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19 **IN THE UNITED STATES DISTRICT COURT FOR THE**
20 **SOUTHERN DISTRICT OF CALIFORNIA**

21 **Pro Publica Inc.,**

22 *Plaintiff,*

23 v.

24 **Vice Admiral Lia Reynolds; Carlos**
25 **Del Toro; Caroline D. Krass; and**
26 **Lloyd J. Austin, III,**

27 *Defendants.*

28 **Case No. 3:22-CV-1455-BTM-KSC**

PROPOSED AMICI CURIAE
BRIEF OF THE REPORTERS
COMMITTEE FOR FREEDOM OF
THE PRESS AND 34 MEDIA
ORGANIZATIONS IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT

Date: February 21, 2025

Time: 11:00 a.m.

Judge: Hon. Barry Ted Moskowitz

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11

12 Adam Klasfeld, *Manning Did Not ‘Aid the Enemy’ by Spilling Secrets to*
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13

14 Carl Prine, *Navy Dismisses More SEAL War Crimes Cases, Removes*
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15

16 Darren Samuelsohn, *Military Still Secretive On Sex Crimes*, POLITICO (Sept. 25,
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17

18 Dave Phillips, *Disposable: Surge in Discharges Includes Wounded Soldiers*, The
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19

20 David A. Schlueter, *Reforming Military Justice: An Analysis of the Military Justice*
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21

22 *David Phillips of The Gazette, Colorado Springs, CO, The Pulitzer Prizes* (last
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23

24 Dienes, Levine and Lind, *Newsgathering and the Law* (3d ed. 2005) 6

25

26 Emily Crockett, *The War in Congress Over Rape in the Military, Explained*, Vox
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27

28 Geoff Ziezulewicz, *Navy Chief Convicted for Bahrain Sex Crimes Loses Court*
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1 Geoff Ziezulewicz, *Tinder, Sailor, Hooker, Pimp: The U.S. Navy’s Sex Trafficking Scandal in Bahrain*, Mil. Times (June 16, 2020) 17

2

3 Geoff Ziezulewicz, *Why the Navy Struggled to Convict in Bahrain Sex Crime Cases*, Navy Times (June 16, 2020)..... 18

4

5 Gina Harkins, *Senators Demand ‘Immediate Action’ After Explosive Report on Navy Sex Trafficking Scandal*, Military.com (July 29, 2020) 17

6

7 Kyle Rempfer, *Bowe Bergdahl Loses Unlawful Command Influence Appeal Based on Trump Tweets*, Mil. Times (July 17, 2019) 13

8

9 Letter from Rachel E. VanLandingham, President, Nat’l Inst. of Mil. Just. to Hon. Caroline D. Krass, Gen. Couns., Dep’t of Def. (Sept. 19, 2022)..... 15

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11 Letter from Reporters Committee and 38 Media Orgs. to C. Krass, Gen. Couns., Dep’t of Def. (Sept. 13, 2022).....3, 14

12

13 Media Insight Project, *How Americans Describe Their News Consumption Behaviors*, Am. Press Inst. (June 11, 2018) 13

14

15 Mil. Just. Rev. Panel, *Comprehensive Review and Assessment of the Uniform Code of Military Justice* (December 2024)..... 11

16

17 *Other than Honorable*, The Gazette (last visited Jan. 6, 2025)..... 16

18

19 *Report of the Military Justice Review Group, Part I: UCMJ Recommendations (“Report”)* Mil. Just. Rev. Grp. (Dec. 22, 2015) 5

20

21 *Sex Crime Coverup: Senators Attack Lack Of Transparency In Military Justice System*, First Amendment Coal. (Dec. 10, 2015) 14

22

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae are the Reporters Committee for Freedom of the Press (“Reporters Committee”), and the following news and media organizations (together, “amici”):

1. American Broadcasting Cos., Inc. d/b/a ABC News
2. The Associated Press
3. The Atlantic Monthly Group LLC
4. Courthouse News Service
5. Dow Jones & Co. (incl. The Wall Street Journal)
6. The E.W. Scripps Company
7. First Amendment Coalition
8. Gannett Co., Inc.
9. Inter American Press Association
10. The Intercept Media, Inc.
11. Los Angeles Times Communications LLC
12. The Media Institute
13. MediaNews Group Inc.
14. Military Reporters & Editors
15. Military.com
16. National Freedom of Information Coalition
17. National Newspaper Association
18. The National Press Club
19. National Press Photographers Association
20. The New York Times Company
21. News/Media Alliance
22. Nexstar Media Inc.
23. Online News Association
24. Radio Television Digital News Association

- 1 25.Sightline Media Group (incl. The Navy Times, The Army Times, and Defense
- 2 News)
- 3 26.Sinclair Broadcast Group, Inc.
- 4 27.Slate
- 5 28.Society of Environmental Journalists
- 6 29.Society of Professional Journalists
- 7 30.Student Press Law Center
- 8 31.TEGNA Inc.
- 9 32.Tully Center for Free Speech
- 10 33.Vox Media, LLC
- 11 34.The War Horse News

12
13 Lead amicus the Reporters Committee is an unincorporated nonprofit association
14 founded by leading journalists and media lawyers in 1970 when the nation’s news media
15 faced an unprecedented wave of government subpoenas forcing reporters to name
16 confidential sources. Today, its attorneys provide pro bono legal representation, amicus
17 curiae support, and other legal resources to protect First Amendment freedoms and the
18 newsgathering rights of journalists. (Statements of interest for all amici are set forth in the
19 motion for leave to which this proposed brief is appended.)

