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IN THE DISTRICT COURT OF THE SECOND 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

**MEMORANDUM IN SUPPORT OF  
MOTION TO BE HEARD AS  
INTERESTED PARTIES AND UNSEAL  
RECORDS**

AMERICAN BROADCASTING  
COMPANIES, INC., D/B/A/ ABC NEWS;  
THE ASSOCIATED PRESS; BONNER  
COUNTY DAILY BEE; CBS NEWS; CNN;  
COWLES PUBLISHING, D/B/A/ THE  
SPOKESMAN-REVIEW; COEUR D'ALENE  
PRESS; DAILY MAIL;  
EASTIDAHONEWS.COM, LLC, D/B/A/  
EAST IDAHO NEWS; FOX NEWS; IDAHO  
PRESS CLUB; ION MEDIA NETWORKS,  
LLC, D/B/A/ COURT TV; KXLY;  
LEWISTON TRIBUNE/TPC HOLDINGS  
INC.; MOSCOW-PULLMAN DAILY

MEMORANDUM IN SUPPORT OF MOTION TO BE HEARD AND TO UNSEAL RECORDS

NEWS/TPC HOLDINGS INC.; SCRIPPS  
MEDIA, INC., D/B/A/ KIVI-TV; SOCIETY  
OF PROFESSIONAL JOURNALISTS;  
STATES NEWSROOM, D/B/A/ IDAHO  
CAPITAL SUN; TEGNA; THE MCCLATCHY  
COMPANY, LLC, D/B/A/ THE IDAHO  
STATESMAN; THE NEW YORK TIMES  
COMPANY; NBC NEWS; NEWSNATION;  
and UNIVERSITY OF IDAHO STUDENT  
MEDIA/THE ARGONAUT,

Interested Parties.

## I. INTRODUCTION

On July 2, 2025, Brian Kohberger pled guilty to the murders of four University of Idaho students and to one count of burglary. Mr. Kohberger’s plea sharply changed the Sixth Amendment fair trial/First Amendment balance in this case. Mr. Kohberger will never face a jury to determine his guilt, nor will a jury have any role in determining whether the death penalty is the proper punishment. All that remains is for the Court, not a jury, to impose a sentence, and that is scheduled to occur on July 23. The parties have waived a presentence investigation and Mr. Kohberger has agreed that he will not argue for anything less than consecutive life sentences without the possibility of parole. And he has agreed not to appeal. The nearly three-year investigation and prosecution of Mr. Kohberger has come to an end.

As this Court has acknowledged, this case has been marked by secrecy. Indeed, more than half of the nearly 500 orders entered in this case—approximately 246—have been orders to seal. Declaration of Rebecca Boone in Support of Motion to Be Heard and Unseal Records (“Boone Decl.”), ¶ 9. Since January 1, 2025, over 150 orders to seal have been entered. *Id.*, ¶ 11. From what the Media Coalition can discern, the primary justification for most of the motions to seal and orders to seal has been the need to preserve Mr. Kohberger’s right to a fair trial. *Id.*, ¶ 13. But

Mr. Kohberger’s change of plea and the terms of his plea agreement have rendered that

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justification moot. In the absence of this justification, the continued infringement on the Media Coalition's and public's First Amendment rights is impermissible and does not comport with Idaho law. Indeed, in a separate filing on July 14, 2025, the State acknowledged that the fair trial right no longer provides a basis to continue the Nondissemination Order. Accordingly, the Media Coalition<sup>1</sup> respectfully requests that this Court unseal the voluminous sealed records in this case.

## II. LEGAL STANDARD

“Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.” I.C. § 74-102(1). The Idaho Supreme Court has authority to adopt rules regarding the public disclosure of certain information, Idaho Code § 74-104(1)(b), and it has adopted Idaho Court Administrative Rule 32 for that purpose. *Doe v. State*, 153 Idaho 685, 687, 290 P.3d 1277, 1279 (Ct. App. 2012) (“The Court adopted Administrative Rule 32 to define when public access to judicial records may be denied.”).<sup>2</sup> Rule 32 recognizes that “[t]he public has a right to access the judicial department’s declarations of law and public policy, and to access the records of all proceedings open to the public.” I.C.A.R. 32(a). Unless an exception applies, the public has a right to transcripts and recordings of public hearings, and all “[p]leadings, motions, affidavits, responses, memoranda, briefs and other documents filed or lodged in a case file[.]” I.C.A.R. 32(d)(7).

