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October 24, 2014

The Honorable Susan E. Cox
U.S. Magistrate Judge for the Northern District of Illinois
Everett McKinley Dirksen U.S. Courthouse
219 South Dearborn Street
Chicago, IL 60604

VIA OVERNIGHT MAIL

Re: *United States v. Mohammed Hamzah Khan*, No. 14-cr-564

Dear Judge Cox:

The Reporters Committee for Freedom of the Press (the “Reporters Committee”) writes to express concern about the government’s motion for partial closure of Mr. Khan’s detention hearing. We respectfully urge the Court to ensure public access to the entirety of that hearing.

The Reporters Committee is an unincorporated association of reporters and editors dedicated to defending and preserving the First Amendment’s guarantee of a free press, and safeguarding the right of the public to be informed about the conduct of its government. As a representative of the news media and an advocate for press freedom, the Reporters Committee has a strong interest in public access to court proceedings, particularly criminal matters involving terrorism-related charges.

It is well established that the public and the press enjoy a First Amendment right of access to preliminary proceedings in criminal cases. *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1, 13 (1986).

Overcoming this constitutional presumption of access is a “formidable task.” *In re Associated Press*, 162 F.3d 503, 506 (7th Cir. 1998). “The presumption of openness may 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. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Waller v. Georgia*, 467 U.S. 39, 45 (1984) (quoting *Press-Enterprise Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501, 510 (1984)). In addition, the Court “must consider alternatives to secrecy, whether or not the lawyers propose some.” *United States v. Blagojevich*, 612 F.3d 558, 565 (7th Cir. 2010). The Seventh Circuit applies this standard even in the context of motions for partial closure. See *Walton v. Briley*, 361 F.3d 431, 433–34 (7th Cir. 2004) (conducting a *Waller* analysis related to a partial closure of a criminal trial).

Courts have consistently recognized a First Amendment right of access to detention hearings. *See, e.g., Seattle Times Co. v. U.S. Dist. Court*, 845 F.2d 1513, 1517 (9th Cir. 1988) (“We hold, therefore, that the press and the public have a right of access to pretrial release proceedings and documents filed therein.”); *United States v. Chagra*, 701 F.2d 354, 363–64 (5th Cir. 1983); *United States v. Edwards*, 430 A.2d 1321, 1345–46 (D.C. 1981); *see also United States v. Graham*, 257 F.3d 143, 154 (2d Cir. 2001) (finding “considerable public interest in scrutinizing the courts’ exercise of authority in the context of pretrial detention hearings”).

Because the government’s justification for its motion has been filed under seal, the Reporters Committee cannot respond to the substance of the government’s argument. It appears, however, that the motion is based upon the asserted privacy rights of minors.¹ Simply because a minor’s privacy interest may be implicated in a hearing does not, on its own, justify closure. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607–08 (1982) (recognizing that “safeguarding the physical and psychological well-being of a minor” is a compelling interest, but stating that the presence of such interest “does not justify a *mandatory* closure rule, for it is clear that the circumstances of the particular case may affect the significance of the interest”); *United States v. Yazzie*, 743 F.3d 1278, 1288 (9th Cir. 2014) (stating that a court must consider the minor’s age, psychological maturity, understanding of the proceedings and charges, the desires of the victim, and the interests of parents and relatives).

Mr. Khan’s arrest has generated substantial public interest and media coverage around the globe. The press and the public have a powerful interest in the progress of Mr. Khan’s case, including whether the Court releases Mr. Khan from custody before trial, and how the Court arrives at its decision. Both the community of Bolingbrook and the nation have legitimate questions about Mr. Khan’s alleged ties to a terrorist group, the proof supporting those allegations, and whether Mr. Khan poses any security threat, which may be addressed at the detention hearing.²

Only countervailing interests of the highest order may overcome the public’s constitutional right of access to Mr. Khan’s detention hearing. And all doubts about the propriety of secrecy “must be resolved in favor” of public access. *In re Continental Ill. Sec. Litig.*, 732 F.2d 1302, 1313 (7th Cir. 1984)

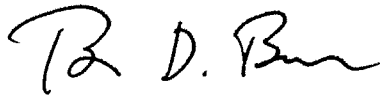
¹ *See* Jason Meisner, *Judge postpones hearing for Bolingbrook teen in Islamic State case*, Chicago Tribune, Oct. 9, 2014, available at <http://www.chicagotribune.com/suburbs/bolingbrook/ct-terrorism-court-secrecy-met-20141008-story.html>.

² *See, e.g.,* Jethro Mullen & Ted Rowlands, *Who is Mohammed Hamzah Khan?*, CNN.com, Oct. 7, 2014, available at <http://www.cnn.com/2014/10/07/us/who-is-mohammed-hamzah-khan>.

(stating that the court “must be firmly convinced that disclosure [of a report relied upon by the district court in resolution of a dispositive motion] is inappropriate, if we are to reject demands for access”).

The Reporters Committee respectfully urges the Court to permit the press and the public full access to Mr. Khan’s detention hearing, or, alternatively, to consider less restrictive alternatives to the partial closure sought by the government. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "B. D. Brown".

Bruce D. Brown, *Executive Director*
Katie Townsend, *Litigation Director*
Tom Isler, *McCormick Foundation Legal Fellow*
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