25-897

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Justin C. Mustafa,
Plaintiff,
American Civil Liberties Union of Connecticut,
Intervenor-Appellant,
v.

Christopher Byars,
Defendant-Appellee,
Stanley, Captain, Walker C.I., Ebonie Suggs, CCS, Walker C.I., Peletier C/O, Garner C.I., Swan, LT. Garner C.I.,
Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Reply Brief of Appellant

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The ACLU's appeal advances three grounds for why the district court's order restricting access to the *Mustafa* trial videos must be vacated: (1) When he displayed the trial videos in open court and let his opponent do the same, Mr. Byars waived any later ability to move to seal the videos—and defeated his claim that sealing was essential to preserve a higher value; (2) the district court's delayed disclosure of the then-unrestricted trial videos abrogated the ACLU's First Amendment right of contemporaneous access; and (3) the district court's sealing order contravenes the First Amendment's narrow tailoring requirement in three ways.

In opposition, Mr. Byars ignores (1) and (2) entirely. Because Mr. Byars offers no response to the ACLU's first two claims, it does not re-brief its arguments at length here. Mr. Byars's brief addresses (3), but only tangentially. His opposition is limited to the suggestion that because the public can still view the trial exhibits in person, the restrictions imposed by the district court do not offend the First Amendment.

The main focus of his brief is dedicated to digressions, deflections, and distractions having nothing to do with the ACLU's arguments. First, the ACLU does not make common-law access right arguments, so the common law access right decision *Mirlis v. Greer*, 952 F.3d 51 (2d Cir. 2020) does not control. Second, the Prison Litigation Reform Act has nothing to do

with this First Amendment sealing case. Third, the hearing transcript Mr. Byars dwells on at length has been a part of the district court's docket since the ACLU ordered it in early September, and, therefore, part of the record on appeal. And fourth, there is no "unclean hands" doctrine as applies to records requesters; a judicial document is a judicial document and remains so, whenever requested.

1. Mr. Byars's irrelevant arguments.

1.1. The ACLU asserts its First Amendment access right on appeal, so the district court's sealing order cannot be salvaged by common law access decisions.

Mr. Byars insists that this Court's decision in *Mirlis* is critical to this appeal.[1] But *Mirlis* is a common law decision that has no applicability to the First Amendment access claim advanced by the ACLU here.

Before this Court in *Mirlis* was the district court's application of the common law in deciding whether to seal certain deposition videos played at trial. *See* 952 F.3d at 58-67. The *Mirlis* panel was explicit in limiting its review to arguments raised under the common law, noting that the district

[1] Appellee's Brief at 4–5, 37 n. 5, 41–44, 47–48.

court's decision rested "solely on the common law presumption of access" and that no party "rel[ied] on a constitutional analysis to support its position." *Id.* at 58 n.5. As such, the Court "[did] not further address any possible constitutional issue." *Id.*

On appeal here, the ACLU limits its claim to the First Amendment access right and leaves the common law right aside.[2] The two rights are "distinct," with the First Amendment being "a strong form" of the "slightly weaker" common law right of access. *United States v. Greenwood*, 145 F.4th 248, 254 (2d Cir. 2025). This distinction is not academic. The common law applies more broadly but is easier to overcome,[3] while the

[2] Appellant's Brief at 49-63.

[3] The common law right applies to any phase of any court proceeding on a sliding scale, depending upon (1) "the role of the material at issue [plays] in the exercise of . . . judicial power," and (2) the value such information yields to those monitoring the courts. *United States v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995). The weight of the public's presumptive access to a given judicial document is affixed between "matters that directly affect an adjudication" (a heavy presumption) to those "that come within a court's purview solely to insure their irrelevance" (a light one). *Id.* Against that, a court considering sealing "must balance competing considerations against" public access. *Id.* at 1050.

