No. 15-CF-663

IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

JONATHAN BLADES

DEFENDANT-APPELLANT,

V.

UNITED STATES,

PLAINTIFF-APPELLEE

On Appeal from the Superior Court for the District of Columbia

BRIEF *AMICI CURIAE* OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AND 17 OTHER ORGANIZATIONS IN SUPPORT OF DEFENDANT-APPELLANT'S PETITION FOR REHEARING OR REHEARING *EN BANC*

Bruce D. Brown (No. 457317)
Katie Townsend (No. 1026115)
Caitlin Vogus (No. 988826)
Gunita Singh (No. 1601923)
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1020
Washington, DC 20005
Telephone: (202) 795-9300

Counsel for *Amici Curiae*
[Full Counsel Listing in Appendix B]

DISCLOSURE STATEMENT

The Reporters Committee for Freedom of the Press is an unincorporated nonprofit association of reporters and editors with no parent corporation and no stock.

The American Civil Liberties Union of the District of Columbia states that it is a nonprofit District of Columbia membership corporation, that it has not issued stock or debt securities to the public, that it has no parents, subsidiaries, or affiliates that have issued stock or debt securities to the public, and that it has no parents, subsidiaries, or affiliates in which any publicly held corporation holds stock.

American Society of News Editors is a private, non-stock corporation that has no parent.

The Associated Press Media Editors has no parent corporation and does not issue any stock.

Association of Alternative Newsmedia has no parent corporation and does not issue any stock.

The D.C. Open Government Coalition is a tax-exempt, nonprofit 501(c)(3) corporation, that it has no parent corporations or subsidiaries, and that no publicly held company has a ten percent or greater ownership interest (such as stock or partnership shares) in amicus.

Dow Jones is a Delaware corporation with its principal place of business in New York. News Corporation, a publicly held company, is the indirect parent corporation of Dow Jones. Ruby Newco, LLC, a subsidiary of News Corporation and a non-publicly held company, is the direct parent of Dow Jones. No publicly held company directly owns 10% or more of the stock of Dow Jones.

First Look Media Works, Inc. is a non-profit non-stock corporation organized under the laws of Delaware. No publicly-held corporation holds an interest of 10% or more in First Look Media Works, Inc.

Gannett Co., Inc. is a publicly traded company and has no affiliates or subsidiaries that are publicly owned. BlackRock, Inc., a publicly traded company, owns 10 percent or more of Gannett's stock.

Hearst Corporation is privately held and no publicly held corporation owns 10% or more of Hearst Corporation.

The Investigative Reporting Workshop is a privately funded, nonprofit news organization affiliated with the American University School of Communication in Washington. It issues no stock.

The McClatchy Company is publicly traded on the New York Stock Exchange American under the ticker symbol MNI. Chatham Asset Management, LLC and Royce & Associates, LP both own 10% or more of the common stock of The McClatchy Company.

National Press Photographers Association is a 501(c)(6) nonprofit organization with no parent company. It issues no stock and does not own any of the party's or amicus' stock.

Radio Television Digital News Association is a nonprofit organization that has no parent company and issues no stock.

Society of Professional Journalists is a non-stock corporation with no parent company.

Tribune Publishing Company is a publicly held corporation. Merrick Media, LLC, Merrick Venture Management, LLC and Michael W. Ferro, Jr., together own over 10% of Tribune Publishing Company's common stock. Nant Capital LLC, Dr. Patrick Soon-Shiong and California Capital Equity, LLC together own over 10% of Tribune Publishing Company's stock.

The Tully Center for Free Speech is a subsidiary of Syracuse University.

WP Company LLC d/b/a The Washington Post is a wholly-owned subsidiary of Nash Holdings LLC, a holding company owned by Jeffrey P. Bezos. WP Company LLC and Nash Holdings LLC are both privately held companies with no securities in the hands of the public.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

STATEMENT OF INTEREST

Pursuant to D.C. Appellate Rule 29, the Reporters Committee for Freedom of the Press and 17 other organizations, through undersigned counsel, respectfully submit this brief as *amici curiae* in support of the petition for rehearing or rehearing *en banc* filed by Defendant-Appellant Jonathan Blades. *Amici* have filed a motion seeking leave of Court to file this *amici* brief. *See* D.C. App. R. 29(b). Defendant-Appellant consents to the filing of this *amici* brief. The United States does not oppose the filing of this *amici* brief.

