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STATE OF MINNESOTA	DISTRICT COURT
HENNEPIN COUNTY	FOURTH JUDICIAL DISTRICT
State of Minnesota Plaintiff, vs.	The Honorable Peter A. Cahill
Derek Michael Chauvin Defendant	Dist. Ct. File 27-CR-20-12646

MEMORANDUM IN SUPPORT OF MEDIA COALITION'S MOTION TO UNSEAL JUROR IDENTITIES AND OTHER JUROR MATERIALS

American Public Media Group (which owns Minnesota Public Radio); The Associated Press; Cable News Network, Inc.; CBS Broadcasting Inc. (on behalf of WCCO-TV and CBS News); Court TV Media LLC; Dow Jones & Company (which publishes *The Wall Street Journal*); Fox/UTV Holdings, LLC (which owns KMSP-TV); Gannett Satellite Information Network, LLC (which publishes *USA Today*); Hubbard Broadcasting, Inc. (on behalf of its broadcast stations, KSTP-TV, WDIO-DT, KAAL, KOB, WNYT, WHEC-TV, and WTOP-FM); Minnesota Coalition on Government Information; NBCUniversal Media, LLC; The New York Times Company; The Silha Center for the Study of Media Ethics and Law; Star Tribune Media Company LLC; TEGNA Inc. (which owns KARE-TV); and WP Company LLC (which publishes *The Washington Post*) (collectively, the "Media Coalition") by and through undersigned counsel, hereby submit this Motion to Unseal Juror Identities and Other Juror Materials.

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INTRODUCTION

This is not a motion that the Media Coalition brings lightly or, for that matter, quickly. It has waited through trial, through verdict, through sentencing, and until now—more than three months after the jurors completed their service in the trial of Derek Chauvin—out of respect for the integrity of the proceedings, for the Court's articulated concerns about juror impartiality and safety, and for the jurors themselves, who served their community under very difficult circumstances and handled harrowing evidence and testimony. The passage of time and subsequent events, however, have resolved many of those concerns and further demonstrated that the public interest in this case and the national reckoning to which it gave rise make transparency regarding the identities, backgrounds, and predilections of the people who handed down the verdict *more important*, not less.

During the delay in bringing this motion, the Twin Cities community—in fact, the country—appears to have found some peace following Mr. Chauvin's conviction. The jurors' verdict led not to a repeat of the destructive unrest that arose in response to Mr. Floyd's tragic death but to celebrations and demonstrations that one news outlet called "jubilant" and "a moment of catharsis," while describing Minneapolis as "a scene of collective relief and satisfaction."[1] Within two days, public safety officials were detailing plans to "defortify" the Twin Cities, including by demobilizing more than 3,000 National Guard members and reassigning state troopers and others, citing "calmed tensions and decreased threats of civil

[1] Shaila Dewan & Julie Bosman, *"We Matter": A Moment of Catharsis After the Derek Chauvin Verdict*, NYTimes.com (April 20, 2021), https://www.nytimes.com/2021/04/20/us/verdict-reaction-chauvin-trial.html; *see also* Andy Mannix, *Minneapolis streets erupt in elation over guilty verdicts for Derek Chauvin*, StarTribune.com (Apr. 21, 2021), https://www.startribune.com/minneapolis-streets-erupt-in-elation-over-guilty-verdicts-for-derek-chauvin/600048215/.

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unrest."[2] Eight weeks later, the Court's sentencing of Mr. Chauvin was met with a similar response, evoking—according to one news outlet—"community relief" and a "sense of justice."[3] The sentencing drew smaller crowds than the verdict and reactions were reportedly "subdued."[4] Meanwhile, prior to sentencing, two jurors and one alternate voluntarily came forward and spoke publicly about their experience—Lisa Christensen, the alternate, within the first couple of days after the verdict; Brandon Mitchell a week or so later; and Journee Howard in early June. Undoubtedly, they fielded many inquiries in the hours and days after coming forward, but the Media Coalition is not aware that any of them has been threatened, harassed, or otherwise made to fear for their safety since coming forward.

Consistent with our Constitutional principles and well-settled legal precedent, it is now time to make public information about the jurors who served in this case. As this Court has recognized, our legal system is an open one, and it cannot keep juror identities a secret forever. As explained in greater detail below, identification of jurors is a *central feature* of our criminal justice system, not a flaw or an afterthought, and the common refrain among laypersons that "they did their duty, now leave them alone" ignores the full scope of a juror's responsibility.