First Amendment applies to fewer judicial proceedings but is exceedingly difficult to overcome.[4]

The Venn diagram of the two rights yields two principles. First, "in all cases where the First Amendment applies, the common law right applies *a fortiori*." *Newsday LLC v. Nassau Cnty.*, 730 F.3d 156, 164 n.9 (2d Cir. 2013). Second, where both rights apply to a given proceeding, a court need not reach the weaker common law right if it finds the First Amendment one insuperable. *E.g.*, *id.* The upshot is that Mr. Byars may prevail in his quest to restrict the trial exhibits he so eagerly showed the public only if he surmounts the First Amendment.

Perhaps Mr. Byars's point is instead that *Mirlis* stands for the proposition that some materials ought to be kept off the Internet. That much is unremarkable. No matter the access right asserted, it may be that a prohibition against public distribution could withstand appellate review,

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[4] The First Amendment right of access applies to any phase of any proceeding if either (1) "experience and logic" require it, because the proceeding has "historically been open to the press and general public," and "public access plays a significant positive role in the functioning of" it, *Press-Enterprise v. Superior Ct.*, 478 U.S. 1, 8 (1986), or (2) the right of access is asserted to court filings rather than in-person attendance, and those filings were "submitted in connection with judicial proceedings that themselves implicate the right of access." *In re N.Y. Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987). Where it applies, the First Amendment right bars restrictions unless they are "essential to preserve higher values and . . . narrowly tailored to serve that interest." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006).

depending on the type of document and nature of the harm.[5] But this case does not deal with personal privacy invasions of the kind that re-open wounds whenever replayed online; it deals with two men disputing the contents of a Styrofoam food tray. And the people Mr. Byars is trying to prevent from seeing the exhibits do not have Internet access.

More importantly, because *Mirlis* applied only the common law, its analysis is no answer for the First Amendment claim here. The weaker common law access right is subject to balancing against competing considerations, while the stronger First Amendment one is not. The First Amendment requires that a would-be sealer prove that any restriction is "essential" to preserving a higher value and is narrowly tailored "to serve that interest." *Lugosch*, 435 F.3d at 120. If the putative sealer furnishes a higher value, the test is a functional one rather than a weighing of policy priorities. If a proposed restriction is either not essential or does not cling tightly enough to the higher value, then the restriction is unconstitutional no matter how compelling the interest in sealing.[6]

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[5] Copyrighted material leaps to mind. In an infringement contest alleging that one pop song too closely resembled another, for example, it is difficult to imagine that the First Amendment would require the district court to release digital copies of both songs to anyone who asked, as opposed to making the exhibits available for listening only.

[6] Mr. Byars further suggests that the ACLU waived, forfeited or abandoned any argument that grapples with the district court's application of *Mirlis*. Not at all. In its opening brief,

Lastly, there is no meat on the bones of Mr. Byars's intimation that the ACLU's possible use of the Internet to speak about or republish the trial exhibits is nefarious. The ACLU intervened and fought sealing of the trial exhibits to formulate speech. It is a non-profit organization that exists to protect and expand civil rights and civil liberties in Connecticut. Speech is integral to the ACLU, because it uses "public education and policy advocacy in Connecticut's legislative and executive branches to change the law," and to specifically "restore democratic oversight and control over the state's prison system."[7] In relevant part, the ACLU wishes to draw on the *Mustafa* trial exhibits to formulate speech fostering "public examination and debate" about people "suffer[ing] injury in prison at the hands of the government."[8]

That speech-formulation is greatly hampered by the district court's duplication restriction because it necessarily forbids time-shifting and

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the ACLU argued that the district court's sealing order violated the First Amendment's narrow tailoring mandate and that it was legal error to rely on broad "safety and security" concerns. *See* Appellant's Br. 60 (citing *ABC, Inc. v. Stewart*, 360 F.3d 90, 104 (2d Cir. 2004)). The ACLU did not utter Mr. Byars's magic word: *Mirlis*. Instead, it argued that it was improper to rely on the balancing approach from common law access right cases (including *Mirlis*) when addressing a First Amendment claim.

[7] JA-85.

