

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
v.	:	
ZACHARY BORGHI	:	Lehigh County Criminal Div.
	:	CP-39-MD-0002924-2025
	:	
APPEAL OF: MEDIA INTERVENORS	:	No. 1315 EDA 2026
LEHIGHVALLEYNEWS.COM,	:	
THE MORNING CALL and	:	
LEHIGHVALLEYLIVE.COM	:	

BRIEF OF MEDIA INTERVENORS

On Appeal from the April 1, 2026 Order of the
Court of Common Pleas of Lehigh County

Paula Knudsen Burke
Pa. Bar ID No. 87607
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
4000 Crums Mill Road, Suite 101
Harrisburg, PA 17112
(717) 370-6884
pknudsen@rcfp.org

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal, which is taken from the April 1, 2026 Opinion and Order of the Court of Common Pleas of Lehigh County-Criminal Division in the matter *Commonwealth v. Zachary Borghi*, pursuant to 42 Pa. C.S. § 742.

Additionally, this Court has jurisdiction pursuant to the collateral order doctrine, which provides for immediate appellate review of orders on motions to unseal. *See* Pa. R. App. P. 313; *Cap. Cities Media, Inc. v. Toole*, 483 A.2d 1339, 1344 (Pa. 1984); *Commonwealth v. Long*, 922 A.2d 892, 897 (Pa. 2007); *A.A. v. Glick*, 237 A.3d 1165, 1169 (Pa. Super. Ct. 2020). Access-based motions to intervene and unseal are separate from the merits of the underlying case; they raise the important and “deeply rooted” right of timely public access to the courts; and the access rights they seek to vindicate will be irreparably lost absent appellate review. *Glick*, 237 A.3d at 1169.

DECISION UNDER REVIEW

Appellants LehighValleyNews.com, The Morning Call and lehighvalleylive.com (collectively, “Media Intervenors”) seek review of the order of the Court of Common Pleas of Lehigh County-Criminal Division in the matter *Commonwealth v. Borghi*, No. MD 2924-2025, dated April 1, 2026. That order granted Media Intervenors’ request to intervene but denied, in full, the motion to unseal. It is reproduced below verbatim pursuant to Pa. R.A.P. 2115.

ORDER

AND NOW, this 1st day of April, 2026, upon consideration of Media Intervenors’¹Motion to Intervene and Unseal, filed January 2, 2026; IT IS **HEREBY ORDERED** that the Motion to Intervene is **GRANTED** and the Motion to Unseal is **DENIED**².

¹ LehighValleyNews.com, The Morning Call, and lehighvalleylive.com

² First, the court acknowledges the procedural defect in this matter. Intervenors should have filed a motion seeking only to intervene, and following a grant by the court, then filed a motion to unseal. *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 181 A.3d 349, 351 (Pa. Super. Ct. 2018) (“*Allegheny County IIP*”), aff’d, *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 223 A.3d 214 (Pa. 2019) (“*Allegheny County IV*”). The court finds the defect is harmless. Further, the Commonwealth indicated it would waive any procedural defects. As such, this court has ruled on the merits of the motion to unseal.

Second, this court finds the presentment in this matter shall remain sealed as not all the defendants are “in custody...or released pending trial.” 42 Pa. C.S. § 4551(b). Further, evidence was presented that threats were made against two confidential informants used in this investigation. Thus, the public interest in secrecy outweighs Intervenors need for the information. *Douglas Oil Co. of Cal. v Petrol Stops Nw.*, 441 U.S. 211 (1979).

Finally, the court does not find the cases cited by Intervenors' to be persuasive as those cases involve documents or proceedings where there is a presumption of openness. *E.g.*, *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987) (newspaper had common-law right of access to arrest warrant affidavits); *Commonwealth v. Upshur*, 924 A.2d 642 (Pa. 2007)

BY THE COURT:
James T. Anthony, Judge

SCOPE AND STANDARD OF REVIEW

This Court reviews *de novo* all legal determinations made by the Court of Common Pleas, including rulings on motions to intervene, *see Schriner v. Schaffhauser*, No. 1762 MDA 2012, 2013 WL 11261854, at *2 n.1 (Pa. Super. Ct. June 18, 2013), and rulings on “whether there exists a common law or constitutional right of public access to a judicial proceeding” or record, and the scope of its review is plenary, *Commonwealth v. Curley*, 189 A.3d 467, 472 (Pa. Super. Ct. 2018) (quoting *Commonwealth v. Selenski*, 996 A.2d 494, 496 (Pa. Super. Ct. 2010)). “A trial court’s decision . . . regarding access to a particular item must be reviewed for abuse of discretion.” *Selenski*, 996 A.2d at 508. A trial court commits an abuse of discretion when it errs as a matter of law or its decision is “the result of partiality, prejudice, bias, or ill-will.” *Kurtzman v. Hankin*, 714 A.2d 450, 453 (Pa. Super. Ct. 1998).

(audiotape played at preliminary hearing was “public judicial record or document” to which presumptive right of access applied); *In re M.B.*, 819 A.2d 59 (Pa. Super. Ct. 2003) (constitutional presumption of openness applies to juvenile dependency matters); and *Commonwealth v. Buehl*, 462 A.2d 1316 (Pa. Super. Ct. 1983) (first amendment right of access applies to pretrial hearings). Conversely, grand jury proceedings have not historically been open to the press and public. *Allegheny County IV*, 223 A.3d 214. “[W]hile the cases discussed above were based upon a presumption of access flowing from the historical tradition and constitutional requirements of open courts and public trials, the opposite is true of grand jury proceedings.” *Id.* at 223 (quoting *Allegheny County III*), 181 A.3d at 355–56).