The *amici* are listed in the appendix to this brief. As news media outlets and organizations dedicated to defending the First Amendment and newsgathering rights of journalists, *amici* have a strong interest in this case. The holding of the panel of this Court that the use of a "husher" during *voir dire* does not constitute a partial closure of the courtroom and may be predicated upon generalized concerns about juror privacy undermines the news media's ability to observe judicial proceedings and inform the public about the workings of the criminal justice system. *Amici* urge the Court to grant rehearing or rehearing *en banc* to correct the erroneous holding of the panel and reaffirm the public's constitutional right of access to *voir dire*.

SUMMARY OF THE ARGUMENT

The Court should grant rehearing or rehearing *en banc* because the panel decision violates the public's First Amendment right of access to *voir dire*, a right that is distinct from a defendant's Sixth Amendment right to a public trial. *See Press-Enter. Co. v. Superior Court*, 464 U.S. 501 (1984). Undergirding the First Amendment's guarantee of presumptive public access to criminal trials, including *voir dire*, is the need to ensure that our society's "constitutionally protected discussion of governmental affairs is an informed one." *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604–05 (1982). For the right to attend judicial proceedings to be meaningful, the public must be able to see and hear what is going on during those proceedings.

Despite the fact that the trial court used a "husher" to prevent the public from hearing any of the answers that prospective jurors gave to questions posed to them during individual *voir dire* in this case, a panel of this Court held that the *voir dire* was not closed to the public because the public was not "precluded from perceiving contemporaneously what [was] transpiring in the courtroom." *Blades v. United States*, No. 15-CF-663, at *15 (D.C. Jan. 23, 2019) (hereinafter "Slip Op."). Yet permitting the public to see—*but not hear*—jurors answer questions during *voir dire* does not comport with the First Amendment right of access. For the reasons set forth herein, *amici* respectfully urge this Court to grant Defendant-Appellant's petition for rehearing or rehearing *en banc* and reverse the panel decision.

ARGUMENT

I. The First Amendment creates a strong presumption of public access to all aspects of criminal trials, including *voir dire*.

In *Richmond Newspapers, Inc. v. Virginia*, the Supreme Court recognized the public's right of access to criminal trials, predicated on both the common law and the First Amendment. 448 U.S. 555 (1980). Four years later, in *Press-Enterprise Co. v. Superior Court*, the Court held it unconstitutional for a California court to close the majority of a lengthy *voir dire* in an emotionally charged criminal case in which the defendant was charged with rape and murder. 464 U.S. 501, 511 (1984) ("*Press-Enterprise I*"). Since then, both this Court and the United States Court of Appeals for the District of Columbia Circuit have applied the strong presumption of public access to *voir dire*, and recognized the central importance of the constitutional right of access to, among other things, safeguarding public trust in the legal system and educating the public about judicial proceedings. *See In re Jury Questionnaires*, 37 A.3d 879, 885–86 (D.C. 2012); *Cable News Network, Inc. v. United States*, 824 F.2d 1046 (D.C. Cir. 1987).

A. The right of access to judicial proceedings, including *voir dire*, serves vital constitutional interests.

Public trust in our nation's courts can exist only if those courts operate transparently. As Justice Brennan explained in his concurrence in *Richmond Newspapers*: "Closed trials breed suspicion of prejudice and arbitrariness, which

in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice." *Richmond Newspapers*, 448 U.S. at 595 (Brennan, J., concurring); *see also Gannett Co. v. DePasquale,* 443 U.S. 368, 429 (1979) ("Anything that impairs the open nature of judicial proceedings threatens to undermine this confidence and to impede the ability of the courts to function"); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) ("Public access to the criminal trial fosters an appearance of fairness, thereby heightening public respect for the judicial process."). Simply put, "[I]t is difficult for [people] to accept what they are prohibited from observing." *Richmond Newspapers*, 448 U.S. at 572.

In addition, "free and robust reporting, criticism, and debate" about judicial proceedings "contribute[s] to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system[.]" *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 587 (1976). Access to criminal trials educates the public about how the criminal justice system works.

Finally, "public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper Co.*, 457 U.S. at 606. As this Court stated in *In re Jury Questionnaires*, the presence of members of the public at

criminal trials enhances the integrity of judicial proceedings by "discourag[ing] perjury, the misconduct of participants, and decisions based on secret bias or partiality." 37 A.3d 879, 885 (quoting *Richmond Newspapers*, 448 U.S. at 569).

