by Judge Victor A. Bolden on 12/17/2024. (Cunningham, A) (Entered: 12/17/2024) |
| 12/18/2024 | <u>141</u> | RESPONSE re <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> filed by Justin C Mustafa. (McDonald, Jeffrey) (Entered: 12/18/2024) |
| 12/20/2024 | <u>142</u> | First OBJECTION re <u>135</u> Order, <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> filed by Byars. (Finucane, Stephen) (Entered: 12/20/2024) |
| 12/23/2024 | <u>143</u> | REPLY to Response to <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> filed by ACLU of Connecticut. (Barrett, Dan) (Entered: 12/23/2024) |

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| 12/24/2024 | 144 | <p>ORDER granting in part the <u>137</u> emergency motion to intervene for immediate disclosure of judicial documents with the remainder of the motion taken under advisement until the Defendant supplements its current response by January 10, 2025.</p> <p>The motion for the ACLU to intervene in this case for the purpose of seeking the disclosure of judicial documents is granted. Consistent with Rule 24 of the Federal Rules of Civil Procedure, the ACLU has satisfied the standards set forth for mandatory intervention, having shown through the filing of a "timely motion," Fed.R.Civ.P.24(a), "an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties represent that interest." <i>Id.</i>; <i>Catanzano v. Wing</i>, 103 F.3d 223, 232 (2d Cir. 1996) ("In order to intervene as of right under Fed.R.Civ.P. 24(a)(2), an applicant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action. Failure to satisfy any one of these requirements is a sufficient ground to deny the application." (citation omitted)). In any event, even if mandatory intervention is not appropriate, at a minimum, permissive intervention would be because of the "claim," Fed. R. Civ. P. 24(b), made here, regarding the relevant documents. Accordingly, the ACLU is permitted to intervene in this case.</p> <p>At this time, however, the Court does not grant the motion in full, i.e., ordering the immediate release of the judicial documents, given the January 10, 2025 deadline previously established by the Court, and the Court's earlier consideration perhaps, erroneously of the challenges inherent in complying with an end of the year, or early in the next year deadline. Indeed, as a practical matter, this Court routinely extends deadlines in all of its cases comfortably past the New Year, to the extent practicable. In this case, the Court's decision may not have been practicable, or even wise, given the constitutional considerations at issue.</p> <p>Nevertheless, and despite the Defendant's failure to address specifically (and adequately, as of yet) the necessity of continued sealing, <i>see, e.g.</i>, Reply in Further Support of Limited Intervention and Disclosure of Court Records, at 5 ("He does not which part of which of the six videos he wishes to restrict from public access, what it shows, or how the depiction harms him."), the Court will give the Defendant until January 10th to provide this specificity. In doing so, the Court is neither ignoring the significant First Amendment considerations at issue, <i>see, e.g.</i>, <i>In re Nat'l Broad. Co.</i>, 635 F.2d 945, 952 (2d Cir. 1980) ("Once the evidence has become known to the members of the public.... through their attendance at a public session of court, it would take the most extraordinary circumstances to justify restrictions on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence, when it is in a form that readily permits sight and sound reproduction."), nor any potential public safety issue inherent in unlimited and unfettered access to an aspect of the inner operations of a specific, high-security correctional facility, <i>see</i> Defendant's First Objection to the Letter and Purported "Emergency" Motion To Intervene and For Immediate Disclosure Filed By the ACLU at 6 ("The layout and blind spots of a prison especially a Level 4 security facility like Garner pose obvious safety and security threats."); <i>United States v. Amodeo</i>, 71 F.3d 1044, 1051 (2d Cir. 1995) ("In determining the weight to be accorded an assertion of a right of privacy, courts should first consider the degree to which the subject matter is traditionally considered private rather than public.... This will entail consideration not only of the sensitivity of the information and the subject but also of how the person seeking access intends to use the information."). Instead, the Court is trying to ensure that the appropriate legal standard is properly applied, and the relevant factors properly weighed.</p> |
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| | | <p>The Defendant must preserve and maintain the exhibits at issue in the pending motion for immediate disclosure, if ultimately ordered by the Court. <i>See Dietz v. Bouldin</i>, 579 U.S. 40, 47 (2016) ("[D]istrict courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases.").</p> <p>In addition, the Court will hold a hearing for the pending motion on January 13, 2025 at 10:00 a.m. (the parties are forewarned that if a previously scheduled criminal trial remains ongoing, this proceeding will be moved to as early as noon on the same day, January 13, 2025).</p> <p>Signed by Judge Victor A. Bolden on 12/24/2024. (Cunningham, A) (Entered: 12/24/2024)</p> |
| 12/24/2024 | 145 | <p>NOTICE OF E-FILED CALENDAR re: <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i>. THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. Motion Hearing set for 1/13/2025 at 10:00 AM in Courtroom Two, 141 Church St., New Haven, CT before Judge Victor A. Bolden (Cunningham, A) (Entered: 12/24/2024)</p> |
| 01/02/2025 | 146 | <p>NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Settlement Conference is set for 1/2/2025 at 11:45 AM before Judge Robert M. Spector. NOTICE regarding hearing via Zoom: The Settlement Conference scheduled for 1/2/2025 at 11:45 AM will be conducted via Zoom.</p> <p>Call-in and Public Access Number: +1 646 828 7666</p> <p>Meeting ID: 160 159 9888</p> <p>Meeting Password: 079639</p> <p><i>The Court will distribute the video link to the parties via email.</i></p> <p>Please note: Members of the public are permitted to join this hearing by audio only using the public access number above. Video participation is permitted by the parties and counsel only. This is in accordance with the remote access policies of the Judicial Conference of the United States, which governs the practices of the federal courts. All persons granted remote access to proceedings are reminded of the general prohibition against photographing, recording, screenshots, streaming, and rebroadcasting in any form, of court proceedings. Violation of these prohibitions may result in sanctions, including restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the court. (MacCarthy, C) (Entered: 01/02/2025)</p> |
| 01/02/2025 | 147 | <p>Minute Entry for proceedings held before Judge Robert M. Spector: A Settlement Conference was held on 1/2/2025. (Doc. No. 132). Total Time: 1 hours and 55 minutes. This case has settled after a settlement conference today. The parties understand that the district judge may decide to close this case administratively under Local Rule 41(b). (MacCarthy, C) (Entered: 01/02/2025)</p> |
| 01/02/2025 | 148 | <p>Minute Entry for proceedings held before Judge Robert M. Spector: A Settlement Conference was held on 1/2/2025 (Doc. No. 146). 5 minutes (MacCarthy, C) (Entered: 01/02/2025)</p> |
| 01/02/2025 | <u>149</u> | <p>NOTICE of Appearance by Jaclyn Marie Blickley on behalf of ACLU of Connecticut (Blickley, Jaclyn) (Entered: 01/02/2025)</p> |

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| 01/10/2025 | <u>150</u> | MOTION for Hearing re <u>145</u> Calendar Entry re Hearing on Motion, <i>Motion to be Excused from Hearing</i> by Justin C Mustafa. (McDonald, Jeffrey) (Entered: 01/10/2025) |
| 01/10/2025 | <u>151</u> | Joint NOTICE by Byars re <u>119</u> MOTION for Attorney Fees , <u>120</u> MOTION for New Trial <i>First Motion for Judgment as a Matter of Law, for New Trial, and For Remittitur</i> ; <i>Fed. R. Civ. Pro. 50; 59 Joint Notice of withdrawal of post-trial motions (Docs. 119; 120)</i> . (Finucane, Stephen) (Entered: 01/10/2025) |
| 01/10/2025 | <u>152</u> | Second OBJECTION re <u>143</u> Reply to Response to Motion, <u>135</u> Order, <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> filed by Byars. (Finucane, Stephen) (Entered: 01/10/2025) |
| 01/12/2025 | <u>153</u> | ORDER granting <u>150</u> Motion to be Excused from Hearing. The Court GRANTS the Plaintiff's motion to be excused from appearing at the January 13, 2025 hearing. Signed by Judge Victor A. Bolden on 1/12/2025. (Cunningham, A) (Entered: 01/12/2025) |
| 01/13/2025 | <u>154</u> | ORDER withdrawing [] Motion ; withdrawing <u>119</u> Motion for Attorney Fees; withdrawing <u>120</u> Motion for New Trial. The Court GRANTS the parties' <u>151</u> motion to withdraw the Defendant's motion for judgment as a matter of law, new trial, or remittitur and the Plaintiff's motion for attorneys' fees. Signed by Judge Victor A. Bolden on 1/13/2025. (Cunningham, A) (Entered: 01/13/2025) |
| 01/13/2025 | <u>155</u> | Minute Entry for proceedings held before Judge Victor A. Bolden: Motion Hearing held on 1/13/2025 re <u>137</u> Emergency MOTION to Intervene <i>for Immediate Disclosure of Judicial Documents</i> filed by ACLU of Connecticut. Total Time: 1 hours and 2 minutes. (Court Reporter Heather Ireland.) (Murphy, T) (Entered: 01/15/2025) |
| 01/17/2025 | <u>156</u> | SATISFACTION OF JUDGMENT by Justin C Mustafa. (McDonald, Jeffrey) (Entered: 01/17/2025) |
| 01/20/2025 | <u>157</u> | RESPONSE re <u>155</u> Motion Hearing, filed by Byars. (Attachments: # <u>1</u> Affidavit Proposed Declaration of Deputy Warden Mulligan)(Finucane, Stephen) (Entered: 01/20/2025) |
| 01/21/2025 | <u>158</u> | AFFIDAVIT re <u>157</u> Response, <u>155</u> Motion Hearing, Signed By Deputy Commissioner William Mulligan filed by Byars. (Finucane, Stephen) (Entered: 01/21/2025) |
| 01/23/2025 | <u>159</u> | TRANSCRIPT of Proceedings: Type of Hearing: Jury Trial. Held on 10-1-2024 before Judge Victor A. Bolden. Court Reporter: Heather A. Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 2/13/2025. Redacted Transcript Deadline set for 2/24/2025. Release of Transcript Restriction set for 4/23/2025. (Ireland, Heather) (Entered: 01/23/2025) |
| 01/27/2025 | <u>160</u> | RESPONSE re <u>158</u> Affidavit, <u>157</u> Response filed by ACLU of Connecticut. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9)(Barrett, Dan) (Entered: 01/27/2025) |
| 01/28/2025 | <u>161</u> | TRANSCRIPT of Proceedings: Type of Hearing: Jury Trial. Held on 10/3/2024 before Judge Victor A. Bolden. Court Reporter: Heather A. Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the |

