

No. 24-5839

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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NIKKI BOLLINGER GRAE, et al.,  
Plaintiffs-Appellees,

and

THE NASHVILLE BANNER,  
Intervenor-Appellant

v.

CORRECTIONS CORPORATION OF AMERICA, et al.,  
Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Tennessee, No. 3:16-cv-02267  
Hon. Aleta A. Trauger, United States District Judge

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**BRIEF OF INTERVENOR-APPELLANT  
THE NASHVILLE BANNER**

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November 6, 2024

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

# Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 24-5839

Case Name: Grae et al. v. Corr. Corp. of Am. et al.

Name of counsel: Wendy Liu

Pursuant to 6th Cir. R. 26.1, The Nashville Banner

*Name of Party*

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

## CERTIFICATE OF SERVICE

I certify that on November 6, 2024 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Wendy Liu

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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## **STATEMENT IN SUPPORT OF ORAL ARGUMENT**

Intervenor-Appellant the Nashville Banner (the Banner) respectfully requests oral argument. This case presents the question whether the strong presumption in favor of openness of court records is overcome by a party's generalized assertion that the information in the records is confidential or irrelevant, or by the court's interest in incentivizing the filing of certain records. The issue presented is important in light of the recurring nature of unsealing issues, and there is considerable public interest in the underlying records. The Banner believes that oral argument will assist the Court in deciding the case.

## **STATEMENT OF JURISDICTION**

In the order on appeal, the district court denied in part a motion by the Banner to unseal records. The district court had subject matter jurisdiction over the underlying action pursuant to 28 U.S.C. § 1331. The district court issued its decision on August 16, 2024. Order, RE 515, 27395–405. The Banner timely filed its notice of appeal on September 12, 2024. Notice of Appeal, RE 517, Page ID #27412. This Court has jurisdiction over this appeal under the collateral order doctrine. *See Rudd*

*Equip. Co. v. John Deere Constr. & Forestry Co.*, 834 F.3d 589, 592–93 (6th Cir. 2016).

## **STATEMENT OF THE ISSUE**

Whether the district court erred in denying the unsealing of deposition transcripts that were filed in court as exhibits to summary judgment and other motions, based on the court’s interest in incentivizing parties to submit entire transcripts and the defendants’ generalized assertion that the information was confidential and irrelevant to the court’s resolution of the motions.

## **STATEMENT OF THE CASE**

### **A. The Underlying Litigation and the Sealed Records**

Defendant CoreCivic (previously, Corrections Corporation of America) is a publicly traded company that owns and operates private prisons and detention facilities. Memorandum Opinion, RE 447, Page ID #24519. Between 2012 and 2016, pursuant to contracts with the U.S. Bureau of Prisons (BOP), CoreCivic operated five facilities housing BOP inmates. Memorandum Opinion, RE 447, Page ID #24520.

A 2016 review by the Department of Justice’s Office of Inspector General found that prisons operated by CoreCivic had significant safety



and security deficiencies. The Office of Inspector General reported that “CoreCivic facilities experienced substantially higher rates, relative to BOP institutions, of a number of unwelcome occurrences, such as inmate fights, inmate-on-inmate assaults, and suicide attempts and self-mutilations.” Memorandum Opinion, RE 447, Page ID #24534 (citing Office of Inspector General, *Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons* (2016)); see Memorandum Opinion, RE 447, Page ID #24534 (referencing the death of a correctional officer at a CoreCivic facility). Then-Deputy Attorney General Sally Q. Yates subsequently issued a memorandum directing BOP to decline to renew private prison contracts or reduce substantially BOP’s use of private prisons, citing as an example BOP’s decision declining to renew a contract for a CoreCivic facility. Memorandum Opinion, RE 447, Page ID #24535–36.

CoreCivic’s stock price then plummeted, and this securities class action followed. The plaintiffs alleged, on behalf of themselves and others similarly situated, that defendants CoreCivic and CoreCivic’s principals violated federal securities law by making false and misleading

statements about CoreCivic's business, operations, and compliance policies. Amended Complaint, RE 57, Page ID #654.

