

Supreme Court of the State of New York
Appellate Division: Third Judicial Department

In the Matter of the Application of CAMPAIGN
FOR ACCOUNTABILITY,

Docket No.: _____

Petitioner,

For a Judgment Pursuant to Judiciary Law § 90(10)
to Unseal an Attorney Disciplinary Proceeding,

- against -

GRIEVANCE COMMITTEE FOR THE THIRD
JUDICIAL DEPARTMENT, JOHN A. SARCONI
III,

Respondents.

PETITIONER'S BRIEF

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PRELIMINARY STATEMENT

Petitioner Campaign for Accountability (“CfA”) requests that this Court unseal all papers, records and documents concerning the disciplinary proceeding conducted by the Attorney Grievance Committee for the Third Judicial Department (the “Grievance Committee”) against John A. Sarcone III, the First Assistant U.S. Attorney for the Northern District of New York.

In March 2025, Mr. Sarcone was sworn in as Interim United States Attorney for the United States Attorney’s Office for the Northern District of New York (“NDNY USAO”). Shortly thereafter, he engaged in several erratic and potentially illegal acts, including (i) making false statements about an alleged assault, (ii) causing an unwarranted charge of attempted murder to be filed against the alleged assailant (which was later dropped), (iii) providing a false residential address in a sworn statement, seemingly in violation of federal law requiring that he reside in the district in which he was serving, and (iv) retaliating against the newspaper whose reporting raised questions about his residency.

Given the serious ethical concerns raised by those actions, Petitioner CfA filed a complaint with the Grievance Committee, alleging that Mr. Sarcone may have violated several of the New York Rules of Professional Conduct (“Rules”). Approximately one year later, the Grievance Committee released its decision resolving CfA’s complaint in a brief one-page letter addressed to CfA. The

Grievance Committee stated that it “determined there was a sufficient basis for a finding of professional misconduct” against Mr. Sarcone and that it “took appropriate action” against him.

Citing New York Judiciary Law § 90(10), the Committee declined to disclose what specific allegations against Mr. Sarcone it had sustained or what action it had taken, or otherwise to provide any substantive information about its decision. Section 90(10) is a provision of New York law that keeps “sealed” and “confidential” “all papers, records and documents” upon “any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney.” But “upon good cause being shown,” § 90(10) permits this Court to unseal all “such papers, records and documents.”

Good cause exists to unseal all papers, records, and documents in connection with Mr. Sarcone’s discipline. *First*, unsealing the proceeding implicates no privacy or confidentiality interests of CfA, the complainant. While the disclosure of sensitive attorney-client information may deter a complainant from filing a complaint if it were public, here there is no such information at issue in connection with Mr. Sarcone’s disciplinary proceeding. Indeed, the complainant, Petitioner CfA, was not Mr. Sarcone’s client and publicly posted its complaint at the time it was filed with the Grievance Committee. Meanwhile, Saul Morales-Garcia, the man falsely accused by Mr. Sarcone, was not the complainant and, in any event, the

allegations against him were all also widely disseminated at the time. In such circumstances, there are no corresponding victims of the attorney's misconduct whose privacy rights could possibly justify continued nondisclosure.

Second, unsealing presents no risk that Mr. Sarcone's reputation would be irreparably harmed by unfounded accusations. To the contrary, some—if not all—of the accusations have been sustained by the Grievance Committee, which has already made “a finding of professional misconduct” and taken “appropriate action” against Mr. Sarcone. Moreover, Mr. Sarcone's reputation has already been impacted by numerous news articles that highlighted his misconduct, the complaint brought against him, and the Grievance Committee's findings. Given that sweeping news coverage, the disclosure of any corresponding records is unlikely to have any significant impact on his reputation or otherwise cause any new harm. As such, the privacy and confidentiality interests of the accused attorney that ordinarily support keeping the files under seal do not exist here.

Third, and perhaps most important, there is a strong public interest in disclosure of the disciplinary proceeding records. The public has a special stake in disclosure of these proceedings because Mr. Sarcone is a public prosecutor who has already been found to have engaged in professional misconduct and who continues to wield immense prosecutorial authority as the most senior attorney at the NDNY USAO. Given that position, and the significant public trust that must be placed in

Mr. Sarcone by the courts of the Northern District and the community he serves, the contents of his disciplinary proceeding are a matter of vital public interest.

Finally, if the Court rejects Petitioner's showing of "good cause," the First Amendment independently requires access to Mr. Sarcone's disciplinary files. The Grievance Committee proceedings themselves constitute judicial proceedings that are ordinarily public under both the common law and the First Amendment, and that is especially so since Mr. Sarcone is a high-ranking public prosecutor. The secrecy provisions of § 90(10) must yield to the First Amendment in this case.

In light of the foregoing, Petitioner asks this Court to exercise its discretion to permit disclosure of all papers, records and documents concerning the disciplinary proceeding against Mr. Sarcone and the subsequent finding of professional misconduct, including whatever actions the Grievance Committee took in connection with that finding.