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| | | Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 2/18/2025. Redacted Transcript Deadline set for 2/28/2025. Release of Transcript Restriction set for 4/28/2025. (Ireland, Heather) (Entered: 01/28/2025) |
| 03/21/2025 | <u>162</u> | ORDER granting in part and denying in part <u>137</u> motion for immediate disclosure of judicial documents. For the reasons in the attached Ruling and Order, the ACLU's motion for disclosure is GRANTED in part and DENIED in part. The parties are ordered to allow the ACLU to view the requested exhibits, Pla-1, Pla-1-a, Def-H, Def-I, Def-J, and Def-K, in a reasonable manner consistent with this Ruling and Order no later than March 31, 2025 . Signed by Judge Victor A. Bolden on 3/21/2025. (Cunningham, A) (Entered: 03/21/2025) |
| 03/28/2025 | <u>163</u> | NOTICE by Byars re <u>162</u> Order,, <i>NOTICE OF COMPLIANCE</i> (Finucane, Stephen) (Entered: 03/28/2025) |
| 04/03/2025 | <u>164</u> | TRANSCRIPT of Proceedings: Type of Hearing: Jury Trial. Held on 10/3/24 before Judge Victor A. Bolden. Court Reporter: Heather Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov . Redaction Request due 4/24/2025. Redacted Transcript Deadline set for 5/5/2025. Release of Transcript Restriction set for 7/2/2025. (Ireland, Heather) (Entered: 04/03/2025) |
| 04/11/2025 | <u>165</u> | NOTICE OF APPEAL as to <u>162</u> Order,, by ACLU of Connecticut. Filing fee \$ 605, receipt number ACTDC-8132683. (Barrett, Dan) (Entered: 04/11/2025) |
| 04/11/2025 | <u>166</u> | CLERK'S CERTIFICATE RE: INDEX AND RECORD ON APPEAL re: <u>165</u> Notice of Appeal. The attached docket sheet is hereby certified as the entire Index/Record on Appeal in this matter and electronically sent to the Court of Appeals, with the exception of any manually filed documents as noted below. Dinah Milton Kinney, Clerk. Documents manually filed not included in this transmission: none (Freberg, B) (Entered: 04/16/2025) |
| 06/02/2025 | <u>167</u> | TRANSCRIPT of Proceedings: Type of Hearing: Pretrial Conference. Held on 9/25/24 before Judge Victor A. Bolden. Court Reporter: Heather Ireland. IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS: To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or |

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| | <p>purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov. Redaction Request due 6/23/2025. Redacted Transcript Deadline set for 7/3/2025. Release of Transcript Restriction set for 9/2/2025. (Ireland, Heather) (Entered: 06/02/2025)</p> |
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STANDING PROTECTIVE ORDER

1. It is hereby ordered by the Court that the following shall apply to information, documents, excerpts from documents, and other materials produced in this action pursuant to Federal and Local Rules of Civil Procedure governing disclosure and discovery.
2. Information, documents and other materials may be designated by the producing party in the manner permitted ("the Designating Person"). All such information, documents, excerpts from documents, and other materials will constitute "Designated Material" under this Order. The designation shall be either (a) "CONFIDENTIAL" or (b) CONFIDENTIAL-ATTORNEYS' EYES ONLY." This Order shall apply to Designated Material produced by any party or third-party in this action.
3. "CONFIDENTIAL" information means information, documents, or things that have not been made public by the disclosing party and that the disclosing party reasonably and in good faith believes contains or comprises (a) trade secrets, (b) proprietary business information, or (c) information implicating an individual's legitimate expectation of privacy.
4. "CONFIDENTIAL-ATTORNEY'S EYES ONLY" means CONFIDENTIAL information that the disclosing party reasonably and in good faith believes is so highly sensitive that its disclosure to a competitor could result in significant competitive or commercial disadvantage to the designating party.
5. Designated Material shall not be used or disclosed for any purpose other than the litigation of this action and may be disclosed only as follows:
 - a. *Parties*: Material designated "CONFIDENTIAL" may be disclosed to parties to this action or directors, officers and employees of parties to this action, who have a legitimate need to see the information in connection with their responsibilities for overseeing the litigation or assisting counsel in preparing the action for trial or settlement. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.

- b. Witnesses or Prospective Witnesses:* Designated Material, including material designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” may be disclosed to a witness or prospective witness in this action, but only for purposes of testimony or preparation of testimony in this case, whether at trial, hearing, or deposition, but it may not be retained by the witness or prospective witness. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order, by signing a document substantially in the form of Exhibit A.
 - c. Outside Experts:* Designated Material, including material designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” may be disclosed to an outside expert for the purpose of obtaining the expert’s assistance in the litigation. Before Designated Material is disclosed for this purpose, each such person must agree to be bound by this Order, by signing a document substantially in the form of Exhibit A.
 - d. Counsel:* Designated Material, including material designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY,” may be disclosed to counsel of record and in-house counsel for parties to this action and their associates, paralegals, and regularly employed office staff.
 - e. Other Persons:* Designated Material may be provided as necessary to copying services, translators, and litigation support firms. Before Designated Material is disclosed to such third parties, each such person must agree to be bound by this Order by signing a document substantially in the form of Exhibit A.
- 6. Prior to disclosing or displaying any Designated Material to any person, counsel shall:
 - a.* Inform the person of the confidential nature of the Designated Material; and
 - b.* Inform the person that this Court has enjoined the use of the Designated Material by him/her for any purpose other than this litigation and has enjoined the disclosure of that information or documents to any other person.
- 7. The confidential information may be displayed to and discussed with the persons identified in Paragraphs 5(b) and (c) only on the condition that, prior to any such display or discussion, each such person shall be asked to sign an agreement to be bound by this Order in the form attached hereto as Exhibit A. In the event such person refuses to

sign an agreement in substantially the form attached as Exhibit A, the party desiring to disclose the confidential information may seek appropriate relief from the Court.

8. A person having custody of Designated Material shall maintain it in a manner that limits access to the Designated Material to persons permitted such access under this Order.

9. Counsel shall maintain a collection of all signed documents by which persons have agreed to be bound by this Order.

10. Documents shall be designated by stamping or otherwise marking the documents with the words "CONFIDENTIAL" or "CONFIDENTIAL-FOR ATTORNEYS' EYES ONLY" thus clearly identifying the category of Designated Material for which protection is sought under the terms of this Order. Designated Material not reduced to documentary form shall be designated by the producing party in a reasonably equivalent way.

11. The parties will use reasonable care to avoid designating as confidential documents or information that does not need to be designated as such.

12. A party may submit a request in writing to the party who produced Designated Material that the designation be modified or withdrawn. If the Designating Person does not agree to the redesignation within fifteen business days, the objecting party may apply to the Court for relief. Upon any such application, the burden shall be on the Designating Person to show why the designation is proper. Before serving a written challenge, the objecting party must attempt in good faith to meet and confer with the Designating Person in an effort to resolve the matter. The Court may award sanctions if it finds that a party's position was taken without substantial justification.

13. Deposition transcripts or portions thereof may be designated either (a) when the testimony is recorded, or (b) by written notice to all counsel of record, given within ten business days after the Designating Person's receipt of the transcript in which case all counsel receiving such notice shall be responsible for marking the copies of the designated transcript or portion thereof in their possession or control as directed by the Designating Person. Pending expiration of the ten business days, the deposition transcript shall be treated as designated. When testimony is designated at a deposition, the Designating Person may exclude from the deposition all persons other than those to whom the Designated Material may be disclosed under paragraph 5 of this Order. Any party may mark Designated Material as a deposition exhibit, provided the deposition witness is one to whom the exhibit may be disclosed under paragraph 5 of this Order.

and the exhibit and related transcript pages receive the same confidentiality designation as the original Designated Material.

14. Any Designated Material which becomes part of an official judicial proceeding or which is filed with the Court is public. Such Designated Material will be sealed by the Court only upon motion and in accordance with applicable law, including Rule 5(e) of the Local Rules of this Court. This Protective Order does not provide for the automatic sealing of such Designated Material. If it becomes necessary to file Designated Material with the Court, a party must comply with Local Civil Rule 5 by moving to file the Designated Material under seal.

15. Filing pleadings or other papers disclosing or containing Designated Material does not waive the designated status of the material. The Court will determine how Designated Material will be treated during trial and other proceedings as it deems appropriate.

16. Upon final termination of this action, all Designated Material and copies thereof shall be returned promptly (and in no event later than forty-five (45) days after entry of final judgment), returned to the producing party, or certified as destroyed to counsel of record for the party that produced the Designated Material, or, in the case of deposition testimony regarding designated exhibits, counsel of record for the Designating Person. Alternatively, the receiving party shall provide to the Designating Person a certification that all such materials have been destroyed.

17. Inadvertent production of confidential material prior to its designation as such in accordance with this Order shall not be deemed a waiver of a claim of confidentiality. Any such error shall be corrected within a reasonable time.

18. Nothing in this Order shall require disclosure of information protected by the attorney-client privilege, or other privilege or immunity, and the inadvertent production of such information shall not operate as a waiver. If a Designating Party becomes aware that it has inadvertently produced information protected by the attorney-client privilege, or other privilege or immunity, the Designating Party will promptly notify each receiving party in writing of the inadvertent production. When a party receives notice of such inadvertent production, it shall return all copies of inadvertently produced material within three business days. Any notes or summaries referring or relating to any such inadvertently produced material subject to claim of privilege or immunity shall be destroyed forthwith. Nothing herein shall prevent the receiving party from challenging the propriety of the attorney-client privilege or work product immunity or other applicable privilege designation by submitting a challenge to the Court. The Designating Party

bears the burden of establishing the privileged nature of any inadvertently produced information or material. Each receiving party shall refrain from distributing or otherwise using the inadvertently disclosed information or material for any purpose until any issue of privilege is resolved by agreement of the parties or by the Court. Notwithstanding the foregoing, a receiving party may use the inadvertently produced information or materials to respond to a motion by the Designating Party seeking return or destruction of such information or materials. If a receiving party becomes aware that it is in receipt of information or materials which it knows or reasonably should know is privileged, Counsel for the receiving party shall immediately take steps to (i) stop reading such information or materials, (ii) notify Counsel for the Designating Party of such information or materials, (iii) collect all copies of such information or materials, (iv) return such information or materials to the Designating Party, and (v) otherwise comport themselves with the applicable provisions of the Rules of Professional Conduct.

19. The foregoing is entirely without prejudice to the right of any party to apply to the Court for any further Protective Order relating to Designated Material; or to object to the production of Designated Material; or to apply to the Court for an order compelling production of Designated Material; or for modification of this Order; or to seek any other relief from the Court.

20. The restrictions imposed by this Order may be modified or terminated only by further order of the Court.

IT IS SO ORDERED,

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge

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EXHIBIT A

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled _____ have been designated as confidential. I have been informed that any such documents or information labeled "CONFIDENTIAL PRODUCED PURSUANT TO PROTECTIVE ORDER" are confidential by Order of the Court.

I hereby agree that I will not disclose any information contained in such documents to any other person. I further agree not to use any such information for any purpose other than this litigation.

