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VIA ECF

The Honorable Lewis A. Kaplan
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Carroll v. Trump*, 22 Civ. 10016 (LAK)

Dear Judge Kaplan:

We write on behalf of Plaintiff E. Jean Carroll in response to Defendant Donald J. Trump's request for a preliminary jury charge concerning his potential failure to attend the trial in this case.

Your Honor has directed the parties to advise whether they intend to be present throughout the trial. Ms. Carroll has made clear that she will attend the entire trial and will testify under oath before a jury of her peers. In contrast, Mr. Trump has yet to answer the Court's question, and he now asks the Court to deliver an excuse to the jury in the event he decides not to attend trial.

Mr. Trump's motion is frivolous. Mr. Trump will soon stand trial in federal court for sexual assault and defamation. These are extremely serious claims—and he has the right to appear at trial and testify under oath in his own defense. In the alternative, he has the right to decline to appear at trial, and to accept any associated consequences. Given the gravity of the allegations at issue in this case, one might expect Mr. Trump to appear in person. But he is obviously free to choose otherwise. Either way, Ms. Carroll has a right to play Donald Trump's deposition at trial under Federal Rule of Civil Procedure 32(a)(3), so she has no need for him to testify live.

However, the notion that Mr. Trump would not appear as some sort of favor to the City of New York—and that the jury should be instructed as much—“taxes the credulity of the credulous.” *Maryland v. King*, 569 U.S. 435, 466, 133 S. Ct. 1958, 1980 (2013) (Scalia, J., dissenting). Some of the most important and high-profile cases in our Nation's history have been tried in the Southern District of New York. *See, e.g., United States v. Al Fawwaz*, No. 98 Cr. 1023 (Kaplan, J.); *United States v. Ghaith*, No. 98 Cr. 1023 (Kaplan, J.). This Court and the City it calls home are fully equipped to handle any logistical burdens that may result from Mr. Trump's appearance at a week-long trial. Indeed, the Court has already made clear that it takes those matters seriously. If Mr. Trump decides not to appear at his own trial for sexual assault and defamation, the jury may draw

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whatever inferences it chooses—and Mr. Trump has no right to a judicial endorsement of his (flimsy) excuse. *See, e.g., Kostelec v. State Farm Fire & Cas. Co.*, 64 F.3d 1220, 1229 (8th Cir. 1995) (“[T]here may be comment on the failure of a party to call an available witness whose testimony the party would naturally be expected to produce if favorable to him.”); *Finch v. Covil Corp.*, 388 F. Supp. 3d 593, 616 (M.D.N.C. 2019) (“It is proper for a party in a civil case to suggest inferences, based in evidence, from the failure of an adversary to present witnesses under its control.”).

Mr. Trump’s position is especially difficult to credit in light of his own recent activity. Over the past few weeks, Mr. Trump attended the Ultimate Fighting Championship 287 event,¹ spoke at the National Rifle Association’s annual meeting,² and appeared for a deposition in the New York Attorney General’s civil case against Mr. Trump, his adult children, and the Trump Organization.³ On Monday, he announced that he has scheduled a New Hampshire campaign event for next Thursday, April 27—in other words, in the middle of the trial in this case.⁴ If Mr. Trump can find a way to attend wrestling championships, political conventions, civil depositions, and campaign functions, then surely he could surmount the logistics of attending his own federal trial.

Respectfully submitted,



Roberta A. Kaplan

cc: Counsel of Record

¹ <https://www.businessinsider.com/trump-surprise-ufc-287-appearance-mike-tyson-kid-rock-2023-4>.

² <https://www.washingtonpost.com/politics/2023/04/14/trump-pence-nra-2024/>.

³ <https://www.cnn.com/2023/04/13/politics/trump-deposition-civil-lawsuit-new-york-trump-organization/index.html>.

⁴ <https://www.nbcboston.com/news/local/trump-holding-april-campaign-event-in-manchester-nh/3023901/>.