

IN THE CIRCUIT COURT FOR  
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND,

v.

KADEN HOLLAND,

Defendant.

Case No. C-16-CR-23-001720

HEARING REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE  
TO OPPOSE DEFENDANT'S MOTION TO SEAL JUVENILE WAIVER HEARING**

Pursuant to this Court's January 23 order, the Reporters Committee for Freedom of the Press, the Associated Press, Gannett Co., Inc., Maryland-Delaware-D.C. Press Association, NBCUniversal Media LLC, Sinclair, Inc., WP Company LLC d/b/a The Washington Post, and TEGNA Inc. (together, "Media Intervenors") hereby move to intervene in this proceeding for the limited purpose of opposing Defendant's motion to seal the February 1 juvenile waiver hearing in this matter. For the reasons given below, drawing a veil of secrecy around the hearing would violate the press and public's First Amendment right of access to judicial proceedings, badly undermining the public's ability to understand a case that has become "a symbol of rising juvenile crime in the D.C. area" and sparked extensive debate on issues of core public concern. Tom Roussey, *Judge Sets Hearing to Determine Media Access in 'Baby K' Case in Prince George's County*, WJLA (Jan. 17, 2024), <https://perma.cc/E2ES-FNW8>. Media Intervenors respectfully request that they be heard on this issue at or prior to the February 1 hearing.

**RELEVANT PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Media Intervenors are the Reporters Committee for Freedom of the Press, the Associated Press, Gannett Co., Inc., Maryland-Delaware-D.C. Press Association, NBCUniversal Media

LLC, Sinclair Inc., WP Company LLC d/b/a the Washington Post, and TEGNA, Inc, institutions that exercise and defend the rights of journalists to gather and report the news.

The Reporters Committee for Freedom of the Press (“Reporters Committee”) is an unincorporated nonprofit association founded by journalists and media lawyers in 1970, when the nation’s press faced an unprecedented wave of government subpoenas forcing reporters to name confidential sources. Today, its attorneys provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists, including the right of access to judicial proceedings.

The Associated Press (“AP”) is a news cooperative organized under the Not-for-Profit Corporation Law of New York. The AP’s members and subscribers include the nation’s newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 280 locations in more than 100 countries. On any given day, AP’s content can reach more than half of the world’s population. The AP has closely covered the events at issue in this case. *See, e.g., Maryland Police: Attackers Tried to Shoot Boy on School Bus*, AP (May 5, 2023), <https://apnews.com/article/maryland-school-bus-shooting-malfunction-537f44204feb2d7ebfb9543bd9575e7b>.

Gannett Co., Inc. (“Gannett”) is the largest local newspaper company in the United States. Through its subsidiaries, Gannett has more than 200 local daily brands in 43 states including Maryland which—together with the iconic USA TODAY—reach an estimated digital audience of 140 million each month.

The Maryland-Delaware-D.C. Press Association, founded in 1908, is a nonprofit organization devoted to advocating for the interests of news media organizations in the region. The Association’s members include nearly all of the newspapers in Maryland, Delaware and the

District of Columbia as well as online-only publications and TV stations. The Association serves to bring together news media organizations for the preservation and defense of the principles of the First Amendment and to promote the growth and development of the industry.

NBCUniversal News Group, a division of NBCUniversal Media LLC, includes NBC News, Telemundo News, MSNBC, CNBC, and NBCUniversal Local, an owned television-stations group that produces substantial amounts of local news and public affairs programming. NBC News produces the “Today” show, “NBC Nightly News with Lester Holt,” “Dateline NBC” and “Meet the Press” as well as digital and streaming news reporting, such as [NBCNews.com](https://www.nbcnews.com) and NBCNewsNow. In the Washington, D.C. region, NBCUniversal owns NBC4 Washington, which has closely covered the events at issue in this case. *See, e.g.,* Walter Morris, *15-Year-Old Suspect in D.C. Homicide, Attempted Murder on School Bus Taken Into Custody*, NBC 4 (May 31, 2023), <https://perma.cc/N2JV-5UZK>.

Sinclair, Inc. is a diversified media company and leading provider of local news and sports. The Company owns, operates and/or provides services to 185 television stations in 86 markets; is a leading local news provider in the country; owns multiple national networks; and has TV stations affiliated with all the major broadcast networks and owns and provides services to 21 RSN brands. Sinclair’s content is delivered via multiple-platforms, including over-the-air, multi-channel video program distributors, and digital and streaming platforms. In the Washington, D.C. region, Sinclair owns and operates WJLA, which has closely covered the events at issue in this case. *See, e.g.,* Kate Davison, Ida Domingo & Brad Bell, *Leaders Address Youth Crime After ‘Baby K’ Charged as Adult in PGCPs Bus Attack*, WJLA (May 31, 2023), <https://perma.cc/6EZR-SEZT>.