_____ DATED: _____

Signed in the presence of:

_____ (Attorney)

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

| | | |
|----------------------------|---|-----------------------------|
| JUSTIN C. MUSTAFA, | : | CIVIL NO. 3:19-CV-1780(VAB) |
| <i>Plaintiff,</i> | : | |
| | : | |
| v. | : | |
| | : | |
| C/O BYARS, <i>et al.</i> , | : | AUGUST 30, 2024 |
| <i>Defendants.</i> | : | |

FIRST JOINT TRIAL MEMORANDUM

The parties jointly submit this Joint Trial Memorandum. The parties are scheduled for jury selection on September 30, 2024 with trial and evidence to begin that day or the following day and continue that week. *See* (Doc. 81). The operative pleadings for this case for purposes of trial are the plaintiff's Complaint (Doc. 1) and the defendant's Answer and Affirmative Defenses (Doc. 27) to that Complaint.

Also important concerning the pleadings is the Court's Initial Review Order (Doc. 9) for the Complaint, which reviewed and limited the scope of plaintiff's complaint and the action the proceeded to this stage. Further, there was a motion for summary judgment that was granted in part and a related appellate ruling that resulted in the other defendants no longer being party to the case. *See* (Doc. 45); (Docs. 45 – 56; 57; 58; 62; 63; 64); *see also Mustafa v. Pelletier*, No. 22-2187, 2023 WL 7537625, 2023 U.S. App. LEXIS 30197 (2d Cir. Nov. 14, 2023))(summary order).

At this stage, there is only one defendant remaining, Mr. Byars, with two causes of action proceeding against him to trial. Namely, a cause of action for

Excessive Force brought under the Eighth Amendment pursuant to 42 U.S.C. § 1983, and one in tort for assault under Connecticut state law, presumably brought pursuant to 28 U.S.C. § 1367. The case arises from a dispute concerning a May 25, 2019, interaction between plaintiff, Justin Mustafa (a former inmate incarcerated within the Connecticut Department of Correction) and the defendant Christopher Byars, who was acting in his role as a Connecticut Correction Officer working at the Garner Correctional Institution, in Newtown, Connecticut. Plaintiff claims the defendant assaulted him and used excessive force when attempting to shut a mini food “trap” door in plaintiff’s prison cell door; the defendant denies this and maintains that he used appropriate force.

The parties seek to supplement their joint trial memorandum by September 16, 2024, and to file motions *in limine* by that date, with responses to said motions to follow thereafter. The parties wish to address evidentiary disputes at the pretrial conference. The parties preliminary exhibit and witness list are included below, and they err on the side of being overinclusive. The parties are continuing to work cooperatively in effort to winnow down needed witnesses and exhibits, in the hope of streamlining the needs of the case, and they will continue to do so in the coming weeks. Were the Court to allow, the parties seek and respectfully request leave to submit a supplemental trial memorandum by September 16, 2024, the parties believe this would aid this process of winnowing down disputes.

1. Trial Counsel and Supporting Staff

The plaintiff is represented by Jeffrey O. McDonald and Forrest Noiro from Hasset & George, P.C., 945 Hopmeadow St., Simsbury, CT 06070, who have been appointed as *pro bono* counsel. *See* (Doc. 24; 26; 66).

The defendant is represented by Assistant Attorneys General Stephen R. Finucane and Edward D. Rowley, 165 Capitol Avenue, Hartford, CT 06106.

2. Jurisdiction

The plaintiff invokes jurisdiction under 42 U.S.C. § 1983, and presumably 28 U.S.C. § 1331 and 28 U.S.C. § 1367. *See* (Complaint)(Doc. 1 p. 2).

3. Jury/Non-Jury

This case is claimed for a jury to try disputed issues of fact and for the Court to determine disputed issues of law. (Complaint)(Doc. 7 PACER p. 11).

4. Nature of Case

Plaintiffs:

Plaintiff, Justin Mustafa asserts that on May 25, 2019, while an inmate at Garner Correctional Institute, he was subjected to cruel and unusual punishment when Defendant Byars struck him in the hand with a metal key, causing a permanent injury. Plaintiff alleges that Defendant's actions constitute excessive force and violate the 8th Amendment of the United States Constitution.

Defendant's:

The defendant asserts that he did not use constitutionally excessive force or commit an assault under the circumstances on May 25, 2019, and he denies liability for plaintiff's claims of excessive force and or assault. The defendant leaves and holds plaintiff to his burdens of proof on all claims. The defendant also asserts affirmative defenses of qualified immunity and failure to exhaust administrative remedies.

5. Stipulations of Fact and Law

None at this time.

6. Plaintiff's Contentions

On May 25, 2019, Plaintiff was locked behind a cell door, unable to inflict harm to Officer Byars, when Officer Byars knowingly and intentionally struck Plaintiff's hand with the key. Officer Byars' conduct constitutes cruel and unusual punishment in violation of the Eighth Amendment. Defendant Byars was in no danger when he injured Plaintiff. Plaintiff was locked in a cell and had his hand in the food tray.

Plaintiff sustained a significant left-hand injury in this incident. He sustained a 4mm puncture to the posterior aspect of his proximal phalanx, and he experienced numbness in his 3rd and 4th finger determined to be left mild ulnar neuropathy at the elbow, as seen in cubital tunnel syndrome. Prior to May 25, 2019, Plaintiff had no issues with his left hand or fingers, and he was never diagnosed with cubital tunnel syndrome.

Plaintiff is 35 years old. He has a life expectancy of 40.94.

7. Defendant's Contentions

The defendant denies the plaintiff's contentions, which are incorrect, incomplete, and or misleading. The defendant maintains that his conduct on May 25, 2019, did not amount to excessive force under the Eighth Amendment or an assault under state tort law, in the given circumstances. He maintains that plaintiff (by his own admission) engaged in an elaborate, ongoing, and premediated "smoke and mirrors" plan of creating, exaggerating, exacerbating, or fabricating injuries to himself as part of an elaborate plan to try and incur as many trips to medical and increase medical expenses in the hope that he would be transferred back to Massachusetts custody as a result.

The defendant maintains that he is entitled to judgment on the merits. He also maintains that he is entitled to qualified immunity from suit and from any judgment in money damages for the federal claims. He also maintains that he is entitled to statutory immunity under Conn. Gen. Stat. § 4-165 and entitled to sovereign immunity for the claims brought under state law. He also maintains that plaintiff did not properly exhaust his available administrative remedies, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a).

8. Legal Issues

- a. Did Defendant violate the 8th Amendment of the United States Constitution when he struck Plaintiff's hand.
- b. Did Defendant's commit assault when he struck Plaintiff's hand.

- c. Did plaintiff worsen or exacerbate his alleged injuries.
- d. Did plaintiff worsen or exacerbate his alleged injuries as part of his plan to incur or increase medical expenses in the hope of it resulting in his transfer back to Massachusetts custody.
- e. Are plaintiff's federal claims brought under the Eighth Amendment barred by qualified immunity.
- f. Is plaintiff's state-law claim for assault barred by sovereign immunity.
- g. Is plaintiff's state-law claim for assault barred by statutory immunity under General Statute § 4-165.
- h. Is plaintiff's state-law claim for assault barred or deficient under state law, given the law-enforcement or correctional nature and context of the conduct at issue in the case.
- i. Is the defendant entitled to judgment as a matter of law and any or all claims.
- j. Is any of the parties' evidence precluded or inadmissible under the Rules of Evidence or governing law.
- k. The parties are working to narrow legal disputes in the case and reserve or respectfully request the right to supplement this section in their anticipated supplemental joint trial memorandum.

9. Proposed *Voir Dire* Questions

The parties working to narrow disputes over the proposed *voir dire* questionnaires, and they reserve or respectfully request the right to provide proposed *voir dire* questionnaires with a supplemented joint trial memorandum. The parties also wish to discuss them at the final pre-trial conference.

10. List of Witnesses*Plaintiff's*

- 1) Justin Mustafa (party, plaintiff), expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in his complaint or otherwise at issue in this lawsuit.
- 2) Christopher Byars (party, defendant), expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit, as well as his training as a correctional officer.
- 3) Giovanni Torres, (witness), expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 4) Keeper of Records for Connecticut Department of Corrections. Will testify to the authentication of records related to the subject incident, including but not limited to Inmate Request Forms, Grievances, Disciplinary Reports, other prison records and videos.

- 5) Keeper of Records for UConn Health. Will testify to the authentication of medical records.
- 6) Keeper of Records for Trident Care. Will testify to the authentication of medical records.
- 7) Keeper of Records for Lemuel Shattuck Hospital. Will testify to the authentication of medical records.
- 8) Keeper of Records for Dr. Rothkopt. Will testify to the authentication of medical records.
- 9) Plaintiff reserves the right to call Defendant's witnesses and rebuttal witnesses as appropriate.

Defendant's

The defendant will cross examine each of plaintiff's witnesses and also reserves the right to call plaintiff's own witnesses in his (the defendant's) case in chief. The defendant also reserves the right to call other witnesses for purposes of rebuttal or impeachment. In addition, the defendant intends to call the following witnesses in his case in chief.

Will call:

- 10) Justin C. Mustafa (party, plaintiff). In addition to cross-examining and impeaching plaintiff, the defendant expects to call plaintiff, Justin Mustafa, in the defendant's case in chief, to testify concerning the facts,

events, conditions and circumstances described in his complaint or otherwise at issue in this lawsuit.

- 11) Christopher Byars (party, defendant). The defendant expects to call himself in his case in chief. He expects to testify to his training, education, and experience in the correctional field. He expects to testify to the facts, events, conditions, and circumstances described in plaintiff's complaint or otherwise at issue in this lawsuit, including his (Mr. Byars') state of mind as it relates to the above, including plaintiff's claims against him (Byars) and the defendant's defenses to those claims.

May call:

- 12) Officer Patrick Kennedy, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 13) Captain Felipe Lugo, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 14) Deputy Warden Egan, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and

circumstances described in the complaint or otherwise at issue in this lawsuit.

- 15) Officer Snowden (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 16) Officer Craig Roach (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 17) Lieutenant Cuzio (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 18) Dr. Gerald Valletta, MD, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 19) Officer Barry, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.

- 20) Officer Wells, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 21) Officer Jackson, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 22) Officer Sherman, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 23) Lieutenant Tolmie, (witness). This witness is expected to testify in Plaintiff's case in chief concerning the facts, events, conditions and circumstances described in the complaint or otherwise at issue in this lawsuit.
- 24) Keeper(s) of Records, Connecticut Department of Correction
- 25) Keeper(s) of Records, University of Connecticut Health Center
- 26) Keeper(s) of Records, Massachusetts Department of Correction
- 27) Other relevant Keeper(s) of Records.
- 28) The defendant reserves the right to call rebuttal witnesses where appropriate.