20 Amici file this brief in support of the Motion for Summary Judgment filed by
21 Plaintiff Pro Publica, Inc. (“ProPublica”). ECF No. 88. As news organizations and other
22 organizations that advocate for the First Amendment and newsgathering rights of the press,
23 amici have a strong interest in safeguarding the public’s presumptive right to access court
24 proceedings and records, including in courts martial, and have previously filed as amici in
25 federal courts concerning access. *See, e.g.,* Brief of Amici Curiae RCFP and NPPA, *Leigh*

1 v. *Salazar*, 677 F.3d 892 (9th Cir. 2012).¹ Prompt access to judicial hearings and records
2 is essential for journalists, in their role as “surrogates for the public,” to gather information
3 and keep the public informed about court cases of public interest. *Richmond Newspapers,*
4 *Inc. v. Virginia*, 448 U.S. 555, 573 (1980). It is from this perspective that amici write to
5 emphasize the public interest in this case and the importance to the wider press and public
6 of timely access to proceedings and records of courts-martial.

7 ///

8 ///

9 ///

21 ¹ Amici’s interest includes this matter specifically. The Reporters Committee
22 previously filed an unopposed motion for leave to proceed as amicus curiae in support of
23 ProPublica’s motion for a preliminary injunction. ECF No. 14. The parties subsequently
24 stipulated to a stay of proceedings, and the Court denied the motion as moot without
25 prejudice to renew. ECF Nos. 15, 16, 43. The Reporters Committee, joined by 38 media
26 organizations, also sent a letter to Department of Defense General Counsel Caroline D.
27 Krass regarding the Department’s prior guidance on Article 140a of the Uniform Code of
28 Military Justice and its application to access requests, including ProPublica’s here. *See*
Letter from Reporters Committee and 38 Media Orgs. to C. Krass, Gen. Couns., Dep’t of
Def. (Sept. 13, 2022), available at <https://www.documentcloud.org/documents/22415281-2022-09-13-us-v-mays-news-media-coalition-letter/>.

1 **INTRODUCTION**

2 The public’s presumptive right of access to court records in criminal matters,
3 guaranteed by the First Amendment, is essential to public trust in—and the effective
4 functioning of—institutions charged with applying and enforcing the law. Press and public
5 access promotes accountability, ensures that proceedings are fair and that those subjected
6 to government process are not wrongfully deprived of their liberty, and fosters confidence
7 in the system. *See Press-Enter. Co. v. Superior Ct. of Cal., Riverside Cnty.*, 464 U.S. 501,
8 508 (1984) (“Openness enhances both the basic fairness of the criminal trial and the
9 appearance of fairness so essential to public confidence in the criminal justice system”).
10 For these reasons, the First Amendment ensures the public a presumptive right to observe
11 criminal proceedings and inspect records—a right that is overcome only when, and only to
12 the extent that, the government demonstrates a compelling interest in closure. And as
13 military courts and the Armed Forces’ rules recognize, this qualified constitutional right of
14 access applies in court-martial proceedings.

15 Yet despite that recognition, Defendants (hereinafter, the “Navy”) have denied the
16 press and public access to nearly all records in the court-martial of Seaman Apprentice
17 Ryan Mays, USN, who was charged with setting the July 2020 fire that destroyed the USS
18 *Bonhomme Richard*, and the records in numerous other matters in which ProPublica, a non-
19 profit news organization, has sought access, based on policies that lack legal foundation.
20 At issue are records, including written court orders and documents discussed in open court
21 that are not classified, sealed, or privileged, and proceedings for which there is an
22 uncontested tradition of openness. In the Mays case, for example, the withheld documents
23 are ones that in other court-martial proceedings have been released, if not
24 contemporaneously, within a matter of days. Mays was acquitted, and there remain open
25 questions concerning one of the country’s worst non-combat warship disasters, including
26 why Mays was prosecuted despite internal recommendations against doing so. The public
27 interest in Mays’ court-martial and in the other proceedings that ProPublica discusses in its
28 Motion for Summary Judgment is substantial. The Navy’s positions that it will “not

1 publish any court filings or records in cases that result in a full acquittal,” *see* JAG Instr.
2 5813.2, and its refusal to afford adequate public notice of hearings are contrary to both law
3 and the public interest.

4 Congress recognized these very concerns when it enacted Article 140a of the
5 Uniform Code of Military Justice to facilitate “timely access to dockets, filings, and
6 rulings” at all stages of court-martial proceedings. *Report of the Military Justice Review*
7 *Group, Part I: UCMJ Recommendations* (“Report”) Mil. Just. Rev. Grp. at 1012 (Dec. 22,
8 2015), <https://perma.cc/M5ZF-JLZH>; 10 U.S.C. § 940a(a)(4). For good reason: Without
9 advance knowledge of military proceedings and without access to the accompanying
10 records, members of the press, including but not limited to ProPublica, are unable to report
11 on these important proceedings. Journalists may miss court-martial hearings altogether,
12 for example, and without access to the records used in the proceedings they do observe,
13 they may be prevented from understanding what occurred and the basis for important
14 decisions. The public cannot assess the Navy’s decision to proceed with Mays’ trial despite
15 a preliminary hearing officer’s recommendation to the contrary, by way of example, and
16 to determine whether that trial was fairly conducted without the records underlying the
17 proceedings. In a range of military justice matters, service members and institutional
18 interests alike benefit from transparency. At base, access ensures that justice is served.