Public access to jury selection—a critical part of the criminal trial—serves all of these interests. It ensures that *voir dire* is fair; contributes to public understanding of how the jury system works; and allows the public to monitor and serve as a check on judges, attorneys, and prospective jurors. *See Press-Enterprise I*, 464 U.S. at 505 (stating that "[t]he process of juror selection is itself a matter of importance, not simply to the adversaries but to the criminal justice system."); *id.* at 518 (Stevens, J., concurring) (noting that "public access cannot help but improve public understanding of the *voir dire* process, thereby enabling critical examination of its workings to take place.")

B. The right of access to *voir dire* can be overcome only by compelling interests, and any restriction on access must be narrowly tailored.

There may be instances where court closures are necessary. But, "closed proceedings, although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness." *Richmond Newspapers*, 448 U.S. at 509. Decisions to close court proceedings must be made on a case-by-case, rather than categorical, basis. *Globe Newspaper Co.*, 457 U.S. at 597. A party seeking the closure of court proceedings must show that such closure is necessitated by a compelling governmental interest. *Id.* at 606–07; *Wash. Post v. Robinson*, 935

F.2d 282, 288 (D.C. Cir. 1991). "[I]t is only under the most exceptional circumstances that limited portions of a criminal trial may be closed even partially to the public." *Kleinbart v. United States*, 388 A.2d 878, 883 (D.C. 1978). In addition, any closure of a court proceeding must be "narrowly tailored" to serve that compelling interest. *Globe Newspaper Co.*, 457 U.S. at 606–07.

II. The news media frequently acts as a surrogate for the public by attending and reporting on jury selection.

As the Supreme Court explained in *Richmond Newspapers*, reporters serve as a surrogate for the public when they exercise their First Amendment right to attend and observe judicial proceedings. 448 U.S. at 573. Because of jury selection's significance to a criminal trial, journalists frequently attend *voir dire* in cases of public interest and report to the public what they see and hear, including observations about jurors' tone of voice and demeanor. *See* Section III, *infra*. Like other news, media reports about jury selection are most valuable to the public when they are provided contemporaneously. *See Int'l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918) ("The peculiar value of news is in the spreading of it while it is fresh . . . .").

For example, the *Chicago Tribune* reported on jury selection in the trial of Jason Van Dyke, the police officer who shot and killed teenager Laquan McDonald. *See* Megan Crepau et al., *Five people picked in first day of jury*

selection at Jason Van Dyke's murder trial, Chi. Tribune (Sept. 11, 2018), https://perma.cc/67C8-NFFV. The *Tribune* described *voir dire* in detail, reporting, for example, how one of the prospective jurors "*hesitated at length* when asked if he could be fair to both sides, ultimately answering that he would do his best." *Id.* (emphasis added). Another prospective juror, "who appeared nervous and rarely spoke above a whisper, said he believes everyone, including police officers, 'must abide by the law,'" according to the *Tribune*. *Id.* News outlets also reported on *voir dire* in Bill Cosby's 2018 trial for sexual assault. *See* Michael B. Sisak, *Jury selection wraps up in Bill Cosby's sexual assault trial*, Associated Press (Apr. 5, 2018), https://perma.cc/6KKH-6ARC. The Associated Press described how one alternate selected for the jury "said he could set aside what he's heard about the Cosby case but hesitated and couldn't guarantee it when pressed by the judge." *Id.*

The press often reports about jury selection in high profile cases on the same day that *voir dire* occurs. *The Washington Post*, for example, provided same-day coverage of jury selection in the trial of Ingmar Guandique for the murder of Chandra Levy, even hosting a live chat with readers during one of the days of jury selection to answer questions about *voir dire* and other aspects of the trial in real time. *See Chandra Levy trial: Jury selection begins today,* Wash. Post (Oct. 18, 2019), https://perma.cc/ZV8K-S2V6. When news outlets cannot report same-day

on jury selection because they must wait to obtain a transcript of the proceedings, as in this case, it is the public that loses valuable, timely information.

