UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

ISABEL ZELAYA, et al., Plaintiffs, v. ROBERT HAMMER, et al., Defendants.	No. 3:19-cv-00062-TRM-CHS

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF OPPOSING MOTION TO SEAL

Proposed Intervenor States Newsroom, the publisher of the Tennessee Lookout (hereinafter, the "Tennessee Lookout") respectfully submits this Memorandum of Law in support of its Motion to Intervene for the Limited Purpose of Opposing Motion to Seal. For the reasons set forth herein, the Tennessee Lookout opposes Defendants' request to seal Exhibit 1 to Plaintiffs' Reply in Support of Motion for Class Certification ("Exhibit 1") and to redact the second paragraph on page 1 that continues onto the second page of that filing (the "Identified Paragraph")—judicial records that should be open to public inspection under both the common law and First Amendment.

INTRODUCTION

This class action case stems from a raid in April 2018 of "the Southeastern Provision meatpacking plant in Bean Station, Tennessee, a small town in the far

eastern corner of the state" by law enforcement officers from both the federal and Tennessee state governments. (ECF No. 97 ¶ 1.) According to the Complaint, these officers "were assisting with the execution of an Internal Revenue Service ("IRS") search warrant for financial documents related to the alleged crimes of the Plant's owner, James Brantley." (*Id.* ¶ 2.) Plaintiffs allege that "[t]he officers planned to detain and arrest every worker in the Plant who was Latino." (*Id.*) "Meanwhile, the officers did not detain the Plant's white workers or subject them to the same aggressive treatment and unreasonable and prolonged detention that the Latino workers experienced. (*Id.* ¶ 3.) This was "the largest workplace immigration raid in nearly a decade." (*Id.*)

In February 2021 (ECF No. 1), Plaintiffs filed this class action suit claiming multiple constitutional violations by the federal and state officers who conducted the raid. (ECF No. 97 ¶¶ 216-282.) Plaintiffs filed their Motion for Class Certification on May 31, 2022 (ECF No. 637), which Defendants' have opposed (ECF No. 659). The Court granted Plaintiffs' Motion for Class Certification on August 9, 2022. (ECF No. 738.)

Based on the designation of portions of documents as confidential by Defendants, Plaintiffs filed a Motion for Leave to File Plaintiffs' Reply in Support of Motion for Class Certification under Seal ("Plaintiffs' Reply"). (ECF No. 676 at 1.) Plaintiffs explained that they did not believe the confidentiality designations by Defendants were proper. (*Id.*)

Certain of the Defendants filed a Brief in Support of Plaintiffs' Motion for Leave to File under Seal (the "Defendants' Brief"), asking that the Court seal Exhibit 1 to Plaintiffs' Reply and to redact a paragraph in Plaintiffs' Reply that describes Exhibit 1. (ECF No. 693 at 1-2.) According to Defendants' Brief, Exhibit 1 is "a compilation of videos which Plaintiffs pieced together" and it "is intentionally inflammatory and provocative." (*Id*. at 2.) Defendants' Brief argues that Exhibit 1 and the Identified Paragraph should be withheld from the public because they are not relevant, and it asserts that "[f]iling the video and Plaintiffs' inflammatory remarks in the public record has the potential to prejudice potential jurors, provoke retaliation, and place the agents … at personal risk." (*Id*. at 2-3.)

Plaintiffs oppose sealing Exhibit 1 and redaction of the Identified Paragraph. They argue that these items are not only relevant, but also that they do not meet the stringent standards for sealing judicial records. (ECF No. 701.) The Tennessee Lookout agrees that the sealing sought in the Defendants' Brief should be denied.

PROPOSED INTERVENOR

Proposed Intervenor States Newsroom is a national 501(c)(3) nonprofit that operates newsrooms in 28 states, each of which publish their content on state-specific web platforms. In Tennessee, the States Newsroom publication is the Tennessee Lookout, which launched in 2020.

ARGUMENT

I. The Tennessee Lookout has standing to intervene to oppose sealing.

The Sixth Circuit has held that "media organizations may move to intervene for the purpose of contesting closure of hearings and the sealing of documents." *Application of Storer Commc'ns, Inc.*, 828 F.2d 330, 335 (6th Cir. 1987) (citing *United States v. Criden*, 675 F.2d 550, 555, 559 (3d Cir. 1982))); *see also U.S. ex rel. Martin v. Life Care Centers of Am., Inc.*, 912 F. Supp. 2d 618, 622 (E.D. Tenn. 2012) (holding that media had standing to intervene to oppose sealing of judicial records). Accordingly, and as discussed above, the Tennessee Lookout is a member of the news media with standing to intervene in this case for the limited purpose of opposing the sealing advocated by Defendants in ECF No. 693.