[8] JA-86.

republication in whole or part. Time-shifting[9] is important to the ACLU's speech formulation and expression because viewing and discussing the trial exhibits with policymakers is difficult—if not impossible—to do when it requires making an appointment with Mr. Mustafa's counsel. Re-publication in whole or in relevant part comprises the ACLU's ability "to share the recording with the public," and in so doing "to communicate with others on matters of public concern." *Reyes v. N.Y. City*, 141 F.4th 55, 68 (2d Cir. 2025) (affirming preliminary injunction against municipality violating state statute protecting video recording of public officials).

Mr. Byars's objection that the ACLU may use the Internet to distribute its eventual speech on the subject is no more cogent an accusation than would be one that the ACLU might write a book. The Internet now contains "the principal sources for knowing current events" and "speaking and listening in the modern public square," and "provide[s] perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham v. North Carolina*, 582 U.S. 98,

[9] The ability to consume media "at a later time" than the one at which it is made available. *Sony Corp. of Am. v. Universal City Studios*, 464 U.S. 417, 421 (1984).

107-08 (2017) (applying intermediate scrutiny to strike statute barring social media use by convicted sex offenders).

Neither *Mirlis* nor its discussion of the Internet has any bearing here, where the ACLU asserts a First Amendment right, where Mr. Byars did not allege or prove that people incarcerated at Garner have unfettered Internet access, and where any ACLU use of the Internet to speak about the trial exhibits would be as protected as speech in print.

1.2. The Prison Litigation Reform Act cannot trump the First Amendment's access guarantee and, anyway, does not apply to the ACLU's claims here.

In a throwaway mention, Mr. Byars asserts that the district court's order comports with the Prisoner Litigation Reform Act ("PLRA"). Why he does so is unclear, because the PLRA has no bearing on this sealing dispute.

As a general matter, the PLRA places certain limitations on federal civil actions "brought by a prisoner." *See, e.g.*, 42 U.S.C. § 1997e(e) (stating that "[n]o Federal civil action may be brought by a prisoner . . . for mental or emotional injury suffered while in custody without a prior showing of physical injury"). But the ACLU was not a prisoner when it intervened and raised its claims for access to the trial exhibits.

In some instances, the PLRA places limitations on federal civil actions "with respect to prison conditions." For example, prospective relief in an action "with respect to prison conditions" is limited by the terms of 18 U.S.C. § 3626(g)(7). "[P]rison conditions," in turn, mean "the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison." *Id.* § 3626(g)(2). Thus, for example, when a New York district court issues a mandatory injunction over the provision of medical care in state prisons, or when the Vermont district court so-orders a consent decree over unsanitary conditions in that state's women's prison, the PLRA requires that that injunction stay within certain parameters.

But the provisions of the PLRA, including 18 U.S.C. § 3626(g)(7), have nothing to do with disputes, like this one, over ancillary issues far removed from the substantive merits of prison or prisoner claims. This is true even if the rest of the case is governed by the PLRA. For example, an order to defendants in a prison case to prepare a summary of facts relevant to a *pro se* prisoner's claim is not prospective relief under the PLRA because it does not "accord or protect" the substantive relief sought but is instead done "in connection with the district court's customary pretrial management prerogatives." *In re Arizona*, 528 F.3d 652, 658 (9th Cir.

2008). Similarly, an award of attorneys' fees is not prospective relief under the PLRA—or indeed, any relief at all—because "attorney fees are more properly characterized as the means of obtaining the relief rather than the relief itself." *Carruthers v. Jenne*, 209 F. Supp. 2d 1294, 1299-1300 (S.D. Fla. 2002).[10]

This case is even one more step removed. It has nothing at all to do with Mr. Mustafa's claim. An order on a First Amendment dispute, separate and apart from the underlying merits of a complaint, is not prospective relief in an action "with respect to prison conditions." *See, e.g.*, *Associated Press v. Tewalt*, No. 1:24-CV-00587-DKG, 2025 WL 723034, at *13 (D. Idaho Mar. 6, 2025) does not apply because "the First Amendment right Plaintiffs allege . . . does not concern prison conditions nor effect the lives of those imprisoned").