III. The use of a "husher" is permissible only if First Amendment requirements are satisfied.

In *Richmond Newspapers*, the Supreme Court stated: "Free speech carries with it some freedom to listen." 448 U.S. at 576 (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972)). That is unquestionably true with respect to the public's constitutional right to attend and observe criminal trials. Use of a "husher" during jury selection prevents the public from hearing and understanding what is occurring in the courtroom; it amounts to partial closure of the proceeding, even if the public is permitted to be physically present in the courtroom.

The right to observe a judicial proceeding necessarily includes the right to listen to what is being said. The public's right of access to judicial proceedings would be hollow if all it guaranteed was a right to be physically present in the courtroom. "The ability to see *and to hear* a proceeding as it unfolds is a vital component of the First Amendment right of access." *ABC, Inc. v. Stewart*, 360 F.3d 90, 99 (2d Cir. 2004) (emphasis added). Indeed, the very purposes of the First Amendment right of access—to allow the public to oversee and understand

what is transpiring in the courtroom, and to monitor judges and participants, *see* Section I, *supra*—cannot be achieved if the public cannot hear what is being said.[1]

In the instant case, the courtroom was partially closed by the trial court's use of a "husher" to render inaudible to those present the responses of prospective jurors to questioning during *voir dire*. The United States Court of Appeals for the Sixth Circuit has held that use of a white noise device like the "husher" used here violates the First Amendment in the absence of specific findings supporting a partial court closure, even when a transcript of *voir dire* is later released to the public. *See In re Petitions of Memphis Pub. Co.*, 887 F.2d 646 (6th Cir. 1989). That case involved criminal charges against the former head basketball coach at Memphis State University and attracted "mammoth pretrial publicity." *Id.* at 647. The court held that "the naked assertion . . . that defendant's Sixth Amendment right to a fair trial 'might well be undermined', without any specific finding of fact

---

[1] The panel suggested that use of a "husher" does not amount to closure of the courtroom because it is equivalent to the use of a screen that permits the public to hear—but not see—a witness's testimony. Slip Op. at *17. Even assuming, *arguendo*, that use of a screen to shield a criminal proceeding partially or entirely from public view is not a closure of the courtroom—which *amici* do not concede—unlike a screen, use of a "husher" makes what is transpiring in the courtroom incomprehensible to those present. Under the panel's reasoning, a trial court could employ a "husher" to render inaudible the entirety of a witness's testimony or any other part of a criminal trial without satisfying First Amendment standards. Such a result would make the First Amendment's presumption of public access to criminal trials meaningless.

to support that conclusion, was insufficient to justify closure [of *voir dire*] under *Press-Enterprise I* and *Press-Enterprise II*." *Id*. at 648–49.

That a transcript of *voir dire* may be made public after the fact does not alter the analysis. Although the Supreme Court has ordered the release of transcripts when court proceedings have been improperly closed, *see Press-Enterprise I*, 464 U.S. at 513, the later release of a transcript does not cure the initial, improper closure. Access to transcripts of *voir dire* is an imperfect substitute for contemporaneous public access to the proceeding itself. *See, e.g., Publicker Indus., Inc. v. Cohen*, 733 F.2d 1059, 1072 (3d Cir. 1984) ("[T]he 'cold' record is a very imperfect reproduction of events that transpire in the courtroom." (Citation omitted)).

A cold transcript does not reveal the nuance conveyed by tone of voice, inflection, hesitation, and much more that is observed when hearing juror responses firsthand. *See e.g., State v. WBAL-TV*, 975 A.2d 909, 926 (Md. Ct. Spec. App. 2009) ("[A] transcript ordinarily reflects only the words spoken, and not how they were said . . ."); *Oxnard Publ'g Co. v. Superior Court*, 68 Cal. Rptr. 83, 95 (Ct. App. 1968) (With only a written record, "[i]mportant, sometimes vital, parts of the trial, including . . . demeanor . . . gestures[,] intonations, hesitances, inflections, and tone of voice . . . are not there.").

IV. The First Amendment presumption of access was not overcome here.

The trial court did not specifically address whether the First Amendment presumption of access to *voir dire* was overcome in this case, nor did it make "findings specific enough that a reviewing court can determine whether the closure order was properly entered," as the First Amendment requires. *See Press-Enterprise I*, 464 U.S. at 510; *see also* (1/7/15 Tr. 250–53). The trial court also did not provide adequate notice of the closure and give representatives of the press and general public an opportunity to be heard on the question of their exclusion. *Globe Newspaper Co.*, 457 U.S. at 609. Nor did the panel sufficiently address the First Amendment presumption of access; it erroneously held that the use of a "husher" was "an alternative to closure" of the proceeding, and thus did not even implicate the public's First Amendment right of access. Slip Op. at *18. This Court, upon rehearing or rehearing *en banc*, should hold that no compelling interest overcame the public's constitutional right of access in this case.