II. Defendants cannot satisfy their heavy burden to justify sealing.

A. The press and public have a presumptive right of access to judicial records and the standard for overcoming that presumption is stringent.

The Sixth Circuit has long recognized that public access to judicial records is a fundamental and indispensable feature of our legal system. *See Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983) ("The English common law, the American constitutional system, and the concept of the 'consent of the governed' stress the public nature of legal principles and decisions."); *id.* at 1177 (noting that openness "has been a fundamental feature of the American judicial system"). Among other things, public access "provides a check on courts," *id.* at 1178, and "promote[s] 'true and accurate fact finding,'" *id.* (quoting *Richmond*

Newspapers, Inc. v. Virginia, 448 U.S. 555, 596 (1980) (Brennan, J., concurring)). Moreover, as the Court recognized in *Brown & Williamson*, the public "has an interest in ascertaining what evidence and records" underlie judicial decisions, *id.* at 1181, and permitting the public "to review the facts presented to the court" is essential to public confidence in, and oversight of, the administration of justice, *id.* at 1178. *See also id.* at 1177 ("[C]ourt records often provide important, sometime the only, bases or explanation for a court's decision.").

The Sixth Circuit has repeatedly and recently confirmed the "strong presumption in favor of openness" it recognized in *Brown & Williamson*, *id.* at 1179, holding that "only the most compelling reasons can justify [the] non-disclosure" of judicial records. *Lipman v. Budish*, 974 F.3d 726, 752 (6th Cir. 2020); s*ee also In re Nat'l Prescription Opiate Litig.*, 927 F.3d 919, 940 (6th Cir. 2019) (vacating insufficiently explained sealing orders and instructing district court to "bear in mind that the party seeking to file under seal must provide a compelling reason to do so and demonstrate that the seal is narrowly tailored to serve that reason") (quotation marks omitted); *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 307 (6th Cir. 2016) (vacating sealing orders when "the parties and the district court plainly conflated the standards for entering a protective order . . . with the vastly more demanding standards for sealing off judicial records from public view"); *Rudd Equip. Co., Inc. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 593–94 (6th Cir. 2016) (affirming district court's decision to vacate its own sealing order when order was unsupported by specific findings and conclusions).

Under Sixth Circuit precedent, a judicial record may be sealed, entirely or in part, only if—and only to the extent—necessary to serve a compelling interest in nondisclosure. *In re Nat'l Prescription Opiate Litig.*, 927 F.3d at 939; *Shane Grp.*, 825 F.3d at 305 ("Only the most compelling reasons can justify non-disclosure of judicial records.") (quoting *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)). And, "[w]hen a district court opts to seal court records, it must set forth specific findings and conclusions 'which justify nondisclosure to the public.'" *Rudd Equip. Co.*, 834 F.3d at 594 (quoting *Brown & Williamson*, 710 F.2d at 1176).

The proponents of sealing, here Defendants, bear the burden of demonstrating that a compelling interest exists and that it overcomes the public's right of access. *In re Nat'l Prescription Opiate Litig.*, 927 F.3d at 939. "[T]he greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption." *Shane Grp.*, 825 F.3d at 305 (citing *Brown & Williamson*, 710 F.2d at 1179). And in class action lawsuits like this one, "the standards for denying public access to the records 'should be applied … with particular strictness.'" *Id.* (quoting *In re Cendant*, 260 F.3d 183, 194 (3d Cir. 2001)).

To carry this heavy burden, the party seeking closure must show "that 'disclosure will work a clearly defined and serious injury[.]'" *Shane Grp.*, 825 F.3d at 307 (citation omitted). "'In civil litigation, only trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), and information required by statute to be maintained in confidence (such as the name of a minor victim of a sexual assault),' is typically enough to overcome the presumption of

access." *Shane Grp.*, 825 F.3d at 308 (quoting *Baxter Int'l, Inc. v. Abbott Labs.*, 2979 F.3d 544, 546 (7th Cir. 2002)). "[S]pecificity is essential"; generalized assertions of harm are insufficient. *See id.* at 307-08 (explaining that the party seeking closure only offered platitudes and not the required specificity of harm).

