25-115

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

BRUTUS TRADING, LLC,
Relator-Appellant,

v.

STANDARD CHARTERED BANK, STANDARD CHARTERED PLC, STANDARD CHARTERED TRADE SERVICES CORPORATION,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, ASSOCIATED PRESS, DOW JONES & CO, PROPUBLICA, AND TIMES MEDIA LTD FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF REVERSAL ON LIMITED ISSUE OF ORDER TO SEAL

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Proposed amici curiae the Reporters Committee for Freedom of the Press ("Reporters Committee"), The Associated Press, Dow Jones & Co. (including *The Wall Street Journal*), Pro Publica, Inc. and Times Media Ltd. (London) respectfully move this Court for leave to file the attached amici curiae brief on the limited issue of unsealing. Appellant Brutus Trading LLC and Appellee the United States consent to the filing of this amicus brief. The position of Appellees Standard Chartered Bank, Standard Chartered PLC, and Standard Chartered Trade Services Corp. was unknown at the time for filing. *See* Fed. R. App. P. 29(a)(2).

As representatives and members of the news media, amici have a strong interest in protecting the public's First Amendment and common law rights of access to court proceedings and records. The press relies on judicial records to keep the public apprised of cases of public importance and to facilitate public monitoring of the judicial system.

Lead amicus the Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide *pro bono* legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists, including access to court proceedings and records. The Reporters Committee

regularly appears before New York state and federal courts both as amicus and as counsel representing the press in matters involving court access. *See* Br. of Amici Curiae Reporters Comm. for Freedom of the Press & 32 Media Orgs., *Giuffre v. Maxwell*, No. 18-2868 (2d Cir. Dec. 17, 2018); Br. for Intervenors-Appellants Time Inc. & Reporters Comm. for Freedom of the Press, *Hardy v. Equitable Life Assurance Soc'y*, No. 16-3273 (2d Cir. Nov. 22, 2016); *see also Hartford Courant Co., LLC v. Carroll*, 986 F.3d 211 (2d Cir. 2021) (representing plaintiff-appellee newspaper).

The proposed brief highlights the reasons that the news media, and amici advocating on their behalf, have a powerful interest in protecting public access to court records. Further, because the brief is limited to the issue of the First Amendment and common law right of access, it addresses the sealing issue with a level of depth that amici believe will aid the Court's decisional process. Amici's interest in this matter is limited to the law of access and the District Court's decision as it relates to sealing. Amici do not otherwise take a position as to the merits of the underlying litigation or support or oppose any party to the litigation.

Dated: April 29, 2025

Respectfully submitted,

/s/ Bruce D. Brown

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system, with a resulting electronic notice to all counsel of record.

Dated: April 29, 2025

/s/ Bruce D. Brown

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CORPORATE DISCLOSURE STATEMENTS

The Reporters Committee for Freedom of the Press is an unincorporated association of reporters and editors with no parent corporation and no stock.

The Associated Press is a global news agency organized as a mutual news cooperative under the New York Not-For-Profit Corporation law. It is not publicly traded.

Dow Jones & Company, Inc. ("Dow Jones") is an indirect subsidiary of News Corporation, a publicly held company. Ruby Newco, LLC, an indirect subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. News Preferred Holdings, Inc., a subsidiary of News Corporation, is the direct parent of Ruby Newco, LLC. No publicly traded corporation currently owns ten percent or more of the stock of Dow Jones.

Pro Publica, Inc. ("ProPublica") is a Delaware nonprofit corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. It has no statutory members and no stock.

Times Media Limited (London) is the publisher of *The Times of London*. It is a subsidiary of News UK, which is wholly owned by News Corp.

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press ("Reporters Committee"), The Associated Press, Dow Jones & Co. (including The Wall Street Journal), ProPublica, and the Times Media Ltd. (London) (together, "amici").[1]

The Reporters Committee is an unincorporated nonprofit association founded by leading journalists and media lawyers in 1970 when the nation's news media faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide *pro bono* legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists, including access to court proceedings and records. The Reporters Committee regularly appears before New York state and federal courts both as amicus and as counsel representing the press in matters involving court access. *See* Br. of Amici Curiae Reporters Comm. for Freedom of the Press & 32 Media Orgs., *Giuffre v. Maxwell*, No. 18-2868 (2d Cir. Dec. 17, 2018); Br. for Intervenors-Appellants Time Inc. &

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E) and Loc. R. 29.1(b), amici state as follows: (1) no party's counsel authored this brief in whole or in part; (2) no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (3) no person—other than the amici, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief.