11. Proposed Exhibits

Plaintiff's

- 1) Video, 5/25/19
- 2) Disciplinary Report, 5/25/19
- 3) Incident Report, 5/25/19
- 4) Photographs of Plaintiff's hand, 5/25/19
- 5) Medical Incident Reports, 5/25/19
- 6) Medical Incident Report, 5/26/19
- 7) Use of Force Reports, 5/25/19
- 8) Grievance, 6/24/19
- 9) Inmate Request Form, 6/26/19
- 10) Inmate Request Form, 6/30/19
- 11) Inmate Request Form, 6/30/19
- 12) Inmate Request Form, 7/10/19
- 13) Inmate Request Form, 7/14/19
- 14) Inmate Request Form, 7/15/19
- 15) Inmate Grievance Appeal Form, 7/24/19
- 16) GCI MH Brief Encounter, 7/24/19
- 17) GCI Nurse Patient Encounter, 6/28/19
- 18) CCI MD Sick Call, 5/29/19
- 19) GCI MH Brief Encounter, 5/29/19

- 20) GCI W10, 5/25/19
- 21) UConn Health medical record, 5/25/19
- 22) UConn Health medical record, 6/2/19
- 23) Trident Care Imaging medical record, 9/30/20
- 24) Lemuel Shattuck Hospital medical records, 11/10/20
- 25) Dr. Rothkopt medical records, 7/9/21
- 26) Plaintiff's letter, 7/16/19 (Ex. B to Plaintiff's Declaration in opposition to MSJ)
- 27) Plaintiff's letter, 7.16.19 (Ex. C to Plaintiff's Declaration)
- 28) Inmate Request Form, 8/23/19 (Ex. D to Plaintiff's Declaration)
- 29) Inmate Request Form, 8/23/19 (Ex. E to Plaintiff's Declaration)
- 30) Plaintiff's letter, 8/25/19 (Ex. F to Plaintiff's Declaration)
- 31) Envelope received by Plaintiff (Ex. G to Plaintiff's Declaration)
- 32) Plaintiff's letter, 9/30/19 (Ex. H to Plaintiff's Declaration)

The defendant reserves the right to lodge specific objects in the supplemented Joint Trial Memorandum, through motions *in limine*, at the pretrial, and or at trial.

Defendant's

- A. Plaintiff's CT DOC RT60 Movement Sheet
- B. Incident Report Package for GCI-2019-05-060 (this case).
Approximately 49 pages. Incident date 05-25-19.

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- C. Disciplinary Report package for DR #GCI-19-05-060 (this case).
Approximately 6 pages. Incident date 05-25-19.
- D. Photo: color version of photograph 1 from incident report
- E. Photo: color version of photograph 2 from incident report
- F. Photo: color version of photograph 3 from incident report
- G. Photo: color version of photograph 4 from incident report
- H. Video recording: handheld video camera recording, 5-25-19 starting at
or around 5:47 pm. Video of plaintiff's escort from F Unit to Medical and
then to UConn transport.
- I. Video Recording: handheld video camera recording, 5-25-19 starting at
or around 11:31pm. Video of plaintiff's escort to F Unit after being
transported back from UConn.
- J. Video recording: C038 from F Unit, 5-25-19, 3:39 pm – 5:39pm.
Stationary camera footage.
- K. Video recording: C037 from F Unit, 5-25-19, 3:39 pm – 5:39pm.
Stationary camera footage.
- L. Disciplinary Report package for DR #GCI-19-05-028. Approximately 60
pages. Incident date 05-13-19.
- M. Disciplinary Report package for DR #GCI-19-06-001. Approximately 7
pages. Incident date 06-02-19.

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- N. Disciplinary Report Package for DR #GCI-19-06-015. Approximately 7 pages. Incident date 06-06-19.
- O. Disciplinary Report Package for DR #GCI-19-07-054. Approximately 5 pages. Incident date 07-19-19.
- P. Disciplinary Report Package for DR #GCI-19-07-058. Approximately 6 pages. Incident date 07-20-19.
- Q. Disciplinary Report Package for DR #GCI-19-09-008. Approximately 6 pages. Incident date 09-03-19.
- R. Disciplinary Report Package for DR #GCI-19-09-013. Approximately 5 pages. Incident date 09-05-19.
- S. Disciplinary Report Package for DR #GCI-19-09-021. Approximately 6 pages. Incident date 09-07-19.
- T. Disciplinary Report Package for DR #GCI-19-09-025. Approximately 6 pages. Incident date 09-08-19.
- U. Disciplinary Report Package for DR #GCI-19-09-029. Approximately 6 pages. Incident date 09-09-19.
- V. Disciplinary Report Package for DR #GCI-19-09-029. Approximately 6 pages. Incident date 09-09-19.
- W. Disciplinary Report Package for DR #GCI-19-09-037. Approximately 6 pages. Incident date 09-11-19.

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- X. Disciplinary Report Package for DR #GCI-19-09-043. Approximately 6 pages. Incident date 09-16-19.
- Y. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- Z. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- AA. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- BB. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- CC. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- DD. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- EE. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- FF. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- GG. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.

- HH. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- II. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- JJ. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- KK. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- LL. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- MM. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery. To be identified *via* BATES Stamp number.
- NN. The defendants reserves the right to supplement his exhibit list, including but not limited to the medical records excerpts. To be identified *via* BATES Stamp number.

The plaintiff reserves the right to lodge specific objects in the supplemented Joint Trial Memorandum, through motions *in limine*, at the pretrial, and or at trial.

12. Deposition Testimony

The parties do not plant to have witnesses testify by deposition at trial.

13. Requests for Jury Instructions

The parties are working to narrow disputes over the proposed jury instructions, and reserve or respectfully request the right to provide proposed jury instructions with a supplemented joint trial memorandum. Further, the defendant seeks a charge conference at the close of evidence so that the parties can review the Court's proposed jury instructions and verdict forms, discuss same, lodge, and preserve objections if needed, and offer suggested changes.

Further the defendant respectfully requests for the Court to instruct the jury on primary portions of the jury charge, including the law, evidence, etc., before closing arguments, with any charges on logistics such as filing out the form and specifics concerning the deliberation process to follow after closing arguments.

14. Anticipated Evidentiary Problems, Motions *in Limine*

Evidentiary disputes:

- a. Evidence as to Plaintiff's convictions
- b. Evidence as to other bad acts, including incidents while incarcerated.
- c. The defendant objects to hearsay evidence offered by plaintiff, including plaintiff offering his own hearsay statements.
- d. The defendant objects to outside medical records besides those from DOC or UConn, as the defendant has not had sufficient notice or opportunity to conduct relevant discovery concerning same. The defendant also objects to corresponding witnesses.

- e. The defendant objects to evidence concerning life expectancy, as that was not subject to discovery or other parts of the litigation, and it appears there is no competent witness that can testify to that.
- f. The parties reserve the right to lodge evidentiary objections or challenges in their anticipated supplemental joint trial memorandum, *via* motions *in limine*, at the pretrial conference, and at trial.

The parties seek and respectfully request leave to supplement their joint trial memorandum by September 16, 2024, and to file motions *in limine* by that date, with responses to said motions to follow thereafter. The parties wish to address evidentiary disputes at the pretrial conference.

15. Proposed Findings and Conclusions

Generally, this is not applicable, as this is a jury case. However, the defendant plans to submit proposed special interrogatories for the jury decide specific facts in the event they find for the plaintiff on the merits of his claims. Plaintiff may do the same. The parties respectfully request to take this up at the charge conference.

16. Trial Time

The plaintiff expects to complete his case in chief by the end of the 2nd full day of evidence.

The defendant anticipates that he can finish his case in by the end of the 2nd full day after plaintiff rests and hopefully after the first, if possible. The parties

anticipate being able to finish the entire trial by the end of the day, Friday, October 4, 2024, if not sooner.

17. Courtroom Technology

The parties seek to use courtroom technology to allow for the defendant's exhibits, plaintiff's exhibits, or other offered materials to be displayed to the jury and to the Court on the Court's electronic screens or monitors.

The defendants specifically and respectfully request to use the Court's projector to display documents and use of the Court's technology to play and display video records during the trial.

The parties plan to use both the document camera, as well as connect their laptops to the Court's system, to display exhibits to witnesses and the jury.

18. Further Proceedings

The parties are scheduled for a pretrial conference on September 19, 2024, at 10 a.m. *See* (Doc. 81).

19. Miscellaneous

This section is left intentionally blank.

20. Election for Trial by Magistrate Judge

The parties have not agreed to have the case tried by a United States Magistrate Judge.

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WHEREFORE, the parties respectfully request that the Court accept this
Joint Memorandum.

Respectfully submitted,

PLAINTIFF
Justin Mustafa

By: Jeffrey O. McDonald
Jeffrey O. McDonald, *Esq.*,
Hassett & George, P.C.
945 Hopemeadow St.
Simsbury, CT 06070
Tel. (860) 651-1333
Fax. 855 651-1888
Email: jmcdonald@hgesq.com

Respectfully submitted,

DEFENDANT
Christopher Byars

WILLIAM TONG
ATTORNEY GENERAL

By: /s/ Stephen R. Finucane
Stephen R. Finucane (ct30030)
Edward D. Rowley (ct30701)
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Fax: (860) 808-5591

CERTIFICATION

I hereby certify that on August 30, 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Stephen R. Finucane
Stephen R. Finucane
Assistant Attorney General

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

| | | |
|----------------------------|---|-----------------------------|
| JUSTIN C. MUSTAFA, | : | CIVIL NO. 3:19-CV-1780(VAB) |
| <i>Plaintiff,</i> | : | |
| | : | |
| v. | : | |
| | : | |
| C/O BYARS, <i>et al.</i> , | : | SEPTEMBER 16, 2024 |
| <i>Defendants.</i> | : | |

PARTIES' PROPOSED EXHIBIT LIST

The parties provide the following proposed exhibit list. The parties respectfully request to discuss specifics, including objections, objections in part, and proposed or possible compromises. The parties also plan to and respectfully request leave to file motions *in limine* by Wednesday, September 18, 2024, as the parties are continuing to work cooperatively to limit disputes. Thus far, the parties have resolved numerous evidentiary disputes themselves and are hopeful that they can continue to do so in advance of the pretrial.

Plaintiff's

- 1) Video, 5/25/19

Full Exhibit by Agreement.

- 2) Incident Report, 5/25/19 (to be redacted or omitted)

Parties wish to discuss at the pretrial. The defendants are also intending to offer the entire incident report package, of which this document is a part of. The parties believe there may be room for a

stipulation as a full exhibit if there are certain approved conditions or redactions.

- 3) Photographs of Plaintiff's hand, 5/25/19

Full Exhibit by agreement.

- 4) Medical Incident Reports, 5/25/19 (GCI 000023 – 00024)

Parties wish to discuss at the pretrial. The defendants are also intending to offer the entire incident report package, of which this document is a part of. The parties believe there may be room for a stipulation as a full exhibit if there are certain approved conditions or redactions.

- 5) Medical Incident Report, 5/26/19

Parties wish to discuss at the pretrial. The defendants are also intending to offer the entire incident report package, of which this document is a part of. The parties believe there may be room for a stipulation as a full exhibit if there are certain approved conditions or redactions.

- 6) Use of Force Reports, 5/25/19

Parties wish to discuss at the pretrial. The defendants are also intending to offer the entire incident report package, of which this document is a part of. The parties believe there may be room for a

stipulation as a full exhibit if there are certain approved conditions or redactions.

- 7) Inmate Request Form, 6/26/19

The defendant objects. The parties wish to discuss further at the pretrial.

