

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK, ss.

No. SJ-2024-\_\_\_\_\_

TRUSTEES OF BOSTON UNIVERSITY AND  
BOSTON GLOBE MEDIA PARTNERS LLC,

Petitioners,

v.

CLERK-MAGISTRATE OF THE CAMBRIDGE DISTRICT COURT,

Respondent.

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**EMERGENCY PETITION AND BRIEF OF  
TRUSTEES OF BOSTON UNIVERSITY AND  
BOSTON GLOBE MEDIA PARTNERS LLC  
SEEKING RELIEF PURSUANT TO G.L. c. 211, § 3  
(Hearing Requested)**

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Dated: January 12, 2024

## **CORPORATE DISCLOSURE STATEMENT**

Petitioner Trustees of Boston University states that it is a Massachusetts charitable institution that has no parent corporation and does not issue stock.

Petitioner Boston Globe Media Partners LLC states that it has no parent corporation and no publicly traded corporation owns 10% or more of its stock.

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## **ISSUE PRESENTED**

1. Whether this Court should exercise its general superintendence power to order the Clerk-Magistrate of the Cambridge District Court to release twenty-eight applications for criminal complaints in the Cambridge District Court in advance of show cause hearings on sex-for-fee charges scheduled to begin January 18, 2024, where the applications stem from a federal prosecution that has garnered substantial public attention, and where the Clerk-Magistrate has already ordered that the show cause hearings be open to the public because the public interest in the proceedings outweighs the privacy interests of the accused?

## INTRODUCTION

Petitioners Trustees of Boston University, owner of the radio station WBUR-FM, and Boston Globe Media Partners LLC, owner of the *Boston Globe* newspaper, respectfully petition this Court to exercise its superintendence power to order the Clerk-Magistrate of the Cambridge District Court to release 28 applications for criminal complaints in advance of public show-cause hearings scheduled to begin on January 18, 2024.

This Court has long recognized the profound importance of access to court records by the news media. Such access ensures judicial transparency and accountability, and is fundamental to the gathering and reporting of the news. As such, the Court has held that applications for criminal complaints should be released to the media and the public when the interest in their disclosure outweighs any right to privacy of the accused – even though such applications are not subject to the common law or First Amendment right of access to judicial documents.

Here, the Clerk-Magistrate of the Cambridge District Court correctly decided to open to the public the show-cause hearings for 28 potential sex-for-fee charges arising out of the U.S. Attorney’s recent prosecutions against Han Lee, James Lee, and Junmyung Lee for running a multi-state prostitution enterprise in Massachusetts and Virginia. The U.S. Attorney has stated that the accused potentially facing charges next week include public officials.

While the Clerk-Magistrate was correct to open the hearings, she has frustrated the effective public monitoring of those hearings by denying WBUR's request for disclosure of the applications for criminal complaints. The Clerk-Magistrate did so even though the same legal standard that applies to opening a hearing applies to a request for the applications. The denial of access to the applications will greatly impede the ability of the news media to effectively inform the public of the conduct and outcome of the show-cause hearings.

Accordingly, and for the reasons more fully set forth below, the Court should exercise its superintendence authority to order the Clerk-Magistrate to provide to WBUR and the *Boston Globe* the requested applications for criminal complaints prior to January 18, 2024, the date the hearings are set to begin.

### **FACTUAL BACKGROUND**

#### **A. The Parties**

The Clerk-Magistrate of the Cambridge District Court has possession of the 28 applications for criminal complaints addressed herein.

Trustees of Boston University is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. Trustees of Boston University owns and operates WBUR-FM ("WBUR") a public radio station that provides extensive coverage of national and local news and information.



Boston Globe Media Partners LLC (the “*Globe*”) owns and operates the *Boston Globe* newspaper, which provides extensive coverage of national and local news.

Both WBUR and the *Globe* have extensively covered the federal prosecution discussed below, and wish to cover the upcoming show-cause hearings on associated sex-for-fee charges that begin on January 18.

