



Warner Norcross + Judd LLP

June 18, 2024

Hon. Jonathan J. C. Grey  
United States District Court Judge  
Theodore Levin U.S. Courthouse  
231 W. Lafayette Blvd., Room 635  
Detroit, MI 48226

Re: ***United States of America v. Aws Naser*, Case No. 22-20504**  
**Letter to Hon. Jonathan J.C. Grey on Behalf of The Intercept**

Dear Judge Grey:

Our firm represents journalist Trevor Aaronson and The Intercept, a national news organization where Mr. Aaronson has served as a contributing writer since 2015. I am writing with serious concerns over the Government's Response Opposing Defendant Aws Naser's Motion to Unseal, et al. (ECF No. 142). Please allow this letter<sup>1</sup> to (1) concur in Mr. Aws' Motion to Unseal Exhibits, et al. (ECF No. 125) based on the important public interest and the strong presumption of public access to exhibits in a criminal case; and (2) to address and correct the numerous false claims made by the Government and to remind the officers of this Court of the essential and constitutionally protected role that journalists serve in our society.

As background, Mr. Aaronson is an award-winning national journalist who has covered FBI terrorism investigations and DOJ material support prosecutions for nearly two decades.<sup>2</sup> Mr. Aaronson first contacted Mr. Naser in 2019 while producing the documentary podcast, "American ISIS." Since Mr. Naser's federal indictment, Mr. Aaronson has maintained communication with Mr. Naser and has considered producing a documentary about this case.

First, The Intercept is troubled by the Government's failure to meet the exceptionally heavy burden required to justify concealing exhibits in this criminal case.<sup>3</sup> Indeed, the First

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<sup>1</sup> Courts can and have acknowledged letters from media outlets regarding requests for open access to court proceedings. *See, e.g., United States v. Valenti*, 987 F.2d 708 (11th Cir. 1993).

<sup>2</sup> In addition to appearing in The Intercept, Mr. Aaronson's reporting has been featured in major media outlets such as CBS, NPR, MSNBC, The New York Times, The Guardian, The Daily Beast, and The Atlantic. He has also produced popular documentary podcasts on FBI cases, including the series "Alphabet Boys," and the Audible Originals, "American ISIS," "Hold Fast," and "Pulse: The Untold Story."

<sup>3</sup> "The party seeking to seal records has the heavy burden of overcoming the 'strong presumption in favor of openness.'" *Kondash v. Kia Motors Am., Inc.*, 767 F. App'x 635, 637 (6th Cir. 2019) (quoting *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305 (6th Cir. 2016)).

Amendment and common law protects the public’s right of access to judicial proceedings and court records. That right serves to allow 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). Journalists often perform the cherished and constitutionally protected function of gathering news on matters of common concern and reporting it to the public, especially on matters involving government and law enforcement.

As the United States Supreme Court has cautioned, “[a] responsible press has always been regarded as the handmaiden of effective judicial administration, *especially in the criminal field*. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 560 (1976) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)) (emphasis added).

Even further, the Sixth Circuit recognizes the public’s interest in “review[ing] the facts presented to the court.” *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1178 (6th Cir. 1983). Allowing the public to ascertain what evidence and records the Court relies on in its decision is critically important to public confidence in the administration of justice. *Id.* at 1181. “[O]nly the most compelling reasons can justify” the non-disclosure of judicial records—not mere assumptions and speculation about what one journalist may or may not do with the records. *Id.* at 1178.

Here, the FBI 302 reports the Government seeks to keep sealed hold significant public interest, not only due to the high-profile nature of Mr. Naser’s terrorism prosecution but also because they may shed light on the FBI’s partnerships with state and local law enforcement in terrorism investigations. The public has a clear interest in the FBI’s involvement in Joint Terrorism Task Forces and information-sharing agreements.<sup>4</sup>

Second, The Intercept finds the Government’s position in its opposition to Mr. Naser’s Motion to be highly speculative. As a preliminary matter, the Government makes the blatantly false allegation that Mr. Aaronson is somehow colluding with Mr. Naser to “taint the jury pool and undermine the fairness of the trial.” As a responsible and ethical journalist, Mr. Aaronson would never engage or participate in such conduct. The Government has baselessly assumed, without evidence, that Mr. Aaronson intends to release a work of journalism before the trial and that it would be “one-sided” and “sensationalized.” Many of Mr. Aaronson’s previous projects took years to report and produce, and not all his journalistic efforts result in published works.

Furthermore, the Government’s allegation that Mr. Aaronson has “improper motives” such as “promoting public scandal or gratifying private spite” is wildly inappropriate and entirely

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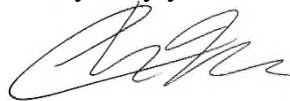
<sup>4</sup> This Court has recognized “the importance of the right to access ‘information regarding public *police activity*.’” *Somberg v. Cooper*, 582 F. Supp. 3d 438, 445 (E.D. Mich.), *leave to appeal denied sub nom. In re Somberg*, 31 F.4th 1006 (6th Cir. 2022) (emphasis in original).

unfounded. Mr. Aaronson has dedicated much of his career to reporting on FBI counterterrorism cases, aiming to inform the public about the FBI's methods in identifying and investigating alleged terrorists—an undeniably critically important topic of public interest. Mr. Naser's case, with its decade-long FBI investigation and ties to a known terrorist, is of significant public interest.<sup>5</sup>

Finally, the Government, in an apparent bid to bolster its unfounded accusation of Mr. Aaronson having “improper motives,” mentions that “Naser and Aaronson discussed a sexual assault involving a witness's family member and expressed an interest in learning more background details connected to it.” However, this statement deliberately omits crucial context: Mr. Aaronson's interest stems from allegations made by Mr. Naser that FBI agents may have made promises to investigate the alleged assault as part of an improper agreement with a parole officer.<sup>6</sup> This only serves to underscore the heightened public interest in the case.

This Court should be alarmed by the Government's public attacks on a journalist who has been working diligently to obtain the information it aims to conceal from the public. We respectfully ask the Court to unseal the exhibits in question, allowing the public to scrutinize both the government's prosecution of Mr. Naser and its public criticisms of Mr. Aaronson.

Very truly yours,



Charles C. Kadado

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<sup>5</sup> In fact, the level of public interest is already well established. Parts of Mr. Naser's story have been detailed in Mr. Aaronson's audio documentary “American ISIS,” Brett Forrest's book “Lost Son,” and has been covered multiple times by The Detroit News, among numerous other media outlets.

<sup>6</sup> For example, Mr. Naser's defense attorneys have raised concerns about the FBI and its Task Force Officer's treatment of Mr. Naser's parole “as a prolonged erasure of his Fourth Amendment rights . . .” (ECF No. 94, p.7).