QUESTIONS PRESENTED

1. Is there good cause to unseal all records, papers and documents concerning the disciplinary proceeding against John A. Sarcone III?
2. Does the First Amendment require access to the records, papers and documents concerning the disciplinary proceedings against John A. Sarcone III?

STATEMENT OF FACTS

CfA is a national nonpartisan ethics watchdog organization based in Washington, D.C. that leverages research, litigation, and communications to address various forms of misconduct and malfeasance in public life. Petition (hereinafter “Pet.”) ¶¶ 9-10. As part of those efforts, CfA routinely files ethics complaints with an eye towards providing oversight bodies with the materials and information they need to pursue appropriate disciplinary action in connection with corruption, negligence, and/or unethical behavior. *Id.* ¶ 11.

A. Mr. Sarcone’s Nomination as United States Attorney

John A. Sarcone III’s position as a federal prosecutor has been mired in controversy since the start. *See* Pet. ¶¶ 16-19. He was one of several recent appointments of lawyers to serve as U.S. Attorneys who lacked any previous prosecutorial experience and who therefore drew immediate criticism. *See id.* Mr. Sarcone’s appointment came on March 4, 2025, when the Attorney General appointed Mr. Sarcone as the Interim United States Attorney for the NDNY USAO for a 120-day term. *Id.* ¶ 17. Pursuant to 28 U.S.C. § 546, at the end of 120 days, if the Senate has not acted to confirm an Interim U.S. Attorney, the interim term ends, and the district court can appoint a replacement, including the Interim U.S. Attorney, to serve until a permanent U.S. Attorney is confirmed by the Senate. *See* Pet. ¶ 18; *id.* Ex. 3.

In some districts with well-qualified Interim U.S. Attorneys, the court has appointed the Interim U.S. Attorney to serve on an ongoing basis. In NDNY, however, the court was apparently unimpressed with Mr. Sarcone’s qualifications and so it appointed instead a seasoned veteran of the U.S. Attorney’s office, Donald Kinsella, to fill the post. Pet. ¶ 18. Mr. Kinsella was nonetheless immediately fired. *Id.* In response, the NDNY court issued a statement including a thinly-veiled criticism of Mr. Sarcone. *See* Pet. Ex. 4. The court thanked Mr. Kinsella for “his willingness to return to public service so that this vacancy could be filled with a qualified, experienced former prosecutor” *Id.* Mr. Sarcone then asserted (without legal authority) that he was “serving as Acting United States Attorney for the Northern District of New York indefinitely.” Pet. ¶ 19.

Shortly thereafter, Mr. Sarcone attempted to issue subpoenas to the Attorney General of New York State, which he signed supposedly as “Acting United States Attorney.” *See generally* Pet. Ex. 3. In the ensuing litigation over the subpoenas, Judge Schofield, sitting by designation in the NDNY, noted that Mr. Sarcone’s interim appointment had ended after 120 days. *See generally id.* Without either Senate confirmation or appointment by the court, Mr. Sarcone was therefore not the Acting United States Attorney, but instead “an official who acted without lawful authority.” *In re Grand Jury Subpoenas to the Off. of the N.Y. State AG*, 2026 U.S. Dist. LEXIS 49852, at *15 (N.D.N.Y. Mar. 11, 2026). This ruling is consistent with

federal court decisions on similar facts in New Jersey, Virginia, Nevada, and California.¹ It is now on appeal to the Second Circuit. Pet. ¶ 49. Mr. Sarcone continues as the chief prosecutor in the NDNY, now styling himself the First Assistant United States Attorney. *Id.* ¶ 20.

B. The Disciplinary Complaint

1. The False Sworn Accusation of an Assault

A few months after Mr. Sarcone's interim appointment, on June 17, 2025, a surveillance video taken at the Hilton Hotel in Albany, New York, captured Mr. Sarcone standing just outside the hotel smoking a cigar and looking at his cellphone when Saul Morales-Garcia, an undocumented El Salvadoran immigrant began yelling at him and holding a knife. Pet. ¶ 23. In response, Mr. Sarcone appeared to walk towards the hotel lobby, while Morales-Garcia, seemingly continuing to yell and gesture, knife in hand, began to leave the area. *Id.* ¶ 24.

For the duration of the video, Morales-Garcia is never seen anywhere near Mr. Sarcone. *See id.* ¶ 23-25. Instead, he only appeared to yell at Mr. Sarcone from a distance, while Mr. Sarcone yelled back. *See id.* ¶ 25. Rather than call 911 during the incident with Morales-Garcia, Mr. Sarcone called Albany County Sheriff Craig

¹ *United States v. Giraud*, 795 F. Supp. 3d 560, 606 (D.N.J. 2025), *aff'd*, 160 F.4th 390 (3d Cir. 2025); *United States v. Garcia*, 2025 U.S. Dist. LEXIS 194389, at *49 (D. Nev. Sept. 30, 2025), appeal docketed, No. 25-6468 (9th Cir. Oct. 14, 2025); *United States v. Ramirez*, 807 F. Supp. 3d 1086, 1105 (C.D. Cal. 2025); *United States v. Comey*, 810 F. Supp. 3d 768, 780 (E.D. Va. 2025); *United States v. James*, 810 F. Supp. 3d 752, 763 (E.D. Va. 2025).