Rule 32 allows information to be sealed from the public only “[i]n very narrow circumstances.” *State v. Allen*, 156 Idaho 332, 336, 325 P.3d 673, 677 (Ct. App. 2014). “[W]hen

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<sup>1</sup> The Media Coalition is made up largely of the media organizations listed in the caption.

<sup>2</sup> During the prosecution of Mr. Kohberger, two versions of Rule 32 were effective. For purposes of this motion, the Media Coalition has relied on the current version of the rule even though many of the orders were issued under the prior version.

entering an order redacting or sealing records in a case file, a court must fashion the least restrictive exception from disclosure and provide the reason for the redaction or sealing.” I.C.A.R. 32(i)(3). If a record has been sealed, any “non-part[y] whose rights are affected by or who otherwise have a right to access information contained in a court file, may move to . . . unseal records in a case file.” I.C.A.R. 32(i)(1). Moreover, this Court, at any time, “may reconsider, alter, or amend any order issued under [Rule 32] at any time.” I.C.A.R. 32(i)(7). Decisions under I.C.A.R. 32(i) are within the trial court’s sound discretion. *State v. Dinegar*, No. 47336, 2020 WL 3263918, at \*1 (Idaho Ct. App. June 17, 2020).

### **III. ARGUMENT**

#### **A. The Court should unseal the judicial records in this matter as soon as possible.**

Now that Mr. Kohberger will never face a jury and his prosecution (and, thus, his investigation) has concluded, there is no reason for this case to remain cloaked in secrecy. There no longer appears to be any proper reason for the Court to maintain the categorical sealing of records in this case. Indeed, the Court should unseal the sealed records in this case as soon as possible for at least three reasons.

*First*, and most importantly, the Court should unseal all records in this matter because the primary justification for sealing no longer exists. As the State acknowledged in its response to the Media Coalition’s motion to vacate the Nondissemination Order, Mr. Kohberger’s “right to a fair trial on the issue of guilt is no longer an issue.” State’s Response to Coalition of Media Organization’s Motion to be Heard as Interested Parties and Motion to Vacate Nondissemination Order at 2. Although the Media Coalition has not reviewed each of the 246 orders to seal in this case, it appears that the predominate justification for sealing the mass amounts of judicial records throughout this case was to protect Mr. Kohberger’s right to a fair trial. *See, e.g.*, Order Sealing

Defendant’s Evidence in Support of Offer of Proof Re: Alternate Perpetrators filed May 27, 0225  
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(citing Idaho Code § 74-124(b)); Order Sealing Defendant's Response to State's First Supplemental Requests for Discovery filed April 14, 2025 (same); Order Sealing Exhibits to States Objection to Defendants' Motion to Suppress and Memorandum in Support Re Search Warrant for Defendant's Apartment (citing the prior version of I.C.A.R. 32(i)(2)(E)); *see also* Boone Decl., ¶ 13. Mr. Kohberger has now pleaded guilty. He has waived his right to an appeal and, therefore, there is no possible set of circumstances under which Mr. Kohberger will ever face a jury to determine his guilt or whether the death penalty should be imposed. Thus, there is no need to continue sealing records to preserve Mr. Kohberger's "right to a fair trial." *See, e.g., In re Search of One Device & Two Individuals under Rule 41*, No. 25-SW-82 (ZMF), 2025 WL 1587917, at \*6 (D.D.C. May 29, 2025) (explaining that "there is a recent trend among courts finding that traditional justifications for sealing no longer apply *post-indictment*" because the "end of an investigation is a significant benchmark" let alone the end of a prosecution); *State v. Mendez*, 157 Wn. App. 565, 585, 238 P.3d 517, 526 (2010) ("The trial court correctly recognized that Mr. Mendez's interest in a fair trial was no longer in play. He had pleaded guilty and been sentenced. His conviction was final."), *review granted, cause remanded on other grounds*, 172 Wn.2d 1004 (2011); *Energy & Pol'y Inst. v. Drummond Co.*, No. SC-2023-0651, 2024 WL 4716227, at \*11 (Ala. Nov. 8, 2024) (J. Parker, dissenting) ("If the record is unsealed after trial, then the parties may not need to redact information because the risk of an unfair trial will be moot at that point.").

Because the primary reason for sealing the records in this case is moot, the infringement on the public's right to view judicial records can no longer be justified, nor does continued sealing comply with Rule 32. *Allen*, 156 Idaho at 336, 325 P.3d at 677 ("In the context of criminal proceedings, the public has a right, protected by the First Amendment, to know what goes on in its courts."); *Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cnty.*, 464 U.S. 501, 510 (1984)

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(explaining the presumption of openness may only be overcome by an overriding interest based on findings that sealing is essential to preserve higher values and is narrowly tailored to serve that interest). Moreover, without unsealing the significant records withheld from the public, the cloud of secrecy looming over this case will only hinder the public's faith and understanding of the judicial process, and Mr. Kohberger's plea.