19 Timeliness is a vital component of the qualified right of access. Contemporaneous
20 access to court-martial proceedings (and notice thereof), and prompt access to records
21 enable the media to report on the outcomes of prosecutions, and the reasons underlying
22 prosecutorial and judicial decisions, while the public interest is at its height. And as amici
23 explain below, there are many examples of public interest reporting concerning issues of
24 military justice that, without timely disclosure, might never have been published—to the
25 detriment of the public and the system itself. For these reasons, amici write to urge this
26 Court to safeguard the right of access by granting ProPublica’s motion for summary
27 judgment and denying the cross-motion for summary judgment filed by Defendants.
28

1 **ARGUMENT**

2 **I. The right of access to military court proceedings and records permits**
3 **public oversight and ensures government accountability.**

4 **A. The qualified First Amendment right of public access to court-**
5 **martial proceedings is well settled.**

6 The press and public have a right of access to criminal proceedings and records
7 rooted in the First Amendment and the common law. *See Richmond Newspapers, Inc.*, 448
8 U.S. at 556 (“the right to attend criminal trials is implicit in the guarantees of the First
9 Amendment without the freedom to attend such trials, which people have exercised for
10 centuries, important aspects of freedom of speech and of the press could be eviscerated”);
11 Dienes, Levine and Lind, *Newsgathering and the Law* § 3.01[1] (3d ed. 2005) (“Courts
12 have extended the First Amendment right of access to preliminary hearings, suppression
13 hearings, bail and detention hearings, competency hearings, and plea hearings. Today,
14 almost all pretrial proceedings are presumptively open.” (collecting cases)); *Civ. Beat L.*
15 *Ctr. for Pub. Int., Inc. v. Maile*, 117 F.4th 1200, 1204 (9th Cir. 2024) (“Under the First
16 Amendment, the press and the public have a presumed right of access to court proceedings
17 and documents.” (citation and quotation marks omitted)).

18 Access to court proceedings and records are “important to a full understanding of
19 the way in which the judicial process and the government as a whole are functioning.”
20 *Associated Press v. U.S. Dist. Ct. for C.D. Cal.*, 705 F.2d 1143, 1145 (9th Cir. 1983)
21 (applying right of access to pretrial court records) (internal quotation marks omitted); *see*
22 *also Valley Broad. Co. v. U.S. Dist. Ct. of Nev.*, 798 F.2d 1289, 1293 (9th Cir. 1986)
23 (holding that access to court documents “helps the public keep a watchful eye on public
24 institutions and the activities of government” (internal citation omitted)). It “leads to a
25 better-informed citizenry,” which “tends to deter government officials from abusing the
26 powers of government,” *Civ. Beat L. Ctr. for Pub. Int., Inc.*, 117 F.4th at 1207 (citation
27 omitted), and “serves to ensure that the individual citizen can effectively participate in and
28 contribute to our republican system of self-government,” *Globe Newspaper Co. v.*

1 *Superior Ct.*, 457 U.S. 596, 604 (1982). The First Amendment right is a qualified one that
2 recognizes the “presumption of openness may be overcome,” but only where the
3 government demonstrates “an overriding interest” that allows a court to make specific
4 “findings that closure is essential to preserve higher values and is narrowly tailored to serve
5 that [overriding] interest.” *Press-Enter. Co.*, 464 U.S. at 502.

6 Military courts have consistently held that the qualified right of access applicable to
7 criminal proceedings, generally, applies in court-martial proceedings, including in Article
8 32 proceedings. *See, e.g., United States v. Travers*, 25 M.J. 61, 62 (C.M.A. 1987) (“There
9 can be no doubt that the general public has a qualified constitutional right under the First
10 Amendment to access to criminal trials. . . . The right to public access to criminal trials
11 extends to courts-martial.” (citing *Richmond Newspapers, Inc.*, 448 U.S. 555); *United*
12 *States v. Hershey*, 20 M.J. 433, 435–36 (C.M.A. 1985) (recognizing public right of access
13 to court-martial); *United States v. Hasan*, 84 M.J. 181, 204 & n.12 (C.A.A.F. 2024) (same);
14 *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997) (“[A]bsent ‘cause shown that
15 outweighs the value of openness,’ the military accused is likewise entitled to a public
16 Article 32 investigative hearing.” (quoting *Press–Enter. Co.*, 464 U.S. at 509)); *see also*
17 R.C.M. 806 (Rules of Court-Martial for the U.S. Armed Forces stating that court-martial
18 proceedings should be open to the public). As the court in *United States v. Hasan*
19 explained, “conducting criminal trials in public is of paramount constitutional concern”
20 because “[p]ublic trials ensure that judges and prosecutors act professionally; they reduce
21 the chances of arbitrary and capricious decision-making; they encourage witnesses to come
22 forward; [and] they discourage perjury[.]” 84 M.J. at 204. Importantly, they also “enhance
23 public confidence in the court system.” *Id.* Affirming the right of access, this country’s
24 highest military court has noted that “public confidence in matters of military justice would
25 quickly erode if courts-martial were arbitrarily closed to the public.” *Travers*, 25 M.J. at
26 62.

27 In a military court proceeding, as in other criminal proceedings, to overcome the
28 public’s presumptive right of access an “overriding interest” in closure must be shown.

1 *E.g., Travers*, 25 M.J. at 62 (citing *Press-Enter. Co.*, 464 U.S. 501). “[P]rior to excluding
2 all or portions of the public from viewing a court-martial, the military judge must articulate
3 findings warranting, and limiting as narrowly as possible, the infringement upon the
4 constitutional right of the public to attend courts-martial of the United States.” *United*
5 *States v. Story*, 35 M.J. 677, 678 (A.C.M.R. 1992), *aff’d*, (C.M.A. Mar. 11, 1993); *see*
6 *United States v. Ortiz*, 66 M.J. 334, 342 (C.A.A.F. 2008) (reversing conviction of military
7 officer in closed proceeding where government had not clearly identified an overriding
8 interest in closure and military judge had not articulated specific factual findings, thereby
9 violating defendant’s Sixth Amendment right to a public trial); *Powell*, 47 M.J. at 364, 366
10 (holding that preliminary hearing had to remain open to the public unless the Army could
11 show a specific and substantial need for secrecy).

