

June 21, 2024

**VIA EMAIL**

The Honorable Juan M. Merchan  
Supreme Court of the State of New York  
County of New York: Part 59  
100 Centre Street  
New York, NY 10013

**Re: Application of News Organizations for Audiovisual Coverage of Sentencing Hearing  
in *People v. Trump*, Indictment No. 71543-23**

Dear Justice Merchan:

We represent the following news organizations: Advance Publications, Inc., American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, Bloomberg L.P., Cable News Network, Inc., CBS Broadcasting Inc. d/b/a CBS News, Dow Jones & Company, Inc. (publisher of *The Wall Street Journal*), Insider, Inc., National Public Radio, Inc., NBCUniversal News Group, The New York Times Company, Newsday LLC, NYP Holdings, Inc. (publisher of the *New York Post*), Reuters News & Media Inc., Vox Media, LLC (publisher of *New York Magazine*), and WP Company LLC (publisher of *The Washington Post*) (collectively, the “News Organizations”). We write to request permission for one videographer and one radio journalist—who will abide by certain restrictions described below—to provide live and recorded pool coverage of the July 11, 2024 sentencing of the former President and presumptive Republican nominee for President, Donald J. Trump.

At the outset, Mr. Trump’s sentencing “involves a matter of monumental significance [that] cannot possibly be disputed.” Decision & Order at 3 (Apr. 3, 2023). “Never in the history of the United States has a sitting or past President been” convicted of criminal charges or sentenced on those charges. *Id.* Considering that Mr. Trump is a candidate in a national election that will take place in less than four months from the sentencing, the historical and political significance of Mr. Trump’s sentencing is undeniable. The eyes of the country, and indeed the world, are upon these proceedings. It is imperative that the American public be able to see and hear these proceedings for themselves.

The unparalleled public interest in this case presents a unique opportunity to educate the public about these proceedings specifically and our criminal justice system more broadly. Over

the course of Mr. Trump’s six-week trial, a large and dedicated press corps—reporting for a broad cross-section of newspapers, magazines, television networks, radio stations, podcasts, and various other mediums, including international, national, and local outlets—has done yeoman’s work covering these proceedings and informing the public about every aspect of this case. The public has benefited immensely from this coverage. Both Your Honor and the Office of Court Administration have helped enable this broad cross-section of the news media to exercise their First Amendment and common-law rights of access to these proceedings and thereby keep the public informed.

Notwithstanding the news media’s extensive and continuous reporting on the trial, elected officials at the highest levels of our government have called the legitimacy of these proceedings into question and sowed public doubt about the fairness and integrity of the legal process and the outcome.<sup>1</sup> The sentencing, as the culmination of these proceedings, presents an opportunity for the public to learn directly, with their own eyes and ears, about the criminal justice system at work in this case and to draw their own conclusions about the integrity and fairness of these proceedings. As the Supreme Court held forty years ago, “People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing.” *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 509 (1984) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980)); see also *People v. Boss*, 182 Misc. 2d 700, 706 (Sup. Ct. Albany Cnty. 2000) (“The denial of access to the vast majority will accomplish nothing but more divisiveness while the broadcast of the trial will further the interests of justice, enhance public understanding of the judicial system and maintain a high level of public confidence in the judiciary.”). For these reasons, it is essential that the sentencing in this historic proceeding be made available via contemporaneous video and audio, for the benefit of the public, our institutions, and the historical record.

We recognize that over one year ago, this Court denied the News Organizations’ request to televise the arraignment in this case, after carefully weighing competing interests. But much has changed since then, and the Court “is now called upon to engage in that balancing exercise” anew. Decision & Order at 3 (Apr. 3, 2023). Most significantly, unlike at the arraignment, Mr.

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<sup>1</sup> See, e.g., Speaker of the House of Representatives Mike Johnson, X (May 30, 2024, 5:10 PM), <https://x.com/SpeakerJohnson/status/1796288179944685719> (“Democrats . . . convicted the leader of the opposing party on ridiculous charges, predicated on the testimony of a disbarred, convicted felon. This was a purely political exercise, not a legal one. The weaponization of our justice system has been a hallmark of the Biden Administration, and the decision today is further evidence that Democrats will stop at nothing to silence dissent and crush their political opponents. The American people see this as lawfare, and they know it is wrong—and dangerous.”). According to a national poll this month, 51% of respondents either did not believe or did not know if the verdict in this case “was the result of a fair and impartial judicial process,” and only 46% believed that it was fair and impartial. *Politico Magazine Trump Verdict Survey* at 8, IPSOS (June 7–9, 2024), <https://www.ipsos.com/sites/default/files/ct/news/documents/2024-06/Politico%20Magazine%20Trump%20Verdict%20Topline%2006%2012%202024.pdf>.