TEGNA Inc. owns 64 news brands in 51 markets and is the largest owner of Big Four

affiliates in the top 25 markets among independent station groups, reaching approximately 39 percent of all TV households nationwide. In the Washington, D.C. region, TEGNA owns and operates WUSA9, which has closely covered the events at issue in this case. *See, e.g.,* Alanea Cremen, ‘Baby K’ Found: Accused Gunman Charged with Trying to Kill Teen on School Bus Arrested, WUSA9 (May 31, 2023), <https://perma.cc/5VCF-3E3L>.

WP Company LLC d/b/a The Washington Post is a news organization based in Washington, D.C. It publishes The Washington Post newspaper and the website [www.washingtonpost.com](http://www.washingtonpost.com), and produces a variety of digital and mobile news applications. The Post has won Pulitzer Prizes for its journalism, including the award in 2020 for explanatory reporting. The Post has closely covered the events at issue in this case. *See, e.g.,* Jasmine Hilton et al., *15-Year-Old Wanted in Attempted Killing of 14-Year-Old on Md. School Bus*, Wash. Post (May 25, 2023), <https://perma.cc/7ZAU-5Z7H>.

## ARGUMENT

### I. The Court should grant Media Intervenors’ motion to intervene.

The First Amendment and due process make clear that members of the press and public “must be given an opportunity to be heard on the question of their exclusion” before judicial proceedings or records are sealed, *Globe Newspaper Co.*, 457 U.S. at 609 n.25 (citation omitted), and limited-purpose intervention is the “correct procedure” for third-parties to oppose closure in a criminal case, *News Am. Div. v. State*, 447 A.2d 1264, 1272 (Md. 1982); *see also* Md. Rule 16-910(a)(1) (permitting any party, “including a person who has been permitted to intervene as a party,” to move to inspect case records). The same is true here: Media Intervenors have standing to intervene to vindicate their—and the public’s—right to access judicial proceedings in this matter in response to Defendant’s request to close the juvenile waiver hearing, a step that

would impede Media Intervenors' ongoing reporting on matters of core public concern.

**II. The First Amendment and Maryland Declaration of Rights guarantee presumptive public access to criminal proceedings, including where juveniles are tried as adults.**

The First Amendment and Article 40 of the Maryland Declaration of Rights both settle that public access to criminal proceedings is “an indispensable attribute” of our system of justice, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980), a principle that can be overcome “only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest,” *Press-Enter. Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501, 510 (1984); see *Sigma Delta Chi v. Speaker*, 310 A.2d 156, 157–58 (Md. 1973) (noting that Article 40 and the First Amendment are read “in pari materia”). That presumption of access is rooted in an “unbroken, uncontradicted history” that predates the Constitution itself, “supported by reasons as valid today as in centuries past,” *Richmond Newspapers*, 448 U.S. at 573, including “the therapeutic value of open justice” and the guarantee only transparency can provide “that the proceedings were conducted fairly to all concerned,” *id.* at 569. The public’s rights reach, too, beyond the trial to “pretrial proceedings,” which must be open “[i]f members of the public are to be able to evaluate the work of trial judges, prosecutors, and public defenders.” *Buzbee v. J. Newspapers, Inc.*, 465 A.2d 426, 432–33 (Md. 1983).

The same principles apply with full force where juveniles stand tried as adults in ordinary criminal court. In determining whether a First Amendment presumption of access attaches to a class of proceedings or judicial records, courts look to the “complementary considerations” of “experience and logic,” weighing “whether the place and process have historically been open to the press and general public” and “whether public access plays a significant positive role in the functioning of the particular process.” *Press-Enter. Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 8–9 (1986). Both inquiries make plain that the presumption of access attaches here.

As to experience, “criminal proceedings have historically been open to the press and public, even when juveniles were involved.” *Hartford Courant Co. v. Carroll*, 986 F.3d 211, 220 (2d Cir. 2021). Nationwide, cases in which juveniles are tried as adults routinely draw extensive interest and detailed press coverage at every stage of the criminal process.<sup>1</sup> Indeed, Maryland and a host of other states require that even true juvenile proceedings—proceedings not at issue here, where the Defendant has been charged in ordinary criminal court—be open to the public where an individual stands charged with an act “that would be a felony if committed by an adult.” Md. Code Ann., Cts. & Jud. Proc. § 3-8A-13(f)(3)(i).<sup>2</sup> No jurisdictions, by comparison, apply anything but the traditional presumption of access where juveniles are tried as adults. *See Hartford Courant Co. v. Carroll*, 474 F. Supp. 3d. 483, 498 (D. Conn. 2020), *aff’d* 986 F.3d 211 (2d Cir. 2021) (finding “no case suggesting that the right of access to proceedings and court records in a criminal prosecution has ever hinged on the age . . . of the defendant”).