Reporters Comm. for Freedom of the Press, *Hardy v. Equitable Life Assurance Soc'y*, No. 16-3273 (2d Cir. Nov. 22, 2016); *see also Hartford Courant Co., LLC v. Carroll*, 986 F.3d 211 (2d Cir. 2021) (representing plaintiff-appellee newspaper).

As representatives and members of the news media, amici have a strong interest in protecting the public's First Amendment and common law rights of access to court documents. The press relies on judicial records to keep the public apprised of cases of public importance and to facilitate public monitoring of the judicial system, which will be curbed by the decision below.

SOURCE OF AUTHORITY TO FILE

Counsel for Appellant and counsel for the United States have consented to the filing of this brief. The Reporters Committee was unable to reach Appellees' counsel in time for filing and thus files the accompanying motion for leave to appear as amici curiae. *See* Fed. R. App. P. 29(a)(2).

INTRODUCTION

"People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980) (plurality opinion). Recognizing the importance of public observation, openness has become "an indispensable attribute" of the American judiciary. *Id.* at 569. As this Court put it, the "notion that the public should have access to the proceedings and documents of courts is integral to our system of government" and is rooted in both the common law and the First Amendment. *United States v. Erie Cnty.*, 763 F.3d 235, 238–39 (2d Cir. 2014).

In practice, the First Amendment and common law rights of access "permit[] the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). The monitoring function "provides judges with critical views of their work," "deters arbitrary judicial behavior," and promotes "confidence in the conscientiousness, reasonableness, [and] honesty of judicial proceedings." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995) ("*Amodeo II*"). Access thus addresses the systemic "need for federal courts, although independent—indeed, particularly because they are independent—to have a measure of accountability and for the public to have confidence in the

administration of justice." *Id*. This "enhances both the basic fairness of" the judicial system "and the appearance of fairness so essential to public confidence in the system." *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 508 (1984) ("*Press-Enterprise I*").

To effectively monitor the courts, the public requires information—information that is often found in judicial documents and brought to light by the press. *Amodeo II*, 71 F.3d at 1048 ("Such monitoring is not possible without access to testimony and documents that are used in the performance of Article III functions."). This is what Times Media Limited ("Times Media"), publisher of *The Times* (London) and now amicus here, sought to do when it moved to intervene and unseal below in this *qui tam* litigation. *See* Joint Appendix ("JA") 333, 337–39 (ECF Nos. 144, 146). The unsealing motion was directed at an electronic exhibit containing approximately 200 pages of spreadsheets of banking transactions, labeled Exhibit K. It had been attached to and was a purported basis for Appellant Brutus Trading, LLC's ("Appellant" or "Brutus") Federal Rule 60(d)(3) motion to set aside the judgment. Brutus alleged in its Rule 60(d) motion that the Government perpetrated a fraud on the court when in 2019 it successfully exercised its authority under the False Claims Act to request dismissal of Brutus' lawsuit. *See* JA 35. According to Brutus, the Government had falsely denied that certain evidence previously obtained and provided by Brutus—the spreadsheets of

bank transactions that would go on to make up Exhibit K—showed violations of trade sanctions by Appellees Standard Chartered Bank and related companies ("Appellees" or "SCB"). In its Rule 60 motion, Brutus alleged that through more advanced data forensics, it was able to "decloak" those spreadsheets and found thousands of suspicious transactions dating from 2007 to 2012. Appellant's Br. at 14–18. These illegal transactions, Brutus argued, were ultimately flowing to sponsors of terrorism, such as Iran. *Id.* Brutus alleged further that the Government was aware of the evidence but nevertheless sought and obtained dismissal of the *qui tam* action against SCB. *Id.* at 31–35.

