

**No. 21-1458**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

---

JOHN DOE  
Plaintiff-Appellant,

v.

PRINCETON UNIVERSITY  
Defendant-Appellee.

---

On Appeal from the United States District Court  
for the District of New Jersey No. 3:20-cv-04352  
(The Honorable Brian Martinotti)

---

**UNOPPOSED MOTION TO NOT VIDEO RECORD ORAL  
ARGUMENT, SEAL AUDIO RECORDING AND ANY  
TRANSCRIPT OF ORAL ARGUMENT, AND TO  
PROVISIONALLY SEAL FORTHCOMING OPINION  
PURSUANT TO L.A.R. 106.1**

---

Stephen J. Kastenberg  
Ballard Spahr LLP  
700 East Gate Drive Suite 330  
Mount Laurel, NJ 08054

*Counsel for Appellee Princeton University*

Dated: November 3, 2021

## **I. UNOPPOSED MOTION TO SEAL UNDER L.A.R. 106.1**

Defendant-Appellee Princeton University (“Appellee” or “Princeton” or the “University”) respectfully moves, pursuant to United States Court of Appeals for the Third Circuit L.A.R. 106.1, for the Court to do the following: (i) refrain from video recording the forthcoming November 10, 2021, 11:30 a.m. oral argument,<sup>1</sup> (ii) seal any audio recording or transcript of the argument, and (iii) hold the Court’s forthcoming opinion on the merits provisionally under seal to provide the parties an opportunity to request redactions or sealing should either party believe that appropriate for the same reasons as set forth below.

Appellant John Doe (“Appellant” or “Doe”) does not oppose this motion,<sup>2</sup> and previously moved to seal the Joint Appendix and Brief for Appellant as well as his Reply brief. *See* 3d Cir. Dkt. Nos. 20, 25, 31.<sup>3</sup>

## **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

The instant appeal arises from the United States District Court for the District of New Jersey’s December 31, 2020 Order granting Appellee’s Motion to Dismiss Appellant’s claim. *See* Joint App’x [hereinafter “J.A.”], at A26-27. Appellant is a

---

<sup>1</sup> 3d Cir. Dkt. No. 38.

<sup>2</sup> On October 29, 2021 and November 1, 2021, Counsel for Appellant informed counsel for Appellee via email that Appellant does not oppose this motion.

<sup>3</sup> Reference to the District Court proceedings will be made by “ECF No.\_\_\_\_.” Reference to the instant appeal proceedings will be made by “3d Cir. Dkt. No.\_\_\_\_.”

former student at Princeton University, and his claims below focus on a University Title IX investigation (i) against Appellant over claims by a fellow student (“Claimant” or “Roe”) that Appellant had committed repeated acts of intimate relationship violence against Claimant, in violation of University rules, and (ii) against Roe with respect to counterclaims asserted by Doe. *See generally* J.A., A38-A96, Compl.

On April 15, 2020, Appellant concurrently filed his Complaint and a motion to proceed with the use of pseudonyms and for a protective order. *See id.*, at A95; *Doe v. Princeton Univ.*, Case No. 3:20-cv-04352-BRM-TJB (D.N.J. April 15, 2020), ECF No. 2. On April 16, 2020, Appellee filed in the lower court its Unopposed Emergency Motion to File Documents Under Seal, which aimed to protect the disclosure of all former and current Princeton students, including a claimant/counter-respondent to a Title IX investigation and witnesses interviewed in connection therewith, to the same extent that Doe’s identity would be protected. *See id.*, ECF No. 8. On April 16, the District Court ordered Appellant’s Complaint and Motion for Temporary Restraining Order sealed, and ordered the parties to submit proposed redactions. *See id.*, ECF No. 10. Consistent with the lower court’s rulings, Appellee later filed an Unopposed Notice to Redact and Seal the transcript of oral argument held April 21, 2020 and Appellee’s Reply Memorandum of Law in Further Support of its Motion to Dismiss, which was granted. *See id.* ECF Nos. 46, 47.

On December 31, 2020, the District Court issued an Opinion granting Appellee's Motion to Dismiss. *Id.*, ECF No. 54 and an Order directing the parties to submit a joint proposed redacted version of the Opinion. *Id.*, ECF No. 55. On January 20, 2021, the District Court entered a redacted version of the Opinion. *Id.*, ECF No. 56. The District Court's Order granted Appellant thirty days to cure deficiencies in Appellant's Complaint identified in the Opinion; however, on January 27, 2021, Appellant notified the District Court of his intention to stand on his existing Complaint and appeal the District Court's Opinion and Order to this Court. *See id.*, ECF Nos. 54, 55, 57.

On March 25, 2021, Appellant filed a Motion to Continue Impoundment pursuant to 3d Cir. L.A.R. 106.1(C)(2). 3d Cir. Dkt. No. 12. This Court granted the Motion to Continue Impoundment by Order dated April 30, 2021. 3d Cir. Dkt. No. 19. On May 17, 2021, Doe filed a motion requesting to file his opening brief and the accompanying joint appendix in this matter under seal. 3d Cir. Dkt. Nos. 20, 25. Doe later also filed an unopposed motion to file his reply brief under seal. 3d Cir. Dkt. No. 30. Consistent with the Court's order continuing impoundment, the University also filed an unopposed motion to seal its brief under seal. 3d Cir. Dkt. No. 26.

