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OFFICE OF THE ATTORNEY GENERAL

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EXECUTIVE DIVISION

By Electronic Mail

April 29, 2022

Hon. Arthur F. Engoron
New York Supreme Court
New York County
60 Centre Street, Room 566
New York, NY 10007

Re: People v. Trump, et al.– No. 451685/2020

Dear Justice Engoron:

This office (“OAG”) represents Petitioner in the above-referenced special proceeding. I write in response to the recent submission of three affidavits from Respondent Donald J. Trump in support of his request that the Court purge the finding of civil contempt against him. Although the affidavits provide some additional information about Respondent’s efforts to comply with the Court’s February 17, 2022 order and OAG’s December 2021 subpoena, they are insufficient to purge the finding of contempt. Rather, the Court should not purge the finding of contempt until the following are done:

1. All of Mr. Trump’s hard copy custodial files located in Trump Tower and off-site storage are searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
2. All of the hard copy files of Mr. Trump’s executive assistants are searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
3. All electronic devices (including computers and mobile phones) issued by the Trump Organization to Mr. Trump’s executive assistants and all of Mr. Trump’s mobile phones are collected, imaged, and searched and all responsive documents are produced. OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.
4. For each of Mr. Trump’s properties where he maintains a “private residence” and/or “personal office” that contains any hard copy files, all such files are searched and all responsive documents are produced.

More specifically, the Court should deny Respondent’s request to purge the finding of civil contempt for the four reasons set forth below.

First, with respect to the hard copy custodial files of Mr. Trump that are located in Trump Tower and off-site storage,¹ Respondent relies exclusively on a number of prior searches conducted by others with respect to these materials (with the exception of the “chron” files).² *See* Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21. These prior searches, conducted by individuals who are not identified, took place between January 2020 and November 2021 – before OAG issued the December 2021 subpoena to Mr. Trump – based on earlier subpoenas issued to the Trump Organization (“TTO Subpoenas”). *See* Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21. Mr. Trump’s reliance on these prior searches to satisfy his independent obligation under the December 2021 subpoena is insufficient because: (i) the December 2021 subpoena seeks additional material in Demands 7 and 8 that was not requested in the prior TTO Subpoenas (and therefore would not have been part of the search);³ and (ii) the Trump Organization production has been plagued with compliance issues resulting in the need for the retention of the independent e-Discovery monitor HaystackID and repeated Court intervention (NYSCEF Nos. 314, 667). As a result of these production problems, OAG and the Trump Organization have agreed that HaystackID will collect and independently review all of this material and produce documents responsive to both the TTO Subpoenas and the December 2021 subpoena, a process which HaystackID expects to conclude by May 6, 2022 for all material except possibly what exists in off-site storage. OAG will consider HaystackID’s review and production of this material to satisfy Mr. Trump’s independent production obligation under the December 2021 subpoena with respect to this category when completed.⁴

¹ This material consists of the following: (i) Mr. Trump’s “chron” files; (ii) Mr. Trump’s hard copy calendars; (iii) the files located in cabinets outside Mr. Trump’s office; (iv) the storage room by Mr. Trump’s office; (v) the Executive Office storage closet; (vi) the file cabinets located on the 25th and 26th floors; and (vii) files maintained in off-site storage. *See* LaRocca Hornik Rosen & Greenberg LLP letter dated April 20, 2022 (“TTO April 20 Letter”) at 15.

² Mr. Trump’s counsel did not review any of his custodial files located in Trump Tower or off-site storage with the single exception of the “chron” files. Habba Aff. ¶ 9; Madaio Aff. at ¶9. Instead, counsel reviewed “attorney work product provided by” counsel for the Trump Organization, a list of the search terms used in the prior searches, the prior OAG subpoenas issued to the Trump Organization, and weekly status reports provided to OAG by the Trump Organization’s counsel. Habba Aff. at ¶¶ 19, 24, 5, 30, 35, 40, 45, 49, 57; Madaio Aff. at ¶¶ 24, 29, 33, 37, 41, 45, 48, 55. Counsel’s review of this other material is without any legal relevance; it does not serve as a proxy for reviewing the hard copy documents themselves.

³ Ms. Habba’s efforts described at paragraphs 52 and 53 of her affidavit to account for any missing documents from prior searches that would be responsive to Demands 7 and 8 were ineffectual. She provides no information on how she “confirmed that all communications and documents with Forbes Magazine” and those involving “insurance procurement” have been produced. Nor was the “supplement[al]” search she had the Trump Organization’s IT team perform using search terms adequate to cover hard copy documents.