Brutus attached Exhibit K to its motion for reconsideration but filed the exhibit under seal.[2] After Times Media sought to unseal the exhibit, SCB opposed unsealing, and the Government took no position. JA 342, 346 (ECF Nos. 149, 151). The District Court denied the motion to unseal in a footnote citing unspecified privacy concerns in its order denying Brutus' motion to set aside the judgment. JA 562 n.4 (ECF No. 157).

[2] After Times Media moved to unseal, Brutus filed a letter with the District Court expressing agreement with unsealing and requesting to join that motion. JA 343 (ECF No. 150). Other media organizations also filed motions seeking to unseal Exhibit K. JA 353, 354 (ECF Nos. 155 & 156). After the District Court issued its Order denying both Times Media's motion and the motion to vacate, Brutus appealed the Order, and it has argued against the broad sealing on appeal. Appellant's Br. at 45–48.

To be clear, amici take no position on the merits of the underlying litigation. Amici support Appellant in its appeal of the sealing issue and write to address the common law and First Amendment access rights to the judicial record at issue and to raise concern that the exhibit remains sealed without any specific finding by the District Court that those presumptions of access were overcome. In denying Times Media's motion to unseal Exhibit K, the District Court evidently severely undervalued the powerful public interest in this information and vastly outweighed the asserted countervailing interests in favor of secrecy. Access will provide the public and the press with information relevant to their understanding of the District Court's determinations on whether an international bank with ties to the United States violated U.S. and international money laundering and sanctions laws and whether the beneficiaries of such alleged violations were terrorists or state sponsors of terrorism. It will also shed light on whether the Government was aware of any such evidence, or whether, as the Government insists, these allegations are unfounded.

For the reasons set forth herein, amici respectfully urge this Court to reverse the District Court's order denying unsealing and remand for specific, on-the-record findings as required under the First Amendment and common law.

ARGUMENT

I. The exhibit to an adjudicated dispositive motion is presumptively open to the public under the First Amendment and the common law.

There is a long-established presumption of public access to "judicial documents." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). This presumption has roots both in the common law and in the qualified First Amendment right of access. *Id.*; *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004). Here, the document attached to Brutus' motion as Exhibit K is a judicial document presumed open under the common law and is also subject to the First Amendment right of access.

A. The sealed exhibit here is a judicial document.

A presumption of public access attaches to all judicial documents, defined broadly as documents that are filed with the court and "relevant to the performance of the judicial function and useful in the judicial process." *Lugosch*, 435 F.3d at 119 (quoting *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("*Amodeo I*")); *accord Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 139 (2d Cir. 2016) (assessing "relevance of the document's specific contents to the nature of the proceeding" and usefulness to "evaluating the fairness and integrity of the court's proceedings" (citation omitted)). While "the mere filing of a paper or document with the court is insufficient to render that paper a judicial document subject to the right of public access," *Lugosch*, 435 F.3d at 119 (quoting *Amodeo I*, 44 F.3d at 145), a document is judicial if the judge considered it in

reaching a decision, as here, or "should[] have considered or relied upon it, but did not," *Bernstein*, 814 F.3d at 140 n.3 (citations omitted).

From these principles it follows that documents filed in connection with dispositive motions are presumptively judicial documents. *Brown v. Maxwell*, 929 F.3d 41, 47 (2d Cir. 2019) ("[I]t is well-settled that 'documents submitted to a court for its consideration in a summary judgment motion are—as a matter of law—judicial documents[.]'" (quoting *Lugosch*, 435 F.3d at 121)). Naturally then, documents filed in support of Rule 60 motions for relief from a judgment are also presumed open. *See Olson v. Major League Baseball*, 29 F.4th 59, 88 (2d Cir. 2022) (finding exhibit attached to unsuccessful Rule 60(b) motion was a judicial document and affirming order to unseal); *Sanchez v. MTV Networks*, 525 F. App'x 4, 7 (2d Cir. 2013) (same); *Giurca v. Montefiore Health Sys., Inc.*, No. 18-cv-11505, 2021 WL 2739061, at *3 (S.D.N.Y. July 1, 2021) ("Plaintiff's Rule 60(b)(3) motion papers were unquestionably 'judicial documents[.]'").[3]

SCB argued before the District Court that Exhibit K was not a judicial document entitled to a presumption of access because Brutus' "latest bid for post-judgment relief" relied on a "preposterous premise" and lacked "a good faith basis." JA 347 (ECF No. 151). But this argument misses the mark. The

[3] The District Court did not state otherwise; in its brief discussion of sealing, it appeared to assume that Exhibit K is a judicial document to which the right of access attaches. JA 562 n.4 (ECF No. 157).