QUESTION INVOLVED

1. Did the trial court err as a matter of law when it denied Media Intervenors' motion to unseal judicial records?

Suggested answer: Yes.

STATEMENT OF THE CASE

A. Form of Action

This matter arises on appeal from the denial of three news outlets' petition to unseal documents in a criminal prosecution in the Lehigh County Court of Common Pleas.

B. Procedural History

Media Intervenors provide news coverage of Lehigh County and nearby eastern Pennsylvania communities, including coverage of public safety and criminal activity in the area. R.006a. Reporters for Media Intervenors routinely cover criminal and civil cases proceeding before the Lehigh County Court of Common Pleas and local Magisterial District Judges ("MDJs"). *Id.* To provide their readers with timely and important information about news impacting their communities, Media Intervenors frequently rely on timely access to court dockets and filings. *Id.*

Media Intervenors have been covering this case since August 29, 2025, when Lehigh County District Attorney Gavin Holihan held a press conference to

announce the arrests of nearly two-dozen individuals—although the only person identified by name the day of the press conference was Mr. Borghi, then (and now) an elected official holding the position of a sitting County Commissioner—in a “wide-ranging conspiracy.” R. 075a. Media Intervenors attempted to inspect the dockets and judicial records for the more than twenty individuals discussed at the press conference – including elected official Mr. Borghi – but discovered no docket or judicial records were open for public inspection; rather, all the press conference defendants’ criminal information was entirely under seal, including docket sheets. R.076a. Basic information such as the names of the defendants (except for Mr. Borghi), the charges filed, and the dates of any future court appearances were completely unavailable to the public. R.006a. Mr. Borghi’s name was only made available because he was arrested in a public building (Bethlehem City Hall where he was a city employee). R.006a. It was not until Media Intervenors moved on October 30, 2025, to intervene and unseal that Judge Caffrey, Supervising Judge of the Lehigh County Investigating Grand Jury, ordered the dockets unsealed. R.085–086a. His order directed the Magisterial District Court and Clerk of Judicial Records to unseal all dockets “stemming from the Grand Jury Presentment of May 30, 2025.” *Id.*

Although Judge Caffrey’s November 25, 2025 Order allowed the public and press to view dockets for the defendants arrested as part of the charges announced

on August 29, 2025, public information about the prosecutions remained scant. Pa. R. Crim. P. 504(6)(a) requires a criminal complaint to contain “a summary of the facts sufficient to advise the Defendant of the nature of the offense charged,” but in this instance, the affidavit of probable cause simply instructed the reader to “see the attached sealed grand jury presentment,” which is unavailable. R.148–149a.

Media Intervenors filed their motion to intervene and unseal that document on January 2, 2026. R.074a. The motion explained that intervention is the proper procedure for members of the news media to challenge access restrictions; that the Grand Jury Act, 42 Pa. C.S. § 4551, establishes a presumption of openness for the presentment document where—as here—the defendant has been arrested; and that any sealing must be narrowly tailored to serve a compelling state interest. R.074–078a. On January 16, 2026, the Court held a hearing on Media Intervenors’ motion. R.100a. Following the hearing, the Court issued a briefing schedule. R.098a. On January 30, 2026 the Media Intervenors and the District Attorney filed their respective briefs. R.130a, 191a. On April 1, 2026 the Court entered an order granting Media Intervenors’ motion to intervene but denying the motion to unseal. R.213a.

Media Intervenors noticed this appeal on May 1, 2026, and it was docketed that same day. R. 215a. On May 5, 2026 the lower court issued an order directing Appellants to file a statement of errors complained of on appeal. R.265a. On May

15, 2026, Media Intervenors filed with this Court an application to expedite the appeal, explaining that so long as the presentment remains sealed, it will continue to thwart Media Intervenors' ability to gather and report the news and the public's ability to obtain timely and truthful information about this pending criminal case of public concern which involves an elected official currently holding the role of a county commissioner. R.266–267a. The Commonwealth indicated by letter to this Court on May 20, 2026 that it did not intend to file a formal response on the application to expedite, and this Court on June 12, 2026 granted Media Intervenors' application to expedite the appeal and entered a briefing schedule. R.285a. This brief and the reproduced record are filed in accordance therewith.

C. Name of Judge whose determination is to be reviewed: Judge James T.

Anthony, Lehigh County Court of Common Pleas

D. Closely condensed chronological statement

On July 2, 2025 Lehigh County Detectives presented a five-page criminal complaint and affidavit of probable cause to Magisterial District Judge Ronald S. Manuscu. R.151a–153a. The lead offense was Possession with Intent to Deliver. *Id.* On August 28, 2025 Mr. Borghi was arrested pursuant to the arrest warrant issued by “CCP 31” as a result of the July 2, 2025 criminal complaint and affidavit of probable cause. R.060a. A professional bondsman posted bail in the amount of \$50,000 on August 28, 2025. R.061a. On August 29, 2025 Lehigh County District

Attorney Gavin Holihan announced the arrests of nearly two-dozen individuals, including Mr. Borghi. R.075a. The case was held for court on March 31, 2026. *Id.* The District Attorney's office filed an information on May 21, 2026. R.071a. On July 6, 2026 the District Attorney's office filed a joinder notice informing Mr. Borghi that his original 2025 charges would be combined with the newer charges filed in 2026. R.291a. On July 6, 2026 the senior judge assigned to the case issued an order scheduling Mr. Borghi's combined cases for trial on October 26, 2026. R.292a.

E. Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P

2111(a)(11). The Statement of Errors Complained of on Appeal is available in its entirety in the Reproduced Record (R.280a.) but the issues are listed below.

1. The trial court did not fully contend with the Investigating Grand Jury Act. The Investigating Grand Jury Act provides that a supervising judge “**may** . . . direct that the presentment be kept secret until the defendant is in custody or has been released pending trial.” 42 Pa. C.S. § 4551(b) (emphasis added). The Grand Jury Act therefore establishes the grand jury presentment as a presumptively public record.
2. The trial court improperly conflated grand jury proceedings with grand jury presentment documents. The trial court disregarded the cases cited by the Media

Intervenors “as those cases involve documents or proceedings where there is a presumption of openness. . . . Conversely, grand jury proceedings have not historically been open to the press and public.” Order at n.2. This was error. As described above, grand jury *presentments* are presumptively public documents under the Investigating Grand Jury Act once they have been voted on and accepted by the supervising judge. 42 Pa. C.S. § 4551(a), (b). The presumption of secrecy afforded to grand jury *proceedings* does not apply.

3. The trial court did not heed the presumption of openness of judicial records guaranteed by the common law. See Br. in Supp. of Media Intervenors' Mot. to Intervene and Unseal at 10–13. The trial court erred as a matter of law when it denied Media Intervenors’ motion to unseal the grand jury presentment, which was attached to the affidavit of probable cause for the prosecution of Mr. Borghi. The affidavit of probable cause, as part of a routine criminal prosecution, is a judicial record and is presumptively public. *See, e.g., United States v. Smith*, 123 F.3d 140, 147 (3d Cir. 1997); *Commonwealth v. Upshur*, 924 A.2d 642, 647 (Pa. 2007); *Commonwealth v. Fenstermaker*, 530 A.2d 414, 420 (Pa. 1987); *Commonwealth v. Selenski*, 996 A.2d 494, 496 (Pa. Super. Ct. 2010).

4. Where, as here, the presumption of access to judicial records and proceedings attaches, the party seeking closure bears the burden to overcome that presumption. The court must make specific on-the-record findings justifying closure and explain

its consideration and rejection of less-restrictive alternatives. *See Upshur*, 924 A.2d at 651–52. Even if grounds existed for denying unsealing as to a portion (or even a majority) of the grand jury presentment—which was appended to Mr. Borghi’s affidavit of probable cause and referenced the criminal cases of numerous other individuals—it was an error of law for the trial court to deny unsealing as to the specific pages describing the alleged criminal conduct of Mr. Borghi. *See Trial Tr.* 19:23–24, Jan. 16, 2026.

5. The trial court did not heed the presumption of openness of judicial records guaranteed by the First Amendment to the U.S. Constitution. *See Br. in Supp. of Media Intervenors' Mot. to Intervene and Unseal* at 10–13; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980). As with the common law, even if a compelling interest necessitates some form of closure, the First Amendment requires any access restrictions to be no broader than necessary to serve that interest. *Press-Enter. Co. v. Superior Ct.*, 464 U.S. 501, 510 (1984).

6. The trial court did not contend with the established prerequisites for sealing court records—i.e., on-the-record findings that a document should be withheld from the public notwithstanding the aforementioned presumption of access. The District Attorney’s office - through representations of counsel —alleged that witnesses were threatened but did not present witnesses, evidence, or specify whether the alleged threats were as to Mr. Borghi in particular, or why redaction

would be insufficient to ameliorate any safety concerns regarding the witnesses.

See Trial Tr. 9:12–10:15, Jan. 16, 2026.

SUMMARY OF ARGUMENT

More than ten months after Lehigh County District Attorney Gavin Holihan announced the arrests of nearly two dozen people—including County Commissioner Zachary Borghi—the public remains in the dark as to the basic facts underpinning the prosecutions. The affidavit of probable cause, a presumptively public document, is blank save a single reference to a sealed grand jury presentment. R.148a.

The trial court and the Commonwealth rely upon the status of two individuals mentioned in the presentment who have not been charged, as well as threats by unspecified persons against unspecified confidential informants. Neither the trial court nor the Commonwealth have adequately explained how the two individuals and unspecified threats stand in the way of the First Amendment and common law rights of access to public judicial documents, particularly as applied to the records at issue here and when the records sought involve a sitting elected official county commissioner.

“The importance of the public having an opportunity to observe the functioning of the criminal justice system has long been recognized in [Pennsylvania] courts.” *Commonwealth v. Fenstermaker*, 530 A.2d 414, 417 (Pa.

1987). “The nature of criminal law is such that it punishes offenses against the collective public, and, accordingly, members of the public have an interest in observing criminal justice processes to be assured that offenses perpetrated against them are dealt with in a manner that is fair to their interests, and fair to the interests of the accused.” *Id.* (citation omitted). But here, the public—and the press as their surrogate—are unable to properly observe the criminal justice processes of the prosecutions stemming from the 12th Investigating Grand Jury.

Media Intervenors sought to intervene in the above-captioned proceeding for the limited purpose of vindicating their constitutional and common law rights of access. The trial court’s decision erred as a matter of law when it denied the motion to unseal the grand jury presentment. The trial court did not properly contend with the Constitutional and common law rights of access or engage with the requirement to narrowly tailor any sealing to serve a compelling state interest.