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[2] Nicole Norfleet & Briana Bierschbach, *Post Chauvin trial, barriers and boards set to disappear from government buildings, businesses*, StarTribune.com (April 22, 2021), https://www.startribune.com/post-chauvin-trial-barriers-and-boards-set-to-disappear-from-government-buildings-businesses/600048725/; *see also* Matt Sepic, *Minnesota Guard troops standing down as Twin Cities are quiet after verdict*, MPRNews.org (Apr. 21, 2021), https://www.mprnews.org/story/2021/04/21/minnesota-guard-troops-standing-down-as-twin-cities-are-quiet-after-verdict; Tweet of Star Tribune reporter Rochelle Olson, https://twitter.com/rochelleolson/status/1385307659444707334 (Apr. 22, 2021) (stating that Hennepin County District Court would return to normal security levels on April 26).

[3] Nicole Norfleet & Reid Forgrave, *Derek Chauvin's sentencing sparks relief but also resolve to keep fighting injustice*, Star Tribune.com (June 26, 2021), https://www.startribune.com/derek-chauvin-s-sentencing-sparks-relief-but-also-resolve-to-keep-fighting-injustice/600072205/.

[4] *Id.*

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Simply put, our criminal justice system asks jurors not only to leave their jobs and families, evaluate often-heartbreaking evidence, and make difficult, life-altering decisions but also *to do so publicly*, *by name,* and to then find the personal fortitude to withstand the scrutiny that results as the public tries to understand and learn from the verdict. As Justice Scalia wrote in concurring that the names on a petition must be disclosed to the public despite fears of "threats and intimidation":

> There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.

Doe v. Reed, 561 U.S. 186, 228 (2010).

It is, admittedly, an enormous thing for our system to ask of ordinary men and women, especially in cases like this one. But to ensure confidence in not only this particular verdict but also the criminal justice system writ large—and to continue to improve that system, including by understanding and addressing the sort of implicit biases that many feared might play an outsized role in this very case—the public must be able to scrutinize jurors' answers to the questionnaires, ask them to share their insights into the prosecution, consider what mattered to them, and yes, even decide whether the jury reached the right verdict for the right reasons.

Courts cannot wait to release juror names until the day that *every* juror is ready speak. They cannot wait for the day there is *zero* risk of a juror facing some unpleasantness from some member of the public. Those days will likely never come.[5] Thus, the question is whether—more

[5] Indeed, contrary to the apparent hope that, with the passage of time, interest in hearing from the jurors will wane, interest will likely only increase in the coming months, as the trials of Mr. Chauvin's co-defendants and former police officer Kimberly Potter (charged in the death of Daunte Wright) approach. *See, e.g.*, Jennifer Mayerle, *Juror On Mohamed Noor Trial Talks For The First Time*, WCCO.com (April 16, 2021), https://minnesota.cbslocal.com/2021/04/16/wcco-exclusive-juror-on-mohamed-noor-trial-talks-for-the-first-time/.

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than three months after entry of the verdict, more than a month after sentencing, and at a time when the public seems largely satisfied with the trial's outcome—the Court can cite a concrete, non-speculative threat to juror safety that can justify withholding jurors' names and information until the arbitrary date of October 20. It cannot, and so the time to release the jurors' names, along with the prospective juror list, juror profiles, juror questionnaires, and the original verdict forms (together the "Juror Materials")—to which the press and public have a *contemporaneous* right of access—is now.

Argument

I. The Media Coalition has standing to assert its interest in access to juror names and other juror information.

The Media Coalition brings this Motion pursuant to Minn. Gen. R. Prac. 814(a), which states that, subject to certain exceptions addressed *infra*, the "names of the qualified prospective jurors drawn and the contents of juror qualification questionnaires . . . ***must*** be made available to the public upon specific request to the court, supported by affidavit setting forth the reasons for the request." The Media Coalition believes its reasons for requesting this information are self-evident, but, consistent with requirements of Rule 814(a), it is filing with this motion an affidavit from Susan "Suki" Dardarian, managing editor of *The Star Tribune*, who speaks on behalf of the entire Media Coalition.

Further, although the Court's April 23 Order sealing Juror Materials states that it will not "revisit" the issue of unsealing juror identities before the passage of 180 days, *see* Apr. 23 Order at 3, that Order was entered without giving the Media Coalition or the public any chance to be heard on the issue of sealing all juror information. There does not appear to be a rule that explicitly governs *sua sponte* orders such as the one at issue here; however, Minn. R. Crim. P. 26.02 *requires* a hearing when sealing of jurors' names, addresses, and other identifying

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information is sought by motion, and Minn. R. Crim. P. 25.03 similarly requires a hearing before issuance of an order restricting access to any public record relating to a criminal proceeding. Meanwhile, this Court has previously recognized that the press has a well-established right to intervene and be heard in criminal matters when pursuing the public's right of access to judicial proceedings and records. Aug. 11 Order at 11 (recognizing "right to be heard on issues of access to or exclusion from criminal proceedings," citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) and *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)).