In addition, even when a compelling interest in nondisclosure overcomes the presumption of openness, judicial records may be sealed only to the extent necessary to serve that interest. *Id.* In other words, sealing must be "narrowly tailored"; a judicial record may not be sealed in its entirety when targeted redactions will suffice. *Shane Grp.*, 825 F.3d at 305. "The proponent of sealing therefore must 'analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.'" *Id.* at 305–06 (quoting *Baxter Int'l, Inc. v. Abbott Lab'ys*, 297 F.3d 544, 548 (7th Cir. 2002)); *see also id.* at 308 (explaining that those seeking closure must "demonstrate—on a document-by-document, line-by-line basis—that specific information in the court record meets the demanding requirements for a seal").

Defendants have not—and cannot—carry their burden to justify closure here.

B. The public interest in this case and the judicial records at issue is extremely high.

The public interest in access to judicial records is always strong. The public has a powerful interest in knowing how and why judicial power is exercised. *See Lipman*, 974 F.3d at 753 ("The public has a strong interest in obtaining the information contained in the court record, which includes an interest in ascertaining what evidence and records the District Court and this Court have

relied upon in reaching our decisions.") (quotation marks omitted); *Rudd Equip. Co.*, 834 F.3d at 593 ("[T]he resolution of private disputes frequently involves issues and remedies affecting third parties or the general public, and secrecy serves only to insulate the participants, mask impropriety, obscure incompetence, and conceal corruption.") (quotation marks and citations omitted).

Here, the public's interest is even stronger than usual, for four reasons. First, this is a class action and, thus, "by definition[,] some members of the public are also parties to the case." *Shane Grp.*, 825 F.3d at 305 (cleaned up). For that reason, the Sixth Circuit has held that "the standards for denying public access to the record" in class action suits "should be applied with particular strictness." *Id.* at 305 (cleaned up).

Defendants are incorrect that "the public right of access is less compelling because the parties are not asking the Court to rule on the merits of the case." (ECF No. 693 at 4.) On the contrary, the already heightened public interest in access to judicial records in class action suits is at its apex where, as here, Defendants seek to seal and redact documents filed in support of a motion for class certification, "arguably the most important filing in any putative class action." *Shane Grp.*, 825 F.2d at 306; *see also*, e.*g.*, *Soutter v. Equifax Info. Servs. LLC*, 299 F.R.D. 126, 130–31 (E.D. Va. 2014) ("[T]he class certification decision is, as a practical matter, of dispositive consequence, notwithstanding that it is not dispositive in the same way as is a summary judgment motion.").

Second, Exhibit 1 and the Identified Paragraph appear to relate to a

broader public discourse in Tennessee and nationally regarding the treatment of people of color by law enforcement. Plaintiffs explained in their Response Brief that Exhibit 1 and other evidence in support of their Motion for Class Certification "show that the Raid 'was conducted in an unnecessarily violent, humiliating, and demeaning manner toward Latino workers (ECF No. 701 at 5; *see also id.* (describing the treatment of Latino workers by Defendant Witsell in Exhibit 1 as "brutal"); *id.* at 8 (discussing a description in a publicly available filing in this case of Defendant Witsell standing on the neck of an unidentified Latino worker for approximately 25 second while another law enforcement officer put handcuffs on the worker).) "[A]llegations of improper police treatment of minorities is an issue of importance to the public generally, and to public health and safety, specifically." *Sampson v. City of El Centro*, No. No. 14-cv-1807-L (DHB), 2015 WL 11658713, at *10 (S.D. Cal. Aug. 31, 2015). "To state the obvious, alleged systemic issues in policing are at the forefront of the public consciousness, sparked by countless instances of excessive force by police officers in recent years." *Robinson v. City of Huntsville*, C.A. No. 5:21-cv-00704-AKK, 2021 WL 5053276, at *3 (N.D. Ala. Nov. 1, 2021). "[P]ublic access to videos like those at issue here, even where there is no constitutional violation, is imperative to foster dialogue about whether structural reforms in policing are needed." *Id.*

Third, because this is a case involving the constitutional rights of the Plaintiffs, the public interest is further magnified. "Piling onto the public interest in disclosure, the underlying lawsuit implicates citizens' federal and state

constitutional rights vis-à-vis the operation of a public law enforcement agency. The public unquestionably holds a hefty interest in police force transparency, and especially so when fundamental rights are at stake." *Harmon v. City of Santa Clara*, 323 F.R.D. 617, 624 (N.D. Cal. 2018) (citing *Sampson*, 2015 WL 11658713, at *10); *see also id.* at 625 ("Cases involving a civil rights claim against a police department should be 'moderately pre-weighted in favor of disclosure from the outset[.] (citation omitted)). That Plaintiffs' claims all relate to their constitutional rights thus weighs heavily in favor of access to the judicial records Defendants ask the Court to seal.