During the discovery phase of this lawsuit, at the parties' request, the district court entered a stipulated protective order that provided that materials exchanged in discovery could be designated as "confidential" by a party or non-party producing that material. Protective Order, RE 86, Page ID #1684–99. The protective order stated that "confidential" records "submitted to the Court in connection with a motion or court proceeding shall be filed under seal, redacted, or protected from public disclosure." Protective Order, RE 86, Page ID #1693.

Throughout the course of the litigation, the parties filed under seal hundreds of documents encompassing thousands of pages of records. For instance, the parties and non-party BOP, which had produced documents in the litigation, moved to seal documents submitted in connection with, among other things, motions to compel discovery, a motion for class certification, a motion for reconsideration of the certification decision, summary judgment motions, *Daubert* motions, and even a motion to extend deadlines. The Court granted every motion to seal, without

making specific factual findings or offering reasoning. *See, e.g.*, Order, RE 128, Page ID #3511 (stating only “Motion GRANTED.”).

In a later decision, the district court quoted without redaction certain sealed information. The court stated that, although it “ha[d], so far, honored the parties’ confidentiality claims,” it disagreed with certain of the confidentiality assertions made by the defendants (collectively, CoreCivic). Memorandum Opinion, RE 165, Page ID #4418. The court stated that it “discern[ed] no serious threat of unfair competition associated with disclosure of the relevant communications” and that “[n]one of the cited internal conversations reveal[s] any confidential CoreCivic strategies, practices, or research and development.” Memorandum Opinion, RE 165, Page ID #4418. The district court, however, did not unseal at the time the records that it quoted.

After the court decided the parties’ summary judgment and *Daubert* motions, and less than one month before trial was scheduled to commence, CoreCivic settled the class’s claims for \$56 million. Stipulation, RE 463, Page ID #24844–82. The Court approved the class action settlement and entered final judgment on November 8, 2021. Final

Judgment and Order, RE 479, Page ID #25424–30; Entry of Judgment, RE 480, Page ID #25431.

Of the hundreds of documents filed under seal, only a handful of records were unsealed while the lawsuit was pending. At final judgment, thousands of pages of materials filed on the docket remained under seal, including materials that were publicly available elsewhere.

### **B. Post-Judgment Motions to Intervene and Unseal**

Shortly after the securities class action settled, Marie Newby, on behalf of herself and as administrator of the Estate of Terry Childress, moved to intervene and unseal the parties' class certification, summary judgment, and *Daubert* motions, responses, replies, and exhibits. Motion to Intervene and Unseal, RE 481, Page ID #25432–46. In response, the district court unsealed only the documents that CoreCivic and BOP did not oppose unsealing. *See* Order, RE 494, Page ID #26214. Ms. Newby appealed, but she and CoreCivic settled before her appeal was resolved.

Eddie Tardy then moved to intervene and assume Ms. Newby's role in the appeal. He, like Ms. Newby, was preparing to file (and then did file) a lawsuit alleging the wrongful death of his child in a CoreCivic facility. This Court, however, found that Mr. Tardy lacked "standing to

intervene on the public's behalf, having repeatedly disclaimed any need for the documents himself." *Grae v. Corr. Corp. of Am.*, 57 F.4th 567, 569 (6th Cir. 2023); *see id.* at 568.

### **C. The Nashville Banner's motion to unseal**

On November 1, 2023, the Banner, a locally owned and community-supported civic news publication, filed a motion to intervene for the limited purpose of moving to unseal and filed a motion to unseal all the sealed records on the docket. RE 503, Motion to Intervene and Unseal, Page ID #26050–68. The Banner and its reporters are interested in reporting on the conditions in private prisons, including CoreCivic facilities, and the serious safety and security issues at CoreCivic facilities. Declaration, RE 504-1, Page ID #26271–72. The sealing of the records adversely affects the Banner's ability to report. Declaration, RE 504-1, Page ID #26273. The Banner's motion to unseal argued that the public has a First Amendment and common-law right of access to court filings, and that in light of the strong presumption in favor of openness regarding court records, only the most compelling reasons could justify nondisclosure. It argued that the district court's sealing orders lacked the requisite specific findings and conclusions justifying nondisclosure. In

addition, the Banner argued that the parties had failed to meet their heavy burden to demonstrate that a compelling reason justifies sealing. Memorandum, RE 504, Page ID #26250–70.

