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*Attorneys for Interested Parties*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

v.

BRYAN C. KOHBERGER,

Defendant.

Case No. CR01-24-31665

**RENEWED MOTION TO BE HEARD  
AS INTERESTED PARTIES**

AMERICAN BROADCASTING  
COMPANIES, INC., d/b/a ABC NEWS; THE  
ASSOCIATED PRESS; RADIO  
TELEVISION DIGITAL NEWS  
ASSOCIATION; TEGNA INC./KREM  
(SPOKANE), KTVB (BOISE) AND KING  
(SEATTLE); KXLY-TV/4 NEWS NOW AND  
KAPP/KVEW-TV—MORGAN MURPHY  
MEDIA; SCRIPPS MEDIA, INC., d/b/a KIVI-  
TV, A DELAWARE CORPORATION; THE  
SPOKESMAN-REVIEW/COWLES  
COMPANY; LAWNEWZ, INC.; WP  
COMPANY LLC, DBA THE WASHINGTON  
POST; SOCIETY OF PROFESSIONAL  
JOURNALISTS; THE SEATTLE TIMES;  
RADIO TELEVISION DIGITAL NEWS

RENEWED MOTION TO BE HEARD AS INTERESTED PARTIES - 1

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ASSOCIATION; THE NEW YORK TIMES COMPANY; and THE MCCLATCHY COMPANY, LLC, dba The Idaho Statesman,

Interested Parties.

On January 15, 2024, this Court issued a Notice of Hearing and Order Regarding January 21, 2025 Hearing. In that Order, the Court set a “closed/sealed” hearing for 10 a.m. on January 21 to (1) hear the Defense Motion to Unseal materials related to its request to suppress evidence stemming from the use of IGG DNA, and (2) consider what portions, if any, and under what circumstances, should the various motions set to be heard on January 23<sup>rd</sup> and January 24<sup>th</sup> be open to the public. While the Court’s Order setting the January 21 hearing unambiguously closed the hearing to the public (and thus, the press), it did not make any specific findings as to the probability that the Defendant’s right to a fair trial would be prejudiced, nor was any member of the public or press provided an opportunity to raise objections to the closure.

On Tuesday, January 21, 2025, at approximately 8 a.m., the Interested Parties<sup>1</sup> filed a motion to be heard regarding the closure of the hearing and provided courtesy copies to Court staff and to the parties by email. In their motion, the Interested Parties requested, in the alternative, an opportunity to be heard prior to the Court closing of any portions of the January 23 or 24, 2025 hearings to the public. After the hearing, the Court issued an order denying the Interested Parties’ motion, noting that it was untimely, and stating that the Court needed the

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<sup>1</sup> The Interested Parties are American Broadcasting Companies, Inc. d/b/a ABC News, The Associated Press, Radio Television Digital News Association, TEGNA Inc./KREM (Spokane), KTVB (Boise) and KING (Seattle); KXLY-TV/4 NEWS NOW and KAPP/KVEW-TV – Morgan Murphy Media; Scripps Media, Inc., d/b/a KIVI-TV, The Spokesman-Review/Cowles Company, LawNewz, Inc., WP Company d/b/a The Washington Post, the Society of Professional Journalists, The Seattle Times, Radio Television Digital News Association, The New York Times, and, for purposes of this motion, The McClatchy Company, LLC, dba The Idaho Statesman.

hearing to be closed “to have a candid discussion with the parties about information that previously had been sealed or subject to non-dissemination orders. As such, the Court acting within its discretion, proceeded with the closed hearing.” Order Denying Petitioner’s Motion to Be Heard Prior to January 21, 2025, Hearing at 1-2. The Court’s order did not address the Interested Parties’ alternative request to be heard prior to the Court closing any portions of the hearings on January 23 or 24, 2025.

Also following the closed January 21 hearing the Court entered an order governing the proceedings on the January 23 and 24, 2025, in which the Court ordered the proceedings closed at the outset while it takes up testimony related to the Defendant’s motion to suppress genetic information and the Defendant’s motion for a *Franks* hearing related to the IGG investigation. Order Governing Proceedings for January 23 and 24 hearing at 1. A *Franks* hearing is an evidentiary hearing that allows defendants to challenge the truthfulness of statements made by a law enforcement officer in an affidavit, typically in support of a request for a Court to issue a search warrant. *See, e.g., State v. Fisher*, 140 Idaho 365, 93 P.3d 696 (2004). At a *Franks* hearing, the defendant bears the burden of proving that any false statements were deliberate or reckless. *Id.* at 370, 701. The Court further ordered that the courtroom will be closed but the remainder of the proceedings will be live-streamed subject to the Court’s determination at any time to close the hearing. Order Governing Proceedings for January 23 and 24 hearing at 1, 1 n.3. This determination, like the determination to close the January 21 hearing, was made without giving the Interested Parties or any other member of the public or the press an opportunity to raise objections to the need for closure.

Accordingly, for the reasons set forth in the Interested Parties’ Memorandum filed on January 21, 2025, incorporated by reference herein, the Interested Parties request an opportunity

to be heard prior to the Court closing of any portions of the January 23 or 24, 2025 hearings to the public.<sup>2</sup> See *Oregonian Pub. Co. v. U.S. Dist. Ct. for Dist. of Oregon*, 920 F.2d 1462, 1466 (9th Cir. 1990) (before closing a proceeding, a Court must afford those excluded from the proceeding “a reasonable opportunity to state their objections.”). The Interested Parties further request to be heard regarding the specific factors this Court must address before it can close any portion of the hearing: (1) whether closure serves a compelling interest; (2) whether there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) whether there are alternatives to closure that would adequately protect the compelling interest. *Id.* (citing *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14 (1986) (*Press-Enterprise II*)). There is significant public interest in knowing if the evidence the state seeks to introduce at trial was gathered in a constitutional manner or meets evidentiary thresholds for admission. There is also significant public interest in knowing if any law enforcement officer working on this investigation made deliberate or reckless false statements in an affidavit seeking authorization to obtain critical evidence.

Absent an opportunity for the Interested Parties to state their objections, the January 23 and 24 hearings will be the second set of hearings in a week that fails to follow the process set out in *Press-Enterprise II*.

DATED: January 22, 2025

STOEL RIVES LLP

/s/ Wendy J. Olson

Wendy J. Olson  
Anders Pedersen

*Attorneys for Interested Parties*

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<sup>2</sup> Counsel for the Interested Parties will be available outside of the courtroom by 9 a.m. on January 23, 2024.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of January 2025, I served a true and correct copy of the within and foregoing **RENEWED MOTION TO BE HEARD AS INTERESTED PARTIES** upon the following named parties by the method indicated below, and addressed to the following:

William W. Thompson, Jr.  
Ashley Jennings  
Latah County Prosecuting Attorney

Hand Delivered  
 Via Facsimile  
 U.S. Mail  
 Via email  
 Via iCourt efile & serve at:  
*paservice@latah.id.us*

Jeffery Nye  
Ingrid Batey  
Deputy Attorney General  
Jeff.nye@ag.idaho.gov

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 U.S. Mail  
 Via email  
 Via iCourt efile & serve at:  
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Anne Taylor  
Attorney for Defendant

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 Via Facsimile  
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 Via Facsimile  
 U.S. Mail  
 Via email  
 Via iCourt efile & serve at:  
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Jay Logsdon  
Kootenai County Public Defender

Hand Delivered  
 Via Facsimile  
 U.S. Mail  
 Via email  
 Via iCourt efile & serve at:  
*jay.logsdon@spd.idaho.gov*

/s/ Wendy J. Olson  
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Wendy J. Olson