Apple's personal cellphone. *Id.* ¶ 26. Albany law enforcement arrived on the scene shortly thereafter and arrested Morales-Garcia. *Id.*

That same evening, Mr. Sarcone completed an Albany County Sheriff's Office "Supporting Deposition," in which he represented that he was "standing in front of the Hilton hotel" when a man "began yelling at [him] . . . in a threatening manner" and "pulled a knife out of his pocket and began to charge . . . in an aggressive manner." *Id.* ¶ 27; *see id.* Ex. 7 at Ex. 1. Mr. Sarcone further stated that he "became fearful for [his] life and . . . attempted to flee the area" and that the man "was making the motion as if he was going to attempt to cut my throat." Pet. Ex. 7 at Ex. 1. Mr. Sarcone signed the deposition pursuant to a notice stating that "False Statements made herein are punishable as a class A misdemeanor pursuant to section 201.45 of the New York State Penal Law." *Id.*

Approximately two days after the incident with Morales-Garcia, Mr. Sarcone's office issued a press release stating that he was "the victim of a life-threatening incident," and that the perpetrator was charged with attempted second-degree murder. Pet. ¶ 29. The press release further stated that Morales-Garcia "lunged at Sarcone," and made a "slitting-the-throat gesture at Sarcone." Pet. ¶ 30. It also claimed that but-for Mr. Sarcone's actions, Morales-Garcia may have gone on to kill others, even though there was no assertion that he had physically harmed or killed anyone. *Id.* Finally, the press release referenced Mr. Sarcone's efforts to

“help combat the infiltration of gangs, drug [*sic*], human traffickers, and sexual predators,” in effect associating Morales-Garcia with such criminals although there was no allegation that he was part of a gang or involved in any sort of drug or human trafficking or sexual misconduct. *Id.*

None of Mr. Sarcone’s allegations about Morales-Garcia’s behavior in the press release was corroborated by the surveillance video of the incident. Pet. ¶ 31. Nevertheless, casting himself as a hero, Mr. Sarcone is quoted in the press release stating that he “feared for [his] life, but . . . couldn’t let [Morales-Garcia] harm and potentially kill others.” Pet. ¶ 31. The press release does not advise (as is routine in DOJ statements) that, notwithstanding the filing of charges, Morales-Garcia should be presumed innocent until proven guilty. *See id.*

In addition to the press release, in the same time period, Mr. Sarcone appeared on a nationally-televised news program during which he stated that he told the Sheriff that Morales-Garcia’s initial charges for menacing and weapons possession were insufficient because Morales-Garcia “threatened his life.” Pet. ¶ 32. It was thereafter, in response to Mr. Sarcone’s intervention, that Morales-Garcia was also charged with attempted murder. *See id.*

Despite Mr. Sarcone’s efforts, after the video tape was reviewed, the Albany County District Attorney’s office dropped the attempted murder charge against Morales-Garcia and reduced the weapons violation to a misdemeanor. Pet. ¶ 35.

With some understatement, District Attorney Lee Kindlon explained that “[a] fair reading of the evidence and controlling case law informs that this incident did not rise to the level of attempted murder.” *Id.* Morales-Garcia then pleaded guilty to one charge of menacing in the second degree, a misdemeanor, and was sentenced to ninety days in jail. *Id.*

2. The False Sworn Statement of a Residence in NDNY

Under 28 U.S.C. § 545, the United States Attorney must live in the district in which he or she has been appointed. In the sworn deposition Sarcone provided regarding the incident with Morales-Garcia, Mr. Sarcone listed his address as “87 S. Orange Street Unit #2,” a location within the NDNY. Pet. ¶ 36. That building, however was later discovered to be boarded-up, with “plywood boards covering its entrance and windows, and a ‘No Trespassing’ sign tacked to the plywood that covers the front door and prevents anyone from entering.” *Id.* When questioned by the *Albany Times Union* regarding his residence, Mr. Sarcone stated “[t]hat’s the residence that I have – that I established when I got here.” Pet. ¶ 37. When pressed by the *Times Union*, Mr. Sarcone claimed that he had been “spending 70% of my time in hotels . . . because I can’t get in there yet.” *Id.*

Mr. Sarcone then claimed that despite being boarded up, the property was fully renovated and the owner was simply waiting for new windows and a door. Pet. ¶ 38. When the *Times Union* followed up with the owner, Steve Sabba, he

offered additional excuses about the condition of the property and said it was being renovated. *See id.* But contrary to Sabba’s claims, the *Times Union* confirmed with an Albany building official that any remodeling of the sort claimed by Sabba would have required a permit and that none had been issued for the property since its purchase two years earlier. Pet. ¶ 39. And in response to the *Times Union*’s inquiries, the director of Albany’s Department of Buildings and Regulatory Compliance visited the building in question and issued the owner a citation for failing to register it as vacant. *See id.*

3. The Retaliation Against the *Times Union*

Following the *Times Union*’s June 27, 2025 article concerning questions about whether Mr. Sarcone actually lived in Albany, Mr. Sarcone ordered his staff to remove the paper and its reporters from the U.S. Attorney’s Office media distribution list. Pet. ¶ 41. Mr. Sarcone then sent an email to all NDNY prosecutors stating that the “*Times Union* has been deleted from our distribution list.” *Id.* ¶ 42. Two weeks later, and following a request for comment from the *Times Union*, the directive was rescinded. *Id.* Of course, it is black-letter law that “the First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech” by, for example, publishing a newspaper. *Lozman v. City of Riviera Beach*, 585 U.S. 87, 90 (2018).