12 This standard also applies to the sealing of records introduced in court-martial
13 proceedings. The Army Court of Criminal Appeals, for example, applied the qualified
14 First Amendment right of public access to documents admitted in evidence at a pretrial
15 proceeding held in connection with a court-martial. *United States v. Scott*, 48 M.J. 663,
16 666 (A. Ct. Crim. App. 1998). In that case, the court below had made no findings of fact
17 to support its conclusion that privacy interests justified sealing a stipulation of facts. The
18 Army Court of Criminal Appeals reversed that sealing order. *Id.* In so doing, it observed
19 that just as “the general public has a qualified constitutional right of access to materials
20 entered into evidence in federal criminal trials” concomitant with its right of access to the
21 trial itself, “[t]his qualified right of access to materials entered into evidence may apply
22 with equal validity to exhibits that were presented in public at a trial by court-martial.” *Id.*
23 (citation omitted). Indeed, while access to the proceedings themselves permits the public
24 to observe what the courts are doing, access to the records introduced in connection with a
25 proceeding allow the public to fully understand the court’s decisions and perform its public
26 oversight role. *See Wash. Post v. Robinson*, 935 F.2d 282, 288 (D.C. Cir. 1991) (setting
27 forth widely accepted rationale that judicial documents “have traditionally been open to
28 the public” because public access to them “enhances both the basic fairness of the criminal

1 [proceeding] and the appearance of fairness so essential to public confidence in the
2 system”).

3 Here the Navy resists disclosure by asserting, *inter alia*, that the right of access does
4 not attach to court-martial documents. To be clear, the Navy concedes, as it must, that the
5 right of access attaches in court-martial proceedings, but it argues that the records from the
6 proceeding are not open because they contain information that has not been historically
7 publicly available. This argument is easily rejected. It relies on a “narrow focus on
8 categories of documents” divorced from the underlying proceeding, an approach the Ninth
9 Circuit expressly rejected just last year. *Civ. Beat L. Ctr. for Pub. Int., Inc.*, 117 F.4th at
10 1209 (quoting *Forbes Media LLC v. United States*, 61 F.4th 1072, 1083 (9th Cir. 2023)).
11 As the court explained, “in making the threshold right of public access determination,”
12 judges do not “consider the categories of documents sought abstracted from the
13 proceedings in which they were generated. Instead, [they] must . . . evaluate court records
14 in the context of [the] proceedings” from which they are sought. *Id.* (internal citation
15 omitted). By way of example, the Ninth Circuit pointed to cases in which, “in determining
16 whether the right attaches to pre-indictment search warrant *materials*, [it] evaluated
17 whether there was a history of public access to warrant *proceedings* and whether public
18 access would support the functioning of those proceedings.” *Id.* (citation omitted); *see also*
19 *Hartford Courant Co., LLC v. Carroll*, 986 F.3d 211, 220 (2d Cir. 2021). Given the
20 consistent application of the First Amendment right in military proceedings like the one
21 involving Mays, the Navy’s argument that the First Amendment right does not attach to
22 the documents from that proceeding fails.²

23
24 ² To the extent that the Navy is arguing that the press does not have an absolute right
25 to documents used in connection with court proceedings, this is a straw man. The right of
26 access “can be blunted if ‘court files might . . . become a vehicle for improper purposes’ or
27 where access could interfere with the administration of justice.” *F.T.C. v. Standard Fin.*
28 *Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987) (quoting *Nixon v. Warner Commcn’s, Inc.*,
435 U.S. 589, 598 (1978)). “Yet, the presumption is no mere paper tiger. . . . [T]he citizens’

1 Nor do conclusory invocations of national security justify withholding of materials
2 from a public trial. *See, e.g., United States v. Rosen*, 487 F. Supp. 2d 703, 716 (E.D. Va.
3 2007) (explaining that “as an abstract proposition” the government’s interest in protecting
4 national security information “can be a qualifying compelling and overriding interest” but
5 it “must make a specific showing of harm to national security in specific cases to carry its
6 burden in this regard” (citing *Press–Enter. Co.*, 464 U.S. at 510)). The Navy here fails to
7 justify, by setting forth specific reasons tied to the actual documents at issue, the
8 withholding of records from a public trial. *See id.* at 716–17.

9 The government's *ipse dixit* that information is damaging to
10 national security is not sufficient to close the courtroom doors
11 nor to obtain the functional equivalent[.] . . . [Courts] require a
12 judicial inquiry into the legitimacy of the asserted national
13 security interest, and specific findings, sealed if necessary, about
14 the harm to national security that would ensue Granting that
15 national security concerns can justify appropriately tailored trial
16 closures, the government nonetheless bears the burden of
demonstrating, as a factual matter, that harm to national security
would result from failing to close the trial.

17 *Id.* (citing, *inter alia*, *In re Washington Post*, 807 F.2d 383, 391–92 (4th Cir. 1986)
18 (rejecting government's argument that courts should defer to Executive Branch assertions
19 that trial closures are necessary for national security reasons and stating that a proceeding
20 cannot be closed merely because the case implicated CIPA at an earlier stage))). It bears
21 emphasis that in its recently issued report, the Military Justice Review Panel likewise
22 asserted that courts-martial should be open, prior notice of proceedings available, and
23 documents accessible. *See* Mil. Just. Rev. Panel, *Comprehensive Review and Assessment*
24 *of the Uniform Code of Military Justice* (December 2024), available at

25 _____
26 right to know is not lightly to be deflected . . . and “[o]nly the most compelling reasons can
27 justify non-disclosure of judicial records.” *Id.* (quoting *In re Knoxville News-Sentinel Co.*,
28 723 F.2d 470, 476 (6th Cir.1983)).