Thus, pursuant to court rules, the common law, and the First Amendment, the Media Coalition has standing to bring this Motion, and it respectfully requests that the Court consider it, despite its filing prior to October 20, 2021.

II. Court rules and the common law require release of juror identities and other juror materials

Courts throughout the country have held that the press and the public have a common law right of access to juror identities. *See, e.g.*, *United States v. Blagojevich*, 612 F.3d 558, 563 (7th Cir. 2010) (concluding that there is a common law presumption in favor of disclosure even while trial is ongoing and that it had not been overcome); *In re Baltimore Sun Co.*, 841 F.2d 74, 75 (4th Cir. 1988) ("When the jury system grew up with juries of the vicinage, everybody knew everybody on the jury and we may take judicial notice that this is yet so in many rural communities throughout the country. . . . We think it no more than an application of what has always been the law to require a district court, upon the seating of the panel of a jury and alternates, if any, which will hear a case, to release the names and addresses of those jurors who are sitting, as well as those veniremen and women who have attended court but have not been seated for one reason or another.").

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Minnesota's common law and applicable Court rules compel the same conclusion here. The Rules of Public Access to Records of the Judicial Branch define "records" as "any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage." Rule 3, subd. 5. Under this definition, the identities of jurors and prospective jurors, along with their profiles, questionnaires, and verdict forms are undoubtedly court records, and they are therefore presumptively public under the Rules and the common law: "Records of all court and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records." *Id.* Rule 2; *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597-99 (1978) ("It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents."); *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202-03 (Minn. 1986) (stating that even in civil context, the common law right to inspect and copy court records is "undisputed").[6] To overcome the common law presumption in favor of access, "a party must show *strong countervailing reasons* why access should be restricted." *Schumacher*, 392 N.W.2d at 205-06 (emphasis added). And that is with good reason, as transparency "promotes fairness, accuracy, and public confidence." *Minneapolis Star & Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 556 (Minn. 1983).

In implicit recognition of this common law burden, rules dealing with juror information impose similarly stringent requirements on trial participants who wish to shield such information from public disclosure. For example, Minn. R. Crim. P. 26.02 subd. 2(2), which the Court relies

[6] Other cases recognizing the common law right include *In re CBS*, 828 F.2d 958, 959 (2d Cir. 1987); *Valley Broad. Co. v. U.S. Dist. Ct.*, 798 F.2d 1289, 1293-97 (9th Cir. 1986); *United States v. Guzzino*, 766 F.2d 302, 303-304 (7th Cir. 1985).

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upon in its April 23 Order, states that jurors may remain anonymous only if "a *strong reason* exists to believe that the jury needs protection from external threats to its members' safety or impartiality," and the Rule requires the Court to "make *detailed* findings of fact supporting its decision to restrict access to juror information." (Emphasis added). Likewise, Minn. Gen. R. Prac. 814(a) allows withholding of the names of prospective jurors and the contents of juror qualifications questionnaires *only* where the "strong reason" standard of Rule 26.02 subd. 2(2) is satisfied or where the "interest of justice" requires confidentiality.

Whether the standard for withholding jurors' names and other Juror Materials is the common law's "strong countervailing reason," Rule 26.02's "strong reason," or Rule 814's "interest of justice," the common law presumption of access prevails here. Indeed, the one case cited in the April 23 Order—*State v. Bowles*, 530 N.W.2d 521 (Minn. 1995)—demonstrates how exceptional the circumstances must be before an anonymous jury is permitted.

In that case, which used the same "strong reason" language found in Rule 26.02, the defendant, an alleged member of the Vice Lords street gang, was convicted in the retaliation killing of a police officer. In the run-up to trial, another gang member was killed—presumably because he was believed to be a police informant—and certain witnesses in the case against defendant were relocated with their families for their protection, at the State's expense. The court thus kept the identities of jurors secret from not only the public but also from the parties on grounds that releasing their identities might cause them to fear for themselves and their families and that this fear could impact their verdict. In affirming this decision the court made clear that anonymous juries are the exception, not the rule, and typically empaneled only in prosecutions of organized crime figures. *Id*. at 530-31.

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The circumstances at issue in *Bowles* do not exist here.[7] Mr. Chauvin is not an organized crime figure. The trial is over and there is no way that jurors' fears of intimidation, harassment, or violence can unfairly impact their deliberations. And the Media Coalition is not aware—certainly there is no indication in the Court's April 23 Order—that any juror or prospective juror has faced any specific threat to their safety, even though two jurors and an alternate have already come forward. In other words, there is no "strong reason" to believe the jurors need protection from "external threats to their safety" or—given their service is over—their "impartiality." We are left, then, only with the Court's previously articulated desire to protect the jurors from "unwanted publicity" and perhaps "harassment." April 23 Order at 3.