4. The CfA Complaint

On August 6, 2025, CfA filed its complaint detailing the above actions involving Mr. Sarcone and alleging that they represented potential violations of the Rules. *See* Pet. Ex. 7. CfA requested that the Grievance Committee investigate Mr. Sarcone. Pet. ¶ 43. CfA’s complaint received significant news coverage, virtually all of which identified CfA as the complainant. *See id.* ¶ 46.

On April 1, 2026, the Grievance Committee responded to CfA’s complaint in a one-page letter, stating that it “determined there was a sufficient basis for a finding of professional misconduct” by Mr. Sarcone and that the Committee “took appropriate action.” *Id.* ¶ 47. Pursuant to Judiciary Law § 90(10), the Committee declined to provide any further details.

Following the Grievance Committee decision, the DOJ relentlessly continued to defend Mr. Sarcone and to attack Morales-Garica as a “criminal alien.” *See* Pet. Ex. 19. DOJ spokesperson Emily Covington condemned both the complaint and Morales-Garcia, as though the videotape evidence was not available for all to see. *See id.* “John Sarcone was a victim of a violent crime by a criminal alien, and this baseless complaint is nothing more than a politicized attack on a United States Attorney,” Covington said in a statement. *See id.*

The Grievance Committee decision received considerable publicity and its refusal to issue any details received critical comment. Pet. ¶ 48. The *Times Union*

wrote an editorial, recognizing that secrecy was required by Judiciary Law § 90(10), but urging Mr. Sarcone voluntarily to release the letter disciplining him.

There is, however, nothing barring Mr. Sarcone from revealing what the disciplinary committee disciplined him for. In the interests of preserving his own good (or thereabouts) name and the larger cause of federal justice, we implore him to do so post haste. How can the public be able to fully trust his word absent a clean breast of these matters? How can judges or opposing counsel view him as an honest broker?

Don't go looking for transparency or accountability from his bosses at the Justice Department: An agency spokesperson told Politico that Mr. Sarcone "was a victim of a violent crime by a criminal alien, and this baseless complaint is nothing more than a politicized attack on a United States Attorney."

Wouldn't disclosing the results of the committee's investigation — not mentioned in the statement above — reveal whether the complaint was baseless or righteous?

Pet. Ex. 15.

ARGUMENT

I. THERE IS GOOD CAUSE UNDER JUDICIARY LAW § 90(10) TO UNSEAL ALL RECORDS OF MR. SARCONE'S DISCIPLINARY PROCEEDING

Attorney disciplinary proceedings in New York state are governed by New York's antiquated Judiciary Law § 90(10), which keeps private and confidential "all papers, records and documents upon . . . any complaint, inquiry, investigation or proceeding relating to the conduct or discipline of an attorney," unless charges are later sustained by the relevant appellate court. N.Y. Jud. Law § 90(10). Mr. Sarcone's discipline was imposed by the Grievance Committee, pursuant to 22

NYCRR §1240.7(d)(2), not by this Court, and so did not automatically become public. Even so, there is an exception to this secrecy: “*upon good cause being shown*,” this Court may permit the disclosure of “all or any part of [the] papers, records and documents” of a disciplinary proceeding. N.Y. Jud. Law § 90(10) (emphasis added).

In applying laws keeping secret disciplinary proceedings of professionals, New York’s appellate courts have explained that the confidentiality requirements of such laws serve two purposes. First, they “serve[] the purpose of safeguarding information that a potential complainant may regard as private or confidential and thereby removes a possible disincentive to the filing of complaints of professional misconduct.” *In re Johnson Newspaper Corp. v. Melino*, 77 N.Y.2d 1, 10-11 (1990) (“*Johnson Newspaper*”); see *Bell v. City of N.Y.*, 2023 U.S. Dist. LEXIS 168781, at *3 (E.D.N.Y. Sept. 1, 2024) (“The purpose of [§ 90(10)] is to protect complainants who come forward”) (applying New York law). Second, it “evinces a sensitivity to the possibility of irreparable harm to a professional’s reputation resulting from unfounded accusations.” *Johnson Newspaper*, 77 N.Y.2d at 11; see *In re Aretakis*, 16 A.D.3d 899, 899-901 (3d Dep’t 2005).