CoreCivic and BOP partially opposed the Banner’s motion to unseal, asserting that they had met their burdens to seal numerous documents. BOP Opposition, RE 512, Page ID #26350–61; CoreCivic Opposition, RE 513, Page ID #26362–86. Nevertheless, CoreCivic and BOP did not dispute that sealing was improper as to 188 docket entries; indeed, CoreCivic conceded that sealing was a mistake for some and was unjustified for others in light of the passage of time. *See* CoreCivic Opposition, RE 513, Page ID #26365, 26369–74, 26376–79.

The district court granted the Banner’s motion to intervene, and it granted in part and denied in part the Banner’s motion to unseal. The court first stated that complying with this Court’s requirement that the court set forth specific findings and conclusions justifying nondisclosure “can be a serious challenge in major, document-heavy litigation” and that it was not “require[d] ... to go through an empty exercise of reinventing the wheel for every successive filing in ... a case.” Memorandum & Order, RE 515, Page ID #27398–99. The court then granted in part the Banner’s

motion. As it had in response to Ms. Newby's motion to unseal, the court ordered the unsealing of the records as to which CoreCivic and BOP did not oppose unsealing, and it denied unsealing as to all other records. *See* Memorandum & Order, RE 515, Page ID #27405.

As relevant here, the court denied the motion to unseal as to nearly two dozen deposition transcripts filed by the parties. The court stated that excerpts of those transcripts "that were actually relevant to substantive matters decided by the court" were filed publicly, and that the full transcripts "were not strictly a necessary component of this litigation," although "frequently helpful to the court." Memorandum & Order, RE 515, Page ID #27402. The court concluded that "its interest in encouraging parties to file supplemental full transcripts, combined with CoreCivic's assertion of its interests in confidential information" justified the sealing of the transcripts. Memorandum & Order, RE 515, Page ID #27402.

### **SUMMARY OF ARGUMENT**

The district court erred in denying the unsealing of nearly two dozen deposition transcripts filed on the court docket. As this Court has recognized, the public has a right to access court filings. Under this

Court's well-established law, the strong presumption in favor of openness for court records can be overcome only for the most compelling of reasons: if the information contains trade secrets, is covered by a recognized privilege, or is required by statute to be kept confidential.

The information in the sealed transcripts falls into none of those categories. CoreCivic's generalized assertions that the transcripts contain "confidential" information that was "not relevant" to the court's resolution of a motion are patently insufficient to overcome the strong presumption in favor of public access. And the district court's interest in incentivizing parties to file the records because of their usefulness to the court is not a legitimate basis for court secrecy; indeed, it supports unsealing. Because the public interest in the sealed records is significant and no compelling reason justifies sealing, the Court should reverse the district court's decision denying unsealing of the full deposition transcripts.

### **STANDARD OF REVIEW**

This Court "review[s] decisions of the district court to seal court documents or records, as well as orders lifting or modifying a seal, for abuse of discretion." *Rudd Equip.*, 834 F.3d at 593. Nevertheless, "[i]n



light of the important rights involved, the district court’s decision is *not* accorded’ the deference that standard normally brings.” *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 306 (6th Cir. 2016) (emphasis added); *see Rudd Equip.*, 834 F.3d at 593 (stating that “the district court’s decision is not accorded the traditional scope of ‘narrow review reserved for discretionary decisions based on first-hand observations’” (citation omitted)).

## ARGUMENT

### **I. Deposition transcripts filed in court are court records subject to the strong presumption in favor of openness.**

The public has a right of access to documents filed with the court. *See Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177–80 (6th Cir. 1983). The public’s right of access to court filings springs from two sources, the common law and the First Amendment, and applies to civil and criminal cases alike. *Id.*; *see Rudd Equip.*, 834 F.3d at 595. As this Court has reiterated, there is a “‘strong presumption in favor of openness’ regarding court records.” *Rudd Equip.*, 834 F.3d at 593 (quoting *Brown & Williamson*, 710 F.2d at 1179); *see Meyer Goldberg, Inc., of Lorain v. Fisher Foods, Inc.*, 823 F.2d 159, 163 (6th Cir. 1987)

(discussing the “‘long-established legal tradition,’ which recognizes ‘the presumptive right of the public to inspect and copy’”).