But neither juror preference for privacy nor the potential for inquiries and even criticism from the press and public (which are not "harassment" in the legal sense of the term) is grounds to seal their identities under the common law. *See In re Globe Newspaper Co.*, 920 F.2d 88 (1st Cir. 1990) (analyzing "interest of justice"[8] language similar to that found in Rule 814 and concluding that the common law required release of juror names and addresses at the end of a trial involving a member of the Mafia). In *Globe Newspaper*, the court acknowledged that although there may be cases in which post-verdict withholding is justified—"such as, most obviously, when there is some special risk of personal harm to the jurors"—it is not enough to point to "the personal preferences of the jurors and the judge's distaste for exposing them to press interviews."

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[7] It bears noting that the challenge to the anonymous jury in *Bowles* came from the criminal defendant, not the press.

[8] The First Circuit analyzed the local jury selection plan of the U.S. District Court for the District of Massachusetts, which stated that "any judge of this Court may order that the names of jurors remain confidential . . . if the interests of justice so require." *Id.* at 92. That language conformed to language found in 28. U.S.C. § 1863(b)(7) authorizing judges to keep confidential the names of jurors "in any case where the interests of justice so require." *Id.*

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Id. at 91. In so holding, the First Circuit explained that the "interest of justice" standard requires "that the trial court find *specific* and *convincing* reasons why, in the particular case, the juror identities are required to be withheld," and that the "standard means that withholding should occur only in an *exceptional* case." *Id.* at 93 (emphasis added); *see also Valentine v. State*, 396 So. 2d 15, 17 (Miss. 1981) (interpreting similar "interests of justice" phrasing and concluding that "only in rare and exceptional cases should a presiding judge sequester or keep secret the names of jurors drawn from the jury box"); *People v. Vigil*, 718 P.2d 496, 500 (Colo. 1986) (likewise holding under comparable statute, that absent specific reasons a court may not withhold juror names and addresses). Such "exceptional" circumstances, the Court explained, would include a "credible threat of jury tampering, a risk of personal harm to individual jurors, and other evils affecting the administration of justice." *Globe Newspaper*, 920 F.2d at 97.

Undoubtedly, this case was high-profile and led to strong opinions on both sides of the issues. The Media Coalition does not doubt the Court when it says that trial participants have received a large number of sometimes "incendiary, inflammatory, and threatening" emails and phone calls concerning the case. Apr. 23 Order at 2. But there is no reason to believe—certainly no facts in the record—that, more than three months after rendering their verdict, those conscripted into service will receive messages at the same rate or of the same tenor as did the elected officials and public employees involved in the trial, to say nothing of the private attorneys who voluntarily took on representation of high-profile clients and proceeded to publicly and zealously advocate often controversial positions. Nor is there any basis to assume that the jurors here are incapable of dealing with such feedback (including by ignoring it), nor case law to support the notion that jurors should be spared all criticism, even if communicated

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directly and even if caustic. In fact, the case law recognizes the opposite—that our system expects jurors to have thick skin:

> Jurors may be citizen soldiers, but they are soldiers nonetheless, and like soldiers of any sort, they may be asked to perform distasteful duties. Their participation in publicized trials may sometimes force them into the limelight against their wishes. We cannot accept the mere generalized privacy concerns of jurors, no matter how sincerely felt, as a sufficient reason for withholding their identities.

Globe Newspaper, 920 F.2d at 98.

In any event, the facts available here do not point to any articulable, concrete "risk of personal harm" to jurors and/or to threatening behavior by any member of the public. To the contrary, Brandon Mitchell, the first juror to come forward, has provided various details about his experience that are incredibly illuminating to the jury's deliberation, including about the order in which the jury deliberated, the length of time it took for the jury to consider the various charges, the evidence the jury found most persuasive, and the jury's reaction to Mr. Chauvin's defense. In a point that is crucial to the Court's consideration of jury safety, Mitchell told reporters that he "felt no pressure to reach a verdict that would lessen the chance of violent protests," and said that he "was relieved to now be able to talk about the case."[9] The Media Coalition is not aware that Mitchell has ever suggested in his public remarks that he has been threatened or feared for his safety since voluntarily identifying himself.