## **B. The Federal Case**

On November 8, 2023, the U.S. Attorney’s Office for the District of Massachusetts announced that three individuals had been arrested for operating “sophisticated high-end brothels in greater Boston and eastern Virginia.” (Appendix (“App.”) 3). The three defendants, Han Lee, James Lee, and Junmyung Lee, were charged with conspiracy to coerce and entice to travel to engage in prostitution pursuant to 28 U.S.C. §§ 371 and 2422. *United States v. Lee*, 23-mj-04605-DHH (D. Mass.).

In connection with the charges, the U.S. Attorney’s Office publicly announced that “[c]ommercial sex buyers” at the brothels included “elected officials, high tech and pharmaceutical executives, doctors, military officers, government contractors that possess security clearances, professors, attorneys, scientists and accountants, among others.” (App. 3). According to the government, the brothel’s website “described a verification process that interested sex buyers

undertook to be eligible for appointment bookings – including requiring clients complete a form providing their full names, email address, phone number, employer and reference if they had one.” (App. 4).

The federal case has garnered extensive local and national attention. (App. 8-23); Aishvarya Kavi, “3 Charged with Running Prostitution Service Used by Politicians and Others,” *New York Times*, Nov. 8, 2023; Dan Rosenzweig-Ziff, “‘High-End Brothel’ Serving Politicians and Executives Busted, Feds Say,” *Washington Post*, Nov. 8, 2023; Katie Cole, *U.S. Attorney Seeks Charges Against 28 Accused of Patronizing Brothel Ring in Mass.*, WBUR.org, December 19, 2023; Sean Cotter, “Exposure of Brothels that Catered to the Elite Spotlights How Legal System Treats Buyers and Sellers in Sex Trade,” *Boston Globe*, Nov. 10, 2023.

### **C. The Pending Show Cause Hearings**

On December 19, 2023, the U.S. Attorney’s Office announced that the Homeland Security Investigations Task Force and the Cambridge Police Department had submitted applications for complaints against 28 sex buyers allegedly associated with the brothel in the Cambridge District Court. (App. 24) Representatives of the news media, including the *Globe* and WBUR, immediately asked the Clerk-Magistrate of the Cambridge District Court to hold the hearings in public pursuant to Standard 3:15, Revised Standards on the Complaint Procedure of the District Court, which provides that such hearings may be held in open court

where the public interest in them outweighs any privacy interest of the accused. (App. 27).

On December 21, 2023, the Clerk-Magistrate granted the request, and issued a written order providing that the show-cause hearings for the 28 individuals will be held in public. (App. 27). The Clerk-Magistrate noted that although show-cause hearings are presumptively closed to the public, the governing standard provides an exception if “the application is one of special public significance and the magistrate concludes that legitimate public interests outweigh the accused’s right of privacy.” (*Id.*) Here, the incidents had already attracted public attention prior to the show-cause hearing, and thus “the interest in shielding the participants from publicity is necessarily diminished, while the public’s legitimate interest in access is correspondingly stronger.” (*Id.*, quoting *Eagle-Tribune Pub. Co. v. Clerk-Magistrate of Lawrence Div. of Dist. Court Dept.*, 448 Mass. 647, 656 (2007)). The Clerk-Magistrate thus determined that a “legitimate public interest outweighs the individuals’ privacy rights,” and opened the hearings. (App. 27).

The next day, December 22, 2023, Ally Jarmanning, a reporter for WBUR, requested access to the applications for criminal complaints in the 28 matters. (App. 28). She noted that Standard 5:02 of the Revised Standards on the Complaint Procedure provides that the same considerations for opening show cause *hearings* apply to determining whether to permit the public access show-cause *records*. (*Id.*)

Accordingly, she noted, if the hearings are open, the applications should be open, too. (*Id.*)

On December 26, 2023, the Clerk-Magistrate denied WBUR's request for the applications. (App. 29). The Clerk-Magistrate's written decision set forth the general rule that such applications are non-public, and summarily denied access to the applications "prior to a finding of probable cause by a judicial officer." (*Id.*). Unlike her ruling about the show-cause hearings, the Clerk-Magistrate did not consider whether a legitimate interest of the public outweighed the right of privacy of the accused in the applications. Nor did she explain the difference in treatment between the hearings and the applications. (*Id.*).

