

April 3, 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: Supplemental Submission in Further Support of News Organizations' Application 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:

We write 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., Law360,¹ 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"). In response to Your Honor's April 2, 2023 email, the News Organizations make the following additional requests in connection with their original application seeking permission for a limited number of videographers, photographers and radio journalists to cover the arraignment of former President Trump in *People v. Trump*, IND-71543-23.

First, the News Organizations respectfully request that a hearing on their original access application be consolidated with the mandatory conference required by 22 NYCRR § 131.5. As Section 131.5(a) states, where an application for audio-visual coverage has been approved, the presiding judge "shall conduct a conference for the purpose of reviewing, with counsel to all parties to the proceeding and with representatives of the news media who will provide such coverage, any objections to coverage that have been raised, the scope of coverage to be permitted, the nature and extent of the technical equipment and personnel to be deployed, and the restrictions on coverage

¹ Law360 also joins in the News Organizations' original access applications.

to be observed.” Given the limited time frame before the April 4, 2023 arraignment, the News Organizations believe that consolidating this conference with a hearing on the merits of their original applications would best serve the interests of judicial economy. The News Organizations request a combined hearing and conference at the earliest opportunity today, so that they and the Court may prepare for their news coverage of the arraignment.

Second, the News Organizations request that as many seats as possible be reserved for members of the press within the physical courtroom where the arraignment will take place. The News Organizations recognize that there is limited seating capacity in the courtroom. But these space limitations are precisely why maximum press presence in the courtroom is necessary and why contemporaneous audio-visual coverage of the proceeding is crucial. Since the courtroom cannot fit the enormous number of people who are interested in this historic proceeding, it is the press who must serve the function—so essential in a democracy—of being the eyes and ears of the public. Ultimately “[p]ublic scrutiny of a criminal trial enhances the quality and safeguards the integrity of the factfinding process, with benefits to both the defendant and to society as a whole.” *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, 457 U.S. 596, 604–06 (1982); *see also United States v. Alcantara*, 396 F.3d 189, 201–02 (2d Cir. 2005) (“The ability to see and to hear a proceeding as [it] unfolds is a vital component of the First Amendment right of access . . .”). Accordingly, as many seats as possible should be reserved for press representatives in the courtroom where the arraignment will take place, so that a diversity of the press—on behalf of the public—has the ability to experience firsthand, and accurately report, the unfolding events.

Third, while we understand that an overflow room (or rooms) with streaming CCTV viewing of the arraignment may be set up, such remote viewing of events is not a constitutionally adequate substitute for in-person news reporting from the actual courtroom where the arraignment will take place. *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 511 n.10 (1984) (limitations on access must be “reasonable” and “not . . . deny or unwarrantedly abridge . . . the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places”). Remote CCTV cameras often fail to capture images of who is speaking, not infrequently have audio and video glitches, and cannot substitute for first-hand observation of the demeanor and facial expressions of parties, their counsel, and judicial officers. Accordingly, the News Organizations request that the Court prioritize placing journalists in the arraignment room itself, not in an overflow room. Moreover, to the extent the arraignment courtroom cannot accommodate every journalist and member of the public who wishes to attend, the News Organizations request that the court provide as many overflow rooms (with CCTV) as is possible under the circumstances.

Fourth, although the Supreme Court, Criminal Term Website directs the general public to turn off phones and laptops during court proceedings, those directives should not apply to the media under the extraordinary circumstances here. The News Organizations note that members of the press are typically exempted from this directive and are permitted to bring and use electronic devices during criminal proceedings. Accordingly, the News Organizations respectfully request that the Court exercise its discretion to allow use of electronic devices by journalists during the arraignment. Specifically, the News Organizations ask that journalists be permitted to bring their electronic devices (such as cell phones, tablets, and laptops) into the courthouse, the court room, and any overflow rooms, so that they may email, text, and live-Tweet during the proceedings. The

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News Organizations will use their electronic devices silently and responsibly without any disruption to the proceedings.

Fifth, the News Organizations wish to confirm with the Court that, as is the normal practice, use of cameras will be permitted in the hallways of the building.

Finally, the News Organizations respectfully request that a seat in the actual arraignment courtroom be reserved for me or one of my colleagues, as attorneys for the News Organizations, so that the News Organizations can be adequately represented if any access-related issues arise in connection with the proceeding.

We thank the Court for its consideration of these matters.

Respectfully Submitted,

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