In light of the strong presumption in favor of openness, sealing court records is “generally impermissible.” *In re Nat’l Prescription Opiate Litig.*, 927 F.3d 919, 939 (6th Cir. 2019). This Court has explained that there is a “‘stark difference’ between court orders entered to preserve the secrecy of proprietary information while the parties trade discovery, and the sealing of the court’s docket and filings.” *Rudd Equip.*, 834 F.3d at 593. “The line between these two stages, discovery and adjudicative, is crossed when the parties place material in the court record.” *Shane Grp.*, 825 F.3d at 305. “Unlike information merely exchanged between the parties, [t]he public has a strong interest in obtaining the information contained in the court record.” *Id.* “That interest rests on several grounds,” including “the litigation’s result,” the public’s “entitle[ment] to assess for itself the merits of judicial decisions,” and “the conduct giving rise to the case,” for “secrecy insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption.” *Id.* (quotation marks and citation omitted).

To overcome the strong presumption of openness, the party seeking to seal bears “a heavy” burden: “Only the most compelling reasons can justify non-disclosure of judicial records.” *Shane Grp.*, 825 F.3d at 305 (quoting *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983)). “[I]n 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; see M.D. Tenn. L.R. 5.03(a). “Moreover, the greater the public interest in the litigation’s subject matter, the greater the showing necessary to overcome the presumption of access.” *Shane Grp.*, 825 F.3d at 305. Where sealing is warranted, “the seal itself must be narrowly tailored to serve that [compelling] reason and should analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Rudd Equip.*, 834 F.3d at 594 (quotation marks omitted).

In this case, deposition transcripts were filed as exhibits supporting or opposing numerous motions. See Transcript, RE 267-1, Transcript, RE 267-2, Transcript, RE 267-3, Transcript, RE 267-4, Transcript, RE 267-

15, Transcript, RE 267-16 (submitted in connection with motion to preclude reliance on an advice-of-counsel defense); Transcript, RE 387-1, Transcript, RE 387-2, Transcript, RE 389-1, Transcript, RE 389-2, Transcript, RE 389-4 (submitted in connection with *Daubert* motions); Transcript, RE 398-2, Transcript, RE 398-3, Transcript, RE 398-8, Transcript, RE 399-10, Transcript, RE 399-11, Transcript, RE 400-6, Transcript, RE 400-12, Transcript, RE 400-13, Transcript, RE 401-15, Transcript, RE 401-18, Transcript, RE 401-20, Transcript, RE 401-24, Transcript, RE 401-26 (submitted in connection with summary judgment motion).<sup>1</sup> Because they are court records, the transcripts are subject to the strong presumption in favor of openness.

## **II. The strong presumption in favor of openness requires unsealing the deposition transcripts filed in court.**

In light of the foregoing, the district court's decision denying the unsealing of the full deposition transcripts cannot stand. The public interest in this case is strong, and no compelling reason overcomes the presumption of openness as to these court records. Neither CoreCivic's assertions that the information is confidential and irrelevant, nor the

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<sup>1</sup> The Page ID #s for these records are unknown to undersigned counsel because these records were filed under seal.

district court's desire to incentivize filing complete transcripts, is sufficient to overcome the public's right to access the records.

**A. The strong presumption in favor of openness is particularly strong in this case.**

CoreCivic's already heavy burden to overcome the strong presumption in favor of public access is especially heavy in this case. First, because the underlying case is a class action, "where by definition some members of the public are also parties to the case, the standards for denying public access to the record should be applied ... with particular strictness." *Shane Grp.*, 825 F.3d at 305 (cleaned up).

Second, the importance of the subject matter of the underlying litigation makes the "strong presumption in favor of openness ... appl[y] here with extra strength." *In re Nat'l Prescription Opiate Litig.*, 927 F.3d at 939; *see Shane Grp.*, 825 F.3d at 305 (stating that "the greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access"). As the district court recognized, "[t]here are ... strong, legitimate public interests in information regarding [CoreCivic's] operations and shortcomings, in addition to the ever-present public interest in transparent court proceedings." Order, RE 494, Page ID #26212. "CoreCivic is a public

contractor accused of misrepresenting the quality of services it provided in exchange for public funds” and “is responsible for the ongoing health, safety, and security of the many individuals detained in its facilities.” Order, RE 494, Page ID #26212 (typo corrected). Thus, as the court below agreed, “the public’s interests in accessing the materials at issue in this case are stronger than in most ordinary litigation between private parties.” Order, RE 494, Page ID #26212.