Pursuant to *Boston Globe Media Partners, LLC v. Chief Justice of Trial Court*, where a Clerk-Magistrate "denies a records request" relating to a show-cause hearing, "the requester may bring that denial to a judge for redetermination." 483 Mass. 80, 102 n. 20 (2019). WBUR did so on January 8, 2024, asking First Justice David E. Frank to order the applications to be made public. (App. 30-31). However, the First Justice denied the request on the ground that relief from the Clerk-Magistrate's decision must be sought from a single justice of this Court. (App. 32).

## ARGUMENT

### I. THE COURT MAY EXERCISE ITS SUPERINTENDENCE AUTHORITY TO REQUIRE THE CLERK-MAGISTRATE TO MAKE THE REQUESTED APPLICATIONS FOR CRIMINAL COMPLAINTS PUBLIC.

Under G.L. c. 211, § 3, this Court has “general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided.” This superintendence authority extends to the request made herein.

In *Bos. Globe Media Partners, LLC v. Chief Just. of Trial Ct.*, 483 Mass. 80 (2019), this Court addressed the ability of the public to obtain access to the records of show cause hearings. The Court held that “in extraordinary circumstances, relief from a clerk-magistrate’s or judge’s decision not to release requested show cause hearing records may be sought from a single justice of this court.” *Id.* at 102 n. 20 (2019).

The present petition presents “extraordinary circumstances,” for three reasons. First, the clerk-magistrate has, without explanation, treated WBUR’s request for the applications for criminal complaints differently from its request to open the show-cause hearings concerning them, notwithstanding that the governing standards and this Court’s precedents hold that the legal standard for both decisions is the same. Second, the First Justice ruled that WBUR could not apply to him for a “redetermination” of the denial, despite the fact that *Bos. Globe Media*

*Partners* allows for such a determination by a judge. Third, as explained more fully below, the public has an extraordinary interest in the applications at issue, and the news media's coverage of the show cause hearings, scheduled to begin on January 18, will be hampered absent this Court's intervention.

II. THE APPLICATIONS FOR CRIMINAL COMPLAINTS SHOULD BE RELEASED BECAUSE THE PUBLIC'S INTEREST IN THE APPLICATIONS SUBSTANTIALLY OUTWEIGHS ANY INTEREST IN PRIVACY.

The Clerk-Magistrate should be ordered to provide public access to the applications for criminal complaints in these cases. As she has already correctly determined, this is one of those exceptional cases "where [a] legitimate public interest outweighs the individuals' privacy rights" in show-cause hearings. (App. 27). That determination logically requires the disclosure of the associated applications, and the Clerk-Magistrate committed error by treating the request for them differently, without explanation. In any event, the applications should be released because the public interest clearly outweighs any privacy rights in their contents in this unusual case.

**A. The Standard for Providing Access to an Application for a Criminal Complaint is the Same as That for Opening a Show-Cause Hearing.**

The question of whether a Clerk-Magistrate should provide access to an application for a criminal complaint is governed by the Revised Standards on the Complaint Procedure, issued by the District Court Department of the Trial Court

(the “Complaint Procedure”),<sup>1</sup> and this Court’s decision in *Bos. Globe Media Partners, LLC v. Chief Just. of Trial Ct.*, 483 Mass. 80, 94 (2019) (“*Globe*”).

Under both, the standards for providing access to applications for criminal complaints is the same as that for opening associated show-cause hearings. They both consider whether a legitimate interest of the public outweighs the privacy interests of the accused. (App. 41, 103-104 (Standards 3:15, 5:02)).

Under Standard 3:15, show cause hearings are presumptively closed, but “[i]f the application is one of special public significance and the magistrate judge concludes that legitimate public interests outweigh the accused’s right of privacy, the hearing may be opened to the public and should be conducted in the formal atmosphere of a courtroom.” (App. 41). Similarly, under Standard 5:02, applications for criminal complaints “are presumptively unavailable to the public unless a magistrate or judge concludes that the legitimate interest of the public outweighs any privacy interests of the accused.” (App. 103).