- 8) Inmate Request Form, 6/30/19

The defendant objects. The parties wish to discuss further at the pretrial.

- 9) Inmate Request Form, 7/10/19

The defendant objects. The parties wish to discuss further at the pretrial.

- 10) Inmate Request Form, 7/14/19

The defendant objects. The parties wish to discuss further at the pretrial.

- 11) Inmate Request Form, 7/15/19

The defendant objects. The parties wish to discuss further at the pretrial.

- 12) GCI MH Brief Encounter, 7/24/19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present

medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

13) GCI Nurse Patient Encounter, 6/28/19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

14) CCI MD Sick Call, 5/29/19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

15) GCI W10, 5/25/19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

16) UConn Health medical record, 5/25/19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

17) GCI X-rays of left hand 5.31.19

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims

against him, including medical records from the same set, batch, or collection of medical records from discovery that this proposed exhibit of plaintiff's is or was obtained from.

- 18) Trident Care Imaging medical record, 9/30/20

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him.

- 19) Lemuel Shattuck Hospital medical records, 11/10/20

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him.

- 20) Dr. Rothkopt medical records, 7/9/21

The parties wish to discuss further at the pretrial. The defendant would be willing to agree to this and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him.

The defendant reserves the right to lodge specific objections in the through motions *in limine*, at the pretrial, and or at trial.

Defendant's

A. Plaintiff's CT DOC RT60 Movement Sheet

Full Exhibit by Agreement.

B. Incident Report Package for GCI-2019-05-060 (this case).
Approximately 49 pages. Incident date 05-25-19.

The parties wish to discuss at the pretrial. The plaintiff is intending to offer several documents from this package as his own exhibits. The parties believe there may be room for a stipulation as a full exhibit if there are certain approved conditions or redactions.

C. Disciplinary Report package for DR #GCI-19-05-060 (this case).
Approximately 6 pages. Incident date 05-25-19.

The defendant leaves this exhibit as a placeholder and for purposes of ID only at this point. The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

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- D. Photo: color version of photograph 1 from incident report, hand through cell trap door.

Full Exhibit by Agreement.

- E. Photo: color version of photograph 2 from incident report, plaintiff in restraints and red jumpsuit.

Full Exhibit by Agreement.

- F. Photo: color version of photograph 3 from incident report, plaintiff showing back of hand with bandaging.

Full Exhibit by Agreement.

- G. Photo: color version of photograph 4 from incident report, plaintiff showing back of hand with bandaging.

Full Exhibit by Agreement.

- H. Video recording: handheld video camera recording, 5-25-19 starting at or around 5:47 pm. Video of plaintiff's escort from F Unit to Medical and then to UConn transport.

Full Exhibit by Agreement.

- I. Video Recording: handheld video camera recording, 5-25-19 starting at or around 11:31pm. Video of plaintiff's escort to F Unit after being transported back from UConn.

Full Exhibit by Agreement.

J. Video recording: C038 from F Unit, 5-25-19, 3:39 pm – 5:39pm.
Stationary camera footage.

Full Exhibit by Agreement.

K. Video recording: C037 from F Unit, 5-25-19, 3:39 pm – 5:39pm.
Stationary camera footage.

Full Exhibit by Agreement.

L. Disciplinary Report package for DR #GCI-19-05-028. Approximately 60 pages. Incident date 05-13-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protect both the defendant's rights and interests in addition to the plaintiff's rights and interests.

M. Disciplinary Report package for DR #GCI-19-06-001. Approximately 7 pages. Incident date 06-02-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report

package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- N. Disciplinary Report Package for DR #GCI-19-06-015. Approximately 7 pages. Incident date 06-06-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- O. Disciplinary Report Package for DR #GCI-19-07-054. Approximately 5 pages. Incident date 07-19-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- P. Disciplinary Report Package for DR #GCI-19-07-058. Approximately 6 pages. Incident date 07-20-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- Q. Disciplinary Report Package for DR #GCI-19-09-008. Approximately 6 pages. Incident date 09-03-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- R. Disciplinary Report Package for DR #GCI-19-09-013. Approximately 5 pages. Incident date 09-05-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- S. Disciplinary Report Package for DR #GCI-19-09-021. Approximately 6 pages. Incident date 09-07-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- T. Disciplinary Report Package for DR #GCI-19-09-025. Approximately 6 pages. Incident date 09-08-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the

defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- U. Disciplinary Report Package for DR #GCI-19-09-029. Approximately 6 pages. Incident date 09-09-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- V. Disciplinary Report Package for DR #GCI-19-09-037. Approximately 6 pages. Incident date 09-11-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the

defendant's rights and interests in addition to the plaintiff's rights and interests.

- W. Disciplinary Report Package for DR #GCI-19-09-043. Approximately 6 pages. Incident date 09-16-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

- X. Disciplinary Report Package for DR #GCI-19-09-047. Approximately 6 pages. Incident date 09-13-19.

The parties wish to discuss at the pretrial. If there is an agreed-upon or Court-confirmed middle ground for evidence concerning how prison discipline or prison rules are involved in this case, then the defendant would not seek to offer the entire disciplinary report package, so long as there is a middle ground to protected both the defendant's rights and interests in addition to the plaintiff's rights and interests.

Y. Certified Criminal Hx for Plaintiff

FRE 609 and 902

Plaintiff objects. The defendant maintains that has the right to impeach plaintiff's credibility under Fed. R. Evid. 609. The parties wish to discuss further at the pretrial.

Z. Certified Criminal Hx for Giovanni Torres

FRE 609 and 902

Plaintiff objects. The defendant maintains that has the right to impeach the witness's credibility under Fed. R. Evid. 609. The parties wish to discuss further at the pretrial.

AA. Medical Records: excerpt(s) from CT Doc or UConn medical records produced in discovery, identified *via* BATES Stamp number.¹

The parties wish to discuss further at the pretrial. Many of the plaintiff's exhibits include related and even overlapping medical records. The defendant would be willing to agree to those and other medical records to come in as full exhibits so long as the defendant is able to present medical records as full exhibits for use in his defense of the claims against him, including medical records from the same set,

¹ Attached to this exhibit list is a list of the relevant identifying BATES page numbers and dates of the medical records that the defendant seeks to use. This list has been provided to plaintiff as well, so that he can use it and refer to it in either motion practice or at the pretrial.

batch, or collection of medical records from discovery that plaintiff's proposed exhibits were obtained from.

The plaintiff wishes to discuss further, including concerning specifics or content of specific records.

Additional exhibits to be marked using excerpts of the defendant's Exhibit AA:

The defendant's proposed Exhibit AA is approximately 140 entries from a larger, 998-page DOC medical records for the time period ranging from March 2019 through September 2019. The defendant's proposed Exhibit AA will be structured in chronological order for trial, to enable it to be user friendly when needed by the Court, the Jury, or the parties. However, the defendant also plans to select out key excerpts that it anticipates will be used extensively during trial (such as the records concerning the X-rays of plaintiff's hand following the incident), and plans to mark those as separate or sub-exhibits, such as AA1, AA2, etc.

The plaintiff has been provided the records themselves and the corresponding identification pages and information, along with notice of the defendant's plan of how to mark, structure, and use the records

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at trial, so plaintiff can assess the materials, file relevant motions if needed, and address specifics at the pretrial if needed.

The plaintiff reserves the right to lodge specific objections in the through motions *in limine*, at the pretrial, and or at trial.

Respectfully submitted,

PLAINTIFF
Justin Mustafa

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Respectfully submitted,

DEFENDANT
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WILLIAM TONG
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Attachment

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**Medical records that constitute Defendant's Exhibit AA
and from which excerpts will be used for sub-exhibits:**

| <u>List Number;</u> | <u>BATES number;</u> | <u>(PDF number);</u> | <u>Date</u> | |
|---------------------|----------------------|----------------------|-------------|----------------|
| 1. | 0293; | (173); | 9-18-19 | |
| 2. | 0343; | (223); | 9-11-19 | |
| 3. | 0375; | (255); | 9-8-19 | |
| 4. | 0378 – 0380; | (258-260); | 9-8-19 | |
| 5. | 0421 – 0422; | (301-302); | 9-5-19 | |
| 6. | 0481 – 0483; | (361-363); | 8-22-19 | |
| 7. | 0563 – 0565; | (443-445); | 7-28-19 | |
| 8. | 0577 – 0578; | (457-458); | 7-24-19 | (Pl's Exh. 12) |
| 9. | 0580 – 0582; | (460-462); | 7-23-19 | |
| 10. | 0616; | (496); | 7-20-19 | |
| 11. | 0625 – 0628; | (505-508); | 7-20-19 | |
| 12. | 0651 – 0652; | (511-512); | 7-20-19 | |
| 13. | 0659 – 0661; | (539-541); | 7-2-19 | |
| 14. | 0748; | (628); | 6-15-19 | |
| 15. | 0749; | (629); | 6-14-19 | |
| 16. | 0760; | (640); | 6-11-19 | |
| 17. | 0773; | (653); | 6-10-19 | |
| 18. | 0776; | (656); | 6-9-19 | |
| 19. | 0794; | (674); | 6-7-19 | |
| 20. | 0804; | (684); | 6-6-19 | |
| 21. | 0810 – 0811; | (690-691); | 6-6-19 | |

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|-----|----------------------|------------|---------|----------------|
| 22. | 0653 – 0654; | (533-534); | 6-6-19 | |
| 23. | 0827 – 0828; | (707-708); | 6-5-19 | |
| 24. | 0711 – 0715; | (591-595); | 6-2-19 | |
| 25. | 0706; | (586); | 6-2-19 | |
| 26. | 0866; | (746); | 5-31-19 | |
| 27. | 0867 – 08688; | (747-748); | 5-31-19 | |
| 28. | 0882; | (762); | 5-29-19 | |
| 29. | 0883; | (763); | 5-29-19 | |
| 30. | 0886 – 0890; | (766-770); | 5-29-19 | (Pl's Exh. 14) |
| 31. | 0891 – 0892; | (771-772); | 5-29-19 | |
| 32. | 0904; | (784); | 5-27-19 | |
| 33. | 0907; | (787); | 5-27-19 | |
| 34. | 0911; | (791); | 5-26-19 | |
| 35. | 0912; | (792); | 5-26-19 | |
| 36. | 0914; | (794); | 5-25-19 | |
| 37. | 0915 – 0917; | (795-797); | 5-25-19 | |
| 38. | 0919 – 0920; | (799-800) | 5-25-19 | (Pl's Exh. 15) |
| 39. | 0732; | (612); | 5-25-19 | |
| 40. | 0733 – 0737; | (613-617); | 5-25-19 | |
| 41. | 0290; | (170); | 9-19-19 | |
| 42. | 0292; | (172); | 9-19-19 | |
| 43. | 0293; | (173); | 9-18-19 | |
| 44. | 0294 – 0295; | (174-175); | 9-17-19 | |
| 45. | 0298; | (178); | 9-16-19 | |
| 46. | 0299 – 0300; | (179-180); | 9-16-19 | |
| 47. | 0306 – 0307; | (186-187); | 9-15-19 | |