**B. No compelling reason justifies sealing the deposition transcripts.**

The sealed information in the deposition transcripts do not fall within any of the three categories recognized by this Circuit as a legitimate reason justifying secrecy: “trade secrets, information covered by a recognized privilege (such as the attorney-client privilege), [or] information required by statute to be maintained in confidence,” *Shane Grp.*, 825 F.3d at 308; see *Brown & Williamson*, 710 F.2d at 1180. CoreCivic does not contend otherwise, and nothing in the publicly filed excerpts of the deposition transcripts suggests that the sealed testimony contains any such information. See Transcript Excerpts, RE 513-8, Page ID #27103–343; Transcript Excerpts, RE 513-9, Page ID #27344–75. Indeed, given that the underlying litigation alleged fraud from

CoreCivic's statements *to the public*, it is not surprising that the deposition testimony contain no trade secrets, privileged information, or information required to be kept confidential by statute.

1. CoreCivic asserts that the full transcripts should be sealed because they contain a "significant amount of BOP and CoreCivic confidential information." CoreCivic Opposition, RE 513, Page ID #26383. To begin with, this assertion is belied by the fact that BOP does not assert confidentiality or oppose the unsealing of these records. *See* BOP Opposition, RE 512, Page ID #26357.

Further, CoreCivic's generalized assertion that the transcripts contain confidential information is insufficient to overcome the strong public presumption in favor of public access. CoreCivic "bear[s] the burden of showing that 'disclosure will work a clearly defined and serious injury[,] [a]nd 'in delineating the injury to be prevented, specificity is essential.'" *Shane Grp.*, 825 F.3d at 307–08 (internal citation omitted). Rather than specifying the harm resulting from disclosure, CoreCivic "offers only platitudes," *id.* at 308, that fail to discharge CoreCivic's heavy burden to justify sealing.

Moreover, the purported confidentiality of information is not a sufficient reason to seal court records. Indeed, such a reason “conflat[es] the standards for protective orders, which concern secrecy within the discovery process, and orders to seal filings, which implicate the right of the public to access court records.” *Lipman v. Budish*, 974 F.3d 726, 753 (6th Cir. 2020); see *Shane Grp.*, 825 F.3d at 307. Although an assertion of confidentiality may suffice under “a mere protective order restrict[ing] access to discovery materials,” that “is not reason enough ... to seal from public view materials that the parties have chosen to place *in the court record.*” *Shane Grp.*, 825 F.3d at 307.

To the extent that CoreCivic’s concern is about potential competitive or reputational harm, such concerns are “simply not the sort of harm that sealing the court’s record is aimed to prevent.” *Rudd Equip.*, 834 F.3d at 594 (reputational harm); see *Shane Grp.*, 825 F.3d at 307–08 (concluding that the company’s “concern about ‘competitively-sensitive financial and negotiating information’” was “inadequate” to justify sealing). In addition, the sealed testimony concerns events that are approximately a decade old, see Memorandum Opinion, RE 447, Page ID #24519 (relevant time period for the case was from 2012–2016), and



CoreCivic “no longer operate[s] any prison contracts for the BOP,” CoreCivic Annual Report 64, SEC Form 10-K (2023). Any concerns based on the “sensitivity of the information and the potential for competitive injury” thus have been weakened by the passage of time. *FTC v. AbbVie Prods. LLC*, 713 F.3d 54, 69 (11th Cir. 2013); *see id.* at 71 (stating that “the passage of time had altered the balance enough so that the value of public access ... exceeded the value of confidentiality”).

CoreCivic’s assertion that the sealed information is “not relevant to the resolution of the motions,” CoreCivic Opposition, RE 513, Page ID #26383, likewise does not justify sealing. As this Court has explained, “the public is entitled to assess for itself the merits of judicial decisions [and] ... ascertain[] what evidence and records the District Court and this Court have relied upon in reaching [their] decisions.” *Shane Grp.*, 825 F.3d at 305. Access to the full transcripts allows the public to assess for itself the relevance of the testimony contained in the court records. *See Metlife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 666 (D.C. Cir. 2017) (stating that documents were judicial records subject to the right of public access “notwithstanding ... the defendants’ contention that many of them were *not* relevant to the proceedings” (discussing *United*

*States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980)); *Pryor v. City of Clearlake*, 2012 WL 2711032, at \*2 (N.D. Cal. July 6, 2012) (stating that “the standard for sealing records is not the relevance of evidence submitted or the fact that briefing referred to evidence eventually found to be irrelevant”). In addition, the notion that public access applies only to information relevant to the court’s disposition of a motion undermines the public’s interest in “the conduct giving rise to the case”—another ground for public access. *Shane Grp.*, 825 F.3d at 305.