Here, neither of these justifications for confidentiality is present: (1) the privacy and confidentiality interests of the complainant that may be implicated by the relevant disciplinary proceedings are nonexistent because the complainant—

Petitioner CfA—publicly disseminated its complaint, which was subject to extensive contemporaneous news coverage; and (2) there is no concern that Mr. Sarcone’s reputation would be irreparably harmed by unfounded accusations because the Grievance Committee already determined that he committed misconduct and disciplined him for it. In short, none of the purposes of the secrecy component of § 90(10) are served here and they provide no reason to keep the circumstances of Mr. Sarcone’s discipline secret. The absence of any reason for secrecy alone constitutes “good cause” for disclosure.

Even more important, there is a compelling public interest that is served here by openness. The Grievance Committee proceedings constitute a judicial proceeding, which is presumptively public under the common law and the First Amendment, and the public interest in disclosure is paramount because Mr. Sarcone is the senior federal prosecutor in NDNY and has been found to have abused his position and engaged in professional misconduct. This public interest meets the “good cause” standard and also requires access under First Amendment case law.

A. The Matters in the Complaint Are Already Public

First, there is no concern that unsealing the disciplinary proceedings against Mr. Sarcone will divulge information that the complainant may view as private or confidential. As the Third Department has explained, where information is “already part of the public domain,” it no longer requires protection. *Aretakis*, 16 A.D.3d at

901. In *Aretakis*, an attorney who was the subject of a disciplinary proceeding disclosed the complainants' complaints against him in a newspaper before obtaining prior approval from an appellate court. *Id.* at 900. The Grievance Committee filed a lawsuit against him, claiming that he violated Judiciary Law § 90(10). *Id.* The attorney subsequently moved, among other things, for an order *nunc pro tunc* saying that his voluntary disclosure had waived the protection of § 90(10) and constituted "good cause" to divulge the contents of the complaints against himself. *Id.* The court granted the motion, noting that, as far as the complainants' interests in privacy and confidentiality was concerned, "the matters referred to in their complaints had to do with public statements already made by respondent and, thus, were already part of the public domain." *Id.* at 900-01.

The same is true here. Indeed, the complainant—Petitioner CfA—has openly published its complaint against Mr. Sarcone, on which the Grievance Committee relied when it "determined there was a sufficient basis for a finding of professional misconduct" against Mr. Sarcone and "took appropriate action" against him. *See* Pet. ¶¶ 43-45, 47. Further, through this Petition, CfA disclaims any relevant privacy and/or confidentiality interest in connection with the filing of its complaint against Mr. Sarcone.

In any event, the factual allegations and corresponding misconduct that underpin the disciplinary proceeding against Mr. Sarcone have long since been made

part of the public domain, given extensive contemporaneous news coverage. *See* Pet. ¶ 46. Such articles have detailed Mr. Sarcone’s alleged ethical violations, including (1) the false and misleading statements that both he and his office made about the alleged assault by Morales-Garcia, (2) causing unwarranted attempted murder charges to be filed against Morales-Garcia, (3) making false statements in a sworn Supporting Deposition about a fictitious residential address, (4) violating the federal requirement that he reside in the Northern District where he was appointed, and (5) his petulant and unapologetic retaliation against the *Times Union*, punishing it in violation of the First Amendment for its truthful reporting. *See id.*

In other words, the relevant misconduct underlying CfA’s complaint has been widely publicized. Neither CfA, Mr. Sarcone, Morales-Garcia, nor any third party has any privacy or confidentiality interest in the information that CfA presented to the Grievance Committee. As such, CfA has waived any protection provided by § 90(10) confidentiality to “safeguard[] information that a complainant may deem private,” and this consideration militates in favor of disclosure. *In re Rodeman*, 65 A.D.3d 350, 352 (4th Dep’t 2009).

B. It is Unlikely that Mr. Sarcone’s Reputation Would Be Irreparably Harmed by Unfounded Accusations

Similarly, there is little concern here that unfounded accusations will unfairly tarnish Mr. Sarcone’s reputation. *Cf. Johnson Newspaper*, 77 N.Y.2d at 10-11 (noting that Judiciary Law § 90(10) “evinces a sensitivity to the possibility of

irreparable harm to a professional's reputation resulting from unfounded accusations.”). Again, the Grievance Committee has concluded its review of Mr. Sarcone's alleged ethical violations and—based on those allegations—“determined that there was a sufficient basis for a finding of professional misconduct” and “took appropriate action.” Pet. ¶ 47.

Given that finding, it is unlikely that divulging the corresponding disciplinary proceeding documents, papers and records will tarnish Mr. Sarcone's reputation any more than it has already been tarnished. Such disclosure would instead simply provide detail as to what *specific* charges against Mr. Sarcone were sustained by the Grievance Committee and what *specific* disciplinary action was taken. Moreover, disclosure of the records would include Mr. Sarcone's response to the charges which to date has simply consisted of false assertions that the charges are “baseless.” It is even possible that Mr. Sarcone's response included an apology or explanation of his conduct that might even serve to enhance his reputation.

Disclosure would enable the public to assess for itself whether the charges were warranted or unwarranted. As the *Times Union* noted in its editorial, “wouldn't disclosing the results of the committee's investigation . . . reveal whether the complaint was baseless or righteous?” Pet. Ex. 15. In any event, the operative facts affecting Mr. Sarcone's reputation—namely the finding of misconduct and

imposition of discipline—have already been covered extensively by the press. Pet. ¶¶ 46, 48.