To date, both Roe’s and Doe’s identities, as well as the identities of student witnesses, have remained confidential and undisclosed by the courts or the University.

### III. ARGUMENT

Under 3d Cir. L.A.R. 106.1(a), a party wishing for a document to be placed under seal must first file a motion to seal that “set[s] forth with particularity why sealing is deemed necessary.” L.A.R. 106.1(a). The motion must “explain the basis for sealing and specify the desired duration of the sealing order.” *Id.*

In this case, starting with Doe’s motion to proceed with the use of pseudonyms, the District Court consistently determined that the materials necessary for adjudication contain sensitive, private information worthy of sealing. ECF No. 10. In line with precedent in this Circuit,<sup>4</sup> this Court granted Doe’s Motion to Continue Impoundment. 3d Cir. Dkt. No. 19. Appellee anticipates that, for the reasons articulated in the prior motions to seal in this case, the forthcoming oral argument is likely to refer to certain information that this Court and the lower court

---

<sup>4</sup> Courts in this Circuit have regularly granted motions to seal documents in analogous Title IX contexts. *See, e.g. Doe v. Mercy Catholic Med. Ctr.*, No. 19-2734, 2021 U.S. App. LEXIS 8694, at \*17 n.15 (3d Cir. Mar. 25, 2021) (granting motion to seal certain documents in a Title IX matter); *Doe v. Rider Univ.*, No. 3:16-cv-04882-BRM-TJB, 2020 U.S. Dist. LEXIS 25708, at \*2–3 (D.N.J. Feb. 4, 2020) (granting motion to seal highly personal and sensitive information about non-parties who were students, including education records protected under FERPA).

previously determined should be kept confidential. 3d. Cir. Dkt. Nos. 20, 25, 28, 30. Similarly, Appellee anticipates that, like the lower court opinions, the forthcoming opinion in this Court may contain information that one or both parties would believe to be confidential and would want the opportunity to motion it to be sealed or redacted.

No less restrictive alternative is available. Appellee anticipates that “argument relating to the sealed materials” cannot be contained to separate filings because oral argument and the forthcoming opinion a likely to refer extensively to information this Court has already deemed confidential. *See* L.A.R. 106.1(a).

Appellee does not object to the time frame that Doe requested in his amended motion to seal Appellant’s Brief and the Joint Appendix, which called for sealing confidential information for twenty-five years from the close of this case. 3d Cir. Dkt. No. 25.

#### IV. CONCLUSION

For the foregoing reasons, Appellee Princeton University respectfully requests that this Court grant the Motion to Not Video Record Oral Argument, Seal Audio Recording and any Transcript of Oral Argument, and to Provisionally Seal Forthcoming Opinion Pursuant to L.A.R. 106.1.

Dated: November 3, 2021

/s/Stephen J. Kastenberg  
Stephen J. Kastenberg, Esq. (026001993)  
BALLARD SPAHR LLP  
210 Lake Drive East, Suite 200  
Cherry Hill, New Jersey 08002-1163  
Telephone: 856.761.3400  
Facsimile: 856.761.1020  
1735 Market Street  
Philadelphia PA 19103  
Kastenberg@ballardspahr.com (cell  
215.913.0350)

*Attorneys for Princeton University*

**CERTIFICATION OF COMPLIANCE**

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains no more than 5,200 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f). This motion contains a total of 1,584 words. This motion also 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). This motion has been prepared in 14-point Times New Roman, a proportionally spaced typeface, using Microsoft Word. The motion complies with Third Circuit Local Appellate Rule 31.1(c). The text of the electronic brief is identical to the text of the paper copies filed with the court. The electronic brief was subject to a virus scan and no virus was detected.

Dated: November 3, 2021

/s/Stephen J. Kastenberg  
Stephen J. Kastenberg



**THIRD CIRCUIT RULE 27.3 CERTIFICATION**

Pursuant to Third Circuit Local Appellate Rule 27.3, the undersigned counsel for Defendant-Appellee certifies that on October 29, 2021 and November 1, 2021 counsel for Appellant informed counsel for Appellee that Appellant does not oppose this motion.

Dated: November 3, 2021

/s/Stephen J. Kastenberg  
Stephen J. Kastenberg

**THIRD CIRCUIT RULE 28.3(d) CERTIFICATION**

Pursuant to Third Circuit Local Appellate Rule 28.3(d), the undersigned counsel for Defendant-Appellee certifies that he is a member of the bar of this court.

Dated: November 3, 2021

/s/Stephen J. Kastenberg  
Stephen J. Kastenberg

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2021, a true and correct copy of the foregoing Unopposed Motion to Not Video Record Oral Argument, Seal Audio Recording and any Transcript of Oral Argument, and to Provisionally Seal Forthcoming Opinion Pursuant to L.A.R. MISC. 106.1 was sent to all parties by way of electronic court filing.

Dated: November 3, 2021

/s/Stephen J. Kastenberg  
Stephen J. Kastenberg