Fourth and finally, all of the Defendants who seek sealing of Exhibit 1 and the Identified Paragraph were at the time of the raid law enforcement officials in either the federal or state government. (ECF No. 97 ¶¶ 18-73 (identifying named defendants as federal law enforcement officers).) "[T]he public interest is 'particularly legitimate' where one of the parties is a public entity." *Sampson v. City of El Centro*, No. No. 14-cv-1807-L (DHB), 2015 WL 11658713, at *9 (S.D. Cal. Aug. 31, 2015) (quoting *Glenmeade Trust Co. v. Thompson*, 56 F.3d 476, 484 (3d Cir. 1995)). This too weighs in favor of access to the records in question.

Taken together, these factors significantly bolster the already strong public interest in access to the judicial records at issue. Particularly given the strength of the public interest in access, Defendants' arguments fall well short of satisfying their heavy burden to justify sealing.

C. Defendants' asserted interests in secrecy are speculative and do not outweigh the significant public interest in this case and in the judicial records at issue.

Defendants assert two interests in favor of closure, both of which are speculative and patently insufficient to overcome the public's presumptive rights of access to the judicial records at issue. First, Defendants' baldly assert that public access to Exhibit 1 and the Identified Paragraph "has the potential to prejudice potential jurors." (ECF No. 693 at 3.) Second, Defendants claim that "the interests of nondisclosure are compelling and necessary to protect the personal safety of the individual federal agents who are identified by name and accused of engaging in conduct that Plaintiffs describe in a provocative manner that appears intended to analogize it to other national events that sparked destructive protests and physical violence against law enforcement." (*Id*. at 3.) These interests are speculative and demonstrably insufficient to justify the secrecy sought by Defendants.

1. Defendants' argument that public access may prejudice their right to a fair trial is baseless and without merit.

Defendants argue that "[s]hould the video at issue be made part of the Court's public records, it has the potential to not only be made public, but also be publicized. Media coverage increases the potential for information to be taken out of context and improperly impact a jury's decision and taint the jury pool." (ECF No. 693 at 4.) Such speculation is insufficient to justify sealing of Exhibit 1 and the Identified Paragraph.

As an initial matter, the U.S. Supreme Court has explained in the context of access to a criminal preliminary hearing that such a hearing "shall be closed only

if specific findings are made demonstrating that, first, there is a *substantial probability* that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights." *Press-Enter. Co. v. Superior Ct. of Cal.*, 478 U.S. 1, 14 (1986) ("*Press-Enterprise II*") (citations omitted) (emphasis added). Neither the U.S. Supreme Court nor the Sixth Circuit has addressed the applicable standard in analogous civil cases, but assuming the same standards apply in both the civil and criminal context, the Sixth Circuit has found the *Press-Enterprise II* standard to be the applicable test in analogous criminal sealing matters. *Appl. Of Nat'l Broad. Co.*, 828 F.2d 340, 345-46 (6th Cir. 1987). But, "[t]he First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of that right." *Press-Enterprise* II, 478 U.S. at 15.

Defendants do not even attempt to allege a substantial probability that their fair trial rights will be prejudiced; instead, they merely claim that "[f]iling the video and Plaintiffs' inflammatory remarks in the public record has the *potential* to prejudice potential jurors…" (ECF No. 693 at 2-3 (emphasis added).) Defendants' speculative, conclusory assertions do not approach the kind of showing that would establish that "there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity…." *See Sampson v. City of El Centro*, No. 14cv1807-L (DHB), 2015 WL 11658713, at *7 (S.D. Cal. Aug. 31, 2015) (rejecting argument that release of videos and photographs of the deceased's interactions with

law enforcement "could taint future jury pools" because "Defendants' fear that disclosure could taint the jury pool is too speculative and broad to meet the[] burden of demonstrating particularized harm").