This Court has confirmed the equivalence of these standards. In *Eagle-Tribune Pub. Co. v. Clerk-Magistrate of Lawrence Div. of Dist. Ct. Dep’t*, 448 Mass. 647, 656–57 (2007), the Court considered whether the public has a right to attend show cause hearings. It held that “[w]hile the First Amendment does not require that a Massachusetts show cause hearing be open to the public, there may

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<sup>1</sup> A copy of the Complaint Procedure standards is included in the Appendix.

be circumstances in which an open hearing is appropriate.” *Id.* at 656. It continued (in words that describe this case), “[w]here an incident has already attracted public attention prior to a show cause hearing, the interest in shielding the participants from publicity is necessarily diminished, while the public’s legitimate interest in access is correspondingly stronger.” *Id.* Further, “in deciding whether to allow access to a particular show cause hearing, clerk-magistrates should consider not only the potential drawbacks of public access, but its considerable benefits” – specifically, of increased transparency and public confidence. *Id.* at 656-657.

In *Bos. Globe Media Partners, LLC v. Chief Just. of Trial Ct.*, 483 Mass. 80, 102 (2019), the Court applied the same standard to applications for criminal complaints. “In considering individual records requests, the clerk-magistrate should balance the interests of transparency, accountability, and public confidence that might be served by making the requested records public against the risk that disclosure would unfairly result in adverse collateral consequences to the accused.” *Id.* at 102. The Court repeated its observation about prior publicity from *Eagle-Tribune*, and added the following: “[W]here the accused is a public official, the interests of transparency, accountability, and public confidence are at their apex if the conduct at issue occurred in the performance of the official’s professional duties or materially bears on the official’s ability to perform those duties honestly or capably.” *Id.*



**B. The Clerk-Magistrate Erred by Treating the Request for Applications Differently than the Show-Cause Hearing, and in Failing to Conduct the Required Balancing.**

The Clerk-Magistrate erred by treating the request for applications for criminal complaints differently from the request to open the show-cause hearing, notwithstanding that the standard for both is the same. Logically, if the accused's privacy rights in the show-cause hearing are outweighed by the public interest in values of transparency, accountability, and public confidence, then the privacy rights in the associated application are outweighed, too. Yet, the Clerk-Magistrate's December 26 decision treats them differently, with no explanation for the distinction. (App. 29).

Further, the Clerk-Magistrate's December 26 decision failed to conduct the balancing test required by *Bos. Globe Media Partners, LLC*, 483 Mass. at 102: "In considering individual records requests, the clerk-magistrate should balance the interests of transparency, accountability, and public confidence that might be served by making the requested records public against the risk that disclosure would unfairly result in adverse collateral consequences to the accused." As the December 26 decision shows, the Clerk-Magistrate gave no consideration to the values of transparency and accountability, and discussed only the reasons for the general rule against disclosure – namely, the interests of the accused. (App. 29).

Nor did she consider the effect of prior publicity on whether the applications should be released. (*Id.*) Accordingly, the decision was erroneous.

**C. The Single Justice Should Order the Release of the Applications.**

The Single Justice should order the Clerk-Magistrate to disclose the 28 applications prior to January 18, the scheduled start of the show-cause hearings, pursuant to the Court’s superintendence authority. The applications concern 28 individuals who allegedly provided some of the “demand” side of the equation to a high-end, allegedly coercive prostitution operation. (App. 3). The U.S. Attorney’s Office has announced that the alleged buyers are “elected officials, high tech and pharmaceutical executives, doctors, military officers, government contractors that possess security clearances, professors, attorneys, scientists and accountants, among others.” (*Id.*). And, as shown above, the matter has already been the subject of national and local media coverage. (App. 8-23).