It does not appear that Journee Howard, the second juror to come forward, or Lisa Christensen, the alternate who came forward, have feared for their safety, either. Howard's

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[9] *See* Amy Forliti & Doug Glass, *Chauvin juror: After intense trial, verdict was "easy part,"* U.S.News.com (Apr. 29, 2021), https://www.usnews.com/news/us/articles/2021-04-28/chauvin-juror-says-guilty-verdicts-could-have-come-quicker; *see also* Morgan Winsor, *Derek Chauvin juror says trial was like "watching somebody die on a daily basis,"* GoodMorningAmerica.com (Apr. 28, 2021), https://www.goodmorningamerica.com/news/story/derek-chauvin-juror-trial-watching-die-daily-basis-77361744.

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interviews[10] echoed many of the same themes that Mitchell spoke of, and she answered crucial questions about her exposure to the bystander video before the trial and her efforts to avoid social media commentary after receiving her juror questionnaire from the Court. Howard also talked about her decision to speak publicly, and explained that after the one-year anniversary of Mr. Floyd's murder, and six weeks after the verdict, she was "mentally ready" to speak publicly, and that it was "a wakeup call that this is still important to a lot of people and that it is something that if people are willing to listen, then I would love to share."[11] Likewise, Christensen, who has also given multiple press interviews,[12] explained that "she is sharing her experience because it's an untold part of the story that adds transparency to the jury process." *Id*.

The Media Coalition does not mean to make light of the unrest George Floyd's murder caused. But much has changed in the months since the jury rendered that verdict, and at this juncture, resistance to releasing their names appears based on little more than a desire to have them left alone. That's not enough. As stated in *Globe Newspaper*, the Court may "sympathize

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[10] *See Derek Chauvin Trial: Journee Howard Shares Her Experience Being A Juror In The Case*, Getuperica.com (June 9, 2021), https://getuperica.com/354181/derek-chauvin-trial-journee-howard-juror-no-9-interview/; Paul Walsh, *2nd Derek Chauvin juror who deliberated comes forward, breaks down what worked for prosecution and what didn't for defense in George Floyd murder case*, Star Tribune (June 10, 2021) https://www.startribune.com/2nd-derek-chauvin-juror-who-deliberated-comes-forward-breaks-down-what-worked-for-prosecution-and-wh/600066839/.

[11] At the end of the interview, Howard even provided her social media account names for Instagram and Twitter so anyone who is interested can follow her.

[12] *See Alternate juror talks about the Chauvin trial verdict and the testimony that "really got to me,"* CBSNews.com (Apr. 23, 2021), https://www.cbsnews.com/news/chauvin-trial-alternate-juror-lisa-christensen-testimony/; John Eligon, *"I Could Feel Their Pain": A Juror on the Chauvin Trial Speaks Out,"* NYTimes.com (Apr. 24, 2021), https://www.nytimes.com/2021/04/23/us/derek-chauvin-juror.html); Chao Xiong, *Chauvin trial was life-changing, says alternate juror*, StarTribune.com (Apr. 23, 2021), https://www.startribune.com/chauvin-trial-was-life-changing-says-alternate-juror/600049142/.

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with a juror's desire in a publicized criminal case such as this was to remain anonymous," but the "juror's individual desire for privacy is not sufficient justification by itself to withhold his or her identity. Nor is the judge's general belief that, as a matter of policy, it would be better to keep the names and addresses private." 920 F.2d at 98. Pursuant to Minnesota common law, Minn. R. Crim. P. 26.02, and Minn. R. Gen. Prac. 814(a), the Court should release juror identities and other Juror Materials.

III. The First Amendment likewise requires release of juror identities and other Juror Materials

The Court may grant the Media Coalition's motion for access to juror identities and other juror information based on Court rules and the common law alone—it need not reach the constitutional question of whether there is also a First Amendment right to such information. If, however, the Court finds that some "strong reason" overrides the common law right to the Juror Materials, it must consider whether there is a constitutional right to this information, and the law is clear: Just as there is a common law presumption of access to criminal court records, there is a First Amendment right, as well. *See Star Tribune v. Minn. Twins P'ship*, 659 N.W.2d 287, 296 (Minn. App. 2003) ("Similar to the common-law standard, a presumption of access to judicial records exists under the First Amendment."); *see also* Aug. 11 Order at 8 (recognizing the press and public's First Amendment right of access in criminal cases).[13] Because the juror names,

[13] *See also In re Providence Journal Co.*, 293 F.3d 1, 10 (1st Cir. 2002) (right applies to "documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings"); *United States v. Haller*, 837 F.2d 84, 87 (2d Cir. 1988) (records of plea hearing); *United States v. Smith*, 123 F.3d 140, 146 (3d Cir. 1997) (records of a criminal proceeding); *In re Associated Press*, 172 F. App'x 1, 4 (4th Cir. 2006) (records filed "in connection with criminal proceedings"); *United States v. Edwards*, 823 F.2d 111, 112-13 (5th Cir. 1987) (transcript of midtrial questioning of jurors); *In re Storer Commc'ns, Inc.*, 828 F.2d 330, 336 (6th Cir. 1987) (records pertaining to recusal of judge); *United States v. Peters*, 754 F.2d 753, 763 (7th Cir. 1985) (trial exhibits); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573 (8th Cir. 1988) (documents filed in support of search warrant

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profiles, and questionnaires are "records" under the Rules of Public Access to Records of the Judicial Branch, the First Amendment presumption attaches and general concerns for juror privacy cannot overcome it.

