

April 13, 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: Filings Under Seal in *People v. Trump*, IND-71543-23

Dear Justice Merchan:

We are counsel to the following news organizations: American Broadcasting Companies, Inc., d/b/a ABC News, Advance Publications, Inc., 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, 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*), Reuters News & Media Inc., and WP Company LLC (publisher of *The Washington Post*) (collectively, the “News Organizations”).

During the April 4, 2023 Conference, Your Honor stated that the News Organizations and the parties are permitted to brief the issue of whether the Affirmation of Assistant District Attorney, Peter B. Pope—which was filed by the District Attorney’s Office under seal—should remain sealed.<sup>1</sup> See April 4, 2023 Conference Tr. 8:2–17. Following the Conference, the News Organizations learned that the District Attorney’s Office filed an additional application seeking an order authorizing the unsealing of the indictment in this case, which was supported by the

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<sup>1</sup> The Pope Affirmation was filed by the District Attorney’s Office in support of its application seeking an order authorizing it to publicly disclose that an indictment had been returned against former-President Donald Trump.

Affirmation of Assistant District Attorney Christopher Conroy.<sup>2</sup> This application and supporting affirmation were also apparently submitted under seal by the District Attorney's Office.

The News Organizations are trying to determine whether motions to unseal are warranted with respect to both of these sealed applications. Counsel for the News Organizations have contacted the District Attorney's Office and asked for the reasons that it filed these applications under seal. The District Attorney's Office, however, has declined to provide any explanation. Before burdening the Court and the parties with briefing on this issue, the News Organizations respectfully request that this Court order the District Attorney's Office to promptly set forth, in writing, its basis for sealing the applications, so that the News Organizations can determine whether any access motion is necessary.

“[P]rior to issuance of an order to seal judicial documents, the court is obligated, where possible, to afford news media an opportunity to be heard.” *Mancheski v. Gabelli Group Capital Partners*, 835 N.Y.S.2d 595, 597 (2d Dep't 2007) (citing *Matter of Herald Co. v. Weisenberg*, 59 N.Y.2d 378, 383 (1983)); *see also*, *Maxim Inc. v. Feifer*, 43 N.Y.S.3d 313, 315 (1st Dep't 2016) (“[T]he party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access.”) (citing *Mosallem v. Berenson*, 905 N.Y.S.2d 575, 579 (1st Dep't 2010)). Without knowing the District Attorney's Office's asserted justification for why it has submitted its two applications under seal, the News Organizations cannot realistically determine whether sealing was appropriate and, therefore, whether any access motion would be appropriate here. It is of paramount importance that the public and press be able to meaningfully and responsibly exercise their First Amendment access rights in this monumental case.

Accordingly, the News Organizations respectfully request that this Court order the District Attorney's Office to promptly provide, in writing, the basis on which it asserts that its applications are appropriately sealed. The News Organizations thank the Court for its time and consideration of this matter.

Respectfully Submitted,

Davis Wright Tremaine LLP

By: 

Robert Balin

Jeremy Chase

Rachel Strom

Raphael Holoszyk-Pimentel

Alexandra Settelmayer

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<sup>2</sup> The News Organizations were made aware of this additional application through Your Honor's April 4, 2023 Order.

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cc: The Honorable Ellen N. Biben, Administrative Judge (ebiben@nycourts.gov)  
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