

about Ms. Armstrong by self-appointed “true crime” sleuths have garnered as many as 77.4 million total views.⁶ Reddit threads about Ms. Armstrong have received thousands of comments, largely malicious, parroting sexist media portrayals of Ms. Armstrong.⁷ Indeed, there even exists a Reddit “sub-forum” specifically dedicated to discussion about Ms. Armstrong.⁸ A public Facebook group named “Kaitlin Armstrong Case Discussion” boasts 1,100 members and has almost daily posting activity.⁹ Amongst participants of the Facebook group—whose posts are publicly available to be viewed—Ms. Armstrong is already tried and convicted:



Michelle D Benedict

Just another murderer trying to get away with murder.

Like Reply Share 2d



Melissa Ramirez

Tahd Frentzel Still a lot of people do not know about this case. So she may be able to move some place and live a normal life. I really hope she goes away from the rest of her life.

Like Reply Share 1d



⁶ Search Results for “Kaitlin Armstrong,” TIKTOK, <https://www.tiktok.com/discover/kaitlin-armstrong> (last visited Aug. 21, 2022).

⁷ Search Results for “Kaitlin Armstrong,” REDDIT, <https://www.reddit.com/search/?q=kaitlin%20armstrong> (last visited Aug. 21, 2022).

⁸ KaitlinArmstrong, REDDIT, <https://www.reddit.com/r/KaitlinArmstrong/> (last visited Aug. 21, 2022).

⁹ Kaitlin Armstrong Case Discussion, FACEBOOK, <https://www.facebook.com/groups/3048827815428234> (last visited Aug. 21, 2022).



Mark Franco

She was a total jealous crazy psycho wench. As a 3rd rate "pro" racer felt totally upstaged by a younger, Prettier, and light years ahead of her More Talented Superior racer. She could never compete, or hold a candle to the incredible talent Super Star that Mo was and was on her way to becoming 1 of the best [if not Thee Best] in the world. I live here, in VT where Mo was

The result of this widespread, biased publicity is that **there is virtually nowhere in the English-speaking world where Ms. Armstrong could receive a fair trial today.**

Through their inflammatory statements, government actors have contributed to a carnival-like media storm about Ms. Armstrong. The *Affidavit for Arrest Warrant*, written by Austin Police Department Detective Richard Spitler, has largely framed the media narrative. After an arrest warrant was issued for Ms. Armstrong, the U.S. Marshals Service – Lone Star Fugitive Task Force initiated a manhunt for Ms. Armstrong, igniting a frenzy of sensationalized allegations regarding Ms. Armstrong’s travel to New York and Costa Rica.¹⁰ After Ms. Armstrong’s deportation from Costa Rica, Deputy U.S. Marshal Brandon Filla (Deputy Filla) hosted a press conference at the federal courthouse in Austin, Texas.¹¹ Three senior prosecutors from the Travis County District Attorney’s Office—First Assistant Trudy Strassburger, Trial Director Guillermo Gonzalez, and Youth Justice Division Director Rickey Jones—stood alongside Deputy Filla and other local, state, and federal authorities:

¹⁰ Press Release, U.S. Marshals Service, Kaitlin Armstrong Captured in Costa Rica: 43-day fugitive investigation ends at Santa Teresa Beach hostel (Jun. 30, 2022), <https://www.usmarshals.gov/news/press-release/kaitlin-armstrong-captured-costa-rica>.

¹¹ COURT TV, *Capture of Kaitlin Armstrong: U.S. Marshals Press Conference*, YOUTUBE (Jul. 8, 2022), <https://www.youtube.com/watch?v=HIDruwCn5Xs>.



Travis County District Attorney's Office (@DATravisCounty), Twitter (Jul. 8, 2022, 11:58 AM), <https://twitter.com/DATravisCounty/status/1545452161479446532>.

While standing at the courthouse doors, defense counsel for Ms. Armstrong requested admission to observe the press conference but was denied access by the U.S. Marshal's Office. Afterwards, defense counsel advised U.S. District Court Judges Yeakel and Pitman about the exclusion of defense counsel from the press conference. After the U.S. Marshal's Office was

admonished for their conduct, the Chief Deputy U.S. Marshal for the Western District of Texas called defense counsel to apologize for the actions of Deputy Filla.

As TCDAO leadership stood alongside him, Deputy Filla portrayed Ms. Armstrong’s lawful travel to New York as “fleeing” from justice; speculated about changes to Ms. Armstrong’s face and hair color as evidence of flight; and painted an association of Ms. Armstrong with the most “violent” and “worst of the worst” criminals who “wreak havoc” on the community. Deputy Filla stood before a large, projected image of Ms. Armstrong’s “Wanted” poster with **CAPTURED** in bright red letters across Ms. Armstrong’s face.