A. The First Amendment right of access applies.

The starting point for the First Amendment analysis is *Press-Enterprise v. Superior Court* ("*Press-Enterprise I*"), 464 U.S. 501 (1984), which concerned access to *in camera* jury *voir dire* transcripts from a criminal trial for the rape and murder of a teenage girl. On the theory that *voir dire* might probe prospective jurors' sensitive, personal experiences (such as whether they or anyone close to them had been raped), the trial court ordered that all but three days of the six-week *voir dire* be closed to the public. *Id*. at 503. After the jury was empaneled, and again after the jury rendered its verdict, the press moved the court to release a complete transcript of the *voir dire*. *Id*. The trial court, the California Court of Appeals, and the California Supreme Court all refused. *Id*. at 504-05.

The U.S. Supreme Court reversed, explaining that the press and public can be barred from a criminal trial (including *voir dire*) only when necessary to protect a "compelling governmental interest" and only if the restriction on access is "narrowly tailored to serve that interest." *Id.* at 510. It then concluded that the trial court's concerns over jurors' privacy interests were "unsupported by findings showing that an open proceeding in fact threatened those interests" and that the trial court "failed to consider whether alternatives were available to protect the interests of the prospective jurors." *Id.* at 510-11.

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applications); *CBS v. U.S. Dist. Ct.*, 765 F.2d 823, 825-26 (9th Cir. 1985) (documents filed in pretrial proceedings and post-trial sentencing records); *United States v. Ignasiak*, 667 F.3d 1217, 1237-39 (11th Cir. 2012) (post-trial pleading revealing impeachment information); *Wash. Post v. Robinson*, 935 F.2d 282, 287-88 (D.C. Cir. 1991) (plea agreement).

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Since it issued, many courts have pointed to *Press-Enterprise I* as implicitly holding that there exists not only a First Amendment right of access to *voir dire* but also to juror identities, *especially* after the trial ends and disclosure poses no threat to jurors' impartiality. *See, e.g.*, *United States v. Wecht*, 537 F.3d 222, 239 (3d Cir. 2008) (finding a First Amendment right to juror names at the time of swearing in and empanelment of the jury); *United States v. Doherty*, 675 F. Supp. 719, 723 (D. Mass. 1987) ("[U]nder the First Amendment, the public has a general right, at some reasonable time after a verdict is delivered, to the names and addresses of the jurors discharging this important public trust."); *State ex rel. Beacon Journal Publ'g Co. v. Bond*, 781 N.E.2d 180, 195-96 (Ohio 2002) (First Amendment and state constitution both guarantee the public and press a qualified right of access to juror names and addresses as well as to juror questionnaires); *Commonwealth v. Long*, 922 A.2d 892, 904 (Pa. 2007) (finding a First Amendment right of access to jurors' identities). Likewise, courts have found a First Amendment right to information related to jurors such as the juror profiles questionnaires under seal here. *See Lesher Commc'ns v. Superior Court*, 274 Cal. Rptr. 154, 156 (Ct. App. 1990) (recognizing First Amendment right to jury questionnaires on grounds that the questionnaire is part of the *voir dire* itself and *Press-Enterprise I* thus compels disclosure); *Bond*, 781 N.E.2d at 188 (same).

That a trial is highly publicized does not reduce the strength of the First Amendment right—just the opposite. As the Court explained in *ABC v. Stewart*, "The mere fact that the suit has been the subject of intense media coverage is not, however, sufficient to justify closure. To hold otherwise would render the First Amendment right of access meaningless; the very demand for openness would paradoxically defeat its availability." 360 F.3d 90, 102 (2d Cir. 2004); *see also United States v. Shkreli*, 264 F. Supp. 3d 417, 421 (E.D.N.Y. 2017) ("[A]lthough the court is sympathetic to the privacy concerns of the jurors, the privacy interest of the jury in this case

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cannot prevail over the presumption of openness that attaches to all judicial proceedings."); *United States v. Espy*, 31 F. Supp. 2d 1, 2-3 (D.D.C. 1998) (ordering the release of juror names and addresses one week after the verdict in a high-profile civil trial of charges stemming from activities alleged to have occurred during defendant's term as Secretary of Agriculture).

