

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  
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The Honorable Tamiko A. Amaker  
Chief Administrative Judge  
New York City Criminal Court  
100 Centre Street  
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The Honorable Kevin McGrath  
Supervising Judge, New York County  
New York City Criminal Court  
100 Centre Street  
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Re: Application of News Organizations to Permit Videography, Photography, and Radio  
Coverage of the Arraignment of Former U.S. President Donald J. Trump in  
*People v. Trump*, IND-71543-23

Dear Justice Merchan, Judge Amaker, and Judge McGrath:

This firm writes on behalf of various news organizations, including 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*) (collectively the “News Organizations”). We write in advance of the arraignment of former U.S. President Donald J. Trump, which is expected to take place on Tuesday, April 4, 2023,<sup>1</sup> to respectfully request that this Court, in addition to providing access to print journalists, allow the

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<sup>1</sup> Michael R. Sisak, *Trump to be arraigned Tuesday to face hush money indictment*, The Associated Press (Mar. 31, 2023), available at <https://apnews.com/article/trump-indictment-new-york-hush-money-election-488c76cf92269e2c258d5203a6e981a1/>

presence of a limited number of videographers, photographers, and radio journalists at this proceeding.

Initially, there is a qualified right held by the public and press to have access to both judicial documents and proceedings under both the First Amendment and the common law. *See, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980); *Lugosh v. Pyramid Co.*, 435 F.3d 110, 119–20 (2d Cir. 2006). And it is well established that the public and press have standing to assert their right of access. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n. 25 (1982) (“representatives of the press and the general public must be given an opportunity to be heard on the question of their exclusion”) (citation and internal quotation marks omitted). It is equally settled that this right of access applies to criminal proceedings, including arraignments. *See Associated Press v. Bell*, 70 N.Y.2d 32, 37 (1987) (“Plainly the First Amendment right of access is not limited to the criminal trial itself. The many policy concerns favoring open proceedings—articulated time and again by the courts—obviously may pertain equally to other phases of a criminal action.”) (citations omitted); *Times-Union of Capitol Newspaper Div. of Hearst Corp. v. Harris*, 71 A.D.2d 333, 336 (3d Dep’t 1979) (holding that court was required to hold “arraignment in open court”); *People v. Jelke*, 284 A.D. 211, 227 (1st Dep’t 1954) (“Publicity, not secrecy, in arraignment, plea, and judgment is part of our tradition. It is deemed necessary, not only for individual security, but also in the public interest.”), *aff’d*, 308 N.Y. 56 (1954).

Here, the gravity of this proceeding—the unprecedented and historic arraignment of a former U.S. President—and, consequently, the need for the broadest possible public access, cannot be overstated. The entire world is following these proceedings, and “with limited seats for the public and for the press, the rights of the press and public to view court proceedings . . . would surely be curtailed if not denied” absent any cameras in the courtroom. *People v. Boss*, 701 N.Y.S.2d 891, 895 (Sup. Ct., Albany Cnty. 2000) (allowing audio-visual coverage of trial).<sup>2</sup> Ultimately, “[t]he denial of access to the vast majority will accomplish nothing but more divisiveness” while the broadcast of the arraignment “will further the interests of justice, enhance public understanding of the judicial system and maintain a high level of public confidence in the judiciary.” *Id.* at 895; *see also People v. Santiago*, 712 N.Y.S.2d 244 (Monroe Cnty. Ct. 2000) (permitting audio-visual coverage by broadcast and print media).

The Administrative Rules of this Court expressly contemplate audio-visual coverage of arraignments. *See* 22 NYCRR § 131.1. Section 131.1 states that the broad policy of the Unified Court System is to facilitate audio-visual coverage of judicial proceedings to the “fullest extent” under the law, “[i]n order to maintain the broadest scope of public access to the courts, to preserve public confidence in the Judiciary, and to foster public understanding of the role of the Judicial Branch in civil society.” As to the specific proceeding at issue, § 131.1(c) expressly carves out audio-visual coverage of arraignments as permissible under the Administrative Rules. *See* 22 NYCRR § 131.1(c) (“Audio-visual coverage of party or witness testimony in any court proceeding

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<sup>2</sup> Providing access to a video recording allows a viewer to become “virtually a participant in the events portrayed,” amplifying the impact of the information presented. *United States v. Martin*, 746 F.2d 964, 971–72 (3d Cir. 1984) (“The hackneyed expression, ‘one picture is worth a thousand words’ fails to convey adequately the comparison between the impact of the televised portrayal of actual events upon the viewer of the videotape and that of the spoken or written word upon the listener or reader.”) (quoting *United States v. Criden*, 501 F. Supp. 854, 859–60 (E.D. Pa. 1980)).

(other than a plea at an arraignment) is prohibited.”). The Administrative Rules unambiguously permit audio-visual recordings of arraignments and this Court should grant the News Organizations’ request on that basis. In addition to facilitating the policy goals of Section 131.1, the News Organizations’ request for a limited number of videographers, photographers, and radio journalists complies with 22 NYCRR § 29.1. The News Organizations make this limited request for audio-visual coverage in order to ensure that the operations of the Court will not be disrupted in any way. *See* 22 NYCRR § 29.1(a)(1)–(4). The presence of a limited number of photographers, videographers, and radio journalists should not impose any burden on the Court’s resources or interfere with the Court’s operations. Moreover, and as discussed throughout this application, the presence of audio-visual coverage in this restricted manner will also safeguard the constitutional rights of the public and participants in this proceeding. *See* 22 NYCRR § 29.1(a)(5). Ultimately, the significance of this arraignment only underscores the critical need for photographers, videographers, and radio journalists to be present.

The News Organizations stand ready to work cooperatively with the Court to ensure that the public have an opportunity to observe this historic proceeding.

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In sum, the News Organizations respectfully request the Court’s permission for a limited number of photographers, videographers, and radio journalists to be present at the arraignment. If it would assist the Court in reaching its decision, counsel for the News Organizations respectfully requests to be heard at any hearing on this matter. Because of the urgency of this application, counsel for the News Organizations will make themselves available for a hearing at the earliest opportunity, including over the weekend. We thank the Court for its consideration of this matter.

Respectfully Submitted,

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