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April 3, 2023

Hon. Juan Merchan
New York State Supreme Court
Criminal Term, Part 59
100 Centre Street, Room 1602
New York, New York 10013

Re: *People v. Donald Trump*, Ind. No. 71543-23

Dear Justice Merchan:

We respectfully write in opposition to the media request, in a letter by Robert D. Balin, Esq. dated March 31, 2023, to permit videographers, photographers, and radio journalists to take audio/visual recordings during tomorrow's arraignment.¹ We submit that the media request should be denied because it will create a circus-like atmosphere at the arraignment, raise unique security concerns, and is inconsistent with President Trump's presumption of innocence.

As an initial matter, contrary to any suggestion in the Media's application, "it is well settled that insofar as courtroom proceedings are concerned, the right to photograph court proceedings is not guaranteed by the Constitution." *Post v. Killackey*, 2002 U.S. Dist. Lexis 9604, at *12 (S.D.N.Y. May 31, 2002) (quoting *United States v. Yonkers Bd. of Education*, 747 F.2d 111, 113 (2d Cir. 1984)). As the Supreme Court has observed, a "defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or nationwide arena. The heightened public clamor resulting from radio and television coverage will inevitably result in prejudice." *Estes v. Texas*, 381 US 532, 549 (1965). See also *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222 (2005) (upholding the constitutionality of an "absolute ban" on televised court proceedings under both the federal and state Constitutions). Indeed, in federal criminal cases, such photography is outright prohibited. See Fed. R. Crim. P. 53 ("Except as otherwise provided by a statute or these rules, the court must not permit the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom").

Besides for citing (inapposite) caselaw about general public access to court proceedings, the media letter relies almost exclusively on 22 N.Y.C.R.R. § 131.1 for their request. But, under the Administrative Rules of the Court, before a court may allow audio/visual coverage of any court proceeding, it must consider, among other things, "whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties." 22 NYCRR § 131.3(d)(3). Moreover, the court "must insure that audio-visual coverage is

¹ We have no objection to the Media's other request for media seating in the courtroom.

conducted without disruption of court activities, [and] without detracting from or interfering with the dignity or decorum of the court, courtrooms and court facilities[.]” *Id.* at § 131.1(g).

We have grave concerns that audio/visual recordings of tomorrow’s arraignment will only further exacerbate an already almost circus-like atmosphere around this case. Thus, we believe that any photography or video of tomorrow’s proceedings will detract from both the dignity and decorum of the proceedings and courtroom, and will necessarily interfere with the fair administration of justice.

In addition, the Administrative Rules require the Court to take into account potential security concerns. *See* § 131.1(g) (“[A]ll presiding trial judges and all administrative judges shall take whatever steps are necessary to insure that audio-visual coverage is conducted ... without compromise of the safety of persons having business before the court”); § 131.7(f) (“No coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person.”). As Your Honor is well-aware, this case presents extraordinary security concerns (including Secret Service-related concerns) and we submit that any video or photography of the proceedings will only heighten these serious concerns.

For these reasons, we respectfully submit that the Court should deny the Media’s request for audio/visual coverage of tomorrow’s court proceeding.

Respectfully submitted,

/s/ Susan Necheles

Susan R. Necheles

Todd Blanche

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