Courts applying the First Amendment to press requests for juror information have often conducted an "experience and logic" analysis, finding first that jurors' information has historically been open to and known by the public. As the Court set out in *Press-Enterprise I*, "[t]he roots of open trials reach back to the days before the Norman Conquest," 464 U.S. at 505, and the public selection of jurors appears to have begun as early as the 16th century, *id.* at 506. Indeed, public jury selection was common when the Constitution was adopted. *See id.* at 508 & n.7 (noting that several accounts recite the public jury selection of two of the British soldiers charged for the Boston Massacre in 1770). As just one example, Chief Justice John Marshall printed the names of the jurors in the court's reported decision in the treason trial of Aaron Burr. *United States v. Burr*, 25 F. Cas. 55, 87 (D. Va. Cir. Ct. 1807). It is beyond dispute that there exists a tradition, dating to the nation's founding and indeed long before, of access to juror names.

As for the "logic" prong, the question is whether public access to the jury information "plays a significant positive role in the functioning of the particular process in question"—here, the judicial process. *Press-Enterprise Co. v. Superior Court* ("*Press-Enterprise II*"), 478 U.S. 1, 8 (1986). There can be no doubt that it does, for the same reasons this Court previously recognized when granting the Media Coalition broad access to video evidence. *See* Aug. 11 Order at 4-6 (elaborating on the many reasons for transparency in criminal prosecutions). Likewise, as the Supreme Court held in *Press-Enterprise I*, complete access to *voir dire*

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"enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." 464 U.S. at 508; *see also Richmond Newspapers*, 448 U.S. at 571-72. And with regard to juror identities specifically, courts have held that disclosure "allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness and public confidence in that system." *Globe Newspaper*, 920 F.2d at 94.

In sum, Minnesota courts have already held that a First Amendment right of access applies to criminal court records, and both experience and logic show that right extends to those court records that include the Juror Materials at issue here. Thus, the only question is whether the First Amendment right of access has been overcome. As discussed below, it has not.

B. The April 23 Order is not narrowly tailored to protect a compelling interest.

As *Press-Enterprise I* makes clear, any restrictions on the public's First Amendment right of access must be only as broad as is necessary to protect a "compelling" or overriding interest. 464 U.S. at 510. The April 23 Order's sealing of juror identities, profiles, and questionnaires for at least 180 days—until October 20—is not narrowly tailored, nor is it "necessitated by a compelling governmental interest." *Id.*

First, as explained above, the Court's findings, entered without notice or opportunity to be heard or even re-evaluated based on changed circumstances, fall short even under the common law and they certainly do not satisfy the "compelling interest" test of the First Amendment. *See, e.g.*, *Wecht*, 537 F.3d at 240 ("[W]e cannot accept the mere generalized privacy concerns of jurors as a sufficient reason to conceal their identities in every high-profile case." (citation omitted)); *Shkreli*, 264 F. Supp. 3d at 419 ("Despite the long and challenging service of the jury members and the court's profound gratitude for their service and attention

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throughout the trial, the privacy interests and preferences of the jury alone are generally insufficient to preclude disclosure of their names."). Indeed, even in a case with demonstrated connections to the terrorist group ISIS, the court determined that jurors' names and hometowns could be made available to the public and the press shortly after the jury rendered its verdict. *United States v. Wright*, Crim. No. 15-10153-WGY, 2017 U.S. Dist. LEXIS 222476, at *2-4 (D. Mass. Oct. 20, 2017). Here, given the passage of time, the lack of any community unrest in the wake of the verdict, and the voluntary, self-identification of two jurors and one alternate, none of whom have reported being threatened by any member of the public, there simply is no compelling government interest requiring any continued secrecy.

Second, even if a compelling interest were at stake, the April 23 Order is not narrowly tailored. Rather, the Court's concern for juror privacy and its gratitude for the jurors' service can both be addressed other than through a blanket sealing order that intends to keep sealed jurors' names and information sealed for *at least* six months, which is both unnecessarily long and completely arbitrary. For example, the Court can notify the jurors before releasing their identities so they are not surprised and it can give them a number to call if they believe they are being harassed by the press or public.[14] *See, e.g.*, *In re Bay City Times*, 143 F. Supp. 2d 979, 982 (E.D. Mich. 2001) ("If a juror believes an inquiry rises to the level of harassment, the juror may resort to this Court for relief."). In sum, the April 23 Order, which maintains the sealing of jurors' identities and the Juror Materials for at least six months after the jury returned its verdict—and contemplates even further sealing—is not narrowly tailored to protect a compelling interest and cannot withstand First Amendment scrutiny.

