

Inner City Press

August 12, 2022

By E-mail to Chambers

Hon. Eric R. Komitee United States District Judge
U.S. District Court, Eastern District of New York
225 Cadman Plaza East, Room 1426 S
Brooklyn, New York 11215

Re: Press opposition to sealing of sentencing memo / exhibit in US v. Jackson, 20-cr-476 (ERK)

Dear Judge Komitee:

In the above captioned criminal case, Assistant US Attorneys Emily J. Dean and Benjamin Weintraub in their August 11, 2022 submission (Dkt No. 105) requesting the sealing in full of a 40 minute video and state that "the government does contest that 'a party's sentencing submission is a judicial document.'"

Inner City Press opposes both.

It is extraordinary to argue that a sentencing memo, intended to influence the Court's decision on incarceration of a defendant, is not a judicial document.

Inner City Press has sought clarification of this stated policy of the US Attorney for the EDNY from his spokesman John Marzulli, without any response. (Mr. Marzulli has told Inner City Press, You can follow us through the press releases on our website, of which this entire week there have been precisely two, none about this case or policy).

The Second Circuit has observed that a document is a judicial document "not only if the judge actually relied upon it, but also if 'the judge should have considered or relied upon [it], but did not.'" *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 140 n.3 (2d Cir. 2016) (citing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006)).

This is a request to the Court that it docket and unseal, if necessary in partially redacted form, Exhibit 16 to the Sentencing Memo. "Representatives of the press must be given an opportunity to be heard on the question of their exclusion from a court proceeding, and we have recognized a similar right of news media to intervene in this Court to seek unsealing of documents filed in a court proceeding."

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Trump v. Deutsche Bank AG, 940 F.2d 146, 150 (2d Cir. 2019) (internal citations, quotation marks and alterations omitted). The Press' interest is separate and apart from that of the defense.

"The common law right of public access to judicial documents is firmly rooted in our nation's history." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006).

If appropriate, PLEASE TAKE NOTICE that Inner City Press and its undersigned reporter, in personal capacity, will move this Court before Honorable Eric C. Komitee, U.S. District Judge for the Eastern District of New York, at a date and time directed by the Court, for entry of an order granting permission to be heard on sealing or unsealing of all portions including Exhibit 16 to the Government's sentencing memorandum in *US v. Jackson*, 20-cr- 476 (ERK)

Please act on, and docket, this request, as soon as possible before the sentencing. Similar Inner City Press requests are routinely docketed in the SDNY, regardless of not being submitted on ECF. Inner City Press and the undersigned, while admitted in the SDNY, are not parties to this criminal case, nor filers in the EDNY. Thank you.

Respectfully submitted,

/s/

Matthew Russell Lee, Inner City Press

cc: Emily.Dean@usdoj.gov, benjamin.weintraub@usdoj.gov,
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