"classification of [Rule 60] motions (and exhibits to such motions) as 'judicial documents' is not contingent upon their likelihood of success." *Olson*, 29 F.4th at 89. This Court's decision in *Olson v. Major League Baseball* illustrates the point. There, defendants sought to seal an exhibit to a motion for reconsideration because plaintiffs' motion advanced a "flawed legal theory" that "was doomed to fail regardless of the specific content of the sealed document." *Id.* While agreeing with the merits of defendants' opposition to reconsideration, this Court rejected their argument on sealing. Defendants' position, the Court explained, "overlooks the fact that reconsideration motions, by their very nature, seek to have the court re-assess its prior analysis." *Id.* Under defendants' "proposed approach, unsuccessful reconsideration motions would not be designated as 'judicial documents' simply because they may appear to be futile in the wake of the court's prior ruling"—which "is not the law." *Id.* Regardless of the parties' or the courts' view on the ultimate merits of a substantive motion and the quality of the evidence filed in support thereof, "access to [] materials [filed in connection with a Rule 60 motion] assists the public in evaluating the merits of the court's decision," which serves the ultimate purpose of the right of access. *Id.*

Here, the Order on appeal adjudicated a motion that was predicated on the contents of the exhibit under seal. JA 556–60 (ECF No. 157). The District Court rejected Appellant's arguments that the exhibit shows that their complaint was

wrongly denied and that Appellees perpetrated a fraud on the Court; yet it considered the exhibit in reaching its conclusion. JA 558–60 (ECF No. 157). Under these circumstances, and the foregoing case law, there can be no dispute that the exhibit is a "'judicial document' [which] triggers a presumption of public access, and requires a court to make specific, rigorous findings before sealing the document or otherwise denying public access." *Bernstein*, 814 F.3d at 141 (quoting *Newsday LLC v. Cnty. of Nassau*, 730 F.3d 156, 167 n.15 (2d Cir. 2013)).

B. As a judicial document, the exhibit is subject to the strong common law presumption of access.

Once a court concludes that the record sought is a judicial document, the document is "subject at common law to a potent and fundamental presumptive right of public access that predates even the U.S. Constitution." *Olson*, 29 F.4th at 87 (quoting *Mirlis v. Greer*, 952 F.3d 51, 58 (2d Cir. 2020)). The common law "presumption . . . is based on the need for federal courts, although independent—indeed, particularly because they are independent—to have a measure of accountability" to the public and "for the public to have confidence in the administration of justice," which transparency in courts' operations affords. *Amodeo II*, 71 F.3d at 1048.

To apply the common law privilege, the court must assess the weight of the presumption of access to the document at issue. *Lugosch*, 435 F.3d at 119. The weight is "governed by the role of the material at issue in the exercise of Article III

judicial power and the resultant value of such information to those monitoring the federal courts." *Amodeo II*, 71 F.3d at 1049. That information will generally "fall somewhere on a continuum from matters that directly affect an adjudication to matters that come within a court's purview solely to insure their irrelevance." *Id.* Where a document's "role in the performance of Article III duties" is "negligible . . . the weight of the presumption is low." *Id.* Conversely, where a document "directly affect[s] an adjudication," *Bernstein*, 814 F.3d at 142 (quoting *Amodeo II*, 71 F.3d at 1049), "or [is] used to determine litigants' substantive legal rights, the presumption of access is at its zenith," *id.* (citing *Lugosch*, 435 F.3d at 121). In such cases, the presumption "can be overcome only by 'extraordinary circumstances,'" *id.* (quoting *Amodeo II*, 71 F.3d at 1048). "The locus of the inquiry is, in essence, whether the document 'is presented to the court to invoke its powers or affect its decisions.'" *Id.* (quoting *Amodeo II*, 71 F.3d at 1050). Applying this framework, the weight of the presumption with respect to the exhibit here is strong.

