

IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
FIRST DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CASE NO. 43CR-24-551

AARON SPENCER

DEFENDANT

**MOTION TO INTERVENE AND RECONSIDER THE ORDER LIMITING
COURTROOM OCCUPANCY AND NO RECORDINGS AND INCORPORATED BRIEF**

NLA Productions, LLC (“NLA Productions”), for its motion to intervene and to reconsider the Order Limiting Courtroom Occupancy And No Recordings and incorporated brief, states as follows:

1. NLA Productions is a member of the media that has actual and concrete plans to send a representative to attend the trial in this matter, which is currently scheduled to begin on January 26, 2026.

2. On January 13, 2026, the Court entered its *sua sponte* Order Limiting Courtroom Occupancy And No Recordings.

3. This Order only allows 20 members of the general public and news media to observe jury selection. Order, ¶ 1. After jury selection, attendance “inclusive of parties, counsel, counsel’s staff, family members, observers and media” is limited to 55 individuals, total. Order, ¶ 2. The Court only allows one representative per station, newspaper, or other media organization “at all times,” and prohibits “recording devices in the Courtroom at any time” including “cameras, cell phones, apple watches, iPad, recorders, eye glasses” [sic]. Order, ¶¶ 4, 8.

4. On January 19, 2026, a representative of NLA Productions sent an email to the Court requesting formal permission to allow a pool camera in this matter.

5. There is significant public interest surrounding this case. NLA Productions seeks to ensure transparent access to the proceedings while maintaining the dignity of the court.

6. NLA Productions respectfully requests that the Court allow it to intervene and that the Court reconsider its January 13, 2026, Order.

7. NLA Productions has standing because it will be imminently, directly impacted by the Court's Order regarding attendance limitations, it has requested a pool camera, and news gathering receives First Amendment protections. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 2341, 189 L. Ed. 2d 246 (2014) ("An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." (cleaned up)); *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972) ("[W]ithout some protection for seeking out the news, freedom of the press could be eviscerated.").

8. Intervention is proper in this case. NLA Productions and undersigned counsel are not aware of controlling precedent on this issue, but courts across the country permit news organizations to intervene in criminal cases for the limited purpose of challenging orders that limit public access or otherwise restrict rights under the First Amendment. *See, e.g., Grube v. Trader*, 142 Haw. 412, 429, 420 P.3d 343, 360 (2018) (permitting intervention by media to challenge motion to unseal in a criminal case); *People v. Zimmerman*, 2018 IL 122261, ¶¶ 5–7, 120 N.E.3d 918, 921 (permitting intervention to challenge a motion to close a courtroom and to file motions to seal); *People v. Sledge*, 312 Mich. App. 516, 537, 879 N.W.2d 884, 897 (2015) (permitting intervention by media to challenge a gag order).

9. The other recognized alternative, seeking a writ directly from a higher court, would deprive this Court of reviewing its decision “with the benefit of argument on the question of closure by an advocate of First Amendment and common-law interests.” *Wichita Eagle Beacon Co. v. Owens*, 271 Kan. 710, 713, 27 P.3d 881, 883 (2001). Allowing NLA Productions to intervene in this case rather than going directly to the Arkansas Supreme Court will allow this Court to make a more “fully informed closure decision in the first instance.” *Id.* Intervention is also a more efficient use of judicial resources and is less disruptive to the underlying criminal case. *Id.*

10. Reconsideration is imperative under existing precedent from the Arkansas Supreme Court in this case.

11. On May 29, 2025, the Arkansas Supreme Court struck down the Court’s gag order in this matter. *See Spencer v. State*, 2025 Ark. 91, 712 S.W.3d 296.

12. In that decision, Arkansas Supreme Court noted the gag order’s place within a pattern of secrecy in this case, stating that “the Lonoke County Circuit Court’s courtroom was at least partially closed to the public during Spencer’s arraignment.” *Id.*, 2025 Ark. 91, at 17, 712 S.W.3d at 308. The Arkansas Supreme Court provided the following warning:

Although it appears the circuit court intends to close further proceedings to the public, we caution the court from doing so without an evidentiary basis and adherence to the required constitutional analysis set out in *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). *See Mitchell v. State*, 2019 Ark. 67, at 5, 567 S.W.3d 838, 841. As we stated in *Schnarr v. State*, 2017 Ark. 10, 2017 WL 374727, “[t]he right to a public trial is one of the most important safeguards in the prosecution of persons accused of crime.”

Id. In *Waller*, the United States Supreme Court established that a party seeking to close a hearing “must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to

closing the proceeding, and it must make findings adequate to support the closure.” 467 U.S. 39, 48 (1984).