[14] This Court should not, however, require that the media contact jurors only through an attorney, as was ordered by the court when releasing the Noor jurors' identities. This requirement constituted a gag and a prior restraint on the media and was unconstitutional.

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C. The right of access to court records is a *contemporaneous* right, and delay in releasing Juror Materials amounts to denial of that right.

Finally, the right of access to court records, including the Juror Materials at issue here, is a contemporaneous right, and where delay is not otherwise justified by strong or compelling reasons, it cannot be excused by promises of "eventual" release. As the Supreme Court has explained, "The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Stewart*, 360 F.3d at 99 ("The ability to see and to hear a proceeding *as it unfolds* is a vital component of the First Amendment right of access—not . . . an incremental benefit" (emphasis added)); *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (access to court documents "should be immediate and contemporaneous"); *Republic of the Philippines v. Westinghouse Elec. Corp*., 949 F.2d 653, 664 (3d Cir. 1991) ("the public interest encompasses the public's ability to make a contemporaneous review of the basis of an important decision of the district court"); *In re Continental Ill. Sec. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984) ("The presumption of access [to court records] normally involves a right of *contemporaneous* access.").

Contemporaneous access is guaranteed in part because "[d]elays imposed by governmental authority" are inconsistent with the press' "traditional function of bringing news to the public promptly," *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 560-61 (1976), and can "destroy the contemporary news value of the information the press seeks to disseminate," *id.* at 609 (Brennan, J., concurring); *see also Valley Broad. Co.*, 798 F.2d at 1292 (noting that because the media "seeks to obtain the tapes for contemporaneous broadcast when presumably they will pack the greatest punch, delay will prejudice its application in a way not correctable on appeal" (internal marks and citation omitted)).

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Prompt reporting is imperative because it helps ensure accountability, *see, e.g.*, *Richmond Newspapers*, 448 U.S. at 592 (Brennan, J., concurring) ("[C]ontemporaneous review in the forum of public opinion is an effective restraint on the possible abuse of judicial power." (quoting *In re Oliver*, 333 U.S. 257, 270 (1948))), and nowhere is accountability more important than in our criminal justice system. *See, e.g.*, *Robinson*, 935 F.2d at 287 (recognizing "the critical importance of contemporaneous access . . . to the public's role as overseer of the criminal justice process"); *In re Application of NBC (Myers)*, 635 F.2d 945, 952 (2d Cir. 1980) ("there is significant public interest in affording [opportunity to scrutinize evidence] contemporaneously . . . when the public attention is alerted to the ongoing trial").

The reasons for contemporaneous access to the Juror Materials are obvious here: there are other prosecutions against police officers already scheduled for trial in this very Court—Kimberly Potter in December and Mr. Chauvin's co-defendants in March—and Mr. Chauvin and his co-defendants are set to be arraigned on federal charges in September. And whether they involve police officers or not, future prosecutions that divide the public are inevitable. Thus, the time to build confidence in the judicial system—the time to learn from the Chauvin jurors—is now.

Conclusion

It is not lost on the Media Coalition that the Court has made clear to jurors that "they may, if they choose, identify themselves publicly and speak with whomever they wish about this case," Apr. 23 Order at 3, and yet only two jurors (and one alternate) have chosen to do so. The Coalition understands that the remaining jurors, when their names are revealed, may choose not to respond to media inquiries or say anything public at all about their experience, and the Coalition respects whatever decision they ultimately make.

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But it bears noting that simply knowing *who* the jurors are—even if they never speak to the press—helps the public learn whether they were "suitable decision-makers." *Blagojevich*, 612 F.3d at 561. The First Circuit has also recognized the value in publicly identifying jurors: doing so, it said, "allows the public to verify [their] impartiality" which "ensures fairness, the appearance of fairness and public confidence in that system." *Globe Newspaper*, 920 F.2d at 94. Further, the First Circuit explained, "information about jurors, obtained from the jurors themselves *or otherwise*, serves to educate the public regarding the judicial system and can be important to public debate about its strengths, flaws and means to improve it." *Id*. (emphasis added); *see also Shkreli*, 264 F. Supp. 3d at 420 ("Whether members of the jury choose to grant or decline press interviews regarding their service, the identities of the jury members may still be important to inform the public about the jury selection process, the conduct of the trial, or the criminal justice system in general.").

For this and all the reasons discussed above, the Court should immediately disclose the jurors' identities to the press and public, and it should unseal the related Juror Materials, including the prospective juror list, juror profiles, juror questionnaires, and the unredacted verdict forms.

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Dated: August 4, 2021

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