Media Intervenors respectfully request that, to allow Media Intervenors to obtain and report on basic information pertaining to the pending prosecution of a sitting elected official, this Court reverse in an expedited fashion the decision below to keep the presentment sealed.

ARGUMENT

I. The grand jury presentment for Mr. Borghi's prosecution must be unsealed.

The First Amendment, article 1, sections 9 and 11 of the Pennsylvania Constitution, and the common law all guarantee members of the press and public a presumptive right of access to judicial records and proceedings. *See, e.g., Smith*, 123 F.3d at 147; *Upshur*, 924 A.2d at 647; *Fenstermaker*, 530 A.2d at 417; *Selenski*, 996 A.2d at 496.³

Here, Media Intervenors assert their presumptive right of access to the grand jury presentment as a judicial record. There is no basis to seal the document under the Investigating Grand Jury Act, which allows sealing of the presentment under narrow circumstances not present here. And the presentment is incorporated into the affidavit of probable cause, which no party disputes is a public record. Because the public—including Media Intervenors—have a presumptive right of access to the grand jury presentment in this case, the Commonwealth (or any other

³ The constitutional and common law rights of access are not identical—the constitutional right of access provides stronger protections, while the common law right of access attaches to more types of records. *See Long*, 922 A.2d at 897–98 & n.6.

party opposing sealing) must meet a strict test to justify sealing. They have not met this test. The trial court’s determination that the grand jury presentment could stay under seal was error, and should be reversed.

A. The grand jury presentment is a presumptively public judicial record at this stage of criminal proceedings.

Pursuant to the Investigating Grand Jury Act, the supervising judge “may . . . direct that the presentment be kept secret until the defendant is in custody or has been released pending trial.” 42 Pa. C.S. § 4551(b). Implicit in this provision is a recognition that the presentment is by default a public record, which “*may*” be sealed only when a judge determines that such sealing is necessary—which in turn can only happen during a specified phase of the proceedings, before the defendant is in custody or released pending trial. Absent the judge’s affirmative exercise of this cabined discretion to keep the document “secret” during this discrete period of time, the presentment would be accessible to the public, like any other court record.

Here, the predicate for potentially sealing the presentment as set forth by the Act—waiting until the defendant is in custody or is released pending trial—has now expired. Mr. Borghi was arrested on August 28, 2025, and a bail bondsman posted surety on his behalf that same day; he was present at the time of the January 16, 2026 hearing in the Lehigh County Court of Common Pleas where the judge questioned his status.

THE COURT: Well, Mr. Borghi is not in custody, is he?

MS. BURKE: I'm sorry. He is in pre --yes. And Your Honor, for the record, we just identified that Mr. Borghi is here at counsel table with his defendant -- with his attorney. He's out on bail.

R.102–103a.

While Mr. Borghi was later (after the January 2026 hearing) charged with additional and apparently related crimes,⁴ he was released pending trial in the instant case, which removes the basis for keeping the grand jury presentment “secret” under the statute. Likewise, although the Commonwealth at the January 2026 hearing cited “two other people who are in the wind” – presumably meaning that the “two other people” were individuals indicted by the grand jury but not yet in custody or released pending trial – the pages of the presentment that outlined the charges against Mr. Borghi were specific to him and could be released without revealing information pertaining to other defendants, including any defendants not yet in custody. R.127–128a.

This was made clear during the January 2026 hearing by Mr. Borghi's counsel, who explained:

This case has been, since July, under a dark cloud of secrecy. A major indictment for corrupt organizations was filed by the district attorney

⁴ Pending in the Lehigh County Court of Common Pleas at *Commonwealth v. Borghi*, Nos. CP-39-CR-0001488-2026, CP-39-CR-0001489-2026, CP-39-CR-0001490-2026 and CP-39-CR-0001491-2026.

against 40 individuals, not Mr. Borghi, of course. But 40 individuals. And the district attorney has been reluctant to disclose any information with regard to any of those. Without disclosing the contents of the presentment, I think I am at liberty to say that, at least, on his individual behalf and I don't speak on behalf of any of the other 40. On pages -- the only reference to Mr. Borghi occurs on pages 44 and 45 of the presentment. And at the very least, on behalf of Mr. Borghi, we ask that those two pages, at least, be released.

R.118–199.

Accordingly, there is no basis under the Investigating Grand Jury Act to keep the portion of the grand jury presentment detailing the basis for Mr. Borghi's charges under seal, which by all accounts is confined to two pages. To the contrary, at least as to Mr. Borghi, the grand jury presentment is presumptively public. For that reason alone, the trial court's decision to keep the presentment under seal in its entirety should be reversed.

B. The affidavit of probable cause is presumptively public, which here necessitates the unsealing of the incorporated grand jury presentment.

As explained above, the grand jury presentment at issue in this case is attached to and incorporated by reference into the police criminal complaint and affidavit of probable cause for Mr. Borghi's prosecution. R.148a, 151a–153a. The section of that document that would have in a narrative fashion summarized the facts supporting the charges simply said to "see the attached sealed grand jury presentment." R.148a. The police criminal complaint has been appropriately unsealed by the trial court; there is no basis for continued sealing of the appended

affidavit of probable cause that summarizes the information that must be set forth in the now-public criminal complaint. For this additional reason, the trial court's decision to maintain the grand jury presentment in this case under seal must be reversed.