As Chief Justice Warren E. Burger said: "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). When criminal proceedings are "conducted in the open, there is at least an opportunity both for understanding the system in general and its workings in a particular case." *Id.* Indeed, "Idaho's courtrooms [and their records] are the only places in the state where our citizens can witness all three branches of government in action at the same time." G. Richard Bevan, Chief Justice, Idaho Supreme Court, State of the Judiciary Address to Idaho Senate and Idaho House of Representatives (Jan. 18, 2023), <https://isb.idaho.gov/blog/state-of-the-judiciary-address/>. Undoubtedly, "these proceedings affect Idaho's people in profound ways." *Id.*

As this court has recognized, this case has garnered intense national and even international attention. It is deeply important to the people of this State and remains so despite Mr. Kohberger's plea. However, because Mr. Kohberger will never face a trial, the public will also never have the opportunity to fully discover or understand the evidence that would have been presented against Mr. Kohberger, or the steps that the prosecution and law enforcement took that eventually led to Mr. Kohberger's guilty plea. If the record remains sealed, especially to the current extent, the public may never truly accept Mr. Kohberger's guilty plea as the ultimate conclusion of this

horrific case. But unsealing the record here will not only preserve the public’s First Amendment rights, but will also promote confidence in the judicial system as a whole.

*Second*, the plain language of Rule 32 now supports unsealing the sealed records in this case. When the justification for sealing court records is to preserve the accused’s right to a fair trial, Rule 32 specifically contemplates that the record only be sealed “temporarily.” I.C.A.R. 32(i)(3)(A)(6); *see also* Order Denying Motion to Unseal IGG Suppression Briefing and Hearing filed January 22, 2025, at 1. This temporal limitation comports with the inevitable fact that an accused’s interest in a right to a fair trial also only exists temporarily—that is, until his or her guilt has been determined. Indeed, the State and this Court have acknowledged that sensitive information, such as IGG evidence, does not need to remain sealed “after trial.” *See* Order Denying Motion to Unseal IGG Suppression Briefing and Hearing filed January 22, 2025, at 2. Because the primary justification for sealing most—if not all—of the records mandates that the records only be sealed temporarily, the Court should begin the process of unsealing them as soon as possible.

*Third*, even if another justification may exist for continuing to protect some of the records, it is unlikely that the complete sealing of a record still complies with Rule 32 and the First Amendment. The Media Coalition understands that there may be sufficient justifications for sealing records other than protecting the right to a fair trial. However, it appears that the only other exception that has been referenced for sealing the records in this case—and that appears to continue to be potentially applicable—is when “[t]he records contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person.” I.C.A.R. 32(i)(3)(A)(1). To the extent that any such highly intimate facts or statements relate to Mr. Kohberger, now that Mr. Kohberger has pleaded guilty, it seems unlikely that the publication of any facts or statements involving Mr. Kohberger’s crimes would be highly objectionable. To the

extent any such highly intimate facts or statements relate to a third party, only the Court (and possibly the parties) are in a position to determine whether sealing under Rule 32(i)(3)(A)(1) remains appropriate. Rule 32 mandates that “when entering an order redacting or sealing records in a case file, a court must fashion the least restrictive exception from disclosure and provide the reason for the redaction or sealing.” I.C.A.R. 32(i)(3); *Press-Enter. Co.*, 464 U.S. at 510 (explaining the closure to public must be “narrowly tailored to serve that interest”).

Here, even if protecting some information from the public is justified under this exception, it is extremely unlikely that it would be necessary to completely seal any record rather than rely on redactions to protect the identity or personal information of other individuals. *See, e.g., Calyxt Inc. v. Morris Ag Air & Sons Inc.*, No. CV-20-01221-PHX-DLR, 2022 WL 17689166, at \*2 (D. Ariz. Dec. 15, 2022) (“[T]he Court will not authorize the sealing of entire documents if only portions thereof contain information that should properly be sealed.”); *HR Staffing Consultants, LLC v. Butts*, No. CV 15-3155 (KM)(JBC), 2015 WL 9918413, at \*2 (D.N.J. July 17, 2015) (“It is the burden of the movant, not the Court, to demonstrate that an entire document should be sealed as opposed to redacted.”). This preference, and least restrictive means test, is apparent in the Court’s most recent order regarding alternate suspects. *See* Redacted Order on Defendant’s Offer of Proof Re: Alternate Perpetrators filed June 26, 2025; *see also* Redacted Memorandum Decision and Order on Defendant’s Motion to Continue filed June 26, 2025. There the Court did not find it necessary to seal the entire order to preserve the alternate suspects’ identities, which are perhaps the most important identities to preserve in a criminal proceeding, but found it sufficient to redact certain sections that might allow the public to identify who they were. *Id.* If there are any records that should remain protected under the need to protect personal information, those exhibits should not remain completely sealed but should be redacted only to the extent necessary.