Because of those realities, to the ACLU's knowledge, no court, anywhere, has ever held that a First Amendment court records access claim

[10] The fact that the PLRA itself refers to attorneys' fees as "directly and reasonably incurred *in enforcing the relief*" only underscores the statute's clear distinction between prospective relief on the substantive merits of a case—governed by the terms of 18 U.S.C. § 3626(g)(7)—and everything else.

is subject to the PLRA. The resolution of the ACLU's claim here turns on the same principles as all other *Press-Enterprise II* litigation.

1.3. The hearing transcript is a non-issue.

Mr. Byars suggests—without explanation—that a transcript from a January 10, 2025, hearing is relevant to the issues on appeal[11] but that the ACLU failed to appropriately "preserve the record . . . as would be necessary to charge reversable error."[12] This argument misapprehends basic appellate procedure. The record on appeal includes "the transcript of proceedings, if any; [ ] and a certified copy of the docket entries prepared by the district clerk." Fed. R. App. P. 10(a)(2)–(3). Here, the ACLU ordered both the trial transcripts and the sealing hearing transcript before Mr. Mustafa even filed his brief. As a result, both are on the district court docket, and both are incorporated into the appellate record. When the ACLU filed its Form D, it

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[11] Mr. Byars maintains that the hearing transcript reveals that the ACLU failed to read trial transcripts before the hearing or consider "whether supervised viewing and access of the videos would be a sufficient remedy." Appellee's Br. 53. Even if this were true, Mr. Byars fails to explain how prior knowledge of the trial transcripts or counsel's alleged failure to consider "supervised viewing" interacts with the three legal errors set forth on appeal. Absent any explanation to that effect, the ACLU and this Court are left to speculate why the possibility of supervised viewing changes the legal analysis here. The ACLU, moreover, vigorously argued in its post-hearing brief that no sealing order restricting access to the trial exhibits would pass First Amendment muster *at all*. *See* JA156-165.

[12] Appellee's Br. 53.

notified the Court, and Mr. Byars, that it was not ordering a transcript of the proceedings as it "was not needed."[13] *See* Fed. R. App. P. 10(b)(1)(A)–(B) (requiring an appellant to either order a transcript of "the proceedings not already on file as the appellant considers necessary" *or* "file a certificate stating that no transcript will be ordered"). Mr. Byars has identified no legitimate procedural error and the record contains the very transcript he believes is absent. The hearing transcript is a non-issue.

1.4. There is no 'unclean hands' exception to a court's violation of the contemporaneous access right.

Finally, Mr. Byars contends that "any claims or arguments about delay below" are likewise "waived, forfeited, or abandoned" because the ACLU allegedly "delayed[] and [ ] has unclean hands."[14] That is not the law. The First Amendment right of access inquiry focuses on a court's—not a requestor's—delay. It is "the district court [that] must make its findings [about disclosure] quickly." *Lugosch*, 435 F.3d at 126. This is because a court's decision "[t]o delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression."

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[13] *Id.*

[14] Appellee's Br. 56.

Id. at 127. It is not a defense to suggest—as Mr. Byars does—that a delay in requesting court documents weakens the public's presumptive right of access. After all, the "unquestionably . . . irreparable injury" that results from the "loss of First Amendment freedoms" does not dissipate merely because the request for public documents came a week, month, or year after a particular court decision. *Id.*

At any rate, the time between the district court's October 21, 2024, judgment and the ACLU's November 14, 2024, request was minimal. Twenty-four days to be exact.[15] Although Mr. Byars argues that "[t]he ACLU waited nearly two months after judgment entered to file its motion below" and that it "never sought access to the Court's electronic copies of the videos during the 30 days following trial before they were destroyed in the normal course[,]"[16] his timeline of events is wrong. The ACLU requested the exhibits twenty-four days after judgment—six days before Mr. Byars's arbitrary deadline. And the district court 'returned' digital copies of the exhibits to Mr. Byars's counsel on November 22, 2024,[17] while the ACLU's

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[15] JA-251.

[16] Appellee's Br. 56.

[17] JA75-JA76.

request had been pending for eight days. Thus, to the extent the date of a records request is relevant, the ACLU's request here was timely.