Deputy Filla did not mention that the “43-day manhunt” for Ms. Armstrong was a direct result of law enforcement incompetence: the Austin Police Department had arrested Ms. Armstrong on a valid misdemeanor warrant within a day of Ms. Wilson’s death but released her from custody because of a mistaken belief that the warrant contained an incorrect date of birth.

On July 17, 2022, Ms. Armstrong filed pretrial motions seeking a *Franks* hearing regarding the original warrant for Ms. Armstrong’s arrest and seeking suppression of illegally obtained evidence.¹² After Ms. Armstrong filed these motions, a small number of news outlets published articles about the defense allegations that Ms. Armstrong has been the victim of a fictitious and misogynistic portrayal propagated by law enforcement.¹³

The Travis County District Attorney’s Office (“TCDAO”) filed its *Motion for Order Prohibiting Comment to Media* on August 18, 2022, in which it moved this Court to prohibit “all

¹² Motion to Suppress Statements, Observations, and Recordings, *State of Texas v. Kaitlin Armstrong*, Docket Number D1DC22301129 (403RD Judicial Dist. Ct., Austin, Tex.).

¹³ See, e.g., Maggie Q. Thompson, *Kaitlin Armstrong Defense Team: Police ‘Concocted a Misogynistic and Fictitious Story,’* THE AUSTIN CHRONICLE, Aug. 19, 2022, <https://www.austinchronicle.com/daily/news/2022-08-19/kaitlin-armstrong-defense-team-police-concocted-a-misogynistic-and-fictitious-story/>.

parties” from commenting to media about the case. In its Motion, the State argues that “the interests of justice are best served by the parties avoiding comment to the media, as to avoid prejudice to the venire prior to the selection of jury[.]”¹⁴

ARGUMENT

1. The Travis County District Attorney’s Office Ignores Their Own Contribution to Prejudice Against Ms. Armstrong.

Before Ms. Armstrong filed pretrial motions critical of the police investigation in this case, the State did not express concern for “avoid[ing] prejudice to the venire” or facilitating the adjudication of facts in court. TCDAO leadership has contributed to the negative portrayal of Ms. Armstrong in the public eye. Leadership of the TCDAO not only stood alongside Deputy Filla as he vilified Ms. Armstrong but promoted their participation via a tweet from the official TCDAO Twitter account after the fact.¹⁵ The TCDAO’s participation in and promotion of the press conference is tantamount to an endorsement of prejudicial statements made at the press conference. A day following the press conference, TCDAO tweeted a commitment to “hold Ms. Armstrong accountable” (i.e., secure a conviction against her):



¹⁴ State’s Motion for Order Prohibiting Comment to Media, *State of Texas v. Kaitlin Armstrong*, Docket Number D1DC22301129 (403RD Judicial Dist. Ct., Austin, Tex.).

¹⁵ Travis County District Attorney’s Office (@DATravisCounty), Twitter (Jul. 8, 2022, 11:58 AM), <https://twitter.com/DATravisCounty/status/1545452161479446532>.

Travis County District Attorney's Office (@DATravisCounty), Twitter (Jul. 8, 2022, 11:58 AM), <https://twitter.com/DATravisCounty/status/1545452164738420747>.

Prior to August 17, 2022, virtually every piece of information potentially prejudicing Ms. Armstrong had been provided to the media by government actors. The allegations in Detective Spitler's original *Affidavit for Warrant of Arrest*, though full of mischaracterizations, material omissions, and false statements, have significantly shaped the media portrayal of Ms. Armstrong. As of today, most media stories parrot a misogynistic and fictitious "love triangle" theory, laid out in Detective Spitler's affidavit:

NEWS



Kaitlin Armstrong fled to New York City after love-triangle slaying: authorities

EXCLUSIVE: 'He's got out of Dodge.' Cyclist at the center of love triangle that ended in murder has FLED Texas and gone into hiding amid fears his fugitive girlfriend – accused of killing 'other woman' – will target him next

Inside the Murder Case Against Kaitlin Armstrong: A 43-Day Search and an Alleged Love Triangle

Kaitlin Armstrong has pleaded not guilty to murdering cyclist Moriah Wilson out of jealousy, but prosecutors contend that evading an arrest warrant by fleeing to Costa Rica isn't a good look.

From top: headlines from the NEW YORK POST, DAILY MAIL, and E! NEWS, respectively.

