

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

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| ELIYAHU MIRLIS | : | CIV. NO. 3:16 CV 00678 (MPS) |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| RABBI DANIEL GREER, and YESHIVA OF | : | |
| NEW HAVEN, INC. | : | |
| Defendants | : | SEPTEMBER 5, 2019 |

OBJECTION TO MOTION TO INTERVENE AND UNSEAL

Aviad Hack, through undersigned counsel, respectfully objects to the State of Connecticut's Motion To Intervene and Unseal As To State of Connecticut. (ECF No. 362). The State has moved this Court to unseal portions of a videotape in accordance with this Court's decision (ECF No. 277), an order which was stayed by the Second Circuit Court of Appeals on April 18, 2018. See Mirlis v. Daniel Greer, et al., No. 18-507 (ECF No. 54) ("Defendants-Appellants and Appellant Avi Hack move, unopposed, for a stay pending appeal of the district court's order authoring public access to certain videotapes. Upon due consideration it is hereby ORDERED that the motion is GRANTED. *See U.S. Sec. & Exch. Comm'n v. Citigroup Glob. Mkts. Inc.*, 673 F.3d 158, 162) (2d Cir. 2012)). For this reason alone, the State's request should be denied.

Moreover, the State has failed to establish that intervention is permitted under Fed. R. Civ. P. 24.

I. LAW & ANALYSIS

The State's Motion to Intervene is premised on its "undeniably compelling interest in the detection, investigation, and prosecution of criminal offense committed within its borders – particularly those involving the abuse and/or exploitation of minors" and the need to "properly perform its law enforcement function...." Id. at 3. While the State's prosecution of Daniel Greer for the sexual assault and risk of injury offenses he is alleged to have committed is compelling, the motion presently before the court is untimely. Mr. Greer was arrested more than two years ago on July 26, 2017, See State v. Greer, No. NNH-CR17-0177934-T, Connecticut Superior Court, Judicial District of New Haven, and the video the State now seeks, on the eve of trial, has not been necessary for his prosecution. Presumably, the State has been properly performing its law enforcement function without this video for the past two years. The state is and has been fully aware of the content of the video it seeks and has at least knowledge that the transcript has been publicly available, if not actual possession of the same.

Regardless of the State's unseasonably late request, intervention under Fed. R. Civ. P. 24, either permissive or as of right, is inappropriate in the instant action because

the issue the State raises has already been decided. For this reason, the State cannot “establish that its interest may be impaired by the disposition of the action” as required under the four-part test under Rule 24(a)(2). The disposition of the issue has already occurred. The State recognizes that Rule 24(b) “gives the district court broad discretion to permit a nonparty to intervene in a private lawsuit where ... that party’s claims and the **pending civil action** share questions of law and fact and where such intervention would not ‘unduly delay and prejudice the adjudication of the rights of the original parties.’” (Emphasis added.) Mot. To Intervene at 4, quoting Bridgeport Harbor Place I, LLC v. Ganim, 269 F. Supp. 2d 6, 8 (D. Conn. 2002). But the State fails to recognize that this civil action is **not** pending before this court. Nor does it address the fact that the intervention would “prejudice the adjudication of the rights of the original parties” in that the State’s publication of the requested video in a state courtroom would defeat the entire purpose of the stay that is presently in effect.

As this intervention is improper and/or untimely under Rule 24, the State is left to argue that intervention is proper under the case law which recognizes that intervention is permitted to seek to modify confidentiality orders at any time. The State goes on to argue that it actually isn’t seeking to enforce the Court’s Order (ECF No. 277) because the State does not seek to make the videotape public. Perhaps this argument could be

◇ accepted if the State indicated that it had no intention of disclosing the videotape beyond prosecutors and law enforcement working on the case. However, the State's intended uses are only facially based in confidentiality. In fact, the State represents that the videotape is sought "for purposes associated with its investigation and prosecution" and further that it would be disseminated beyond members of the prosecution team and law enforce if it is admitted into evidence by the state court judge during trial. If the State does not actually intend to offer the videotape during trial, then it has no need to obtain the videotape at this point when the transcript is readily available. If the State does intend to have the videotape admitted as evidence, it is intending to publicly display the video, thereby contradicting its argument that it is not seeking to enforce this Court's Order related to the confidentiality of the tape. The State's assertion that it would then request the state court to seal the videotape, and its' entirely assumed faith that this request will be granted and enforced, is ironic given that the sealing of the videotape which was played during a trial before this court is the precise issue presently before the Second Circuit Court of Appeals.

II. CONCLUSION

The State's intended use of the video to possibly play in court "if, under certain limited circumstances, the state court judge admitted it as evidence" constitutes the

◇ public rebroadcasting of the video, which the stay is intended to prevent while the pending appeal is decided. This Court is without the authority to terminate the stay which was granted by the Second Circuit Court of Appeals.

For all of the foregoing reasons, the Motion To Intervene and Unseal should be denied.

/s/

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CERTIFICATION OF SERVICE

I hereby certify that on SEPTEMBER 5, 2019, a copy of the foregoing was filed electronically and served by mail on anyone unable to receive electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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