The public should be able to judge for itself how the applications for criminal complaints against the powerful and elite customers of a high-end brothel are handled, to better enable it to discern whether justice is done in these hearings. The *Globe*’s previous coverage has shown that prosecutors have historically been far more likely to charge people for selling sex than for buying it. A *Globe* review of court records found that in the first half of 2023, “nearly twice as many charges were filed against people for selling sex than were filed against those accused of

paying for it.” (App. 15). Observers have raised the question of whether it is fair “to arrest the sellers but not buyers.” (*Id.*). Accordingly, the court system’s processing of law enforcement’s applications for criminal complaints, in which sex buyers may or may not be prosecuted, is important. Further, some of the potential defendants are public officials, and in such cases “the interests of transparency, accountability, and public confidence are at their apex” because the charges may materially alter the official’s “official’s ability to perform [his] duties honestly or capably.” *Bos. Globe Media Partners, LLC*, 483 Mass. at 102. In all these cases, therefore, the public interest outweighs the privacy interest of the accused.

As the Court held long ago, “it is of the highest moment that those who administer justice should always act under the sense of public responsibility, and that every citizen should be able to satisfy himself with his own eyes as to the mode in which a public duty is performed.” *Cowley v. Pulsifer*, 137 Mass. 392, 394 (1884). Openness of court records, this Court has held, “facilitates the citizen’s desire to keep a watchful eye on the workings of public agencies, permits the media to publish information concerning the operation of government . . . and supports the public’s right to know whether public servants are carrying out their duties in an efficient and law-abiding manner.” *Bos. Herald, Inc. v. Sharpe*, 432 Mass. 593, 606 (2000), quoting *George W. Prescott Publ. Co. v. Register of*

*Probate for Norfolk County*, 395 Mass. 274, 279 (1985) (internal quotations omitted).

[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice.

*Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491–92 (1975).

Practically speaking, without access to the applications for criminal complaints, the news media's coverage of the show-cause hearings will be unduly hampered. At the outset of a hearing, the clerk may call out the name of an accused, and that individual may or may not be present. If such person has a relatively common name, it will be nearly impossible for the members of the media to accurately identify the accused. Unlike other kinds of court proceedings, show-cause hearings are not typically listed in the public schedules of hearings distributed by clerk's offices, and are hidden from public view in the MassCourts online docket system. The applications for the criminal complaints will provide the

detail that would accurately identify the accused; without them, it is possible that one or more may be mis-identified as persons with the same or similar names.

Furthermore, it is likely that the clerk or other parties at the public hearings will make reference to a statement in the application that will not make sense to observers who lack access to the document. Statements about such facts could be misinterpreted by the public or the news media if the application documents are not provided in advance of the show-cause hearings.

Access to the applications, in short, will greatly facilitate accurate observation of the show-cause hearing by the news media and the public, and therefore will serve the public interest.

### **CONCLUSION**

For the foregoing reasons, Trustees of Boston University and Boston Globe respectfully request that the Single Justice order the Clerk-Magistrate of the Cambridge District Court to provide them with access to and copies of the applications for criminal complaints in the above-referenced matters before January 18, 2024.

### **REQUEST FOR HEARING**

Petitioners respectfully request that a hearing on this petition be held as soon as practicable.

Respectfully Submitted,

TRUSTEES OF BOSTON UNIVERSITY  
and BOSTON GLOBE MEDIA  
PARTNERS, LLC

By their attorney,

*/s/ Jeffrey J. Pyle*

\_\_\_\_\_  
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**CERTIFICATE OF COMPLIANCE**

I, Jeffrey J. Pyle, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing superintendence petitions. Counsel further certifies that the foregoing brief is produced in the Times New Roman, 14-point proportional font, and created on Microsoft Word 365. According to the word count function of Microsoft Word 365, it contains 3,304 non-excluded words. I have relied on the word count feature in the word processing software for this word count.

*/s/ Jeffrey J. Pyle* \_\_\_\_\_  
Jeffrey J. Pyle

**CERTIFICATE OF SERVICE**

Pursuant to Supreme Judicial Court Rule 2:22, I hereby certify that on January 12, 2024, I have made service of this Petition upon the Office of the Attorney General by certified mail and email to [agoemergencyfilings@mass.gov](mailto:agoemergencyfilings@mass.gov), and by hand to the Clerk-Magistrate of the Cambridge District Court.

*/s/ Jeffrey J. Pyle* \_\_\_\_\_  
Jeffrey J. Pyle