Trump has not objected to audiovisual coverage of the sentencing. Defense counsel has informed the undersigned that Mr. Trump takes no position on this application.<sup>2</sup>

The News Organizations are sensitive to the unique security challenges presented by this case, including to court personnel. Importantly, to mitigate those issues, the News Organizations are prepared to significantly limit their proposed audiovisual coverage in full cooperation with the Court's directions. Specifically, if the Court so directs, the sole videographer in the courtroom would film *only* the Defendant, the parties' counsel, or Your Honor. There would be no filming whatsoever of court staff or any other individual in the courtroom.

In the alternative, the News Organizations are prepared to take the following additional precautions, should the Court deem it necessary:

- If technically feasible, the News Organizations can connect to and rebroadcast the Court's internal closed-circuit feed of the proceedings. If that is not technically possible, the videographer can set up in the overflow room and film one of the television monitors displaying the feed. Either way, the Court's technical staff would control precisely what is televised and could limit it to the case participants. (In the past, the feed has contained three smaller screens showing only the prosecution, the defense, and Your Honor.)
- Although both audio and video coverage would best serve the public, alternatively the News Organizations can provide audio-only coverage, so that no one is visible at all. *See* 22 N.Y.C.R.R. § 131.3(f) ("Before denying an application for coverage, the presiding trial judge shall consider whether such coverage properly could be approved with the imposition of special limitations, including but not limited to . . . prohibition of video . . .").

Part 131 of the Administrative Rules vest this Court with discretion to permit audiovisual coverage of the sentencing hearing. *See* 22 N.Y.C.R.R. § 131.3(a). In light of all relevant factors, including the proposed limitations set forth above, the Court should favorably exercise its discretion here. The factors to be considered include:

(1) the type of case involved; (2) whether the coverage would cause harm to any participant; (3) whether the coverage would interfere with the fair administration of justice, the advancement of a fair trial, or the rights of the parties; (4) whether the coverage would interfere with any law enforcement activity; (5) whether the proceedings would involve lewd or scandalous matters; (6) the objections of any of the parties, victims or other participants in the proceeding of which coverage is sought; (7) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse; and (8) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought.

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<sup>2</sup> The People informed the undersigned that they would advise the Court whether they intend to take a position after reviewing this filing.

*Id.* § 131.3(d).<sup>3</sup>

Here, all of these factors point in favor of permitting audiovisual coverage of the sentencing hearing:

- (1) The proceeding at issue is the criminal sentencing of a former President and current presidential candidate, which is of monumental significance to the public.
- (2) Coverage will not harm any participant. To date, no party has raised any objection to audiovisual coverage of the sentencing. Such coverage will not include any court staff or any individual other than the parties, their counsel, and Your Honor.
- (3) Coverage will not interfere in any way with the trial, which has already concluded. Instead, coverage will bolster public confidence in the administration of justice.
- (4) Coverage will not interfere with any law enforcement activity. As noted, no court personnel will be filmed. The presence of a camera in the courtroom, or rebroadcasting or filming the preexisting closed-circuit feed of the proceedings in the overflow room, will have no discernible impact on law enforcement activities. The pool videographer and radio journalist will have any necessary credentials and will adhere to any other security requirements.
- (5) The sentencing does not involve lewd or scandalous matters.
- (6) As noted, to date, no party or participant has objected to coverage of the sentencing.
- (7) The single compact camera and microphone will be unobtrusive and will not disturb the proceedings in any way.<sup>4</sup> If the Court deems it necessary, the equipment can be operated in the overflow room rather than the courtroom itself, and if the Court's internal feed can be rebroadcast, no separate recording equipment would be used at all.
- (8) Coverage of the sentencing is not barred by N.Y. Civ. Rights Law § 52 (which only applies to witness testimony) or any other law. “[T]here is no statutory prohibition to

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<sup>3</sup> Part 29 sets forth similar factors to consider before permitting audiovisual coverage:

- (1) there will be no detracting from the dignity or decorum of the courtroom or courthouse;
- (2) there will be no compromise of the safety of persons having business in the courtroom or courthouse;
- (3) there will be no disruption of court activities;
- (4) there will be no undue burden upon the resources of the courts; and
- (5) granting of permission will be consistent with the constitutional and statutory rights of all affected persons and institutions.

