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BY ELECTRONIC MAIL

The Honorable Juan M. Merchan
New York State Supreme Court, Criminal Term, Part 59
100 Centre Street
New York, NY 10013

RE: Application of News Organizations Related to the Arraignment in IND-71543-23.

Dear Justice Merchan,

This letter is in response to the Court's April 2, 2023 request for the parties' position on the news organizations' March 31, 2023 application to permit videography, photography, and radio coverage of the arraignment in this proceeding. This office typically declines to take a position on such requests. In this case as well, we defer to Your Honor's discretionary determination of how best to manage these proceedings. To aid the Court, we note the following points.

As Your Honor is aware, Civil Rights Law § 52 "bans audiovisual coverage of most courtroom proceedings." *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 228 (2005). The Court of Appeals has upheld the constitutionality of the statute and, in the course of doing so, has confirmed that there is no right under the First Amendment or New York Constitution to "bring cameras into the courtroom." *Id.* at 229. As both the Court of Appeals and the Supreme Court have noted, "the presence of cameras" raises a number of concerns, "including the prejudicial impact of pretrial publicity on the jurors, the impact on the truthfulness of the witnesses, responsibilities placed on the trial judge to assure a fair trial and the impact on the [defendant]." *Id.* at 230; *see also Estes v. Texas*, 381 U.S. 532, 549 (1965).

The plain language of Civil Rights Law § 52 prohibits cameras only in proceedings where "the testimony of witnesses by subpoena or other compulsory process is or may be taken," which courts have interpreted to mean the entirety of the trial itself. *See Matter of Heckstall v. McGrath*, 15 A.D.3d 824, 825-826 (3d Dep't 2005) (rejecting interpretation of statute "as precluding audiovisual coverage only during the testimony of subpoenaed witnesses"). There thus does not appear to be a categorical prohibition on cameras during an arraignment. The Rules of the Chief Administrator of the Courts reflect this distinction,

making an exception to the prohibition on audio-visual coverage for “a plea at an arraignment.” 22 N.Y.C.R.R. § 131.1(c). Even if cameras are not categorically barred, however, Your Honor retains “the power and discretion . . . to control the conduct of judicial proceedings” and to ensure that any press coverage “is conducted without disruption of court activities, without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities, without compromise of the safety of persons having business before the court, and without adversely affecting the administration of justice.” *Id.* § 131.1(e) & (g); *see also* N.Y. Ct. Rules § 29.1(a) (Rules of the Chief Judge identifying relevant considerations). It would thus be a defensible exercise of the Court’s discretion to exclude or restrict videography, photography, and radio coverage of the arraignment in the interest of avoiding potential prejudice to the defendant, maintaining an orderly proceeding, assuring the safety of the participants in the proceeding, or for other reasons within the Court’s broad authority to manage and control these proceedings.

We note that, in a different matter that was also the subject of significant public interest, Your Honor responded to a similar request from news organizations to conduct audio-visual coverage of the arraignment of individual and corporate defendants by allowing a limited number of still photographs to be taken prior to the commencement of proceedings. *See People v. The Trump Corporation, et al.*, Indictment No. 1473/2021, Order on Applications to Conduct Audio-Visual Coverage of Proceedings (Sup. Ct. N.Y. Cty. July 1, 2021).

Respectfully Submitted,

/s/ Matthew Colangelo

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cc: (By Email)
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