13. The January 13, 2026, Order does not adhere to Arkansas Supreme Court’s decision. Instead, it severely limits the ability of the general public and the media to attend the trial in this matter without making any findings related to (1) an overriding interest that is likely to be prejudiced, (2) whether the restriction is no broader than necessary to protect that interest, and (3) reasonable alternatives to its partial closure of proceeding attendance. *See id.* Instead, the Order merely states that the courtroom will be “crowded” during jury selection (Order, ¶ 1) and concludes that the Order itself “constitutes a reasonable, narrowly tailored regulation of the courtroom access that fully preserves the defendant’s Sixth Amendment right to a public trial while safeguarding the integrity and orderly conduct of the proceeding.” The factual findings, if any, that led to these conclusions are not present in the Order. There was no finding related to an overriding interest that would be prejudiced, whether the restriction was over-broad, or what alternatives may exist to the Court’s restrictions.

14. Additionally, Arkansas Code Ann. § 16-10-105 states that “[t]he sittings of every court shall be public, and every person may freely attend the sittings of every court.” The Court’s January 13, 2026, Order violates this law by prohibiting individuals from accessing the courtroom if that person is employed by a media organization and another person from that media organization is already in attendance. *See* Order, ¶ 4.

15. The Sixth Amendment to the United States Constitution and article 2, section 10 of the Arkansas Constitution both guarantee a public trial. Yet this case, intentionally or not, has routinely been hidden from the view of the public—and it begs the question *why*. The administration of justice, and the legitimacy of the decisions made within Arkansas’s criminal

justice system, now hang in the balance of this Court’s decision to open or close the trial in this matter. *See Press-Enter. Co. v. Superior Ct. of California, Riverside Cnty.*, 464 U.S. 501, 508 (1984) (“Openness . . . enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.”).

16. “[S]eparate from the accused’s Sixth Amendment right to a public trial, the press and the general public have a constitutional right of access to criminal trials under the First Amendment, made applicable to the states through the Fourteenth Amendment.” *Mitchell v. State*, 2019 Ark. 67, 6, 567 S.W.3d 838, 841 (requiring a new trial in a first-degree murder case when the circuit court improperly closed the courtroom certain testimony without making the necessary findings under *Waller*) (citing *Presley v. Georgia*, 558 U.S. 209, 212 (2010)).

17. The Court has the opportunity to protect the interests of justice, and the public’s perception of it, by allowing a camera pooling arrangement under Administrative Order Number 6.

18. A camera pooling arrangement serves as an alternative arrangement that would ease any restriction on courtroom attendance insofar as such a restriction is found necessary in accordance with *Waller*.

19. NLA Productions is prepared to serve as the pool coordinator if selected by the media pool pursuant to Administrative Order Number 6. In this role, it would have the capacity to coordinate the pooling of resources and act as the primary provider of footage to all authorized requesting parties, ensuring that the media presence in the courtroom remains orderly and uncrowded.

20. NLA Productions acknowledges and would agree to abide by the stipulations set forth by the Arkansas Supreme Court in Administrative Order Number 6, including:

- a. Using one video camera and one still camera in the courtroom, placed in stationary positions outside the bar, with other electronic equipment not a component part of the cameras located in an area remote from the courtroom to be designated by the Court;
- b. Operating equipment that does not require distracting sound or light, and not using any artificial lighting devices;
- c. Only removing or installing camera and audio equipment when the Court is not in session;
- d. Strictly adhering to the prohibition of audio equipment to record conversations between attorneys and clients or conversations between attorneys and the court held outside the hearing of the jury; and
- e. Strictly adhering to the prohibition of broadcasting, recording, or photographing jurors, minors without parental or guardian consent, victims in cases involving sexual offenses, and undercover police agents or enforcement.

21. NLA Productions further states that it would have a dedicated “kill switch” in place, allowing for the immediate termination of all video, audio, and photography at the Court’s discretion.

22. NLA Productions has the capacity to provide, and would provide, a download link to allow the members of the media pool so that they could download all media acquired inside the courtroom immediately following the day’s proceedings.

23. NLA Productions represents that it is committed to a “silent and invisible” presence, ensuring that the judicial process remains the sole focus of the room.

24. Several local media outlets and companies and support this request for a media pooling arrangement.

WHEREFORE, NLA Productions, LLC requests that the Court grant her motion to intervene, reconsider its Order Limiting Courtroom Occupancy And No Recordings, allow a media pooling arrangement.

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of the Court using the AOC eFlex electronic filing system, which shall send notification of such filing to all counsel of record.

/s/ John E. Tull III

John E. Tull III