⁴ If the HaystackID review confirms that the Trump Organization has indeed produced “all documents from the chron file that was [sic] not purely political,” it would resolve the immediate

Second, Respondent has failed to meet his obligations under the December 2021 subpoena with respect to the hard copy files of his numerous executive assistants, which are within his control.⁵ As to these files, Mr. Madaio attests that he received confirmation that Mr. Trump’s prior counsel “had interviewed all of Respondent’s executive assistants as to whether they had any documents or communications responsive to the Subpoena and that no such responsive documents were identified.” Madaio Aff. at ¶11. This is patently insufficient. The subpoena requests eight categories of documents over the period from January 1, 2010 through December 1, 2021. NYSCEF 361 at Instruction No. 18. Simply asking Mr. Trump’s executive assistants if they can recall from memory whether there are any documents in their files that would be responsive to the subpoena is no substitute for collecting and reviewing their files. Nor is it sufficient for Mr. Trump to rely on prior searches of the assistants’ hard copy files that were conducted as part of the Trump Organization’s production and pre-date the issuance of the December 2021 subpoena (Habba Aff. at ¶ 14; Madaio Aff. at ¶ 21) for the same reasons that the prior searches do not satisfy Mr. Trump’s obligations with respect to his own custodial files. Respondent’s counsel needs to collect and review the hard copy files of Mr. Trump’s executive assistants and produce any responsive material in order to comply with the Court’s February 2022 order. As with Mr. Trump’s custodial files, OAG would consider a review and production of responsive documents by HaystackID to be satisfactory for this category.

Third, Respondent’s submission does not recount any efforts to collect and review electronic devices used by Mr. Trump and his many executive assistants, all of which are likely to contain responsive material. This includes all of the office computers used by his assistants (including Rhona Graf’s laptop and desktop computer at Trump Tower) and all of Mr. Trump’s mobile phones, whether issued to him by the Trump Organization or held by him personally.⁶ HaystackID April 18, 2022 Report, Ex. C at lines 63-64, 221-22. These devices need to be collected, imaged, and searched using appropriate search term filters, predictive coding, or other forms of technology-assisted review as necessary, in consultation with OAG (*see* NYSCEF 361, Instruction No. 8). OAG would consider collection, review, and production by HaystackID of responsive material from the relevant electronic devices to be satisfactory for this category.

production issues but would likely indicate that responsive documents had not been preserved. It is simply not plausible that Mr. Trump authored only three documents dealing with the value of his assets and his wealth. To that end, Mr. Trump and his counsel need to also comply with the Instruction No. 3 of OAG’s subpoena concerning “Documents No Longer in Your Possession.”

⁵ Respondent has stipulated that “documents in the possession of a company owned or controlled by [him] or a Trust owned by him” are under his “control,” which would include the files of his executive assistants. Habba Aff. at ¶ 61.

⁶ The HaystackID report identifies two “flip” phones that belong to Mr. Trump, but given Mr. Trump’s reported use of a smart phone, he apparently has, or must have had in the past, one or more other phones that he obtained for personal use. *See, e.g.*, <https://www.nytimes.com/2017/01/25/us/politics/president-trump-white-house.html?ref=politics>.

Fourth, with respect to potentially responsive documents located at Mr. Trump’s personal residences and personal offices, Respondent’s submission is insufficient. Ms. Habba states that based on privileged conversations she had with Mr. Trump, she “determined that there are no additional responsive documents” at Trump National Golf Club Bedminster or Mar-a-Lago. Habba Aff. at ¶ 16. As with the earlier affidavit from Mr. Madaio, Ms. Habba’s affidavit “provide[s] the Court with no basis to find that the search had been a thorough one or that it had been conducted in a good faith effort to provide” responsive documents. NYSCEF 758 at 3. As an initial matter, why is the response limited to Bedminster and Mar-a-Lago? Ms. Habba should identify each of Mr. Trump’s properties where he maintains a “private residence” and/or “personal office” and describe in detail the efforts undertaken to search files maintained at each such location for responsive documents, including where and how files are maintained, and when and who conducted the search. Ms. Habba’s statement that she met with Mr. Trump to verify “whether” he had any responsive documents, Habba Aff. at ¶17, without any further elaboration on what efforts she undertook after having that conversation, is insufficient – especially given that counsel had previously sought additional time to “go look at Mar-a-Lago,” not just speak with Mr. Trump. NYSCEF No. 671 at ¶ 16. Finally, Mr. Trump’s two-paragraph affidavit adds no useful information to the mix. Mr. Trump merely states off the top of his head, with no hint that he conducted any type of search, that he has no documents in response to the December 2021 subpoena in his “personal possession.” Trump Aff. at ¶ 1. It is unclear whether “personal possession” means on his person or something more, but regardless it is insufficient absent any indication that he or someone at his direction conducted a search and without sufficient detail about any search to enable the Court to find the search was thorough and done in a good faith effort to find responsive documents.

* * *

For these reasons, Respondent’s request that the Court purge its finding of civil contempt should be denied at this time.

Respectfully,

/s/ Andrew S. Amer

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cc: Counsel of Record (via NYSCEF)