1 <https://mjrp.osd.mil/sites/default/files/MJRP%202024%20Comprehensive%20Review%20and%20Assessment%20of%20the%20UCMJ.pdf>. In issuing its recommendations
2 urging adherence to current transparency standards and introducing others, the panel did
3 not suggest that threats to national security provide a blanket reason to close categories of
4 hearings or records, or to conceal knowledge of proceedings in a range of cases. This
5 guidance by the panel further highlights that the Navy is wrong as a matter of both the law
6 and fact to “invoke ‘national security’ broadly and in a conclusory fashion.” *Rosen*, 487
7 F. Supp. 2d at 717.

8
9 Nor do generalized privacy concerns, without specific reasons for denying access
10 and withholding documents, represent an overriding interest. *See, e.g., Civ. Beat L. Ctr.*
11 *for Pub. Int., Inc.*, 117 F.4th at 1209 (rejecting categorical sealing of records containing
12 health information and requiring any limitations on access be justified on case-by-case
13 basis with specific reasons).³ Surely, its refusal as a matter of policy to deny access to
14 records where a service member is acquitted does not satisfy an overriding interest in
15 privacy. For the criminal defendant’s part, an acquittal usually represents vindication.⁴

16
17 ³ There are numerous examples of the parties or government attempting to thwart
18 press access to records from judicial proceedings, with courts closely scrutinizing and
19 rejecting bald invocations of privacy. *See, e.g., Standard Fin. Mgmt. Corp.*, 830 F.2d at
20 412 (holding that, while privacy is a category of interests that under certain facts may
21 require the access right to yield, party seeking to seal judicial documents provided “no
22 sufficiently compelling reasons to warrant cloaking the documents in secrecy”); *United*
23 *States v. Kravetz*, 706 F.3d 47, 58 (1st Cir. 2013) (rejecting argument that third-party letters
24 submitted in connection with sentencing should be categorically sealed, and presumption
25 of access defeated, to protect writers’ privacy; despite “a legitimate concern that the routine
26 disclosure of third-party letters may discourage valuable input from the community during
27 the sentencing process . . . that concern ordinarily would appear to be outweighed by
28 positive gains”).

⁴ In this case, Mays supports release of the documents, yet even were it otherwise, his
preference for privacy would not be dispositive; like the government, a criminal defendant
seeking closure must show an overriding concern to which the First Amendment interest
yields. *Travers*, 25 M.J. at 62. To the extent that acquittal has prompted *the government*

1 Withholding records here, where the proceedings were open to the public and the
2 records were not subject to a protective order, cannot withstand scrutiny.

3 **B. The access right is one of contemporaneous access, which serves the**
4 **public interest in obtaining timely information.**

5 “[A] necessary corollary of the right to access is a right to timely access.” *E.g.*,
6 *Courthouse News Serv. v. Planet*, 947 F.3d 581, 594 (9th Cir. 2020) (collecting cases). As
7 the Ninth Circuit has explained, because “old news” often “does not receive[] much public
8 attention,” denying access ““at the time [the] audience would be most receptive would be
9 effectively equivalent to a deliberate statutory scheme of censorship.”” *Planet*, 947 F.3d
10 at 594 (citation omitted); *accord Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24
11 F.3d 893, 897 (7th Cir. 1994) (“The newsworthiness of a particular story is often fleeting.
12 To delay or postpone disclosure . . . may have the same result as complete
13 suppression.”). Thus, absent a compelling justification by the government, delays in access
14 to court filings, even brief ones, have been found to be unconstitutional. *See, e.g.*,
15 *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 329 (4th Cir. 2021) (requiring courts to
16 provide access to new civil complaints on same day as filed); *Associated Press*, 705 F.2d
17 at 1147 (vacating order imposing 48-hour sealing period on criminal case records as “a
18 total restraint on the public’s first amendment right of access even though the restraint is
19 limited in time”); *United States v. Brooklier*, 685 F.2d 1162, 1172–73 (9th Cir. 1982)
20 (holding that delayed release of transcript of closed suppression hearing until end of trial
21 violated right of access).

22 Prompt access to judicial records ensures that the public learns about important cases
23 while they are still newsworthy, promotes accuracy in reporting, and informs public debate
24

25
26 to desire secrecy—for example, over concerns about its own handling of the investigation
27 or prosecution that led to the acquittal—this would not be a basis for overcoming the access
28 right. “[M]ere . . . ‘embarrassment’” does not amount to a compelling interest justifying
closure of court martial proceedings. *See Hershey*, 20 M.J. at 436.

1 about cases and the institutions handling them. *Planet*, 947 F.3d at 594; *see also Grove*
2 *Fresh Distribs., Inc.*, 24 F.3d at 897 (delaying disclosure “undermines the benefit of public
3 scrutiny”). According to one study, “nearly two-thirds of adults now say they look at news
4 at least several times a day.” Media Insight Project, *How Americans Describe Their News*
5 *Consumption Behaviors*, Am. Press Inst. (June 11, 2018), <https://perma.cc/M3L2-84PB>;
6 *see also* Toni Locy, *Covering America’s Courts: A Clash of Rights* 13 (2d ed. 2013). This
7 reflects the reality that the public recognizes the “value of news” and relies on the press for
8 timely, accurate information about our increasingly complex and interconnected modern
9 world. *Int’l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918) (“The peculiar value
10 of news is in the spreading of it while it is fresh.”); *see also Neb. Press Ass’n v. Stuart*, 427
11 U.S. 539, 561 (1976) (“[T]he element of time is not unimportant if press coverage is to
12 fulfill its traditional function of bringing news to the public promptly.”).

