

March 31, 2023

VIA EMAIL

The Honorable Juan Merchan
Supreme Court of the State of New York
County of New York: Part 59
100 Centre Street
New York, NY 10013
jmerchan@nycourts.gov

Re: Application of News Organizations to Unseal Indictment in *People v. Donald J. Trump*,
IND-71543-23

Dear Justice Merchan:

We represent numerous news organizations: Advance Publications, Inc., American Broadcasting Companies, Inc., d/b/a ABC News, The Associated Press, The Atlantic Monthly Group LLC (publisher of *The Atlantic*), Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting Inc. on behalf of CBS News and WCBS-TV, The Daily Beast Company LLC, Daily News LP (publisher of the New York *Daily News*), Dow Jones & Company, Inc. (publisher of *The Wall Street Journal*), Insider, Inc., National Public Radio, Inc., NBCUniversal Media, LLC (NBC News, MSNBC, CNBC, NBC Owned Television Stations, and Noticias Telemundo), The New York Times Company, *The New Yorker*, Newsday LLC, NYP Holdings, Inc. (publisher of the *New York Post*), and WP Company LLC (publisher of *The Washington Post*). We write to request the unsealing of the indictment of former U.S. President Donald J. Trump, as well as of certain other documents filed in connection with the District Attorney's application to disclose the fact of the indictment. We also request an opportunity to be heard on this matter at the earliest available time.

On March 30, 2023, Manhattan District Attorney Alvin Bragg announced that a New York County grand jury had returned an indictment against former President Trump, and his indictment remains under seal.¹ Because of the overwhelming public interest in the contents of the indictment, and because no valid purpose is served by keeping the indictment under seal pending arraignment, we respectfully request that it be unsealed without delay. Indeed, any delay only allows speculation about the content of the indictment to proliferate.

¹ Alvin Bragg (@ManhattanDA), TWITTER (Mar. 30, 2023, 7:15 PM), <https://twitter.com/ManhattanDA/status/1641579988360019968>.

It is firmly established that “the press and general public have a constitutional right of access to criminal trials.” *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 603 (1982). That right of access extends to the indictment. “Because of our historic experience and the societal interest served by public access to indictments . . . such access is protected by the First Amendment and the common law right of access to the judicial process.” *United States v. Smith*, 776 F.2d 1104, 1112 (3d Cir. 1985). Indeed, “our criminal law tradition insists on public indictment.” *Smith v. Doe*, 538 U.S. 84, 99 (2003).

The public’s right of access “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984). That interest must “be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Id.* In addition, before any closure, members of the news media have the right to be heard “in a preliminary proceeding adequate to determine the magnitude of any genuine public interest.” *Herald Co. v. Weisenberg*, 59 N.Y.2d 378, 383 (1983) (quoting *Gannett Co. v. De Pasquale*, 43 N.Y.2d 370, 381 (1977), *aff’d*, 443 U.S. 368 (1979)).

We recognize that, under normal circumstances, an indictment is sealed until the defendant’s arraignment. *See* N.Y. CRIM. PROC. LAW § 210.10(3). However, the circumstances here are extraordinary, and the usual rationale for sealing does not apply. “The purpose of the prohibition on revealing the existence of an indictment before a defendant is in custody is to prevent the defendant from learning of the indictment and choosing to flee the jurisdiction.” MCKINNEY’S N.Y. PENAL LAW § 215.75 practice commentary (statute prohibiting unlawful disclosure of indictment). Here, however, the defendant is the former President of the United States (hardly a flight risk), he is already aware of the indictment, and his attorney has publicly announced his intention to voluntarily appear for his arraignment.²

The First Amendment right of access must prevail over state law sealing procedures in these extraordinary circumstances. Clearly, the right of access is at its zenith when applied to the first ever indictment of a former U.S. president. And no higher values are served by keeping the indictment under seal. Aside from the fact that a former U.S. president is not a flight risk, maintaining the indictment under seal, despite the public disclosure of its existence, only fuels speculation as to its contents. Full disclosure of the indictment will enhance both the general public’s and the parties’ right to an accurate public understanding of the charges. As such, former President Trump’s indictment should be unsealed without delay.

In addition, the District Attorney filed an application, supported by an affirmation dated March 30, 2023, requesting an order authorizing the disclosure of the fact of former President Trump’s indictment.³ The Court heard the application and granted it on the same day, recognizing that the disclosure “would be in the public interest and an appropriate exercise of this Court’s discretion.” *Id.* Now that the world is on notice of the existence of the indictment, the public

² William Rashbaum, *Live Updates: Trump Likely to Be Arraigned on Tuesday*, N.Y. TIMES (Mar. 30, 2023), <https://www.nytimes.com/live/2023/03/31/nyregion/trump-indicted/d8c52803-3c91-56d3-b3d1-a27207a6432f?smid=url-share>.

³ Frank G. Runyeon, *1st Public Filing in Trump Case Shows DA Got OK to Disclose*, LAW360 (Mar. 31, 2023, 4:17 PM), <https://www.law360.com/articles/1592431>.

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interest in unsealing the contents of the indictment is only heightened. That public interest likewise calls for unsealing the District Attorney's application, the supporting affirmation, and any transcript of the hearing on the application.

The magnitude of the public interest in a former president's indictment cannot be overstated. Such an unprecedented and important event in American history demands that it be publicly and rigorously documented. Quite literally, the world is watching, and "[o]penness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." *Press-Enter.*, 464 U.S. at 508. The immense public importance demands the highest level of transparency possible, at the earliest possible time. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

Accordingly, we request that the Court immediately unseal the indictment, as well as all court filings and any transcript related to the District Attorney's application to disclose the fact of the indictment. We request a hearing on this important matter at the earliest available opportunity, and can be available over the weekend, in person, by videoconference, or by telephone.

Respectfully submitted,

Davis Wright Tremaine LLP

By: 

Robert D. Balin

Rachel Strom

Jeremy Chase

Raphael Holoszyc-Pimentel

Alexandra Settlemayer

cc: The Honorable Tamiko A. Amaker, Administrative Judge (tamaker@nycourts.gov)
The Honorable Kevin McGrath, Supervising Judge (kmcgrath@nycourts.gov)
Lucian Chalfen, Director of Public Information (lchalfen@nycourts.gov)
Alvin Bragg, Manhattan District Attorney (bragga@dany.nyc.gov)
Susan R. Necheles (srn@necheleslaw.com)