2. Mr. Byars raises no argument surmounting his First Amendment sealing burden.

Very little of Mr. Byars's brief involves the claims actually advanced by the ACLU in this appeal. The little that does—the entirety of Mr. Byars's First Amendment rejoinder—focuses on the public's ability to view the trial exhibits notwithstanding the district court's restrictions. For Mr. Byars, though, the problem is not whether the trial exhibits may be sealed via a copying, retention, or distribution prohibition, but whether the trial exhibits may be sealed at all given the harm asserted and the total control the appellees have over the people they imagine will cause that harm.[18]

[18] Mr. Byars staked his tardy sealing claim entirely on the specter of a Garner resident watching the trial exhibits. With the exception of a concern for the fleeting nudity of Mr. Mustafa—which the ACLU has never objected to redacting—every subject that Byars's lone declarant claimed to be seal-worthy is of nefarious use only to the approximately five hundred people incarcerated at Garner at any one time. "If *inmates* know a particular area of the prison housing unit is not visible on the camera . . . if *an inmate* were to know that specific conduct . . . cannot be picked up via the camera . . . , that . . . intelligence can enable *inmates* to plan to commit violent acts or other unlawful acts . . . these security and safety concerns are especially problematic for those *vulnerable inmates* in a way that is *specific to the RHU at Garner*." JA149-150 (emphases added). *See also* JA149-152 (fixed camera blind spots, prison layout, placing and removing restraints, escorting incarcerated people through the prison, and preparing for transportation elsewhere).

Mr. Byars and his employer have complete control over the people they incarcerate at Garner. Unlike a business attempting to shield trade secrets from market competitors, for example, Connecticut's prison system entirely controls whether its imagined adversaries (prisoners) may see any video at all.[19] That control *is* the narrowly tailored method of preventing people incarcerated at Garner from watching the *Mustafa* trial videos. The blunt instrument of reducing the free world's ability to assess the trial facts and judgment is out of bounds where the sole locus of the asserted harm is already comprehensively walled off from them.

Ultimately, the district court's failure to grapple with this narrow tailoring inquiry was error. Mr. Byars's reliance on pre-*Press-Enterprise II* case law, and his failure to address targeted redaction, is inapposite.

2.1. *Warner* has been eclipsed by *Press-Enterprise II* and this Court's uniform scrutiny of purported distribution impediments.

Mr. Byars incorrectly places great weight upon *Nixon v. Warner Commc'ns*, 435 U.S. 589 (1978). That 5-4 decision dealt primarily with the common law right of access, agreeing that it encompassed a right to copy

[19] *See* Appellant's Br. at 58–63 (citing interlocking prison rules on point).

what we now refer to as judicial documents, *id.* at 597, but decided that the Presidential Recordings Act's "alternative means of public access" to the Nixon Oval Office tapes "tip[ped] the [common law] scales in favor of denying release." *Id.* at 606. In a scant four paragraphs, the Court also passed upon a First Amendment claim to copies of the tapes in the trial court's possession. But the majority treated the First Amendment's application as coextensive with attendance at public proceedings, observing that an order on remand forbidding duplication would comprise "no restrictions upon press access to, or publication of any information in the public domain," because the press had been in the courtroom and heard the tapes played. *Id.* at 609. The majority also rested its brief analysis on a distinction between the information contained on the tapes and the tapes themselves, the latter of which it viewed as beyond the First Amendment's ambit because "the public has never had physical access to" the tapes. *Id.* at 609.