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|-----|---------------------|------------|---------------------|
| 48. | 0313; | (193); | 9-15-19 |
| 49. | 0318 – 0319; | (198-199); | 9-14-19 |
| 50. | 0321; | (201); | 9-14-19 |
| 51. | 0329; | (209); | 9-13-19 |
| 52. | 0341; | (221); | 9-11-19 |
| 53. | 0343; | (223); | 9-11-19 |
| 54. | 0346 – 0347; | (225-226); | 9-11-19 |
| 55. | 0351 – 0352; | (231-232); | 9-10-19 |
| 56. | 0363 – 0365; | (243-245); | 9-9-19 |
| 57. | 0375; | (255); | 9-8-19 |
| 58. | 0378 – 0380; | (258-260); | 9-8-19 |
| 59. | 0390 – 0392; | (270-272); | 9-7-19 |
| 60. | 0396 – 0397; | (276-277); | 9-7-19 |
| 61. | 0406 – 0408; | (286-288); | 9-6-19 |
| 62. | 0412; | (292); | 9-5-19 |
| 63. | 0421 – 0422; | (301-302); | 9-5-19 |
| 64. | 0425; | (305); | 9-4-19 |
| 65. | 0433; | (313) | 9-4-19 |
| 66. | 0435; | (315); | 9-4-19 |
| 67. | 0438 – 0439; | (318-319); | 9-4-19 |
| 68. | 0450; | (330) | 9-3-19 |
| 69. | 0461 – 0463; | (341-343); | 8-27-19 |
| 70. | 0468 – 0469; | (348-349); | 8-26-19 and 8-25-19 |
| 71. | 0478; | (358); | 8-26-19 |
| 72. | 0480; | (360); | 8-25-19 |
| 73. | 0481 – 0483; | (361-363); | 8-22-19 |

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| 74. | 0490; | (370); | 8-21-19 |
| 75. | 0509 – 0511; | (389-391); | 7-31-19 |
| 76. | 0551 – 0552; | (431-432); | 7-29-19 |
| 77. | 0563 – 0565; | (443-445); | 7-28-19 |
| 78. | 0585 – 0586; | (465-466); | 7-23-19 |
| 79. | 0595 – 0596; | (475-476); | 7-22-19 |
| 80. | 0625 – 0628; | (505-508); | 7-20-19 |
| 81. | 0651 – 0652; | (511-512); | 7-20-19 |
| 82. | 0659 – 0661; | (539-541); | 7-2-19 |
| 83. | 0690; | (570); | 6-24-19 |
| 84. | 0693; | (573); | 6-21-19 |
| 85. | 0746; | (626); | 6-17-19 |
| 86. | 0748; | (628); | 6-15-19 |
| 87. | 0755; | (638); | 6-11-19 |
| 88. | 0760; | (640); | 6-11-19 |
| 89. | 0763; | (643); | 6-11-19 |
| 90. | 0766 – 0768; | (646-648); | 6-10-19 |
| 91. | 0777; | (652); | 6-10-19 |
| 92. | 0797; | (677); | 6-7-19 |
| 93. | 0804; | (684); | 6-6-19 |
| 94. | 0812; | (692); | 6-6-19 |
| 95. | 0820; | (700); | 6-6-19 |
| 96. | 0827 – 0828; | (707-708); | 6-5-19 |
| 97. | 0833; | (713); | 6-4-19 |
| 98. | 0847; | (727); | 6-3-19 |
| 99. | 0857; | (737); | 6-2-19 |

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| 100. | 0880 – 0881; | (760-761); | 5-29-19 |
| 101. | 0891 – 0892; | (771-772); | 5-29-19 |
| 102. | 0893; | (773); | 5-29-19 |
| 103. | 0895; | (775); | 5-28-19 |
| 104. | 0902; | (782); | 5-28-19 |
| 105. | 0903; | (783); | 5-27-19 |
| 106. | 0904; | (784) | 5-27-19 |
| 107. | 0905 – 0906; | (785-786); | 5-27-19 |
| 108. | 0908; | (788); | 5-27-19 |
| 109. | 0909; | (789); | 5-26-19 |
| 110. | 0910; | (790); | 5-26-19 |
| 111. | 0913; | (793) | 5-26-19 |
| 112. | 0921; | (801); | 5-25-19 |
| 113. | 0922 – 0924; | (802-804); | 5-24-19 |
| 114. | 0925 – 0927; | (805-807); | 5-24-19 |
| 115. | 0928 – 0929; | (808-809); | 5-24-19 |
| 116. | 0931 – 0933; | (811-813); | 5-23-19 |
| 117. | 0934 – 0935; | (814-815); | 5-22-19 |
| 118. | 0936; | (816); | 5-22-19 |
| 119. | 0937 – 0938; | (817-818); | 5-22-19 |
| 120. | 0939; | (819); | 5-22-19 |
| 121. | 0945; | (825); | 5-22-19 |
| 122. | 0950 – 0952; | (830-832); | 5-21-19 |
| 123. | 0957 – 0958; | (837-838); | 5-20-19 |
| 124. | 0968; | (848); | 5-17-19 |
| 125. | 0977 – 0979; | (857-859); | 5-16-19 |

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| 126. | 0983 – 0985; | (863-865); | 5-16-19 |
| 127. | 01001 – 01002; | (881-882); | 5-16-19 |
| 128. | 01004 – 01005; | (884-885); | 5-16-19 |
| 129. | 01011 – 01013; | (891-893); | 5-16-19 |
| 130. | 01018; | (898); | 5-14-19 |
| 131. | 01020; | (900); | 5-14-19 |
| 132. | 01023; | (903); | 5-14-19 |
| 133. | 0991; | (871); | 5-13-19 |
| 134. | 01026; | (906); | 5-13-19 |
| 135. | 01034 – 01036; | (914-916); | 5-13-19 |
| 136. | 01038; | (918); | 5-11-19 |
| 137. | 01041; | (921); | 5-11-19 |
| 138. | 01046 – 01047; | (926-27); | 5-10-19 |
| 139. | 01056 – 01058; | (936-938); | 4-28-19 |
| 140. | 01098 – 01100; | (978-980); | 3-12-19 |
| 141. | 01101; | (981); | 3-11-19 |

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EXHIBIT LOG

United States District Court
District of Connecticut
Exhibits Log: 3:19-cv-1780 VAB
Mustafa v. Byars,

Plaintiff Counsel:Jeffrey O. McDonald**Defense Counsel:**Stephen R. Finucane & Edward D. Rowley

| EXHIBIT | DESCRIPTION | RLS | IDENTIFIED | ADMITTED |
|---------|--|-----|-----------------------|-----------------------|
| Pla-1 | Video Unit F.LVC | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-1-a | Video Unit F | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-2 | Incident Report.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-3 | Color photo of hand.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-12 | MH Brief Encounter 7.24.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-13 | Nurse Patient Encounter 6.28.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-14 | CGI MD Sick Call 5.29.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-15 | GCI W10 5.25.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-16 | UConn medical records 5.25.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-17 | GCI x-ray L hand 5.31.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-18 | Trident Care Imaging record 9.30.20.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-19 | Lemuel Shattuck Hospital record 11.10.20.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-20 | Dr. Rothkopt medical record 7.9.21.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Def-A | CT DOC RT60.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-AA | Medical Records.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-B | IR Package GCI-2019-05-060 Bates-REDACTED (BS #s 1-49).pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-D | Color Photo hand through trap.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-E | Color Photo jumpsuit and restraints.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-F | Color Photo, showing back of hand with bandaging.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-G | Color Photo showing palm of hand with bandaging.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-H | Video, Handheld - 5-25-19 5.47 pm (Mustafa Escort).mp4 | Yes | 9/30/2024 1:41 PM | 9/30/2024 1:41 PM |
| Def-I | Video, Handheld - 5-25-19 11.31 pm (Mustafa back from UCONN - going to RHU).mp4 | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-J | Video, Stationary C038 2019-05-060 - (C038 Housing Unit F - 5-25-19 - 3.39 pm - 5.39 pm).avi | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-K | Video, Stationary C037 2019-05-060 - (C037 Housing Unit F - 5-25-19 - 3.39 pm - 5.39 pm).avi | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Court-1 | Juror Note- Range, Cap, or Guidelines | No | 10/3/2024 3:00 PM | 10/3/2024 3:00 PM |

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| EXHIBIT | DESCRIPTION | RLS | IDENTIFIED | ADMITTED |
|---------|----------------------------|-----|----------------------|----------------------|
| Court-2 | Jury Note- Verdict Reached | No | 10/3/2024 3:00 PM | 10/3/2024 3:00 PM |

JA-75

Case 3:19-cv-01780-VAB Document 126 Filed 11/22/24 Page 1 of 1



Dinah Milton Kinney
Clerk

Monica Watson Cucchiarelli
Chief Deputy Clerk

Andrea Perce
Human Resources Manager

Christopher Newton
Information Technology Manager

Melissa Ruocco
Division Manager, New Haven

Joanne Pesta
Division Manager, Bridgeport

Michael Bozek
Division Manager, Hartford

Michelle Rynne
Operations Analytics Manager and
Courthouse Construction Liaison

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

450 Main Street
Hartford, CT 06103
Phone: 860.240.3200
Fax: 860.240.3211

141 Church Street
New Haven, CT 06510
Phone: 203.773.2140
Fax: 203.773.2334

915 Lafayette Boulevard
Bridgeport, CT 06604
Phone: 203.579.5861
Fax: 203.579.5867

C/O Stephen R. Finucane on behalf of Jeffrey O. McDonald
Office of the Attorney General
110 Sherman Street
165 Capitol Avenue

Jeffrey O. McDonald
Hassett & George, PC
915 Hopmeadow St.
Simsbury, CT 06070
860-651-1333

Case Number & Caption: 3:19-cv-01780-VAB Mustafa v. Byars

Dear Counsel:

The above matter has concluded in this court, enclosed is/are the following:

☒ Plaintiff's exhibits ☐ Defendant's exhibits ☐ Government's exhibits
☐ Administrative Record ☒ Other exhibit files held for 30 days & deleted

Please acknowledge receipt of the return at the bottom of this letter and return it to the clerk's office in ☐ Bridgeport ☒ New Haven ☐ Hartford.

Thank you for your cooperation.