Under Rule 32(i)(5)(A), the Court must enter an order explaining its reasoning and specifically identifying the records to be unsealed. The Media Coalition recognizes that implementation of this rule for all of the records covered by the 246 orders to seal places a burden on the Court. However, it is impossible for the Media Coalition, in its current position, to properly identify what records should or should not remain sealed in a manner that would allow it to narrow its motion to unseal to any specific orders or records.<sup>3</sup> Obviously, the Media Coalition is not in a position to review what was sealed to determine if there is any justification for the infringement of the public’s First Amendment rights. Additionally, many of the Court’s orders do not expressly clarify what specific exemption justified the sealing of a record. *See, e.g.*, Order Sealing the Defendant’s Witness and Exhibit List filed May 9, 2024; Order Sealing Exhibits filed July 24, 2025; Order Sealing Defendant’s Replies to the State’s Objections to Franks and IGG filed December 20, 2024; *see also* Boone Decl., ¶ 11.<sup>4</sup> Given the inherent challenges mentioned, it is generally “the party seeking to keep records sealed [that] bears the burden of justifying that secrecy, even where, as here, the district court already previously determined that those documents should be sealed.” *United States v. Pickard*, 733 F.3d 1297, 1302 (10th Cir. 2013) (collecting cases); *see also Vanda Pharms., Inc. v. Food & Drug Admin.*, 539 F. Supp. 3d 44, 52 (D.D.C. 2021) (“It is not the [party seeking unsealing’s] burden to proffer a need for public access; the

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<sup>3</sup> The Media Coalition maintains its position that the most appropriate path forward, given that there is no longer a need to protect a Mr. Kohberger’s right to a fair trial, is to unseal all the records in this matter. If the State or Defense believes that there is sufficient justification to reseat a record for some other reason, either party can renew its request to seal specific records that would ensure compliance with Rule 32, Idaho Code § 74-124, and the First Amendment.

<sup>4</sup> To the extent that these orders, and ones like them, do not comply with the requirements of Rule 32, this is further reason that the Court should unseal the records in this case. *See* I.C.A.R. 32(i)(3)(B) (“[N]o record can be redacted or sealed (aside from presentence investigation reports) unless the court first enters a written order that includes the determinations made under subsection (i)(3)(A) above.”).

burden is instead the respondent's to demonstrate the absence of a need for public access because the law presumes that the public is entitled to access the contents of judicial proceedings.” (citations omitted; alterations in original)). Thus, if either the State or Mr. Kohberger believes that any records in this case should remain sealed, it is their burden to show that the judicial record continues to fit within one of the “very narrow circumstances” justifying sealing. *Allen*, 156 Idaho at 336.<sup>5</sup> Unless either party is able to do so, the Court should unseal all the records in this matter.

#### IV. CONCLUSION

Simply put, the need to protect Mr. Kohberger's right to a fair trial is no longer a legitimate purpose for sealing judicial records in this matter. For that reason, and the reasons stated in this memorandum, the Media Coalition respectfully requests that this Court grant its motion and unseal all the records in this case.

DATED: July 14, 2025.

STOEL RIVES LLP

/s/ Wendy J. Olson

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*Attorneys for Interested Parties*

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<sup>5</sup> The Media Coalition recognizes that it might be the most expeditious and efficient path forward for the Defense and the State to conduct a preliminary review of the sealed records and provide a proposed list to all involved of what documents they believe should remain sealed before proceeding to a hearing or conducting additional briefing on the matter.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 14, 2025, I served a true and correct copy of the within and foregoing **MEMORANDUM IN SUPPORT OF MOTION TO BE HEARD AND VACATE NONDISSEMINATION ORDER** upon the following named parties by the method indicated below, and addressed to the following:

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Senior Deputy Prosecuting Attorney  
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MEMORANDUM IN SUPPORT OF MOTION TO BE HEARD AND TO UNSEAL RECORDS

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Pro Hac Vice

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