

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,  
Plaintiff,

CASE NO.: 18-001958CF10A

vs.

JUDGE: SCHERER

NIKOLAS CRUZ,  
Defendant.

ORDER REQUIRING RESPONSE

**THIS CAUSE** comes before the Court upon the receipt of a Media Request Letter dated February 20, 2018, asking the Court to provide public access to the complete docket and court file in the above-referenced case. The Court has reviewed the Motion, and finds that a response by BOTH the State and the Defense is necessary. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that BOTH the Office of the State Attorney and the Office of the Public Defender, as counsel for the defendant, shall file a written response to the attached Media Request letter, and shall provide a courtesy copy of said response to the Court NO LATER THAN THURSDAY, FEBRUARY 22, 2018.

**DONE AND ORDERED** on this 20th of February, 2018 in Chambers at Fort Lauderdale, Broward County, Florida.

  
ELIZABETH A. SCHERER  
CIRCUIT COURT JUDGE

Copies furnished to:  
Office of the State Attorney, Homicide Trial Unit  
Office of the Public Defender, Homicide Trial Unit, Attorney for the Defendant



2101 Vista Parkway Suite 4006, West Palm Beach, FL 33411

February 20, 2018

**VIA FAX AND HAND DELIVERY**

(954) 831-5572

Honorable Elizabeth Scherer  
Circuit Judge – 17th Judicial Circuit of Florida  
201 S.E. 6<sup>th</sup> Street, Room NW7760  
Ft. Lauderdale, FL 33301

Re: State v. Nikolas Cruz, Case No. 18001958CF10A

Dear Judge Scherer:

Shullman Fugate PLLC represents ABC, Inc., ALM Media, LLC, Graham Media Group, Inc., NBCUniversal Media, LLC, Scripps Media, Inc., Univision Communications Inc., WFTV, LLC, and WPLG Inc. ("the Media"), which asked this firm to contact you about the partially sealed docket and court file in the above-referenced case. I write to ask that this Court direct the Clerk of Court to provide public access to the complete docket and court file (with the exception of any records specifically made confidential) in this matter and to provide to the Media notice and an opportunity to be heard concerning any future requests for closure in this case.

On February 14, 2018, nineteen year old Nikolas Cruz was charged with seventeen counts of premeditated murder in connection with the shooting deaths of seventeen high school students and teachers at Marjory Stoneman Douglas High School: Alyssa Alhadeff, Scott Beigel, Martin Duque Anguiano, Nicholas Dworet, Aaron Feis, Jami Guttenberg, Chris Hixon, Luke Hoyer, Cara Loughran, Gina Montalto, Joaquin Oliver, Alaina Petty, Meadow Pollack, Helena Ramsay, Alex Schachter, Carmen Schentrup, and Peter Wang. Defendant was arrested the same day nearby the school where the shooting occurred. Needless to say, the public interest in this latest mass shooting is great. In the few days since the shooting, public debate on issues of school safety, mental health, government competence, and gun ownership has been robust.

The Media has learned about a motion or other paper Defendant filed in the case late Friday afternoon, February 16, 2018. The court document itself was filed under seal. It is the media's understanding that there exists an order permitting the document to be filed under seal, and that document is under seal as well. Neither the motion nor the order appears on the Court's docket, even though pleadings subsequent to these materials are reflected on the docket for this case. The Media found out about these sealed filings due to a series of hearings held February 19, 2018 related to whether the State Attorney objected to closure of the records. At the Monday afternoon hearing, the State Attorney apparently informed the Court it did not object to the sealing of these court records.

RECEIVED

FEB 20 2018

ELIZABETH A. SCHERER  
CIRCUIT COURT JUDGE

The State Attorney's Office has indicated to the undersigned that it knows very little about the contents of the motion, but it appears to have been addressed to defense counsel's efforts to visit Defendant at the jail. The Clerk's Office has told the undersigned's office that it does not have a copy of the motion or order or any paperwork justifying closure of these materials. This absence of these materials from the public docket is very troubling.

The Media has standing to oppose closure of criminal proceedings and records. *Sarasota Herald-Tribune v. Talley*, 523 So. 2d 1163 (Fla. 2d DCA 1988); *Times Publ'g Co. v. Pennick*, 433 So. 2d 1281 (Fla. 2d DCA 1983); *News-Press Publ'g Co. v. State*, 345 So. 2d 865 (Fla. 2d DCA 1977). To be sure, the public's right of access to court records, including dockets, is solidly rooted in the First Amendment to the United States Constitution, Article I, Section 24 of the Florida Constitution, the Florida common law and Rule of Judicial Administration 2.420. In *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988), the Florida Supreme Court remarked:

... [A] strong presumption of openness exists for all court proceedings. A trial is a public event, and the filed records of court proceedings are public records available for public examination ... The burden of proof in [closure] proceedings shall always be on the party seeking closure.

When considering a request to seal judicial records, the "analysis must begin with the proposition that all civil and criminal court proceedings are public events, records of court proceedings are public records and there is a strong presumption in favor of public access to such matters." *Sentinel Communications Co. v. Watson*, 615 So. 2d 768, 770 (Fla. 5th DCA 1993). As such, before any closure of court records can occur, closure generally must be supported by a demonstrated compelling interest, the court must find that no reasonable alternatives to closure exist, and any closure order must be narrowly tailored to protect that compelling interest. *Barron*, 531 So. 2d at 118; *Miami Herald Publishing Co. v. Lewis*, 426 So.2d 1, 6-8 (Fla. 1982). Absent a specific confidentiality provision, the framework mandated by Florida courts, the U.S. Constitution, Florida Constitution, and Rule of Judicial Administration 2.420 requires a fact-specific, case-by-case analysis prior to closure and judicial findings to support closure. Importantly, the press is entitled to notice and an opportunity to be heard on closure issues. *Lewis*, 426 So.2d at 4.

Here, neither the motion nor the sealing order appears on the public docket (and the sealing order itself appears to be sealed). Put simply, the process by which the closure occurred in this case is completely shielded from public view, and the Media – the public's surrogate in access matters – has no basis to understand whether the proper procedures for sealing court records were followed. See Fla. R. Jud. Admin. 2.420. Therefore, we request that the Court ensure that these documents appear on the public docket and unseal the records requesting and authorizing the closure so as to permit the Media to assess whether the closure of the underlying defense filing was warranted.

We understand Your Honor has advised the parties that the Court expects proper closure protocols to be followed in this case going forward and appreciate the Court's commitment to



Hon. E. Scherer  
February 20, 2018  
Page 3 of 3

adhering to the strict requirements of closure. The Media request to participate in the process of any future proposed closures of records or proceedings in this case. The Media likewise request that the Court direct the parties to provide to the undersigned notice of any efforts to close any record or proceeding in this case, including serving upon the undersigned a copy of the motion setting forth the basis for any requested closure.<sup>1</sup> Finally, the Media request that this Court permit the Media an opportunity to be heard on any requested closure in this case.

Thank you for your consideration of this matter.

Sincerely,  
Shullman Fugate PL



Deanna K. Shullman  
dshullman@shullmanfugate.com

cc (via email): Michael Satz, State Attorney  
Shari Tate, Esq.  
Howard Finkelstein, Public Defender  
Melissa McNeill, Esq.

---

<sup>1</sup> By email correspondence dated February 19, 2018, the undersigned likewise directly requested that the State Attorney's Office and Public Defender serve upon the undersigned any requests for closure.