Sincerely,

Dinah Milton Kinney, Clerk

By: /s/ Tatihana Murphy
Deputy Clerk



Acknowledgement

Exhibits returned to: Stephen Finucane on 11-22-24
Print name date

JA-76

Case 3:19-cv-01780-VAB Document 127 Filed 11/22/24 Page 1 of 1



Dinah Milton Kinney
Clerk

Monica Watson Cucchiarelli
Chief Deputy Clerk

Andrea Perce
Human Resources Manager

Christopher Newton
Information Technology Manager

Melissa Ruocco
Division Manager, New Haven

Joanne Pesta
Division Manager, Bridgeport

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Division Manager, Hartford

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UNITED STATES DISTRICT COURT
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915 Lafayette Boulevard
Bridgeport, CT 06604
Phone: 203.579.5861
Fax: 203.579.5867

Stephen R. Finucane
Office of the Attorney General
110 Sherman Street
165 Capitol Avenue

Case Number & Caption: 3:19-cv-01780-VAB Mustafa v. Byars

Dear Counsel:

The above matter has concluded in this court, enclosed is/are the following:

☒ Defendant's exhibits ☐ Plaintiff's exhibits ☐ Government's exhibits
☐ Administrative Record ☐ Other _____

Please acknowledge receipt of the return at the bottom of this letter and return it to the clerk's office in ☐ Bridgeport ☒ New Haven ☐ Hartford.

Thank you for your cooperation.

Sincerely,

Dinah Milton Kinney, Clerk

By: /s/ Tatihana Murphy
Deputy Clerk



Acknowledgement

Exhibits returned to: Stephen Finucane on 11-22-24
Print name date

JA-77

ORDER. In light of the attached letter, the Court wishes for the parties to file responses outlining their respective positions by January 10, 2025. Signed by Judge Victor A. Bolden on 12/9/2024. (Cunningham, A)

JA-78

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Chief Judge Michael P. Shea
United States District Court
450 Main Street
Hartford, CT
06103

December 4, 2024

Re: appeal of court records access denial

Dear Chief Judge Shea,



765 Asylum Avenue, Fl 1
Hartford, CT 06105
T/860.523.9146
F/860.586.8900
www.acluct.org

On behalf of the ACLU of Connecticut, I write to appeal a constructive denial by the clerk's office of our request for copies of video exhibits played at a September trial. We respectfully request that the Court produce copies of the six trial exhibits to the ACLU, if necessary after first ordering the parties to return them to the clerk's office.

1. The ACLU's request, and the clerk's office's constructive denial of it.

On November 14, 2024, the ACLU—through counsel—made a telephonic request to the clerk's office for copies of the following six video exhibits played at trial before Judge Bolden in *Mustafa v. Byars*, No. 19-cv-1780:

Plaintiff's Ex. 1 and 1-a
Defendants' Ex. H, I, J, and K

I have enclosed a copy of the Court's exhibit log [ECF # 114] for your convenience. The docket shows that *Mustafa* was tried in September, judgment entered in favor of Mr. Mustafa in October, and that the defendant's post-trial motion [ECF # 120] is pending. The trial exhibits that the ACLU seeks were introduced without objection or limitation, and have never been sealed in whole or part.

Over the course of a few telephone calls, the clerk's office determined to look into whether the Court still possessed the trial exhibits. On a telephone call on November 18th, Ms. Melissa Ruocco stated that she needed to verify that the Court still possessed the exhibits.

On November 22nd, counsel telephoned Ms. Ruocco again to inquire about the status of the ACLU's request, and left a voicemail. That same day—while our request was pending—the clerk's office returned

Chief Judge Michael P. Shea
 United States District Court
 page 2

all trial exhibits to Mr. Byars's counsel. ECF ## 126, 127. Hours later, Byars moved for a protective order restricting how the parties may handle the videos.[†]

Since leaving a message for Ms. Ruocco on November 22nd, the ACLU has heard nothing further about its request, and subsequent calls to Ms. Ruocco have gone unanswered.

2. The public has undiminished common law and First Amendment rights of speedy access to the *Mustafa* trial exhibits.



The public has qualified common law and First Amendment rights of access to materials submitted to a court that are "relevant to the performance of the judicial function and useful in the judicial process," *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006), as trial exhibits unquestionably are. Although those rights may be overcome in limited circumstances, *see, e.g., Matter of New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987); D. Conn. Local R. 7(e)(1)(A) (spelling out standards), here the Court has not restricted the public's right of access in any way, and so there is no legal impediment to the ACLU inspecting or copying the exhibits. And, that access should be speedy. "Our public access cases and those in other circuits emphasize the importance of immediate access where a right to access is found." *Lugosch*, 435 F.3d at 126 (collecting cases).

3. The Court retains control over the *Mustafa* trial exhibits, even if it has shifted their physical custody back to the parties.

Lastly, the current location of the trial exhibits is no reason for the public to be denied access to them. If the Court does not retain physical custody of the trial exhibits, it possesses lawful control over them and may order their return to the Court for public access.

[†] ECF # 128. The Court so-ordered that motion without briefing from Mr. Mustafa on November 26th [ECF # 129]. Protective orders, of course, govern only the parties' conduct, *see* Fed. R. Civ. P. 26(c), and not the public's access to the Court's records, the latter of which may not be curtailed without a strict scrutiny-equivalent showing. *Compare, e.g., Haidon v. Town of Bloomfield*, 552 F. Supp. 3d 265, 269 (D. Conn. 2021) (Fed. R. Civ. P. 26(c) protective order requires showing of "good cause") *with, e.g., Joy v. North*, 692 F.2d 880, 894 (2d Cir. 1982) (reversing order restricting access to summary judgment materials based on the Rule 26 standard, and explaining that good cause is "patently inadequate" for sealing).

JA-80

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Chief Judge Michael P. Shea
United States District Court
page 3

As a general rule, every court “has supervisory power over its own records and files.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978). *See also* 28 U.S.C. § 457 (empowering each lower court to keep its records and dispose of obsolete ones). This Court has exercised that power to set a default rule that filings “may be withdrawn only upon order of the Court,” while exhibits in evidence may only be “by stipulation of the parties or by order of the Court.” D. Conn. Local R. 83.6(a). The Court requires parties to take physical custody of trial exhibits after entry of judgment—presumably to save space and work for its clerk’s office—but requires parties to preserve such exhibits “until final determination of the action, including the date when the mandate of the final reviewing court has been filed or until the time for appeal has expired.” *Id.* R. 83.6(c). The local rule also reflects that trial exhibits are part of the case’s record to be preserved for the Court of Appeals. *See* Fed. R. App. P. 10(a) (setting out that the record on appeal comprises, in relevant part, “the original papers and exhibits” from this Court).

With a post-trial motion pending, *Mustafa* remains short of final determination or expiration of the appeal, and so the exhibits remain within the Court’s control even if they are no longer in its physical custody. *Cf. Littlejohn v. Bic Corp.*, 851 F.2d 673, 683 (3d Cir. 1988) (holding, in long-concluded case, that courts lose power over judicial documents “restored to their owner after a case has been completely terminated and which were properly subject to destruction by the clerk of court”).

Accordingly, we request that you direct the parties to re-supply the clerk’s office with trial exhibits 1, 1-a, H, I, J, and K, and to shortly thereafter permit the ACLU to copy those exhibits at its expense.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Dan Barrett", with a large, sweeping flourish extending to the right.

Dan Barrett
Legal Director
dbarrett@acluct.org
(860) 471-8471

JA-81

Case 3:19-cv-01780-VAB Document 135 Filed 12/09/24 Page 4 of 5

Case 3:19-cv-01780-VAB Document 114 Filed 10/08/24 Page 1 of 2

United States District Court
 District of Connecticut
 Exhibits Log: 3:19-cv-1780 VAB
 Mustafa v. Byars,

Plaintiff Counsel:Jeffrey O. McDonald**Defense Counsel:**Stephen R. Finucane & Edward D. Rowley

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| Pla-3 | Color photo of hand.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-12 | MH Brief Encounter 7.24.19.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
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| Pla-20 | Dr. Rothkopt medical record 7.9.21.pdf | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
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| Def-G | Color Photo showing palm of hand with bandaging.pdf | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-H | Video, Handheld - 5-25-19 5.47 pm (Mustafa Escort).mp4 | Yes | 9/30/2024 1:41 PM | 9/30/2024 1:41 PM |
| Def-I | Video, Handheld - 5-25-19 11.31 pm (Mustafa back from UCONN - going to RHU).mp4 | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
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| Court-1 | Juror Note- Range, Cap, or Guidelines | No | 10/3/2024 3:00 PM | 10/3/2024 3:00 PM |

JA-82

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Document 135

Filed 12/09/24

Page 5 of 5

Case 3:19-cv-01780-VAB

Document 114

Filed 10/08/24

Page 2 of 2

| EXHIBIT | DESCRIPTION | RLS | IDENTIFIED | ADMITTED |
|---------|----------------------------|-----|----------------------|----------------------|
| Court-2 | Jury Note- Verdict Reached | No | 10/3/2024 3:00 PM | 10/3/2024 3:00 PM |

JA-83

Case 3:19-cv-01780-VAB Document 137 Filed 12/16/24 Page 1 of 11

**United States District Court
District of Connecticut**

Justin Mustafa,
Plaintiff

No. 19-cv-1780

v.

December 16, 2024

Christopher Byars,
Defendant

**Emergency Motion to Intervene for
Immediate Disclosure of Judicial Documents**

On November 14, the ACLU of Connecticut requested, from the clerk's office, copies of video exhibits in this matter. The videos were played in open court during trial and never sealed—and as a result, they retain the strongest common law and First Amendment presumptions of access. Yet, the Court has still not made the videos available, and recently offered the parties to the underlying litigation a month in which to weigh in on the ACLU's request. Because the ACLU (and any member of the public) has rights to the immediate inspection or copying of the videos, and because no restriction of those rights has been ordered by the Court, the ACLU now moves on an expedited basis to intervene and obtain the records.

1. Facts

1.1. The parties' decisions to enter video exhibits at trial without limitation.

In this 42 U.S.C. § 1983 litigation, plaintiff Justin Mustafa contends that defendant Christopher Byars—a prison guard at the Garner Correctional Institution—injured him in contravention of the Eighth Amendment proscription against cruel or unusual punishment. In mid-September 2024, two weeks before the jury trial was to

start, the parties submitted a joint pretrial memorandum including their respective exhibit lists and objections thereto. Mr. Mustafa set out that he planned to introduce a video, and Byars consented:

Plaintiff's

1) Video, 5/25/19

Full Exhibit by Agreement.

Parties' Proposed Ex. List [ECF # 88-1] 2. Mr. Byars informed the Court that he planned to introduce four such videos, and Mustafa consented:

H. Video recording: handheld video camera recording, 5-25-19 starting at or around 5:47 pm. Video of plaintiff's escort from F Unit to Medical and then to UConn transport.

Full Exhibit by Agreement.

I. Video Recording: handheld video camera recording, 5-25-19 starting at or around 11:31pm. Video of plaintiff's escort to F Unit after being transported back from UConn.

Full Exhibit by Agreement.

J. Video recording: C038 from F Unit, 5-25-19, 3:39 pm – 5:39pm. Stationary camera footage.

Full Exhibit by Agreement.

K. Video recording: C037 from F Unit, 5-25-19, 3:39 pm – 5:39pm. Stationary camera footage.

Full Exhibit by Agreement.

Id. 8-9. No party moved *in limine* to exclude or limit use of the videos. No party moved to seal the video exhibits ahead of trial. And no party moved to close any portion of the trial to the public.