Moreover, CoreCivic’s position that information not “cited in the briefing and Order” should be sealed, CoreCivic Opposition, RE 513, Page ID #26383, flips the strong presumption in favor of public access. Instead of demonstrating on a “line-by-line basis[] that specific information in the court record meets the demanding requirements for a seal,” *Shane Grp.*, 825 F.3d at 308, CoreCivic asks for continued sealing of the entirety of the filed transcripts, aside from the portions cited by the parties and the court—without consideration of whether any of the information is a trade secret, privileged, or within the scope of a statutory confidentiality provision. For example, rather than a “narrowly tailored” seal, *id.* at 305, CoreCivic maintains that, for two transcripts, hundreds of pages should

be entirely sealed and only four pages publicly disclosed. *See* Transcript Excerpts, RE 513-8, Page ID #27283–85; Transcript Excerpts, RE 513-8, Page ID #27341–43. “Carried to its logical conclusion, that view would permit the redaction of every page of a brief or joint appendix that a court opinion did not cite or quote .... Needless to say, this would greatly diminish the common-law right of access.” *Metlife*, 865 F.3d at 668–69.

2. In denying unsealing of the full deposition transcripts, the district court added a reason not asserted by CoreCivic: It stated that, because the filing of complete transcripts is “frequently helpful to the court,” the court’s “interest in encouraging parties to file supplemental full transcripts” also supported sealing, because parties might not file complete transcripts if they were not confident of sealing. Memorandum & Order, RE 515, Page ID #27402. The court’s reasoning does not justify sealing under this Court’s standards. *Cf. Shane Grp.*, 825 F.3d at 308. As this Court has explained, a party’s “reli[ance] on a seal in filing its documents with the court ... is too thin a reed” to justify sealing. *Rudd Equip.*, 834 F.3d at 595. Moreover, the observation that “[t]he filing of complete transcripts is ... frequently helpful to the court,” Memorandum & Order, RE 515, Page ID #27402, weighs in favor of disclosure, not

secrecy. Just as complete transcripts provide the court with context for the parties' arguments, they provide the public with that same context. *See also Shane Grp.*, 825 F.3d at 305 (discussing the public's entitlement to assess the merits of court decisions and the records relied on by the court). And just as parties might prefer other material to be kept under seal, the full transcripts too become presumptively open to the public once filed. *See Brown & Williamson*, 710 F.2d at 1180 (stating that "the natural desire of parties to shield prejudicial information contained in judicial records ... cannot be accommodated by courts without seriously undermining the tradition of an open judicial system").

## CONCLUSION

For the foregoing reasons, this Court should reverse the district court's decision denying the unsealing of the full deposition transcripts and remand with instructions to unseal the transcripts.

Respectfully submitted,

*/s/ Wendy Liu*

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November 6, 2024

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). As calculated by my word processing software (Microsoft Word for Office 365), the brief contains 4,147 words, not counting the parts of the brief excluded by Federal Rule of Appellate Procedure 32(f) and Sixth Circuit Rule 32(b)(1). The brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief is composed in a 14-point proportional typeface, Century Schoolbook.