No modern court would conduct the same analysis. Eight years after *Warner*, the Supreme Court decided *Press-Enterprise II*, establishing the test to determine whether a First Amendment right of attendance applies to any given phase of litigation, 478 U.S. 1, 10-11 (1986), and, the high bar that

any restriction upon attendance must clear. *Id.* at 13-14. A year after that, this Court held that the same First Amendment right extends to "written documents submitted in connection with judicial proceedings that themselves implicate the right of access," whether or not any in-court proceedings transpired. *In re N.Y. Times*, 828 F.2d at 114. The net result is that nowadays, the question of First Amendment access to court filings "is identical to whether the right applies to the physical proceedings." *Newsday LLC*, 730 F.3d at 163. In any such proceeding, restrictions upon the judicial documents pertaining to it may be imposed only "if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *N.Y. Times*, 828 F.2d at 116 (cleaned up).[20]

[20] In the intervening years, this Court has clarified that court records access rights extend to all "judicial documents," that is, any "item filed" that is "relevant to the performance of the judicial function and useful in the judicial process." *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995). It also applies the 'judicial documents' gating criteria to First Amendment and common law records-access claims, whether raised together or separately. *E.g.*, *Lugosch*, 435 F.3d at 119-20. The judicial documents test makes no distinction between a physical judicial document (if one even exists in modern electronic filing) and the information contained in it, as *Warner* did. And no decision has overruled this Court's holding in *New York Times* that physical access to a proceeding is not a substitute for access to a proceeding's documents. *See Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004) (explaining that *Warner* has "not impeded the circuits" in developing the First Amendment right of access to documents).

In addition to the sea change in access analysis that *Press-Enterprise II* and *In re N.Y. Times* marked, early duplication cases like *Warner* were suffused with practical impediments now obviated by the march of technology. Our national courts are entirely electronic, and there is no functional difference between inspecting and copying a judicial document. Whether a PACER subscriber reads or downloads, say, the *Mustafa* joint pretrial memorandum, the bits are transmitted all the same with no work imposed upon the court. The case law has adjusted to that reality. The days are gone of bona fide duplication objections based on the "administrative and mechanical difficulties" of copying "50 separate reels" of open-reel audio tape, *Warner*, 435 U.S. at 595, 593 n.3, or the lack of a "feasible way" to re-create the playing of excerpts of "71 videotapes and audiotapes" that had been run through a proprietary trial presentation software package. *In re Providence J.*, 293 F.3d 1, 8 (1st Cir. 2002). And as time has worn on, the Courts of Appeal have accounted for functional barriers by subjecting them to *Press-Enterprise II* scrutiny the same as any other asserted reason for restricting a judicial document. Practical impediments can be "persuasive arguments" for a restriction, *Courthouse News Serv. v. Corsones*, 131 F.4th 59, 71 (2d Cir. 2025), that "might well" permit a deviation from the First

Amendment norm of unfettered access, *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 329 (4th Cir. 2021), but they do not mean that the right applies to inspection but not duplication.

This Court presaged as much in *In re Nat'l Broad. Co.*, where it held that only "the most extraordinary circumstances" may "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*." 635 F.2d 945, 952 (2d Cir. 1980) (emphasis added). Although nominally a common law decision, *NBC* cited First Amendment physical attendance cases as weighing against restricting later duplication of video exhibits. *Id.* at 951 (identifying the "the high public interest in full opportunity to know whatever happens in a courtroom" and citing *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980) and *Cox Broad. v. Cohn*, 420 U.S. 469 (1975). As this Court surmised, the correct analysis is to view inspection and copying as parts of the same access right. *See, e.g.*, *Hartford Courant*, 380 F.3d at 95 (explaining that the 'history and logic' analysis shows "that docket sheets and their equivalents were, in general, expected to remain open for public viewing *and copying*")

(emphasis added).[21] The development of this Court's holdings on the topic forecloses the very argument that Mr. Byars now makes, and compels the highest protection for trial exhibits that are easily duplicated like the ones at issue here.

2.2. Even if any restrictions could meet narrow tailoring, targeted redactions would be more tightly fitted than the district court's total duplication ban.

Mr. Byars also does not controvert that—even if his employer's stem-to-stern control of information inside of prison did not exist—targeted redactions would be a far narrower abrogation of the First Amendment access right and would address the items enumerated by Mr. Byars's lone declaration in support of sealing. The Connecticut Superior Court recently concluded precisely that, turning aside correctional employees' bid to seal a video depicting the death of Mr. J'Allen Jones in the very same prison. That court correctly concluded that restricting the entire video was overly broad and instead ordered that "(1) doors and door numbers; (2) metal detectors; and (3) staff members in the background who are not named as defendants

[21] Moreover, because the First Amendment access right is a stronger one that grew out of the comparatively weaker common law right, it would make no sense to conclude that the First Amendment version does not include the right to copy that the common law's unquestionably does.