And for good reason. “The safeguards to the integrity of the factfinding process and the enhanced appearance of fairness that public access brings to judicial proceedings are not

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<sup>1</sup> *See, e.g.*, Daniel Tepfer, ‘Gang Hunter’ Arraigned in Murder of 12-Year-Old, CT Post (Dec. 26 2018), <https://perma.cc/8NES-NJKU> (reporting on the arraignment of 16-year old charged as an adult for conspiracy to commit murder); David Owens, *Hartford Teen Charged with Killing Uncle to Be Prosecuted as an Adult*, Hartford Courant (Dec. 19, 2017), <https://perma.cc/XA6J-P2T9> (reporting on pretrial hearing of 17-year-old charged with murder whose case had been transferred to adult criminal court); Alaine Griffin, *Additional Psych Exam OK’d on Prom Day Stabbing Suspect*, Hartford Courant (Mar. 31, 2015), <https://perma.cc/M49E-GUGW> (reporting on a pretrial hearing of a 17-year-old charged with murder); *Teen Convicted in 2009 Beating Death of Wylie Man*, Dallas Morning News (Mar. 8, 2012), <https://www.dallasnews.com/news/crime/2012/03/08/teen-convicted-in-2009-beating-death-of-wylie-man/> (reporting on jury trial of teen charged with murder).

<sup>2</sup> *See also, e.g.*, Cal. Welf. & Inst. Code § 676 (same with respect to certain enumerated serious offenses); Ind. Code § 31-32-6-3 (same with respect to murder and other felony offenses); 42 Pa.C.S. § 6336(e) (same with respect to all felony offenses); S.D. Codified Laws § 26-7A-36 (same with respect to certain crimes of violence and drug offenses); Va. Code Ann. § 16.1-302(C) (same with respect to all felony offenses).

diminished by the age or other personal characteristics of the litigants.” *Id.* at 499–500. On the contrary, those considerations have special force where juveniles stand trial; the fundamental fairness of prosecuting minor defendants as adults remains the subject of ongoing public debate and legislative deliberation, including in Maryland. See Rachel Baye, *Maryland Tries Hundreds of Juvenile Defendants as Adults. One Annapolis Bill Tries to Change That*, WYPR (Feb. 17, 2023), <https://perma.cc/PSQ3-NU2A>; see also Ben Conarck, *Maryland Ranks Fourth for Rate of Prisoners Convicted as Children*, Baltimore Banner (May 10, 2023), <https://perma.cc/EV2P-WZKJ>. Barring the public from those trials would undermine the cardinal First Amendment interest in “ensur[ing] that this constitutionally protected discussion of governmental affairs is an informed one.” *Globe Newspaper Co.*, 457 U.S. at 605 (internal quotation marks omitted). And logic, too, therefore makes clear that proceedings involving juveniles tried as adults in ordinary criminal court—like any other criminal trial—must presumptively be open to press and public.

In light of those principles, Defendant’s reliance on any tradition of secrecy that attaches to true juvenile proceedings is misplaced. Defendant cites only “cases in which confidentiality protections were upheld regarding proceedings held on *juvenile* dockets,” but this case and this hearing are currently unfolding on this Court’s ordinary criminal docket, and “the unremarkable assertion that juvenile courts typically proceed in private . . . does not refute the presumption of access applicable to regular criminal cases.” *Hartford Courant Co.*, 986 F.3d at 220. The U.S. Court of Appeals for the Second Circuit recently rejected a substantially identical argument, explaining that the bare fact that “a regular criminal court *can* transfer a child’s case back to the juvenile or youthful offender docket” does nothing to undercut the presumption of access where the Court has not yet done so. *Id.* (emphasis added). And as the State’s submission rightly notes, no provision of Maryland law provides for the closure of juvenile waiver hearings pending

the resolution of a transfer motion—an omission that can only be considered deliberate in light of Maryland’s express framework governing the sealing of *records* pending the resolution of a transfer motion. *See* Md. Code Ann., Crim. Proc. § 4202(i).<sup>3</sup> Maryland law and the First Amendment therefore reach the same result: The ordinary presumption of access applies to criminal proceedings on the ordinary criminal docket, including juvenile waiver hearings.