An affidavit of probable cause falls within the definition of “arrest warrant information” in the Pennsylvania Rules of Criminal Procedure. *See* Pa. R. Crim. P. 513.1(A) (defining “arrest warrant information” as “the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, any affidavit(s) of probable cause, and documents or information related to the case”). Pennsylvania courts hold that arrest warrant information is presumptively public under the common law at a minimum. *Fenstermaker*, 530 A.2d at 418–19; *see also id.* at 419 (declining to reach First Amendment claim); *but see Commonwealth v. Fenstermaker*, 502 A.2d 181, 184 (Pa. Super. Ct. 1985) (holding First Amendment right attaches to arrest warrant information). There are good reasons for this presumption: Public access to arrest warrant information discourages perjury in affidavits, encourages law enforcement to ensure affidavits are supported by sufficient cause, promotes fairness and accuracy in judicial decision making, and increases the perception of fairness in the arrest warrant process. *Fenstermaker*, 530 A.2d at 418–19. This Court reaffirmed the importance of public access to arrest warrant information

more recently, referencing *Fenstermaker*. See *In re Sealed Arrest Warrants Pursuant to Pa. R.Crim.513.1*, 313 A.3d 214, 218 (Pa. Super. Ct. 2024)

Rule 513.1 covers the circumstances when arrest warrant information may be sealed. The rule was itself drafted in 2013 to codify *Fenstermaker* and, like that case, recognizes that arrest warrant information is covered by “the presumption of openness” and should only be sealed in “rare cases” where the Commonwealth can overcome that presumption. Cmt., Pa. R. Crim. P. 513.1.⁵ In the Final Report accompanying the Supreme Court of Pennsylvania’s adoption of the new rule 513.1, the Criminal Procedural Rules Committee wrote that it “recognized the strong tradition and policy in Pennsylvania of maintaining the openness of the courts and court records. At the same time, the Committee recognized that disclosure of arrest warrant information prior to execution has the potential for injury or loss of life to the executing officers in addition to the possibility of flight on the part of the defendant.” See Supreme Court of Pennsylvania, *Delay in Dissemination and Sealing of Arrest Warrants Final Report* (Dec. 23, 2013) <https://www.pacourts.us/assets/opinions/Supreme/out/443crim-rpt.pdf>. The Report

⁵ When the words of a rule are not explicit, the intention of the Supreme Court may be ascertained by considering, among other matters: “[. . .] the commentary accompanying the rule[.]” 201 Pa. Code Rule 108(c), Pa. R.J.A. 108(c). See also Comment, 201 Pa. Code Rule 103, Pa. R.J.A. 103 (“Effective October 1, 2021, [a] ‘rule’ includes the rule text and any accompanying commentary such as a note or comment. Such commentary, while not binding, may be used to construe or apply the rule text.”)

and its discussion of new Rule 513.1 makes clear that access is presumed except for in the most serious of circumstances and that if there is a delay in dissemination and sealing, it should be of a short duration and then the case resumes as any other prosecution. “When the warrant is executed, the attorney for the Commonwealth or the police officer will take copies of all the original filings to the issuing authority designated in the sealing order, and, thereafter, the case will proceed as any other case before the issuing authority.” Final Report at 6. Any sealing order must specify the good cause for the sealing and must only be for sixty (60) days, unless extended for an additional thirty (30) days by further order. *See* Pa. R. Crim. P. 513.1.

Here, there would be no basis to keep the arrest warrant information for Mr. Borghi’s prosecution (including the affidavit of probable cause) under seal. The warrants have been executed, and Mr. Borghi was charged, arrested, and released pending trial. Accordingly, even if the grand jury presentment were, standing alone, not a presumptively public document, the affidavit of probable cause to which it has been appended is presumptively public “arrest warrant information.” And because the grand jury presentment contains the facts required to be included in the affidavit of probable cause, that document—or at the very least those portions that set forth those facts—must be made public.

The trial court's opinion does not acknowledge this reality. Instead, the court appears to ground the sealing in the Investigating Grand Jury Act (which does not justify sealing at all at this stage, *see supra* section I.A), and the fact that grand jury *proceedings* are presumptively secret. But Media Intervenors are not seeking access to any grand jury proceedings; they are instead simply seeking access to a meaningfully complete version of the affidavit of probable cause; the only portion of the arrest warrant documents currently available are the first three pages of a five-page police criminal complaint and affidavit of probable cause. *See* 1925 Opinion at 3–4, R.289–290a; R.151–153a.

C. The Commonwealth has not met its burden to justify sealing a presumptively public judicial record.

Rule 513.1 and its comment – as well as the Final Report announcing the new rule – make it clear that sealing is an extraordinary remedy that must be reserved for circumstances that clearly establish good cause.

The rule establishes a standard of “good cause” for sealing the arrest warrant information. When determining whether good cause exists to seal the arrest warrant information, the justice or judge must consider whether the presumption of openness is rebutted by other interests that include, but are not limited to, whether revealing the information would allow or enable flight or resistance, the need to protect the safety of police officers executing the warrant, the necessity of preserving the integrity of ongoing criminal investigations, and the availability of reasonable alternative means to protect the interest threatened by disclosure.