*/s/ Wendy Liu*

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Wendy Liu

## CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

*/s/ Wendy Liu* \_\_\_\_\_

Wendy Liu

**DESIGNATION OF RELEVANT DISTRICT COURT  
DOCUMENTS**

<b>Record Entry Number</b>	<b>Description</b>	<b>Page ID Numbers</b>
57	Amended Consolidated Class Action Complaint	652–726
82-1	Parties’ Stipulation and Proposed Protective Order	1644–1662
86	Revised Stipulation and Protective Order	1684–1701
128	Order Granting Motion to Seal	3511
177	Stipulation and Order Amending Protective Order to Protect Source Selection Information	4511–4519
165	Memorandum Opinion on Motion to Reconsider Class Certification Decision	4412–48
Sealed 267-1	Deposition Transcript of Patrick Swindle	Unknown <sup>2</sup>
Sealed 267-2	Deposition Transcript of Todd J. Mullenger	Unknown
Sealed 267-3	Deposition Transcript of Damon Hininger	Unknown
Sealed 267-4	Deposition Transcript of David Garfinkle	Unknown
Sealed 267-15	Deposition Transcript of Cameron Hopewell	Unknown
Sealed 267-16	Deposition Transcript of Damon Hininger	Unknown
288	Defendants’ Motion to Seal	9546–54
291	Order Granting Motion to Seal	9773
Sealed 387-1	Deposition Transcript of Lucy P. Allen	Unknown
Sealed 387-2	Deposition Transcript of W. Scott Dalrymple	Unknown
Sealed 389-1	Deposition Transcript of D. Scott Dodrill	Unknown

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<sup>2</sup> For all “Unknown” statements in the Page ID Numbers column, counsel for Intervenor-Appellant does not know the Page ID numbers for the record because the record is under seal.



Sealed 389-2	Deposition Transcript of Harley G. Lappin	Unknown
Sealed 389-4	Deposition Transcript of Harley G. Lappin	Unknown
Sealed 398-2	Deposition Transcript of Donald William Murray	Unknown
Sealed 398-3	Deposition Transcript of D. Scott Dodrill	Unknown
Sealed 398-8	Deposition Transcript of Douglas M. Martz	Unknown
Sealed 399-10	Deposition Transcript of Thurgood Marshall, Jr.	Unknown
Sealed 399-11	Deposition Transcript of William Dalius	Unknown
Sealed 400-6	Deposition Transcript of David Garfinkle	Unknown
Sealed 400-12	Deposition Transcript of Harley G. Lappin	Unknown
Sealed 400-13	Deposition Transcript of Harley G. Lappin	Unknown
Sealed 401-15	Deposition Transcript of Bart VerHulst	Unknown
Sealed 401-18	Deposition Transcript of Justin Marlowe	Unknown
Sealed 401-20	Deposition Transcript of Donna Mellendick	Unknown
Sealed 401-24	Deposition Transcript of Damon Hininger	Unknown
Sealed 401-26	Deposition Transcript of John Baxter	Unknown
409	Bureau of Prisons' Motion to Seal	23460-64
410	Bureau of Prisons' Memorandum in Support of Motion to Seal	23465-75
413	Defendants' Motion to Seal	23485-97
414	Order Granting Bureau of Prisons' Motion to Seal	23860
415	Order Granting Defendants' Motion to Seal	23861
447	Memorandum Opinion on Motions for Summary Judgment	24518-70
463	Stipulation of Settlement	24844-82
479	Final Judgment and Order of Dismissal with Prejudice	25424-30

480	Entry of Judgment	25431
481	Newby's Motion to Intervene and Unseal	25432-46
492	Defendants' Partial Opposition to Newby Motion to Intervene and Unseal	26050-68
494	Order on Newby's Motion to Intervene and Unseal	26209-14
503	The Nashville Banner's Motion to Intervene and Unseal	26244-49
504	The Nashville Banner's Memorandum in Support of Motion to Intervene and Unseal	26250-70
504-1	Declaration of Steve Cavendish	26271-74
505	Order Reopening Case	26275
512	Bureau of Prisons' Opposition to Motion to Intervene and Unseal	26350-61
513	CoreCivic's Opposition to Motion to Intervene and Unseal	26362-86
513-1	Appendix of Sealed Information	26387-401
513-8	Excerpts of Sealed Deposition Transcripts	27103-343
513-9	Excerpts of Sealed Deposition Transcripts	27345-375
514	The Nashville Banner's Reply in Support of Motion to Intervene and Unseal	27376-86
514-1	The Nashville Banner's Reply in Support of Motion to Intervene and Unseal, Ex. 1	27387-91
514-2	The Nashville Banner's Reply in Support of Motion to Intervene and Unseal, Ex. 2	27392-94
515	Memorandum & Order	27395-405
516	Notice of The Nashville Banner	27406-11
517	Notice of Appeal	27412