Because the disciplinary proceeding that Petitioner seeks to unseal concerns the same misconduct that has already tarnished Mr. Sarcone’s reputation and resulted in both a finding of professional misconduct and disciplinary action, any further disclosure of information concerning that misconduct or the disciplinary proceeding is unlikely to cause any unwarranted harm to his reputation.

C. There is a Compelling Public Interest in the Behavior of Attorneys, Especially Prosecutors

Most important, there is a compelling public interest in the disclosure of the disciplinary proceeding records involving Mr. Sarcone. The public has a special stake in disclosure of these proceedings because Mr. Sarcone is not just an attorney, but a federal prosecutor who already has been found to have engaged in professional misconduct and who continues to wield immense prosecutorial authority while serving as the most senior attorney at the NDNY USAO.

Public interest in disclosure—constituting “good cause”—is accordingly at its apex in this case. As the New York Court of Appeals has said, “[t]he administration of justice must not only be above reproach, it must also be beyond the suspicion of reproach.” *People v. Savvides*, 1 N.Y.2d 554, 556 (1956). Prosecutorial misconduct “is of exceptional public interest” because it “bear[s] both on the fair administration of justice for criminal defendants and the efficacious prosecution” of penal laws.

United States v. Nejad, 521 F. Supp. 3d 438, 443 (S.D.N.Y. 2021) (publicly referring suspected misconduct by federal prosecutors to the Department of Justice Office of Professional Responsibility).

The public interest in opening the files involving Mr. Sarcone has two components. First, the public has an interest in the behavior of members of the executive branch, particularly those with the power of the chief federal prosecutor in this judicial district. Second, the public has an interest in the functioning of the judicial branch, of which the Grievance Committee is a part, acting as an arm of this Court. Thus, opening the files will allow the public to assess not only Mr. Sarcone's conduct, but also the performance of the Grievance Committee. *See, e.g., F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987) ("The appropriateness of making court files accessible is accentuated in cases where the government is a party: in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch.").

There are unusually strong reasons—constituting good cause—for public access to disciplinary proceedings involving public prosecutors. First and foremost, prosecutors exercise some of the government's greatest powers. They can investigate criminals, charge defendants, seek detention, negotiate pleas and

influence sentencing. Unlike ordinary litigants, they act in the name of the public. Indeed, state court prosecutors in New York act in the name of “the people.”

Prosecutors also can protect innocent people from wrongful prosecution and conviction. The failure to do so is one of the charges against Mr. Sarcone, and the public deserves to know how he explained himself to the Grievance Committee, and what it thought of his explanation.

By his actions, often in public, the prosecutor helps to preserve the legitimacy of the legal system. If the public believes prosecutors are not accountable and do not act with integrity, confidence in verdicts and plea agreements declines. Mr. Sarcone very publicly made many seemingly false statements and engaged in alleged abuses of power. The public should know how the Grievance Committee resolved his apparent lies and abusive conduct.

Prosecutors often make decisions that receive only limited review. For instance, most criminal charges end in pleas rather than trials, which is what eventually happened with Morales-Garcia. When a prosecutor has made unsubstantiated charges, as Mr. Sarcone did here, the result is not always public. A public resolution—rebuking him for his conduct—assures the public that the prosecutor’s power is not unchecked.

Finally, public access to the records when a prosecutor is disciplined helps ensure equal treatment under law. Mr. Sarcone’s press release making accusations

against Morales-Garcia reeked of racism, claiming that bringing charges against an undocumented immigrant from El Salvador—this “criminal alien,” as DOJ put it, *see* Pet. Ex. 19—helped protect the public from “the infiltration of gangs, drug, human traffickers, and sexual predators.” Pet. ¶¶ 29-30. A public sanction of the prosecutor for this baseless charge helps to assure the public that in fact the system provides equal justice under law.

Reflecting all of these reasons, the Grievance Committee exists “to protect[] the public, maintain[] the honor and integrity of the legal profession, and deter[] attorneys from committing professional misconduct.”² *See In re Rowe*, 80 N.Y.2d 336, 341 (1992) (“The primary concern of a[n] [attorney] disciplinary proceeding is the protection of the public in its reliance on the integrity and responsibility of the legal profession.”) (citations omitted). Nowhere is public interest in the honor, integrity, and responsibility of the legal profession greater than in the behavior of a prosecutor.

In *Berger v. United States*, the Supreme Court set forth in classic language the public interest in ethical behavior by the prosecutor in our system of government:

[He] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite

² *See Attorney Grievance Committee*, N.Y. Sup. Ct., App. Div., 3d Dep’t, <https://www.nycourts.gov/ad3/agc/>.

sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed he should do so. But while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

295 U.S. 78, 88 (1935). Such are the standards that should provide the measure of all prosecutors in all cases—not whether they won or lost, but whether justice was done. When a prosecutor falls short, however, action by the Grievance Committee is the most the public can expect. Unlike other practicing attorneys, prosecutors alone have “absolute immunity” from civil suit, a doctrine justified on the assumption that “associations of . . . peers,” *i.e.*, grievance committees, will regulate prosecutors through “professional discipline.” *Imbler v. Pachtman*, 424 U.S. 409, 427, 429 (1976). Yet discipline of prosecutors by grievance committees is a rarity,³ making the discipline of Mr. Sarcone all the more unusual and all the more important for the public to understand. The Grievance Committee, operating under the aegis of this Court, deserves to be specially congratulated for acting—but congratulations will be more warranted if the public is given an explanation.