That conclusion is supported by *Olson*, where the Court was called upon to weigh the presumption of access to a letter attached as an exhibit to plaintiffs' motion for reconsideration. There, the letter "was a core component of" the motion, 29 F.4th at 90, and "the district court's denial of the reconsideration motion was a dispositive adjudication of the parties' substantive legal rights," *id.*

In light of these facts, the Court affirmed the lower court in that the exhibit "represents the kind of document to which the strongest presumption of access applies." *Id.* (citation omitted). The reasoning in *Olson* applies equally to the exhibit here, which was central to Brutus' dispositive motion and the District Court's resulting denial.

Appellees argued below that because this case is a *qui tam* action that the Government decided to dismiss (over the objections of the relator) before the answer was filed, the District Court had "no adjudicatory role" or that "at a minimum, the presumption of access would be at its weakest." JA 347 (ECF No. 151) (citations omitted). The argument is easily rejected. First, this Court has held that the right of access attaches to certain filings—including a complaint later voluntarily dismissed—that do not require a typical merits adjudication but are offered in furtherance of judicial approval, calling upon the Article III power and consuming court resources. *See, e.g.*, *Bernstein*, 814 F.3d at 141, 143 (holding that the right of access applies to voluntarily dismissed complaint because "[a]lthough the speedy settlement of the claim meant that the court did not adjudicate the merits of the case, the district courts routinely engage in adjudicatory duties even in connection with complaints that are dismissed or settled" and a "sealed complaint leaves the public unaware that a claim has been leveled and that state power has been invoked—and public resources spent—in an effort to resolve the

dispute"); *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 408–09 & n.5 (1st Cir. 1987) (same for documents filed in furtherance of judicial approval of a consent decree where the documents "were material and important to [the district court's] decision to approve the settlement") (cited with approval in *Amodeo II*, 71 F.3d at 1049).[4]

The document here was supplied to the District Court in connection with a motion that adjudicated the parties' substantive rights. Even had the District Court not expressly relied on the exhibit in reaching a decision, a strong presumption attached; but in fact, the District Court did consider it in denying reconsideration.

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[4] SCB's opposition wrongly implied that the U.S. Supreme Court held that a court "'has no adjudicatory role'" in a *qui tam* dismissal initiated by the Government prior to the filing of an answer. JA 347 (ECF No. 151) (quoting *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 436–437 & n.4 (2023)). This is not what the Supreme Court held. Rather, *Polansky* (which did not involve the right of access) established that the standard for evaluating dismissal under Federal Rule 41(a)(2)—the provision governing voluntary dismissals after an answer is filed and court approval is required—supplies the adjudicatory standard for voluntary dismissals in *qui tam* actions. The partial quotation that appears in Appellees' opposition below was taken from a footnote in which the Supreme Court recognized the challenge of overlaying the Federal Rule 41(a)(1) standard—involving pre-answer dismissals permitted without a court order and thus "no adjudicatory role" by the district court—onto a *qui tam* dismissal, which by statute *does* require court approval at any stage. 599 U.S. at 436 n.4. The Supreme Court saved for another day how best to reconcile application of the Rule 41(a)(1) standard with the FCA's requirements. This open procedural question, while interesting, has no bearing on the right of access, except to the extent it confirms that this is a case where the "litigants' substantive legal rights" were determined through use of the Article III power. *Bernstein*, 814 F.3d at 142 (citation omitted).

The weight of the common law presumption is accordingly strong. *See Olson*, 29 F.4th at 87.

C. The First Amendment also guarantees the public a powerful presumptive right to access the exhibit.

"In addition to the common law right of access, it is well established that the public and the press have a 'qualified First Amendment right to attend judicial proceedings and to access certain judicial documents.'" *Lugosch*, 435 F.3d at 120 (citation omitted). Where the First Amendment right attaches, it has been described as even "stronger than its common law ancestor and counterpart." *Erie Cnty.*, 763 F.3d at 239 (citing *Hartford Courant Co.*, 380 F.3d at 91).