Trial proceeded without any closure to the public, and the videos were admitted into evidence. Mr. Mustafa's videos were numbered Plaintiff's Ex. 1 and 1-a:

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|---------|------------------|-----|-----------------------|-----------------------|
| Pla-1 | Video Unit F.LVC | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |
| Pla-1-a | Video Unit F | Yes | 9/30/2024 10:17 AM | 9/30/2024 10:17 AM |

And Mr. Byars's videos were designated as Defendants' Ex. H, I, J, and K:

| | | | | |
|-------|--|-----|-----------------------|-----------------------|
| Def-H | Video, Handheld - 5-25-19 5.47 pm (Mustafa Escort).mp4 | Yes | 9/30/2024 1:41 PM | 9/30/2024 1:41 PM |
| Def-I | Video, Handheld - 5-25-19 11.31 pm (Mustafa back from UCONN - going to RHU).mp4 | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-J | Video, Stationary C038 2019-05-060 - (C038 Housing Unit F - 5-25-19 - 3.39 pm - 5.39 pm).avi | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |
| Def-K | Video, Stationary C037 2019-05-060 - (C037 Housing Unit F - 5-25-19 - 3.39 pm - 5.39 pm).avi | Yes | 9/30/2024 10:02 AM | 9/30/2024 10:02 AM |

Exhibit Log [ECF # 114] 1. The jury returned a \$1.35 million verdict for Mr. Mustafa on October 3, 2024 [ECF # 111], and the Court entered judgment accordingly on October 21st. ECF # 117. Mr. Byars's motion for a new trial [ECF # 120] is pending, and the parties have a settlement conference before Judge Spector on January 2, 2025. ECF # 133. No party has, at any time, moved to seal any of the videos, and the Court has not done so.

1.2. The ACLU, and its request to copy the trial exhibits.

The ACLU of Connecticut is a statewide non-profit organization that has, since 1948, advocated for the protection and extension of civil rights and civil liberties. Among other activities, it uses public education and policy advocacy in Connecticut's legislative and executive branches to change the law and restore democratic oversight and control over the state's prison system. The ACLU of Connecticut believes that

incarcerated people should not suffer injury in prison at the hands of the government, and that such occurrences are serious matters meriting public examination and debate.

On November 14, 2024, the ACLU—through counsel—made a telephonic request to the clerk’s office for copies of the six video exhibits played at trial.¹ Over the course of a few telephone calls, the clerk’s office determined to look into whether the Court still possessed the trial exhibits. On a telephone call on November 18th, a clerk’s office supervisor stated that she needed to verify that the Court still possessed the exhibits, citing D. Conn. L. R. 83.6’s provision for the Court to return trial exhibits to the parties.²

Having not heard back, on November 22nd the ACLU’s counsel telephoned the supervisor again to inquire about the status of the ACLU’s request, and left a voicemail.³ That same day—while the ACLU’s records request was pending—the clerk’s office returned all trial exhibits to Mr. Byars’s counsel. ECF ## 126, 127. Before the end of the same day, Byars moved for a protective order [ECF # 128] restricting how the parties could handle the videos, but did not ask that the public’s right to them be curtailed. The Court so-ordered the motion without further briefing. ECF # 129. The ACLU has heard nothing further about its request.⁴

On December 4th, the ACLU wrote to Chief Judge Shea to appeal the constructive denial of its request. On December 9th, the Court docketed the ACLU’s appeal letter and ordered the parties to “file responses outlining their respective positions” on the letter by January 10, 2025. ECF # 135.

¹ Decl. of Dan Barrett (attached here as Ex. 1) ¶ 2.

² *Id.* ¶ 3-5.

³ *Id.* ¶ 6-7.

⁴ *Id.* ¶ 8.

Because the ACLU (and the public) has undisputed First Amendment and common law rights of contemporaneous access to the trial exhibits, it now moves to intervene for the limited purpose of immediately obtaining them.

2. The ACLU has common law and First Amendment rights to the trial exhibits it seeks, and those rights will be lost without immediate intervention and disclosure of the documents.

2.1. Having been presented in open court, the trial exhibits are judicial documents to which the strongest presumptions of public access attach.

The ACLU has twin rights of access to the trial exhibits it has requested, provided by the First Amendment and the common law. Both apply to “judicial documents,” that is, materials submitted to a court that are “relevant to the performance of the judicial function and useful in the judicial process.” *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). Videos played in open court at trial and pre-trial proceedings are judicial documents, *Mirlis v. Greer*, 952 F.3d 51, 60 (2d Cir. 2020); *In re Nat’l Broadcasting Co.*, 635 F.2d 945, 952 (2d Cir. 1980), whether admitted into evidence or not. *United States v. Graham*, 257 F.3d 143, 152 (2d Cir. 2001).

While all judicial documents enjoy a presumption of access, the weight of the presumption depends upon the role of the document at issue. As the First Amendment goes, the presumption is heaviest as to “evidence introduced at trial or in connection with summary judgment,” *Brown v. Maxwell*, 929 F.3d 41, 49 (2d Cir. 2019), because those materials request that the Court use its power to adjudicate parties’ rights. *See also, e.g., United States v. Akhavan*, 532 F. Supp. 3d 181, 187 (S.D.N.Y. 2021) (holding

that the First Amendment right of access to after-the-fact copies of trial evidence is “especially strong”).

The common law similarly holds trial exhibits at the apex of public access. The weight of the common law access presumption derives “from the role those documents played in determining litigants’ substantive rights—conduct at the heart of Article III—and from the need for public monitoring of that conduct.” *United States v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995). Trial evidence is the paradigmatic example of information used to adjudicate rights, and so garners the strongest presumption of public access. *In re NBC*, 635 F.2d at 952. For purposes of the common law, “[o]nce the evidence has become known to the members of the public . . . through their attendance at a public session of court, *it would take the most extraordinary circumstances to justify restrictions* on the opportunity of those not physically in attendance at the courtroom to see and hear the evidence, when it is in a form that readily permits sight and sound reproduction.” *Id.* (emphasis added). *See also In re CBS, Inc.*, 828 F.2d 958, 960 (2d Cir. 1987) (extending common law rule to videotaped deposition played in open court, and reversing denial of public access to copy the tape).

The exhibits at issue here were played in open court, and are therefore judicial documents to which the public has the strongest right of access. Any restriction upon their release, including by delay, implicates the ACLU’s rights of access to them.

2.2. The ACLU’s interest in vindicating its contemporaneous right of access to the videos necessitates its limited intervention.

Intervention has two forms: mandatory and permissive. It is mandatory via Fed. R. Civ. P. 24(a)(2), in relevant part, where the putative intervenor (1) through a

timely motion, shows (2) an interest in the litigation, (3) that “may be impaired by the disposition of the action,” (4) which interest is “not adequately protected by the parties to the action.” *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 197 (2d Cir. 2000). Alternatively, this Court may grant permissive intervention where the would-be intervenor “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b).

As a court records-seeker, the ACLU easily meets both standards. Its request to intervene comes about a week after the Court put its access rights on hold; it has important common law and First Amendment rights to contemporaneous information access as detailed below; those rights are denied each day that the ACLU is denied the trial exhibits; and no existing party to the litigation shares its interest in prompt disclosure. And, intervention would cause no delay to the parties, who have already had a judgment rendered and are briefing the defendant’s motion for a new trial. Nothing in granting intervention or the immediate production of the trial exhibits would delay the parties’ march towards a final resolution. *See In re Telegraph Media Group Ltd.*, 23-mc-215, 2023 WL 5770115, at *2 (S.D.N.Y. Sep. 6, 2023) (explaining that in practical terms, permissive intervention requires the district court to consider “whether the proposed intervention will unduly delay or prejudice the adjudication of the parties’ rights.”).

In either event, whether viewed as mandatory or permissive, records-seeker intervention “should be granted absent some compelling justification for a contrary result.” *In re Pineapple Antitrust Litig.*, No. 04-md-1628, 2015 WL 5439090, at *1 (S.D.N.Y. Aug. 10, 2015) (granting intervention to challenge sealing orders). *See also Trooper 1 v. New York State Police*, 22-cv-893, 2024 WL 1345516, at *3 (E.D.N.Y. Mar.

29, 2024) (granting motion to intervene for contesting sealing where no risk that intervention would interfere with the merits of the case and the request to gain access to documents would not cause delay or prejudice to the parties); *Coleman v. Suffolk County*, 174 F. Supp. 3d 747, 754 (E.D.N.Y. 2016) (granting permissive intervention, and explaining that “courts in this Circuit have demonstrated a willingness to allow the press to intervene in situations such as this where the public’s access to court documents is at stake”). This Court should therefore grant the ACLU leave to intervene for the limited purpose of obtaining the six trial exhibits it seeks.

3. The heavy First Amendment and common law presumptions for public access to the trial exhibits are unimpeded and undiminished here, so the Court must release the exhibits.

The mine-run court records access case features a party trying to seal a filing, or a member of the public trying to unseal one. The ACLU’s records request is different. Here, no Court order has curtailed the public’s rights to the records sought, and no party has sought to curtail those rights. The sole purpose of the ACLU’s intervention and motion for production is to vindicate its undiminished rights to the trial videos. The situation that the ACLU now finds itself in is the same one that a person walking into the clerk’s office and asking to see a motion for summary judgment would if they were made to first wait a month, and then a further month while the Court took briefing on the subject from the parties in the underlying litigation. Because production of records is the default, and because the parties’ views on the public’s right of access are irrelevant, the Court must order the immediate production of the trial exhibits.

Both the common law and First Amendment rights may be overcome by a strict scrutiny-equivalent showing that the public’s access should be narrowly limited in

consideration of compelling circumstances.⁵ Whether that showing was—or could be—met is irrelevant to the ACLU’s request here, because the trial evidence it seeks has never been restricted in any way. The Court has not sealed the exhibits in whole or part, and no party has so much as *asked* the Court to do so. In the absence of a sufficient order having been issued, immediate access is the default. *United States v. All Funds at Wells Fargo Bank in San Francisco in Acct. No. 7986104185*, 643 F. Supp. 2d 577, 585 (S.D.N.Y. 2009) (holding that district courts are “*required* to order disclosure” unless the public’s right has been overcome) (emphasis added).

Moreover, the views of the parties who showed the trial exhibits in open court are irrelevant to the public’s strong right of access. The right of access belongs to the public, not to them, and it vested the moment the parties showed the videos in open court. At any rate, the parties conclusively demonstrated their views of the matter by playing the videos at trial without objection or limitation, and by not once moving to seal the videos before or after the trial. It is a continued diminution of the public’s rights for the Court to delay access for a further month while the parties consider whether they now prefer to try retroactively making secret that which they voluntarily revealed at trial.

4. The public’s contemporaneous or immediate right to inspect the videos requires the Court to quickly release them.

Lastly, the Court should not only release the records, but do so quickly. The ACLU’s right to the trial exhibits is a contemporaneous or immediate one that continues to be denied each day that its request for access is delayed.

⁵ See, e.g., *Matter of New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987); D. Conn. Local R. 7(e)(1)(A) (spelling out standards).