Moreover, "[j]urors are not that fragile." *In re Murphy-Brown, LLC*, 907 F.3d 788, 798 (4th Cir. 2018). Public access to factual information, like Exhibit 1, has generally been found not to threaten a defendant's fair trial rights. *See Patton v. Yount*, 467 U.S. 1025, 1032-33 (1984) (discussing fact that "purely factual articles" were part of pretrial publicity during voir dire for criminal trial that was found to be constitutional); *Murphy v. Florida*, 421 U.S. 794, 802 (1975) (noting that the pretrial publicity was "largely factual in nature" when rejecting the criminal defendant's claim that the publicity was inflammatory). And even extensive, negative pre-trial publicity "does not necessarily produce prejudice" and jurors are not required to be ignorant regarding the case to be considered impartial." *Skilling v. U.S.*, 561 U.S. 358, 381 (2010) (citing *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). "Pre-trial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976).[1]

[1] In the thirteen counties that make up the Knoxville division of this Court, there are more than one million potential jurors. Even in the criminal context, such a large potential juror pool would make any claim of an inability to seat an impartial jury due to prejudicial pretrial publicity difficult, if not impossible, to prove. *Skilling*, 561 U.S. at 382 (finding that "[g]iven this large, diverse pool of potential jurors , the suggestion that 12 impartial individuals could not be impaneled is hard to sustain" with a pool of 4.5 million people); *U.S. v. Hofstetter*, No. 3:15-CR-27-TAV-CCS, 2018 WL 813254, at * (E.D. Tenn. Feb. 9, 2018) (noting the geographic breadth and population of the Knoxville division in 2018 and finding that it was "a sufficiently large and diverse population from which to draw twelve to fourteen jurors").

Finally, a party attempting to overcome the public's rights of access to judicial records and proceedings—even in the most high-profile of matters—on the ground that "'there is a substantial probability that the defendant's right to a fair trial will be prejudiced by [pre-trial] publicity" bears a "heavy burden" to so demonstrate. *ABC, Inc. v. Stewart*, 360 F.3d 90, 98–99 (2d Cir. 2004); *U. S. v. Shkreli*, 260 F. Supp. 3d 257, 259–60 (E.D.N.Y. 2017); *see also In re Charlotte Observer*, 882 F.2d 850, 855 (4th Cir. 1989) (explaining that voir dire is the "preferred safeguard against" any effects of pretrial publicity). "It is significant that voir dire in some of the most widely covered criminal prosecutions has revealed the fact that many prospective jurors do not follow such news closely and that juries can be empaneled without inordinate difficulty." *Appl. of Nat'l Broad. Co.*, 828 F.2d at 346 (citations omitted). "The judicial process does not run and hide at those moments when public appraisal of its workings is most intense." *In re Murphy-Brown*, 907 F.3d at 798

In sum, Defendants' have done no more than offer platitudes and unsupported speculation to claim that their right to a trial by an impartial jury in this civil class action suit might be harmed if Exhibit 1 and the Identified Paragraph were available to the public. Defendants also ignore the reality that trial courts routinely seat impartial jurors in high-profile cases with publicity that far exceeds that found in case using the wide array of tools trial courts have, including, most importantly, voir dire. Defendants' argument would be far from sufficient to justify sealing the judicial records at issue even in a case of lesser

public interest than this one.[2]

2. Defendants' argument that public access risks potential harm is based on broad generalizations and has been rejected by courts in analogous circumstances.

Defendants also argue that "[p]ublicizing the video and Plaintiffs' disputed and inflammatory description of it has the *potential* to subject the individually-named officers to violence or threats of violence in an already tense situation." (ECF No. 693 at 3 (emphasis added).) Similarly, Defendants claim that "[t]he duties performed by DHS agents are dangerous enough without being subject to provocative statements, that intentionally or unintentionally, invite condemnation and potential retaliation." (*Id*. at 3-4.) These assertions are not "a clearly defined

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[2] Defendants also argue that "[u]ntil it is determined that this video is admissible at trial, it should not be part of the public record." (ECF No. 693 at 4.) This is contrary to the Supreme Court's decision in *Press-Enterprise II* that the "risk of prejudice does not automatically justify refusing public access to hearings on every motion to suppress. Through voir dire, cumbersome as it is in some circumstances, a court can identify those jurors whose prior knowledge of the case would disable them from rendering an impartial verdict." 478 U.S. at 15. If Defendants' argument was accepted all motion to suppress hearings and documents related to them would be prophylactically closed to keep possibly inadmissible evidence from the public. That is not the law.