To determine whether the First Amendment right attaches to a particular document, a court looks to whether "experience and logic" support making the document available to the public. *Lugosch*, 435 F.3d at 120. Specifically, the court considers whether it is a document that has "historically been open to the press and general public" and whether "public access plays a significant positive role in the functioning of the particular process in question." *Id.* (quoting *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 8 (1986) ("*Press-Enterprise II*")). Applying the framework from *Press-Enterprise II*, dispositive motions and the documents attached thereto are subject to the First Amendment presumption of access. *See Lugosch*, 435 F.3d at 123 (because presumption of access to dispositive motions and related documents "is of the highest" order, they "'should

not remain under seal absent the most compelling reasons'" (quoting *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982))). Once a First Amendment right of access to a judicial document is found, the document "may be sealed [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." *Id.* at 120 (citation omitted).

The First Amendment presumption of access clearly attaches to the exhibit here. First, the sealed document is an exhibit to a substantive motion resolved by the District Court, which in doing so adjudicated the parties' substantive rights. JA 552–62 (ECF No. 157). The exhibit was discussed in the parties' papers and the District Court's Order. *Id.* As such, this is the kind of document that is traditionally open to the public. *Lugosch*, 435 F.3d at 124 (holding that qualified "constitutional right of access . . . appl[ies] to written documents submitted in connection with judicial proceedings that themselves implicate the right of access" (citations omitted)). Logic also dictates that the document be open: Brutus alleges that the document reveals that U.S. and international laws intended to combat terrorism are being violated and that the Government is ignoring or concealing this evidence. Appellant's Br. at 8–12. Whether or not the District Court credited Brutus' argument, a primary purpose of the right of access is to allow the public to observe and understand the court's actions so it can be satisfied that justice was done or, where necessary, raise concerns. *Lugosch*, 435 F.3d at 124 ("[A]n

adjudication is a formal act of government, the basis of which should, absent exceptional circumstances, be subject to public scrutiny[.]" (citation omitted)). And as this Court has observed, "[a]ccess to written documents filed in connection with pretrial motions is particularly important in the situation . . . where no hearing is held and the court's ruling is based solely on the motion papers"—precisely the situation here. *Id.* (citation omitted).

Moreover, the District Court appeared to give no weight to the strong public interest in access to judicial records in a case involving alleged violations of sanctions imposed to impede the financing of terrorism. *See Bernstein*, 814 F.3d at 143 (finding that strong public interest in the subject of a case weighs against sealing documents related to the matter). SCB's prior violations as well as a lawsuit in a London court over allegations of ongoing ties to Iran have been the sources of news coverage.[5] And even now, public officials and others trade allegations over the correct policy, and the correct execution of policies, with respect to sanctioned regimes and actors who may be boosting those regimes.[6]

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[5] *Standard Chartered agrees settlement with New York regulator*, BBC (Aug. 14, 2012), https://www.bbc.com/news/business-19253666; Press Release, Off. Foreign Assets Control, Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and Standard Chartered Bank (Apr. 9, 2019), https://ofac.treasury.gov/recent-actions/20190409; *Standard Chartered fails to narrow £1.5bn lawsuit over Iran sanction breaches*, Fin. Times (Mar. 25, 2025), https://www.ft.com/content/c3c0209c-e647-4f26-bac0-cc16ad1cd1be.

[6] For example, as Appellant referenced in its brief, Senator Charles Grassley recently issued a report accusing the Obama and Biden Administrations of failing

The First Amendment presumption attaches to the exhibit at issue and as such, can be overcome only if it is specifically determined that closure is essential to preserve a higher value.

II. The Court should reverse the sealing order because neither the First Amendment nor the common law presumption was overcome.

The party seeking closure of a judicial document in full or part bears the burden of demonstrating that sealing is necessary and appropriate. *Hartford Courant Co.*, 380 F.3d at 91. The District Court disposed of the motion to unseal, and maintained the seal on the exhibit, in a single footnote that cited unspecified privacy concerns as to the contents of the 13-year-old documents in the exhibit. JA 562 n.4 (ECF No. 157). But broad, general notions of privacy are not enough to demonstrate either a "higher value[]" that overcomes the First Amendment presumption of access, *see Press-Enterprise II*, 478 U.S. at 13–14, or the