TCDAO waited 94 days from the issuance of Ms. Armstrong’s arrest warrant before raising their concern for fairness. During that time, the government actively participated in media events, and otherwise supplied media with prejudicial images of Ms. Armstrong. The State has waived any standing in seeking a media blackout.

2. TCDAO’s Prejudicial Activity is Especially Influential

The TCDAO’s participation in the carnival-like media atmosphere in this case shows its failure to adhere to their fundamental prosecutorial duty: “to see that justice is done.”¹⁶ Because of the unique role held by prosecutors in our justice system, “[t]he prevailing view is that prosecutor statements are more likely to influence prospective jurors” than statements of other advocates.¹⁷ Thus, “it is essential that prosecutors respect both the power of their words and their office, and ensure that their public comments are carefully tailored solely to further valid law enforcement interests and to steer far clear of violating a defendant’s fundamental right to a fair trial.”¹⁸ In particular, press conferences “provide little benefit relative to the dangers that they may pose in creating bias against the defendant.”¹⁹ The TCDAO’s role in creating the media spectacle around this case is especially prejudicial to Ms. Armstrong and betrays the fundamental rule of prosecutorial ethics.

3. The State’s proposed blanket gag order would violate the First Amendment, and defense statements to the media would not present a “substantial likelihood” of prejudicing the Court’s ability to conduct a fair trial.

The State’s Motion seeks a form of prior restraint, one that, in effect, will *only* apply to Ms. Armstrong. The term “prior restraint” is often used to refer to any order restricting speech or

¹⁶ *Berger v. United States*, 295 U.S. 78, 88 (1935).

¹⁷ Scott M. Matheson, Jr, *The Prosecutor, the Press, and Free Speech*, 58 *FORDHAM L. REV.* 865, 868 (1990).

¹⁸ Anthony S. Barkow *Prosecuting Political Defendants*, 44 *GA. L. REV.* 953, 1009 (2010).

¹⁹ *Id.* at 1019.

publication of information.²⁰ And in *Near v. Minnesota ex rel Olson*, the Supreme Court of the United States maintained that prior restraints, such as the gag order sought by the State, are “the essence of censorship.”²¹ Forty years later, the Supreme Court again addressed the issue of prior restraints in *Organization for a Better Austin v. Keefe*. The Court stated that “any prior restraint on expression comes to this Court with a heavy presumption against its constitutional validity.”²² Therefore, the State’s proposed blanket gag order comes with a heavy presumption against constitutional validity.

The State cannot overcome the heavy presumption against constitutional validity, particularly considering its active participation in shaping the damning media portrayal of Ms. Armstrong. In *U.S. v. Brown*, the Fifth Circuit set the standard for regulating attorneys and parties with a gag order. The Court held that a gag order of attorneys and parties does not violate the parties and attorneys’ First Amendment right of free speech *only if* the extra-judicial commentary by those individuals would present a “substantial likelihood” of prejudicing the Court’s ability to conduct a fair trial, *so long as* the gag order is narrowly tailored *and* uses the least restrictive means available.²³

The State’s proposed gag order would be unjustified because (1) statements by defense counsel would not present a “substantial likelihood” of prejudicing the Court’s ability to conduct a fair trial; (2) the gag order is not “narrowly tailored,” and (3) the gag order is not the least

²⁰ Mark R. Stabile, Note & Comment, Free Press-Fair Trial, Can They be Reconciled in a Highly Publicized Criminal Case? 79 GEO. L. J. 337, 338 (1990) (courts refer to restraints on extrajudicial speech of trial participants and restrictions on media coverage of criminal trials as prior restraints).

²¹ *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931).

²² *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971) (internal quotes omitted).

²³ *U.S. v. Brown*, 218 F.3d 415, 428 (5th Cir. 2000) (emphasis added).

restrictive means available.²⁴ Imposing a gag order *at this time* would not assist in the fair administration of justice. The gag order would simply allow thousands upon thousands of news articles prejudicing Ms. Armstrong to remain cemented in the public’s eye as irrefutable truth. The proposed gag order is not “narrowly tailored.” The State has requested an order prohibiting all parties from “mak[ing] any comment regarding, assessing, or characterizing any fact of the case to any member of any form of public media.”²⁵ This is tantamount to a total “gag order” that does not leave available any avenues of expression to Ms. Armstrong, such as “assertions of innocence, general statements about the nature of an allegation or defense, and statements of matters of public record,” such as statements found in public filings.²⁶ Finally, the proposed gag order is not the least restrictive means available to the Court. Less restrictive means at the Court’s disposal—such as jury sequestration, “searching” voir dire, and “emphatic” jury instructions—would be sufficient to protect the Court’s interest in holding a fair trial.²⁷