A. *Voir dire* in this case did not solicit particularly sensitive information.

Amici acknowledge that "[t]he jury selection process may, in some circumstances, give rise to a compelling interest of a prospective juror when interrogation touches on deeply personal matters that person has legitimate reasons for keeping out of the public domain." *Press-Enterprise I*, 464 U.S. at 511. Any asserted need for privacy in these situations, however, must be balanced against the

need for openness. *Id*. at 508. The Supreme Court has made clear that closure of *voir dire* must be rare and *only* for compelling interests. *Id*. at 509–10. It follows that the presumption of public access to *voir dire* will be overcome only in extreme cases. *See also In re Dallas Morning News Co*., 916 F.2d 205, 206 (5th Cir. 1990) (finding the possibility that *voir dire* would "infringe upon the venire members' privacy" insufficient to justify closure).

A generalized, speculative finding that jurors "might be less candid if questioned in public" is insufficient to justify closure because "if this general theory of potential prejudice were accepted . . . all testimony could be taken in secret." *United States v. Brooklier*, 685 F.2d 1162, 1169 (9th Cir. 1982). Moreover, "although important, juror candor is, by itself, insufficient to restrict access to *voir dire*[.]" *United States v. Pirk*, 284 F. Supp. 3d 445, 452 (W.D.N.Y. 2018) (holding that it was inappropriate to conduct *voir dire* in chambers and instead offering prospective jurors the opportunity to discuss particularly sensitive matter at sidebar as part of an otherwise open *voir dire*).

Here, the record does not support any finding that *voir dire* questioning was of a nature that the First Amendment presumption of public access to jury selection was overcome. *See Stewart,* 360 F.3d at 101–02 (holding that the presumption of access to *voir dire* was not overcome where there was no "controversial issue to be probed in *voir dire* that might have impaired the candor of prospective jurors").

Indeed, the trial court expressed only a generalized concern about prospective jurors holding back, citing "experience and belief" that they "are less forthcoming in response to especially sensitive questions" without use of a "husher." (1/7/15 Tr. 253).

Moreover, a review of the transcript of *voir dire*, which was released without redaction, does not reveal any particularly sensitive questions or information that was elicited from prospective jurors. Many of the questions related to innocuous matters, such as where the jurors live and work, whether they know any of the attorneys present, and whether any of them have studied law. (1/8/15 Tr. 298—300). The most arguably sensitive questioning concerned some jurors' experiences with burglaries or muggings that they described as disturbing or upsetting. *See e.g.*, (1/8/15 Tr. 46—47, 160). Though being the victim of such crimes is unquestionably disturbing and upsetting, questioning of this type is typical in criminal jury selection and falls far short of touching upon "deeply personal matters" that a prospective juror would have "legitimate reasons for keeping out of the public domain." *Press-Enterprise I*, 464 U.S. at 511.

B. Even if partial closure of *voir dire* was justified, the trial court's use of the "husher" in this case was not narrowly tailored.

In *Press-Enterprise I*, the Supreme Court explained how trial courts can strike the appropriate balance between juror privacy and court openness, and avoid resorting to unnecessary and overbroad closure of *voir dire*:

> To preserve fairness and at the same time protect legitimate privacy, a trial judge . . . should inform the array of prospective jurors, once the general nature of sensitive questions is made known to them, that those individuals believing public questioning will prove damaging because of embarrassment, may properly request an opportunity to present the problem to the judge *in camera* but with counsel present and on the record. . . . By requiring the prospective juror to make an affirmative request, the trial judge can ensure that there is in fact a valid basis for a belief that disclosure infringes a significant interest in privacy.

Id. at 512.