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to take certain available enforcement actions against Iran, presumably as a way to build relations. Grassley accused the Department of Justice and Department of State of "obstruction" in enforcing certain laws. *See* Majority Staff of S. Comm. on the Judiciary, Rep. on State Department Obstruction of Law Enforcement Action Against Iran's Weapons of Mass Destruction and Ballistic Missile Programs (Mar. 4, 2025), https://www.grassley.senate.gov/imo/media/doc/grassley_report_state_dept_obstruction_of_law_enforcement_action_against_iran.pdf. While amici do not presume the sealed document in this case will in fact provide evidence with respect to allegations like these, there can be no question as to the public importance of and public interest in information that may relate to such debates. *Globe Newspaper Co.*, 457 U.S. at 606 (access allows "the public to participate in and serve as a check upon the judicial process").

"countervailing considerations in 'extraordinary circumstances'" to overcome the common law presumption, *Olson*, 29 F.4th at 93 (quoting *Amodeo II*, 71 F.3d at 1048).

With respect to the common law, once the common law presumption of access attaches, courts balance the "weight of the presumption of access" against "countervailing factors," such as "the danger of impairing law enforcement or judicial efficiency" and "the privacy interests of those resisting disclosure," to determine if "extraordinary circumstances" warrant restricting public access. *Amodeo II*, 71 F.3d at 1048, 1050–51; *accord Lugosch*, 435 F.3d at 120. Importantly, generalized claims of privacy do not suffice. *Lugosch*, 435 F.3d at 120. Moreover, the inclusion in a document of confidential information is not a basis for sealing the entire document. *Id*. And even where the judicial document references a non-party, courts closely scrutinize and reject bare invocations of privacy that do not outweigh the public interest in disclosure. *See, e.g*., *Olson*, 29 F.4th at 93 (rejecting that letter discussing third parties must be maintained under seal); *Standard Fin. Mgmt. Corp*., 830 F.2d at 412 (holding that, while privacy is a category of interests that under certain facts may require the access right to yield, party seeking to seal judicial documents provided "no sufficiently compelling reasons to warrant cloaking the documents in secrecy"); *United States v. Kravetz*, 706 F.3d 47, 58 (1st Cir. 2013) (rejecting argument that third-party letters

submitted in connection with sentencing should be categorically sealed, and presumption of access defeated, to protect writers' privacy; despite "a legitimate concern that the routine disclosure of third-party letters may discourage valuable input from the community during the sentencing process . . . that concern ordinarily would appear to be outweighed by positive gains"). Here, while the document contains purported banking transactions dating from 2007 to 2013, it has not been established that there is a legitimate privacy interest in the specific information contained therein, much less a privacy interest that is sufficiently extraordinary to defeat the common law presumption of access. This is particularly true to the extent that the information in the exhibit relates to allegedly unlawful transactions involving or benefitting sanctioned entities.

There are other "special circumstances" that additionally favor access under the common law. As noted above, there is significant public interest in this important litigation and the accuracy of the allegations levied. *See supra* Section I.C & notes 5–6. Public access would allow for the public monitoring that may resolve whether the "decloaked" transactions show what Brutus alleges. Additionally, contrary to what the SCB argued below, Opp. At _, "[t]he appropriateness of making court files accessible is accentuated in cases where the government is a party." *Standard Fin. Mgmt. Corp.*, 830 F.2d at 410. As the First Circuit put it, "in such circumstances, the public's right to know what the executive

branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch." *Id.*

Nor was the stringent First Amendment presumption overcome here. Once a First Amendment right of access to a judicial document is found, the document "may be sealed [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.'" *Lugosch*, 435 F.3d at 120 (first quoting *Press-Enterprise II*, 478 U.S. at 13–14; then quoting *Press Enterprise I*, 464 U.S. at 510). And just as generalized privacy concerns, without more, do not defeat the common law right, nor do they represent an overriding interest that overcomes the First Amendment. *See id.* (reversing sealing and remanding because "[w]here privacy interests in wiretapped conversations are asserted, the court should consider whose privacy interests might be infringed, how they would be infringed, what portions of the tapes might infringe them, and what portion of the evidence consisted of the tapes" (citation and internal quotation marks omitted)); *Civ. Beat L. Ctr. for Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1209 (9th Cir. 2024) (rejecting categorical sealing of records containing confidential health information and requiring any limitations on access be justified on case-by-case basis with specific reasons).