13 Journalists—including those covering the military justice system—routinely rely on
14 contemporaneous access to court records to disseminate breaking news about matters of
15 public concern. *See, e.g.,* Kyle Rempfer, *Bowe Bergdahl Loses Unlawful Command*
16 *Influence Appeal Based on Trump Tweets*, *Mil. Times* (July 17, 2019),
17 <https://perma.cc/5YA4-AKW3> (reporting on, and linking to, new appeals court ruling on
18 Bowe Bergdahl court-martial); Adam Klasfeld, *Manning Did Not ‘Aid the Enemy’ by*
19 *Spilling Secrets to WikiLeaks*, *Courthouse News Serv.* (July 30, 2013),
20 <https://perma.cc/LUM5-G5HQ> (reporting on, and linking to, verdict in Chelsea Manning
21 court-martial announced that day). For reporters who cover courts, including the military
22 justice system, delivering the news requires prompt access to court documents, including
23 records in court-martial proceedings, absent the government’s ability to make a specific
24 showing that access should be restricted or delayed.

25 **C. Congress enacted a statutory right of access to further ensure public**
26 **access to military courts.**

27 Not only does the First Amendment require access here, but Congress has expressly
28 recognized the need to facilitate public access to presumptively open military courts and

1 court records. Specifically, Congress adopted, as part of the Military Justice Act of 2016,
2 Article 140a to ensure public access to court-martial filings, records, and docket
3 information, consistent with access in civilian courts. 10 U.S.C. § 940a(a)(4) (ADD
4 parenthetical). Congress passed the law following years of public outcry concerning
5 reports of widespread sex crimes in the military and lax military adjudications, which led
6 to calls from the public and officials within the military itself for greater transparency
7 through public access. *See* Letter from Reporters Committee and 38 Media Orgs., *supra*
8 note 1.⁵ Among other things, the law was expected to shed light on how sexual assault
9 crimes are handled by addressing the “lack of uniform, offense-specific sentencing data
10 from military courts, which makes meaningful comparison and analysis of military and
11 civilian courts ‘difficult, if not impossible.’” David A. Schlueter, *Reforming Military*
12 *Justice: An Analysis of the Military Justice Act of 2016*, 49 St. Mary’s L.J. 1, 113 (2017).

13 Article 140a requires the Secretary of Defense to “prescribe uniform standards and
14 criteria . . . using, insofar as practicable, the best practices of Federal and State courts” to
15 facilitate “public access to docket information, filings, and records, taking into
16 consideration restrictions appropriate to judicial proceedings and military records.” 10
17 U.S.C. § 940a(a)(4) (emphasis added). Significantly, the standards and criteria must
18 facilitate such public access “at all stages of the military justice system . . . including
19 pretrial, trial, post-trial, and appellate processes”—not merely after the conclusion of trial
20 and only in cases of conviction, as the Navy contends. *Id.* This language is consistent with
21

22 ⁵ Allegations of sexual misconduct in the military were the subject of news reporting
23 prior to Congress taking action. *See, e.g.*, Emily Crockett, *The War in Congress Over Rape*
24 *in the Military, Explained*, Vox (June 8, 2016), available at [https://www.vox.com/20](https://www.vox.com/2016/6/8/11874908/mjia-military-sexual-assault-gillibrand-mccaskill)
25 [16/6/8/11874908/mjia-military-sexual-assault-gillibrand-mccaskill](https://www.vox.com/2016/6/8/11874908/mjia-military-sexual-assault-gillibrand-mccaskill); *Sex Crime Coverup:*
26 *Senators Attack Lack Of Transparency In Military Justice System*, First Amendment Coal.
27 (Dec. 10, 2015), available at [https://firstamendmentcoalition.org/2015/12/sex-crime-](https://firstamendmentcoalition.org/2015/12/sex-crime-coverup-senators-attack-lack-of-transparency-in-military-justice-system/)
28 [coverup-senators-attack-lack-of-transparency-in-military-justice-system/](https://firstamendmentcoalition.org/2015/12/sex-crime-coverup-senators-attack-lack-of-transparency-in-military-justice-system/); Darren
Samuelsohn, *Military Still Secretive On Sex Crimes*, POLITICO (Sept. 25, 2013), available
at <https://www.politico.com/story/2013/09/military-sexual-assault-transparency-097314>.

1 the view “that, to the extent ‘practicable,’ trial by court-martial should resemble a criminal
2 trial in a federal district court.” *United States v. Valigura*, 54 M.J. 187, 191 (C.A.A.F.
3 2000).⁶ The Navy’s invocation of the law to resist disclosure is irreconcilable with the
4 statute’s history, purpose and language, and risks further frustrating the legitimate news
5 reporting that Congress sought to facilitate.⁷

6 **II. The public relies on and benefits from press coverage of the military, and**
7 **the Navy’s fight for secrecy will stymie important news reporting.**

8 Given that “each individual has but limited time and resources with which to observe
9 at first hand the operations of his government, he relies necessarily upon the press to bring
10 to him in convenient form the facts of those operations.” *Cox Broad. Corp. v. Cohn*, 420
11 U.S. 469, 490–91 (1975). As a “surrogate[] for the public,” *Richmond Newspapers, Inc.*,
12 448 U.S. at 573, the press may have no weightier responsibility than to report on the
13 military. Some of these stories necessitate access to court records, whether as the focus of
14 the story or to provide context and background facts, for a variety of reporting that sheds
15 light on military institutions and the people at all levels connected to it.