22 N.Y.C.R.R. § 29.1(a). For the same reasons, these factors are also satisfied here.

<sup>4</sup> See *Courtroom Television Network, LLC v. State*, 1 Misc. 3d 328, 368 (Sup. Ct. N.Y. Cnty. 2003) (“There is no dispute that [a] small, silent, remote-controlled camera utilizing only natural light, does not present the physical problems of television coverage which beset a bygone era.”), *aff’d*, 8 A.D.3d 164 (1st Dep’t 2004), *aff’d*, 5 N.Y.3d 222, 234 (2005) (noting “the technological improvements to audiovisual equipment, which renders its presence in courtrooms less obtrusive”). While *Courtroom Television* upheld the constitutionality of the ban on audiovisual coverage of *witness testimony* (which the News Organizations do not necessarily concede was correct), the court did not cast any doubt on the permissibility of audiovisual coverage of non-testimonial proceedings such as a sentencing. Further, the court expressly recognized that technological advancements have minimized or eliminated any physical disruption caused by cameras, which have only improved in the two decades since.

audio-visual coverage of a sentencing,” because the proceeding does not involve witness testimony. *People v. Ashdown*, 12 Misc. 3d 836, 838 (Sup. Ct. Rensselaer Cnty. 2006).<sup>5</sup>

As this Court aptly noted at the beginning of this case, “[t]he populace rightly hungers for the most accurate and current information available.” Decision & Order at 3 (Apr. 3, 2023). Audiovisual coverage will satisfy that legitimate need for information and further the important goals animating the First Amendment right of access and Part 131 of the Administrative Rules: “to preserve public confidence in the Judiciary, and to foster public understanding of the role of the Judicial Branch in civil society.” 22 N.Y.C.R.R. § 131.1(a). In this historic proceeding involving the sentencing of a former President and current presidential candidate, the public deserves no less.<sup>6</sup>

If it would assist the Court, counsel for the News Organizations will make themselves available for any conference or hearing on this matter at any time. We thank the Court for its consideration of this application.

Respectfully submitted,

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<sup>5</sup> See also *People v. Olivo*, Indictment No. 07-1664, 2006 WL 8418870, at \*1 (Westchester Cnty. Ct. Sept. 12, 2008) (permitting audiovisual coverage of criminal trial’s opening and closing statements); *Nonhuman Rights Project, Inc. v. Stanley*, Index No. 152736/2015, NYSCEF Doc. No. 52 (Sup. Ct. N.Y. Cnty. May 21, 2015) (permitting audiovisual coverage of habeas oral argument). Notably, the New York Court of Appeals and every Appellate Division department regularly provide live and recorded streams of arguments. See New York State Court of Appeals, YOUTUBE, <https://www.youtube.com/@newyorkstatecourtofappeals7445>; Appellate Division, First Department, YOUTUBE, <https://www.youtube.com/@NYSAD1>; Appellate Division, Second Department, <https://www.nycourts.gov/courts/ad2/>; Appellate Division, Third Department, <https://nycourts.gov/ad3/>; Appellate Division, Fourth Department, *Oral Arguments*, <https://ad4.nycourts.gov/go/live/>.

<sup>6</sup> In recognition of these significant public interests, a Georgia court provided a live and recorded stream—and allowed pooled media to do the same on an ongoing basis with their own feed—of criminal proceedings against Mr. Trump and others. See Order Allowing Recording Device Pursuant to Rule 22 on Recording of Judicial Proceedings, *State v. Trump*, No. 23SC188947 (Ga. Super. Ct. Fulton Cnty. Sept. 13, 2023); Judge Scott McAfee, YOUTUBE, <https://www.youtube.com/@judgescottmcafee/streams>.

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