What is more, many of the alleged transactions were previously disclosed in Brutus' Declarations. *See* Doc. Nos. 104 and 105. Any sealing of Exhibit K as to

those transactions would be ineffective and cannot survive the tailoring analysis under the law. *See Gambale v. Deutsche Bank AG*, 377 F.3d 133, 144 & n.11 (2d Cir. 2004) ("[H]owever confidential [information in a court record] may have been," since its dissemination, "it was confidential no longer," and once "[t]he genie is out of the bottle, . . . [w]e have not the means to put the genie back"); *Grossberg v. Fox Corp.*, 23-CV-2368, 2023 WL 2612262, at *1 (S.D.N.Y. Mar. 23, 2023) (courts "routinely deny sealing requests where ... the information to be sealed is already publicly available) (collecting cases); *Charlemagne v. Educ. Alliance, Inc.*, 22-CV-1136, 2022 WL 1421480, at *2 (S.D.N.Y. May 5, 2022) (denying redaction request as "futile" where information in question was already public). Any closure must be justified with reference to "a substantial probability" that the requested "closure would prevent" the identified harm. *Press-Enterprise II*, 478 U.S. at 14. Where at least some of information sought to be closed has already be released, that standard cannot be satisfied. Absent evidence of an overriding interest that could overcome First Amendment access or the right of access provided under the common law, and given the considerations favoring openness here, with respect to the seal on Exhibit K, the Order should be reversed.

III. The exhibit was sealed in its entirety and without specific, on-the-record findings.

It is not enough for a lower court to decide for itself that a document that should otherwise be accessible to the public should instead be sealed. It must

articulate the overriding interest in closure "along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." *See Press-Enterprise I*, 464 U.S. at 510. To do this, the trial court reviews and analyzes the judicial record to determine that sealing is necessary to protect a compelling interest and that any sealing is only as extensive as required to protect that compelling interest. *See Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, No. 14-CV-6867, 2016 WL 1071107, at *10 (S.D.N.Y. Mar. 18, 2016), *aff'd,* 814 F.3d 132 (2d Cir. 2016) ("Accordingly, determining whether the ethical concerns raised by providing public access to a judicial document outweigh the public's constitutional right of access must be done on a case-by-case basis."). "Broad and general findings" by the court "are not sufficient to justify closure." *E.g.*, *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987).

Here, the District Court made no specific, on-the-record findings that show it meaningfully assessed the existence of privacy interests in the exhibit containing these banking records, which dated from 2007 to 2013. It did not indicate how many of the transactions might implicate a privacy interest or appear to consider whether some might not at all due to the passage of time or possible illegality in the transaction. Nor did the Court explain why any such claimed ongoing privacy interest outweighed the public interest in access. While in the proper case, the presumption may yield to countervailing considerations or overriding interests,

potentially including a legitimate privacy interest, the District Court set forth no explanation for why the presumption was defeated here.

Nor did the District Court appear to consider redactions to ensure the sealing would be as limited as possible. *Amodeo I*, 44 F.3d at 147 (remanding for court to "make its own redactions, supported by specific findings, after a careful review of all claims for and against access"). This too was in error. Even in cases in which a judicial document contains confidential information sufficiently sensitive to keep under seal, where it is "unclear" "why the [district] court concluded that the entire document should remain under seal" remand is required to consider whether "portions . . . may be amenable to public access." *IDT Corp. v. eBay*, 709 F.3d 1220, 1224 (8th Cir. 2013). If the trial court believes the confidential information is so "embedded as to make redaction impracticable," this too must be explained on the record.

If this Court declines to order unsealing in the first instance, amici respectfully request that it remand to the District Court for a determination as to whether all or portions of the exhibit may be unsealed, supported with specific findings.

CONCLUSION

For the foregoing reasons, amici curiae urge this Court to reverse the District Court's order denying access to the judicial document in this case.

Dated: April 29, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), Loc. R. 29.1(c), and Loc. R. 32.1(a)(4)(A) because it contains 5,692 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point, Times New Roman font.

Dated: April 29, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system, with a resulting electronic notice to all counsel of record.

Dated: April 29, 2025

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