Moreover, the Sixth Circuit has explained that one of the benefits of access to courts and court records is that "[t]he remedies or penalties imposed by the court will be more readily accepted, or corrected if erroneous, if the public has an opportunity to review the facts presented to the court." *Brown & Williamson*, 710 F.2d at 1178. Here, not only was the video and its description presented to the Court for its consideration, but it also appears that the Court relied on Exhibit 1 in its order granting Plaintiffs' class certification motion. (ECF No. 738 at 4 (citing the "*Ayala Arrest*" document, which is very similar to the docket entry description for Exhibit 1, for the statement that "an HSI agent stood on the neck of a prone employee").)

and serious injury" that is sufficiently specific to carry the heavy burden to justifying sealing. *E.g.*, *Shane Grp.*, 825 F.3d at 307 (noting that "specificity is essential" when a party seeks sealing and that platitudes are insufficient to justify sealing) (citation omitted). Rather, Defendants' arguments are far too attenuated to justify sealing and are based on "unsubstantiated or speculative claims of harm," which are patently insufficient to warrant sealing. *See Doe v. Public Citizen*, 749 F.3d 246, 270 (4th Cir. 2014) ("This Court has never permitted wholesale sealing of documents based upon unsubstantiated or speculative claims of harm…"). And, even if Defendants' broad, unsubstantiated allegations did satisfy the specificity requirement, Defendants arguments should be rejected as insufficient to overcome the heavy presumption of public access in this case.[3]

In *Robinson v. City of Huntsville*, C.A. No. 5:21-cv-00704-AKK, 2021 WL 5053276 (N.D. Ala. Nov. 1, 2021), the government and law enforcement defendants sought leave to file under seal "bodycam footage from the defendant officers who shot Ragland and a compilation of screen shots from the videos." *Id.* at *1. Among

[3] Defendants also claim to be seeking sealing pursuant to Rule 26(c) and its "good cause" standard "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." (ECF No. 693 at 3.) The Sixth Circuit has made abundantly clear, however, that Rule 26 and its good cause standard are not the applicable framework for deciding whether to seal judicial records. *E.g.*, *Shane Grp.*, 825 F.3d at 305 (explaining that "there is a stark difference between so-called 'protective orders' entered pursuant to the discovery provisions of Federal Rule of Civil Procedure 26, on the one hand, and orders to seal court records, on the other"). And "'[s]imply showing that the information would harm [a party's] reputation is not sufficient to overcome the strong common law presumption in favor of public access to court proceedings and records.'" *Rudd*, 834 F.3d at 594 (quoting *Brown & Williamson*, 710 F.2d at 1179).

the arguments proffered by the defendants was that "'the release of these videos … could compromise the safety of the defendant officers," *id*. at *2, and that widespread dissemination of the materials "[is] a much larger and very specific threat to officer safety and privacy," *id*. at *4. The court rejected these arguments. *Id*. "The defendant officers were public officials acting under the authority of the City of Huntsville, and the footage depicts the officers performing their duties in a public space in front of multiple witnesses." *Id*. "As such, the officers' actions are rightfully the subject of public scrutiny, and their limited right to privacy in these actions do not override the public's right of access to the full contents of the footage." *Id*. (citations omitted).

Moreover, this Court has already ordered redaction of things like government agents' personal addresses, emails, and phone numbers because "[p]lacing such information in the public record could place agents' safety at risk and has no bearing on the primary issue in this case, i.e., whether Plaintiffs were improperly targeted by Defendants based on their race and ethnic origin and whether excessive force was used to detain them in a workplace raid." (ECF No. 709 at 2.) In contrast, according to the Plaintiffs, Exhibit 1 and the Identified Paragraph are relevant to their Motion for Class Certification. (ECF No. 701 at 5.)

Whatever potential risk of harm to the objecting Defendants there may be from public access to Exhibit 1 and the Identified Paragraph, it is de minimis, and is outweighed by the heightened public interest in this case and in the specific judicial records at issue. That the risk of harm is only broadly and generally

asserted further reinforces the conclusion that the objecting Defendants request to seal Exhibit 1 and the Identified Paragraph should be denied.

CONCLUSION

For the reasons herein, the Tennessee Lookout respectfully requests that the Court grant its motion to intervene and enter an order denying the objecting Defendants' request to seal Exhibit 1 and the Identified Paragraph in ECF No. 693.

Dated: August 10, 2022

Respectfully submitted,

/s/ Paul R. McAdoo

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2022, a copy of the foregoing memorandum was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system on all counsel of record.

/s/ Paul R. McAdoo