³ A 2013 analysis of ten years of state and federal decisions revealed 30 cases in which judges reversed convictions explicitly because of serious misconduct by New York City prosecutors. Yet, New York’s disciplinary committees “almost never took serious action against prosecutors,” and out of these 30 cases, publicly disciplined **only one** of the prosecutors judicially found to have committed misconduct. None of the other prosecutors was disbarred, suspended, or publicly censured. Joaquin Sapient & Sergio Hernandez, *Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody*, PROPUBLICA (April 3, 2013), <https://www.propublica.org/article/who-polices-prosecutors-who-abuse-their-authority-usually-nobody>.

There is little case law interpreting the “good cause” standard in § 90(10). One somewhat similar case focused on protecting the integrity of the judicial system by opening the proceedings. In *In re N.Y. News (Cohn)*, 113 A.D.2d 92, 93 (1st Dep’t 1985), two news organizations brought an application pursuant to § 90(10) “directing the disclosure of all records in the disciplinary proceeding pending before [the Appellate Division, First Department] against Roy M. Cohn.” *Id.* at 92. During the pendency of a disciplinary proceeding against Cohn, Cohn had publicly disparaged the grievance committee and accused it of being “constituted of incompetents who prosecuted him for a political purpose, upon meritless charges, with the intent of ‘smearing him.’” *Id.* at 95.

The First Department found that there was “good cause to disclose the record of [Cohn’s] disciplinary proceeding.” *Id.* at 95. In reaching this conclusion, the First Department noted that “the public has a stake” in the grievance committee’s “good reputation for integrity and competence” which allows the committee to properly conduct “its work as this court’s prosecutorial nominee.” *Id.* at 93.

Here, as in *N.Y. News*, notwithstanding the evidence, the DOJ has continued to attack the disciplinary process, even after the Grievance Committee imposed discipline. After the discipline became public, and long after the attempted murder charges against Morales-Garcia had been dismissed, the DOJ insisted that “John Sarcone was a victim of a violent crime by a criminal alien,” and that the CfA

complaint was “baseless” and “nothing more than a politicized attack on a United States Attorney.” Pet. Ex. 19. As in *N.Y. News*, this verbal assault in response to the Committee’s finding of “professional misconduct,” was nothing less than an attack on “this Court’s prosecutorial nominee” and a challenge to the Grievance Committee’s “good reputation for integrity and competence.” 113 A.D.2d at 93. The public has a stake in understanding the serious charges against Mr. Sarcone and the work of the Grievance Committee. Finding “good cause” to unseal the records would deny Mr. Sarcone and his allies the ability to challenge the Committee’s integrity and competence.

In a famous speech over 50 years ago to the assembled lawyers at the Justice Department, Supreme Court Justice Robert Jackson warned about the dangers of a rogue prosecutor:

It would probably be within the range of that exaggeration permitted in Washington to say that assembled in this room is one of the most powerful peace-time forces known to our country. ***The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous.*** He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. [...] The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. [...] ***While the prosecutor at his best is one of the***

*most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.*⁴

The sins of the “worst” sort of prosecutor map neatly on the conduct alleged against Mr. Sarcone. He allegedly had Morales-Garcia arrested and held for trial, based on one-sided accusations that he personally knew to be false. He issued public statements with veiled—and allegedly baseless—intimations that Morales-Garcia was a gang member involved in drugs and human trafficking. He fueled race-based concerns about Morales-Garcia by calling him an “illegal alien” who threatened the public. His press statements never bothered to mention that notwithstanding the (false) charges he insisted upon, Morales-Garcia was entitled to a presumption of innocence at trial. He even lied about where he lived. And he retaliated against the press for its accurate reporting.

Good cause exists to open the files and allow the public to judge the evidence against Mr. Sarcone, what he said in his defense, and how the Grievance Committee resolved the charges. As the *Times Union* noted in its editorial calling for Mr. Sarcone voluntarily to release the grievance committee’s findings, “How can the public be able to fully trust his word absent a clean breast of these matters? How can judges or opposing counsel view him as an honest broker?” Pet. Ex. 15. Or, as

⁴ Robert Jackson, Att’y Gen. of the United States, The Federal Prosecutor, Address at Second Annual Conference of United States Attorneys (Apr. 1, 1940), in 31 J. Am. Inst. Crim. L. & Criminology 3, 6 (1940), available at <https://www.roberthjackson.org/speech-and-writing/the-federal-prosecutor/> (emphases added).

Justice Brandeis memorably observed, “[s]unlight is . . . the best of disinfectants.” Louis D. Brandeis, *Other People’s Money, and How the Bankers Use It* (1914), available at <https://tinyurl.com/2vr7hyyp>.