16 For example, a three-part investigation published by The Gazette in 2013 revealed
17 that the Department of Defense had been steadily charging soldiers with misconduct over
18

19 ⁶ Likewise, Article 36 of the Uniform Code of Military Justice authorizes the
20 President to prescribe rules for courts martial that should, “so far as he considers
21 practicable, apply the principles of law and the rules of evidence generally recognized in
22 the trial of criminal cases in the United States district courts.” 10 U.S.C. § 836(a).

23 ⁷ The National Institute for Military Justice shared this view in a September 19,
24 2022 letter to the Department of Defense, in which NIMJ expressed agreement with the
25 letter sent by the Reporters Committee and other media organizations. *See* Letter from
26 Rachel E. VanLandingham, President, Nat’l Inst. of Mil. Just. to Hon. Caroline D. Krass,
27 Gen. Couns., Dep’t of Def. (Sept. 19, 2022), available at [https://www.nimj.org/upload](https://www.nimj.org/upload/s/1/3/5/5/135587129/nimj_letter_art_140a_sept_19_2022_1.pdf)
28 [s/1/3/5/5/135587129/nimj_letter_art_140a_sept_19_2022_1.pdf](https://www.nimj.org/upload/s/1/3/5/5/135587129/nimj_letter_art_140a_sept_19_2022_1.pdf) (stating “concerns
about how Article 140a, UCMJ is being misconstrued as a mandate for secrecy rather
than for public access to courts-martial”).

1 minor offenses and dishonorably discharging them as the Army downsized after decades
2 of war. *Other than Honorable*, The Gazette (last visited Jan. 6, 2025), available at
3 <https://cdn.csgazette.biz/soldiers/index.html>. The Gazette’s review of court and
4 administrative documents revealed a “25 percent Army-wide” increase since 2009 in
5 misconduct discharges and furthermore that this “mirror[ed] the rise in wounded” soldiers.
6 See Dave Phillips, *Disposable: Surge in Discharges Includes Wounded Soldiers*, The
7 Gazette (May 19, 2013), available at <https://cdn.csgazette.biz/soldiers/day1.html>. The
8 reporting also revealed that at the eight Army posts housing most of the Army’s combat
9 units, “misconduct discharges ha[d] surged 67 percent. All told, more than 76,000 soldiers
10 have been kicked out of the Army since 2006.” *Id.* The simultaneous rise of the number
11 of wounded and the misconduct charges had devastating impacts for veterans: Following
12 a dishonorable discharge, a former serviceman is no longer entitled to military benefits,
13 including medical care. *Id.*

14 The investigation raised the question of whether the military was “using minor
15 misconduct to discharge veterans,” to avoid the costs of caring for a generation of soldiers
16 returning from Iraq, Afghanistan and other places around the globe with PTSD and other
17 mental and physical ailments. The Department of Defense denied that there was any
18 attempt to separate from wounded soldiers, but the article reported that it “doesn't take
19 serious misconduct to be discharged and lose a lifetime of benefits,” having “found troops
20 cut loose for small offenses that the Army acknowledges can be symptoms of TBI and
21 PTSD.” *Id.*

22 The Gazette reviewed documents from prosecutors that suggested a possible
23 overuse of a mechanism to allow soldiers to avoid court-martials—but which would
24 immediately strip the soldiers of all military benefits. *Id.* The newspaper conducted
25 lengthy and numerous interviews with many soldiers who, following their discharge, had
26 been refused care at VA hospitals for injuries and conditions sustained while in combat.
27 Some eventually ended up in homeless shelters. *Id.* The reporting shed light on both these
28 personal stories and complicated public policy questions that impact the lives of service

1 members and their families, among others. It also won the Pulitzer Prize for national
2 reporting. *David Phillips of The Gazette, Colorado Springs, CO*, The Pulitzer Prizes (last
3 visited Jan. 23, 2025), available at <https://www.pulitzer.org/winners/david-philipps>. The
4 public might never have known about the struggles of these young former soldiers, and the
5 government's handling of their conduct upon their tours of duty, without this reporting,
6 which predated the enactment of Section 140A and which the reporter primarily had to
7 obtain via public records requests and other shoe leather reporting.

