

**IN THE SUPERIOR COURT OF PENNSYLVANIA**

**IN RE: SEALED ARREST WARRANTS** : No. 21 WDA 2023  
**PURSUANT TO PA.R. CRIM. 513.1** :  
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**MEDIA INTERVENORS’ APPLICATION TO EXPEDITE APPEAL**

Petitioners the Herald-Standard - Uniontown Newspapers, Inc. (“Herald-Standard”), the Mon Valley Independent (“MVI”), and the Observer-Reporter (collectively, “Media Intervenors”) hereby request that the Court expedite the above-captioned appeal pursuant to Pennsylvania Rules of Appellate Procedure 123 and 105(a).

It is well settled that the press and public have a strong, presumptive right to inspect judicial records and attend proceedings in criminal cases under the First Amendment, Pennsylvania Constitution, and common law, and that intervention is the proper way to assert that right of access. *See United States v. Smith*, 123 F.3d 140, 147 (3d Cir. 1997); *Commonwealth v. Fenstermaker*, 530 A.2d 414, 416–17 & n.1 (Pa. 1987); *Commonwealth v. Upshur*, 924 A.2d 642, 645–47 (Pa. 2007); *Commonwealth v. Curley*, 189 A.3d 467, 473 (Pa. Super. Ct. 2018).

*Commonwealth v. Keven Van Lam*—a criminal prosecution stemming from a shooting death that is of undeniable public interest—is proceeding in secret in violation of that presumptive right of public access to criminal matters. For this

reason, Media Intervenors moved to intervene for the limited purpose of obtaining public access to court filings, the docket sheet, and hearings in the *Lam* case.

The extensive secrecy in *Lam* was imposed by a November 6, 2022 order of the Westmoreland County Court of Common Pleas (hereinafter, the “Sealing Order”), which granted a petition by the County to seal arrest warrant information for 60 days pursuant to Pennsylvania Rule of Criminal Procedure 513.1. The Sealing Order did not state the Court’s reasons for sealing or discuss any less-restrictive alternatives. Nor does that Sealing Order purport to seal the docket itself; the Sealing Order expressly applies only to the arrest warrant information and the County’s petition itself.

Despite the fact that *no court order* purports to seal it, the docket in the *Lam* case is sealed. The docket’s sealing appears to be based on a novel and still-unexplained decision to define the docket as “arrest warrant information” within the scope of Rule 513.1. As a result of the docket’s sealing, Media Intervenors and the public remain unable to access basic information about the *Lam* case, including the nature of the charges filed against Mr. Lam. Media Intervenors and the public also cannot know the dates of future proceedings in the *Lam* case unless officials decide to share this information on a case-by-case basis.

Media Intervenors filed their emergency motion to intervene and unseal on November 22, 2022. The motion explained that intervention is the proper

procedure for members of the news media to challenge access restrictions; that the strong presumption of access applies to the sealed filings and docket in *Lam*; and that the Commonwealth failed to demonstrate that the sealing was narrowly tailored to serve a compelling state interest. After a December 14 hearing on Media Intervenors' emergency motion, the Court that same day entered an order denying the motion in full.

Although the order states—for the first time—that the Court found that sealing the arrest warrant information served a compelling state interest in protecting the Commonwealth's investigation, it did not address the sealing of the docket, or consider any alternatives to such extensive closure. Further, the Court stated at the hearing that the impact of sealing was minimal because the charges against Mr. Lam would be discussed in open court at the December 19 preliminary hearing, but that hearing has since been continued to February 13, 2023 and the charges remain sealed. On December 30, 2022 Media Intervenors' Notice of Appeal was docketed in the Westmoreland County Court of Common Pleas. The Superior Court docketed the above-captioned case on January 5, 2023.

Expedited resolution of this appeal is critical because, without timely access to judicial records and proceedings, the public cannot effectively monitor the pending *Lam* prosecution. See *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (“To delay or postpone disclosure undermines the

benefit of public scrutiny . . . .”). As the Supreme Court has recognized in a similar context, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Grove Fresh Distribs., Inc.*, 24 F.3d at 897 (“[E]ach passing day may constitute a separate and cognizable infringement of the First Amendment.” (quoting *Nebraska Press Ass’n v. Stuart*, 423 U.S. 1327, 1329 (1975))). So long as the Sealing Order remains in effect, it will continue to significantly hinder Media Intervenors’ ability to gather and report the news and the public’s ability to obtain truthful information about this pending criminal case of public concern.

For these reasons, Media Intervenors respectfully request that this Court grant their Application for Expedited Appeal and promptly issue an order setting forth an expedited briefing schedule. Media Intervenors propose the following schedule, as set forth in the attached Proposed Order: Media Intervenors shall file their opening brief and the Reproduced Record by January 18, 2023; Appellees shall file their response brief by February 1, 2023; and Media Intervenors shall file their reply brief by February 6, 2023. This proposed schedule would allow for the parties to articulate their positions and for the Court to have the opportunity to enter an order before the February 13, 2023 preliminary hearing.

Dated: January 5, 2023

Respectfully submitted,

/s/ Paula Knudsen Burke

Paula Knudsen Burke

PA ID 87607

REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

PO Box 1328

Lancaster, PA 17608

(717) 370-6884

pknudsen@rcfp.org

*Counsel for Media Intervenors*

**CERTIFICATE OF SERVICE AND COMPLIANCE WITH PUBLIC  
ACCESS POLICY**

I certify that on this 5th day of January, 2023, I caused a true and correct copy of the foregoing document to be served by PACFile and email on the following:

Nicole Ziccarelli

District Attorney

nziccare@co.westmoreland.pa.us

James Lazar

Assistant District Attorney, Westmoreland County

2 N Main St., Ste 206

Greensburg, PA 15601

(724) 830-3949

jlazar@co.westmoreland.pa.us

*Counsel for the Commonwealth*

Lyle Dresbold

Attorney at Law

David J. Shrager & Associates

617 Frick Bldg.

437 Grant St.

Pittsburgh, PA 15219

(412) 261-6198

lyledresbold@yahoo.com

*Counsel for Defendant Keven Van Lam*

I further certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Paula Knudsen Burke

Paula Knudsen Burke (No. 87607)