**III. The presumption of public access to the juvenile waiver hearing is not overcome on the facts of this case, where Defendant’s trial raises issues of obvious public concern and any countervailing interests—to the extent any exist—are attenuated.**

The First Amendment presumption of access can be overcome only if—and only to the extent that—concealing the proceedings from the public “is essential to preserve higher values.” *Press-Enterprise I*, 464 U.S. at 510. No such showing can plausibly be made here, given both the affirmative values that favor access in this case and the weakness of any contrary interests.

In any criminal case, the structural considerations canvassed above would counsel in favor of transparency. But this case further implicates a raft of urgent debates on matters of core public concern—and for just that reason has already received extensive press and public interest nationwide. The allegations against Defendant have sparked discussion on policy questions as wide-ranging as the adequacy of Maryland’s probation and truancy systems, *see* Brad Bell, *How*

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<sup>3</sup> Media Intervenors understand from this Court’s January 23 order that the docket and all records in this proceeding are currently sealed pursuant to that authority. Media Intervenors would urge the Court to consider whether portions of those records can be unsealed in advance of the February 1 hearing—or, at a minimum, immediately after the issuance of the Court’s decision—to allow the public to understand and evaluate the Court’s ultimate ruling. “Without access to the sealed materials, it is impossible to know which of those materials persuaded the court and which failed to do so (and why),” *Metlife, Inc. v. Fin. Stability Oversight Council*, 865 F.3d 661, 669 (D.C. Cir. 2017) (Garland, J.), and the same public interests discussed here in connection with the First Amendment likewise represent “good cause” for their disclosure, subject, if necessary, to tailored redactions, Md. Code Ann., Cts. & Jud. Proc. §3-8A-27(b)(1). What’s more, the complete sealing of the docket prevents members of the press and public from “know[ing] of the need to request access” to any particular documents that may exist, denying them any opportunity to move for their disclosure. *Hartford Courant Co.*, 986 F.3d at 223.



*the System Failed in the Case of 15-Year-Old Accused of School Bus Attack, Murder*, WJLA (June 5, 2023), <https://perma.cc/2K8A-UZ8C>, the law governing questioning of juveniles, *see* Casey Nolen, *Prosecutor, Police Say New Maryland Law Slowing 'Baby K' Investigation*, WUSA9 (June 1, 2023), <https://perma.cc/HC5T-RDDX>, and, of course, the drivers of an “ongoing spike in juvenile crime across the region,” Brad Bell, *'No Silver Bullet': As Juvenile Crime Spikes, Officials Seek Solutions*, WJLA (May 26, 2023), <https://perma.cc/63JK-UWVG>. Community concern is likewise legitimately heightened by the fact that the Defendant has been charged not just with the serious offense at issue in this case, but also with a related murder in the District of Columbia. *See* Roussey, *supra*; *Richmond Newspapers*, 448 U.S. at 571 (noting that the logic favoring public access has special force where “a shocking crime” is alleged). Simply put, the public deserves to be able to understand this Court’s resolution of the question presented at the hearing, and secrecy would undermine public confidence in the ultimate result.

Any countervailing interests that might exist, for their part, are attenuated. Defendant’s submission relies entirely on the provisions of Md. Code Ann., Crim. Proc. § 4202(i) to justify closure, but as discussed above that statute speaks only to judicial records, not judicial proceedings. As to any privacy interests at stake, the most important consideration in that vein is that Defendant’s identity has already been made public in connection with detailed coverage of the alleged offense, diminishing any secrecy interests that might otherwise be at stake. *See, e.g.,* Roussey, *supra*. As the Supreme Court has made clear, where the press has already “relied upon routine newspaper reporting techniques to ascertain the identity” of a juvenile defendant, there is no legitimate interest in attempting to restrain further public dissemination of that information. *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979). On the facts of this case, drawing a veil of secrecy around these proceedings would do little to advance any particular public value,

while undermining the “confidence in the fair administration of justice” that only transparent judicial proceedings can guarantee. *Richmond Newspapers*, 448 U.S. at 572 (citation omitted).

### CONCLUSION

For the foregoing reasons, Media Intervenors respectfully request that Defendant’s motion to seal the juvenile waiver hearing in this case be denied.

Dated: January 26, 2024

Respectfully submitted,

/s/ Lisa Zycherman  
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*\* Pro hac vice application forthcoming*

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