4. Defense counsel’s public statements have conformed with the Texas Rules of Professional Conduct.

The two examples of defense counsel media statements, unlike statements made by government actors, are presumptively proper and do not violate Rule 3.07. Rule 3.07 of the Texas Rules of Professional Conduct provides that a lawyer should not make an “extrajudicial statement . . . if the lawyer knows or reasonably should know that it will have a substantial

²⁴ *See id.*

²⁵ State’s Motion for Order Prohibiting Comment to Media, *State of Texas v. Kaitlin Armstrong*, Docket Number D1DC22301129 (403RD Judicial Dist. Ct., Austin, Tex.).

²⁶ *Brown*, 218 F.3d at 429-30.

²⁷ *Nebraska Press*, 96 S.Ct. at 2805.

likelihood of materially prejudicing an adjudicatory proceeding.”²⁸ Subsections (b) and (c) of Rule 3.07 provide guidance on presumptively *proper* and *improper* statements.

The State’s concern about the impropriety of defense counsel’s public comments is disingenuous, as evidenced by the failure of the State to limit *its own* activity to areas authorized by Rule 3.07. The State stood present at a self-congratulatory press conference following the apprehension of Ms. Armstrong, providing details about Ms. Armstrong’s alleged appearance changes; use of “aliases;” and details of alleged “flight” from justice that went far beyond “the fact, time and place of arrest” details authorized for disclosure under Rule 3.07(c)(8) and were intended to feed the media spectacle around this case, to the prejudice of Ms. Armstrong.

The State cites two pieces of information in an AUSTIN CHRONICLE article, allegedly supplied by defense counsel, as evidence of the pressing need for a gag order. First, the State argues that information referencing a defense motion for an independent “test fire” indicates that defense counsel was the “source” for information about the defense motion. However, the information cited in the article was information apparent from the title of the motion itself.²⁹

Second, the State cites a quote from defense counsel regarding the circumstances of Ms. Armstrong’s alleged “flight” as evidence for the necessity of a gag order. The perspective offered by defense counsel does nothing more than provide additional context to combat relentless assertions that Ms. Armstrong’s “flight” from justice is evidence of her guilt.

²⁸ TEX. DISCIPLINARY R. PROF’L CONDUCT R. 3.07.

²⁹ Motion for Examination and Inspection of Evidence and Test Fire, *State of Texas v. Kaitlin Armstrong*, Docket Number D1DC22301129 (403RD Judicial Dist. Ct., Austin, Tex.).

CONCLUSION AND PRAYER

The Defense and the State share an ethical and legal duty to provide Ms. Armstrong a fair trial. The Defense and the State do not agree on the best method to ensure fairness for all parties. The Defense seeks a ban of prejudicial comment consistent with Rule 3.07, while the State seeks a total media blackout. The Defense looks forward to a contested hearing on this matter and will pray for the Court's appointment of a legal ethics expert to promulgate a procedure to ensure that no government actor or party to this matter prejudices legal proceedings against Ms. Armstrong. Such procedures must be consistent with repairing the damage already done through the relentless barrage of attacks against Ms. Armstrong by government actors.

These procedures must acknowledge that:

(1) by delaying this request for a communications ban, during which time a wildly prejudicial narrative developed creating bias against Ms. Armstrong, the State has waived any serious argument that a total ban should now come into effect; and

(2) a total restriction on communications with media would, in effect, only apply to Kaitlin Armstrong because the State's prejudicial narrative is alive and well in the public forum.

Respectfully Submitted,

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ATTORNEYS FOR KAITLIN ARMSTRONG

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defense Motion to Prohibit Prejudicial Comment to Media has been served upon the Travis County District Attorney's Office via electronic service on this 22nd day of August, 2022.

Travis County Assistant District Attorney Rickey Jones

via electronic service

/s/ Richard Cofer
Richard Cofer

Cause No. D-1-DC-22-301129

STATE OF TEXAS

v.

KAITLIN ARMSTRONG

§
§
§
§
§

IN THE 403RD JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

ORDER

ON THIS _____ DAY OF _____, 20____, CAME TO BE HEARD Defense Motion to Prohibit Prejudicial Comment to Media and the Court hereby orders the appointment of a legal ethics expert, mutually agreed upon by the parties, to confer with the parties and establish a mutually agreed policy related to public communications by government actors and parties to this cause to ensure a fair and impartial trial.

Signed this ____ day of _____, 20____.

JUDGE PRESIDING

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Status as of 8/23/2022 10:57 AM CST

Associated Case Party: State of Texas

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