See Comment, Rule 513.1

The instant case involves an effort to review judicial documents that are presumed to be public for a sitting elected official. There is significant public interest in maintaining openness for these documents. Where, as here, the presumption of access to judicial records attaches, the burden is on the party seeking closure to overcome that presumption and justify sealing. *See Upshur*, 924 A.2d at 651. The First Amendment and the common law each set their own bar for overcoming the presumption of access. Under the First Amendment, “[o]nly a *compelling* government interest justifies closure and then only by a means narrowly tailored to serve that interest.” *In re M.B.*, 819 A.2d 59, 63 (Pa. Super. Ct. 2003) (emphasis in original) (citations and internal quotation marks omitted). Specifically, the party seeking to restrict public access must demonstrate “that opening the proceedings will work a clearly defined and serious injury to the party seeking closure” and “that the material [it seeks to keep secret] is the kind of information that the courts will protect.” *Id.* (citations and internal quotation marks omitted). Where the common law presumption of access attaches, the party seeking closure must establish that the presumption of access is outweighed by interests in secrecy. *Upshur*, 924 A.2d at 651 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 602 (1978)). Finally, under Rule 513.1, the Commonwealth bears the burden of establishing “good cause” for sealing arrest warrant information. Pa. R. Crim. P. 513.1.

Consistent with the common law right of access, the court is required to issue an order “contain[ing] an articulation of the factors taken into consideration” in deciding whether “the presumption of openness attached to a public judicial document is outweighed by circumstances warranting closure of the document to public inspection.” *Fenstermaker*, 530 A.2d at 420–21. Additionally, the court is required to address “the availability of reasonable alternative means to protect the interest threatened by disclosure” of arrest warrant information. Cmt., Pa. R. Crim. P. 513.1. Neither the Commonwealth, nor the trial court, met these requirements.

Judge Caffrey’s November 25, 2026 Order fails to name any factual or legal ground for sealing the presentment (which in turn constructively seals the affidavit of good cause) and merely refers to the court’s June 9 Order. R.041–042a. Similarly, the December 9, 2025 Order also fails to provide any good cause for why the grand jury presentment can only be provided to defense counsel and not any further distribution. R.057–058a. The only rationale – beyond references to the Grand Jury Act – offered by the Commonwealth (or the trial court) to justify sealing did not occur months after Mr. Borghi had been arrested. At the January 2026 hearing, the Commonwealth presented an offer of proof that confidential informants have been threatened or assaulted, R.108–109a which the trial court accepted without further analysis as “evidence” despite the lack of any sworn testimony. R.213a, FN 2. (“Evidence was presented that threats were made against

two confidential informants used in this investigation.”). *Id.* The trial court erred by not explaining how these vague allegations of harm overcame the presumption of access. *See In re Avandia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 924 F.3d 662, 678 (3d Cir. 2019) (rejecting “broad, vague, and conclusory allegations of harm that are, standing alone, insufficient to overcome the presumption of public access”); *PG Publ’g Co. v. Commonwealth*, 614 A.2d 1106, 1109. This is particularly compounded in the case of Mr. Borghi because, as his attorney pointed out, there was no direct evidence or notification from the Commonwealth that his client had been involved in any threats. R.121. Mr. Borghi’s counsel urged the court to examine pages 44 and 45 of the grand jury presentment. “Nothing within the context of those two pages that would cause anyone to have any reason to suspect who that CI might be,” attorney Astead noted. *Id.*

The trial court and the Commonwealth did not explain how public release of the presentment would have any further impact on the confidential informants or other witnesses, nor why the presentment at least as to Mr. Borghi could not be redacted to control for any witness intimidation concerns. Nor did the trial court explain how the widespread publicity – including a post on X (formerly Twitter)⁶

⁶ The text above a mug shot and photo of a man in handcuffs in the September 11, 2025 X post from the U.S. Marshals Service stated “Lehigh County fugitive Luis Beltre . . . was charged in a large scale drug investigation where more than 22 persons have been arrested and 25 firearms were seized.” R.026a. At the time, the post had more than 4,000 views.

by the U.S. Marshalls Service about its capture of a different defendant in the case –hadn’t already provided potential wrongdoers with plenty of fodder to carry out threats. R.026a. In fact, the trial court, in discussing the alleged threats to confidential informants, posed the question to the attorney for the Commonwealth: “It’s just someone put two and two together [to figure out who was a confidential informant]” R.108a. Potential wrongdoers could have “put two and two together” just based on word of mouth about who was arrested. Or, they could have gleaned information based off of who was in Lehigh County Jail, unable to post bail. Or, as provided by the December 9, 2025 order, numerous defendants were already provided with copies of the presentment and could have ignored the order and shared information about confidential informants. R.057–058a The Commonwealth did not present any particularized evidence about which defendant – whether Mr. Borghi or some other defendant – presented a risk or posed a harm to confidential informants. The Commonwealth also did not explain how the threats related to the specific grand jury presentment pages pertaining to Mr. Borghi.

Further, the court did not address any less-restrictive alternatives, such as targeted redactions. *See Press-Enter. Co.*, 464 U.S. at 510; *United States v. Criden*, 675 F.2d 550, 560 (3d Cir. 1982); *Upshur*, 924 A.2d at 652; *Fenstermaker*, 530 A.2d at 420; *Buehl*, 462 A.2d at 1322. Accordingly, the trial court committed

reversible error in denying Media Intervenors' motion to unseal the presentment incorporated into the affidavit of probable cause.

II. To the extent any continued sealing is necessary, such sealing must be narrowly tailored and supported by specific, on-the-record findings.

Even if the Commonwealth could demonstrate a countervailing interest necessitating some form of closure, any such access restrictions must be no broader than necessary to serve that interest. *Press-Enter. Co.*, 464 U.S. at 510; *Buehl*, 462 A.2d at 1322. Further, any such continued sealing must be supported by specific, on-the-record factual findings. *Upshur*, 924 A.2d at 651 (citing *Fenstermaker*, 530 A.2d at 420–21).