8 The Gazette is far from alone in its work to cover our country's largest agency and
9 the courts and bureaucracy connected to it. The Navy Times, following an intensive
10 investigation that relied on court records and other documents exposed the participation of
11 Naval officers stationed in Bahrain in a trafficking ring involving Thai sex workers. Geoff
12 Ziezulewicz, *Tinder, Sailor, Hooker, Pimp: The U.S. Navy's Sex Trafficking Scandal in*
13 *Bahrain*, Mil. Times (June 16, 2020), available at [https://www.militarytim](https://www.militarytimes.com/news/your-military/2020/06/16/tinder-sailor-hooker-pimp-the-us-navys-sex-trafficking-scandal-in-bahrain/)
14 [es.com/news/your-military/2020/06/16/tinder-sailor-hooker-pimp-the-us-navys-sex-traffi](https://www.militarytimes.com/news/your-military/2020/06/16/tinder-sailor-hooker-pimp-the-us-navys-sex-trafficking-scandal-in-bahrain/)
15 [cking-scandal-in-bahrain/](https://www.militarytimes.com/news/your-military/2020/06/16/tinder-sailor-hooker-pimp-the-us-navys-sex-trafficking-scandal-in-bahrain/). The reporting drew attention from members of Congress. See
16 Gina Harkins, *Senators Demand 'Immediate Action' After Explosive Report on Navy Sex*
17 *Trafficking Scandal*, Military.com (July 29, 2020), available at [https://www.milit](https://www.military.com/daily-news/2020/07/29/senators-demand-immediate-action-after-explosive-report-navy-sex-trafficking-scandal.html)
18 [ary.com/daily-news/2020/07/29/senators-demand-immediate-action-after-explosive-repo](https://www.military.com/daily-news/2020/07/29/senators-demand-immediate-action-after-explosive-report-navy-sex-trafficking-scandal.html)
19 [rt-navy-sex-trafficking-scandal.html](https://www.military.com/daily-news/2020/07/29/senators-demand-immediate-action-after-explosive-report-navy-sex-trafficking-scandal.html). It also led to military prosecutions of service
20 members involved in the scandal. Geoff Ziezulewicz, *Navy Chief Convicted for Bahrain*
21 *Sex Crimes Loses Court Appeal*, Navy Times (Dec. 9, 2020), available at [https://www.nav](https://www.navytimes.com/news/your-navy/2020/12/09/navy-chief-convicted-for-bahrain-sex-crimes-loses-court-appeal/)
22 [ytimes.com/news/your-navy/2020/12/09/navy-chief-convicted-for-bahrain-sex-crimes-los](https://www.navytimes.com/news/your-navy/2020/12/09/navy-chief-convicted-for-bahrain-sex-crimes-loses-court-appeal/)
23 [es-court-appeal/](https://www.navytimes.com/news/your-navy/2020/12/09/navy-chief-convicted-for-bahrain-sex-crimes-loses-court-appeal/). The coverage of this important story continued through the criminal
24 proceedings, which examined why convictions were difficult to obtain despite the nature
25 of the charges. See Geoff Ziezulewicz, *Why the Navy Struggled to Convict in Bahrain Sex*
26 *Crime Cases*, Navy Times (June 16, 2020), available at [https://www.navytimes.com/ne](https://www.navytimes.com/news/your-navy/2020/06/16/why-the-navy-struggled-to-convict-in-bahrain-sex-crime-cases/)
27 [ws/your-navy/2020/06/16/why-the-navy-struggled-to-convict-in-bahrain-sex-crime-cas](https://www.navytimes.com/news/your-navy/2020/06/16/why-the-navy-struggled-to-convict-in-bahrain-sex-crime-cases/)
28 [es/](https://www.navytimes.com/news/your-navy/2020/06/16/why-the-navy-struggled-to-convict-in-bahrain-sex-crime-cases/). Yet the journalist who broke this story has stated, including in a declaration submitted

1 in connection with this lawsuit, the unnecessary difficulties of obtaining court documents
2 from Navy and its continued unexplained withholding of documents in the Bahrain sex
3 scandal case even now, years later. *See* Decl. of Geoff Ziezulewicz, ECF No. 96 ¶¶ 5, 7–
4 8.

5 Veteran investigative reporter Carl Prine reported on military courts for decades,
6 including his award-winning *Wounded Warriors* series on the struggles of Iraq and
7 Afghanistan combat veterans, and himself served in the Marine Corps and the Pennsylvania
8 Army National Guard. Prine’s coverage of the prosecution of Special Warfare Operator
9 Chief Edward Gallagher, who was accused of stabbing to death a wounded Islamic State
10 prisoner of war during a SEAL Team 7 deployment to Iraq in 2017, among other charges,
11 has provided the public with important information and analysis in this highly debated and
12 politicized case. Carl Prine, *Navy Dismisses More SEAL War Crimes Cases, Removes*
13 *Controversial Prosecutor*, Navy Times (Aug. 6, 2019), available at
14 [https://www.navytimes.com/news/your-navy/2019/08/07/navy-dismisses-more-seal-war-](https://www.navytimes.com/news/your-navy/2019/08/07/navy-dismisses-more-seal-war-crimes-cases-removes-controversial-prosecutor/)
15 [crimes-cases-removes-controversial-prosecutor/](https://www.navytimes.com/news/your-navy/2019/08/07/navy-dismisses-more-seal-war-crimes-cases-removes-controversial-prosecutor/). He reported on the alleged missteps
16 made by the government in the Gallagher case and the resulting removal of a lead
17 prosecutor. *Id.* He has also reported extensively on documents and testimony that continue
18 to be discussed as former and incoming President Donald Trump champions Gallagher’s
19 cause and appears to challenge the authority of military officials who determined his
20 behavior was criminal and subject to military prosecution. He also testified about the
21 obstacles imposed by the Navy to obtain access to military court proceedings and
22 particularly the records relating to them—obstacle with which many amici are familiar—
23 despite the settled case law allowing for access and now a federal statute to help facilitate
24 that access. *See* Decl. of Carl Prine, ECF No. 97 ¶¶ 6–9.

25 The military’s resistance to facilitating or even permitting the access to which the
26 public is entitled raises the question of how many important stories go untold, because the
27 press is unaware of what information is being withheld. Should the Navy prevail here, and
28 particularly if it continues to rely on its own erroneous policy guidance that public access

1 does not attach where a court-martial ends in acquittal, the flow of information to the press
2 will be impaired, and it is the public that, unable to receive reporting like the examples
3 referenced herein and countless others, will suffer.

4 **CONCLUSION**

5 For these reasons, amici respectfully request that the Court grant ProPublica’s
6 Motion for Summary Judgment, deny Defendants’ Cross-Motion, and that it enjoin
7 Defendants from further violations of ProPublica’s constitutional rights through improper
8 denials or delays in access to the court martial documents at issue.

9
10 Dated: January 24, 2025

Respectfully submitted,

11
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