The trial court should have, but did not, follow the Supreme Court's guidance in this case. Had the trial court believed that certain specific questions to be posed during *voir dire* would elicit particularly sensitive information from prospective jurors that they would be unwilling to discuss candidly in open court, the trial court should have given each prospective juror an opportunity to request to be questioned *in camera*—or using the "husher"—*only* as to those matters "sufficiently sensitive to justify the extraordinary measure of a closed proceeding." *In re Dallas Morning News Co*., 916 F.2d at 207. Instead, the trial court prevented the public from hearing *any* of the prospective jurors' individual answers during the *entirety* of *voir dire,* regardless of the nature of the questions being posed. The blanket use of a "husher" during jury selection in this case was not narrowly tailored and, for that reason too, must be reversed.

CONCLUSION

For the foregoing reasons, the Court should grant Defendant-Appellant's petition for a rehearing or rehearing *en banc*.

Respectfully submitted,

s/ Bruce D. Brown
Bruce D. Brown (No. 457317)
Katie Townsend (No. 1026115)
Caitlin Vogus (No. 988826)
Gunita Singh (No. 1601923)
THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS
1156 15th Street NW, Suite 1020
Washington, DC 20005
Telephone: (202) 795-9300

Counsel for *Amici Curiae*

APPENDIX A: LIST OF *AMICI*

The Reporters Committee for Freedom of the Press

American Civil Liberties Union of the District of Columbia

American Society of News Editors

Associated Press Media Editors

Association of Alternative Newsmedia

D.C. Open Government Coalition

Dow Jones & Company, Inc.

First Look Media Works, Inc.

Gannett Co., Inc.

Hearst Corporation

Investigative Reporting Workshop at American University

The McClatchy Company

National Press Photographers Association

Radio Television Digital News Association

Society of Professional Journalists

Tribune Publishing Company

Tully Center for Free Speech

The Washington Post

APPENDIX B: FULL COUNSEL LISTING

Arthur B. Spitzer (D.C. Bar No. 235962)
American Civil Liberties Union of the District of Columbia
915 15th Street, NW - 2nd floor
Washington, DC 20005-2302
Tel. 202-601-4266
aspitzer@acludc.org

Kevin M. Goldberg
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209
Counsel for American Society of News Editors
Counsel for Association of Alternative Newsmedia
Counsel for D.C. Open Government Coalition

Jason P. Conti
Jacob P. Goldstein
Dow Jones & Company, Inc.
1211 Avenue of the Americas
New York, NY 10036
Counsel for Dow Jones & Company, Inc.

David Bralow
First Look Media Works, Inc.
18th Floor
114 Fifth Avenue
New York, NY 10011

Barbara W. Wall
Senior Vice President & Chief Legal Officer
Gannett Co., Inc.
7950 Jones Branch Drive
McLean, VA 22107
(703)854-6951

Jonathan Donnellan
Ravi V. Sitwala
Diego Ibarguen
Hearst Corporation
Office of General Counsel
300 W. 57th St., 40th Floor
New York, NY 10019

Juan Cornejo
The McClatchy Company
2100 Q Street
Sacramento, CA 95816

Mickey H. Osterreicher
200 Delaware Avenue
Buffalo, NY14202
Counsel for National Press Photographers Association

Kathleen A. Kirby
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
Counsel for Radio Television Digital News Association

Bruce W. Sanford
Mark I. Bailen
Baker & Hostetler LLP
1050 Connecticut Ave., NW
Suite 1100
Washington, DC 20036
Counsel for Society of Professional Journalists

Karen H. Flax
VP/Deputy General Counsel
Tribune Publishing Company
160 North Stetson Avenue
Chicago, Illinois 60601

John B. Kennedy
James A. McLaughlin
Kalea S. Clark
The Washington Post
One Franklin Square
Washington, D.C. 20071
Tel: (202) 334-6000
Fax: (202) 334-5075

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief *Amici Curiae* of the Reporters Committee for Freedom of the Press and 17 Other Organizations in Support of Defendant-Appellant's Petition For Rehearing or Rehearing *En Banc* was served electronically, by the Appellate E-Filing System, on April 8, 2019 upon the following:

Daniel Gonen
Staff Attorney
Public Defender Service
633 Indiana Ave. N.W., # 220
Washington, DC 20004
DGonen@PDSDC.ORG

Counsel for Appellant Jonathan Blades

Elizabeth Trosman, Esq.
Chief, Appellate Division
U.S. Attorney's Office for the District of Columbia
555 4th St N.W.
Washington, DC 20530
DCCAFilings@usdoj.gov

Counsel for Appellee United States

s/ Bruce D. Brown
Bruce D. Brown
Counsel of Record for *Amici Curiae*