The trial court states in its opinion that there is no need to make on-the-record findings because the presentment is not presumptively public and because the Grand Jury Act does not require any. R.290a. While it is true that the Act does not explicitly require any on-the-record findings, under the common law and First Amendment, such findings *are* required to justify sealing a presumptively public judicial record that is part of a normal criminal prosecution. And under the Act, the presentment—at least in part—is a presumptively public record, since sealing would be allowed only until a defendant is in custody or released pending trial. 42 Pa. C.S. § 4551(b). The Act allows for wide discretion in issuing a sealing order because it does not contemplate a situation like the present one, where a defendant was arrested ten months ago and the grand jury presentment, which has been

incorporated into the police criminal complaint and affidavit of probable cause, still remains secret.

Accordingly, if the Court finds any continued sealing may be necessary, Media Intervenors respectfully ask that this Court direct the trial court to unseal the presentment and utilize targeted redaction of specific words or phrases instead of wholesale sealing. *Cf., e.g., Press-Enter. Co.*, 464 U.S. at 520 (Marshall, J., concurring) (citing redaction as a less-restrictive alternative to complete closure); *Warthluft v. Milton Hershey Sch. & Sch. Tr.*, No. 1:16-CV-2145, 2019 WL 5394575, at *5 (M.D. Pa. Oct. 22, 2019) (“[C]onsider[ing] redaction of sensitive material as an alternative to wholesale sealing of documents, an approach which also calls for a document-specific analysis.”); *United States v. Korbe*, No. 09-CR-0056, 2010 WL 11527423, at *4 (W.D. Pa. Nov. 8, 2010) (granting in part motion to unseal but redacting records “in the narrowest possible manner” after finding “no alternatives . . . would protect the compelling interests” at stake). Media Intervenors also request that the trial court be directed to place its detailed factual and legal findings on the record, explaining, as necessary, why the presumptive right of access is overcome, as well as why less-restrictive alternatives do not adequately protect the interests at stake.

CONCLUSION

For the reasons set forth above, Media Intervenors respectfully request that this Court vacate the April 1, 2026 order of the Lehigh County Court of Common Pleas denying their motion to unseal. Media Intervenors also respectfully request that the Court adjudicate this matter in an expedited fashion to allow Media Intervenors to obtain and report on basic information regarding the prosecution of an elected official.

Dated: July 10, 2026

Respectfully submitted,

/s/ Paula Knudsen Burke

Paula Knudsen Burke

Pa. Bar ID No. 87607

REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

4000 Crums Mill Rd, Ste. 101

Harrisburg, PA 17112

(717) 370-6884

pknudsen@rcfp.org

Counsel for Media Intervenors

CERTIFICATE OF COMPLIANCE

1. 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.

Dated: July 10, 2026

/s/ Paula Knudsen Burke

Paula Knudsen Burke

Pa. Bar ID No. 87607

REPORTERS COMMITTEE FOR
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CERTIFICATE OF SERVICE

I certify that on this 10th day of July, 2026, I caused a true and correct copy of the foregoing document to be served by email and PACFile on the following:

Craig W. Sheetz, Esq.
Joseph Stephen Holaska, Esq.
Heather F. Gallagher, Esq.
Lehigh County District Attorney's Office
455 W. Hamilton St.
Allentown, PA 18101-1614
For the Commonwealth of Pennsylvania

Gary Neil Asteak, Esq.
Asteak Law Offices
726 Walnut St
Easton, PA 18042-4351
For Defendant Zachary Borghi

/s/ Paula Knudsen Burke

Paula Knudsen Burke
Pa. Bar ID No. 87607
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS

APPENDIX

PER Pa.R.A.P. 2111 (b)

Opinion delivered by trial court appended

**IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

Filed
6/25/2026 8:18 AM
Clerk of Judicial Records
Lehigh County, PA

COMMONWEALTH OF PENNSYLVANIA

No. CR-957-2026

vs.

ZACHARY BORGHI,

Defendant

Pa.R.A.P. 1925(a) OPINION

James T. Anthony, Judge:

On May 30, 2025, the Twelfth Panel of the Lehigh County Investigating Grand Jury issued a Presentment (“the Presentment”) recommending charges against several individuals, including the defendant, Zachary Borghi. The Presentment was reviewed and accepted by the Honorable Thomas M. Caffrey—then Supervisory Judge for Grand Jury—on June 9, 2025. On June 10, 2025,¹ Judge Caffrey issued an order directing that the Presentment be sealed. Thereafter, the defendant was charged with Possession with the Intent to Deliver or Manufacture a Controlled Substance and Criminal Possession of a Controlled Substance.

On November 7, 2025, Media Intervenors² (“Intervenors”) filed an Emergency Petition to Intervene and Unseal³ seeking to have the criminal dockets related to the Grand Jury investigation unsealed. On November 25, 2025, following a hearing and upon agreement of counsel, Judge Caffrey denied the petition without prejudice and directed the Magisterial District Court and Lehigh County Clerk of Judicial Records to

¹ The Order was dated June 9, 2025, but docketed June 10, 2025.

² LehighValleyNews.com, The Morning Call, and lehighvalleylive.com.

³ The petition was originally filed under Civil Docket 2025-C-4385 on October 30, 2025, and later transferred to the Criminal Division on November 7, 2025, under docket MD-2716-2025.

unseal the dockets stemming from the Presentment. The Presentment itself was ordered to remain sealed.