II. THE FIRST AMENDMENT REQUIRES DISCLOSURE ON THE FACTS OF THIS CASE

Although the Court need not reach the First Amendment issue in order to resolve this case based on the “good cause” exception, § 90(10) is unconstitutional in violation of the First Amendment, at least insofar as it can be read to bar disclosure of the disciplinary files relating to Mr. Sarcone. The Grievance Committee proceedings themselves constitute judicial proceedings that are ordinarily public under both the common law and the First Amendment. To determine whether the First Amendment applies to a particular government proceeding, the Court considers “experience,” *i.e.*, “whether the place and process have historically been open to the press and general public,” and “logic,” *i.e.*, “whether public access plays a significant positive role in the functioning of the particular process in question.” *Hartford Courant Co., LLC v. Carroll*, 986 F.3d 211, 219 (2d Cir. 2021) (cleaned up). These tests of history and logic that govern the First Amendment analysis are easily met here.

As for history, the strong public interest in the behavior of attorneys goes back at least to the origins of state licensing in 1876. Indeed, in the late nineteenth and early twentieth century, attorney disciplinary proceedings were public affairs carried

out in State Supreme Court as a species of regular civil litigation. *See, e.g., In re Kelly*, 59 N.Y. 595, 596 (1875) (“The [disbarment] proceeding is of a public nature”); *In re Spencer*, 137 A.D. 330, 331 (1st Dep’t 1910) (“These [disbarment] proceedings have been spoken of as being of a public nature”).

Confirming the public interest in attorney discipline, these public trials were covered by the press in detail, just as the charges against Mr. Sarcone were prominently reported. *See* Leslie C. Levin, The Case for Less Secrecy in Lawyer Discipline, 20 Geo. J. Legal Ethics 1, 12 n.67 (2007) (collecting articles in general-circulation newspapers, in one instance describing “filled” courtrooms and in another a “large crowd” expecting “a good legal fight”) (cleaned up).

Meanwhile, as this Court assumed responsibility for Grievance Committee proceedings, they came to be recognized as judicial proceedings. “[T]he filing of [a] complaint [with a grievance committee] initiate[s] a judicial proceeding” with the “Grievance Committee act[ing] . . . [as] an arm of the Appellate Division.” *Wiener v. Weintraub*, 22 N.Y.2d 330, 332 (1968); *see id.* at 331 (noting that “a proceeding before . . . a [grievance] committee constitutes a judicial proceeding”) (cleaned up); *see also Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 433, 434 n.13 (1982) (bar disciplinary committees are an “arm of the court in performing the function of receiving and investigating complaints and holding hearings,” whose actions are of an “essentially judicial nature.”). Of course, judicial

proceedings are presumptively public under both the common law and the First Amendment.⁵

As for logic, all the reasons set forth above that explain why the “good cause” standard is met apply with equal force in demonstrating why “public access plays a significant positive role in the functioning of the particular process in question.” *Hartford Courant Co., LLC*, 986 F.3d at 219. The public has a special stake in disclosure of these proceedings because Mr. Sarcone is not just an attorney, but a public prosecutor who already has been found to have engaged in professional misconduct and who continues to wield immense prosecutorial authority as the most senior attorney at the NDNY USAO. That is enough to demonstrate the constitutional flaw in applying the secrecy rule of § 90(10) on the facts of this case.

The Second Circuit just affirmed this history and logic analysis, specifically with respect to Grievance Committee proceedings involving prosecutors accused of misconduct. “Upon *de novo* review, we conclude that the experience-and-logic test supports a qualified, presumptive First Amendment right of access to formal

⁵ See, e.g., *Civil Rights Corps v. LaSalle*, 741 F. Supp. 3d 112, 168 (S.D.N.Y. 2024) (holding under First Amendment that “experience and logic both support a presumptive right of access to [Grievance] Committee dispositions” of complaints against prosecutors), *aff’d*, No. 24-2251 (2d Cir. July 29, 2026); *In re Demetriades*, 58 F.4th 37, 45-46 (2d Cir. 2023) (there is “a strong presumption under both the common law and the First Amendment that judicial documents—and especially judicial decisions, which are used to determine litigants’ substantive legal rights—should be subject to public scrutiny.”) (cleaned up); *Hardy v. Equitable Life Assurance Soc’y of United States*, 697 F. App’x 723, 725 (2d Cir. 2017) (“It should go without saying that the judge’s opinions and orders belong in the public domain.”) (cleaned up).

disciplinary hearings in the Second Department, including all pertinent records, and select dispositions of the Grievance Committee.” *Civil Rights Corps v. LaSalle*, No. 24-2251, slip op. at 4-5 (2d Cir. July 29, 2026).

The Court need not reach the constitutional question if it agrees that Petitioner has demonstrated “good cause” for access to Mr. Sarcone’s disciplinary files. But if the Court disagrees, it must resolve Petitioner’s claim to a right of access under the First Amendment.

CONCLUSION

For the reasons stated above, this Court should unseal all records, papers and documents concerning the disciplinary proceeding against John A. Sarcone III.

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Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

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