. . . be blurred out," and that any "radio transmissions between correctional officers" be "mute[d]." *Richardson v. Semple*, No. HHD-CV-18-6098918-S, 2025 WL 2963180, at *3 (Conn. Super. Ct. Oct. 16, 2025). Here as there, the narrow tailoring inquiry demands that "different circumstances call for different cures." *ABC*, 360 F.3d at 104 (reversing *voir dire* closure order where there existed "at least two" more narrowly tailored options to meet the harm defendants identified). A careful examination of the trial videos at issue here may reveal that "targeted redactions may strike a better balance in serving the First Amendment right" than a blanket restriction like the one the district court imposed. *Greenwood*, 145 F.4th at 256 (vacating wholesale sealing order).

The only thing Mr. Byars offers on the subject is a minor suggestion that the rigors of *Press-Enterprise II* may be overlooked because the videos "do not show actual hand strike, the challenged use of force that the jury found to be excessive." Appellee's Br. 12. The First Amendment does not stratify access to judicial documents based upon their import in hindsight. Instead, it deems certain categories of documents as particularly vital; here, information submitted in support of a request for adjudication. *E.g.*, *Lugosch*, 435 F.3d at 121. Mr. Byars's and Mr. Mustafa's decisions to stake

their respective cases on the forty-two items they introduced at trial concludes the matter as to all of them.

2.3. The underlying incident's occurrence in prison does not weaken the public's First Amendment access right to judicial documents from the resulting litigation.

Lastly, Mr. Mustafa's PLRA argument is indicative of the reasoning infecting his limited First Amendment one. The underlying dispute concerned a constitutional violation and tort committed in prison that was tried after the victim's incarceration ended. Yet, Mr. Byars insists that the affirmative litigation disabilities placed upon prisoners by statute apply to the ACLU, and, that prison rules governing media intake behind bars should be imposed upon the free world.

Mr. Byars's attempt to parlay the prison *setting* of the underlying incident into a result mandating the imposition of prison rules upon the free world is as flawed as it would be were he to intervene in a mine-run civil litigation to seek sealing of expert testimony about fermentation so as to prevent incarcerated people from learning to make homemade alcohol. Nothing in this case asks the Court to bless an incarcerated person gaining access to the trial exhibits. It asks the Court to recognize that Mr. Byars's asserted higher interest pertains solely to the people currently under the

prison system's plenary control, and so a restriction upon the free world is neither essential nor narrowly tailored to serving that interest.

Mr. Byars makes the same overreach when he complains that there are no prison-specific cases among the precedents foreclosing the restriction he sought.[22] There is no setting-wide rule for any judicial documents, because the First Amendment requires "specific, on the record findings" supporting a restriction being essential for a higher value and narrowly tailored to accomplish it. *In re N.Y. Times*, 828 F.2d at 116 (cleaned up). The test cannot be satisfied by citing generalities like 'prison' or 'personal privacy' divorced from context, lest its high bar be functionally supplanted by categorical exemptions. Notes from a private meeting may not be sealed simply because they were generated behind closed doors. Neither may portions of medical records disclosing the injury at issue in a tort suit simply because they were generated during a doctor-patient interaction. The propriety of each depends upon the contents of the document and whether sealing meets *Press-Enterprise II*.

[22] Appellee's Br. at 38.

3. Conclusion

For the reasons set forth above and in the ACLU's principal brief, the partial sealing order of the district court must be vacated.

November 5, 2025

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Dan Barrett

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I hereby certify that true and accurate copies of the foregoing brief were served electronically through the Court's CM/ECF System and by first-class mail, postage prepaid, in accordance with Rule 25 of the Federal Rules of Appellate Procedure on November 5, 2025 to the Clerk of the Court and the following counsel of record:

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