On December 9, 2025, Judge Caffrey issued a protective order authorizing the Lehigh County District Attorney's Office to disclose and provide copies of the Presentment to counsel for the defendant,⁴ but limiting the reproduction and dissemination of said materials. On January 2, 2026, Intervenors filed a Motion to Intervene and Unseal. Following a hearing on January 16, 2026, I took the motion under advisement and the parties submitted briefs.⁵ On April 1, 2026, I denied the petition. A footnote to the Order detailed the reasons for the decision:

First, the court acknowledges the procedural defect in this matter. Intervenors should have filed a motion seeking only to intervene and, following a grant by the court, then filed a motion to unseal. *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 181 A.3d 349, 351 (Pa.Super. 2018) ("*Allegheny County III*"), *affd*, *In re 2014 Allegheny Cnty. Investigating Grand Jury*, 223 A.3d 214 (Pa. 2019) ("*Allegheny County IV*"). The court finds the defect is harmless. Further, the Commonwealth indicated it would waive any procedural defects. As such, this court has ruled on the merits of the motion to unseal.

Second, this court finds the presentment in this matter shall remain sealed as not all the defendants are "in custody [or...] released pending trial." 42 Pa.C.S.A. § 4551(b). Further, evidence was presented that threats were made against two confidential informants used in this investigation. Thus, the public interest in secrecy outweighs Intervenors' need for the information. [*See Douglas Oil Co. of California v. Petrol Stops Nw.*, 441 U.S. 211 (1979)].

Finally, the court does not find the cases cited by Intervenors[] to be persuasive as those cases involve documents or proceedings where there is a presumption of openness. E.g., *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987) (newspaper had common-law right of access to arrest warrant affidavits); *Commonwealth v. Upshur*, 924 A.2d 642 (Pa. 2007) (audiotape played at preliminary hearing was "public judicial record or document" to which presumptive right of access applied); *In re M.B.*, 819 A.2d 59 (Pa.Super. 2003) (constitutional presumption of openness

⁴ The Order was issued for this defendant and nine co-defendants.

⁵ Subsequent to the filing of the petition, I became the Supervisory Judge for Grand Jury.

applies to juvenile dependency matters); and *Commonwealth v. Buehl*, 462 A.2d 1316 (Pa.Super. 1983) (first amendment right of access applies to pretrial hearings). Conversely, grand jury proceedings have not historically been open to the press and public. *Allegheny County IV*, 223 A.3d 214. “[W]hile the cases discussed above were based upon a presumption of access flowing from the historical tradition and constitutional requirements of open courts and public trials, the opposite is true of grand jury proceedings.” *Id.* at 223 (quoting *Allegheny County III*, 181 A.3d at 355-56).

Order Denying Motion to Unseal, April 1, 2026.

Intervenors appealed the decision on May 1, 2026, and raised six errors in their concise statement of errors complained of on appeal. Errors 1, 2, 3, and 5 stem from their allegation that I erred in denying their motion because the Presentment was presumptively public. I find no merit to this.

Grand jury presentments are governed by Section 4551 of the Investigating Grand Jury Act (“the Act”). 42 Pa.C.S.A. §§ 4541-4553. Under the Act, once the grand jury determines a presentment should be returned against an individual:

[T]he grand jury shall direct the attorney for the Commonwealth to prepare a presentment which shall be submitted to the investigating grand jury for a vote. Should a majority of the full grand jury vote approval for the presentment it shall then be submitted to the supervising judge. The supervising judge shall examine the presentment, and if it is within the authority of the investigating grand jury and is otherwise in accordance with the provisions of this subchapter, the supervising judge shall issue an order accepting the presentment.

42 Pa.C.S.A. § 4551(a). Following this, the supervising judge “may, on his own motion or at the request of the Commonwealth, direct that the presentment be kept secret *until the defendant is in custody* or has been released pending trial.” 42 Pa.C.S.A. § 4551(b) (emphasis added).

Here, Judge Caffrey reviewed the Presentment and, in exercising his discretion authorized under the Act, apparently determined that it should be sealed. Any

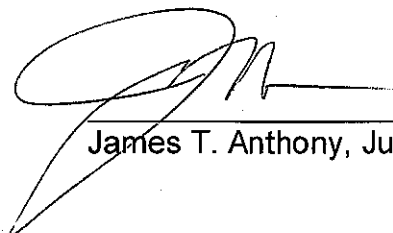
presumption of openness that attached after the Presentment was reviewed and accepted by Judge Caffrey was overcome once he ordered the Presentment sealed. At the time of the hearing on Intervenor's motion, there was no presumption of openness, and not all of the defendants were in custody. Additionally, there was an offer of proof from the Commonwealth that if called as witnesses, detectives involved in this investigation would testify that confidential informants utilized in this case were threatened and/or assaulted. As such, there is no merit to these errors.

Errors 4 and 6 are still based on Intervenor's argument that the Presentment was presumptively public, but further allege I erred by not meeting some required burden or prerequisite to overcome the presumption and by failing to make on-the-record findings. As set forth above, any presumption of openness was no longer at issue when Intervenor filed their motion. Further, the Act does not set forth any prerequisites for sealing a presentment or require any on-the-record findings. Rather, the Act gives great discretion to the supervising judge "on his own motion or at the request of the Commonwealth" to issue a sealing order until the defendant is in custody. 42 Pa.C.S.A. § 4551(b). As such, I also find these errors to be without merit.

Conclusion

Based on the forgoing reasons, I submit the defendant's appeal is without merit and ask that my order be affirmed.

June 24, 2026



James T. Anthony, Judge